

The Criminal Acts Perpetrated during Jammu Massacre, 1947: An International Law Perspective

Adnan Rahman *

Amar Jahangir †

Syed Mudasser Fida Gardazi ‡

Abstract: *The Dogra Forces of the erstwhile princely state of Jammu and Kashmir, with the support of the extremist armed groups of Hindus and Sikhs, perpetrated various criminal acts during Jammu Massacre, 1947. A huge number of Muslims were killed, raped, maimed, and tortured, and thousands were forced to migrate to Pakistan in critical conditions. The massacre generally and nature, threshold, and scope of these acts are retrospectively analyzed, to the extent of Genocide Convention, 1948 and Rome Statute of International Criminal Court, 1998, by the review of existing literature. The study suggests few viable and effective legal redressals under international law to the victims of the Jammu Massacre, including refugees and the living generations of the killed persons. The work is somehow useful and relevant for future studies around the multifarious nature and aspects of the criminal acts similar to the acts of Perpetrators involved in the Jammu Genocide.*

Key Words: Criminal Acts, Jammu Massacre, International Law and Conflict of Jammu and Kashmir

Introduction

The conflict of Jammu and Kashmir (JK) has many dimensions, and India has been committing massive violations of human rights in Indian administered JK since its occupation on October 27, 1947. (Schofield, 2000, 2003) However, there was another perspective of the indirect persecution and interference of the Indian private militias of RSS, former members of Indian National Army (INA), and Patiala forces, as well as the Congress blue-eyed Mahar Chand Mahajan for carrying out the crimes against humanity in the Jammu region of the erstwhile state of Jammu and Kashmir before the actual occupation of JK by Indian forces in collaboration with the forces of the Maharaja Hari Singh. Then it remained continued even after Indian occupation of the larger part of the former state of J & K and had turned aggravated and reached its most tragic and inhumane culmination on November 06, 1947. The day of November 06 is remembered every year as Jammu Massacre Day or Jammu Martyrs Day in Pakistan and AJK to pay homage and tribute to the martyrs and migrants of the Jammu region who had faced the worst form of persecution and injustice. During these incidents

of the Jammu Massacre of 1947, ranging from the month of October 1947 to November 1947, thousands of Muslims of Jammu were killed, tortured, raped, and forced to migrate to Pakistan and AJK by extremist Hindus and Sikhs under the active patronage of Government of the erstwhile state of J & K headed by Hindu Maharaja Hari Singh. (Chaudhary, 2015)

The scholars and historians used different nomenclature to attribute the incidents of the Jammu that occurred in the months of October and November of 1947. The phrases like Massacre, Carnage, Genocide, Ethnic Cleansing, Mass Killing, Pogrom, and Holocaust were used by different writers to highlight the severity and intensity of the killings and atrocities being committed by Hindu and Sikh extremist groups against the Muslims in the Jammu region of the erstwhile state of JK. There has not been any legal analysis of the incidents of the Jammu that occurred in 1947 under the relevant provisions of the International law applicable at that time. Moreover, no critical and objective legal study has been carried out on the nature and kind of acts committed by the perpetrators in the Jammu

* Member Law Faculty, University of Azad Jammu and Kashmir, Muzaffarabad, Pakistan.

Email: mir.adnan.rahman@gmail.com

† PhD Scholar, Department of History and Pakistan Studies, International Islamic University Islamabad, Pakistan.

‡ Assistant Professor, Department of Law, University of Azad Jammu and Kashmir, Muzaffarabad, Pakistan.

region to convert the Muslim majority into a minority through gross and systematic killings and forced migrations. There is also a controversy related to the death toll of the Muslims during the Jammu Massacre of 1947, but there is a consensus on the widespread and calculated organized crimes against the Muslims of Jammu by Rashtriya Swayamsevak Sangh (RSS) backed Hindu Sabha, Akali Dal and Hindu Patiala forces with aid and abetment of Maharaja Forces and state administration but so far, no research-based and independent work has been carried out to ascertain the exact number of killings, rapes, tortures and forced migrations during Jammu Massacre, 1947. These statistics range from 20,000 to 2, 37,000, but these incidents of the Jammu Massacre needs an investigation to highlight the exact number of the killings, migrations, and rapes of Muslims of Jammu. [\[Stephens, 1953\]](#)

The Government of India and the Government of Pakistan appointed a commission comprising of two Englishmen to ascertain the actual number of the killings in the Jammu Massacre, 1947, and they calculated a number of 70,000 by their joint investigations. [\[Snedden, 2013\]](#) But the immediate figures were highlighted by the news of three leading Newspapers of that time in India. The first news was shared by "The Times" on 10 August 1948 and claimed the death toll of 2 37,000. The British daily "London Times" also published a report about the Jammu massacre on October 10, 1947, and stated that Maharaja Hari Singh had killed around 2,37,000 Jammu Muslims by using his own forces with personal supervision and patronage. Ian Stephens wrote an editorial in "The Statesman" in 1948 (Calcutta) and claimed that around 5 00,000 Muslims had been butchered in the Jammu province of the erstwhile state of JK. Another Journalist, Horace Alexander, wrote an article in Weekly "Spectator" on January 16, 1948, and stated that around 2 00,000 Muslims of Jammu were killed during the Jammu Massacre, 1947. Similarly, a Jammu based journalist Zafar Chaudhary made his claim in a recent book that around 303,501 Jammu Muslims were lost from the Jammu region in 1947, and there is no exact data on how many of them had migrated to Pakistan and AJK and how many of them were killed by the extremist groups of Hindus and Sikhs. [\[Chaudhary, 2015\]](#) Illyas Chatha, another scholar who wrote about the nature and different perspectives of the Jammu Massacre, 1947 at length, has claimed that around 250,000 to 3,00,000 Muslims of Jammu were killed during the Massacre of Jammu took place in 1947. [\[Chatha, 2009\]](#) Ian Coplan is a leading scholar who wrote extensively about the

princely states of the subcontinent, and British India had written in his research article that around 80,000 Muslims of Jammu were massacred during the communal riots in Jammu in 1947 and stated that the ethnic cleansing of the Muslim minority in other princely states of India has similarities with the situation of Jammu. [\[Copland, 1998\]](#) The most important eyewitness of the Jammu Massacre, 1947 was Ved Bhasin, who submitted his written testimony in the University of Jammu in 2003 and narrated the events of persecution and brutal killings of Muslims of Jammu in his memoirs. He claimed that around 100,000 Muslims were killed by fanatic right-wing Hindus and Sikhs with the active support and supervision of the Maharaja administration. [\[Bhasin, 2003\]](#) Christopher Snedden also wrote a lot about the different perspectives of the conflict of JK, including the Jammu Massacre, 1947, and he made an estimated claim that around 20,000 to 100,000 Muslims of Jammu were killed by extremist and armed groups of Non-Muslims during the riots of Jammu province in 1947. [\[Snedden, 2001\]](#) The Azad Government of the state of JK also constituted a committee comprising of Justice Yousuf Saraf to compile the history of the erstwhile state of JK. Justice Yousuf Saraf compiled and stated that almost 20,000 to 200,000 Muslims of Jammu lost their lives in the Jammu Massacre, 1947. [\[Saraf, 2005\]](#)

The Maharaja specifically targeted and killed the Muslims of Jammu for the obvious reason that the Jammu-based Muslim Conference (MC) took three significant steps against the Maharaja Hari Singh. Firstly, the General Council of the Muslim Conference passed a resolution for the accession of the princely state of Kashmir with Pakistan on July 19, 1947. Secondly, the Muslims of Jammu, particularly from the Western districts of Mirpur, Poonch, and Kotli, rose against the forces of Maharaja and launched a widespread and popular rebellion to get rid of the tyrannical and despotic rule of the Maharaja Hari Singh. Thirdly, the Muslims of the western districts of Jammu also announced a revolutionary and representative government with the name of "Azad Government of the state of JK." These three were very landmark developments, and all were carried out by the Muslims of the Jammu against the ruling Maharaja Hari Singh of the state of JK. There was very close proximity and the relationship between the forces of the Maharaja Hari Singh and the acts of violence committed by the extremist and armed Hindus and Sikhs in the Jammu region. The maharaja was in close connections with the leaders of the right-wing Hindu groups. Moreover, the Muslim soldiers were disarmed and sent back home intentionally to target the Muslim

population of the Jammu province. Besides, the Government of the Maharaja Hari Singh distributed arms amongst the Hindus and Sikhs and allowed the RSS and other Hindu and Sikhs right-wing groups to give trainings to their youth in order to mobilize them against the Muslims of Jammu as per the larger plan. When Pakistan sent Lorries to Jammu in the first week of November 1947, all the passengers of those Lorries were mercilessly killed in the presence and with the implicit support of the forces of the Maharaja Hari Singh. ([Fareed, 2017](#); [Umer, 2017](#); [Aiqar, 1995](#)) This proves the direct connection and patronage of the administration of the Maharaja Hari Singh to all the right-wing Hindu and Sikh groups involved in killing Muslims in the Jammu region and looting their property. Many writers and scholars wrote a lot with historical and documentary evidence to prove that Maharaja's Administration was involved in patronizing the Jammu massacre in, 1947, and the top leadership of India was also aware of the occurrence of the violent events in the Jammu region of the erstwhile state of JK. When the massacre of the Muslims in Hyderabad and Jammu region of the erstwhile state of JK came into the limelight, it was revealed to the independent observers and Journalists that the establishment in New Delhi is indifferent to Indian Muslims and did not show any concern at all on the mass killings of the Muslims. ([Naqvi, 2016](#))

The partition of Indo Pakistan subcontinent had also brought the worst communal violence and strife in entire India, particularly in Punjab and Bengal of British India, and out of all the 565 princely states of India, the princely state of JK was the only princely state where this communal violence took place ([Chatha, 2009](#)) and eventually converted into a full-fledged and state-sponsored mass killings and crimes against humanity. The threshold and severity of that massacre and atrocities also qualified as the genocide as per the convention on the Prevention and Punishment of the Crime of Genocide, 1948 (CPPCC, 1948) and the definition of the Genocide as given by the Rome Statute of International Criminal Court, 1998 (Rome Statute), but technically and legally, there was no law defining Genocide when the Jammu Massacre took place in 1947 except a resolution of United Nations General Assembly (UNGA) condemning the act of genocide in the occupied territories of the world without defining it and without determining its punishment. Unfortunately, no significant research and academic work have been carried out so far on the unpleasant Massacre of Jammu that took place in 1947 from the legal perspective under International law.

Similarly, this is also necessary to analyze the unlawful acts of the Jammu Massacre, 1947, in the backdrop of the CPPCC, 1948 and the Rome Statute, 1998 so that the legally valid nomenclature can be attributed to the mass murder and forced migrations of Jammu region occurred in 1947. The analysis of the incidents of the Jammu, 1947 will establish the legally correct fact whether the incidents of the Jammu, 1947 are qualified and regarded as "Genocide" or not. Under what grounds and arguments, the legal terminology of "Genocide" can be used for these incidents of Jammu and, contrary to it, what legal arguments are valid and correct to not term these incidents of Jammu as "Genocide". This legal analysis will be of great significance to establish the validity of the use of the terminology of "Genocide" for the incidents of Jammu, 1947. In the same way, the analysis of the incidents of Jammu, 1947 in the backdrop of the Rome Statute, 1998 will elaborate the application of the jurisdiction of the Rome Statute, 1998 on the incidents of Jammu, 1947 and also establish the nature of those incidents in the light of the definition of the Genocide, Crimes against Humanity and War Crimes given in the Rome Statute, 1998.

The incidents of Jammu occurred in 1947, and the CPPCC was adopted in 1948. ([Schabas, 2009](#)) There was no law related to the definition and punishment of the Crime of Genocide in 1947. However, Nuremberg Trials were initiated against the German Nazis by the Nuremberg Military Tribunal in 1946, and the definition of the War Crimes, Crimes against Peace, and Crimes against Humanity was given in the charter of the Nuremberg trial called the Nuremberg Charter or London Charter. ([Heller, 2011](#)) This charter was like a decree, and it set down the rules and procedure to formally and legally conduct the trials of the Nuremberg. This is also a proper legal inquiry to critically analyze the nature of the incidents that occurred in the Jammu region in 1947 in the light of the definitions of the War Crimes, Crimes against Peace, and Crime against Humanity to ascertain the legally valid nature of the crimes committed by the perpetrators.

Jammu Massacre, 1947: A Historical Outlook

Historically speaking, this is a very important question that what were the circumstances and relevant facts which took place at that time and were responsible for the Jammu Massacre in 1947. The following factors were significant in causing this massacre, among other factors. First of all, when Hindus and Sikhs of Punjab and adjoining areas reached Jammu after the partition

of the subcontinent in the month of March 1947 and afterwards, it caused severe unrest and communal disharmony in the erstwhile state of JK, particularly in Jammu province. Secondly, the presence of a strong and trained workers network of RSS in Jammu province and the absence of any such parallel organization and preparation on the part of the Muslims of Jammu was another significant reason which led to the Jammu Massacre, 1947. The Hindu organization of RSS was established in 1925 and had strong roots and presence everywhere in the subcontinent and also in the Jammu region of the erstwhile state of JK. Likewise, the Sikh organization of Akali Dal and its strong ranks and files in Jammu province were also responsible for the mass killings of the Muslims in Jammu province. The Akali Dal was also established in 1920 to protect the religious places of the Sikh community, and this was also already present in the Jammu province. The nefarious designs of the Maharaja Hari Singh and his administration, especially his Congress nominated new Prime Minister of the erstwhile state of JK Mahar Chand Mahajan, were to convert the Muslim majority Jammu province into a minority or even create a religiously homogenous Jammu province with all the Hindu population. This effort of the Hindu and Sikh organizations was basically a systematic policy to transform the Jammu province into a Hindu majority region through the systematic demographic changes in the Jammu province of the erstwhile state of JK. [\[Chaudhary, 2015\]](#)

Another reason for the Jammu Massacre was the arrest or absence of the main leadership of MC in the region of Jammu in those days and also their lack of preparations for any expected pogrom by extremist Hindus and Sikhs. The direct and expressed patronage of the Government of JK to the perpetrators of this massacre in the Jammu province was the real loss as Muslims trusted the machinery of the Maharaja Government, but they were mercilessly killed and persecuted due to the same blind trust. The Maharaja's administration took back all the arms or weapons of any kind from the Muslims and then distributed the weapons among the Hindus and Sikhs to use against the Muslims. There was also another reason of the hatred and revenge of Maharaja Hari Singh. The resolution of the General Council of MC for the accession of JK with Pakistan on July 19, 1947, and the start of Poonch rebellion from August 1947 against the forces of Maharaja instigated the Maharaja to turn hostile towards the Muslims and as Jammu was the Dogra land of Maharaja, so Maharaja started a patronage of the extremists Hindus and Sikhs to kill the Muslims of Jammu. Most of the incidents of Jammu Massacres took place in the months of

September, October and November, 1947. [\[Saraf, 2005\]](#)

The nature and legal terminology of these massacres of Jammu can be divided into two different categories on the basis of the occupation of JK by India on October 27, 1947. Before October 27, 1947, many incidents took place in the Jammu region where Muslims were killed and raped by Hindus and Sikhs under the patronage of the Government of Maharaja. These actions were part of the state policy at that time and can be regarded as the crimes against humanity intended by the Hindu ruler and Hindu and Sikh organizations against the Muslims of the Jammu region of the erstwhile state of JK. After the occupation of JK by India on October 27, 1947, all the incidents of the Jammu massacres that occurred after October 27, 1947, had aggravated into war crimes as the occupation of JK by India converted this region and communal violence into an international armed conflict under International Humanitarian Law (IHL). The relevant provisions of the IHL as enshrined in the Geneva Conventions and Hague Conventions define the partial or complete occupation of any territory as International Armed Conflict, and then it also invokes the application of the provisions of the IHL and changes the character of the gross and systematic violations of the human rights into war crimes. However, the crime of Genocide and crimes against humanity can occur in both peacetime and wartime, and there is no need of any certain prerequisites to qualify the situation for the application of any set of rules and regulations. [\[Schabas, 2009\]](#)

Nature of Criminal Acts Committed during Jammu Massacre

Various unlawful acts and omissions were committed by the perpetrators of the Jammu Massacre against the religious group of Muslims in the Jammu region of the erstwhile state of JK. These include but are not limited to murder, extermination, forced transfer of population or forced migration, imprisonments, tortures, rapes, sexual slavery, enforced prostitution, forced marriages against the religions of the women, sexual violence, persecution, enforced disappearances of persons, destruction and appropriation and plundering of properties by the extremist and armed Hindus and Sikhs. Now it is necessary to analyze the nature the criminal acts being committed by perpetrators with a threshold of their impact and degree of their nature to categorize them into different criminal acts and omission under the relevant provisions of the International criminal law within the broader

domain of public international law as applicable at that time.

First of all, there is a lot of literature available on the facts and events that happened in the Jammu region in 1947, where different categories of unlawful acts are enumerated with relevant events and ground situations of that time of history. On the basis of those books, personal accounts of the survivors, reports of the journalists, and investigative research work, a range of unlawful acts have been identified with varying numbers of murders, wounded, and raped cases. In different research works conducted on the incidents of the Jammu that occurred in 1947, the scholars, researchers, and journalists have used different nomenclatures to collectively describe the humanitarian crises and barbaric acts committed in the Jammu region of the erstwhile state of JK at that time. The different nomenclatures used by different scholars and writers to describe the incidents of Jammu are massacre, genocide, slaughter, pogrom, ethnic cleansing, mass killings, carnage and bloodshed. Now, it is important to analyze these different nomenclatures being used for the atrocities committed by perpetrators in the Jammu region of the erstwhile state of JK under the relevant provisions of the International law as applicable in 1947.

As far as the nature of these acts is concerned, there are a few very relevant and significant facts necessary to establish the true nature of these acts under the relevant provisions of the International Law in 1947: Firstly, there was a relationship between the state of JK and the acts of violence carried out against the Muslims of Jammu in 1947. All the acts were committed by the perpetrators with the active patronage of the Maharaja Hari Singh, and there was complete patronage of the state of JK before and after October 27, 1947. Secondly, these acts were not spontaneous and sudden. Rather, these were the results of planning, coordination, and well-thought conspiracies against the Jammu Muslims.

Thirdly, these acts were not carried out by only a few people at a specific place in a sporadic way. But these were the massive violations of the human rights of the Muslims of Jammu, which were much broader and deeper in threshold and intensity and was committed against the entire Muslim population of the Jammu region in a systematic way. Fourthly, these acts intended to target the religious group Muslims due to bitter and horrific communal violence that occurred in the regions of British India, particularly in adjoining areas of Punjab. So a Muslim religious group was attacked, killed, and forced to migrate to the situation of the Jammu Massacre, 1947.

Fifthly, the nature and classification of the unlawful acts committed during the incidents of Jammu in 1947 fulfills the elements of the definitions and criteria for the crime of Genocide, Crimes against Humanity, and War Crimes but needs objective legal analysis to be given the proper legal nomenclature and general title in accordance with the relevant applicable provisions of the International law applicable in 1947. Sixthly, there was a clear objective and anticipated political advantage of the Hindu maharaja for carrying out these unlawful acts against the Jammu Muslims in the form of demographic changes of the Jammu region and converting the Muslim majority profile of the Jammu region into Muslim minority.

These facts and the nature of the unlawful acts committed during the Jammu Massacre in 1947 will be helpful in determining the collective nomenclature for the series of systematic and gross acts under the relevant provisions of the International Law. In the next sections, I will apply the CPPCG, 1948, Rome Statute, 1998, and London Charter for the Nuremberg trial to determine the nature of the series of unlawful acts committed during the Jammu massacre in 1947.

Analysis of the Criminal Acts of Jammu Massacre under Genocide Convention, 1948

The most important document to analyze the crime of Genocide is the CPPCG, 1948. This was adopted by the UNGA on December 09, 1948, and came into force in January 1951. After the adoption of this convention, states were very reluctant to sign and ratify it due to its stringent obligations on the states regarding the crime of Genocide. ([Schabas, 2009](#))

As there was no law criminalizing and condemning the act of genocide as a heinous and immoral act against humanity, the CPPCG, 1948 was the reflection of the intentions and designs of the UN to formally criminalize and condemn the act of genocide under International law. Similar views were given by the ICJ in its advisory opinions given in 1951, 1996, and 2007, respectively. So this is a kind of judicial recognition of the prohibition of the crime of genocide under International law. Furthermore, the International court of justice also declared and expressly recognized the prohibition of the Genocide as the "Preemptory Norm of International Law" in 2006. It means the Prohibition of the genocide is now Jus cogens under International Law, and no deviation is possible by any state or group of people from this most important and non-derogatory principle of international law. (the Democratic Republic of the

Congo v Rwanda) Before this convention, there was only a resolution of the UNGA that affirmed genocide was a crime under international law in 1946, but that resolution was not sufficient to qualify the Massacre of Jammu 1947 as Genocide. [\[Koursami, 2018\]](#)

So it can be considered that the CPPCG, 1948 is the basic and foundational document regarding the prohibition of the genocide and the elements of the genocide, and its definition has been used in the two ad hoc tribunals established by the United Nations Security Council (UNSC) in former Yugoslavia and Rwanda as well as in the Rome Statute, 1998. Moreover, in 2004, the Secretary-General of the United Nations also appointed a special adviser on the prevention of Genocide so that the adviser can regularly warn the UN about the threat of Genocide if any such situation arises in any part of the world. Furthermore, the UN and its different organs have passed many resolutions, declarations, and statements about the prohibition of genocide and the significance of humanity and its protection from the catastrophe of Genocide.

This CPPCG, 1948, has also been domesticated by many states of the world by incorporating relevant provisions, particularly the definition of genocide in the penal laws of the states. [\[Henham et al, 2007\]](#) States have either incorporated the definition of the CPPCG, 1998 as it is, or have incorporated the definition of the genocide and its elements with slight changes and modifications. This is also very important to analyze these persecutions and killings under the relevant provisions of the International Law applicable in 1947. There was no provision of the international law defining Genocide at that time. The CPPCG, 1998 was unanimously adopted by UNGA on December 09, 1948. Before this convention, there was no definition of Genocide in International law. Although there was a resolution of the UNGA that condemned the act of Genocide that resolution did not define the crime of Genocide and also did not mention its criminality and punishment, which is the most important element for the criminality of any act or omission under the criminal law. Although the crime of genocide has its roots in IHL and has direct overlapping with the International Human Rights Law, its nature and scope directly pertain with International Criminal Law.

Hence, the atrocities and criminal acts committed by the extremist groups of Hindus and Sikhs during the incidents of Jammu in 1947 cannot be treated as a "Crime of Genocide" as the CPPCG cannot be made applicable with retrospective effect. Otherwise, the nature of the acts, threshold of the bloodshed, and intensity of

the humanitarian crises, and the actual loss of the lives of the Jammu Muslims are sufficient to be called as "Genocide," but the absence of the relevant law relating to the Crime of Genocide is the main reason to not call these atrocities as Genocide. It has been observed that few scholars and Journalists are using the phrase "Genocide" to highlight the barbaric and inhumane treatment of the Jammu Muslims by the Hindus and Sikhs, but legally and technically, the legal terminology of genocide cannot be used for the horrible incidents of Jammu occurred in 1947 under the CPPCG as it has its own specific requirements and legal consequences under the relevant provisions of the International Criminal Law.

Analysis of the Criminal Acts of Jammu Massacre under Rome Statute of ICC, 1998

The Rome Statute of the International Criminal Court (ICC) was adopted on 17 July 1998 and entered into force on 17 July 2002. ICC also has the jurisdiction to try the cases of war crimes, crimes against humanity, genocide, and acts of aggression. However, the International Criminal Court cannot try the acts before 2002. The act of genocide was illegal since World War II, but it was not possible to prosecute even after the Convention of Genocide, 1948, as most of the states ratified this convention with the condition of prior consent of the state before taking any trial of Genocide.

The ICC is the result of the multilateral treaty and has been operative since July 1, 2002. As far as the composition of the ICC is concerned, it has a Presidency, a Registry, an office of the Prosecutor, and a judicial division. The governing forum of the International Criminal Court is the Assembly of the State Parties, which is a forum of all the member states of the Rome Statute, 1998. There have been a specific criteria and prerequisites pertaining to the jurisdiction and admissibility of the cases before the ICC. There are three significant jurisdictional requirements for the prosecution of any individual in the ICC. Firstly, there is a subject matter requirement of the jurisdiction determines that which acts can be called as crimes under the Rome Statute, 1998. There are four acts that are termed as crimes under this law: Crime of Genocide, Crimes against humanity, War Crimes and Crimes of Aggression. [\[Stahn, 2015\]](#)

The second jurisdictional requirement is the territorial or personal jurisdiction. This means in which territory the alleged crimes has been committed and whether that territory falls within the territorial jurisdiction of the state's parties to the Rome Statute, 1998 or the state that has

expressly declared to accept the jurisdiction of the ICC. It also includes registered vessels and registered aircraft. Besides, all the natural persons fall within the jurisdiction of the ICC if that natural person is the national of a state which is a party to the statute of ICC or has declared to accept the jurisdiction of the ICC. The third jurisdictional requirement of the ICC is the temporal jurisdictional requirement, that means the time period on which the jurisdiction of the ICC can be applied. The ICC cannot have retroactive jurisdiction, and ICC has no jurisdiction over the acts of Genocide, War Crimes, Crimes against Humanity, or War Crimes that occurred before July 01, 2002.

The careful analysis of the Rome Statute, 1998, the jurisdiction of the court cannot be applied on the criminal acts committed by the extremist groups of Hindus and Sikhs against the Jammu Muslims in 1947. Although, the nature and degree of the criminal acts fulfil the elements of the definitions of War crimes (those committed after October 27, 1947), crimes against humanity and genocide but cannot be legally called with the nomenclature of these crimes under the Rome Statute, 1998 as this law was enforced with effect from 2002 with prospective effect only.

Legal Nature and Categorization of the Criminal Acts of Jammu Massacre under relevant International Law existing in 1947

In the Nuremberg Trial ([Heller, 2011](#)) the perpetrators were charged under existing international law, such as crimes against humanity as the crime of 'genocide' was not formally defined until the CPPCG, 1948. After World War - II, the London Charter of the International Military Tribunal was adopted, and it laid down the rules and procedure for the Nuremberg trial. The charter included war crimes, crimes against peace, and crimes against humanity within its jurisdiction to try the individuals who committed these heinous crimes during the Holocaust. The crimes against humanity were also included in the jurisdiction of the Nuremberg Tribunals, and the acts of murder, extermination, enslavement, deportation and other inhumane acts committed against any civilian population before or during the war were included in the broader definition of the crimes against humanity.

There was neither CPPCG, 1948 ([Koursami, 2018](#)) nor Rome Statute, 1998 ([Stahn, 2015](#)) present in 1947 that can be applied to the unlawful acts committed in the Jammu region in 1947. Besides, the UN Charter was also silent about it, and the ICJ did not have any jurisdiction

to try the individuals for the unlawful criminal acts against any racial, ethnic or religious group of people. There was only one law available at that time in the form of the London Charter, which was specifically drafted and adopted to try and punish the Nazi forces for the acts against the Jews. However, due to their international character, endorsement by the UN, and similarity in the nature of unlawful acts, the threshold of the situation, and horrific consequences, the unlawful acts committed against the Jammu Muslims can be evaluated and analyzed in the light of the crimes against humanity and war crimes as defined in the London Charter. Although these laws were specifically made for the prosecution of perpetrators of the Holocaust, the analysis of the Jammu Massacre in the light of the definition of the "Crimes against Humanity" as defined by the relevant Laws of Nuremberg Trials, the incidents of the Jammu Massacre qualified to be termed as the "Crimes against Humanity". The incidents of the Jammu Massacre was against the Muslims of Jammu specifically. Initially, the extremists groups of Hindus and Sikhs had killed and raped Muslims of Jammu with the aid, abetment and active patronage of the Maharaja Hari Singh before October 27, 1947. So the unlawful acts committed by the perpetrators against the Muslims of Jammu before the occupation of JK on October 27, 1947, can be termed as crimes against humanity alone. As per the London Charter, the acts of murder, extermination, enslavement, forced migrations and inhumane treatment can be called as crimes against humanity, and all these unlawful acts were also committed by the extremists' groups of Hindus and Sikhs against the Muslims of Jammu in 1947.

Then after the occupation of JK by India on October 27, 1947, the RSS and Sikh extremist groups carried out the persecution of Jammu Muslims with the patronage of the Indian Government and Armed Forces as well as the local administration of the Maharaja. Moreover, the occupation of the territory was unlawful, and that occupation aggravated the situation and converted the territory of the erstwhile state of JK into International Armed Conflict. Now the unlawful acts committed by the perpetrators against the Muslims of Jammu after October 27, 1947, can be regarded as both crimes against humanity and war crimes. The incidents of the Jammu massacre involved the acts of murder, rape, extermination of the Muslims community, forced deportation of Muslims to Pakistan and other inhumane acts against civilian population both before the occupation and during the occupation of JK by India. On the other hand, if we analyze the definition of Genocide as enumerated

in the CPPCG, 1948 ([Henham et al., 2007](#)) or in the Rome Statute, 1998, the acts of the Jammu Massacres also qualified to be called as "Genocide", however, as there was no treaty or convention in 1947 defining the crime of Genocide, it would be appropriate to term these acts occurred before October 27, 1947, as "Crimes against Humanity" under the relevant provisions of London Charter for the Nuremberg Trials and customary International law and those occurred after October 27, 1947, can be regarded as both Crimes against humanity and war crimes ([Crowe, 2013](#)) under the relevant provisions of the International law particularly in the extended and broader interpretation and application of the London Charter adopted for the Nuremberg Trials. ([Heller, 2011](#))

Moreover, this is also not appropriate to term the incidents of the Jammu massacre as "Ethnic Cleansing" as it does not include extermination in its meaning. This term only means to expel or remove any religious or other group of people from the specific region to convert that region as religiously or ethnically or otherwise homogenous. However, in the incidents of the Jammu massacre, thousands of Jammu Muslims were also brutally killed, and thousands were forced to migrate. Nowadays, genocide and ethnic cleansing are also used interchangeably, but both have different meaning and scope of application. Moreover, ethnic cleansing is not a proper legal terminology with specific convention or treaty to define its nature and elements, so it is appropriate to also not describe the incidents of Jammu massacre as ethnic cleansing. Similarly, the phrases of pogrom and rioting are also not appropriate as these are used to reflect the communal violence and have limited scope of meaning within the domestic jurisdiction of the concerned state. Then, the words like carnage, holocaust, slaughter, and mass killings are not legal terminologies and only highlight the threshold of the events and intensity of the unlawful acts but do not reflect the legal sense under any convention or treaty of International law.

Conclusion

It is concluded that there is a need to conduct a special investigation to ascertain the facts and figures about the Jammu Massacre, 1947, in particular to determine the exact number of murders, rapes and forced migrations then to

Pakistan and AJK. The unlawful acts committed during the incidents of the Jammu Massacre, 1947 cannot be called as Genocide under the CPPCG, 1948 or Rome Statute, 1998, as both of these treaties were signed after the occurrence of the massacre and cannot have any retrospective effect. However, the London Charter for the Nuremberg Trials was present in 1947, so the analysis of the incidents of the Jammu Massacre, 1947 under the relevant provisions of the London charter for Nuremberg Trials reveals that these unlawful acts can be called as Crimes against Humanity and War Crimes.

This is also important to highlight the stories and facts of the Jammu Massacre, 1947, at the international level to describe these incidents as the Holocaust (ethnic cleansing) of Muslims by Hindus. This will help to highlight the most important and foundational aspect of the genesis of the conflict of Jammu and Kashmir in its historical perspective. Moreover, it is also necessary to publish authentic and research-based literature in AJK and Pakistan on the different perspectives of the Jammu massacre, 1947. The Government of Pakistan and the Government of AJK should establish a commission on the Jammu Massacre, 1947 to record the stories of the living survivors (if any), compile all the available written material, including books, articles, and research papers, and to compile a document about the events of the Jammu Massacres, statistics of killings, tortures, rapes, sexual violence, force migrations and plundering of their properties. This would be very effective in countering the negative propaganda of India against the exact figures of the death toll and forced migrations in the Jammu Massacre.

Lawfare has gained great significance, and it is important to highlight the historical facts and events with proper legal interpretation in the light of the relevant provisions of the domestic, regional and international law. The incidents of the Jammu massacre can be properly highlighted as another important perspective of the conflict of JK with its objective and critical analysis under the relevant provisions of the International law applicable at that time. The presentation of the incidents of the Jammu massacre in 1947 as crimes against humanity and war crimes with valid and logical legal arguments and jurisprudential analysis will provide strength to the foreign policy of Pakistan on the longstanding conflict of JK.

References

- Aiyar, S. (1995). 'August anarchy': The partition massacres in Punjab, 1947*. *South Asia: Journal of South Asian Studies*, 18(sup001), 13-36.
<https://doi.org/10.1080/00856409508723242>
- Bhasin, V. (2003). Experiences of Partition: Jammu 1947. Jammu University, <https://kashmirilife.net/jammu-1947-issue-35-vol-07-89728/>
- Chatha, I. Terrible Fate: 'Ethnic Cleansing' of Jammu' Muslims in 1947. *Pakistan Vision*, 10(1), 117 - 140.
- Chaudhary, Z. (2015). *Kashmir Conflict and Muslims of Jammu* (1st ed.). Gulshan Books.
- Copland, I. (1998). The Further Shores of Partition: Ethnic Cleansing in Rajasthan, 1947. *Past and Present* (160), 203 - 239.
- Crowe, D. M. (2013). *War Crimes, Genocide and Justice: A Global History*. Palgrave Macmillan.
- Fareed, R. (2017). *The forgotten massacre that ignited the Kashmir dispute*. <https://www.aljazeera.com/news/2017/11/6/the-forgotten-massacre-that-ignited-the-kashmir-dispute>
- Heller, K. J. (2011). *The Nuremberg Military Tribunals and the Origins of International Criminal Law*. Oxford University Press.
- Henham, R., & Behrens, P. (2007). *The Criminal Law of Genocide: International, Comparative and Contextual Aspects*. Ashgate Publishing Limited.
- Koursami, N. (2018). *The 'Contextual Elements' of the Crime of Genocide*. T.M.C Asser Press.
- Naqvi, S. (2016). *Being the other, the Muslims in India*. Aleph Book Company. Reservations to the convention on the prevention and punishment of the crime of Genocide (Advisory opinion), (1951) ICJ Reports 16, p.23.
- Saraf, M. Y. (2005). *Kashmiris Fight for Freedom*. Ferozsons.
- Schabas, W. A. (2009). *Genocide in International Law: The Crime of Crimes* (2nded.).Cambridge University Press.
- Schofield, V. (2000, 2003). *Kashmir in Conflict*. IB Tauris
- Snedden, C. (2001). What happened to Muslims in Jammu? Local Identity, "the Massacre" of 1947 and the Roots of the Kashmir Problems. *South Asia*, XXIV(2), 111 - 134.
- Snedden, C. (2013). *Kashmir: The Unwritten History*. Harper Collins.
- Stahn, C. (2015). *The Law and Practice of the International Criminal Court*. Oxford University Press.
- Stephens, I. (1953). *Horned Moon*. Chatto & Windus London.
- The Spectator, (London), 16 January, 1948.
- The Statesman, (Calcutta) 1948.
- The Times, (London), 10 August 1948.
- The Times, (London), 10 October, 1948.
- Umer B. (2017). "The Massacre That Widened the Communal Gap," *News Click*, November 4, 2017, <https://www.newsclick.in/massacre-widened-communal-gap>.