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Political Pressure and the Independence of the ICC

ANKUR CHETTRI¹

ABSTRACT

This paper aims to examine the independence of the judiciary and its officers, beginning with a brief history of the importance of judicial independence in ancient India, then moving to modern international law, tracing its journey from the Nuremberg trial to present day International Criminal Court the paper has examined various laws from where the concept of independency of the judiciary flows; the statutes such as “Universal Declaration of Human Right” , “International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights” , Code of Judicial Ethics and Basic Principles on the Independence of the Judiciary , focusing on the various laws that ensure and guide judicial independence at the International Criminal Court. The paper has also examined the challenges faced by the Court and its staff, the government's interference in the Court's work, the limited recognition of the Court, and local/domestic hurdles in gathering evidence, securing witnesses, and protecting the interests of victims. Finally, the paper establishes whether the Court, which has the jurisdiction to try and punish individuals for committing atrocities such as war crimes, genocide, crimes against humanity, and crimes against aggression, is really an independent institution or not. What are the factors that have affected its independence, and is there a way forward?

I. INTRODUCTION

The concept of an Independent Judiciary has been around for a long time, whether in international law or domestic law. In India, the concepts of just law and judicial independence have been around since ancient times. The post of "*nyaayaadheesh*" is considered to be superior to the King himself. "Kautilya states that the *Nyaayaadheesh* should be free and fearless even of the King himself."² The prevalence of the theory in modern day context is echoed through various judgements as seen in the case of "*ADM Jabalpur v. Shivkant Shukla (1976) (Habeas Corpus Case)*" where Justice H.R. Khanna's famous dissent asserted that the right to life and liberty is inviolable, strengthening the long-term principle of judicial independence, even if the

¹ Author is a Student at KIIT School of Law, India.

² 'Allahabadhighcourt.in/Event/TheIndianJudicialSystem_SSDhavan.Html'
<https://allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html> accessed 26 October 2025.

immediate decision was a setback."

As International Court of Justice Judge Hilary Charlesworth stated in her speech at the Supreme Court of India, "Judicial independence is critical to the operation of legal institutions, particularly in volatile political contexts,"³ proving that the concept is not limited to domestic jurisdictions. The maxim "*Fiat justitia ruat caelum*" (let justice be done though the heavens fall) has succeeded in reinforcing unwavering commitment to justice, upholding fairness and independence.

International law, which is usually restricted to nation-states and disputes between them, for the resolution of those disputes, the United Nations established the International Court Of Justice, established by the Charter of the United Nations as the principal judicial organ of the United Nations.⁴ However, after the Second World War when the Allied power had defeated the Axis Powers the three state heads Franklin D. Roosevelt, Winston Churchill, and Joseph Stalin had debated what should be the fate of the Nazi Leaders who took part in systematic killing millions of Jews it was first agreed to execute all the leaders following the earlier trends as prominently see during the end of World War one. Still, the idea began to change after the death of Franklin D. Roosevelt. The United Nations started to deliberate upon the idea of putting the Nazi leaders on international trials for their atrocities. Hence, the *Nuremberg Trial*, which took place between November 20, 1945, and October 1, 1946, later laid the foundation for the development of international criminal law.

The Nuremberg Trial

After the death of Hitler and the defeat of the Axis powers during World War Two, the world began to deliberate how the nazi commanders were to serve justice. The then victors thought of summary execution or a show trial.⁵ However, the United Nations thought of conducting a trial of the commanders and of senior Nazi members, to promote the rule of law⁶ and give equal opportunity to defend themselves, reflecting on what had happened after the First World War and the Treaty of Versailles.

The trial, considered the foundational stone of current International Criminal Law, was not without drawbacks. The judges presiding over the trials were all from the victorious states:

³ 'ICJ Judge Hilary Charlesworth Joins CJI Chandrachud on Supreme Court Bench | India News - Times of India' <<https://timesofindia.indiatimes.com/india/icj-judge-hilary-charlesworth-joins-cji-chandrachud-on-supreme-court-bench/articleshow/107619869.cms>> accessed 26 October 2025.

⁴ United Nations, 'United Nations Charter (Full Text)' (*United Nations*) <<https://www.un.org/en/about-us/un-charter/full-text>> accessed 27 October 2025.

⁵ a trial in a court of law in which the verdict has been decided in advance

⁶ 'What Is the Rule of Law - United Nations and the Rule of Law' <<https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>> accessed 26 October 2025.

America, Russia, France, and Britain.

The judges for the main trial were: - "Francis Biddle (American), John J. Parker (American), Edward Francis Carter (American), Colonel Sir Geoffrey Lawrence, Lord Justice (British, President of the Tribunal), Sir Norman Birkett (British), Henri Donnedieu de Vabres (French), Robert Flaco (French), Major General Iona Nikitchenko (Soviet), Lieutenant Colonel Alexander Volchkov (Soviet)"⁷

The selection of the judges and the law used to try them raises an essential question about the independence of the trial itself. The Nuremberg Charter, which created the law to prosecute the Senior Nazi members, was signed in August 1945, which was after the conclusion of the war,⁸ and the rule of law states that criminal law should not be applied retrospectively (*ex post facto*); it should only be prospective in nature. Some of the judges themselves had drafted the Charter and created the rules of procedure, including cross-examination and evidence procurement. It was a selective trial; only the crimes committed by the Axis were tried in the court, neglecting the doctrine of "*unclear hands*"⁹, keeping aside the atrocities committed by the Allied Powers.

The trial lacked a German judge, rendering it unjust to the defendants. Other judges presiding over the trials were from a particular nation that had won the war, rendering the prosecution a mere victor's justice.¹⁰, violating the principle of *nemo iudex in causa sua*¹¹, which states that no one should be the judge in their own cause, or the rule against bias.

Nuremberg trial, although considered the foundational stone, is found to be a kangaroo court, which means "a court whose proceedings deviate so far from accepted legal norms that they can no longer be considered fair or just."¹² Only a reflection of the victor's justice.

These views are not only those of scholars and academicians; this view is widely seen among the citizens of most nation-states. It is widely seen as a miscarriage of justice, a dubious victory of the Allied forces. This trial has violated the fundamental principles of law, compromised the independence of the judiciary, and resulted in an unjust outcome. Although the prosecution

⁷ 'The Nuremberg Trials' (*The National WWII Museum | New Orleans*) <<https://www.nationalww2museum.org/war/topics/nuremberg-trials>> accessed 26 October 2025.

⁸ 'How Were the Crimes Defined?' (*Holocaust Encyclopedia*) <<https://encyclopedia.ushmm.org/content/en/article/how-were-the-crimes-defined>> accessed 26 October 2025.

⁹ 'Legal Definition of UNCLEAR HANDS' <<https://www.merriam-webster.com/legal/unclear+hands>> accessed 26 October 2025.

¹⁰ William A Schabas, 'Victor's Justice: Selecting "Situations" at the International Criminal Court, 43 J. Marshall L. Rev. 535 (2010)'.

¹¹ Manupatra, 'MyApp' <<https://articles.manupatra.com/article-details/Audi-Alteram-Partem-and-Nemo-Judex-In-Causa-Sua-The-Two-Pillars-of-Natural-Justice>> accessed 26 October 2025.

¹² 'Kangaroo Court | Wex | US Law | LII / Legal Information Institute' <https://www.law.cornell.edu/wex/kangaroo_court> accessed 26 October 2025.

punished the culprits, it failed to deliver justice. The trial delivered peace over justice.¹³

II. INDEPENDENCE IN THE INTERNATIONAL CRIMINAL COURT

The concept of an independent criminal Court was debated at the United Nations, which led to the establishment of the International Criminal Court.¹⁴

The International Criminal Court was established under the Rome Statute on July 1, 2002, with currently 125 member countries, known as "The Assembly of state parties"¹⁵¹⁶. "It has four core jurisdictions for genocide, war crimes, crimes against humanity, and aggression. From its inception, the court has heard 33 cases, with some cases having more than one suspect. INTERNATIONAL CRIMINAL COURT judges have issued 61 arrest warrants, 22 people have been detained in the INTERNATIONAL CRIMINAL COURT detention centre and have appeared before the Court, and 30 people remain at large. Charges have been dropped against eight people due to their deaths. INTERNATIONAL CRIMINAL COURT judges have also issued nine summonses for the individuals to appear in court. The judges have issued 13 convictions and four acquittals."¹⁷

It is a sui-generis independent international organization that prosecutes individuals. It is not part of the UN system, making it a relatively independent organization, much more independent than the UN. INTERNATIONAL CRIMINAL COURT defines its jurisdiction as such: - "The Court may exercise jurisdiction in a situation where genocide, crimes against humanity or war crimes were committed on or after July 1, 2002, and:

- The crimes were committed by a State Party national, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court; or
- The crimes were referred to the INTERNATIONAL CRIMINAL COURT Prosecutor by the United Nations Security Council (UNSC) pursuant to a resolution adopted under Chapter VII of the UN charter."¹⁸¹⁹

¹³ 'Peace-vs.-Justice'. INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION [ISSN 2581-9453] volume 2 issue 2, 2020

¹⁴ 'INTERNATIONAL CRIMINAL COURT SHOULD BE INDEPENDENT BODY, AND NOT SUBSIDIARY OF SECURITY COUNCIL, SPEAKERS TELL LEGAL COMMITTEE | Meetings Coverage and Press Releases' <<https://press.un.org/en/1997/19971021.gal3044.html>> accessed 26 October 2025.

¹⁵ 'Assembly of States Parties' <<https://www.InternationalCriminalCourt-cpi.int/asp>> accessed 26 October 2025.

¹⁶ 'The States Parties to the Rome Statute | International Criminal Court' <<https://asp.InternationalCriminalCourt-cpi.int/states-parties>> accessed 26 October 2025.

¹⁷ 'About the Court' <<https://www.InternationalCriminalCourt-cpi.int/about/the-court>> accessed 26 October 2025.

¹⁸ 'How the Court Works' <<https://www.InternationalCriminalCourt-cpi.int/about/how-the-court-works>> accessed 26 October 2025.

¹⁹ Nations (n 10).

States Parties primarily fund the Court under the Rome Statute; it also receives voluntary contributions from governments, international organisations, individuals, corporations, and other entities, ensuring its independence and fairness²⁰. The independence and impartiality of the judiciary are guaranteed under Articles 3 and 4 of the Code of Judicial Ethics (INTERNATIONAL CRIMINAL COURT-BD/02-03-22). The code ensures that the judges at the INTERNATIONAL CRIMINAL COURT are fair, impartial, independent, confident, diligent, and loyal to the Court.²¹ The code serves as a guiding light for the judges, ensuring their independence.

“The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted, on September 6, 1985, a universal human rights instrument on the basic principles of the independence of the judiciary”²², which has elucidated and elaborated on the points of equality, freedom, and independence of the justice system in all of the member states. Ensure a fair and just selection, conduct, and training of the judges. These principles enable member states to secure and promote the independence of the judiciary in their domestic legal system. These principles were formulated with the understanding that they are equally applicable to every judge "where they exist". There are six basic principles. These principles not only ensure a free judiciary but also address the conduct, functioning, and legality of the Court's members, including its lawyers.²³ These are: -

- Independence of the judiciary: -The domestic laws of countries aim to ensure the independence of judicial officers, which is enshrined in the constitution. The government shall respect and observe the independence of the judiciary. The judiciary shall decide every matter impartially, paying due regard to the facts of the case and in accordance with the law, being free from any threat, inducement, restriction, or improper influence from any quarter or for any reason. The Court shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide the problems that are within its competence by law.

No external, unwarranted interference shall be made to the Court while continuing its proceedings, and no judicial decision is subject to revision. Every person has the right to be tried by ordinary courts of law. The Court shall follow due process of law. It is the duty of each member state to provide adequate resources to enable the judiciary to

²⁰ ‘About the Court’ (n 7).

²¹ ‘Code of Judicial Ethics | International Criminal Court’ (n 5).

²² ‘Basic Principles on the Independence of the Judiciary | OHCHR’ <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-independence-judiciary>> accessed 26 October 2025.

²³ *ibid.*

perform its functions properly.²⁴

- Freedom of expression and association: -The UDHR guarantees every individual the freedom of expression, belief, association, and assembly, provided that the expression does not undermine the dignity of the Office they hold or the rights of others. The judges are free to join associations to represent their interests.²⁵
- Qualifications selection and training: -The appointment should be without discrimination on the grounds of colour, sex, religion, political or other opinion, national or social origin, property, birth, or status. The judicial officer should be an individual of integrity who is appropriately trained and qualified in law.²⁶
- Conditions of service and tenure: -The appointment of the judge will be for a guaranteed tenure, unless a mandatory retirement age or expiry of term exists. The term of Office of the judge is to be independent, secure, backed by adequate remuneration, pension, and conditions of service, which are to be secured by law. The selection and promotion of judges will be based on objective criteria, including ability, integrity, and experience. The assignment of cases is a matter of internal administration.²⁷
- Professional secrecy and immunity: -The judiciary is bound to keep matters of the Court confidential, except for public proceedings. The judges shall enjoy personal immunity from the institution of civil suits.²⁸
- Discipline, suspension, and removal: -All the judges are expected to show utmost discipline and sincerity toward the law if any complaint or charge is to be found against the judges the matter is to be dealt expeditely and confidentially at the initial stage they have the right to get fair trial the judges are only to be suspended or removed in matter of incapacity or behaviour that makes them unfit to discharge their duties. The decisions are subject to independent review.²⁹

These codes and principles help the court and its members ensure the just functioning of the organization.

III. CHALLENGES TO INDEPENDENCE IN THE INTERNATIONAL CRIMINAL COURT

As we have well discussed and proven, the judiciary at the International Criminal Court is

²⁴ *ibid.*

²⁵ *ibid.*

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ *ibid.*

²⁹ *ibid.*

designed to be independent of all coercion and influence. Its independence is secured, and it has proved time and again that it is an independent organization. However, some elements undermine its sovereignty. One of the primary hurdles for the independent functioning of the Court is politics. The USA, which claims to lead the world with its Western ideology, has time and again tried to interfere with the courts' working. Recently, President Trump, under his Executive Order No. 14203³⁰ Has imposed sanctions on the International Criminal Court, which had earlier issued an arrest warrant against the Israeli Prime Minister Netanyahu and former Defence Minister Yoav Gallant in November 2024 for their alleged war crimes in Gaza. The US government stated the investigation into Israel and US personnel as illegitimate and an attack on the sovereignty of the us and its allies.³¹ Following this UN noted that sanctions are "AN ATTACK ON GLOBAL RULE OF LAW".³²

Many African nations (Burkina Faso, Mali, Niger) criticize the International Criminal Court as politically bias, neo-colonialist, and inefficiency, which is valid to some extent. Out of the five permanent members of the United Nations Security Council, only two are party to the International Criminal Court statute: only United Kingdom and France. Most East Asian countries are not parties to the statute, making the International Criminal Court ineffective, and larger trends are being observed. Three African countries have announced their withdrawal from the International Criminal Court, calling it a tool for neo-colonialism and oppression³³, making the Court less recognizable and difficult to enforce. The withdrawal, although not supported by the reasons for it, seems fair. The African nations are in pursuit of their "indigenous justice system"³⁴

The States play a significant role in the efficiency and effectiveness of the Court. The Court relies on the state (government) for enforcement and fulfilling its core mandate. Non-cooperation promptly leads to loss of life and evidence, and significantly hampers the Court's working.

The staff and the Office of the Prosecutor itself must be free from influence and coercion. The

³⁰ 'Executive Order 14203—Imposing Sanctions on the International Criminal Court | The American Presidency Project' <<https://www.presidency.ucsb.edu/documents/executive-order-14203-imposing-sanctions-the-international-criminal-court>> accessed 27 October 2025.

³¹ The White House, 'Imposing Sanctions on the International Criminal Court' (*The White House*, 6 February 2025) <<https://www.whitehouse.gov/presidential-actions/2025/02/imposing-sanctions-on-the-international-criminal-court/>> accessed 27 October 2025.

³² 'The Global Assault on Rule of Law' <<https://www.ibanet.org/The-global-assault-on-rule-of-law>> accessed 27 October 2025.

³³ 'Three West African Countries to Quit International Criminal Court' <<https://www.bbc.com/news/articles/czjvp0pr3eko>> accessed 27 October 2025.

³⁴ *ibid.*

independence of the Prosecutor is of utmost importance for gathering evidence, securing witnesses, and protecting the interests of victims.³⁵ The Prosecutor has full authority over the administration of the Office, including the staff facilities and other resources. They have the power to open an investigation upon referral to the state party and the UN Security Council. The Prosecutor, under his "*proprio motu powers*", may start an investigation on the territory or against nationals of a State Party, subject to confirmation by a Pre-Trial Chamber of the Court. In a recent case, the chief prosecutor is under investigation in a case of sexually harassing a coworker³⁶ this comes under scrutiny as this was done immediately after the chief prosecutor had issued an arrest warrant against Israeli Prime Minister Benjamin Netanyahu and then-defence minister Yoav Gallant, and Hamas leaders Yahiya Sinwar, Mohammed Deif, and Ismail Haniyeh bore criminal responsibility for war crimes and crimes against humanity³⁷.

The Court also has the Office of Public Counsel for the Defence, which assists and acts as an amicus on defence issues that require the Office to be independent in terms of its substantive functions, but falls within the remit of the Registry solely for administrative purposes. They are mandated by Regulation 77 of the Court's regulations, which lays down four primary functions of the Office. These are: -³⁸

1. Representing and protecting RoC 77(4)(a)³⁹
2. Supporting and assisting RoC77(4)(b) ⁴⁰
3. Appearing RoC 77(4)(c)⁴¹
4. Acting on appointment RoC 77(4) (d-f)⁴²

IV. OBSERVATIONS

Actus Curiae Neminem Gravabit, an act of the Court shall prejudice no one.⁴³ A legal principle that clearly states the Court needs to be independent, as discussed in the above passages,

³⁵ 'Office of the Prosecutor' <<https://www.InternationalCriminalCourt-cpi.int/about/otp>> accessed 27 October 2025.

³⁶ 'INTERNATIONAL CRIMINAL COURT Chief Prosecutor Karim Khan Steps aside until Sexual Misconduct Probe Ends' (16 May 2025) <<https://www.bbc.com/news/articles/cgeg738rvdeo>> accessed 27 October 2025.

³⁷ 'Israel Gaza War: INTERNATIONAL CRIMINAL COURT Prosecutor Seeks Arrest Warrants for Netanyahu and Hamas Leaders' (20 May 2024) <<https://www.bbc.com/news/articles/c3ggpe3qj6wo>> accessed 27 October 2025.

³⁸ 'The Office of Public Counsel for the Defence - Google Search' <https://www.google.com/search?q=The+Office+of+Public+Counsel+for+the+Defence&oq=The+Office+of+Public+Counsel+for+the+Defence&gs_lcrp=EgZjaHJvbWUyBggAEEUYOdIBBzE2MGowajmoAgawAgHxBQX-XZ8cdl4J&sourceid=chrome&ie=UTF-8> accessed 27 October 2025.

³⁹ 'RegulationsCourt_2018Eng'.

⁴⁰ *ibid.*

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ 'Actus Curiae Neminem Gravabit - B&B Associates LLP' <<https://bnblegal.com/actus-curiae-neminem->

elucidates the very foundation of the Court. The statute that gives birth to the institution has time and again reminded us that the Court is independent. The staff, the Prosecutor, and especially the Defence should be independent. The evidence has supported my argument that the Court itself is very independent. It is the external factors, such as the state's ignorance, unlawful sanctions, and domestic hurdles, that make the job of the Prosecutor a nightmare, undermining the functioning of the Court.

At this time of conflict, the need for the International Criminal Court has never been greater, and its independence is at its highest. The high contracting parties should understand that this institution is much higher than the sovereignty of the state. This institution is a necessity for humanity.⁴⁴, and all nation-states should look beyond the borders of national sovereignty and unite to work for the upliftment and betterment of the entire human race.

V. THE WAY FORWARD FOR THE INTERNATIONAL CRIMINAL COURT

During the current session of the International Criminal Court Assembly of Parties, the parties discussed, following a clarification of the Court's jurisdiction, how the International Criminal Court should support national prosecutions and assist capacity building in willing states. It is widely debated whether the Court's jurisdiction reflects an anti-African bias or whether it reflects the absence of national proceedings in the relevant countries.⁴⁵ The participation of powerful states poses a challenge for the International Criminal Court. The Security Council can refer the situation, even though, as stated earlier, most P5 members are not parties to the International Criminal Court, since the International Criminal Court is an independent organisation. The UN Security Council should not refer the situation without providing adequate support.⁴⁶

The organisation proves to be effective when used in its full capacity for the benefit of justice.

VI. CONCLUSION

From ancient *nyaayaadheesh*, "free and fearless", via a sui generis International Criminal Court, independence is not ornament, but the whole architecture. Authority will endure only if independence lives on the page, in the structure, and in the daily discipline under the political fire. The controversial Nuremberg legacy, the Rome Statute and the International Criminal

gravabit/> accessed 27 October 2025.

⁴⁴ 'About the Court' (n 7).

⁴⁵ 'Three West African Countries to Quit International Criminal Court' (n 39).

⁴⁶ Darryl Robinson, 'Feeling a Way Forward for International Justice – ICC, Africa and the World' (*EJIL: Talk!*, 22 November 2016) <<https://www.ejiltalk.org/feeling-a-way-forward-for-international-justice-icc-africa-and-the-world/>> accessed 27 October 2025.

Court, the Code of Judicial Ethics, and the UN Basic Principles all combine to link an impartial judgment to the security of assignment, confidentiality, demotion in an orderly manner, and prosecutorial independence. The enduring maxims—"nemo iudex in causa Sua," "Actus Curiae Neminem Gravabit," and "Fiat justitia ruat caelum"—are working constraints, not slogans, measuring independence by even-handed jurisdiction and consistent enforcement, allies included.

The Court is most vulnerable when it relies on others: sanctions, withdrawals, and non-cooperation convert legal ideals into operational deficits that erode investigations, witness protection, and victim support. The way forward is practical and principled—deepen complementarity, fortify defence equality via the Office of Public Counsel for the Defence, insulate prosecutorial choices with review against clear standards, and tie any Security Council referrals to concrete cooperation guarantees and resources. In an era of proliferating conflicts, credibility means equal justice under law for genocide, crimes against humanity, war crimes, and aggression—beyond borders of sovereignty, without fear or favor, and without delay.
