

# **The Role of Religion in Transitional Justice in Sri Lanka: A faith exploration**

**Right to Truth, Justice and Human Dignity**

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## Acknowledgements

The National Christian Evangelical Alliance of Sri Lanka (NCEASL), formerly the Evangelical Fellowship of Ceylon was founded in 1952.

The NCEASL works actively in three broad areas: Missions and Theology; Religious Liberty and Human Rights; and Relief and Development. The NCEASL is affiliated to the World Evangelical Alliance (WEA), a worldwide network of over 620 million Christians in 129 countries. The NCEASL is led by renowned social transformation, religious liberty and human rights activist Deshamanya Godfrey Yogarajah.

For over two decades, the Religious Liberty Commission (RLC) of the NCEASL has monitored and documented incidents of violence, intimidation and discrimination against Sri Lanka's Christian community. The aim of the RLC, however, is to advance religious liberty for all Sri Lankans through advocacy and lobbying, research and documentation, and training and education. The RLC has also been involved in peace-building efforts and raising awareness around transitional justice and reconciliation.

The drafting of this report and the field work necessary for compilation was undertaken by Kalani Subasinghe and Fr. Milroy Fernando SJ on a voluntary basis. The NCEASL is extremely grateful to them both for their tireless efforts in compiling this study.

## Preface

The effect of religion on our nation is immeasurable. It is the basis of our cultural tourism, it permeates our vocabulary, it creates most of our public holidays – but of course, these are material matters. For the individual, religion is fundamental. It defines our interpersonal relationships, formation of morality, ritualistic duties, and much more. If transitional justice is about finding institutional solutions to bring about lasting peace, then it is only natural – and necessary – that religion be of deep consideration.

It is in this spirit that the National Christian Evangelical Alliance of Sri Lanka has produced this research on the role of religion in transitional justice in Sri Lanka. The research examines the theological basis for pillars of transitional justice mechanisms. One may see obvious connections of reconciliation with Christianity or truth-telling as a Buddhist obligation but this study goes much further by examining theology finely, quoting scripture and using parables and stories, to demonstrate the theological backbone that supports many of these transitional justice pillars. If religion is core to the individual, and the individual is the building block of society at large, then understanding how religion can contribute to eventual social peace is important for implementing transitional justice mechanisms.

It has been an illuminating experience reading this final report. Subtle but thorough explanations on diverse aspects of socio-religious behaviour and transitional justice mechanisms have been put forward by the researchers involved. For instance, justice in Islam means that everything in its right place in the way intended by Allah; the human pursuit of justice is understood as a pursuit towards divinity. However, if oppression is experienced in the human pursuit of justice, then this is not of the divine order since Allah does not oppress. True justice in good Islamic faith precludes the possibility of unjust action. This negation of harm is explained through the concept of interconnectedness in Hinduism. If Krishna is in all beings and all beings participate in Krishna, then if one were to injure any part of this system, this is tantamount to self-harm or God-harm. In the chapter on Buddhism, the researchers go beyond a predictable exploration of good and bad *kamma* and explain concrete systems of peace-maintenance in the Sangha and in stories of the Buddha's life. The crux is that post-conflict reconciliation mechanisms are carried out to prevent future conflict rather than forget about the past. Reconciliation, to the Christian, is a religious mandate: the Church and its members are fundamentally a reconciled and reconciling community because of the sacrifice of Jesus. The journey towards reconciliation, the chapter argues, entails repentance and requires communities to be reconciled with one another in their pursuit of their ultimate reconciliation with God.

The research ultimately argues for and urges those of the religious order to take on the mantle towards right implementation of transitional justice mechanisms and similarly, for those involved in producing these mechanisms to take seriously the participation of religious persons and institutions. On behalf of the NCEASL I am proud to present this work on the Right to Truth for the use of laypersons and clergy of all creeds in Sri Lanka. Our country and culture sits on thousands of years of spiritual richness – let us embrace this and use it constructively towards creating successful transitional justice in our nation.

- ***Deshamanya Godfrey Yogarajah***

*General Secretary, NCEASL*

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## Introduction

In 2015, the Government of Sri Lanka (GoSL) laid foundations for Sri Lanka's transitional justice<sup>1</sup> mechanism by co-sponsoring Resolution 30/1 at the United Nations Human Rights Council, titled 'Promoting Reconciliation, Accountability and Human Rights in Sri Lanka'.<sup>2</sup> In this resolution, the GoSL commits to establish a Commission for Truth, Justice, Reconciliation and Non-Recurrence, an Office of Missing Persons for Truth Seeking, a Judicial Mechanism with Special Council, and an Office for Reparations.

Transitional justice generally occurs in the context of a political transition from violence and oppression to peace and stability. These societies must confront a violent past to provide justice for all citizens, establish civic trust, reconcile communities, and prevent future abuses. Transitional justice consists of judicial and non-judicial measures to redress legacies of human rights atrocities. The systems, structures and processes that are currently being discussed include fact-finding or truth commissions, justice, restoration, memorialization, and institutional reform to ensure non-recurrence. The approach aims to provide some form of justice for victims, as well as reinforce the possibilities for peace, democracy, and reconciliation.

Religion plays a central role in the inner life and social behaviour of human beings. Religions have developed laws, principles and ideas that have provided civilizations with a commitment to critical peace related values. These include empathy, openness to and even love for strangers, the suppression of unbridled ego and acquisitiveness, the articulation of human rights, unilateral gestures of forgiveness and humility, interpersonal repentance and the acceptance of responsibility for religious leaders to make a transition from conflict to a peaceful society.

past errors as a means of reconciliation, quest for truth, and the drive for social justice. In fact, religion has various experiences and behavioural retrospectives on humanity, and it is of great importance therefore to underline its role in transitional justice.

Religion has continued to play a major role in the lives of the Sri Lankan people, and it certainly provides a fertile source of authority and inspiration to draw from for such a critical and novel process as transitional justice. Transitional justice in Sri Lanka requires interiorized commitment. Promoting transitional justice strategies, therefore, requires involvement of religion and religious leaders.

## About this Study

This study explores the key principles and practices of transitional justice from the perspective of Sri Lanka's major religions, namely, Buddhism, Hinduism, Islam and Christianity. It emphasizes the solid basis for transitional justice in religions, illustrating this through anecdotes, religious scriptures and stories. It explores the contribution that religions and religious leader could make to the proper understanding of transitional justice and its successful implementation in Sri Lanka.

Several studies have been done on the role of religion in transitional justice but they mainly reflect general and popular opinions, population surveys and statistics and are mainly concentrated on Abrahamic religious traditions applied in Latin American, South African and Middle-Eastern contexts. This study is unique as it discusses the pillars of the transitional justice from all major religious perspective which are home to Sri Lanka. The argument is that the pursuit of a just society necessitates active participation of the religions and

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<sup>1</sup> Transitional justice is defined as "full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms [...] individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof" (UN Secretary-General, 2004). For further definition of the term TJ see International Centre for Transitional Justice, <http://www.ictj.org/en/tj>. For the conceptual history of TJ and how it had been applied for almost around 40 transition it has witnessed see (Arthur, 2009, McAuliffe, 2011, Elster, 2004, Teitel, 2003). For a bibliography on scholarly research on TJ see Transitional Justice Data Base, <https://sites.google.com/site/transitionaljusticedatabase/transitional-justice-bibliography>.

<sup>2</sup> The resolution contains commitment "to undertake a comprehensive approach to dealing with the past, incorporating the full range of judicial and non-judicial measures". See Promoting reconciliation, accountability and human rights in Sri Lanka, A/HRC/RES/30/1, 14 October 2015, para. 4.

## Executive Summary

This report is divided into four chapters concerning the four religions, followed by a conclusion.

**Chapter 1** Studies transitional justice from the Buddhist Perspective. This chapter focuses on Buddhist concepts such as *kamma*, *karuna*, *metta* that lay the foundation for interpersonal harmony and individual responsibility for one's action. It also deals with the concept 'reconciliation' and related components as found in the Buddhist disciplinary rules (*Vinaya Pitakā*) and the Buddha's discourses (*Sutta Pitakā*).

**Chapter 2** explores truth and being from a Hindu perspective. It argues that the disclosure of truth is necessary to ensure accountability and is necessitated by a being's behaviour in accordance with *dharmā*. The role of the religious leaders, therefore, is to present transitional justice as a path (*dharmā*) that serves this purpose of upholding the truth (*satya*). Moreover, through an understanding of the interconnectedness of the self, God/Krishna, and the other, pursuit of justice will take a positive, constructive direction as it is driven by love.

**Chapter 3** studies the concept of justice from an Islamic perspective. Emphasizing that Islam is a religion of peace, this chapter will focus on Islamic legal foundation for transitional justice by studying

important pillars such as retribution, restoration and reconciliation measures under *Shari'ah*. The chapter argues that as a core value and fundamental of all virtues, justice is an integral element of the Islamic discourse of peace and jurisprudence. It underlines that the Qur'ān not only give us an indication of what justice is: it establishes that attainment of justice is akin to worship and emphasizes of our responsibility as human beings to strive relentlessly for justice.

**Chapter 4** explores the concept of reconciliation from the Christian Perspective. It first spells first that reconciliation is a Gospel paradigm and a mandate and that any attempt to foster reconciliation brings with it two vitally important steps i.e. the prophetic call for justice and truth-telling. It also argues that 'revealing is healing' - reconciliation offers healing. The chapter emphasises the fact that Justice and Reconciliation are inseparable and therefore the Gospel of reconciliation should be a central point of catechesis and faith formation.

The conclusion is an invitation for academicians, practitioners of transitional justice and the GoSL community to consider religions and religious leaders as significant partners in the implementation of the transitional justice process in Sri Lanka.

## A short review on the first chapter

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One of the fundamental challenges faced by Sri Lanka in its post – war context is the issue of how society should enter on to a path of peace and reconciliation following a time of traumatic social devastation. It is possible to address this challenge through the positive transformation of structural (political as well as conflicting, deep social structures) and cultural dimensions that resulted in violent conflict. When preparing the background for this transformation, it is vital, therefore, to establish a series of transitional justice processes.

It goes without saying that this exercise of identifying the various intellectual and spiritual resources available to us within our religious traditions is a highly commendable exercise.

The following is a short, critical review on the chapter concerning the Buddhist tradition presented in this study.

It should be noted that, as a whole, reading this study was a pleasant experience. The study has been presented under 08 topics, namely; the concepts of equity and justice founded in Buddhism, the responsibility of judiciary, the Buddhist approach to reconciliation, cultural values supporting reconciliation, truth, *karma* (fate), rebirth, justice and individual responsibility.

It appears that the *pitaka* inscriptions and disciplinary inscriptions for *bikkhus* in particular have been studied comprehensively. Additionally, the researcher has adhered to the views of a board of Buddhist intellectuals.

Academically speaking, the study proves to be an exhaustive exploration of the subject matter.

The study highlights the importance of Lord Buddha's observation of seeing others as oneself

as well as the biological oneness of the human being. The researcher has also focused on the various “visual impairments” that present themselves within society, that act as an obstacle in achieving this.

This study sufficiently discusses the manner in which the Lord Buddha directed conflicting parties to the path of light, amid social issues and psycho – social darkness that prevails during situations of war and conflict.

The researcher has considered the just institutional processes that are necessary for the civilized existence of *bhikkhus*, and directs the dialogue towards the need for a post-war society that is established on proper legal and judicial foundations.

Beyond these virtuous institutional processes necessary for this kind of transition, this report also reveals the various cultural and spiritual values necessary for individuals and communities.

The Buddhist analysis of the concepts of truth, *karma*, as well as the five orders or process (*niyama dhamma*), provides a sound background to justice and the establishment justice. The deep moral foundations of Buddhism regarding ‘offence’ and ‘penalty’ is clearly highlighted through this commentary.

Even though there are prevalent issues and situations harmful to society, the Buddhist path has recognized that the approach of judging and punishing wrong-doers is almost puerile. It is better then to understand those behaviours and identify the root causes for such behaviour, and encourage collective responsibility through ethical and social approaches.

Finally, rather than responding to post-war challenges in a simplistic manner, and resorting to problematic and short-term solutions, this report establishes that Buddhism considers it wiser to focus on attitudinal changes in order to achieve a more humane society in the long-term.

# Chapter 1

## Buddhism and Transitional Justice

“In this world hatred never ceases by hatred;  
it ceases by love alone.  
This is an eternal law.”

- Verse 5, *Yamaka Vagga (The Twin Verses)*, *Dhammapada* -

### 1.1 Introduction

This chapter will discuss how the teachings of the Buddha, as enshrined in the Buddhist disciplinary rules (*Vinaya Pitaka*) and the Buddha’s discourses (*Sutta Pitaka*), views and contributes to modern day ‘transitional justice’. Emphasis will be on the concept of justice based on the foundation of equality, reconciliation,<sup>3</sup> acknowledgment of past actions, truth seeking and principles conducive to social concord and non-dispute such as loving kindness. Provisions in the ‘*Vinaya Pitaka*’ are also linked with institutional reform to ensure non-recurrence, a major pillar of transitional justice.

### 1.2 Foundation of ‘Justice’ in Buddhism

Human equality is a necessary precondition for justice. Lord Buddha rejected stratification or discrimination of humans on grounds of birth and replaced this with assessing a person’s status on the basis of Dhamma or righteousness of behaviour. In the *Vāsettha Sutta*, the Buddha produces arguments from history, biology, psychology, and ethics in support of the fact that all human beings belong to one group.<sup>4</sup>

“One is not a Brahmin by birth,  
Nor by birth a non-Brahmin.  
By action is one a Brahmin,  
By action is one a non-Brahmin.”

Thus, the Buddhist doctrine considered all human beings equal; one and all were treated equally; similar to oneself.

### 1.3 Judicial Responsibility

Judicial decision making is one of the three pillars in democratic governance, the ultimate adjudicator, and becomes law as judgments. Judicial service is one of

the highest forms of responsibility for any individual. A guardian of the law must abide by the law and act both lawfully and impartially.

In the ‘*Dhammattha Vagga*’ (The just or righteous) section of the *Dhammapada*, the Buddha says, “A man is not a judge merely because he arbitrates cases hastily without proper care. A wise judge would investigate and give his decisions without being partial.” (Verse 256, *Dhammattha Vagga*). In dealing with the judicial duties of a king, the *Tesakuna Jataka* explains that a king should never succumb to anger. S/he should listen to both parties equally, hear the arguments of each, and make a decision free of favouritism, hatred, fear, or foolishness.

The Noble Eight-Fold Path sets out guidelines for every aspect of human conduct and provides a more equitable, humane, and understanding discharge of judicial responsibility. Right understanding is to see things as they really are, not as we wish to see them, and involves concepts of detachment and diligence. Kind thoughts should be developed towards victims as well as troublemakers - guiding them in the righteous path. Right thought means that the mind should be pure, free from ill will, cruelty, irrelevance, partiality, anger, jealousy, and enmity. A fundamental duty of the judge is right speech. It is to adhere to the truth always - not to lie out of fear, self-aggrandizement, financial advantage, to create disharmony, or trigger aversion. Right action means also the dedication of the right time and effort and due compliance with the rules of judicial ethics. Right livelihood is to live blamelessly with integrity on wealth earned honestly.

The right effort is in relation to the effort required in the study of the facts, law, etc, and the determination to see a task to its end. Right effort is closely associated with right mindfulness. Right Concentration is to unite, harmonize, be peaceful from moment to moment, where one remains still (non reactive) to the negative emotions, both craving and aversion. Right concentration from a judge requires both a consideration of the pertinent

<sup>3</sup> ‘Reconciliation’ can be termed as healing (*‘suvapath weema’*) in Sinhala, as it’s more of a mental process, than physical. Discussion with Venerable Galkande Dhammananda Thero.

<sup>4</sup> Discussion with Venerable Walswewa Ghanarathana Thero; (The Middle Length Discourses of the Buddha, pp 798 – 807)



factual matters and laws. Right concentration requires a realization that one is discharging a solemn trust. One is not only deciding a dispute between parties but also laying down a precedent, affecting the future.

#### 1.4 Buddhist Approach to Reconciliation

The Pāli Canon cites several instances where disputes arose, between kings, Buddha's own relatives, and within his Ministry. The Buddha applied diverse approaches to suit the different situations and stakeholders concerned. When the Buddha's own relatives, the Sākya and the Kōliyas, lined for war to share water of the Rohini River, he intervened to avert war and asked them the crucial question: "What is the value of water and human lives?" The Buddha explained the futility and dangers that follow war, reconciled the two assemblies and taught them to live without hate among the hateful.

These verses from the Dhammapada point out the path to tolerance and peaceful co-existence.

"In this world hatred never ceases by hatred;  
it ceases by love alone.  
This is an eternal law."  
- Verse 5, *Yamaka Vagga*  
(*The Twin Verses*), *Dhammapada*

"Some do not realize that we all perish in this  
quarrel; those who realize it have their quarrels  
ceased."  
- Verse 6, *Yamaka Vagga*  
(*The Twin Verses*), *Dhammapada*

"Let us live happily without hate among the  
hateful; among the hateful  
men let us live without hate."  
- Verse 197, *Sukha Vagga*  
(*Happiness*), *Dhammapada*

To King Pasenadi Kōsala, who was extremely miserable being defeated thrice by his own nephew King Ajātasattu, the Buddha explained the futility of victory and defeat (Nārada Maha Thera 1980);

"Victory breeds hatred in the conquered.  
The defeated live in sorrow.  
Giving up both victory and defeat,  
the appeased live in peace."  
- Verse 201, *Sukha Vagga*  
(*Happiness*), *Dhammapada*

After the victory, the moral responsibility of the victor is to help the defeated and eliminate their grievances. As long as we keep 'the victorious and the defeated' dichotomy in the society, we are keeping alive the hatred and anger. We need to see the opponent, whether terrorist or government, as having part of the truth, which is necessary to bring wholeness and peace. The opponent must be part of the solution (Ariyaratne, Keynote Speech).

The **Vinaya Pitaka** of the Tripitaka contains methods and instructions for how monks should confess their offenses, settle protracted disputes, seek reconciliation with one another and how schism in the Sangha should be harmonized. The *Kammakkehandhaka* of the Vinaya Pitaka has five different kammās or acts of punishment for reprehensible behaviour of members of the monastic community (Dhirasekara 2004, pp 224-235). One of these acts is '**Patisaraniya Kamma**' – **act of reconciliation**, which requires the offender to apologise to the aggrieved party. This is concerned solely with the relations of the monk with the laymen so far as he tends to damage the interests of the laymen and abuses the Buddha, Dhamma and the Sangha in their presence.

The *Khandakas*, in the section '*Samathakkehandhaka*', contains comprehensive Buddhist monastic legislation dealing with seven different ways (*satta adhikaranasamatha*) disciplinary action within the monastic community could be carried out. The seven ways of settlement of litigation are confrontation, on account of memory, on account of past insanity, acknowledgement, opinion of the majority, pronouncement of bad character, and covering over with grass (Bhikku Bodhi, pp 853-860).

The method of 'covering over with grass', which is figuratively named '**Tinavatthāraka**', is the closest to 'reconciliation' in the Sri Lankan context.<sup>5</sup> This is where both sides make a blanket confession of wrongdoing and a promise not to dig up each other's minor offenses. This frees them to focus on the major wrongdoings, if any, that caused or exacerbated the dispute. No further investigation is made and no party is blamed or punished. Like excrement, it is buried, becomes part of the soil and eventually covered over with grass (Ajahn Brahmavamso, 2011).

The '*Tinavatthāraka*' as a disciplinary measure attempts to preserve the concord of the monastic

<sup>5</sup> Discussion with Venerable Walswewa Ghanarathana Thero; (Ajahn Brahmavamso 2011)

community while recognizing the existence of contending parties in the Sangha and the possible break up of the monastic unity through their factional differences. These principles are applicable to current reconciliation efforts in relation to making confessions, apologies, exercise of restraint for the future, with the broader goal of protecting and promoting unity amongst the opposing groups.

### 1.4.1 Honest Acceptance of Blame

“One who sees his transgression as a transgression,

and one who rightfully pardons another who has confessed his transgression. These two are wise.”

"The one who doesn't see his transgression as a transgression, and the one who doesn't rightfully pardon another who has confessed his transgression. These two are fools.

-Bāla-pandita Sutta, Anguttara Nikāya

Lord Buddha appreciated the honest acceptance of blame as honourable, and pardoning as a quality of the wise. This encourages a wrongdoer to see reconciliation as a winning, rather than a naming, blaming, shaming situation or a losing proposition. In the **Samaññaphala Sutta**, when the King Ajātasattu realizes the gravity of killing his own father and makes a confession, the Buddha notes, “*Because you see your transgression as such and make amends in accordance with the Dhamma, we accept your confession. For it's a cause of growth in the Dhamma and Discipline of the noble ones when, seeing a transgression as such, one makes amends in accordance with the Dhamma and exercises restraint in the future.*” (Samaññaphala Sutta: Dīgha Nikāya Sutta 2). According to Buddhism if a sin was perpetrated, there is no forgiving of sin. One cannot undo what has already been done, it can only be rectified. The ability to recognize one’s mistakes and admit them to others is an essential component in the reconciliation process, which could be facilitated through ‘truth commissions’ or any similar structures.

## 1.5 Culture of Values Reinforcing Reconciliation

The Vinaya methods recognize that genuine, sustainable reconciliation cannot be based simply on the desire for harmony. It requires a mutual understanding of the root causes and a promise to exercise restraint in the future. Therefore, a ‘culture of values’ that aid reconciliation, and prevent those in the right from abusing their position during such processes have been discussed (Thanissaro Bhikku 2011; “Forgive and Forget”, 2013).

- a) **Self-reflection** - To engage in an honest, responsible self-reflection basic to the Dhamma practice, before accusing another of wrongdoing. The checklist of questions he recommended are "Am I free from unreconciled offenses of my own? Am I motivated by kindness, rather than vengeance? Am I really clear on our mutual standards?" Only if they can answer "yes" to these questions should they bring up the issue.
- b) **Right speech** - To employ right speech (avoidance of ‘divisive speech’), to speak only words that are true, timely, gentle, to the point, that promote concord, and prompted by kindness.
- c) **Inspiration** – The motivation should be compassion, solicitude for the welfare of all parties involved, and the desire to see the wrongdoer rehabilitated, together with an overriding desire to hold to fair principles of right and wrong.

The culture of values also includes five moral responsibilities that can lead to reconciliation. It is interesting to note that these moral responsibilities undercut the five basic strategies that modern sociologists have identified, as being used by people to avoid accepting blame when they have caused harm (Thanissaro Bhikku, 2011).

STRATEGY	MORAL RESPONSIBILITY
Deny responsibility	We are always responsible for our conscious choices
Deny harm was actually done	We should always put ourselves in the other person's place
Deny worth of the victim	All beings are worthy of respect
Attack the accuser	We should regard those who point out our faults as if they were pointing out treasure
Claim that they were acting in the service of a higher cause	There are no higher purposes that excuse breaking the basic precepts of ethical behavior

These principles broadly encompass some of the fundamental teachings of the Buddha – the five precepts, the Noble Eightfold Path, law of moral causation (*Kamma*), Ten Perfections (*Dasa Pāramitā*), and the four Sublime States. Several of the relevant, individual components in these essential teachings that are discussed below provide valuable insights when considering and implementing transitional justice mechanisms and procedures.

The five precepts are the practical approach to morality. The Noble Eightfold Path as briefly outlined above, aims at promoting and perfecting the three essentials of Buddhist training and discipline: namely ethical conduct, mental discipline, and wisdom. The Ten Perfections (*Dasa Pāramitā*), are transcendental virtues, which are cultivated with compassion, guided by reason, uninfluenced by selfish motives, and unsullied by misbelieve and all feelings of self-conceit (Nārada Maha Thera, 1980).

### 1.5.1 The Four Sublime States

These are the most important teachings of the Buddha in achieving social harmony. It is said to consist in the cultivation of;

- 1) *Metta*, or loving kindness towards all beings
- 2) *Karuna*, compassion or pity, which enables one to react and respond to the pain and suffering of another.
- 3) *Muditā*, sympathetic joy, felicitation or appreciation, is to overcome envy, jealousy and hostility and rejoice over another's good fortune.
- 4) *Upekkhā*, signifying both equanimity and equality towards all, removes obvious obstacles of either disposition or perception to unity and harmony.

### Metta

*Metta*, or loving kindness towards all beings, is a means of arousing positive states of mind in order to overcome anger, hatred and other negative states. Benign thoughts can produce soothing physical effects and has a liberating influence on the one who possesses it and on the one to whom it is extended. Practicing loving kindness results in the purification of the mind, and leads to behaviour without biases, prejudices, discrimination or hate. '*Metta*' is a nominal derivative of '*mitta*', a friend. Yet, his definition of loving kindness was akin to what a mother felt towards her only child - one way flow irrespective of the behaviour of the child.

“Just as a mother her own child, her only son,  
protects with all her might,  
Just so one should towards all that lives  
Develop one's own mind in boundless love,  
Unfold one's mind in all-embracing kindness,  
Above, below, on every side,  
Unhindered, free from hate and angry feeling.”  
*Karaniya Metta Sutta* (hymn of universal love)

So is metta – spread towards all beings equally irrespective of their behaviour. The Buddhist idea of fellowship or mettā is thus founded on the conception of the oneness of the human species, the equality of man and the spiritual unity of mankind. The Buddhist undertaking to refrain from killing is not a negative precept and has its positive side when fully stated, viz. “One refrains from killing creatures, laying aside the stick and the sword, and abides conscientious, full of kindness, love and compassion towards all creatures and beings.”

The challenge of Buddhism is show compassion to all people instead of retaliation or hatred. Hatred is

self-defeating and harms the hater more than the hated. Keeping grudges in one's mind contributes to perpetuating hatred;

“He abused me; he beat me;  
He defeated me; he robbed me,”  
In those who do not harbor such thoughts  
Hatred is appeased.  
In those who harbor such thoughts  
Hatred is never appeased.”  
Verses 3 and 4, *Yamaka Vagga*  
(*The Twin Verses*), *Dhammapada* -

Universal love – Metta – is a primary condition for world peace. It is diffused to all beings in all directions, throughout the universe, sans any limits. It is individual peace that leads to a world at peace.

### **Karuna (Compassion)**

Metta or loving kindness in its active dimension is ‘Karuna’, compassion or pity, which enables one to react and respond to the pain and suffering of another. Sharing, readiness to give comfort, sympathy, concern and caring – all are manifestations of compassion. Buddhist literature says that compassionate persons who refrain from harming and oppressing others endeavours on the positive side to relieve those in distress and gives others the invaluable gift of security. The practice of forgiveness is the practice of understanding and compassion. When we see that our suffering, hatred, and fear are organic, we do not try to run away from them. Through the practice of calming, resting and deep looking taught by the Buddha, we could transform our endless cycle of resentment, anger, loneliness, hate, fear and despair into elements of understanding, which can nourish our compassion, happiness, and well-being (Kuruppu 2003).

### **1.6 Truth**

According to Buddhism truth cannot be hidden since otherwise it would be breaking the fourth precept - abstaining from false speech, of the five precepts (*Panchasila*).<sup>6</sup> From a Buddhist point of view, if there is anything true we should be ready to accept it. It does not matter where it comes from. Truth must also be consistent; it is said that “truth is one and there is no second truth.”

Sacca (Truth) is one of the ten perfections (Paramis), transcendental virtues that every Bodhisatta practices in order to gain supreme enlightenment. ‘Dasa Raja Dhamma’ (Royal qualities) notes that one must always uphold the truth, safeguard the truth and never compromise it. To uphold the truth, one will also have to speak the truth.

As per the above ‘truth’ as a basic virtue indicates a harmony between one’s awareness and one’s communication. Right understanding (Samma Ditti) is the first factor in the Noble Eight Fold Path, which is a guide for the other factors of the path and enables one to understand the starting point. Right understanding is of two kinds;

1. Apparent reality – Ordinary conventional truth – Sammuti sacca - Operates within the confines of the world. The ordinary worldly knowledge of science, art, literature, history.
2. Ultimate reality – Abstract truth – Paramattha sacca - Leads to the liberation from the world.

It is only through right understanding that one can see the cause and effect, the arising and ceasing of all conditioned things. This is the Buddhist approach to understand the truth of life (Kuruppu 2003). Realization of truth is so essential to true happiness because wisdom alone is capable of cutting off defilements at the root, and it is wisdom that realizes truth.

### **1.7 Kamma**

Buddhists believe that no one is above the law of kamma like the rule of law. As per the kammic law of cause and effect, wholesome or unwholesome thoughts motivate whatever actions to perform intentionally – ‘kamma’ - the action or seed and based on these motivations, good or bad ‘kamma vipaka’ is created accordingly. Each action has a reaction. If one has done a good action, the consequences bring happiness to oneself; if one has done an evil action, the consequences bring suffering to oneself. The law of karma as stated is a causal correlation, which guarantees the fact of individual moral responsibility.

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<sup>6</sup> Discussion with Venerable Bellanwila Wimalaratana Thero

A Buddhist who understands the operation of the law of kamma would say;

‘According to the seed that’s sown, so is the fruit ye reap therefrom.  
The doer of good (will gather) good,  
the doer of evil, evil (reaps).  
Sown is the seed and planted well.  
Thou shalt enjoy the fruit thereof.’  
– Samyutta i – 227 – The Kindred Sayings -

So Buddhism can well be represented as ‘an automatic system of morality’ in which the man, or otherwise, is a completely free agent. Kamma means men are the heirs of their deeds done in both the past and present life. Kamma asserts that an intentional action will lead in a result proportionate in nature and intensity to that intention. If one understands the operation of Kamma and the result of volitional acts (Kamma vipaka), one may not be tempted to evil and unwholesome actions.

Accountability of process of karmic law is quite clear. It depends entirely on the intention of doer. Buddhism considers intention as the primary criteria and investigation processes are mainly focused on the intention. The mind is the forerunner of all (evil or good) states (Kumarasena 2011).

“By mind the world is lead, by mind is drawn:  
And all men own the sovereignty of mind.” -  
Narada Thero

### 1.7.1 Fruition of Kamma

Once the Buddha said: “Bhikkus, for some people, only a little bad Kamma can lead to rebirth in hell, but for others that same small amount of bad Kamma will produce results only in the present moment, and even then, only the most extreme aspects of it will become apparent, not the minor. There are those who have not trained their actions, have not trained in moral restraint, have not trained their minds, and have not developed wisdom. They dwell discontented over minor Kamma results. This kind of person it is who, over just a little bad Kamma, can go to hell. (Like putting a lump of salt into a very small vessel.)

There are those who have trained their actions, have trained in moral restraint, have trained their minds, and have developed wisdom. For this kind of person, just the same kind of minor bad Kamma gives results only in the present, and even then the minor aspects of that Kamma do not manifest, only

the major. (Like putting a lump of salt into a river.)” Hence, there is the possibility for a Kammic descent, or Kammic ascent, in the so-called evolutionary scale of beings. In Buddhism therefore there is every possibility to mould one’s Kamma (Narada Maha Thera 1980).

These are five conditions that modify the weight of Kamma (Santina, n.d.);

Subjective conditions

- a) Persistent, repeated action
- b) Action done with great intention and determination
- c) Action done without regret

Objective conditions

- d) Action done towards those who possess extraordinary qualities
- e) Action done towards those who have benefitted one in the past

Kamma takes into account the subjective and objective conditions that determine the nature of an action. If it is based on subjective conditions, then the weight of the action will be enhanced. This ensures that the effects of actions be equal and similar to the nature of the causes.

Past Kamma is extinguishable and modifiable in the context of one’s present actions. Powerful good Kamma can prevent bad Kamma from giving their result, or mitigate their effects, and same with powerful bad Kamma. The fact that a person does not remember his past is no hinderance to the working of Kammic law. It is the knowledge of the inevitability of the sequence of Kamma in the course of one’s life in Samsara that helps to mould the character of a Buddhist.

### 1.7.2 Five-fold Natural Laws

It is to be noted that the Buddhist doctrine of Kamma is not fatalism. The Buddha neither subscribed to strict determinism (*Niyati vada*) nor complete indeterminism (*Adhicca samuppanna*) (Santina, n.d.). Kamma is one of many factors conditioning the nature of experience and the Buddha explains that man is conditioned by the functioning of various laws (Piyadissi Thera, 1980). Among them are the ‘five-fold natural laws’ (*Pancha Niyama Dhamma*);

1. Environment and physical laws (*utu-niyāma* – law of seasons)
2. Biological laws (*bija-niyāma* - law of seeds)

3. Psychological laws (*citta-niyāma* - law of consciousness)
4. Moral and spiritual laws (*dhamma-niyāma* - law of doctrine)
5. Karmic heritage (*Kamma-niyāma* – law of kamma)

As such, kamma is only one of the five factors that can affect the world, and it has its own limitations. Further, the final outcome of kamma can get affected by other kammās as well.

### 1.8 Restorative Justice

In all offences the Buddhist philosophy was not to inflict punishment with a retributive base (Kumarasena 2011). Though crime is an individual choice, offenders may not perceive themselves as capable of free action. Then, as Vinaya also dictates, the main concern shifts to the suspect's intention and away from determining their guilt. The intention decides the nature of the offense. If one does not consent to commit an act, then one is not guilty of it; and the lighter the intention, the less grave the offense. (Ratnapala Sutta: 5, 93, 192).

Retributive justice can provide momentary relief, satisfaction but not the complete justice, which is the requisite, and the cycle of the cause / effects may continue to remain. From a Buddhist perspective, justice would be more focused on areas of mercy, compassion, and wisdom. They are the same underpinnings as existing in transitional and restorative justice programs. There are a few Pāli Suttas that address this;

**1. The Aṅgulimāla Sutta**, the most famous Buddhist text on crime and punishment, is about the reform of a serial killer. The Buddha addresses Aṅgulimāla "I have stopped forever, abstaining from violence towards living beings; but you have no restraint towards things that live." Aṅgulimāla then renounces evil forever, joins the Sangha as a Bhikku and becomes an Arahant, erasing his past misdeeds. The Sutta concludes with some verses that Aṅgulimāla utters while experiencing the bliss of deliverance, for example:

"Who checks the evil deeds he did  
By doing wholesome deeds instead,  
He illuminates the world  
Like the moon freed from a cloud."

There is no mention of punishment as a deterrent or to "annul the crime," although Aṅgulimāla suffers karmic consequences that even his

arahantship (a condition of spiritual perfection) cannot escape.

**2. The Cakkavatti-Sīhanāda** (The lion's roar on the turning of the wheel) **Sutta** addresses the relationship between poverty and violence. The Buddhist approach to remedying problems is with correct understanding the causes of crime - The Sutta states that poverty is the cause of immorality and crimes such as theft, falsehood, violence, hatred, cruelty, etc. In the Sutta, a king's violent attempt at deterrence sets off an explosion of violence that leads to social collapse. The Sutta shows that if punishment is sometimes a mirror-image of the crime (something that retributists propose), in this case the crime is a mirror-image of the punishment. However, the story within the Chakkavatti Sihanada Sutta ends with people, when the depth of brutality has been reached, going into retreat into caves, jungle dens, and caverns tree trunks - and emerge to embrace one another and to restore harmony through the recovery of moral sense.

**3. In the Kūṭadanta Sutta**, in which a chaplain tells a king that there is much lawlessness and civil disorder in his kingdom, making property insecure, the king is advised that, in order to eradicate crime, the economic condition of the people should be improved (Rahula 1996). The Sutta explains how futile it is to suppress crime through punishment. Instead, the Buddha suggests

The fundamental message from both the Cakkavatti-Sīhanāda and Kūṭadanta Suttas is social and economic contexts should be considered in criminal procedures and the solution lays in restorative measures such as provisions for people's basic needs rather than retributive punishments. Provision of reparative benefits and welfare facilities is mainly intended to solve such basic problems. For effective reconciliation one of the key pillars in the transitional justice process is reparation programs. This is aimed at economic compensation, and more importantly to dignify victims by acknowledgment of the appalling past atrocities and to foster social cohesion.

### 1.9 Individual Responsibility - Attitudinal Change

In addition to poverty and social injustice, sensuous craving is identified as a root of conflict in in the Mahadukkhanda Sutta (Bhikku Bodhi, pp 179 – 185). Beneath lofty political ideology and grievances we find those same malignant drives

that motivate so much ordinary human conduct - greed, lust for power, domination, hate, delusion, etc. There is no possible resolution to a conflict without calming the mind of the individual, and eliminating anger, hatred, and desire. Once, Sakka the ruler of the gods came to the Buddha and asked: “by what bonds are people bound whereby, though they wish to live in peace without hate and hostility, they yet live in conflict with hate and hostility.” The Master replied: “It is the bonds of envy and avarice that so bind people.” Self-transformation is the fundamental goal of Buddha’s teaching for liberation from suffering. As the mind is the forerunner of all actions, making the mind pure was the Buddha’s remedy (Dhammapada 1 - 2) and, the line of defense that the Buddha emphasized was attitudinal change. The following stanzas in the Dhammapada expound how the Buddha wanted this change to take place;

“Conquer anger with non-anger or love.  
 Conquer evil by good,  
 Conquer miserliness with generosity,  
 Conquer falsehood by truth.”  
 - Verse 223 – Dhammapada -

A person of tolerance, non-hatred and non-violence was described by the Buddha as wise, noble and mature (Dhammapada 258 - 261) and a Brahman or a recluse (Dhammapada 142, 405).

“Speak the truth; do not yield to anger  
 and do no injury to anyone:  
 by these three paths one will attain  
 the world of gods and will not grieve anymore,”  
 - Verse 224 – Dhammapada -

Equally praised as noble persons were those who, with the power of patience and forbearance, endured reproach, beating and bondage (Dhammapada 399) and who were friendly among the hostile and peaceful among the violent (Dhammapada 406).

## 1.10 Conclusion

Restorative processes encompass concepts such as truth, justice, empathy, and compassion, and could be considered as the driving force of transitional justice mechanisms. Buddhism has much to contribute to these universal concepts. Buddhist scriptures contain a philosophical foundation which can become an essential factor in transforming human attitudes towards reconciliation. The Buddhist method of designing a solution to address rights violations requires right understanding of the problem and its roots to avoid triggering another conflict. The understanding of root causes and realization of truth, relates to truth seeking, investigations, truth commissions which are integral components of the transitional justice mechanism.

Right reconciliation in Buddhism has its roots in mutual understanding with compassion. Buddhist accountability does not intend to punish anyone but rather provide benefit. Deeper philosophy of accountability in Buddhism is a derivation of the accountability process applicable for an individual – the theory of Kamma, which functions according to cause and effect instead of rewards and punishments (Kumarasena 2011).

The Vinaya Pitaka suggests that we must also find a way to divert our focus from punishing guilt to reforming intention. Confessions are the first step and the honourable acceptance of wrongful deeds or blame should be seen as the means for progress in spiritual practice of individuals, which is the primary aim of Buddhists. The Vinaya Pitaka also provides for the correction of offences and omissions which violate its injunctions. The Dhamma emphasizes the discipline of the individual’s mind, as true reconciliation and peace is built in the mind of an individual then shared in communities.

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### **List of Interviews with Buddhist Monks and Academics**

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5. Venerable Professor Gallele Sumanasiri Thero, Vice Chancellor, Buddhist and Pali University
6. Dr. A. T. Ariyaratne, President, Sarvodaya Shramadana Movement of Sri Lanka

## Chapter 2

# Transitional Justice: Toward A Spirituality of Truth and Justice A Hindu Perspective

*“We need accountability for things that took place, truth can heal and free us”<sup>7</sup>*

### 2.1 Introduction

In this chapter, we examine the teachings of Hinduism as relevant to the issues of truth and justice in the transitional justice process. Our exploration is based primarily on the *Upaniṣhad*<sup>8</sup> and *Bhagavadgītā*<sup>9</sup>. Transitional Justice truth-seeking must deal with ‘mythologies of the past’ to ensure accountability, justice to victims, and achieve sustainable reconciliation and peace. As that which upholds truth (*dharmā*), religion plays a vital role in transitional justice mechanisms. It is a truth-force that must be cultivated as essential in transitional justice processes. The role of religious leaders is to present transitional justice as a path (*dharmā*) that upholds truth (*satya*) and to engage all of society in public dialogue on these difficult issues. Sages whose desire to seek the Ultimate were fulfilled because they trod this path of truth.

### 2.2 Religion as upholding the order of Truth (*Satya*)

Public disclosure of truth and official acceptance facilitates healing and reconciliation (Sooka, 2006, p. 8). “Given that nationalist myth-making, based on historical distortion, has fueled both interstate and intrastate wars, efforts to prevent the instrumentalisation of facts and history are needed to prevent a return to violent conflict” (Mendeloff, 2004, pp. 356-357). Disclosure of truth ensures accountability when ‘human rights violations have been characterized by denial, deception, or imposed silence’ (Mendez, p.5). Eirin points out “numerous commissions have not even acknowledged the problematic nature of ‘truth’, but assumed that one truth could be established, and must be established

so that reconciliation could ensue.” Further, he notes “This makes it vital that the problematic

nature of truth is acknowledged and addressed when constructing a truth commission” (Mobekk, 2005, p. 266). What we need is a spirituality of truth. The Hindu understanding of *dharmā* and *satya* clears this ambiguity in defining truth. Moreover, we will see that the fulfillment of *dharmā* presupposes or necessitates *satya*, the truth.

The word *dharmā* is derived from the root *dhṛ* which means ‘to bear, to support, to uphold’ (Olivelle, 2011, p. 139), emphasizing the role of the person in actively ‘supporting’ or ‘upholding’ the cosmic and moral order. It connotes the universe in which we live, its structures, physical, moral or spiritual, our basic support system. Called *ṛta* in the Vedas, *dharmā* is found in the universal laws; it is the intrinsic justice and rightness underlying all that exists. Dharma when properly pursued is a means to universal welfare (*sarvaḥkhilāhita*). It is the code of conduct of the individual or group, the precepts of social behavior.

*Satya* is usually translated as Truth. While ‘truth’ or ‘true’ may have different manifestations (discussed further in the next section), *satya* is primarily ontological and existential. This word is derived from the word *sat*, which literally means being (*to be*), ever-existent or never dying. It also denotes being real, sincere, pure and effectual etc.

In the *Rgveda* the word *dharmā* occurs as a noun six times in combination with *satya* (steadfastness, invariability, non-discrepancy etc.). The most sustained treatment of *dharmā* is found in the *Bṛhadāraṇyaka-upaniṣad*: “That which is *dharmā* is also that which *satya* is” (“*yo vai sa dharmah satyam vai tat*”) (1.4.14). Here the word *dharmā* is used synonymously with ‘Truth’. ‘He who speaks *dharmā* speaks *satya*, and he who speaks *satya* speaks of *dharmā*’ (1.4.14). *Satya* is the highest *dharmā*; the world is supported on it. Dharma is life force. *Satya*

<sup>7</sup> This was the sentiments expressed by the most of the interviewees in the North.

<sup>8</sup> The *Upaniṣhads*, commonly referred to as *Vedānta* or ‘the end’ or ‘the highest purpose of the Veda’, is a collection of texts that serves as the foundation of some of the central philosophical concepts of Hinduism and its various traditions (see. Doniger, 1990, pp. 2-3).

<sup>9</sup> The *Bhagavadgītā* (“Song of the Lord”) is a 700-verse scripture in Sanskrit. It is part of the epic *Mahabharata* (chapters 25 - 42 of the 6th book of Mahabharata). The chapter is Krishna’s battlefield discussion with Arjuna. Renowned as the jewel of India’s spiritual wisdom, the discussions provide a definitive guide to the science of self-realization.

and Dharma are convertible without being tautological.

Now one can understand better the relation between *dharmā* and *satya*. Every person can claim, as the sage does in the *Atharvaveda*: “*mṛtyor abam brahmacārī*” (6.133.3) – “I am a *brahmacārī* unto death.” *Brahmacharya* means the way of living adopted in search of Brahma i.e. Truth. It implies a constant movement towards the great, and ultimately towards God, who is the Greatest of all. As the *Chāndogya-upaniṣad* maintains: all this is Brahman (“*sarvam khalu idam brahma*” 3.14.1). As the *Bhagavad-gītā* teaches, people who have some kind of God-experience see all as they see themselves (*ātma-anupamyā* 6.32)<sup>10</sup>. When one *does the truth*, or *lives the truth* one ‘conducts oneself in accord with Brahman’ or ‘Truth’. The more humans become aware of that which is Great or God, the Highest Truth, the more they realize the inter-connectedness of all creatures. They love as they love themselves. They work for the welfare of all (*loka-saṅgraha* 3.20,25)<sup>11</sup>. Then the universe will be truly sustained – the ordinary meaning of *dharmā*. Religion is that which upholds truth (*dharmā*) and transitional justice is a path (*dharmā*) that serves this purpose of upholding the truth (*satya*). Truth-telling in transitional justice should be seen as a first step in the process of upholding *dharmā* which maintains the moral order of the universe.

### 2.3 Religion as ‘Truth-Force’ (*Satyāgraha*)

Truth alone is victorious, not untruth.  
The path leading to God is permeated by truth.  
Sages, whose desire are all fulfilled, by this path  
approach The highest abode of that truth.

Satyam eva jayate na anṛtṇam  
Satyena panthā vitato devayānaḥ,  
yena ākramanti ṛṣayo hi āptakāmāḥ,  
yatra tat satyasya paramam nidhānam  
(Muṇḍaka-upaniṣad 3.3.6)

This *mantra* gives us some important aspects of *satya* (truth) which is important to truth recovery mechanism of transitional justice

Firstly, the primacy of truth.

The word *Satya* usually is translated as Truth. The word *true* can have different meanings. First, in the sense of a true definition; implies conceptual consistency. Second, in the sense of awareness of reality as it is in itself; the verification of a claim based on a partial correspondence between mind and outside reality. Third, truthfulness in the sense of what one proclaims as one sincerely believes or knows to be true. Fourth, there is ontological truth: the correspondence between an idea of a thing and the thing as it is. This is the *truth of existence (sat)*. Fifth, we have religious or *existential truth*; when life embraces belief, when one *does or lives the truth* and struggles to be what they claim to be. Authentic religion, then, is an invitation to live a highly moral life, to give priority to human values such as truth and justice over all other concerns.

A system of thought that is consistent – *satya* in its first meaning - can convince a person who is given to logical thinking. However, we tend to take the data of our sense as true – *satya* in its second meaning. When we know a person sufficiently, we are inclined to accept her testimony as true. We believe she is communicating something she herself believes to be true - *satya* in its third meaning. An institution attracts followers when it really has the purpose that is the reason for its existence – *satya* in its fourth sense, and that the followers perceive as also relevant to them. But when we see somebody embodying his convictions in his life, we are deeply moved. This is *satya* in its fifth meaning. I may not be able to give you a convincing argument for the existence of God, whom I believe to be love. But if you consistently experience me as a loving, compassionate and caring person, then you may not need any other argument. My life becomes the most powerful argument.

<sup>10</sup> ātmaupamyena sarvatra samaṁ paśhyati yo ṛjuna sukhaṁ vā yadi vā duḥkhaṁ sa yogī paramo mataḥ

I regard them to be perfect yogis who see the true equality of all living beings and respond to the joys and sorrows of others as if they were their own.

<sup>11</sup> karmaṇaiva hi sansiddhim āsthitā janakādayaḥ

loka-saṅgraham evāpi sampāshyan kartum arhasi

yad yad ācharati śhreṣṭhas tat tad evetaro janaḥ

sa yat pramāṇaṁ kurute lokas tad anuvartate

By performing their prescribed duties, King Janak and others attained perfection. You should also perform your work to set an example for the good of the world. Whatever actions great persons perform, common people follow. Whatever standards they set, all the world pursues (BG 3:20-21).

Testimony or witness is true not because it is said but rather, because it is true, you proclaim it. Persons who relate their stories via truth commissions should be heard carefully not because of their representative value but rather because the person communicates something s/he believes to be true. “Truth alone is victorious”; truth-seeking mechanisms in a post-conflict society uphold the order of the cosmos (*dharmā*)

The function of religion is the second concern of the *mantra*: it is meant to serve as a path (*panthā*) to God. Religious leaders must establish a ‘Humanistic Nationalism’, a deep humanism, and transitional justice is part of establishing such a doctrine. However, this is possible only when religion rediscovers its identity as a path – permeated by truth – leading to God. If religion is to be an instrument of peace, then we need to purify our allegiance to its, not use it to provide social identity or social security. Very often religious leaders, the sages, are the root cause of the deterioration of religion.

Finally, the acknowledgement of God as Supreme Truth, the end of the *panthā*. History proves that when one community thinks that it has the full truth, it tends to be violent. God alone is the Supreme Truth – we are merely pilgrims. This awareness prompts us to examine our own beliefs: are they promoting well-being? Are they mediating peace and harmony? This journey to truth also entails humility, understanding we may make mistakes, being able to apologize for such mistakes, and working with all humanity towards social justice and ecological healing. Religion as a Truth-Force and religious leaders as Truth-Enforcers or Seekers, therefore, can facilitate enquiry into the *why* of conflicts and *how* to prevent their recurrence in the future.

## 2.4 Religion as Contemplation of Truth

In the *Bṛhadāraṇyaka-upaniṣad* it is stated, “...*bṛdayena hi satyam jānāti bṛdaye hi eva satyam*” (2.3.23): truth is not only known by the heart; it also dwells in the heart. This will be easily understood if we keep in mind that the deepest expression of truth is the presence of an authentic person, and ultimately of the most authentic One. Most religions, including the great majority of Hindu tradition, think of God as love or as loving. In the presence of such a God, our awareness becomes love. In the *Bhagavadgītā*, the song of the Lord, Kṛṣṇa tells Arjuna that a person who has the highest devotion (*parā bhakti*) knows Him as He is (BG 18:54-55)<sup>12</sup>. Only when we look at God – for that matter any person – with love will we know Him truly.

The *Bhagavadgītā* treats the reader to the discrimination between real and unreal (*viveka*)<sup>13</sup> or right understanding in the wake of Arjuna’s decision not to fight, i.e. not to do his duty on the battle field of *Kurusetra* (Sheveland, 2007). The Gita’s argument in favor of *Kshatriya Dharma* (why he should fight) stands in serious tension with the Gita’s ethical construal of discrimination. Notably, the Gita links its spirituality of discrimination to an ethic of discrimination, an ethic whereby others are viewed equally, as non-different from self, and as grounded in the divine nature. Discrimination (*viveka*) is both spiritual and moral, as several verses from chapter six attest (BG 6:7,9,12,19)<sup>14</sup>.

One’s mental and moral lives must both be marked by lack of aversions and attachments i.e. bias toward some (‘friends’, etc.) and against others (‘enemies’, etc.). This union between the inner life of the mind and the outer world of action is grounded in the ontological union of persons with persons, as well as their union together in Krishna. To see ‘self’ is to see ‘other’ in self, in Krishna. The ethic of discrimination is grounded in a theology of

<sup>12</sup> brahma-bhūtaḥ prasannātmā na śochati na kāṅkṣhati  
samaḥ sarveṣu bhūteṣu mad-bhaktiṁ labhate parām

One situated in the transcendental Brahman realization becomes mentally serene, neither grieving nor desiring. Being equitably disposed toward all living beings, such a yogi attains supreme devotion unto me.

bhaktiā mām abhijānāti yāvān yaś chāsmi tattvataḥ  
tato mām tattvato jñātvā viśhate tad-anantaram

Only by loving devotion to me does one come to know who I am in truth. Then, having come to know me, my devotee enters into full consciousness of me.

<sup>13</sup> Viveka is often understood as discrimination i.e. wisdom made active or right understanding. It is the ability to discriminate between the real and unreal.

<sup>14</sup> “The higher the self of a tranquil man whose self is mastered is perfectly poised in cold and heat, joy or suffering, honor or contempt. He is set apart by his disinterest toward comrades, allies, enemies, neutrals, nonpartisans, foes, friends, good and even evil men. He should focus his mind and restrain the activity of his thought and senses; sitting on that seat he should practice discipline for the purification of the self. “He does not waver, like a lamp sheltered from the wind” is the simile recalled for a man of discipline, restrained in thought and practicing self-discipline” (The *Bhagavad Gita: Krishna’s Counsel in a Time of War*, 1986).

participation. Arming himself within discipline, seeing everything with an equal eye, “the true yogis, uniting their consciousness with God, see with equal eye, all living beings in God and God in all living beings” (BG 6:29-31)<sup>15</sup>. The self ‘here’ is non-different from the self ‘there’, and all beings exist in the Lord just as we must be see the Lord imbued in all the world and all of reality participating in the Lord. This sense of radical participation of all beings in the Lord renders all things holy.

This is no doubt an aspect of what the Gita means by “renunciation”. That which is to be renounced is not confined to the external world of sensual attachments but includes my own cognitive categorizations of persons - my constructs of mind that inhibit my vision of the truth of living beings. Renunciation has clear social-ethical consequences: “The karma yogis, who neither desire nor hate anything, should be considered always renounced. Free from all dualities, they are easily liberated from the bonds of material energy.” (BG 5:3,18).<sup>16</sup>

Realization of Krishna, then, seems to be the condition for the possibility of perceiving living beings with an equal eye, indeed, of “bowing everywhere” to Krishna’s omnipresence. The vision of Krishna issues a call for moral accountability by disclosing the truth of living beings. This manner of expressing the ontological participation of reality in the Lord makes an appeal beyond sympathy for others from a position of detachment from them; one has rather become the Lord and experienced the other in oneself, and oneself in the other (in Krishna). This has self-evident relevance in the transitional justice context.

## 2.5 Religion as the path of ‘Disinterested’ service (*Nishkama Karma*)

Karma yoga is the path of disinterested service, of action, that enables a way towards self-realisation and realization of God without giving up on active life in the world. Rather, work is worship for the practitioners of karma-yoga. The word *karma* is derived from its verbal root *kri* which means to “to

act”, “to do” and to “bring about”. Karma yoga includes action in general (*karma*), dutiful action (*dharma*), ritualistic action (*samskara*) and social service (*yajana*).

Throughout Bhagavadgītā inaction is condemned. It urges action as an inalienable feature of human existence: “There is no one who can remain without action even for a moment. Indeed, all beings are compelled to act by their qualities born of material nature (the three *guṇas*)” (BG 3:5).<sup>17</sup> In fact, it claims the true ascetic is s/he who renounces not actions, but selfish interest in actions “The Supreme Divine Personality said: Giving up of actions motivated by desire is what the wise understand as *sanyās*. Relinquishing the fruits of all actions is what the learned declare to be *tyāg*.” (BG 18:2).<sup>18</sup> Thus, Bhagavadgītā suggests that for true progress in life, one needs to act (*karma*) and to act righteously (*dharma*). This is “dharma in action”: “renunciation in action and not renunciation of action”. The spirituality of Karma-yoga that the Bhagavadgītā offers has two aspects:

First, *Nishkama Karma*: Work done with an inner freedom from greed (*kama*). Action with this inner freedom is *karma-phala-tyaga*: “You have a right to perform your prescribed duties, but you are not entitled to the fruits of your actions. Never consider yourself to be the cause of the results of your activities, nor be attached to inaction.” (BG 2:47)<sup>19</sup> - the detached frame of mind that does not expect the fruit of an action. The ideal *yogin* of the Bhagavadgītā is, therefore, one who lives God but works in the world by fulfilling God’s will, whose head is in solitude, but whose hands are in society. S/he is not the *sanyasin*, retired from the world and renouncing everything, but the disinterested householder, a *nishkama karmayogin*.

*Lokasamgraha* (world-solidarity or cosmic benefit), the second aspect is one’s chief duty: working towards the welfare of the world. It teaches that one is transformed by the work done in a spirit of sacrifice (*yajna*). Life itself becomes a *yajna* by which humans dedicates their wealth and deeds to the

<sup>15</sup> arva-bhūta-stham ātmānaṁ sarva-bhūtāni chātmani  
ikṣhate yoga-yuktātmā sarvatra sama-darśhanaḥ

<sup>16</sup> jñeyah sa nitya-sannyāsī yo na dveṣṭī na kāṅkṣhati  
nirdvandvo hi mahā-bāho sukhaṁ bandhāt pramuchyate

<sup>17</sup> na hi kaśchit kṣhaṇam api jātu tiṣṭhatyakarma-kṛit  
kāryate hyavaśaḥ karma sarvaḥ prakṛiti-jair guṇaiḥ

<sup>18</sup> kāmyānāṁ karmaṇāṁ nyāsaṁ sannyāsaṁ kavayo viduḥ  
sarva-karma-phala-tyāgaṁ prāhus tyāgaṁ vichakṣhaṇāḥ

<sup>19</sup> karmaṇy-evādhikāras te mā phaleṣhu kadāchana  
mā karma-phala-hetur bhūr mā te saṅgo ’stvakarmaṇi

service of God in all. Liberated from the shackles of *kama* and rooted in the experience of *yajña*, the *yogin* serves nature and society with an attitude of genuine self-sacrifice: “They are released from the bondage of material attachments and their intellect is established in divine knowledge. Since they perform all actions as a sacrifice (to God), they are freed from all karmic reactions” (BG 4:23).<sup>20</sup>

Karma-yoga means also “a passionate concern for the well-being of all realities”, not only humans (BG 5:25; 12:4). The *yogin* realizes that only a mutually nourishing relationship between the humans and the life-giving powers of nature can bring about the integral welfare of all: “By your sacrifices the celestial gods will be pleased, and by cooperation between humans and the celestial gods, prosperity will reign for all.” (BG 3:11)<sup>21</sup> There cannot be self-realization without integration of the individual self with the larger social and environmental self. In a spirit of universal solidarity (*lokasamgraha*), one works for the welfare of all (*lokashema*) by the practice of *dharmā* (righteousness).

Transitional Justice can be understood as one such spiritual path of action or work (karma-yoga). Karma yoga enables transitional justice practitioners to act with the inner freedom of *niskama karma* (desire less action) and work for universal welfare or cosmic benefit (*lokasamgraha*). It necessitates action (*karma*) done righteously (*dharmā*) and entails self-abnegation, readiness to sacrifice everything for another being. It urges “renunciation in action and not renunciation of action”.

## 2.6 Religion as a Path for Non-Violence (*Ahimsā*)

The ethical derivative of the principle of unity of all life is the precept of *Ahimsā* that holds an absolute primacy in most legal, ethical, and devotional literature in Hinduism.

Since the supreme reality finds expression in all forms of life, non-violence must be the right attitude towards all living beings. *Ahimsā* also concerns non-violence between human and nature. It is fully difficult to translate the word *ahimsā*.

Normally it is rendered as non-violence, non-injury, non-killing. However, the Sanskrit term suggests something deeper. The initial *a* is clearly *privativum*, a denial. *Himsa* derives from the root *han*, meaning to strike, to kill, to harm. But *himsa* does not denote merely the outward aggressive act (this would be *hatī*), it also indicates the internal desire. Correspondingly, *ahimsa* is not merely the absence of violence but the negation of the desire to strike. The Braminic and the Sramanic traditions will stress such virtues as *dayā* (mercy), *kāruṇya* (compassion), *kṣamā* (tolerance) in the ethical precept of *ahimsā*.

For Gandhi, non-violence (*ahimsā*) is a basic law of life, the goal of human life and identical with love, truth and God. For Gandhi ‘when the practice of *ahimsā* becomes universal, God will reign on earth as He does in heaven’ (Merton, 1965, p. 7). The substitute for violence, for Gandhi, is non-cooperation. ‘Non-cooperation’, he declared, ‘is protest against an unwitting and unwilling participation in evil’ (Merton, 1965, p. 19). Non-violence for Gandhi, bears witness to the chief truth of Hinduism: ‘The belief that all life (not only human but all sentient beings) is one, i.e., all life coming from the One universal source, call it Allah, God or *Parameshvara*’.

We can also reflect on the tradition of *ahimsa* in relation to the culture of peace. *ahimsā* is the radical renunciation of violence from the heart. In this sense *ahimsā* calls for a fundamental option for a culture of peace and a civilization of love. Gandhi rightly interpreted *ahimsā* in the sense of love and faithfulness to truth, which he calls *Satyagraha* or ‘clinging to truth’. Clinging to truth in our divided world demands a struggle for fidelity to love and peace. The culture of peace and the civilization of love demand that we are committed to a praxis and a life-style that embody these values.

## 2.7 Religion and the Sacredness of the Human Being

God and human being are in essence spirit (*ātman*), pure awareness (*caitanya*). There is also an intimate relationship between them, the *paramātmā* and the *jīvātman*. Śāṅkara, the *advaitic* philosopher, describes the intimate relationship between human spirit and divine spirit as *tadātmya*, which really

<sup>20</sup> gata-saṅgasya muktasya jñānāvasthita-chetasah  
yajñāyācharataḥ karma samagraṁ pravīryate

<sup>21</sup> devān bhāvayatānena te devā bhāvayantu vaḥ  
parasparaṁ bhāvayantaḥ śhreyah param avāpsyatha

means that God is the real Self, the ultimate core of one's being. The *Muṇḍaka Upaniṣad* (III.1.1-3) presents the human spirit and the divine spirit as two birds, two intimate friends, who occupy the branches of the same tree. The divine spirit has also been described as the inner witness (*sākṣi*) of the activities of the human spirit (*Śvetāśvatara Upaniṣad* VI.II).

Service to human being, therefore, is the true service of God. This idea has found expression in the concept of *nara-narāyaṇa* or *daridra-narāyaṇa*. The human being, especially the poor person, is the visible manifestation of God himself. It is this insight that inspired Swami Vivekananda to integrate the ideal of service through humanitarian activities into the traditional Indian monasticism, which was by and large, a-cosmic. This is in line with the Bhagavadgītā ideal of *lokasaṁgraha*, working for the welfare of the world by upholding unity and harmony of the whole of creation. Sri Krishna calls the attention of Arjuna to the example of kingly sages like Janaka who attained perfection through the action for the welfare of the world (BG 3:20) Then there is the example of Sri Krishna himself, who, though lacking nothing, involves himself in the world through his incarnation in order to establish justice.

## 2.8 Conclusion

The Hindu tradition offers a sense of community understood as mutual interdependence, as embodied in the Indic tradition of Unity in Diversity: *Ekam sat vipra bahudha vadanti* ('Truth is one, but there are different perceptions of that Truth'). This Vedic axiom, as shown, is the heartbeat of Hindu culture. A relentless search (*sādhana dharma*) for Truth, for the Ultimate, for the Divine, permeates all forms of our life and thought. At the same time, we respect the diverse paths of this search (*samāj dharma*). The Hindu philosophical tradition has rather insisted that mutual interdependence can be as an experience of equality and community. This heritage assures a peaceful coexistence of diverse religions.

This implies that religious leaders have to uphold and teach the universal values of truthfulness (*satyam*), justice (*dharmā*), equanimity (*samabhavana*), equality (*samatva*), non-violence (*ahimsā*), love (*maitri*) and compassion (*karuna*). By working according to *nishkama karma* we can promote peace, justice, and human rights in a commitment to national integration. Each religion can also then enter a dialogue to comprehend its liberative potential for the integral well-being of all humankind (*lokasaṁgraha*).

Hinduism calls us to *be the truth* by *being with the Truth*, which is a call to contemplative action and a return to our being's centre. There we will discover the other and joyfully accept him in his otherness, grateful for his otherness – one more instance of God's glory and a source of enrichment for us. If the culture of peace is a relational enterprise built by the diverse subaltern solidarities of the powerless it will prepare the way of peace for all; *antyaodaya* (uplifting the victims) leads to *sarvodaya* (development of all). Then there will be the peace in our country that we seek through transitional justice mechanisms: *om śāntiḥ śāntiḥ śāntiḥ*.

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## Chapter 3

# Transitional Justice Initiative in Sri Lanka Islamic Perspective

“Reconciliation is the best” (S.4:128)<sup>22</sup>

### 3.1 Introduction

Sri Lanka needs an inclusive approach to transitional justice that includes meaningful participation of the variety of actors in the discourse around transitional justice with a prophetic courage to avoid revenge and re-occurrence. This chapter focuses on Islamic legal foundations under *Shari'ah* for transitional justice pillars such as retribution, restoration and reconciliation measures.<sup>23</sup> Justice is an integral element of the Islamic discourse of peace and jurisprudence. The Qur'ān indicates what justice constitutes and emphasizes human responsibility to strive relentlessly for it. The chapter shows justice in Islam may fall into two categories that are very pertinent to transitional justice discourse: *retributive justice*, the criminal prosecution for an offence; *restorative justice*, non-punitive forms of justice for wrongdoing. While arguing that in Islam the attainment of justice is akin to worship, this chapter shows that Qur'ānic teaching resonates with concepts of justice and peace useful to transitional justice mechanisms.

### 3.2 Islamic Perspectives on Peace

The word “Islam” stems from the Arabic word *salam/silm* that is to *work for peace* through unconditional submission (*taslim*) to the will of God. The Qur'ān calls the way of Islam as “the path of peace” (S.5:16)<sup>24</sup>. Muslims in their daily prayers must pray five times to God that He may keep them on the right path and protect them from going astray. At the close of the prayers worshippers look at their right and left and say, *May the peace and blessing of Allah be*

*upon you (al-salām 'alaykum = peace be upon you):* implying an intention of spreading peace from within (the spiritual domain) to without (social domain). Peace in Islam implies a condition of internal and external order.

God is referred to as *as-salām* or “Peace” in the Qur'ān (S. 59:23)<sup>25</sup>. Peace in Islam begins with God. The Qur'ān presents peace as a condition of paradise: “Those who seek to please God are assured ... that they will be guided by Him to the ‘paths of peace’”. Paradise, which is the final destination of the society of God’s choice, is referred to in the Qur'ān as “the home of [the peaceful]” (S.89:27-30). In the Qur'ānic sense, peace on earth has two important aspects: firstly, God-consciousness cultivated through inner spiritual discipline, and secondly, social peace established between oneself and others. The underlying principle in both is the practice of patience or forbearance (*sabr*): “But whoever endures patiently and forgives—that is a sign of real resolve.” (S.42:43)<sup>26</sup>. A popular hanging in Muslims homes says, “God is with those who are patient.”

The Qur'ān instructs to resist provocation and aggression in society engulfed in conflict, to speak of patience (*sabr*) or gentleness (*riḡḡ*), to actively reject violence (*unf*) and disruption of the social system causing losses in life and property (*fasad*), to protect the sacredness of human dignity and engage peacefully in resisting oppression (*zulm*) through plausible means, to engage in peace-making, confidence building. God does not accept aggressors as friends but rather ‘abhors violent activity’ (S.2:205) and encourages patience, which

<sup>22</sup> Wa inimra'atun kha\_fat mim ba'ihā\_nusyū\_zan au i'ra\_dan fala\_juna\_ha 'alaihima\_ ay yusliha\_bainahuma\_sulha\_(n), salhu khair(un), wa uhdiratil anfususy syuhh(a), wa in tuhsinu\_wa tattaqu\_fa innalla\_ha ka\_na bima\_tamalu\_na khabira\_(n). If a woman fears maltreatment or desertion from her husband, there is no fault in them if they reconcile their differences, for reconciliation is best. Souls are prone to avarice, yet if you do what is good, and practice piety - God is Cognizant of what you do.

<sup>23</sup> The word *Shari'ah* refer to Islamic law that governs the members of the Islamic faith. The laws are derived or has two primary sources: the Qur'ān (Revelation of God) and the Hadiths (Words and life examples of Muhammad) (See. Coulson, 2011, pp. 1-7).

<sup>24</sup> Yahdi bihilla\_hu manittaba'aridwa\_nahu\_subulas sala\_mi wayukhrijuhum minaz zuluma\_tūlan nu\_ri bi iznihi wa yahdihim ila\_sira\_tim mustaqim(in). God guides with it whoever follows His approval to the ways of peace, and He brings them out of darkness into light, by His permission, and He guides them in a straight path.

<sup>25</sup> Huwal la\_hul lazi la\_ila\_ha huwal almalikul qud du\_sus sala\_mul muminul muhaiminul azizul jab ba\_rul mutakab bir subha\_nal la\_hi am ma\_yusriku\_n He is God; besides Whom there is no god; the Sovereign, the Holy, the Peace Giver, the Faith-Giver, the Overseer, the Almighty, the Omnipotent, the Overwhelming. Glory be to God, beyond what they associate.

<sup>26</sup> Wa laman sabara wa gafara in na za\_lika lamin azmil umu\_r

in turn dissipates violence. Islamic perspectives for global justice can be perceived from Holy Qur'an's invitation: "So be quick to do good acts" (S.5:48).

In the Holy Qur'an Abel rejected violence against Cain in these beautiful words: "Surely, if you stretch out your hands against me to kill me, then I shall not stretch out my hands against you to kill you. I fear Allah the Rubb (Sustainer) of the universe" (S.5:28)<sup>27</sup>. The story of Abel possesses a challenge to say no to violence and promote peace and harmony in Sri Lanka. According to Islam, since God has created the whole humanity through Adam and Eve, we all form one (family) (S.49:13)<sup>28</sup>. This unity should lead to peace. However, an individual can follow the path of God as messengers of peace striving for justice (*fitrah*) and peace or follow the path of their own interest (*al-nafsi*). This notion of *fitrah* is fundamental to Islamic conception of peace; it "provides not only the foundational premise for a constructive politics of human potential and value maximization, but also a safeguard against dehumanizing 'the other' within the context of a conflict situation" (Sharify-Funk, 2001, p. 279). This implies that transitional justice application must consider *fitrah* (justice) as fundamental to peace and democracy.

The life and example of Prophet Mohammed further exemplifies these paths of peace. A well-known story speaks of a woman who would throw

rubbish on the Prophet whenever he passed. One day, when he noticed she was not at her window, ready to throw, he became worried about her health and inquired after her. This demonstrates non-aggressiveness and sensitivity of others' needs, even those who do not respect or accept him. The prophet has also narrated a story of a woman who saw a dog thirsty and drew water from the spring and gave it to the dog. The prophet said because of this single act of kindness she entered paradise.

The Qur'an says "Do not take life which God had made sacred except by a legal right" (S.17:33)<sup>29</sup>. In the sixth year of Hijra, fueled by hatred, some Muslims were prevented access to the sacred mosque at Mecca. When the Muslims were re-established in Mecca, some of them wanted to retaliate. The Qur'an tells us that we must not return evil for evil (S.5:2).<sup>30</sup> Violence always leads to breach of peace and is a crime against society (S.5:32)<sup>31</sup>. Islam conceives of one world and universal humanism. Humanity belongs to one family (S.2:213)<sup>32</sup>. Islamic activism for justice, therefore, is a movement of and for peace; it is not a movement of protest and reactionary ideas. The Qur'an says, *al-sulhu khayrun* ("reconciliation is best") and makes it clear that conflict can only be successfully ameliorated through the establishment of justice, which transcends sectarian self-interests (S.4:135)<sup>33</sup>. The Qur'an suggests that it is meritorious to forgo revenge in a spirit of charity

<sup>27</sup> La'im basatta ilayya yadaka litaqtulani ma\_ ana bi ba\_sitii yadiya ilaika li'aqtulak(a), inni akha\_fulla\_ha rabball'a\_lamin(a).

<sup>28</sup> Ya\_ ay yuhal na\_su in na\_halaqna\_kum min zakariw wa unsa\_ wa ja'alna\_kum suu\_baw wa qaba\_ila litaa\_rafu\_ in na akramakum indal la\_hi atqa\_kum in nal la\_ha alimun kabir

O people! We created you from a male and a female, and made you races and tribes, that you may know one another. The best among you in the sight of God is the most righteous. God is All-Knowing, Well-Experienced.

<sup>29</sup> Wa kulla insa\_nin alzamna\_hu ta\_'irahu\_ fi 'unuqih(i), wa nukhriju lahu\_ yaumal qiya\_mati kita\_bay yalqa\_hu mansyu\_ra\_(n).

<sup>30</sup> ... wa iza\_halaltum fasta\_du\_, wa la\_yajrimannakum syana'a\_nu qaumin an saddu\_kum 'anil masjidil hara\_mi an ta'tadu\_, wa ta'a\_wanu\_'alal birri wat taqwa\_, wa la\_ta'a\_wanu\_'alal ismi wal'udwa\_n(i)... ...And let not the hatred of people who barred you from the Sacred Mosque incite you to aggression. And cooperate with one another in virtuous conduct and conscience, and do not cooperate with one another in sin and hostility. And fear God...

<sup>31</sup> Min ajli za\_lika katabna\_'ala\_bani isra'\_ila annahu\_man qatala nafsam bi gairi nafsin au fasa\_din fil ardi fa ka'annama\_qatalan na\_sa jami'a\_(n), wa man ahya\_ha\_ fa ka'annama\_ ahyan na\_sa jami'a\_(n)...

Because of that We ordained for the Children of Israel—that whoever kills a person—unless it is for murder or corruption on earth—it is as if he killed the whole of mankind; and whoever saves a person, it is as if he saved the whole of mankind.

<sup>32</sup> Ka\_nan na\_su ummataw wa\_hidah(tan), fa ba'asalla\_hun nabiyyina mubasasyirina wa munzirin(a), wa anzala ma'ahumul kita\_ba bil haqqi liyahkuma bainan na\_si fi makhtalafu\_fih(i), wa makhtalafa\_fihi illal lazina u\_tu\_hu mim ba'di ma\_ja'\_athumul bayyina\_tu bagyam bainahum, fa hadalla\_hul lazina a\_manu\_limakhtalafu\_fihi minal haqqi bi iznih(i), walla\_hu yahdi may yasya\_u\_ila\_sira\_tim mustaqim(in).

Humanity used to be one community; then God sent the prophets, bringing good news and giving warnings. And He sent down with them the Scripture, with the truth, to judge between people regarding their differences. But none differed over it except those who were given it—after the proofs had come to them—out of mutual envy between them. Then God guided those who believed to the truth they had disputed, in accordance with His will. God guides whom He wills to a straight path.

<sup>33</sup> Ya\_ ay yuhal lazina a\_manu\_ku\_nu\_qawwa\_mina bil qisti syuhada\_'a lilla\_hi wa lau 'ala\_anfusikum awil wa\_lidaini wal aqrabin(a), iy yakun ganiyyan au faqiran falla\_hu aula\_bihima\_, fala\_tattabi'ul hawa\_an ta'dilu\_, wa in talwu\_au tu'ridu\_fa innalla\_ha ka\_na bima\_ta'malu\_na khabira\_(n). O you who believe! Stand firmly for justice, as witnesses to God, even if against yourselves, or your parents, or your relatives. Whether one is rich or poor, God takes care of both. So, do not follow your desires, lest you swerve. If you deviate, or turn away—then God is Aware of what you do.

(S.5:45)<sup>34</sup>. Hostilities must be brought to an end as quickly as possible and must cease the minute the enemy sues for peace (S.2:192-3)<sup>35</sup>. This means that transitional justice efforts are not activism for justice or a movement of protests and reactionary ideas. Rather, it is a movement of and for peace, resolving conflict by establishing justice that transcends sectarian self-interests.

### 3.3 Islamic Perspective on Justice

Justice is an integral element of the Islamic discourse of peace and jurisprudence. It is stated that “so central is justice to the Islamic value-system, that Muslims are reminded that it transcends an individual’s most precious bond – the bond to oneself” (Muzafar, 2000, p. 261). Justice is more significant than one’s own self-interest. There are several words [(*qist*-equity/fairness), (*qasḍ*-temperance), (*istiḳāma*-straightforwardness), (*wasat*-moderation), (*birr*-righteousness), (*naṣīb*-share), (*hiṣṣa*-goodness), (*miẓān*-balance/scale) which are used to denote manifold aspects of Justice in Islam. The most commonly used word for Justice, however, in Islam is *adl* an abstract noun which is derived from the root verb ‘*ayn-dal-lam*’ that incorporates several meanings: (i) to sit straight or setting in order; (ii) to turn away from wrong to that of right or fixing in the right place; (iii) equality or to be equal; (iv) to balance or establish equilibrium (v) fairness, righteousness and correctness. Thus, the meaning of justice is a combination of both moral and social values.

Justice is one of the Divine attributes and God in Islam is referred to as the source of justice and the Absolute Justice and Ultimate Judge (*ahkam al-*

*hakimin*). God forbids *al-fahsha*’ (lewdness), *al-munkar* (disobedience), and *al-baghy* (insolence) (S.16:90). God disclosed Himself through Revelations, communicated to men through prophets, so the principle of justice must be measured and realized by the standards set by revelation (S.57:25)<sup>36</sup> and that “the doctrine of reward and punishment is founded on divine justice: it is written that each and every human being will be treated fairly based on his or her personal acts and achievement” (Souaiaia, 2008, p. 1).

In many of these Quranic examples, being just outwardly is a reflection of one’s inner state of God consciousness (*taqwa*) (S.5:8)<sup>37</sup>. As Shah-Kazemi explains, ‘In God, justice means that everything is in its right place, whereas for man justice entails the effort to put everything in its right place: an immutable metaphysical quality on the divine side, and a dynamic, volatile effort on the human side... Man’s moral effort to act justly in the world here below – where things are not in their right place – is rooted in an innate spiritual predisposition to justice... [S]o in man, just action is an expression ... of a spiritual affinity with the Ultimate nature of reality – of things as they truly are in God, and therefore as they ought to be here on earth’ (Shah-Kazemi, 2007, pp. 82-83).

*Zulm* (injustice) is used in the Qur’ān to mean that which is wicked, a contempt of God’s laws, indulgence in evil, oppression and unfairness that leads to corruption and disruption of peace, as opposed to *adl* or justice. The Holy Qur’ān stresses that *idl* (justice) is complemented with *ihsam* or benevolence (S.5:60)<sup>38</sup>. The important duty of a

<sup>34</sup> Wa katabna ‘alaihima fiha annan nafsa bin nafsi wal’aina bil ‘aini wal anfa bil anfi wal uzuna bil uzuni was sinna bis sinn(i), wal juru\_ha qisa\_s(un), faman tasaddaqa bihi fa huwa kaffa\_ratul lah(u), wa mal lam yahkum bima\_ anzalalla\_hu fa ula\_ika humuz za\_limu\_n(a) And We wrote for them in it: a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and an equal wound for a wound. But whoever forgoes it in charity, it will serve as atonement for him. Those who do not rule according to what God revealed are the evildoers.

<sup>35</sup> Fa inintahau fa innalla\_ha gafu\_rur rahim(u). But if they cease, then God is Forgiving and Merciful. Wa qa\_tilu\_hum hatta\_la\_taku\_na fitnatuw wa yaku\_nad dinu lilla\_h(i), fa inintahau fa la\_’udwa\_na illa\_’alaz za\_limim(a). And fight them until there is no oppression, and worship becomes devoted to God alone. But if they cease, then let there be no hostility except against the oppressors.

<sup>36</sup> Laqad arsalna\_rusulana\_bil bay yina\_ti wa anzalna\_ma’ahumul kita\_ba wal miza\_na liyaqu\_man na\_su bil qisth wa anzalna hadida fih basun sadiduw wa mana\_fiu lin na\_si wa liyalamal la\_hu may yansuru\_hu\_wa rusulahu\_bil gaib in nal la\_ha qawiy yun aziz

We sent Our messengers with the clear proofs, and We sent down with them the Book and the Balance, that humanity may uphold justice. And We sent down iron, in which is violent force, and benefits for humanity. That God may know who supports Him and His Messengers invisibly. God is Strong and Powerful.

<sup>37</sup> Ya\_ayyuhal lazina\_a\_manu\_ku\_nu\_qawwa\_mina lilla\_hi syuhada\_’a bil qist(i), wa la\_yajrimannakum syna’\_nu qaumin ‘alla\_’alla\_tadilu\_, i’dilu\_, huwa aqrabu lit taqwa\_, wattaqulla\_h(a), innalla\_ha khabirum bima\_tamalu\_n(a). O you who believe! Be upright to God, witnessing with justice, and let not the hatred of a certain people prevent you from acting justly. Adhere to justice, for that is nearer to piety, and fear God. God is informed of what you do.

<sup>38</sup> Qul hal unabbu’ukum bi syarrim min za\_lika masu\_batan’indalla\_h(i), mal la’anahulla\_hu wa gadiba’alaihi wa ja’ala minhumul qiradata wal khana\_zira wa’abadat ta\_gu\_t(a), ula\_ika syarrum maka\_naw wa adallu’an sawa\_’is sabil(i).

government is to bring development and prosperity through justice and equitable rule. Justice is the *raison d'être* of legislating and governance: Islamic law and jurisprudence is to realize God's justice on earth. In Qur'ānic description, a just society is a land free from all forms of oppression; thus, the Islamic political ethic approves of violence only to remove injustice (*zulm*). The prophet said a society can persevere with unbelief (*kufir*) but not with injustice (*zulm*). The Qur'ān indicates explicitly that God does not oppress (S.9:70, 10:44, 29:40 and 30:9)<sup>39</sup>; therefore, injustice or oppression occurs only through human interventions, and the only path to justice is the divine order since God does not oppress.

### 3.4 Islam and Retributive Justice

According to the Qur'ān, to bring about justice, one must “enjoin what is right and forbid what is wrong” (S.3:104)<sup>40</sup> and serve one God “in an integrated relationship of solidarity with the community” (Ammar, 2001, p. 166). Within this context of interconnectivity or interrelatedness between community and individual “crime is seen as an abrogation of the individual's responsibility towards God, as well as of the harmony and solidarity of the community in both the public and private spheres” (Ammar, 2001, p. 166). Islam classifies criminal offences and corresponding punishment into three categories: *Hudūd*, *Qisās*, and *Ta'zir*. As Ammar notes “these categories indicate different bases of infringed rights, God's rights (public), or individual rights (private). These categories have a number of implications as well: various levels of judicial discretion in implementing punishments; the harshness of penalties imposed; and different evidentiary or fact-finding standards. Whatever the category or the implication, however, all jurists agree that the final objective in this classification of crime and punishment is to achieve a just society” (Ammar, 2001, p. 166).

*Hudūd* (singular *hadd*) literally means ‘limits’. Legally, *hudūd* offences are violations of the

“rights of God” (*ḥuqūg al-Allah*) or “claims of God” as well as His established legal and social order or “rights of humans” (*ḥuqūg al-'ibad*). A *Hudūd* offender is viewed as someone who has strayed away from the path of God and needs to return. The punishments are predetermined by God in the Qur'ān and mandatory (*'uqūbāt muqaddara*), leaving little room for rehabilitation and repentance. The judge merely determines the accuracy of the testimonies and evidence. These offences, once proven, cannot be subject to forgiveness or pardon. *Hudūd* offences include adultery (*zina*) (S.17:32), which includes offences like adultery, fornication, incest/pedophilia, rape, pimping; sodomy/lesbianism; waging war against God and society (*hirāba*) (S.5:33-34), which includes armed robbery (*ḥirābah*) (S.5:33-34), terrorism, armed violence (*baghi*) (S.49:9-10), slander (*qadhif*) (S.24:23-5), use of intoxicants (*shurh al-khamr*) (S.4:43), theft (*sariqa*) (S.5:38-39), apostasy (*ridda*) (S.2:217), unjustified disobedience to an Islamic ruler (S.49:9-10), waging war against God and His messengers (S.5:33-34). *Hudūd* punishments are intended as deterrents rather than punishments proper and are hence carried out in public to deter others. Since the goal of the penalties is to protect public interest, they are labelled as claims of God and not claims of any human which apply to the interest of private person. In *hudūd*, the system of proofs is integrated into substantive law and are limited to confession and witness testimony. A confession is only valid if made in court by a person of age who understands the meaning of the confession and acts of his or her free will. A confession obtained through torture does not have any legal value. Retribution is considered an aim of punishment in some *hudūd* crimes as is shown by Qur'ān which speaks of punishment as recompense for those crimes. Reform does not play any role here.

*Qisās* (‘equality in retaliation’) is derived from the root verb *qassa* which implies ‘he followed’ the track or the footsteps. In Islamic legal system, “the

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Say, “Shall I inform you of worse than that for retribution from God? He whom God has cursed, and with whom He became angry. And He turned some of them into apes, and swine, and idol worshippers. These are in a worse position, and further away from the right way.”

<sup>39</sup> Alam ya'tihim naba'ul lazina min qablihim qaumi nu\_hiw wa 'a\_diw wa samu\_d(a), wa qaumi ibra\_hima wa asha\_bi madyana wal mu'tafika\_t(i), atathum rusuluhum bil bayyina\_t(i), fama\_ka\_nalla\_hu liyazlimahum wa la\_kin ka\_nu\_anfusahum yazlimu\_n(a).

Have they not heard the stories of those before them? The people of Noah, and Aad, and Thamood; and the people of Abraham, and the inhabitants of Median, and the overturned cities? Their messengers came to them with the clear proofs. God never wronged them, but they used to wrong their own selves (S.9.70).

<sup>40</sup> Waltakum minkum ummatuy yad'u\_na ilal khairi wa ya'muru\_na bil ma'ru\_fi wa yanhauna 'anil munkar(i), wa ula\_ika humul muflihu\_n(a). And let there be among you a community calling to virtue, and advocating righteousness, and deterring from evil. These are the successful.

expression of ‘retaliation’ is spoken of as *qisas* because it follows the tracks footsteps of the offender, perpetrating on him an injury, as a punishment, exactly equal to the injury which he inflicted upon his victims, but no more” (Wasti, 2008, p. 12). *Qisas* offences include unintentional murder (S.4:92)<sup>41</sup> and intentional murder (S.4:93)<sup>42</sup>, both of which violate public and private rights – public because humans are God’s creation, and private because the victim’s family has lost a loved one. The punishment for such offences is to be applied according to the law of equality or retaliation (*qisas*) and/or cases of compensation (*diyya*) ordained in the Qur’ān (S.2.178)<sup>43</sup>. This verse is believed to contain the doctrine of retribution in Islam. The strict application of the law is to uphold the social order. On the doctrine of *qisas* and *diyya*, Sacehina notes that “retributive justice [is] a process of rehabilitation rather than [a] cycle of violence of the sort common in the pre-Islamic tribal culture of revenge. Therefore, from Koranic admonition to forgive and accept compensation, it seems retributive punishment is worth pursuing only to the extent that it leads to reconciling (*shifa’ al-sudur* = ‘healing of the heart’) the victim and the wrongdoer, and rehabilitating the latter after his or her acknowledgment or responsibility” (Sacehina, 2001, pp. 111-112).

To guarantee fair application of punishment, the administration of justice for *qisas* offences is in the hands of an ‘appointed guardian’ or ‘mediator’ not the community or the victims or his/her family. Forgiveness from the victim, while desirable, does not abrogate the state’s right to punish. The state cannot waive the rights and remedies of the victim, except in those situations in which the state substitutes itself for the victim. Victims can seek

compensation (*diyya*) without prosecuting but the power of dropping the case rests with the victims, to preserve the rights of victims of *qisas*.

*Ta’zir* is another category of crime in Islam pertaining to minor offences where discretionary punishment is imposed to protect the interest of society and prevent repetition of such offences. *Ta’zir* punishment aims for public good, including the rehabilitation of the offender. This could be retrospective punishment with the aim of reforming the perpetrator or it could be a coercive measure to ensure a person carries out his duties, such as ritual prayer or fasting. In *ta’zir*, “the discretionary power of the judge, the contextual setting of the society and the status and personality of the offender [contribute] to the definition of a crime and the implementation of the penalty” (Ammar, 2001, p. 173). Forgiveness and minimum punitive measures are central to *ta’zir* punishment. Common retributive measures include mediation, victim-offender conference, victim’s compensation programs. The Penal sanctions for *ta’zir* offences can be done away with in four instances: repentance by the offender; the granting of grace by the victim initially and then by the judge; victim and offender forgive each other; the death of the convict.

According to Islam retributive punishment is important for the wrongdoer to understand their responsibility and culpability. While *hudūd* offers a framework of intense deterrence for potential perpetrators, *ta’zir* and *qisas* offer options for how retributive justice may be administered guided by values of social good, compassion, forgiveness and rehabilitation. *Ta’zir* punishments are intended for non-repetition while *qisas* ensures that retributive justice will not snowball into an ever-increasing

<sup>41</sup> Wa ma\_ka\_na limu'minin ay yaqtula mu'minan illa\_ khat'a\_(n), wa man qatala mu'minan khata'an fa tahriru raqabatim mu'minah(Tin), wa in ka\_na min qaumim bainakum wa bainahum misa\_qun fadiyatun musallamatun ila\_ ahlihi wa tahriru raqabatim mu'minah(tin), famal lam yajid fa siya\_mu syahraini mutatabi'ain(i), taubatam minalla\_h(i), wa ka\_nalla\_hu'aliman hakima\_(n).

Never should a believer kill another believer, unless by error. Anyone who kills a believer by error must set free a believing slave, and pay compensation to the victim’s family, unless they remit it as charity. If the victim belonged to a people who are hostile to you, but is a believer, then the compensation is to free a believing slave. If he belonged to a people with whom you have a treaty, then compensation should be handed over to his family, and a believing slave set free. Anyone who lacks the means must fast for two consecutive months, by way of repentance to God. God is All-Knowing, Most Wise.

<sup>42</sup> Wa may yaqtul mu'minan muta'ammidan fa jaza\_uhu\_ jahannamu kha\_lidan fiha\_ wa gadiballa\_hu\_'alaihi wa la'anahu\_ wa a'adda lahu\_'aza\_ban 'azima\_(n).

Whoever kills a believer deliberately, the penalty for him is Hell, where he will remain forever. And God will be angry with him, and will curse him, and will prepare for him a terrible punishment.

<sup>43</sup> Ya\_ ayyuhal lazina a\_manu\_ kutiba 'alaikumul qisa\_su fil qatla\_, al hurru bil hurri wal 'abdu bil 'abdi wal unsa\_ bil unsa\_, faman 'ufiya lahu\_ min akhihi syai'un fat tiba\_ 'um bil ma'ru\_fi wa ada\_ 'un ilaihi bi ihsa\_n(in), za\_lika takhfifum mir rabbikum wa rahmah(tun), fa mani'tada\_ ba'da za\_lika fa lahu\_ 'aza\_bun alim(un).

O you who believe! Retaliation for the murdered is ordained upon you: the free for the free, the slave for the slave, the female for the female. But if he is forgiven by his kin, then grant any reasonable demand, and pay with good will. This is a concession from your Lord, and a mercy. But whoever commits aggression after that, a painful torment awaits him.

cycle of violence. The ruling seeks to lessen the severity of retributive justice, manifesting God's mercy and compassion. By regulating retribution, the Qur'an evidently wanted to underscore two socially related goals: to put moral-legal restrictions on the natural human tendency to an excessive penalty and to suggest an alternative to retribution and a potential cycle of violence through an acceptance of blood money as compensation or forgiveness. The alternative to retributive justice assumes that no peace can result from retaliatory measures until forgiveness enters to provide the healing process need to restore human relations.

### 3.5 Islam and Restorative Justice

Peace-making (*sulha*) and reconciliation (*musalaha*) are Islamic conflict resolution mechanisms referred to collectively as *sulha*. It refers to both the process and outcome of restorative justice and peacemaking. *Sulha* is a ritualistic conflict-resolution process i.e. action-and ritual-oriented employed either privately or publicly. A typical *sulha* process contains various steps:

- i. An offence committed which results in an injury or death
- ii. To prevent any retaliatory or retributive action, the offender seeks the guidance of noble leader to investigate the offence.
- iii. The leader visits the injured party to listen to their grievances and to seek permission to intervene and arbitrate the case.
- iv. If the victim agrees to comply with the request of truce, it would mark the formal initiation of the *sulha* ritual.
- v. Following a period of deliberation, investigation and mourning, arbitrator arranges for the payment of compensation (*diyya*), either symbolic or monetary determined by the severity and unique weights of the offence.
- vi. The communities gather for the ritual of *musafaha*, the 'shaking of hands'. The offender is demanded to follow this ritual with each member of the victim's family. In completion of the ritual, the arbitrator tie knots in a white flag borne by the offender, memorializing the consolidation of peace.

- vii. To express forgiveness and further reconciliation, the victim's family is expected to offer bitter coffee to the family of the offender.
- viii. The family of the offender serves a meal to the family of the offended. The meal referred to as *mumalaha* completes the ritual of reconciliation.

The reconciliation process, as explained above, includes acknowledgement of the offence, guilt by the offender, a willingness to forgive and forgo vengeance and a payment of a fine or compensation (*diyya*). Hence, the ritual of *sulha* has a restorative quality in which the process is much more than a judgement of who is right and wrong (S. 42:40<sup>44</sup>). Here, too, the emphasis is on reconciliation, rather than adjudication. The bilateral way in which the parties relate, each with its own assigned symbolic role, is critical. The process "restores two parties an ordered universe of peace, predictability, fairness, and security, when this is precisely what the violence or offense stole from them" (Abu-Nimer, 2001, p. 95).

*sulha* does not judge but rather facilitates a transformation of the victim's attitudes from vengeance to forgiveness by restoring their sense of honor and avoiding damage to the offender's sense of honor. The result is to repair the damaged ethos of the community by repairing the broken relationship of the community and the affected party. As Doron Pely notes "in the context of the Sulha, this communal perspective is essential because it touches the essence of the inter-clan dispute, above and beyond the dispute between individuals, as well as the need to resolve the interclan dispute in addition to the interpersonal dispute(s)" (Pely, 2016, p. 27). *sulha* governs relations between people and is regarded as an important religious duty in Islam directly related to preserving social harmony All issues concerning the rights of God are strictly out of bounds for *sulha*.

Embedded in *sulha* is the virtue of forgiveness. God is seen as the great Forgiver (S.39:53)<sup>45</sup>and rewards highest those who, even when they are justifiably

<sup>44</sup> Wa jaza\_u say yi atin say yi atum mitsluha\_ faman afa\_ wa aslaha fa ajruhu\_ alal la\_h in nahu\_ la\_ yuhib buz za\_lim in  
The repayment of a bad action is one equivalent to it. But whoever pardons and makes reconciliation, his reward lies with God. He does not love the unjust.

<sup>45</sup> Qul ya\_ iba\_diyal lazina asrafu\_ ala\_ anfusihim la\_ taqnatu\_ mir rahmatil la\_h in nal la\_h in nal la\_ha yagfiruz zunu\_ba jamia\_ in nahu\_ huwal gafu\_rur rahim  
Say, "O My servants who have transgressed against themselves: do not despair of God's mercy, for God forgives all sins. He is indeed the Forgiver, the Clement."

angry, can forgive (S.42:37)<sup>46</sup>. Forgiveness combined with reconciliation is preferable to retaliation, even if retaliation is permitted: Forgiveness is an act of a “courageous will” (S.42:43)<sup>47</sup>. Forgiveness is crucial in conflict situation for restoring the relational balance and healing between the victim and the perpetrator. The virtue of forgiveness, therefore, is very much stressed in Qur’ān as a restorative practice. Restorative principles are embedded in Islamic teachings beyond legal codes.

Islamic principles also foregrounds *ad-diyat* (compensation) (S.4:92)<sup>48</sup> over retaliation. *Ad-diyat* is compensation paid to the family of a homicide victim (not ‘blood money’ as commonly believed). Payment of *ad-diyat* must be agreed to by offended and offender. However, the wishes of the victim trump public concerns and state objectives: s/he may insist on the execution of the perpetrator or even pardon without requesting *ad-diyat* (Wasti, 1989, p. 64). *Ad-diyat* must be paid by the offender, failing which their family must pay. If they too cannot pay, it will be responsibility of the state, since it owed the slain person the right of protection and his/her family the right of care. The victim’s family must as for a reasonable *ad-diyat* but the final value is set by a judge. The introduction of *ad-diyat* was a radical step taken by the prophet Mohammad to resolve crises that had arisen in the nomadic tribal societies of the Arabs. Historical facts reveal that in pre-Islamic states, blood feud was the way by which social order was maintained. The principle of *ad-diyat* brought a stop to the cycle of violence.

### 3.6 Conclusion

Justice in Islam, as shown, may fall into two categories. First, the criminal prosecution of offence to obtain *retributive justice*. Second, measures that seek other, non-punitive, forms of justice for wrongdoing, are *restorative justice*. Just retribution dictates that where irrefutable evidence of the guilt of the perpetrator is presented in a court of law, and the offender receives fair legal representation,

and that the victim has refused compensation, then the court must lay down strict punishment or the death penalty as the only applicable punishment. Islamic penology classifies punishments into two classes: those mandated in the Qur’ān (*Hudūd* and *Qisās*) and those that are left to the discretionary powers of the ruler (*Ta’zir*). These categories indicate different basis of infringed rights and obligations, God’s right or individual right; various levels of judicial discretion in implementing punishments; the harness of penalties imposed; and different fact finding standards. The final objective, however, is to achieve a just society.

In circumstances where it is nearly impossible to apply just retribution, it is preferable therefore to award monetary compensation (*al-diyah*). Alternatives to the death penalty in *Qisās* are available including compensation (*diyā*) and reconciliation (*Sulha*). The intervention by the victim can even take the form of forgiveness altogether, a principle deeply attached to both the principles of restorative justice and Islam. *Sulha* is not an alternative to compensation (*diyā*) but rather an additional step in the process. *Sulha* takes the place of forgiveness, and requires negotiations.

The implementation or the choice of approach, whether it is retributive or restorative will depend on the wishes of the victims. Where an individual has been murdered, the Qur’ān gives legal authority to the victim to seek justice. If after a proper examination of all the available evidence proves the guilt of the accused of having committed the crime, the victim has a legitimate right to exact retribution. However, such legal liberty comes with an admonition: the victim must be fair in claiming just retribution. Following the correct guidelines enshrined in the Qur’ān, the application of just retribution will come to be regarded as a just, legal right, rather than barbarous retaliation.

The policy of the Qur’ān is conflict resolution as a principle, for the Qur’ān says: “reconciliation is the

<sup>46</sup> Wal lazina yajtanibu\_nā kaba\_iral ismi wal fawa\_hisya wa iza\_ma\_gadibu\_hum yagfiru\_n  
And those who avoid major sins and indecencies; and if they become angry, they forgive.

<sup>47</sup> Wa laman sabara wa gafara in na za\_likā lamin azmil umu\_r  
But whoever endures patiently and forgives—that is a sign of real resolve.

<sup>48</sup> Wa ma\_ka\_na limu'minin ay yaqtula mu'minan illa\_khat'a\_(n), wa man qatala mu'minan khata'an fa tahriru raqabatim mu'minah(Tin), wa in ka\_na min qaumim bainakum wa bainahum misa\_qun fadiyatun musallamatun ila\_ahlihi wa tahriru raqabatim mu'minah(tin), famal lam yajid fa siya\_mu syahraini mutatabi'ain(i), taubatam minalla\_h(i), wa ka\_nalla\_hu'aliman hakima\_(n).

Never should a believer kill another believer, unless by error. Anyone who kills a believer by error must set free a believing slave, and pay compensation to the victim’s family, unless they remit it as charity. If the victim belonged to a people who are hostile to you, but is a believer, then the compensation is to free a believing slave. If he belonged to a people with whom you have a treaty, then compensation should be handed over to his family, and a believing slave set free. Anyone who lacks the means must fast for two consecutive months, by way of repentance to God. God is All-Knowing, Most Wise.

best” (S.4:128). As Burns states, “there is not theological reason that Islamic society could not take lead in developing non-violence today and there is every reason that some of them should” (Burns, 1996, p. 165). The entire teaching of the Qur’ān is in consonance with the concept of justice and peace which are core to transitional justice mechanisms as the name of the religion of Islam suggests.

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## Chapter 4

# The Gospel of Reconciliation A Christian Response to the Transitional Justice Initiatives in Sri Lanka

*“We do not want to return the evil that perpetrators committed to the nation.  
We want to demonstrate humaneness towards them, so that they in turn may  
restore their own humanity”<sup>49</sup>*

### 4.1 Introduction

Transitional justice requires a political commitment to reconciliation, which seeks to restore constructive relationships through the “acknowledgement of the suffering of victims, the confession and transformation of perpetrators, public apologies, acts forgiveness, public memorials, the healing of a wide array of wounds, and overcoming of hatred and enmity” (Philpott, 2010, p. 102). The Church can participate in the mediatory role of Christ in solving the conflicts. This chapter provides an insight into this notion of reconciliation as it is understood and interpreted in Christian tradition. It spells first that reconciliation is a Gospel paradigm that brings with it two vitally important steps i.e. the prophetic call for justice and truth-telling. While emphasizing the importance of ‘truth-telling’ for ‘truth-recovery’ for a meaningful reconciliation, it argues that ‘revealing is healing’ - reconciliation offers healing. The chapter emphasis the fact that Justice and Reconciliation are inseparable and therefore the Gospel of reconciliation should be a central point of catechesis and faith formation.

### 4.2 The Church and the Gospel of Reconciliation

All this is from God, who reconciled us to himself through Christ, and has given us the ministry (*diakonia*) of reconciliation; that is in Christ God was reconciling the world to himself, not counting their trespasses against them, and entrusting the message (*logos*) of reconciliation to us (2 Cor 5:18-19).

This statement of St. Paul in Corinth shows that Jesus’ ministry of reconciliation and peace has been entrusted to the Church and that Christians are a *reconciled* and *reconciling* community. God is clearly not the object of reconciliation but its subject. Even where the human ministry of reconciliation is concerned, the act of reconciliation is no less God’s.

Paul uses the language of reconciliation differently from its standard use in contemporaneous political discourse on transitional justice. First, for Paul it is God who initiates the process of reconciliation, whereas in transitional justice tradition perpetrators must take the initiative in ending strife, and that the offended party should show goodwill by accepting the offer of reconciliation (Marshall, 1978). Secondly, in order for the Corinthian Church to be reconciled to God, drastic changes had to be made to its social and political life. Thirdly, rather than the weaker party seeking justice and the vanquished party making reparations, Paul says that justice is established in the pursuit of reconciliation: there is a double exchange, friendship for enmity (*reconciliation*), and justice for sin (2 Cor 5: 18-21).<sup>50</sup>

In Romans 5: 9-10, Paul uses justification (to make just, or to make righteous) (v.9) and reconciliation (to turn enemies into friends) (v. 10) in parallel: “Much more surely then, now that we have been justified by his blood, will we be saved through him from the wrath of God. For if while we were enemies, we were reconciled to God through the death of his Son, much more surely, having been reconciled, will we be saved by his life.” In Romans 5: 1-11, *justification* and *reconciliation* come together as a gift from God. It was the more socio-economically powerful party who was being called on to repent. This suggests that ‘victims’ of violence have the right to call on the ‘violators’ to

<sup>49</sup> Cited in (Ntsebeza, 2000a). In her testimony about her son Christopher Piet’s killing, Cynthia Ngewu extended her forgiveness to the police officer who was responsible for her son’s death by these words, therefore, the perpetrator will become human.

<sup>50</sup> The Greek word for reconciliation is based on the word for exchange, and it came to mean the exchange of enmity for friendship (Merkel, 2004, p. 261). In 2 Cor 5:21 Paul therefore says that another exchange also takes place: sin is exchanged for “righteousness” or “justice” (the word is the same in Greek).

be reconciled to them through repentance. Human beings appropriate God's justice by pursuing reconciliation where the nature of the required repentance only becomes clear in the process of seeking reconciliation.

Reconciliation, also includes that between different groups of people. In a particularly strong passage Paul declares to the Gentiles that Christ, through his death on the cross, has made the Jews and gentiles one people, reconciling both groups to God in one body (Eph 2:14-16)<sup>51</sup>. The purpose of this act of Christ was to "create in himself one new humanity in place of the two, thus making peace" (Eph 2:15). Instead of a dividing wall, there is now peace between them, and Christ is that peace (Eph 2:14). The scriptures testify the Kingdom of God entails a message of reconciliation. Such reconciliation is neither a doctrine nor an abstract concept, but a person: Jesus, our reconciliation with God. This theology of reconciliation has been entrusted to the Church. Indeed, her very mission is to reconcile. It is imperative, therefore, for the Church to take seriously its mission of reconciliation in Sri Lanka and aid in developing the appropriate frameworks for a transitional justice based on the Gospel of reconciliation.

### **4.3 Reconciliation as a Prophetic Call for Justice and Truth-Telling**

The theme of justice pervades the book of First Isaiah (Ch. 1-39), proclaimed by the prophet Isaiah to two small nations of the people of Judah who faced constant threat of conquest and dispersion by larger nations. Isaiah's calls for justice envisions a time when the community is both internally reconciled, and reconciled with those perpetrating these injustices. The prophet Isaiah and his call for justice serves as an exemplary model of how a community might initiate reconciliation even when the more powerful refuses to recognize the injustices it has committed.

Throughout Isaiah we find several references to God's call for justice, most clearly articulated in the phrase "cease to do evil, learn to do good; seek justice, rescue the oppressed, defend the orphan, please for the widow" (Is 1:16). Isaiah often reminded the citizens of Judah that loyalty to God came through the just treatment of one's fellow human beings: "what do you mean by crushing my

people, by grinding the face of the poor? Says the Lord God of hosts" (Is 3:15). Indeed, whole nations fall because of their oppression of the outcast and marginalized society (Is 1:25). Through Isaiah, God calls us to refrain from depriving the innocent of their rights (Is 5:23). God acts as the arbiter between the people, ensuring that the powerless do not fall prey to the powerful; with God as the judge, the need for weapons of war vanishes, and we find the people beating "their swords into powerless, and their spears into pruning hooks" (Is 2:4). Here we see that divine reconciliation restores communities and harmonious relationships, overcoming prior injustices. In Isaiah's message God also calls us to remain steadfast in the face of oppression saying, "if you do not stand in faith, you shall not stand at all" (Is 7:9). Standing firm implies not losing hope in the face of overwhelming odds, reminding them that eventually justice would reign and the exiled would return (Is 10:20). Isaiah's methodology offers both a critique of the system which perpetuates oppression, as well as a vision of a hopeful future, an annunciation of a renewed society.

The scriptural 'denunciation' - 'annunciation' dialectic offers a powerful methodology to confront oppression and announce the impending restoration of the community. The denunciation-annunciation dialectic denounces the system of oppression and refuses to capitulate to hatred and violence. The annunciation of the reign of justice presumes that all people are welcome at God's table. It presumes the dual nature of reconciliatory efforts: it highlights injustices of the past while looking towards a vision of a future reconciled community, enabling the articulation of both what happened and what is needed by the affected community.

The first step in the denunciation process is to recognize the injustices committed against a community. In first Isaiah, we get a glimpse of this when God condemns those who offer sacrifices "of bulls, or of lambs" (Is 1:12), while the people's hands are full of blood and they have not removed "the evil of [their] doings" (Is 1:16). Thus, as mentioned earlier, God calls the people to cease doing evil and "learn to do good" (IS 1:16-17). Those who fail to treat others with the full dignity and respect are guilty of oppression, and find

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<sup>51</sup> For he is our peace; in his flesh, he has made both groups into one and has broken down the dividing wall, that is, the hostility between us. He has abolished the law with its commandments and ordinances, that he might create in himself one new humanity in place of the two, thus making peace, and might reconcile both groups to God in one body through the cross, thus putting to death that hostility through it.

themselves at odds with God's call for justice. Instead, the marginalized of the conflict represent the chosen of God.

After denouncing those abusive systems, Isaiah moves quickly to announce a vision of a world free of oppression and injustice. Isaiah uses images which suggest that justice will reap the reward of abundance: "but the Lord of Hosts is exalted by justice, and the Holy God shows himself holy by righteousness. Then the lambs shall graze as their pasture, fatlings and kids shall feed among the ruins" (Is 5:16-17). Isaiah demonstrates that standing up and naming injustice harmonizes us all with God's will, which seeks unity and justice for all creation. 'Denunciation' of the root cause of oppression is followed by 'annunciation' of a future harmony with the divine will.

The denunciation-annunciation dialectic has great potential for transitional justice. The first step in reconciliation would be denunciation of the legacies of conflict and war and telling the truth about its consequences. This process gives victims the right to information and reassures the nation's commitment to justice. Then, annunciation can follow. This might be done in a way that Isaiah envisioned for his own people, by welcoming the exiles i.e. welcoming the victims, refugees, diaspora, internally displaced. Isaiah envisioned the return of the people when he says "a remnant will return, the remnant of Jacob, the mighty God" (Is 10:12) and that from this remnant "a shoot shall come out from the stump of Jesse ... the spirit shall rest on him, the spirit of wisdom and understanding (Is 11:1-2). When the exiles have returned and the era of destruction has ceased, leaders must ensure non-recurrence of injustices, reparative measures fulfilled by the perpetrator and restoration of victims' dignity.

In chapter 10 of Isaiah, we find a highway uniting the enemies of Egypt and Assyria (Is 19:23). In the reign of justice Isaiah envisions, described at the end of the chapter, this highway serves as a conduit for peace and harmony, making Israel, Assyria, and Egypt "a blessing in the midst of the earth" (Is 19:24). With the nations united, God says to them "blessed be Egypt my people, and Assyria the work of my hands and Israel my heritage" (19:25). In this passage, we see that this rule of justice fosters peace where nations are united with one another and with God. The primary message that emerges from Isaiah is that reconciliation implies justice.

#### 4.4 Reconciliation as Courage to hear

Truth-recovery and truth-telling is crucial to transitional justice but such an exercise demands much from both victim and perpetrator: the courage to relate the truth and the courage to hear.

Mark's Gospel account of the hemorrhage woman 5:24-32 shows the courage needed to come out with one's truth and needs. The woman is unnamed and an outcast – much like victims of conflict, unable to speak for fear of being cast out from society or being blamed for their abuse. No one advocates for the woman and, driven by desperation, she surreptitiously appeals to Jesus by touching the hem of his clothes. (Thurston, 1998, p. 19). By doing so, she even violates religious law to claim healing without permission. By this courageous action she becomes the author of her own healing and salvation. Utter desperation breeds radical faith and transformation of action. The women in the Gospel knew that she has to break out of her silence and isolation if she wants to be healed. She had to do it for herself. The will and courage of the woman to seek healing elicited Jesus' will and courage to hear. "Who touched me?" (Mk. 5:30-31) asked Jesus. After being denied in her victimization for so long, this is indeed divine intervention for justice. The healed woman was restored to her traditional community. By this Jesus showed that, there is an area, where God has a radical and inflexible partiality: the area of justice. After listening to the woman, Jesus was never the same person that he was. It reminded him that the woman deserves justice, no less, in the form of healing.

The Church must listen to and take seriously the victims of violence, providing them with services to heal, and becoming aware of violence in society. By listening to one, others will be empowered to speak up against violence and abuse. The Church is challenged to be more like Jesus, willing to be interrupted and smeared in the course of taking care of the marginalized; willing to be challenged and changed by the stories of these victims. This is justice-making, a living testimony to the God of justice.

#### 4.5 Reconciliation as Healing of Memories

Reconciliation must also heal memories. Unhealed memories are a smoldering fire ever threatening to destroy any initiatives towards reconciliation; persons who advocate communalism trap people with ghosts of previous injustices, whether real,

exaggerated, or imagined. The Gospel of reconciliation unmask the ideology of hatred as anti-human and challenges people to repentance. It is painful especially for the victims to refresh memories. Reconciliation offers healing.

Healing has been used constantly as a symbol of the kingdom of God in Christian tradition. Jesus' vision was to heal human society, fragmented and broken. He healed physical and psychological illnesses, claiming this healing action as a sign of his messianic mission. When Jesus sent his disciples on mission to preach the good news of the kingdom of God, he gave them the power to heal (Lk 9:1-2). Jesus subverted the prevailing socio-religious system – and implicitly laws of the state too – by healing on the Sabbath, touching the unclean with His hands, and by forgiving the sins of spiritually burdened, thereby expanding the realm of His healing mission. He crossed socio-political boundaries by eating with tax collectors, touched the sick and the socially untouchable. In other words, Jesus in and through His healing ministry wished to establish a more just humanity. In dealing with painful memories, two types of conclusions are not helpful: (a) an assumption that come from an inflated sense of guilt among the perpetrators of violence for their complicit in atrocities, or those types of attitudes that reflect an attitude of dominance; (b) assumptions that arise from wounded memories of the victims i.e. those who suffer markedly from post-conflict complexes and live on grievances. These assumptions are often less likely to correspond to the exact reality. They need to be sifted and re-interpreted. We need the healing of collective memories.

#### **4.5 Reconciliation: Retributive vs Restorative Justice**

Questions of who can forgive whom and under what conditions (if any) have been raised by South Africa's truth and reconciliation process. The aim of forgiveness in reconciliation is criticized on the basis that some crimes cannot and should not be forgiven – especially if perpetrators are unwilling to be punished for their crimes, to offer restitution to their victims. Others have pointed out that the Christian overtones in constructing processes for obtaining forgiveness are not acceptable to all. It is in this context that Bishop Desmond Tutu distinguishes between retributive and restorative justice.

The theology of retributive justice says that God rewards the righteous and punishes evil people. Material prosperity and good health are the signs of righteousness and God's blessings, and poverty and sickness are the signs of sinfulness and God's punishment. Job's righteous and just living should have ensured prosperity and good health. Instead, he suffers the loss of cattle, servants, sons and daughters, and his own body was covered with "sores from the sole of his foot to the crown of his head" (Job 2:7b). Job's suffering and prosperity of the wicked are clear indications that the theology of retributive justice is faulty, based on the human understanding of justice. God does not necessarily reward us because of our righteous life and deeds nor does God punish our every wicked deed. Retribution can only lead to a never-ending spiral of violence. What we need is to restore community. Mutual forgiveness leads to both inner and outer healing and to the starting of a new relationship.

Reconciliation is a process involving both repentance and forgiveness. It has to be restorative. Restorative has some key characteristics. First, it places victims at the center of justice, aiming to heal the harm done to them while restraining them from unlimited person revenge. Rather than tough measures against offenders, victims need more transparency in the legal process, channels for their voices to be heard, assistance in healing the wounds of crime, and, where applicable, compensation. Second, it is community-based instead of state-based. Restorative justice recovers this communal dimension by including all affected parties: victims, offender, families, the community, police and judicial representatives. Third, it involves the offender by placing responsibility for an offence in his/her hands. In a traditional judicial process, the offender faces judges, jury, and witness as passive recipient of punishment. In a community-based judicial setting the offender face the pain of victims and families more directly. This can prompt offenders to recognize the harm done and prepare them to become actively involved in finding ways to repair it. Fourth, and particularly important for us, restorative justice is biblical. The biblical justice tradition seeks restoration of just relationships, a shalom justice, rather than simple punishment.

Retributive justice practices have to be toned with restorative practices. On the one hand, justice that is retributive without reconciliation is little short of tyranny. True justice seeks to correct the problem. Nonetheless, where possible, Christians must advocate for restorative justice over punitive justice in a panel system. Re-establishing a sense of justice

through the restoration of the humanity and the dignity of both the offended and the offender brings harmony and peace to society. This rarely happens through punishment alone, although punishment might contribute to it. God always forgives sins when, through love and repentance, people open themselves to forgiving grace.

It is the task of today's Church leaders to heal memories in communities that suffered, restore them to health and help them to look positively to the future. They have a vocation to be healers and not merely a depository of grievances.

#### 4.6 Reconciliation as Prophetic dialogue

To achieve peace, justice, and reconciliation, Christians, need to collaborate with people of other faiths and secular ideologies. This means that the church ought to pay attention to the ecumenical as well as interreligious dialogue. Inter-religious, intra-Christian and inter-ethnic conflicts prevent solidarity with the victims of war.

Jesus' dialogue with the Samaritan woman also present some challenging features that will make our interreligious and ecumenical dialogue effective and humanizing. We are inspired to take initiatives just as Jesus began a dialogue with the woman by asking for a drink. It is in reaching out to others that relationship and unity are promoted. Jesus' dialogue with the Samaritan woman overrode traditional discrimination of Samaritans by Jews. They both, as partners in dialogue, searched for truth together in solidarity with one another. Jesus did indeed respect the opinions, belief and experiences of the dialogue partner but He had the courage to critique the religions of both the Jews and the Samaritans. Dialogue means acting together towards common interest and goals of humanity.

Jesus respected and valued the personhood of the Samaritan woman in spite of the cultural barriers, gender biases and her own scandalous marriage history. This person-oriented approach transcends superiority-consciousness and condescending attitudes and hegemonic tendencies in dialogue. The approach respects the personhood of other, their differences, and considers the other as equal. Peace and reconciliation must foreground personhood and his/her fundamental rights. Hostility-approaches will destroy the pluralistic fabric of human family. We urgently need the freedom to go beyond cultural, social and religious prejudices.

Experience has taught us that dogmatic and theological doctrines should not be the starting point of interreligious dialogue today. Interreligious dialogue does not dispense from a critique of religions. Jesus critiqued constructively certain divisive religious and social practices of both the Jewish and Samaritan religions. Jesus' critique led to a new, *liberative* way of life wherein the Father is worshipped in spirit and truth and which unites all people as children of God. Each religion has its own *liberative* potential as well as oppressive elements.

Critiquing religions will enable each religion to discover more of its *liberative* and humanizing potential and to constructively confront its oppressive elements. The Church therefore is called to be a community of dialogue and this dialogical model is in fact a new way of being church. Dialogue today is an obligatory mission, an ethical imperative in transitional justice.

#### 4.7 Reconciliation as Mediation

Any attempt at a lasting reconciliation must address all needs of the victim. Resolutions imposed by victors may not meet needs of victims, meaning an unstable peace. The church has a role to mediate; justice and justice-making are central to the Christian faith.

The practice of justice and righteousness brings *Shalom*. *Shalom* means to have enough, to be complete, to be sound. It also means safety, prosperity and peace from war. *Shalom* intertwines the individual person's total wellness with that of the family and nation. *Shalom*, encompassing the total wellness of human beings and of creation, is the fruit of practicing justice and of righteousness (Isa. 32:17; 59:8). As the altar of Gideon proclaimed, *Yahweh-Shalom*, "The Lord is Peace" (Judges 6:24). He is the source of peace. The challenge to Christians is to do the will of God, to be peacemakers or mediators by practicing justice and righteousness (Micah 6:8).

For Christians, justice must find its own concreteness in the actual experience of violence of the victims. Silence surrendering violence and crimes must be broken. The very act of putting into word one's frustration and pain and anger is liberation. This lamentation becomes a light in the path of those who mediate towards justice-making. In the Bible, for example the Psalms of Lament (55) becomes an imaginative space in

which one's experience of violence can be located. Psalms 55 speaks of what is unknown and un-experienced of the listener. It asks its readers to depart from the closely managed world of public (and private) survival, to move into the open, frightening, healing world of speech. The psalm invites victims to hear themselves too, to raise their voices. It is a text of resistance against silence. To lament and break silence is to allow justice to break in. To give up lament would be to identify God with fear and violence, and, to deny justice. To lament is to pose a trusting Challenge to a just God. This trust in God makes it possible to name the act of violence, hold the perpetrators accountable, hope to end violence and bring justice. Lamentation is a step towards claiming the power within each human being to end violence.

Lamentation also challenges listeners. The Church is often reluctant to name crimes or abuse and even denies its existence, so victims remain silent. We need a culture of rights that is respectful of individuals and groups; a culture of peace between diverse communities that is sustained by consensus not force; a sense of community that gives persons a feeling of individuality, participation and agency in the human community. Many wounds of division between communities and people can be traced to the rejection of legitimate diversity. We are aware that unity can at times be an agenda of uniformity and function as an ideology of religion and culture. The Church committed to the mission of reconciliation must resist such ideology and instead embrace *reconciled diversity*. Reflection on reconciled diversity may help us to know God's ways of embracing all peoples in their rich variety. This is precisely what has been lacking in our response to collective violence in this country.

Mediation is essential to any meaningful reconciliation. To be truly remedial and reconciliatory, restorative justice must operate beyond the statutory adversarial procedure of a court or even an ethical legal perspective of the legislature: it must be comprehensive enough to embrace the multiple levels; hence the critical importance of mediation and genuine pluralism of the Church.

#### 4.8 Conclusion

Central to the mission of the Church is reconciliation of individuals with one another and of human kind with God. If the church is to assume her role of encouraging a culture of solidarity to emerge from such reconciliation, she herself must be seen as just in the eyes of the others. Evangelization is the simultaneous proclamation of liberating justice and of reconciliation. The church can participate in the mediatory role of Christ in solving the conflicts where reconciliation restores the lost relationship. The emphasis here is not to be unmoved to the violence that has been perpetuated. Rather, the accountability of amnesty seekers must be accompanied by frank admission of their. Only then can the truth be addressed with a restorative justice that seeks not revenge but reconciliation. This would depend on a willing admission by the violators, and the equally willing acceptance by the violated. Only then can the truth of forgiveness and the justice of reconciliation come to light.

Christ brought a paradigm shift, radically altering our perspectives about the reality of God, about ourselves and the way we must relate to one another. His simple directive and command, was 'love one another as I love you'. Love them, therefore, across the many borders that presently divide you, and build human communities of the people of God. A mere stress on human rights and on the protection given by the courts or by the force of arms has repeatedly provide ineffective. It is heartening to see that many in the world, including business interests, are adopting the Gospel alternative: they are building social capital, bringing about social cohesion, through association, networking, neighborhood, communities, dialogue, inter-dependence and synergy. Such a paradigm shift will put the small of our human rights within the much larger perspective of the Gospel paradigm of reconciliation.

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## Conclusion

*“Nonviolence is not for power but for truth. It is not pragmatic but prophetic” (Thomas Merton).*

In a country in which the culture of violence and death has become a way of life, transitional justice calls for a new thinking. It demands a new public opinion and build up new philosophical and theological bases for peace. To begin with, we ought to search for the roots of aggressiveness in ourselves. Only when we have unmasked injustice and evil in our own inner world and have subjected ourselves to a spiritual surgery, shall we be able to discover the forces of evil in the society that surrounds us and commit ourselves to working on them and to become promoters of peace. Being promoters of peace is not a popular mission in this Island. It is the ‘fighter’ who fights for justice and human rights is venerated as a hero. This aggressive language has gone into many ideologies and policies that have developed during the last few decades.

We need, therefore, not justice fighters but peace makers today. We need ones who win sympathies and support by the uprightness of their conduct and truthfulness of their argument; those who transform hearts by human touch with which they handle even the most vitiated situations; who have the ability to identify and separate real issues from their own ego-requirements, the rigid ideologies they have appropriated, the irrelevant theologies and predetermined positions they have accepted. This means we need to tap the resources of the sturdy cultures and civilizations of our ancient continent. Our pride in the rich heritage of our great civilizations and stimulating cultures would have little substance, unless we searched for greater rootedness in our own inherited values and religious traditions.

We need, hence, the resources of all faiths and cultures to inspire and sustain people’s movements of solidarity for building a country of justice and peace. When properly mobilized, and equipped, religious communities can achieve justice and accountability for human rights violations, lead their communities promoting participatory governance, and serve as peace educators. The spiritual, moral, and social assets of religious communities and leaders can directly support transitional justive mechanisms and assist individual, intra-group, and inter-community reconciliation

processes. Faith communities offer a spiritual basis for religiously-based conceptions of justice, and religious education for peace. All faith traditions can draw on their spiritualities to define a commitment to justice and human rights. Religious teachings could inspire, contribute and ensure sustainability of the key areas of transitional justice, namely, truth seeking, justice, reparations, reconciliation and non-recurrence.

The spiritual assets of religious communities include the capacity to foster healing and reconciliation in communities where grave human rights violations have taken place. Faith communities provide ways to express apology, repentance and forgiveness. The moral principles and values can enhance and shape the transitional justice systems and processes to better relate to the mass citizenry. Religious communities can engage with transitional justice and human rights in ways that transcend punitive and retributive measures and lead to the transformation of mind and restoration of spiritual and dignity values.

Religions can play a significant role in the process of transitional justice and democracy. Their input can be witnessed in four key areas, namely, Commission for Truth, Justice, Reconciliation and Non-Recurrence, an Office of Missing Persons for Truth Seeking, a Judicial Mechanism with Special Council, and an Office for Reparations. Religious leaders can advance transitional justice initiatives by raising awareness within their communities about the rules and the function of the International Criminal Court, Human Rights and Justice and Peace Commissions advocating for best practices in national judicial processes and assisting victims and communities as they attempt reconciliation. Religious infrastructure can be employed for truth and reconciliation processes. Community-based processes, in particular, can be supported by the extensive existing social institutions of religious communities.

In national dealings, the religions are called to facilitate dialogue, peace and reconciliation at all stages of the evolution of conflict. Often there seems to be lack of commitment and effective attention on the part of the Government to the follow-up and implementation of the peace process. Unless the original root causes of the conflict are addressed, human rights abuses will continue. The religions are therefore called to

support and accompany local initiatives in pursuit of sustainable peace, justice, genuine reconciliation and the reconstruction of civil society, and the establishment of trust among people and state. Of crucial importance to these processes is the need to the truth, and to address with integrity the injustices of the past. If not dealt with, succeeding generations are doomed to a recurrent conflict.

The process of peace-building or peace-preaching must also take into account the legacy of human rights abuse in Sri Lanka. Human rights abuse is an all too common feature of societies in conflict. Instances of gross human rights violations efforts to destroy a group because of the religion, ethnicity can destroy the fabric of society for generations. Impunity in the face of human rights abuse creates a fundamental obstacle to effective conflict transformation, reconciliation, and peace-building. Religion should set her face against the practice of impunity, whereby those guilty of human rights violations and injustices are not brought to account for their deeds. The religions ought to support the establishment of permanent Criminal Court to facilitate the prosecution of the alleged perpetrators of crime against humanity and to undertake appropriate advocacy in support of this goal.

In this way, the religious leaders are called to advance multi-religious dialogue and cooperation in support of peace and sustainable development. The objective of such effort could include transforming conflict and advancing sustainable development, promoting peaceful co-existence and respect of religious diversity, facilitating and promoting mediation and conflict resolution within and outside faith communities, promoting inter-faith relations through dialogue and shared platform and programs, and facilitating cooperation among civil groups. Peace-building includes building institutional capacity of governance and non-governmental organizations, including religious communities, strengthening legal systems and governance structures, undertaking long-term education, advocacy, and action to promote lasting peace. The religious communities can play a central role in efforts to achieve justice and accountability for human rights violations, lead their communities promoting participatory governance, and to serve as peace educators.

What is important above all for religious leaders is to offer reconciliation. Reconciliation offers healing. As in Africa after the apartheid, a commission for truth and reconciliation should be set up in every district. The religious leaders should

act as catalysts in such situations and act as healing agents. It should build structures that defeats false rumors. Inter-faith dialogue centers could be used in Sri Lanka for promoting positive images of religions, removing prejudices and trying to heal past memories. When focusing on reconciliation, religious leader ought to concentrate on an at the grassroots level, where the victims are. Peace accords achieve nothing without reconciliation at the level of the victims.

The participation of religious leaders lends moral authority to transitional justice initiatives. In many cases, religious leaders hold influence and trust in communities where politicians do not. Religious communities are uniquely able to oppose religious extremism and intolerance through peace education. The educational task is an inner renewal of religious denominations themselves. Listening, affirming, appreciating, questioning, searching together, leading people to creative dialogue with even opponents; these are some of the steps that the religious leaders could take in the fulfilment of their task. Our culture values religiosity, community cohesion, family loyalty, love, compassion, concern for every sentient being, absolute respect for life, choice of the middle path, moderation, balance, renunciation for a higher goal. These and many other values in our tradition eludes our discussion on the transitional justice mechanism adopted in Sri Lanka. Secular ethic is impersonal; religious demands are personal. This means there is a need for prophets: a vocation to be healers and not to be a depository of grievances. This demands formators who are can form the community for justice and peace. Prophets who can lead to understand the spiritual roots and wealth of the pillars of transitional justice. This is *the* task of religions and religious leaders today.