

## Punishing Hamas: On Israel and the ICJ ruling

The Hindu

Paper - II  
(International Relations)

The International Court of Justice's ruling, that Israel must immediately stop its military offensive in Rafah, the southernmost city of Gaza, is the latest setback for the Jewish nation in a war that grinds on with heavy civilian casualties and no end in sight. In January, while hearing a genocide case against Israel that was filed by South Africa, the United Nation's top court had asked Tel Aviv to take measures to prevent acts of genocide in Gaza. The court refused to order a ceasefire then, but has now come to the conclusion that Israel's Rafah offensive could lead to a complete or partial destruction of the Palestinian population in the city. The court has also asked Israel to keep the Rafah crossing with Egypt open for aid delivery and allow UN investigators to gather evidence about alleged war crimes, besides demanding an immediate release of all hostages. The ICJ ruling comes days after the Chief Prosecutor of the International Criminal Court, Karim Khan, claimed that Israeli and Hamas leaders had committed war crimes and crimes against humanity in Gaza, and sought arrest warrants against Israel's Prime Minister Benjamin Netanyahu, its Defence Minister Yoav Gallant and Hamas leaders Yahya Sinwar, Mohammed Deif and Ismail Haniyeh. Israel appears to be unperturbed by these developments. Immediately after the ICJ issued its ruling, Israeli fighter jets pounded Rafah. The ICJ rulings are binding, but the court lacks the mechanisms to implement them.

More than seven months after the war began, which was triggered by Hamas's October 7 cross border attack on Israel in which at least 1,200 people were killed, Tel Aviv seems to be fighting in the dark. When it launched the war, Mr. Netanyahu said he would crush Hamas and release hostages. Today, Israel is fighting Hamas even in northern and central Gaza where it had earlier declared victory. At least 120 hostages, most of them feared dead, are still in Hamas's captivity. The war is marked not just by the incompetence of the Israeli Defence Forces. Its disproportionate use of force on Gaza has made the strip into a graveyard, which has turned international public opinion against Israel. Last week's decision by Norway, Ireland and Spain to recognise the state of Palestine shows how the line of thinking is changing even in the West. Mr. Netanyahu appears to be irrationally adamant today. His only focus is on a war that has done little to bolster Israel's security. Israel has not met its military objectives; its deterrence has been broken twice, peace with Arabs stands shattered, it stands isolated in the world, there could be an arrest warrant against its leaders and there is a ruling by the ICJ against the way it is conducting the war. By seeking to punish the entire Palestinian population in Gaza for what Hamas did, Mr. Netanyahu is rendering Israel's standing weaker and the international support for the Palestinian cause to grow stronger.

### The territorial Jurisdiction of the ICC

- ❖ Like Russia, Israel, too, isn't a member of the ICC.
- ❖ Thus, some are questioning if the ICC can issue arrest warrants for Israeli leaders.
- ❖ The basis of ICC's jurisdiction in this case is that Palestine is a state party to the court.
- ❖ Thus, the ICC can exercise what is known as territorial jurisdiction.
- ❖ This means that if a crime is committed on the territory of a state party to the ICC, the Court can exercise jurisdiction on that crime, even if it is committed by people belonging to a state that isn't its member.
- ❖ Hence, the crimes committed by Israeli soldiers in Gaza fall within the Court's jurisdiction.
- ❖ Similarly, Hamas' conduct in Israel falls within the Court's jurisdiction even though Israel isn't a member of the ICC.

### ICC's record against high-level state officials

- ❖ The ICC's track record is not quite encouraging, especially regarding heads of states. Take the example of Omar al-Bashir, former Sudanese President. ICC issued an arrest warrant against him way back in 2009. At the time, he was the president of Sudan.
- ❖ In 2019, he was ousted from office in a military coup. However, he has still not surrendered to the court.
- ❖ On the other side of the spectrum are the cases of William Ruto, the incumbent President of Kenya, and his predecessor, Uhuru Kenyatta.
- ❖ Both were accused of committing crimes against humanity, but the court finally dropped the charges and abandoned the prosecution.
- ❖ Similarly, an arrest warrant was issued against Simone Gbagbo, the former first lady of the Ivory Coast, but the ICC subsequently dropped the charges.
- ❖ Likewise, while the arrest warrant against Putin has undoubtedly limited his international travels, his surrender to the ICC seems unlikely.

### Expected Question for Prelims

**Que.** Consider the following statements with reference to the International Court of Justice:

1. It is the main judicial organ of the United Nations.
2. Unlike the six major institutions of the United Nations, it is the only institution which is not located in New York.

Which of the statements given above is/are correct?

- (a) Only 1                      (b) Only 2  
(c) Both 1 and 2              (d) Neither 1 nor 2

**Answer : C**

### Mains Expected Question & Format

**Que.:** What are the implications of the recent decision of the ICJ regarding Israel and Hamas? Discuss the current decision in the context of the jurisdiction of the ICJ and its track record.

**Answer's Approach:**

- ❖ In the first part of the answer, briefly explain the decision of the International Court of Justice regarding Israel and Hamas.
- ❖ In the second part, mention the jurisdiction of the International Court of Justice and its track record.
- ❖ Finally give a conclusion giving suggestions.

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.