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Victim Compensation in the Criminal Justice System: International Scenario

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ABSTRACT

This chapter explores the international landscape of victim compensation within the criminal justice system, tracing its evolution from ancient legal traditions to modern frameworks. Initially grounded in vengeance and kin-based restitution, victim compensation has transformed into state-sponsored mechanisms emphasizing restorative justice. The chapter highlights key international developments, notably the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), which established global norms for victim rights and reparations. Case studies of the UK and New Zealand demonstrate advanced statutory compensation schemes, such as the UK's Criminal Injuries Compensation Scheme and New Zealand's Accident Compensation Corporation (ACC). Despite progress, challenges persist, including inconsistent implementation, underfunding, and limited psychological support. The role of NGOs, international legal instruments, and restorative principles is emphasized in bridging these gaps. Overall, effective victim compensation is vital for justice, recovery, and reaffirming victims' dignity in post-crime contexts.

KEYWORDS

Victim Compensation, Restorative Justice, Un Declaration 1985, Criminal Injuries Compensation Scheme, ACC New Zealand, International Law, Victims' Rights.

INTRODUCTION

The concept of victim compensation has a long and complex

history, originating in ancient civilizations where laws from Roman, Jewish, Greek, and Babylonian societies allowed victims or their families to claim reparations for wrongs done to them. The assurance of these reparations was often dependent on the power of the victim's kin group, highlighting the reliance on social structures to enforce justice. In Anglo-Saxon England, a similar approach was taken: any inflicted harm, intentional or not, was viewed as a wrong needing redress. This provided a system of compensation, which evolved significantly over time. The initial approach often led to cycles of revenge and conflict, prompting a transformation towards monetary compensation known as "bot" by the eleventh century. Offenders would pay a designated sum for minor wrongs, and for more serious offenses, they would incur both a payment to the victim and a fine for the king. Over generations, the focus shifted from victim restitution toward state-administered punishment, leading to the idea of crimes being offenses against society as a whole rather than individuals. As the legal landscape developed, the role of victims diminished significantly. They became secondary players in the criminal justice system, primarily serving as witnesses for the prosecution. Although discussions around victim compensation were initiated by philosophers in England and Italy in the 18th and 19th centuries, substantial progress took time. The modern movement for victim compensation gained momentum in the 1950s, largely due to the efforts of British magistrate Margery Fry, who advocated for state-funded compensation for victims. Her work spurred the establishment of the Criminal Injuries Compensation Board in the UK in 1964.

ROLE OF THE UN DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

The recognition of the need for compensation for crime victims was solidified on an international level through the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which was adopted in 1985. In this declaration, a "victim" is defined as any person who has suffered harm, including physical and mental injury, emotional distress, or significant loss of fundamental rights, as a result of actions violating criminal laws. This definition is particularly inclusive, extending beyond individual victims to their families and anyone who assists or intervenes on their behalf. Significantly, the declaration asserts that an individual can be identified as a victim regardless of whether the perpetrator is known or has been caught, thereby emphasizing the need for societal recognition of harm experienced. This broad definition aims to encompass various contexts in which violence and crime occur, acknowledging that harm takes many forms and affects a diverse array of individuals. In addition to this declaration, several human

rights instruments have supported the rights of victims. The Universal Declaration of Human Rights (UDHR), though not explicitly outlining victim compensation, implies the right to an effective remedy for grievances. This is further elaborated in the Basic Principles and Guidelines on the Right to a Remedy and Reparation, adopted later in 2005, mandating states to provide various forms of reparation, such as restitution, rehabilitation, and financial compensation.

INTERNATIONAL CRIME MANAGEMENT IN VICTIM COMPENSATION

As international crime, including acts such as terrorism and war atrocities, has become more prominent, the management of victim compensation has evolved into a critical area of focus. Central to this evolution is the concept of restorative justice, which emphasizes repairing the damage caused to victims and communities rather than solely punish offenders. The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power serves as a vital framework outlining states' responsibilities to support victims. The establishment of the International Criminal Court (ICC) in 1998 further embeds victim compensation into international criminal law, allowing victims of serious violations like genocide and war crimes to participate in proceedings and claim reparations. Serious challenges remain in achieving effective victim compensation. Many programs rely on contributions from convicted offenders, which can be inconsistent when perpetrators are indigent or untraceable. Consequently, alternative funding mechanisms such as state-funded initiatives and international support—have emerged to fill these gaps, ensuring victims receive necessary reparations. The ICC's Trust Fund for Victims stands out as a mechanism aiming to provide resources to victims when direct compensation from offenders is unavailable.

GAPS IN THE INTERNATIONAL FRAMEWORK FOR VICTIM COMPENSATION

While international frameworks for victim compensation have advanced considerably, significant gaps in their implementation still exist. One of the most pressing issues is the lack of uniformity and enforceability in compensation laws across different jurisdictions. Many nations fail to adequately fund or implement programs intended to help victims, which leaves them without crucial support. The political climate in situations marked by international crime also complicates matters. In regions afflicted by conflict, the identification of perpetrators and the establishment of accountability for crimes can be severely hindered. This creates obstacles for victims seeking compensation

and deprives them of access to justice. Non-governmental organizations (NGOs) play a pivotal role in advocating for the rights of victims and addressing these systemic failures. Groups such as Amnesty International and Human Rights Watch actively provide assistance, ensure the documentation of human rights abuses, and lobby for stronger victim protection policies. Their role is crucial in filling the gaps left by ineffective governmental responses and ensuring that victims' voices are recognized. Overall, victim compensation must be viewed within the broader context of justice. It serves not only to provide financial redress but also to validate the victims' experiences and facilitate their recovery. In transitional justice contexts, compensation is often integrated into larger accountability frameworks involving truth commissions and systematic legal reforms designed to prevent such violations from recurring.

HISTORICAL DEVELOPMENTS

The historical evolution of victim compensation can be examined from two perspectives: the development of victimological theories about victim rights and the establishment of legal systems aimed at compensating victims. Victimology itself has evolved significantly, transitioning from retributive systems characterized by vengeance to restorative frameworks seeking to repair past harms. This transformation has occurred repeatedly throughout history across various cultures. For instance, in ancient Arabian societies, the transition from tribal revenge towards compensation for crimes marked a critical shift in how justice was perceived and administered. Over the years, the encroachment of state power has altered how victim rights were viewed. By the twelfth century, monarchies began to assert greater control over compensation processes, centralizing authority. As state systems took charge of law enforcement and punishment, the rights of victims became secondary, nudging justice toward a model that emphasized the state's role in addressing crime.

ISLAMIC LAW AND VICTIM COMPENSATION

Islamic law features a nuanced perspective on victim compensation, categorizing offenses in ways that emphasize the role of victims in the justice process. Notably, in cases of qisas, which are crimes that allow for restitution or retribution, victims are given key responsibilities. The prosecution of these crimes typically requires the victim to initiate actions against the offender, granting them significant authority over the proceedings. Victims of qisas crimes have several options available to them: they can choose to forgive the offender entirely or seek a monetary compensation known as diyya. This framework of law reflects certain restorative justice principles,

focusing on reconciliation and victim involvement. However, it also retains harsher elements by allowing for potential retributive justice where victims can demand an equivalent form of punishment, often referred to as "an eye for an eye."

CONTEMPORARY VICTIM COMPENSATION MODELS

Modern legal systems have significantly transformed the landscape of victim compensation, moving away from personal vengeance toward frameworks where the state upholds justice. A crime is now conceptualized as an offense against society, and the responsibility for determining consequences for the offender lies solely with the state. This transition compels victims to channel their pursuit of compensation through civil litigation rather than criminal proceedings. Philosopher Jeremy Bentham pointed out the neglect victims often suffered within the justice system, advocating for a societal obligation to compensate those harmed by crime. Legislative measures in England, particularly the Criminal Act of 1826, began to formalize the idea of compensating individuals who assisted in perpetrator apprehensions, which set the stage for ongoing discussions around victim compensation. The establishment of the Criminal Injuries Compensation Scheme in 1964 marked a significant breakthrough as it recognized the need for state-sponsored compensation mechanisms designed to support victims regardless of the offender's financial position. This system aimed to alleviate some of the burdens faced by victims during the criminal justice process.

VICTIM COMPENSATION REGIME IN BRITAIN

In the UK, the progression of victim compensation schemes has transformed from rudimentary restitutionary measures to sophisticated statutory frameworks that prioritize victims' rights. The Criminal Injuries Compensation Scheme established in 1964 emerged as a pivotal implementation enabling victims of violent crime to receive direct compensation from public funds. Currently administered by the Criminal Injuries Compensation Authority (CICA), this system has undergone numerous reforms to enhance its efficiency and effectiveness. The introduction of a tariff-based system in later updates has helped standardize compensation amounts while ensuring a clearer framework for determining eligibility and requisite awards for victims. Victims can access compensation through various channels, including direct payments from public funds or court-ordered restitution from offenders where applicable. This comprehensive structure ensures a multifaceted approach to victim compensation that acknowledges the diverse needs and circumstances faced by victims of crime.

NEW ZEALAND'S VICTIM COMPENSATION FRAMEWORK

New Zealand has gained recognition for its innovative approach to victim compensation, articulated through the Accident Compensation Corporation (ACC) established in 1974. This model departs from traditional fault-based compensation systems found in many other countries by adopting a no-fault principle that covers all personal injuries, including those resulting from criminal acts. The Victims' Rights Act 2002 further emphasizes the importance of recognizing and respecting victims throughout the judicial process. The implementation of the Victim Assistance Scheme (VAS) illustrates New Zealand's commitment to providing comprehensive support to victims of serious crimes, offering financial assistance and services that extend beyond just medical support. Additionally, the establishment of the Victims' Special Claims Tribunal facilitates the management of compensation claims, ensuring that victims can pursue due recompense against funds derived from offenders' settlements. This contributes to a sense of justice and validation for victims' experiences.

CHALLENGES AND CRITICISMS

Despite advancements in both the UK and New Zealand victim compensation systems, there are ongoing critiques concerning their scope, accessibility, and the adequacy of support provided to victims. In New Zealand, while the ACC model effectively addresses many physical injuries, it often falls short in recognizing and catering to the emotional and psychological repercussions that can accompany crime. Critics also point out that certain compensation frameworks lack guaranteed restitution for victims, especially in cases where offenders are untraceable or there are disputes concerning liability. This gap has prompted ongoing discussions advocating for legislative reforms that would further solidify victim rights and entitlements. Moreover, there is increasing acknowledgment of the need for systematic improvements, helping to streamline how compensation is allocated while enhancing the overall victim experience within the criminal justice system.

CONCLUSION

Victim compensation is a crucial aspect of modern criminal justice systems, reflecting society's evolving understanding of the need to support individuals harmed by crimes. The frameworks in place today which is illustrated by examples from both the UK and New Zealand and demonstrate significant progress, though challenges remain in ensuring effective and equitable compensation. As highlighted by international frameworks such as the UN Declaration of Basic Principles of Justice for Victims of Crime and

Abuse of Power, the global community must prioritize the establishment of fair and accessible compensation mechanisms. Continuous engagement from NGOs, advocates, and legislators is necessary to ensure that victims receive proper recognition and compensation, affirming their place within the justice system and facilitating their path to recovery. As the dialogue surrounding victim compensation evolves, it is essential to adapt and refine systems to meet the growing needs of victims, ultimately contributing to a more just society.

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