CHAPTER – III

VICTIMS OF CRIME IN PRIMITIVE SOCIETY

In the primitive societies the responsibility of protecting oneself against crimes and of punishing the offender was rested with the individuals, which reflected the ideas of retributive and restitutive justice. As the society has got organized in the form of states, the responsibility of protecting the members against the criminals and punishing the visitors of criminal acts shifted to the political authority. The remedies however continued to be based by and large on the restitutive justice who requires compensation by the wrong doer to the victims and its family members. This was the position obtaining in the old Germaine law, Code of Hamurabi, Law of Moses and the ancient Hindu Law. Later the same ideas of restitution of, along with the elements of retribution were followed in the Islamic system. Besides restitution the philosophy based on compensation was also believed to incorporate the concept of atonement and expiation on the one hand and that of punishment on the other.

The third stage as reflected in the contemporary world was reached at the end of medieval age with the idea of crime as an act against the state taking firm roots along with the vesting of more powers in the political authority even if theoretically not unsound. As such in the practice it gives rise to the unfortunate situation in which victim of crime became an irrelevant factor in the administration of justice, the state being merely concerned with the punishment and to a lesser extent reformation and rehabilitation of the offender, completely overlooked in the fate of the victims, which is a very important aspect to establish rule of law and for maintenance of peace and law and order in the society. The rehabilitation of the victim or his dependants in case of his death is most important which has been totally overlooked by the state, and it has become necessary to provide rehabilitatory measures for the victims of crime.

The role, importance, and visibility of the victim have varied greatly in human societies. These variations reflect the historical evolution of legal concepts, as well as diverse approaches to the interpretation of such notion as that of individual responsibility. At one time in history, the victim of crime enjoyed the central position in the
administration of the criminal justice. Over the centuries, however, the victim has evolved as a mere witness in the criminal proceedings. In this chapter we will attempt to trace the rise and fall of victim in the criminal justice system in the international perspective.

Crime and criminal has been recognized throughout the history of mankind. So also in the criminal-victim relationship, the aspect which was recognized although was the harm, injury, or other damages caused by the criminal to his victim. Till the end of II World War there has been virtually no consideration of the victim's participation in the wrong-doing or victim's perception of criminal justice system or compensation to the victim of crime by the criminal law and criminologist. But historically the victim once enjoyed the golden age during which his important role was recognized and also an emphasis was given for due consideration to compensation recognizing his right to physical and economic well being in terms of human dignity.

The domination role of the victim originated from the middle Ages and this is very evident from the system of "composition" (compensation). ¹ Though the victim enjoyed a golden age in the Middle Ages, then also it must be admitted that the restitution to the victim of crime is an ancient practice, and which was inseparably linked with the system of punishment.

The basis of primitive law was the reparation by the offender or offender's family to the victim for his loss or injury. At that time there was no political institution to enforce law and punish the criminal, so the right to punish was vested with the victim or victim's kin. The victim or victim's family was allowed to punish a criminal or directly receive goods or money as compensation for a crime.²

In the ancient societies, redressal for personal wrongs was in the hands of the individual, as he was alone, in his struggle for existence. He single-handedly faced the attack and harms caused to him by external forces. He had to take the law in to his hands and punish the aggressor in accordance with the prevailing practices accepted by his society. He carried out the punishment in form of revenge aimed at deterrence and compensation. It was the private revenge and compensation was exclusively personal.³

In primitive societies criminal-victim relationship was the reflection of existence for
survival and power struggle and it was not based on the idea of responsibility but on the theory of survival. So the idea of prevention of future crime guided the victim to ruthless retaliation and aggressively acquired compensation. Attack was the defence against attack.

When gradually the primitive groups were firmly established, the concept of social control came into force and an offence against an individual was considered as an offence against his clan or tribe. Although the punishment to be exacted from the offender was neither codified nor always standardized by the type of offence, some form of restitution or compensation was invariably involved in the interrelationship between the victim and the offender. In this respect, the individual victim's position was very often taken over by his clan or tribe. This can be considered as the emergence of the concept of collective liability.

Injury to the person was decided in accordance with the seriousness of the offence and social evaluation of the aggrieved party. Typically, as among the Ifugao in North Luzon, the determination of damages involved five critical factors, that is, (1) the nature of the offence, (2) the relative class and position of the litigants, (3) the solidarity and behavior of two kinship involved in the dispute, (4) the personal tempers and reputation of the two principals, and (5) the geographical position of the two kin groups.

There were also traditional formulas of damages for various offences. So also punitive damages were pecuniary because of the property and money orientation of the society. For instance, in the case of rape of a married woman by married man, both her own and her husband's kin groups were offended. Each collected damages equivalent to those paid in the case of aggravated adultery. If the rapist were married, he paid these damages not only to the woman's and her husband's but also to his wife's skin.

With the progress of society and the changing values, the material culture reached a higher level of acceptance with the growing concept of private property. At this stage any danger to private property was equated with the physical and mental hurt. Thus, a trend towards composition is a noticeable corollary of the social and economic evolution.

Early references to compensation are sporadic and do not offer any clear picture. The death fine is referred to more than once in a Homer, in the Ninth Book of Iliad. Ajax, in
reproaching Achilles for not accepting Agamemnon’s offer to reparation, reminds him that even brother's death may be appeased by a pecuniary fine and that the murdered having paid the fine may remain at home free among his own people.

Not only in the time of the Greek, but in still earlier ages, where Mosaic dispensation was established among the Hebrews, are traces of restitution to the victim apparent. That Dispensation, in its penal department, took special and prominent cognizance of the rights and claims of the injured persons, as against the offender. For example, if two men were involved in a fight and one hit the other with a stone or with his fist with the result that the opponent was badly injured but did not die, the perpetrator was required to pay for the loss of the injured man's time and cause him to be thoroughly healed. For injuries both to person property, restitution or reparation in some form was the chief and often the only element of punishment. Among Semitic nations the death fine was the general practice and it continued to prevail in the Turkish Empire.

Reparation or compensation as a form of punishment is found to be recognized from ancient time in India. In ancient Hindu Law, during Sutra period, awarding of compensation was treated as a royal right. The Law of Manu requires the offender to pay compensation and pay the expenses of cure in case of injuries to the sufferer, and satisfaction to the owner where goods were damaged. In all cases of cutting of a limb, wounding or fetching blood, the assailant shall pay the expenses of a perfect cure, or in his failure, both full damages and a fine of some amount.

In ancient Hindu Law, the law givers were fully aware of the necessity of directly compensating the victims of crime. Thus, Manu in Chapter VIII, Verse 287 says: "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 amercement and expenses as a fine to the king)."

In Chapter VIII, Verse 288, Manu says: "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."

Manu thus, provides direct reparation to the victim of crime apart from payment of fine to the king (the State).
In Chapter XXI, Verse 10, Brihaspati says: \(^{14}\)

"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".

In Chapter XXII, Verse 7, he says:

"A merchant who conceals the blemishes of an article which he is selling, or mixes bad and 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 law of Vishnu and Yajnavalakys also advocates compensation to the victim of crime for their injury. Yajnavalakys, 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 from defect.\(^{15}\)

Again, traders or business men who lost their property while traveling through the kingdom were also compensated.\(^{16}\) So also during Islamic rule restitution and atonement was a recognized form of punishment.

The law of Moses also provided four-fold restitution for stolen sheep and five-fold for the more useful one.\(^{17}\) The code of Hammurabi (C. 1728 -1686 B.C.) instituted by the king of ancient Babylonia, is one the oldest legal codes and almost generous in compensating the victims. It was the victim who was considered first, not the offender. In Babylon, a theft victim was not repaid with goods like value; rather, each crime carried different restitution. The theft of goods while they were being transported was punishable by a five-fold restitution; the embezzlement of a merchant's money by one of his employees required a three-fold payment; and stealing from priesthood of State, a more serious offence, could only be repaid by the death of the offender as punishment. If a thief was not apprehended, even then the Babylonian state restored the property of the victim stolen, provided the victim had itemized his property in the presence of God.\(^{18}\) Hammurabi 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 has 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 10sl) the city or the mayor shall pay one
manch of silver to his kins folk.

Every victim was avenged and compensated in accordance with the status. The
time 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 aristocate, the
criminal himself was blinded in one eye.

Babylonic law had a considerable influence on kannaites in Palestine, and there are
similarities between the code of Hammurabi and the restitution of the old testament.
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.

The Germanic tribes enjoyed more rights than those of Rome. By the 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 victim's status, age, sex.

In spite of the fairly close relationship between the ancient Roman criminal and civil
law, it is not easy to find reliable information concerning the position of the victim or
restitution to him. According to the law of the Twelve Tables the codification of Roman
oral law, written by ten commissioners in 451 B.C., a thief who was caught in the act of
committing the theft was obliged to pay double the value of the stolen object. In cases
where the stolen object was found in a search of his house, he was to pay three times the
value, or four times the value if he resisted the execution of the house search. He was to
pay four times the value of the object if he had stolen it by force or threat of violence. In
certain cases the kinship was exposed to the revenge of the victim.

In the case of slander, also, the insulting person had to pay. The sum to be paid was decided by the magistrate according to the rank of the victim, his relation to the offender, the seriousness of the offence, and the place where it was committed. In any case, while the history of Roman law shows some general decline from its classic stage to the Justinian period, its system of responsibility had reached higher level than did any previous law.

Because of the increasing importance of economic goods the dialectal conditions started to change and the system of responsibility was transformed. Blood-feud faded out and physical retribution began to be replaced by financial compensation. The criminal and his victim introduced the redemption of revenge and submitted the judgment of guilt to negotiation. In most cases, the agreement on the question of compensation still involved both interested political entities - the criminal's tribe, clan, or family and that of the victim. It took some time until the individual offender and the individual victim stood somewhat as they had in the era of private revenge, and negotiated guilt and punishment as two individuals.

However, it was only toward the end of the middle Ages that the concept of restitution was closely related to that of punishment and was temporarily included in penal law. Still, the victim's role in the crime itself was not considered at all and his participation in criminal procedure served only to gain satisfaction for his injury. For example, under several system in early American law, a thief in additions to his punishment was ordered to return three times the value of the stolen goods, or, in the case of insolvency, to place his person at the disposal of the victim for a certain length of time. In the Germanic Common Laws a further refinement transformed retaliation into the system of composition; even murder could be compensated for between the wrongdoer and the nearest relative of the slain.

3.1 Victim in the Medieval Period

The change from vengeful retaliation to composition was part of a natural historical process. As tribes settled down, reaction to injury or loss became less severe. Compensation to the victim served to mitigate blood feuds, which, as tribes became more
or less stable communities, only caused endless trouble because in injury would start perpetual vendetta.21 Composition offered an alternative that was in many ways equally satisfactory to the victim. In Arbia, 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.22 Among German tribes, the criminal was humiliated to some extent by compensation, which appeased the victim's desire for revenge.23 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.24

Composition combined punishment with damages. For this reason it could be applied only to personal wrongs, not to public crimes25. This was only why, in its first stage of development, it 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.26 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 the "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 free-nom man 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".27 Thus, the "value" of human being and their social position were involved in determining compensation, and a socially stratified composition developed. By the time of Alferd in 871, the feud was resorted to only after compensation had been requested and refused. The "Dooms of Alfreid" provided a scale of monetary penalties whereby the knocking out of the front teeth was calculated at a rate of eight shillings to be paid to the victim, the knocking out of an eye tooth or a molar being calculated at four shillings and fifteen shillings respectively. These dooms detailed the
compensation for a variety of crimes against the person.\textsuperscript{28}
It is difficult to pinpoint the start of new developments in community judicial control, 
since the community traditionally exercised a certain collective control over the extent of 
compensation. The bridge to state criminal law had as a support the system of 
composition, and the settlement by periodical tribal assemblies of the amount to be paid 
provides an early example of judicial proceedings. Soon after the emergence of 
composition, some laws elaborated all intricate system of compensation. Every kind of 
blow or wound given to every kind of person had its price.\textsuperscript{29} From the many differences 
in the amount of damages and in the "value" of the victim, a complicated system of 
regulation evolved that culminated in the earlier codified law of many peoples 
particularly that of the Anglo-Saxons.\textsuperscript{30} Several aspects of the law of Aethelred and of 
Alfred are mentioned by a Clearance R. Jeffery: "Henceforth, if anyone slay man, he 
shall himself bear the vendetta, unless with help of his friends he pay compensation for it 
within twelve months to the full amount of the slain man's wergild, according to the 
inherited rank... The authorities must put a stop to the vendettas. First, according to the 
public, 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 If a man has spear 
over his shoulder, and anyone is transfixed thereon, he shall pay the wergild without the 
fine. If a bone is laid bare, 3 shillings shall be paid as compensation. If a shoulder is 
disabled, 30 shillings shall be as compensation.\textsuperscript{31}

Presumably outlay, which resulted from a failure to provide composition, developed 
in connection with these tariff regulations. If the wrongdoer was reluctant to pay or could 
not pay the necessary sum, he was declared a outlaw: he was to be ostracized, and 
anybody might kill him with impunity.\textsuperscript{32}

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.\textsuperscript{33}
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, compensation for criminal offences consisted of two payments that is, one to the victim's family (wer, for homicide, Bot for injuries) and the other to the ruler of king (wite).

The next step was for the State to claim all monetary compensation due to a victim. 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 double payment continued; but gradually the king took all of it. Discretionary money penalties took the place of the old write, while the both gave way to damages, assessed by a tribunal. 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 separated from criminal law and became a special field 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 a 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 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 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.

3.2 The Decline of the Victim

After the Middle Age, restitution, as a concept separate from punishment, seems to have been on the wane. Little as we know about crime today, even less was known then. No other possible aspect of the victim's role was taken into consideration, and the victim became the "poor relation" of the criminal law. The decline of restitution as a criminal sanction has been traced to several developments in the criminal justice system.

With the growth of centralized legal systems, however, restitution was gradually phased out, Government took over; crimes were seen as act against the State, and the State assumed the role of the Prosecutor, it was the State that divided what punishment the offender should undergo, and in a sense in return for taking upon itself the major task of dealing with the criminal offences, the State stood to gain from any penalties inflicted upon offenders which might carry with them monetary rewards; the fine-payment to the State, took over from restitution-payment to the victim. In the process of transfer from a personalized system to an impersonal state-run system, the victim was virtually forgotten by the system. In the evolutionary process, the government became stronger familial groups were replaced by the sovereign as the central authority in matters of criminal law. During this process the interest of the state gradually over shadowed and supplanted those of the victim. The connection between restitution and punishment was severed. Restitution to the victim came to
play an insignificant role in administration of criminal law. The victims rights and the concept of compensation and restitution were separated from the criminal law instead became incorporated into the civil law. 35

The decline in the oenological importance of restitution and non-recognition of the victim's functional role in crime gained theoretical support from the endeavor to find different bases for penal and civil liability. Victims who want that offender should make good of the losses are left to the civil justice system.

The theories that distinguished between civil and penal liability reveal two trends. According to the subjective view, penal liability results from deliberate infringement of the law. It differs from civil liability in that the latter does not involve strong deliberate opposition to the will of the state. This theory fails to take into account criminal offences committed through negligence. On the other hand, there are certain kinds of deliberate infringement that give rise to civil liability only.

According to the objective view, however, penal wrongs involve a direct injury to the victim, which exists in and of itself, apart from any statement made by the victim. This differs from civil liability, which is an indirect injury solely dependent on the victim's statement. This theory fails to consider that infringement of the civil law can exist independently of the statement of the victim. On the other hand, volenti non fit injuria has some application to criminal law.

Generally speaking, since the era of composition, the conventional view is that a crime is an offence against the state, while a tort is an offence only against individual rights. 36 Also, in accordance with this thinking, crime means only the offender and his offence and the victim's relationship to the crime is viewed in a civil rather than in a criminal point of view.

However, this may be, the system of compensation surrendered only after a struggle; even after the German-Busse penal law there are records of victims who, in spite of the common law character of the criminal law, asked for indemnification and personal satisfaction as well as public punishment. The connection between crime and restitution might have lessened, but could not be completely disregarded, even after the introduction of the procedure of inquisition, in which the theoretical and between the
demands of penal law and those of the victim are most acute. Court practice in the sixteenth and seventeenth centuries made possible the so called adhesive procedure which opened the way for discretion by a court, concerning the victim's claim for restitution, within the scope of the criminal proceedings. Though the original rationale for victim restitution diminished over the years, the potential for restitution itself never completely disappeared as a criminal sanction. Penal codes of the nineteenth century also seemed to give some support to the idea of restitution in the form of the adhesive procedure. This procedure appeared in the laws of some states. Later on, however, the situation got worse, and even in the criminal procedure, the idea of restitution was kept alive only by the force of tradition.

3.3 The Resurrection of the Victim: The International Scene: The Individualistic and the Universalistic Approaches

The victim of crime, after occupying a position of almost complete obscurity for centuries, has now emerged and been accepted as a person worthy of attention in nations across the world. For legal historians and comparative lawyers this "rags to riches" story should provide. Some absorbing questions for study: why, for instance, have schemes to compensate innocent victims of crime flourished in present decades of twentieth century after failing to flower in earlier periods of criminal law reforms.\textsuperscript{37} The answer to the question may be attributed in part to changed socio-economic conditions. Despite being an era of great innovations and change in criminal law, the nineteenth century was dominated by policies of laissez-faire which made governments reluctant to implement social welfare programs, including those effecting victims of crime. The situation has changed gradually and restitution and compensation programs as a social welfare measure now predominate in the legislative platforms of governments in most advanced nations where partial or total responsibility for social casualties is now accepted.

Advocates of restitution and defenders of the victim's role in the judgment of crime did not look on with folded arms: they could not accept the deterioration of the victim's position. They thought of the victim's problem only in relation to his compensation. Sir Thomas More suggested in 1516 that restitution should be made by the offender to their victims and that offender should be required to labor on public works.\textsuperscript{38} The philosopher Herbert Spencer in the last century proposed that the prisoners income, derived from
prison work, should be utilized for making reparation to his victim and that he should be kept in prison until restitution is completed.\textsuperscript{39} In 1847 Bonneville de Marsangy outlined a plan of reparation,\textsuperscript{40} and later on, several international prison or penitentiary congresses enthusiastically argues for the reparation to the victim of crime. At the International Prison Congress held in Stolckhome in 1878 Sir George Agnue, Chief Justice of New Zealand, and William Tallack, a British penal reformer, proposed a return in all nations to the ancient practice of making reparation to the injured.\textsuperscript{41} Raffaele Garofalo raised the question at the international Prison Congress held in Rome in 1885\textsuperscript{42} and wrote that reparation to the victim is "a matter of justice and social security".\textsuperscript{43} The problem was also discussed at the International Prison Congress held at St. Petersburg in 1890 and at the International Penal Association Congress held at Christiania in 1891. At this Congress the following conclusions were adopted: \textsuperscript{44}

1. Modern law does not sufficiently consider the reparation due to injured parties.

2. In the case of petty offence, time should be given for indemnification.

3. Prisoner's earnings in prison might be utilized for this end.

The problem of victim compensation was exhaustively discussed at the International Prison Congress held in Paris in 1895.

At this Congress it was felt that modern laws were particularly weak on victim compensation and that, in some respects, the laws of certain countries were harder on the victim than on the offender. The final resolutions of the Paris Congress were similar in principle to those made in 1891 at Christiania. At the Sixth International Penitentiary Congress, held at Brussel in 1900, reparation issue was the subject of exhaustive discussion. Prof. Prins, of the University of Brussel proposed that reparation to the victim should be taken in to account as a condition of suspension of sentence or conditional release after imprisonment.\textsuperscript{45} American delegate to Brussels Congress in his subsequent report to U.S. Congress summarized Garofalo's recommendations as follows\textsuperscript{46}:

In the case of prisoners having property, steps should be taken to secure it, and to prevent illegal transfer. As to insolvent offenders, other methods of constraint must be sought. The minimum term of imprisonment being sufficiently high, its execution should
be suspended in the case of offenders who beyond the cost of the process have paid a sum fixed by the judge, exception being made in case of professional criminals and recidivist. The state treasury would gain, since it would not only be spared the expenses. The delinquent be punished and the injured party reimbursed. In case of serious offences in which imprisonment is deemed necessary, the prisoner would be released on parole after certain time of imprisonment, depend on the willingness of the prisoner to reimburse his victim from his earning saved in the prison. He argues a public fund to assure reparation for those who cannot obtain it in any other manner.

The members of the Brussels Congress could not decide on any specific proposal on restitution or to apply earning of the prisoners towards compensation. It has been said that the Brussels Congress conclusion "effectively managed to bury the subject of victim compensation as a significant agenda topic at international penological gatherings from thenceforth to the present time. 47

The problem of restitution again became the subject of exhaustive discussion by the most respected penologists of the time. Kathleen Smith 48, a British Penal Officer, advocated for the adoption on the "self-determinate sentence as a means of compensating victims of crime and rehabilitating offenders. Under the scheme the length of sentence an offender will be determined primarily by the efforts he himself made to pay restitution to his victim. His sentence will be set in terms of money owed to the victim. The offenders earning while in prison will be utilized to make restitution and as payments are made, the sentence will be reduced.

Sentence for crimes involving victims will include: (1) compensation due to the victim for physical or psychological damage sustained, and (2) supplementary fines to be levied at the court discretion. In case of homicide a set scale would be utilized to determine the amount of compensation due to the surviving spouse and to each child or dependent of a given age. In offences involving property the offender’s sentence will be based primarily on the value of stolen or damaged. The court will direct what part, if any, of the sentence can be paid from private funds and what part will be paid from the earning of the offender while in prison 49

It has frequently been noted that the separation of civil and penal function is a serious defect in the system of fines, which go only to the state, while the injured victim
suffers all the hardships of the civil process. However, except for sporadic efforts, there is
still a tendency to move the question of compensation or restitution more and more out of
criminal procedure, probably in the desire to keep the victim from being involved in it. The argument clearly indicates that the victim is not accepted as an important role
player in crime. History suggests that growing interest in the reformation of a criminal is
matched by decreasing care for an interest in the victim.

And the victim is continuing to lose ground; if one examines the legal systems of
different countries, one rarely finds an instance in which the victim of a crime can be
certain to expect full restitution.

Similarly, hardly any legal system, takes fully into consideration the victim’s
contribution to a crime in those rare cases where there is state compensation, the system
either is not fully effective or does not work at all. Where there is no system of state
compensation, civil procedure and civil execution generally offer the victim insufficient
compensation. While the punishment of crime is regarded as the concern of the state, the
injurious result of the crime—that is to say, the wrong or damage to the victim— is regarded
almost as a private matter. It recalls the lonely man of the early days of social
development, who by himself had to find compensation, and who by himself had to take
revenge against those who harmed or otherwise wronged him. Today’s victim cannot
seek satisfaction on his own, since State forbids him to take the law into his own hands.
REFERENCES

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. Ancient Law; Sir Henry S. Maine, Oxford Library Press, (1946), p. 307.
8. William Tallack, Supra, page 39, f.n.1, pp. 6-7
10. Richard R. Cherry, supra, page 64, f.n. 1, p.11.
22. E. B. Tyler, Anthropology, New York, (1989) c.f I. L. Gillin, Criminology and
24. Tacitus, Germani, Chapter 21, c.f J. L. Gillin, Supra, fn.1.
27. Ephrasim Ermenton, _Introduction to the History of the Middle Age_. Boston. (1888) p.87 ; Barnes and Teeters. _SPE_ page 75. fn.3. p.41.


30. Barnes and Teeters, _Supra_ page 75, fn. 3, p. 401.


39. B. R. Jacob, _Supra_ page 87. fn.1, p. 162.


41. William Tallack, _mpra_. page 37, fn.1, p. 3.


44. Stephan Schafer, _Supra_. page 38, fn.1, p.10.

45. Barrows, Repon on the Sixth International Prison Congress, Brussel, 1900 (1903) at pp. 25,26.


47. Gilben Geis, State Compensation to victims of violent crimes. _Supra_. fn.2, p.89.


49. _Ibid_., p.59.


51. Stephen Schafer, _Supra._ page 38.