

DILEMMA IN APPLICATION OF TRANSITIONAL JUSTICE IN THE POST CONFLICT

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Abstract

The term Transitional Justice was mooted in the international justice as a reconciliation process to heal the wounds of the victims who were subject to the atrocities under authoritative regime or civil war and to consolidate democratic justice aiming at building peace and preventing conflict situation in future. Theoretically, I analyze Transitional justice measures and their relationship with theoretical aspects. Truth Commission, Restoration and reparation are generally grounded in moral, social and cultural concepts. Criminal trials and punitive measures executed within the legal justice. Political reforms are done through the democratic justice.

The second part of my article will explore factual situation in relation to the transitional justice concerned with the post conflict society of Sri Lanka and identify causation of variables in persuasion and negation of justice in the theoretical context aforesaid. Transitional justice is a temporary measure and it is not rooted in domestic legal system permanently. Its applicability is to be required and justified with the atrocities done in the authoritative regime or in civil war which were ended with human suffering and regime change. The thirty years war in Sri Lanka is defined in different terms within the range of civil war, ethnic war, terrorist war and separatist war. In the article I analyze whether the nature of the conflict and atrocities associated with it is legally and morally qualified for the application of transitional justice measures.

Concerned with prosecutorial justice, substantive law applicable is examined to test its appropriate applicability in context of conflict of Sri Lanka. In application of procedural law, issues have been arisen as to trial procedure, whether it should be international, domestic or hybrid. In relation to the application of moral justice (non legal) such as Truth Commission is hardly relevant due to scare elements of ethnic violence between ethnic groups. However, restorative and reparative justice seems to be possible in relation to the lands, displaced persons and war prisoners. In my analysis, political justice (liberalism and democracy) seems to be primarily concerned under the new regime established in 2015. Constitutional reforms have been introduced for promotion of rule of law as a part of democratic justice. The previous regime that ended the war militarily was reluctant to investigate the alleged atrocities in the war and disagreed with resolutions passed by UNCHR which demanded to investigate war crime in the conflict. The previous regime initially opposed any foreign intervention. However, some facts finding commissions were appointed to convert international pressure and recommendations made by the commissions were not executed. The new regime through its foreign policy strategies maintains a close relationship with international political will and believe in constitutional reforms would bring some justice to the issues arising in the post conflict period.

However, nationalistic elements, military victory, mutual distrust of the ethnic communities linked with past and future, lack of political will, party politics in power struggle are decisive factors affecting to the transitional justice process.

Keywords: Justice, Conflict, Political Will, Democratic Justice.
