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"INDIA'S INTERNATIONAL OBLIGATION TO IMPLEMENT LAWS WITH SPECIAL REFERENCE TO GENOCIDE CONVENTION OF 1948"

Name of 1st Author: Dr. Anshu Jain, Name of 2nd Author: Upasana Kalgotra

Designation of 1st Author: Assistant Professor, Designation of 2nd Author: Research Scholar

Name of Department of 1st Author: Department of Laws

Name of Organization of 1st Author: Guru Nanak Dev University, Amritsar, India

ABSTRACT

International law prescribes international norms and principles which are agreed to be followed by all the nations of the world for the maintenance of peace, security and respect among nations. Therefore, all the states are made to enter an international obligation in the form of treaties, conventions, and agreements to act accordingly and legislate their domestic laws based on these treaties, conventions and agreements. India is also a significant contributor in the development of international law and is a signatory to number of international treaties and conventions, based of which India has enacted number of domestic legislations such as human rights, environment laws, labour laws, trade laws, intellectual property rights and many more.

But it has been observed that despite being signatory to number of conventions protecting right of individuals, India is still ignorant of the fact that there are certain spheres of human rights which require full-fledged legislations preventing mass killing of individuals belonging to a particular community, religion, caste, ethnic group, culture, or language or in other way, Indian legal system requires a legislation to prevent the crime of Genocide. India has witnessed many incidents of mass killing of individuals belonging to a community, sponsored through state officials. Due to lack of legislation, only few of the culprits have been sentenced for such a heinous crime. This paper has attempted to highlight few of those events that has created outrage among the people leading to human rights violation and which have remained undealt by the government due to poor legislation. Thus, India must fulfil its prime obligation to enact genocide law to deliver justice to the victims of genocide in India.

Keywords; International law, Human rights, Genocide, domestic legislations, community.

1. INTRODUCTION

In general terms, international law can be understood as the rules and principles that deal with relations between various nations in the world. These rules and principles are binding upon different nations through certain agreements in the form of treaties and conventions. Austin has termed international law as, "positive international morality' and defines law as, "the command of the sovereign, and the indeterminacy of sovereign at the international level and the lack of coercive force had made him classify international law as mere positive morality" (Rattan and Rattan 8-9). Today, this has become an obligation for all the states to enforce and abide by these international norms and rules through the process of ratification of international treaties and conventions and by incorporating them into state's own domestic laws. International laws are non-binding on member states unless and until, they have been recognised by the states. Thus, these are mere obligatory in nature.

In India, international law has played a pivotal role in developing legal system of the country. India is a significant contributor in the development of international laws and has acted as the founding member of United Nations Charter. Therefore, it owes an obligation to ratify the international treaties and conventions and incorporate them into the municipal laws of the country and this requirement has been fulfilled by the Indian legal system to certain extent. The Constitution of India has very expressly mentioned that the state must respect international relations and promote peace and security (*The Constitution of India*, art. 51). It acts as a driving force behind the formulation of other laws of the country. However, there are number of instances which have clearly demonstrated that Indian legislature has been reluctant to assimilate some of the international laws under Indian scenario. It has been seen that despite ratifying number of treaties and conventions at international platform, Indian legal system is still facing enormous challenges in protecting rights of individual in India. Now, it has become a prime necessity to formulate these laws. Therefore, this paper will be discussing some of the urgent matters of protection of people of India which require prime concern of the Indian government.

2. INTERNATIONAL LAW AND DOMESTIC LAW

The term 'international law' was coined by *Jeremy Bentham* in 1780. This law is also referred as 'Law of Nations'. Different thinkers have explained their individual perspectives to define international law. One of the famous definitions of international law is given by Prof. L. Oppenheim, which states, *"Law of Nations or International Law is the name for the body of customary and conventional rules which are considered legally binding by the civilized states in their relationship with each other"* (Agarwal 1). However, the definition was very widely criticised by many scholars on certain grounds and some of them are : (a) exclusion of international organisations and institutions as the subjects of international law; (b) international law not only include individuals as subjects but it also provides rights to them; (c) the term 'civilized state' was removed as it denotes only the Christian states during that period (Agarwal 1). But the modern definitions which has been widely accepted is by Starke. According to him, "body of law which is composed for its

greater part of the principles and rules of conduct which States feel themselves bound to observe, and, therefore, do commonly observe in their relations with each other, and which includes also:

- the rules of law relating to the functioning of international institutions/organisations, their relations with each other, and their relations with State and individuals; and
- certain rules of law relating to individuals and non-State entities so far as the rights and duties of such individuals and non-State entities are the concern of the international community" (Agarwal 3).

The basic aim behind the drafting of international law, is that all the member states of the world who are signatory to international treaties and conventions must ensure that their domestic laws must be consistent with the international norms. Thus, international law could only be applicable through domestic laws. Domestic law, also termed as Municipal law, can be defined as:

"Municipal law is the national, domestic, or internal law of a sovereign state defined in opposition to international law. Municipal law includes law at the national level and the state, provincial, territorial, regional or local levels. While, as far as state law is concerned, these may be distinct categories of law, international law is uninterested in this distinction and treats them all as one. Similarly, international law makes no distinction between the ordinary law of the state and its constitutional law. Article 27 of the Vienna Convention on the Law of Treaties provides that, where a treaty conflicts with a state's municipal law, the state is still obliged to meet its obligations under the treaty. The only exception to this rule is provided by Article 46 of the Vienna Convention, where a state's expression of consent to be bound by a treaty was a manifest violation of a "rule of its internal law of fundamental importance" (Sehrawat).

Hence, international law and domestic law are closely related with each other. International law acts a source for the enactment of laws in the states by proving a framework for provisions under various fields to be applied by the states as per the demand of the situation present in the country. However, for the better understanding of their application, it is of utmost importance to examine the relationship between international law and domestic law thoroughly with the help of two main theories, i.e., Dualistic theory and Monistic theory.

2.1. Dualistic Theory

In 1899, the dualistic theory was developed by Triepel, a German Scholar. According to this view, international law and municipal laws do not form a part of single entity. Both exist as separate legal systems. Being distinct systems, international law could not be applied as the part of the municipal law. It can be applied within a state only by virtue of its adoption in the municipal laws and making it a part of the state law. Further, this theory was also followed by Anzilotti, an Italian jurist (Agarwal 42).

2.2 Monistic Theory

The Monistic theory was developed by two German scholars Moser and Martens in 18th century but the full fledges concept about this doctrine was developed in 19th century. This theory states that international law is formulated only through states. Thus, it could be considered as a separate body. International law and municipal law are the part of single legal system (Agarwal 44).

3. IMPLEMENTATION OF INTERNATIONAL LAW IN INDIA

Now, it is an established rule under international law that every party to the treaty must perform it as it is binding on them and India is obligatory to this rule. India is one of the founding members of United Nations and has played a prominent role towards the framing of international norms and principles for member states of the world by introducing some essential matters of international concerns and making all the member states to affirm to these norms and principles by entering into treaties and conventions. All the nations in the world have agreed to protect each other through endorsing domestic laws. Similarly, the Constitution of India also encompasses few provisions which have very evidently empowered Indian Parliament to frame laws based on international treaties and conventions to which India is signatory.

Among these provisions, an important aspect that deals with the rights of citizen which has imbibed the provisions of Universal Declaration of Human Rights to which India is a signatory. These are the alienable rights which provides dignity and respect to all the human beings irrespective of their gender, creed, caste, place, religion and are universally applicable. But it has been observed that despite having plethora of legislations dealing with rights of individual, there are certain aspects which have remained untouched by the Indian Parliament. India has witnessed number of unexpected events that have led to the mass killing of innocent people belonging to particular community due to political agendas of political parties. These tragedies had a major impact on lives of victims as well as on lives of future generations. It has been realised that justice is still delayed to the victims of these incidents due to reluctant approach of the government.

Under Article 51(c) and Article 253 of the Constitution of India, Indian Parliament has the prime obligation to apply international law under Indian scenario and India is among the three nations in condemning genocide at world level by sponsoring a resolution in General Assembly for confirming 'Genocide' as an international crime. This has led to the enactment of Convention on the Prevention and Punishment of the Crime of Genocide, 1948. This was the major step to ensure the protection of human rights at international level. On 29th November, 1949, Indian signed the Genocide Convention where as it was ratified on 27th August 1959. Till date, Indian Parliament has made no attempt to abide the international obligation despite being a party to this convention. Thus, India has violated the objectives of the Article VI of Genocide Convention. Moreover, there is no other legislation that would substitute the crimes under Genocide Convention. This paper has tried to put a light on number of incidents that may somehow fulfil the essentials of Genocide and which require the urgent attention of the Parliament to frame laws.

3.1. Anti- Sikh Riots of 1984

The anti-Sikh riots of 1984 is denoted as one of the heinous crimes in the history of India against a particular community. This communal violence was a spontaneous reaction to the death of much-loved Prime Minister Indira Gandhi who was shot dead by her own Sikh bodyguards. If we study back the root cause of this violence against Sikh community, it has been found that in early 1980s, Sikh separatist leaders had started committing some serious offences against Hindu minorities and other civilians and thus abusing their human rights for demanding religious and political autonomy from the Indian government. Massacre on civilians and indiscriminate bombing in crowds were also the part of these events. As a result, Indira Gandhi government

launched 'Operation Blue-Star' to arrest the chief leader of the militant group, who was hiding inside the holy shrine of Golden temple.

This military campaign had led destruction of some of the parts of temple as well as killing of civilians, militants and security personnel. Thus, on 31st October, 1984, Mrs. Indira Gandhi was assassinated by her own bodyguards in an act of revenge of military assault happened at Golden temple hurting religious sentiments of Sikh community. The assassination of Mrs. Indira Gandhi led to the retaliatory act of anti-Sikh communal violence through the instigation of congress leaders in Delhi and other parts of the country. Within three days of this violence, at least 2,733 Sikhs were killed, women were raped, and their properties were destroyed ("India: No Justice for 1984 Anti-Sikh Bloodshed").

The reports of the witnesses of these atrocities give the incites how the law enforcement agencies did not show interest in investigation of the violence as they themselves participated in commission of such a crime at a mass level. Various commissions and committees were set up to inquiry into the matter. Only few of the perpetrators were convicted for this offence. Many of the survivor victims are still hoping to get justice even now. The atrocities met out by the victims of such communal violence were not less than an act of genocide. Nanavati Commission of 2005 had denied the spontaneous nature of riots and described it as planned act as the victims were beaten before they were burnt alive (Gill).

Another committee which reported the reluctant part on part of the police in investigating the offence was Kapoor- Mittal Committee. The committee had identified 72 police officers who were negligent performing their duties during such an incident and recommended to dismiss 30 officers. However, no action was taken against them by the government (Gill). Further, Pav Singh, author of '1984 – India's Guilty Secret' has also projected such a violence as a government- orchestrated genocidal massacre. He has stated, "At the time, the authorities projected the violence as a spontaneous reaction to the tragic loss of a much-loved Prime Minister. But evidence points to a government-orchestrated genocidal massacre unleashed by politicians--with the trail leading up to the very heart of the dynastic Gandhi family--and covered up with the help of the police, judiciary, and sections of the media" ("1984 anti-Sikh genocide not spontaneous but govt-orchestrated"). Thus, such a planned act of government fulfils the criteria of an act termed as genocide.

These above-mentioned reports and claims demand a strict legislation in order to protect human rights and such atrocities at mass level. It has been realised, only few culprits have been convicted for these riots. There is a need legislative reforms to ensure justice to the victims of these offences at present as well as in future.

3.2. Exodus of Kashmiri Pandits from Kashmir

If we study back the origin of Kashmir, Kashmiri pandits are the native of Kashmir valley. Kashmiri Pandits are basically the Kashmiri Hindus who are a part of Saraswat Brahmin community of India. During the medieval times, it was observed that most of the people from valley were converted into Islam and the Kashmiri Pandits were only the community left in the valley as Hindus. The northern part of the country was attacked by many invaders for many times and this led to the establishment of Muslim rule in the state. In

1975, Sheikh Abdullah was appointed as the chief minister of Jammu and Kashmir with the support of congress. However, later, he lost his position and the State was under the governor rule. Soon after the appointment of Jagmohan Malhotra as the governor, armed conflicts began to take place in the valley. But on the horrific day of 19th January, 1990, the valley witnessed the beginning of the exodus of Kashmiri pandits. Threats and communal calls to leave Kashmir or to convert were made against the Hindus. This later, turned into merciless killings of Hindus and their families ("Kashmiri Pandits: History, struggle, exodus and everything else you need to know").

Survived Kashmiri pandits fled to the other parts of the country and became refugee in their own state. As a result of this terrifying event of 19th January, 1990, on 21st January, 1990, paramilitary troops shot dead 50 Kashmiri Muslims on Gawkadal bridge in Srinagar. This further preceded by a series of massacre through militant attacks on civilians.

The union and the state government provided refuge to displaced community through humanitarian relief. However, they have failed to provide security to lives and to their upcoming generations through their rehabilitation schemes. An important aspect which has to be dealt under this part of the paper that whether such an incident could be considered as an act of genocide? Three years after this crime against humanity, the Parliament of India enacted the Protection of Human Rights Act, 1993 which led to the establishment of National Human Rights Commission. Soon after its establishment, the displaced Kashmiri pandit community submitted a memorandum to the commission for seeking redressal of the ethnic cleansing of the community from the valley ("Human rights violations & the Pandits").

After the four years of argumentation of the case before the commission, the commission delivered its decision and stated, "the crimes committed against the Kashmiri Pandits are, by any yardstick, deserving of the strongest condemnation. And there can be no gainsaying the acute suffering and deprivation caused to the community". It held such acts to be designed in genocide way. It has observed that Geneva Convention has a peremptory status and all must adhere to the provisions of the convention ("Human rights violations & the Pandits").

Apart from this order, the US bases non-profit organisation, International Commission for Human Rights and Religious freedom (ICHRRF), has officially acknowledged exodus of Kashmiri Pandits as an act of genocide. On 27th March, 2022, the commission tested number of victims and survivors of persecution by holding a special hearing where the victims and survivors shared the atrocities met by them through evidences. They further requested to recognise such a terrible act and to appoint a commission for inquiry into ethnic cleansing in order to prevent future atrocities ("ICHRRF officially recognises the Kashmiri Hindu Genocide"). However, till date perpetrators of this crime are still living freely without any further inquiry and investigation as the supreme court has also refused to hear a plea on the prosecution of the culprits responsible for mass killing of Kashmiri Hindus.

3.3. Gujarat Riots of 2002

Another situation of mass crime targeting a distinct group was witnessed in Gujarat. In 2002, a genocidal attempt was made in the State where more that 2000Muslim people were killed. The incident was triggered when a train carrying Hindu activists from Ayodhya were burnt down at Godhra Station in Gujarat. Ghanchi Muslim community living close to the station was alleged to have committed the murder. Following this act, Muslims were targeted, attacked, killed, and injured on large scale in order to eliminate them from the state, in a well-planned manner. Women were sexually assaulted and their properties were burnt down, agricultural lands were forcibly acquired. They were made to live in relief camps ("Nainar and Uma 397).

During investigation of this mass crime, it was reported that State officials were the chief perpetrators of this act as were liable to have conspired and participated in the violence. The State made a deliberate failure to inquire into the matter. The negligent role played by the State in such a serious act was held to be one of the main factors in realising the role of the State. The evidences of computerised list of Muslim houses and shops, distribution of trishuls and swords, use of gas cylinders implies violence to be well conspired in advance to target a particular community. The nature of the concerned attack, number of participations, and scale of the attack demonstrates the violence committed in a systematic manner to eliminate Muslims from the State. Thus, can be named as genocidal attempt (Nainar and Uma 408).

4. CONCLUSION

The crime of genocide is defined under Article II of the Genocide Convention as: "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 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" (Nainar and Uma 364).

Therefore, India being a state party to this Genocide Convention has an obligation to prevent this offence in the country and punish the groups and individuals responsible for committing any such crime against any other group in the country by enacting a proper legislation sufficient to prosecute the culprits. Attempts to introduce an exclusive law for prevention and punishment of the crime of genocide has been made in the House of Parliament. But it was argued that India has already affirmed the obligation of Genocide Convention by enacting laws such as Indian Penal Code and Criminal Procedure Code which provide penalties to the persons guilty of genocide. On the other side, it has also been observed that these criminal laws have immuned the state officials from committed any offence in their official capacity. This has raised a question regarding the impunity of culprits sponsored by state in committing offence against communities belonging

to particular religion, caste, ethnic group, language, cultural etc. Crimes against mass gatherings have remained unrecognized under these laws.

Incidents such as Sikh riots, Exodus of Kashmiri Pandits and Gujarat Riots have evidently fulfilled the ingredients of Genocide which are absent under the colonial laws of IPC and CrPC. India has violated the international obligation under Articles 51 and 253 of the Constitution of India by not enacting laws as per Genocide Convention. Inclusion of Genocide law under the guise of Indian Penal Code and Criminal Procedure Code has led to the failure of investigation and prosecution of offenders of mass crimes without a specific law. this has further led to the failure of justice to victims and a clear violation of Human Rights. An urgent need of relevant legislation specifically dealing with genocide crime ensuring sanction and protection of future incidents of mass killings sponsored by state is required by the Indian government for acknowledging the Convention of 1948 to punish authoritative officials for violating the human rights.

Works Cited:

- "1984 anti-Sikh genocide not spontaneous but govt-orchestrated", *The Tribune*, https://www.tribuneindia.com/news/archive/punjab/-1984-anti-sikh-genocide-not-spontaneous-but-govt-orchestrated-512100. Accessed on 6 September 2023.
- "Human rights violations & the Pandits", *Rising Kashmir*, http://risingkashmir.com/human-rights-violations--the-pandits. Accessed on 23 September 2023.
- "ICHRRF officially recognises the Kashmiri Hindu Genocide, 1989-1991", *Business Standard*, https://www.business-standard.com/article/current-affairs/ichrrf-officially-recognises-the-kashmiri-hindu-genocide-1989-1991-122032800405_1.html. Accessed on 23 September 2023.
- "India: No Justice for 1984 Anti-Sikh Bloodshed", *Human Rights Watch*, https://www.hrw.org/news/2014/10/29/india-no-justice-1984-anti-sikh-bloodshed. Accessed on 25 September 2023.
- "Kashmiri Pandits: History, struggle, exodus and everything else you need to know", *News nine*, https://www.news9live.com/knowledge/kashmiri-pandits-history-struggles-exodus-and-everything-else-you-need-to-know-174708. Accessed on 22 September 2023.
- Agarwal, H.O. *International Law & Human Rights*. Allahabad Central Law Publications, 2011.
- Gill, Monique. *The 1984 Sikh Genocide- 36 years on*, Human Rights Pulse, https://www.humanrightspulse.com/mastercontentblog/the-1984-sikh-genocide-36-years-on, Accessed on 26 September 2023.
- Nainar, Vahida, et al. *Pursuing Elusive Justice: Mass Crimes in India and Relevance of International Standards*. Oxford University Press, 2013.

- Rattan, Jyoti, et al. *Public International Law (International Law 1),* Bharat Law House Pvt. Ltd., 2021.
- Sehrawat, Vivek. *Implementation of International law in Indian Legal System,* Florida Journal of International Law vol. 31, 2021, https://scholarship.law.ufl.edu/cgi/viewcontent.cgi?article=1050&context=fjil. Accessed on 8 September. 2023.
- *The Constitution of India as amended by The Constitution (one Hundred and Fifth Amendment) Act, 2021.* Edited by Universal, Lexis Nexis, 2023.