3.

CRIME VICTIMS' RIGHT TO COMPENSATION: HISTORICAL RETROSPECT

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Introduction

Historically, victims have received erratic treatment in different ages, eras and governing systems. There was a time when the victims' rights were at the zenith. In ancient system, victims were the backbone of whole criminal justice system. This period is considered as the golden age (Schafer 1960: 3) for the victims as they enjoyed a dominant role and recognition in the criminal justice dispensation process. An emphasis was given for due consideration to compensation, recognising his right to physical and economic well-being in the terms of human dignity.[2]The variations in the treatment meted out to the victim, relates to the historical evolution of legal concepts of crime and punishment as well as diverse approaches to the interpretation of such notions concerning the victims' importance, and their visibility and invisibility in human societies. Therefore, position of the victims and the remedies provided in any form has varied greatly from time to time and system to system.

In research, to develop a concept into a new legal thought, it is better to place the concept into a historical line of scientific development. In this context it is pertinent to analyze the evolution of victims of crimes so as to better understand the plight of victims of crimes; and certainly it has practical reasons so as to understand important contributions of those who dealt with similar topics before and also to know in whose shoulders we stand on.

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[2]Das (1997: 35); See also Randhawa (2011: 11); Gautham (2011).

A historical analysis of victim justice system is an arduous task. With a large wealth of sources to draw from, it requires historical judgment as to what to include and what not. Since the history of all criminal justice systems is beyond the scope of this work, the author draws from historical and other sources that best explain the evolution of the current system. The source of victim history has to be churned out from the history of criminal justice system. Many of the existing studies have taken a historical approach to compensation, and considered altogether, the study can be viewed as a chronicle of the development of victim compensation. Consequently, the literature review will clarify the evolution of such plans, as well as thoughts, theories, controversies and modern day manifestations. The historical evolution of victim compensation follows different timelines and different tracks in the Global and the Indian scene. In the forthcoming paragraphs of the study first trace the history of victim compensation in the global scenario and secondly lay a special emphasis on the historical development in India.

Position of Victims in the Ancient Era

The notion of legal life in primitive cultures relied on unwritten customs that often were more rigid than written law. The first stage in the evolution of law was personnel revenge. The ancient societies allowed private disputes to be settled in a personnel manner i.e. 'redressal' for personal wrongs was in the hands of the individual, as he was alone in his struggle for existence. As he single-handedly faced the attacks and harms caused to him by externals, he had to take the law in to his hands and punish the aggressor in accordance with the prevailing methods accepted by his society. He carried out the punishment in form of revenge aimed at deterrence and compensation. The revenge was and compensation was exclusively personal (Maine 1946: 307).[3]

An offence against individual was an offence against his clan or tribe, and although the punishment to be exacted from the offender was neither codified nor always standardised by the committed offence, some form of compensation or restitution was invariably involved in the relationship between the victim and the criminal injury to the individual person wherever it was asserted, and was scaled in accordance with the seriousness of the crime, nature of the crime, the relative class, positions of the parties, the personal tempers and reputations of the criminal and his victim (Schafer 1976: 147; Jacob 1970: 152, 154-155). The justice was imparted according to the wishes of victims and they were alone competent of exonerating their offenders. But, later on, due to the

[3] The Penal law of ancient communities is not the law of crimes; it is the law of wrongs, or, to use the English technical word of Torts.

emergence of adversarial system in 16th century, their role was reduced to a considerable length. The victim has become a mere tool for operating criminal justice system. During the mid 21st century, particularly in Europe and America, victims' movements again gained momentum and many social reformers raised their voice to look after the plight of the victims of crime Laster (1970: 72-73).

The roots of the concept of 'victim oriented justice' practices are ancient, reaching back into the customs and religions of the most traditional societies (Braithwaite 2002: 64-68). The particular focus of the restorative practices favored by ancient societies was not to make offenders 'pay', but make reparation to the person and not the State they wronged, building stronger futures at interpersonal levels. although 'crime and punishment' of today are traditionally associated, the historical review of compensatory ideals shows that this has not always been the case in the past (Gavrielides 2011). In fact, some have claimed that the restorative justice values are grounded in traditions of justice as old as the ancient Greek and Roman civilizations (Van Ness and Strong 1997: 24). Most legal scholars agree that for centuries justice systems recognized the value of victims and their recovery from harm perpetuated by offenders (Karmen 1990: 279). The details of restorative justice's implementation in the justice systems of the early societies is documented in a number of other historical sources, many of which indicate that punishment, in today's sense, was the exception rather than the norm (Gavrielides 2011). The practice of individual compensation served as a substitute for the death penalty during 400 B.C. (Gillin 1935).

The code of Hammurabi[4] instituted by the king of ancient Babylonia, is one of the oldest legal codes and almost generous in compensating victims and reveals a society with a system of strict justice. Penalties for criminal offences were severe and varied according to social class of the victim.[5] This code may have been the first "victims' rights statute" in history. The importance of the code was its concern for the Rights of Victims. The significance of the code discussed below.

[4] Hammurabi is best remembered for its law code, a collection of 282 laws. For centuries, law had regulated people's relationships with one another in the lands of Mesopotamia It shows rules and punishments if those rules are broken. It focuses on theft, farming (or shepherding), property damage, women's rights, marriage rights, children's rights, slave rights, murder, death, and injury. The punishment is different for different classes of offenders and victims. For a comprehensive summary, see Gordon (1957).

[5]In ancient Babylonia, there were three classes, or social groups: free men, who were the wealthiest and most powerful class; citizens or common men; and slaves. The reverse was also true. See Gordon (1957); See also The History Guide (2009).

1. *The Code of Hammurabi*

The code of Hammurabi of Babylonia imposed following obligations on the citizens and the state:

i) The state had the power to punish the offender. The blood feuds that have occurred previously between private citizens were barred under the Code.

ii) The Code also ensured the protection of the weaker from the stronger. Widows were to be protected from those who might exploit them, elder parents were protected from sons who would disown them, and lesser officials were protected from higher ones.

iii) The Code restored equity between the offender and the victim. The victim's grievance was more or less redressed and he or she was required to forgive vengeance against the offender (Gordon H 1957)

In Babylon, each crime carried different restitution; for e.g., a theft victim was not repaid with goods but paid the value of goods. As per the code of Hammurabi the theft of goods in transit was punishable with a fine of five times the value of the goods which is payable to the owner (Office of Victims of Crimes); the embezzlement of a merchant's money by one of his employees required a three- fold payment (Office of Victims of Crimes); and stealing from priesthood of State, a more serious offence, could only be repaid by the death of the offender as punishment.[6] If a thief was not apprehended, even then the Babylonian state restored the property of the victim, provided the victim had itemized his property in the presence of God (Barke 1978: 171).

If the robber is apprehended, then he who was robbed shall claim under oath the amount of his loss; then the community on whose ground and territory and in whose domain the offence occurred would compensate him for the goods stolen. If persons are stolen, then the community has to pay one mina of silver to their relatives. If fire break out in a house, and someone who comes to put it out cast his eye upon the property of the owner of the house and take the property of the master of the house, he shall be thrown into that self-same fire. If a man knock out the teeth of his equal, his teeth shall be knocked

[6] Hummurabi Code, for example, provided that, Section 22: If a man has committed robbery and is caught that man shall be put to death; Section 23: If a robber is not caught, the man who robbed shall formally declare whatever he had lost before a God, and the city mayor in whose territory or district the robbery has been committed shall replace whatever he has lost for him; Section 24: If (it is) the life (of the owner that is lost) the city or the mayor shall pay one manch of silver to his kins folk (Das 1997: 39-40).

out [A tooth for a tooth]. If he knocks out the teeth of a freed man, he shall pay one-third of a gold mina (Roth 2011).

If a woman of the free class loses her child by a blow, he shall pay five shekels in money. If this woman dies, he shall pay half a mina. If he strikes the maid-servant of a man, and she loses her child, he shall pay two shekels in money. If a builder builds a house for someone, and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death. If it kills the son of the owner the son of that builder shall be put to death. If it kills a slave of the owner, then he shall pay slave for slave to the owner of the house. If it ruins goods, he shall make compensation for all that has been ruined, and in as much as he did not construct properly this house which he built and it fell, he shall re-erect the house from his own means. If a builder builds a house for someone, even though he has not yet completed it; and if then the walls seem toppling, the builder must make the walls solid from his own means.

The theory of an eye for eye had certain qualification. If a criminal, blinded a slave, the amount of compensation was half a mina of silver. A commoner who suffered a similar injury received an extra mina. If this same crime is committed against an aristocrat, the criminal himself was blinded in one eye. The greater the power of the person who committed a crime and the lower the status of the victim, the smaller will be the penalty.[7] Thus, every victim was avenged and compensated in accordance with the status.

2. *The Mosaic code*

Victim justice can also be seen in teachings of Moses of Israel. The teachings of Moses were crystallized in the form of Mosaic Law[8] and laid the foundations for the modern rule of liability. The owner of a dangerous animal must pay compensatory damages to

[7] According to Laws 196 through 199, for instance, a free man who put out the eye of another free man would have his own eye removed. By contrast, if a free man did the same to a common man, he would merely have to pay a fee in silver; and if he poked out a slave's eye or killed the slave, he would have to pay half the slave's value, to the slave's owner and not to the slave.

[8]Mosaic law the laws (beginning with the Ten Commandments) that God gave to the Israelites through Moses; it includes many rules of religious observance given in the first five books of the Old Testament (in Judaism, these books are called the Torah). The ancient law of the Hebrews, contained in the Pentateuch and traditionally believed to have been revealed by God to Moses. Also called Law of Moses. See Definition of Mosaic Law, http://www.thefreedictionary.com/Mosaic+Law.

the aggrieved party if the owner was aware that the animal was dangerous. Hebrews, trances of restitution to the victim are apparent (Tallack 1900: 6-7). For example, if two men were involved in a fight and one hit and injured the other, the perpetrator was required to pay for the loss of the injured man's time. The Law of Moses, required four-fold restitution for stolen sheep and five-fold restitution for a more useful ox (Cherry 2002).

3. *Canaanites in Palestine*[9]

The Code of Hammurabi had a considerable influence on the people of Palestine especially the Canaanites. There were similarities between the code of Hammurabi and the statements in the Old Testament (Drews 1998). Restitution and vengeance were the theme of punishment. It provided that a thief could not afford to compensate a victim, he becomes the victim's property and could be sold as a slave. The victim keeps the sale proceeds as compensation. Theft was discouraged by imposing a severe burden of restitution on the offender by compelling him to pay four or five times the stolen property.

4. *Greek civilization*

Greek civilization did not invent or originate the notion of law.[10]It is worth noting that the word punishment derives from the Greek word "*pune"*, which means 'an exchange of money for harm done', while the word 'guilt' may derive from the Anglo-Saxon word "*geldam"*, which means 'payment' (Braithwaite 2002).

[9]The term Canaanites is by far the most frequently used ethnic term in the Bible The name 'Canaan' did not entirely drop out of usage in the Iron Age. Throughout the area that we—with the Greek speakers—prefer to call 'Phoenicia', the inhabitants in the first millennium BC called themselves 'Canaanites'. For the area south of Mt. Carmel, however, after the Bronze Age ended references to 'Canaan' as a present phenomenon dwindle almost to nothing (the Hebrew Bible of course makes frequent mention of 'Canaan' and 'Canaanites', but regularly as a land that had become something else, and as a people who had been annihilated). (Drews 1998: 48-49).

[10] Greek law that would emerge in the seventh century different from the earlier Mosaic and Near Eastern Law codes in several respects. The first written law code of Greek civilization is credited to the statesman Draco who is considered as first legislator of Athen. Commissioned to write a new code to control the masses and to eliminate blood feuds fueled by revenge. Draco attempted to suppress crime by imposing capital punishment. Hence, Draco's name has become linked in perpetuity to ruthlessness or draconian punishment.

The death fine is referred to by Homer, in his famous book of the *Iliad*.[11] The first written law code of Greek civilization is credited to the statesman Draco who is considered as first legislator of Athen, and the Draconian Code informed about the legal procedures and protocol and forms of compensation were introduced to end the age old cycle of private revenge (Roth 2011:11).

5. *Dooms of Alford*

The leading writer Tacitus, reporting on the Germanic tribes in the first century, A.D., commented that "even manslaughter will be compensated for with a certain number of cattle or arms, and the whole household accepts this satisfaction". By 9th century A D and the time of Alford and his so-called "Dooms of Alford" the blood feud was invoked only if the victim's request for monetary compensation was denied. Like Hammurabi code, each crime had a price depending upon the types of crime committed as well as victims' status, age, sex etc. (Schafer 1960: 6-7) Among German tribes, the criminal was humiliated to some extent by compensation, which appeased the victim's desire for revenge (Henting 1937: 215). At this time it was assumed that the victim should seek revenge or satisfaction. This was the only aspect of the criminal – victim relationship that gained recognition among the ancient Germans, said Tacitus, "even homicide is atoned by a certain fine in cattle and sheep; and the whole family accepts the satisfaction to the advantage of the public weal, since quarrels are most dangerous in a free state" (Das 1997: 43; Gillin 1935: 28). In Arabia, Tyler noted, the tribes in the cities found it necessary to provide compensation for offences against the person in order to prevent the socially disintegrating effects of the blood-feud (Tyler 1881).

6. *The Twelve Tables*

The ascendance of Augustus Caesar in 27 B.C. signalled the beginning of organized law enforcement in the ancient Rome. In 451–450 B C the Law of Twelve Tables[12] was drafted by a committee of Roman Judges. The Roman law is derived from Twelve

[11]Homer referred to the case of *Ajax*, who criticized *Achilles* for not accepting *Agamemnon*'s offer of reparation. In his criticism, Ajax pointed out to Achilles, that even a brother's death may be compensated by the payment of money (Cherry 2002: 4).

[12] The Law of the Twelve Tablets (Latin: *Leges Duodecim Tabularum* or, informally, *Duodecim Tabulae*) was the ancient legislation that stood at the foundation of Roman law. In 450 BC, after a revolt for legal and social protection and civil rights between the privileged class (patricians) and the common people (plebeians) a commission of ten men (Decemviri) was appointed to draw up a code of law (later two additional persons were appointed) and the Twelve Tables were established. A ten-man commission with extraordinary powers, *decemvirilegibusscribundis*, set forth the basis of law for all Roman citizens. It was a complete *ius civile*. These tables covered all areas of the law emphasizing the procedure that was to be followed for various crimes. They made the law open and applicable, supposedly, to all citizens but those with wealth generally found ways to escape judgment (Steinberg 1982: 381); Hunter (1920: 16-22); Jolowicz (1952).

Tables and these tables were a collection of basic rules relating to conduct of family, religion and economic life. Those laws signaled the end of private justice achieved through blood feuds by confirming compensation as the accepted method of justice in ancient Rome. In the Twelve Tables, restitution was the sanction of choice for most crimes, and victim retaliation was tolerated only when attempts to obtain restitution had failed. In many respects, the Twelve Tables indicated the beginning of state-involved justice.

Emperor Justinian codified the Roman Laws into a set of writings. These writings became to known as Justinian Code and distinguished between two major types of laws (a) Public laws: Dealt with the organization and administration of the Republic (b) Private laws: Addressed the issues such as contracts, possession and other property. (c) Rights, the legal status of various persons such as slaves, husbands and wives, and injuries to citizens. It contained elements of both our civil and criminal law. In ancient Roman law a thief was obliged to pay double the value of stolen object. However it was only towards the end of the concept of the punishment and through that the criminal-victim relationship had become sanctioned (Schafer 1976: 149).

Henry Maine, the famous jurist of historical school in his book Ancient Law,[13] after reference to few provisions of Roman Law based on Twelve Tables, observes:

> *"…if therefore the criterion of a delicit, wrong or tort be that the person who suffers it, and not the state, is conceived to be wronged, it may be asserted that in the infancy of jurisprudence the citizen depends for protection against violence or fraud not on the law of crime but on the law of tort"* (Maine 1946: 213)

The above observation is made in view of the position which prevailed in ancient Rome and other systems of jurisprudence according to which even when injury to human body including homicide was caused by an individual it could only be a subject matter of an action to be taken by the aggrieved persons if they desired to do so and they could compromise the matter with the accused or could even ignore it. The state could do nothing in the absence of private action or in face of compromise (Jois 1984: 322).

[13] In the Chapter "Early History of Delicit and Crime" (Maine 1946: 213).

7. *The Holy Bible:*

Scholars believe that the first five chapters of the Old Testament that record teachings of Moses were transcribed during the Jews' Exile in Babylon during the 5th and 6th century B.C. In any event, *Deuteronomy***,** the fifth book of the Hebrew Bible, and of the Jewish Torah, instructs that with respect to certain crimes, the penalty shall be ". . . eye for eye, tooth for tooth, hand for hand, foot for foot" (Chapter 19, Verse 15).[14] Because the rabbinic tradition taught that this penalty was not to be interpreted literally and that what the Biblical instruction really meant was that a victim of an assault or other crime should receive from the criminal the *value* of an eye, or the *value* of a foot, arguably Deuteronomy presents the first more formalized scheme of victim restitution since the Code of Hammurabi (VALOR 2002).

Victim Compensation in the Medieval Period

Before the Anglo Saxon period, two races Celts and Romans dominated England. They had their own customary laws to decide the cases related to civil and criminal offences. The Anglo-Saxon legal system was originally a system of tribal justice. From 449 A.D to 800 A.D Anglo Saxon tribes invaded England and settled there (Kulshreshtha 1950). The old legal codes were recorded from the time of Aethelbert of Kent[15] on 570 B.C. and a complete record of the changes which occurred in the legal system is made available.[16] The Kentish laws of Aethelbert contained specified amounts of compensation for a large number of crimes ranging from murder to adultery.

1. *Anglo – Saxon Laws*

Prior to the Norman conquest of 1066 A.D., the legal system in England was very decentralized. There was little written law except for crimes against society. Anglo-Saxon England[17] did not have a professional standing law enforcement body analogous

[14] See also, Fishman (2002: 414) and Bandstra (2004).

[15]Aethelbert followed the Roman practice of recording the laws. These laws are a record of AngloSaxon tribal custom, based on the principle of kinship. There is no evidence of borrowing from the Roman legal system. Whenever a migration or invasion occurred the laws were recorded so as to make them familiar to all. The family or kinship group, not the State, was regarded as the injured party (Committee of the Association of American Law Schools 1907: 35-37).

[16] See also, Thorpe (1840); Attenborough (1922); Rightmire (1932); Robertson (1925)..

[17]Anglo-Saxon Law is a body of written rules and customs that were in place during the Anglo-Saxon period in England, before the Norman conquest. This body of law, along with early Scandinavian law and Germanic law, descended from a family of ancient Germanic custom and legal thought (Jeffery 1956-1957).

to modern police. If a crime was committed then there was a victim, and it was up to the victim - or the victim's family - to seek justice. As a society, England had forgotten or moved away from the teaching of the Code of Hammurabi, and crimes during this period were again viewed as personal wrongs. Compensation was paid to the victim or his/her family for the offense. If the perpetrator failed to make payments, the victim's family could seek revenge resulting in a blood feud. For the most part during this period, criminal law was designed to provide equity to what was considered a private dispute.

1.a. Outlawry:

The characteristic of ancient laws was that law was weak, and its weakness was displayed by a ready recourse to outlawry. It could not measure its blows; he who defied was outside its sphere; he was out law. He who broke law had gone to war with the community (Pollock and Maitland 1911a: 449). Thieves and like offenders would be the persons least able to pay the tariff imposed as "compensation" by the old laws and so for their failure to pay that would be outlawed (Potter 1948: 308).

1.b. Blood Feud:

Where the blood feud was permitted, the community in fact withdrew its protection for the wrongdoer upon certain terms. It was legal permission afforded, provided that no more was sought than was just due (Potter 1948: 307). The law simply left it to the private individuals to enforce his rights by self-redressal. But this self-redressal was governed by rules: a man could not choose what vengeance he would extract because this was decided by law (Pollock and Maitland 1911a: 450). This regulation of self – redress opened the way to imposing a form of compensation, or money price, to be exacted in the place of payment in blood. Even in our earliest law a price is set on life, and in Alfred's day it was unlawful to commence a blood feud until an attempt had been made to extract that sum (Pollock and Maitland 1911a: 451). Even the slayer himself was to have twelve months for the payment of the *wer* (blood money) before he was attacked, and the feud was not be prosecuted by harboring him: a breach of his decree was to be cause of outlawry.[18]

The establishment of church brought about a lot of changes in laws of crime. V. D. Kulshehthra (1950: 7) argues that the influences of Christianity made way for an inclination against punishment and in favour of 'emendation' or 'atonement'. The

[18]Manaraefan Herred Group dedicated to Re-enactment of Vikings Life claims thus in their website "Revenue, Lordship, Kinship & Law".

church was averse to blood-shed, and more especially to any curtailment of the time that is given to a sinner for repentance gradually. It was in later stage of Anglo-Saxon period, that the concept of monetary compensation instead of seeking violence to avenge the wrong developed (Kulshreshtha 1950: 7). The idiom like "*buy off the spear or bear it*" seemed to grow from this concept of compensating the victims. Thus for petty crime like stealing, robbery or telling a lie merely the fine was imposed on the wrongdoer.

The change from vengeful retaliation to composition was part of a natural historical process. As tribes settled down, reaction to injury or loss become less severe, compensation to the victim served to mitigate blood-feuds, which, as tribes become more or less stable communities, only caused endless trouble because in injury would start perpetual vendetta (Barnes 1944: 400-401). Composition offered an alternative that was in many ways equally satisfactory to the victim. Composition combined punishment with damages. For this reason, it could be applied only to personal wrongs, not to public crimes (Barnes 1944: 401). This is because idea of compensation was in its early stages of development and was subject to private compromise. This supports the view that during the Middle Ages the penal law of communities, in which crimes were paid for by restitution, was not a law of crimes, but a law of torts (Cohen 1944). Thus, criminal-victim relationships could be viewed only in terms of the victim's revengeful emotions and his claim for compensation. The injuring party offered monetary satisfaction or something else of economic value. If the injured party accepted it, he was fully avenged and "criminal procedure" was complete. Payment was made entirely to the victim or his family. The amount depended on the importance and extent of the injury. The amount of compensation varied according to the nature of the crime and the age, rank, sex and prestige of the injured party; "A freeman is worth more than a slave, a grown-up more than a child, a man more than a woman, and a person of rank more than a freeman" (Emerton 1888: 87-90). Thus the value of human being and their social position were involved in determining compensation, and a socially stratified composition, developed.

It is difficult to pinpoint the start of the new developments in community judicial control, since the community traditionally exercised a certain collective control over the extent of compensation. Soon after the emergence of compensation, laws started to elaborate the intricate system of compensation. Every kind of blow or wound given to every kind of person had its price (Pollock and Maitland 1911a: 451). From the many differences in the amount of damages and in the "value" of the victim, a completed

system of regulation evolved that culminated in the earlier codified law of many peoples particularly that of the Anglo-Saxons (Pollock and Maitland 1911a: 451).

Presumably outlay, which resulted from a failure to provide compensation, developed in connection with these tariff regulations. If the wrongdoer was reluctant to pay or could not pay the necessary sum, he was declared an outlaw: he was to be ostracized, and anybody might kill him with impunity (Pollock and Maitland 1911a: 451).

A share is claimed by the community or king as a commission for its trouble in bringing about a reconciliation between the parties, or perhaps, as the price payable by the malefactor either for the opportunity that the community secures for this of redeeming his wrong by a money payment, or for the protection that it affords him, after he has satisfied the award, against further retaliation on the part of the man whom he has injured (Oppenheimer 1913: 162-163).

All crime was crime against the family. It was the family that was regarded as having committed the crimes of its members. It was the family that had to atone, or carry out the blood-feud. In time, money payments were fixed as commutations for injury; but, even as late as the twelfth century, Welsh blood-feuds were fought. As feudalism and Christianity changed the organization of Saxon society, the blood-feud was replaced by a system of compensations: the wer, wite, and bot.

1.c. Bots; Wite; Wer; Botless.

Gradually, however, the power of the community exceeded the strength of the individual and the community began receiving. Part of the compensation went to the victim-wergild and another part went to the community-Friedens geld. In Saxon England, there were three kinds of pecuniary compensation which became popular in England; wer, bots,wite.

The *wer* or wergild was a money payment made to a family group if a member of that family were killed or in some other way injured. The *bot* was a general payment of compensation for injuries less than death. The *wite* was a public fine payable to a lord or king. The only other punishment referred to is outlawry, or *friedlos*. A man who was an outlaw could be slayed by anyone without fear of reprisal or feud. Anyone offending the folk-peace could be placed outside this peace, or be made peace-less. Imprisonment was a punishment unknown to the Saxons.

Like the blood-feud, the wer or wergild contained within it the idea of collective responsibility. The clan as a group was responsible for the offenses of its members, and for the collection and payment of the *wer* (Pollock and Maitland 1911b: 450-451). Gradually the *wer* replaced the feud. By Alfred's time (871) the feud could be resorted to only after compensation had been requested and refused (Jeffery 1957: 647; Vinogradoff 1908: 213). A law of Aethelred's made it a breach of the king's peace to resort to the feud before demanding compensation (Jeffery 1957: 645-666).

The collective responsibility of the kin was gradually destroyed and absorbed by other groups. If a breach of peace be committed within a "*burh*" let the inhabitants of the "*burh*" go get the murderers, or their nearest kin, head for head. If they will not go, let the ealdorman go; if he will not go, let the king go; if he will not go, let the ealdordom lie in "peacelessness" (Jeffery 1957: 645-66)[19]. Henceforth, if anyone slay a man, he shall himself bear the vendetta, unless with the help of his friends he pays compensation for it within twelve months to the full amount of the slain man's wergild, according to the inherited rank.

If, however, his kindred abandon him and will not pay compensation on his behalf, it is my will that, if afterwards, they give him neither food nor shelter, all the kindred, except the delinquent, shall be free from the vendetta. The authorities must put a stop to the vendettas. First, according to public law, the slayer shall give security to his advocate and the advocate to the kinsmen of the slain man, that he, the slayer, will make reparation to the kindred.

After this it is incumbent upon the kin of the slain man to give security to the slayer's advocate that he, the slayer, may approach under safe conduct and pledge himself to pay the wergild. And no monk who belongs to a monastery anywhere may lawfully either demand or pay compensation incurred by vendetta. He leaves the law of the kindred behind when he accepts the monastic rule (Jeffery 1957: 656).

As feudalism developed in England between 700 and 1066, the lords and bishops replaced the kinship group as the recipients of the wer and wite. The wer was determined by the amount of land owned by a man, his feudal rank, rather than by his rank in the family (Jeffery 1957: 657).

[19] As mentioned in the Law of Aethelred 11.6.

At this time no distinction is made between intentional and unintentional slayings, or between private and public wrongs (Jeffery 1957: 657).[20] Today we would view such a schedule of payments as belonging to the law of tort, personal injuries for which compensation may be due at law. An insurance policy provides exactly the type of protection provided above by the early Saxon law. Whether or not we call this law criminal law or tort law depends upon the way we use these terms. This is not criminal law as we know it today. Even in the case where the king or lord inherited a wergild it was in the spirit of being an heir, and is not analogous to a criminal action. A man can fall heir to a suit at civil law, but a man cannot fall heir to a criminal law suit, nor can he collect damages and compensation as a result of a crime. Some crimes were "botless", that is, no compensation was allowed. In such a case the feud had to be resorted to. Secret murder was a "botless" crime (Jeffery 1957: 657).[21] We can watch a system of true punishments-corporeal and capital punishments-growing at the expense of the old system of pecuniary mulcts, blood-feud, and outlawry; but on the eve of the Norman Conquest mere homicide can still be atoned for by payment of the dead man's price or "wergild", and if that be not paid, it is rather for the injured family than for the state to slay the slayer.

Thus the Anglo-Saxon adopted the Germanic system of splitting fines between victim and the ruler, but whenever a crime was termed as a "breach of king's peace" the king received the entire amount originally for a crime to breach the king's peace it had to effect the kings household and property directly. The next step was for the State to claim all monetary compensation due to a victim.

The double payment continued, but gradually the king took all of it. Discretionary money penalties took the place of the old *wite*, while the *bot* gave way to damage, assessed by a tribunal (Pollock and Maitland 1911b: 458-591). As the State monopolized the institution of punishment, the rights of the injured were slowly separated from the penal law: composition as the obligation to pay damages became

[20] If one kills another unintentionally by allowing a tree to fall on him the tree shall be given to the dead man's kindred, and they shall remove it within 30 days from the locality (Law of Alfred 13). If a beast injures a man, its owner must hand over the beast to the injured man or come to terms with him (Law of Alfred 24). If a man has a spear over his shoulder, and anyone is transfixed thereon, he shall pay the wergild without the fine (Law of Alfred 36). If a bone is laid bare, 3 shillings shall be paid as compensation (Law of Aethelbert 34). If a bone is damaged, 4 shillings shall be paid as compensation (Law of Aethelbert 35). If a shoulder is disabled, 30 shillings shall be paid as compensation (Law of Aethelbert 38).

[21] See also Thorpe (1840); Attenborough (1922); Rightmire (1932); Robertson (1925).

separated from criminal law and become a special filed in civil law. Thus, the victim was stripped of financial compensation and psychological satisfaction of avenging crime.

With this development, the "golden age" of the victim came to an end. It had been an era when his possible participation in any wrongdoing was not taken into consideration. During that time, in fact, it seems inconceivable that the victim's relationship with the criminal could have helped to develop or precipitate the crime. The criminal-victim relationship was strictly divided between the active role of the doer and the passive role of the sufferer. The criminal alone was responsible for the crime. The victim was merely the injured party; he was not thought to be involved in any psychological intricacies of crime causation, and pushed his every advantage as the object of crime that was allegedly caused only by the criminal. He had almost dictatorial power over the settlement of the criminal case; at no other time in the history of the crime has the victim occupied such an advantageous position in criminal procedure.

The state of affairs marks the closing phase of the centuries-long period during which of the criminal procedure was the private or personal concern of the victim or his family and was largely under their control. The injury, harm, or other wrong done to the victim was not only the main or essential issue of the criminal case; it was the only issue. In the criminal procedure there was no room for societal or other considerations. The survival and power of the group, so often the real reason behind the criminal procedure, remain almost always behind the scenes. The procedure was exclusively aimed at the private compensation of the victim, which took the form of private revenge. It was indeed the golden age of the victim. Criminal justice served only his private interests. No other aspects of crime could compete with this concept in this privately owned and privately administered criminal law.

Changes in the 12thcentury

The Influence of the state power over compensation gradually increased towards the 12th century as a result of which, the position of criminals was somewhat eased. As the central power in the community grew stronger, its share of the compensation for crime also increased. The share was claimed as a commission for the trouble of the community by overlord or king in helping reconciliation between the criminal and his victim. One part of the compensation went to the victim (Schafer 1976: 149-150). The State monopolized the institution of punishment; the rights of the injured victim were

slowly separated from the penal law, and the original victim of wrong became practically ignored (Schafer 1976: 149-150).

The emergence of the concept of Damages

As the life the community became more ordered and the royal authority was less concerned to establish power, the king turned to suppression of minor disorders. In the twelfth century Henry II was able to substitute a simple notion of liability. He set apart certain wrongs as matters for the interference of the crown. Others were peculiarly the concern of the private citizen, though they might entail a fine to the king (Schafer 1976). According to Pollock and Maitland (1911), this change appeared with remarkable suddenness. In this century three salient features in the law of wrongs emerge. There were a few crimes of wide definition, such as robbery with violence, punishable at discretion with death or maiming. The other crimes were punished chiefly by discretionary money penalties which have taken the place of the old pre-appointed '*wite*' while the old pre-appointed '*bot*' has given way to 'damage' assessed by a tribunal. Outlawry had grown into a matter of process rather than punishment (Schafer 1976). An 'action for damages' was a novelty. By an action for damages we mean one in which the plaintiff seeks to obtain, not a fixed *'bot'* appointed by law, but a sum of money which the tribunal, having regard to the facts of the particular case, will assess as a proper compensation for the wrong that he has suffered.

Victim Compensation under The Islamic Law

Islamic criminal law divides crimes into categories that are distinct from those employed in most common law and civil law countries.[22] The qisas crimes[23] are particularly interesting for restorative justice studies because the victims retain a central role in the prosecution and sentencing of defendants. In most versions of classical Islamic jurisprudence, the prosecution of the *qisas* crimes must be instigated by the victim. The victims of *qisas* crimes are given a choice as to the punishment that will be imposed. They may choose to forgive the defendant and demand no punishment at all, or they may demand a payment, known as "diyya," as compensation for the crime.

[22] Under classical Islamic law, crimes can be divided into a number of categories based on a variety of criteria. Crimes are commonly classified based on the available punishments for the crime. The three broad categories of crime according to their respective available punishments are: the hudud, qisas, and tazeer crimes (Shaheed 2010).

[23] There are two types of qisas crimes. The first is the penalty inflicted for intentional homicide, while the second refers to the penalty for inflicting intentional personal injury. The later form is sometimes referred to as qawad. See El-Awa (1982: 71).

Furthermore, the law of *qisas* fulfills some of the objectives of the restorative justice movement by allowing victims to participate in sentencing and encouraging forgiveness and reconciliation. There is, however, one glaring difference between the law of *qisas* and restorative justice; the victims of the crimes may also demand retaliation in kind: an eye for an eye, a life for a life. Nevertheless, *qisas*' emphasis on forgiveness and inclusion of the victims and the community in the prosecution and sentencing of perpetrators are significant characteristics which warrant an examination of the law of *qisas* as a form of restorative justice (Hascall 2011).

The *diyya* is the payment of money to the victim of a violent crime. The payment can be made in substitution for the *qisas* penalty at the request of the victim(s) or it can be imposed if any of the procedural or substantive requirements for the imposition of *qisas* have failed.[24] The following from the Qur'an verse 4:92 deals with the payment of restitution:

> "*Never should a believer kill a believer; but by mistake. If one (so) kills a Believer, it is ordained that he should free a believing slave, and pay compensation to the deceased's family, unless they remit it freely"*

The following *hadith* also addresses restitution: *Whoever is killed inadvertently as by flogging or beating with a stick or being hit by a stone, his blood-price is a hundred camels.* It is important to note that the victim or the victim's family must insist that the *qisas* penalty be carried out. If any of these standards are not met, the *qisas* penalty will not be applied; in many instances the penalty will consist of *diyya* payment. It is also important to note that the amount of the payment is fixed according to the circumstances of the wound and the person wounded. Although *diyya* is often translated to mean "blood money," it can also be seen as restitution. The term "blood money" carries with it a negative connotation. It conjures up images of gangsters, contract killers, and those who betray the lives of others for money. It is perhaps for these reasons that *diyya* has been overlooked in the restorative justice discourse. However, the payment of money to the innocent victims or their families has nothing in common with paying the guilty parties for the murder or injury.

[24]Diyya Payment may be required for the following wrongs: intentional or felonious homicide, quasi-intentional murder, unintentional homicide, intentional infliction of wound, and/or unintentional infliction of wound (Shaheed 2010: 58).

Victim Compensation in the Modern world.

The Modern legal systems has parted ways with the system of the Middle Ages in two fundamental respects; the decline of the victim's right to revenge, and the ascent of monetary and compensatory damages. Today's society generally considers the right to revenge as uncivilized. The law reflects this disapproval by depriving a crime victim of the right to determine the wrongdoer's punishment. Unlike in the Middle Ages, punishing criminal acts today lies exclusively within the domain of the State. As a result, a crime is no longer viewed as a wrong against the victim alone, but as a wrong against society as a whole and the victim is excluded from the process of punishing the wrongdoer. The victim's only option is to sue for compensation in separate civil court proceedings.

In practical operation of old law, it proved very oppressive for offenders and criminals who were used to be tortured and humiliated with oppressive fine. There was no fine balance between the nature of offence and quantity or punishment. It outwardly reconciled the stern facts of a rough justice with a Christian reluctance to shed blood; it demanded money instead of life, but so much money that few were likely to pay it. Those who could not pay were outlawed, or sold as slaves. From the very first it was an aristocratic system; not only did it make a distinction between those who were 'dearly born' and those who were 'cheaply born', but it widened the gulf by impoverishing the poor folk (Schafer 1976: 149-150). Hence offender himself became victim of excessive punishment whereas the victim rights remained paramount during this era.

However, the picture began to change with modern criminal justice; the government assumed responsibility for dispensing justice by bringing the offender to book, but it also meant that, with the appropriation of fines to the State coffers, the victim was left with ineffective remedies. Compensations were the means by which humanity moved slowly from the practice of private vengeance to the enforcement of public justice. As the modern State emerged and the government took on itself the responsibility of enforcing justice, the offender gradually became the central figure in the criminal arena. It is, of course, true that the evolution has not been uniform throughout the world; there are countries where eye for eye, tooth for tooth, cutting of the hand for committing theft, and death penalty for adultery still prevail, but they are the exceptions. The general tendency is the other way. Therefore, with the criminological theories becoming more and more sophisticated, the victim is getting almost forgotten. Victimology seeks to rectify this omission and resurrect the victim from oblivion. It looks at the crime from the victim's point of view.

Victimology as a Separate Discipline

The harrowing incidents of the Second World War in Europe acted as a catalytic agent for thinking minds in the criminological field to concentrate their processes on this vital element for whose benefit, for whose protection, and for whose peaceful existence organized society established systems of criminal justice, namely, the victim. There has been the inadequacy and the ineffectiveness of the several direct and indirect procedures designed to help and insure that the victims is compensated by the offender that it was only in recent times that the criminal justice policy-makers in the West began to pay attention to the victims of criminal offences. Most of them had previously been concerned, and many of them continue to be concerned, primarily with the rehabilitation of the offender. In Europe, America, and Australia, victimology a comparatively new branch of criminology, has since rescued the victim from oblivion. Yet, when victimological thinking first took shape, academicians concerned themselves principally with the negative aspects of the victim's personality, his/her contribution to crime causation. Inevitably, this one-sidedness in thinking and its resultant negative impact on criminal policy provoked a reaction.

During the 18th Century, classical criminologists paid their attention on criminal behavior as a characteristic feature of criminology but by the end of 19th century, the positivists focused on with the personality of the criminal. Victimology as a distinct field of study has only really emerged in recent years, although it's indebted to its parent discipline Criminology.

Emergence of doctrine of State compensation to victim

The doctrine of State compensation to victim again attracted the attention of sociologists and jurist in Europe during the Nineteenth century. Jeremy Bentham (1879) argued that the presence of the social contract between State and the Citizen, victims of crime should be compensated, when their property or person was violated. Despite the activism of Penologists like Jeremy Bentham the acceptance of the principles of compensation to the victims remained unfulfilled. During the 1950s Margery Fry, an English Penal reformer called refocusing on the plight of victims and the bestowing of effective remedies on victims such as State Compensation[25]. This heralded the establishment of State Compensation Programmes in the American and European jurisdictions. The modern approach of victimology acknowledges that a crime victim has right to be adequately compensated, rehabilitated and repaired irrespective of

[25]See generally, Judicial Review of Probation Conditions (1967: 181, 183); Schafer (1970: 108); Fry (1951: 126).

identification and prosecution of offender and the payment of such compensation should be made by the State. Britain set up a non-statutory programme[26] in 1964, which was administered by the Criminal Injuries Compensation Board and the funds being sanctioned by the Parliament annually. The move towards State compensation was mirrored in the United States, with California being the first State to do so in 1965. In 1984 the Victims of Crime Act was enacted by the Congress, which established a Crime Victims Fund within the US Treasury. The need for a victim compensation framework has been recognized by the international community. With the impetus given in the United Kingdom by Margery Fry, who was never tired of advocating the need for translating abstract theory into legislative terms, the idea of State compensation to victims of criminal offences was mooted. Several countries in western and southern Europe, the United States, Canada and Australia, taking the lead given by New Zealand in 1963, have legislated for payment of compensation to victims of criminal offences from public funds.[27]

In the civil law systems generally, the victims enjoyed a better status in administration of criminal justice. Towards the last quarter of the twentieth century, the common law world realized the adverse consequences arising from this inequitable situation and enacted laws giving rights of participation and compensation to the victims. "Victims" mean the person or persons who have suffered financial, social, psychological or physical harm as a result of an offense, and includes, in the case of any homicide, an appropriate member of the immediate family of any such person. In the Constitutions of certain countries, rights of victims have been recognized thereby forcing changes in criminal justice goals and procedures. In the United States the Supreme Court ruled that consideration of Victim Impact Statements during sentence hearing was constitutionally permissible. This enabled victims to describe the extent of any physical, emotional, or psychological effects caused by the crime. As a result of the activities of certain progressive thinkers and activists in various advanced countries, like the UK, Canada, USA, Australia and New Zealand, the focus has marginally shifted towards the unfortunate victim, who generally is the most injured party in the crime and also the party who naturally deserves redress but often does not get it.

[26]The programme was given statutory form in the Criminal Injuries Compensation Act, 1953.

[27]Canada-Monitoba enacted the *Justice for Victims of Crime Act, 1986*. New Zealand has also enacted *Victim of Offences Act, 1987*. In the United Kingdom, *Criminal Justice Act, 1988* has made fresh provisions for payment of compensation by the *Criminal Injuries Compensation Board*. Australia has also enacted a legislation based on the U.N. Declaration of 1985. *Victims of Crime Act* became a part of Federal Law in the United States in 1984. Now replaced by *Victims of Crimes Act 2002*.

The U. N. and Victims of Crimes

Till 1980's, research and practice concentrated mainly on the accused. In 1980, the United Nations Organisation has dealt with the question in which way the situation of crime victims might be improved. Thus, the seventh United Nations Congress on the Prevention of Criminal and Treatment of Offences on the Prevention of Crime and Treatment of Offences, which took place in Milan from 26 August to 6 September 1985, recommended to the United Nations General Assembly, for the ratification of ''Basic Principles of Justice for Victims of Crime and Abuse of Power.'' On November 29, 1985, the General Assembly of the United Nations adopted the declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power vide resolution No.40/34. This declaration, the first specifically concerned with societal responses to the needs of victims, establishes standards that take into account the variety in prevailing legal systems, social structures, and stages of economic development of the Member States. The declaration, concerning victims of crime, establishes standard for access to justice and fair treatment, restitution from the offender, compensation from the State, and assistance towards recovery.

This declaration calls upon States to take the necessary steps to give effect to the provisions in the declaration and to curtail victimization. In particular, the declaration specifies certain ways in which victims should have access to judicial and administrative procedures and how they should be treated fairly. The declaration says that victims should be treated with compassion and respect for their dignity and entitled to prompt redress. The victims should be informed of their rights in seeking redress through formal or informal procedures that the expeditious, fair and inexpensive and accessible.

The responsiveness of judicial and administrative process should be geared to serve the needs of the victims. The victims should be informed of their role and scope, timing and progress of the proceeding, and disposition of their case. Offenders or third parties responsible for the crime should make fair restitution to victims, their families or dependants. Such restitution should include the payment for harm or loss suffered, reimbursement of expenses incurred as a result of victimization. And also the governments should help to adopt practice, regulations and laws to consider restitution as an available sentencing option in criminal cases.

The "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power," approved by the General Assembly in November 1985, constitutes the "soft

law" basis for the international standards concerning the treatment of victims, and is "designed to assist governments and the international community in their efforts to secure justice and assistance for victims of crime and victims of abuse of power."

This Declaration recommends measures to be taken at the national, regional and international levels to secure access to justice and fair treatment, and to ensure restitution, compensation, and social assistance for victims of crime. It further outlines the main steps to prevent victimization linked to abuse of power, and to provide remedies for the victims of such offences.

The Economic and Social Council of the United Nations (ECOSOC) has adopted two resolutions to encourage the implementation of the Declaration. These resolutions provide guidance to countries on necessary measures to ensure full compliance with the Declaration, such as the review of legislation, training for criminal justice officials, establishment of victims' assistance services, research activities, and exchange of information. In order to support ECOSOC's resolutions, United Nations Office on Drugs and Crime (UNODC) has published a guide for policymakers on implementing the Basic Principles for Victims, as well as a handbook on justice for victims on the use and application of the Basic Principles and a toolkit for professionals on assessing police, prosecutorial, and judicial policies and practices relating to victims and witnesses.

New initiatives seeking to enhance the rights of victims are also being proposed by the academic and advocacy communities. In 2005, representatives of the World Society of Victimology (WSV) organized a workshop at the Eleventh United Nations Congress on Crime Prevention and Criminal Justice on the pressing need to transform the 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power into a Victims' Rights Convention. As a result, the WSV, in partnership with the International Victimology Institute (INTERVICT) of Tilburg University and the Tokiwa International Victimology Institute (TIVI), developed a draft Convention on Justice and Support for Victims of Crime and Abuse of Power for Victims, which has not yet gathered sufficient support by governments.

Although many countries have been criticized for their sluggish implementation of the Basic Principles for Victims, there is evidence that, on the whole, governments throughout the world have advanced in the field of protecting the rights of crime victims in their domestic legislation and practices, in comparison to the period that preceded the

Declaration. Still, much remains to be done, and it is of utmost importance to promote the implementation at the national level of those international standards and norms.

Victim Compensation - Indian Scenario

Reparation or compensation as a form of punishment is found to be recognized from ancient time in India. The Indian scenario as to victims of crimes and compensation can be analysed under the following heads:

Vedic Period:

In early Vedic period of civilization, retribution was main element in criminal law. The law was designed to compensate the victim and not to punish the offender, the state playing the role of an arbitrator (Randhawa 2011: 11). The individuality of the offender was not taken into consideration (Makkar 1993: 148). It is also pertinent to note that in vedic period emphasis was given to the fact that only offender should be punished, an innocent should not be made the victim of law.

The punishment served four main purposes, namely to meet the urge of the person who suffered, for revenge or retaliation as deterrent and preventive measures and for reformation or redemption of the evil doer (Randhawa 2011: 12). According to Dr. Sen the famous historian, in Hindu law punishment of crimes occupied an important place than for wrong. In addition to penalty the injured individual was entitled to get of compensation. It was conceived that the king was under a duty to indemnify the individual who had suffered from a crime (Sen 1984: 388). For committing murder, early Sutras prescribe that the murderer should pay fine according to the caste of the person murdered. Mostly the penalties were based upon caste consideration as informed by *Baudhayana.* Other ancient law books lay down the punishment for murder as death with confiscation of the murderer's property (Sen 1984: 388).

In ancient Hindu Law, the law givers were fully aware of the necessity of directly compensating the victims of crime. Thus, Manu says (Muller 1886: 304):

> *"If a limb is injured, a wound (is caused) or blood (flows, the assailant) shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual anercement and expenses as a fine to the king)"* (Chapter VIII, Verse 287).

He further adds (Muller 1886: 304):

> *"He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the kind a fine equal to the damage."* (Chapter VIII, Verse 288)

Manu thus, provides direct reparation to the victim of crime apart from payment of fine to the king (the State).

Jois (1984: 301-325) quotes Brihaspathi,

> "*He who injures a limb, or divides it, or cuts it off, shall be compelled to pay the expenses of curing it; and (who forcibly took an article in a quarrel restore) his plunder. A merchant who conceals the blemishes of an article which he is selling, or mixes bad good articles together, or sells (old articles) after repairing them shall be compelled to give a double quantity (to the purchaser) and to pay fine equal (in amount) to the value of the article."*

The Vishnu Smirithi[28] and Yajnavalakya[29] also advocate compensation to the victim of crime for their injury. Yajnavalakya, Narada and Brihaspati fix a compensation twice to the purchase (who paid the price) and a fine an equal amount, in case of fraudulent sale of one article to another, or knowingly, selling defective articles as free defect.[30]Again, traders or business men who lost their property while travelling through the kingdom were also compensated.[31] So also during Islamic rule restitution and atonement was a recognized form of punishment.

Narada was probably first to recommend compensation to the victims by the offender in order to expiate his sins. A mention may be made to the *Smriti* for prescribing corporal punishment and money compensation to the victims or his family of theft, assault, adultery, rape and manslaughter[32]. In ancient time, caste used to play a

[28]Law of Vishnu, Verse-75,76 (Varshnee 1982: 65).

[29]Law of Yajnevalkya 11,226.10,Ubj 11257; (Varshnee 1982: 65)

[30]Narada N 118,7Br XVIII-411 (Varshnee 1982: 65).

[31]Arthasastra by Acharya Vishnugupta (Chanakya) (Benarji 1976: 110).

[32]Arthasastra by AcharyaVishnugupta (Chanakya) (Benarji 1976: 110).

predominate role while punishing a criminal and compensating the victim. The "*Dandaviveka"* quotes a verse in which the considerations, that should weigh in awarding punishment and brought together, namely, the offender's caste, the values of thing, the extent or measure, use or usefulness of the things with regard to which an offence is committed, the person against whom an offence is committed (such as an idol, temple, king or Brahmin), age, ability (to pay) qualities, time, place, the nature of the offence (whether it was repeated or was a first offence) (Gandhi 2006: 11). Certain classes of person were exempted from punishment. Some *smriti*-writers prescribe that as a general rule a Brahmin offender was not to be sentenced to death or corporal punishment for any offence, but in such cases other punishments were substituted.

Under the *Shastric* laws, criminals were required to pay a fine as well as to undergo corporal punishment for their offence. In certain cases, the court was empowered to grant compensation to the aggrieved party (victim) in addition to the punishment given to the offender (Gandhi 2006: 12). However, in *Buddhism*, caste did not play any role while awarding punishment and compensation. *Buddhism* was in favour of the equality of all before the law. An offender brought before justice must be judged and punished according to this offence and without any concession to immunities or privileges relating to the caste (Thapar 1979: 33).

The major defect of ancient legal system was that it was based on caste system. *Sudras* become the victims of this caste ridden legal system. The most severe punishment was inflicted upon them whereas Brahmin offenders used to enjoy certain Kind of privileges in the society. They could not be sentenced for death. Gautama and Manu prescribed the details of penalty to be paid by *Sudras, Vaishyas, Kshatriyas, Brahmins* and upper class persons. Among these four categories heavy fine was imposed on *sudras* for violation of any law even though it was a trivial offence. Hence they were made the victims of abuse of law. The guardians of law were, in the nature of things, persons belonging to elite groups (Brahmins). Consequently, legal code conformed to their world view: *"In the ancient past there were moments when societies incorporated the metaphysical ideals of human rights into their legal and social function. Even in* (*generally Brahimins, Kahatriyas); the slaves, the Sudras, the serfs were all beyond the pale"* (Thapar 1979: 33).

In ancient period, there were well developed norms for awarding compensation to the victims of crime. Kautilya in his classic work 'Arthashastra' lays down many principles to determine the compensation. According to Kautuliyan, "*After taking into full consideration the nature of the offence is grave or simple, circumstances that led*

to the preparation of the offence, the antecedent and present circumstances, the time, place, motive, consequences and the social position and rank of a person, the magistrate shall determine the propriety of imposing the first, middlemost or highest amercement."

(1) First Amercement- A fine ranging from forty- eight to ninety-six *panas* is called first amercement.

(2) Middle Amercement- A fine ranging from two hundred to five hundred *panas* is called middle amercement.

(3) Highest Amercement-A fine ranging from five hundred to one thousand *panas* is called the highest amercement.

Corporal punishment excepting the punishment of death can be avoided by paying a redemption amount (Gupta 1987: 9-10).

When a judge or magistrate imposes unjust fine, he shall be fined either double the amount of the fine, or eight times the short fall or excess over the prescribed fine. If he imposes corporal punishment wrongly, he shall be fined eight time of the just claim which he disallows or unjust claim which he allows. If an innocent person is punished, magistrate and judges are punished for wrong judgment, even the ruler must impose on himself a fine thirty times that amount and offer it to *varuna* (chastiser of Kings) and thereafter distribute it among Brahmins so that the sin of wrongful punishment may thereby be wiped out. Inapt and defective judicial system always bring disaffection and disappointment and defective judicial system always brings disaffection and disappointment among subjects." *By not punishing the guilty and punishing those not deserving to be punished, by arresting those who ought to be arrested; and by failing to protect subjects from thieves etc, through these causes decline, greed and disaffection are produced among subjects."*

Since the compensation remained the central point while determining the guilt of the accused therefore Sir Henry Maine has made generalization that "*penal law of ancient communities is not the law of crimes, it is law of wrongs or to use the English technical word, of tort"* (Maine 1946). Therefore in the early era of history, the emphasis was on compensation to the victim or "spiritual" and material satisfaction of the victim, rather than on punishment of the offender.

Victim Justice in Medieval India

Muslim period marks the beginning of a new era in the legal history of India. The social system of Muslims was based on their religion, Islam, which may be described as a reformist version of seventh century Arabian practice (Randhawa 2011: 11). The payment of compensation to the victims also existed in a well-developed form in Mohammedan Law (Jain 1987: 321). The Muslim followed the principle of equality for men and they had no faith in the graded or sanctified inequality of caste system. The *Quran* being of absolute authority, all controversy centered round its interpretation from which arose the Muslim law or *Shariat*. During the reign of *Sher Shah* Dynasty, great reforms were brought in judicial system. *Sultan Sher Shah* himself used to say, "*Stability of Government depended on justice and that it could be his greatest care not to violate it either by oppressing the weak or permitting the strong to infringe the laws with impunity."* During his reign if robbery or theft was committed, then it was it head of the village councils known as '*Moqoddams*' who was made to pay for the loss sustained by the victim.

In Mughal Period, integrated system of judiciary came into existence. Litigants were represented before the courts by professional legal experts. They were popularly known as *'Vakils'*. Thus the legal profession flourished during mediaeval Muslim period.In criminal cases, a complaint was presented before the court either personally by the victim or through his representative known as '*Vakil'*. A public prosecutor '*Mohtasib'* instituted the prosecution against accused before the court. For the commission of homicide, '*Qisas'* or blood fine was imposed on offender. It was sort of blood-money paid by the man who killed victim in case if he was convicted but not sentenced to death for his offence. The state was authorized to punish the criminals for grave offences although the injured party might "waive his private claim to compensation or redress". The Great Mughal Emperor Akbar by his foresight displayed a policy of tolerance by repealing the discriminating law regarding Muslims and Non- Muslims. He created a common citizenship and a unanimous system of justice for all. Akbar's successor Jahangir was normally a justice loving monarch. He rightly took credit for dispensing even handed justice to all irrespective of birth, rank or official position. He used to say that God forbid he should care for nobles or even princes in matter of dispensation of justice. No sooner did he occupy the throne than he got a golden chain studded with 60 bells hung outside the Agra Fort. Any aggrieved or distressed victim could sue for justice direct from his majesty by pulling the chain (Ahmed 1941: 102).

During the Mughal period, Qazi was entrusted with the functions of imparting justice to subject after the Emperor. He used to punish the offenders with Islamic Laws which

were based on the Koran. Nobody was considered above the law. Even princes were executed for violation of the law. The Victims had full right to sue anyone who so ever he might be. The forms of punishment are *Qatlul or Wilful Murder*[33],*Qatl Bi - Sabab*[34] *and Diya*[35].

A story is told how Emperor Jehangir was faced with a problem in one of his daily "darbars" and how he solved it. One day the Empress in a fit or anger hit her launderer whose work was not satisfactory. The washerman fell down dead. Somebody persuaded the widow to attend the Jehangir "darbar" the next morning. The laundress waited trembling till all the others had mentioned their grievances and received redress from the Emperor. Finally, Jehangir looked at her and said, "Who are you"? What do you want?" In great trepidation she replied that she was the court laundress and recapitulated the previous day's calamity. "Your husband was killed?" "By whom?" queried Jehander. "By the Empress", replied the woman. It is said that Jehangir was stunned and leaned back on his throne, but only for a moment. He then came down the steps of his throne and faced the laundress. Drawing his sword from the gilded holster, he held it out to her and said, "Hold it." The woman did not know what she was being led up to. But she obeyed the command of the Emperor. Then he spoke to her along the following lines: "The Empress killed your husband. How, with that sword, you kill the Emperor's husband. I command you to do it". The laundress was nonplussed. She fell at the Emperor's feet, recovered her equanimity soon enough, and said, "Sire, I have suffered, but I do not want either the Empress or the country to suffer by my obeying Your Majesty's command. I am prepared to take any punishment for this disobedience." The story goes that Jahangir was so touched by the words of the washer-woman that he made her a baroness and showered her with riches beyond measure. It is perhaps one of the earliest known cases of victim compensation in modern Indian history (Rajan 1995: 10; Randhawa 2011: 15).

[33]Qatlul or willful murder arose where the criminal intentionally killed a person with a weapon or something that served for a weapon, such as a club, a sharp stone or fire. If one committed a willful murder, one was a sinner and deserved hell; and secondly he was liable to retaliation. But retaliation lapsed if the heir or the next of kin either forgave or compounded for the offence. The Muslim law admitted of no other expiation for willful murder. The murdered could not benefit by his crime and thus he lost right of inheritance to the murdered person if such a right otherwise accused. See generally, Sangar (1967: 63).

[34] Homicide by intermediate cause, blood money must be paid. If the quadruped, on which a person was sitting, trampled another person under foot, the rider was to incur diya and expiate and he was to loss right to inheritance Sangar (1967: 109).

[35] Retaliation could be commuted for by a sum of money, called Diya. Diya could be paid to the heirs of the murdered person in place of retaliation, Diya for murder was to be paid for by a hundred camels or a thousand or ten thousand dirhams according to Abu Hanifa.

But after Jahangir, his successors Shajahan and Aurangzeb were fanatic Muslim Emperors. They adopted discriminatory policy towards non-Muslim. *Hindus* and *Sikhs* were made the victims of draconian laws. The non-Muslim had no right to full citizenship. They were not treated as equal to Muslims in law and were called "Zimmis." Their evidence was inadmissible in the courts against Muslims. They did not enjoy all rights and privileges which the Muslims did (Randhawa 2011: 16).

Pre-Independence India and the British Legacy

While the great *Mughals* was ruling in Delhi, there appeared on the Indian scene, a phenomenon almost unparalleled in the history of the world. A handful of adventurers from the East India Company came to India as a trading body which possessed some sovereign prerogatives for the purpose of trade and became transformed into a sovereign body, "the trade of which was auxiliary to its sovereignty". British Government gradually introduced their own legal system and started imparting justice according to their laws which were alien to this land. Some of the rules evolved to protect the ruler were certainly not conductive to a proper administration of justice. The British period, however, constituted a major and fundamental breakthrough from some very important reforms in *Mohammedan Criminal Law*. Punishment for murder, it was ordered, was now to be given on the basis of the intention of the party rather than the manner and the instrument employed. Blood money and cruel punishments were abolished (Rajan 1995: 5-6).

Derelict of Victims - Post Independence Period

The adversarial system (or adversary system) of law is the system that relies on the skills of each advocate representing his or her party's position and involves an impartial person, usually a jury, trying to determine the truth of the case (Langbein: 2003). As opposed to that, the inquisitorial system has a judge whose task is to investigate the case. In India Adversary system is legacy of British common law. The Code of Criminal Procedure of 1882 (10 or 1882), was consolidated for whole India as a uniform law. The Procedure envisaged an 'adversarial system' which was alien to pre British Indian Legal System. There was only one provision under Section 357 in the Cr.P.C 1973 where court could, while awarding sentence, award compensation.

The principle of compensating victims of crime has for long been recognized by the law though it is recognized more as a token relief rather than part of a punishment or substantial remedy. The Criminal Procedure Code 1973 has provisions to earmark a portion of the fine imposed on the accused for the victims of offence. Compensation can

be awarded only if the offender has been convicted of the offence with which he is charged. The laws enacted in India place the responsibility to give compensation to the victims of crime on the crime-doers. But, many a time it is difficult to realize the amount thus ordered and as such the victims do not get any compensation whatsoever. The Supreme Court and High Courts in India have of late evolved the practice of awarding compensatory remedies not only in terms of money but also in terms of other appropriate relief and remedies.

Proposing the amendment in criminal justice, Committee on Reforms in the Criminal Justice System has suggested that an important object of the criminal justice system is to ensure justice to the victims, yet he has not given any substantial right, not even to participate in the criminal proceedings. Therefore Committee feels that the system must focus on justice to victims.[36] The committee has also suggested that some of the good features of the inquisitorial system can be adopted to strengthen the Adversarial system and to make it more effective. This includes the duty of the court to search the truth, to assign a proactive role to judges, to give directions to the investing officers and prosecution agencies in the matter of investigation and leading evidence with the objective of seeking the truth and focusing on justice of victims.[37] Now the victim's role has been confined only to initiate criminal justice system. Pursuant to the recommendations of Committee, the amendments have been incorporated into the Cr.P.C 1973 in 2009 and many legal rights have given to the victim's. The present trends and schemes of compensation adopted by various States in India in the light of Criminal Law Amendment Act 2009 are positive steps towards resurrection of victims' importance in Criminal Justice System.[38]

Conclusion

Crime is a non-separable part of social subsistence generated by constant interaction between the individual on the one hand and the social environment, order and mores or ethos of the society on the other. From the above analysis, it is revealed that in the ancient period, criminal law was victim oriented, i.e., why Stephen Schafer calls it 'Golden Age' for victims. In 16th and 17th century with the advent of industrial revolution, renaissance and French revolution, a sea of change was notice in the

[36]*Report of the Committee on Reforms of Criminal Justice System* (2003).

[37]*Report of the Committee on Reforms of Criminal Justice System* (2003).

[38]Sec. 357A, Cr.P.C. *Criminal Law Amendment Act 2009*

criminal justice system. The criminologist focused their attention towards the rights of the criminals, and conditions of the prisoners and preached the doctrine of fair play and justice over those who had earlier perpetrated injustice on other members of the society (Bag 1999). Another reason for the decline of victims' role in criminal justice system is adversarial system. Now the criminal law became offender oriented and victim on the suffering end. Some criminologist took the task of understanding the importance of the studying of criminal-victim relationship, in order to obtain a better understanding of crime, its origin and implications. Hence in the 21st century victim movement has been regained momentum in whole world but with different outlook and nature. However, our criminal justice system is concerned with the offender, his rights and his correctional needs. Unfortunately, it does not show equal concern to the victim, who is physically, mentally, psychologically or monetarily injured by the offender. In the long run this will result in a hollow system of criminal administration devoid of justice. The victims' right to compensation was ignored except a token provision under Code of Criminal Procedure. However, of late, the Supreme Court and High Court in India have evolved the practice of awarding compensatory remedies to victims not only in terms of money but also in terms of other appropriate reliefs and remedies. Nonetheless, during the recent past the idea of payment of compensation to victims of crime has gained a momentum. The traditional assumption is that a victim is sufficiently satisfied if the offender is convicted and punished by the state. It is not only less persuasive in the contemporary `offender – oriented' criminal jurisprudence but also 'unjust and inequitable'. Moreover, the statutory provisions are inadequate to tackle the problems of victims of crimes and their right to compensation. We should reformation the criminal justice system, by including the legitimate victim rights and interests as an important goal and by developing the ideologies and methodologies to enhance such interest and protect the rights of victims. The goal implies that victim's rights should be integrated into existing procedures where possible. Ideally, a successful enhancement of the victim's role in the criminal justice system will ease the ineptitude and will perk up the overall quality of criminal justice system.

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Afterthoughts

Impact Assessment of the National Environmental Institution in Nigeria on Environmental Protection

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Surrogacy: Enablement or Exploitation?

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