Bridging India's Justice Deficit

Mains: *GS II | Judiciary*

Why in News?

A recent study examines a major gap in India's legal system: while India has ratified key international treaties against severe atrocities, its domestic laws still lack specific offences for genocide, crimes against humanity, and war crimes.

What is international criminal law?

- The word "international" in ICL points to how severe a crime is, not only where it happens.
- Many grave abuses occur inside a country's own borders, so domestic courts are on the front line of delivering justice.
- **India's Existing Treaty Footprints -** India has ratified the **1948 Genocide Convention** and the **1949 Geneva Conventions** (both of which apply even in purely internal conflicts).
- India has voted in the UN Security Council for resolutions treating severe internal crises such as in Somalia (1992), Libya (2011), and Cote d'Ivoire (2011) as threats to international peace.
- However, India is ***not a party to the Rome Statute*** of the International Criminal Court (ICC).

What are the key gaps in India's current legal framework?

- **Missing Specific Offences -** Even though India ratified the Genocide Convention, ordinary criminal charges (such as murder or rioting) do not capture the specific legal element of **intent to destroy a protected group**, which defines genocide.
- Similarly, there is no standalone domestic law defining crimes against humanity as a distinct offence, meaning large-scale systematic atrocities may be treated only as routine individual crimes.
- Ordinary criminal law also lacks clear command responsibility rules where commanders or superiors can be held accountable for serious crimes committed by forces under their control that they failed to prevent or punish.
- **Limits of the Geneva Conventions Act, 1960 -** India implements the 1949 Geneva Conventions through the **Geneva Conventions Act, 1960**, but it has produced **zero prosecutions** over more than 6 decades.
- Prosecution under the Act requires central government initiation (as seen in *Monteiro v. Goa*, 1969), leaving citizens without direct legal recourse when state action is involved.
- Ordinary criminal sections often carry lower penalties (for instance, wrongful confinement carrying a lower maximum sentence than grave breach provisions) or fail to cover specific acts like unlawful deportation of protected persons from occupied territory.
- **Internal Conflicts and Military Discipline Gaps-** Most armed violence India has faced since 1960 has been internal rather than interstate war, yet the 1960 Act focuses on grave breaches of international armed conflicts rather than criminalizing violations of **Common Article 3** in internal conflicts.

- Treating serious abuses merely as "conduct prejudicial to good order and military discipline" in military proceedings can understate their gravity compared to ordinary criminal courts.

Why India's concerns need a fresh look?

- In 1998, India voted against the Rome Statute raising concerns such as the UN Security Council's power to refer or delay cases, copying permanent-member (P5) veto dynamics into judicial processes, and the failure to include nuclear weapons use as a war crime.
- Passing an Indian statute on core international crimes lets Indian courts handle accountability domestically without submitting to external court control.
- Safeguards such as allowing the **National Human Rights Commission (NHRC)** or a court taking *suo motu* cognizance where state officials are accused can guard against politically motivated cases without blocking genuine accountability.

What are the key challenges?

- **Political and Administrative Sensitivity -** Laws touching on state forces, internal security conflicts, and command accountability often face resistance over fears of harassment or operational friction.
- **Drafting Precision and Safeguards-** Defining offences clearly, setting jurisdiction rules, designating competent courts, and building anti-misuse checks require careful legal design.
- **Balancing Global Diplomacy and Domestic Law -** Aligning domestic legislation with ongoing UN negotiations (such as on crimes against humanity) while protecting India's strategic interests demands balanced policymaking.

What is the way forward?

- Legislate clear definitions and penalties for genocide, crimes against humanity, and war crimes including internal conflicts within Indian law.
- Specify designated courts, command responsibility standards, and independent procedural checks (such as NHRC or court-monitored triggers) so justice is impartial and protected from abuse.
- Back India's voice at the UN and on the global stage with strong domestic accountability standards that protect citizens' rights and uphold the rule of law.

Reference

The Hindu | A louder gavel to bridge India's justice deficit

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