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Second Ordeal- Study On The Methods And Consequences Of Denial Of Genocide

Shivani Raviprakash

ABSTRACT

This paper aims at addressing one of the most detrimental shortcomings in the domestic legal system of India, which is the failure to address the crime of “genocide” and provide an adequate legal framework. This loophole has been used by perpetrators to evade facing the consequences of their acts. An attempt is made at expounding how the “definition” of genocide is used as an escape clause to refute the blame. An explanation is provided for the use of the legal doctrine of hierarchical accountability for war crimes to analyze and determine who should be held accountable. A brief overview of few instances of denial of genocide from around the world is provided. This paper sheds light on the reasons and the methods adopted to deny and justify the crime of genocide and the consequent effect that it has on the victims. The paper endeavors to analyze the mechanism used by various countries to deny the occurrence of genocide and thereby elucidate the importance and urgency for India to amend its penal laws to criminalize the act of genocide.

Key words: Genocide, Denial, Amend, Mechanism

INTRODUCTION

Denial of genocide, inaction by the authorities, and misterming of the crime have undoubtedly contributed to the perpetration of more genocidal acts. In a case of genocide, the destruction is not of individuals only, but of a culture and ethnicity. The criminal act of genocide is considered as heinous and atrocious in comparison to other crimes against humanity as it intends to completely exterminate the chosen group and is therefore termed the gravest of the crimes against humanity¹.

It is a strenuous task to identify the act of Genocide. The convention on the prevention and punishment of the crime of genocide in 1948 recognized only three instances of genocide, the mass killing of Armenians by Ottoman Turks between 1915-1920, the Holocaust, during which more than six million Jews were killed and Rwanda, where an estimated 800,000 Tutsis and moderate Hutus died in the 1994 genocide.² While other authorities such as International Criminal Tribunal for Former Yugoslavia have recognized the 1995 massacre at Srebrenica as genocide. The International Criminal Court in 2010 issued an arrest warrant for the President of Sudan, Omar al-Bashir, on genocide charges. Some authorities consider the Soviet man-made famine of Ukraine (1932-33), the Indonesian invasion of East Timor (1975), and the Khmer Rouge killings in Cambodia in the 1970s as genocide and some do not.

States often claim that the massacres don't fit the legal definition of genocide, even if over a million people were killed, as famously claimed by the Turkish Government. Many times telling the truth about genocide may not be in the States political, economic, and military interests. Denial of genocide has had a profoundly negative impact on everyone concerned, denial not only harms the victims but also their survivors. It is not only insulting to the survivors, but they also may not get the compensation they deserve. Recognition of the crime is an elemental demand by the victims of genocide seeking justice.

Although crimes against humanity and genocide are often used interchangeably, these two concepts are notably different. The former aims at harming the individual, the latter aims at annihilating the group. Genocide unlike other crimes against humanity does not merely target an individual but targets every individual belonging to a particular group irrespective of their gender, age, or social standing.

¹ Alain Destexhe, *Rwanda and Genocide in the 20th Century*, New York University Press; 1 edition (October 1, 1995)

² <https://www.bbc.com/news/world-11108059>

OBJECTIVES

1. Understand the need for a legal framework with respect to “genocide” in India.
2. Understand the reasons for denying and justifying the crime of genocide and the consequent effect it has on the victims.
3. Understand the mechanism used by various governments and perpetrators to evade the legal consequences of genocide.

RESEARCH METHODOLOGY

The convention on the prevention and punishment of the crime of genocide in 1948 is the source of the primary data. The secondary data was mostly collected through journal articles, newspaper articles, and books. A qualitative approach was adopted to compare and analyze the unfolding of events in various instances of genocide, to understand the cause, modes, and effects of the event. Since there is a lack of judicial precedents in India addressing the issue as the laws regarding the crime have not yet been codified under India’s domestic legal system, inferences are made from international treaties and conventions, to elucidate the importance of codified law.

DEFINITION OF GENOCIDE AS AN ESCAPE CLAUSE-

Every time a State is accused of genocide, their first response has always been to justify how their act does not satisfy the definition of “genocide”. The States choose whichever definition suits their requirements to deny the act of genocide. They look for any loophole or escape clause to avoid accountability.

Raphael Lemkin is credited with coining the term genocide’ in 1944. To form the new term, Lemkin combined the Greek words “*genos*” (race, tribe) and “*cide*” (Killing). Lemkin defined genocide as: *"The coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups with the aim of annihilating the groups themselves. The objectives of such a plan would be the disintegration of the political and social institutions of culture, language, national feelings, religion, economic existence, of national groups and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals*

*belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group"*³

The United Nations General Assembly during its first session undertook a resolution titled "The Crime of Genocide" on 11 December 1946, which affirmed that genocide was a crime under international law before which the act of genocide was generally subsumed within crimes against humanity.⁴

Article II of the Convention on Prevention and Punishment of the Crime of Genocide, defines the scope and ambit of genocide, the bare text of which is provided below.

Article II: 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 or mental 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.*⁵

Despite having such extensive definitions, States deny allegations of genocide. Defining genocide, instead of aiding in the cementing of the claim of genocide has become a tool used by the States to escape being held accountable for their crimes. States delve into the technicalities of the wording of the definitions to evade responsibility. Therefore it is of prime importance that India codifies its laws regarding genocide and provides a formal definition, laying down the components that would constitute the crime.

CATALYSTS

A host of factors contribute to the environment under which genocide is committed, ranging from general racism, anti-Semitism, religious hatred, blind obedience, political opportunism, coercion, profiteering, and xenophobia.

³ Dan Eshet, *Totally Unofficial: Raphael Lemkin And The Genocide Convention*, 2007

⁴ "United Nations General Assembly Resolution 96 (I): The Crime of Genocide" 11 December 1946

⁵ Article II, Convention on the Prevention and Punishment of the Crime of Genocide, 1948

The Nazis claimed that the Jews are "Lives unworthy of life" or *lebensunwertes Leben* in German⁶. Apart from the obvious catalysts in the perpetuation of genocide are other clandestine factors such as "policy decisions". More than three-hundred Jewish organizations attempted to provide information to U.S. President Franklin Roosevelt about the persecution of Jews in Europe, but the ethnic and cultural diversity of American immigrant Jewish communities and their comparative lack of political power in the U.S. hindered their ability to influence policy.⁷

STAGES OF GENOCIDE

Dr. Gregory Stanton, President of Genocide Watch and President of the International Association of Genocide Scholars has classified the various predictable stages of genocide. While all instances of genocide may not follow the same stages of progression, Dr. Gregory Stanton's classification seems to be the closest to accuracy. I have attempted to briefly analyze each of his stages below.

The first stage would be of "*Classification*", where the group is identified as distinct from the society. The second stage would be "*Symbolization*", where the classified group will be associated with names and symbols. The third stage would be "*Dehumanization*", where the perpetrators address the target group with vile names in attempts to convince the public that they are not worthy of being a part of their society. The fourth stage would be "*Organization*", where groups with social, political, and military power will organize themselves for the purpose of achieving their common goal. The fifth stage would be "*Polarization*", where attempts are made to ensure any scope for a cordial conciliation by moderates is eliminated. The sixth stage would be "*Preparation*", this would include the training and arming of the perpetrators as well as the transportation and concentration of the target group. The seventh stage would be "*Extermination*", which encompasses the act of elimination and annihilation of the target group. The last stage, which is the subject of discussion and analysis of this paper would be "*Denial*". This stage is a continuation of the act of genocide, and its repercussions not only harm the victims of genocide but will affect the occurrence of future acts of genocide. This stage must be recognized as a vital aspect of the process of genocide as the harm the denial of the act of genocide would cause would not be any less significant than the harm the act of genocide itself would cause.

⁶ Proctor, Robert, *Racial Hygiene: Medicine under the Nazis*. Cambridge, MA: Harvard University Press. 1988

⁷ Laqueur, Walter; Baumel, Judith Tydor, *The Holocaust Encyclopedia*. New Haven and London: Yale University Press. 2001

YAMASHITA STANDARD/MEDINA STANDARD

Before delving into the reasons for denying the act genocide, it is important to discuss who should be held accountable for the crime. International recognition of the genocide is infinitesimal if we cannot resolve who must be held accountable. It is a well-established fact that the government which guarantees its citizen fundamental rights and must protect its citizens from inhumane acts. The act of genocide is carried out by multiple people on different levels. Different people are responsible for carrying out certain tasks at different levels. Under the 1948 Genocide Convention, the signatories are supposed to respond to genocide by investigating and punishing those who are responsible. India is a signatory to this convention and has ratified it accordingly.

The legal doctrine of hierarchical accountability for war crimes can be used to analyze and determine who should be held accountable. This legal doctrine which was established by the Hague Conventions of 1899 and 1907, is known by various names such as the Yamashita/Medina standard, the superior responsibility, or the command responsibility.⁸ This doctrine states that not just the action but also the omission of a required action would constitute individual criminal liability. To put this very simply, the superior who fails to prevent the crimes committed by his subordinates or punish them for committing such crimes would also be responsible for those crimes.

This doctrine of Yamashita/Medina standard is partly based on “Lieber Code” of the United States of America, which regulated accountability by imposing criminal responsibility on commanders for ordering or encouraging soldiers to wound or kill already disabled enemies.⁹ Article 71 of the Lieber Code and Article 1 of Section I of the 1907 Hague IV both lay the burden on the superiors, of being ethical and lawful in the directions issued by them to their subordinates.¹⁰

Yamashita/Medina standard or Command responsibility has been used to determine accountability in various instances such as Nuremberg trials, by the International Criminal Tribunal for the former Yugoslavia, by the International Criminal Tribunal for Rwanda for that Rwandan Genocide, by the International Criminal Court in trials regarding genocide, war crimes, crimes against humanity and crimes of aggression. Therefore every person who was directly responsible for the perpetuation of the crime must be answerable.

⁸ Allison Marston Danner and Jenny S. Martinez Guilty Associations: Joint Criminal Enterprise, Command Responsibility, and the Development of International Criminal Law , California Law Review, Vol 93, Issue 1, January 2005

⁹ Command Responsibility The Mens Rea Requirement, By Eugenia Levine, Global Policy Forum, February 2005

¹⁰ Laws And Customs Of War On Land(HAGUE IV), October18,1907

BRIEF OVERVIEW OF INSTANCES OF GENOCIDE DENIAL

Holocaust

The years between 1941 and 1945 saw the systematic mass killing of approximately six million Jews, who at the time constituted around two-thirds of Europe's Jewish population in German-occupied Europe. This genocide was perpetrated by Nazi Germany and its collaborators who blatantly denied to acknowledge this systematic mass killing as an act of genocide and instead blamed Western capitalism for the act. After decades of denial, mostly post the reunification of Germany in 1990, Berlin has accepted historical responsibility for the Holocaust by engaging in reconciliation and trust to make Germany's international relations better. The Nazis and their collaborators were brought to justice. Few of the higher-ranking Nazi officials were tried as part of the Nuremberg Trials. Denial of the holocaust is illegal in several European countries and Israel. After surrendering to Allied Forces, Germany placed special emphasis on constructing a stronger bond with its European neighbors, particularly France and the United Kingdom. Germany had taken the initiative to apologize to the Jewish people. Berlin has marked January 27th as the Holocaust Memorial Day annually as a time for remembrance.¹¹

Holodomor

Holodomor, also known as the Ukrainian Genocide of 1932–33, during which millions of inhabitants of Ukraine, the majority of whom were ethnic Ukrainians, died of starvation in a peacetime catastrophe unprecedented in the history of Ukraine. The government of Soviet Ukraine denied that such a famine occurred or that even if it did, it was not a premeditated act.¹²The country banned discussions on the famine and allowed only those that were altered and falsified to depict the famine as an unavoidable natural disaster, to absolve the Communist Party and uphold the legacy of Stalin. One of the underrated contributions to this propaganda is the works of Western journalists and intellectuals including Louis Fischer, Walter Duranty, and George Bernard Shaw.¹³

But there has been a steep change in the stance of various governments since 2006. The Ukrainian Genocide of 1932–33 has been recognized as an act of genocide that was carried out by the Soviet

¹¹ Tom McGregor, Germany 'accepting historical responsibility' on Holocaust restores trust, CCTV.Com Feb 23, 2017

¹² Radzinsky, Edward, Stalin: The First In-depth Biography Based on Explosive New Documents from Russia's Secret Archives. London: Hodder & Stoughton, 1996

¹³ Roman Woronowycz, Patriarchal Sobor concludes in Lviv,adopts code of social responsibility, The Ukrainian Weekly, July 14, 2002

government, by Ukraine and 14 other countries such as Australia, Canada, Colombia, Mexico, Poland, Vatican to name a few.¹⁴

Cambodian Genocide

A communist party of Cambodia known as Khmer Rouge and its leader Pol Pot were responsible for the death of an estimated 1.7 million people during their tenure between the years 1975 to 1979. Pol Pot a Cambodian politician who led Cambodia as the Prime Minister of Democratic Kampuchea between 1976 and 1979 stated that he had a clear conscience and denied being responsible for the genocide.¹⁵ The communist party aggressively denied they were responsible for the genocide and placed the blame on Vietnam stating that the idea of the genocide was perpetrated as a part of Vietnam's propaganda against the communist party. The communist party's actions resulted in the deaths of millions by way of starvation, torture, exhaustion, or disease in labor camps. The victims were also bludgeoned to death during mass executions in "killing fields".

Former president Khieu Samphan has stated that Vietnam had invented the notion of genocide as propaganda to justify their invasion with the "blessing of the current Cambodian leaders"¹⁶. He claimed that Vietnam has never cooperated with the tribunal known as the Extraordinary Chambers in the Courts of Cambodia and that it had invented the unacceptable idea of the Cambodian genocide. After nearly half a century the Cambodian Prime Minister Hun Sen passed legislation in 2013 that prohibits the denial of the Cambodian genocide and other war crimes committed by the Khmer Rouge.

Armenian Genocide

The Armenian genocide began in 1915 when the Turkish government attempted to annihilate the country's Armenian population by deporting from their ancient homeland and massacring them. This attempt to destroy the culture and heritage of the Armenians resulted in the death of more than a million of them.

¹⁴ President of Ukraine Victor Yushchenko, The Verkhovna Rada (Parliament) of Ukraine: LAW OF UKRAINE: About the Holodomor of 1932–1933 in Ukraine, 28 November 2006.

¹⁵ Alvarez, Alex , Governments, Citizens, and Genocide: A Comparative and Interdisciplinary Approach. Indiana University Press.2001

¹⁶ Prak Chan Thul, "Khmer Rouge leader denies mass murder, blames Vietnam" Reuters, June 23, 2017

The Armenian genocide despite being officially accepted by many countries is denied by Turkey. The Republic of Turkey's maintains its formal stance which is that the deaths of Armenians during the "relocation" or "deportation" cannot aptly be deemed "genocide", and they have justified their position by stating that the killings were not deliberate or systematically orchestrated; that the killings were justified because Armenians posed a Russian-sympathizing threat¹⁷. In recent times the Turkish government has continued to deny that they were responsible for the perpetration of the crime of Genocide despite various other countries formally recognizing it as an act of genocide as it very well fits into the definition of genocide.

Rwandan Genocide

The 1994 Genocide against Tutsi is the genocide of the twentieth century where more than one million Tutsis were killed in only three months from April to July 1994. This genocide was the fastest and most vicious genocide in human history. The 1994 Tutsi genocide was recognized officially by the United National Security Council in October 1994. The nature of denial here is slightly different from the ones discussed until now, as although the occurrence of the genocide is recognized, officials continue to deny the extent of the crime, often undermining the ghastly nature of the crime.

The genocide deniers' claim that the target of the killings was not Tutsi, despite the existence of evidence to prove otherwise. The majority of genocide deniers claim to promote peace, human rights, and true reconciliation. It is being denied in the speeches of conferences, in the media and academic debates and writings in the name of democracy, freedom of speech, academic freedom, and reconciliation¹⁸. It is worth mentioning that the violence has not ceased as supporters of the racist ideology of Hutu power have yet to accept that the events that occurred in 1994 were genocidal in nature, but rather they continue to deny this by stating it is nothing but propaganda and fake news.

Although Rwanda has two public holidays which mourn the genocide, many continue to deny the genocide by interpreting the definitions of the term "genocide" to suit their needs, or they attempt to justify the genocide.

Bangladesh Genocide

¹⁷ Dinkell, Christoph, "German Officers and the Armenian Genocide". *Armenian Review*. 1991, 44 (1): 92.

¹⁸ Joseph Karorero, Denial of the 1994 Genocide against the Tutsi in Rwanda, *International Journal of Education and Research*, Vol. 3 No. 5 May 2015

The systematic annihilation of the Bengali people by the Pakistani army during the Bangladesh Liberation War in the 1970s, targeted Hindu men, academics, and professionals, spared the women from murder but subjected nearly 400,000 to rape and sexual enslavement. The people of West Pakistan abused their eastward neighbors economically and through a lack of aid. West Pakistan neglected to send adequate aid following the Bhola Cyclone that ravaged East Pakistan and left close to 500,000 dead in 1970¹⁹. Pakistan has continued to explicitly deny the occurrence of genocide, despite an official study by the Pakistani Army. The Hamoodur Rahman Commission report of 1974, documented that the Pakistani Army had planned and carried out the execution of intellectuals, soldiers, officials, businessmen, and industrialists, and had buried them in mass graves under the pretense of quashing a rebellion²⁰

The American government has never acknowledged the actions of the Pakistan Army as a genocide. Henry Kissinger characterized it as unwise and immoral but never termed it to be genocidal. The horrible acts that occurred to the Bengali people was clearly a genocide under the terms of the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948.

REASONS FOR DENIAL OF GENOCIDE

The taboo associated with the term “genocide”-

Being associated with an act of genocide in any form is considered a taboo. Anti-Semitism has been considered taboo by most people in the Western world. More often than not, world leaders address the issue of genocide, without labeling the incident an act of genocide due to the taboo associated with the term “genocide”.

Barack Obama never in his two terms as U.S. President, used the term "genocide", despite his previous public recognition and support for the genocide bills, as well as election campaign promises to formally recognize the Armenian Genocide.²¹

¹⁹ Pai, Nitan. The 1971 East Pakistan Genocide – A Realist Perspective. International Crimes Strategy Forum, 2008. Print.

²⁰ Tahmima Anam, Pakistan's State of Denial, The New York Times International Edition, Dec. 27, 2013

²¹ “Barack Obama on the Importance of US-Armenia Relations”, Organizing for America, January 19, 2008

The taboo regarding the subject caused the then German Foreign Minister Frank Walter Steinmeier to omit the label "genocide" when addressing the massacres of Armenians in the final years of the Ottoman Empire, during World War I.²²

In 1994, the Clinton Administration has instructed its spokesmen not to describe the deaths in Rwanda as genocide. But American officials claimed that so stark a label could inflame public calls for action the Administration is unwilling to take. A senior administration official of the Clinton Administration stated that "Genocide is a word that carries an enormous amount of responsibility".²³

Thus "genocide" as a word invokes fear and State officials are extremely careful with its use due to the taboo associated with the word.

Fear of Reparations-

States generally deny the act of genocide with the intent to avoid the reparations that are demanded by the victims. Along with labeling the event as an act of genocide, they fear the consequences of that labeling. The Turkish government has denied the genocide, fearing that reparations will follow soon. The Jews have been successful in claiming restitution against many States where their property had been confiscated.

Alfred-Maurice de Zayas an American lawyer and expert in the field of human rights and international law and retired high-ranking United Nations official has said in his work "The Genocide against the Armenians 1915–1923 and the relevance of the 1948 Genocide Convention" that the survivors of the genocide against the Armenians, both individually and collectively, have the standing to advance a claim for restitution. He has suggested that whenever possible "*restitutio in integrum*" (complete restitution, restoration to the previous condition) should be granted, to re-establish the situation that existed before the violation occurred. But where restitution in integrum is not possible, compensation may be substituted as a remedy.²⁴

²² "Steinmeier avoids term 'genocide' discussing Armenian killings", Deutsche Welle, 17.04.2015

²³ Douglas Jehl, "Officials Told to Avoid Calling Rwanda Killings 'Genocide'", The New York Times, June 10, 1994

²⁴ De Zayas, Alfred "The Genocide against the Armenians 1915–1923 and the relevance of the 1948 Genocide Convention", 4 May 2010

MODES AND MANNER OF DENIAL OF GENOCIDE

Labeling of the act as a Propaganda stunt or a Conspiracy Theory-

It is not rare to see genocide deniers claiming the act of genocide was a hoax or an exaggeration. They implicitly or explicitly deny the genocide and make baseless allegations that the genocide is a conspiracy designed to advance the interest of the victims at the expense of other people. Many holocaust deniers have accused the Jews of inventing a conspiracy to extort money from the government. And the holocaust deniers have labeled the Jews as manipulative and powerful conspirators who have fabricated myths of their suffering for their ends.

The Holocaust deniers have time and again accused the Jews of having established their lies as 'truth' by forging evidence and reaped benefits from the said accusation. The deniers have also made outrageous claims such as the holocaust was nothing but a propaganda effort with the intention of making financial claims on Germany and acquiring international support for Israel.²⁵

Deniers of the Cambodian genocide claim that Vietnam who is considered an enemy state invented the idea of genocide as propaganda. Thus it is very common for States to deny genocide claiming it's a hoax or propaganda invented to satisfy the alleged victim's personal benefit.

National politics and the subsequent interference of 1st world countries into the national politics of 3rd world countries

Internal politics between political parties and different political ideologies and values have also resulted in genocide being denied. The era of the Cold War saw a silent conflict between communism and democracy. The Western governments aided the struggling and conflicted third world countries to transition from communism to democracy, even if it was at the cost of killings and massacres.

The Indonesian Genocide was a result of the transition of the communist government to a democratic government. Western governments and much of the West's media preferred Indonesia's founding President Suharto, who came to power in 1966 and the "New Order" to the increasingly leftist "Old Order". The British ambassador, Andrew Gilchrist, wrote to London: "I never concealed from you my belief that a little shooting in Indonesia would be an essential preliminary to effective change."

²⁶The Legal and Security Affairs Minister Djoko Suyanto dismissed Indonesia's National Commission

²⁵ The nature of Holocaust denial: What is Holocaust denial?, Institute for Jewish Policy Report, report 3, 2000.

²⁶ David Edwards, The Compassionate Revolution: Radical Politics and Buddhism. Green Books Ltd, 1998. p. 142.

on Human Rights findings on the killings and stated that “this country would not be what it is today if it didn’t happen.”

Personal interest in the national politics of another nation has also resulted in the denial and negation of genocide, this is especially evident in the case of the Indonesian genocide. Declassified documents released by the U.S. Embassy in Jakarta in October 2017 show that the U.S. government had thorough and detailed knowledge of the 1965-66 massacres and that the U.S. government actively supported, encouraged and facilitated the Indonesian Army's massacres to further its geopolitical interests in the region. US officials, dismayed at Indonesia's shift towards the left, were "ecstatic" over the seizure of power by right-wing generals, and were determined to avoid doing anything that might thwart the efforts of the Indonesian Army.²⁷

Thus perpetrators of genocide claim that the act of genocide was essential for the welfare of the country and was menial collateral to be paid for the betterment of the country. The perpetrators falsely claim that a major change in the political environment will affect the citizens in an inconsequential manner.

Shield of Sovereignty

Principles of state sovereignty, equality, and non-interference have been used to evade accountability by the government’s perpetuating genocide. It is well established that the sovereign cannot be made subject to the judicial processes of most countries. It is the right of every nation to conduct its internal affairs independently, but this right is being exploited to violate the basic fundamental rights of its citizens.

Until recently, the international law relating to sovereign immunity relied virtually exclusively upon domestic case-law and latterly legislation, although the European Convention on State Immunity, 1972 was a notable exception. Notably, in 2004, the UN adopted the Convention on Jurisdictional Immunities of States and Their Property.²⁸

Despite these Conventions, the States still demand non-interference in their national matters and the people who are in eminent positions can manipulate the national laws and the stance of the

²⁷ Melvin, Jess, "Telegrams confirm scale of US complicity in 1965 genocide". Indonesia at Melbourne. University of Melbourne. 20 October 2017

²⁸ E. Denza, "The 2005 UN Convention on State Immunity in Perspective", 55 ICLQ, 2006, p. 395

international community's jurisdiction on the matter is ambiguous thus facilitating inhumane crimes like genocide.

Raphael Lemkin, in his autobiography the "Totally Unofficial Man" has said that a nation's right to determine what happens to its citizens and within its borders should not be used as a shield for nations that persecuted and murdered their own people. He thought that sovereignty should be redefined to mean all the things a nation does for the benefit of its own people. He has stated that "Sovereignty cannot be conceived as the right to kill millions of innocent people."

Diplomacy -

Very often countries negate the claim of genocide due to their personal participation in it. Even if they do recognize the act of genocide, they decline their own participation in it. In this era of globalization, most countries have political and economic relationships with each other, therefore they try and maintain a diplomatic stance. During the Indonesian genocide, the British embassy in Jakarta advised intelligence headquarters in Singapore on how the news should be presented, which was "Suitable propaganda themes"

Sometimes the holocaust deniers do not outrightly deny the very fact of the massacres, but they deny the participation of their own nationals in it, as was done by some post-Soviet states in response to the Holocaust²⁹ Instead, nationalist post-Soviet discourses denied some of the national or regional elements of the Holocaust, like, for example, the contribution of different nationalist organizations or armies to it, or very frequently the participation of local populations in pogroms (a violent riot against the Jews) and other forms of anti-Jewish violence.

JUSTIFICATIONS PROVIDED FOR PERPETRATING THE CRIME

Necessity-

Leaders of States often justify their acts by claiming it was the need of the hour and it was absolutely essential for the betterment of people. Khieu Samphan, former Cambodian communist politician said

²⁹ Rossoliński-Liebe, Grzegorz. "Debating, obfuscating and disciplining the Holocaust: Post-Soviet historical discourses on the OUN-UPA and other nationalist movements". East European Jewish Affairs, 2012

people were forced to work in labor camps because of “the immediate need to solve the problem of hunger”, claiming that it was not criminal to ensure the welfare of the people.

Religion-

Perpetuators of genocide have often used religion to justify their acts by claiming that their act is justified as they are morally right in the eyes of God. The systematic annihilation of the Bengali people by the Pakistani army during the Bangladesh Liberation War in the 1970s targeted Hindu's specifically.

In Indonesia, the Islamic Defenders Front groups' leaders justify acts of genocide as attacks against “infidels” and “blasphemers.” Indonesian officials and security forces frequently facilitate harassment of religious minorities, in some cases even blaming the victims for the attacks. Authorities have made blatant and discriminatory statements. In January 2012, Indonesia's Religious Affairs Minister Suryadharma Ali publicly stated that Shia is “against Islam”. Many of such abuses were a result of a culture of impunity spawned by the government's failure to seek accountability for the massacres in Indonesia in the mid-1960s. Therefore these perpetrators of genocide believe they are not responsible for their acts as everything they did was for a higher purpose of fulfilling God's intent.

Double Genocide-

Governments commonly claim that when people are killed on both sides, it makes those who carried out the genocide and their enemies morally equivalent. They claim that in such instances the responsibility is shared because both sides have been involved in the killings.

The act of genocide has often been justified using bogus moral equivalence. The Holocaust has been justified on the basis of the myth that the Jews were all Communists and got what they deserved because Communism was every bit as genocidal as Nazism and that the holocaust was the opposite and equal reaction to the first genocide, which is the crimes of Communism.³⁰

The Rwandan Genocide has been justified by accusing the Tutsis of engaging in a "counter-genocide" against the Hutus. A study issued in 2009 of central and southern Rwanda, based on 8 months of field research in Rwanda over a period of 2 years, found, however, that the absolute number of Tutsis killed was double that for Hutus, and that the patterns of killing for the two groups differed.³¹

³⁰ David Katz, The “Double Genocide” Theory, Jewish Currents, November 22 2017

³¹ Verwimp, Philip, "Testing the Double-Genocide Thesis for Central and Southern Rwanda". The Journal of Conflict Resolution. 2009, 47 (4): 423–42.

Thus, genocide perpetrators juvenily play the “blame game” to avoid being accused of genocide.

War-

War has been used as a defense for the perpetration of genocide in various instances. The Rwandan government claimed that there was no genocide against the Tutsi in Rwanda arguing that the huge number of civilian deaths in Rwanda was due to fighting in a resumed civil war.

The Pakistan government claims that the Bangladesh genocide took place in a context of civil war, communal riots, which include instances where Bengalis did the killing and counter-genocide and denied any conclusion that casts the Pakistan army as guilty of perpetrating genocide.”³²

FAILURE OF THE CRIMINAL JUSTICE SYSTEM IN INDIA DUE TO INADEQUATE PENAL LAWS

Prosecution of the perpetrators of genocide is not even an option made available by the Indian judicial system. The crimes of “genocide” and “crimes against humanity” do not find a place in the legal framework of the country which boasts of being one of the oldest judicial systems in the world. The lack of a law that deals with such mass crimes have resulted in the perpetrators of these crimes who are responsible for the deaths of innumerable people to escape the consequences of their actions. This is an outright violation of the fundamental rights guaranteed under Part III of the Indian Constitution. India has witnessed many events that could qualify as acts of genocide, they include the 1984 anti-Sikh riots, the 1989 Bhagalpur riots, the 1993 blasts in Bombay, the 2002 Gujarat riots, the 2003 Muzaffarnagar riots, the 2008 Kandhamal riots, etc.

The penal laws of India do not comply with the international standards, owing to which are failing in protecting the interests of their marginalized and underprivileged citizens. India is a signatory to the Genocide Convention of 1948 and had consequently ratified it on August 27th, 1959, but has still not passed any legislation addressing the crime. Article 51 of the Indian Constitution provides that India has to oblige to the International laws and treaties and Article 253 of the Indian Constitution provides that India has to implement any treaty, agreement or convention that has been ratified by the country and enact the laws necessitated.

³² Pai, Nitan. The 1971 East Pakistan Genocide – A Realist Perspective. International Crimes Strategy Forum, 2008. Print.

The international criminal court investigates and tries crimes relating to genocide and crimes against humanity. The ICC is governed by the “Rome Statute”, which India has opted not to sign stating that it does not agree with the definition of “Crimes against Humanity” as it included the terms “widespread” and “systematic”.

The former Minister of State for Home Affairs Shri Kiren Rijju has justified the lack of enacting an exclusive law for genocide by stating that the provisions of the Indian Penal Code provide effective penalties³³, but the provisions of both the IPC and CrPC are ineffective in prosecuting the perpetrators for the crime of genocide. Prosecution of a public servant requires prior sanction and therefore the courts cannot take cognizance without the requisite procedures and thus this provision has been used by public servants to evade facing the consequences of their actions.³⁴

In “*State through CBI vs Sajjan Kumar & Ors*”³⁵, Sajjan Kumar, a Congress leader, and former Lok Sabha MP were awarded life term for his role in the 1984 mass killings of Sikhs in Delhi. Justice S. Muralidhar and Justice Vinod Goel in Paras 367.1 and 367.10 of the judgment held that the mass killings that were engineered by political actors with the assistance of the law enforcement agencies fit the description of “crimes against humanity”. Such peculiar cases need to be viewed from the larger context of mass crimes that require a different approach and much can be learned from similar experiences elsewhere. In Para 367.6 of the judgment, the court held that the reason these criminals evade prosecution and punishment is due to the political patronage they enjoy. The court noted that the domestic legal system of India neither describes “Crimes against Humanity” nor “Genocide” and this loophole is used to evade prosecution. Thus our legal system must be strengthened urgently.

Way Forward-

The penal laws of India need an urgent reform, which includes providing adequate statutory relief to the victims of genocide and other crimes against humanity. The legal system must also hold those responsible who failed or omitted to take the appropriate action as was necessary, by incorporating the legal doctrine of hierarchical accountability. The Indian legal system needs to define what would constitute an act of genocide, its parameters, and its components and also address the resulting sexual

³³ Rajya Sabha, Unstarred Question No. 718, On 2nd March 2016

³⁴ Section 197 (1) of the Code Of Criminal Procedure, 1973

³⁵ CRLA. 1099/2013

and communal violence. But most importantly the Indian legal system needs to stop shunning the term “genocide” and make express provisions regarding the crime.

CONCLUSION-

Genocide is considered an international crime and one of the most gruesome acts a human could commit. Murdering one individual attracts the death penalty in most countries, but murdering millions goes unpunished. Denial of genocide is considered a second cruel ordeal for survivors and the families of the victims. The pain and insult of denial are just as harsh and cruel as the event of genocide itself. Denying the event of genocide results in historical negationism, which is the distortion of the historical record. The planning, execution, cover-up, and continued denial of this grave crime of genocide has snowballed into various issues such as the disappearance of activists and intellectuals, and bombings and assassinations.

Usually, the purpose of historical negation is to achieve a national, political aim, by transferring war-guilt, demonizing an enemy, providing an illusion of victory, or preserving a friendship.³⁶ Denial of genocide leads to questioning the legitimacy of the event. The survivors after having gone through the inhumane event must now strive to prove that they did. The innumerable defenses the perpetrators of genocide have fabricated makes it futile to attempt to establish the truth.

The act of genocide is much more than just killing a group of people, it is intended to destroy a community as a whole due to blind hatred. Victims of genocide suffer due to their ethnicity or the racial or religious group they belong to. It is not ambitious to determine the subjects of a future crime, yet there are no measures being adopted to avert the possible events. Even in the 21st century, the era of globalization, where the curtains between racial, religious, and ethnic groups are becoming distorted, we, unfortunately, do not see a decline in the acts of genocide.

³⁶ Harold D. Lasswell, *Propaganda Technique in World War I*. 1927, MIT Press, pp. xxii–xxvii