

Full Length Research Paper

Criminal policy shifts from using penal logic to insurance logic (a new contribution of reparative justice)

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Abstract

Studies in the area of criminal sciences have been known as that the domain development of penal system intervention its mere emphasis on methods recommended by classical penal justice system whether its punishing form or renutritioning form cannot be responsive to the public opinion as expected. In other words, now, the deficiencies of traditional penal system which has been combined with numerous difficulties resulted from accumulation of cases on penal inflation and lacks of facilities in judicial investigations have become completely obvious. On the other hand, ignoring the victim as one of the main elements of criminal phenomenon has confronted the suppressing penal system with many dead-ends, because the storm-like results and policies of the system's functions, although hasn't been ineffective in terms of prevention and punishment, has had the least effect in terms of compensating and healing the victim's feelings. The emergence of victimology has brought hope to the creation of an environment in which the role of victim in the crime evolution process is carefully considered and the position, needs, and methods of supporting the victims are also provided. Thus, the process of substituting the new approaching for the traditional reparative justice has put forward a new perspective for victimologists and criminal scientists. In this new approach, insurance mechanism has presented significant suitabilities that can be viewed a heartening indication for initiating effective actions for victims of criminal act.

Keywords: Insurance Logic, Reparative Justice, Victims Supporting Plans, Substituting Resources, Loss Reparation and Compensation

INTRODUCTION

Crime perpetration is often coupled with loss and damages imposed to the victim. In addition to the losses that are directly imposed to the victim, due to the occurrence of criminal action, there are other losses (e.g. solicitation expenses, medical expenses and losses resulted from disablement) that the victim is increasing another part of losses (e.g. losses resulted from hurt

feelings) are not materially visible. This category of losses that are also viewed as unmaterial losses affect the victim and have unpleasant effects on the victims life. In these situations the society in general and the victim in particular expects that criminal policy makers do all they can to benefit from existing mechanisms to compensate the relative incurred losses, although these

mechanisms are not able to bring the victim's state of affairs to what it was before. In this article, by relying on new approaches to new reparative justice model and other countries experiencing in this issue we intend to introduce the evolution of new parts of insurance law that gradually is developing while it limits the extent of penal system's intervention. Then, we will address the competencies of insurance mechanism in supporting the victims. It should be stated that the application of concepts such as reparation, revival, restitution, restoration, compensation, reclamation, compatibility, reconciliation, discussion, and mediation have all been addressed in the evolution of victimology studies in penal law. In this article, by relying on the abilities of insurance mechanism, attempt has been made to examine all potential and existing capabilities of insurance industry in supporting victims of crimes and the degree of effectiveness of this legal mechanism in the criminal area has been discussed. Experts have not reached a common and special meaning of reparative justice but Howard Zehr (2002), who is one of pioneers and scientists of reparative justice in the United States, has defined reparative justice as: Restorative justice is the process of encompassing, to the possible extent, those who have had a role in a certain crime and also the losses, needs and requirement of victims and their compensation. Martin Wright (2002) defines restorative justice as follow: Restorative justice is the justice that attempts to balance the victim's and society's interests and the victim's need for social reacceptability and tries, to the possible extent, to restore and improve the victim's condition, and in this approach, to create such a balance, it encourages all those who, somehow, have an interest in the criminal incidence (e.g. victim of crime, offender and their relatives), the public's representatives, and the penal justice official to activity participate in the process.

A Support Plan for Victims of Crime

Before discussing about a support plan for victims of crime we should define victim of crime. A victim of crime is a person against whom a crime has been perpetrated. The crime can have different dimensions and aspects. Thus, we are facing with social victims, hidden victims, financial victims and economic victims. A victim of crime is a forgotten being who, nevertheless, is in need of support and attention. Although the role of victim of crime in the evolution of crime and its relation with offender has been the main issue of victimology discussions through late 1970 the real and determining condition of victim as a human being and one of the elements of criminal phenomenon, with all his feelings and needs, has been overlooked and after this time, we notice a turning point in the history of victimology that. The pivot of discussions concerns with victim of crime and its needs.

The result of this break through is not only the beginning of a new thought that examines the role of victim of crime in crime perpetration but also concerns about helping and supporting victim of crime and restoring his pains.

In practice, this vision and revitalization of the role of victim of crime require serious efforts of thinkers of penal laws, sociologists, psychologists and politician.

The phrase relational victimology with secondary victimology are exactly addressing this new vision. It is interesting to note that the range and realm of issue in the subject of secondary victimology extended in such a way that, gradually, indirect victims of criminal act (e. g. families and spouses of primary victim of crime) were paid attention to, and some plans and recommendations were introduced to support them.

The penal laws of some countries have been affected by this new thought and administrative bases were established in the penal laws to understand the condition of victim of crime and to introduce method of loss compensation. Organizing non-governmental organizations pluronthropic societies.

To support victims of crimes, providing supporting funds and participation of governmental financial resources to compensate the losses resulted from uncompensated crimes are all plans and initiatives that can viewed as the result of the humanity approach to secondary victimology.

The justification of supporting plan for victims of crime by each criminal scientist has been presented in specific way and from different view. Some experts have emphasized on its value dimensions of supporting plan for victims of crime and some others have presented the increasing growth of crime in recent decades and the government's familiar to support society as the primary basis for evolution of new movement and presentation of supporting plan for victims of crime.

It should be noted that, in some cases, the justification of supporting plan for victims of crime has been known as an extreme point of view.

That is "The unpleasant record of penal laws and its lack of merit for supporting the public, have justified the necessity for its abandonment.

This movement has been striving against penal laws through three stages of punishment omission, crime omission and consequently omission of penal system. Thus, the purpose of applying supporting plan for victim of crime, from this point of view, is to substitute non-judicial resolution (justice diversion) with the help of people and people-oriented organizations and limiting penal laws domain.

Another defendable justification for supporting plan for victims of crime is to decrease the number of crime and to prevent revictimization.

Criminologists who are in favor of this approach maintain that supporting a victim of crime whether in the form of legal support or in form of material and moral support can cause him to rediscover his strength and be

released from social anxiety that had made him a potential victim of crime. It can also decrease crime.

Another duty of governments, regarding supporting victim of crime, is providing security for the victims and preventing mental and material pressures on him. Establishing organizations that protect victim of crime from threats, intimidations, and molestation in between the time of appealing to justice system and judicial courts and the time of adjudication of his rights is essential and requires serious attention of criminal law administrations.

Evolution of Insurance laws for supporting victims of crime

Research in the last few decades has shown that the concept of criminal policy, relative to the past, has developed, which means that the answers provided to criminal phenomenon has gone beyond punitive sphere and is not just resulted from penal systems.

From this point thereafter, other legal systems are presenting their answers about criminal phenomenon. This is where administrative, civil, disciplinary, tax, and insurance legal system enter the picture, and parallel to that, the public (including informal and public organizations) become active against criminal phenomenon. Thus in the discussion of crime prevention, formal organizations, along with public and non-governmental organizations help the process to succeed. It is expected that in the supporting victim as crime stage the presence of these organizations is continued.

Obviously, if the effectiveness and positive role of civil society and informal and non-governmental systems, is proven in the prevention of criminal act, then, we can be sure of its merit for playing a positive role in the supporting victim of crime stage.

This attitude towards the issue reflects a new perspective which, in broad scope, provides bases for the entrance of civil society and non-governmental organizations to the field of supporting victims of crime. In this approach the necessity of identifying existing potentials in society as well as people-oriented organizations for supporting victims of crime, as a major principle, is considered by criminal policy makers and criminologists. With this attitude, it seems logical to expect that the loss and damages to victims of crime are carefully examined and compensated. Thus, being careless to compensating the losses born on the victims is not justified.

Criminal policy should be very sensitive to satisfy the expected actions to compensate the losses born on victims of crime and enforce adequate controls. It is obvious that after crime occurrence the very first person responsible for compensating the losses is the respective offender. All the available tools to criminal policy should encourage offender to compensate the

losses born on victim of crime. In such a situation, for different reasons, such as death of offender, lack of identification being fugitive, or financial inability it is not possible to compensate the losses by forcing the offenders.

It is obvious that in such situations, only asking the victim to be patient and bears the losses, without providing any useful mechanism to support him is not fair. On the other hand, pursuing offender and responses from penal justice system in most cases do not have any specific result for the victim who is involved in difficulties resulted from being the victim and related losses and damages.

The fact of the matter is that the ability and efficiency of penal justice system is very limited in concepts such as compensating, and comforting the feelings of victim of crime. Thus, criminal policy introduces two sources of loss compensation namely government charity associates contribution as substitute sources for compensating the losses born on victim of crime.

In law making area, anticipating many cases for which government in certain circumstances is obligated to compensate the loss is viewed as the examples that governments are the substitute sources of loss compensation.

It should be mentioned that in Islamic laws (Feghh) numerous cases have been anticipated for which loss compensation is considered to be paid from public's fund (Beyt-ol-mall) that shows the attention paid to the necessity of supporting victim of crime. Charity institutions, with their traditional mechanisms, mostly establish charity societies that have their own defined issues and participation of these organizations in the process of supporting victims of crimes is reflected in their philanthropic activities.

In some other cases it is accomplished in the form of organized societies. These societies mostly prefer to guide and mentor and prepare draft for victims of crime in order to defend their rights and provide ground for compensating the loss born on them.

Governments' responsibility for compensating the loss born on victim of crime when it can not be provided by the criminal, stems from the attitude of transition from individual civil responsibility rights to social civil responsibility rights.

Some countries like France in cases like legislation of July 1985 about victims of crimes resulted from driving, have accepted the right repairment of compensation as separate from error and the process of transition from responsibility right to insurance right has been accomplished. In Iran regulations related to benefiting from body injuries fund the subject of section 10 of responsibility insurance law for owners of land motors vehicles versus has third party has addressed this issue.

Now, regarding what has been stated, proposing insurance rights and substituting procedures based on thought and logic for mere penal procedures can be clear and answer the question of what is a new and

practical alternative to the limitations of financial governmental resources and charity as the two alternative tools for loss compensation born on victims of crimes. The author's definite answer is provided of a plan for benefiting from various potentials of organized insurance fund that can be a strong substitute resource to support penal policy and overcome the difficulties in compensating loss born on victims of crime. Thus, in a simple categorization we can explain the role of insurance in compensating losses born on victims of crimes, based on the nature of losses.

The role of insurance in compensating material losses

Financial or material losses resulted from criminal act hit the properties and assets of victims of crime when may be in the form of a decrease in positive asset.

Material or financial losses caused by criminal act and born on assets and properties of victim of crime may be appeared in the form of decrease in positive asset or increase of negative assets which is viewed as material losses. The nature of role playing of insurance in compensating this kind of losses is well determined regarding the above definition it can be stated. There are two major groups of asset and liability insurance contract each of which has various kinds that serve to compensate material losses. Generalization of property insurance (theft, fire and shipping insurance) contracts and also liability insurance (such as liability insurance for owner of motor vehicles and employers' liability toward employees and third parties and professional insurance) can lead to developing reliable safety for losses born on properties and material losses.

In recent years liability insurance contracts have been so widespread that almost all kinds of liabilities are covered by the insurance industry. On the hand some liability insurance coverage such as land motor vehicles owners liability insurance for third parties are clear examples of the fact that law makers pay attention to the necessity of generation of insurance to support victims of crimes.

Body Damages

Damages on the whole body may lead to injury, deficiency or cut of part of body; illness and temporary or life unemployment, and even death of the victim. The efficiency of insurance, in these cases, in addition to what can be observed in the form life, accident, medical or organ deficiency, regarding to the possibility of demanding blood money through documentation of liability insurance policy of the crime factor can be important.

The role of insurance in restoration of moral losses

Non-material losses and the necessity of compensating them is an issue that law experts have viewed differently. Some have argued that it is not possible to measure these non-material losses monetarily or it is insulting to victim of crime and some experts have argued that these losses are overcome as long as the victim is satisfied through loss compensation. In most countries including Iran, the law makers, influenced by the said approach have emphasized on compensating these losses.

There is no specific definition of these losses, however it can be exemplified as losses to reputation, religious beliefs beauty, feelings, and family affection.

In Iran, the penal law which has been mandated in 2000 unexpectedly has blocked the path of penal conduct of enforcing criminal to compensate these losses and it seems necessary to reexamine and revise this law.

As can be observed the ground for demanding and compensating non-material losses is not as appropriate as can be, thus insurance and its related mechanism have not had a chance to play a role in this area. Therefore the limitations in insurance procedures is not related to the industry itself.

The competencies of insurance mechanism in supporting victims of crime

Innovation in insurance procedures and regulations, variation in topics and detition in insurance laws, and provision of many innovative plans in the form of new insurance contracts have led to a very favorable condition for insurance to play role in supporting victims of mishap in general and compensating losses born on victims of crimes.

Mandating laws related to obligatory insurance (e.g. liability insurance for land motor vehicle owners against third parties) indicates that law makers are concerned about supporting victims of mishap and victims of crimes through benefiting from insurance means.

In obligatory accident insurance every, insured individual is the target of different fines and penalties and as the case may apply in certain conditions he can benefit from his insurance policy to compensate the whole or part of losses incurred. It is interesting to note that in the regulations of most regular policies the intentional losses of third parties to an insured individual or an insured investment are not included in the commitments of insurers.

At this point we are going to address some capacities of insurance to support victims of crimes from view point of direct loss compensation and also as common meditation procedures which are applicable by insurers.

Loss compensation

The foundation of insurance is based on compensating incurred loss by insurer. In many insurance policies losses or damages on insured properties or insured person as result of criminal act of third parties are not excluded from the insurer's commitment therefore the stakeholder of insurance policy, when he is the victim of crime, can ask his insurer to compensate the loss based on the requirement of policy.

Insurance coverages for properties

In the framework of property insurance regulation all properties owned by individuals in the form of specific insurance policy and against defined risks such as fire, theft, illegal acts of third parties or natural risks are covered and supported by insurers. Therefore developing fire, theft, shipping and engineering insurances support crime targets under their supporting umbrella. For this reason participation of insurance organizations in the process of supporting victims of crime and the activities of criminal policy are clear.

At this point it is appropriate to point out the interaction of insurance industry administrators and criminal policy administrators as a necessity that can result in favorable end toward supporting victims of crime.

Insurance Coverage for Individual

Insurance policies as individual, family, educational professional and sports accident insurances and also life insurance and health insurance are viewed as insurances that the main issue is health and life of the insured. Thus if there is any harm or damage to the insured or death of the insured, the insurer is required to compensate as the case may be.

Development and improvement of insurance culture and generalization of insurance coverages can reduce the damage resulted from accidents and crime.

Liability Insurance Coverage

The foundation of liability insurance plan is to support the victims and to avoid facing the irresponsibility of people that are the main cause of the accidents. In recent years liability insurers have gone beyond individual responsibility and have provided plans such as municipality insurance for citizens and had a deep look into the necessity of developing liability insurance for simplification of loss compensation process.

CONCLUSION

The process of "being victims of crime" have been of great concern to the experts of criminal scenes and participants of penal justice system causality relation between victim of crime and his behavior, characteristics of criminal extended effort toward reducing the events of "being victims of crime" and relying on the necessity of supporting victim of crime in an organized approach are all the issues of victimology.

Today, the movement of supporting victim of crime and indirect victims of criminal act is one of the orientations in criminal policy knowledge. The necessity of making some fundamental changes in the structure of loss removal procedures and making new breakthrough in the social security and convenience system and accepting two important realities stimulate the path of research into benefiting from extended capabilities of insurance phenomenon and the thought based on insurance logic.

The first reality is that "victim of crime and loses of criminal act is often the victim of penal justice system and disorder in social relations.

Second, inefficiency and limitation of capabilities related to governments in loss removal from victims of crimes focuses the attention of every researcher to the necessity of logical and altruistic employment of insurance mechanism with all the various legal and mutual possibilities.

REFERENCES

- Ashoori M (2009). Criminal procedure (3rd ed). Tehran: Samt publication. (In Persian)
- European convention on the compensation of victims of violent crimes (1983).: Strasbourg
- Gassin R (2007). Melanges offerts a Raymond Gassin: sciences penales and sciences criminologiques. Facultae de droit et science politique.
- Gassin R (2007). Criminologie. 6ème éd. Paris : Dalloz.
- Marty MD (1992). Les grads systemes de politique criminelle. Presses Universitaires de france.
- Pradel J (1991). Histoire des doctrines penales. Presses Universitaires de france.
- Salehi A (1992). The rights of victims and third party insurance. J Mgt. Sch. of Tehran University(In Persian). 24(3):33-45.
- Seventh United Nations congress on the prevention of crime and the treatment of offenders (1985).
- Tavajohi A (1998). Criminal politics on supporting of victims. J. Higher Edu. Inst. of Qom (In Persian). 4(1): 31.
- Wright M (2002). An international approach, what is restorative justice? Paper to seminar in Hounour of Gunual Marnell, Stockholm.
- Zehr H (2002). The little book of restorative justice: Good Books Publication, p37.