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## বিষয়

**Report on the proposal of the Government for making  
“Genocide” a punishable offense.**

৩০ মার্চ ১৯৯৭

পুরাতন হাইকোর্ট ভবন  
ঢাকা-১০০০

**THE LAW COMMISSION  
OLD HIGH COURT BHABAN  
DHAKA.**

Report on the proposal of the Government for making “genocide” a punishable offense.

This is a reference by the Government under Memo No. 169 Ain Matamat 820/97 Dated 10-03-97 of the Ministry of Law, Justice and Parliamentary Affairs to examine as to whether legislation can be made in order to make genocide a punishable offence under the criminal law of Bangladesh. The text of the letter of reference runs as follows:-

নিম্ন স্বাক্ষরকারী আদিষ্ট হইয়া জানাইতেছেন যে, সংশ্লিষ্ট কনভেনশনে গণহত্যাকে অপরাধ হিসাবে সংগায়িত করে বিভিন্ন দেশে তদনুসারে গণহত্যাকে শাস্তিযোগ্য অপরাধ হিসাবে গণ্য করার প্রস্তাবনা রহিয়াছে। উক্তরূপ প্রস্তাবনার আলোকে বাংলাদেশের ফৌজদারী আইনে গণহত্যা সম্পর্কিত কোন ফৌজদারী বিধান প্রণয়ন করা সম্ভব বা সমীচীন হইবে কিনা সেই বিষয়ে আইন কমিশন কর্তৃক সদয় মতামত/সুপারিশ প্রদানের জন্য অনুরোধ করা হইল।

(মোঃ মজিবুর রহমান)  
উপ-সচিব

2. According to the above letter the points of reference are:

(1) Whether enactment of legislation making genocide a punishable criminal offence is possible; and (2) whether such enactment will be proper.

3. We propose to deal with the above points of reference, one after the other.

4. On December 09, 1948, the United Nations General Assembly approved and proposed for ratification or accession to the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention came into force on January 12, 1951, according to article XIII thereof after twenty states ratified/acceded to it.<sup>1</sup> The contracting states to the Convention are bound to enact necessary legislation in order to give effect to the provisions of the Conventions, and in particular, to provide effective penalties for persons guilty of genocide or any other acts enumerated in article III of the Convention.<sup>2</sup> Article II

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<sup>1</sup> Convention on the Prevention and Punishment of the Crime of Genocide, article XIII.

<sup>2</sup> Ibid, article V.

of the Convention defines what acts constitute genocide and article III thereof lays down what acts relating to genocide should be punishable.<sup>3</sup>

5. Bangladesh has not so far ratified or acceded to the Convention and therefore it is under any such obligation to comply with the provisions thereof. But if the Government wants, there is no bar against incorporating the principles laid down in the Convention relating the prevention of and punishment for the crime of genocide in our municipal law. The convenient way to do so is to adopt the definition of genocide as laid down in the Convention and to provide for punishment for such acts of genocide as are provided therein and incorporate the crime of genocide in our Penal Code, 1860, as a punishable offence.

6. The convention defines “genocide” as follows:-

“Genocide” means any of following acts committed with intent to destroy, in whole a part, a national, ethnical, racial or religious group, as such:

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

7. The Convention also makes the following acts punishable;

- (a) Genocide;
- (b) Conspiracy to commit genocide;
- (c) Direct and public incitement to commit genocide;
- (d) Attempt to commit genocide;
- (e) Complicity in genocide;

8. The definition of “genocide” as provided in the Convention, may be adopted.

9. So far as punishments are concerned, the acts referred to in clauses (b), (c), (d) and (e) para 7 of this report corresponding to clauses (b), (c), (d) and (e) of article III of the convention are covered respectively by Chapter VA, Chapter V, Chapter XXIII and section 34 of the Penal Code, 1860, and as such, no fresh legislation is required in these respects. So, only the all referred to in clause (a) of Para 7 of this report corresponding to clause (a) of article III of the Convention is required to be incorporated in the Penal Code, 1860 as a punishable offence be suitable amendment thereof.

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<sup>3</sup> Ibid, article II and III

10. Along with the amendment of the Penal Code, 1860, necessary amendment will have to be made in the Code of Criminal procedure, 1898, for including the offence of “genocide” in Schedule II (Tabular Statement of Offences) thereof.

### **Recommendations:**

11. In the light of the above discussion, we make the following recommendations:-

- (1) A new Chapter being “Chapter XVIA” shall be added after “Chapter XVI” of the Penal Code, 1860, as follows:-

**“Chapter XVIA”  
OF OFFENCES AGAINST A PARTICULAR CLASS OR GROUP OF  
PEOPLE OF Genocide.**

377 A. “Genocide” means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately infliction 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.

Explanation: “Causing serious bodily or mental harm” includes “voluntarily causing hurt,” “voluntarily causing grievous hurt,” and “rape.”

377B. Whoever commits genocide shall be punished with death or imprisonment of life or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”

- (2) In “Schedule II” of the Code of Criminal Procedure, 1889, after “section 377” the following shall be added:

**“Of Offences Against A Particular Class of Group of People.  
Of Genocide**

377 B	Genocide	May attest without a warrant.	Warrant	Not bailable	Not compoundable	Death or imprisonment for life or imprisonment of either description for 10 years and fine.	Court of Session
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12. So far as the propriety of enacting legislation making “genocide” a punishable criminal offence is concerned, the matter solely depends on the policy decision of the Government. It is for the Government to decide whether it will be proper to enact any such law. While taking and decision as to whether to enact a law making “genocide” as defined in the Convention as punishable offence under our municipal law, the factual conditions the situations prevailing in the country and as to whether there is any real basis or necessity for the proposed legislation may, the Commission feels, be taken into consideration.

**Singed /= 30.03.1997**  
(Justice Dr. F.K.M.A. Munim)  
Chairman

**Singed /= 30.03.1997**  
(Justice Amin-Ur-Rahman Khan)  
Member

Dhaka,

The 30<sup>th</sup> March, 1997

**Singed /= 30.03.1997**  
(Justice Naimuddin Ahmed)  
Member