Understanding Armed Conflict

Transitional Justice
What is Transitional Justice?

The concept of transitional justice has multiplicity of definitions and understandings from various organizations and international institutions perspective. Transitional justice refers to the set of judicial and non-judicial measures that have been implemented by different countries in order to redress the legacies of massive human rights abuses.\(^1\) The United Nations described ‘transitional justice’ in the report of 2004 given by the Secretary-General, as given below.\(^2\)

“A full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth-seeking,

in institutional reform, vetting and dismissals, or a combination thereof.”

The measures are political choices made by States that are undergoing a governance transition. The human rights violations being referred to could be caused by the former governments and non-state actors. These measures include criminal prosecutions, truth commissions, reparations programs, and various kinds of institutional reforms. In addition to being a response to widespread or systemic violations of the past, it also seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy and the rule of law usually in a post-conflict environment.\(^3\)

Transitional Justice is based on the basic principle or rather the grundnorm - Rule of Law. Rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.\(^4\) Rule of Law as a concept incorporates the principles of principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency. Hence, it forms lays down the foundation for the conceptual justification for the need of transitional justice in any society that is stepping out of a conflict or recouping from one.

Transitional Justice maintains uniformity across the world by aiming to enforce fundamental international law norms throughout the process a State has adopted. Since it addresses the human right violation, it follows the International Humanitarian Law, International Human Rights Law and the principles of due process in criminal prosecutions. The Transitional Justice system laid down internationally needs to be implemented in the National reform schemes for it to work effectively. It is essential that these efforts be based upon meaningful public participation involving national legal professionals, Government, women, minorities, affected groups and civil society to show effect and address the post-conflict societal needs. The political environment and needs should also be taken into consideration while affecting the process of Transitional Justice in terms of institutional and legal reforms.

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The main objectives of Transitional Justice can be understood as to resolve the disputes and divisions in the society that have arisen from human rights violations which in turn helps in restoration and rehabilitation of victims. The mechanism behind transitional justices determines the legal accountability for such violations leading to criminal prosecution of the perpetrators. It ensures that no impunity is granted to such gross, heinous crimes against humanity. The information gathered forms an historic record that basically is indicative of a caution against the recurrence of any such violations. Precautionary measures are taken by the State to avoid such acts in the future by spreading awareness amongst the people by educating them on the history of the war and crimes, and human rights that is vested in them. The State also aims to promote stability in the society through peace.

The objectives are achieved through setting up of Truth Commissions, recognizing victims and giving reparations, bringing in institutional reforms, addressing the importance and implementing means to achieve gender justice, and above all integrating local and global of transitional justice.

*Given below is a detailed description of functioning and implementation of Truth Commission and Reparations.*

**Truth Commissions**

Truth commissions are official, temporary, non-judicial factfinding bodies that investigate a pattern of abuses of human rights or humanitarian law committed over a number of years. It is strongly recommended that they be formed through a consultative process that incorporate public views on their mandates and on commissioner selection, and that they garner sufficient international support to function and recognize their independence when it comes to functioning.

Truth Commissions help in achieving the objectives of justice and peace, as they complement the institutional set up of Tribunals – International, National and Ad hoc. They are potential platforms for reconciliation for victims and post-conflict societies. These commissions take a victim-centred approach ensuring their voices are heard by the nation directly facilitating public discourse on the past violations. The truth commission seeks to collect all the facts of the crime, i.e., past human right violations, reads it in context of the circumstances under which it all occurred. This helps in creating a record of events and making a timeline, which can be maintained as historical records. The commission also gives recommendations which act as remedy to the victims and the society. Apart from which the work done by the commission helps account liability by identifying the perpetrators based on all the facts and evidence collected, which is used to account for reparations to be given to the victims and bring in the necessary legal and institutional reforms to prevent such crimes from recurring in the future.

The benefits of forming a Truth Commission can only be fully utilized if the entire process is transparent and credible. The sensitivity of the subject matter being looked into must be understood and respected, especially when they deal with discrimination and gender issues. Hence, it can be understood that

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7 Ibid p.17.
Truth Commissions are the most productive solutions in strong, stable and democratic civil societies where there is free speech for the victims to narrate their stories and the public to debate on solutions; strong judiciary to subsequently try the perpetrators; substantive funding by the state.

Reparation Programmes

Justice is served to the victim of crimes against humanity through recognizing their condition and the violations they have ensued, one of the means of granting such recognition is reparations. Reparations are compensations given to victims for the loss they would have suffered due to the conflict resulting in violations. It includes non-monetary elements, such as the restitution of victims, legal rights, programmes of rehabilitation for victims and symbolic measures, such as official apologies, monuments and commemorative ceremonies. It could also be given for loss of property leading to displacement, given to refugees to help sustain, etc. Reparations are one of the duties the State is obliged to do for its citizens subsequent to a human right violation. The victims’ right to reparations was recognized by the UNHRC in 2006 by passing a resolution to address the basic principles and guidelines on the scope of such a right.9

Principle 15 under the Resolution addresses the issue of computing such reparations in case it’s monetary in nature and the harm it should cover and the subject to whome it should get distributed. It reads:

“Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.”

Reparations complement the process of Tranistional Justice as it aims at ensuring justice to the victims of human right violations, along with restoration of peace in the society by addressing the past violations. Trials by Tribunals should mandatorily happen with a special mechanism for reparations being run along side like in the case of Rwanda and Yugoslavia trials.10

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8 Ibid p.18