

Conclusion

The protection regime of intellectual property law encourages the individuals and collective entities to actively engage in innovative and creative activities by affording a rigid security cover over their ownership of “the interest in the property”. However, such protection, as viewed by international institutions, significantly endangers the human rights of individuals in many ways. The enforcement mechanism prescribed for ensuring compliance with agreements such as TRIPS encourages the States to ignore their obligations under various human rights treaties. Though some of these obligations are “jus cogens”, still States are dared to disregard them for immediate and materialistic benefits. If this trend is allowed to continue, no State can be found fault with for violating human rights since there would be far more ‘business’ awaiting them to be worried about. If public interest is to be the yardstick for limiting any one’s human rights it should be so in the case of intellectual property rights well and in that the very ‘public interest’ itself is to be defined by international human rights law.

The Relevance of the Principles of International Humanitarian Law in post –conflict situations: A Justification for Transitional Justice with special reference to Sri Lanka

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Background

International Humanitarian Law (IHL) is defined as the body of law which seeks, for humanitarian reasons, to limit the effects of armed conflict. In a wider sense, IHL includes all the legal provisions whether in the form of treaty law, or customary international law ensuring respect for the individual and his well being in times of war, and thus comprises of the law of war and human rights. Technically, IHL is applied only once an armed conflict is begun and does not deal with the legitimacy or otherwise of the armed conflict. Therefore, it is commonly believed that IHL has no relevance in post war situations. The main objective of this research is to explore whether the principles of IHL has any further relevancy in post conflict situations. During the past thirty years our country was facing with a protracted internal armed conflict with a resistant movement named LTTE, and thus IHL could be effectively applied to that situation without any problem. Now Sri Lanka is immune from war and considered as enjoying a period of peace. In times of peace, human rights principles are applied and thus principles of IHL cannot be applied. Therefore, the relevance of the principles of IHL in post-war Sri Lanka is questionable. However, the compliance with or violations of IHL during an armed conflict undoubtedly influence the conduct of the judiciary and the situations of the victims in post-conflict societies. Therefore, this paper seeks further to determine the influence of IHL on the transitional justice process in post war situations with special reference to post war Sri Lanka.

Methods

This is mainly a library based research and hence scholarly work on the issue will be reviewed. Practical examples will be drawn from countries in transition to democracy after armed conflicts, which have been deeply affected by serious violations of human rights and humanitarian law. Text books and journal articles will be the main source for

exploring the relevance of IHL in post war conflict situations and as a justification for transitional justice.

Results

Though IHL is primarily applied in times of armed conflict situations IHL principles can be having a limited relevance even in a post war period, if societies are willing to transform themselves through transitional justice. The term “transitional justice” has come to be used to refer to the various processes accompanying political transition by societies emerging from a period of violence that aims to deal with the serious human rights violations committed during the conflict and to achieve national reconciliation. At present, transitional justice has become a popular theme in the common currency both at international and domestic levels. In Sri Lanka too, discussions are emerging in relation to transitional justice with the end of the long lasted internal armed conflict. This paper has identified ‘transitional justice’ as a process that can be introduced as a response to systematic or widespread violations of human rights and humanitarian law principles occurred during situations of armed conflicts. It seeks recognition for victims and to promote possibilities for peace, reconciliation and democracy. This paper emphasizes that achieving transitional justice to war torn societies is not a special form of justice but justice adapted to societies transforming themselves after a period of persistent grave violations of human rights and humanitarian laws. During any armed conflict situation, international or non-international in nature, such violations are highly prevalent, and after the cessation of hostilities it is an obligation of the national authorities to bring justice to victims and to usher good governance and rule of law for such war affected societies. This approach emerged in the late 1980s and early 1990s, mainly in response to political changes in Latin America and Eastern Europe and to demands in these regions for justice. At the time, human rights activists and others wanted to address the systematic abuses by former regimes but without endangering the political transformations that were underway. Transitional justice can be approached in diverse ways. For example it can be accomplished through Criminal prosecutions against the perpetrators of blatant violations of IHL. After the Second World War for the first time in the history, Nuremberg and Tokyo War Crimes Tribunals were set up to prosecute and punished the war criminals of the defeated countries. Though the best way of prosecuting the alleged offenders is through the domestic criminal justice system when the States are unwilling or not able to use their own laws and court system to prosecute the offenders, there should be an alternative system of prosecution beyond the domestic level. In 1990s the UN Security Council set up the *ad hoc* International Criminal Tribunal for the Former Yugoslavia and for Rwanda to prosecute the perpetrators of human rights and humanitarian violations occurred in the territories of the Former Yugoslavia, and in in Rwanda. Considering the problems of having temporary tribunals, the Rome Statute of the International Criminal Court (ICC) was adopted in 1998.

In addition to criminal prosecutions, truth commissions also serve achieving transitional justice to societies crippled by ravages of armed conflicts. These commissions of inquiry have the primary purposes of investigating and reporting on key periods of recent past abuse. They are often official state bodies that make recommendations to remedy such abuse and to prevent its recurrence. Besides, there can be reparation programs which are state-sponsored initiatives that help repairing the material and moral damages of past abuse. They typically distribute a mix of material and symbolic benefits to victims, benefits which may include financial compensation and official apologies. Another

method of transitional justice will be the reforming of security systems of States. These efforts seek to transform the military, police, judiciary and related state institutions from instruments of repression and corruption into instruments of public service and integrity.

Conclusions

As identified in this paper the avenues of achieving transitional justice can be varied, depending on the nature of violations, actual damages occurred, cultures and practices of societies etc. But the most significant factor is to bring justice to victims, with a view to rebuild war torn societies ending an era of distrust, despair and hatred due to huge violations of human rights and humanitarian law principles during the war.

In Sri Lanka too, prosecuting the perpetrators who have committed heinous violations of IHL during the conflicts should be done without delay. This should not be a form of 'victors' justice'. The type of transitional justice that is used to repair the damage should be agreed without political motivations and thorough public consensus, in order to win the hearts of all segments of the society.

Critical Review of Socio-Legal Impact of Death Penalty: A Sri Lankan Perspective

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Background

The sole objective of the criminal justice system of any State is to strike a balance between the duty to protect the society from violence and at the same time seeing the culprits are punished in proportionate to the degree of harm caused to the society by them. Many things should be taken into consideration by the State in striking this balance. The issue of death penalty still remains as a hotly debated subject pertaining to its suitability and proportionality in this regard. The issue is further complicated because of its social, religious and cultural implications. The debate over death penalty has been revived in Sri Lanka for some time now.

Although there were some discussions in this country over the social impact of death penalty, no such discussion has been undertaken in analyzing its legal implications coupling with other social dimensions.

Objectives

This paper attempts to evaluate the effectiveness of the imposition of death penalty on convicted offenders from a particular perspective of its socio-economic impact on society. It becomes so necessary in the context of the imbalance in the justice system which marginalizes the poor and the oppressed.

It is also necessary to reassess the extent to which death penalty has contributed in reducing the crime rate in this country and, if this is not satisfactory, identifying the causes for such failure. Since the deterrence aspect of the sentence may operate varyingly from society to society, the cultural dimensions also become relevant and to be looked into.