Crime Against Humanity

This article is based on editorial "Crimes that India's statute books have failed to define" that appeared in The Hindu on 8th July 2019. It talks about the status of India's legal jurisdiction concerning Crime Against Humanity and Way forward.

Delhi High Court, while pronouncing the judgment in **State v. Sajjan Kumar (2018)** held that neither 'crimes against humanity' nor 'genocide' has been made part of India's criminal law, a lacuna that needs to be addressed urgently.

The case was concerned with the mass killing of Sikhs during the anti-Sikh riots in 1984. The court categorically stated that these kinds of mass crimes "engineered by political actors with the assistance of the law enforcement agencies" fit into the category of crimes against humanity (CAH).

What are Crimes Against Humanity (CAH)?

- Crimes against humanity are certain acts that are deliberately committed as part of a widespread or systematic attack directed against any civilian or an identifiable part of a civilian population.
- Crime against humanity is an offence in international criminal law, adopted in the **Charter of the International Military Tribunal (Nürnberg Charter)**, which tried surviving Nazi leaders in 1945, and was, in 1998, incorporated into the **Rome Statute of the International Criminal Court (ICC)**.
- Crimes against humanity consist of various acts—murder, extermination, enslavement, torture, forcible transfers of populations, imprisonment, rape, persecution, enforced disappearance, and apartheid, among others.
- The term also has a broader use in condemning other acts that, in a phrase often used, "shock the conscience of mankind." World poverty, human-made environmental disasters, and terrorist attacks have thus been described as crimes against humanity.
- Unlike war crimes, crimes against humanity **can be committed during peace or war**.
- The irony about CAH is that the wide practice of atrocities is tolerated or condoned by a government or a de facto authority.
- This makes CAH important to be discussed in the International community and tried by forums like the International Court of Justice and International criminal court

What is the status of CAH in India?

- India is **not a party to the Rome Statute**, which means that it is under no obligation at present to enact separate legislation dealing with CAH.
- Also, the Indian representatives at the International Law Commission (ILC) have shown their concerns regarding negotiations for the adoption of the separate treaty on crimes against humanity.
- **Reasons for India's reluctance** to actively participate in the negotiation process on a separate Convention on CAH :
    - Negotiations at ILC seeks to adopt the same definition of CAH as provided in the Rome Statute.

        - According to Rome statute: Crimes against humanity are certain acts that are deliberately committed as part of a widespread **or** systematic attack directed against any civilian or an identifiable part of a civilian population.
        - India is not in favour of using 'widespread or systematic' as one of the conditions, but prefers '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 the **enforced disappearance of persons** under CAH.
        - In international human rights law, a forced disappearance (or enforced disappearance) occurs when a person is secretly abducted or imprisoned by a state or a third party with the authorization of political organization, with the intent of placing the victim outside the protection of the law
        - According to the Rome Statute of the International Criminal Court, when committed as part of a widespread or systematic attack directed at any civilian population, a "forced disappearance" qualifies as a crime against humanity
        - India is of the view that it has **signed but not yet ratified the UN International Convention for the Protection of All Persons from Enforced Disappearances,** therefore, it is under no obligation to criminalise it through domestic legislation.

Way Forward

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, and Muzaffarnagar in Uttar Pradesh in 2013", where the criminals "have enjoyed political patronage and managed to evade prosecution" In this context:

- 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 crimes against humanity reflects 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.

India's policymaking has been motivated by the motto: **Think globally, act locally,** but in case of crime against humanity India must follow **Act locally, Inspire globally**. So India's eventual adherence to the International Criminal Court and the Rome Treaty will act as a pathway for the renaissance for the future of human rights-oriented modes of Indian governance.

Also, along with that, India's active engagement at ILC for a CAH treaty will pitch for rule of law, nationally as well as internationally, simply conceived as an endeavour to make power more accountable, governance increasingly just, and the state incrementally ethical.

Drishti Input:

India's reluctance regarding negotiations for a separate treaty on Crime Against Humanity doesn't augur well wi