EDITORIAL HIGHLIGHTS

25-11-2026

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GS 2/GS 3: FEDERALISM & ENVIRONMENT
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Who pays for climate change is a federal question



Mukund P. Unny

An Advocate-on-Record at the Supreme Court of India

In the 1990s, several U.S. States sued the tobacco companies to hold them accountable for the health hazards of cigarettes. This litigation led to a 1998 Master Settlement Agreement, under which the companies committed at least $206 billion over 25 years as compensation for the harmful effects of cigarettes. Inspired by the famous tobacco litigation case of the 1990s, a small county called Boulder in Colorado, U.S., initiated a major litigation under the State law, in 2018, to fix liability on major oil and gas companies for the impact of climate change.

The suit claimed compensation for recovering the costs of coping with wildfires, floods and heat by building a case on public nuisance and consumer protection. In May 2025, the Colorado Supreme Court allowed the suit to proceed, holding that federal law did not pre-empt Boulder's claims for damages under State law.

The oil companies, now backed by the Donald Trump administration, argue that federal law, including the Clean Air Act and the very structure of the American Constitution, forbids a State from applying its own law to global emissions.

They argue that a State cannot use its own tort law to make companies pay for harm from global emissions. This case has now ended up in the U.S. Supreme Court which recently heard arguments on the most important question in climate governance: who pays for climate disasters, and whether States have a role in formulating climate policy?

The Indian nexus

Since climate change is an international phenomenon, the issue in the U.S. has a direct nexus with India. When climate disasters affect India, its States are left to its own devices, with little help from any direction. When landslides tore through Mundakkai and Chooralmala in Wayanad on July 30, 2024, the Keralam government reported 298 deaths and 32 missing people. The Union took nearly five months to declare the tragedy a "disaster of severe nature", and when assistance for rehabilitation came, it came not as a grant but as a 50-year interest-free loan of ₹529.50 crore. After the 2023 floods in Himachal Pradesh, the State government pegged the losses at ₹9,042 crore. Even though the Union Government released ₹633.73 crore in NDRF assistance for immediate relief, it sanctioned only a meagre ₹2,006.40 crore for recovery and reconstruction plan nearly two years after the disaster. In Punjab, after the floods of August and September 2025, the State government demanded ₹20,000 crore in immediate relief. The Union government announced only ₹1,600 crore as the relief. Like in Boulder, the governments that bear the costs of climate disasters are not the ones that control the climate policy.

States bear climate costs but lack the powers and resources to respond

The Union occupies the field

The Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 were enacted by Parliament to give effect to the Stockholm Conference of 1972. Article 253, under which the Air Act and Water Act were enacted, permits Parliament to legislate on any subject, including those in the State List, to implement an international agreement. Once climate change is framed as a treaty obligation, the Union can claim the entire field.

The law on disaster management deepens the imbalance. 'Disaster' finds no mention in any of the three Lists of the Seventh Schedule; Parliament enacted the Disaster Management Act, 2005 by drawing on entries in the Concurrent List such as 'social security and social insurance', the participation of the States in the framing of environment policy is minimal.

The Union has also kept the revenue that climate policy generates. The Clean Environment Cess on coal, raised to ₹400 a tonne in 2016, which was collected entirely by the Union, since Article 270(1) keeps cesses outside the pool of taxes shared with the States. Can the States claim the Clean Environment Cess for climate relief?

In *M.K. Ranjitsinh vs Union of India* (2024), the Supreme Court of India recognised a right against the adverse effects of climate change under Articles 14 and 21, observing that the absence of a single climate statute "does not mean that the people of India do not have a right against the adverse effects of climate change". Earlier, *M.C. Mehta vs Union of India* (1987) laid down the rule of absolute liability for hazardous industries, and *Vellore Citizens Welfare Forum vs Union of India* (1996) made the "polluter pays" principle part of the law of the land. The National Green Tribunal Act, 2010 empowers the tribunal to award compensation for environmental damage. But despite the spread of law across different statutes, real polluters have rarely paid for polluting the environment in India.

The Sikkim High Court has now opened a door that the law has so far left shut. In September 2026, a Bench led by Chief Justice A. Muhamed Mustaque initiated a *suo motu* public interest litigation, *In Re: Climatic Justice in the State of Sikkim*, after the flash floods in neighbouring Nepal. The Court has called for climate-risk assessments from the State's departments and all six districts.

The Bench has also called for a shift from "reactive disaster management" to an "anticipatory and participatory model of climate governance". For a Himalayan State that saw the glacial lake outburst flood in the Teesta valley in October 2023, the case gives the Court a chance to confront the question that federalism has so far avoided: when a State suffers a climate disaster, who must bear its cost, and what does the Union owe it?

Sharing the financial burden

We are confronting a climate crisis and the need of the hour is a decentralised system in climate governance. Our climate change policy is deeply centralised which takes away the States power to act without giving them the means to recover.

The way forward lies in sharing both the authority and the burden. The Finance Commission may have to start considering climate vulnerability as a criterion in the devolution of funds. Disaster relief to the States must come as grants, not as loans with deadlines attached, and within a fixed time after a disaster. Levies on fossil fuels must be shared with the States that bear their costs. The U.S. Supreme Court will decide who may sue for climate damage and against whom. India must decide, before the next major disaster, who pays for it.

GS 2: INTERNATIONAL RELATIONS

THE HINDU PAGE: 08

A changing Washington, a shift in U.S.-Israel ties



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Israel-U.S. relations after the midterms are strained but not broken

On the morning of the midterm elections in the United States on November 3, U.S. President Donald Trump announced that the U.S. would stop giving Israel about $4 billion a year, under a deal he said he had made with Israeli Prime Minister Netanyahu months earlier. The announcement was widely seen as a last-minute attempt to limit the damage to the Republicans. It failed. But it was a tacit admission by Mr. Trump that unconditional support for Israel had become a political liability.

The Republicans suffered a heavy defeat, with the Democrats winning both the Senate and the House. U.S. Vice-President J.D. Vance went further, saying the Iran war was the reason that the Republicans had lost, and called on the party to change its relationship with Israel.

Eroding public opinion

American public opinion on Israel has shifted sharply. Nearly half of American voters – three times as many as in 2017 – now believe that the U.S. is excessively supportive of Israel. Earlier this year, for the first time, more Americans empathised with the Palestinians than with the Israelis.

The shift is most marked among Democrats, but younger Republicans are also turning against Israel. The change is also visible in the U.S. Congress. In 2024, only 18 Democratic Senators supported an effort to block arms sales to Israel.

By April this year, 40 of the 47 Democratic senators voted against the sale of bulldozers to Israel. In September, 46 of the 47 voted for a resolution requiring the State Department to report on the killing of American citizens by Israeli settlers or security forces in the West Bank. The motion, however, failed to secure a majority.

Such unity on a resolution critical of Israel would have been unthinkable a few years ago. Abdul El-Sayed, who campaigned for an end to all military aid to Israel and accused it of genocide, won a Senate seat in Michigan despite heavy spending by the American Israel Public Affairs Committee (AIPAC), the main pro-Israel lobby.

However, a study by Israel's Institute for National Security Studies (INSS) suggests that the picture is more nuanced. It divides Democratic lawmakers into three camps. The smallest, the Left Progressives, wants to end all military aid to Israel and accuse it of genocide. It has been joined by El-Sayed, Troy Jackson of Maine and six House members backed by the Democratic Socialists of America. The largest, the Mainstream Progressives, wants U.S. aid to be conditioned on human rights and support a Palestinian state, but stop short of an arms embargo. The third, the pro-Israel establishment, is backed by AIPAC and opposes conditions on aid, but is under growing pressure, with only seven Senators clearly in its ranks. The momentum in the Democratic party clearly favours conditional aid.

Looking ahead

Yet, the relationship is strained but not broken. Most Democrats make a distinction between support for Israel's security and support for Israeli hardline policies. Party leaders such as Chuck Schumer, the likely Senate Majority Leader, and Hakeem Jeffries, the presumptive Speaker, remain firmly supportive of Israel's security, though Mr. Jeffries has called for changes in the relationship. Additionally, several moderate, pro-Israel Democrats have also won in the midterms, and therefore anti-Israel factions will find it harder to dictate the agenda.

The midterm results will not immediately transform U.S. policy. Mr. Trump will still control foreign policy, and a Democratic Congress cannot force him to change course. The real significance of the new U.S. Congress may lie beyond 2028.

Over the next two years, it can constrain the U.S. administration, pressure Israel on settler violence and scrutinise military aid. These steps would lay the ground for a markedly different policy if a Democrat wins the White House in 2029. However, the end of U.S. aid may be more a change of label than of substance. Israel has received more than $300 billion in U.S. assistance since 1948, in inflation-adjusted terms, and Washington has repeatedly provided emergency funding beyond the annual $3.8 billion. Future funding is likely to be routed through the Pentagon's research, development and procurement budgets, under which Israel could continue to receive billions in U.S. military spending without it being categorised as foreign aid. In effect, Mr. Trump would remove the politically damaging label while preserving, or even expanding, the military relationship.

Inside Israel

Much will depend on who governs Israel. Opposition leader Gadi Eisenkot, tasked by President Herzog with forming a government, has until December 6, extendable to December 20.

His bloc has 48 seats, lacks a majority and faces difficult coalition negotiations. Mr. Eisenkot has explored an arrangement with the ultra-Orthodox parties, which are seeking exemptions from military service for yeshiva students.

He also faces divisions within his bloc over relying on the Arab parties, which hold 19 seats. A minority government dependent on their support or abstention remains an option. A unity government with Likud appears unlikely, given the opposition bloc's commitment to unseating Mr. Netanyahu.

Much will also depend on Israel's policies. It will need to stop settler violence and settlement expansion, end attacks in Gaza and move towards a political settlement with the Palestinians.

Actions will count for more than words. Thus, a post-Netanyahu government without far-right Ministers Itamar Ben-Gvir and Bezalel Smotrich, and willing to change course, could find far more willing partners in Washington and other capitals.

GS 3: INDIAN ECONOMY & EMPLOYMENT

THE HINDU PAGE: 09

Revisiting monthly frequency of PLFS



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To meet the growing demand for employment-unemployment statistics at a more frequent interval, the Ministry of Statistics and Programme Implementation introduced the Periodic Labour Force Survey (PLFS) with its first round conducted in 2017-18.

The PLFS was launched primarily with two objectives: one, to produce detailed annual estimates of important labour force parameters based on a longer reference period of one year and a shorter reference period of one week (popularly known as the Current Weekly Status (CWS) approach) preceding the date of survey for both rural and urban areas of States and UTs; and two, publishing quarterly estimates of three key labour force indicators – the Labour Force Participation Rate (LFPR), the Worker Population Ratio (WPR), and the Unemployment Rate (UR) – as per the CWS for urban areas of 22 major States as well as all-India. These parameters have significantly strengthened India's labour market database.

Since January 2025, the PLFS sampling methodology was revamped to produce monthly estimates of LFPR, WPR, and UR as per CWS for both rural and urban areas at the national level, apart from expanding the coverage of quarterly estimates to rural areas as well. This necessitated a substantial increase in sample size. During PLFS-2025, around 2.7 lakh households were visited for data collection as compared to about one lakh households which used to be visited under the old design. Similarly, the total number of sample locations (villages/urban blocks) increased from about 12,700 earlier to 22,594 during PLFS-2025. Importantly, the cited figures represent only the 'first visit' samples and do not include a large proportion of these samples covered under 're-visits'. Under the revamped design, the monthly PLFS collects data from nearly 4,100 villages and 3,400 urban blocks, gathering data from about 49,000 rural and 40,000 urban households.

Analysis clearly shows that the revamped PLFS design with a substantial increase in sample size produces monthly estimates which do not differ significantly across most months

Static monthly numbers

Given the substantial increase in sample size, it would be of interest to examine the month-to-month changes in key indicators. This will help assess whether the observed changes reflect ground reality or whether they are likely due to sampling fluctuations.

For brevity, this article examines two indicators – the WPR and UR, considering all persons aged 15 years and above, with rural and urban areas taken together. Further, the scope of this analysis is confined to the latest 10-month period from January 2026 to October 2026, reflecting the most recently released estimates.

For the 10 consecutive months till October 2026, the released estimates of UR are 5%, 4.9%, 5.1%, 5.2%, 5.5%, 5.5%, 5.1%, 5%, 5%, and 4.9% respectively while the corresponding WPR estimates are 53.1%, 53.2%, 52.6%, 52.2%, 51.4%, 51.4%, 52.5%, 52.8%, 52.7%, and 53%. Statistically, whether these estimates – and more importantly the observed month-to-month changes – reflect actual ground realities can be assessed by estimating 'Confidence Limits' (CLs) for each month within which the true values are likely to fall with a pre-specified probability. For any two selected months, the observed change in the indicator is not statistically significant if their 'Confidence Intervals' (CIs) overlap. Under such a situation, while the estimates may suggest an increase or decline, the true underlying trend in the population could be different.

Importantly, none of the nine monthly changes in the UR from February to October 2026 have been statistically significant compared to their preceding months. For example, consider April 2026 and May 2026, with published URs as 5.2% and 5.5%, respectively. The CIs – with a probability of 0.95 (that is, with a 95% chance) – for the UR are 5%-5.4% for April 2026 and 5.3%-5.7% for May 2026. These ranges overlap and it is possible that the true URs were 5.4% in April and 5.3% in May. Therefore, the actual UR might have declined in May 2026, despite the published estimates indicating an increase. A similar pattern applies to the WPR, where monthly changes are statistically significant only for the two months of May and July 2026.

The analysis clearly shows that the revamped PLFS design with a substantial increase in sample size produces monthly estimates which do not differ significantly across most months. Detecting real changes in these monthly indicators would require overhauling the sampling strategy and further expanding the sample size. Given the high resource costs with no significant difference noticed in the monthly estimates, a practical alternative is to release only quarterly and annual estimates, tailored to appropriate sample size requirements.

GS 2: POLITY & JUDICIARY
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In Bilkis Bano case, SC order imperils promise of an equal justice



BRINDA KARAT

BILKIS BANO, in her courageous statement, which will surely awaken the conscience of everyone who has one, has said that she will appeal against the Supreme Court (SC) order suspending the life sentences of two of the 11 men convicted in her case and releasing them on bail. This appalling order was made without giving her an opportunity to be heard. Since that horrific day in March 2002, when 14 members of her family, including her mother, brothers, sisters, cousins and three-year-old daughter, were brutally killed, and she herself was gang raped, Bilkis has had to fight for justice. How much more pain and grief is this system going to inflict on her?

Did the judges who passed this order read the 2024 judgment authored by Justice B V Nagarathna, which reversed the remission granted to the convicts in 2022 with the approval of the all-important Home Ministry? Did they consider its description of the crimes against Bilkis and her family as "grotesque and diabolical, driven by communal hatred"? Although that judgment dealt with different issues, it records the case history and meets the arguments advanced by the convicts. Given the detail with which the case was examined, it is surprising that the matter was considered by a different bench.

The grounds cited for suspending the sentences and granting bail repeat arguments rejected by courts earlier: The long years spent in jail, the fact that a name was added three years later, and so on. The convicts have been treated with extraordinary leniency by Gujarat authorities. After conviction, they were granted parole for an average of three years each, besides more than a year of remission. Nor should the SC need reminding that the Bombay High Court found police personnel guilty of tampering with evidence, including Bilkis's first statement, in which the men she had named were omitted from the FIR. The haste with which the sentences have been suspended without any substantive reason opens the door for the remaining convicts to seek similar relief.

One convict has been granted bail on grounds of "disability". The extent of the disability has not been made public. But it is difficult not to recall the SC's treatment of the late G N Saibaba, the severely disabled Delhi University professor. Despite a medically certified 90 per cent disability, the SC refused him bail, observing that in "terrorist" acts, "brain usage is more important than any other physical involvement". Saibaba was later acquitted of all charges. Such selective judicial concern — granting bail to convicts in a communal crime on the ground of an undisclosed disability, which earlier courts had rejected — can hardly enhance public confidence in the judiciary.



There are fundamental questions about the meaning of a life sentence. In *Gopal Vinayak Godse v State of Maharashtra* (1961), concerning the brother of Nathuram Godse, a Constitution Bench ruled that life imprisonment does not mean a fixed term of 14 or 20 years; it lasts for the remainder of the prisoner's life, unless lawfully remitted. In a crime as heinous as that committed against Bilkis and her family, driven by "communal hatred", surely this principle must carry weight. Leniency towards these convicts establishes a dangerous precedent.

Many of us oppose capital punishment. Yet it remains on the statute books, subject to the judicial test that it be imposed only in the "rarest of rare" cases. What crimes qualify? In 2012, a woman in Delhi was brutally gang-raped and subjected to sexual torture, and died of her injuries. Six men were involved, one a minor. The adult accused were convicted and sentenced to death; four were hanged, one died by suicide, and the minor served a three-year term under juvenile justice law. The judiciary held that the case qualified as one of the rarest of rare, as indeed it did. But the crime against Bilkis was no less brutal. Why was it not placed in the same category? The use of women's bodies to perpetrate sexual crimes during communal violence has never been recognised by the courts as a factor placing such crimes in the "rarest of rare" category.

Even when justice was secured in the Bilkis case — as in the 2008 convictions, the 2017 High Court judgment and the 2024 Supreme Court judgment — it was undermined by communal majoritarian forces within the system. The issue goes beyond the injustice inflicted on Bilkis Bano. The promise of equal justice is placed in jeopardy for every citizen. To quote the 2024 judgment "Courts have to be mindful of not only the spelling of the word 'Justice' but also the content of the concept. Courts have to dispense justice and not justice being dispensed with."

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GS 1/GS 2: SOCIAL JUSTICE & POLITY
INDIAN EXPRESS PAGE: 11



In crimes against women, how to define woman

SHIVANI VIJ

WHILE THE challenge to the Transgender (Amendment) Act, 2026 is pending in the Supreme Court (SC), a related but distinct question has surfaced before the courts: Does the word "woman" in penal statutes include transgender women? The constitutional recognition of gender identity in *NALSA v UOI* (2014) favours inclusivity, but the issue is more nuanced and is best addressed in two categories.

In a case concerning outraging modesty under the BNS, the Bombay HC interpreted the pre-amendment definition and held that the allegations could be sustained by a transgender person who identifies as a woman; she had not undergone gender-affirming surgery (*Vishal Sunil Ingle*, 2026). However, the Allahabad HC, in the context of false promise to marry, held that despite surgery, transgender women do not fall under the statutory definition of a woman. It stated that the law intended for transgender and cisgender women to be protected separately, retaining the distinction between sex and gender (*Mohd Saaklr*, 2026).

Leaving aside the amendment, which narrows the definition of a transgender person, Section 7(1) recognises the choice to undergo gender-affirming surgery. The person is then eligible for a change in the legal recognition of their gender. Once this choice is made, excluding transgender women from the statutory protections available to women is irrational and arbitrary under Article 14. This category is largely non-contentious and makes an easy case for inclusion.

Transgender persons who have not chosen surgery include those with intersex variations at birth, as per the amended definition, and those with a self-perceived gender identity, as per the original definition. Their exclusion undermines their right to gender identity — a substantive protection not contingent on surgery.

First, the Transgender Act has only piecemeal offences for crimes against transpersons, such as abuse, coercion and exploitation. These carry a maximum punishment of two years, far less than those against women under BNS. There is a vacuum as far as sexual and gender-based violence against transgender women is concerned. This provides a strong basis for inclusion. Second, persons with intersex variations who identify as women, and those whose self-perceived gender identity is female, face disadvantages arising from such identification. This doesn't mean the disadvantages faced by cisgender and transgender women are always similar, just that discrimination arises from their identification with the feminine gender. Thus, biological characteristics cannot be the sole determinant of legal protection.

> Where a trans woman is subjected to non-consensual sexual acts falling within the definition of rape, protection shouldn't be denied solely due to sex assigned at birth

Third, the true test should be whether the ingredients of an offence are otherwise satisfied under the penal statute. If so, the class of victims should be read broadly. Where a trans woman is subjected to non-consensual sexual acts falling within the physical acts under the definition of rape, protection should not be denied solely because of sex assigned at birth. This would also make a case for gender-neutral sexual offences through broader legislative reform.

While the question would ultimately require consideration by the SC, the interpretation must favour inclusion rather than exclusion. This would not prevent the legislature from enacting special provisions for aggravated crimes but would acknowledge the recognition and inclusion that transgender women have long been fighting for.

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GS 2: POLITY & JUDICIARY
INDIAN EXPRESS PAGE: 14

• LEGAL

Contempt of court: When the law applies, and when it doesn't

Apurva Vishwanath
New Delhi, November 24

THE SUPREME Court on Monday came down heavily on an additional sessions judge in Bihar who had convicted his district's police chief of contempt of court. The bench, headed by Chief Justice of India Surya Kant and also comprising Justices Joymalya Bagchi and V Mohana, in oral observations told the judge to stop acting like "Bahubali", while questioning his reading of the provision he had relied on.

The judge had relied on Section 384 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which replaced Section 345 of the Code of Criminal Procedure. The provision gives powers of contempt for offences "committed in the view or presence" of any Civil, Criminal or Revenue Court.

What is the law on contempt? And why is not following a district judge's orders not contempt?

The case

The 4th Additional Sessions Judge at Sasaram in Rohtas had found the Superintendent of Police guilty of wilfully failing to carry out the court's directions, convicted him under Section 384 of the BNSS and fined him Rs 1. The judge directed the registration of an FIR for perjury against the victim in a kidnapping case.

The police officer had challenged the Sessions Judge's ruling before the Patna High Court. The High Court stayed any further action while castigating the judge, which prompted him to move the Supreme Court against the remarks.

In the Supreme Court hearing Monday, Justice Bagchi observed that failure to comply with a judge's direction is not a crime committed "in the face of the court". If the judge believed police were defying his orders, he said, the matter should have been left to the High Court. The top court was essentially drawing out the lines that run through contempt law, which deals with different kinds of contempt through different procedures and forums.

Constitutional courts

Punishing for its contempt is a power that flows to courts from the Constitution itself. Articles 129 and 215 make the Supreme Court and the High Courts "courts of record" with the power to punish contempt of themselves. Contempt of courts is also a "reasonable restriction" or a facet of speech that is exempted from the right to free speech.

The primary statute that governs how this Constitutional power is exercised is the Contempt of Courts Act, 1971. The offences under this statute can be broadly categorised as civil and criminal contempt.

CIVIL CONTEMPT is defined as wilful disobedience of a court's judgment, decree, direction or order, or wilful breach of an undertaking given to a court. For example, Vijay Mallya was held guilty of contempt by the Supreme Court in 2017 for transferring $40 million to his children despite the court ordering him not to do so.

CRIMINAL CONTEMPT covers publications or acts that scandalise or lower the authority of a court, interfere with judicial proceedings, or obstruct the administration of justice. In 2020, the Supreme Court began proceedings on its own over two tweets by advocate Prashant Bhushan about the court and the Chief Justice. It held him guilty and fined him Re 1, with three months in jail and a three-year bar from practice if he did not pay.

There is also contempt as an offence in the penal code, which is more commonly used in district courts.

Contempt 'in the face' of court

When the misconduct takes place inside the courtroom, a faster procedure applies. The Supreme Court and High Courts deal with it under Section 14 of the 1971 Act. Trial courts have the narrower power under Section 384 of the BNSS, the provision used in Rohtas. It covers five offences, including refusing to answer questions and intentionally insulting or interrupting a judge. It allows a fine of up to Rs 1,000, imposed before the court rises that day.

However, the decision on whether to act on such conduct largely depends on the judge involved. In October 2025, an advocate tried to throw a shoe at then Chief Justice B R Gavai in court. The Attorney General gave the consent the law requires before a private party can seek criminal contempt action in the Supreme Court. However, a bench of Justices Surya Kant and Bagchi declined to pursue the case, noting that the CJI himself had chosen to ignore the incident.

Not contempt

- Section 384 of the Bharatiya Nagarik Suraksha Sanhita gives powers of contempt for offences 'committed in the view or presence' of any Civil, Criminal or Revenue Court.
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GS 2: INTERNATIONAL RELATIONS & LAW
INDIAN EXPRESS PAGE: 14

• GLOBAL

Road to Myanmar's landmark genocide verdict, its implications for Israel's case



EXPERT EXPLAINS

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THE INTERNATIONAL Court of Justice (ICJ) last week found that the Republic of the Union of Myanmar "committed genocide" against the Rohingya ethnic group in its Rakhine State. The verdict makes Myanmar the first sovereign State in history to be directly held responsible for such a crime.

It comes 78 years after the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide, and 82 years after lawyer Raphael Lemkin coined the term "genocide".

Holding a 'State' responsible

The 1948 convention defines genocide as killing members of a group, causing them serious bodily or mental harm, deliberately inflicting conditions to bring about the group's destruction, imposing measures to prevent births within the group, and forcibly transferring their children to another group.

Its adoption marked a unique development for international law. In that decade, the most prominent international legal development was the codification of individual criminal responsibility, when Nazi German officials were held responsible for 'high crimes'. The 1945 London Charter for the International Military Tribunal at Nuremberg listed three categories: Crimes Against Peace, War Crimes and Crimes Against Humanity.

The World War II trials prosecuted individuals and not States, despite the Holocaust being perpetrated as part of Nazi State policy. That only individuals could be held criminally responsible was clear in the very first of the 'Nuremberg Principles': "Crimes against international law are committed by men, not by abstract entities..." Even when the State of Israel prosecuted Adolf Eichmann for the Holocaust, judges had to draw parallels to the crime of international piracy to highlight the gravity of genocide and argue that any accused could be tried by any legal authority anywhere.

The jurisprudence of such courts was advanced through the last century. Individual criminal responsibility for genocide, war crimes, and crimes against humanity was advanced principally by the International Criminal Tribunals for Rwanda and Yugoslavia, before being codified in the 1998 Rome Statute for the International Criminal Court (which specifically prosecutes individuals).

History of genocide cases at ICJ

For the ICJ to conclusively find a breach of the 1948 Genocide Convention, two aspects must be present — *actus reus* or the physical act, and *dolus specialis* or the specific intent to commit the crime of genocide.

The path to establishing such intent is narrow. Based on the ICJ's jurisprudence: "The Court may only establish genocidal intent by inference from circumstantial evidence if it is the only reasonable inference that can be drawn from the evidence".

The ICJ has earlier ruled on two other cases involving the convention: *Bosnia and Herzegovina v. Serbia and Montenegro* (2007) and *Croatia v. Serbia* (2015). In the latter, the court did not find *dolus specialis*. In the former, however, the ICJ did recognise the 1995 Srebrenica Massacre as genocide but held that Serbia's main violation was failing to prevent individual perpetrators.

Crucially, in both cases, the ICJ relied on the findings and reasoning already established by the Yugoslavia Tribunal to consider the presence/absence of *dolus specialis*.

In the latest *The Gambia v. Myanmar* case, however, the ICJ's reasoning was drawn principally from the facts submitted for this case alone. Their findings were sufficient to pass the "only reasonable inference" test, allowing Myanmar to be held directly responsible for genocide under Article III of the 1948 convention.

South Africa v. Israel

The ICJ is not a Court of Record, as understood in the domestic sense for any country. It is not tied to its own past judgments; Article 59 of the ICJ Statute states that its judgments have "no binding force except between the parties and in respect of that particular case."

The historic nature of the latest judgment itself was achieved through a rare 9-6 split amongst the 15 judges of the Bench, showing continued polarisation of opinion on direct State responsibility.

Collectively, this means that there is no predetermined implication of the 2026 judgment on other active cases relating to the 1948 Genocide Convention, such as *South Africa v. Israel* (2023), in which Israel is accused of directly committing genocide in the Gaza Strip.

However, the interpretation of evidence has major implications for how similar evidence could influence future reasoning.

The Myanmar military's 2017 "clearance operations", which killed about 10,000 Rohingya people, its brutal killing of over 2,000 children under the age of five, its "large-scale terrain clearance", and other such acts were all crucial to determine *dolus specialis*. Most importantly, the court ruled that the presence of other counter-insurgency objectives during *actus reus* did not preclude the co-existence of genocidal intent.

In Gaza, Israel has committed similar actions on an exponentially larger scale, justifying it as part of its counter-terror campaign against Hamas. For instance, the 2026 UN Independent International Commission of Inquiry into Israeli actions found that "at least 20,179 children" had been killed in Gaza since December 2023 alone. Notably, for Myanmar, the court considered the killing of children in particular to be "foundational" to the intent of genocide. This, along with many other commonalities, will invariably affect the ICJ's treatment of the Gaza case.