Legislation for Crimes against Humanity

What is the issue?

- Neither ‘crimes against humanity’ nor ‘genocide’ has been made part of India’s criminal law.
- This lacunaneeds to be addressed urgently.

How did the issue originate?

- This was said by the Justice of the Delhi High Court, while pronouncing the judgment in State v. Sajjan Kumar (2018).
- The case concerned the mass killing of Sikhs during the anti-Sikh riots in 1984 in Delhi and throughout the country.
- The court also stated that mass crimes “engineered by political actors with the assistance of the law enforcement agencies” fit into the category of crimes against humanity (CAH).

How is it dealtglobally?

- Internationally, CAH are dealt with under the Rome Statute of the International Criminal Court (ICC).
- **CAH definition** –Offences such as murder, extermination, enslavement, deportation, torture, imprisonment and rape committed as a part of widespread or systematic attack directed against any civilian population, with knowledge of the attack.

Why India has not enacted one yet?

- **India is not a party to the Rome Statute**.
- This means that it is under **no obligation** to enact a separate legislation dealing with CAH.
- Even after ratification of the Genocide Convention (1948), India has not enacted it in domestic legislation.

Why India had objected to the Rome Statute’s CAH definition?

- **Proof -** India was not in favour of using ‘widespread or systematic’ as one of the conditions.
- It prefers ‘widespread and systematic’ asit would require a higher threshold

of proof.

- **Distinction -** India wanted a distinction between international and internal armed conflicts.
- This was probably because its internal conflicts with naxals and other non-state actors could fall under the scope of CAH.
- **Disappearance -** The objection related to the inclusion of enforced disappearance of persons under CAH.
- It would put the country under an obligation to criminalise it through domestic legislation.

Why is there an urgency?

- **Pattern of mass killings**– Observed in "Mumbai in 1993, Gujarat in 2002, Odisha in 2008, and Uttar Pradesh in 2013".
- The criminals of these crimes have enjoyed political patronage and managed to evade prosecution.
- **International Reputation –**Lack of legislation doesnot go well with its claim of respect for an international rules-based order.
- Turning a blind eye to the mass crimes and shielding the perpetrators **reflect poorly on India's status as a democracy**.

What could be done?

- India should show political will and constructively engage with the ILC.
- It should address the shortcomings in the domestic criminal justice system.

Source: The Hindu

Quick Facts

International Law Commission (ILC)

- ILC is a body of experts established by the United Nations General Assembly (UNGA).
- Establishedin 1948.
- **Mandate** – Progressive development and codification of international law, in accordance with article 13(1)(a) of the Charter of the UN.
- **Article 13 (1) (*a*)** of the Charter of the United Nations to "initiate studies and make recommendations for the purpose of encouraging the progressive development of international law and its codification".



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