**[ICC, Myanmar and Kashmir](https://nation.com.pk/03-Feb-2020/icc-myanmar-and-kashmir%22%20%5Ct%20%22_new)**

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In what can be termed a major development, on November 19, 2019, the ICC’s pre-trial chamber authorised an investigation into the acts of violence against Rohingya Muslim minority of Myanmar. The authorisation follows a prosecutorial request to conduct an inquiry into possible commission of ‘atrocity crimes’ in Myanmar as listed in the Rome Statute of International Criminal Court, in particular, crimes against humanity.

Myanmar itself is not a party to the Rome Statute. However, the investigation has been authorised on the basis that parts of the crimes have taken place in Bangladesh, which accepts ICC’s jurisdiction. The crimes falling under ICC’s jurisdiction include crimes against humanity, genocide, war crimes and aggression. If a part of these crimes, such as murder, torture or rape takes place on the territory of a state party or a state having accepted jurisdiction, the ICC’s may step in and exercise its jurisdiction. In this case, the Gambia invoked the ICC’s jurisdiction. The Gambia maintained that part of the crime, i.e. ‘deportation’ took place in Bangladesh.

Since 2016, there have been countless reports of human rights violations of Myanmar’s Rohingya Muslim minority at the hands of its overwhelming Buddhist majority. It has been claimed that the reign of terror was unleashed at the behest of Buddhist monks who set out to cleanse Myanmar of Rohingyas. Allegedly, the fiery speeches of these monks provoked Buddhist citizens to commit the acts of murder, rape, persecution and deportation to annihilate Rohingyan Muslims. It is estimated that to date about 25,000 Rohingyans have been killed, and 600,000 to 1 million have been forced to take refuge in neighbouring Bangladesh. The latter enabled the ICC to authorise an investigation as Bangaladesh had accepted ICC’s jurisdiction.

According to the definition of crimes against humanity under the ICC statute, any act of willful murder, rape, deportation, and persecution on national racial, religious and ethnic grounds may qualify as crime against humanity if the same is committed in the backdrop of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. Now what is to be established through investigation is whether crimes against humanity have taken place on the territory of Myanmar against an ethnic minority. Also, was the government of Myanmar’ unable’ or ‘unwilling’ to put a stop to the atrocities? If the above elements are satisfied, the ICC can summon the accused in their individual capacity and carry on with the trial. According to the judges of the ICC pre-trial chamber, the requisite threshold level has been achieved to warrant an investigation.

Assuming that the actus reus of the crime can be established, the difficult part would be to establish mens rea or mental part of the crime. Since Myanmar has been insisting that the acts of murder, rape, deportation, and persecution were committed without its knowledge, it would be interesting to see how the prosecutor would go about proving the element of wider design. Nevertheless, a beginning has been made, a window has been opened, and this opening carries a ray of hope for oppressed minorities anywhere in the world. The message is loud and clear that if a country is silent over gross human rights violations on its territory, it should be deemed to be privy to the crime (being ‘unable’ or ‘unwilling’). Thus, the ICC can intervene, provided a part of the crime has taken place on the territory of a state party to the Rome statute.

Subsequent to the ICC ruling in “the situation in Bangladesh/Myanmar”, the Gambia submitted another application under the Genocide Convention 1948 in the International Court of Justice (ICJ) for an indication of provisional measures requiring Myanmar to prevent violence and human rights abuses against Rohingyans on its territory. On January 23, 2020, the ICJ ordered provisional measures, hence, accepting the application of the Gambia in “The Gambia v. Myanmar” provisional measures case.

What lessons can one draw from this episode? Since neither India nor Pakistan is a party to the Rome statute, the jurisdiction of ICC cannot be invoked. Nonetheless, the Kashmiris, if they are deported or forced to take refuge in a neighbouring country because of their targeted persecution, the jurisdiction of the ICC might be invoked, provided the country of refuge, like Afghanistan, is a party to the Rome statute. Numerous statements of RSS/ BJP top brass are on record to establish their intention to purge India of Muslim minority and to establish a Hindu supremacist state. Likewise, incidents of public lynching of Muslims and denial of citizenship rights can all constitute the required elements of ‘atrocity crimes’ subject to the ICC jurisdiction.

Therefore, Pakistan needs to ratify the Rome Statute without further delay. Ratifying the Rome Statute will help in restraining India from pushing its agenda of establishing a Hindu supremacist state by driving out its religious minorities under the threat of persecution.