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Award of Compensation as a Mode of Victim Restoration: A Comparative Analysis of Laws in India, New Zealand and Germany

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Abstract

Many jurisdictions all over the world give various support services for the restoration of the victims of crime. Restoration includes physical, emotional, and economical restoration, where compensation plays a predominant role. In India, distinct statutory provisions relating to compensation are provided under the Code of Criminal Procedure and the various victim compensation schemes of the different states. However, the implementation of these laws is bridled with inconsistencies due to disparity in the schemes of different states. The grant of compensation depends on three factors 1) the type of victims of crime 2) the granting authority and 3) criteria and the mode of assessment of compensation. In this regard, NZ despite being a common law country prioritizes victims of crime for compensation. Amongst the civil law countries, Germany has made concrete efforts in victim compensation through specific statutes. The present paper examines the prevailing legal framework and compensation schemes in India concerning victim compensation and analyses how far the existing laws and policies compares to the international standards of victim compensation in the already established jurisdictions of NZ and Germany, to assess where India stands in terms of the victim restoration through compensation.

Keywords: Victim, Restoration, Compensation.

Introduction

Victims of crime have been marginalized in the process of criminal justice administration up until the 1970s. However, there was an overall change in the attitude as

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the discipline of victimology evolved. (Srinivasan & Eyre, 2007) The victimological movement reveals two types of victims, one is a direct victim who directly suffers the harm and another is a secondary victim who is connected to the direct victims for their survival (Shaveta, 2018). Both require protection and rehabilitation through various modes which include “access to justice and fair treatment, restitution, compensation and assistance” (Panda, n.d).

Compensation is one of the legitimate approaches for enforcing victims’ rights (Shali, 2017) and considered as a mode of making up for the losses resulting from criminal victimization (Galaway & Rutman, 1974). Compensation policy prevents the members of the state from committing further crimes as a huge financial charge is imposed for the wrong that acts as an example (Garkawe, 1999).

The three significant ways in which compensation to crime victims may be awarded are through mediation, criminal justice process and the state victim’s compensation schemes (VCSs). In all EU countries mediation is one of the prominent and widespread ways for victims to get compensation from the perpetrator. This applies to violent crimes involving property damage or injury. In such cases, the criminal proceedings are suspended in the countries belonging to the continental legal system until the mediation is continued and accordingly, the criminal proceedings are continued or terminated (Aertsen & Willemsens, 2014). In India mediation process is a feature of plea-bargaining procedure mediated by the Court for working out a satisfactory disposition that includes payment of compensation where the offender and victim come face to face in presence of the prosecutor and investigation officer. (Sections 265C and E of CrPC)

The Criminal Justice Systems (CJS) in the EU (having continental legal system), mostly, allow property and non-property claims against the accused where the criminal court decide on these claims, along with the criminal conviction, although, the victim may choose to enforce the consequences of the damage suffered in a separate civil lawsuit against the offender. Compensation through the state’s victim protection are broadly the same in all EU member states (Buck, 2005).

The United Nations General Assembly while adopting the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power gave recognition to victim’s right to access compensation for the first time considering the increased number of crimes and to secure justice and assistance. As a pioneer, European Council adopted the European Convention on the compensation of victims of violent crimes in 1983 where the state parties are under obligation to provide compensation to the victim for the violent act resulting in physical injury or death (European commission, 2020). The EU adopted the Council Framework Decision on the standing of victims in criminal proceedings in March 2001 and recognized compensation for crime victims (Slaowomir, 2013). Victims’ rights directives are the central tools of the European Union (EU) and in 2004 compensation directive was adopted which obliges the member states to make a state compensation scheme for the violent and intentional crimes and provides facilities for cross border compensation claims (Council Directive, 2004). In 2012 Victim’s Rights Directive further strengthens the victims right by providing rights like right to be recognize, to be treated in a respected, non-discriminatory way and to obtain decision on compensation within a reasonable time during criminal trial and the member states will

take measures which will ultimately lead the offender to give satisfactory compensation to the victim. (Art-16)(Directive 2012)

Therefore, EU has made intensive efforts to harmonize law over the last few decades which are reflected in their victim protection systems. For the present study due to its robust statutory framework, the jurisdiction of Germany has been selected from the EU. On the other hand, both India and New Zealand (NZ) emanating from common law inheritance has Anglo-Saxon legal system that historically places victims at a disadvantageous position. In spite of that the system in NZ has been extremely effective to ensure restoration of victims through compensation. As far as India is concerned crime victims have received prominence since the last decade and the CJS through its various agencies are taking important strides towards victim restoration.

In India victim's right for monetary relief is recognized by the Code of Criminal Procedure (CrPC) primarily under section 357 CrPC where the compensation is realised from the fine paid by the offender upon conviction by the courts. Also, under this provision the courts can order direct payment of compensation by the offender to the victim if no fine is ordered. But in spite of this provision, there were many cases, where the victims received inadequate compensation or where the accused person was discharged or acquitted and the victim ended up without any monetary help. To fill up this gap in 2009 section 357A CrPC was introduced which compelled every state to provide compensation through their respective VCSs even in cases of discharge or acquittal and offender being unidentified.

In the international scenario NZ is the first country in the world which established a specialized program in the year 1963 to grant monetary assistance to the crime victims, despite being a common law country where it is characteristic for the victims to have little or no say in the criminal justice administration. (International Parameter and Framework on Justice to Victim, n.d.) Amongst civil law countries, Germany has a concrete legislative framework to this end.

In NZ, Victim's Rights Act 2002 gives prominence to the victims in the CJS by granting various rights like right to information and participation in the sentencing process.(New Zealand Law Commission, 2008) NZ has significantly prioritized victim compensation through reparation under the Sentencing Act (SA) 2002 and Accident Compensation Act (ACA) provides compensation to victims specifically for physical injuries.

In Germany, the Criminal Procedure (Victim Protection Act) 1987 was the first legislation that gave primacy to the victim by involving them in the trial process and by securing restitution from offenders. Further, a separate legislation i.e. Crime Victims Compensation (CVCA) Act 1985 specifically provides compensation to victims of violent crime by providing financial relief to victims or dependents who have suffered physical or economic loss as a result of violent crime. (Restitution and Rehabilitation of Victim Of Crime, n.d.)

This paper presents the comparative analysis of different aspects of granting compensation to victims of crime in India and two other jurisdictions i.e., NZ and Germany. The specific objectives of this paper are as follows-

1. To assess the classes or categories of victims entitled to receive compensation under the laws of India, NZ and Germany

2. To analyze the role of the granting authorities in the respective jurisdictions.
3. To examine the criteria and the mode of assessment of compensation in the three jurisdictions.

Types of Victims entitled to Compensation

In India crime victims received statutory recognition when the definition of victim was included in CrPC (under section 2(wa) that defined victim “as a person who has suffered loss or injury due to the offence committed by another and also includes the legal heirs and guardian of the victim”. However, a uniform definition has not been adopted in all the state VCSs. Some states have adopted the same definition as CrPC whereas others have included the dependents of the victim into the definition. Moreover, the definition of dependents varies from one to another state compensation scheme, for instance in the Andhra Pradesh VCS, dependent means any person depending upon the income of the victim; in another state, Kerala dependent includes father, mother, and unmarried daughter (Chakroborty, 2017). Some states provide compensation on the basis of physical or mental injury while others consider the victim’s income level and loss of income or re-employability post victimization. Few states compensate for property related offences.

However, in NZ the scope for victims to receive compensation is broader in comparison to India because ACA provides compensation to any kind of victim. The only eligibility criterion entitling a victim to receive compensation is to have suffered physical injury. The SA defines “victim” very broadly, which includes the immediate family members of the primary victim in case of death. Persons who have lost property, suffered emotional harm including the loss or damage consequential on emotional harm are eligible to get compensation under SA. In Germany also victims who have sustained any physical assault is entitled for compensation. The *CVCA* gives privilege to the surviving dependents and foreign nationals *by fulfilling certain statutory conditions can claim for compensation under this Act by filling an application post reporting of the crime to the authorities and there is no limitation for filing such application (I Am the Victim of a Crime. What Are My Rights?, n.d.)*.

Granting Authorities

Monetary compensation significantly benefits the victims in mitigating their sufferings, though there are emotional scars that may be neutralized by counselling and healing touch from the family and the community. In India the authorities bestowed with the power of granting compensation to victims under the CrPC are the Criminal Courts and District and State Legal Services Authorities (DSLAs or SLSAs). The DSLA and SLSA are statutory bodies constituted under the Legal Services Authorities Act 1987 that is mandated to provide various legal services to indigent persons accused of crime as well as victims of crime.

Trial Courts as well as appellate courts trying or hearing criminal cases under section 357 CrPC have the power to grant compensation out of the fine amount or direct the offender to pay compensation where fine is not part of the sentence (section 357, clause 1 and 3). And it has been held by the Supreme Court in *Hari Kishan and State of Haryana vs Sukhbir Singh (1988)*, 4 SCC 551 that, “This power to award compensation is not

ancillary to other sentences but it is in addition thereto.” However, there is no such effective institutional mechanism to collect the compensation amount from the accused and pay it to the victim (Bajpai, 2016).

The courts may also grant compensation even where the offender is released on probation (Sec 5 of Probation of Offenders Act 1958). Under Sec 357A CrPC every state and Union Territories (UTs) has been mandated to prepare VCS to provide monetary relief to victims or his dependents who have suffered harm due to the crime and require rehabilitation. Compensation from the schemes is granted in two ways firstly, on the recommendation made by the trial court to the DSLA for inadequate compensation or where the case ends in acquittal or discharged and there is a positive victim who needs restoration. (Sec 357A (3) CrPC) Secondly, upon the victim’s application to the DLSA when the victim is identified but the offender is unidentified and therefore, no trial has taken place. (Sec 357A (4) CrPC). In both cases, DLSA should finish the inquiry within two months and grants the compensation, if so decided. The victim is also entitled to get instant first aid facility or medical benefits without any charge upon receiving a certificate of the police officer or the local magistrate or any interim relief for mitigating the suffering. (Sec 357A (5) (6) CrPC)

In NZ compensation to victims is granted by the courts where the offence is tried, for loss or damage to the property or any emotional harm under the SA. (Section 32 of the Sentencing Act, 2002). Specifically, for physical injuries the Accident Compensation Corporation (ACC) grants compensation under the ACA. All that has to be considered in such cases is that the victim has suffered a personal injury (Miller, 1996). The CJS in NZ is more compassionate towards the victims owing to the fact that there is no Statutory maximum for compensation. Moreover, weekly compensation provision is the most attractive provision in NZ that provides wide range of facilities including home help, home modification, aids and appliances.

Germany also has a concrete statutory regime exclusively for compensation and rehabilitation of the victims of violent crimes under CVCA and the German Criminal Code (StpO) for property crimes. Both civil and criminal courts are competent to entertain compensation claims made by the victims. Under the German legal system, the difference in civil and criminal law lies in the fact that in criminal law the victim obtains a “one-off” payment from the offender and the amount given as compensation in the criminal proceeding is much less than under civil law (Bochmann & Griesheim, 1999).

Criteria for Granting Compensation

All the three jurisdictions follow some standard eligibility criteria for granting compensation. The important criteria for granting compensation are firstly, the expenses made by the victim on medical treatment for injury whether mental or physical due to the crime; secondly, loss of earning to the family due to the victim’s injury and thirdly, the paying capacity of the accused.

In India the courts have very wide power to grant compensation in all crimes under section 357 CrPC though, in clause 1 of this provision the quantum of compensation does not surpass the fine amount ordered to be paid. Clause 3 of Sec 357 provides the court power to direct the offender to pay compensation to the victim even where fine does not form part of the sentence, by considering, the nature of the injury and the financial ability

of the accused to pay the sum. Also, there is no cap on the amount of compensation. However, there can be no challenge against the court's decision for not granting compensation (Rathor & Shahi, n.d.), but under section 372 CrPC on the ground of inadequate compensation given by the trial court; victims may file appeal before the high court.

Victim Compensation Schemes in India

The VCS in each of the states are instrumental in granting compensation where the courts make a recommendation to the DLSA. *However, there are disparities and inconsistencies in the VCS floated by the different states.* In the states of Telangana and Haryana, one of the criteria for compensation is that the income of the victim's family should not exceed 4.5 lakhs. Further, the state of Madhya Pradesh notified that if the annual income of the victim exceeds five lakhs then only fifty percent of the designated amount for that offence is disbursed towards compensation.

The schemes of Haryana, Telangana and Maharashtra mention further exclusionary conditions that if the victim is an employee under central or state government, corporation or public undertakings and pays income tax he is disqualified for compensation. Under Mizoram VCS, people below the poverty line are eligible for receiving the benefit and victims having insurance policies concerning life and property are excluded. Another eligibility criterion is from territorial jurisdictional perspective where states like Kerala and Maharashtra specifically mentioned that the crime must have occurred within the jurisdiction of the state. *Under* Himachal Pradesh VCS, compensation can be awarded if the victim giving information of the crime within a reasonable time to the police and cooperating in investigation as well as trial.

Under Mizoram VCS, for loss of property worth more than rupees one lakh, and for death or permanent incapacitation due to the crime, if the victim was the sole breadwinner of the family, such victim or the dependents are eligible for compensation. States like Goa, Himachal Pradesh have made special provisions for granting compensation to the minor and mentally ill victims. Some states like Odisha, Meghalaya give support services like shelter, counselling, medical and legal aid, education, and vocational training to the victims.

In states like Delhi and Uttar Pradesh, certain other factors like severity of the offense, travelling expenditure, loss of educational and employment opportunity, relationship between offender and victim, economic condition of the victim are also considered (Dube, n.d.). Although majority of the states see the loss suffered by the victim and the amount required for minimum sustenance and rehabilitation while determining the quantum of compensation, at the same time fixing an upper limit beyond which compensation may not be granted. However, there is no uniformity indicating the eligibility criteria for granting compensation to victims under VCSs.

A special compensation scheme in the form of Women Compensation Scheme (WCS) came in 2008 for female victims or survivors of sexual assault and the apex court directed to all the States and UTs to implement the scheme through their respective schemes with a uniform standard followed throughout the country (National Legal Services Authority's Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes-

2018). The scheme provides that women victims or the dependents who have been injured or suffered loss and requires rehabilitation should be given compensation as per the amount decided by the DLSA or SLSA of their respective states. (Sec 3(1) Women Compensation Scheme). The scheme contains provision for filing online application (Sec 6 WCS) and interim compensation. (Sec 9(1) WCS) Gang-rape victims are entitled to minimum five and maximum ten lakhs rupees, victims of rape and unnatural assault are entitled to a minimum of four lakh and a maximum of seven lakhs rupees respectively.

Special provisions have been made for acid attack victims such as interim compensation of rupees one lakh within fifteen days from the date a matter is brought before DLSA. The SLSA or DLSA has the power to exceed the upper limit in deserving cases. (Sec (9) (3) WCS) This scheme also gives special privileges to minor victims by raising the compensation amount to fifty percent more than the amount fixed. Under this scheme, the dependents of a deceased victim are entitled to minimum five lakhs and maximum ten lakhs rupees. Altogether there are thirteen categories of injuries specified and for each injury lower and upper limit is fixed. The scheme provides a statutory limitation of three years from the date of occurrence of crime or conclusion of trial for bringing the claim.

Additionally, a Central Victim Compensation Fund (CVCF) in 2015 with an initial corpus fund of rupees two hundred crores to support the VCS established by the states and UTs to encourage the states to implement the scheme effectively and to reduce the inconsistency in the amount of compensation by the states for the same offense under their respective schemes. The fund was conceived to provide monetary assistance to victims of rape, acid attack, physical abuse of a minor, human trafficking, etc. (Central Victim Compensation Fund Guidelines, 2015). Under this scheme first the States pay compensation from their respective funds and then seek reimbursement from the CVCF. However, CVCF committee exercises their discretionary to accept or reject the proposal of reimbursement. On acceptance, the funds are transferred to the SLSA.

Sentencing Act of NZ

In NZ for effective enforcement of the sentence of reparation the SA contains strong statutory provisions for fixing the quantum of reparation. (New Zealand Law Commission, 2008) Reparation means payment of money which the court feels reasonable and fair, granted to the person who has in terms of any loss or damage to the property or any emotional harm or loss or damage consequential to any emotional or physical harm or loss or damage to property. (Section 32 of the Sentencing Act, 2002). The rationale behind the sentence of reparation under the criminal proceedings is to save the time and cost of both state and victim. Prior to the SA the victim had to file a separate civil suit to prove the offenders' wrong and to establish the quantum of loss, which was time-consuming ("Compensation and Restitution," 2020). The reparation amount recovered from the offender is directly given to the victim or with victim's consent to his insurer (Sec 38SA). However, receiving the reparation amount will not preclude the victim to recover the excess damages through a civil proceeding.

A mediator of sorts is involved in the reparation process as the court orders a probation officer or any other person deemed fit by the court to prepare a report pertaining to firstly, the cost of the loss or damage in case of property crimes; secondly, the nature of such

emotional harm and the cost of any consequential loss; thirdly, in case the loss is consequential to the physical harm, the nature and quantum of such loss and the sum which the victim is entitled under ACA 2001; fourthly, the financial capacity of the offender to pay and finally, in case of payment through instalments, frequency and amount to be paid by the offender. (Sec 33 SA)

The probation officer while preparing the report attempts to build a consensus between the offender and the victim as to the amount the offender should pay. In case of disagreements, the probation officer informs the court accordingly, and based on the value of loss incurred by the victim the court imposes a sentence of reparation. The victim must be provided with a copy of such report made by the probation officer unless it is otherwise directed by the trial court. (Sec 34 SA) Court while fixing the amount of compensation takes into consideration the offender's and his dependent's paying capacity so that they do not face too much hardship to pay. (Sec 12 SA) Where the offender is incapable to pay, the court can order the offender to pay a lesser amount than the actual loss suffered by the victim and in some cases allows the offender to pay on an instalment (Sec12 SA).

Sentence of reparation can be cancelled, firstly, by an application submitted to the court by the offender and another by the court's initiatives. In certain cases, the offender as well as the Registrar of the court can make an application to the court for cancellation on the ground that the offender is unable to pay due to his changed financial condition since the sentence of reparation was imposed on him. (Sec 38A (2) SA) The court may cancel the reparation order only after informing the victim and by allowing him to be heard or after the Registrar upon exercising reasonable efforts failed to trace the victim. (Sec 38A (4) SA) Such a reparation order can be then substituted with any other sentence or with another sentence of reparation. (Sec 38A (1) (b) SA)

Accident Compensation Act of NZ

The ACA comes into play when the victim has suffered any physical injury; otherwise, reparation is ordered under SA for other injuries like property or emotional. Crime victims in NZ have received the status of other accident victims. An accident includes a criminal act which results in personal injury (section 25 of ACA). Victims of crime are covered under ACA whether the injury was due to the carelessness of a doctor or motorist or it is the result of the criminal act by the criminal in a premeditated assault (Miller, 1996). Personal injury is defined (Accident Compensation Act, 2001) as “death, any physical injury including a strain or a sprain, mental injuries incidental to the physical injuries, including sexual offenses, and work-related mental injury”. (Sec 26 ACA) The only exception is “personal injury caused due to disease, or infection unless it is work-related, caused by treatment or is consequential on another treatment injury.” (Sec 26(2) ACA)

Apart from this, earlier crime victims were receiving compensation from other schemes like Worker's Compensation Scheme, Criminal Injuries Compensation Scheme etc. The pain point with this practice was that the victim used to get far less than the maximum amount fixed under the schemes. So, a royal commission was created which gave its report (Connell, 2012), that criticized the common law practise of compensating

personal injury by accident on the ground of 'fault principle'. To remove this difficulty arising from schemes, the commission recommended replacing the schemes by a comprehensive no-fault system of accident prevention, rehabilitation, and compensation by the Accident Compensation Corporation (ACC). The first ACA came in 1972 followed by four re-enactments i.e., ACA 1982, Accident Rehabilitation and Compensation Insurance Act 1992, Accident Insurance Act 1998, lastly Injury Prevention Rehabilitation and Compensation (IPRC) Act 2001. Thereafter Act followed three amendments and the title of the Act was changed back to Accident Compensation Act 2001. Clause 1 of Sec 317 of ACA 2001 categorically provides for restrictions on suing for damages under any other law in NZ for personal injury and death.

Any person including non-residents who suffer a personal injury as defined under ACA is entitled to claims including those who are ordinarily residents of NZ but have suffered the injury while remaining outside and the injury is covered under the Act. The claim should be lodged before the ACC within twelve months from the date of personal injury (Sec 53 ACA) and beyond if it does not prejudice the ACC in its ability to make a decision. After the claim is entertained the claimant gives all the required information and health certificates to the ACC. (Sec 55ACA) The ACC bears the medical assessment costs of the claimant and investigates the claims within twenty-one days but where the claim is complicated within two months at its own expenditure. (Sec 56, 57 ACA) The ACC reserves the right to deny any claim and review and appeal can be made against the ACC's decisions (New Zealand Law Commission, 2008).

This scheme also provides counselling services to the claimant and bears accommodation, transportation and pharmaceuticals costs of victims (New Zealand Law Commission, 2008). For permanent impairment on account of physical and mental injury lump sum compensation is provided. If the impairment is ten percent minimum compensation is \$2,500 and for eighty percent maximum is \$100,000. If the person is dead, funeral expenses, weekly compensation is given to the spouse, children, and any other dependent of the claimant, and also there is a facility of child care payment (New Zealand Law Commission, 2008).

Apart from these there are also government-funded schemes that give monetary support to crime victims in NZ. A scheme was introduced as the Criminal Justice Assistance Reimbursement Scheme which grants compensation to persons who suffered loss of property or earning by being a witness for the prosecution, persons who assisted the justice process by reporting the crime, and includes a near relative of the witness who lost property or earning by assisting the witness to the criminal justice process. (Miller, 1996) Another scheme came in 1994 which provide state-funded counselling sessions to the members of the families of homicide victims. Travelling costs, accommodation costs, childcare costs are also provided to victims of serious crimes to attend the court hearing. An emergency grant is given to the deceased victim's families where the death is sudden and there is severe financial hardship (New Zealand Law Commission, 2008). Therefore, the mechanism of granting compensation in NZ is comprehensive which aims at a holistic rehabilitation and restoration of the victim.

Crime Victim Compensation Act and German Criminal Code

In Germany under CVCA almost every kind of victim is given compensation. The Act mentions that any person who has sustained a physical assault is entitled to get

compensation. The term physical assault has been defined very liberally under the act which also includes:

“Intentional administration of poison, the least negligent creation of a danger to the life and limb of another person by the commission of a crime by means of causing a common danger.”

Under CVCA, monetary assistance is given to the victims of violent crime for physical and economic loss which results from the physical injury and such victims are treated as war victims and receive equal compensation as that of war victims even when compensation is obtained from alternative systems. The Act provides pension benefits for permanent damage and compensation for physical injury which results from a wilful, unlawful physical assault or lawful defence of such physical assault justified under the Act. (Sec 1 CVCA) Further compensation is also given for both financial and bodily loss due to the physical assault, which also means intentional administration of poison and even the least negligent conduct on the part of the offender which results in danger to the life and limb of a person. However, CVCA does not pay damages for accidental injuries caused by a motor vehicle (Crime Victim Compensation Act, 1985).

When the claim is made under CVCA for violent crime, the federal administration decides the claim without waiting for the police investigation report except in certain cases. Compensation under the Act is granted even when the offender remains unidentified, in those cases the claimant is required to submit all the documents clarifying the fact, the evidence in connection to it, and the extent of the damage (Chakraborti, 2017).

The criteria for determining the amount of compensation is on the basis of the degree of damage to the victim viz. the compensation granted for damage of ten to twenty percent, is up to 800 Euros; for fifty to sixty percent damage, up to 1600 Euros; for thirty to forty percent damage, up to, 5,800 Euros, for seventy to ninety damage, up to the amount is 10,200 Euros and for a hundred percent damage the compensation amount is 16,500 Euros. Such amount is given as a single payment and not in instalments.

Apart from the monetary compensation, victims are entitled to curative treatment, medical rehabilitation and psychotherapeutic measures, aids and appliances which include glasses, medication, prosthetic devices that are non-means-tested and means-tested. In some cases, victims are granted monthly pension and also some additional support like assistance in running the household, and in some cases, long term assistance in case of financial emergency (Walther, 2021). No specific victim compensation fund exists rather it is the federal state that bears the cost of compensation (Crime Victim Compensation Act, 1985).

Property-related claims can be brought against the accused by the victim himself or by his legal heirs arising out of a criminal offense under the German Code of Criminal Procedure (StPO) (section 403 StPO). Claims for compensation can be filed in writing or orally into the criminal trials and the victim can withdraw the application before the final verdict comes (Sec 404(4) StPO). The application must contain the subject matter, the grounds for which compensation is claimed, and the evidence in connection to the crime. (German Code of Criminal Procedure (Strafprozeßordnung – StPO), 1987)

If the court finds the claim to be well-grounded, it includes a compensation order in the judgment. The victim can challenge the decision if the claim is refused (Sec 406(a) StPO). Both civil and criminal courts play pro-active role in determining the compensation, whereas criminal court delivers the judgment as to whether compensation should be granted or not, the civil court decides the quantum (Sec 406(3) StPO). If compensation is granted by the courts the defendant has the right to file an appeal regarding the quantum without contesting on the merit. Therefore, the German system of granting compensation is much simplistic, where the claims for injury due to violent crimes are processed under CVCA and for damage to property under StPO.

Comparative Analysis

Table 1 provides a summary of the comparative analysis of the different aspects of victims' compensation in the three countries from the above discussion.

Table 1. Summary of Comparative Analysis

Sl. No.	Country	India	NZ	Germany
1.	Definition of victim	One who suffered loss or injury, the legal heirs and guardian of the victim	Immediate family members of the victim and the non-residence of NZ who suffered injury while outside	One who sustained a personal injury and the surviving dependents
2.	Granting Authority	Trial court, appellate court and State and District Legal services authority.	Trial court and ACC	Civil and criminal courts
3.	Compensation for injuries	Some states Provide only for physical and mental injury and some states included property related offences.	Any kind of physical injury including the smallest strain or sprain under ACA. For property loss and mental injury under SA	For physical and economic loss under CVCA.

4.	Compensation for foreign nationals	No such provision under the VCSs.	Foreign nationals who suffer any personal injury while in NZ are eligible under ACA.	Foreign nationals upon fulfilling certain conditions depending on the length of stay in Germany are eligible under CVCA.
5.	Interim compensation	Interim compensation is given regardless of whether the matter ends in conviction.	Weekly compensation is given under ACA.	Under CVCA single payment is made depending upon the degree of damage.
6.	When perpetrator is unknown	Victim or dependents can apply to DLSA where the perpetrator remains unidentified under section 357A CrPC.	No such provision under ACA	Compensation given even when offender is unidentified.
7.	Period for claiming compensation	In some states it is six months and some states extended up to three years.	No restrictions on filling compensation	No time limit under CVCA
8.	Mitigation for the damage by amount of compensation	Compensation amount is based on the discretion of the courts under Section 357 CrPC. State compensation is fixed for specific injuries under the schemes.	Compensation is granted depending upon the degree of damage under Accident compensation scheme.	It is decided depending upon the degree of damage under CVCA.

9.	Uniformity among the state compensation scheme	VCS varies from one state to another.	ACA applies everyone uniformly.	State provides compensation. Terrorist and extremist attack victims get compensation from dedicated state funds. In some states victim support foundations exist which provide financial grants for material damages and compensation for immaterial injuries under CVCA.
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The above comparative analysis makes it clear that there are some distinguishing features in the mode of victim’s compensation between India and the other two jurisdictions. In both NZ and Germany compensation is granted for all kinds of physical injury. In India section 357 CrPC gives wide power to the courts to grant compensation in cases of criminal offences but this power is used sparingly by the courts compared to a large number of cases that exists. Also, under VCSs of India only for certain specific offenses compensation is granted like rape, acid attack, death, permanent disability, etc. and not for all kinds of physical injuries.

In Germany both criminal and civil courts are involved in the process of compensation. In India only for civil wrongs that also qualify as offences like defamation and criminal trespass etc., the victim can file a civil suit for damages.

Under StPO, the victim may claim compensation in writing or orally indicating subject matter, the grounds for demanding compensation, the evidence in connection to the crime, and as proof of the claim asked by the offender. In India, the court can on its own motion order compensation under section 357CrPC and there is no scope for the victim to apply to the courts. However, in cases where the accused is discharged or acquitted, the victim can file application for compensation before the SLSA or DLSA.

In NZ in case of physical injury crime victims are treated as accident victims. The compensation scheme is significantly exhaustive providing monetary support, shelter, counseling, and medical assistance to the victims. Also, the Criminal Justice Assistance Reimbursement Scheme provides compensation to persons who have suffered loss of earnings or property by being a witness for the prosecution or defense, including close

relatives of such witnesses. In India such provision under the VCS is absent with respect to witnesses of crime or persons who are assisting the victim in the administration of justice.

Under SA a systematic procedure is followed for determining the quantum of reparation. A probation officer or any other person acts as a mediator who gets the offender and the victim to agree to the sum the offender is required to pay. Whereas, in India, the courts have the discretionary power to order and recommend compensation and during such a process, the victim has neither any say nor the Probation officer has any role in the sentencing process. In most criminal trials, it is the Prosecutor who represents the State and by default represents the victim. Despite a provision under section 24(8) CrPC that enables a separate legal representation of the victim at the time of trial, such a lawyer cannot call or examine witnesses or present arguments (not even for compensation) and ends up playing a second fiddle to the Prosecutor. As such the victim remains a mute spectator throughout the trial and sentencing process.

In NZ there are emergency provisions under ACA where compensation is awarded on an urgent basis within a few days or weeks and there is provision of lump-sum compensation for permanent disability arising out of physical and mental injury. Under this death benefits are given to the survivors of the victim and weekly compensation is given to the surviving spouse, child, and any other dependent of the claimant. In India, also the dependents of the victims are entitled to receive compensation from DLSA or SLSA in some states but not in all states. Also, there is provision for instant first aid and medical facility freely available to the victim and also interim compensation under section 357A (6) CrPC. Moreover, the Supreme Court of India in *Bodhisattwa Gautam v. Subhra Chakroborty* (1996 AIR 922) observed that:

“The Courts have the right to award compensation pending the final decision of the matter. The VCSs should provide for such measures especially for offenses like rapes and acid attacks where interim compensations can make a significant impact on the victim’s rehabilitation.”

In NZ under SA reparation is granted for loss of property and mental harm. In India, although there is no express provision for compensation under CrPC for mental injury but the Courts and the SLSA or DSLA (under some of the state compensation schemes) have discretion for taking into account any mental injury to arrive at a conclusion whether to award compensation and how much to award.

Conclusion

Any comparison of India with NZ and Germany may seem out of place as India has hardly any similarity with these two countries in terms of population, culture, or crime rate and its compensation laws are still a work in progress. However, the significance of this comparative analysis lies in the realistic assessment of the laws and schemes in India with the already standardized systems in NZ and Germany (and most of the EU also have standardized practices) having a comprehensive victim compensation mechanism in place. The victim has greater participation in the CJS in both countries. In NZ, the compensation for property loss and emotional harm is granted by the Criminal Courts and for physical injury by the ACC. In Germany both the civil and criminal courts get involved parallelly while in India generally, compensation to crime victims is granted by

the courts with a precondition of the courts convicting the offender and the DSLA comes to the rescue wherever, the offender is not in the picture either due to discharge or acquittal or unidentified. However, in Germany if the defendant is not held guilty in the appellate court and if the conviction is quashed then the application upon which has been granted for the compensation will also be quashed. (Sec 406a (3) StPO)

In NZ the system of compensation has evolved over a period of time and its uniqueness lies in the prominence given to the personal injury caused to the victim rather than the fault principle for granting compensation. In India also irrespective of the arrest, trial, or conviction of the culprit, a victim is entitled to receive money from DLSA or SLSA under the SVCSs of the different states, though there exists some discrepancy in the eligibility criteria and the quantum of compensation under the schemes of each state. The eligibility criteria for obtaining compensation in some states are stricter than the other though most of the States' schemes provide for victims of serious offenses.

Germany has a very robust compensation system the CVCA lays clearly down to whom, when and under what conditions compensation may be awarded that enables the citizenry to be aware of their rights. Also, the victim can appeal if the application for compensation is rejected by the court. However, in India, a crime victim has no right under the law to challenge the *non-payment* of compensation by the court or DLSA or SLSA. However, the 2009 amendment in CrPC provided under section 372 that for the *inadequacy* of the amount of compensation granted by the trial court, the victim has a specific right of appeal to the higher courts.

In India though the law has granted wide power to the courts to grant compensation, however, the frequency of cases where compensation has been awarded under this provision is like a drop of water in the ocean (*Swaran Singh v. State of Punjab, AIR 1978 SC 1525; Guruswamy v. State of Tamil Nadu, 1979 (3) SCC 797*). Courts have not been applying this provision consistently and effectively. So, taking note of the indifference of subordinate courts towards granting compensation, the Supreme Court in *Hari Kishan and State of Haryana vs Sukhbir Singh (1988)4 SCC 551*, directed all the courts to apply compensation provisions liberally and to grant adequate compensation.

The apex court further observed in *Ankush Shivaji Gaikwad v. State of Maharashtra (Appeal decided on 3rd May 2013)*, that though it is upon the discretion of the courts to award or refuse compensation in a particular case, there are no limitations or embargo imposed on courts in granting compensation. Therefore, the compensation provisions under the law might as well be interpreted to read that Courts should apply its mind to the question of compensation in every criminal case by recording reasons for awarding as well as refusing compensation.

The comparative analysis in the preceding section reveals that India has made significant progress towards compensating the crime victims but at the same time needs to follow a comprehensive VCS that may be implemented uniformly and consistently in the whole country so that crime victims across states are not treated differently. Also, victims must be allowed to participate in the process of decision making for granting compensation. Another weak link is that the criterion for awarding or rejecting compensation by the Courts or DLSA are not provided with clarity and more than often this results in ignoring the actual psychological impact of the crime on the victim while making a decision. As a way forward, there is a need to empirically study in India as to

how far the courts, DLSA and SLSA are granting compensation to the victims and what are the considerations upon which they base their decisions. The victim as the worst affected entity must have a clear standing to claim compensation on fair and equitable terms to emerge out of the trauma of the crime realistically and more effectively.

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