

Protection of the Rights of the Victim of Crime: Demands for Restorative Justice and Victim-Centered Approach in a Criminal Justice System

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Background

Justice and security are two significant interrelated components in a sustainable society. Law is a powerful instrument which is used to ensure justice and security to everyone the society. The administration of criminal justice through criminal law aims to control human behavior to the extent needed in maintaining the required degree of individual freedom, safety and social order. Therefore, an effective criminal justice system is of utmost importance in maintaining law and order and ensuring the protection of all the members of society from crimes and criminals. An effective criminal justice system should take care of rights, benefits, and the dignity of a law breaking offender, the victim of a crime, and the society as a whole.

The protection of an offender's rights and dignity originated from the development of the classical school of criminology which resulted in the establishment of the modern criminal justice system. It was further developed with the emergence of the reformation theory of sociological school of criminology which comprised a human rights approach towards the offender. Under this theory, the offender is viewed as a victim of society who is needed to be fed, clothed and lodged at the expenses of the State. Due to this human rights approach, the accused has the privilege to enjoy the right to equality and equal protection of law, right against ex-post facto laws, protection against double jeopardy, protection against self-incrimination, right to have freedom from unwarranted arrest and detention, right to legal aid and defence and right to speedy trial. According to the policy of the present criminal justice system the victims' interest is subservient to the interest of the society and the role of the criminal justice system is to help the society as a whole rather than recompense the victim on individualistic basis and bring the law breaker before the court and punish or refer him for rehabilitation. This policy pushed the victim of crime away from the justice process and the victim became a forgotten man in the process. The adversary system which is the traditional and conventional model of the judicial system of trial treats the victims of crime just as a witness. However, there are some modifications incorporated to the traditional adversary system which are favorable to the victims of crime and the inquisitorial system where the victims have some opportunity to participate in the prosecution, do not protect the rights of the victim of crime completely. Therefore, the rights of the victims throughout the criminal justice process have still remained relatively unchanged. This situation demands a great necessity of shifting from defendant-centered criminal justice jurisprudence to the victim-oriented one, where the rights of the victims of crime are fully recognized and provided.

The study intends to establish the strong case of restorative justice with a view to safeguard and provide meaningful justice to the victims of crime and focus on the issue of ensuring justice to them thereby guaranteeing their active participation in criminal justice system.

Methodology

The administration of criminal justice of Sri Lanka has not focused on the above issue adequately. Therefore, the study mainly considers the criminal justice system of Sri Lanka as a sample, to address the issue of the protection of the rights of the victim of crime. The method adopted to conduct the research is extensively based on books, articles, statutory provisions, international instruments and case law relating to the topic. The field research is based only on the interviews conducted with the judicial officers and lawyers from public and private bar.

Outcomes

Theoretically, this study found that modern criminal justice neglects the legitimate needs of victims of crimes: equal protection and fair treatment to protect the interests of the victim of crime are needed; the victims of crime should be given an opportunity for active participation in proceedings; a new sentencing policy should be introduced in order to provide the justice to the victims of crime and such policy should include restitution as an integral part of sentencing.

The study further found that the protection of victim rights and assistance provided to the victims of crime are also not adequately addressed by the substantive criminal law and procedural laws in Sri Lanka. There are no legal provisions to protect the victim of crime, or to empower the court to impose compensation order other than section 17 of the Code of Criminal Procedure Act No 15 of 1979 where the compensation order may be imposed as an ancillary order (*Rabo v James* 32 New Law Report 91) and the Penal Code (Amendment) Ordinance No 22 of 1995 where the court can impose a compensation order for the sexual offences against women and children as mandatory. The Sri Lankan courts have not tended to order compensation on the State where the offender is not convicted or unidentified or unable to compensate for the victims of crime.

Conclusion and Recommendations

Due to the absence of provisions for ensuring the protection of the rights of the victims of crimes, several substantive and procedural safeguards are required based on restorative justice and victim-centered criminal justice system. The study suggests that the sentencing policy should be changed as to incorporate reparation as an integral part of the prescribed punishment in substantive criminal law; the victim of crimes should be treated equally with the accused and procedural laws should be reformed accordingly; a Criminal Injuries Compensation Board should be established to compensate the victims of crime when the offender is not convicted of the alleged offence, where the offender is unknown, unidentified or cannot be apprehended and where the offender is not in a position to compensate the victim.

Keywords: victim of crimes, restorative justice, criminal justice system, Sri Lanka

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