

ABSTRACT

The principle that individuals are and can be held criminally accountable for violations of the laws of war dates back to many years. However, it was only after World War II and the Nuremberg and Tokyo trials, set up to judge those German and Japanese military leaders accused of serious crimes during the war, that the idea of individual criminal responsibility for serious breaches of international law gained ground. In this thesis an attempt has made to trace the evolution of individual's responsibility for crime against humanity, the present legal framework in national and international level and the role of various law enforcement agencies to deal with the problem.

Evolution of the Problem:

History is witness to the fact that wherever an individual or groups of individuals have become powerful, they have flagrantly tortured the weak and the defenseless. Even where power is legitimated and turned into a legally valid authority, abuse of power and torture of the weak and the defenseless has continued. In this back drop considerable legal mechanism has developed for the exercise of such raw power.

An international crime has been broadly defined as "an act universally recognized as criminal, that is, an act that is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances". Crimes against humanity now are established as jus cogens norms and are implicitly recognized as such in the preamble of the Hague Convention, which served to codify the customary law of armed conflict.

Unfortunately, despite several attempts for fixing liability to the individuals who have committed crime against humanity and subjecting them to trials like Nuremberg trials and Tokyo trials the legal framework for fixing liability to individuals guilty of the act of committing crime against humanity to this day remains obscure and vague and ad hoc mechanisms are used to settle such cases.

In the face of recent developments in countries like Libya, Egypt, Iraq the lack of legal framework to deal with such matters has become a cause for international concern. The main thrust of this work is to study the existing legal framework for determination of individual's accountability for the crime against humanity and to propose changes into the existing framework.

Hypothesis

There is insufficient legal framework for the control and regulation and for fixing liability on the individual for committing crime against humanity and the present mechanism

works through international ad hoc tribunals internationalized or mixed tribunals, the International Criminal Court as well as national courts, military tribunals and ordinary courts which allows any state to try alleged perpetrators, even in the absence of any link between the accused and the state exercising jurisdiction which leads to miscarriage of justice on one hand and multiple trials on the same cause of action on the other hand.

Research Questions

1. What is the genesis for global movement for accountability?
2. What are the shortcomings of the present legal framework for accountability of international crime?
3. What is the role of the International Law Enforcement Agencies to provide proper justice to the victims?
4. What are the shortcomings of the institutional mechanisms to prevent the growth and spread of the international crime?
5. What is the concept of global movement towards accountability and what is the scope of its growth?

Methodology

Having selected the above topic for this research, the work will perforce be based on theoretical doctrinal research. The methodology followed is traditional non-empirical research.

Chapter Summary

Chapter I: “ACCOUNTIBILITY OF INDIVIDUALS FOR CRIME AGAINST HUMANITY: THEORETICAL AND CONCEPTUAL FRAMEWORK”. The jurisprudential rooting of the present research work is discussed under this chapter. This chapter also explains the concepts used in this research and international legal theories.

Chapter-II: HISTORICAL EVOLUTION OF THE CONCERN FOR CRIME AGAINST HUMANITY AND FIXING OF ACCOUNTABILITY: This chapter discuss about the preliminary concepts of international crimes, such as aggression, genocide, war Crimes and crime against humanity and the historical evolution of crime against humanity, this is also an attempt to establish individual criminal liability for the crime against.

Chapter-III: CRIME AGAINST HUMANITY BY INDIVIDUALS: PRE 1945 SPECTRUM: This chapter deals with the scenario of crime against humanity by individuals before 1945.

Chapter-IV: CRIME AGAINST HUMANITY BY INDIVIDUALS: A POST 1945 SPECTRUM: This chapter describes the scenario of the framework of the trials of individuals for crime against humanity after World War II (1939-1945).

Chapter V: “A ROADMAP OF THE DEVELOPMENT OF LAW ENFORCEMENT AGENCIES FOR DEALING WITH INDIVIDUALS ACCUSED OF CRIME AGAINST HUMANITY”. In this chapter the matter of discussion is about various international law enforcement agencies like International Criminal Court, International Court of Justice, Ad Hoc Tribunals and Hybrid Tribunals.

Chapter-VI: “A COMPARATIVE STUDY OF THE INTERNATIONAL AND INDIAN LEGAL FRAMEWORK RELATING TO CRIME AGAINST HUMANITY BY INDIVIDUALS”.

This chapter mainly deals with the Indian legal framework and also the various Indian incidents regarding the crime against humanity in comparison with international framework for accountability of individuals for crime against humanity.

Chapter-VII: “A STUDY OF INTERNATIONAL PRINCIPLES REGARDING LIABILITY OF INDIVIDUALS FOR CRIME AGAINST HUMANITY IN SELECTED NATIONAL JURISDICTIONS”.

The subject matter of this chapter is about the various national laws to combat crime against humanity and the implementation of those laws by the nation states.

Chapter-VIII: “INDIVIDUAL LEADER’S LIABLE FOR CRIME AGAINST HUMANITY: A COLLAGE”.

In this chapter I have discussed about various specific instances of individual leader’s liability. It is a narrative chapter.

Chapter IX: SUGGESTIONS AND CONCLUDING REMARKS: In conclusion it can be summed up that the hypothesis that legal framework for the control and regulation and for fixing liability on the individual for committing crime against humanity is insufficient, has been proved and in this regard certain suggestion has been put in the thesis.