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Crimes Against Humanity: Evolution, Prosecution, and Challenges for the International Criminal Court

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Abstract

In international law, the term crimes against humanity refers to crimes, including murder, torture, enforced disappearance, etc., committed in a large-scale manner against civilians irrespective of their nationality. The crimes against humanity, together with crimes such as genocide, war crimes, and crimes against aggression, form part of core crimes in international criminal law. The idea of crimes against humanity traces its development to the early 1900s, and subsequently, it received serious attention during the Second World War. The Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, adopted in 1945, has defined the term crimes against humanity for the first time in its history. Subsequently, several developments occurred, including the Nuremberg Trials, the Tokyo Trial, the International Criminal Tribunal for Former Yugoslavia and the International Criminal Tribunal for Rwanda, etc. All these have significantly influenced the moulding of crimes against humanity. Finally, adopting the Statute of the International Criminal Court has given a final shape to the concept of crimes against humanity and the methods to deal with its prosecution, punishment, etc. Being one of the core international criminal law crimes, this paper examines the historical evolution, the concept of crimes against humanity and the various criticisms and challenges in prosecuting crimes against humanity under international criminal law.

Keywords: *Crimes Against Humanity; International Criminal Law; War Criminals; Nuremberg Trials; ICTR; ICTY.*

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1. Introduction

International criminal law has rapidly developed in the 20th century due to the establishment of different international *Adhoc* and mixed or hybrid criminal tribunals to prosecute grave international violations. This development has culminated in establishing the International Criminal Court (ICC). One of the most important reasons for establishing the ICC is the need for a permanent body to identify crimes against humanity and for its successful prosecution and punishment. Thus, the Rome Statute of ICC has identified eleven types of crimes and declared them as crimes against humanity when it is "committed as part of a widespread or systematic attack directed against any civilian population" (Article 7). Though the Rome Statute specifies the crimes covered under the term crimes against humanity and provides the provisions for their detection, prosecution and punishments, the application of these provisions in appropriate cases raises several concerns in international law. One of the major issues is the ambiguity in the definition itself; it emphasizes the word "widespread or systematic attack"; however, the criteria for identifying what actions would qualify it leads to multiple interpretations. Further, the new forms of crimes, such as crimes committed in cyberspace, artificial intelligence-related crimes and environmental crimes, are outside the purview of the definition given by the Rome Statute. The issues related to gathering credible and reliable pieces of evidence from the conflict zone and the interference of countries with this process pose significant hurdles in prosecuting crimes against humanity. Further, the shield of state sovereignty also poses a significant threat to the ICC's mandate in prosecuting the persons involved in such crimes. This paper aims to conduct an extensive study of the concept of crimes against humanity and identify the various criticisms and challenges faced by the ICC while dealing with a prosecution related to such crimes against humanity. Such an analysis is necessary considering the nature and seriousness of the crimes covered under crimes against humanity. This paper also proposes appropriate suggestions for overcoming those challenges and strengthening the ICC to deal effectively with its mandate.

2. The Objective and Scope of the Study

The major aim of this study is to investigate the notion of crimes against humanity under international law, with particular attention to the concept, historical development, and prosecution-related challenges. The specific aims of this study include:

1. To trace the evolution of the concept of crimes against humanity under international law.

2. To examine the scope of the concept of the crimes against humanity.
3. To identify the procedure involved in prosecuting the crimes against humanity by the International Criminal Court.
4. To examine the criticisms and challenges that may arise while dealing with the crimes against humanity committed by the ICC and suggest remedial measures

The scope of this research, however, is restricted to the analysis of various provisions of the Statute and pieces of literature about crimes against humanity. Instead of delving into particular case studies or the effects of crimes against humanity on a particular society, the study concentrates on the more general legal and jurisprudential analysis of the concept of crimes against humanity and its prosecution-related challenges.

3. Research Methodology

The research methodology for this study involves a comprehensive review of international legal instruments and scholarly literature on crimes against humanity. Key methods include historical analysis to explore the evolution of the concept, systematic analysis of legal frameworks governing prosecution and punishment, and critical analysis of existing research to examine challenges in enforcing international law through institutions like the International Criminal Court. Initially, the relevant materials were identified using hardcopy books and journals available in the institution's library and through the journal databases and general searches on Google. Subsequently, the researchers used the historical method (to trace the history and evolution of the concept of crimes against humanity and the various instances that led to the creation of the ICC); systematic method (to understand the scope and nature of the international law relating to identification, prosecution and punishment of crimes against humanity); and the analysis method (to systematically review the large volume of research papers related to the issues discussed in the paper).

4. Results and Discussion

4.1. History and Evolution of Crimes Against Humanity

The contemporary idea of crime against humanity has evolved in response to the 20th-century atrocities against the human population. However, the idea of crimes against humanity has its roots in ancient documents such as the Code of Hammurabi and the ancient Indian Manu Code, which emphasised the need for humane treatment and rules for prohibiting excessive violence (Fnish, 2013). During the medieval period, the writings of thinkers such as St. Augustine and St. Thomas Aquinas also emphasised the need for the protection of civilians against

the horrors of war (Fisher, 2011). From the available literature, it can be found that the term crimes against humanity was first used by G. W. Williams in his letter describing the atrocities suffered by people in Congo Free State, sent in 1890 to the United States Secretary of State (Hochschild, 1999). It is further found that, the term was used earlier by him in 1883 in connection with the slavery of the United States and subsequently Mr. Benjamin Harrison, the former US President also used the term crime against humanity in the context of slavery in 1889 (Lösing, 2020).

In international law, the idea of crime against humanity was first discussed in connection with the Martens Clause. A Russian diplomat, Fyodor Fyodorovich Martens, has introduced the idea of laws of humanity or humanistic values while codifying the rules relating to international human rights law (Sarkin, 2009). This idea was specifically incorporated in the Preamble of the Second Hauge Convention in 1899 and is further expanded in the Fourth Hauge Convention on Laws and Customs of War on Land in 1907 (Cassese, 2000). The Convention states that, "Until a more complete code of the laws of war has been issued, the High Contracting Parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience"(Meron, 2000). This statement is popularly known as the Martens Clause, and it emphasises that even in the absence of specific treaty provisions, humans must be treated based on the principle of humanity and dictates of public conscience (Meron, 2000).

A joint statement issued by Russia, France and Britain in 1915 is considered as the first instance in the history of crimes against humanity where one government was alleged to be responsible for the commission of the crimes against humanity (Bianchi, 1999). The statement alleged that the Turkish Government would be held responsible for the massacre of the Armenian population in Turkey, the massacre was termed as crimes against humanity. However, the statement failed to identify the violation of applicable international law, and hence, it became a mere statement without any effect (Clark, 2011).

Immediately after the conclusion of World War I, a Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties at the Paris Peace Conference in 1919 (Irish, 2022). It was a fifteen-member committee charged with identifying the authors of World War I and fixing liability accordingly. The Committee used the idea of crimes against humanity and concluded that Germany and her Allies were responsible for the various violations of international law including customary law of war and laws of humanity (Robinson, 1999). The United States and several other states vehemently objected to the report of the Committee, and as a result, the findings of the committee

found no place in the subsequent development of international law (Moir, 2006). However, the identification of violations like crimes against humanity by this report has brought forth the debate about crimes against humanity in the limelight.

The most important development in this context is the adoption of the London Charter in 1945 which seeks to establish International Military Tribunals (IMT) to prosecute the alleged perpetrators of Nazi atrocities. It was signed by the Allied powers (France, the Soviet Union, the United Kingdom, and the United States) for the systematic prosecution and punishment of the "major war criminals of the European Axis" for their involvement in the atrocities (Korn, 2017). The trials were held in Nuremberg, Germany, and hence, they are popularly known as Nuremberg Trials. The London Charter, which provides the legal basis of the Nuremberg trials, defined the term 'Crime Against Humanity' in its Article 6. The trials were concluded in October 1946 and it has prosecuted and punished several Nazi leaders for crimes against humanity.

To prosecute the leaders of Japan for their conspiracy to start war and wage, an International Military Tribunal for the Far East (IMTFE) was established by eleven countries in April 1946 (International Military Tribunal for the Far East, 1946). The establishment and the conduct of trials by IMTFE were modelled following the Nuremberg trial, and they have reproduced the definition of crimes against humanity verbatim from the Lond Charter (Article 5c). Since these trials were held in Tokyo, it is popularly known as the Tokyo War Crime Trials (Cho, 1967). The trials were concluded in 1948, and several alleged war criminals were prosecuted and punished for the violation of crimes against humanity.

The establishment and the successful conduct of trials for the commission of crimes against humanity by international tribunals have accelerated the debate for establishing a permanent body to deal with crimes against humanity. Though the international community succeeded in adopting treaty law relating to Genocide (Convention on the Prevention and Punishment of the Crime of Genocide, 1948) and International Humanitarian Law (Four Geneva Conventions, 1949), it failed to establish a legal framework for crimes against humanity. The establishment of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in 1994 to prosecute the perpetrators of violence in former Yugoslavia and Rwanda, respectively, has further accelerated the development of law relating to crimes against humanity (McDonald, 2001). In 1994, the International Law Commission submitted a final draft of the Statute of the International Criminal Court. After several negotiations, in 1998 at Rome, the Statue of ICC was opened for signature, and it legally came into force in 2002 (Blumenthal, 2002). The adoption of the Rome Statute has given final shape to the concept of 'Crimes against Humanity'

(Chernor Jalloh, 2013). The statute unequally defines the crimes covered under this term and provides provisions for its prosecution and punishment.

4.2. Concept of Crimes Against Humanity

Generally, crimes against humanity refer to those crimes which are committed in a large-scale manner targeting civilians regardless of their nationality. These crimes can be committed during wartime or peacetime and involve the most egregious human rights violations. Such commissions of crime may be the direct result of a state policy, or they may be sponsored by a government or perpetrated by a non-state actor. The Lond Charter 1945, which established the International Military Tribunal of Nuremberg, is the first international instrument to define the concept of crimes against humanity explicitly. It states that the crimes against humanity include "murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or prosecutions on political, racial or religious grounds in execution or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated" (Article 6c). Immediately after establishing the International Law Commission (ILC) in 1947, the United Nations assigned the task of codifying "offences against the peace and security of mankind" (Graefrath, 1990).

The ILC adopted a Draft Code of Crimes against the Peace and Security of Mankind in 1996 and offered another definition in Article 18. It followed the definition given by the London Charter; however, it omitted the word "before or during the war", and removed the nexus between war or armed conflict with crimes against humanity. It is to be noted that both ICTY and ICTR followed the definition formulated by the London Charter and upheld the considered nexus between crimes against humanity and an armed conflict (Article 18).

The Rome Statute of ICC, 1998 has provided a slightly different definition and it states that, "crime against humanity means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health" (Article 7).

This definition is considered the most accepted and wider for crimes against humanity compared to its earlier definitions offered by the London Charter, ICTR, ICTY and ILC Draft Code, as it covers a wide range of specific criminal acts. It is to be noted here that, the most important significance of this definition is that it does not make any reference to a nexus with war or armed conflict, i.e. the crimes which are classified as crimes against humanity can occur both during the armed conflict and during in peacetime (Robinson, 1999). After 72 years of deliberations, the ILC developed a Draft of Articles on the Prevention and Punishment of Crimes Against Humanity in 2019, which also reaffirmed the definition provided in the Rome Statute (Article 2). An examination of different definitions available for the concept of crimes against humanity reveals that they are inhuman criminal acts which are declared as crimes by municipal legal systems of the world and are systematic or widespread targeting civilians during a war or peacetime.

4.3. Legal Status of Crimes against Humanity in International Law

Crimes against humanity are considered to be one of the core components of international criminal law. However, the legal status of this is in question. This is mainly because, unlike other major forms of crimes, such as war crimes or genocide, in relation to crimes against humanity, there is no binding comprehensive treaty. Currently, the legal framework for crimes against is the Rome Statute of ICC wherein only 124 nations are parties (International Criminal Court). The USA has voted against the Rome Statute, and countries, such as "China, Ethiopia, India, Indonesia, Iraq, North Korea, Saudi Arabia, and Turkey", never signed the statute; whereas "Egypt, Iran, Israel, Russia, Sudan, and Syria", have signed the statute but not yet ratified it. Countries such as "Burundi, Gambia, Philippines and South Africa" have withdrawn from the statute (Klebucista & Ferragamo, 2024). Sometimes, the statute has also witnessed an *en masse* withdrawal from it. For example, in 2009, African states parties collectively withdrew from the ICC Statute (Bachmann & Sowatey-Adjei, 2020). The non-

cooperation of several states may affect the legality of the Rome of Statute as a multilateral instrument; however, legal scholars consider crimes against humanity to be a binding legal principle under international law. They view it in two different ways:

i) Crimes Against Humanity – A Principle of Armed Conflict. It is generally argued that crimes against humanity originated as a principle of war or, in other words, it is an extension of war crimes or by an analogy (Moir, 2006). This is mainly because this concept has developed in its modern sense through its incorporation in the Hauge Conference on Laws and Customs of War on Land in 1907. Further, the concept of crimes against humanity was used in relation to war, including the Commission on the Responsibility of the Authors of the War and the Enforcement of Penalties at the Paris Peace Conference, 1919; International Military Tribunals, 1945; and International Military Tribunal for the Far East, 1946. Moreover, the definition offered by the London Charter, 1945, ICTR, and ICTY, also reaffirms its nexus with the armed conflict. All these cases are related to armed conflicts, and hence, it is viewed as a principle of the law of war.

ii) Crimes Against Humanity – A Human Rights Standard. The development of international criminal law is considered as a response to the need for providing an "ultima ratio modality of protection of human rights"(Bassiouni, 1982). Hence, various literature points out that crimes against humanity are a standard for protecting the human rights of a group of civilians. The scholars who propose this view point out that the definition of crimes against humanity proposed by the ILC Draft Code, ICC Statute and the ILC Draft Articles on Crimes against Humanity explicitly dropped the need for an armed conflict to consider a criminal act as a crime against humanity. It is further argued that if a similar type of criminal act is committed during wartime, it is treated as a war crime under the ICC Statute (Article 8). Moreover, it is argued that the development of the human rights law framework is indebted to the various crimes against humanity the world has witnessed before and during World War II. Thus, once the human rights framework was developed in international law, international criminal law was also developed to protect human rights. Hence, laws relating to crimes against humanity have also developed. Due to the conflicting debate about the legal status of crimes against humanity, some scholars think there is a need to develop a binding treaty. In 1947, the United Nations has entrusted this task to the International Law Commission, however, they could succeed only to the extent of developing a Draft of Articles on the Prevention and Punishment of Crimes Against Humanity in 2019.

4.4. Prosecution of Crimes Against Humanity: Procedure

The International Criminal Court, established per the Rome Statute's provisions, is entrusted with the jurisdiction to prosecute individuals for crimes against humanity internationally. However, the primary jurisdiction concerning crimes against humanity is with the domestic courts, and the ICC has only an ancillary role. In cases where the domestic courts are unable or unwilling to prosecute or prosecute the perpetrators of the crimes fairly, then the ICC can step into the matter and exercise the jurisdiction (Kleffner, 2008). The ICC consist of 18 judges and the following organs (a) The Presidency; (b) An Appeals Division, a Trial Division and a Pre-Trial Division; (c) The Office of the Prosecutor; and (d) The Registry (Article 34). The president and four other judges sit in the Appeals Division; the Trial Division and the Pre-Trial Division comprise six judges each. The procedure for the exercise of jurisdiction and trial involves different stages which are as follows:

i) *Commencement:* ICC can commence its jurisdiction to deal with a crime against humanity in either of three ways: a) state referral, b) Referral by the UN Security Council, or c) *Propio* Motu Investigation. Thus, to commence an investigation, either a state party or the UN security council must refer a matter to the Court, or the Prosecutor of the ICC can also start a preliminary investigation based on the information he received.

ii) *Preliminary Examination*: Once ICC decides to exercise its jurisdiction, before the commencement of formal investigation, it has to complete a preliminary exam. In this examination, the Prosecutor should ensure that: the alleged crime is an act committed after the first July 2002; it is exercising jurisdiction in the territory of state parties of the statute; if it is exercising jurisdiction in a non-state parties' territory they have consented for it; the alleged crime must be a crime as listed as a crime against humanity; and the investigation is against a natural person. So also, the prosecutor should ensure that the alleged crime is not properly investigated or prosecuted by the concerned domestic court. Even though these elements are satisfied, the prosecutor still has the discretion to decide whether to move forward with the investigation or not in the interest of justice.

iii) *Investigation:* The prosecutor's office will investigate the allegation to collect information and related evidence about the alleged crime against humanity.

iv) *Summons & Arrest Warrant*: If the prosecutor's office gathers sufficient evidence about the perpetrators of the alleged crime, it can request the Pre-Trial Chamber (PTC) to issue summons or arrest warrants as the case may be.

v) *Preliminary Hearing:* On initial appearance by the parties before the PTC, they will be given a chance to hear. PTC can either confirm or dismiss the charges based on the initial hearing.

vi) *Trial:* The trial Chamber will proceed with the trial once the PTC confirms the charges. During this stage, the Office of the Prosecutor will present the evidence collected, and the defence lawyers are allowed to test the veracity of the evidence. Based on the evidence presented and tested, the Trail Chamber can declare the guilt or innocence of the accused. If the verdict declares the guilt of the accused, then the Chamber can award imprisonment based on the gravity of the crime committed by the accused and also issue an order for a fine or forfeiture. Also, the Chamber can issue orders directing the provision of reparations to the victims. Otherwise, the Trial Chamber can acquit the accused.

vii) *Appeal:* The judgement of the Trial Chamber can be appealed by the office of the prosecutor or the accused before the Appeal Chamber. The Appeal Chamber is empowered to modify, reverse or confirm the judgement of the Trial Chamber.

4.5. Criticisms and Challenges

The International Criminal Court was established with the idea of fixing individual criminal responsibility for those who commit atrocities. It is expected that "the mere existence of ICC will act as a catalyst for accountability" (Goldston, 2019). However, a review of the functioning of the ICC for the last 22 years reveals that the ICC become merely one of the international bodies to deal with certain disputes of criminal nature. Several challenges and criticisms question the legitimacy and effectiveness of ICC, among them some of the key challenges and criticisms are as follows:

i) *Lack of Universal Membership:* As per the Statute, the ICC can exercise jurisdiction only for crimes against humanity in the countries that have ratified the statute. It is to be noted that only 124 countries are currently parties to the ICC statute; many major powers, including Russia, the USA, India, China, etc, are not yet part of the statute. About 40 countries of the world never joined the Statute, and most of them are critical to the activities of the ICC. This will adversely affect the functioning of the ICC and limit the ICC from exercising jurisdiction over several crimes against humanity. For example, there were allegations about crimes against humanity in Guantanamo Bay against the US, since the US was not subscribed to the ICC Statute, it was unable to deal with

such allegations (Pearlman, 2015). Likewise, concerning China's treatment of Uyghurs in Xinjiang and Tibetans in Tibet, Russia's activities in Crimea, etc, highlight the issue of and the need for universal membership.

ii) *States Cooperation:* The ICC can proceed with an investigation only if there is cooperation with the concerned states. However, in serious cases of crimes against, the states are unwilling to cooperate, and hence, the ICC finds it very difficult to collect evidence, arrest the perpetrators and conduct the trial. The resistance of Sudan and some of the member states of the African Union in cooperating with the ICC for the prosecution of former Sudanese President Omar al-Bashir is one of the relevant examples here (Duursma & Müller, 2019). Even though the ICC issued an arrest warrant, the state was not ready to execute it. Likewise, in the case of Kenyan President Uhuru Kenyatta, Kenya refused to cooperate with the ICC and did not provide relevant documents and other evidence (Hillebrecht & Straus, 2017). The case of Saif al-Islam Gaddafi, son of former Libyan leader Muammar Gaddafi, is another well-known example in this context (Skander Galand, 2018).

iii) *Political Pressure:* The major powers in the world can exert significant political pressure and influence, thereby hindering the proper functioning of the ICC. There were several allegations about crimes against humanity committed by US, Taliban and Afghanistan authorities in Afghanistan. It was openly criticized by the US, which is a member of the ICC and exerted significant pressure through several measures, including sanctions on ICC officials, revocation of visas and diplomatic threats (Ochs, 2020)

iv) *Delay in Trials:* In most cases, ICC takes several years to conclude its trial. The trial of Thomas Lubanga took 6 years (Kurth, 2013); the trial of Jean-Pierre Bemba concluded after 10 years (Birkett, (2020); the trial of Laurent Gbagbo took 7 years (Lagoké, 2023); the trial of Germain Katanga took 7 years (Gaskins, 2020); and the Dominic Ongwen concluded after 6 years (Gurpur, 2021).

v) *Resource Constraints:* The functioning of the ICC relies on the funds it receives as contributions from its member states. However, the inadequate funding by member states hinders the ICC from effectively collecting the evidence and conducting the trial speedily (Wiebelhaus-Brahm & Ainley, 2023). The Darfur investigation is an illustrious case wherein the ICC finds it difficult to collect evidence and secure witness protection due to financial constraints. The investigations against the Lord's Resistance Army of Uganda also suffered a setback due to financial constraints.

vi) *Perception of Selectivity and Bias:* From the cases dealt with by ICC for the last 24 years, it can be seen that most cases are from the Global South. Hence, there were specific allegations of bias against the ICC's indictments. The leaders of the African Union publicly expressed their dissatisfaction about this selectivity in the 2013 African Union Summit (Werle, *et al.* 2014). In 2017, due to bias, the African Union backed the mass withdrawal from the ICC Statute. It is to be noted that, while withdrawing from the ICC Statute, Burundi opined that, the ICC Statute is "a political instrument and weapon used by the West to enslave other States" (Barham, 2018).

vii) *Conflict with National Interests:* In certain cases, the prosecution of ICC may lead to conflict with the national interest and may exacerbate the conflict further. For example, for the alleged commission of crimes against humanity, the ICC has issued an arrest warrant against Joesph Kony and several other members of the Lord's Resistance Army of Uganda; however, as a measure of establishing peace in the country, the Ugandan Government offered amnesty to Joesph Kony and others. As a result, the case becomes unresolved (Happold, 2007). A similar situation has arisen in the cases related to the Civil War (1991-2002), the armed conflict of Colombia by FARC, the Civil War in South Sudan, etc.

viii) *Imperfections in the Definition of Crimes Against Humanity:* The definition is very broad and fairly covers all possible types of crimes which can be treated as crimes against humanity. However, the possibility of conflicting interpretations of the keywords used in the definition may pose a challenge in identifying crimes against humanity. For example, words such as 'systematic and widespread', 'attacks'; civilians; etc., are open to multiple interpretations (Acevedo, 2017).

ix) *Witness and Victim Protection:* The victims and witnesses of crimes against humanity face significant threats to their safety. Extending protection to them is a herculean task for the ICC. The incidents reported while dealing with the cases of Darfur (Sudan); Post-Election Violence in Kenya, Bosco Ntaganda (Democratic Republic of Congo), etc. illustrate the concerns related to victims and witness protection (Pérez-León Acevedo, & De Vos, 2020).

x) *Privilege of High-Level Perpetrators:* Generally, the perpetrators of crimes against humanity enjoy wide political or military powers that help them to hinder effective prosecution by the ICC. The cases of Omar al-Bashir (Sudan); Muammar Gaddafi (Libya); Robert Mugabe (Zimbabwe); Bashar al-Assad (Syria); etc highlight the seriousness of this criticism.

5. Future Directions

Considering the need to place the ICC as the centre for prosecuting crimes against humanity internationally, addressing the various criticisms and challenges is imperative. But, addressing the various criticisms and challenges the ICC faces requires a multifaceted approach. Firstly, all the nations should subscribe to the ICC Statute and extend their whole-hearted support for the prosecution and related activities of the ICC. It will strengthen the ICC and make it a truly international institution armed with powers to deter and prosecute the perpetrators of crimes against humanity. The argument that all nations should subscribe to the ICC Statute and extend full support for the prosecution and related activities of the ICC is rooted in the principle of universal jurisdiction to prosecute crimes against humanity, ensuring accountability and global justice. However, several factors contribute to states' reluctance to join. First, concerns about sovereignty deter some nations, as they fear ICC jurisdiction might infringe on their autonomy, particularly by prosecuting officials or military personnel, which is seen as external interference in domestic affairs. Second, political bias is often cited, particularly by African states, which argue that the ICC disproportionately targets African nations while overlooking similar issues elsewhere. Additionally, security and diplomatic pressures play a significant role, with major powers such as the United States, China, and Russia who are not party to the ICC often influencing allies to avoid joining. These powers aim to shield their nationals from ICC prosecution and avoid precedents that could impact their geopolitical interests. Lastly, legal compatibility concerns arise in states that believe their domestic legal systems are equipped to handle such prosecutions or where national laws do not align easily with ICC standards, complicating compliance. For states interested in joining the ICC, the process involves signing the Rome Statute to signal initial support, followed by ratification or accession through national legislative approval, and depositing this with the UN Secretary-General. Many states then implement domestic legislation to align with ICC mandates, allowing them to cooperate fully and apply ICC rulings domestically. Broadening ICC membership through these steps would not only strengthen the ICC’s authority but also promote a unified international response to crimes against humanity, enhancing accountability and impartiality within the global justice system. Secondly, to counter the criticisms of bias, the ICC should take necessary measures to ensure transparency and build trust. One of the strategies can be publishing regular reports and engaging in regular discussions with civil society and non-governmental organisations. Thirdly, the ICC can develop appropriate mechanisms and schemes to protect witnesses and victims. The ICC may establish mechanisms through partnerships with national and international non-governmental organisations to protect the victims and witnesses. Fourthly, to overcome the financial crunch, the ICC may find alternative sources, such as

contributions from private parties. Fifthly, the complexities of legal procedures may be reduced to expedite the prosecution, and it can avoid the delay in its process.

6. Conclusion

Crimes against humanity are one of the grave large-scale violations of human rights. The illustrious Nuremberg trial, Tokyo Trial, ICTR and ICTY have laid the foundation for establishing a permanent institution for dealing with the crimes against humanity. Through the work of the International Law Commission, the concept of crimes against humanity and the procedures for its investigation, prosecution, punishment and related matters were developed. As a result, the international community adopted the Rome Statue and created the permanent body of the International Criminal Court to deal with crimes against humanity. Thus, it can be seen that the creation of the ICC is in response to many years of negotiations and deliberations with an unquestionably splendid goal of prosecuting the perpetrators of crimes against humanity. The ICC, through its investigations and indictments, proved their significance and importance in maintaining international peace and security. However, several criticisms and challenges, including the lack of universal membership, funding issues, political pressure, etc., hampered its efficacy and functioning. Addressing the various criticisms and challenges will boost the efficacy and legality of the ICC, which is necessary in contemporary times for ensuring peace and security in the world.

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Conflict of Interest

The authors declare that there is no conflict of interest to report

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