Human Trafficking and its Prosecution: Challenges of the ICC

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5.1 Introduction

The International Criminal Court was established with the aim of prosecuting serious crimes which were committed against the international community and the effects of which were felt across the world. To prosecute the criminals of such crime, the international community came together and thought of establishing a strong legal response and thus the International Criminal Court was established. The International Criminal Court (commonly known as the ICC) came into force on 1 July 2002.\(^3\) It was entered into force after 74 countries of the world ratified the Rome Statute of the International Criminal Court initially and 121 countries now. The Rome Statute, also known as the ICC Statute, has a universal jurisdiction over the crimes which are committed against the international community or citizens of any country which affects the entire world.\(^4\) The Rome Statute, in its jurisdiction, includes the crimes such as war crimes, genocide, crimes against humanity and crimes of aggression.\(^5\)

The most dreadful crime in the world is the crime against humanity which also includes human trafficking. Human Trafficking, as it is already known, is the third largest and profit making business in the world only after drugs and arms trafficking. The extent of human trafficking has been such that the trade is flourishing across the borders despite various international laws, interventions by the UN and its enforced conventions, protocols and statutes. Trafficking of human is an ever growing problem and has its presence in almost all the countries across the world. The Rome Statute, which was enforced, has a special reference to trafficking in persons and is defined under the crimes against humanity.

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Human trafficking is defined as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of coercion, of abduction, of fraud, of deception, of abuse of power or of a position, of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Many organizations operating at the national and international as well as local level have identified trafficking of persons into exploitation through forced prostitution, sexual exploitation, forced labour, slaver, servitude, exploitation in wars, use of children in begging and also includes removal of organs. Trafficking occurs not only across the borders but also actively takes place within the national borders of the countries. Trafficking also includes drug trafficking and arms trafficking but the most severe and dreadful trafficking is human trafficking as it uses human beings as a commodity, used and reused, sold and resold, abused with force or coercion, exploited and involves violation of human rights. To control, prevent and counter the acts of human trafficking, international community with the help of the United Nations has enforced anti-trafficking protocols and measures to combat it, laid down rules and basis for the countries to frame their own anti-trafficking laws at their domestic and regional level to fight trafficking and prosecute the traffickers. The United Nations enforced its most important convention, a step towards preventing and controlling trafficking of human beings, the United Nations Convention against Transnational Organized Crime, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2003 after the International Criminal Court and the Rome Statute. The UNTOC and Palermo Protocol have helped the ICC to understand, define, explain and prosecute human trafficking cases.

The International Criminal Court may prosecute any case of crimes against humanity irrespective of the amount of time passed since the crime or the act of crime was committed. This is in accordance with Article 29, which states that “the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.” However, Article 24 states that, “no person shall be criminally responsible under this Statute prior to the entry into force of the Statute.”

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7 Dr. Mohamed Y. Mattar, The International Criminal Court (ICC) Becomes a Reality: When Will the Court Prosecute The First Trafficking in Persons Case?, The Protection Project (9 June 2002)
The International Criminal Court has jurisdiction over the most serious crimes committed by individuals, which comprises genocide, crimes against humanity, war crimes and crimes of aggression. The three important and major crimes have been very cautiously defined in the Statute to avoid ambiguity or vagueness for the efficient prosecution of such cases whereas the crime of aggression is dealt with by the Court when the Assembly of States Parties agrees on the definition, elements and conditions under which the Court will exercise jurisdiction. The Rome Statute does not identify any new categories of crimes, and reflects only existing conventional and customary international law. The crimes identified and prosecuted by the ICC are briefly described as follows:

**Genocide:** It is a very serious form of crime and includes those crimes which are specifically listed prohibited acts, such as killing, causing serious harm, committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

**Crimes against humanity:** It includes the crimes which are specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population. Such crimes or acts include murder, extermination, rape, sexual slavery, the crime of apartheid, among others.

Genocide and crimes against humanity are punishable irrespective of whether they are committed in time of “peace” or of war.

**War crimes:** War crimes include severe and grave breaches of the Geneva Conventions of 1949 and other serious violations of the laws of war, committed on a large scale in international as well as internal armed conflicts.

The inclusion of internal conflicts is consistent with customary international law and reflects the reality that in the past 50 years, the most serious violations of human rights have occurred not in international conflicts but within the States. The definitions of the crimes in the Statute are the product of years of hard work involving many delegations and their experts.

The judges of the ICC are required to strictly construe the definitions and are not to extend them by analogy. The aim is to establish objective international standards,
leaving no room for arbitrary decisions. In cases of ambiguity, the definitions are to be interpreted in favour of the suspect or accused.

5.2 Application of the ICC

Among various such international legal frameworks, the International Criminal Court enacted the Rome Statute to combat human trafficking and to deal with and have universal jurisdiction on the most serious crimes which are of concern to humanity. The Rome Statute also follows Article 7 of the Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956.\(^8\) The slavery in the convention is defined as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” Article 7 of the Rome Statute was constituted to deal with crimes against humanity including enslavement, sexual slavery, enforced prostitution and any other form of sexual violence of comparable gravity.

Article 7 of the Rome Statute was enacted with reference to “trafficking in persons” which is considered as a crime against humanity under the enslavement provision of the Statute which has been stated in Article 7 (1).\(^9\) The most important of the Article 7 of the Rome Statute is Article 7 (1) (a) – (k). It states that the acts to come under the Crime Against Humanity, must be “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”\(^10\) Article 7 could be further explained by the following elements:

- Perpetration of the acts being committed as mentioned in the Article 7 (1) (a)-(k)
- It must constitute an attack directed against any civilian population
- It must be a widespread or systematic attack
- The perpetrator is aware and have the knowledge of the acts committed has been a part of or intended to be a part of such attack.

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\(^8\) Dr. Mohamed Y. Mattar, *The International Criminal Court (ICC) Becomes a Reality: When Will the Court Prosecute The First Trafficking in Persons Case?*, The Protection Project (9 June 2002)

\(^9\) Ibid

\(^10\) Article 7 of the Rome Statute
In many cases of such crimes being conducted and then being prosecuted by ICC, it has been noticed that the cases include crime against humanity as well as war crimes and thus prosecution of human trafficking in such cases is at the risk of being ignored or prosecuted under the Article 7 of the Rome Statute. Thus it is very important to distinguish human trafficking and the war crimes in such cases while prosecution, and consider it under the Article 7 of the Rome Statute – Crimes Against Humanity. There are also various obstacles being faced while prosecuting cases of human trafficking such as, the jurisdiction of a country where the prosecution of the case being undertaken and the traditional laws and values of the countries.

5.2.1 Acts constituting Attack directed against any Civilian Population:

Article 7 of the Rome Statute describes the acts which must constitute an attack directed against any civilian population, which must be systematic and widespread. Such attacks means “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack”.

As defined, such attacks constitute course of conduct referred to, viz, abuse, exploitation etc. involving multiple commission of the acts, directed against a civilian population and is not confined to any kind of war or military attack. Further, it can be understood and observed by the fact that, though such attacks are directed against civilian population but these are not against an entire population of a country or a region but is conducted against individuals who belong to civilian population and is conducted in cooperation with other groups of criminals such as organized crime groups.

Studies have established that any kind of intentional crime conducted in isolation against a civilian population is an outcome of terror or discrimination and persecution involving the political system of a state even.

The acts of human trafficking can be considered as attacks directed against any civilian population, such as trafficking of multiple persons constituting the multiple commissions.

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11 Article 7 (1) of the Rome Statute
12 Prosecutor v. Tadic, Judgment, IT-94-1-T, 649 (ICTY Trial Chamber, May 7, 1997)
as mentioned in Article 7 of the Rome Statute. Such multiple commissions can be constituted even if trafficked persons are less at a time but the crime is conducted over the years. Further, attacks also can be considered as directed against civilian population when the trafficked person, may be only one, is exploited continuously throughout the lifetime through forced labour or prostitution.

Article 7 of the Rome Statute also describes such act as an organized crime, conducted in cooperation with various and a large number of criminal groups which work in conspiracy which can be defined as a “joint criminal enterprise”. Such crimes are conducted by some very powerful and dominant crime groups across the borders and manage and control the entire human trafficking racket globally. All these activities of crimes conducted intentionally in cooperation with other crime groups. Such criminal activity and conspiracy can be conducted if the information about weak and vulnerable persons of one country is shared by the traffickers of that country with the traffickers of the other country, may be its neighbouring country which could be feasible, could constitute a joint enterprise and also can be defined as attack directed against any civilian population.

Many instances made it evident that such attacks against civilian population is conducted, as defined as multiple commissions, by trafficking vulnerable persons from a vulnerable group, mostly including women and girls, from one country to another in an organized manner, sold and resold, and also conducted in a lesser extent but over many years.

### 5.2.2 Attacks as Widespread and Systematic in nature:

The acts of human trafficking and attacks directed against a civilian population is, generally and in most of the occasions, a widespread as well as a systematic attack since such attack is directed against a large number of persons or a group of persons which are weak and vulnerable to such attacks of human trafficking. It is also conducted in an organized manner and has an organized strategy which is followed by the traffickers, hence such attacks are systematic in nature. These attacks are spread over a large area, globally, across the borders and is often found as large-scale
whereas in some occasions, such attacks have been found conducted as a small-scale criminal activity.\textsuperscript{13}

These attacks involving human trafficking in a widespread and systematic manner is established through identification, recruitment, manipulation, coercion, monitoring, and exploitation of the trafficked persons for obtaining ownership of the trafficked persons in the form of force, power and control.

Human trafficking, as understood, is conducted in a very systematic manner in which the traffickers keep on doing the act repeatedly which includes, recruitment, harbour and continuous exploitation of the trafficked persons, by way of coercion, force, sold and resold across the world. The organized crime groups also exploit the vulnerable victims and population until the trafficked persons are profitable. When there is a decline in the profitability of the trafficked persons, they start to look out for new groups of persons to keep their business going, recruit and traffic again.

Trafficking of persons has been classified as large-scale and small-scale activities. Though small-scale operations of human trafficking has not been identified as widespread by the ICC but since it is conducted through conspiracy and joint enterprise in cooperation with other organized crime groups and its increasing number of trafficked persons / victims of trafficking over the years establishes it as widespread.

Instance of such widespread activity of human trafficking can be cited where women from North Korea are trafficked in large numbers to China but more studies are required to establish this as a widespread crime. But conducting a study to find out the facts of trafficking in this part of the world is quite difficult due to various restrictions imposed on the information of North Korean refugees.\textsuperscript{14}

5.2.3 Attacks in furtherance to the State or Organizational Policy:

The Rome Statute states that the attacks must be “pursuant to or in furtherance of a State or organizational policy to commit such attack”. But the policy as mentioned in

\textsuperscript{13} Article 7 of the Rome Statute

the statute can be defined in a broad manner. Since the human trafficking is an organized crime, it is executed in a planned manner and as per a policy but it is not necessary for the policy to be specified or set-rules.

In some countries, it has been noticed that the state or the country encourages such attacks against a group of persons, who are vulnerable to such attacks of human trafficking and purposefully ignores or fails to take action against the organized crime groups conducting the attacks. Such States are included as recognized countries and governments by the United Nations and are actively involved in all governmental activities and functions.

Organization, in Article 7 of the Rome Statute, is referred to as any such group of persons who has a capability of conducting an attack against a civilian population which is a widespread and systematic in nature. The organized crime groups prevalent in countries / states, as discussed above, works in committing such attacks with the help of the government and policies of that state which is thereby increasing their economy.

Policies which have come to the notice through various cases prosecuted by the ICC included policies such as targeting as a particular population and destroying their property, targeting a civilian population to gain control and supremacy and become dominant on that population. Thus the business of trafficking of human has mainly three policies which are a) to recruit, sell, transport, harbour, or transfer humans b) to profit-off of the exploitation of humans and c) to fuel demand for the human trafficking economy.

Such attacks on civilian populations are done through human trafficking based on some policies of using the children as shields in armed conflicts, using women for sexual exploitation, exploiting women and children through forced labour and finally exploiting many cultural and ethnic groups or population.

It has been studied and observed that there are many States and organizations which are involved in committing the crime of human trafficking and conducting attacks on civilian population in a widespread manner but is backed by the governmental policies
of that particular State. Hence, it is also seen that these States does not include policies of United Nations and its Conventions in combating the crime.

5.2.4 Perpetrator’s knowledge of the attack:

The Rome Statute, in its Article 7, Crime against humanity, states that the perpetrator or the person committing such crime or attack aimed at civilian population in a widespread and systematic manner is aware of such attack being conducted. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

The Article 7, Crimes against Humanity and the elements of crimes does not require any kind of proof to establish that “the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization”. This means that the perpetrator was aware of the attack but may not have the knowledge of all the characteristics and precise details of the attack and the policy of the State or the organization.\(^{15}\)

This has been evident from many such instances where the perpetrator was found at the scene of the crimes and the political background in which the act was committed. But in some cases, it has also been noticed that the perpetrators were not aware of the consequences of the attack and the policies of the State or organizations and has been merely a player. But since, the nature of such attack and the crime is organized and is conducted as joint enterprise between the groups of traffickers, it is understood that the perpetrators are aware of the attack, nature and purposes of the attack. Same can be referred to in human trafficking.

5.3 Challenges and Limitations before the ICC

The International Criminal Court was established to prosecute cases which constitute crimes against humanity as defined in Article 7 of the Rome Statute but these crimes to be prosecuted by the ICC must qualify the conditions of the crime to be considered as crimes against humanity and hence the attack has to be widespread and / or

\(^{15}\) Article 7 of the Rome Statute
systematic in nature, has to be directed against a civilian population, and the perpetrator or the offender was aware or had the knowledge of the attack. Under this definition, cases of trafficking of human can be prosecuted since it conforms to the conditions or provisions mentioned in Article 7 of the Rome Statute – Crimes against Humanity. Hence, the International Criminal Court can prosecute cases of trafficking in persons, sexual slavery, and forced prostitution.

Lack of a precise and accurate definition of trafficking is one of the biggest impediments in the prosecution of trafficking cases by the ICC. The definition of trafficking given by the Palermo Protocol is very precise and the ICC needs to adopt it so that the aim of establishing the Rome Statute to include and expand all forms of exploitation and slavery as a consequent of trafficking could be taken up and prosecuted in an effective manner.\textsuperscript{16}

Many countries across the world have enacted various anti-trafficking laws and legislations to prosecute human trafficking cases at the regional level or the domestic level. In spite of these anti-trafficking laws, various developmental activities, awareness programmes and effective policies in countering human trafficking crime, it has not yet been possible to effectively prosecute and combat human trafficking. The ICC also has not yet been able to achieve success in treating the trafficking as a crime against humanity in a potential manner despite the enforcement of the Rome Statute and its Article 7. The allegations and accusations of traffickers as per the Rome Statute have not been successful to be prosecuted by the ICC so far due to the limitations of the ICC and a proper definition of trafficking. Even the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) have not been successful so far in prosecuting the trafficking cases and punishing the traffickers thereby combating the crime.\textsuperscript{17}

There are many cases which describe the nature of the organization, the sophistication with which the traffickers carry out their activities, the different background and situation and the extent to which they have spread across the borders and all over the world.

\textsuperscript{16} Benjamm N. Schiff, \textit{Building the International Criminal Court}, Cambridge University Press, 1\textsuperscript{st} Edition (2008)
\textsuperscript{17} Jane Kim, \textit{Prosecuting Human Trafficking As A Crime Against Humanity Under The Rome Statute}, (2011)
and these have highlighted the challenges of the ICC in prosecuting cases of trafficking and the cases of crimes against humanity.

Another difficulty and challenge before the ICC in prosecuting trafficking cases is the risk of ignoring the seriousness and magnitude of human trafficking. The definition of trafficking as “trafficking in persons, in particular women and children,” is clearly mentioned in Article 7(1)(c) of the Rome Statute. However, the appropriate definition of trafficking, beyond the attachment of ownership over a person or deprivations of liberty – is not lucid in the Statute. The Rome Statute does not include a proper definition of ‘trafficking’ and hence it is a challenge before the ICC to have a potential prosecution of trafficking cases. Trafficking is considered to be modern day slavery. The deficiency of a proper and precise definition for “trafficking” in the Rome Statute poses a big problem because of the different definitions existing in different countries and this has a possibility in affecting the scope of the Statute to deal with and prosecuting trafficking cases. Moreover, the definition of ‘enslavement’ is regarded as the modern day slavery but this is not accepted legally because enslavement covers a wide range of forms which could be considered as slavery. Enslavement, as it is defined in the Article 7 of the Rome Statute and also in the Convention on the Abolition of Slavery in the Elements of Crimes, is stated as “right of ownership over a person” but poses a major question whether it is applicable to modern day slavery.\(^\text{18}\)

There are also cases where the crimes being conducted include crimes against humanity as well as the war crimes when brought to the ICC for prosecution. Prosecution of such human trafficking are at the risk of being ignored or prosecuted under the Article 7 of the Rome Statute. Hence, there is an important and urgent need to distinguish the human trafficking and the war crimes in such cases during the prosecution and consider it under the Article 7 of the Rome Statute of Crimes against Humanity.

Further, it has been also noticed that the jurisdiction of the countries becomes an obstacle in the prosecution of the cases of human trafficking. The limited reach of the ICC jurisdiction and admissibility regime of the court is a challenge in itself. This is a very unique combination in which a jurisdiction that is conservative in nature and state-

sovereignty oriented system based on the principle of territoriality is combined with an admissibility regime based on the complementarity principle.\textsuperscript{19} The complementarity principle explains the challenge of the ICC to prosecute cases unless and until the states are unwilling or fail to prosecute or unable to have jurisdiction and prosecute the cases. The importance of the prosecution by the state parties is recognized by the Rome Statute. It is the state sovereignty which gives the states the primary right to have the criminal jurisdiction and exercise its powers of prosecuting trafficking cases or other cases of crimes against humanity which entails to international crimes. Thus, the ICC is only the last resort to prosecute cases and have jurisdiction on the crimes conducted in the state party’s territory which constitute international crime and this happens only if the country or the state fails to exercise criminal jurisdiction or are not able to investigate and prosecute the cases or are unwilling to investigate and prosecute cases.\textsuperscript{20} It is a very complex system of the ICC. The ICC faces a dilemma also. On one hand, if the states start prosecuting and resolving cases of trafficking and crimes against humanity in an effective manner at the national level, then the ICC will have no cases to prosecute. Whereas, on the other hand, the ICC requires successful handling of cases and prosecuting cases effectively to establish its worthiness and aim with which it was established.\textsuperscript{21}

The ICC also faces challenges while prosecuting cases due to lack of effective cooperation and support from the states. Since the ICC is dependent on the sates to provide evidences, investigate in an effective manner, it finds it difficult if the state parties are not cooperating and supporting the ICC in the prosecution. The ICC does not have executive powers and police of its own to investigate cases and thus it is fully dependent on the states. This is a weakness on the part of the ICC which is a major challenge because the originator of the ICC wanted to keep the states’


\textsuperscript{20} Benjamin N. Schiff, \textit{Building the International Criminal Court}, Cambridge University Press, 1\textsuperscript{st} Edition (2008)

sovereignty.\textsuperscript{22} Hence, the ICC always requires full cooperation and support from the state parties while prosecuting cases.

Another challenge and limitation of the ICC is its restraint to carry out investigations and collect evidences with regard to the mass crimes committed in regions which are thousands of miles away. Thus, the ICC has difficulty to have its access, reach to these areas and regions which could also be unsafe.\textsuperscript{23} These are difficulties pertaining to technicalities and logistics which no other court faces in prosecuting crimes.\textsuperscript{24} Such difficulties were experienced by the ICC while prosecuting cases and investigating in regions such as Uganda, Central Africa and the Democratic Republic of Congo. The ICC also faces dearth of resources such as financial and other related resources for conducting investigations.\textsuperscript{25}

One more challenge faced by the ICC is the protection of the victims of trafficking in prosecuting trafficking cases. The prosecutor and the security forces of the country need to have appropriate security measures to provide victim protection and also to collect evidences form them, providing logistics pertaining to residence and travelling while the prosecution of the cases are going on. To provide effective protection to the victims, the ICC needs to depend on the states of both the countries involved in the trafficking case to cooperate and support the ICC for efficient prosecution and judgment.

5.4 Conclusion

As human trafficking is a transnational organized crime and has its presence felt in all the countries across the world, therefore there is a need to have an international body or statute which could address the human trafficking cases and deliver effective and efficient prosecution. Thus the establishment of the International Criminal Court and the Rome Statute to prosecute cases which constituted crimes against humanity took place. The Rome Statute, thus ratified, had its jurisdiction over the crimes such as war crimes, genocide, crimes against humanity and crimes of aggression and Article 7 defined the


\textsuperscript{23} Benjamin N. Schiff, Building the International Criminal Court, Cambridge University Press, 1st Edition (2008)

\textsuperscript{24} Ibid

\textsuperscript{25} Benjamin N. Schiff, Building the International Criminal Court, Cambridge University Press, 1st Edition (2008)
crimes against humanity. The nature and operation of the ICC with reference to the Rome Statute and prosecution of trafficking cases has been very significant since the establishment of the ICC. There are various important protocols and conventions enforced by the UN for preventing trafficking, labour, slavery which have in turn formed the basis of the Rome Statute and the establishment of the ICC.

The application of the ICC in prosecuting cases constituting crimes against humanity under Article 7 of the Rome Statute with reference to enslavement, sexual slavery, enforced prostitution and any other form of sexual violence of comparable gravity has been very imperative. The characteristics of Article 7 of the Rome Statute – crimes against humanity which would be applicable for prosecution by the ICC with a brief description of the kinds of attack to be constituted as crimes against humanity is elucidated has been seen very precise. These characteristic of the crimes against humanity are, viz., attacks directed against a civilian population, attacks as systematic and widespread, attacks in furtherance to the State or organizational policy and attacks committed with the perpetrator’s knowledge. The first characteristic of the attacks which is directed against civilian population qualify as crimes against humanity to be prosecuted by the ICC. This crime constitutes course of conduct referred to, viz., abuse, exploitation etc. involving multiple commission of the acts, directed against civilian population and is not confined to any kind of war or military attack. Such attack directed against a civilian population is also referred to human trafficking. The next component is the nature of the attack which is considered under Article 7 as the attack conducted is widespread and systematic. The acts of human trafficking constituting attacks directed against a civilian population is, in most of the occasion, a widespread and systematic attack since it is directed against a large number of persons or a group of persons which are weak and vulnerable human trafficking. The organized manner of trafficking also qualifies to be systematic in nature and its extent, that is, it is spread over a large area, globally and across the borders again qualifies the widespread nature of the attack. The attack in furtherance to State or Organizational policy constitutes the crimes against humanity under the Rome Statute in its Article 7. Hence, the nature of the crimes of trafficking which are committed in some countries with the assistance of the government and policies of that state thereby increasing their economy and use of the trafficked persons in armed conflicts, labour or purposeful exploitation of any cultural

or ethnic group is a crime which could be prosecuted by the ICC. The next important characteristic of the nature of the crime with reference to trafficking constituting to be crimes against humanity under Article 7 of the Rome Statute is the knowledge of the attack by the perpetrator.27

The challenges and limitations of the International Criminal Court in prosecuting cases pertaining to crimes against humanity and specifically those of human trafficking has been observed in various cases. The International Criminal Court, despite being the universal authority to prosecute cases of international crimes, such as those specified by the Rome Statute, has not been able to deliver much successful judgments in cases of crimes against humanity. The nature of the ICC and the reasons, limitations and challenges faced in prosecuting cases, such as, trafficking cases, war crimes, genocide, exploitation and slavery28 has been aptly discussed in this article. Lack or absence of a precise and accurate definition of trafficking is one of the biggest obstacles in the prosecution of trafficking cases by the ICC. The vague definition of trafficking has been an impediment in the prosecution of trafficking cases by the ICC and also by the ad hoc tribunals, ICTY and ICTR. Another challenge faced by the ICC has been the risk of ignoring the seriousness and magnitude of human trafficking which again is a consequence of vague definition of trafficking and the definition of enslavement and the identification of slavery and prosecution of cases in punishing the traffickers who traffic people for enslavement purpose. Further, there is a confusion which is being created between the victims of war crimes and crimes against humanity due to which proper prosecution of such cases is ignored. Furthermore, the reach, jurisdiction of the ICC and admissibility regime of the court and the complementarity principle of the ICC in prosecuting cases29 has also been a challenge for the ICC in prosecuting cases of crimes against humanity. The ICC cannot prosecute any case applicable as crimes against humanity until the state parties refer it to the ICC or are unwilling to prosecute or fail to prosecute. The ICC cannot go beyond its jurisdiction and enter into the jurisdiction of the state parties in prosecuting cases of crimes against humanity.30 The lack of cooperation and support from the countries involved in prosecution of the

30 Ibid
trafficking cases is also one of the major challenges before the ICC which is also discussed in the chapter. The ICC further lacks in executive powers and hence is dependent on the state parties and this weakness of the ICC poses limitation and a challenge in effectively work and prosecute cases because the ICC does not have its own network of investigating officers and police force to gather evidences. The difficulty of the ICC in terms of technicalities and logistics has added up to its challenges and limitations since the cases which are prosecuted by the ICC are originating in some other countries are thousands of miles away. The cost of prosecution, victim protection, residence and travelling of the victims and the officials is also a major concern for the ICC since it faces scarcity of financial and other resources.  

The major focus, therefore, is to facilitate and strengthen the International Criminal Court (ICC) in prosecuting cases which constitute crimes against humanity and the effective application of Article 7 of the Rome Statute and overcoming the challenges and limitations of the ICC in the prosecution of crimes against humanity, especially the trafficking case. The countries across the world should strive to prosecute cases of crimes against humanity and specifically those of human trafficking and facilitate the ICC in prosecute cases of trafficking and other cases of crimes against humanity.

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