

CRIMES THAT INDIA'S STATUTE BOOKS HAVE FAILED TO DEFINE

Relevant for: Indian Polity | Topic: Indian Constitution - Amendments, Schedules, and Important Articles

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Neither 'crimes against humanity' nor 'genocide' has been made part of India's criminal law, a lacuna that needs to be addressed urgently. This was the lament of Justice S. Muralidhar 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 categorically stated that these kind of mass crimes "engineered by political actors with the assistance of the law enforcement agencies" fit into the category of crimes against humanity (CAH).

Internationally, CAH are dealt with under the Rome Statute of the International Criminal Court (ICC). They are defined as 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".

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

The most probable reason for India's reluctance to actively participate in the negotiation process on a separate Convention on CAH, which started in 2014, could be the adoption of the same definition of CAH as provided in the Rome Statute. The Indian representatives at the International Law Commission (ILC) have stated that the draft articles should not conflict with or duplicate the existing treaty regimes.

India had objected to the definition of CAH during negotiations of the Rome Statute on three grounds.

First, India was not in favour of using 'widespread or systematic' as one of the conditions, preferring 'widespread and systematic', which would require a higher threshold of proof.

Second, India wanted a distinction to be made between international and internal armed conflicts. This was probably because its internal conflicts with naxals and other non-state actors in places like Kashmir and the Northeast could fall under the scope of CAH.

The third objection related to the inclusion of enforced disappearance of persons under CAH. It is pertinent here that India has signed but not yet ratified the UN International Convention for the Protection of All Persons from Enforced Disappearances as it would put the country under an obligation to criminalise it through domestic legislation.

Can these objections be seen as providing the basis for India's objections/silence to the ILC's ongoing work? Does India have objections to the very definition of CAH based on the Rome Statute or does it have concerns with the contextual elements of the crime?

In *State v. Sajjan Kumar*, the Delhi High Court also said that "a familiar pattern of mass killings"

was seen “in Mumbai in 1993, in Gujarat in 2002, in Kandhamal, Odisha in 2008, and Muzaffarnagar in Uttar Pradesh in 2013”, where the criminals “have enjoyed political patronage and managed to evade prosecution”.

India’s missing voice at the ILC does not go well with its claim of respect for an international rules-based order. Turning a blind eye to the mass crimes taking place in its territory and shielding the perpetrators reflect poorly on India’s status as a democracy. It would be advisable for India to show political will and constructively engage with the ILC, which would also, in the process, address the shortcomings in the domestic criminal justice system.

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