

‘The legal definition of Genocide in the 1948 Convention is outdated and unlikely to meet the challenges of hate crimes in the 21st Century. It is ripe for reform.’ Critically comment on this statement.

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Abstract

Genocide—what Winston Churchill called the "crime with no name" back in 1941 during the Nazi invasion of the Soviet Union—shows just how brutally systematic humans can get. Think ancient wipeouts like Carthage or Genghis Khan's rampages, all the way to colonial horrors like the Herero massacres. The word itself only popped up after World War II, baked into the 1948 Genocide Convention, which pins it down as deliberate acts to wipe out a national, ethnic, racial, or religious group, fully or partly. But that tight definition—stuck on just four group types and needing rock-solid intent—leaves a ton of today's mass killings, hate-driven persecutions, and gender violence in a gray area. Other laws like crimes against humanity or hate crimes don't quite cover it. Courts have stretched the rules creatively, rethinking groups and what counts as genocidal acts. Still, this paper argues it's not enough for 21st-century threats. We need real fixes—doctrinal tweaks and maybe even rewriting the text—to make the law match the world's ugly realities.

Index Terms – Genocide, Rwanda Genocide, Protected groups, Gender and the Genocide, Kashmiri Pandits, Hate Speech.

[1] **INTRODUCTION**

- [2] Genocide, referred to by Winston Churchill as the “crime with no name” during the German invasion of the Soviet Union in 1941, has consistently exemplified humanity's potential for systematic brutality.¹ Although mass extermination of civilians has been a feature of conquests from Carthage to Genghis Khan's campaigns and the Herero massacres in colonial South West Africa, the term "genocide" was coined only in the aftermath of the Second World War and is not found in earlier documents such as the Hague Conventions of 1899 and 1907. In 1948, the Convention on the Prevention and Punishment of the Crime of Genocide formalised this new crime, defining it as specific banned actions executed with the goal to annihilate, wholly or partially, “a national, ethnic, racial or religious group, as such.”² The term, a result of rigorous post-war political negotiations, is narrowly defined yet ethically significant: to designate an atrocity as "genocide" now designates it as "the most egregious act conceivable."
- [3] The Convention's narrow emphasis on four protected groups and its stringent requirement for special intent result in numerous current instances of mass violence, hate-fuelled persecution, and gender-based harm existing in legal ambiguities, inadequately addressed by crimes against humanity, persecution, and domestic hate crime frameworks.³ In this context, this essay contends that while courts and tribunals have innovatively expanded the 1948 text—through subjective interpretations of group membership and an enhanced acknowledgement of genocidal acts—the legal definition is inadequate to encompass the entirety of 21st-century hate crimes and is consequently in need of focused doctrinal and possibly textual reform.
- [4] **THE GENOCIDE IN RWANDA**
- [5] On 6 April 1994, Rwandan President Juvénal Habyarimana was assassinated when his aircraft was downed near Kigali, precipitating a swift intensification of enduring ethnic tensions into a systematic effort to eradicate the Tutsi population. In the subsequent three months, around 800,000 Rwandans were murdered, averaging about 11,500 deaths daily in April and May, with claimed peaks of 45,000 kills per day, surpassing the rate of Nazi extermination camps.⁴ The massacre revealed how swiftly ingrained bias and political exploitation can convert a vulnerable culture into a locus of widespread carnage.

¹ Amann, D.M. (2002) Group mentality, expressivism, and genocide, *International Criminal Law Review*, pp. 93–143.

² Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 102 Stat. 3045, 78 U.N.T.S. 277

³ Weiner, R. (2010b) 'The law of genocide,' *Oxford Research Encyclopedia of International Studies*. <https://doi.org/10.1093/acrefore/9780190846626.013.338>

⁴ Scott Peterson, *Me Against My Brother: At War in Somalia, Sudan and Rwanda* (Cavendish UK: Rutledge, 2001) at 247.

- [6] The origins of this tragedy are found in Rwanda's colonial and post-colonial past, when the Hutu and Tutsi—originally socio-economic classifications, with Hutu mostly engaged in agriculture and Tutsi in cattle herding—were solidified as inflexible "ethnic" groupings. During German and subsequently Belgian governance, colonial authorities advanced a "scientific" racial theory portraying the Tutsi as a Nilo-Hamitic race originating from Egypt and Ethiopia, inherently predisposed to govern the Bantu Hutu majority.⁵ This narrative was solidified through identity cards categorising individuals as Hutu or Tutsi. During decolonisation, the revolutions of the late 1950s and early 1960s resulted in around 10,000 Tutsi fatalities and an estimated 270,000–370,000 fleeing to neighbouring countries, so solidifying Hutu political supremacy under the First Republic and subsequently under Major General Habyarimana.⁶
- [7] On 1 October 1990, Tutsi refugees, organised as the Rwandan Patriotic Front (RPF), invaded northern Rwanda from Uganda, resulting in civil war and culminating in the 1993 Arusha Accords, which established power-sharing between the government and the RPF.⁷ While these deals were being discussed, hardline factions within Habyarimana's Mouvement Révolutionnaire National pour le Développement (MRND) were preparing for widespread bloodshed by strengthening the Interahamwe militia and spreading extremist propaganda. Following Habyarimana's demise, this apparatus was mobilised: within approximately one hundred days, over 800,000 Tutsi and moderate Hutu were exterminated, up to 500,000 women endured rape and various forms of sexual violence, and as many as 100,000 children were rendered orphaned, designating the Rwandan genocide as one of the most severe instances of mass slaughter in contemporary history.⁸
- [8] **THE ICT FOR RWANDA**
- [9] On 8 November 1994, pursuant to Chapter VII, the UN Security Council enacted Resolution 955, which established the International Criminal Tribunal for Rwanda (ICTR) to prosecute individuals accountable for genocide and other grave breaches of international humanitarian law perpetrated in Rwanda, as well as by Rwandan nationals in adjacent countries, from 1 January to 31 December 1994.⁹ The ICTR was established to adjudicate genocide, crimes against humanity, and war crimes, with the objectives of fostering national reconciliation, aiding in the restoration and maintenance of peace in the Great Lakes area, and ensuring responsibility for the principal perpetrators of the atrocities.¹⁰
- [10] The ICTR was the inaugural international tribunal to condemn a person for genocide and has generated the most comprehensive corpus of case law regarding the offence. In the seminal Akayesu judgement, the Trial Chamber was tasked with interpreting a fifty-year-old Convention devoid of antecedent international jurisprudence, therefore elucidating the definition and extent of genocide under Article II of the 1948 document.¹¹ Jean Paul Akayesu was found guilty on 2 September 1998 of genocide, crimes against humanity, and direct and public incitement to commit genocide, receiving a life sentence the subsequent month; since that initial trial, the ICTR has convicted numerous individuals for genocide and associated offences.¹²
- [11] The ICTR interpreted and applied the law of genocide by extensively utilising the preparatory works of the Genocide Convention, referencing the Vienna Convention on the Law of Treaties, which allows for the use of travaux préparatoires as an additional interpretative tool. This technique influenced a significant portion of the Tribunal's jurisprudence, encompassing its interpretation of protected groups, specific purpose, and the extent of genocidal activities. The ICTR, in Akayesu and subsequent cases, acknowledged that systematic mass rape, sexual mutilation, and forced maternity could qualify as genocidal acts if executed with the intent to annihilate a protected group, thus expanding the definitions of "causing serious bodily or mental harm" and "imposing measures intended to prevent births."¹³ Simultaneously, Rwandan jurisprudence revealed the tenuousness of the definition's parameters: the Tribunal's practice of taking judicial notice of the occurrence of genocide in Rwanda has been criticised for impairing the capacity of defendants to challenge fundamental aspects, and its pronounced focus on genocide has occasionally eclipsed crimes against humanity and persecution that may more accurately represent the comprehensive range of hate-fueled abuses.¹⁴

⁵ Alison Hopkins (2010) 'Defining the protected groups in the law of Genocide: Learning from the experience of the International Criminal Tribunal for Rwanda,' Dalhousie Journal of Legal Studies, 19.

⁶ Alison Hopkins (2010) 'Defining the protected groups in the law of Genocide: Learning from the experience of the International Criminal Tribunal for Rwanda,' Dalhousie Journal of Legal Studies, 19.

⁷ Alison Hopkins (2010) 'Defining the protected groups in the law of Genocide: Learning from the experience of the International Criminal Tribunal for Rwanda,' Dalhousie Journal of Legal Studies, 19.

⁸ Survivor's Fund Statistics, online: <http://survivors-fund.org.uk>

⁹ Szpak, A. (2012) 'National, Ethnic, Racial, and Religious Groups Protected against Genocide in the Jurisprudence of the ad hoc International Criminal Tribunals,' European Journal of International Law, 23(1), pp. 155–173. <https://doi.org/10.1093/ejil/chs002>

¹⁰ Establishment of an International Tribunal and Adoption of the Statute of the Tribunal SC Res. 955 UN SCOR, 1994, UN Doc. S/RES/955 at para. 1.

¹¹ Prosecutor v. Jean-Paul Akayesu, ICTR-96-4-T, Sentence (2 October 1998) (International Criminal Tribunal for Rwanda, Trial Chamber 1), online: ICTR <http://www.ictor.org>

¹² Alison Hopkins (2010) 'Defining the protected groups in the law of Genocide: Learning from the experience of the International Criminal Tribunal for Rwanda,' Dalhousie Journal of Legal Studies, 19.

¹³ William Schabas, *The United Nations International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge: Cambridge University Press, 2006) at 95.

¹⁴ Alison Hopkins (2010) 'Defining the protected groups in the law of Genocide: Learning from the experience of the International Criminal Tribunal for Rwanda,' Dalhousie Journal of Legal Studies, 19.

[12] THE PROTECTED GROUPS OF GENOCIDE

[13] The 1948 Genocide Convention safeguards four distinct groups: national, ethnic, racial, and religious; however, it does not provide definitions for these categories within its text. Article II defines genocide as acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”¹⁵ This definition is replicated verbatim in Article 6 of the Rome Statute of the ICC, Article 2 of the ICTY Statute, and Article 4 of the ICTR Statute, presenting these tribunals with similar challenges regarding the identification of protected victim groups. Commentators and a UN study on genocide have identified a significant issue with the Convention, highlighting its limited definition of victim groups. The ambiguity regarding which groups are included within the four categories has rendered the Convention less effective and less comprehensible than intended.¹⁶

[14] Early international jurisprudence sought to address this issue by employing an objective, quasi-scientific method for defining groups, particularly evident in the ICTR’s Akayesu judgement. The Trial Chamber defined a national group as a collection of individuals perceived to share a legal bond based on common citizenship, along with reciprocal rights and duties. An ethnic group is characterised by members sharing a common language or culture, while a religious group consists of individuals who share the same religion, denomination, or mode of worship. A racial group is identified by hereditary physical traits associated with a specific geographical region, regardless of linguistic, cultural, national, or religious factors. The formulations aimed to establish the Convention’s protected groups based on objective characteristics; however, they soon revealed the challenges of confining dynamic social identities within strict legal categories.¹⁷

[15] Subsequent case law has shifted towards a more subjective interpretation of group membership. The ICTY Trial Chamber in Jelisić warned that defining national, ethnic, racial, or religious groups using objective and “scientifically irreproachable” criteria is “perilous” and may not align with the experiences of the individuals involved regarding such classifications.¹⁸ International criminal courts increasingly enquire whether perpetrators and victims recognised the targeted population as a distinct protected group. For instance, ICTR chambers often fulfil the “ethnic group” criterion by taking judicial notice that the Tutsi were socially and politically acknowledged as an ethnic group in Rwanda in 1994, rather than requiring anthropological evidence.¹⁹

[16] This subjectivist approach enables tribunals to incorporate complex social realities within the Convention’s four-group framework; however, it fails to address the fundamental structural limitation that numerous vulnerable communities remain unaddressed.²⁰ Groups defined by political, social, sexual orientation, and gender identities, often targeted by contemporary hate crimes, are not explicitly enumerated in the Convention. Consequently, severe or systematic violence and incitement against these groups may not legally qualify as genocide. Such campaigns should be classified, if addressed, as crimes against humanity, persecution, or under domestic hate crime laws, highlighting the critique that the 1948 definition is insufficient to encompass the full spectrum of modern hate-motivated group harm.²¹

[17] GENDER AND THE GENOCIDE

[18] Research on women and genocide indicates that mass rape and sexual violence are integral to genocidal campaigns, serving as primary methods of group destruction, as evidenced in Bosnia, Rwanda, Darfur, and the Holocaust. Feminist advocates and women's NGOs, including the authors of the CUNY Clinic Memorandum and participants in the Women in the Law Project, effectively urged ad hoc tribunals to classify rape as a war crime, a crime against humanity, and a crime of genocide.²² These precedents are now incorporated into the Statute of the International Criminal Court. The ICTR's decision

¹⁵ Lingaas, C. (2015) 'DEFINING THE PROTECTED GROUPS OF GENOCIDE THROUGH THE CASE LAW OF INTERNATIONAL COURTS,' International Crimes Database [Preprint]. <https://www.internationalcrimesdatabase.org/upload/documents/20151217T122733-Lingaas%20Final%20ICD%20Format.pdf>

¹⁶ Bettwy, D.S., LL.M. (2011) 'The Genocide Convention and unprotected groups: Is the scope of protection expanding under customary international law?,' Notre Dame Journal of International & Comparative Law, 2, pp. 167–169. <http://scholarship.law.nd.edu/ndjicl/vol2/iss1/4>

¹⁷ Nin Jorgensen, “The Definition of Genocide: Joining the Dots in the Light of Recent Practice” (2001) 1 Int’l Crim. L. Rev. 285 at 304.

¹⁸ Lingaas, C. (2015) 'DEFINING THE PROTECTED GROUPS OF GENOCIDE THROUGH THE CASE LAW OF INTERNATIONAL COURTS,' International Crimes Database [Preprint]. <https://www.internationalcrimesdatabase.org/upload/documents/20151217T122733-Lingaas%20Final%20ICD%20Format.pdf>

¹⁹ Bettwy, D.S., LL.M. (2011) 'The Genocide Convention and unprotected groups: Is the scope of protection expanding under customary international law?,' Notre Dame Journal of International & Comparative Law, 2, pp. 167–169. <http://scholarship.law.nd.edu/ndjicl/vol2/iss1/4>

²⁰ Nersessian, supra n. 13, p. 28; Schabas, supra n. 28, p. 125; Werle, Jessberger, supra n. 45, p. 297; Guglielmo Verdirame, “The Genocide Definition in the Jurisprudence of the Ad Hoc Tribunals”, in 49 International and Comparative Law Quarterly (2000), p. 589.

²¹ Lingaas, C. (2015) 'DEFINING THE PROTECTED GROUPS OF GENOCIDE THROUGH THE CASE LAW OF INTERNATIONAL COURTS,' International Crimes Database [Preprint]. <https://www.internationalcrimesdatabase.org/upload/documents/20151217T122733-Lingaas%20Final%20ICD%20Format.pdf>

²² Gender and the Future of Genocide Studies and Prevention' (2012) Genocide Studies and Prevention, 7(1), p. Article 10. <https://digitalcommons.usf.edu/gsp/vol7/iss1/10>

in Akayesu was significant, as it acknowledged rape as a tool of genocide when carried out with the intent to eliminate a protected group.

- [19] A detailed examination indicates that “rape” in the context of genocide includes a range of practices rather than being a singular act. In addition to opportunistic assaults enabled by impunity, frequently referred to as wartime rape, there are observable patterns of systematic mass rape, forced maternity, murder through rape, sexual torture, gang rape, coerced incest, sexual mutilation, forced prostitution, sexual slavery, rape camps, and enforced “marriages” to perpetrators of genocide.²³ In certain genocides, including Bosnia and Rwanda, mass rape seems to have been systematically orchestrated from higher authorities to annihilate specific communities. In contrast, in instances like the Armenian genocide, evidence indicates that aspects of sexual violence were less rigorously controlled, with some offenders engaging in murder largely due to the impunity provided by the context of genocide. Henry Theriault has articulated this dynamic by proposing that in specific instances, “genocide was a tool of rape,” suggesting that a hyper-masculinised environment of impunity can serve as a recruitment strategy for perpetrators.²⁴
- [20] Re-centering women’s experiences challenges the definitions of genocide that emphasise solely physical killing and isolated massacres. Women and girls face mortality due to gang rape and sexual mutilation, and they are also subjected to forced pregnancy, sterilisation, and other assaults on their reproductive capacity, all of which can lead to the group’s destruction.²⁵ Sexual violence is prevalent in genocidal contexts, making it challenging to consider this aspect as non-essential to genocide assessments. However, legal and academic discourses that emphasise mass graves and body counts frequently overlook or diminish the suffering experienced by women.²⁶ Recognising that perpetrators have historically exploited the vulnerability of a group by compromising its reproductive capacity necessitates a more comprehensive understanding of genocidal acts, which must include reproductive and gendered violence.²⁷
- [21] The existing legal framework, characterised by a limited list of protected groups and a strict special intent requirement, results in numerous gendered and displacement-based harms remaining in doctrinal ambiguities. Sexual violence targeting victims based on gender, sexuality, or social status, rather than national, ethnic, racial, or religious identity, may not be encompassed by the Genocide Convention, despite being motivated by hate and aimed at group destruction. This conduct is often prosecuted as crimes against humanity, persecution, or domestic hate crimes, which may not convey the same level of condemnation as genocide and may downplay the significance of sexual and reproductive violence in the perpetrators’ destructive agenda.
- [22] **KASHMIRI PANDITS: A GENOCIDE OR NOT?**
- [23] Kashmiri Hindus, known as Kashmiri Pandits, have historically constituted a vital component of Kashmir’s social and cultural landscape, as evidenced by official documents like the Government of India’s High Level Committee report on Kashmiri migrants.²⁸ In the late 1980s, increasing dissatisfaction with Indian governance—stemming from socio-economic issues and claims of electoral fraud—intensified pro-independence sentiment and the emergence of armed militancy, notably with the Jammu and Kashmir Liberation Front (JKLF) gaining prominence.²⁹ In this volatile context, Kashmiri Pandits, a small Hindu minority in a Muslim majority area, were increasingly viewed by certain militant groups as symbols of Indian dominance.³⁰
- [24] Multiple factors contributed to their susceptibility. Narratives depicting Pandits as allies of ruling elites, frequently based on selective or colonial perspectives, obscure their enduring contributions to Kashmiri society and cultivate resentment and distrust.³¹ Their limited population in comparison to the Muslim majority rendered them more susceptible to intimidation, prompting militants to identify them as targets. By early 1990, this hostility manifested in a campaign of threats and violence: mosques disseminated hate speech and explicit warnings urging Kashmiri Hindus to vacate the Valley or face severe repercussions, instilling a pervasive sense of fear and indicating their unwelcome status in their homeland.³²

²³ Gender and the Future of Genocide Studies and Prevention' (2012) *Genocide Studies and Prevention*, 7(1), p. Article 10. <https://digitalcommons.usf.edu/gsp/vol7/iss1/10>

²⁴ Henry Theriault, “Gender and Genocide: New Perspectives for Armenian Genocide Research,” paper presented at the Armenian Genocide Workshop, Strassler Center for Holocaust and Genocide Studies, Clark University, 8–10 Apr 2010.

²⁵ Strandberg Hassellind, F. and University of Gothenburg (2020) Groups defined by gender and the Genocide Convention, *Genocide Studies and Prevention: An International Journal*, pp. 60-75. <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1679&context=gsp>

²⁶ Gender and the Future of Genocide Studies and Prevention' (2012) *Genocide Studies and Prevention*, 7(1), p. Article 10. <https://digitalcommons.usf.edu/gsp/vol7/iss1/10>

²⁷ Strandberg Hassellind, F. and University of Gothenburg (2020) Groups defined by gender and the Genocide Convention, *Genocide Studies and Prevention: An International Journal*, pp. 60-75. <https://digitalcommons.usf.edu/cgi/viewcontent.cgi?article=1679&context=gsp>

²⁸ Government of India, Ministry of Home Affairs, Report of the High Level Committee for Kashmiri Migrants (Press Release, August 2007), available at <https://kashmirmigrantsip.jk.gov.in/>.

²⁹ Kachroo, Sanjay. *Exile and Return: The Future of Kashmiri Pandits* (Penguin Random House India Private Limited, 2020).

³⁰ A. Baru, *The Tragic Story of Kashmiri Pandits: A Community in Exile* (Penguin Random House India Private Limited 2016).

³¹ G. M. Bhat, *Kashmir and Kashmiri Pandits: A History of their Marginalization* (Partridge Publishing India 2018).

³² Sharma, R., Rout, A., and KIIT School of Law. THE EXODUS OF KASHMIRI HINDUS AND CHALLENGES TO HUMAN RIGHTS IMPLEMENTATION, KIIT School of Law. <https://ssrn.com/abstract=4799506>

- [25] Targeted killings exacerbated the atmosphere of fear. Prominent Kashmiri Hindus, including intellectuals, politicians, and businesspeople, were killed in attacks that, according to official statements, aimed to send chilling messages to the broader community regarding the repercussions of staying in Kashmir.³³ Violence and intimidation extended beyond elites; ordinary Pandits also encountered assaults, harassment, and threats, leading to a mass exodus of Kashmiri Hindus from the Valley in the late 1980s and early 1990s. This displacement, frequently characterised by survivors as coerced and abrupt, dislocated a historically established minority and altered the demographic composition of the region.³⁴
- [26] The episode presents concerning similarities to the Rwandan genocide, especially regarding the employment of hate propaganda and targeted violence against a marginalised group; however, notable differences exist as well. In contrast to Rwanda, where the Hutu-led government executed widespread massacres aimed at the physical extermination of Tutsis, Kashmir did not experience similar mass killings.³⁵ The Indian government asserts that it deployed security forces to manage the insurgency; however, critics highlight significant shortcomings and delays in safeguarding Pandit neighbourhoods. The international response was relatively subdued, influenced partly by the ongoing territorial dispute between India and Pakistan and by a hesitance to frame the events in a manner that could escalate the conflict to an international level.³⁶
- [27] The legal characterisation of the Kashmiri Pandits' experience is thus contested due to these complexities. Some commentators contend that the pattern of targeted killings, threats, and orchestrated terror constitutes ethnic cleansing, while others emphasise that, regardless of terminology, the campaign was evidently a hate-driven effort to expel a vulnerable minority.³⁷
- [28] According to the 1948 Genocide Convention, the key issue is whether there was a clear intent to eliminate the Pandits as a group “as such,” either entirely or partially, rather than merely to expel or instil fear in them to induce flight. The challenge of establishing genocidal intent in this context highlights the limitations of the Convention’s restrictive definition in addressing severe, identity-based campaigns of forced displacement and persecution. Even when victims perceive the violence as existential, the legal criteria for genocide may remain unmet, relegating the events to be categorised—if addressed at all—under broader classifications such as crimes against humanity, persecution, or domestic criminal law.³⁸
- [29] **HATE SPEECH AND GENOCIDE**
- [30] Hate speech is at the intersection of the inchoate international crime of direct and public incitement to commit genocide and hate speech as persecution, which can be crimes against humanity when part of a larger campaign of violence. Thus, international criminal law criminalises extreme speech as incitement to genocide, punishable even if no killings occur, and as persecution, punished when speech is part of a widespread or systematic attack on civilians.³⁹
- [31] Incitement to genocide from Nuremberg to the ICTR is examined by Richard Ashby Wilson, who highlights judicial issues with “directness” and causality. The ICTR expanded the definition of “direct” incitement in *Akayesu* and the “Media Case” (Nahimana et al.) to include euphemistic and coded language like calls to “go to work” or references to Tutsi as “cockroaches” (Inyenzi), which, in Rwanda’s 1994 cultural and temporal context, clearly indicated orders to kill. This jurisprudence indicates that societal context, shared understandings, and the surrounding violent campaign determine whether speech is incitement.⁴⁰
- [32] Wilson also finds a “ghost of causation” in incitement legislation. Since direct and public incitement to genocide is an inchoate crime, accountability does not need genocide or a causal connection from words to kills. ICTR judges regularly utilised causal language, insisting on a “possible causal link” between broadcasts and future killings, threatening a collapse of incitement into other forms of culpability, such as commanding or inciting, that presuppose the underlying crime. Wilson suggests that J. L. Austin’s speech act theory defines genocidal incitement as a performative act whose illegality rests in its context—authoritatively asking an audience to commit genocide—rather than in its downstream effects.⁴¹
- [33] Gregory Gordon extends this theory by focussing on persecution as a crime against humanity instead of genocide, providing another approach to harmful speech. Despite scholarly focus on incitement to genocide, international jurisprudence from

³³ Bilal Ahmad Mir (2024) 'Kashmiri Pandits Amid Conflict-induced Displacement: Facts, Issues, and the Future Ahead,' *Journal of Internal Displacement*, 14(1), pp. 2–23.

³⁴ Government of India, Ministry of Home Affairs, Statement regarding Kashmiri Pandits in Rajya Sabha (Mar. 17, 2016), available at <https://timesofindia.indiatimes.com/india/provide-security-to-kashmiri-pandit-employees-or-shift-them-to-jammu-congress/articleshow/96567751.cms>.

³⁵ Bose, Sumantra. *Roots of Conflict in Kashmir*. Penguin Random House India Private Limited, 2017.

³⁶ Kuper, Leo. "Genocide." In *International Encyclopedia of Women and Global Justice*, edited by H.C. Thomas, vol. 1, 533-538. ABC-CLIO, 2004.

³⁷ Sharma, R., Rout, A., and KIIT School of Law. THE EXODUS OF KASHMIRI HINDUS AND CHALLENGES TO HUMAN RIGHTS IMPLEMENTATION, KIIT School of Law. <https://ssrn.com/abstract=4799506>

³⁸ Sharma, R., Rout, A., and KIIT School of Law. THE EXODUS OF KASHMIRI HINDUS AND CHALLENGES TO HUMAN RIGHTS IMPLEMENTATION, KIIT School of Law. <https://ssrn.com/abstract=4799506>

³⁹ Wilson, R.A. and University of Connecticut School of Law (2015) Inciting Genocide with Words, *Michigan Journal of International Law*. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1076&context=mjil>

⁴⁰ Wilson, R.A. and University of Connecticut School of Law (2015) Inciting Genocide with Words, *Michigan Journal of International Law*. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1076&context=mjil>

⁴¹ Wilson, R.A. and University of Connecticut School of Law (2015) Inciting Genocide with Words, *Michigan Journal of International Law*. <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1076&context=mjil>

Nuremberg to the ICTR and ICTY has accepted that protracted campaigns of dehumanising propaganda might constitute persecution as part of a larger attack on civilians. Julius Streicher's conviction at Nuremberg, based on his decades-long antisemitic writings, is central to this line of authority, as are subsequent cases like Ruggiu, the Media Case, and Kordić.⁴²

- [34] Gordon believes context determines whether hate speech becomes persecution. In contrast to incitement to genocide, which is an inchoate offence, persecution requires that the statement be entrenched in a contemporaneous pattern of widespread or systematic violence and that the speaker be aware of it. Hate speech loses its free expression justifications and becomes an instrument of collective subjugation and injury when the “marketplace of ideas” collapses and speech no longer contributes to democratic discussion. Gordon argues that hate speech should be considered persecution when it is part of a systematic campaign against a civilian population, but that isolated or sporadic expressions of hatred in peacetime or speech geographically removed from violence should not be subject to international criminal law.⁴³
- [35] Wilson and Gordon chart a range of “atrocious speech” from hate propaganda to genocide. One end is incitement to genocide, where speech explicitly or implicitly calls for the destruction of a protected group and is punishable even without killings; the other is persecution as a crime against humanity, where speech contributes to and sustains a larger pattern of discriminatory attacks. Both techniques need careful attention to who is speaking, to whom, in what context, and against what discrimination and violence. This analysis suggests that international law should target hate speech that is integral to genocidal and persecutory projects, even if it does not fit neatly into the Genocide Convention's traditional definition.
- [36] **CONCLUSION**
- [37] Genocide has grown from a “crime with no name” into the archetypal international crime, yet its legal definition is restricted and inconsistent. Due to the Genocide Convention's focus on national, ethnical, racial, and religious groups and its strict requirement of special intent, many contemporary patterns of mass violence, displacement, and gendered harm fall into grey zones dealt with only partially by crimes against humanity, persecution, and domestic hate crime regime. The development of international criminal jurisprudence—from Akayesu and the ad hoc tribunals to current ICC and ICJ proceedings—shows that courts have cautiously interpreted protected groups and genocidal acts in more context-sensitive ways, relying on subjective perceptions of group membership and recognising sexual violence as a tool of group destruction. Rwanda, the Kashmiri Pandits, and Ukraine demonstrate the political implications of genocidal branding and the ongoing evidential disputes regarding group elimination. It appears that while the Convention's core architecture has endured, the lived realities of victims, the centrality of hate speech, and the prominence of gendered and displacement-based harms make continued doctrinal refinement and a more integrated relationship between genocide law, universal jurisdiction, and the broader atrocity crime framework desirable and necessary.
- [38] One option is to keep the 1948 concept and use interpretative development, with judges using subjective group criteria, wider definitions of genocidal actions, and context-sensitive approaches to incitement and sexual assault. Ad hoc tribunals, the ICC, and *Ukraine v. Russia* show that progressive evolution may adapt the law to new kinds of atrocity without restarting politically contentious treaty discussions. However, this approach has clear limits where whole categories of victims—political, social, gender defined, or sexual orientation groups—remain outside the text, and where a narrow group list and strict special intent requirement leave many hate-driven campaigns to be addressed at best under crimes against humanity or domestic hate crime law.
- [39] The other option is to recognise that the 1948 definition is outmoded and consider minor but significant changes. Expanding the list of protected groups (to include political or gender groups, or at least to clarify that “ethnical” can cover certain modern identity formations), recalibrating or clarifying *dolus specialis* so that patterns of group destructive conduct and ideology can more readily support inferences of genocidal intent, and codifying—at treaty or statutory level—jurisprudential advances on sexual and reproductive violence and genocidal legislation, universal jurisdiction, and larger atrocity crime regimes must be better linked to prevent 21st-century hate crimes that fall short of the legal genocidal threshold from being left in a normative and enforcement vacuum. Against this backdrop, the claim that the 1948 legal definition is unlikely to meet modern hate crimes and is ripe for reform is compelling, provided that “reform” means careful doctrinal refinement and systemic integration rather than wholesale replacement of the Convention's core structure.

⁴² Gordon, G.S. (2013) 'Hate Speech and Persecution: A Contextual Approach,' *Vanderbilt Journal of Transnational Law*, VOLUME 46(NUMBER 2), pp. 303–373.

⁴³ Gordon, G.S. (2013) 'Hate Speech and Persecution: A Contextual Approach,' *Vanderbilt Journal of Transnational Law*, VOLUME 46(NUMBER 2), pp. 303–373.