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**DAILY EDITORIAL
ANALYSIS**

TOPIC

**CRIMES AGAINST HUMANITY &
INDIAN STANCE**

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CRIMES AGAINST HUMANITY & INDIAN STANCE

Context

- Recently, the **UN General Assembly (UNGA)** adopted a resolution approving the text of a proposed treaty governing the prevention and punishment of crimes against humanity (**CAH Treaty**).

About the Crimes Against Humanity

- These represent some of the gravest offenses under international law, encompassing acts such as murder, extermination, enslavement, deportation, torture, and rape when committed as part of a widespread or systematic attack against civilians.

Historical Context

- The concept of crimes against humanity was **first codified in the 1945 London Charter**, which established the **Nuremberg Tribunal** to prosecute major war criminals of the **Second World War**.
- This marked a significant development in international law, establishing that **individuals**, not just states, are accountable for atrocities committed during conflicts, irrespective of their official capacity.

International Legal Instruments

- Rome Statute (1998):** It established the **International Criminal Court (ICC)**, which has jurisdiction over *genocide, war crimes, and crimes against humanity*.
 - It defines crimes against humanity and outlines the court's mandate to prosecute individuals responsible for such acts.
- Draft Articles on Prevention and Punishment of Crimes Against Humanity:** The **International Law Commission (ILC)** has been instrumental in developing draft articles aimed at preventing and punishing crimes against humanity.
 - These articles propose measures for criminalization under national law, establishment of national jurisdiction, and international cooperation in investigations and prosecutions.

Key Elements

- Widespread or Systematic Attack:** The acts must be part of a larger attack against a civilian population.
- State or Organizational Policy:** There must be a policy or plan behind the attack, indicating it is not random.
- Types of Acts:** Includes murder, extermination, enslavement, deportation, imprisonment, torture, rape, and other inhumane acts.

Need for a Crimes Against Humanity (CAH) Treaty

- Unlike genocide and war crimes, which are governed by the **Genocide Convention of 1948** and the **Geneva Conventions of 1949** respectively, **crimes against humanity are only covered under the Rome Statute of the ICC**.
 - It complicates efforts to hold perpetrators accountable, especially in countries that are not parties to the Rome Statute.
 - A dedicated CAH treaty would not only address individual criminal responsibility but also **hold states accountable** for failing to prevent such crimes, similar to the obligations under the Genocide Convention.
- Jurisdictional Limitations:** The **ICC's jurisdiction is limited to its member states**, which means that crimes committed in non-member states often go unpunished.
 - It underscores the **need for a comprehensive treaty** that would obligate all states to prevent and punish crimes against humanity, similar to the obligations under the Genocide Convention.
- Political and Diplomatic Obstacles:** States may be reluctant to cooperate with international investigations or to extradite suspects due to political alliances, fears of retaliation, or concerns about national sovereignty.
 - Additionally, powerful states can exert influence to shield their allies from accountability, further complicating international justice efforts.
- Implementation and Enforcement Issues:** Many countries lack the necessary legal infrastructure or political will to prosecute crimes against humanity effectively.

- ◆ This is compounded by issues such as corruption, weak judicial systems, and inadequate resources, which can impede the investigation and prosecution of these crimes.
- **Victim and Survivor Support:** Many survivors face ongoing trauma, stigmatization, and economic hardship.
 - ◆ Ensuring their protection, offering psychological and financial support, and involving them in justice processes are essential but often neglected aspects of addressing these crimes.

India's Position on CAH

- India's stance on the proposed CAH treaty **reflects a cautious approach**, rooted in its broader concerns about international criminal justice mechanisms.
- **India is not a party to the Rome Statute** and has historically expressed reservations about the ICC's jurisdiction and the potential for political misuse.
- India **advocates for a balanced approach** that respects state sovereignty while addressing the need for accountability.

Domestic Legal Framework

- Currently, India's domestic legal framework does not specifically address crimes against humanity.
- It was highlighted by Justice S. Muralidhar of the Delhi High Court, who noted that neither crimes against humanity nor genocide is included in India's criminal law.
- Incorporating CAH into domestic legislation would align India with international standards and strengthen its commitment to human rights.

Conclusion and Way Forward

- The adoption of a resolution to negotiate a treaty on crimes against humanity marks a significant milestone in the international community's efforts to combat serious human rights violations.
- The resolution calls for preparatory sessions in 2026 and 2027, followed by negotiating sessions in 2028 and 2029 to finalize the treaty.
- This treaty is expected to play a pivotal role in ensuring that impunity for crimes against humanity is addressed comprehensively and effectively.

Source: TH

Mains Practice Question

Why is there a need for a dedicated treaty on Crimes Against Humanity(CAH) , and how could it complement the existing legal frameworks? analyze India's position on CAH in the context of its broader foreign policy objectives.