



# **Role of International Criminal Court in Promotion of International Justice Present Era**

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## **Abstract:**

The International Criminal Court was established by Rome Statute International Criminal Court, 1998. Its basic aim is to investigate, prosecute and provide punishment for International Crime Committed by people. The ICC court has very limited powers to decide the crime of genocide, crime against humanity, war crimes and crime against aggression. ICC plays crucial role in maintaining peace and provides justice to the state parties of the Rome Statute. In this article the researcher has tried to discuss historical development objectives, organs of International Criminal Court, Jurisdiction of Criminal Court and Issues and challenges before International Criminal court. There are few criticisms on International criminal court which have been also discussed in this article.

**Index Terms:** International Criminal Court, Rome statute, historical development, objectives, jurisdiction, organs of ICC, issues and challenges on ICC.

## **Introduction:**

The International Criminal Court is permanent judicial body established by Rome Statute of International Criminal Court (1998) to prosecute and settle the matters relating to war crimes, genocide and crimes against humanity. It has started its sitting from 1st July 2002 at that time only 60 countries ratifies the Rome statute. Main object behind constitution of International Criminal Court is to settle the dispute amongst states. In this research article the researcher has tried to discuss about the historical development of ICC, its power and functions

## **Historical development of International Criminal Court:**

After the World War II, allied power launched as a result of it first International War Crimes Tribunal constituted known as Nuremberg Trials. This trial was for prosecute Nazi officials. By world war crime many people died and it had great losses of humanity. The General Assembly in its 260<sup>th</sup> resolution recognises that, history of genocide by world war has inflected on loss of human being and humanity to avoid these types of offences there is needed of International co-operation and co-ordination amongst the nation. In this resolution the General Assembly has invited the International Law Commission to study and desirability of establishment of International Judicial organ for the trial of persons who charged with genocide. The conclusion given by the commission that there is need of establishment of international Criminal Court to settle the offences

relating to Genocide and similar serious offences of human being. For this purpose the General assembly constituted a committee for preparation of report and the committee had prepared its draft in 1951 and revised in 1953.

The matter relating to establishment of International Criminal Court is considered periodically. In December 1989, the request made by Trinidad and Tobago to General Assembly then the General Assembly asked the International Commission to resume work on International Criminal Court and include the offences related to Drug Trafficking. Then after, this many governments and countries recommended the idea of establishment of permanent court for settling the matters relating to world's serious crimes. The United Nations had previously setup the ad hoc International Criminal Tribunal to solve the disputes relating to war crimes of Yugoslavia and Rwanda (1993), but many International law experts stated that it having insufficient and inadequate deterrent effects.

Lastly the International Law Commission has completed the work of preparation of draft of statute for international Criminal Court and submitted to the General Assembly in 1994. On the basis of this draft the General Assembly has established Ad Hoc Committee for establishment of International Criminal Court in 1995. After the Ad Hoc committees report, the General Assembly created preparatory committee on establishment of International Criminal Court and finally it has been completed the draft in 1998 after discussion and sittings of preparatory committee. On 1<sup>st</sup> July 1998 at Rome conference, the treaty of establishment of International Criminal Court was adopted by General Assembly and in 2001 Rome Statute came into force it was ratified by the 60 Countries.

**Objectives of International Criminal Court:** Following are some objectives of the International Criminal Court as under-

1. **To maintain peace and order:** The main object of the International Criminal Court is to maintain the International peace and to protect human rights and fundamental freedoms of the human beings in the world.
2. **To provide International justice:** International Criminal Court is trying to provide international justice to the state parties relating to the offences prescribed in the statute. It is permanent judicial body for providing justice to the society at large.
3. **To solve Dispute:** The international Criminal Court is solving criminal matters or cases at international level. There are number of cases decided by the International Criminal Court which are relating to genocide, violence etc.
4. **To deter future war and crimes:** It is also one of the objectives of the International Criminal Law is to deter the states for commission of crime and prevention of war which are affecting on human being.
5. **To protect the rights of victims:** It is also a means to provide justice to the victim. In the present era human rights plays very vital role in the protection of rights of victims who are suffered by way of war or crimes.
6. **The International Criminal Court recognises the role of Security Council:** The main role is assigned to the Security Council is to maintain peace and security in the states. This provision has been mentioned under the Rome statute.
7. **To decide the limitations of the Ad Hoc tribunals:** International Criminal Court has power to decide the limitation of the Ad hoc tribunal.
8. **To prevent impunity:** The International Criminal Court prevents impunity.
9. **To decide four types of crime as:** The International Criminal Courts solves matter relating to four International Crimes such as-
  - a. **Genocide**- individuals having the intent to destroy in whole or part of a national, ethnic, racial, or religious group.
  - b. **War crimes**- serious breach of the Geneva Convention. This convention lays down prohibitions on torture and attacks on civilians.
  - c. **Crimes against humanity**- gross violations with regard to large-scale attacks against civilian populations. It also includes murder, rape, torture, imprisonment, bondage and slavery.

d. **Crimes of aggression**- threat of armed force by a state against another state. Also covers State actions violative of the UN Charter.

**Organs of the International Criminal Court:** following are main organs of the International Criminal Court

#### 1. The Presidency:

This organ is comprised by President and two Vice- President. These persons are elected from the 18 Judges of the International Criminal Court. This presidency is taking care of proper administration of the Court and responsible for the same. The Presidency coordinates and maintains agreements of the prosecutor on all matters. The responsibilities of presidency also include judicial functions of ICC , external relations of the states, coordinates judicial matters like assigning judges for deciding cases, transfer of cases, Registry's administrative work etc. .

#### 2. The Judicial Divisions:

Judicial division Consists of 18 Judges Eighteen judges which makes three division of the court including Pre- trial, Trial and Appeals. Judicial Division is recognised as good moral character and maintains integrity. These judges are appointed from throughout the world by Assembly of the state parties. They are also appointed on the basis of their competence, qualification, experience in criminal law, procedure, international law, International humanitarian law, human rights etc. These judges have to conduct fair trials and provide proper justice to the parties.

#### 3. The Office of the Prosecutor:

The Office of the Prosecutor is headed by the Prosecutor and he is assisted by a Deputy Prosecutor. The Prosecutor and Deputy Prosecutor are appointed by the Assembly of the state. It is the mandatory duty of the Prosecutor to receive and analyse the information relating to international Crime and to find out whether is any reasonable basis for investigation? Then there is need to conduct the investigation in such matters and cases relating to genocide, crimes against humanity and war crimes. This is an independent organ of the International Criminal Court. It conducts preliminary examinations, investigations and prosecutions in the above mentioned cases and crimes. The Office of Prosecutor comprises with divisions as-

- The Investigation division- conducts investigation
- The Prosecution division
- The jurisdiction, Complementarily and cooperation division

#### 4. The Registry:

The Registry is a natural organ of the International Criminal Court and it is headed by the Registrar. The core functions the Registry are as to provide administrative and operational support to the judiciary and the Office of the Prosecutor, to develop effective mechanisms for protection of witnesses, to provide help to the court, to assist the defence council, conducting relevant non judicial activities including general court management, security, public information, court records, translation and interpretation, counsel support, support for victims to participate in the court proceedings etc.

### ***Jurisdiction of International Criminal Court and Crime:***

International criminal court is deciding the crimes relating to Genocide, war crimes, crimes against humanity and crime of aggression.

- **Genocide:** Genocide means an individual having intention to destroy whole or part of national, ethnic, racial, or religious group. According to the Rome Statute, 'genocide' means includes-
  - killing members of the group;
  - causing serious bodily or mental harm to members of the group;

- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of one group to another group.

• **War Crime:**

War Crime is serious breach of the Geneva Convention and violation of laws which are applicable to International armed conflict. This convention lays down prohibitions of offences, human torture and attacks on civilians. Grave breaches of Geneva Convention include following acts or crime against person and property protected under the provision of Geneva Conventions as-

- murder;
- mutilation, cruel treatment and torture;
- taking of hostages;
- intentionally directing attacks against the civilian population;
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals;
- pillaging;
- rape, sexual slavery, forced pregnancy or any other form of sexual violence;
- conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities

• **Crimes against Humanity:** Crimes against humanity include following kinds of crimes committed by systematic manner against the human being.

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of population;
- imprisonment;
- torture;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds;
- enforced disappearance of persons;
- the crime of apartheid;
- Other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.

• **Crime of Aggression:**

An act of aggression means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. These crimes come under the jurisdiction of International criminal Court.

## ***Procedure of International Criminal Court:***

### **a. Referrals:**

Any State can make request to the Office of Prosecutor to conduct investigation procedure to carry out Investigation in International crimes within the jurisdiction of ICC. Non-party state of Rome Statute even can make request in some exceptional cases. The United Nation Security Council can also have power to refer some cases to the ICC and the Prosecutor himself can take cognizance or initiatives to start investigation in some cases.

### **b. Analysis:**

The Prosecutor having powers to analyse the matter and he determines that whether the case comes under the preview Jurisdiction of ICC or Not? He also having power to find out category and type of offence and then after it will be permitted for investigation. He has also power to communicate relevant information about initiatives taken by ICC relating to investigation to the state parties.

### **c. Investigation**

The Office of Prosecutor initiates investigation and gives permission for collection of relevant evidence the crime and if the risk involved for safety of victims and witnesses that will be protected. The concern state parties also bound to provide assistance in investigation procedure.

### **d. Arrest:**

The power of warrant and summons are given to the Pre-Trial chamber. Warrant and summons can be issued by the Pre-Trial Chamber after investigation has completed. Warrant is issued for obtaining of appearance of accused and prevents him from commission of crime. After warrant, the registrar send request to state parties for cooperation in such crime. After arrest it will be informed to the ICC, ICC does not have specific power for arrest to suspected person it will depend on cooperation of the state parties. To execute the warrant is depend on state parties because the ICC is judicial body and it does not have its own police force.

### **e. Charges before Trial:**

The suspected person appears before the court if charges confirmed before the pre-Trial hearing and it should be in the presence of prosecution. After the charges confirmed by Pre-Trial the Trial Chamber take next responsibility. If the accused admits guilt of crime then he will be liable for consequences of his admission. If accused does not admit guilt then trial proceeds and evidences and witnesses will be presented accordingly.

### **f. Procedure of Sentencing:**

After hearing and analysis of evidence and witnesses the judges decides whether accused is guilty or not. If he found guilty then court will award punishment in the form of fine, forfeiture of the property, imprisonment etc. but court does not have power to award death sentence. Court can impose maximum punishment up to 30 years. The imprisonment is governed by the respective state laws. The appeals are allowed if the state party is not satisfied with the decision during that period the accused will remain in the prison.

**International Criminal Court-Issues and Challenges:** following are some issues and challenge before ICC-

- Till the date many countries are not member of the ICC therefore maximum cases decided by countries as per their own legislation including India.
- There are many areas where need of improvement including administration, judicial work, Information Technology sector etc.
- ICC does not have power to award Death sentence, hence it has less impact of deterrent effects on the accused person.
- Today there is greater need to become member of ICC so the effect of International Criminal Court will be more on countries.
- Implementation of judgement of ICC will be relied on the state parties.
- There is conflict between International and National laws and policies in the matters of punishments.
- The role of the Pre-Trial Chamber and relation with Trial Chambers has not been clarified by Judges of the ICC.
- There is dispute between Court Chamber and role of Victim at the time of proceedings.
- Very few cases decided by the ICC till the date.
- Lack of Executive Power to ICC.
- ICC is situated at Hegue it is difficult to all the victims and accused to present before the court at the time of proceeding.
- The ICC is not UN organization but is has a cooperation agreement with the United Nations.
- ICC has no retrospective jurisdiction on the matters or crimes committed before 1<sup>st</sup> July 2002.
- ICC does not have its own police force for implementation law and order.
- ICC does not take cases person below the age of 18 years even though the state is party of such statute.

### **Recommendations:**

- All the states should have provided active support, participation and support to International Criminal Court.
- The ICC should have expanded its power and jurisdiction relating to the investigation, prosecution and punishment.
- The ICC must take initiatives relating to maintenance of peace and order in the nation (State Parties to Rome Statute).
- States must defend the integrity of the Rome Statute, encourage universality,
- At present time there is needed to increase the powers of International Criminal Court.
- There is need to enhance the executive powers of the International Criminal Court.
- There should be specific police unit of International Criminal Court to implement Law and Order in the society.
- In serious crime there must be power to the ICC to issue order of capital punishment.
- ICC must be constituted as per the convenience of the disputed country.

### **Sum-up:**

On the basis of above discussion, it has been concluded that, The International Criminal Court is Judicial Body constituted to take cognizance of some crimes at International Level. It has been constituted as per the Rome statute which states about, constitution, powers and functions of the ICC. Several criticisms are made on role International Criminal Court that ICC is great tool in the hands Western countries because it provides punishment to small and weak countries. Only four types of crime come under the preview of the International Criminal Court. Today, emerging new crimes and it have great impact on the development of the countries. As per the changing scenario of the crime there is need to cover emerging crimes under ICC. It is complement Court to Nation who becomes member it can't replace the National Criminal Court.

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- Nürnberg trials, in this trial series of trials held at Nürnberg, Germany in 1945–1946, in which former Nazi leaders were indicted and tried as war criminals by the International Military Tribunal. The indictment or presentment of true Bills lodged against them contained four counts: (1) crimes against peace (i.e., the planning, initiating, and waging of wars of aggression in violation of international treaties and agreements), (2) crimes against humanity (i.e., exterminations, deportations, and genocide), (3) war crimes (i.e., violations of the laws of war), and (4) a common plan or conspiracy to commit the criminal acts listed in the first three count
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- It has been defined Article 6 of the Rome Statute available on <https://www.icc-cpi.int/sites/default/files/iccdocs/PIDS/docs/UICCGeneralENG.pdf>
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