

# Rethinking Public Compensation to Crime Victims in Nigeria's Jurisprudence: Justifications for State Compensation and A Comparative Analysis

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## ABSTRACT

As it stands today, Nigeria has no crime victims' compensation or reparation schemes, and there are no laws throughout the thirty-six states of the Federation placing obligations or duties on governments, states or federal to pay compensation to crime victims who suffered crimes of violent nature. Although, crime victims have been instrumental in criminological discourse; they have been forgotten and neglected and therefore denied due recognition in Nigeria. The major research problems are the unavailability of state compensatory schemes for victims of crime in Nigeria. The second research problem is the lack of political will on the part of Nigerian government to enact into law the Bill before the Nigerian National Assembly since 2011 on the Remedies and Rights of crime victims. The purpose of the study is to hold the Nigerian government accountable like other nations of the world to fulfil its constitutional duties to the citizenry in terms of protecting innocent subjects from criminals. Several nations of the world have moved ahead with time in matters of crime victims' compensations, Nigeria cannot afford to lag behind in such issue of international dimensions. In this connection, the article dissects the need for legislations in Nigeria's jurisprudence with a view to making statutory provisions for Nigerian citizens who suffered criminal injuries such murder, rape, robbery, and carjacking etc as a result of crime. The paper further examined the genesis of crime victims' compensation, and its justifications. The paper in addition beamed its search lens on foreign jurisdictions from a comparative point of view for the purposes of advancing legal arguments in support of crime victims' compensation programmes in the administration of criminal justice in Nigeria.

The research finds out that there is crime victim compensation provided by the state.

The author adopted the desk top research methodology in the write-up.

**Key words:** crime victims, offenders, reparation, lack of public compensation to crime victims by the Nigerian government.

## INTRODUCTION

In theoretical terms, crime victims over the decades have civil remedies available to them in tort proceedings against criminal offenders who have victimized or wronged them vide criminal conduct; however, in reality, the remedies available to crime victims are in most instances of little value.<sup>[1]</sup> Also, in several occasions, the criminal offenders are not identifiable and/or apprehended; and in few instances where the criminals are identified, the crime victims more often than not, lack the capacity in terms of money and time to bring or institute civil proceedings against the criminal offenders due to the high costs of litigation.<sup>[2]</sup> Additionally, since criminal offenders are typically indigent,<sup>[3]</sup> chances are that a financial

compensation judgement against such criminal offenders would virtually have no chance of being paid. Furthermore, if upon conviction and eventual incarceration, such imprisonment of the criminal offenders merely serves to compound their poverty; and it is a well-known fact that inmates are generally unable to earn nothing during their confinement.[4] The abject poverty of criminal offenders has led to the increased interests and advocacy throughout the world for social legislation to make available an adequate financial indemnification to crime victims, particularly victims of crimes of violent nature.[5]

The article examined the need for crime victims' compensation plans in Nigeria from a historical perspective with a view to including legislative intervention in crime victims' indemnification schemes. Also considered are comparative discussions on other jurisdictions that have already incorporated state compensation scheme into their national laws. The justifications for crime victims' compensation are also examined.

## ORIGIN OF CRIME VICTIMS' COMPENSATION

The demonstration of adequate care and concern for crime victims is not a recent phenomenon; this is because the care and concern for crime victims have been evident during periods of high rates of criminality and victimization of harmless citizens.[6] Most of the time, heinous crimes have served as a factor which has increased public awareness of the devastating effects of victimization of innocent and defenseless people.[7] Before the modern awareness and interest in crime victims, there are myriad and wealth of writings emphasizing the cross-cultural and religious origins of compensating crime victims.[8] It was also true that indemnification of crime victims by the criminals or his family member served as the basis of primitive and early western law.[9]

The most and commonly cited authority for contemporary efforts by states or government to pay compensation to crime victims is the Hammurabi Code of 1775 BC of the ancient Babylonia. In part, the Code provides: "If the robber is not caught, the man who has been robbed shall formally declare whatever he has lost before a god, and the city and the mayor in whose territory or district the robbery has been committed shall replace whatever he has lost for him. If it is the life of the owner that is lost, the city or the mayor shall pay one maneh of silver to his kinsfolk." [10]

In the ancient Jewish law, an offender was obliged to compensate the crime victim.[11] The ancient Jewish law on crime victims' compensation consisted of the possibility of paying compensation as an alternative to implementation of the rule of an eye for an eye referred to as the talion; compensation was made in monetary form called the sheqalim; the level of compensation depended on the seriousness of injury; the compensation was designed to cover pain and suffering as well; [12] and poor people were entitled to the same indemnification as the rich.[13]

Additionally, under the Jewish law, the system of crime victims' compensation included the idea of collective responsibility; the concept that the society was liable for the omissions or failures of the priest, who was guilty of not preventing the crime.[14]

In England, the criminal offenders buy back the peace they had broken by paying compensation to the crime victims or to the victims' family, the compensation is called the bot.[15] The Doms of Alfred, which was the laws in operation during the reign of King Alfred, provided *inter alia* that: "If a man knocked out the front teeth of another man, he was to pay him eight shillings; if it was an eye, four shillings; and if a molar, fifteen shillings." [16] During King Alfred's period which was around 870 AD, individual revenge by crime victims was proscribed by the state only after a demand for compensation, referred to as the composition, was requested by crime victims and such demand was turned down by the criminal offenders.[17] Consequently, criminal offenders who were unable to provide compensation or composition to the crime victims were labeled an outlaw and the offenders could be killed by members of the community.[18]

## MARGERY FRY

### Modern advocate of public compensation to crime victims

The modern interest and concern for crime victims' plight is traceable to the writings of Margery Fry.<sup>[19]</sup> Fry had advocated that compensation be made by the criminal offenders to the crime victims as a means of reforming or rehabilitating the criminal offenders. But the difficulties inherent in demanding compensation from the offenders became a herculean task, this discouraged Fry, who instead, advocated that society should assume this obligation and compensate crime victims as a matter of social welfare policy. The state denies citizens' actions that might be thought of as self-protective, and then fails to halt crimes of violence.<sup>[20]</sup> Fry argued further that crime victims have not elected or chosen to become victims of crime; to this end, it is injustice and viewed as harmful if crime victims do not receive support from any quarters.<sup>[21]</sup> Government's help for crime victims support services can be seen as benevolent, it is a way of seeing that crime victims have needs which should be met in order to restore their equilibrium.<sup>[22]</sup> This stands as the fact of the reality on ground if the society thinks of the establishment or development of criminal injuries compensation schemes. Fry believed that the establishment of such crime victims' compensation programme is a way of addressing the disequilibrium, i.e. the crime created by society.

Fry's advocacy for state compensation resulted to jurisdictions like New Zealand being the first to establish state compensation programme for victims of violent crime in 1963;<sup>[23]</sup> England in 1964<sup>[24]</sup> introduced its programme and gradually states in the United State of America, particularly, state of California was first to introduced it in 1965.<sup>[25]</sup> In Australia, compensation programs for victims of violent crime are state-or territory-based. Each of Australia's six states and one territory administers its own programme in accordance with its own statutes.<sup>[26]</sup>

In Canada, financial compensation for victims of violent or personal crimes is administered by the provinces, according to their own rules and standards;<sup>[27]</sup> and many other western countries introduced crime victims' compensation programmes eventually.<sup>[28]</sup> These programmes as at the time of introduction in the various jurisdictions were modest and reasonable, and in the 1970s, social movements began to pay more attention to crime victims.<sup>[29]</sup>

## JUSTIFICATIONS FOR STATE CRIME VICTIMS' COMPENSATION

Scholars and advocates have adduced several logical foundations to justify public or state programmes compensating crime victims.<sup>[30]</sup> Some of the justifications are examined hereunder:

**Society prohibits the individual from effectively protecting himself and then defaults on its responsibility to protect him. It therefore has the duty to compensate the victim.**

In the history, advocacy and proposal for state funded compensation to crime victims by scholars and concerned individuals, the most common argument in support of such programme is the scope and consideration of how the state denies certain individual actions as thought to be self-protection, self-preservation and then the state failing to halt crimes of violence in society.<sup>[31]</sup> According to Margery Fry the State which forbids our going armed in self-defense cannot disown all responsibility for its occasional failure to protect.<sup>[32]</sup>

Fry is generally credited for her concern of modern day compensation plans; her popularization of this rationale gave it an early start in claiming the attention of those sympathetic to her goals and hopes. Arthur J Goldberg one of the first supporters of compensation plans to adopt Fry's justification for compensation

plans contended that: “The victim of a robbery or an assault has been denied the ‘protection’ of the laws in a very real sense, and society should assume some responsibility for making him whole.”[\[33\]](#)

Other renowned supporters of compensation plans included but are not limited to Ralph Yarborough who advocated help and support for the victims of crime[\[34\]](#) and Abner Mikva who delivered a speech on compensation of victims of crime before the Senate Committee on the District of Columbia.[\[35\]](#)

The argument in the above reasoning of Fry and others is to the effect that, if left alone by the state, the individuals could protect themselves. The argument on the other hand is that if the individuals were ever able to protect themselves, why was the government established in the first place? It is submitted that whether any government could protect its citizens absolutely seems doubtful, although, it is equally doubtful whether being crime victim necessarily depends upon government failing in its obligations to the citizens. Whatever the divide one stands, there should be support compensation programme for crime victims along the line of Fry.

**By appropriating the fine to itself and incarcerating the convicted criminal the state effectively denies any remedy to the victims of crime.**

The second argument for the support of state compensation to crime victims is inherent in the multitude of difficulties caused in part by changes in criminal and civil law.[\[36\]](#) These branches of law have never evolved to the point of adequately ministering to the needs of crime victims. The reality, almost universally, is that: “One rarely finds an instance in which the victim of a crime can be certain to expect full restitution...where there is no system of state compensation, civil procedure and civil execution generally offers the victim insufficient compensation.”[\[37\]](#)

Not all crimes are torts and vice versa, but it is impossible to imagine a crime of violence which is not also a tort.[\[38\]](#) Although, it has been reasoned that crime victims of tort can claim compensation in civil suit from which can issue an award for damages, but the truth of the matter is that civil suit affords inadequate and ineffective remedies.[\[39\]](#)

There are two reasons why civil suit may not afford adequate remedy to the crime victims. First there is the chance that the criminal offenders may not ever be apprehended. Citizens do not have all it takes to apprehend or arrest criminals; this is why individuals including those victimized by criminal conduct are dependent upon the state to apprehend the criminals. But in most instances, there is no apprehension. Even if apprehended, there are other problems that make recovery most unlikely, for unhappily: “Those who have a propensity for violence, all too often turn out to be men of straw without funds.”[\[40\]](#)

The second problem that may make civil suit inadequate as a means of remedy for the crime victims is that “not only does the state fail to help crime victims financially; the state in addition makes it harder for victims to secure compensation by incarcerating the criminal offenders. The imprisonment of the offenders makes it virtually impossible for the criminals to fulfill any civil judgment that might be rendered against them.”[\[41\]](#)

Additionally, if the criminals had had funds, chances are that they would have exhausted all the funds in pursuit of their own defense in the criminal case. Thus it seems that with any combination of realities that might face an individual who has been crime victim; their chances for recovery from the offenders make it practically impossible for crime victims to gain compensation from the criminal offenders. It is submitted therefore that: “The premise that either the government assists the victims of crime or they suffer the consequences alone seems to be substantiated if reliance is placed upon existing civil remedies.”[\[42\]](#)

**The state has focused its attention and relief on the criminals to the effective exclusion of the victim of crime. Expenditures have been directed toward the criminals and not the victims.**

Many reasons are advanced for supporting compensation programmes to the justification above. First of such reasons is that there is a general awareness of modern day penal practices which reflect a conception of public monies being spent for various aspects of penal programmes. Those in support of this position are for the most part seeking what they perceive to be a balancing of concern shown by the state to the criminal offenders and to the crime victims as well.[\[43\]](#)

As a result of what has been said, it is argued that compensating the crime victims is a corollary to providing rehabilitation and other social services to the criminal offenders.[\[44\]](#) Supporting the forgoing, Mike Mansfield provided a better understanding in paying compensation for persons injured by certain criminal acts in the following statement: “This is a time for Congress to demonstrate to the people of America that it is as interested in the problems and suffering, of victims of criminal acts as it is in protecting rights of accused criminals.”[\[45\]](#)

It is interesting that support for crime victims’ compensation programmes has for a long time been generated by the need to improve the state of penal reform. This is why it has been opined on compensation to crime victims: “That the general public will not be ready for adequate treatment for criminals until they are satisfied that victims are receiving proper care. We must defeat the idea that penal reformers are putting criminals before the victims.”[\[46\]](#)

**The state has a moral obligation to aid the innocent victims of violent crimes. It is “right” that the state attempts to minister to the needs of the victims.**

The question being asked in regards to this justification is that does the state have a moral obligation to aid the innocent victim of violent crime? Many people have responded in the affirmative to this question. According to the people saying that the state has a moral obligation to aid innocent crime victims, compensation as a prescriptive necessity stems from their inclination toward a certain philosophical disposition because of the wrong done to victims and compensation by the state is the only curative right. Accordingly, Longford, speaking in support of a compensation programme for Great Britain stated that: “Why are we so sure by now that the State ought to accept special responsibility for the victims of violence? One answer, if there were time, would be to take a whole string of individual cases and challenge anyone to deny that in these cases the community ought to provide some compensation where it is not provided at all, or at any rate, to provide much more generous compensation.”[\[47\]](#)

The moral obligation supporters for the most part, seek to avoid making compensation from the state to crime victims a legal right which the crime victims could then demand. To this end, in as much as compensation is a moral right the moral obligation supporters argued, it remains something that the state ought to do but not something that the state has or must to do. This is why Britain’s compensation programme does not make payments on a legal but on an *ex gratia* basis.[\[48\]](#) There is a moral responsibility involved. The conception is that there is a moral obligation for the state to compensate victims of crime; additionally, there are administrative advantages to conclude that moral obligation is the appropriate base for a state-financed compensation programme.[\[49\]](#)

**“No justification” theory: In a democracy no theoretical justification of absolute “rightness” is necessary to adopt a compensation program. A demand for a service from the state needs no theoretical justification for the state to assume a new role**

In this area of compensation to crime victims, efforts are being made to achieve something which is beneficial to the public interest. Generally, the agreement is that programmes designed for the compensation of crime victims will be in the public interest. However, the questions being asked are: first, is it sufficient

justification to establish crime victims' compensation programmes because it is felt to be advantageous to the public interest? Secondly, do not such programmes require sound theoretical support to justify it as being substantively sound? The supporters of compensation programmes have responded in the negative to the above questions.

They reasoned that it is enough that a need exists and that the state has the capacity to satisfy the need. The argument continued that in the state, various national and societal needs will certainly have to compete with other needs in the political process through which resources are allocated. Obviously, not all of these needs will be satisfied or supplied. The reason for this is that there will be many forces moving the state to act in a particular way at a particular time and what the state does finally depends on the competition and success of these competing forces. What comes out of the national or societal competition is the public interest of the open market. The test for determining the success or otherwise of the competition is procedural, not substantive.[\[50\]](#)

Supporters of this justification discussed above like Rupert Cross who in the early times of advocacy for crime victims' compensation programme has said: "Speaking for myself, I am content to do without theoretical justifications for compensation of victims of violence. After all, these are questions of public welfare and they should be determined by public opinion. Human needs account for the most of the Welfare State, and its evolution has nothing to do with tortuous lines of reasoning such as those I have mentioned. If there is a widely recognized hardship, and if that hardship can be cheaply remedied by state compensation, I should have thought that the case for such a remedy was made out, provided the practical difficulties are not too great."[\[51\]](#)

## **CURRENT POSITIONS OF CRIME VICTIMS IN NIGERIA CRIMINAL JUSTICE SYSTEM**

The concern and care for crime victims in criminal justice administration cannot be over stressed because of the role they play as witnesses and active participants in trial processes[\[52\]](#) in justice system. It is also important to express concern on how to reduce[\[53\]](#) criminal activities. Since the concern for criminal behaviour and activities are as old as crime itself,[\[54\]](#) the concern for crime victims as a matter of urgency must also be expressed in the legal documents of Nigeria and in its justice systems. For a very long time, no attempts have been made to pay close attention and focus on the status of the crime victims in the criminal justice system in Nigeria.[\[55\]](#) The various criminal legislations,[\[56\]](#) laws[\[57\]](#) and statutes[\[58\]](#) in Nigeria have not given express provisions as far as the relationship between the offenders and the crime victims are concerned. (Excluding victims of human trafficking and IDPs).

However, to some extent, relationship between these two parties in the criminal justice system in Nigeria can be implied from some sections of the Criminal Code.[\[59\]](#)

It is also the law and practice that when a person is assaulted due to provocation, the offender is usually not liable in law.[\[60\]](#) Also, a person is not always held responsible if he assaults another person for the reason that he was attempting or trying to prevent the re-occurrence of insults. But on the relationship between the crime victims and the offenders, the law provides or allows a defense wherever the act committed by anyone is reasonably necessary in order to resist actual and unlawful violence threatened to him or to another person.[\[61\]](#)

Against this backdrop above, it is clear that the status of crime victims in the Nigerian criminal justice system is not clearly spelt in our laws. Put differently, the Nigerian law does not make adequate provisions and protection for the crime victims as it does for the offenders who enjoy Constitutional immunity or protection.[\[62\]](#) This arrangement and situation in Nigeria is in contrast with the position of crime victims in jurisdictions like the United States of America,[\[63\]](#) Britain, Canada,[\[64\]](#) New Zealand[\[65\]](#) and Australia[\[66\]](#)

to mention but a few. The Nigerian law does not provide for compensation to the crime victims or his relation if the crime victims died as a result of the offender's action.[\[67\]](#)

### **Need for legal framework for crime victims' right to compensation in Nigeria: a comparative analysis**

The need to incorporate legal provisions on state compensation for crime victims is conspicuously absent in Nigeria laws and its criminal justice administration.[\[68\]](#) Although, there is a Bill on crime victims' remedy before the Nigeria legislature,[\[69\]](#) it is submitted that the statutory laws of Nigeria on crime victims' compensation by the state is still a far cry both from the constitutional and statutory perspectives respectively. It is in the light of the foregoing that a comparative analysis of the legal framework of jurisdictions with such state laws on crime victims' compensation is examined here under with a view to challenging the Nigerian government to follow the trend at the international levels on crime victims' compensation.

### **Comparative analysis of legal framework of foreign jurisdictions**

The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power was adopted by the General Assembly on 29 November 1985. The preparatory work on the Declaration was conducted within the framework of the Sixth and Seventh Congresses on the Prevention of Crime and the Treatment of Offenders, following a decision of the Committee on Crime Prevention and Control. A draft of the Declaration was prepared by the Secretary-General of the United Nations and submitted to the Committee in 1984. Following regional meetings and several meetings of experts, a draft of the Declaration was submitted to the General Assembly by the Seventh Congress in 1985. The General Assembly accordingly adopted the Declaration as an annex to resolution 40/34 on 29 November 1985. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power consists of two parts: Part A on Victims of Crime is subdivided into sections concerning Access to justice and fair treatment, Restitution, Compensation, and Assistance; and Part B, on Victims of abuse of power.[\[70\]](#) Articles 9, 12 and 13 of Declaration of Basic Principles provides that "Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions, When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; (b)The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.[\[71\]](#)

As a result of the above provision, different western jurisdictions like England and Wales,[\[72\]](#) New Zealand,[\[73\]](#) Canada,[\[74\]](#) Australia in each of its states[\[75\]](#) and almost all the states in the United States,[\[76\]](#) Finland,[\[77\]](#) France,[\[78\]](#) Germany,[\[79\]](#) Japan[\[80\]](#) and South Korea[\[81\]](#) have adopted crime victims' compensation programmes.

Recently, India has taken steps to uphold the crime victim's right to compensation.[\[82\]](#) Crime victims' right to compensation was introduced in the United States of America by former US President Ronald Reagan in 1982 when the President's task force was created.[\[83\]](#) The establishment of the President's task force on crime victims led to the enactment of the Federal Act named Victim of Crime Act, (hereafter referred to as VOCA), 1984. The VOCA makes provision for crime victims' fund made up of federal criminal fines, penalties and forfeited amount of bond money.[\[84\]](#)

The VOCA provides for federal victims' compensation programmes and supports the various US states'

crime victims' compensation and local crime victims' service programmes.[\[85\]](#) Pursuant to the VOCA, all the states in the US operating the crime victims' compensation programmes got their funding from VOCA in 1986.[\[86\]](#)

Additionally, there is the Crime Victims' Rights Act, (hereafter referred to as CVRA) which forms part of the US Justice for All Act of 2004. The CVRA brought significant changes to the scenery of crime victims' right. The Act lists the various rights accorded to crime victims in federal criminal cases and provides procedures for enforcing those rights.[\[87\]](#) The CVRA gives crime victims' rights to full and timely restitution as provided by law.[\[88\]](#)

In addition to the VOCA 1984 and CVRA 2004, most of the states in the US have increased the strength, permanence, and enforceability of crime victims' rights by amending their state constitutions which guarantees rights to crime victims.[\[89\]](#)

In the United Kingdom, between 1964 to 1996 several non-statutory schemes have been administered by the Criminal Injuries Compensation Board. To this end, the Criminal Injury Compensation Act was enacted in 2012.[\[90\]](#) The Criminal Injuries Compensation Authority is the body that pays money to crime victims who are physically or mentally injured as innocent crime victims.[\[91\]](#) The dependants of a crime victim who died as a result of crime are also eligible to apply for compensation.[\[92\]](#) Furthermore, the scheme allows the parent; children, husband, wife or partner and witnesses right to compensation.[\[93\]](#)

In New Zealand, the Accident Compensation Scheme makes provisions for statutory compensation for personal injury in addition to personal injury resulting from crime.[\[94\]](#) The enabling law under which compensations are available under the Accident Compensation Scheme is the Accident Compensation Act 2001.[\[95\]](#) The crime victims' compensation scheme in New Zealand is funded from government contributions and levies collected from offenders and private individuals.[\[96\]](#) The fund for the scheme is administered by the Accident Compensation Corporation.[\[97\]](#)

The New Zealand Sentencing Act 2002 defines crime victims in wide terms which include the immediate family of the primary victims.[\[98\]](#)

The Accident Compensation Scheme is regulated on a no-fault basis.[\[99\]](#) In other words, no matter what a person was doing when they were injured, whether by contributory negligence or through their action, they will be covered by the Accident Compensation Scheme, in as much as the injury is within the provisions of the ACC Act. The ACC Act provides a detailed cover for personal injury sustained by victims of crime.[\[100\]](#) Under the Accident Compensation Scheme Act, cover comes in the form of entitlements.[\[101\]](#)

In Korea, the major measure for the protection and assistance to crime victims which was introduced into the country's criminal justice system was the compensation order system.[\[102\]](#) The Korean law permits crime victims of certain crimes, like bodily injury, death resulting from bodily injury, crimes inflicting bodily injury and death through negligence, crimes concerning rape and infamous conduct, larceny and robbery, to receive compensation for damages occurring from the defendant's criminal behaviour.[\[103\]](#)

Furthermore, the Korean constitution provides crime victims' right to testify in court[\[104\]](#) and the right of the crime victims to receive aid from the state, from a crime a person suffered injury due to the criminal acts of another according to the law.[\[105\]](#) Consequent upon the Korean Constitution as stipulated in article 30 thereof, the Crime Victim Aid Act was enacted.[\[106\]](#) Other laws on crime victims in Korea include the Crime Victim Protection Act[\[107\]](#) and the Criminal Procedure Act which allows relatives of the crime victim to represent the primary crime victim in circumstance of death.[\[108\]](#)

In Bangladesh, the Constitution has been amended over sixteen times since 1972;[\[109\]](#) however, there have

not been any meaningful and positive provisions on crime victims' compensation in this regard as the country's criminal justice system is often blamed for its inaction towards crime victims' protection and compensation.[\[110\]](#)

Although, the Bangladesh Code of Criminal Procedure refers to compensation, such compensation is only awarded at the discretion of the country's court;[\[111\]](#) worst still, where no fine is imposed on the criminal offenders, the Bangladesh court cannot of its own accord award compensation.[\[112\]](#)

From the foregoing comparative analysis of some jurisdictions, it is apparently clear that New Zealand has done a commendable work in criminal justice system in relation to crime victims' compensation compared to countries like the United States of America, England and Wales and Bangladesh. New Zealand through its statutory provisions[\[113\]](#) and India by its constitution give crime victims a constitutional coverage and protection and rights to compensation.[\[114\]](#) To this end, pursuant to the statutory provisions, the recognition and application of crime victims' rights to state compensation, the United States, England, India and New Zealand deserve much better position than Nigeria.

In Nigeria, award of compensation is still at the discretion of the Nigerian courts.[\[115\]](#) Unlike the Western countries, crime victims in Nigeria do not have a statutory coverage in terms of state compensation. Finally, it is clear that crime victims' right to compensation in western nations is well established and the procedures to realize this has adequately been provided for; in this connection, it is submitted that progress in this field has been made which can serve as precedent to country like Nigeria which has not made adequate provisions for crime victims' compensation by the state.

## CONCLUSIONS

This paper has demonstrated and shown that there is a pressing demand for the existence of measures which will be directed at creating an enabling environment for effective enforcement of offender's liability to crime victims in Nigeria. It is submitted that Nigerian courts' awards of compensation alone will not and cannot alleviate the plight of the multitude of crime victims in Nigeria, no matter how efficient the enforcement structures created by the state. It is noted that the principal reason for the inability of the criminal offenders to pay compensation in Nigeria is the level of poverty of offenders. This is not peculiar to Nigeria, because even rich and developed nations like Britain, New Zealand and United States of America share this problem of poverty amongst the citizens. Therefore, it is not expected that criminal offenders in Nigeria will ever be able to remedy in full the havoc they have caused through their criminal behaviour. It is on this premise that it becomes very urgent and necessary that the Nigerian government as a responsible and responsive state intervene in establishing a state-fund crime victim compensation scheme within the boundary discussed above. If the Nigeria state continues to pay lip service by not taking the issue seriously, it does so at the risk of making the crime victims feel isolated or estranged from the growing voice of concern and the suffering of crime victims.

It stands to reason therefore, that state funded victim compensation is the primary instrument to resolve crime victim-offender problem, the crime victims will receive healing from the effect of victimization without any fear of recidivism; while on the other hand, the criminal offenders receive restoration into the community to become a better citizen.

Finally, it will be recalled that the constitutional rights to freedom and security of the person[\[116\]](#) is stressed and given huge attention in the Nigerian constitution. The rights further include rights to protection against criminal violence from any source whether public or private sources irrespective of the country.[\[117\]](#) Giving effect to this protection is one of the duties of the state. The Nigerian government has failed in this duty and to make matters worse, the Nigerian courts are helpless because they lack the requisite jurisdiction to

provide effective redress for the harm done to crime victims, except of course, the minor compensatory power provided in some statutes as noted earlier. To this end, legislative intervention is needed with a view to giving substance to crime victims' compensatory rights, which must be strengthened by appropriate fiscal support in the form of state-funded compensation scheme.

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- [40] Watson, 685.
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- [47] Earl of Longford ‘The 245<sup>th</sup> Parliamentary Debates’ (1962) *House of Lords* 247.
- [48] Brooks, 484.
- [49] Brooks, 485.
- [50] Powell, N.J., *Responsible public bureaucracy in the United States* (Boston: Allyn and Bacon. 1967) 153.
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- [56] Repealed Criminal Procedure Act chapter 41 Laws of the Federation of Nigeria 2004.
- [57] Repealed Criminal Procedure Code chapter 30 Laws of the Federation of Nigeria 2004.
- [58] Criminal Code chapter C 38 Laws of the Federation of Nigeria 2004.
- [59] Criminal Code Sec 316 (1-6) Except as hereinafter set forth a person who unlawfully kills another under any of the following circumstances that is to say- if the offender intends to cause the death of the person killed or that of some other person if the offender intends to do to the person killed or to some other person

some grievous harm if death is caused by means of an act done in the prosecution of an unlawful purpose which act is of such a nature as to be likely to endanger human life if the offender intends to do grievous harm to some person for the purpose of facilitating the commission of an offence which is such that the offender may be arrested without warrant or for the purpose of facilitating the flight of an offender who has committed or attempted to commit any such offence if death is caused by administering any stupefying or overpowering things for either of the purposes last aforesaid if death is caused by willfully stopping the breath of any person for either of such purposes is guilty of murder In the second case it is immaterial that the offender did not intend to hurt the particular person who is killed In the third case it is immaterial that the offender did not intend to hurt any person In the three last cases it is immaterial that the offender did not intend to cause death or did not know that death was likely to result.

[60] Oloruntimehin, 403.

[61] Criminal Code Sec 33(2)(a-c) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as a result of the use to such extent and in such circumstances as are permitted by law of such force as is reasonably necessary for the defense of any person from unlawful violence or for the defense of property in order to effect a lawful arrest or to prevent the escape of a person lawfully detained or for the purpose of suppressing a riot insurrection or mutiny.

[62] The Nigerian Constitution Sec 36(4,6) Whenever any person is charged with a criminal offence he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty: Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts Every person who is charged with a criminal offence shall be entitled to be informed promptly in the language that he understands and in detail of the nature of the offence be given adequate time and facilities for the preparation of his defense defend himself in person or by legal practitioners of his own choice.

[63] Herman, S., & Waul, M., "Repairing the harm" (2004) *National center for victims of crime* 19.

[64] The Canadian resource center for victims of crime *Victims' Rights in Canada* (2015) 2.

[65] 'Compensating crime victims' (2008) New Zealand law Commission issue paper 11 10.

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[67] Britain from where the Nigerian Criminal Code was inherited has introduced the payment of compensation to crime victim so many years ago by enacting the Criminal Injuries Compensation Act in 1964.

[68] Yusuf, U.A. & Yahaya, S.S., 51.

[69] Criminal Justice (Victims' Remedy) Bill 2011.

[70] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power <http://www.legal.un.org/avl/ha/dbpjcvcap/dbpjcvcap.html>. (Accessed on 13/07/2023).

[71] Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power A/RES/40/34 29 November 1985 96th plenary meeting

[72] Criminal Injuries Compensation Scheme 2012.

[73] Accident Compensation Act 2001: Sentencing Act 2002.

[74] Alberta The Victims of Crime Act 1997: Ontario Compensation for Victims of Crime Act RSO C24 2014: Quebec The Crime Victims Compensation Act 1972.

[75] Australian Capital Territory: Victims of Crime (Financial Assistance) Act 1983 New South Wales: Victims' Rights and Support Act 2013 Northern Territory: Victims of Crime Assistance Act Queensland: Victims of Crime Assistance Act 2009 South Australia: Victims of Crime Act 2001 Tasmania: Victims of Crime Assistance Act 1976 Victoria: Victims of Crime Assistance Act 1996 Western Australia: Criminal Injuries Compensation Act 2003.

[76] In the United States there is a federal fund for victims of crime individual states have control over their compensation schemes However Victims of Crime Act of 1984 serves as a major funding source for victim services throughout the United States.

[77] Tort Liability Act (412/1974 as amended): Finnish Act on Compensation for Crime Damage (1204/2005 as amended).

[78] French Guarantee Fund (Fonds de Garantie) 2003 which compensates victims under certain conditions.

[79] The German Crime Victims Compensation Act (Opferentschädigungsgesetz – OEG The latest version of the German Crime Victims Compensation Act from 7 January 1985 is based upon the earlier version adopted on 15 May 1976.

[80] The Basic Act on Crime Victims (Act No. 161 of 2004: The Crime Victims Support Act (Act Related to the Support of Crime Victims by Payment of Benefits for Crime Victims Act No. 36 of 1980

[81] Crime Victim Protection Act (No. 12187 revised on January 7 2014): Enforcement Decree of the Crime Victim Protection Act (Presidential Decree No. 25050 revised on December 30 2013): and Enforcement Rules of the Crime Victim Protection Act (Legal Decree No. 789 revised on May 28 2013).

[82] Srinivasan, M., & Mathew, J.E., "Victims and the criminal justice system in India: need for a paradigm shift in the justice system" (2007) *Temida* 51. See Indian Constitution Arts. 38 & 41 adopted 26 November 1949 by the Constituent Assembly and came into effect on 26th January 1950 The Code of Criminal Procedure 1973 Sec 250.

[83] President's task force on victims of crime final report established on April 23 1982.

[84] United States Code Sec 10601(b)(1) Crime Victims Fund Fines deposited in Fund penalties forfeited appearance bonds there shall be deposited in the Fund all fines that are collected from persons convicted of offenses against the United State.

[85] Afroze, T., "Sentencing practices in Bangladesh" (2007) *Bangladesh journal of law* 137.

[86] 'New directions from the field: victims' rights and services for the 21st century [https://www.ncjrs.gov/ovc\\_archives/directions/pdf/txt/direct.pdf](https://www.ncjrs.gov/ovc_archives/directions/pdf/txt/direct.pdf). (Accessed on 24/07/2023).

[87] 'Victims' rights' [http://www.justice.gov/usao/briefing\\_room/vw/rights.html](http://www.justice.gov/usao/briefing_room/vw/rights.html). (Accessed on 24/07/2023).

[88] Crime Victims Right Act 2004 Sec 3771(a)(6) A crime victim has the following right(s) the right to full and timely restitution as provided in law.

[89] Constitution of Oregon Sec (5) (a) every victim described in paragraph (a) of subsection (3) of this section shall have remedy by due course of law for violation of a right established in this section.

[90] The Criminal Injuries Compensation Scheme 2012.

[91] Criminal Injuries Compensation Authority Business plan 2014–18 To provide a compassionate efficient and fair service to blameless victims of violent crime.

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[94] New Zealand law Commission ‘Compensating crime victims’ (2010) New Zealand report 121 17.

[95] Accident Compensation Act 2001 Sec 3 The purpose of this Act is to enhance the public good and reinforce the social contract represented by the first accident compensation scheme by providing for a fair and sustainable scheme for managing personal injury that has as its overriding goals minimizing both the overall incidence of injury in the community and the impact of injury on the community.

[96] Thomson Reuter foundation ‘Compensation schemes: comparative report on national state compensation schemes’ 80. <http://www.trust.org/contentAsset/raw-data/038ad26c-b7c2-4ce1-8e22.../file>. (Accessed on 24/07/2023).

[97] Collins, D., & Potroz, R., *Accident Compensation Corporation statement of intent* (2006-2007) 4. <http://www.parliament.nz/mi.../accident-compensation-corporation-acc-te-kaporeihana>. (Accessed on 07/07/2023).

[98] Sentencing Act 2002 Sec 4(a) (i)(iv) victim means a person against whom an offence is committed by another person and a member of the immediate family of a person who as a result of an offence committed by another person dies or is incapable unless that member is charged with the commission of or convicted or found guilty of or pleads guilty to the offence concerned.

[99] Flood, C.M., “New Zealand’s no-fault accident compensation scheme: paradise or panacea?” (2010) 8 *Health law review* 3.

[100] Accident Compensation Act 2001 Sec 26(1) Personal injury means the death of a person or physical injuries suffered by a person including for example a strain or a sprain or mental injury suffered by a person because of physical injuries suffered by the person or mental injury suffered by a person in the circumstances described in section 21 or work-related mental injury that is suffered by a person in the circumstances described in section 21B.

[101] Accident Compensation Act 2001 Sec 69(1) The entitlements provided under this Act are rehabilitation comprising treatment social rehabilitation and vocational rehabilitation: first week compensation: weekly compensation: lump sum compensation for permanent impairment: funeral grants survivors’ grants weekly compensation for the spouse or partner children and other dependants of a deceased claimant and child care payments.

[102] Seok, C.K., ‘The current situation and challenges of measures for victims of crime in the Korean criminal justice system’ The 144th international senior seminar visiting experts’ paper 76. [http://www.unafei.or.jp/english/pdf/RS\\_No81/No81\\_10VE\\_Seok.pdf](http://www.unafei.or.jp/english/pdf/RS_No81/No81_10VE_Seok.pdf). (Accessed on 06/07/2023).

[103] Act on special cases concerning expedition of legal proceeding 1981 Art. 25(1).

[104] Constitution of the Republic of Korea as amended 1987 Art. 27 para 5 A victim of a crime shall be entitled to make a statement during the proceedings of the trial of the case involved as under the conditions prescribed by Act.

[105] Constitution of the Republic of Korea Art 30 Citizens who have suffered bodily injury or death due to criminal acts of others may receive aid from the State under the conditions as prescribed by Act.

[106] The Act was adopted on 28 November 1987 and was implemented on 1 July 1988.

[107] Act on the Prevention of Domestic Violence and Protection etc. of Victims thereof 2010 Article 1 The purpose of this Act is to prevent domestic violence and to protect and support victims thereof.

[108] Criminal Procedure Act Amended by Act No. 8496 2007 Art 294-2 The court shall upon receiving a petition from a victim of a crime or his legal representative including his spouse lineal relative sibling if the victim is dead hereafter referred to as victim in this Article admit such victim as witness for examination.

[109] 'Constitutional Amendments in Bangladesh' (2011) <http://www.studiesbangladesh.blogspot.com/2011/06/constitutional-amendments-constitution.html>. (Accessed on 06/07/2023).

[110] Al Faruque, A. & Rahaman, M.D.S., 'Victim protection in Bangladesh: a critical appraisal of legal and institutional framework' (2013) 13 *Bangladesh journal of law* 33.

[111] Code of Criminal Procedure 1898 Sec 545(1) Wherever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal revision or otherwise a sentence of fine or a sentence of which fine forms a part the Court may when passing judgment order the whole or any part of the fine recovered to be applied in the payment to any person of compensation for any loss or injury caused by the offence when substantial compensation is in the opinion of the Court recoverable by such person in a Civil Court

[112] Faruque, 33.

[113] Accident Compensation Act 2001 and Sentencing Act 2002.

[114] The Constitution of India 2007.

[115] Administration of Criminal Justice Act 2015 sec 319(1) a court may within the proceedings or while passing judgment order the defendant or convict to pay a sum of money as a compensation to any person injured by the offense irrespective of any other fine or other punishment that may be imposed or that is imposed on the defendant or convict where substantial compensation is in the opinion of the court recoverable by civil suit.

[116] The Nigeria Constitution sec 14 (1) (2) The Federal Republic of Nigeria shall be a State based on the principles of democracy and social justice it is hereby accordingly declared that: the security and welfare of the people shall be the primary purpose of government.

[117] The Constitution of the Republic Of South Africa 1996 sec 12 (1) Everyone has the right to freedom and security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause and a right not to be detained without trial and a right to be free from all forms of violence from either public or private sources.