

Transitional Justice

Description

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Introduction

Transitional justice is a process or mechanism in which countries emerging from conflicts respond to massive human right violations that the normal procedures become insufficient to address the atrocities. At a period of transition, the need to address past violations would arise. This need is addressed through what is usually referred to as transitional justice.

Transitional justice's main aim is in order to ensure accountability, serve justice and achieve reconciliation. Transitional justice consists of both judicial and non-judicial measures implemented in order to redress human right abuses.

Objective of Transitional Justice

The main objective of transitional justice is to end human right violence and ensure human right protection. The primary objectives are establishing the truth, providing victims a public platform, holding perpetrators accountable, strengthening the rule of law, providing victims with compensation, effectuating institutional reform, promoting reconciliation, and promoting national consultation.

Society During Transitional Period

Transitional justice has to address the needs of societies in transition. The main needs that arise in societies in transition are the following:

1. The need for justice- Victims of violations or their relatives and the society at large need to see the perpetrators of the violations brought to justice. It is thus necessary that transitional justice should provide a mechanism by which this need may be satisfied. It is generally proposed that justice shall be rendered in order for a society to break with the past & move forward.
2. The need to know the truth- The society in general, and victims or relatives in particular, wants to know who among its members did participate in the violations, the degree of their participation and why the violation happened. There are two arguments regarding this point. Some people argued that knowing the truth about the past is crucial to build a viable, rights-respecting & democratic society as well as to ensure that violations wouldn't happen again. On the other side some people argued that knowing the truth is not desirable as it may lead to further suspicion & animosity between those that claim to be victims & their relatives on the one hand and alleged perpetrators.
3. The need for reconciliation- Society may also need to create conciliation among its members. There may be a general understanding that one group of the society are victims while others are

perpetrators or vice versa. This and other factors are likely to develop among members of the society a mentality of suspicion, mistrust & even animosity. A society wishing for moving forward should therefore address this mentality. Society should have a mechanism of reconciling its divided members & building trust, confidence & mutual respect among its members. A divided society should break with the past, establish a stable system & move forward. In addition to this there might be the need for compensation for the victims in society.

Modalities of Transitional Justice

There are different modalities of transitional justice which are utilized in different stages.

1. Prosecution- this process involves the investigation & prosecution of alleged perpetrators, and imposition of penalty if found guilty. Thus, it involves the apprehension of perpetrators, the gathering of evidence, and the filing of criminal charges. And making judicial hearings and decisions according to the law. Prosecution is not only an alternative but also an obligation in some grave human right violation. Examples of grave violations are war crimes, the crime of genocide, and crimes against humanity. In these cases, countries have the duty under international human right laws as well as international customary laws to prosecute or extradite violators for crimes committed anywhere.
2. Truth and reconciliation- for this mechanism, societies may establish truth commissions or truth and reconciliation commissions. The main priority of this modality is to reveal truths about the past, create conciliation, and achieve a successful transition.
3. Amnesty- the term amnesty refers to an official act, usually through law, prospectively barring prosecutions of a class of persons for a particular set of actions or events. But it is questionable whether amnesties satisfy society's needs or not.
4. Reparation- Reparations can include monetary compensation, medical and psychological services, health care, educational support, return of property or compensation for loss thereof, but also official public apologies, building museums and memorials, and establishing days of commemoration to the victims of conflict.

Conclusion

Generally transitional justice is an essential part of the peace rebuilding process, as the need to obtain justice for victims of conflict has been the main idea for keeping the country stable.

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