

## ABSTRACT

### CRITICAL EVALUATION ON THE CONCEPT OF MANDATORY MINIMUM SENTENCING: SPECIAL REFERENCE TO SRI LANKA

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It is universally accepted now that uniformity in sentencing is an essential requirement. At the time of ordering the sentence, judges need to keep in mind, both the objectives of sentencing and the position of the accused. In other words, a judge should, in determining the proper sentence for an accused, first consider the severity of the offence, along with the punishment provided in the Penal Code or other statute under which the accused is charged: - then the reformation of the accused and finally, the public interest. Judges are able to exercise their discretion in imposing sentences after having considered both aggravating and mitigatory factors.

In Sri Lanka, some statutes passed by the legislature lay out the punishment, so that the trial judges are not given an opportunity to consider the punishment at all. It is simply the predetermined punishment to be given to the wrong doer who commits the specified wrongful act. Such sentencing needs to be done in compliance with the criteria for that crime /offence specified in the statute.

A trial judge, rather than judging a dispute, must consider the basic criteria of the offence in each individual case, and if those criteria are satisfied, the trial judge may pass the sentence as specified in the act itself. There are many outside factors to be considered in delivering a sentence. Apart from the statute the judge needs to consider the attendant circumstances of the accused as well. The judges are not there to merely repeat the contents of the statute and to punish the wrongdoer. They need to do something more than that, in the interest of both the accused and the aggrieved party.

The global trend towards the restriction of mandatory minimum sentencing has been facilitated by international and regional human rights standards. In international law, restrictions imposed upon mandatory sentencing policies, including the abolition of the death penalty, are based upon the normative platform of the UN-based international

declarations, treaties, as well as resolutions by the General Assembly and the Economic and Social Council.

The conflict between the legislature and the judiciary on mandatory sentencing has occurred due to the imbalance of their competing roles. The sentences below the requirement of the mandatory minimum should be adopted with a view to reforming and restoring the accused as a useful member of society, rather than punishing him as a deterrent to society.

#### KEY WORDS

mandatory minimum sentencing; attendant circumstances; accused

