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GENOCIDE - A LEGAL PRESPECTIVE

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INTRODUCTION

Life..! The Right to Life is one of the Supreme rights. Moreover, it is the belief that a human being or animal has the right to live and in particular should not be killed by another entity or nation or ethnic group. No one could be held in servitude for any reason along with everyone having an obligation not to end up another life. One of the supreme crime under international as well as national regime is Genocide. It may true that the “fact of genocide ia as old as humanity” but as an legal concept of genocide is a rather recent arrival. We have to to be noted that ‘killing’ is not necessary to hold on with genocide, somewhat a delibrate and systematic destruction of a people who belong to peculiar race or cultural or religious group. According to Oxford Dictionary, genocide means the murder of a large number of people from a particular nation or ethnic group, with the aim of destroying that nation or group.

HISTORICAL ACCURACY

It is true that the past 20 years or so have been a period of great expansion and development for crimes and consequently occupied the apex position. However the crime of genocide too hold on this position, According to some estimates, nearly 170 million civilians have been subjected to genocide, war crimes and Crimes Against Humanity during the past century. In ancient times it was locked in identity- related conflicts. Some of the historical accuracy about genocide were;

❖ RISE OF ADOLF HITLER : 1933

It is well known by genocide scholars that in 1939 Adolf Hitler urged his generals to exterminate members of the Polish race. Ironically, Hitler – the genocidal maniac who murdered more than six million Jews, who propagated a Nazi ideology. The ideas lay at the heart of Nazi ideology, is their persecutory and genocidal policies and they implemented on an unprecedented scale. Nazis carried out genocide against Europe's Jews and persecuted and murdered other groups based on racial theories (Holocaust). Hitler used Jews' failed WWI-era idealism to feed the world's worst genocide.

❖ WORLD WAR II : 1939

The Second World War played a vital role in radicalising the Nazis' antisemitic policy into genocide. The Wannsee Conference of January 1942, which coordinated the Nazis genocidal policy towards the Jews and resulted in the establishment of six extermination camps. The Nazis did not carry out the Holocaust alone. Their descent into genocide was assisted and carried out by collaborators: Home front and Occupied countries and so on.

❖ ORIGIN OF GENOCIDE : 1944

Polish-Jewish lawyer Raphael Lemkin introduced the word genocide in 1944 and

is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing)

A Holocaust survivor from Poland, whose family was one of the victims of the Jewish Holocaust. In his text, Nazi atrocities 1944, he introduced the word "genocide." (Axis Rule in Occupied Europe)

❖ CONVENTION FOR GENOCIDE

Russian forces committed numerous atrocities and war crimes in Ukraine, including all five of the potentially genocidal acts listed in the Genocide Convention, it was the first convention addressing humanitarian issues and it signifies the international community's commitment to 'never again'. In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the UNGA and came into force in 1951. The convention has been widely accepted by the international community with the support of the majority of States.

DEFINITION FOR GENOCIDE

1. The UN General Assembly described 'genocide' as "a denial of the right of existence of entire human groups, as homicide is the denial of the right to life of individual human beings".
2. Article 6 of ICC (International Criminal Court) Statute defines genocide as:

Any of the following acts committed with intent to destroy, whole or in part, a national, ethnic, racial or religious group, as such:

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

3. Article II of the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG) defines the crime of genocide as identical to Article 6 of the ICC statute, except the fact that Rome Statute expanded the definition given by CPPCG by applying it to times of both war and peace. An important characteristic of genocide is the targeting of a victim not as an individual or for any reason peculiar to him personally, but because he is a member of a national, ethnical, racial, or religious group.

4. The phrase "in whole or in part" in the definition of Genocide has been subject to interpretation by the International Criminal Tribunal for the Former Yugoslavia in the case of **Prosecutor v. Radislav Krstic**. The tribunal in its judgement had held that "the party must be a substantial part of that group. The part targeted must be significant enough to have an impact on the group as a whole."

LEGAL PERSPECTIVE

A challenge of good governance and equitable management which can occur only by eliminating political and economic inequalities, and promoting a common sense of belonging on equal footing. The elevation of genocide to the “crime of crimes” contrasts with the Nuremberg categorization under international law. It directly violates international peace, security and establish the reciprocal or bilateral relationship between the crimes of genocide and against humanity. Even though India has ratified the Convention, there is no existing law defining Genocide.

IPC

Under IPC Section 153B, which criminalises acts that promote enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. with the intent to cause riots or commit acts of violence.

Cr.PC

Under Cr.P.C Section 197 – ‘When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty no court shall take cognizance of such offence except with the previous sanction- of the Central Government of the State Government’.

PREVENTIVE MEASURES

December 9 marks the International Day of Commemoration and Dignity of Victims of the Crime of Genocide and the Prevention of this Crime, offering a moment to reflect upon the great evil that exists in our world and to recommit ourselves to do everything in our power to stop it. On 7 April 2004, the tenth anniversary of the Rwandan genocide, UN Secretary-General Kofi Annan outlined a five-point action plan for preventing genocide:

- Take swift action, including use of military force
- Set up early warning systems
- End impunity through judicial action
- Protect civilians, including through UN peacekeepers
- Prevent armed conflict.

ANALYSIS

This paper basically throws light on the historical instances of genocide and the response of the Indian legal regime and their perspective towards such grotesque crime against humanity. In recent years a growing number of cases both criminal and civil, have been brought outside the territory of states where such crimes have occurred but actual sanction efforts within domestic legal forums have not proven to be successful. Time was ripe for the Supreme Court to settle the jurisprudence of victim-compensation in the light of the UN Basic Principles of Justice for Victims and their protection and participation of the entire process of justice!

CONCLUSION

Genocide is not limited to acts of murder. It also includes actions that may not result in an immediate death but that will eventually lead to the disappearance of a group as such. These are deliberate acts that aim to destroy—immediately or eventually—a group as such.

However, destruction of a group based on grounds of political opposition are not considered as included in the definition of the crime of genocide. We analysis the historical background and an legal regime of genocide. "Right is right, even if everyone is against it, and wrong is wrong, even if everyone is for it."

REFERENCE

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