CHAPTER – I

1. GENERAL INTRODUCTION

Every social institution of the present day works according to a system of rewards and punishments. This is true in respect of almost every social institution of human society and has the object of securing justice to the people and maintaining order and peace in the society. So much so that a family, or an educational institution or a religious institution has for its members a system of rewards for the good things they do, and they have for their members a system of punishments when their behavior is contrary to the governing regulations of the institution. Indian court system and the schemes of statutes about crime and civil protection of property were brought about during the rule of British Crown. (1858-1947) From 1757 to 1857 one century of rule of the British East India Company ended in 1858 and the domains the company owned were passed on to British Crown. The laws leading to social reforms were promulgated by British Governor General even during the East India Company rule in some Indian domains. Famous ‘Abolition of Sati Regulation of 1829’ signed by Lord William Bentick is the first important legal reform before British Crown took the reign. Lord William Bentick showed courage in stopping the most gruesome practice of burning a woman alive was prevalent in those times. He was helped in this humanitarian reform by Raja Ram Mohan Roy. human right of a widow not to die was recognized by a British Governor serving in India while Hindu pundits like Nimayee Mukhopadyay agitated and tried to gain support to continue the cruel, inhuman practice of sati.

law which is also a social institution works under system of rewards and punishments. The law is based on morals and ethics but the morals and ethics undergo drastic changes when new evidence, new reason and new unassailable logic is brought to the fore by social reformers and legal thinkers. This statement has the meaning that if the behavior of persons in the political society is in tune with the best interests of society they are rewarded with honors, and if it is contrary to the norms previously laid down by the political society, there is punishment imposed on them. The system of rewards and punishments in the context of the social institution of law also has the object of securing justice to the people, and maintaining peace and order in society. No other social institution of human society has such a smart system as is there in respect of the social institution of law. The Social Institution of law has three components. In the tangible form
these three institutions are law makers, law enforcers and adjudicators whom we call. Legislature, Police and Judiciary.

When law is fragmented into the two great branches of private law and public law, we find the rules constituting the civil law and the rules constituting the criminal law; and there is the system of rewards and punishments operating in respect of both the civil justice and criminal justice too. The rules applied under the authority of civil law result in civil justice and the rules applied under the authority of criminal law result in criminal justice.

The system of criminal justice is concerned with the administration of law relating to crime is one type of a action which is presume by law to not useful i.e. harmful to the society as a whole. If it’s fact effect may be on a single individual. The proceedings against the persons who commit crime are taken by the state and if convicted the violators are punished as per law. In the case of civil wrongs the rights of the individual wronged only are infringed and therefore the remedies are sought by the aggrieved party himself. Such a civil case would result in the award of compensation or dismissal of the case but a criminal trial may result in conviction or acquittal of the accused.

Legal consequences of crimes and civil wrongs are different from each other. civil justice is administered according to one set of forms and criminal justice according to another. civil justice is administered in one set of courts and criminal justice is administered in another. The outcome of the proceedings too is different generally. Successful civil proceedings result in the award of damages, or a penalty or a specific restitution or in specific performance etc.. The criminal proceedings when successful result in one of a number of punishments ranging from fine to hanging.

In the realm of criminal justice there are well defined body of rules and regulations requiring the members of society to behave in a particular manner and avoid behaving in a manner which is contrary to the norms previously laid down. There are well organized institutions to monitor the enforcement of the provisions of law for various kinds of wrongs. Since the laws for the violation of which punishment is imposed are made by the political society, the institutions which take care of the observance of rules and regulations, come according to the rules and regulations emanating from the political system and after assuming the form of law they constitute the legal system of the country. This is what makes the system of punishments a significant aspect of the legal system having its basis in the political system of the country and is known as a Social institution of law.

Further, what makes the system of punishment a system of very high order is that there are legal principles the violation of which is punished and there are well pronounced objectives with which punishment is imposed on the violators.
The behavior of a person which results in the violation of laws is known as crime and punishment is imposed on him to do justice to the society. The particular principles according to which the violator of law is punished constitute the system of criminal justice. There are officers and an institution performing the function of imposing punishment and securing the Justice. it is with such a system of punishment obtaining in India that this research work is concerned. Although there are a large number of elements constituting the system of punishments the important ones focused in this research work is the body of principles governing the system of punishments?

Before proceeding further with any particular aspect of the subject in a critical way the researcher considers it necessary to offer a brief comment on the nature of the study.

The first important aspect of this research work is to study the nature and scope of the system of punishments under the general law of crimes and the special law of crimes in India. And the second important aspect of this research work is to examine the factors which justify the need for a change in the existing system of punishments.

Research has been carried out by the undersigned for her Ph.D. in the Department of law of Shr. Jagdish Prasad Jhabarmal Tibrewala, University of Rajasthan on the topic: ‘The System of Punishments and the Need for Reform in India’. The specific branch of law in which research was done is the Criminal law of India making a reference, wherever necessary, to the provisions of constitutional law and a few other branches of Public law like the human rights law.

The two particular dimensions of the study relate to the system of punishment that is in place in India and the circumstances in which there is need for reforming the system of punishments.

I. BACKGROUND TO THE STUDY

The subjects relating to the system of punishment have been explored by the undersigned in the background of the fundamental principles of the constitution because the researcher believes that in order to have a precise idea of the System of Punishments in India and to find an answer to the question about the need for reform of its provisions it is necessary to note the concern of the constitution to matters of criminal justice and principles and procedures embodied in the general and special law of crimes.

The fundamental principles of the constitution in regard to matters of criminal justice in the background of which the study has been conducted may be analysed as the following:
The constitution declares in its Preamble the high ideal of Justice as one of the aims for which the Republic has been established. The Preamble declares the high ideals which the state is supposed to pursue as a socialist, democratic, sovereign and secular republic.

The first important branch of state Administration is the Legislature which performs the function of making laws on matters entrusted to its care. In pursuance of the high ideals enshrined in the constitution the legislature formulates the policies of the state and lays down the fundamental principles that need to be observed by all.

Yet another important branch of state Administration is the Executive branch of government. The officers of this branch may exercise their penal powers to punish the misconduct of their subordinates and the wrongs punished under this system are the Misconduct of the officials which are in contravention of the laws relating to the discipline of the officials. Usually, an enquiry committee or a disciplinary committee is appointed and after enquiring into the conduct of a person punishment is inflicted on the delinquent officer.

The third branch of state Administration which is concerned with the system of punishment in a big way is the judicial Branch. The courts of law established under the constitution and the Statutes deal with criminal cases and exercise their power of inflicting punishments on the persons who contravene the laws governing the country. Such a power is exercised by them under two kinds of laws, namely, the general law and the special law of crimes.

The constitution lays down the fundamental principles of justice in the form of legislative, executive and judicial powers of the state and specifies the rights of the individuals as Fundamental rights which act as a restriction on the authority of the state in any matter.

The constitution also sets up the institution of Judiciary which is vested with various kinds of jurisdiction in regard to matters of state and the individuals.

Then there are Tribunals vested with judicial powers in regard to certain matters to secure expeditious disposal of cases. Further, there is an institutional structure.
(viii) The constitution contains the rule regarding punishment of members of legislature and certain high profile officers of the state and the judges of high court and the supreme court. It provides for the system of punishment by referring to the authority of the legislature to punish the legislators through a legal process called Impeachment. Under this rule the whole body of legislature may examine the conduct of a person who is the President, Vice President, or a judge of the supreme court or the high court etc and has committed a certain wrong which is an impeachable offence.

As regards the principles and procedures embodied in the general and special law of crimes, reference may be made first to the general law of crimes. By general law is meant the Indian Penal Code, 1860 which was the earliest Statute to establish the system of punishments. This code contains the provisions regarding punishments as well as the principles on the method of Sentencing and a few principles on the system of criminal justice. The code contains the principles for the resolution of various penal laws also contains the principles with regard to commutation of punishment. The procedure for the prosecution of persons under the penal code is laid down in the code of criminal procedure and the evidence act.

Like the general law the provisions of the special laws also establish a certain system of punishments. But the provisions of special laws contain the rules regarding punishments for a specific subject, place or thing and they are very large in number. Whereas the procedure for the prosecution of persons under the penal code is in accordance with the law of Evidence and the criminal procedure code the procedure for the prosecution and punishment of offenders under the special laws may be both under the special law itself and under the provisions of the law of Evidence and the criminal procedure code.

Yet another important area of study is the human rights law which since the end of World War II and the formation of the United Nations developed a vast body of rules and regulations in relation to the human rights of the ‘Global Citizens’ who may be natives of or residing in any country but are at the same time part of global community. The member countries of United Nations are under obligation to make and amend archaic laws in the light of UDHR, Universal Declaration of Human Rights and ICCPR1966, the international convention on civil and political rights 1966.

II. Research Question

Before the British Crown drafted and promulgated written laws and established courts in India there was complete chaos in the matter of criminal and civil justice in the Indian subcontinent. There were more than 600 states in India wherein Rajas and Nawabs ruled as Vassal states under British Crown. Each state had its own laws mostly unwritten. There were no laws regarding
Everything went on nicely for a citizen until the king or the nawab or his relative did not get interested in a citizen’s property or a young woman in citizen’s home. The problem about the system of punishments is that it is a system which was established as an amalgamation of laws local and English laws years ago under the ancient Hindu, Muslim and British rulers. The age of Statute law in India began with the Indian penal code which was enacted in 1860. The code of criminal procedure was established. The nature of offences and the nature of punishments were devised in the Statute to suit the conditions that were existing earlier in subjugated India but, after republicanism informed citizens of India the socio-economic conditions and political culture and political institutions have changed in a massive way because of which there is a demand from several quarters of the citizenry to give a thought to the revision of the penal code and the analogous statutes both with regard to the nature of the offences and the nature of the punishments and their quantum prescribed in the statutes.

Apart from the general reorientation seen in the behavior of the people in the democratic set up and republicanism; metamorphosis is noticed in the vast numbers of administrative officers, quasi judicial officers and petty officials linked to the governance. In order to avoid incongruity and non-conformism in matters of crime and punishment and the people’s aspirations there is need to shake up entire criminal justice system including scheme of punishments for horde of offences. Taking note of the changes in all walks of life while the system is being operated is creaking under the burden of archaic nature of laws promulgated during subjugation of the nation as back as in 1860. The changing outlook of the punishment has brought into sharp focus, the theory of reformation and re-socialization.

In the 21st Century the system of punishments in any democratic society gets formulated as a result of the work of a number of persons and institutions apart from the work of the legislature alone. There are penologists, sociologists, academicians and human rights activists who participate in the process of building up the penal law. What has happened in recent years is certain theories have developed on account of which it is necessary to know how crime should be dealt with and how punishment should be meted out. The view advocated by penologists of the recent years has become fairly important. A correctional thought has emerged whereby it is believed now that a criminal is born as such but is the by-product of the social forces. At the same time modern inventions marking an advance in science, technology and industry have given rise to new forms of crime which are increasing in number and which call for a new kind of punishment.

In several countries changes have taken place in the system of punishment; new kinds of punishments have been devised, new procedures have been formulated and new principles of criminal justice have been adopted. In order therefore to improve the system of criminal justice it is very necessary to mould the system of punishments. We have to view the kind of change needed
in the system of punishment to make it an effective and efficient system which may help the authorities of the state in securing justice, peace and order in society.

IV. SIGNIFICANCE OF THE STUDY

The significance of the study can be gauged from its relationship with the developments in Criminological Research which is concerned with the modern reformist trends in Criminology and Penology. Criminological Research in any academic institution generally is of two kinds, one pertains to crime Problem and the other pertains to crime Policy. As far as the component of crime Problem is concerned the idea is to know what particular crime is there whose prevention and punishment is bothering the governing authorities of the state. As far as the component of criminal Policy is concerned the idea is to know what steps need to be taken in policy matters so that prevention of crime is given precedence over punishing the wrong doers. No prevention of crime policy really works one hundred per cent therefore another part of the crime policy is creating deterrence. Deterrence can be brought through punishment awarded to the wrong doer. While punishing logics reason and theories work. Penology is now an independent subject dealing with punishments having regard to human rights regime. No barbaric punishments like stone pelting at a tied and half buried woman for crime of opening a face-book account can be given in a democratic country which is member of the united nations. There must be due observance of the fundamental principles of the constitution of the country and the human rights regime.

crime Policy is a subject of great significance in the system of justice. This research work which is related to crime Policy is therefore concerned with a very significant aspect of the system of our state Administration. It is also related to the subject of crime problem as the emergence of new crimes and the seriousness of crime problem acts as a justification for molding the crime policy of the society. The due regard is to be given to the area of crimes which are victimless. There are certain crimes on the statute books simply because state thinks they are crimes otherwise nobody is hurt and loss occurs to anyone by that crime. For example Not singing national anthem and refusing salute the national flag may be a crime just because obedience to flag code is demanded by the state. In Minnersville School District v. Gobits 1940 the United states supreme court has decided that there can be no punishment for not saluting the national flag and there can be no punishment for refusing to sing national anthem. The supreme court said that everybody has liberty to remain silent while others in a row are singing national anthem. American supreme court took Liberty to a very high pedestal. Flag desecration is not criminalized in England, Belgium, Australia and Soviet union.

In India and China however there are laws enacted and punishment for insult is up to three years in both the countries. India had no law on desecration of National Flag. However in a law by name and title prevention of Insults to National to National Honor Act 1971 was enacted. The
Quantum of punishment for insult to National Flag or National Anthem has been raised up to three years of imprisonment. Generally agitators who become extremely inimical to the polity to draw attention to their own demands do insult National flag or national anthem. The leader of DravidaMunnetraKazhagam Late RmaswamyNaicker had insulted National Flag and was sentenced to six months imprisonment in 1957 in Tamil Nadu. Raja Dhale another Dalit leader had burnt National flag in Maharashtra.

There are so crimes under Narcotic Drugs and Psychotropic substances Act. Now in United states many federal states have declared Marijuana as consumable item and no more it will be a crime to possess, consume and sell marijuana. In fact marijuana or cannabis is a natural plant that grows in forest and if humans consume for medicinal benefit or consume it simply to feel comforted and relaxed the government should not have objection. In United states of America out of fifty federal states nearly twenty states have legalized marijuana and now there is no criminality attached to it. By the end of year 2020 entire United states of America will be a nation where consuming and possessing cannabis hemp will not be any crime.

To elucidate further, the subject of Punishments being a part of the system of criminal justice it is also related to the morality ethics and social psychology. Morals are not static. Morals go changing as the episteme widens. Logic expands and reason extends newer boundaries. By nature and quantum of punishments in vogue in a society the civilization of that society is evaluated as great civilization or very rotten degraded civilization. In England the common law crimes and such punishments between 1500 and 1800 that even a layman could brand England as a barbaric country. The entire world knows that King John signed Magna Carta in 1215 and gave the assurance to the barons of medieval England that there will be rule of law in England and the king will not usurp properties of people without recourse to law not anybody’s life and liberty will be taken. Within two centuries democratic England became barbaric. The Rump parliamentarians of House of Commons usurped so much power that they imprisoned King Charles I indicted and tried the king for high treason. King Charles was tried by judges and was sentenced to death. The House of Lords rejected the trial but their power was small before the Rump parliamentarians. On 30 January 1649 King Charles was beheaded in full public view. While dying the King said King is Sovereign and common people indicting him and sentencing is an unlawful act. Before King Charles, was himself sentenced to death in 1649, much before that event King Henry VIII had two of his queens tried for high treason and adultery got them executed. King Henry executed thousands of commoners and tens of nobles including his own wives. Using Bill of Attainder and puppet courts to hang nobles to forfeit their lands and gold was his style of robbing people. In England Women of noble birth were beheaded with sword while the women of common birth were burnt alive for adultery. Thousands of women in England were burnt alive on the charges of
adultery taking on oath false witnesses before the puppet court. The commoners charged with treason forgery and other serious crimes were first drawn (accused persons legs tied together and then tied by long rope to the saddle of a galloping horse and then quartered (cut in to four pieces by an axe) in full public view. Ghastly horrible diabolic punishments existed in England for almost seven hundred years.

A study concerning changes in the system of punishments can bring to light how the authorities of various countries in the world and how the kings and nawabs in our country had been punishing people before courts were established. In the initial years after courts were set up the criminal justice was suspicious since the courts were puppet courts. Maharaja Nandkumar was given death sentence by Justice Impey of Calcutta just because Governor Warren Hastings told justice Impey that Maharaja Nandkumar must be implicated in forgery falsely and hanged. Impey and Hastings were class fellows in school while in Eglnad so the friendship worked and the innocent was hanged because Maharaja Nandkumar had complained to the King’s council about the corruption Warren Hastings’ has been doing in the revenue of the East India Company. Nandkumar episode happened in 1776. The step of updating the system so as to match with the standards set in the constitution of our country and the human rights instruments of the international organizations. This will make it clear to the people how the updated system will be of use to the individuals in protecting their right to life, liberty and property.

Chattel Slavery which allowed buying, selling and holding as property the human beings of particular race called black or negro was an accepted social practice throughout the world in ancient times, in medieval times and in modern times also. Slavery was in vogue in United states of America until President of America Abraham Lincoln scorned at it and made it law by amending constitution in 1865. A civil war ensued between slavery abolitionist states and slavery retaining states. Now chattel slavery is crime in almost all countries. In Mauritania alone slavery persists. Millions are held and their children too in slavery in Mauritania. The law cannot fight unholy things when the whole society becomes corrupt. The powerful become selfish and cruel in such society. crimes and punishments are sometimes only matters of social perception. The concept of victimless crimes has evolved recently in which if there is no victim and therefore the social groups are fighting to abolish punishments for victimless crimes or at least make punishments lighter.

Why should people be hanged for possessing or carrying a small quantity of drug and why they should be sentenced to such term of incarceration that when released the convict is totally useless to himself and to the nation and the society. When a man or woman smokes marijuana or cannabis hemp they are violating cultural values but there is no direct victim of their act per se as there is when some is robbed or battered or injured. crimes like public drunkenness, consensual sexual acts, prostitution do not have a victim but have only social taboo. The argument by many criminologist and sociologists is that such victimless crimes be repealed which do not
affect the society in a way as been published and believed. The rate of incarceration will come down if victimless crimes are taken off the statue book.

Victimless crime is an important subject being taught in many law Universities in the world including India.

V. RATIONALE FOR STUDY

The rationale for study is that it is necessary to know what the system of punishment is and why the system is insufficient to meet the demands of the present day society. There is justification for undertaking a study from the point of view of knowing how it meets the requirements of principles of criminal justice embodied in the constitution of our country and the human rights instruments. Apart from the local problems which justify the study we have to know the internal and external factors on account of which there is need for examining the merits of the system of punishment. Since the study would cover the work of the other agencies at the domestic plane of India and also at the global plane on the subject of punishments it would meet the requirements of the present day system of justice and give a correct assessment of the operational part of the system of criminal justice.

law is never static. It is dynamic Since human society constantly undergoes social transformations because of socio-economic pressures. law must also change keeping pace with social changes. The system of law under which people live should be responsive to the social needs of the relevant period and should reflect current values and philosophies of the society. Otherwise dichotomy will arise between law and social values which will adversely affect social stability and progress. Even when law has been codified, there is no finality about law. As Maine points out, the sign of a progressive human society is whether law keeps on growing after its codification. A country with codified law needs to look into the statutes from time to time, revise some of them, repeal some of them and re-enact some of them in order to synchronize them with changing morals and awareness of rights in society. Common law created chaos. After codification of sustentative law and formation of procedural law, the function of the courts was smoothened and the wheels of justice became well oiled.

Should courts study the undercurrents in relation to morals and ethics or stick to the rule book is a most debated subject in seminars and conferences. Abolition of capital punishment, legalizing homosexuality and trans-genderism, repealing laws and regulations which constrict the freedom are the issues discussed in legal seminars. Newer sets of morals are grappling with age old thinking. There are talebans everywhere. Hindu, Christians, Muslims, Sikhs, Budhists all communities have radicals and puritans. It is difficult if laws are not changed for centuries that
society may run smoothly. It becomes less creative. Instead of developing the law to embrace new relationships or new set of facts, the courts confine themselves by and large to the narrower task of interpreting the legal phrases.

VI. LITERATURE REVIEW

The researcher has reviewed the works of prominent foreign and Indian writers on the subject of criminal justice and chalked out her programme for studying the system of punishments and set the goals of dealing with the issues on hand, Mention may be made of the following treatises, journals and judicial dicta which have been reviewed by the researcher:

Among the books reviewed by the researcher the first one by a foreign writers is the book of Jerome Hall who in his classical work “Principles of Criminal law” has devoted a major portion of his work to a discussion on the principles that should govern the concept of punishment. He has explained in his unique style the principle of ‘Nullum poena sine lege’ and ‘Nullumcrimen sine lege’ and thrown light on the history and development of the system of punishment in the civilized world.

While the above author took care of the jurisprudential basis of the concept of punishment another legal thinker by name CesareBeccaria has in his book “Of crimes and Punishments”, propounded the theory of proportionality and utilitarianism and emphasized the application of the principles formulated by him to all the punishments as early as in the beginning of 19th century, and gave suggestions as to what principles should be followed while awarding punishments to make punishments moderate in nature and to make them devoid of barbarity.

The theory propounded by CesareBeccaria was further developed by Bentham in his work “Rationale of Punishment”, Bentham discussed both the negative and positive aspects of punishments including death penalty, imprisonment, forfeiture of property, and monetary fine.

German Criminologist from Bonn who later migrated to United Kingdom Max Grunhut in his work on “penal Reform, a Comparative Study”, directly dealt with the topic of penal reform and discussed penal Reform, and also history in prisons England..Prof.Grunhut dwelled more on prisons rather than on penal reforms.

The researcher also reviewed the works of foreign authors on the subject of principles and procedures in the administration of criminal justice. For example, she reviewed the work of Max Grunhut’s, on “penal Reform: A Comparative Study, which is the only work which deals directly
with the topic of penal law and gives a clear picture of penal Reform in general, and Prison History in England. But he confined himself to the problem of prisons of England.

The classical work of Edwin Sutherland and Donald R. Cressy “Principles of Criminology” critically analyses in the first section of the work the factors influencing the criminal behaviour and in the second section analyses all the punishments which are in vogue. This section deals with the origin of punishments, the problems relating to punishments and the perspectives of the system of punishment.

Apart from the above foreign writers, many Indian writes have written considerable number of books on the Indian penal code, and other laws, amongst them Prof. Hari Singh Gour’s, the author of “The penal law of India”, is a distinct and classical work because of his approach to the subject, the analysis he put forwarded, and the kind of presentation he did. The author was of the opinion that the punishments provided in the penal code are harsh but he did not make any effort to offer suggestions as to how they can be reformed.

Professor Upendra Baxi’s most debated and reviewed book The Crisis of Indian Legal system (Vikas Publishing 1982) is reviewed by this researcher for the purpose of this thesis. Prof. Baxi is very critical of the judicial system and the legal system though the title suggests the criticism of only legal system. No legal system of any country can work without judiciary adjudicating and police enforcing attendance of the accused, witnesses and other relevant parties. Out of these three, the police is the most corrupt. Lacs of criminal cases have been abandoned or kept pending for 30 years and more because the warrants are not served. The accused person stands for election wins the post and becomes public representative, inaugurates bridges, clinics, schools etc but the accused evades warrants and does not attend the court. If he is elected on ruling party ticket then the judge also takes soft view on his non attendance of the court being bound by his limitations. Prof. Baxi laments that district magistrates office and the police officers in every district enforce laws selectively. No case is filed against rich and powerful unless media becomes very active in the matter. For other ordinary people police becomes predator

The present researcher reviewed Prof. Peter Singer’s book “Practical Ethics” (1993 Cambridge University Press) in order to understand the ethical side of abortions and to know whether killing fetus / embryo amounts to killing human being. According to Prof. Singer, until 14 days after fertilization it cannot be said whether the fertilized human egg will be splitting and forming twins, triplets or quadruplets. Only after 14 days the backbone is formed. Prof. Singer says there is no obvious sharp line that divides the fertilized egg from an adult human being. Prof.
Singer who is also an authority in Logics gives the following inductive logic (from General to specific)

- **First Premise**: It is wrong to kill a potential human being
- **Second Premise**: A human fetus is a potential human being;
- **Third Premise**: Therefore it is wrong to kill a fetus

Prof. Singer who is now Professor of Bioethics in Princeton University has also discussed the problem of killing the terminally ill people who are suffering immensely while alive. To end their suffering with their own consent and in conditions wherein they are not capable of giving consent since they may be in state of Comatose. Coma is a state of prolonged unconsciousness. Euthanasia or mercy killing is of two types 1) Voluntary 2) Involuntary

Voluntary is on the request of the person who wants death in lieu of prolonged suffering. Involuntary is when the dying person is not in a position to give consent. ..

Yet another article written by Justice RajinderSachar “Sentencing: Choices and dilemmas for a judge” describes the problems being faced by the judges while sentencing because of lack of guidance and training.

Judicial Officer Girish B.Deshmukh of Maharashtra judicial service in his study (2013) “Linking Tokenist Monetary Fines to the Current Price Level while granting compensation to the victims of crime: A study with Reference to state’s Accountability” has suggested that nearly two centuries old monetary fines prescribed in the Indian penal code appear absurdly low and need to be linked to current price level. He also suggested that thee should be separate and independent.‘ crime Victim Compensation Boards’ Such boards should sanction substantial and adequate compensation to the families of crime victims irrespective of the adjudication’s result.

Apart from the treatises by learned writers the researcher also reviewed the judicial decisions which dealt with the principles and procedures in the administration of justice and noted the significance of these principles in the system of punishment. One such matter has been the problem of bail, which is related to the system of punishments and arises most of the time with regard to the powers exercised by the police officers in matters of police custody or the judicial officers in regard to judicial custody. The justification or otherwise in the course of trial of a person to convict or acquit a person and grant him bail before the trial is a matter on which the judicial
decisions have been of great relevance as can be seen from the following literature reviewed by the researcher.

While granting bails to the under-trial accused corporate personalities, namely, to Unitech Limited’s M.D. Sanjay Chandra, Swan Telecom’s Director Vinod Goenka, and Reliance Anil Dhirubhai Ambani Group’s executives Hari Nair, Gautam Doshi and Surrendra Pipara, the Hon. Justice Mr. G. S. Singh and Justice Mr. H. L. Dattu of Supreme Court of India, recently adjudicated a landmark judicial decision in the matters of Criminal Appeal No. 2178 OF 2011 and observed that in matters of bail applications, usually, it has been observed by higher judiciary for a long time that the purpose of bail is to ensure attendance of the accused person on the dates of trial fixed by the court as such the court asks the accused persons to give surety of certain amount. If the accused would not appear in court on dates given the amount would be forfeited. The amount is reasonably big so as to give pain to the accused or his surety pain on its forfeiture. The purpose of grant of bail is to protect the right to liberty of the accused and also ensuring his attendance in court binding the accused to a small procedure of court. Two objectives are simultaneously achieved by bail. The liberty is restored and the attendance is ensured. If bail is not granted that accused person will be deprived of his liberty. In absence of his denial or inability to give surety he will have to be put in to the custody which may be police custody or magisterial custody. In common parlance acronyms PCR or MCR are used for police custody and magisterial custody.

There is one strong argument of advocates of liberty that snatching of liberty would be unconstitutional and bad unless it become imperative to secure attendance of the accused at dates of trial given by the trial court judges. However the courts must show respect to the principle of criminal justice that punishment begins only after completing sentence of conviction, and that every accused person must be deemed as innocent until he or she is duly tried by a competent court and is duly found guilty beyond reasonable doubt. After the Bill of rights 1689 was passed in England which contained a directive “no excessive bail and no unusual cruel punishment”, it was felt by legal scholars that holding someone in custody till the completion of trial would cause a great to the accused person and his dependants.

In some rare cases where the liberty of the accused is dangerous to society a need is felt by the society that the accused person should be held in custody even during his trial prior to conviction in order to prevent any harm to society and also to see that the person attends his trial scrupulously. Whether really someone is dangerous as accused before his trial must be put to an operative test. Personal liberty is held high in this country by its constitution. Someone accused will tamper with proof and evidence or threaten witnesses if let free is a fear. Just because of this fear liberty cannot be deprived of any accused person save in extra ordinary circumstances in
an accused Whatever be the legal theory and legal opinion, what actually happens in courts are legal facts and they are different. Daily Hindu (Mumbai Edition) Dated 4th April 2014 reported that the accused in Malegaon Bomb Blast (2008) case Sadhvi Kumari Pragya Singh Thakur has been denied bail by the Bombay high court. The Bench of Justice Hardas and Justice Gadkari said that Pragyasinh gave her own motorcycle to the men involved in blast and that her motorcycle was found in damaged condition at the blast site is enough record to deny bail to her. This is the extra ordinary Even though she has suffered pre-trial imprisonment of five and a half years and no charge sheet has been yet produced before court, Pragya Singh was denied bail. This is imprisonment before trial.

An accused person cannot be jailed to give him a test of what imprisonment can be just because he appears to the court as dangerous to society when enjoying freedom. one important rule is that given bail to the accused is one rule which is protect the accused person and to send jail is a very exceptional cases and when any authority refused to give bail of any accused means that authority denying his liberty under the constitution art. 21. Several thousand accused persons are in jails in India for more than a decade and they have not been produced in court and their charge sheets have also not been produced in court.

In state of Rajasthan v. Balchand, the supreme court opined: That the important and sole base rule is a give bail and not send to jail

In Gurcharan Singh v. state (Delhi Admn.), this court took the view:"

Bail may be opposed by mentioning the ground that the socially and politically powerful position and high status of the accused persons may stall uninfluenced fair police investigation and hinder a fair trial, but the court may not decline to grant bail unless exceptional circumstances are shown to the judiciary that accused persons are charged with serious crimes of conspiracy and murder which are severely punished.

The concept and philosophy of bail was discussed by the supreme court in Vaman Narain Ghiya v. state of Rajasthan (2013).
More recently, in the case of SiddharamSatlingappaMhetre v state of Maharashtra, the supreme court observed that “Just as liberty is precious to an individual, so is the society’s interest in maintenance of peace, law and order. Both are equally important.

“But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. When the under trial persons are held in custody for uncertain period, article 21 which proclaims right to life and right to personal liberty is violated. In state of Kerala v Raneef (2011) it was observed as an important factor which all courts should certainly consider. is the delay in concluding the trial. When the investigating agency has already completed investigation and the charge sheet is already filed, therefore, their presence in the custody may not be necessary for further investigation.”

Apart from the above, many Indian writes have written considerable number of books on the indian penal code, and other laws, amongst them the work of Prof. Hari Singh Gour on “The penal law of India”, is a distinct and classical work because of his approach to the subject, the analysis he put forward, and the kind of presentation he did. The author was of the opinion that the punishments provided in the penal code are harsh but he did not make any effort to offer suggestions as to how they can be reformed. Another classical attempt made was that of Nelson who in his book “Nelson on indian penal code”, gives a vivid explanation of each punishment provided in the penal code with the help of decided cases but he did not make any comments about the existing flaws in the law nor did he make any suggestions to improve the law.

There are numerous articles published in various Journals on different aspects of the system of Punishments, among them the inspiring ones are the articles written by Prof. B. B. Pandein which the writer has critically pointed out the flaws committed by the supreme court in Dowry Death cases Another article written by Justice Krishna Iyer on “Justice in Prison: Remedial Jurisprudence and Versatile Criminology’, vividly explains the problems and perspectives of the prisons and the role of the judges in regard to prisons.

There is plenty of literature available in foreign law journals including United states. One of the few important articles is on Sentensing Reforms in Minnesota state of United states. There have been major reforms in United states in the matters of remission in sentences and liberalization of parole. Minnesota had been in the forefront in appointing a statewide commission independent of legislature to look at the right to liberty of convicted prisoners and under-trials. Review of Dale G.Parent’s book. Includes a detailed analysis of a theoretically and practically important cases permitting departure from rule that these cases are consistent with the Guidelines' structure and purposes.
In his article, Vera Bergelson focused on the intersection of strict liability offenses and affirmative defences. He sought to explore and evaluate a peculiar discrepancy: all states, as well as the Model penal code, deny to a defendant charged with a strict liability offense the defence of mistake, yet at the same time, allow most other affirmative defences.

There is ample discussion about the system of punishments and reforms in other countries. As has been said above there is plenty of literature available in foreign law journals. In one article on Dale G. Parent’s writing says that convicts history of felonies and its severity must be viewed along with his behavior in prison and a score should be given based upon which reduction in prison term must be considered”. Minnesota and Federal Sentencing Guidelines, is also about lenient view about young offenders on probation.

About the importance of sentencing commission the article on “The Role of the Legislature, the Sentencing commission, and Other Officials Under the Minnesota Sentencing Guidelines,” Examines the 1978 Guidelines enabling statute and its apparent goals and sentencing philosophy, the commission’s implementation of the statute, and the evolution of the Guidelines, sentencing statutes, and case law through 1992; concludes with a discussion of how a legislature ought to define its role during and following implementation of commission-based guidelines.

There is plenty of literature available in foreign law journals on the subject of criminal justice and penal reform. One of the few important articles is on “Sentencing Reform in Minnesota, Ten Years After: Reflections on Dale G. Parent’s Structuring Criminal Sentences: the Evolution of Minnesota’s Sentencing Guidelines,” Reviews and updates Parent’s book. Includes a detailed analysis of a theoretically and practically important line of cases permitting departure based on the defendant’s particular "amenability” to probation; argues that these cases are consistent with the Guidelines’ structure and purposes.

Vera Bergelson in his article focused on the intersection of strict liability offenses and affirmative defences. He sought to explore and evaluate a peculiar discrepancy: all states, as well as the Model penal code, deny to a defendant charged with a strict liability offense the defence of mistake, yet at the same time, allow most other affirmative defences..

Agnes J. Busieneiinhis study investigated the alternative methods which teachers use instead of corporal punishment and the efficacy of these methods of student behaviour management. The study was conducted in Eldoret Municipality of Rift Valley province. The population of the study comprised secondary school teachers in Eldoret Municipality. Proportionate
sampling technique was used to select 161 teachers from the 10 public secondary schools representing all the 3 strata of secondary schools in the Municipality.

Ivan Potas and John Walker has expressed the opinion that While public opinion polls generally indicate that a majority persons of the community are in agreement with capital punishment for certain serious and cruel offences, many people would currently argue that it has little real deterrent value over and above that of imprisonment. Those who argue for the death penalty to the convict of murder for the reason that at least the killer is eliminated from society, must also ponder over the fact that in practice the death penalty is often given weighing public outrage and not with application of balanced judicial mind. judges who give death sentence always give analogy that culpability of the convict is proved beyond reasonable doubt but if logic and reason is applied there is always a possibility that there might remain a minute error in perception which can upset the “beyond reasonable doubt“ clause leading to hanging of an innocent person.

Criminologist Laura Hush has in one of her research papers examined whether the UK government’s proposal of reduction in sentencing can be given to offenders and whether the housing problem after the release of prisoner can be tackled by the government as a humanitarian act. proposals put forward in the paper to increase the use of restorative justice would reduce the recidivism rates of young offenders as proposed or whether the current criminal justice system is the most effective means of achieving the government’s aims.

MukeshYadav, Ravi Gangal, PoojaRastogi in their research on a critical review of decisions of courts has been done for highlighting the legal situation on the issue of meaning and scope of applicability of section 354 IPC. Data base collected and compiled from the National crime Record Bureau website to understand the rising trend of crime. This paper discusses various reasons for less punishment for molestation and need for enhanced punishment and making it non-bailable to make sense in preventing rising crimes against woman.

Mohammed Reza Mojtehediiin his research paper highlighted the of the Doctrine of double punishment is one of the most universally accepted and applied doctrine in most of the criminal laws of the various countries of the world. The laws relating calculating of punishment is on of the result of the doctrine. Accordingngly which a alien national punish in a state where the offence is committed will not face any criminal trial in his/her country for the same offence. The intention of this article is to review the situation of the law governs in a state of Iran,
VII. HYPOTHESIS

After reviewing the literature on the subject of punishments in the criminal law of our country and the problems arising before the institutions of justice the hypothesis formulated for study are that the present day system of punishment is in need of reform. This is more so in view of changes in the socio economic conditions of the people and the new principles of criminal justice which have emerged in the form of international human rights norms. The rationale for reform assumed by the researcher is that basic law on the subject of punishments was enacted a century ago and subsequent to the passing of the penal law in that form several changes have taken place in the spheres of social, economic, political and administrative matters which call for a study of the subject exhaustively. The system is deficient in several respects because of which notice has to be taken of the new kinds of offences, certain new principles and procedures need to be recognized. Further, the constitution of our country which was adopted after Independence was something unknown to our system of punishments. There is need for updating the system of punishment by tuning it to the new principles embodied in the constitution.

VIII. AIMS AND OBJECTIVES OF THE STUDY:

The following are the aims and objectives according to researcher with which the study is proposed to be undertaken:

(i) To expound the concept of Punishment and the concept of penal Reform in the area of punishments;

(ii) To study the system of punishments operating in India under the general law of crimes and the special law of crimes vis a vis developed counties (G8 countries) Only USA is taken to save on volume of text.;

(iii) To note the changing trends of our society and study the impact of internal and external factors which are relevant to the question of changes in the system of punishments; To analyse the philosophy of the constitution of our country and the philosophy of the human rights law which need to be incorporated in the system of punishments;

(iv) To examine the question of changes in the system of punishments like introducing new institutions, new principles and new offences to deal with the deficiencies in the system of criminal justice.
(v) To evaluate the work of the committees and commissions this examined the provisions of our Criminal law and suggested a change.

(vi) To highlight the impediments in the process of reform as far as social, economic and political factors are concerned.

(vii) To suggest what changes need to be made in the system of punishments.

IX. METHODOLOGY

The research done is both a doctrinal research and comparative research. In the process the above hypotheses have been tested by reviewing the available literature in the form of Statutes, law reports and the reports of committees and commissions on the System of Punishment.

The documents available in the Library of the University where I have taken admission for my Ph.D. have been reviewed together with the data available in other public libraries of the state of Rajasthan.

Research journals, magazines and the work of eminent writers have been reviewed to note the changes called for in the system of punishments and the need for changes in the principles and procedures of punishment.

Next, the researcher conducted discussion on the matter of law reform with eminent lawyers, judges and academicians of Rajasthan by seeking personal interviews and made a thorough study of the system of punishments and the problem of reform of the system.

X. SCHEME OF PRESENTATION

The research report in which the material is presented herein about the matters referred to above consists of nine (9) chapters a brief description of the contents of each of them may be given as under :-
CHAPTER - I ‘INTRODUCTION’ gives an outline of the topic of research the justification for study. It explains the elements of the prevailing system of punishments, the theories which have guided the legislators in devising such a system and the need for reform of the system. It also describes the hypothesis formulated for study and the methods proposed to be adopted for conducting the study.

CHAPTER - II ‘CONCEPTUAL STUDY OF THE SYSTEM OF PUNISHMENTS AND THE NEED FOR PENAL REFORM’ explains the theoretical concept and the operational concept of punishments. It starts with the meaning and definition of punishments and proceeds to review the views of learned jurists on the subject of punishments. It then touches upon the specific problems affecting the system of punishments which relates to the operational concept of punishment.

CHAPTER - III ‘CONSTITUTIONAL IMPERATIVES OF PUNISHMENT’ discusses the principles laid down in the constitution which are relevant to the subject of punishment, such as, the principles embodied in article 20 (Principles relating to Criminal Justice, such as, the principle of Double Jeopardy, the Principle of ex post facto Legislation, the Principle of compulsory testimony) Indian penal code 1860 was promulgated during the reign of British Crown before India got freedom and became a republic having her own constitution we have to see what changes are needed to bring the penalcode in tune with the constitution.

CHAPTER - IV ‘INTERNATIONAL HUMAN RIGHTS NORMS RELATING TO THE SYSTEM OF PUNISHMENTS’

In thischapterresearcher proposes to discuss the principles embodied in the international treaty known as universal declaration of human rights 1948, the international covenant on economic, social and cultural rights 1966, and the International covenant on civil & political rights, 1966.

It is necessary to make a study of the human rights norms and relate them to the system of punishments because whenever a suggestion is offered by the committees or commissions on penal law Reform the human rights activists raise a hue and cry that the Indian law is not human rights-compliant. It is necessary to update our system by bringing it in tune with the international human rights.

CHAPTER - V ‘SYSTEM OF CRIMINAL JUSTICE IN FOREIGN JURISDICTIONS’ will make a study of the system of punishment as existing in other countries and the reforms that have been made in recent years. Such a reference is necessary in view of the fact that most of the countries like South Africa etc. which like India had enacted the penallaws under the inspiration of
the colonial powers have modified their systems and tried to remove the deficiencies of the system.

CHAPTER VI ‘SYSTEM OF PUNISHMENTS UNDER THE PENAL CODE AND THE NEED FOR REFORM’ studies such of the provisions which stand in need of reform, particularly the provisions relating to Death penalty, Corporal Punishment, and Sexual Offences etc.

CHAPTER VII ‘SYSTEM OF PUNISHMENTS UNDER THE SPECIAL LAW OF CRIMES AND THE NEED FOR REFORM’ studies the punishments which are prescribed under the provisions of Special laws and examine the question of reforming those provisions from the point of view of making them effective.

CHAPTER VIII ‘EVALUATION OF THE WORK DONE BY THE COMMITTEES AND COMMISSIONS ON THE SYSTEM OF PUNISHMENTS AND THE NEED FOR REFORM’ analyses the recommendations of the lawcommissions and certain committees which were set up by the government, which have so far made a study of the subject of Punishments and come up with recommendations. It points out how the commissions missed the idea of making the system of punishments workable.

CHAPTER IX ‘CONCLUSION’ contains a summary of the work, the findings of the researcher and his recommendations to improve the system of punishments.