



INDIAN JOURNAL OF  
LEGAL REVIEW

VOLUME 4 AND ISSUE 3 OF 2024

INSTITUTE OF LEGAL EDUCATION



## INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 4 and Issue 3 of 2024 (Access Full Issue on – <https://ijlr.iledu.in/volume-4-and-issue-3-of-2024/>)

### Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – [info@iledu.in](mailto:info@iledu.in) / [Chairman@iledu.in](mailto:Chairman@iledu.in)



© Institute of Legal Education

**Copyright Disclaimer:** All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

## INTERNATIONAL CRIMINAL LAW: HUMAN RIGHTS VIOLATION

**AUTHOR** – AKANSHA, ILLM SCHOLAR AT IILM GREATER NOIDA

**BEST CITATION** – AKANSHA, INTERNATIONAL CRIMINAL LAW: HUMAN RIGHTS VIOLATION, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 405-412, APIS – 3920 – 0001 & ISSN – 2583-2344.

### ABSTRACT

International criminal law is a fairly new thing in the international legal field aimed at making individuals answerable for the most serious human rights violations. It has moved from the traditional international law approach which targeted states' accountability to a more direct individual approach.

Internationale Criminal Law is built on concepts such as jus cogens (compelling law) and Aut Dedere Aut judicare (extradite or prosecute). The principles state that some offenses like genocide, crimes against humanity, war crimes and aggression are universally acknowledged and should be prosecuted no matter where they take place.

The institution whose core mandate lies within investigating and prosecuting people who are alleged to have committed these crimes is called International Criminal Court (ICC). Nevertheless, the court's jurisdiction extends only over country members who have ratified the Rome Statute which established it. In addition, its jurisdiction might only be exercised by nationals from state parties or those going on within their territories.

Even though it has several limitations, international criminal law has contributed greatly in holding perpetrators accountable through various means. Its prevention role towards future offenses highlights the need for adherence for human rights as well as respect towards them.

**KEYWORDS** – *International Criminal Court (ICC), Rome Statute, Genocide, Crimes against humanity, War crimes, Aggression, Jus cogens, Aut Dedere Aut judicare, international justice, National sovereignty, Accountability, Deterrence, Human rights, Rule of law*

### OVERVIEW

World has not known international criminal law for long; it is new in the field of global laws concerning justice. Therefore, it aims at individuals who perpetrate very serious offenses against mankind rather than states. This distinguishes it from conventional international laws which have mainly concentrated on state accountability.

**Major Principles and Institutions cogens:** Genocide, crimes against humanity, war crimes and aggression are examples of jus cogens or peremptory norms – universally condemned offenses that cannot be rejected by treaties.

**Aut dedere aut judicare:** This principle refers to "extradite or prosecute" which mandates

countries to extradite persons suspected of these crimes to countries where there exists jurisdiction or they should prosecute them domestically.

**International Criminal Court (ICC):** The ICC is the most important in terms of international court responsible for investigating and prosecuting those suspected of having committed most serious offenses within its jurisdiction. However, membership at the Rome Statute (the foundation upon which this court operates) gives it limited authority over only those member states.

**Central offenses:**

**Genocide:** The deliberate destruction targeting whole or parts of a national, ethnic group or religion.

**Crimes against humanity:** Attack directed widely or systematically against non-combatant population.

**War Crime:** Violations against the laws of war, such as unlawful killings of civilians or prisoners of war.

**Aggression:** The use of armed force by a state against the territory or sovereignty of another state.

**Challenges and Limitations:**

**Jurisdictional Limitations:** The ICC can only prosecute cases arising from states that have ratified to the Rome Statute and crimes committed in their territories or by their nationals.

**INTRODUCTION**

International criminal justice system is a body of laws designed for prosecuting and punishing individuals for serious crimes with a trans-border character which include crimes against humanity, war crimes and genocide. The domestic criminal justice system on its side is the totality of laws which operate within a particular country defining what constitutes crime at the same time specifying penalties associated with commission of the offences (Hoffman, 2007). The two systems share some common grounds but differ in terms of various aspects as explained below.

**LITERATURE REVIEW****International Criminal Law Literature Review**

In the last few decades international criminal law experienced a lot of noticeable developments directed towards holding individuals accountable for serious crimes against humanity. This part of literature is voluminous and heterogeneous covering different theoretical, empirical as well as practical aspects. The objective of this literature

review is to give an overview of major trends and themes in this area.

**BASED THEORIES**

**Philosophical underpinnings:** Scholars have examined some ethical and moral principles that inform international criminal law such as justice, accountability and human rights.

**Legal frameworks:** Research has looked at the rise and progression of international legal tools like the Rome Statute, Geneva Conventions among other treaties relevant to this subject matter.

**Jurisdictional issues:** Scholars have investigated the hurdles which prevent effective international criminal jurisdiction especially on issues relating to national sovereignty as well as *aut dedere aut judicare* principle.

**SIGNIFICANT CRIMES**

**Genocide:** The explicit elucidation of genocide and the various aspects covering it have been extensively researched alongside its historical and current appearances.

**Crimes against humanity:** Different types of crimes against humanity including but not limited to imprisonment, torture, persecution and sexual violence have been examined by researchers.

**War crimes:** The pertinent acts that can be classified as war crimes such as killing civilians unlawfully and killing prisoners of war are what researchers have focused on in their studies on laws governing wars.

**Aggression:** In this regard, scholars have scrutinized the concept of aggression as well as difficulties associated with defining and prosecuting aggressions.

**INTERNATIONAL CRIMINAL COURT (ICC)**

**Jurisdiction and Procedures:** The ICC's jurisdiction, investigative and prosecutorial powers as well as procedural rules are areas that have been significantly researched.

**Effectiveness:** The effectiveness of the ICC in holding perpetrators accountable and

promoting justice has been evaluated by scholars.

**Challenges and Limitations:** Key challenges and limitations that face the ICC include financial constraints, political interference, prolonged hearing periods among others; this is what various research works have claimed.

**Trendy upsurge and arising dilemmas.**

**Cyber offense:** Authors have examined the barriers faced in pulling the criminals who are computer-based into justice under the international legal system concerning crime.

**Global warming:** Studies have researched on how warming affects global politics or policies for instance in ecocide.

**Non-State players:** Analysts have looked at non-state forces like international terrorist's groups and transnational mafia as perpetrating international crimes.

#### METHODS OF APPROACHING THE RESEARCH

**Doctrinal Examination:** The legal frameworks and tenets controlling international criminal law have been studied by different scholars through doctrinal examination.

**Empirical Investigations:** In order to find out how often do most people do this or that thing, which types of crimes are most common and what are their effects, empirical investigations including case studies, statistics analysis and surveys have been used.

**Interdisciplinary Research:** To understand the historical, social and psychological aspects behind these crimes scholars have used an interdisciplinary approach.

#### RESEARCH QUESTIONS

What philosophy governs international criminal law? In what ways does this philosophy shape its development and application?

What is the connection between the international criminal law system and domestic ones?

In what manner does international criminal law harmonize individual responsibility and state sovereignty?

What difficulties could one encounter while attempting to prove such crimes especially when there is no conclusive evidence?

How does command responsibility fit into international criminal law, and what does it mean for senior officials' prosecution?

#### METHODOLOGY

International Criminal Law Research Methodology

An approach to the study of international criminal law that is systematic and methodical. Techniques and strategies to ensure the reliability, validity, and credibility of research findings are included in this field.

#### Primary Methods

##### Doctrinal Analysis

**Legal analysis:** This involves studying the main sources of law such as treaties, conventions, and the case law in order to explain or implement legal principles and provisions.

**Comparative analysis:** This is where one looks at similarities and differences in various legal systems as well as approaches to international criminal justice. Theoretical analysis: Involves examining philosophical and theoretical foundations of international criminal law, e.g., theories of justice, accountability as well as human rights.

##### Empirical Research

**Case Studies:** is an in-depth study of specific cases or events related to international crimes.

**Statistical analysis:** refers to the use of quantitative methods in data analysis on international crimes such as victim numbers, perpetrator profiles and patterns of occurrence.

**Survey research:** is where data is collected through surveys or questionnaires to gather information about public opinion, expert views or experiences of victims and survivors in relation to ICC activities.

### INTERDISCIPLINARY RESEARCH

**Historical Analysis:** Look into the historical context behind ICC activities and process that led up now.

**Sociological Analysis:** Examine social and cultural factors which contribute towards international crimes happening ever so often. Psychological Analysis Investigate motivational factors associated with committing acts of violent and extreme criminality at an international level.

#### Qualitative Research

**Interviews:** Conducting interviews with professionals, casualties, survivors, and other concerned parties.

**Focus groups:** Gathering deeper information on certain topics linked to international criminal law via focus groups.

**Ethnographic research:** Carrying out field research in order to see and capture the experiences and views of those affected by international crimes.

#### Ethical Considerations

**Respect for victims:** This means ensuring that the research does not re-traumatize victims or survivors of international crimes.

**Confidentiality:** Maintaining privacy of individuals involved in research.

**Objectivity:** This requires keeping objectivity without bias in research findings.

### PREDICTIVE POLICING

Predictive policing is a new area in international criminal law that offers both opportunities and challenges. For instance, the potential public good associated with data analytics, which can be used to predict future crime patterns and direct police resources more efficiently, remains largely unexplored. However, there are also major ethical concerns about privacy issues related to these technologies. To be successful in implementing predictive policing internationally, it would require cooperation between nations and development of

standardised collection methods for data analysis. On the other hand, it will be important not only for compliance with international treaties on human rights but also for avoiding perpetuating existing inequalities or injustices in the process of using these techniques for policing purposes.

### RESEARCH OBJECTIVES

#### Grasping the Pillars:

**Evolution over the years:** This part gives an overview on international criminal law from time immemorial to modernity.

**Regulatory frameworks:** Examine some of the key international treaties and conventions regulating international criminal law like the Rome Statute and Geneva Conventions. Philosophical foundations: Discuss the moral and ethical principles that underpin international criminal law; for example, justice, accountability and human rights.

#### Investigating Chief Concepts:

**Crimes against humanity:** Discuss as well as evaluate distinct typologies of crimes against humanity such as genocide, war crimes or crimes against peace. Jurisdiction: Analyses the jurisdictional problems faced by international courts such as International Criminal Court (ICC).

**Immunities:** Consider immunity concept with respect to whether it can be removed or abandoned in relation to international criminal law.

The aim of this study is to provide a comprehensive understanding of the development of international criminal law by looking at its history, treaties and conventions, ethical principles and some related concepts. One way to do this would be through an examination of certain definitions of key terms within crime against humanity, jurisdiction or emphasis on immunity issues.

Finally, to gain fuller perspective on global justice mechanisms including grounds for bringing an individual to account for their

actions during conflicts or wars requires delving deeper into difficult questions about how these mechanisms work concerning different cases; how they can initiate political transition processes after major wars around world or why did not happen anything when some countries have experienced serious violations like genocides?

### **Appraising the Value of Global Criminal Justice:**

**Deterring:** Investigate global criminal justice as an obstacle to forthcoming atrocities.

**Responsiveness:** Evaluate the level of success that global criminal justice has achieved in holding wrongdoers accountable.

**The obstacles and constraints:** Distinguish the major hindrances and limitations that international criminal law encounters such as enforcement issues, political interference and lack of resources.

### **Investigating Evolving Trends and Concerns:**

**The internet crime:** Consider the challenges faced when prosecuting internet crimes using international criminal law.

**Changing weather patterns:** Examine how alterations in weather patterns may impact upon international criminal law with particular reference to the ecocide argument.

**Non-State Players:** Research into terrorist groups' involvement in transnational crimes which are regarded as crimes against humanity.

### **Comparative Analysis**

**Domestic criminal law:** In what ways does international criminal law differ from and resemble systems of domestic criminal law?

Transgressions, whereas international criminal law deals with only those acts that threaten global peace and security, such as genocide, war crimes and crimes against humanity.

**Conclusion:** In conclusion, it is evident that international criminal law and domestic criminal law have similarities in their basis for

punishing offenders but also differ widely in terms of the situation they apply to.

### **SIMILARITIES**

The first similarity between international criminal law and domestic criminal law is that both are based on certain legal principles such as legality, proportionality and culpability. Hence both systems aim at ensuring that individuals are punished for wrong doings (Hoffman, 2007). Secondly, the methods used to investigate crimes by these two systems are similar. For instance, they rely on gathering evidence from various sources including interrogating witnesses and conducting forensic analysis. Moreover, procedural safeguards are established by both international criminal law and domestic criminal law so as to ensure that the rights of accused persons are not violated. In this context we take into consideration principles like right to a fair trial, presumption of innocence or even provision of legal representation when one is charged with a criminal offence.

### **DIFFERENCES**

As opposed to international crimes which concern international community as a whole hence transcending national boundaries; domestic criminal laws pertain only within specific nations (office for the prosecutor [of the international criminal court], 2015). Thus, national boundaries help define where domestic courts can operate while enabling study of how laws differ among countries depending on where the cases occur (Cryer, 2007). In addition, the focus of domestic criminal law is on individuals who are subjects of that particular nation or are residing within it (office of the prosecutor of the international criminal court, 2015). On the other hand, international criminal law applies to human beings who are not necessarily from any specific ethnicity or country. The crimes which fall under this jurisdiction include war crimes and crimes against humanity among others. Some offences against local law may differ from those under universal jurisdiction resulting

in such actions being regarded as a violation of global morals.

### LEGAL AND ETHICAL CHALLENGES IN INTERNATIONAL CRIMINAL LAW

#### Legal Problems

**Jurisdictional Issues:** The jurisdiction of international courts, like the International Criminal Court (ICC), is governed by the Rome Statute which requires state parties. As a result, these criminals may enjoy impunity in countries that are not part of this treaty; **Immunities:** It is hard to enforce international law against heads of state, diplomats, and military commanders because they have immunity from prosecution except under certain circumstances; **Evidence:** When there is a lot of shooting going on and many people may have been killed in the conflict zone where those crimes were committed, it will be difficult to gather evidence; **Statute of Limitations:** The statute of limitations could make prosecution difficult especially for cases that happened many years ago; **National Sovereignty:** While balancing international justice with national sovereignty can be sensitive. Some nations may resist the ICC's authority or prefer not to prosecute their citizens.

#### Moral dilemmas

**Victims' rights:** an important ethical issue is to ensure the rights of all victims of international crimes. It includes reparations, access to justice and protection from further offenses.

**Cultural Sensitivity:** Different cultures should be taken into account while making international criminal law. One ought not to impose Western Legal concepts on Non-Western societies.

**Bias:** There exists a possibility for bias during international criminal trials especially in cases that involve powerful nations or groups.

**Prison and rehabilitation:** To minimize recidivism and guarantee public security, it is important that people found guilty of international crimes are effectively imprisoned and rehabilitated.

The International Criminal Court (ICC) also faces some ethical challenges in its quest for justice.

#### Key Findings

**Jurisdictions that are limited:** The ambit of the ICC extends only to those countries that have ratified the Rome Statute, as well as crimes committed on the territory of these countries or these countries' citizens' perpetrated crimes. This can result in those who perpetrate crimes not facing justice in countries which are not parties.

**Obstacles in evidence gathering:** This is due to episode of war-torn states' conditions which are often insecure, witness' reluctance to testify due to fear, and destruction of evidences encountered there.

**National sovereignty versus international justice:** National sovereignty versus international justice emerges in a recurrent form within international criminal law. Some countries could defy ICC command or demand their citizens be exempted from prosecution.

**Victim participation importance:** There exists a vital function performed by victims of international offences during legal proceedings or judicature process. Their involvement with probes and trials helps make surrealistic some realities faced by people who suffered through them.

**Need for global cooperation:** The successful administration of global penal legislation necessitates active collaboration between nations, supranational agencies, and civic organizations.

**Ethics considerations:** For instance, making use of global penal laws raises ethical issues including biases possibilities; the safeguarding of injured parties memorial rights; and the appropriateness of consolidating proceedings in absentia etcetera. This is an instance of ethical challenges faced by international criminal court (ICC) in serving its quest for justice.



## CONCLUSION

International criminal law has turned out to be a significant instrument in dealing with the most serious crimes against humanity. Numerous international institutions and legal frameworks for their establishment have emerged, however remaining challenges include issues of jurisdiction, enforcement and protection of victim's rights.

One such thing is ICC which holds individuals responsible for such crimes yet it is limited in terms of jurisdiction and political factors may reduce its effectiveness. Additionally, another problem arises during evidence collection process because war zones are unstable therefore some evidence may go missing forever.

Another aspect of this is balancing between the international justice system and state sovereignty, since some states may not recognize the authority of ICC or even some of their citizens may be exempted from prosecution. Nevertheless, global crimes can only be solved through international cooperation.

In light of this, the international community should fortify its legal framework, build on the capacity of international institutions and see to it that justice is dispensed and victims of international criminal activities compensated. Only by doing so can human rights and justice be upheld globally.

## DECLARATION

I, Akansha, a student of University Name pursuing LLM with a specialization in Criminology, hereby declare that the research and content presented in this publication is my original work. I confirm that the ideas, concepts, and analysis included in this document have not been submitted elsewhere for evaluation or publication. All sources of information, references, and citations have been properly acknowledged. I further affirm that this work is free from plagiarism and has been written in compliance with the academic and ethical

standards of my university. This publication is created as part of my academic research to contribute to the field of law and criminology in India.

## REFERENCES

### International Criminal Court (ICC) Cases

1. Prosecutor v. Bemba (2016): This case involved the former vice-president of the Democratic Republic of Congo, Jean-Pierre Bemba, who was found guilty of war crimes and crimes against humanity for his role in the conflict in the Central African Republic. [Link](#)
2. Prosecutor v. Ruto and Sang (2016): This case involved Kenyan politicians Uhuru Kenyatta (who became president) and William Ruto (who became deputy president) who were acquitted of charges related to the 2007-2008 post-election violence in Kenya. [Link](#)
3. Prosecutor v. Al-Mahdi (2017): This case involved Ali Muhammad Ali Saleh al-Mahdi, the former president of Sudan, who was charged with genocide, crimes against humanity, and war crimes related to the conflict in Darfur. [Link](#)

### International Criminal Tribunals

4. Prosecutor v. Milosevic (2006): This case involved Slobodan Milosevic, the former president of Yugoslavia, who was charged with genocide, crimes against humanity, and war crimes related to the conflicts in Bosnia and Herzegovina, Croatia, and Kosovo. [Link](#)
5. Prosecutor v. Karadzic (2016): This case involved Radovan Karadzic, a Bosnian Serb political leader, who was found guilty of genocide, crimes against humanity, and war crimes related to the Bosnian War. [Link](#)
6. Prosecutor v. Mladic (2017): This case involved Ratko Mladic, a Bosnian Serb military commander, who was found guilty of genocide, crimes against humanity, and war crimes related to the Bosnian War. [Link](#)

#### Other Notable Cases

7. The Nuremberg Trials (1945-1946): These trials held Nazi leaders accountable for war crimes, crimes against humanity, and crimes against peace during World War II. [Link](#)
8. The Tokyo Trials (1946-1948): These trials held Japanese leaders accountable for war crimes and crimes against peace during World War II. [Link](#)

