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The Right to the Truth: An Inevitable facet in the Development of Victim Jurisprudence

Kushal Srivastava

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The discussion on the ambit of right to the truth in International Law has deepened in contemporary times. The aspect of right to the truth is of paramount importance in terms of International human rights and International criminal justice. It is evident that human suffering in the shape of atrocities like war, genocide, and other conflicts against humanity are real and happening. These circumstances implicate immense psychological and emotional distress on the victim. It is here that the need to know the truth arises, so that the victim gets an opportunity to come across reality. It also helps in divulging the truth and it facilitates the judicial process in the end and helps to achieve the transitional justice that is vouched. There are several vital forums namely international human right courts, truth commissions, and international criminal courts that are in existence for the protection of rights to life and prohibition of torture against victim in furtherance of transnational justice.

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The Right to the Truth: An Inevitable facet in the Development of Victim Jurisprudence

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ABSTRACT

The discussion on the ambit of right to the truth in International Law has deepened in contemporary times. The aspect of right to the truth is of paramount importance in terms of International human rights and International criminal justice. It is evident that human suffering in the shape of atrocities like war, genocide, and other conflicts against humanity are real and happening. These circumstances implicate immense psychological and emotional distress on the victim. It is here that the need to know the truth arises, so that the victim gets an opportunity to come across reality. It also helps in divulging the truth and it facilitates the judicial process in the end and helps to achieve the transitional justice that is vouched. There are several vital forums namely international human right courts, truth commissions, and international criminal courts that are in existence for the protection of rights to life and prohibition of torture against victim in furtherance of transnational justice.

Moreover, it is evident that right to the truth in general parlance arises in situations wherein a particular state fails to deal with atrocities using their own civil and criminal procedures. It is here that the matter attracts concerns and invokes jurisdiction of international entities. Through this research manuscript, an attempt is made to understand and analyse the role of aspect of right to the truth in the development of victim jurisprudence. Another aspect of the manuscript contributes, suggests, and hits the core of the international debate on the right of a victim to the truth. Ultimately, it attempts to ring the bell at the right time and is an appropriate read for the enthusiasts of International Criminal law and those who have zeal to acknowledge the realities of a victim.

Keywords: right to the truth, victim jurisprudence, human right, international criminal law, transitional justice.

I. INTRODUCTION

“The Truth is an empowering and healing force. We embrace it for the past, the present and the future.”

-UN Secretary-General Antonio Guterres

Recently, the entire society was reminded of the International day for the right to truth. The day reminds each individual that they possess the right to know the truth behind the human rights violations, the importance of dignity of victims and to know about the events that led to sufferings. It is true that such a right is considered an imperative for the victim's right and even the United Nations have established such a right to the truth in favour of victims of human right atrocities, but in reality, not much is settled.

The conflict-ridden society or the aftermath of any human right violation or atrocity witnesses harsh questions on the truth behind the happenings of such events. Aggrieved individuals and the concerned society are in the right position to know as to what was the reason behind the happening of events and be aware of all truth incidental thereto or connected therewith. Quest for such questions portrays a jurisprudential dilemma about substantial rights of a victim and its role towards transitional justice and connected justice delivery mechanisms. Apart from such inbuilt necessities, there is an emerging demand to delve deeper, go to the roots of the reasons behind the need for the right to truth, and give impetus in analysing the entire scenario. There are various reports that present sufficient instances to prove that the right to truth is

universal in nature and the same cannot be considered in isolation. In parallel terms with the need to know the truth, it is vital to have a basic understanding of the right itself. It is importance to discuss the elements like the content of the right to truth and as to how the entire emergence took place.

Through various heads, it is an attempt to analyse such vital postulates. This research manuscript unfolds by elaborating on the element of the right to truth, aspects and content it entails. After giving a brief glimpse into the basic understanding of the right, it proceeds to examine the foundational need of the right to truth. Need behind the demand for such rights helps to get a brief idea as to why voices advocating the victim's right to the truth are escalating and it assists in examining the genuinely attached. Moreover, another facet of the discussion depicts the contemporary developments, events at international pedestal that is playing a crucial role in affecting the domain and course of victim jurisprudence at large. Eventually another facet analyses the instrumentality of this right towards achieving transitional justice. It is true that there are judicial authorities and commissions that are working towards the objective of justice but right to the truth has the potential to make the entire postulate more holistic.

II. UNDERSTANDING THE RIGHT TO THE TRUTH

Before delving into the discussion and analysis of the right to truth, it is vital to go through the basic understanding of the concept and get a glimpse of the content of such right to the truth. In a judgment of 2008, the Inter-American Court of Human Rights (IACtHR) observed that-

“This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those...”¹

¹ Valle Jaramillo et al. v. Columbia (November 2008) para 108.

There are literature that depict the trajectory² and highlights that initially the right to the truth was seen as soft obligation and was under the domain of *lex ferenda* but with time, there has been a wholesome difference in the understanding of the concept. Today the reality is that the right to truth is accepted to be norm with binding capacity and as an element falling within the definition of *lex lata*.³ The relevant courts and authorities with an objective to make the concept more elaborative and inclusive have interpreted the content on various occasions. It has also been accepted as a general principle of law at several instances.

There is a three dimensional approach executed to get the knowledge of the content of the right to the truth. Firstly, the approach is at individual level wherein the state has an obligation towards the individual/ victim of human right atrocities. Information revolving around the incident is to be looked for and thorough investigation to be done with an objective to gain knowledge about the perpetrators. These attempts are considered as elements of the content of right to the truth.⁴ The second approach that elaborates on the content aspect is of the structural level. Under this approach, it is essential to analyse the then existing administrative as well as political composition. This helps to identify the scenario circumscribing a particular atrocity and look for the what, when, and how questions. The third approach to be apprised with the content of the right to truth is involving the victim and their families and listening to their stories of the events. It adds to the knowledge of the content however, this specific approach has its own limitations.

² Malanie Klinkner & Howard Davis, ‘The Right to the Truth in International Law’, Victims’ rights in human rights and International Criminal Law, 2020, Routledge-Taylor and Francis Group, 45.

³ Sam Szoke-Burke, ‘Searching for the Right to Truth: The Impact of International Human Rights Law on National Transitional Justice Policies’ (2015), 33 (2), Berkeley Journal of International Law 526 at 528.

⁴ UN Commission on Human Rights, Study on the Right to the Truth, Report of the Office of the United Nations High Commissioner for Human Rights, 8 February 2006, E/CN.4/2006/91, available at: <https://www.refworld.org/docid/46822b6c2.html> accessed 20 April 2023.

III. NEED FOR SUCH TRUTH: AN INEVITABLE REQUISITE

It is true that human suffering opens a plethora of questions and calls for various immediate actions. One such element is the need for truth. The requisite for such need is important and is growing more strong and deeper with time. The aspect of knowing the truth behind the atrocities that happened is of paramount importance. Primarily, the need arises because the victims and their relatives are left with existential questions. Human atrocities have the tendency to create a void wherein victims are not in a state to understand and grasp the reasons behind such acts. The reasons and need behind seeking such truth are many. Primarily the information behind such disappearances or sufferings can help in explaining the absence of a father or a mother or a child for that matter. It can facilitate the investigation process and assist victims and their kins in getting answers to several of their questions and making the entire process more accountable. Need to know the truth can also be seen as a means to achieve justice. Another need arises if unfortunately death has occurred, it can help in tracing the mortal remains and giving opportunity of last rites and showering a dignified funeral to the dead. Moreover, it can also give way for an instance of documenting such human atrocities so that it helps in disseminating such stories to the public at large.⁵ Documenting the sufferings can also act as genuine precedent and assist connected judicial proceedings and boost the aspect of human rights advocacy.⁶

In addition to such a need for truth about victims, the need also arises from society's point of view. The right to the truth behind a human right violation is equally important when it comes to a concerned society. It will not be wrong to state that the community at large becomes a

stakeholder if the target of such offence is the identity of such community itself. A particular society gets affected when the human rights of its inhabitants are threatened or altered with. With such breach in the fundamental human rights of individuals, the entire rule of law of that specific society or connected societies will be on the verge of collapse. Therefore, the need for such truth is evidently vital for both individuals and society. These aspects are so interwoven that it's not easy to accept and analyse them in isolation and according to one's own whim and fancies.

IV. THE UNIVERSALITY OF TRUTH TOWARDS TRANSITIONAL JUSTICE

When we talk about the domain of transitional justice, the aspect of truth is considered to be both universal in nature and as a prerequisite for the justice that is sought. It will not be wrong to state that such a right is complementary to the entire justice delivery mechanism. If there has been a victim of human rights violation, it becomes a universal right⁷ of the aggrieved person to be informed and know the truth of the entire happening of events. Moreover, the want of justice cannot be considered to be one sided and ignore the universal existence of the right to truth. The judicial process ought to be considerate of such necessities. For instance, more than a decade old violation that took place in the country of Nepal is an appropriate example that highlights the acceptance of the right to know the truth as an inevitable universality towards achieving transitional justice. The International Centre for

⁵ Louis Bickford, Patricia Karam, Hassan Mneimneh and Patrick Pierce, 'Documenting Truth' (International Centre for Transitional Justice Report 2009), <https://www.ictj.org/sites/default/files/ICTJ-DAG-Global-Documenting-Truth-2009-English.pdf> accessed 28 April 2023.

⁶ Simon Robins, *Families of the Missing: A Test for contemporary approaches to transitional justice* (Routledge 2013).

⁷ UN Human Rights Council, Declaration on the Right to the Truth, U.N. Doc E/CN.4/2005/L.10/Add.17, April 2005, available at <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G05/138/28/PDF/G0513828.pdf?OpenElement>; UN Commission on Human Rights updated set of protection and promotion of Human Rights through action to combat impunity, principle 2, U.N. Doc. E/CN.4/2005/102/Add.1, February, 2005, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/109/00/PDF/G0510900.pdf?OpenElement>; https://ap.ohchr.org/documents/e/hrc/resolutions/a_hrc_res_9_11.pdf

Transitional Justice Report of 2012⁸ attempts to depict the entire scenario. It was depicted that the right to truth cannot be seen as any political expediency but a well-established and universal form of human right. There can be inquiries through truth commissions ranging from analysing facts to delving deeper into the cause-effect relationship of the consequences. In the aftermath of the conflict, concerned organizations initiated to demand justice⁹ and legislative bills were being tabled with an objective to make the offences of abduction and aid in disappearances fall under the stringent domain of criminalization. However, such bills had their own limitations and loopholes, various voices that rose through these bills advocated for the need to accept the universal nature of the right to know the truth. A Lesson that can be learned from the discussion that the concerned organizations and relevant stakeholders delved into while pointing out the need to know truth and its integral essence in the process to achieve transitional justice at large. A robust policy engaging relevant entities and being executed towards transparency and access to information within the realm of right to truth is vital and futuristic.¹⁰ The state of affairs in the above mentioned scenario demarcates that there is an existing right of victims as well as the concerned society to be well acquainted with the truth and such a right showcases the element of being international as well as universal. Countries and territories that unfortunately fall under the dark dungeons of human atrocity of such nature should stand again and vouch for such right towards the journey of justice that is transitional.

V. GLIMPSE ON THE CONTEMPORARY SCENARIO

Recently the world celebrated the International day for the Right to the truth concerning gross human rights violations and for the dignity of

victims.¹¹ It was March 24 when Monsignor Oscar Arnulfo Romero, an activist who raised voice and advocated against the human right violations in El Salvador was murdered.¹² In order to pay tribute to his memory, the day has been celebrated as International day for the right to the truth with an objective to promote the significance of pursuing truth and transitional justice for the victim/individual who has been at the receiving end of human right violations and other connected atrocities. In addition to this, one should not forget the situation of Bosnia and Herzegovina that had demarcated the importance of the right to the truth towards holistic growth of the society.

Moving on to the recent developments, there are countries that are in the process of either initiating provisions or amending the existing acts/bills that revolve around the concept of transitional Justice. For instance, Nepal is one such country that is in a process of amending its existing law that talks about investigation, inquiry, truth, and reconciliation regarding the disappearances.¹³ The government of Nepal has presented a bill in the house with an objective to adhere to the apex court's ruling and conclude transitional justice process. However, the opposite parties have retaliated against this act by claiming that the said bill will not safeguard the victims' rights and will lead to compromise of several human right principles.¹⁴ In addition to facing harsh questions by the opposition leaders, the act has attracted attention from worldwide, the country has been witnessing questions by International institutions, and this has escalated the debate largely. Institutions are of the opinion that such amendment is not in consonance with the international legal obligations and if adopted will have the potential to undermine justice delivery mechanisms and human right

¹¹ <https://www.un.org/en/observances/right-to-truth-day>.

¹² *ibid*.

¹³ The Enforced Disappearances Enquiry, Truth and Reconciliation Commission Act, 2014, available at <https://www.satp.org/Docs/Document/839.pdf> accessed on 10 May 2023.

¹⁴ <https://kathmandupost.com/politics/2023/03/20/disputed-bill-to-revise-transitional-justice-law-lands-in-house>, March 20, 2023, accessed on 15 May 2023.

applications.¹⁵ Thus, it has been evident that the nature of such amendments are prone to questions, debate, and call for elaborative consultation with connected entities. The case is

either not of Nepal alone, there are various countries that are in between or towards culminating legal provisions towards right to the truth in specific and transitional justice in general.

<p>International Instruments</p> <ul style="list-style-type: none"> • Declaration on the Protection of All Persons from Enforced Disappearance (1992) • Basic Principles and Guidelines on the Right to a Remedy and Reparation (2005) • International Convention for the Protection of All Persons from Enforced Disappearance (2006) <p>Proclamation of the International Day</p> <ul style="list-style-type: none"> • General Assembly resolution proclaiming 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims [A/RES/65/196] • Human Rights Council resolution proclaiming 24 March as the International Day for the Right to the Truth concerning Gross Human Rights Violations and for the Dignity of Victims [A/HRC/RES/14/7] 	<p>Reports of the UN High Commissioner for Human Rights on the Right to the Truth</p> <ul style="list-style-type: none"> • A/HRC/15/33 (2010) • A/HRC/12/19 (2009) • A/HRC/5/7 (2007) <p>Resolutions on the Right to the Truth</p> <ul style="list-style-type: none"> • General Assembly resolution on the right to the truth [A/RES/68/165] • Human Rights Council resolution on the right to the truth [A/HRC/RES/12/12] • General Assembly resolution on basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law [A/RES/60/147] <p>Other Documents</p> <ul style="list-style-type: none"> • General Comment on the Right to the Truth in Relation to Enforced Disappearances (2010) • Study on the right to the truth (2006) [E/CN.4/2006/91] • S/25500, 1993 Report of the Commission on the Truth for El Salvador
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Figure 1.1¹⁶

¹⁵ Human Rights Watch, 'Nepal: Transitional Justice Bill Needs to Protect victims, not abusers', March 23, 2023, available at <https://www.hrw.org/news/2023/03/23/nepal-transitional-justice-bill-needs-protect-victims-not-abusers>, accessed on 17 May, 2023.

¹⁶ <https://www.un.org/en/observances/right-to-truth-day>.

To advocate the importance of this postulate, the United Nations has devoted an entire facet on this topic. There have been General Assembly resolutions that proclaim the essence of the right to the truth towards the dignity of victims of gross human right violations.¹⁷ It has also executed several international instruments (declaration, guidelines, and convention) with an objective to protect the rights of such affected persons. In addition to this, there are annual reports that are published to highlight the importance of this right in international law.¹⁸ The figure 1.1, testifies the fact that there have been a lot of developments that have taken shape lately at International level and each document mentioned in the figure above signifies as per need of the hour there have been modifications to cater and answer connected voices.

VI. THE WAY FORWARD

Achieving transitional justice is not a phenomenon that can happen in a wink. It takes time and is a true test of patience. However, the wait should not undermine the rights of an individual in any case. The delivery of transitional justice is of paramount importance because it has the potential to preserve the rule of law of a nation. The aspect that talks about the status quo of Nepal is a live testimony of this facet.¹⁹ There are various legal procedures and mechanisms, which the concerned countries ought to adhere to in order to ensure transparency and accountability and not to undermine the rule of law.²⁰ Countries that face human right violations on a regular basis are deemed to develop strategic and policy frameworks so that existence and


implementation of transitional justice mechanisms are up and running with the intention to safeguard the rights of individuals and advocate the true essence of right to the truth.

¹⁷<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/524/30/PDF/N1052430.pdf?OpenElement>.

¹⁸ Reports of the United Nations High Commissioner for Human Rights, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go7/129/48/PDF/Go712948.pdf?OpenElement>; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/Go9/150/89/PDF/Go915089.pdf?OpenElement>; <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/151/73/PDF/G1015173.pdf?OpenElement>; accessed on 6 May, 2023.

¹⁹ Human Rights Watch, 'Nepal: Amend Transitional Justice Bill', July 2022, available at <https://www.hrw.org/news/2022/07/25/nepal-amend-transitional-justice-bill>, accessed on 15 May, 2023.

²⁰ <https://www.ohchr.org/en/transitional-justice>.

 Amnesty International

Mexico must guarantee truth and justice for families of Ayotzinapa students

Amnesty International expresses grave concern over the recent events that have taken place in relation to the investigation into the...

29-Sept-2022




Figure 1.2²¹

 The Guardian


'Truth is one of our rights': victims of Indonesia's bloody past want more than regret from their president

After Joko Widodo acknowledged the mass killings of 1965-66, victims say compensation is the next step.

12-Jan-2023



Figure 1.3²²

 Telangana Today

Opinion: Our Right to Truth

The quest for truth and zest for knowledge are at an all-time low, and it appears that right education is replaced with rightist education.

07-Feb-2023





Figure 1.4²³

 The Guardian Nigeria

March 24th: International Day for Truth and Dignity

The International Day for the Right to the Truth (March 24th) concerning Gross Human Rights Violations and for the Dignity of Victims is.

24-Mar-2023





Figure 1.5²⁴

 International Press Institute

The right to truth: IPI demands justice for killed journalists in Africa

By Nompilo Simanje, IPI Africa Advocacy and Partnerships Lead. Mar 30, 2023. SHARE. WhatsApp. March 24 marks the International Day for the...

1 month ago




Figure 1.6²⁵

²¹<https://www.amnesty.org/en/latest/news/2022/09/mexico-must-guarantee-memory-truth-justice-ayotzinapa/>
²²<https://www.theguardian.com/world/2023/jan/13/truth-is-one-of-our-rights-victims-of-indonesias-bloody-past-want-more-than-regret-from-their-president>.
²³ <https://telanganatoday.com/opinion-right-to-truth>.
²⁴ <https://guardian.ng/life/march-24th-international-day-for-truth-and-dignity/>.
²⁵ <https://ipi.media/the-right-to-truth-ipi-demands-just-for-killed-journalists-in-africa/>.

Eventually to demarcate the importance of the right to the truth towards holistic growth of the society, it is vital to keep a tab on the contemporary needs of the society and tune in our efforts in accordance with the evolving need. All above-mentioned figures starting from 1.2 to 1.6 are evident of the fact that voices advocating the right to the truth is emerging and escalating at the international pedestal and with passage of time, individual and societies are becoming more aware of such rights in the domain of international criminal law. However, one should apprise to the fact that the entirety to the right to the truth is not justice per se but a mere means to justice.