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## INDIA AND THE INTERNATIONAL CRIMINAL COURT: LEGAL AND POLITICAL CHALLENGES

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By- N. Reshma<sup>1</sup>

### ABSTRACT

This paper looks closely at India's legal and political position regarding the International Criminal Court (ICC). Although India participated in the Rome Conference in 1998, it has not signed the Rome Statute because of concerns about sovereignty, how prosecutors operate, and the role of the United Nations Security Council. The research investigates India's worries about the Court's authority, particularly over countries that are not members, and the consequences of no immunity for heads of state. Politically, India is careful, mentioning global power imbalances, selective prosecution, and threats to its national security, especially in areas like Kashmir and the Northeast. The paper also assesses India's commitment to international humanitarian law (IHL) and criminal accountability through its domestic laws and treaties, even though it is not a member of the ICC. Through case studies, such as India's invitation to Sudanese President Omar al-Bashir and comparisons with other countries critical of the ICC, the study highlights the geopolitical and diplomatic challenges influencing India's position. The last section discusses potential ways for India to engage and push for reform, suggesting a balanced path where India can work with the ICC without fully joining, while supporting institutional changes. This study seeks to provide a thoughtful perspective on whether India can and should adjust its relationship with the ICC as it aims to become a global leader in norms and a permanent member of the United Nations Security Council.

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<sup>1</sup>Intern, Lex Lumen Research Journal.

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**KEY WORDS:** Sovereignty, International Criminal Court (ICC), Rome Statute, Geopolitical Challenges, Criminal Accountability.

## INTRODUCTION

The International Criminal Court (ICC) was established as a permanent international court to prosecute individuals for serious crimes that concern the global community. These crimes include genocide, crimes against humanity, war crimes, and the crime of aggression. The ICC was created through the Rome Statute in 1998, and it started operating in 2002. Its goal is to end impunity for those who commit these crimes and to provide justice when national systems cannot or will not act. Despite its goals centered on international justice, the ICC's jurisdiction, structure, and perceived biases have prompted various reactions from around the world. As of 2024, 124 countries have ratified the Rome Statute, but several powerful countries—such as the United States, China, Russia, and India—have opted to stay outside the Court's reach. India played an active role in the Rome Conference and supported the concept of an international criminal justice system. However, it ultimately decided not to sign the Statute due to serious concerns about sovereignty, selective prosecution, and flaws in the ICC's design. These worries continue to influence India's cautious approach to the Court. This paper aims to analyze the legal and political challenges behind India's stance on the ICC. It will cover key issues like jurisdictional overreach, prosecutorial discretion, and the role of the United Nations Security Council (UNSC). Additionally, it will assess India's commitment to international legal standards beyond the ICC framework. The goal is to determine whether India's ongoing disengagement is justified or if it should consider changing its position in a changing global landscape.

## HISTORICAL BACKGROUND

The idea of creating a permanent international court to prosecute serious crimes like genocide, war crimes, and crimes against humanity gained traction after the horrors in Rwanda and the former Yugoslavia. While temporary tribunals handled those specific conflicts, the need for a lasting

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institution led to the adoption of the Rome Statute in 1998, which set up the International Criminal Court (ICC). The Statute took effect in 2002.

India played an active role during the Rome Conference and helped shape discussions around the Statute. As a democracy with a strong legal tradition, India supported the broader goal of international criminal accountability. However, it ultimately voted against the final draft of the Rome Statute, joining six other nations, including the United States and China. India has not signed or ratified the treaty since.

India's objections were both legal and strategic. It was especially worried about the Court's authority over non-party states, the lack of immunity for sitting heads of state, and the UN Security Council's referral powers, which were seen as reinforcing power imbalances. Additionally, India opposed leaving terrorism and nuclear weapons out of the Court's jurisdiction, both of which are major security concerns for the Indian state.

Despite India not being a member, the ICC has enjoyed broad international support. As of 2024, 124 countries are parties to the Rome Statute, mostly from Europe, Latin America, and Africa. Still, some major global powers, like India, China, Russia, and the U.S., remain outside the Court's framework.

India's participation in the drafting process but its eventual decision not to join shows its cautious approach to international legal institutions. It balances support for global justice with concerns about national sovereignty.

## **LEGAL CONCERNS AND SOVEREIGNTY ISSUES**

India's choice to stay outside the ICC mostly stems from important legal objections related to sovereignty, jurisdiction, and fairness in international law.

### **1. Jurisdiction Over Non-Party States**

The ICC can try individuals from countries that are not members if the alleged crime took place in a State Party's territory. India believes this violates its sovereign consent, as it could be held accountable without being a party.

## **2. Independent Prosecutor Powers**

Under Article 15, the ICC Prosecutor can initiate investigations independently. India is concerned that this power lacks sufficient checks and could be politically misused.

## **3. Complementarity Clause**

The ICC can take action if a state is “unwilling or unable” to prosecute. India views this as interference and a blow to its judicial credibility.

## **4. No Immunity for Leaders**

Article 27 removes immunity for sitting heads of state. India worries this could put its top officials at risk of international trials, even during politically sensitive times.

## **5. UNSC’s Referral Power**

The UN Security Council (Article 13(b)) can refer cases to the ICC, including from non-member states. India objects because the P5 nations, which have control over referrals, are not bound by ICC jurisdiction themselves.

## **6. Omission of Key Crimes**

The Rome Statute does not include terrorism and nuclear weapons, which India considers essential for its security. This limits the Court’s significance from India’s perspective.

Certainly! Here’s a shortened, point-by-point version of Section 4: Political and Strategic Challenges (approx. 300–320 words) while preserving key arguments:

## **POLITICAL AND STRATEGIC CHALLENGES**

India's hesitation to join the ICC comes from political and strategic concerns, not just legal reasons. These issues reflect India's geopolitical stance, security priorities, and foreign policy aims.

## **1. Selective Justice and Western Bias**

India views the ICC as focusing on weaker countries, mainly in Africa, while powerful nations escape scrutiny. This perceived bias weakens trust in the Court's neutrality.

## **2. Risks to National Security Operations**

India worries that the ICC could investigate military actions in Kashmir or the Northeast, calling them human rights violations. This could politicize internal security issues and limit counter-terror measures.

## **3. Concerns Over Peacekeeping Forces**

India plays a significant role in UN peacekeeping. Joining the ICC could open Indian troops to international legal challenges, which might discourage future involvement.

## **4. Foreign Policy Flexibility**

India keeps connections with leaders under ICC scrutiny, such as Sudan's Omar al-Bashir and Russia's Putin. Membership in the ICC could create tensions in diplomatic relations with these countries.

## **5. Non-Participation of Global Powers**

Major countries like the USA, China, and Russia have not joined the ICC. India questions the fairness of joining a court where others wield influence but are not bound by its rules.

## **INDIA'S COMMITMENT TO INTERNATIONAL LAW WITHOUT THE ICC**

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Although India is not a party to the Rome Statute, it actively engages with international legal standards through domestic law, treaties, and multilateral cooperation. This reflects its commitment to global justice.

- Incorporation of International Humanitarian Law in Domestic Laws

India has included principles of international humanitarian law (IHL) in its legal system through laws like the Indian Penal Code (IPC) and Criminal Procedure Code (CrPC). Offenses such as war crimes, murder, and sexual violence are prosecutable under Indian law, ensuring accountability.

- Ratification of Key Treaties and Conventions

India is a party to several important treaties, including the Geneva Conventions, the Genocide Convention, and the Convention Against Torture (signed, not ratified). These treaties show India's recognition of international legal obligations, even outside the ICC framework.

- Active Participation in UN Peacekeeping Missions

India is one of the largest contributors to UN peacekeeping operations, which operate under strict humanitarian and legal guidelines. This shows India's support for international law enforcement through cooperation rather than ICC membership.

- Support for Regional Legal Frameworks

India collaborates with SAARC and ASEAN countries on legal matters, disaster response, and transnational crimes. It advocates for legal reform and regional justice systems, reinforcing its commitment outside the ICC.

- Functional Equivalence to ICC Norms

India argues that its domestic legal system provides sufficient mechanisms to investigate and prosecute international crimes. This approach allows India to meet international standards without giving up sovereignty.

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## CASE STUDIES AND COMPARATIVE INSIGHTS

India's relationship with the International Criminal Court (ICC) is clearer when we look at specific examples and comparisons with other key countries that have not signed the statute. These cases illustrate how India balances its legal principles, strategic interests, and diplomatic considerations.

### **1. India's Hosting of Omar al-Bashir**

In 2015, India hosted Sudanese President Omar al-Bashir, who had ICC arrest warrants for genocide and war crimes in Darfur.

Despite calls to arrest him under a UNSC referral, India did not detain him, citing its non-party status and sovereign choice.

This reinforced India's view that it is not obligated to enforce ICC actions as a non-member.

### **2. Reaction to ICC Arrest Warrants for Powerful Leaders**

India has stayed neutral regarding the ICC's 2023 warrant for Russian President Vladimir Putin and previous actions against Israeli officials.

India avoids commenting on ICC indictments involving powerful countries. This reflects its non-aligned and careful diplomatic stance.

### **3. South Africa's ICC Dilemma**

South Africa faced criticism for not arresting Omar al-Bashir during an AU summit, even though it is a signatory to the Rome Statute.

This created internal legal and constitutional issues, leading South Africa to think about withdrawing from the ICC.

India views this as a warning about the conflict between international commitments and national interests.

### **4. Comparison with Other Non-Signatories**

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USA: Signed the Rome Statute but later withdrew. It fears loss of sovereignty and politically driven cases.

China: Opposes ICC authority over states that do not consent. It supports diplomatic solutions rather than legal ones.

Russia: Signed but later withdrew its signature following criticism of the ICC's actions in Crimea.

Like India, these countries have concerns about jurisdiction, bias, and protecting their national interests.

## **FUTURE PROSPECTS AND RECOMMENDATIONS**

India's future with the ICC is cautious but not entirely shut. Joining the ICC could improve India's reputation as a supporter of international justice, but current legal and political issues block full membership.

India has major concerns, such as the ICC's power over non-member states, the lack of immunity for current heads of state, and the UNSC's control over referrals. These are seen as threats to its sovereignty and strategic freedom. Additionally, the Court overlooks critical issues like terrorism and nuclear weapons, which are very relevant to India's security.

Despite this, India can explore other ways to engage. One option is to attend ICC meetings as an observer without making full legal commitments. Another is to cooperate selectively, supporting specific ICC investigations or resolutions on a case-by-case basis, especially in serious humanitarian crises like genocide.

Furthermore, India can use its global influence to advocate for reforms within the ICC. These could include:

- Adding terrorism and nuclear weapons to the list of core crimes,
- Reducing the UNSC's political power over referrals,
- Ensuring greater accountability and fairness in the prosecutor's work.



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Such actions would support India's goal of becoming a permanent member of the UN Security Council and a global leader rather than a passive player.

In conclusion, while India may not join the ICC soon, it can still play a significant role in international criminal justice by promoting reforms and engaging positively without compromising its essential national interests

## CONCLUSION

India's complicated relationship with the International Criminal Court (ICC) involves balancing sovereignty, legal independence, and commitments to international justice. Even though India took part in the Rome Conference, it decided not to ratify the Rome Statute for several legal, political, and strategic reasons. Legally, India opposes the ICC's authority over countries that are not members. It also dislikes the lack of immunity for heads of state and the ability of the UN Security Council to refer cases. These points are seen as threats to national sovereignty and could lead to politically motivated prosecutions. Furthermore, the Court does not include crimes like terrorism and nuclear warfare, which are vital to India's national security, reinforcing its skepticism. Politically, India worries about the ICC's perceived bias, particularly its attention on weaker or developing nations. India is also concerned about possible interference in its internal security issues, especially in sensitive areas like Kashmir and the Northeast. Despite not being a member, India supports international criminal standards through its own laws, contributions to peacekeeping, and treaty commitments. This approach shows a way of meeting the ICC's aims without being legally tied to its processes. Looking forward, India may not join the ICC soon, but it can still contribute positively by backing reforms, engaging as an observer, and advocating for a fairer global justice system. As India seeks more influence in the world, especially within the UN, its position on the ICC will need to adapt to match its national interests and global responsibilities.

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