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DAILY EDITORIAL ANALYSIS

TOPIC

INTERNATIONAL CRIMINAL JUSTICE AND INDIA'S ACCOUNTABILITY DEFICIT

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Context

- Recently, **Judge Navi Pillay** was awarded the **Nobel Peace Prize** for advancing international law, renewing debate over India's domestic framework for addressing mass atrocities.

Understanding International Criminal Justice (ICJ)

- It seeks to ensure accountability for serious crimes that threaten humanity, protect victims and prevent future atrocities. It applies to crimes committed within countries as well as across borders.
- The system recognises four major international crimes:
  - **Genocide:** Acts committed with the intention of destroying, wholly or partly, a national, ethnic, racial or religious group.
  - **Crimes Against Humanity:** Widespread or systematic attacks against civilian populations, including murder, torture, persecution and enslavement.
  - **War Crimes:** Serious violations of International Humanitarian Law (IHL), including deliberate attacks on civilians and mistreatment of prisoners of war.
  - **Crime of Aggression:** Leadership-level responsibility for serious unlawful uses of armed force by one State against another.
- The **International Criminal Court (ICC)** was established in 2002 under the **Rome Statute, 1998,** to prosecute these crimes.
- The national courts bear primary responsibility for prosecuting international crimes under the **principle of complementarity**.
- The ICC generally intervenes when domestic authorities are unwilling or unable to conduct genuine proceedings.

India's Global Commitments

- India has accepted several international obligations concerning the prevention and punishment of mass atrocities.
- **Genocide Convention, 1948:** India ratified it in 1959, accepting obligations to prevent and punish genocide.
- **Geneva Conventions, 1949:** Ratified in 1950, they protect civilians, prisoners of war and other vulnerable persons during armed conflicts.
- **UN Security Council (UNSC):** India has supported resolutions treating internal crises, including those in Somalia (1992) and Libya (2011), as threats to international peace.
- **Constitutional Provisions in India: Article 51(c)** promotes respect for international law, while **Article 253** empowers Parliament to implement international treaties.
  - However, **India is not a party to the Rome Statute**. This does not prevent it from criminalising international atrocities through domestic legislation.

Gaps in India's Domestic Criminal Law

- **Absence of Specific Atrocity Crimes:** India's criminal law does not specifically recognise genocide or crimes against humanity.
  - In ***State v. Sajjan Kumar (2018)***, concerning the 1984 anti-Sikh violence, the Delhi High Court highlighted this legislative gap.
  - The **Bharatiya Nyaya Sanhita (BNS), 2023,** punishes murder, grievous hurt and group-based violence under provisions such as **Sections 103 and 117.**
  - However, these provisions do not fully capture the distinctive nature of international atrocity crimes.
  - It undermines the **principle of fair labelling**, which requires criminal laws to reflect the seriousness and character of offences accurately.
- **Limited Coverage of War Crimes:** The **Geneva Conventions Act, 1960,** primarily criminalises grave breaches associated with international armed conflicts. Its major limitations include:
  - Inadequate coverage of customary war crimes and violations during non-international armed conflicts.

- Section 17 restricts prosecution to complaints by the government or authorised officials.
- Courts-martial cannot directly prosecute offences under the Act as such, limiting military accountability mechanisms.
- Although the Act prescribes imprisonment of up to 14 years for certain grave breaches, ordinary criminal provisions may inadequately address such conduct.

- **Challenge of Internal Armed Conflicts:** Internal armed conflicts present additional challenges because governments may classify prolonged violence as internal disturbances.
  - Under IHL, a **non-international armed conflict (NIAC)** is identified through two objective criteria: the intensity of hostilities and the organisation of armed groups.
  - Classification does not legitimize insurgency or restrict the State's right to maintain security.
- For example, in ***Nandini Sundar v. State of Chhattisgarh (2011),*** the Supreme Court declared the **use of armed Special Police Officers** in counter-insurgency roles unconstitutional and directed investigations into alleged abuses associated with Salwa Judum.
  - However, the judgment did not specifically classify the violence as a NIAC or examine alleged offences under a war-crimes framework.

Related Efforts / Initiatives

- **Global:** The **Nuremberg Trials,** tribunals for Rwanda and the former Yugoslavia, and the ICC have strengthened mechanisms for individual criminal accountability.
- **In India:** The **BNS, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam** represent broader criminal justice reforms.
- At the **15th UN Congress on Crime Prevention and Criminal Justice in Abu Dhabi (September 2026)**, India highlighted technology-driven investigations, faster justice and international legal cooperation.
  - However, specific reforms concerning mass atrocity crimes remain necessary.

Way Forward: Building Credible Accountability

- **Comprehensive Legislation:** Recognise genocide, crimes against humanity and war crimes as distinct offences, including serious violations during internal armed conflicts.
- **Independent Investigations:** Establish credible mechanisms to investigate allegations against State and non-State actors.
- **Military Accountability:** Strengthen IHL training, command responsibility and prosecution mechanisms within the armed forces.
- **Victim-centred Justice:** Improve witness protection, compensation, rehabilitation and access to legal remedies.
- **Institutional Safeguards:** Reduce excessive executive control over prosecution while preserving national security and due process.
- **Global Cooperation:** Strengthen cooperation with international justice institutions without treating ICC membership as a prerequisite for domestic reform.

Conclusion

- India's aspiration to become a *Vishwaguru* needs to be supported by a credible commitment to justice. **True sovereignty is strengthened, not weakened, when a State holds perpetrators of serious crimes accountable.**
- Closing the gap between international commitments and domestic enforcement is essential for protecting human dignity and preventing impunity.

Source: TH

Daily Mains Practice Question

[Q] Examine the gaps in India's domestic legal framework for addressing international crimes. How can India strengthen accountability for mass atrocities while safeguarding its sovereignty?