



# CHALLENGES AND SOLUTIONS IN TRANSITIONAL JUSTICE

Dr. Rinku Mukeshbhai Darji

Assistant Professor, Shree P. M. Patel P.G. Institute of Law and Human Right, Anand, Gujarat, India.

## ABSTRACT

Transitional justice has been increasingly popular in recent years as a way of dealing with past wrongdoings and restitution. Because of the contradiction between retributive and restorative justice, its techniques have made a distinct contribution to the cultures in which they have been applied. Trials (as a retributive form) and truth commissions, amnesties, and reparations (as a restorative form) are subject to a variety of issues and critiques, both theoretically and practically. Transitional justice must be realistic, which means learning from all experiences and improving work on education, financing, planning, and evaluation of processes; contributing to social and political change; and spreading the word about what is being done. When possible, different mechanisms should be combined to achieve better results.

**KEYWORDS:** Transitional Justice, Law, India, Legal.

## INTRODUCTION:

Promoting justice, restitution, and reconciliation following a conflict is a lengthy process that may take years to accomplish. However, unresolved systematic abuses of human rights contribute to societal discontent and frequently result in new violence. It is important to re-establish the rule of law during periods of war or authoritarianism if long-term peace and well-functioning governments are to be achieved. Transitional justice is a remedy for systemic or chronic human rights violations. It seeks to recognise victims while also promoting peace, reconciliation, and democracy. Transitional justice is not a distinct sort of justice; rather, it is justice customised to the requirements of communities experiencing transition in the aftermath of massive human rights violations. These changes can occur rapidly in some instances, but may take decades in others.

## BASIC APPROACHES OF TRANSITIONAL JUSTICE:

Many factors, including the specific circumstances of an abuse period, contribute into selecting whether transitional justice approach or set of processes is suitable for a certain country. Are the crimes common or confined to a specific geographical or ethnic group? Is there a high number of criminals or a small number? Was it the government, militants, or both who perpetrated the crimes? Is the perpetrators still in power, or has the transition to a new administration gone smoothly? Is the state well-funded enough to establish a legal system? Are the courts dependable? Is it feasible for the government to compensate individuals for their losses?

Depending on the replies, certain options are more plausible than others. The most important consideration is that any transitional justice procedure must be decided after a comprehensive study of the conflict's circumstances, as well as the positions and interests of victims, leaders, and the general public<sup>4</sup>. The best method to analyse multiple groups' needs and viewpoints is through comprehensive consultations and, preferably, public debate on potential transitional justice options.

The following are some of the factors that impact the utility of various transitional justice systems. These aren't hard and fast rules, but rather different points of view on the topic.

**Criminal Prosecutions:** Prosecutions are the most direct form of accountability, and they work best when competent courts, whether national, international, or hybrid, are in charge of trials. Because the number of potential defendants involved in prior crimes is usually large, and prosecuting them all would be beyond the state's financial, human, and political resources, the number of perpetrators who may be punished is typically limited<sup>5</sup>. To keep prosecutions going, strong political will is required, which is frequently lacking while criminals or their political allies are still in power. Prosecutions take a long time and cost a lot of money, and they only cover individual defendants' offences. Successful prosecutions, on the other hand, send the strongest message against impunity and show victims that the new government is ready to put the terrible past behind them<sup>6</sup>.

**Truth Commissions:** Truth commissions are well-suited to probing large (and long-standing) patterns of abuse, as well as circumstances in which atrocities, whether committed in secret by the government or in remote places, are widely unknown. Rather than punishing people directly, the objective of a truth commission is to establish the facts and causes of systematic abuse in the most unbiased manner possible. Truth Commissions, as official investigative bodies, need a great deal of political will to establish, and they are usually unsuccessful unless

the commissioners are truly independent of the parties engaged in the conflict or abuse. Truth commissions aren't just closed academic investigations; they're a way for everyone in society to find out what kind of abuses occurred and why, as well as how to prevent them from happening again in the future, in a non-criminal setting<sup>9</sup>. They should emerge from wide public debates, and their actions are often most effective when they involve considerable public outreach and involvement.

**Reparations and Compensation :** Reparations and compensation for conflict victims are commonly sought, but they are also the most difficult to acquire - especially when the government's compensation budget is low. Victims must be identified, and their injuries must be appraised (what is appropriate restitution for the mother of a murdered kid or a torture survivor, for example?) For reparations to work successfully, resources must be available to give some form of money or in-kind service to the injured person<sup>10</sup>. Reparations might be connected to the activities of a truth commission in order to make these assessments. Compensation might take the form of a memorial or an apology, or it can be in-kind (free health or education benefits), or it can be monetary (recognising that no amount of money can entirely compensate for emotional loss). Reparations are a powerful instrument for aiding war victims in their rehabilitation, but they may also generate division when one group receives reparations ahead of others who may be eligible.

Although these initiatives are universally acknowledged as providing a solid foundation for transitional justice efforts, they are far from complete. One of the reasons why the sector has increased in strength and diversity over time is because many groups have come up with new strategies to deal with prior mistreatment.

## TRUTH COMMISSIONS:

Truth Commissions are an effective way to foster a collective memory of the past via the formal and public recognition of past crimes. The purpose of a Truth Commission is not to replace a trial, but to evaluate the breadth of massive human rights violations outside the logical framework of a judicial proceeding. Truth commissions are frequently created during periods of transition, when the political institutions charged with maintaining the rule of law are weak, corrupt, or non-existent, and victims are focused with meeting their most basic needs.

Despite the fact that each country and conflict are unique, truth commissions have been used as a mechanism of truth and reconciliation to avert the deflagration of violence that is frequently associated with retributive mechanisms (such as trials or purges), because existing legal structures lack the necessary conditions (infrastructures or specialised personnel) for conducting trials and also for ending<sup>28</sup>. An examination of the past in order to separate the current government's policies from those of the previous administration and to underscore the dawning of a new age of human rights respect.

Regardless of the environment, there are numerous factors to consider while establishing a truth commission, which may be classified into three categories: the panel's establishment, its scope, and the commissioners' selection.

The commission's establishment should consider the recognition and remedy of human rights abuses. Its structure must be clearly defined and efficiently supported by a legal and administrative framework that enables it to function and offer necessary assistance to all members in order to accomplish its objectives.

The commission's rules or statutes must protect the equity of victims, witnesses, and perpetrators in terms of access to means of proof and professional assistance, as well as clearly define the investigation's principles and orientations, particularly its objective, to ensure that the expectations of all parties involved are not disappointed. At the conclusion of its work, the commission should provide a final report outlining its major findings and future recommendations (which should be monitored to see if they were followed or not), as well as contribute to the commission's promotion. All commission operations, particularly those related to the hearings, should be widely publicised across the country via media outlets such as radio, television, and newspapers. In terms of scope, the commission should have a well-defined mandate that describes the investigation's temporal extent, the types of offences that will be examined, the jurisdictions in which violations occurred, and the parties who will be investigated.

Appointment of commissioners should be based on their political independence, integrity, and experience. Additionally, for the sake of justice and equality, this author suggests that the standards include representation for varied locations, «ethnic groups, social minorities, women, and other demographic groupings». The commissioners' legislation, as well as their compensation, responsibilities, and terms of removal, should be examined. In conclusion, truth commissions should be established when social and political conditions allow, in order to achieve the objectives of stability, acknowledgment of wrongdoing, and averting conflict, and when trials have failed to produce positive results (for reasons related to the impact of punishment on society or a lack of infrastructure that prevents trials from taking place) (for reasons related to the impact of punishment in society, or a lack of infrastructure that prevents trials from taking place). The truth commission's organisation should have sufficient time, money, staff, and political stability to ensure that the commissioners' task is accomplished and investigations are as thorough as feasible. Thirdly, there is a need for a final evaluation of the commission's work, as many crimes remain unsolved as a result of the inquiry's scope, and social changes continue.

#### CONCLUSION:

Given that certain forms of transitional justice may perform better alone or in combination with others, depending on the country's social, economic, and political circumstances (it is easier to implement certain mechanisms in economically stable countries; it is more difficult to implement certain mechanisms in countries still at war), the selection of the appropriate mechanism should result from strategically planned decisions. The pursuit of a holistic approach that meets victim needs while also achieving justice, peace, and reconciliation is a key concept that governments should examine. This approach has the ability to reach a greater number of victims, enhance confidence, and bring the procedures closer to the primary players. In light of these concerns, transitional justice may be more realistic. These are novel concerns in terms of how they are addressed in the past and the new visions for states' futures, since there is an acceptance of the necessity of such processes for states to achieve stability and contribute to social progress. Responding to victims' needs and supporting them in processing their grief demonstrates true social responsibility, but it is also the only way to move on following human rights breaches.

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