

## 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 lacuna needs 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 dealt globally?

- 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' as it 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 doesn't 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).
- Established in 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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