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Right of victim for compensation in India: A historical background

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Introduction

The provision of compensation which is being frequently used by courts of different countries and which is considered as a new modern phenomena, is not correct but awarding compensation to victims had a long history. It was a compensation which distinguishes the civil law and criminal law. While the object of civil law is based on the principle of payment of compensation for private wrongs, as a remedy which is pursued through the apparatus setup by the state for that purpose, the system of criminal law functions on the principle of punishing the persons whose behavior is morally culpable. In other words, the very goal of the civil law system is to provide compensation for private wrongs but whereas the system of criminal law aims at punishing the persons whose behavior is morally culpable [1]. It means that purpose of civil is compensation and the purpose of criminal justice is punishing the wrongdoer.

Now this very difference between civil and criminal law has been diluted and compensation is being awarded as a matter of right not in criminal law but also in constitutional law, environmental law and for violation of human rights etc.

The evolution of this concept can be traced both historically and theoretically. There is evidence to indicate that certain categories of the victims of crime were compensated in the older times either by the offender or his kinsmen, or by the sovereign. In earlier law, an injured person or the relatives of one killed could exactly take similar blood feud from the wrong order of his kin. Later it was accepted that Blood-Money could be pain in lien or pursuing the Blood-Feud. (Blood money means money penalty paid by a murderer to the relative of his victim.) Early legal system, commonly move from allowing blood feud to allowing and then requiring payment of blood money, and commonly specify in some detail in the amounts payable for causing the death of a injuries to victims of various degrees. Through the injured person or the relative was allowed by law the option of taking money or taking blood, and certain offence, for example treason were 'botless' or irredeemable and were punishable by death or mutilation & forfeiture of the offender's property to the king the money value set on a man according to his rank.

In the primitive societies the responsibilities of protecting one-self against crime and of punishing the offenders vested with the individuals which reflected the idea of private vengeance. Under this system compensation had to be paid by the wrong doer to the injured persons. As societies got organized in the form of state, the responsibility of punishing the violators of criminal law shifted from the hands of private individuals to the hand of political authorities. The principle however continued where compensation is being paid by the wrong doer to the victim or his family members. This was the position, obtaining from the old Germanic law the code of Hammu Rabi, law of Manu, and Ancient Hindu Law and Islamic Law. This was even confirmed by renowned jurist Sir Henry Maine "The penal law of ancient communities is not the law of crimes, it is the law of wrongs the person injured proceeds against the wrong doer by an ordinary civil action and recovers compensation in the shape of money damaged if he succeeds."

Historically the concept of compensation in crude sense was not only part of Hammurabi's but also existed in developed sense in ancient Greek city state. The concept of compensation was also not new to India and existed in more developed sense than the present, Manu in chapter III verse 287 clearly says that, "If limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole". He further in verse 288 says that "He who damaged the goods of another, be it intentionally or un intentionally, shall give to the owner a kind of five equal to damage" the quotas regarding the same can be found even in the works of Brihaspati. In ancient India, injuries or loss caused due to offence committed by government officers were compensated by his subordinates or by his family members. Again traders or businessmen who lost their property while traveling through the kingdom were also compensated [2].

Similarly, Section 22 and 23, the code of Hammurabi (written sometimes in 2270 BC) provided that when a traveler had been robbed on a highway and the offender escaped, the entire community of the area had to contribute in order to compensate the victim [3]. At the end of medieval age, the idea of crime as an act against the state took its shape. In such a situation, the state was consider to be the proper authority to punish the offender, the victim of crime however became an irrelevant factor.

In the 19th century however the concept of compensation to the victim of crime was sought to be revived by eminent criminologists like Garofale and Ferry and Bentham in England under the influence of their theories a system of compensation was evolved whereby the victim had to be paid out of the fines imposed on the offender, the state also had accepted the responsibility of paying compensation in varying degrees. Thus, in 1926 Sweden introduced a system in which victims were paid compensation out of the fine imposed on the offenders; some concrete progress was made in Europe, USA and some other countries commencing from early sixties the scheme to pay the victims out of public funds were introduced in the southern and western countries of Europe, Canada, Australia, New Zealand and Switzerland [4].

The 'Anglo-Saxon' [5] first systematically used monetary payments in the form of damages or compensation to the victims of wrongs. Monetary compensation replaced the long standing tradition of self-help justice that allowed the victims to retaliate directly against those who wronged them often with bloody and disruptive consequences. Some authors have urged

that the threat to group life and property posed by victim relation was an important factor in the development and initial popularity of financial penalties. Under 'Anglo-Saxon' law, a sum was placed on the life of every free man, according to his rank, and a corresponding sum on every wound that could be inflicted on his person, for nearly every injury that could be done to his civil rights, honour or peace.

By the close of the ninetieth century, an old correctional aim which was prevalent in ancient societies but disappeared from penal practice at a later stage came up for the penal discussions in many countries as a means of securing social justice to the victim.

Compensation or restitution to victim has particular merit as a substitute for both fine and imprisonment. For over a century, opinion has been developing in favour of restitution to the victim or the victim's family by order of the court. At the beginning of the ninetieth century, some western countries had laws which provided that a person convicted of theft and related offences should return to the owner twice the value of the property stolen. This kind of reaction to crime is non-punitive and is probably a system for implementation of the general non-punitive reaction which has been gaining popularly in recent times in many countries. The great criminologist Lombroso so (in Mannheim pioneers, p. 279) was another voice (apart from Bourneville) in the field of penal reforms who supported the idea of victim compensation and recommended that the victim of a crime should be properly compensated for injury. This would not only be an ideal punishment but would benefit the victim as well. He recognized the difficulties in administering of such a proposal, but his idea was that "the victim should be legally entitled to receive a part of the proceeds from work done by culprit during detention."

Flar-falo supported this idea of compensation, he thought that the damages are to be assessed in sufficient amount not only adequate for complies indemnification of the injured party but to cover the expenses incurred by the state as a result of the offenders dereliction if the offenders means are thadequase, his labour must be devoted to the required reparation. The third International Juridical congress at Florence (1891) recommended the Institution of a "Compensation fund" [6].

Under Islamic law, compensation could be paid by the wrongdoer to the victim when so demanded by the victim or his heir as an alternative to retaliatory killing even in case of homicide [7].

In brief, the law relating to compensation to the victim of crime that even existed in ancient civilization of East as well as West, as far as tracing of gradual evaluation of the concept is concern the whole area till mid 1990 can be generally divided into the three parts. In initial year human civilization when the human started living together specially after stone Age, because of the absence of whole of law and authoritative political institution, right to punish or rather might to punish (in from for eye or money) was with the individual and hence in crude sense, the concept of compensation existed as that time even but line of canton that need to be bear in mind is the fast that in primitive society criminal-victims relationship was based on brutal mentality of attack being the best defense.

Then came the area in which the social control in terms of mechanical solidarity creped in the society and the offence against an individual lost its individualistic character and now the offence was considered to be against society due to advent of concept of collective responsibility. The third stage started with the advent of strong Monarch after medieval period in this stage on one hand law saw far reaching change in all its discipline but on other hand, the position of victim right to compensation remind unheard due to advent of more strong institution named state and crystallization of a notion that kind state is parent of his subjects and crime is breach of peace of king or state. So it was the kind state who had the right to punish and get monetary compensation. This position reminded as it is even with advent of democracy and the cause of victim revived unnoticed until 1950 and after that a movement started in USA and European countries and the concept again got prominence.

In India, the concept of compensation goes as far back as 1857, when as attempt was made to regulate the pollution produced by the oriental gas company by imposing fines on the company and giving a right to compensation against the for fouling water [8].

In India, the civil courts played a limited role to combat pollution and offered no relief for violation of environ-legal right. In personal injury cases, the courts hardly awarded compensation for non-pecuniary loss. However, the courts made awards for pain and suffering or loss for amenities of life but the compensation awarded was notoriously law. However, there was an exception when a substantial sum was awarded as a compensation against a persistent industrial polluter in Calcutta where the Calcutta High Court awarded damages of rupees one thousand [9]. In *Bhopal Mass Disaster case* [10] the civil court awarded compensation to victims of industrial Mass Disaster. Thus, a claim or action for compensation is result of harm which has been caused to an individual by a private person or public authorities through their acts, omissions and commissions. In *Monongahela Navigation Company vs. U.S.* [11] it was stated that "The noun compensation standing by itself carries the idea of an equivalent thus, we speak of damage by way of compensation, or compensatory damage as distinguished from punitive or exemplary damage, the former being the equivalent for injury done and the latter by way of punishment.

The emergence of right to compensation under India constitutional law is not very old. It was the late eighties, when such concept started to grow in India under constitutional law. This was the innovative concept developed by Indian judiciary for securing the justice. The compensation is awarded is generally on the basis of the entitlement of the claimant at the law. The modern concept of justice is more concerned with providing relief to victims then the necessities of legal principles.

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11. 149 U.S. 312, 1892.