

A PROFOUND SCRUTINY OF GENOCIDE AND HUMAN RIGHTS

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ABSTRACT

The crime of genocide is said to be collective destructive act and the ultimate violation of the human rights. This destructive act i.e., Genocide is considered to be a form of crime against the humanity. Genocide is the deliberate and measured eradication of a group in its entirety or in part, where the group can be ethnic, racial, religious, or national in nature. Due to Genocide, there is a violation of human rights and there is an atmosphere of fear everywhere. The present paper aimed at observing the essential elements which is distinguishing genocide from other crimes done against the humanity. The actus reus of genocide and the mens rea of genocide which is necessary to be known as both are the essential elements of Genocide as well as in this paper, the topic of preventing genocide is discussed. An operational process for the structural understanding of the genocidal process is required for the prevention of genocide and in this research paper, the seven stages of genocide has been elucidated. In the research paper, I have done a deep study of genocide and human rights and have discussed many incidents where genocide took place and as a result of which human rights violation have taken place. The Application of the Genocide Convention in Bosnia-Herzegovina and the Rwanda genocide, the Convention of the Prevention and Punishment of the Crime of Genocide, and the International Law Commission, Articles on Responsibility of states has been analyzed in this paper. The Genocide is a crime and is punishable, the punishment for the crime of Genocide has been provided in the Convention. By concluding this research paper, it has been concluded that because of the element of special intent i.e., dolus specialis the crime of genocide is unique and the crime of genocide is causing international disturbances. Not only the early warning but also the early action is required for the prevention of genocide and of the International Law Genocide concept is moderately new category.

Keywords: Genocide, Human Rights, Humanity.

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INTRODUCTION

This research paper deals with genocide which is the crime against humanity where the elements of genocide mens rea and actus reus are present to destroy a victimized group which includes national group, ethnic group, racial group or religious group, either in whole or in part. The adoption of the Convention on the Prevention and Punishment of Genocide, in the development and codification of international law and at combating international crime, the convention had marked a major stage. The research paper is dealing with the meaning of genocide and Human Rights, the elements of genocide, seven stages of genocidal process i.e., from classification to extermination, genocide is a crime and is punishable as prescribed under the Convention on the Prevention and punishment of Genocide, Responsibility to protect Genocide along with the application of Genocide Convention in Bosnia-Herzegovina and the Rwanda Genocide is discussed in this research paper which is giving a profound scrutiny of genocide and human rights. Genocide is a crime violating the human rights of an individual.

Human rights are those rights which are given to an individual as a result of human dignity. The human beings are also said to be rational being, and these rational beings have certain basic as well as inalienable rights which are generally known as human rights, these rights are operative to human beings since their birth. Human Rights, according to DD Basu, are the minimum rights that every individual must have against the state or any public authority simply because he is a member of the human family, regardless of any other consideration.¹ History has given us many examples where the violation of human rights popularly known as inherent rights, natural rights, birth rights, etc., has been happened. One of the examples of the violation of human rights is Genocide. Genocide ruins the dignity of an individual whereas the human dignity is very essence of a meaningful life.

A question that usually arises in everybody's mind, "what is the meaning of Genocide?" The answer to this question is that Genocide has been derived from the Greek word where 'genos' which means 'race' and the Latin word 'cidi' it means 'killing' which refers to the premeditated slaughter of a huge group, which can be a national, ethnic, racial, or religious group.. The term

¹ Dr. Agarwal H.O., International Law & Human Rights, Central Law Publications, 22nd Edition 2019, chapter 52: Genocide, p.743 Human Rights in Constitutional Law, (1994), p. 5. According to Bennett "Human rights include those areas of individual or group freedom that are immune from governmental interference or that, because of their basic contribution to human dignity or welfare, are subject to governmental guarantee, protections, or promotion" (International Organizations, Third Edition p. 258),

Genocide was coined by Raphael Lemkin in his renowned book *Axis Rule in Occupied Europe* (1944).² The term Genocide has been defined under the Convention on the Prevention and Punishment of Genocide and this convention was adopted on 9 December, 1948 which defines genocide and talks about all those acts which are genocidal. Article 2 of the Convention on the Prevention and Punishment of Genocide, 1948 enumerates all those specific acts which are termed to be as genocidal and these acts includes:

- (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.

As per the Article 2 of Convention on the Prevention and Punishment of Genocide, 1948 one thing is clear that not only Genocide is the commitment of specific acts which is done with the intention to destroy in whole but also in part which is including destruction of a national, ethnic, or religious group.

ELEMENTS OF GENOCIDE

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In order to constitute an act as the crime of genocide then it must fulfill three elements which are as follows: First there must be mens rea, second there must be victimized group and third the actus reus. These 3 elements comprise the crime of genocide.

² Maahi Mayuri, July 10, 2018, *Genocide: The Crime against Humanity*, <https://racolblegal.com/genocide-the-crime-against-humanity/#:~:text=Genocide%20refers%20to%20the%20mass%20killing%20of%20people,and%20%E2%80%9Cmassacre%E2%80%9D%20were%20used%20instead%20of%20the%20term>

³ Convention on the Prevention and Punishment of the Crime of Genocide, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII, https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf

- A. *Mens rea* is the mental element which is the guilty mind, in the genocide by the purpose of the act the genocidal intent is determined. If of the genocidal massacre killing is a part then even if only a part of group is killed then also it is an act of genocide.
- B. Victimized group can be analyzed from Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide, deals with four types of groups: a national group ethnical group, racial group or religious group where these four groups can be categorized as victimized group.
- C. *Actus reus* is the third element of the crime of genocide where Article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide says following acts prescribed under Article 2 of the Convention which states that killing members of the group, causing serious bodily or mental harm to the members of the group and deliberately inflicting on the group physical destruction in whole or in part and within the group imposing measures to prevent births, and forcibly transferring children of one group to another group is also constituting *actus reus* or guilty act of the Genocide is present.⁴

STAGES OF GENOCIDE

The structural understanding of genocidal process is required for the prevention of genocide and there are seven stages of genocide:

Classification is the first stage of genocidal process where it says that classification is required by own languages and cultures which means division of the natural and social world into category. Rwanda and Burundi children are the ethnicity of their father. Symbolization is the second stage of the genocidal process which means to signify and name classification symbols are used. Some of the characteristics including the shape of nose or sometimes skin color is becoming the symbol for the classification. The third stage of the genocidal process is the dehumanization. Denial of the humanity of other is the step that permit killing with impunity, example Rwandan Hutu hate radio referred to Tutsis as Cockroaches. Both classification and symbolization become the steps of genocide only when they are combined with

⁴Milan Palević, Bojan Milisavljević, Žaklina Spalević, Vol. 65, october-december 2019, *Actus reus of genocide and types of genocidal destruction*, Research Gate, https://www.researchgate.net/publication/338851581_Actus_reus_of_genocide_and_types_of_genocidal_destruction

dehumanization. Organization is the fourth stage of genocidal process; it is said that Genocide is always organized and well planned. Polarization is the fifth stage of genocidal process which says that like a whirlpool it reaches the mass murder as when the Killing of one group is done it provokes the revenge killing by the other state, such type of massacre is polarization.

The identification is the sixth stage of the genocidal process it elucidates that identification substantially speeds up the massacre by identifying ethnic or religious groups and it is compiling a list of victims which are drawn up and the maps are made. Example in the Rwanda, each person's ethnicity was shown by identity cards. The final stage of the genocidal process is the extermination. "Why it is considered as extermination?" It is considered as extermination because here the victims are not considered as a human. They are rats, vermin or Cockroaches. Killing is described as by euphemisms of purification example ethnic cleansing in Bosnia. For preventing the genocide, a full strategy should include an attack on each of the genocidal structural process.⁵

ARTICLES OF THE INTERNATIONAL LAW COMMISSION ON STATE RESPONSIBILITY

It is said on International Law Commission Reports Article 17 says that it is the responsibility of a state for its internationally wrongful acts. As per Article 3 of the International Law Commission report it says that the International Law is governing the characterization of an act of a state as internationally wrongful.

"Is any state responsible for coercing another state on an international level?" The answer is Yes, that coercion of one state to another state to commit an act then that state is said to be internationally wrong, if the act is internationally wrongful act of the coerced State and the coercing State does the act with knowledge of the circumstances of the act then that coercing State is said to be internationally accountable as according to the Article 18 of the International Law Commission Report.⁶

RESPONSIBILITY TO PROTECT GENOCIDE

⁵ Gregory H. Stanton, February 12, 1998, *The Seven Stages of Genocide*, Yale Center for International and Area Studies Working Paper Series, <https://www.files.ethz.ch/isn/46570/GS01.pdf>

⁶ International Law Commission Report, A/56/10 August 200 International Law Commission, Articles on State Responsibility | How does law protect in war? - Online casebook (icrc.org) <https://casebook.icrc.org/case-study/international-law-commission-articles-state-responsibility>

According to 2005 World Summit Outcome Document, Paragraphs on the responsibility to protect states that it is the responsibility of each individual state to protect its population of state from the genocide, ethnic cleansing or any kind of crime happening against the humanity. In addition, the paragraph emphasises that the international community should promote and assist governments in fulfilling their obligations to support the United Nations in order to establish and early capability. In 2001, the Responsibility to Protect was issued where it was said that for the population's Welfare the States is having positive responsibilities. It was depicted that the primary responsibility is the protection of the people simultaneously with the state itself.⁷

APPLICATION OF THE GENOCIDE CONVENTION IN BOSNIA-HERZEGOVINA

Croatia, Macedonia, Slovenia, Serbia, Montenegro, and Bosnia-Herzegovina were the six constituent countries of the former Yugoslavia. Croatia, Slovenia, and Macedonia seceded from Yugoslavia and became independent states as a result of the internal turmoil and crises. Fighting persisted between Yugoslavia (Serbia and Montenegro) and Bosnia and Herzegovina, worsening the region's situation. The Security Council encouraged all parties to halt the war and adhere to the cease-fire agreement. Yugoslavia was also sanctioned by the Council, but the combat continued.⁸ On March 20, 1993, the Republic of Bosnia and Herzegovina filed an application with the International Court of Justice. Yugoslavia had breached various provisions of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, according to the application. Furthermore, the application stated that a series of events in Bosnia and Herzegovina from April 1992 to the date of the application amounted to various types of acts that amounted to genocide, that these acts fell within the definition of genocide set forth in the Genocide Convention, and that Yugoslavia was fully responsible for the violation of the Genocide Convention's provisions.

Extermination, unlawful incarceration, mass rape, sexual assault, destruction of both public and private property, and targeting intellectual and political leaders and experts, among other things, were all part of the massacre. The number of Bosniaks slain by Serb forces at Srebrenica has been estimated to be somewhere between 7,000 and 8,000.

⁷ United Nations Office on Genocide Prevention and the Responsibility to Protect
<https://www.un.org/en/genocideprevention/about-responsibility-to-protect.shtml>

⁸ Dr. Agarwal H.O., International Law & Human Rights, Central Law Publications, 22nd Edition 2019, chapter 52: Genocide, p.746-747

International Court of Justice in the Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) (Serbia and Montenegro)⁹ passed an unanimous order in 1993 that Yugoslavia should immediately take all measures within its power to prevent commission of the crime of genocide, and Yugoslavia and Bosnia and Herzegovina should not take any action, and should make sure that no action is taken, that will aggravate or prolong the existing dispute over the prevention or elimination of terrorism. By a vote of 13 to 1, the Court also ordered Yugoslavia to ensure that any military, paramilitary, or irregular armed units under its control, direction, or influence, as well as any organisations and people under its control, direction, or influence, do not commit any act of genocide, direct and public incitement to commit genocide, or complicity in genocide, whether it is meant towards Bosnia and Herzegovina's Muslim population.¹⁰ On request, the Court reaffirmed the foregoing interim measures and ordered that they be "immediately and effectively implemented."¹¹

GENOCIDE IN RWANDA GENOCIDE



Ethnic Hutus fanatics massacred almost 800,000 people in Rwanda in under a hundred days in 1994. Although Hutus account for about 85% of Rwandans, the Tutsi minority has always governed the country. The Tutsi kingdom was overthrown by Hutus in 1959. The Rwandan Patriotic Front (RPF) is a group of Tutsi exiles who invaded Rwanda in 1990. The battle lasted until a peace agreement was reached in 1993. A jet carrying then-President Juvenal Habyarimana and his Burundi counterpart Cyprien Ntaryamira - both Hutus - was shot down on the night of April 6, 1994, killing everyone on board. Hutu extremists blamed the RPF and promptly launched a well-coordinated killing campaign. The RPF (Rwandan Patriotic Front) said the plane had been shot down by Hutus to provide an excuse for the genocide. The genocide in Rwanda was carried out pathetically as it led to mass killings, rape of girls or women, Neighbors killed neighbors and some of the male killed their wives saying that if they wouldn't have killed their why they would have been killed or raped by Hutus. Identity cards had people's ethnic group.

⁹ ICJ Reports (1993) p.3.

¹⁰ ICJ Reports (1993) p.325

¹¹ Dr. Agarwal H.O., International Law & Human Rights, Central Law Publications, 22nd Edition 2019, chapter 52: Genocide, p.746-747

The genocide in Rwanda had an incalculable impact on the Rwandan people. People were tortured and terrorised as they saw loved ones perish and scared for their own lives. Nearly 100,000 children are thought to have been orphaned, abducted, or abandoned. More than 67 percent of raped women tested positive for HIV/AIDS. Today, 26 percent of Rwanda's population suffers from post-traumatic stress disorder.¹² Hutu extremists established a radio station, Radio Télévision Libre des Mille Collines RTLMC, as well as newspapers that distributed hate propaganda pushing people to "weed out the bugs," or kill Tutsis. On the radio, the names of important persons who would be killed were read out. Priests and nuns have also been found guilty of murdering people, including those who sought refuge in churches. By the end of the hundred days, an estimated 800,000 Tutsis and moderate Hutus had been slain. The United Nations and Belgium both deployed forces in Rwanda, but the UN mission was not given a mandate to stop killing.¹³

GENOCIDE IS A CRIME AND IS PUNISHABLE

It is critical to understand that genocide is punishable under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide. Article 1 of the Convention declares genocide to be a crime under international law, while Article 3 declares genocide to be punishable.

"Is it simply genocide that is punished, or is it also the attempt to commit genocide?" The answer to this question is found in Article 3 of the Convention, which states that genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide are all crimes punishable under the Genocide Prevention and Punishment Convention. Furthermore, anyone charged with genocide or any other crime listed in Article 3 of the Convention will be tried by the competent tribunal of the state in whose territory the crime was committed, as stated in Article 7 of the Convention. Article 7 also states that anyone charged with genocide or any other crime will be tried by any International Penal Tribunal with jurisdiction.¹⁴ The Convention does not provide any penalties for genocide perpetrators. Contracting parties must establish the required legislation

¹² Kabeer Kalwani, June 19 2020, *Genocide in Rwanda*, <https://lawlex.org/lex-pedia/genocide-in-rwanda/23462>

¹³ BBC News, 4 April 2019, *Rwanda genocide: 100 days of slaughter*, <https://www.bbc.com/news/world-africa-26875506>

¹⁴ Convention on the Prevention and Punishment of the Crime of Genocide, Approved and proposed for signature and ratification or accession by General Assembly resolution 260 A (III) of 9 December 1948 Entry into force: 12 January 1951, in accordance with article XIII.

to ensure effective punishment, according to the Convention.¹⁵ In the event that perpetrators of genocide leave to another country, the Contracting Parties agree to "provide extradition in accordance with their own laws and treaties in effect." For the purposes of extradition, genocide is not considered a political crime, according to Article VII of the Convention. It suggests that any State would be unlikely to approve extradition unless domestic law and international treaty responsibilities allowed for it. States, on the other hand, are not allowed to refuse extradition based on political crimes. The aforementioned clauses make it plain that those who commit genocide would face unforgivable punishment. Genocide prevention necessitates both early warning and early action. In July 2004, the Secretary-General appointed a Special Advisor on Genocide with a small but highly professional staff to help him in preventing crimes of genocide. The Special Advisor's office serves as a "focal point" for early warning information from within and beyond the United Nations system, according to him. "We wholeheartedly endorse the mandate of the United Nations Special Advisor for the Prevention of Genocide," the 2005 Outcome Summit Document stated. Early warning information is more likely to help avert genocide.¹⁶

CONCLUSION

Genocide results in the mass destruction of human life, whether carried out entirely or in part. Genocide is a form of genocide that violates a person's human rights, which are a means of gaining human dignity. One of the goals of the United Nations is the protection and promotion of human rights. The global code of human rights, which is stated in the Proclamation of the Universal Declaration of Human Rights, is the first step toward the promotion and preservation of human rights. The main goal of the Convention on the Prevention and Punishment of Genocide is to prevent and punish genocide, whether it is perpetrated during a conflict or in times of peace. It is the responsibility of states to prevent and punish genocide. Early warning information about the genocide act is more likely to help avoid genocide. As a result, genocide is a crime against humanity that has resulted in violations of human rights and the total or partial annihilation of a population.

¹⁵ Kabeer Kalwani, June 19 2020, *Genocide in Rwanda*, <https://lawlex.org/lex-pedia/genocide-in-rwanda/23462>

¹⁶ Dr. Agarwal H.O., *International Law & Human Rights*, Central Law Publications, 22nd Edition 2019, chapter 52: Genocide, p.744-746