Human dignity is the core of civilized society. “Human rights are what reason requires and conscience commands. They are us and we are them. Human rights are rights that any person has as a human being. We are all human beings; we are all deserving of Human rights. One cannot be true without the other. ... One cannot pick and choose among human rights, ignoring some while insisting on others. Only as rights equally applied can they be rights universally accepted. Nor can they be applied selectively or relatively, or as a weapon with which to punish others. Their purity is their eternal strength.” Man enjoys some rights which are considered inalienable, inherent, fundamental, basic and above all universal ones and the enjoyment of which is the foundation of freedom, justice and peace in the world. Every human being irrespective of his status has a right to live and that too with dignity. This is the basic fundamental principle underlying all laws relating to human rights. Human rights, which are claimable by a living person, are generally defined as those rights which every human being is entitled to enjoy and to have protected. Every human being enjoys these rights sheerly by virtue of being a member of human species irrespective of any other factor. Universal Declaration of Human Rights proclaims that all human beings are “born free and equal in the dignity and rights and everyone is entitled to all these rights and freedoms set forth in the Declaration without distinction of any kind such as race, colour, sex, language, religion, potential or other status.” All human rights are derived from the dignity inherent in the human person who is the ‘central subject’ of human rights. These rights are inherent in our natures which help us to fully develop and use our human qualities, talents,
conscience and satisfy our spiritual and other needs also. Without them we cannot live as human beings. Denial of human rights not only is a tragedy and travesty of justice but also gives birth to political and social unrest which sow the seeds of conflict and violence. Individual rights must always be respected irrespective of political system or circumstances. Human rights are a result of man’s long struggle for the realization of his human values and are deeply rooted in the history of human race. The main objective for their protection is to keep peace. It is but human nature rather human agony that an individual has to fight to claim his due share, to claim his right. The pain of torture whether physical or mental can well be understood by the one who himself has suffered. From the stage of commission of offence, starts the quest of victim for justice. According to Bentham⁴ “victims of crime should not be abandoned, rather the society to which they had contributed and which ought to have protected them, owed them an indemnity. In other words, because the ‘social contract’ between victim and state has been breached, the victim has a legitimate claim against the state.” No dharma, no civilized state or society allows ‘might is right’ to avenge for the wrong done to a victim. Instead, state itself shoulders the responsibility for providing justice to the victim by following a lawful procedure. When finally justice is provided to the victim, his quest for justice comes to an end.

2.1 Historical Development Of Criminal Law

The history of criminal law is not only of fascinating interest but an imperative necessity for modern societies where rule of law prevails.⁵ Criminal law is conventionally defined as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer and which are enforced by punishment administered by the state.⁶ Criminal law may be regarded as an instrument of formal social control whereby an organized effort is made to regulate certain areas of

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⁵ Nigam, R.C., ‘Laws Of Crime In India’ (1965) Asia Publishing House, Bombay, at 4
⁶ Sutherland, Edwin H. and Cressey, Donald R., ‘Principles Of Criminology’ (1968)The Times of India Press, Bombay at 4
The law of crime is as old as our civilization. In every organized society certain acts or omissions are prohibited on pain of punishment. Criminal law is the mirror or reflection of the public opinion of the particular time because an act or omission which is a crime in one country may not be a crime in another country. The history of primitive criminal law may be said to have passed through four stages. In the first stage it involved the idea of injury to the State or collective injury, but the State allowed the wronged to avenge himself on the wrongdoer. In the second stage when crimes are multiplied the State is compelled to delegate its powers to particular Commissions and not individual persons wronged, not only to investigate the crime committed but also to punish the particular offender if he is proved to be guilty. In third stage, the legislature did not wait for the commission of crime in order to appoint a Commission to investigate and punish the criminal. It appointed a Permanent Commission to try certain classes of crimes in the expectation that they would be perpetrated. The fourth stage is reached when these Commissions instead of being periodical or occasional, are constituted into permanent benches, their judges being appointed according to definite rules and their jurisdiction defined and the specific offences and the penalties imposed also definitely laid down.

In the ancient society, the evolution was from individual to family and from family to State. The only interest of the individual was self-preservation and in the latter stage, the only interest of the family was to protect it against foreign attacks. After these two stages, law became more organized. The concept of criminal law emerged when the custom of private vengeance was replaced by the principle that the community as a whole is injured when one of its members is harmed. Thus, the right to act against a wrong doing was taken out of the hands of the immediate victim and his family and was instead granted to the State as the representative of the people.

2.1.1 Roman Criminal Law

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8 Nigam, R.C., 'Laws Of Crime In India' (1965) Asia Publishing House, Bombay, at 4
Roman law, specially its criminal law, ‘has exercised greater or less influence on the
corresponding part of the law of every nation of Europe, though in all it was far more
deeply and widely modified by legislation than any other part of Roman
jurisprudence.’\(^{10}\) The oldest part of Roman criminal law was contained in the ‘Twelve
Tables’ (420 B.C.), out of which eight tables deal with crime. Laws were executed
according to these tables. The next stage was the development of Roman criminal law
during the period of emperor Justin. His lawyers divided crimes into the following
classes:

- **Publica Judicia**
  These were the specifically forbidden crimes by particular laws having pre-
defined penalties like death or exile.

- **Extra-Ordinaria Crimina**
  For these offences more specific punishment was provided as it was according to
  the discretion of the judge.

- **Privata Delicta**
  For such offences a special action was set apart involving a definite result for the
  injured party. These were the private wrongs.

### 2.1.2 English Criminal Law

The development of the English criminal law can be traced back to the law of
succession of kings. It had begun with the king Ethelbert and ended during the reign
of Henry I with the compilations made, known as Legas Henrici Primi. The earliest:
English criminal law provisions relating to number of offences such as adultery,
perjury, homicide, rape etc. there was a specific procedure for trials which was tried
by the jury and trial by battle i.e. appeal. Many reforms were introduced in the system:
of criminal trials from eighteenth century onwards.

### 2.1.3 The Mohammedan Criminal Law

The Mohammedan criminal law had its origin in the holy Quran, which makes no
distinction between crime and civil obligation and social duties. The concept of sin,
crime, moral and social obligations, religion, has been blended in the concept of duty.

\(^{10}\) Nigam, R.C., ‘Laws Of Crime In India’ (1965) Asia Publishing House, Bombay, at 8
Kazis had the power to administer criminal justice. The punishment was four folded, namely:\(^{11}\)

- Kisa or retaliation
- Diyut or blood money
- Hadd or fixed punishment
- Tazir and Syasa or discretionary or exemplary punishment

During the Muslim rule, there was no uniformity in the administration of criminal justice and was a complex affair.

### 2.1.4 Criminal Law In Ancient India

Arth Shasta, Manu Samriti and Yajnavikya Samriti are the three leading law codes of ancient India. The seeds of criminal jurisprudence can be found in the works of Manu, an ancient philosopher. The principal offences according to Manu were:

- Assault
- Battery
- Defamation
- Theft
- Robbery
- False
- Evidence
- Slander
- Libel
- Criminal Breach of Trust
- Adultery
- Gambling
- Homicide etc.

Punishment prescribed for the offences was based on scientific principles. They were:

Censure, Rebuke, Fine, Forfeiture of property and Corporal punishment which included Imprisonment, Banishment, Mutilation and Death. The measure of punishment was determined according to following considerations: 12

- The nature of offence
- Time and place of offence
- Strength, age, avocation and wealth of the accused

2.1.5 Criminal Law In British India Regime

In India, Mohammedan criminal law prevailed when the Britishers took over the reign of the country. At that time there were many defects in the Mohammedan criminal law, which resulted in a chaos. Passing of Regulating Act, 1773 and setting up of a Court in each district were the first few attempts to reform criminal justice. In 1834, a Commission was appointed in order to bring about a uniformity in criminal law which submitted its two reports in 1845 and 1846. After some modifications the Draft Penal Code came into force on 1st January 1862. The object of the Indian Penal Code was to provide a law which defines various offences and prescribes punishment for them.

Earlier, there was no uniform law of criminal procedure for whole of India. There were separate Acts, basic in their character to guide the procedure of the courts. It was the Criminal Procedure Code of 1882 which gave for the first time a uniform law of procedure for whole of India both in Presidency towns and in the moffusil. It was replaced by Criminal Procedure Code, 1898 which was amended many times. After various amendments and reports of the Law Commission, a Draft Bill no. XLI of 1970 was introduced in Rajya Sabha on December 10, 1970. The Bill was referred to a Joint Select Committee of both the Houses of Parliament and finally emerged in its present form as the Criminal Procedure Code, which came into force on 25th January 1974. The object of the Code is to provide a machinery for the punishment of offenders against the substantive criminal law such as Indian Penal Code. Criminal Procedure Code has been enacted to supplement the Penal Code by providing rules of procedure to prevent the offences and bringing offenders to justice. It explains the procedure to be followed at various stages of investigation, inquiry, trial, conviction

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12 Nigam, R.C., ‘Laws Of Crime In India’ (1965) Asia Publishing House, Bombay, at 17
etc. Hence, criminal law provides the ultimate means to society for the protection of its individuals. In fact, criminal law can be said to be the achievement of criminal justice. A victim cannot be ignored in a criminal justice system. He cannot be a forgotten person. Justice Krishna Iyer in his book ‘Off The Bench’ quoted:\textsuperscript{13}

‘Much about the moral fiber of a society can be learnt from the way it deals with crime. It is not enough to treat criminals with as much compensation as we can, especially when this liberal spirit is carried to the excess of interfering with crime prevention as the courts have done. It’s about the time society showed a little moral strength by acknowledging that victims, real people, are hurt by crime and that it is to them that criminals owe their debt.’

2.2 Historical Background Of Compensation To Victims Of Crime:

“History is a pattern of timeless moments.”\textsuperscript{14} Every present has a past. To understand the present, it is very essential to co-relate it with the past. The concept of compensation too, is a witness to its zig-zag but a firm past. In the initial year of human civilization when the humans started living together especially after stone age because of absence of rule of law and authoritative political institution, right to punish was with the individual and the concept of compensation existed at that time also.

Then came the era in which the offence against an individual lost its individualistic character and the offence used to be considered as the offence against the tribe to which the individual belonged. From this era collective responsibility clan started replacing the victims’ rights. The next stage started with the advent of strong monarch after medieval period in which the criminal law changed in all its disciplines. The position of victims’ right to compensation remained unheard because of the notion that State is the parent of its subjects and crime is breach of peace of State. So it was the State which had the right to punish and get monetary compensation. There is no clear information as to when the concept of compensation actually began but there are scattered references which throw light on its ancient origin. The ancient practice of

\textsuperscript{13} Goyal, K.N., ‘Human Rights And Criminal Justice’ Cri.L.J. (2002) J.278 at 302
reparation can be founded in the Manusamriti, Code of Hammurabi, the Laws of Moses and Law of Roman Empire.

2.2.1 Vedic Period:
In the vedic period, justice was based on dharma. Detailed rules were laid down for the guidance of the king. It was his duty to uphold the law. One of his chief duties was administration of justice according to local customs and usages and the written codes. It was obligatory on him to enforce not only the sacred law of the texts but also the customary law of the subjects. The king was the fountain head of justice. Main crimes were theft, burglary, robbery and cheating. Cattle lifting was the most common of all. Monetary compensation was given to the relatives of the man killed. To prove their innocence the criminals were subjected to fire and water ordeals. In the time of Manu, compensation was regarded as a penance; hence it could be given to the priests. Manu clearly says that: “If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expenses of the cure or the whole.” He further says that: “He who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage.” The quotes regarding the same can be found even in the works of Brihaspati.

Narada points out that the judicial proceeding has four feet, four bases and four means. It benefits four, reaches four and produces four results. Virtue, Judicial Proceedings, Documentary Evidence and Royal Edicts are the four feet of a law-suit, and each following one is superior to the one previously named. Here virtue is based on truth, judicial proceedings rest on the statements of the witnesses, documentary evidence consists of declarations reduced to writing and an edict depends on the pleasures of the King. Similarly there are four parts of a trial:

- The connection must be examined

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15 Mulla, 'Hindu Law' (1972) Tripathi Private Limited, Bombay, at 14
17 Schafer, Stephen, 'Restitution To Victims Of Crime', (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 3
The title must be ascertained
The case and
A decision is to be given

Because the four means of conciliation and the rest are adopted, it is said to have four means, and since judicial procedure protects the four orders it is said to benefit four. The four results of judicial proceedings are:
- Justice
- Gain
- Renown
- Esteem

Since the judicial procedure affects criminals, witnesses, the assessors of the court, and the King to the amount of one quarter each it is said to reach four. There are four of judicial proceedings such as:
- Declaration
- Answer
- Trial
- Deliberation of the judge regarding the onus-probandi

Under Smriti law, a person who killed a Kshatriya was to give 1000 cows to the Brahmans for the expiation of his sin, 100 cows for the murder of a Vaishya and 10 cows for the murder of Shudra.\(^\text{19}\)

Sutra period also recognized the concept of compensation. ‘Nyāy’, one of the systems of this period recognized compensation as a royal right: for murder, the offender was obliged by the king to compensate the relatives of the deceased or the king or both.\(^\text{20}\)

2.2.2 Law Of Moses:
The Law of Moses, given by Moses, a thirteen century B.C. biblical Hebrew religious leader, a law giver, a prophet and a military leader, provides three Codes namely,\(^\text{21}\)

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\(^{19}\) www.drgokuleshsharma.com/pdf/CRIME%20IN%20ANCIENT%20INDIA%20.pdf accessed on 10-04-2008

\(^{20}\) Schafer, Stephen, ‘Restitution To Victims Of Crime’, (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 3

\(^{21}\) www.realtime.net/~wdoud/topics/lawofmoses.html accessed on 10-07-2008
a) Commandments [Laws of divine institution]
b) Ordinances [Spiritual Code]
c) Judgements [Social Code]

**Code I.** The Commandments, contained the laws of divine institution and establishment, including the moral law. This is the Magna Carta or Bill of Rights of human freedom. The Commandments provide laws of human freedom and provide a divine standard to which the sinner can compare himself and his actions and recognize that he is a sinner and needs a saviour.

**Code II.** The Ordinances, or the spiritual code, included a complete doctrine of Christ and was designed to present Christ as the only Saviour. A ‘shadow’ Christology and a ‘shadow’ Soteriology (doctrine of salvation) is also included in the Ordinances. The Ordinances are designed to communicate God’s grace in both salvation and restoration to fellowship.\(^{22}\) It required four fold restitution for stolen sheep and five fold for the more useful ox.\(^{23}\)

**Code III.** The Judgments, was the social code, the divine laws of establishment applied to social living. Questions of diet, sanitation, quarantine, soil conservation, taxation, military service, how to spend a honeymoon, what to do about divorce, slavery, inheritances, etc., were all covered. It was a complete set of laws. The Social Code is designed to provide a true concept of a national function and freedom under the laws of divine establishment. Apart from the above, The Torah (Five books of Moses)\(^{24}\) distinguishes between offences against God and offences against man. In the first case the manifestation repentance consists in:\(^{25}\)

a) Confession of one’s sin before God (Lev.5:5; Num.5:7), the essential part being a solemn promise and firm resolve not to commit the same sin again.

\(^{22}\) Ibid

\(^{23}\) Schafer, Stephen, ‘Restitution To Victims Of Crime’, (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 4

\(^{24}\) Five books of Moses:
1. Genesis
2. Exodus
3. Leviticus
4. Numbers
5. Deutonomy

b) Making certain prescribed offerings (Lev 5:1-20)

Offences against man require, in addition to confession and sacrifice, restitution in full of whatever has been wrongfully obtained or withheld from one’s fellowman, with one fifth of its value added thereto (Lev.5:20-26). If the wrong man has died, restitution must be made to his heir, if he has no heir, it must be given to the priest who officiates at the sacrifice made for the remission of the sin (Num. 5:7-9). The Law of Moses laid down rules for the regulation and adjustment of temporal dealings. It defined a policy of what is called civil law. Under this law, the thief had to make good his theft to the person from whom he had stolen. If he stole an ox, he had to pay to him five oxen; if a sheep, four sheep.

A man was liable for any suffering or loss caused either by what he did or what he failed to do. If he injured a man so as to cause him to keep his bed, he had to pay for the loss of time and cause him to be thoroughly healed. If he caused death he was himself to die, unless in the case of an accident, and even then he could only escape by getting into one of six cities of refuge appointed in all the land. If a man, in building a house, omitted to add a battlement or parapet to the roof which was flat, he was to make good any injury that might result from people falling off. A man opening a pit and leaving it uncovered was to make good any loss caused by anybody’s beast stumbling into it. A man causing his beast to feed in another man’s field was afterwards to make restitution from the beast of his own field or vineyard. Fire breaking out in standing corn through someone having set fire to thorns, the damage was to be compensated by the person kindling the fire. In all manner of loss, whether of ass, ox, sheep or lost thing, the cause of the parties was to come before the judges, and the responsible party was to pay double, the judges were to investigate as a matter of duty and the parties to plead their own cause. Justice was quick and cheap, and anyone refusing to submit to the award was to be put to death.  

2.2.3 The Law Of Twelve Tables:
The Law of Twelve Tables (Lex Duodecim Tabularum) is an ancient law code that covers both civil and criminal matters. It is commonly believed that these laws served...
to codify existing custom. The actual codes do not survive nor do they exist in their entirety. The existing codes have been compiled from fragments and references to them by authors such as Cicero. The plebeians demanded written laws in order to protect them from the caprices of patrician magistrates, and again in 494, protested by seceding from Rome. Some modern scholars dispute this occurrence as an actual historical event. The tables provide not only a valuable insight into Roman law, but into Roman culture as well. The earliest attempt by the Romans to create a code of law was the Laws of the Twelve Tables. A commission of ten men (Decemviri) was appointed (455 B.C.) to draw up a code of law binding on both patrician and plebeian and which consuls would have to enforce. The commission produced enough statutes to fill ten bronze tablets. The plebeians were dissatisfied and so a second commission of ten was therefore appointed (450 B.C.) and two additional tablets were added. The Law of Twelve Tables also deals with the concept of compensation.

Table III

Law I

When anyone, with fraudulent intent, appropriates property deposited with him for safe keeping, he shall be condemned to pay double its value.

Table VII

Law I

27 www.exovedate.com/ancient_timeline_two.html accessed on 10-07-2008
28 In earlier Roman Republic, laws were kept secret by Patrician and enforced against Plebeian. A Plebeian person named Terentilius proposed in 462 BC that an official legal code should be published so that Plebeians would know the law. Patricians opposed it. But in 450 BC, a board of ten Consular members was appointed to draw up a code. Law of Twelve Tables was thus finally promulgated.

Law of Twelve Tables:
1. Civil Procedure
2. Civil Procedure
3. Debt
4. Parents and Children
5. Inheritance
6. Property
7. Real Property
8. Torts and delicts
9. Public law
10. Funeral regulations
11. Marriage
12. Crimes

29 www.constitution.org/sps/sps01_1.htm accessed on 10-07-2008
If a quadruped causes injury to anyone, the owner tender him the estimated amount of the damage, and if he is unwilling to accept it, the owner shall, by way of reparation, surrender the animal that caused the injury.

Law V
Anyone who turns cattle on the land of another, for the purpose of pasture, shall surrender the cattle by way of reparation.

Table XII

Law III
If a slave, with the knowledge of his master, should commit a theft or cause damage to anyone, his master shall be given up to the other party by way of reparation for the theft, injury or damage committed by the slave.

Restorative approaches to crime date back thousands of years. In Sumeria, the Code of Ur-Nammu (C.2060 BC) required restitution for offences of violence. In Rome, The Twelve Tables ordered convicted thieves to pay double the value of stolen goods. In cases where the stolen object was found in the course of a house-search, 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 stolen objects if he had taken it by robbery. 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 the offence was committed. In exceptional cases the offender was obliged to pay the specially assessed value of the article damaged or lost as well.

2.2.4 The Code Of Hammurabi
The Code of Hammurabi (Codex Hammurabi) the best preserved ancient law code from ancient Mesopotamia was enacted by the sixth Babylonian king, Hammurabi who reigned from 1792 to 1750 BC. He was one of the first rulers who organized the administration of justice in a written law. Hammurabi was the General of Armies, conqueror of the lands between two great rivers, digger of canals, builder of walls and

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30 www.experiencefestival.com/restorative_justice_-_history/articleindex accessed on 10-07-2008
31 Schafer, Stephen, 'Restitution To Victims Of Crime', (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 4
repairer of temples. Hammurabi was also the dispenser of justice for his people. In the thirty-eighth year of his forty-two years reign; about five centuries before Moses; he promulgated his famous list of judgements as the ‘Code of Hammurabi’. Known to history as one of the great ancient lawgivers, Hammurabi is best known through his famous Code. Hammurabi collected the “just verdicts” (*dīnāt mešarim*) that were revealed to him by the great sun god, Shamash, who—because he saw all things from his vantage point in the sky—was god of law, order and justice. As a Babylonian hymn to Shamash put it: 32

*Your rays grasp everything that is hidden,*
*And the behavior of humans is revealed by your light!*  .  .  .  .

*Perched on the highest mountains you inspect the world*  
*And from the midst of heaven,*
*You balance the universe*

The code categorizes provisions into economic law (prices, tariffs, trade, and commerce), family law (marriage and divorce), as well as criminal law (assault, theft) and civil law (slavery, debt). Penalties varied according to the status of the offenders and the circumstances of the offences. The code opens with penalties for witchcraft and spells 33 and judgements regarding false witness and judges that tamper with testimony or justice.34 The code treats of numerous criminal matters, including theft,35 stolen property,36 continuance of trial for lack of witnesses,37 kidnapping,38 escape and kidnapping of slaves,39 and burglary, brigandage and looting.40 The code contains precepts covering social relations in civil society and the administration of government,41 the relations between landowner and farm labourer,42 the maintenance

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32 www.harris-greenwell.com/HGS/Hammurabi accessed on 10-07-2008  
33 Clause 1-2  
34 Clause 3-5  
35 Clause 6-8  
36 Clause 9-12  
37 Clause 13  
38 Clause 14  
39 Clause 15-20  
40 Clause 21-25  
41 Clause 26-41  
42 Clause 42-52
of canals, the responsibility for damages caused to crops by careless farmers\textsuperscript{43} or shepherds and their sheep,\textsuperscript{44} and matters involving land and orchards.\textsuperscript{45} The code also deals with interest and relations between merchants and agents,\textsuperscript{46} the wine business,\textsuperscript{47} transportation of goods,\textsuperscript{48} debts,\textsuperscript{49} grain storage and deposits.\textsuperscript{50} Focus has also been given to the family and relations between the sexes, including slander against women, adultery, rape, unchastity, incest, marriage, dowry, separation, divorce, concubinage and women’s property.\textsuperscript{51} Principles of inheritance as they concerned children, wives, widows, concubines, slaves, and others are then detailed,\textsuperscript{52} judgements regarding adoption and foster-children are also included.\textsuperscript{53} Standards regarding wrongful death and personal injury have also been dealt with in the code,\textsuperscript{54} fees, duties, and liability of physicians and veterinarians,\textsuperscript{55} wrongful branding of slaves,\textsuperscript{56} the rights and duties of home builders,\textsuperscript{57} ship-builders,\textsuperscript{58} and boatmen and ships.\textsuperscript{59} The remaining precepts cover agricultural topics such as oxen,\textsuperscript{60} injuries caused by goring oxen\textsuperscript{61} and the hiring of persons, animals, wagons, and boats and ships.\textsuperscript{62} Finally, the last provisions of the Code deal with servants, the slave-trade, and rebellious slaves.\textsuperscript{63}
Hammurabi universalized these customs across his empire and stiffened the punishments associated with breaches. All of the statements in these treatises, regardless of subject matter, bear the identical grammatical and logical form as the Code of Hammurabi:

- If a man’s chest-hair curls upwards, he will become a slave.
- If the gallbladder of the sacrificial sheep is stripped hepatic duct, the army of the king will suffer of thirst during a military campaign.
- If the north wind sweeps the face of heaven until the appearance of the new moon, the harvest will be abundant.
- If a man, while walking, suddenly falls forward with dilated eyes and is unable to restore them to their normal condition, and if he is himself incapable, at the same time, of moving his arms and legs, an attack of ‘epilepsy’ has started.

The Babylonians were rigorous empiricists. In all their sciences they observed natural phenomena, tried to identify causal links between them and recorded them in treatises and lists. These dealt with many topics- lexicography, grammar, divination, mathematics and medicine, all of which used the if/then conditional format. Despite their empirical spirit, the Babylonians were extremely hampered by an inability to form abstract concepts. The Babylonians went from omen to oracle, from symptom to disease, from fact to judgement, addicted to lists of one-to-one relationships, without once recognizing the existence of any scientific, moral or juridical law behind them. For this reason, all their sciences, including jurisprudence were structured not according to axioms that were revealed and demonstrated, according to laws that were deduced and articulated, but they were based on the accumulations of concrete and individual cases that were enumerated in the way of Lists. Nowhere in any of the Babylonian’s numerous surviving treatises or lists or in their literature there is an utterance of such a principle or of such a law, taken by itself in abstraction and with formal universality. There is an enumeration of indefinite litanies of cases: hypotheses followed each by an exact judgement that one has to express based on them. In their

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64 www.harris-greenwell.com/HGS/Hammurabi accessed on 10-07-2008
jurisprudence just like in everything else, the first fact is connected to the second, not by abstract rule, but by custom, traditional social coercion, the command of the king, or the will of the gods. The Mesopotamians of old never crossed this threshold abstraction to universal concepts. It was the Greeks who had taken further, to the universal concepts, the absolute formulations, that allow clear perception and the distinct expression of the principles and the laws in all their abstraction. The code was notorious for its deterrent cruelty and in some cases of criminal offences demanded even thirty times the value of the damage caused which suggests that the obligation of payment imposed on the criminal was enforced not in the interests of victim, but rather for the purpose of increasing the severity of the criminal’s punishment.\textsuperscript{65} The code provides death penalty for most of the offences like stealing of property, trespass, robbery, conspiracy, adultery etc. The Code prescribed restitution as a sanction for property offences.\textsuperscript{66}

In summary, the Code of Hammurabi appears to be an attempt to apply a scientific methodology-as the Babylonians understood it-to the judgements of the king and the justice thereby wrought. In the Babylonian mind, therefore, the code was a work of science devoted to the exercise of justice. Because there was no notion of law, it was a science devoted to the exercise of power, a science-not of reason-but of the application of custom, coercion, command or the will of the gods to the resolution of civil disputes and the maintenance of order. The ethics of a society are reflected by the laws that govern that society. The ancient Mesopotamian’s put more emphasis on legality than doing what seemed right and good in a given circumstance. Many of the codes were very specific and levied extreme and heavy penalties on anyone who broke those codes. They strived for precise obedience to the stated requirements. The Code of Hammurabi left no room for excuses or accidents. Apart from this it also provides compensation in certain cases. Some of them are as follows:\textsuperscript{67}

Code of Hammurabi:

\begin{itemize}
  \item Schafer, Stephen, ‘Restitution To Victims Of Crime’, (1960) Stevens and Sons Ltd., 11 New Fetter Lane London, at 4
  \item \url{www.experiencefestival.com/restorative_justice_-_history/articleindex} accessed on 10-07-2008
  \item \url{www.wsu.edu/~dee/MESO/CODE.HTM} accessed on 10-07-2008
\end{itemize}
Law 8:
If anyone steals cattle or sheep or an ass, or a pig or a goat, if it belongs to God or to the Court, the thief shall pay thirtyfold. Therefore, if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death.

Law 23:
If the robber is not caught, then shall he who was robbed claims under oath the amount of his loss; then shall the community, and... on whose ground and territory and in whose domain it was compensate him for the goods stolen.

Law 24:
If persons are stolen, then shall the community, and... pay one mina of silver to their relatives.

Law 198:
If he puts out the eye of a freed man, or breaks the bone of a freed man, he shall pay one gold mina.

Law 203:
If a free-born man strikes the body of another free-born man or equal rank, he shall pay one gold mina.

Law 206:
If during a quarrel one man strikes another and wounds him, then he shall swear ‘I did not injure him willingly’ and pay the physicians.

Law 236:
If a man rents his boat to a sailor and the sailor is careless and the boat is wrecked or goes a ground, the sailor shall give the owner of boat another boat as compensation.

Law 245:
If anyone hires oxen, and kills them by bad treatment or blow, he shall compensate the owner, oxen for oxen.

The state was only obliged to compensate travellers. Local victims had to seek restitution by the criminal. Eligibility was limited by offence to murder or robbery; and victim to primary victim or in the case of murder, his heirs. Hammurabi’s motive
in promulgating a code was to re-inforce local crime prevention and law enforcement, since the community that failed to protect visitors, had to pay compensation.68

2.2.5 Anglo-Saxons
In England the 6th century laws of Ethelbert1 and the 9th century laws of Alfred provided for punishment by the payment of money, such as the ‘wergild’ (price of man) in the case of murder, by the offender or the offender’s kin to the victim. Some laws, particularly those of the Anglo-Saxons, stipulated the amount of compensation i.e. every injury had its price. A wrong could be redeemed by way of compensation. One part of the compensation was given to the victim and other, to the king. The principle of compensation reached the high water mark of development in England in the Anglo-Saxon period, the seventh century Kentish laws of Ethelbert included a list of payments for a large number of crimes ranging from murder to adultery.69 In Saxon England the Wer or payment for homicide and the Bot, the betterment or compensation for injury existed alongside the Wite or fine paid to the king or overlord. By this two fold payment, the offender could buyback the peace that he had broken.70 The double nature of the payment shows clearly the close connection between punishment and compensation. In the Anglo-Saxon legal system,71 the guilty party was punished by making him pay restitution to his victim. Even those found guilty of murder were punished by being required to pay money to the victim’s family. For large restitution payments, offenders were given up to a year to pay or they were made indentured servants of the victim’s family.72

2.3 Conclusion
The historical origin of restitution, in a proper sense, the so called system of ‘composition’ lies in the middle ages, and can mainly be found in the Germanic

71 Anglo-Saxons are the descendants of three Germanic tribes: the Angles, Jutes and the Saxons living from early 5th century A D to the Norman Conquest of 1066
72 www.libertariannation.org/a/n029hl.html#L1 accessed on 10-07-2008
common laws. The concept of restitution was provisionally merged with penal law towards the end of the middle ages. Retaliation was transformed into the system of composition according to which even murder could be compounded between the victim and the offender. The vengeful retaliation changed to composition. Gradually, with the setting of tribes, reaction to injury became less severe. Compensation helped in mitigating personal vendetta and blood feuds as it served as an alternative which satisfied the victim's instinct for revenge. This feature supports the view that penal laws of ancient communities in which crimes were met by restitution, was not a law of crimes, but a law of torts. Compensation was provided as per the nature of crime, age, rank, sex and prestige of the victim. The king also had a share in the compensation as a commission for its trouble in reconciling the parties. Before long the injured person's right to restitution grew less and less and after the dividing of the Frankish Empire by the Treaty of Verdun was gradually absorbed by the fine which went to the state. As the state monopolized the institution of punishment, so the rights of the injured were slowly separated from the penal law: composition, as the obligation to pay damages, became separated from the criminal law and became a special field in civil law.

The demand for compensation to victims of crime was advocated during the Penal reforms movement of 19th century. At the International Prison Congress held in 1878 at Stockholm, the ancient practice of compensating the victim was suggested. Since 1878, the question of reparation to the victim had been discussed at length in further Prison Congress. The idea of a public compensation fund for victims of crime,

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73 Schafer, Stephen, 'Restitution To Victims Of Crime', (1966) Stevens and Sons Ltd., London, at 3
74 Ibid at 5
75 Treaty of Verdun in the year 843 divided the Frankish Empire amongst three sons of Louis the Pious I
a) Lothair I-Central Franks
b) Louis the German-East Franks
c) Charles the Bald-West Franks
76 Schafer, Stephen, 'Restitution To Victims Of Crime', (1966) Stevens and Sons Ltd., London, at 7
77 1885 International Prison Congress held in Rome
1890 International Prison Congress held at St. Petersburg
1891 International Prison Congress held in Christiania
1895 International Prison Congress held in Paris
1900 International Prison Congress held in Brussels

58
funded from fines collected was mooted in 1885 at the International Prison Conference held in Paris. In the agenda of the 1890 General Assembly of the International Criminalistic Society, the three main topics of debates were:

- Should the criminal law, take into account the interest of the ‘injured party’? If so, how?
- Should the public prosecutor, who is not the injured party per se, seek a restitution order from a criminal court?
- Should prisoner’s earnings be used to restate the injured party?

In the fifth International Prison Congress held in 1895 in Paris, the proposal for reparation to victims was revised and discussed elaborately. Unfortunately, the Congress could not arrive at any satisfactory conclusion. The Sixth International Penitentiary Congress held at Brussels in 1900 too, could not arrive at a clear decision regarding compensating the victim. At the end of the Brussels Congress, the delegates reaffirmed the Paris vote favouring a reform of procedure to facilitate civil action. The acceptance of principles of state liability to compensate the victim remained remote.

The first international symposium on victims held in Jerusalem in 1973 which led to the establishment in 1979 of the World Society of Victimology resolved that modern laws were harder on victims than on offender in respect of payment of compensation.


79 During the past three decades, 13 international symposia on victimology have taken place at the following locations and the 14th is to be held at Hague, Netherlands in 2012:

1. Jerusalem, Israel (1973)
2. Boston (1976)
3. Muenster, Germany (1979)
5. Zagreb, Croatia (1985)
9. Amsterdam, Netherlands (1997)
10. Montreal, Canada (2000)
to victim.\textsuperscript{80} In its resolutions, it called on legislators, courts and other authorities responsible for crime prevention and crime control to establish, re-evaluate and renovate their organizations and services in order to increase their effectiveness to reduce human sufferings. It also expressed its concern stating that victim’s role in crime can lead to better sentencing practices and general improvement of the legal procedure, which in turn can help to prevent or reduce recidivism and criminality in general. It was suggested that the victim should be sufficiently armed with modern laws to obtain indemnity from the offender. The symposium recommended that all nations should, as a matter of urgency, give consideration to the establishment of the state system of compensation to victims of crime. The symposium gave special attention to the concept of victimology and its place within criminology, the definition of the victim, methods of studying victimological issues, the interdisciplinary aspects, victim typologies, the victim’s role in judicial proceedings, victim of offences against the person and those against property, sexual offences, traffic offences, victim compensation, victim insurance and a number of other miscellaneous subjects.\textsuperscript{81} Justice for victims of crime is a requirement of human rights.\textsuperscript{82} Before society became organised, people merely took the law into their own hands and avenged themselves without any restriction or outside interference. The response to victimisation became a collective responsibility when the individuals became identifiable through their social groups, in the form of clans or tribes. Alternative methods of redressal were developed to reduce violence. Offenders who had surplus wealth devised the method of offering it to the victims as compensation. This method was formalised through the code of Hammurabi. It also existed in the Roman law of Twelve Tables and Law of Moses. Beginning in the 1940s and particularly by the late-1960s, victims’ status was boosted. At the same time, the


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growing movement for women’s rights and the broadening horizon of human rights jurisprudence influenced and promoted victims’ interests. Man-made victimisation is a violation of the human rights of the victim. Therefore crime and victimisation need to be evaluated in terms of violation of human rights of individuals which were developed as political rights to freedom and to participate in shaping community. The recognition of human rights was declared in the Indian Constitution through the Fundamental Rights and Directive Principles of State Policy. Article 21 of the Indian Constitution lays down that “No person shall be deprived of his life or personal liberty except according to the procedure established by law.” Article 38 confers duty upon the State to promote welfare of the people. Thus, when an individual’s fundamental or legal rights are violated because of the callous attitude of the custodians of the law, then the State shall be held responsible and the courts should not hesitate in granting compensation in appropriate cases. In India, the provisions relating to compensation to the victims of crime are laid down in Sections 250, 357, 357A and 358 of the Criminal Procedure Code 1973, Section 5 of the Probation of Offenders Act, 1958, and Sections 140-144 of the Motor Vehicles Act, 1988. Nearly five decades after the United Nations adopted the Universal Declaration of Human Rights in 1948, Parliament enacted the Protection of Human Rights Act, 1993 with an aim to protect the human rights of its citizens guaranteed by the Constitution. The function of the National Human Rights Commission has been detailed in Section 12 of the Act, which, in addition to others, gives it the power to inquire into complaints of human rights violations or public servants’ negligence in the prevention of such abuse. The Commission has also been empowered to recommend measures for the effective implementation of constitutional and legal safeguards for the protection of human rights. Since the enactment of the Human Rights Act, 1993, NHRC has worked as a watchdog providing protection to a number of people who have been victimised and whose rights have been infringed on either by the commissions or omissions of the State.

The concept of compensation has been prevalent since ages but its nature varied from time to time. In the modern era though it is recognised but the concept is yet to
develop and nurtured fully. Detailed laws need to be made and implemented for the protection of the victims and securing full and complete justice to them.