

From globe to home: contribution of the international human rights law for protection of the rights of crime victims

Abstract

Focusing on the marginalization of victims of crime in criminal proceedings, the author analyses the significance of the international human rights treaty law in protecting the rights of crime victims and attempts to identify a set of robust standards relating to them that can be applied to any State. The objective of this study is to investigate the way in which international human rights law can be adopted to consider that victims of crime are a group of people whose rights should be protected by the States at domestic level. To reach the aforementioned goal the paper begins with a brief description as to how the protection of the rights of crime victims throughout the criminal justice process was overlooked and victims were not adequately protected in the administration of criminal justice, especially under the adversarial model of the judicial system of trial as a result of rights of suspect/accused and offender were more concerns of the law. The next part of the study presents a description of the relevant international instruments which are important to the subject. Then the discussion moves to analyze some core principles recognized by the international treaty law which could be supported to protect the victims of crime. The paper concludes by emphasizing the need to insist on enforcement of prevailing international standards to domestic laws where there is a vacuum in the contemporary domestic legal framework in protecting the rights of the victims of crime.

The qualitative research method is followed to carry out this research which contains an examination of relevant international standards. Primary sources which are relevant to the research include international standards and judicial pronouncements are analyzed. Secondary sources such as reports, research articles and textbooks on this topic and information available on the internet is also reviewed in the discussion.

Keywords: adversarial system, international human rights law, rights of the victims of crime, Sri Lanka

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Introduction

Crime takes an enormous physical, financial and emotional charge on its victims. Though there is critic on the notion of increasing the crime rate in individual countries, it cannot be declined that in every year, millions of people, throughout the world suffer physical harm, trauma/mental disturbance and loss and damage of their properties, as a result of crime.¹ The international crime victim survey initiated in 1988 which is one of the largest projects in international criminology providing information relating crime victims covering eighty different countries also endorses the above said fact.²

Generally, crime³ is considered as a wrongful act committed against the society at large resulting in punishment to express society's disapproval, to deter future offending, and to ensure the protection of

the community. Criminal proceedings, the tool used to determine the culpability of the alleged accused which may be considered as a battle between the State and the defendant for the purpose of determining guilt beyond reasonable doubt and imposing sanctions for the offence committed. Therefore, in many jurisdictions today, the role of the crime victim is limited to a witness for the prosecution in criminal proceedings.

When a crime is committed, as the first step of the criminal justice process, the police starts the investigation to discover the identity of the perpetrator and to collect information (evidence) with a view to securing the conviction of the offender in subsequent proceedings.⁴ As the second step, the prosecutor institutes the proceedings against the accused. Finally, the court conducts trial against the accused to determine his/her guilty and if found guilty the court imposes the punishment on the offender.⁵ In many jurisdictions the conviction process and sentencing process are unified into a single procedure where the court pronounces the conviction and sentence at the same time. One may argue that adequate attention is not paid to the rights

¹See, Human Security Reports 2005-2013, United Nations Global Report on Crime and Justice and Report submit UN Commission on Crime Prevention and Criminal Justice.

²See International Crime Victim Survey 1989-2000. It is important to note here that recognizing the importance of this survey some developed countries such as Australia, Canada, New Zealand, USA, Western Europe, have used crime victimization surveys for thirty years. However, the countries in south in South Asian Region especially Sri Lanka do not conduct such surveys officially.

³A crime is an act committed or omitted, in violation of a public law, either forbidding or commanding it; a breach or violation of some public right or duty due to a whole community, considered as a community- Blacks Law dictionary, 2nd Edition .

⁴See, Peiris G.L. , 1975, Criminal Procedure in Sri Lanka Under the Administration of Justice Law No 44 of 1973, Lake House Investment Limited, Sri Lanka, p. 35.

⁵Refer, Shigenori Matsui, 2011, Justice for the Accused or Justice for Victims? The Protection of Victims Rights in Japan, a paper presented at the conference jointly hosted by the University of Hawaii and the University of Sydney on 15th April 2011, Conference Proceedings p.55.

of the person who is directly subjected to the crime due to the State intervention in the criminal justice process. Further, it may say that the accused has several rights which have been guaranteed by the constitutions and other penal statutes, the victim has no such right guaranteed to protect his/her interest during criminal proceedings. This situation adversely affects the ideology of justice and fairness for all as well as equal protection for all before the law.

Further arguing, it is possibly affirmed that when a crime is committed, the State has failed in its responsibility to prevent that crime and to protect its citizens from crime and therefore obligated to provide full redress to the victim for the injury or loss that he/she has suffered as a result of the crime commission. This argument could be supported by the social contract theory too.⁶ According to this theory, the implied contract between the State and its citizens which strengthens the formation of societies where individuals have surrendered their freedom to live in the State as they choose in furtherance of their own self-interest. And in return, all citizens are guaranteed certain fundamental rights and freedoms and receive protection from the State against the violation of those rights. The State has the responsibility to ensure security of a person, principle of justice and fairness that requires complete protection by the State from crime, and full redress in the event of a failure to provide that protection. Therefore, in every phase/stage of the criminal justice system, there should be a proper balance among the rights of the accused, rights of the society and rights of the victim of crime in order to maintain equal protection before the law, fairness and finally to provide justice for all. This argument could be further justified by the statements made by jurists and legal scholars at various occasions and forums. For instance, the Secretary-General of the World Society of Victimology, Michael O'Connell, stated in the submission made to the Office of the United Nations High Commissioner for Human Rights Geneva, Switzerland, on 30 May 2014, that victims' rights are not always respected and victims are still not considered properly as an equal in the criminal justice process; especially in those nations that have inherited the adversarial process. Further quoting Justice Cummins of Victoria Supreme Court Australia he said that the law has not given sufficient attention to the rights of victims and there should be a fair balance between the rights of offenders and the rights of victims.⁷

Regarding such balance British Lord Steyn⁸ also referred to the triangulation of interests which should exist in criminal proceedings; the victim, the defendant and the State/society. He is of the view that respect for the privacy of the defendants is not the only value at stake, the purpose of the criminal law is to permit everyone to go about their daily lives without fear of harm to person or property and there must be fairness to all sides in a criminal case that requires the court to consider a triangulation of interests taking into account the position of the accused, the victim and his/her family and the public.⁹ Therefore, it is an unbeatable matter that every single State should take all the necessary efforts to safeguard and ensure the protection of the rights of the victims of crime at a domestic level.

The objective of this study is to investigate the way in which international human rights law can be adopted to consider victims of crime as a group of people whose rights should be protected by the States at a domestic level to uphold equal protection before the

law and fairness in order to provide justice for all. Therefore, firstly the paper focuses on ways of marginalization of victims of crime in criminal proceedings and how it impacts on crime victims. A brief description is submitted as to how the protection of the rights of crime victims throughout the criminal justice process was overlooked as rights of accused were of more concern with the law and how this marginalization negatively affected on crime victims' rights and interests. The second section which is the central part of this paper demonstrates the contribution of the international human rights law in regard to the protection of the rights of crime victims. This section includes the significance of the international human rights law in protecting the rights of crime victims, core principles/norms/robust standards declared by the international human rights law in protecting the rights of the crime victim. It further investigates the way in which international human rights law can be called upon to consider remedial measures and to end the marginalization of the victims in criminal proceedings or in other words, for proper protection of the rights and the interest of the victims of crime in order to provide justice for all.

Marginalization of victims of crime in criminal proceedings

Historical perspective

In the early ages (primitive era), when there were no well organized institutions to deal with wrongdoers by enforcing law and punishing them, the right to deal with offenders and punishing them was vested on the victim or his/her family members or near relations. Punishment was determined as a private revenge, which was imposed to fulfill the desire of the victim and his/her relatives. With the establishment of ancient tribes the control of aggressive activities became part of the social control, such activities committed against individuals were treated as the offences against the tribe. The power of controlling such activities and dealing with the offenders were taken by the tribe and it has led to the establishment of the concept of collective liability. During this period the victims were compensated for the injuries to mitigate the personal vendetta. At the beginning of the medieval period, with the stability of community power, the community started to play a vital role in bringing about a settlement between the perpetrators and the victims and it led to claiming the King's share (ruler's share) from compensation paid by the offender to the victim. In mid-medieval period, the compensation paid by the offender was entirely taken by the King and it was done by interpreting such aggressive acts as a breach of the King's peace. With the development of the concept of 'State responsibility', new changes crept into the then existing system. They are: crime was viewed as an act against society, not to a particular individual and a specific procedure (criminal procedure) was introduced to deal with such (criminal) matters. As a result the liability against crime was considered as criminal liability and the State took over the role of the victim in the justice process and dealt with the matter in the name of the State responsibility. Further, a clear demarcation of criminal and civil matters was established in the field of law. A new branch of law, criminal law was recognized as a tool for social control in order to promote the safety of the members of the society. This change with the heavy influence of punitive justice with rational choice theory and utilitarianism theory pushed the victim aside and diminished the role of the victim only to a witness in the criminal justice process.

With the emergence of rehabilitation theory with distributive justice and corrective justice in the post-medieval period, criminality was viewed as a curable deviance and the offender was viewed as a person who needs to be rehabilitated/corrected. This directed the

⁶Social contract theory was first introduced by High Grotius in the early 17th century and was refined by the Republican philosophers of the 18th century, notably Jean-Jacques Rousseau and John Locke.

⁷www.ohchr.org/EN/HRBodies/CCPR/Pages/DGCArticle9.aspx.

⁸Attorney-General's Reference (No 3 of 1999) -2001/ 2 (AC 91).

⁹Ibid.

establishment of a human rights based approach towards the offender in the criminal justice system. The rights of the suspect, accused and offender were of more concerned with the law which was one side of the administration of criminal justice. As a result, protection of the rights of crime victims throughout the criminal justice process was overlooked in the administration of criminal justice. The offender has to be looked after at the expenses of the public, including the victim where the victim of crime is left to bear all the expenses related to the crime, pushing the victims towards further victimization which is known in criminology and victimology as secondary victimization.

Present scenario

A victim's role is primarily confined to furnish information placing them as passive or silent spectators, especially under the adversarial model of the judicial system of trial. Their main role is to lodge the complaint to the police. When they go to the police, sometime they can make the complaint only on the sympathy of the officers, where they are not treated in a dignified manner. It is a rare opportunity for the victim to raise his/her concerns other than giving a testimony regarding the incident. The victim is not aware about the progress of the investigation, the position of the case, whether the suspect has been enlarged on bail or convicted or acquitted. They are not required to be present at the courts when delivering the sentence. They do not know the sentencing options available as to whether the courts require knowing the impact of the harm before the sentence is imposed. They are not known of the sentence imposed on the offender or the reasons and underlying principles of mitigation or aggravation of the degree of punishment. Decisions on dropping of charges and reasons for discontinuance or decisions relating to plea-bargaining are not communicated to them at all. There is no proper mechanism to address the post traumatic disorder suffered by the victim as a result of the crime committed on him/her. Also, there is no appropriate mechanism to provide assistance or support the victims need to overcome the hardship that they have to undergo due to the crime committed against them. Therefore, it is important to investigate how best the interest of victims of crime could be improved.

Voice for the protection of victims of crime

The innovative way of thinking of modern criminologists and their writings about victims in the early 1900s led the situation to change. For instance: In 1924 Edwin H. Sutherland included a chapter on victims in his criminology textbook. However, the concept of a science to study victims and the word victimology had its origin with the writings of Benjamin Mendelsohn (1937) known as the father of victimology. Thereafter many scholars (criminologists) such as Hans von Henting (1948), Marvin Wolfgang (1958) conducted research and published literature to address the issue of victims' interests and to discuss the necessity of the protection of the rights of the victim of crime. In some (recent) decided cases, it has been recognized that less attention towards the crime victim and inadequate protection of their rights and interests as a fundamental weakness of the criminal law. For instance, in *Ratan Singh vs. State of Punjab*¹⁰ Justice V.R. Krishna Iyer stated that it is a weakness of Indian criminal law jurisprudence that the victims of crime and the distress of the dependants of the victims do not attract attention of the law and victims reparation is a vanishing point of the Indian criminal law; a deficiency which must be rectified by the legislature. In the case of *Synder vs Massachusetts*¹¹ Justice B.N. Cardozo said 'justice, though due to accused, is due to the accuser. In some cases the rights of the victim are recognized as their

human rights. For instance, In *RK v Mirik & Mirik*,¹² Bell J, delineated the relationship between human rights and victims rights. He stated:

"The bedrock value is that every person without exception has a unique dignity which is the common concern of humanity and the general function of the law to respect and protect.¹³ It finds common law expression in the fundamental right to personal inviolability which underscores the principles of assault, both criminal and civil.¹⁴ It finds international law expression which protects the right to security of the person. More and more it has found expression in legislations allowing criminal courts to order offenders to pay civil compensation to victims of crime".¹⁵

Therefore, it is clear that each State should take the necessary steps to protect the rights of the victims in its criminal proceedings in order to provide justice and fairness for all. Since the rights of the victims could be considered as human rights, the international human rights norms and mechanisms could be inserted to domestic level in order to fill the gap.

Core principles and identifying the rights of the victims of crime under international human right law jurisprudence

Core principles and rights of the victims of rights in International Law

As stated earlier, there is no doubt that the crime victims also deserve a full protection under human rights law in order to have a fair balance with that of the accused. While the human rights framework provides some standards and mechanisms that are relevant to crime victims it is a challenge to develop an analytical approach to the rights of the victim of crime that will encompass all aspects of their detrimental experiences. Though there is a declaration to introduce a set of guidelines applicable to the protection of the interests and rights of the crime victims there is no particular treaty which focuses on the subject specifically/totally. Therefore, this article discusses some core principles underlying all human rights norms applicable to everyone prior to the analysis of the standards relating to the rights of the victims of crime. These core principles are non-discrimination, equality and equal protection of the law which are non-derogable under any circumstances. In this context, the relevant provisions of the international instruments – the Universal Declaration of Human Rights (UDHR- 1948), the International Covenant on Civil and Political Rights (ICCPR -1966), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW-1979), and the Convention on the Rights of the Child (CRC-1989) which exemplify the above said principles with their application to crime victims will be discussed at the first.

These core principles are fundamental in any human rights analysis and also should be applied to all on an equal footing. However, it is true that these core principles have been strongly articulated with regard to certain groups who have a propensity to discriminate frequently, the victims of crime are not adequately protected as a group though they face discrimination as against offenders at various stages in the criminal justice process. Therefore, a question arises here, whether the international human rights treaty law has taken no notice of

¹⁰(1979) 4SCC 719.

¹¹291 US 97 (1934).

¹²R K v Mirik & Mirik (2009) VSC 14 (2 February 2009). Knight v Anderson (2009) VSC 607 (18 December 2009).

¹³Further see, Secretary, Department of Health and Community Services v JWB and SMB (Marion's Case) (1991-1992) 175 CLR 218, 266 per Brennan J.

¹⁴Further see, Robert Goff LJ in Collins v Wilcock [1984] 1WLR 1172, 1177.

¹⁵R K v Mirik & Mirik (2009) VSC 14 (2 February 2009) at Para. 5.

victims of crime when they designed their protective standards. A solution could be found when it is closely scrutinized the Article 2 of UDHR¹⁶ and Article 2 of ICCPR,¹⁷ which include a strong universal non-discriminative guarantee for all. According to these two Articles 'No one could be discriminated¹⁸ due to race, colour, sex, language, religion, nationality, property, political opinion, birth or other status'. Therefore, it may correctly state that the purpose of enclosing the term 'other status' is to provide an opportunity to cover a wide range of groups of people including victims of crime who are subjected to discrimination due their status. Further, it may say the term 'other status' covers all types of victims, including citizens and non-citizen, men and women and adults and children. CEDAW¹⁹ and CRC²⁰ also guaranteed this core principle against gender discrimination and age discrimination for women and children respectively.

According to Article 7 of the UDHR²¹ and Article 26 of the ICCPR²² all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Therefore, it may say the State should ensure that individuals whose rights have been violated due to any reason including crime commission are able

¹⁶Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

¹⁷Article 2.1- 'Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'.

¹⁸Refer Article 1 of ICERD and Article 1 of CEDAW for definition of discrimination Article 1 of ICERD -racial discrimination shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Article 1 of CEDAW - discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field) for definition of discrimination.

¹⁹Article 2 States Parties should condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.

²⁰Article 2.1 - States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 2.2 - States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

²¹All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

²²All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Further see Articles 3&16.

to access remedies on a basis of equality. Further, it is reasonable to state that it is the responsibility of the State to ensure the protection of the rights of the person who committed the offence as well as a person who is victimized due the particular crime.²³

Crime is committed mostly by individuals. Therefore an important question which should be addressed here is whether these core principles are applicable for people who have faced the harmful activities committed by State Actors/Agencies other than individuals. In the public law domain, abusive activities committed by State actors are discussed under 'abuse of power' by the State actors or/and under fundamental rights violation. It is important to discuss (briefly) the ways in which the human rights framework has evolved to respond to any harmful/criminal activity that are committed by individuals other than the State. First, the human rights treaty law was never designed with the sole objective of preventing harmful activities committed by the State. Those instruments were introduced affirmative duties of the State to ensure the basic (subsistence) rights of the people such as right to food, shelter, health, economy, education freedom and safety/security which a human being needs to enjoy a dignified life. Second, those treaties included affirmative duties of the State in the private sphere against the harmful activities committed by individuals in several situations. For instance offences committed against women under domestic violence - standards in CEDAW, offence committed against children by any person—standards in CRC and (physical, mental, sexual) harassment/torture/abuse at workplace—International Labour Law Conventions and standards. Therefore, it may say these core principles are applicable to the harmful activities committed by individuals other than State Actors.

There are some other international instruments which discuss the international consensus on best practices in relation to victims of crime particularly. These instruments provide guidance/set of guidelines and robust standards on how best to protect and promote victims' rights and meet their needs in domestic legal systems. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power²⁴ adopted by the UN General Assembly in 1985 which could be treated as the most important international pronouncement for victims, provides the basic framework of principles relating to the protection of the rights of victims of crime. This declaration is specifically designed to assist the States in their efforts to secure justice, protection and assistance for victims of crime and abuse of power. It recognizes some (legal) rights²⁵ that the victims should be entitled to. In this international instrument, the victims of crime are entitled to access the mechanisms of justice for the redress in terms of national legislation. They should be treated with compassion in respect of their dignity. The judicial and administrative structures should be strengthened in order to ensure that proceedings are expeditiously concluded. The Declaration emphasizes the member States to take the necessary steps to give effect to the provisions contained in the Declaration by enacting legislations to protect the rights of the victims of crime. Article 1 and 2 provide the definition of victim, including the person who is directly suffered from the crime, immediate dependants of the direct victims and person who have suffered harm, when intervening

²³It is also interesting note that there are some other provisions in the ICCPR which could be considered in protection of the rights of the victims of crime. Rights to be protected from harm, which impose obligations on governments to have effective criminal justice systems (Article 6.1, Article 7, and Article 17) Rights to a remedy and to access to justice (Articles 2 and 14) Due process rights (Articles 9, 10, 14, and 15).

²⁴Which is also known as the 'Basic Principles for Victims'.

²⁵Right to be heard, right to be present at criminal proceedings and right to be treated with fairness and dignity.

to assist victims in distress or to prevent victimization. Article 3²⁶ reflects the core principle of non-discrimination and equality.

In the Declaration the rights of the victims of crime are enshrined under the four main headings: Access to justice and fair treatment,²⁷ restitution,²⁸ compensation²⁹ and assistance.³⁰ The rights persevered by the Declaration under the above said four headings could be divided into two groups under a broader perspective – (substantive) service rights³¹ and procedural rights.³² Some standards related to service rights are enshrined from Article 4 to Article 7 under the heading of access to justice and fair treatment. The rights are as follows: Right to be treated with compassion and respect for their dignity, right to fair and expeditious procedure without unnecessary delay in obtaining redress, right to be informed of the progress of the proceedings and of the disposition of their cases, right to get assistance throughout the legal process, right to be safe from intimidation and secondary victimization. From Article 8 to Article 17 also preserved some service rights relating to restitution, compensation and getting material, medical, psychological and social assistance. The procedural rights are enshrined in the Article 6 (b) which says - victims can present their views and concerns at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system. Therefore, victim can participate and express his/her concerns at investigation, granting bail, prosecutorial decisions, plea bargaining, sentencing and parole decisions.

The United Nations Convention against Transnational Organized Crime - 2000, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Specially Women and Children, Supplementing the UN Convention against Transnational Organized Crimes – 2000 are also set out some standards to protect the legal (procedural and service) rights of the victims of crime. According to the Article 25 UN Convention against Transnational Organized Crime, member States should take appropriate measures to provide assistance and protection to victims of crime, access to compensation and restitution for them and opportunity to be participating at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence. The above said rights are also preserved in the Protocol to the UN Convention against Transnational Organized Crime with regard to the victims of trafficking.³³ CEDAW³⁴ and CRC³⁵ also require that there are measures to be taken by the member States, to ensure that women and children are protected from discrimination, exploitation, and the harm which are recognized as their rights and to ensure that access to rehabilitative services where necessary.

Rome Statute of the International Criminal Court which is often referred to as the International Criminal Court Statute or the Rome

Statute is another international treaty/convention/instrument set out some important standards in relation to the protection/safeguard of the rights of the victims who are subjected to the most heinous international crimes; genocide, war crimes, crimes against humanity and crime of aggression.

It emphasizes the necessity of the protection of the rights of the victims of international crimes as well as witnesses with no prejudice to the rights of the accused of the atrocities in the trial process.³⁶ The Rome Statute respects the victim's participation in the process as it believes that victims of these heinous crime should be given the opportunity to participate themselves at the trial to give evidence in relation to the crime committed against them although under normal process, victims are participated in the trial through a legal representative. In the International Criminal Court, either individual victim (man woman child elderly person or disable person) or organization or institute may give evidence regarding the harm caused as a result of the crime committed.³⁷

Victim's reparation and compensation are another two plausible facets of the Statute. The Court may award compensation order as reparation in the view of the court as the most appropriate. Victims of international crimes are awarded compensation based on the theories from the 1985 Victim Declaration and Boven Principle. According to article 79, Rome Statute handled the issue of compensation by incorporating theories from the Victims Declaration and the van Boven Principles. Structuring the promising conception of utilizing trust funds to assist victims, the Rome Statute provides for a trust fund to be established for the benefit of victims of crimes within the jurisdiction of the International criminal Court and the families of such victims. Furthermore, the Rome Statute allows for assistance to victims through the Trust Fund For Victims following a decision by an ICC Pre-Trial Chamber.

Incorporating International standards into Domestic Law

A convention/covenant is a binding treaty, coming into force upon ratification by a certain number of States. In principle, treaties are binding only on State Parties. A treaty does not create any obligation or right for the Non State Party³⁸ without the consent of that particular State. This is very clear in the Vienna Convention on the law of treaties adopted in 1969.³⁹ A declaration is not legally binding, but bears the moral influence as it adopts the international community and can assist the national courts to appreciate the significance of fundamental values.

Two different theories – monism and dualism, are adopted in relation to the application of the international treaty law (international conventions) in the national legal system. Under monism theory, international law does not need to be translated into national law, it is just incorporated and have effects automatically in national or domestic laws. Once ratifying an international treaty by a State the treaty immediately incorporates into national law and customary international law is treated as part of national law. Therefore, in Monists States International law can be directly applied by a national judge, and can be directly invoked by citizens, just as if it were national laws. Dualist States emphasize the difference between national and international law, and require the translation of the international

²⁶The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

²⁷Articles 4, 5, 6 and 7.

²⁸Articles 8,9,10 and 11.

²⁹Articles 12 and 13.

³⁰Articles 14, 15, 16 and 17.

³¹Rights that have effects of end of the impunity or further victimization are termed as substantive rights. These rights would be influenced to obtain adequate, effective and prompt remedy /reparation.

³²Rights that have the effect of influencing the decision making process are termed as procedural rights. These rights can be exercised by participating in the proceedings through consulting and expressing opinion.

³³Article 6.

³⁴Articles 2, 6 and 15.

³⁵Articles 6, 11, 12, 16, 19, 34, 35, 36, 37 and 39.

³⁶Article 64.

³⁷Article 85 (b) 86.

³⁸Pacta tertiis nec nocent nec prosunt.

³⁹See Articles 34 which says that a treaty does not create either obligations or rights for a third State without its consent. Further see Article 35.

law into the national law by explicit incorporation through enacting legislation (enabling statutes). Without this translation, international law does not exist as law in a State.

As far as the Monist States are concerned, they can apply the treaty law directly without any difficulties into national legal systems with regard to the rights of the victim of crime. The human rights treaty law which is a branch of international law unlike other treaties can directly apply even in the dualists legal systems. Since the victims rights are considered as human rights the direct incorporation of human rights treaty law is possible in dualist countries too. Therefore, the rights of the victims of crime could be possible protected in any State. Further, the UDHR and ICCPR are considered as a modern version of customary international law, like monist States, dualist States also can directly incorporate the Standards of ICCPR and UDHR into their domestic legal systems.

Conclusion

The criminal Justice System pays little attention to victims of crime, especially in an adversary system. In this system the law

almost totally focuses on the offender, as how to punish and reform him/her. The application of the rights of the victim in the criminal justice process is not at a satisfactory level due the absence of law or tradition or conventional way of interpreting laws in favour of only the accused. There is no doubt that due consideration should be given at State policy level to the development of an effective mechanism to protect the rights of the victims of crime. There is a great necessity to insist on enforcement of prevailing international standards to national jurisdictions where there is a vacuum in the contemporary domestic legal framework in protecting the rights of the victims of crime.

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Conflicts of interest

Author declares that there is no conflict of interest.