

BOOK REVIEWS

PURSuing ELUSIVE JUSTICE: MASS CRIMES IN INDIA AND RELEVANCE OF INTERNATIONAL STANDARDS (2013). By Vahida Nainar and Saumya Lima. Oxford University Press New Delhi. Pp. 473. Price Rs.995/-.

THE CRIMINAL justice system in India has failed miserably in dealing with mass crimes because of inadequacy of penal laws and lack of adequate procedures to hold public officials accountable for their complicity in mass crimes. The state's control of the law enforcement and investigation agencies, its involvement in appointment of public prosecutors, lack of proper witnesses and victim protection measures and requirement of prior sanction from government to prosecute public officials who are involved in mass crimes make it impossible to prosecute the perpetrators of mass crimes and bring them to justice. There is an urgent need to introduce a new law to deal with mass crimes and this can only be effective when the developments made on the issue in the international legal regime including the international customary and criminal law are taken into account.

This book is a collection of essays depicting various forms of mass crimes which include the persecution of *dalits* and sexual minorities, enforced disappearance, torture, genocide, crimes against humanity and international terrorism. These well-researched essays draw attention to the lacunae in the Indian penal laws because of which justice becomes an illusion to the victims of such crimes. These essays also highlight the need for the Indian laws and procedures to comply with the international standards as these standards are in consonance with the spirit of rights and guarantees provided in the Constitution. They advocate a victim-oriented criminal justice system wherein the victims, particularly the poor, marginalized and the under-privileged are given an opportunity to vindicate their rights.

The very *first* essay in the compilation titled "Impunity Writ Large – A study of Crimes committed during Anti-Veerappan Operations" is a study on the crimes committed during anti-Veerappan operations by the joint special task force established by the governments of Tamilnadu and Karnataka to capture the forest brigand, Veerappan. Instances of illegal detention, custodial violence, deaths and rapes, enforced disappearance and encounter killings of innocent people residing in villages surrounding the forests were perpetrated by the members of the task force. These are violations in the realm of international law, including the Universal Declaration of Human Rights (UDHR), International Convention on Civil and Political Rights (ICCPR), Convention on Torture, International Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and UN Convention on Rights of Child, and also offences under the Indian Penal Code. The author laments that when these instances were brought to the notice; neither

the Central Government nor the state government intervened, thereby failing in their duties towards civilians under the Constitution and statutory law. The National Human Rights Commission, which was vested with *suo motu* power also contributed to the impunity for the crimes perpetrated. The author also emphasizes the need to incorporate in the penal law certain concepts like the doctrine of command or superior responsibility, absolute offence and culpable inaction in order to fix criminal responsibility on the perpetrators of mass crimes, while ensuring that the victims and their families are adequately compensated.

In the *second* essay titled “Persecution of Dalits – The Need to raise standards of Accountability”, the author highlights the inadequacies of the existing laws in India to deal with violence against *dalits*. She illustrates through examples how the caste bias of law enforcement officials, dismal response of the central and state governments irrespective of the party in power and inherent caste bias in judiciary are contributing to the perpetual discrimination and violence against *dalits* in India. The author compares discrimination of *dalits* in India with that of persecution of Afro-Americans in the US and stresses the need to recognize the discrimination as a crime against humanity of persecution as defined in Rome Statute of International Criminal Court (ICC). By doing so, the accountability standards could be raised beyond that provided under the Scheduled Castes/Scheduled Tribes Act to those set by international law.

In the next essay on “Persecution of Sexual Minorities”, the author takes us through international and domestic legal regimes on rights of sexual minorities and drives home the need to interpret discrimination based on sex to include sexual orientation so as to bring within the term ‘persecution’ in ICC statute, the persecution of lesbian, gay, bisexual, transgender/transsexual and intersex (LGBTI) persons.

The *fourth* essay on “Understanding enforced disappearances” discusses what amounts to enforced disappearance, its impact on the members of the family, especially women and children, the international instruments dealing with the enforced disappearances and the role of ICC in dealing with enforced disappearances as crimes against humanity. The author states that though enforced disappearance is not defined in IPC, it is covered by the constitutional guarantee of the fundamental right to life. But, in order to prosecute the public officials accused of the offence, sanction from the Central Government or state government has to be obtained under section 197 of CrPC which stands in direct contradiction of state obligation to prosecute under international standards. The author concludes that as India is a signatory to the Convention on Enforced Disappearances, it must ratify the same and incorporate standards set by the convention to deal with enforced disappearance in domestic law.

The *fifth* essay titled “Severe Punishments and ICC – Significance for Indian Penal Regime” traces the journey of development of international standards of

punishment since World War II to the creation of ICC. The author compares the punishment for serious offences in international criminal law prior to ICC, under the statute of ICC and the severest punishments in Indian criminal law *i.e.* sentence of death and life imprisonment. In the light of rising international opinion against death sentence and permanent punishment *i.e.* imprisonment for life, the author feels that India, as a country seeking to play a larger role globally, has to check its own record against advancement of the international criminal law and human rights law.

The essay on “Law Reform on Sexual and Gender based crimes in Mass Violence” discusses sexual violence in the context of communal violence, caste-based violence in the context of militarization, violence in the context of development and dispossession and violence in anti-Naxal operations. Examples of gender-based violence in Gujarat carnage, sexual violence perpetrated in Jammu and Kashmir and North-Eastern States, caste-based violence in Karamchedu and Khairlanji, violence in Nandigram and violence perpetrated on women in certain districts in Chattisgarh and others are highlighted by the author. According to the author, the inadequacies of the provisions of substantive and procedural criminal law in India which fails to recognize the context and gravity of gender-based crimes as mass crimes, lack of impartial investigation, requirement of sanction to prosecute the officials involved and the vulnerability of the witnesses and victims to further attacks due to lack of laws to protect them, pose challenge to justice. The author also opines that a ray of hope lies in the initiatives at law reform like the Communal Violence Bill, the Criminal Law (Amendment) Bill 2012 and Rape Compensation Scheme (Criminal Law (Amendment) Act 2013 incorporated major changes in law relating to sexual violence).

In the essay titled “Integrating Victims’ Rights in the Legal Framework”, the author discusses the international norms and standards relating to rights of victims for protection, participation and reparation and compares it with the place of victims in the Indian criminal law. The role of judiciary in emphasizing the rights of victims and witnesses, and recommendations of various commissions and committees on law reforms highlighting the need to incorporate witness protection programme and a scheme to ensure participation, rehabilitation and compensation of victims of crime, have been discussed. The essay concludes by emphasizing the need to have an effective mechanism to meet the needs of victims without compromising the rights of the accused to fair trial.

The need for India, as a global leader to ratify Rome Treaty and speak out against blatant subversion of the ideals of global justice by powerful countries in the world in the light of war on terror initiated by the US has been emphasized in the essay titled “Significance of Global Justice in the War against terror”. Discussing the various aspects of The Military Commission Act passed by the US Congress,

which institutionalises and legitimises torture and subverts the notions of fair and humane treatment of suspects, the author emphasizes the global relevance of the ICC for the trial of international crime.

In the essay titled “ICC and the Indian Military Justice System”, the author takes the readers through war crimes as provided under the Rome statute and various aspects of the Indian military justice system (through Indian Army Act). The author advocates amendments in such a way as to benefit the armed forces to try those who violate the law of war as criminals under domestic law rather than as war criminals. If the domestic law is not upgraded to prosecute military people for violations contained in Rome Statute (especially torture and inhuman treatment) and ensure him a fair trial, the author feels the jurisdiction could be asserted by some other country or international tribunal to the disadvantage of our military personnel.

The essay titled “Torture by Private actors – Introducing a legal discourse in India” stresses the need to define torture and provide for punishing it, including torture perpetrated by private actors. The author discusses the legal status of torture internationally and nationally including the various aspects of the Prevention of Torture Bill and suggests amendments to the bill so as to bring it in compliance with the international standards.

In the essay on “Genocides – International Standards and their application in India”, the author brings out the relevance of the international law on genocide in the Indian context. The definition of crime, its parameters, the modes of commission, matters relating to judicial enforcement of the prohibition and legal approaches to prohibition of genocide by some countries are discussed. Though India is a signatory to the Genocide Convention and has ratified it, no legislation has been enacted to define and punish genocide. The author suggests that India has an option to either formulate a separate legislation prohibiting and punishing genocide or amend the bill of communal violence suitably to include definition of genocide and liability under the Geneva Convention.

An essay titled “Crimes against Humanity in India – Towards a Legal Understanding” discusses about the inadequacies of the existing criminal law to tackle several incidents of widespread violence of regular occurrence in recent times. These are situations of mass crimes which in international parlance constitute ‘Crimes against humanity’. The author examines three instances of mass violence, Nandigram, Gujarat and Salwa Judum, applies the elements of crimes against humanity as defined in ICC statute and demonstrates that all situations of mass violence causing large scale destruction, death and physical violence, whether committed by state or private individuals or groups, are crimes against humanity. As the Indian laws fail to address this crime, the author stresses the need to have a new law backed with proper machinery to implement it.

In the last essay titled “International Terrorism – A Crime against Humanity”, the author makes out a case to prove that acts of terror are crimes against humanity and terrorism should be situated within the domain of universal jurisdiction. The author suggests that the state parties to the Rome Statute should consider incorporating into the jurisdiction of ICC, the prosecution for acts of international terrorism as they are crimes against humanity.

Thus, the collection of well-researched essays in this book on various types of mass crimes in India illustrates through case studies, the inadequacies of Indian laws to deal with the situation which affects the marginalized sections of Indian society. They suggest amending existing laws or enacting new laws incorporating these mass crimes as offences and for providing efficient procedures to deal with them on par with the standards laid down by the Rome Statute of ICC. This book deserves to be read by members of the legal fraternity, social scientists, human rights activists, bureaucrats and politicians.

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