

**“The Protection of Victims’ Rights in the context of criminal  
justice system of Sri Lanka:  
International Standards as Reference points.”**

By

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**Master of Laws**

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of*

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## **DECLARATION**

I declared that the work described in this dissertation exclusively carried out by me under the guidance and supervision of Dr. Thusitha Abeysekara and I certify that the report on this work has not been submitted in whole or in part to any other degree or diploma in any University or equivalent institution.

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**CERTIFICATION OF THE SUPERVISOR**  
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## **ABSTRACT**

This research reviews the Protection rights of the Victims of crimes in context of the criminal Justice Systems of Sri Lanka. The suspect centered criminal justice system can be seen when considering the procedure follow in the domestic criminal justice system of Sri Lanka. Victims should be aware of their rights to participate in the criminal justice system within a strong legal protection of criminal justice system. States should recognize the status of all victims of crime. According to human rights standards, victims are treated with respect their dignity through the criminal justice procedure and without suffering any discrimination. Rights of victim of crimes amalgamated with some other rights such as right to fair trial, right to speedy trial, right to public trial, right to inform criminal proceedings, right to compensation and restitution. Victims should be protected and assisted by all appropriate instances and should have free access for specialized help such as health and counseling. There should be easy access and active participation for victims of crime in the criminal procedure, with providing them information and notices. As well as there should be effort to maintain equality between the prosecution and the defense in the criminal justice systems. Victim protection also includes prevent the re-victimisation and re-traumatised in the course of investigations and prosecutions, victims be treated with compassion and with respect for their human dignity throughout the criminal justice process.

Maintaining law and order and ensuring the protection of all the members of society importance in an effective criminal justice system. Victim protection mechanisms are not only measures to provide actual protection, Having a strong piece of legislation on paper will not provide the required protection to victims if it is not comprehensively implemented and developed in practice. Therefore, this study intends to establish strong protection for rights of the victim of crimes and provide meaningful justice with guaranteeing their active participation in criminal justice system according to the international standard by comparing other two jurisdictions of South Africa and United Kingdom by highlighting statutory provisions.

**Key Words - Victims Protection, Criminal Justice, Human Rights**

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## **LIST OF ABBREVIATIONS**

CEDAW - Convention on the Elimination of Discrimination against Women

CPC - Civil Procedure Code

CPS - Crown Prosecution Service

CCP - Chief Crown Prosecutor

CRC - Convention on the Rights of the Child

DPP - Director of Public Prosecutions

ICC - International Court of Criminal

ICCPR - International Covenant on Civil and Political Rights

UNGA-United Nation General Assembly

NPA - National Prosecuting Authority

UDHR - Universal Declaration of Human Rights

UN - United Nations

# CHAPTER 1

## 1.0-Introduction

This is a research of examining existing law and laws enforce procedure in the domestic criminal justice system and get clarification whether protected rights of the victims of crimes during the investigation procedure and court procedure in the domestic criminal justice system.<sup>1</sup> Set on importance of protect Victims' rights as human rights, according to international standard. Compare and contrast developments of law and procedure regarding rights of the victim of crimes with other two jurisdictions, South Africa and United Kingdom.

Victim of a crime is a member of a society who is affected by the wrongdoer's action and who suffers mentally or physically or by both mentally and physically. Sometimes it can be loss or damage to the property of the victim. There is a measurable impact on the strength of the legal protection of rights of the victims of crimes. This principally bases on how the victims of crimes are treated by the criminal justice system. One basic right of a victim of crime is the right to be informed by the criminal justice system, notification of rights of victim of crimes means that ability of participation for the procedure, victims cannot participate unless they are informed of their rights to participate, such as the time and place of the relevant criminal procedure.

Another important area of this study was right to access for criminal procedure and the right to restitution. Access for criminal procedure makes the path to access for justice. Examining what are the accesses for criminal procedure in the domestic criminal justice system is a part of this research. When considering the right of victims to restitution; compensation is one type of restitution for crime-related economic losses. Nevertheless, in some situations, restitution does not fulfill from compensating the victim by compensation. Therefore, this research can find out provisions in the statutory law for restitution in the domestic criminal justice system. Justice for victims of crimes is the most needed fact in the criminal justice system and fair trials give a path to stipulate justice.

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<sup>1</sup> Research can be defined as “an activity that involves finding out, in a more or less systematic way, things you did not know” Walliman and Walliman, *Research Methods: The Basics* (Taylor and Francis, 2011) p.7 < <https://research-methodology.net/research-methodology/>> visited on 16.03.2020.

“Fair trial is a twofold concept which was evolved for many years in the legal arena. The concept of Right to Fair Trial initially considered about the rights of an accused in a criminal trial. Hence; the protection of the rights of the accused is well established in most of the legal systems in the world.”<sup>2</sup>

Therefore, it is important to examine how far the system could protect the rights of the victims of crimes in the view of a right to fair trial with provisions in the existing law and the procedure of the domestic criminal justice system. From this research, it seeks to give recommendations to recognize the right to fair trial for victims of crimes as a fundamental right of the Constitution. However, the right to fair trial for accused/offender is already recognized as a fundamental right by the Constitution of 1978.<sup>3</sup>

Moreover, finding provisions regarding protecting rights of the victims of crimes in the existing statutory laws such as Constitution, Code of Criminal Procedure, Penal Code, Evidence Ordinance and Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015. In addition, procedures follow in the domestic criminal justice system such as procedure for investigation of crimes, procedure for restitution to the victims of crimes. Find out other authorities and mechanisms for protecting rights of victims of crimes other than court procedure and how far protect rights of victims by them.

This research is a comparative research, comparing developments of laws relating to protecting rights of the victims of crimes in the domestic criminal justice systems of South Africa and the United Kingdom. As well as this research, focuses to find out international standards in order to protect rights of the victims of crimes and mention recommendations to enhance the quality of protecting victims’ rights in the domestic criminal justice system according to the international standard. Furthermore, it gives a recommendation for necessary amendments for existing law and changes for the procedure in the domestic criminal justice system with a focus on enhancing the standard of protecting rights of the victims of crimes according to the international standard. Make recommendations to implement programmes, legislations, policies and practices to ensure international standards.

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<sup>2</sup> Jyaruwan Dissanayaka , ‘Balance of the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in Criminal Justice System of Sri Lanka’, (2017), Vol V, JSA Law Journal, Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

<sup>3</sup> Constitution 1978, Article 13.

## 1.1 - Background of the study

### 1.1.1- Who is a “victim”?

‘Victim’ has been given several meaning according to the deferent international instruments, according to the law of other jurisdictions and substantive law of Sri Lanka.

According to the Declaration, “Victim means a persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.”<sup>4</sup>

The General Assembly Resolution 40/34 gives a different meaning for ‘victim’ by including three categories of persons such as ‘persons who individually or collectively have suffered harm’, ‘immediate family or dependents of the direct victim’ and person who suffered harm in intervening to assist victims in distress or to prevent victimization’.<sup>5</sup> According to this meaning a third party victim consider as victim of crime. Therefore it gave a wide interpretation for victim of crime.

National Policy Guidelines of South Africa gives a meaning for a victim by amalgamating the above two meanings as “[a] victim is any person who has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of his or her fundamental rights, through acts or omissions that are in violation of the criminal law. Victim includes, where appropriate, indirect victims such as the immediate family or dependents or even neighbors or colleagues of a direct victim.”<sup>6</sup> According to the General Assembly Resolution 40/34 it means immediate family or dependents of the direct victim as victim of crime but according to above meaning it includes even neighbors as victim of crimes.

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<sup>4</sup> Carlos Fernández de Casadevante Romani, ‘International Law of Victims’, Volume 14, 2010, Max Planck Yearbook of United Nations Law, p. 219-272 <<https://www.mpil.de/en/pub/publications/periodic-publications/max-planck-yearbook/volume-14.cfm>> visited on 09.06.2020.

<sup>5</sup> Ibid.

<sup>6</sup> National Policy Guidelines for Victim Empowerment <<https://www.gov.za/documents/national-policy-guidelines-victim-empowerment>> visited on 31.01.2020.

There is only one statute that gives a meaning for the victim of crime according to the domestic criminal justice system of Sri Lanka. The section 46 of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 given interpretation for victims of crime.

According to Section 46 of the Act-

“Victim of crime” means a person including a child victim who has suffered any injury, harm, impairment or disability whether physical or mental, emotional, economic or other loss, as a result of an act omission which constitutes an offence under any law ; or infringement of a fundamental right guaranteed under Articles 13(1) or (2) of the Constitution, and includes a person who suffers harm as a result of intervening to assist such a person or to prevent the commission of an offence, and the parent or guardian of a child victim of crime and any member of the family and next of kin of such person, dependents and any other person of significant importance to that person.”<sup>7</sup>

When consider above interpretation it mention that specially it include child victim. As well as it include parent or guardian of child and any member of family. Therefore. It gave a silent meaning recognising the right of third person victims of crime.

### **1.1.2 - Rights of the victims of crimes according to existing law of Sri Lanka**

Sri Lanka has separate pieces of legislation as many countries for protecting victims of crimes.<sup>8</sup> The Assistance to and Protection of Victims of Crime and Witnesses Act, No. 4 of 2015 is the main legislation provisions stated for protection to victims of crimes of Sri Lanka. There are some provisions in Criminal Procedure Code and Penal Code for protecting victims of crimes such as Section 17, 191 and 260 of the CCP, Section 364 of Penal Code (Amended) Act No. 22 of 1995.

When considering the provisions given by main legislation for protecting victims it is clear that it focus only prevents the victim re-victimisation as witnesses other than protect rights

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<sup>7</sup> Assistance to and Protection of Victims of Crime and Witnesses Act, No 4 of 2015, S 46.

<sup>8</sup> Ibid.

of the victims of crimes and not focus to ensure the successful and effective investigation and prosecution processes. Protecting victims' rights and assistance to victims means ensuring that victims are not re-traumatized during the investigation and prosecution procedure.

Both rights and assistance of victims are vital, but should not be covered by witness protection. However, these issues are interrelated issues because the victim becomes a witness in some stages of criminal procedure. As well as provisions for hiding the identity of victim or witness can be a more effective trend to stipulate justice for victims of crime.<sup>9</sup> It protects rights to compensation for victims of crime by the provisions in the new legislature.<sup>10</sup> However when victims of crimes are empowered by law, step toward the low conviction rate in the domestic criminal justice system. Protection of victims of crime is an important factor to the proper functioning of the criminal justice system.

### **1.1.3- Rights of the Accused according to existing law of Sri Lanka**

The Article 13 of the Constitution of 1978 guarantees some fundamental rights for the accused.<sup>11</sup> Article 13(1) mentions that any person arrested shall be informed of the reason for the arrest, no person arrested except according to procedure established by law and guaranteed the freedom from arbitrary arrest.<sup>12</sup> Article 13(2) states that not to deprived personal liberty other than the order in accordance with the procedure established by law and every person held in custody shall be brought before the nearest competent court.<sup>13</sup> Article 13(3) guarantee fair trial for the accused mentioning that accused have right to represent by an Attorney-at-Law in a trial,<sup>14</sup> According to Article 13(4) no person shall be punished other than an order of competent court.<sup>15</sup> Article 13(5) states that every person shall be presumed innocent until proven guilty.<sup>16</sup>

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<sup>9</sup> Ibid, S 22.

<sup>10</sup> Ibid, S 28.

<sup>11</sup> Constitution of Sri Lanka 1978, Article 13.

<sup>12</sup> Ibid, Article 13(1).

<sup>13</sup> Ibid, Article 13(2).

<sup>14</sup> Ibid, Article 13(3).

<sup>15</sup> Ibid, Article 13(4).

<sup>16</sup> Ibid, Article 13(4).

Provisions in the Code of Criminal Procedure<sup>17</sup> provide wide range of rights where the accused is given the right to cross-examine witnesses,<sup>18</sup> right to make a defence and call witnesses.<sup>19</sup> As well as have right to bring evidence in the presence of the accused or his/her Attorney-at-Law<sup>20</sup>. The procedure for arrest a suspect mention in section 23 to 43.<sup>21</sup> Section 23(1) states that the person who is subjected to arrest should be informed of the reason for such arresting. The procedure should follow when arrested a suspect mention in section 37.<sup>22</sup> When the evidence are insufficient for allege complain , suspect should be released by the Officer In Charge of the police according to provisions in the section 114.<sup>23</sup> The section 120 mention about powers of the magistrate where a magistrate could discharge the accused.<sup>24</sup> Section 146 states that Magistrate can commencing preliminary inquiry by read over charge or charges to the accused and also the accused given right to remain silent without giving answers.<sup>25</sup> According to the sub section 148(2) the accoused can pose questions to each witnesses produced against the accused and sub section 148(3) states that this opportunity is given even in accused not represent by Attorney-at-Law. Section 150 and 151 mention that, the accused having opportunity to defend in the preliminary inquiry in the Magistrate Courts and this opportunity given in the High Court according to section 201(1). According to section 182(1) Magistrate should inform charges allege against the accused, when the accused brought before Magistrate and section 182(2) states that magistrate should ask reasons for not to be convicted from the accused. As well as according to section 195(b) the High Court Judge should serve the copy of indictment to the accused and according to the section 195(c) should inform the date of trial to the accused. Section 260 gives the rights to represent by an attorney at law for defence.<sup>26</sup> In the section 255(1) mention that right to examine witnesses is identified.<sup>27</sup> Section 314 mention about double jeopardy which means that no person shall be offend for the same offence twice.<sup>28</sup>

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<sup>17</sup> Code of Criminal Procedure Act, No.15 of 1979

<sup>18</sup> Ibid, S 184(2).

<sup>19</sup> Ibid, S 201.

<sup>20</sup> Ibid, S 272.

<sup>21</sup> Ibid, S 23- 43.

<sup>22</sup> Ibid, S 37.

<sup>23</sup> Ibid, S 114.

<sup>24</sup> Ibid, S 120.

<sup>25</sup> Ibid, S 146

<sup>26</sup> Ibid, S 260.

<sup>27</sup> Ibid, S 255(1).

<sup>28</sup> Ibid, S 314.



Certain provisions in the Evidence Ordinance provide protection of rights of the accused.<sup>29</sup> Section 24 states that a confession made by an accused is irrelevant in a criminal proceedings<sup>30</sup> and section 25(1) states that no confession made to a police officer should be proved as against an accused of any offence.<sup>31</sup> Certain provisions in some other legislature lays down certain rights of the victims of crimes, such as Bail Act where protect rights of the victims of crimes<sup>32</sup> and anticipatory bail which benefits the suspect.<sup>33</sup> According to section 41 Of the Judicature Act where the accused could be represented by an Attorney-at-Law.<sup>34</sup> Provisions in the International Covenant on Civil and Political Rights Act, No. 56 of 2007<sup>35</sup> provided that rights of the accused such as right to have legal assistance, right to examine witnesses, right to have an interpreter, freedom of self incrimination in criminal trials and right to appeal recognized in section 4 of this Act.<sup>36</sup>

However, when comparing existing laws relating protection rights of the victims of crimes and suspects/accused in domestic criminal justice it is very clear that accused rights are well protected rather than rights of the victims of crimes. When considering rights of accused and rights of victims it is clear that there is an accused center criminal justice system. Therefore, there is an imbalance between the rights of accused and the rights of victims of crimes according to the statutory laws of the domestic criminal justice system of Sri Lanka.

#### **1.1.4- The Importance of Victim Protection**

When victims come forward and report crimes committed it is a symbol for proper functioning of the criminal justice system. It can make fear in the minds of victims and witnesses when summoning and examining them and about safety and security to come forward to give evidence. If both victims and witnesses of crime have been charged with any threat, duress or attack since of their evidence, they are reluctant to come forward and

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<sup>29</sup> Evidence Ordinance.

<sup>30</sup> Ibid, S 24

<sup>31</sup> Ibid, S 25(1).

<sup>32</sup> Bail Act, No.30 of 1979.

<sup>33</sup> Ibid, S 21- 26.

<sup>34</sup> Judicature Act, No 02 of 1978, S 41.

<sup>35</sup> International Covenant on Civil and Political Rights Act, No 56 of 2007, S 04.

<sup>36</sup> Jayaruwan Dissanayaka, 'Balance the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in the Criminal Justice System of Sri Lanka', (2017), Volume V, JSA Law Journal Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

give evidence without any assurances of protection. When victims feel threatened to come forward when justice is denied, not only is the justice system society as a whole is denied justice. Therefore it needs to be assured with effective protection and many countries have adopted various methods of victim and witness programs to encourage victims and witnesses for the reporting of crimes. Hence, it is essential to confirm protection of victims or witnesses of crime. And it is the duty of the state.

Legal steps in victim's protection would be significant and the same must be precise to provide that assurance such as what kind of protection may be available and what the process will be. Victim of crimes and witness protection mechanism is not only limited to paper it ensures to provide actual protection. Indeed, the victim and witnesses protection process toward a very low conviction rate in the domestic criminal justice system.<sup>37</sup>

## **1.2 - Research Problem**

The right of the victims of crimes protected by existing law and procedure in the domestic criminal justice system, in the view of right to fair trial, right to speedy trial, right to participation, right to be kept informed of the criminal procedure, right to compensation and restitution. Rights of the victim of crime violated from the very first stage that logging of complaints to the Police station. Spend a long time investigating. In the court procedure, without preparing for the case, conducting prosecution by Police officers in the Magistrate Courts. After amending the non-summary procedure<sup>38</sup> the long period that was taken for non-summary inquiry reduced but sometimes further investigation could not conduct for taking necessary information. According to the previous procedure followed for non-summary inquiry, if necessary, sometimes evidence led in non-summary inquiry can be adopted for trials in the High Court.<sup>39</sup> Victims' rights protected by previous non-summary procedure when conducting prosecution by non-summary inquiry by Attorney-at-Law called as non-summery officer. Therefore right to participation was protected in the non-summary inquiry during the previous procedure rather than current procedure.

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<sup>37</sup> Dean G Kilpatrick, David Beatty and Susan Smith Howley, 'The Rights of Crime Victims—Does Legal Protection Make a Difference?' National Institute of Justice, Office of Justice Programs, US Department of Justice <<https://www.ncjrs.gov/pdffiles/173839.pdf>> visited on 09.11.2019.

<sup>38</sup> Code of Criminal procedure(Amendment)Act No, 15 of 2005.

<sup>39</sup> Evidence Ordinance, S 32 and 33.

However, there is an imbalance between the rights of victims of crime and rights of accused in criminal procedure followed in Magistrate Courts.<sup>40</sup>

One of the imperative areas researched by this study was whether the sufficient notice provided to victims of crime regarding criminal procedure and other services provided for victims of crimes. However there was lack of information provided to victims of crime regarding criminal procedure and other services such as legal aid facilities and protection programs held by “National Authority for the Protection of Victims of Crime and Witnesses”.

Another rights related victim of crime is right to compensation and restitution as a victim of crime. The reason was that the court order was only for the convicted defendant and he had to compensate the victim for crime-related monetary losses other than restitution to the victim physically and mentally. Therefore, there is an issue to review the rights of victims of crimes protected in the domestic criminal justice system in accordance with international human rights standards.

There are issues regarding protect right victims of crime in the domestic criminal justice system. Therefore, proceedings of the criminal justice process and legal rights need to be addressed.

### **1.2.1 –Research Problem statement**

When consider fundamental right in Article 13 (3) of the constitution, it is not to be limit only for the right of an accused, if the constitution is protect fundamental rights of the people for the proper function of a domestic criminal justice system. If criminal offence occurred against a victim is consider as an offence against public as well as the government, there should be representation by Attorney-at-Law on behalf of the victim in the Magistrate Courts as in High Courts. Provisions in the “Assistance to and protection of Victims of crimes and Witnesses Act, No.4 of 2015”, practically not full fill protection of victim of crimes which is existing law for protect rights of the victims of crimes.

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<sup>40</sup>Jayaruwan Dissanayaka , ‘Balance the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in the Criminal Justice System of Sri Lanka’, (2017), Volume V, JSA Law Journal Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

### **1.2.2 - Tentative Conclusion**

As the whole, the hypothesis for the research problem has to be proved. Proposals for changes to be in domestic criminal justice system for enhance to protect rights of the victims of crimes according to international standard. Suggestions for amendments of existing law of domestic criminal justice system like Constitution, Code of Criminal Procedure, and “Assistance to and protection of Victims of crimes and Witnesses Act, No.4 of 2015”.

### **1.3 - Questioners**

- 1) Whether the rights of the victims of crimes were protected by the existing laws in the domestic criminal Justice system of Sri Lanka?
- 2) Right of accused is protected by Article 13of the Constitution but the rights of victims of crimes are not protected by the Constitution, what is your view?
- 3) Whether the rights of the victims of crimes were more protected by the procedure followed before the amendment, Criminal Procedure (special Provision) Act No. 15 of 2005? (In the non summary procedure?)
- 4) Whether the imbalance procedure applies for victims of crimes in the Magistrate Court procedure, when represent aggrieved party by Police Officer for aggrieved party while represented by an Attorney-at- Law?
- 5) Are there any representations for victims of crimes as provided by “Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015” in the Magistrate Courts?
- 6) Whether the apply provisions for protecting victims of crimes during the court procedure as provided in “Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015”?
- 7) What kind of changes need to be adopted in both substantive law and procedural law, for more effectiveness to protect rights of the victims of crimes?

## **1.4 –Objective of the study**

- 1) Rights of the victims of crimes accepted as a fundamental right and make necessary amendments to the Constitution. If there is any difficulty to accept rights of the victims as fundamental rights, the right to fair trial for victims of crimes can be accepted initially. Make necessary amendments for procedural law according to the new amendments, as well as implement new laws.
- 2) Implement a separate unit for prosecution in trials before Magistrate Courts which can be to fulfill the right to fair trial for victims of crimes in the Magistrate Courts. If there is any difficulty to implement a separate prosecution unit, at least it should re-implement non-summery unit.
- 3) Recommendation for necessary amendments for “The Victims and Witnesses Protection Act”, which is existing law protection rights of the victim of crimes.
- 4) Introduced a mechanism to protect victims’ rights, which is use by South Africa and United Kingdom. Recommendation for enhance protect rights of victims according to the international standard.

## **1.5- Hypothesis**

The existing law and procedure for protecting the rights of the victims of crimes in the domestic criminal justice system does not adequately protect rights of the victim of crimes according to the international standard.

## **1.6 - Significant of the study**

This research is more important in the social aspect because the victim of a crime is a member of a society who is affected by the wrongdoer’s action and suffering mentally or physically or by both mentally and physically. According to the criminal justice system of Sri Lanka when a criminal offence occurs for a person, it is considered an offence against society as well as it is considered an offence against the government. Legislation for protect rights of the victim of crimes would be an important for the proper function of a domestic criminal justice system.

### **1.6.1 - Significance**

Loops of existing laws can be changed by amending and implementing new laws in the domestic criminal justice system. As instance, fair trial before the competent court protected as a fundamental right by Article 13 of the Constitution<sup>41</sup> and it can amend or implement a new article or sub article which recognizes the right to fair trial for victims of crimes. However, fair trial is not to be limited only for the right of accused and right to fair trial for victims of crimes are also important for proper function of a domestic criminal justice system. If the right to fair trial for victims of crimes is a fundamental right of the Constitution, it should legislate new substantive laws and procedural laws accordingly. Furthermore the procedure followed for prosecuting and investigation should change according to the constitutional aspect. Establish separate unit for representation on behalf of the victim of crime in the courts procedure such as separate Prosecuting Unit. In addition, establish a separate Investigating Unit for investigation of criminal actions.

This will help to change the procedure following in Magistrate Courts, prosecuting by Police Officer while appearing Attorney-at-Law on behalf of accused for defense, which cannot stipulate fair trial. When comparing the legal knowledge and the expertise of the Attorney-at-Law appearing for a suspect/offender, knowledge of Police officers appearing for prosecution is in a weaker position. This new procedure can help to find a solution for a huge problem of “touting”, which is an improper practice to legal profession, but mostly having in the Magistrate Courts. When the victims of crimes are empowered by the law, victims will not be reluctant in seeking relief from the legal procedure other than seeking relief in illegal procedure.

### **1.6.2 - Justification of selected jurisdictions**

Compare and contrast with the other two jurisdictions, South Africa and the United Kingdom. South Africa is a country, which was under colonial rules for some period as Sri Lanka. The common law system, based in Roman Dutch Law, applies to South Africa as the common Law system that is similar to Sri Lankan common law system as well as structure of the judiciary. The criminal justice system of Sri Lanka is based with principles of English Law and when any loopholes are present we adopt provisions of English Law.

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<sup>41</sup> Constitution 1978, Article 13

The United Kingdom is a monistic country which directly adopts international law as domestic law. Therefore, the United Kingdom has a strong victim protection system. When comparing the laws of South Africa and the United Kingdom, we can get an idea of the developments of their laws and procedures regarding protecting the rights of the victim of crime. It makes a path to develop laws and other mechanisms regarding protecting rights of the victims of crimes in the domestic criminal justice system according to the international standard.

International law is automatically accepted as part of its municipal law in monist states and international law does not need to be translated into national law. When ratifying an international treaty, it immediately incorporates that international law into domestic law. Monists contend that the international legal systems are inter-related parts of a single legal structure. Therefore, Statutes of International Court of Crime can be directly applied and adjudicated in domestic courts. Nevertheless, in a dualist state, international law becomes part of municipal law only if it has been expressly adopted in municipal law by legislative acts. International laws need not be translated into national laws in a purely monist state. The law gets automatically incorporated into the internal legal system when ratifying an international law. But the distinction is made between national law and international law in dualism. International law does not automatically incorporate into national law in dualist countries until and it translates into national law.<sup>42</sup>

## **1.7 - Limitations**

This research is a human rights based research and the research area is, rights of the victims of crimes. The research is limited only for the group of “victims of crimes” and limited with the victims of crimes in the domestic criminal justice system. This research is limited with protection of the rights of the victims of crimes during investigation and court procedure in the domestic criminal justice system. Expecting to get clarification from this research that victims’ rights are protected during the investigation processes and court procedure in the domestic criminal justice system by examining existing substantive law, procedural law and laws enforce procedure. The research finds out the provisions in the

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<sup>42</sup>"Difference Between Monism and Dualism." DifferenceBetween.net, September 16, 2015  
<<http://www.differencebetween.net/language/difference-between-monism-and-dualism/>> visited on 31.05.2020.

existing law, procedure and other mechanisms for protecting rights of the victims of crimes in the domestic criminal justice system. As well as this research focuses on protection of right to fair trial for victims of crime. Specially focus with protection of right to fair trial for the victim of crimes during the existing procedure following in the Magistrate Courts.

Compensation does not only fulfill the rights to restitution for victims of crimes it examine the mechanism to retribute victims of crimes in the domestic criminal justice system. The research highlight the importance of recognizing the victims' rights as fundamental rights by the constitution, to fulfill the intention of legislature when legislate the Act of "Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015",<sup>43</sup> Suggestions for the necessary amendment to the Act to enhance and protect victims' rights. Compare and contrast with two other jurisdictions, South Africa and the United Kingdom for information about the mechanism following to protect victims of crimes in their domestic criminal justice systems. Examine development of laws to protect rights of the victims of crimes in the domestic criminal justice system of South Africa and the United Kingdom. Further, examine whether both countries developed their domestic laws for victims protection rights according to the International norms. Compare and contrast International standards for protecting rights of the victims of crimes. Set on the importance of protecting Victims' rights as human rights, according to international standards.

## **1.8 – Chapter outline**

The area of research is right of the victims of crimes. Further importance of protecting rights of the Victim of crimes in concept of human rights. Examined provisions regarding rights of the victims of crimes in existing substantive laws and procedural laws in the domestic criminal justice system. As well as Victims' rights protection during the investigation processes and court procedure in the domestic criminal justice system. Importance of accepting victims' rights as fundamental rights. Recommendation to establish right to fair trial for victims of crime as fundamental rights in the constitution. Victim rights not only limits the right to fair trial, it ensures successful and effective investigation and prosecution processes as well as restitution for victims of crimes. The

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<sup>43</sup> Assistance to and protection of victims of crime and witnesses Act, No 4 of 2015.



right to fair trial for the accused is recognized by the 1978 Constitution. In addition, right of an accused expanded by provision of the Code of Criminal Procedure. The smooth flow of the criminal justice system is based on the eagerness to complain of the victims of crimes. Therefore it is the duty of the state to provide protection for victims of crimes by adopting new procedures and legislating new laws to protect rights of victims of crimes according to the development of international standards. When developing laws and procedures to protect the rights of victims of crimes according to international standards the crime rate also reduces. Therefore, it will be a good chapter for the society of Sri Lanka.

## CHAPTER 2

### 2.0 - Literature Review

#### 2.1 - Introduction

The literature review surveys researches, articles, books, and other sources relevant to the area of research and gives a comprehensive summary of previous research. It is given a theoretical base for the research and given an idea to determine the nature of the research.<sup>44</sup> The writer will analyze the existing knowledge having referred to literature on the subject, while setting out historical, theoretical and practical aspects of the law. Where evaluating findings relates to the literature review and analyses those findings to make answers for research questions.

A literature review of this research gives a landscape for the reader and gives an understanding of the importance of protecting the rights of the victims of crimes for proper functioning of the criminal justice system. This landscape informs that the author has indeed assimilated all previous significant works. The purpose of writing the literature review is to find the research gap.

#### 2.2 - Referring Literature

Through this literature review, list previous researches and articles related research area of rights of the victim of crimes and tries to get identification about the areas of the other researches by highlighting researchers and articles. Comparing and contrasting with other researchers make a path to identify the research problem. There was limited research relating to the area of rights of the victims of crimes in the domestic criminal justice system, therefore, reviewed researches and articles of other jurisdictions. Purpose of reviewing previous research and articles is to identify the research gap between this research and other research or articles.

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<sup>44</sup> Harvey.A, '*Literature Review*', Andruss library, Bloomsbuog University of Pannsylvania <<https://guides.library.bloomu.edu/litreview>> visited on 21.05.2020.

The research of ‘Sri Lanka: making the right choices, establishing effective mechanisms to deliver justice: truth and reparation to victims’, by Amnesty International, discussed the provisions in the international law regarding protecting victims’ rights. Moreover, widely discussed the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015 in the view of the existing law not protecting rights of the victims of crimes. Further, discuss investigation procedure and court procedure following for criminal procedure, highlighted the barriers for led to effective investigations of all stages.<sup>45</sup>

It was recommended for establish the hybrid judiciary system for the judiciary system of Sri Lanka with mechanisms including national and international judges, prosecutors’ lawyers and investigators. Instead of that, “recommended to establish an independent victims and witnesses unit within the justice mechanism that will take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses without any discrimination. Further proposed to use audio and video technology to take testimony of victims and witnesses”.<sup>46</sup>

This research limited only rights of the victims of war crimes. Victim of a war crime is a one category of a victim of crime. However there are some provisions introducing mechanism to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses without any discrimination in the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015. As well as not discuss provisions regarding the compensation of victim of crime. In addition, this research focused only provisions of the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015 other than provisions of other statutory laws such as Code of Criminal Procedure and Penal Code. Audio and video technology to take testimony of victims and witnesses also already use in some cases such as when child is a victim according to Evidence Ordinance (Special Provision) Act No, 32 of 1999.<sup>47</sup> Make a recommendation for adopting a hybrid judiciary system would be a very narrow view and it can be a very expensive which could not make facilities as developing country.

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<sup>45</sup> Ibid, p.10.

<sup>46</sup> Ibid.

<sup>47</sup> Evidence Ordinance (Special Provision) Act No, 32 of 1999, S 163A.

Balance the rights of the Suspect and the Victim; A critical analysis of fair trial rights of Suspect and Victim in criminal justice system of Sri Lanka, (Jayaruwan Dissanayaka, by this article deeply discussed the imbalance between right of accused and rights of the victim of crimes with the view of right to fair trial for victim of crime in the domestic criminal justice system. This article discussed the right to fair trial for victims of crime by comparing international instruments and developments of provisions for protecting rights of the victim of crimes according to international norms. In addition, widely discuss the right to fair trial of suspects/accused in different views. Highlighted imbalance of suspect and victim according to the statutory provision and procedure following in the domestic criminal justice system regarding. Moreover, compared victims' rights and suspect' rights under adversarial systems and inquisitorial systems.

Analysed the available legal provisions related to the right to fair trial for accused and victim of crime and gave the following recommendations.

- “ (a) providing a stronger voice to the victim
- (b) Mechanism to challenge the discretion of Attorney General
- (c) Introducing a proper channel for victim to appeal or revision
- (d) Taking step to speed up the proceedings
- (e) A streamlined policy in punishment
- (e) Giving an equal opportunity to prepare for the trial
- (f) Providing necessary infrastructure to court houses
- (g) Availability of legal aid for victims ”<sup>48</sup>

However, there were no comparative discussions with other jurisdictions in this article other than international norms. When comparing other jurisdictions it can help to understand statutory provisions and procedures they followed for protecting rights of the victim of crimes. Examples from other jurisdictions make the path to implementation or amendment of laws and procedure in the domestic criminal justice systems. Therefore comparative discussion with other jurisdictions would be a more effective method.

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<sup>48</sup> Jayaruwan Dissanayaka , ‘Balance the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in the Criminal Justice System of Sri Lanka’, (2017), Volume V, JSA Law Journal Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

The article ‘Protection of the Rights of the Victim of Crime: Demands for Restorative Justice and Victim-Centered Approach in a Criminal Justice System’ by Jeewa Nilla, discussed the victim of crimes treated deferent ways according to the system following for criminal trials. There are differences between adversarial system and inquisitorial system. “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”.<sup>49</sup> According to the article, the study for this article further found that the substantive criminal law and procedural laws in Sri Lanka also not adequately address protection of victim rights and assistance provided to the victims of crime.

Further this article mentions compensation for victims of crimes and it was suggested that it is a very effective method for compensating victims of crimes. Recommended to establish “Criminal Injuries Compensation Board” to compensate the victims of crime when the offender is not convicted of the alleged offence, when the offender is unknown, unidentified or cannot be apprehended and when the offender is not in a position to compensate the victim”.<sup>50</sup>

In the article of ‘Judicial Discretion Vs. Mandatory Sentencing in Rape Convictions and Victims’ Rights in Sri Lanka; a critical analysis’ by Keshani Imesha Hettiarachchi, pointed out statutory provisions and decided cases relating to rape. Critically analyses the existing grey areas on rape verdicts in Sri Lanka and recommend positive approaches to the criminal justice system to protect the rights of the women and the girl child of Sri Lanka. Discuss these issues and recommend measures to eliminate the gaps in administering justice. It widely discusses the judicial trends on sentencing in rape trials in Sri Lanka and the Penal Code (Amendment) Act, No 22 of 1995.

Discuss victims’ rights afforded in rape trials in Sri Lanka in the view of victims' rights are legal rights afforded to victims of crime. Further, mention provision in the Constitution

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<sup>49</sup> Jeeva Niriella, ‘Protection of the Rights of the Victim of Crime: Demands for Restorative Justice and Victim-Centered Approach in a Criminal Justice System’ Annual Researches Symposium 2012, University of Colombo <<https://scholar.google.com/citations?user=9uLAFBwAAAAJ&hl=en>> visited on 07.06.2020.

<sup>50</sup> Ibid.

and try to give wide interpretation for fundamental rights guaranteed in Article 11 and Article 12 of the Constitution of Sri Lanka.

“The fundamental rights in Article 11 and 12 the right to freedom from torture and equality before law. In this context free from sexual violence and equal treatment before law can be interpreted as fundamental rights of the women and the girl child in Sri Lanka.”<sup>51</sup>

There was only a glance discussion about victims of crimes in the Assistance to and protection of victims of crimes and witnesses Act. Nevertheless, not highlighted provisions mention for protect rights for victim of rape in the Section 03 of the Act and effective protection with including necessary treatment, counseling, rehabilitation and other appropriate assistance which provided by National Authority according to section 13(1)(h) not mentioned.<sup>52</sup> However, this article limited with victims of rape crimes and provisions for protect victims of rape in the domestic justice systems and international instruments.

In the research of “Police Referrals of Crime Victims To Compensation Sources: an Empirical Analysis of Attitudinal and Structural Impediments” by Eric J. Fritsch, Tory J. Caeti, Peggy M. Tobolowsky, Robert W. Taylor of University of North Texas. This research recognizes the substantial personal “cost” of victimization. In this research, widely discussed compensation of victims of crimes and stated historical background of development concept for compensation of victims of crimes in the United State. It discussed only compensation methods and compensation funds for victims of crimes in the United State. Victim rights include assisting them to deal from their ordeals and to provide them with compensation. Right to compensation is a one of the rights of the victims of crimes but by compensating victims not fulfill the right of victims of crimes.<sup>53</sup>

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<sup>51</sup> Keshani Imesha Hettiarachchi, ‘Judicial Discretion Vs. Mandatory Sentencing in Rape Convictions and Victims’ Rights in Sri Lanka; A Critical Analysis’, <[www.juniorbarbasl.lk](http://www.juniorbarbasl.lk)> visited on 21.05.2020.

<sup>52</sup> Assistance to and Protection of Victims of Crimes and Witnesses Act, No 04 of 2015, S 13(1) (h).

<sup>53</sup> Eric J Fritsch, Tory J Caeti, Peggy M Tobolowsky and Robert W Taylor, ‘police referrals of crime victims to compensation sources: an empirical analysis of attitudinal and structural impediments’, (2004), Vol 7 No 3, Police Quarterly, p. 372–393, DOI: 10.1177/1098611103257691, © 2004 Sage Publications <<https://journals.sagepub.com/doi/10.1177/1098611103257691>> visited on 06.06.2020.

### **2.3 - Research Gap**

This research is based with protection rights of the victims of crimes in the domestic criminal justice system. Quantitatively analysed data for this research which gathered from Judicial Officers and Attorneys-at-Law and not focus on qualitative analyse data which taken from victims of crimes police officers, lawyers and judicial officers. As well as this research limited the right to fair trial for victims of crimes procedure following in the Magistrate Courts, but it was not examined procedure following in the High Court. Fairness and justice for victims of crimes in the criminal justice system is also an important fact for victims of crimes, but from this research, that fact is not discussed. As well as there can be third parties who suffer as a result of the victim of crimes, this research focuses only on victims of crimes not the rights of third party victims of victims of crimes. Victim of war crimes and victim of rape can be categorized under the victim of crimes; therefore when protect rights of the victims of crimes rights of the victims of war crime also protected. In this research focused statutory provisions for protecting rights of the victim of crimes in the Assistance to and Protection of Victims of Crime and Witnesses Act of 2015, Code of Criminal Procedure and Penal Code. As well as compared provisions in statutory laws in other two jurisdictions, South Africa and the United Kingdom and willing to make recommendations referring to their criminal justice system other than make recommendations for adopting a hybrid judiciary system, without any critical analysis. There were no comparative discussions with other jurisdictions in this literature review. Comparing the criminal justice system of other jurisdictions would be a more effective method to get ideas for developing the domestic criminal justice systems. There was a review in compensation for victims of crimes and it was suggested that “Criminal Injuries Compensation Board” should be established. And there was another view with widely discussed compensation of victims of crimes and stated historical background of the development concept for compensation and compensation method and compensation fund for victims of crimes in the United State. However, from this research I am willing to make recommendations for effective methods of compensating victims of crimes by comparing examples of other two jurisdictions, South Africa and the United Kingdom. Therefore these gaps will be fulfilled by this research.

## CHAPTER 3

### 3.0 - Methodology

#### 3.1- Introduction

‘Methodology is the philosophical framework within which the research is conducted or the foundation upon which the research is based’.<sup>54</sup> Research Methodology chapter of a research describes research methods, approaches and designs in detail highlighting those used throughout the study. This paper examined primary and secondary sources of data. Primary data is an original and unique data, which is directly collected by the researcher from a source such as observations, surveys, questionnaires, case studies and interviews. As opposed to secondary data which is easily accessible but are not pure as they have undergone through many statistical treatments. Sources of secondary data are government publications, websites, books, journal articles, internal records.

This is a critical study which can be explained as a combination of theoretical research and empirical research.<sup>55</sup> In addition, this study is based on mixed method, which includes qualitative and quantitative but this is type of qualitative research rather than quantitative research. In the course of study, both primary and secondary data will collect and analyze. Data for this research is collecting by desk research and by interviews.

The case studies will apply in illustrating the problematic situations and find solutions for the practical problems. Ultimately, all the primary and secondary data and information of other jurisdictions in South Africa and United Kingdom as well as International criminal justice system gathered will descriptively examine and evaluate in order to reach the more effectively protect rights of the victims of crimes in domestic criminal justice system.

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<sup>54</sup> Walliman, N. S. & Walliman N., “Research methods: the basics” (Brown, 2006), (Taylor and Francis, 2011) p.7 < <https://research-methodology.net/research-methodology/> > visited on 16.03.2020.



### **3.2 – Data**

There are two types of data, primary data and secondary data. Primary data collecting for a specific purpose and critically analysed for find answers for research questions. Secondary data collecting from previously published in journals , magazines, newspapers, books, online publications and other sources. It is compulsory to analyse primary data and secondary data collection for all dissertations.

#### **3.2.1 - Primary and Secondary Sources**

The Primary Sources of data for this research collected by desk research and by interviews. The desk research was based with Substantive law and Procedural law relating to the domestic criminal law. Primary sources were Constitution, Code of Criminal Procedure, Penal Code, Evidence Ordinance and “Assistance to and protection of Victims of crimes and Witnesses Act, No.4 of 2015”.

Secondary sources also take a significant place of this research. Secondary source of data collected mainly collected from Articles and Researches of Sri Lanka. As well as researches, journals and articles of other jurisdictions, specially South Africa and United Kingdom. In addition, international instruments which related to protect victim of crimes. Some data will collect from library records, web sources, online books and online journals.

#### **3.2.2 - Primary and Secondary data**

There are two types of data, primary and secondary. Primary data is a type of data which was not previously published. Primary data is collected for a specific purpose. Primary data critically analyzed to find answers to research questions. The primary data collection resource for the research area of this paper statutory provisions related with rights of the victims of crimes in the domestic criminal justice system and information collected from the interviews, used as Primary data for this research. The data collect from selected group of Judicial Officers, Attorneys-at-Law who practicing in criminal courts which including previous Non summery Officers, State Counsels, officers of “The National Authority for

the Protection of Victims of Crime and Witnesses” and officer of “The Victims of Crime and Witnesses Assistance and Protection Division”.

Information were obtained about experiences and satisfaction of protection for rights of the victims of crimes in the criminal justice system. Interviews had face to face and as telephone conversation. These interviews based with questioners.

Moreover, there are some information gathered by observations such as court procedure, some authorities provide legal aid and victim protection facilities. Therefore, this is a combination of qualitative research and quantitative research, as well as this a qualitative research rather than quantitative research.

Secondary data refers to a type of data that has been previously published in journals, magazines, newspapers, books, online portals and other sources. Secondary data for this research based with books, articles, journals, publications and researches of Sri Lanka. As well as statutory laws, researches, articles, publications and journals of two other jurisdictions, South Africa and United Kingdom. Researches, articles, publications and journals regarding protect rights of the victims of crimes. International instruments regarding protect rights victim of crimes.

### **3.2.3 - Qualitative data and quantitative data**

Primary data collection methods can be divided into two categories, qualitative and quantitative. Quantitative research methods are usually expressed in the forms of variables. Data in quantitative research appears in the forms of numbers and specific measurements. Research findings in quantitative research can be illustrated in the forms of tables, graphs and charts.

Qualitative data dealing with those factors other than numerical values. In general, questionnaires, surveys, and documents and records are quantitative. Moreover, interviews, focus groups, observations, and oral histories are qualitative. In qualitative research each research is approached individually. However data can be in forms of words and images or transcripts in a qualitative research. Finally findings of the research are presented in analysis by only using words in qualitative studies.

There can also be crossover between these two methods. As an example, survey which asks questions to collect responses that shed light on trends, preferences, actions, opinions, and any other element that can be counted.

According to primary data collection methods for this research, this research is a qualitative research rather than quantitative research. Interviews had with selected groups who had sound knowledge and well experienced in criminal justice system. Data collected by unstructured method but based with questioners that related to research problem. Data collected from selected group of people such as ten Judicial officers, ten Attorney-at-Law who practicing in criminal field, three State Counsels, two officers of “National Authority for Victims of crimes and witnesses assistance” and one officer of “The Victims of Crime and Witnesses Assistance and Protection Division”.

### **3.2.4-Data collecting system**

There are several data collection system such as interviews and questionnaires, surveys, observations documents and records. From these data collecting system questionnaires, surveys, records and documents are using for quantitative research and interviews, focus groups, observations, and oral histories are using for qualitative research. There can also be crossover between these two methods called as mixed method.<sup>56</sup> Data collecting system for this research was library , internet, questioners, interviews with focus groups and observations. Library documents used for collect data from statutory laws, and other researches, articles and journals. Internet used for collects data from online researches, journals, articles, e-books and web source. Interviews based with questioners and interviews had with focus groups such as Judicial Officers, Attorneys-at-Law who appearing criminal Courts, State Counsels, Professionals of other government organizations as “National Authority for Victims of crimes and witnesses assistance” and “The Victims of Crime and Witnesses Assistance and Protection Division”. Interviews were conducted by using two method, face-to-face interviews and telephone conversations. Interviews were conducted averagely within thirty minutes and conducted from November 2019 to February 2020. Observed procedure following in Magistrate Court during court visits. And observed procedure following in the “National Authority

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<sup>56</sup> Quentin Ainsworth, ‘Data Collection Methods’, JotForm Education, (Jun 01, 2020) <<https://www.jotform.com/data-collection-methods/>> visited on 31.05.2020.

for Victims of crimes and witnesses assistance” and “The Victims of Crime and Witnesses Assistance and Protection Division” by visiting the place. Observations were done to realise whether the rights of the victim of crimes were protected by the following procedure.

### **3.2.5 - Data analysis method**

There are two main methods of Data analysis, qualitative analysis and quantitative analysis. Qualitative analysis approach mainly answers questionnaires.<sup>57</sup> Data analysis and the drawing of conclusions is the aspect of qualitative research. The most difficulty in the use of qualitative data is that methods of analysis are not well formulated. In a qualitative research, subjectively analysis observations of the researcher and data obtained from interviews with small group of relatively subjects and narrative data is collected in qualitative research. Different methods used for collecting data such as grounded theory practice, narratology, storytelling, and ethnography.<sup>58</sup>

In this research, it was adopted qualitative research method to complete the paper by identifying the legal and procedural issues associated with protect rights of the victim of crime in the domestic criminal justice system. Information collected by using face-to-face interviews, interviews by telephone conversations, questioners, observations and visiting places for this research. The qualitative research method involved in this study for examine two other jurisdictions such as South Africa and United Kingdom. In addition examine international standard. Primary data analyses to find loopholes of existing law and secondary data analysed for find the research gap, recommendations and further researches. Narrative data collected analysed to drawing conclusion.

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<sup>57</sup> Simran Kour Arora, ‘What is Data Analysis? Methods, Techniques & Tools’, Data Analytics, hackr.io (14 May, 2020) <<https://hackr.io/blog/what-is-data-analysis-methods-techniques-tools>> visited on 31.05.2020.

<sup>58</sup> USLegal, ‘Qualitative Research Law and Legal Definition’, Legal Definitions <<https://definitions.uslegal.com/q/qualitative-research/>> visited on 31.05.2020.

## CHAPTER 4

### 4.0 - Analysis and Discussion

#### 4.1-Introduction

In this chapter the writer delves into the meaning importance and relevance of research results. In addition, focus on evaluating and explaining data the researcher found in the research, showing how it relates to the literature review and research question. In addition, making an argument in support of the overall conclusion.<sup>59</sup>

The purpose of the discussion is to, interpret and describe the significance of the findings, already get knowledge about the research problem by investigation, and explaining new understanding or fresh insights about the problem after taking the findings into consideration. Discussion always connects to the introduction by way of the research questions or hypotheses that posed and the literature that is reviewed. However it does not repeat or rearrange the introduction.<sup>60</sup>

#### 4.2-Analysis

The provision mentioned in the victim of crimes and witness protection is fundamental to the credibility of any justice system. Without provision for protecting victims of crimes and asking them to come forward may be irresponsible if there is possibility of being re-victimised during the procedure or have to face any obstacle for justice. Therefore adoption of victim and witness protection legislation or mechanism would be encouraging victims of crime for justice though the criminal procedure. The crime rate also gets reduced as a result of developing laws and other mechanisms related to protecting the rights of the victim of crime in the domestic criminal justice system according to international standards. Hence, when developing laws and mechanisms related to rights of the victims of crimes, it will be a new chapter for the society of Sri Lanka.

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<sup>59</sup> Shona McCombes, How to write a discussion section, Scribbr, July 4, 2019  
<<https://www.scribbr.com/dissertation/discussion/>> visited on 06.06.2020.

<sup>60</sup> Kretchmer, Paul, Fourteen Steps to Writing to Writing an Effective Discussion Section, Organizing Academic Research Papers, Sacred Heart University Library, San Francisco Edit, 2003-2008.  
<<https://library.sacredheart.edu/c.php?g=29803&p=185933>>visited on 06.06.2020.

#### 4.2.1- Right to fair trial

*“There is no more important right in the law than the right to a fair trial; for, without a fair trial all the rights vouchsafed by the substantive law are worthless” -Vanderbilt C.J.<sup>61</sup>*

The most fundamental right of a crime victim is the right to fair trial, and it amalgamates some other rights related to the right to fair trial. According to the criminal justice system of Sri Lanka when a criminal offence occurs for a person, it is considered as an offence against the public as well as it is considered an offence against the government. Therefore, State Counsels from the Attorney General Department conduct prosecution on behalf of the victims in the High Courts. This procedure applies only to offences that are tried before High courts. However, Police officers prosecute on behalf of the victim of crime in Magistrate courts. However, fair trial cannot be stipulated, while appearing Attorney-at-Law on behalf of accused for defense and Police officer appearing for the victim for prosecutes.

There should be some effort to maintain equality between the prosecutor and the accused. Proper balance between these two arms has not been clearly worked out in the domestic criminal justice system and offender is permitted to many privileges which not available to the prosecutor. As instance, the prosecution must prove the charges against the accused by beyond a reasonable doubt in the common law system. However the balance of advantage between prosecution and accused is struck, therefore now widely accepted requirement of a fair trial for victim as accused.

This concept of right to fair trial, has been developed recently to protect the right of the victim of crime in accordance with the rights of the accused in the criminal justice system of domestic and international. Therefore it is clear that justice is based on protection of the rights of the victim as well as rights of the accused.<sup>62</sup>

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<sup>61</sup> Sharvananda S, Fundamental Rights in Sri Lanka-A commentary, (Arnold's International Printing House Pvt. Ltd, 1993), p.149.

<sup>62</sup> Mary Margaret Giannini, 'Equal Rights for Equal Rites?:Victim Allocation, Defendant Allocation,and the Crime Victims' Rights Act', *Yale Law & Policy Review*, p.435-439  
<<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1558&context=ylpr> > visited on 25.05.2020.

#### 4.2.2- Right to Public Trial

One of another important fact of victims' rights is that the trial is open to the public, unless there is a compelling reason to not to have a public trial. Article 14 of the ICCPR states that everyone is entitled to fair and public hearing by a competent, independent and impartial tribunal established by law during the criminal trials.<sup>63</sup> However, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the United Nation General Assembly (UNGA) states that taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation.<sup>64</sup>

This principle was builds in ICCPR, by protecting certain rights including the right to life<sup>65</sup> and the right to security of a person.<sup>66</sup> As well as the Article 2 of ICCPR requires that States should adopt certain provisions to protect such rights.<sup>67</sup> When requires the interest of the private lives of the parties, society or in the opinion of the court, where publicity would prejudice the interests of justice in special circumstances.<sup>68</sup> The logical basis for public trials, encourage other victims of crimes and witnesses to come forward with relevant information. In addition, it will promote public discussion of courts processes and deterring other crimes. Therefore, protecting the right to public trials is an important factor for fair administration of justice. However victims of crimes and witness protection mechanisms will often necessitate precluding the public from the courtroom and not disclosing details about victims and witnesses. There are counterbalancing rights of the accused and the rights of the public trials, when considering witnesses protection mechanisms.<sup>69</sup>

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<sup>63</sup> International Covenant on Civil and Political Rights, Article 14.

<sup>64</sup> Carlos Fernández de Casadevante Romani, 'International Law of Victims', (2010), Volume 14, Max Planck Yearbook of United Nations Law, p. 219-272 <<https://www.mpil.de/en/pub/publications/periodic-publications/max-planck-yearbook/volume-14.cfm>> visited on 09.06.2020.

<sup>65</sup> International Covenant on Civil and Political Rights, Article 06.

<sup>66</sup> Ibid, Article 09.

<sup>67</sup> Ibid, Article 02.

<sup>68</sup> M Cheif Bassiouni, 'Human Rights in the Context of Criminal Justice :Identifying International Procedural Protections and Equivalent Protections in National Constitutions', (Vol 3:235), Duke Journal of Comparative & International Law,p.254. <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article>> visited on 21.05.2020.

<sup>69</sup> Mary Margaret Giannini, 'Equal Rights for Equal Rites?:Victim Allocation, Defendant Allocation,and the Crime Victims' Rights Act',Yale Law & Policy Review, p.435-439. <<https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1558&context=ylpr> > visited on 25.05.2020.

#### **4.2.3- Notification of their rights as victims of crimes**

Right to be kept informed or notification plays a key role in victim's ability to participate in the criminal procedure. Because victims cannot participate criminal procedure unless they kept informed their rights. In addition notice of the time and place of the relevant criminal justice proceedings. Victims of crimes not only need to be notified about the procedure of the criminal justice process, they also need to be informed when the trial has been scheduled and have a right to discuss with the prosecutor as to their legal rights. It was much more common to be notified of their various rights and of the availability of services for victims of crimes in the strong protection legal system.<sup>70</sup>

#### **4.2.4- Compensation and Restitution**

Another important area examined in this study was the right of victims to compensate or retribute. Victim of crime can incur medical costs for physical or emotional trauma. As well as cost for repair and replacement of property and costs for time, they had to spend and measured in loss of the income. Victims of crime can recover these costs either from offenders required to pay compensation or through public compensation.<sup>71</sup> The court orders a convicted accused to repay the victim, for crime related economic losses. However, while victim compensation is sometimes regarded as justice, it encourages the victim to participate in the criminal procedure. Therefore both the international and national law levels have been respected to victim compensation.

### **4.3 - Discussion**

Discussion for demonstrable that the existing legal framework of domestic criminal justice system does not provide sufficient tools for protect rights of the victims of crimes when compared with criminal justice systems of other two jurisdictions of South Africa and United Kingdom by highlighting statutory provisions.

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<sup>70</sup>Norval Morris, The **future** of Imprisonment. Cited in John Hagan, Victims before the Law: A Study of Victim Involvement in the Criminal Justice Process, (1982), Vol 73 Issue 1 Spring Article 11, Journals of Criminal Law and Criminology, p.317 < <https://scholarlycommons.law.northwestern.edu/jclc>> visited on 25.05.2020.

<sup>71</sup> Robert C. Davis & Carrie Mulford 'Finally Getting Victims Their Due', (2008), Volume 24, Victim Rights and New Remedies, Journal of Contemporary Criminal Justice, 2008 Sage Publications p.102 <<http://ccj.sagepub.com>> visited on 14.06.2020.



### **4.3.1- Statutory provisions for protect rights of victims of crimes in Sri Lanka**

#### ***Constitutional provisions***

Fair trial before the competent court protected as a fundamental right, in Article 13(3)<sup>72</sup> of the Constitution of Sri Lanka. Some views were that fundamental rights protected people of the country therefore Article 13 not limited for protect fair trial of accused.

However, Article 13(3) of the Constitution specifically stated as “right of an accused to be heard in person or by an attorney-at-law, at a fair trial by a competent court.”<sup>73</sup> Therefore, it cannot be an acceptable concept that the right to fair trial for victims of crimes is also protected from Article 13(3) of the Constitution 1978. However, fair trial should not be limited only for the right of an accused, because fundamental rights of the constitution protect the fundamental rights of the people. In that view, victims’ rights are also protected by Article 13 of the constitution as well as the accused’s rights. Victim rights are also important as accused right for the proper functioning of a criminal justice system.

#### ***Code of Criminal Procedure Act, No. 15 of 1979***

According to the Section 260 of the Code of Criminal Procedure (CCP), “every aggrieved party shall have the right to be represented in court by an attorney at law”. Therefore any aggrieved party of any case given right to represent by Attorney-at-Law before the trial Judge.<sup>74</sup>

Section 191 (1) of the CCP states that, the Attorney General, the Solicitor General, a State Counsel or a pleader generally or specially authorized by the Attorney-general shall be entitled to appear and conduct the prosecution in any case tried this chapter, but in the absence of any pleader as aforesaid may appear in person or by pleader to prosecute in any appearing person or by pleader to prosecute in any case.”<sup>75</sup> However, Section 191(2) of CCP provided that opportunity to the victim to conduct the prosecution in the absence of a Counsel for summary trial before the Magistrate Court.<sup>76</sup>

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<sup>72</sup> Constitution of Sri Lanka, 1978, Article 13.

<sup>73</sup> Ibid, Article 13(3).

<sup>74</sup>Code of Criminal Procedure Act, No.15 of 1979, S 260.

<sup>75</sup> Ibid, S 191(1).

<sup>76</sup> Ibid, S 191(2)

In addition, according to section 400 of CCP prosecution can conduct trial in the High Court when absent of the accused.

Nevertheless, this section does not apply commonly during the court procedure in the Magistrate Court. Victims do not have awareness about this procedure and police officers also do not have sound knowledge about this section. Therefore, the aggrieved party would not be aware of this opportunity provided by CCP.

Section 17 of the CCP provides necessary legal provisions in respect of compensation to the victim of a crime. According to the sub section 17 (4) of the CCP, “court may order the person convicted or against whom the court holds the charges to be proved to pay within such time or in such installments as the court may directed, such sum by way of compensation to any person affected by the offences as to the court shall seems fit.”<sup>77</sup> As well as sub section 17(6) states that the compensation shall be recoverable as if it were a fine imposed by the courts.<sup>78</sup> In addition, according to the sub section 17(7) when the compensation ordered is by a Magistrate’s Court such compensation shall not exceed five hundred rupees to each aggrieved party.<sup>79</sup>

When considering the compensation provided by section 17(7) of CPC, this amount of five hundred rupees for compensation should be increased and there should be a mechanism to calculate compensation according to the harm of the victim. There are no other legal provisions to protect the victim of crime, or to empower the court to impose compensation order other than section 17 of the CCP.<sup>80</sup>

### ***The Penal Code***

According to the amendment for the Section 364 Penal Code by Penal Code (Amendment) Act No. 22 of 1995, the court can impose a compensation order for the sexual offences against women and children as mandatory.<sup>81</sup>

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<sup>77</sup> Ibid, S 17(4).

<sup>78</sup> Ibid, S 17(6).

<sup>79</sup> Ibid, S 17(7).

<sup>80</sup> Jayaruwan Dissanayaka , ‘Balance of the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Right of Suspect and Victim in the Criminal Justice System of Sri Lanka’, (2017), Volume V, JSA Law Journal Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

<sup>81</sup> Penal Code (Amendment) Act, No 22 of 1995.

### ***Evidence Ordinance***

Section 152 restricts asking insulting or annoying questions from the victim and section 153 forbids cross examination of bad character of the victim.

### ***Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015***

The primary law for protecting rights of the victims of crimes stated in “Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015”. Part II of this Act mentions rights and entitlements of victims of crime and witnesses. Section 03 of this Act states that rights of victims of crime<sup>82</sup> and section 04 states entitlements of victims of crime.<sup>83</sup> Section 07 stated that there is duty of public officers and judicial officers for respect rights and entitlements of victims and witnesses.<sup>84</sup> Offences against victims of crimes and witnesses mentioned in section 08<sup>85</sup> and section 09 states that attending or instigating such offences are considered offences.<sup>86</sup> As well as according to section 10 offences under section 8 and 9 are non-bailable offences.<sup>87</sup> Section 21 states that duty to provide protection to victims of crimes<sup>88</sup> and witnesses and mechanism for providing the protection mentioned in section 22.<sup>89</sup>

There is effective protection given by given re-identification for victims and witnesses. However, an effective protection includes necessary treatment, rehabilitation and counseling and other appropriate assistance not mentioned. According to section 28(1) of the Act, the Court can order to pay in an amount not exceeding one million rupees or a sum of money not exceeding 20% of the maximum fine payable for that offence, or both the compensation and the fine as compensation for the victim of crime. This compensation should be paid in addition to the penal sanction that is imposed on such accused in respect of the offence for which the accused is convicted, and order the convicted person to pay to the Court.<sup>90</sup>

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<sup>82</sup> Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015, S 03.

<sup>83</sup> Ibid, S 04.

<sup>84</sup> Ibid, S 07.

<sup>85</sup> Ibid, S 08.

<sup>86</sup> Ibid, S 09.

<sup>87</sup> Ibid, S 10.

<sup>88</sup> Ibid, S 21.

<sup>89</sup> Ibid, S 22.

<sup>90</sup> Ibid S 28(1).

### ***National Authority for the Protection of Victims of Crime and Witnesses***

As an outcome of Assistance to and protection of victims of crime and witnesses Act “The Victim Protection Authority” was established. The National Authority for the Protection of Victims of Crime and Witnesses (the “Authority”) performed as a corporate body with the perpetual succession and common seal, which can be sue and sued with that name. There is a Board of Management for administering and managing the affairs of the “Authority”.

Board of members consist of six ex-officio members and five appointed members. These five appointed member of the board of management elected from persons with academically or professionally qualified and whiting experience actively associated with criminology, criminal justice system, promotion and protection of human rights or medicine. These five members appointed by the President. Duties and function of the Authority stated in Section 13<sup>91</sup> and powers of Authority stated in Section 14<sup>92</sup> in the Act. This Authority situated in the 1<sup>st</sup> flaw of the building at No.428/11A, Denzel Kobbakaduwa mawatha, Baththaramulla and there are no any branches of the Authority.

### ***The Victims of Crime and Witnesses Assistance and Protection Division***

Section 19 of the Assistance to and Protection of Victims of Crime and Witnesses Act, empowered to the establishment and maintenance of a “The Victims of Crime and Witnesses Assistance and Protection Division”, under the direction and guidance of National Authority.<sup>93</sup> Protection programmes held for victims of crimes and witnesses according to guidelines provided by National Authority by this Division.<sup>94</sup>

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<sup>91</sup> Assistance to and protection of victims of crime and witnesses Act, No 4 of 2015, S 13.

<sup>92</sup> Ibid, S 14.

<sup>93</sup> Ibid, S 19.

<sup>94</sup> Ibid, S 20.

### **4.3.2- Statutory provisions for protect rights of victims of crimes in South Africa**

#### ***Constitutional provisions***

The Constitution of South Africa outlines the vision of an equality-based society and in the preamble notes that “South Africa belongs to all who live in it, united in our diversity”.<sup>95</sup> Section 179 of the Constitution of the Republic of South Africa 1996, provides to establish the National Prosecuting Authority. It was structured according to terms of the Act of Parliament. Appointment of the President of a National Director of Public Prosecutions as head of the NPA. Appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.<sup>96</sup> The Constitution provides that national legislation must ensure that the Directors of Public Prosecutions are appropriately qualified and are responsible for prosecutions in specific jurisdictions.<sup>97</sup>

#### ***National Prosecuting Authority Act No.32 of 1998***

The National Prosecuting Authority (NPA) was established by National Prosecuting Authority Act, No. 32 of 1998,. The creation of the NPA was required by section 179 of the Constitution of South Africa,<sup>98</sup> which came into force in February 1997. Before the NPA Act, public prosecutions were under the direction of the Attorneys-General. Attorney-General appointed by the President for each division of the High Court separately. Other offices of the Attorneys-general were merged into a centralised National Prosecuting Authority. National Prosecuting Authority headed by the National Director of Public Prosecutions, and the other Attorneys-general became Directors of Public Prosecutions.<sup>99</sup>

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<sup>95</sup> Constitution of the Republic of South Africa (Act 108 of 1996), Pretoria: Government Gazette. Cited in Duncan Breen and Juan A. Nel, ‘South Africa - a home for all? The need for hate crime legislation’, ResearchGate.< <https://www.researchgate.net/publication/301275881>> visited on 29.04.2020.

<sup>96</sup> National Prosecuting Authority Act, No 32 of 1998.

<sup>97</sup> Constitution of the Republic of South Africa No. 108 of 1996.

<sup>98</sup> Ibid, S 179.

<sup>99</sup> Dullah Omar Institute at the University of the Western Cape, ‘The Independence & Structure of the Prosecuting Authority’, ACJR Factsheet – The Independence & Structure of the NPA <<https://acjr.org.za/resource-centre/fact-sheet-12-history-and-structure-of-the-npa.pdf>> visited on 31.01.2020.

The “Office of the National Director of Public Prosecutions” was established in terms of section 179 (1) of the Constitution.<sup>100</sup> The head of the NPA known as , the National Director of Public Prosecutions (National Director) appointed by the President. Section 179(4) of the Constitution requires that legislation must ensure that the prosecuting authority exercises its functions without any fear, favour or prejudice.<sup>101</sup>

The NPA has a special role in the domestic criminal justice system of South Africa, as it is responsible for enforcing criminal laws, by instituting criminal proceedings on behalf of the state. Section 20 of the National Prosecuting Authority Act No.32 of 1998, empower to institute and conduct criminal proceedings,

“institute and conduct criminal proceedings on behalf of the State; carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and discontinue criminal proceedings, vests in the *prosecuting authority* and shall, for all purposes, be exercised on behalf of the *Republic*.”<sup>102</sup>

Prosecution policy and issuing of policy directives mention in Section 21<sup>103</sup> of the Act and Powers, duties and functions of prosecutors mentioned in Section 25 of the National Prosecuting Authority Act.<sup>104</sup>

“A *prosecutor* shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her—

- (a) under *this Act* and any other law of the *Republic*; and
- (b) by the head of the Office or *Investigating Directorate* where he or she is employed or a person designated by such head; or
- (c) if he or she is employed as a *prosecutor* in a lower court, by the *Director* in whose area of jurisdiction such court is situated or a person designated by such *Director*.”<sup>105</sup>

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<sup>100</sup> Constitution of the Republic of South Africa No. 108 of 1996, S 179(1).

<sup>101</sup> *Ibid*, S 179(4).

<sup>102</sup> National Prosecuting Authority Act No.32 of 1998, S 20.

<sup>103</sup> *Ibid*, S 21.

<sup>104</sup> *Ibid*, S 25.

<sup>105</sup> *Ibid*, S 25.

### ***Special Investigating Unit and Special Tribunal Act, 1996 (Act 74 of 1996)***

President may establish Special Investigating Units and Special Tribunals<sup>106</sup> and the President must appoint a judge or acting judge of the Supreme Court of South Africa, as head of a Special Investigating Unit established by him or her.<sup>107</sup> A Special Investigating Unit must, as soon as practicable after it has obtained evidence, inform the relevant prosecuting authority thereof.<sup>108</sup> Section 05 of the Special Investigating Unit and Special Tribunal Act mentions the Powers of Special Investigating Unit.<sup>109</sup>

### ***Criminal Procedure Act, 51 of 1977***

In terms of section 297 and 300 of the Act, victims are requested to be present in the court on the date of sentencing of the accused and request the prosecutor to apply to court for a compensation order.<sup>110</sup>

### ***Service Charter for Victims of Crime***

The Service Charter (Victims' Charter) for Victims of Crime in South Africa is an important instrument for promoting justice for victims of crime in South Africa. The Victims' Charter is compliant with the spirit of the South African Constitution of 1996 and the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985.<sup>111</sup> The Victims Charter can be traced back to the National Crime Prevention Strategy and the National Victim Empowerment Programmes.<sup>112</sup>

In order to define what services victims are entitled, in terms of seven rights listed in the Victims Charter. Minimum Service Standard for Victims of Crime can be considered as development of victims rights. The Service Standards sets out responsibilities that each government department such as NPA, Police Services, Departments of Health, Justice and

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<sup>106</sup> Special Investigating Unit and Special Tribunal Act, 74 of 1996, S 01.

<sup>107</sup> Ibid, S 03.

<sup>108</sup> Ibid, S 04 (2).

<sup>109</sup> Ibid, S 05.

<sup>110</sup> Criminal Procedure Act, 51 of 1977, S 297 and 300.

<sup>111</sup> Carlos Fernández de Casadevante Romani, 'International Law of Victims', (2010) Vol.14, Max Planck Yearbook of United Nations Law, p. 219-272 <<https://www.mpil.de/en/pub/publications/periodic-publications/max-planck-yearbook/volume-14.cfm>> visited on 06.09.2020.

<sup>112</sup> The DOJ & CD, 'The Consolidation of the Present Legal Framework Relating to the Rights of and Services Provided to Victims of Crime', Service Charter for Victims of Crime in South Africa, Department: Justice and Constitutional Development Republic of South Africa, <<https://www.justice.gov.za>> visited on 26.01.2020.

Constitutional Development, Social Development and Correctional Services.<sup>113</sup> The Victims Charter and Minimum Service Standards are important documents that victims can use to claim their rights and ensure the realization of justice.

#### **4.3.3- Statutory provisions for protect rights of victims of crimes in United Kingdom**

##### ***The Director of Public Prosecutions***

The Director of Public Prosecutions (DPP) is the head of the Crown Prosecution Service (CPS) in England. The DPP is responsible to the Attorney General. But the DPP is independent from the Government. The Prosecution of Offences Act 1979 established the office of DPP. The DPP's role was to prosecute the most serious or important cases until 1986, since then its role has been widened and now prosecutes most criminal cases.<sup>114</sup>

##### ***The Crown Prosecution Service***

The Crown Prosecution Service (CPS) is independent from the government and the police, and prosecutes. The police and/or other investigative agencies investigate cases before referring to the CPS and thereafter decides which cases should be prosecuting. The CPS has 14 regional teams, each headed up by a Chief Crown Prosecutor (CCP) and prosecutes cases locally in those regions. CCPs work closely with local police forces and other criminal justice partners. If there is insufficient evidence to be sure of a conviction, they may decide not to prosecute. When deciding to prosecute, prosecutors must be fair, objective and independent and it is not important for the CPS to decide whether the suspect is guilty or not, but have to decide whether charges should be brought before the court. Therefore Lawyers of CPS must follow the Code for Crown Prosecutors which sets out general principles to adhere to when considering to prosecute. In the cases of terrorism offences, offences under the Official Secrets Act and certain other serious offences, jurisdiction of the CPS is limited and decision to prosecute is with the Attorney General. The CPS must consult the Attorney General on cases involving national sensitivity or notoriety.<sup>115</sup>

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<sup>113</sup> Ibid, p.3.

<sup>114</sup> The Code for Crown Prosecutors, (26 October 2018|Publication),  
<<https://www.cps.gov.uk/publication/code-crown-prosecutors>> visited on 26.01.2020.

<sup>115</sup> Ibid.



### *The Code for Crown Prosecutors*

The Director of Public Prosecutions (DPP) under section 10 of the Prosecution of Offences Act 1985 issues the Code for Crown Prosecutors (the Code).<sup>116</sup> The DPP is the head of the Crown Prosecution Service (CPS). The DPP operates independently, under the superintendence of the Attorney General. The Attorney General is accountable to Parliament for the work of the CPS. The Code gives guidance to prosecutors when making decisions about prosecutions. Prosecutors are independent in the decision-making process from persons or agencies that are not part of the prosecution. As well as independent from the police and other investigators, free to carry out their professional duties without political interference and must not be affected by improper or undue pressure or influence from any other source. It is the duty of prosecutors to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. As well as Prosecutors must ensure that the law is properly applied, that relevant evidence brought before the court. Prosecutors must be fair and objective when making decisions and always act in the interests of justice and have a duty to protect the rights of suspects and victims.

According to the Human Rights Act 1998, Prosecutors must apply the principles of the European Convention on Human Rights. Prosecutors must comply with the policies and guidance of the CPS issued on behalf of the DPP and any guidelines issued by the Attorney General.<sup>117</sup>

It is a fundamental right on the prosecutor to decide whether a person should be charged with the offence committed and if so what the offences are. An advice or and authorize out of control is an alternative to prosecution. These decisions are made based on the code, DPP's Guidance on Charging and any relevant legal guidance or policy. It is the duty of the relevant officers in charge to conduct inquiries on the alleged crime. Prosecutors must advise the police to conduct investigation based on the lines of inquiry, evidential requirements, pre charge procedures, disclosure management and the overall investigation strategy.

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<sup>116</sup> Prosecution of Offences Act 1985, S. 10. Cited in Ibid

<sup>117</sup>Ibid,

Prosecutors should identify and, where possible, seek to rectify evidential weaknesses but, subject to the Threshold Test<sup>118</sup>, they should quickly stop cases which do not meet the evidential stage of the Full Code Test<sup>119</sup> and which cannot be strengthened by further investigation, or where the public interest clearly does not require a prosecution.<sup>120</sup> Prosecutor's main focus is on evidence and information supplied by the police and other investigators, the suspect too has the right to submit evidence or information to help inform the prosecutors.

However note that a prosecutor should not conduct himself in a manner that would likely a court to rule that a prosecution is conducting him is an abuse of its power. Prosecutors must review the case when an investigation is brought forward. It is a continuing process and the prosecutor must at all times expect any change in circumstance when there is a development in the case. If the prosecutor's case is stopped he must adhere to the method of termination as this can affect the victim's position under the Victims Right to Review Scheme. However in the process of terminating it is a duty of the Prosecutor to consult the investigator.

### ***The Victims' Code***

The Victims' Code is a document which explains what can be expected from organizations when reporting a crime until after a trial has finished. If the crime took place in England or Wales, that is entitlement to get support under the Victims' Code. And also entitled to support a close relative of somebody who has been killed as a result of a crime. It provides a separate leaflet for victims who are under 18 for the support and their parents or guardians.<sup>121</sup>

### ***The Victim Charter***

The Victim Charter is a Charter for victims of crime, which explains entitlements and the standard of service that can be expected from these organisations. Most of these services and entitlements provided by Charter will only be relevant when a crime has been reported

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<sup>118</sup> Prosecution of Offences Act 1985, S 05.

<sup>119</sup> Ibid, S 04.

<sup>120</sup> Ibid.

<sup>121</sup> Victims of crime : Understanding the support you can expect, Ministry of justice, <[https://www.cps.gov.uk/sites/default/files/documents/victims\\_witnesses/adult\\_victims\\_code\\_leaflet.pdf](https://www.cps.gov.uk/sites/default/files/documents/victims_witnesses/adult_victims_code_leaflet.pdf)> visited on 27.04.2020.

to the police and if there are criminal proceedings. There will still have and be able to access services under the Charter even if no one is brought to justice. It includes when no one has been identified, apprehended, charged, prosecuted or convicted of an associated offence.<sup>122</sup> The direct victim of a crime and victims of reporting the crime to the police are entitled to get services and support under the Victim Charter. It includes third parties accused of the crime.

“Others entitled to receive services under this Charter,

- (i) a family member, or representative, of a person who has died following a crime, whether directly as a result of the crime or not;
- (ii) a family member (or representative, usually where there is no family member or the family member cannot be agreed upon), where it would be unreasonable to expect you (as a victim of crime) to access or receive services yourself due to your physical or mental condition;
- (iii) a parent of a child or young person (who may receive services in addition to, or instead of, the child).”<sup>123</sup>

Therefore victims and family members of victims are also entitled to access support services. This includes specialist support services, even who have not reported the crime to the police.

Relevant information regarding rights of victims of crimes stated in the Victim Charter and it will establish the right to be informed of the criminal justice process for the victims of crimes. This charter is not limited only for victims of crimes, it states the rights of third parties of victims of crimes and according to the Charter third party can inform crime on behalf of a victim of crime. Therefore rights of victims of crimes enshrined by the Victims Charter.

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<sup>122</sup> The Victim Charter was placed on a statutory footing in November 2015. cited in Victim Charter Summary, department of justice UK <[www.dogni.gov.uk/victimcharter](http://www.dogni.gov.uk/victimcharter)> visited on 27.04.2020.

<sup>123</sup> Victim Charter Summary, department of justice UK <[www.dogni.gov.uk/victimcharter](http://www.dogni.gov.uk/victimcharter)> visited on 27.04.2020.

#### **4.4 - Conclusion**

In the chapter it analyzes the rights of the victim of crime and widely discusses related rights of the victims. Discuss statutory provision related to protecting the rights of victims of crimes in the domestic criminal justice system and two other jurisdictions of South Africa and the United Kingdom. When comparing the statutory provisions regarding protection rights of the victims of crimes of the domestic justice system with other two jurisdictions, South Africa and the United Kingdom, make a path to find sufficient answers for the research problem. These statutory provisions can be followed as examples for when implementing and amending statutory provision related to victims of crimes in the domestic criminal justice system of Sri Lanka. When comparing statutory provision of these two jurisdictions there should be development in the statutory provision related to victims of crimes to protect their rights in the domestic criminal justice system.

## CHAPTER 5

### 5.0 -Findings and Conclusions

#### 5.1- Findings

##### 5.1.1 – Protection for rights of the victims of crimes according to the procedure

This study found that the substantive criminal law and procedural laws in Sri Lanka is insufficient to address the protection and assistance provided to the victims of crime. Presently in the criminal justice system, the victims' interest is subservient to the interest of the society. Therefore, States Counsels represent the victim in the high. However, State Counsels from the Attorney General Department would not communicate with the victim of crime before or during the procedure in order to safeguard, independence and impartiality of their profession. Conducting trials, according to evidence available in the case record, submitted during the investigation in the Magistrate Courts. This practice obstructs justice to the victim. Therefore, investigation is a very important part of the criminal procedure, because investigations lead to finding evidence which is used to prove relevant facts of the case. Justice depends on the investigation process and totally depends on the knowledge and the competence of the officers in investigating.

However it is not mandatory for the victim or his attorney at law to participate actively in inquiries and trials held in Magistrate Courts. After amending the non-summary procedure by Act No.15 of 2005,<sup>124</sup> non-summary inquiry conduct with police statements and report of expert evidence without calling witnesses. Therefore, if necessary, sometimes evidence led in non-summary inquiry cannot be adopted in the event a witness not in live or couldn't present in the court, before commencing or during the trial in high court.<sup>125</sup> Purpose of this amendment is to reduce the time period spent for inquiry and further investigation could not conduct for take necessary information. Attorney-at-Law call as "non-summary officers" conducted non-summary inquiry in the previous procedure followed for non-summary inquiry. However after the amendment, prosecutions conducted by police officers on behalf of the victim other than represented by an Attorney-at- Law and represent limited cases by state's agents in the Magistrate courts.

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<sup>124</sup> Code of Criminal Procedure (Amendment) Act, No.15 of 2005.

<sup>125</sup> Evidence Ordinance, S 32 and 33.

There can be differences between lack of legal knowledge of Police officer who conduct prosecution and legal knowledge and experience of the defense lawyer, prosecution is in a weaker position. If a victim considers end of the of the case that, that his/her rights have been violated and has not been given a proper opportunity to be heard, then the right to fair trial for victim cannot be protected. According to the policy of the present criminal justice system, pushed the victim of crime away from the justice process and treats as only a witness. Therefore victim became a forgotten person in the process. The role of the criminal justice system is to help the society as a whole rather than compensate the victim on a personalized basis and the offender be brought to court and punished.<sup>126</sup>

### **5.1.2 – Protection for rights of the victims of crimes according to the existing laws**

When considering provisions for protecting rights of suspects/accused, limited provisions are available regarding protecting rights of the victims of crimes in substantive laws and procedural laws of Sri Lanka. Limited provisions in substantive laws and ‘Assistance to and Protection of Victims of Crimes and Witnesses Act’ only discuss the victim’s rights. However, when considering provisions provided in Victims of Crimes and Witnesses Act carefully, it is clear that it did not provide full and adequate protection to the victim of crimes. As well as when deeply considering provisions of this Act, understand that it is more focused with witnesses’ rights rather than victims’ rights.<sup>127</sup> Right to participation, assistance to participate during the investigation and trial process is recognized by this Act. However it doesn’t elaborate what type of participation and assistance is entitled for the victim of crime by this Act. Therefore, there is a doubt whether existing law protects the victim’s rights in the domestic criminal justice system.

When examining the statutory provisions regarding protecting the rights of the victims of crimes, it is very clear that statutory provisions are needed to protect the rights of the victims of crimes. This study found that legitimate needs of the victims of crimes, equal protection and fair treatment to protect the interests of the victim of crime are needed. The

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<sup>126</sup> Jeeva Niriella, ‘Protection of the Rights of the Victim of Crime: Demands for Restorative Justice and Victim-Centered Approach in a Criminal Justice System’ Annual Researches Symposium 2012, University of Colombo <<https://scholar.google.com/citations?user=9uLafBwAAAAJ&hl=en>> visited on 07.06.2020.

<sup>127</sup> Jayaruwan Dissanayaka , ‘Balance of the Rights of The Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in the Criminal Justice System of Sri Lanka’, (2017), Vol V, JSA Law Journal Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

victims of crime should be given an opportunity for active participation in proceedings. A new compensation system should be introduced in order to provide justice to the victims of crime in the domestic criminal justice system.<sup>128</sup>

Rights of the victims of crimes mentioned in Section 03 of the Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015<sup>129</sup> in the domestic criminal justice system, but victims of crimes do not get notice about their rights anywhere even in police stations or court premises. Victims have rights to attend and be heard proceedings, but unless they receive notice of proceedings and of their rights, those rights cannot be exercised.<sup>130</sup> In addition, as the initiative for the Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015 came from the perspective of promoting witness protection rather than victim rights. Therefore victim rights and assistance should not be allowed to overshadow the issue of witness protection.

When considering members, structure, duties and powers of Authority according to the Act it is clear that the mechanism for protecting rights of victims crimes is very successful. Nevertheless, practically it is not so far. For instance the geographical situation of Authority, it is situated sub road off the main road, there is no signboard in the main road or sub road to give direction to find the office in the hope of finding relief. It is located on the first floor of the building situated at No.428/11A, Denzil Kobbekaduwa Mawatha, Baththaramulla . There is no name board in front of the road for indicating that where the Authority. There is only the signage by board at the entrance by indicating the presence on its premises. People who came from rural areas could not find it easily and there are not any other branches of the Authority. Easy access is the most important thing for people who seek protection mechanisms. If a victim of crime has to face obstacles when seeking service of Authority, such as difficult to find a place, resulted in victims of crime and witnesses losing confidence.<sup>131</sup>

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<sup>128</sup> Jeeva Niriella, 'Protection of the Rights of the Victim of Crime: Demands for Restorative Justice and Victim-Centered Approach in a Criminal Justice System' Annual Researches Symposium 2012, University of Colombo <<https://scholar.google.com/citations?user=9uLAFBwAAAAJ&hl=en>> visited on 07.06.2020.

<sup>129</sup> Assistance to and protection of victims of crime and witnesses Act, No 4 of 2015, S 03.

<sup>130</sup> Norval Morris, *The future of Imprisonment*. Cited in John Hagan, *Victims before the Law: A Study of Victim Involvement in the Criminal Justice Process*, (1982), Vol 73 Issue 1 Spring Article 11, *Journals of Criminal Law and Criminology*, p.317 < <https://scholarlycommons.law.northwestern.edu/jclc>> visited on 25.05.2020.

<sup>131</sup> Maneshka Borham, 'Witness Protection Authority: Still faltering after three years', *Sunday Observer* 24 Feb, 2019 <<http://www.sundayobserver.lk/2019/02/24/>> visited on 14.06.2020.

### 5.1.3-Development of the rights according to International Instruments

#### *Right of victims of crimes*

Rome Statute is the first international document mentioning the interests of victims as fundamental to the pursuit of justice.<sup>132</sup> The more significant rights constituting a "fair hearing" are detailed in Article 67.<sup>133</sup> Declaration of 'Basic Principles of Justice for Victims of Crime and Abuse of Power and Basic Principles' adopted by the 'United Nation General Assembly'(UNGA) in 1985 , which details international consensus on best practices in relation to victims of crime. The UNGA and the 'UN Economic and Social Council' have also passed several resolutions that articulate the importance of the rights of women and children who are victims of crime. The UN Basic Principles for victims was designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power. There are some other international instruments , such as The Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law is associated with victims of domestic crimes and Serious Violations of International Humanitarian Law is based on International crimes. Provisions in the statute of the 'International Criminal Court' (ICC), giving standing to victims in ICC proceedings, but also certain rights of compensation.<sup>134</sup>

#### *Right to fair trial*

The Code of Hammurabi was the first written law relating to fair trial. <sup>135</sup> However, the first ever international legal framework on right to fair trial is the promulgation of the 'Universal Declaration of Human Rights' (UDHR), which was adopted by the UNGA in 1948. Mainly discuss the right to fair trial in Article 10 and 11 of the UDHR.<sup>136</sup> Thereafter mention about the right to fair trial norms in several international instruments. Article 14

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<sup>132</sup> UN International Criminal Court, Rome Statute, Preamble, UN Doc A/CONF 183/9\* (1999).

<sup>133</sup> Ibid, art. 67.

<sup>134</sup>Mixed Results, 'US Policy and International Standard an the Rights and Interest of Victims of Crime' <<https://www.hrw.org/report/2008/09/23/mixed-results/us-policy-and-international-standards-rights-and-interests-victims>> visited on 06.06.2020.

<sup>135</sup>A.Wilbert, A.Robertts, C.Regehr, Victimology Theories and Application,<[www.http://books.google.lk](http://books.google.lk)> p.103-104. Cited in Jayaruwan Dissanayaka , 'Balance of the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in the Criminal Justice System of Sri Lanka', (2017), Vol V, JSA Law Journal, Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

<sup>136</sup> Universal Declaration of Human Rights, Office of the High Commissioner, 'The Core International Human Rights Treaties', United Nations Human Rights, p.93.



of the ICCPR further expanded the right to fair trial. International instruments such as ‘Rome Statute of International Criminal Court’ and ‘Convention against Torture and the Cruel Inhuman Degrading Treatment or Punishment’ constituted binding obligations on state parties to ensure the right to fair trial. There are many international documents which are non-binding but ascertain the right to fair trial in criminal proceedings.<sup>137</sup>

### ***Right to Compensations***

The concept of compensation can be found in the ancient Assyrian Code. The principle of compensation to victims similarly provided by ‘Code of Hammurabi’ (1750 BCE). A well-defined system of reparation to victims starting with the Lex XII Tabularum accorded by Roman law and developed in the fifth century BCE. The Lex XII Tabularum was later modified to provide a strict system of monetary compensation for many types of offenses, and was followed by a more comprehensive set of remedies found in the Praetorian law in the second century BCE, the Lex Aquilia de damno (Aquilian law). The right to private redress of wrongs was based on the responsibility for fault. In the Roman legal system. The two sources of criminal and civil responsibility based on dolus and culpa recognized by Roman Law, the first being intentional and the second being negligence.” (See Bassiouni, Crimes Against Humanity in International Recognition of Victims’ Rights.)<sup>138</sup>

### ***The Right to a Speedy Trial***

The right to a speedy trial guarantees the fair trial, because undue delays may cause the loss of evidence or the fading of the memories of the witnesses. In addition, the right seeks to minimize the emotional strain on the victim. Many constitutions contain language relating to both the detention of an accused and the right to a speedy trial in general.<sup>139</sup>

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<sup>137</sup> (For example; *Body of Principles for the protection of All persons under any Form of detention or Imprisonment*, UN General Assembly resolution 43/173, December 9, 1998, *Code of Conduct for Law Enforcement Officials*, UN General Assembly resolution 34/169, December 7, 1979, *Standard Minimum Rules for the Treatment of Prisoners*, UN Economic and Social Council resolution 663 C(XXIV) July 31, 1957 and resolution 2076 (LXII) May 13, 1977) cited in Jayaruwan Dissanayaka, ‘Balance the Rights of the Suspect and the Victim; A Critical Analysis of Fair Trial Rights of Suspect and Victim in the Criminal Justice System of Sri Lanka’, JSA Law Journal (2017), Volume V, Published by the Judicial Service Association of Sri Lanka, ISSN 2357-2884, p.158.

<sup>138</sup> M. Cherif Bassiouni, *International Recognition of Victims’ Rights*, Human Rights Law Review, 2006, Vol 6, Issue 2, Oxford Academic, p. 203–279, <<https://doi.org/10.1093/hrlr/ngl009>> visited on 04.06.2020.

<sup>139</sup> Ibid.

#### 5.1.4- Other International instruments related to victims' rights

Many international instruments address victims' rights. The 'Convention on the Elimination of Discrimination against Women' (CEDAW), This Convention describes what constitutes discrimination against women. All the States which are signatories agree to take all appropriate measures and special measures, including legislation and to ensure that women enjoy all their human rights.<sup>140</sup>

The 'Convention on the Rights of the Child' (CRC), describes the human rights of children. It indicates the rights of the child to survival and protection from harmful influences. It further emphasised that the right to be protected against abuse and exploitation. The Convention has four founding principles such as non discrimination, best interest of the child, the child's right to life and respect for the views of the child.<sup>141</sup>

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the "Basic Principles for Victims")<sup>142</sup> addressed to the needs and rights of victims of crimes. Recognise that victims are entitled to access all mechanisms of justice and to active representation for the harm and loss suffered. And entitled to receive sufficient specialized assistance in dealing with emotional trauma and other problems caused by the result of victimization. This Declaration is based on the philosophy that victims should be sufficient recognized and treated with respect for their dignity<sup>143</sup>

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<sup>140</sup> Ibid, p.119.

<sup>141</sup> Ibid, p.93.

<sup>142</sup> M Cheif Bassiouni, 'Human Rights in the Context of Criminal Justice :Identifying International Procedural Protections and Equivalent Protections in National Constitutions', Vol 3:235, Duke Journal of Comparative & International Law, p.269.

<sup>143</sup> Mixed Results, US Policy and International Standards on the Rights and Interest of victims of crimes, <<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1328&context=djcil>> visited on 21.05.2020  
<<https://www.hrw.org/report/2008/09/23/mixed-results/>> visited on 06.06.2020.

## 5.2 – Conclusion

Providing mechanisms protection for victims of crimes should serve as confidence building measures. The right to a fair trial serves to protect against the arbitrary deprivation of the right to life and right to a defense. Right to fair trial for the victim is given the right to be represented by counsel in proceedings against the accused.<sup>144</sup>Representation of the criminal justice system means, that implement laws which provide victims access to information and facilitate victims to participate in the criminal justice process. Victim protection also seeks to prevent the re-victimisation and re-traumatised during the investigations and prosecutions. This is not focused on the restorative effect for the victim but rather on ensuring investigation and prosecution processes are successful and effective. As well as include them in the process as a means of assisting them provide compensation.

Victims of crime, witnesses, accused and the society, which requires the fair and effective administration of justice. There has been a growing demand and greater attention to protect the rights of victims of crime. Several international human rights instruments-including treaties detailed best practice guidelines-provide standards for upholding victims' rights and interests. Human rights standards demand that victims be treated with compassion and with respect for their human dignity without any discrimination throughout the criminal justice process. Victims of crime should be able to have easy access and participate in the criminal justice system that provides them with information, notice, and an opportunity to be heard without prejudice to the rights of the accused. As well as victims should be protected and assisted in all appropriate instances, and they should have access to specialized help. States should respect, ensure and enforce international human rights and humanitarian law norms contained in treaties if they are a State party of customary international law or domestic law. Provide victims with equal and effective access to justice and provide for or facilitate reparation to victims State's duty to prevent violations, investigate violations, punish violators.<sup>145</sup>

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<sup>144</sup>M Cheif Bassiouni, 'Human Rights in the Context of Criminal Justice :Identifying International Procedural Protections and Equivalent Protections in National Constitutions', Vol 3:235, Duke Journal of Comparative & International Law, p.254.

<<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1328&context=djcil>> visited on 21.05.2020.

<sup>145</sup>Ibid, p.119.

Victims of crime should have recognized their status by the State and justice is the most important and ultimate goal in a fair criminal justice system which ensures the freedom of every individual in the society.<sup>146</sup> A related hypothesis was that victims would have more favorable experiences and greater satisfaction with the strong legal protection system.

Overall, the research revealed that where legal protection is strong, some victims are not afforded their rights, because enactment of laws and amendments is not sufficient to guarantee the full provision of victims' rights in practice. The victims protection criminal justice system should be based on a rock-hard legal basis. A strong legislation will not therefore provide the required protection to victims if it is not widely developed in practice. Therefore there should be progressive and realistic amendments to fill the lacunas in the existing law to change the traditional criminal justice system. Therefore "justice should not only be done, but should manifestly and undoubtedly be seen to be done".<sup>147</sup>

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<sup>146</sup>Mixed Results, US Policy and International Standards on the Rights and Interest of victims of crimes, <<https://www.hrw.org/report/2008/09/23/mixed-results/us-policy-and-international-standards-rights-and-interests-victims>> visited on 06.06.2020.

<sup>147</sup> R vs Sussex Justices exp Mc Carthy, (1924) 1 K.B. 256.

## CHAPTER 6

### 6.0 - Recommendations and Future Researches

#### 6.1 - 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 for protecting victims of crimes in the criminal justice system. This study suggests that the victim of crimes should be treated equally with the accused and substantive laws and procedural laws should be reformed accordingly. At least recognise the right to fair trial for victims of crimes as a fundamental right, by reforming the Chapter III of the Constitution with amending Article 13 or implementing a new Article for recognising rights of the victim of crimes.
- ❖ Legislate new laws for establishing “Prosecuting Unit” for conduct prosecution in the court procedure. It can be a branch of the Attorney general Department. This Unit can be similar with the Non-Summary Unit, which was in the Attorney General Department years back. Attorneys-at-Law can be appointed as Officers of Prosecution. The Officers of the Prosecution Unit take all necessary steps regarding prosecuting procedure, conducting all the trials before the Magistrate Courts and assisting to the State Counsels during the trials before High Courts.
- ❖ As well as implement new law for establishing a separate “Investigation Unit” to investigate necessary evidence according to the crime. This can be established as a separate unit in the Police department with well-trained officers for criminal investigations and make arrangements to have a separate unit in every police station. Investigation regarding crimes can be investigated. Some other relevant information such as medico-legal reports, post mortem reports, report of the registrar of fingerprints, reports of the government analyst and any other report also provided to the investigation Unit for further investigation. When an information or evidence found by the investigation unit, immediately produces it to the Prosecuting Unit. Investigations should be conducted according to the guidance of the Prosecuting Unit. Investigators can be called as witnesses of the court cases to give evidence regarding conducting investigations.

- ❖ Implement a “Code for compensation” as a guideline for compensate victims of crimes. Judicature can follow these guideline when compensate the victims of crimes. Then no need to held separate inquiry, when victims ask for compensation.
- ❖ Established a “Compensation fund” for compensate the victims of crimes, when need aid for critical criminal injuries before suspected the accused, when the offender is unknown, unidentified or cannot be apprehended and where the offender is not in a position to compensate the victim. The Authority for the Protection of Victims of Crime or any other Authority can be provided funds.
- ❖ As well as there should be amendments for the Assistance to and protection of victims of crime and witnesses Act, No.4 of 2015 for enhancing procedure for protect rights of the victims of crimes rather than the witnesses rights or implement separate new law for protect rights of the victims of crimes.
- ❖ In addition, the following rights should recognise by the Constitution or relevant legislation for upheld the rights of the victims of crimes in the domestic criminal justice system.

**The right to be treated with fairness and with respect for dignity and privacy:**

The right to be treated with respect, dignity and privacy by all members of any department, institution, agency or organisation dealing with or providing a service. Especially the police, the prosecutors, court officials, and all other service providers during the investigations and during court procedure. Use measures to minimise inconvenience, conducting interviews by using language of choice and in private. These measures will prevent secondary victimisation. The victim will ensure that special measures are taken in the case of sexual offences, domestic violence and maintenance matters and that, where available. As well as such cases are heard in separate from normal courts procedure.

**The right to offer information:**

The right to offer information during the criminal investigation and trial. There is an opportunity to make a further statement to the police if they realise that the first

statement is incomplete and also make a statement to the court or give evidence during the non summary inquiry when appropriate to bring the impact of the crime to the attention of the court.

**The right to receive information:**

This includes the right to be informed of the rights of the victims and how to exercise them. It includes the right to have explanations in their own language and the right to receive information of all relevant available services such as protection programmes. There can be requests for information regarding court dates, court proceedings and other documents. As well as can request to be informed of the steps of the investigation and case, whether or not the offender has been arrested, charged, granted bail, indicted, convicted or sentenced.

**The right to protection:**

Right to be free from threat, abuse, intimidation, harassments, fear, tampering, bribery and corruption . This will ensure the safety of victims and witnesses to give evidence. This right includes that the court may order for prohibit the publication of any information in certain circumstances and it may order that the trial be held in camera.

**The right to assistance:**

The right to request assistance and, where relevant, have access to available services such as counseling, health, protection and other relevant services provided. As well as legal assistance, assistance during investigation and court procedure such as police will assist by explaining police procedures and court will provide for the services of an interpreter. It includes informing rights and making the appropriate referral to other relevant service providers.

**The right to compensation:**

Compensation refers to an amount of money that a court awards the victim who has suffered loss or damage to property, including money, as a result of a criminal act or omission by the person convicted of committing the crime. Right to compensate

when the offender is unknown, unidentified or cannot be apprehended and where the offender is not in a position to give compensation. Right to institute a civil action against the accused when the court did not grant a compensation order.<sup>148</sup>

**The right to restitution:**

The right to restitution in cases where unlawfully dispossessed of goods or property, or where goods or property have been damaged unlawfully. Restitution refers to orders to return the property or goods that have been unlawfully taken, or to repair the property or goods that have been unlawfully damaged, in order to restore the position prior to the commission of the offence after the conviction.

**The right to complain:**

If you have any complaints regarding the service receiving or if rights are not being observed, can contact the particular government department or service provider.

The National Authority for the Protection of victims of Crime and Witnesses.

The Victims of Crime and Witnesses Assistance and Protection Division.

The Commissions (The Human Rights Commission of Sri Lanka, The Commission to Investigate Bribery or Corruptions, Investigations Commissions or a Special President's Commission of Inquiry or any other Commission appointed under the Commission of Inquiry Act.)

Officer-in-Charge of the Police in the area.

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<sup>148</sup>*Criminal Injuries Compensation Boards.* The establishment of state compensation boards has perhaps been the most widely heralded measure resulting from the recent revival of concern for the victim. Early victim advocates, notably Schafer ([1960] 1970), took the view that any remedies victims might seek from the offender were likely to be inadequate, and ultimately (or at least in the first instance) the burden of redress must fall upon the state. While the pioneering model for a victim compensation board was adopted in New Zealand in 1963 (as mentioned in the introduction), in recent years most of the states of the United States have adopted legislation of this type (see Bureau of Justice Statistics, 1984:5-8; NOVA, 1989:1-5), and Congress provided for federal support under the Victims of Crime Act, 1984. Unresolved issues remain, however, regarding the optimal scope of these programs and the criteria for admissibility, affecting such issues as minimum and maximum claims, the relationship between the parties, victim precipitation, and the types of losses to be covered. Moreover, there has been controversy regarding the very idea of state compensation (Meiners, 1978), as well as the appropriate mode of financing such programs (Thorvaldson and Krasnick, 1980).



## **6.2 - Future Researches**

This research is based on qualitative research rather than quantitative research, so there can be quantitative research for “protection rights of the victims of crimes in the domestic criminal justice system”. As well as this research limited the right to fair trial for victims of crimes, not fairness and justice for victims of crimes in the criminal justice system. This research focuses only on victims of crimes, not the rights of third party victims of crimes. Therefore, there can be research for rights of third party victims of victims of crimes. This research does not review protection of rights of the victims of crimes in the adversarial system, Sri Lanka. Re-victimization of victims of crimes during the investigation and court procedure following the domestic criminal justice system do not focus from this research. As well as satisfaction with the victims of crimes, from the existing compensation procedure not discussed by this research. Restitution of victims of crimes not further discussed, there can be researches ‘psychological restitution for victims of crimes’ and ‘Sentencing policies with restitution for victims of crimes’. This research is limited with victims of crime but there can be victims of other sources such as abuse of powers, natural deserter, therefore there can be further research regarding these areas.

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