

Crimes Against Humanity

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Crimes Against Humanity: Strengthening Justice and Accountability

Context

- The **United Nations General Assembly (UNGA)** recently adopted a resolution approving a proposed treaty to **prevent and punish crimes against humanity (CAH)**.
 - This marks significant progress in closing a crucial gap in **international criminal law**.
 - The journey began in **2019** when the **International Law Commission** submitted the draft text to the UNGA's Sixth Committee.
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Gap in International Legal Framework

1. Absence of a Dedicated Treaty:

- Unlike the **Genocide Convention (1948)** and **Geneva Conventions (1949)**, CAH lacks a specific treaty.
- Current enforcement is limited under the **Rome Statute (1998)** of the International Criminal Court (ICC).
- **A dedicated treaty is essential for a clear and comprehensive legal framework to prevent and prosecute CAH.**

2. Limitations of the Rome Statute:

- Focuses on **individual criminal responsibility** but lacks provisions for **state accountability**.
 - Limited jurisdiction, covering only **member states** or cases referred by the **UN Security Council (UNSC)**.
 - **These gaps hinder efforts to address crimes against humanity effectively.**
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Accountability Challenges

1. Jurisdictional Issues:

- **Non-member states** and major global players are often beyond the ICC's reach, creating a **jurisdictional void**.
- **Broader state cooperation** is needed to address unprosecuted CAH cases.

- Without global jurisdiction, many perpetrators escape accountability.

2. Individual vs. State Responsibility:

- The **Genocide Convention** allows **state-level accountability**, enabling cases like **The Gambia vs. Myanmar (2019)**.
 - A CAH treaty could empower similar actions, reinforcing shared responsibility for **human rights**.
 - **State-level accountability ensures broader mechanisms to prevent and punish crimes.**
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India's Position on the CAH Treaty

1. Scepticism About the ICC:

- India is a **non-signatory** to the Rome Statute, citing concerns about **jurisdictional overreach** and **UNSC influence**.
- Criticizes **discretionary powers** of ICC prosecutors, fearing **selective or politically motivated cases**.
- **India's concerns highlight the tension between global governance and national sovereignty.**

2. Disagreements on Scope:

- Opposes inclusion of **enforced disappearance** in CAH definitions, citing lack of **universal applicability**.
- Strongly advocates for inclusion of **terrorism** and criticizes the exclusion of **nuclear weapons**.
- **India's views emphasize the need for a more inclusive and balanced treaty.**

3. Preference for National Jurisdiction:

- Argues **domestic courts** are better equipped for justice, considering social and political contexts.
 - However, **India lacks comprehensive domestic laws** addressing CAH.
 - **This contradiction weakens India's position in the global arena.**
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Way Forward for India

1. Incorporating CAH into Domestic Law:

- Developing **comprehensive legislation** to address international crimes, including CAH.
- This would align national laws with global expectations and enhance India's **credibility**.
- **A robust domestic framework is vital for India to uphold human rights**

commitments.

2. Proactive Engagement in Treaty Negotiations:

- India could push for inclusion of issues like **terrorism** and **nuclear weapons** while shaping the treaty.
- Active participation reinforces India's commitment to **justice and human rights**.
- **Engagement in negotiations enables India to influence the treaty constructively.**

Conclusion

- The **CAH treaty** is a pivotal step in combating **impunity for crimes against humanity**.
- India's legitimate concerns, while important, are undermined by the absence of **domestic legislation**.
- By addressing these gaps, **India can emerge as a global leader** in justice and human rights advocacy.
- **India must seize this opportunity to lead the global fight against crimes against humanity.**



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