CHAPTER - II

CONCEPTUAL STUDY OF PUNISHMENT AND
THE NEED FOR PENAL REFORM

In a research work of this type which is concerned with the system of punishments and the need for penal reform in India, the first few things that need to be investigated relate to the concept of punishment and the factors which necessitate a change in the system of punishments. As in any research work the initial steps to be taken in pursuing the subject require an investigation into the phenomena of punishments and the factors which call for a change in the system of punishments. In other words, the two preliminary things that call for investigation relate to (i) the theoretical conception and (ii) the operational conception.

The theoretical conception has the notion of what the meaning and definition of punishment is in general, and the operational conception is related to the actual problem on hand, namely, the different kinds of punishment that are imposed under the provisions of the criminal law of our country, the kinds of punishments, the history of punishments, and the objectives with which the punishment is imposed.

The methodology followed in presenting the discussion on the matters covered by this chapter therefore is: Section A deals with the theoretical conception of Punishments, and Section B deals with the operational conception. The discussion then in Section C follows on the notion of penal reform and the institutions which have the responsibility of striving for reform.

The two important themes expounded in this chapter therefore are: (i) the Concept of Punishment, and (ii) the need for penal Reform. Both the themes are related to the system of criminal justice; hence they are explained in one and the same chapter focussing the subject matter in relation to the system of criminal justice.
SECTION A - THE THEORETICAL CONCEPTION OF PUNISHMENT

I. THE MEANING AND DEFINITION OF CRIMINAL JUSTICE

Justice is defined as a moral stand commonly considered being the end which law strives to achieve. The function of law generally is to adjust the conflicting interests of society. From this point of view justice is defined as the harmonious blending of the selfish interest of man with the well being of the society.

Justice is broadly divided into two kinds, one civil and the other criminal. Civil Justice is concerned with the enforcement of citizens' and residents' rights and the procedure laid down for enforcement of the rights through courts of civil jurisdiction by granting the remedies like the remedy of damages, specific performance, injunction declaration etc, criminal jurisdiction by awarding punishment such property etc.

The primary goals of criminal justice are the enforcement of criminal law, maintaining the social order, protecting the individuals from injustice.

II. CRIMINAL JUSTICE SYSTEM:

The concept of criminal justice refers to certain theoretical prepositions which are implemented through legal precepts and the administrative apparatus. The theoretical propositions and the administrative machinery established for implementing the idea of criminal justice together constitute a system known as the system of criminal justice.

Keeping in view the objectives of criminal justice the basic functions of the System of Criminal Justice pertain to (i) determining whether a crime has been committed; (ii) detecting possible offender; (iii) apprehending the suspect; (iv) providing for a review of evidence by the prosecutor to determine whether the case against the alleged offender a merits prosecution; (v) providing for a review of the prosecutor's decision by an independent agency such as a judge of the courts of justice; (vi)
providing for determination by a judge as to the guilt of the offender, and (vii) sentencing the offender to punishment when he has been found guilty of the offence.

law enforcing police, the adjudicating courts, the Prosecutors and the prisons together comprise the criminal justice system. Prisons enforce the basic rules of society as expressed in its criminal law. These agencies discharge the most vital function of government. Without an effective system of criminal justice there can be no government in any real sense; anarchy prevails in the country and no man can be secured in his person or property by having an effective system of criminal justice government can operate in all its hers of authority efficiently, and order can be maintained.

The Criminal Justice System of a country may be considered from at least three perspectives:

1. First it can be considered as a normatic system that is a body of legal rules expressing social values through prohibitions backed by pean sanctions against conduct viewed as wrongful or harmful. The normative system has its basics first in the constitution which proclaim is the objectives of securing justice to the people, and sanctions the establishment of courts to administer justice to the people.

The statutes enacted by virtue of the constitutional authorizations supplement the object of the legal system and set out the procedure to be followed for the purpose;

2. Secondly the Criminal Justice System can be regarded as an administrative system. This view comprehends the official apparatus for enforcing the Criminal law including the Police and theory frontline enforcement agencies procuratorial authorities the courts and the Prisons including the penal correctional facilities and services.

3. Third, Criminal Justice can be considered as a so decimal system. in his perspective, defining and responding the criminal conduct involves all elements of
Criminal Justice System and Criminal Justice Process:

The Criminal Justice Process is not the same thing as Criminal Justice System. The system of criminal justice is structure on certain institutions, and agencies that have the responsibility of applying the rules of Criminal law. Criminal Justice Process on the other hand refers to the steps taken by various agencies of criminal justice system according to the procedure which is relevant to the system of criminal justice. The criminal justice process can be identified with the procedure pertaining to the actions of the agencies and institutions manning the system of criminal justice.

III. THE FRAMEWORK OF CRIMINAL JUSTICE SYSTEM:

The scheme of distribution of subjects giving law making power under the constitution is divided between the Centre and the states. The seventh schedule appended to the constitution has three lists 1) union List 2) state list 3) Concurrent list. The subject’s crime and criminal procedure are mentioned in concurrent list in number 2. In theory it is held that laws made by parliament take precedence over state laws made by state legislatures. In reality however the laws in India surprisingly topple and frustrate the constitutional provisions spelt out in article 162. The Maharashtra Control of Organized crimes Act (section 17) overrides section 25 of Indian Evidence Act

For example article 19 of the constitution gives the citizens right to assemble peacefully and protest against some action by the legal authority as agent of the state. Apprehending that there is likely to be protest the district magistrate of the area in advance declares a prohibitory order that more than three/five persons should not assemble in a place covered by the Prohibitory Order and provision in the order makes the breech of order as punitive. It clearly means that district magistrate is deliberately
and arbitrarily proclaiming prohibitory order to frustrate the right of citizens to
demonstrate. Can the District magistrate decide the fate of citizens’ right to liberty and
freedoms as part of that liberty granted under article 19 of the constitution with a
preconceived pro-government and anti-people stand? Certainly not. This arrangement
of discretionary use of declaring certain area as prohibited in the matter of article 19
frustrates and fails the constitution and tells the world that the regime is oppressive.

Instead of taking the side of protestors who are real masters of the nation the district
magistrate is taking the side of the state under the pretext of possible collapse of
public order. People are not worker ants that they always maintain order meekly by
instinct.

In Coates v. Cincinnati (1971) the United states supreme court said that breech of
prohibitory Order proclaimed by the local authority cannot be a crime since the original
freedom granted by the constitution is used by the person who defied the order. Using
freedom cannot be a crime anywhere.

The facts of the case are Coates was a student. In City of Cincinnati there was
prohibitory order proclaimed by the local authority. Coates and two others
demonstrated by giving slogans and holding placards. The breach was punishable with
50$ as monetary fine and one month in prison. Coates challenged the fine and
imprisonment saying that he used the freedom given to him by first and fourteenth
amendments.

Prohibitory order was proclaimed by a smaller office not equalling or surpassing
constitutional provisions proclaiming freedom. The Local authority at the most stop the
citizen but cannot slap punishment. Certain crimes are simple cases of disobedience
and they fall in to the category of stoppable not the in the category of punishable.

The indian penal code was drafted by a British legal expert Thomas Babbingtom
Macaulay during British India rule and was operative from 1862. The indian penal
code and the criminal procedure code were originally conceived as laws for natives
made by a master race. These laws are applicable to Indian citizens, residents who are not citizens and Indian citizens committing crime abroad. law was drafted more than a century ahead of constitution of India came into being. The subtle oppressive regime can be seen if deeper analysis is done.

Indian penal code is classified for the convenience of law enforcing police, prosecutors, defence lawyers adjudicating judges and the common public. The code categorises offences against state, offences relating to Army Navy Air Force, offences against tranquillity, offences against men women and children, offences relating to immovable and movable property. Offences relating to religion, offences relating to public health, marriage, morality. crimes defined by the code are classified further as cognizable and non-cognizable just like crimes are categorised as misdemeanours and felonies in USA. Non-cognizable offences as crimes are less serious for which bail is not demanded. The felony is a class of more serious crime the punishment for which is more than twelve months of imprisonment. Misdemeanour is a class of less serious crimes the punishment for these crimes is less than twelve months.

Punishments are categorised by the law makers as per the seriousness of the crime. Punishment includes monetary fines simple jail term with hard labour, jail term for life and capital punishment, simple imprisonment, imprisonment with hard labour. There is provision of solitary confinement in Indian penal code and also jail manual but in Sunil Batra v. Delhi Administration WP 2202 of 1977 the supreme court said in 1078 that solitary confinement may well be on the statute book but it is not in conformity with the human rights regime of modern times. When the question of abolition of capital punishment came for debate in united nations India took the stand the in India Rarest of the rare murder doctrine has been evolved and that death sentence is awarded only for those murders which were committed in most evil, cruel manner, outrageously devilish and inhuman and for crimes such as assassinations and collative murders including murders of children.
constitutional arrangement of crime Control: Under the power sharing scheme of the constitution of India the power of governance including public order has been in share of the provincial governance.

The union territories. Policing including apprehension of criminals is performed by the enforcement spays of the state. When there is major breakdown of law and order the constitution of India allows the central government to participate in regaining the public order by joint police operations and sending central reserve police. The central government takes part in police organizations of the states by allotting to states Indian Police service Officers and the state to have the central police officers.

The constitution of India additionally authorizes the Central government to maintain apart from the military, the para military forces which are necessary to safeguard security and integrity of the nation. the central police offices and establishments located in states in spite of the protest of a state government if the state government belongs to a different political party and not the same as having power in state.

Adjudication of criminal matters generally happens in full public view I with visitor galleries. However hearing of matters related to war waged on state by terrorists, happens in camera trials. As a democratic element appeal exists at higher forums. After conviction or acquittal by trial courts. In Many cases the verdict of the trial court is reversed. There are instances in which verdict of the high court is also reversed by the supreme court.

Though there is academic question mark and criticism about independence of Indian judiciary; there is unified hierarchical court system in India having independence at each stage of hierarchy. There is supreme court at the top below which are 24 high courts in India. The high courts have power of supervising the district courts in their territorial jurisdiction headed by principal district judges who monitor the work of civil judges, executive magistrates and trial judges at district level. Panchayat courts also
function in some states of India under names like Nyaya Panchayat, Panchayat Adalat, Gram Kacheri etcetera for deciding civil and criminal disputes of petty and local nature.

The ministry controls central police administration and their functions. Intelligence gathering surveillance and reconnaissance agencies are operated and administered by the Home Department of the central government. The Home department headed by a minister for internal affairs is concerned with peace and tranquillity pertaining to the entire nation. The recruitment of top class administrative and top class police personnel is done by the independent agency known as union Public service commission. The Central Home ministry decides and can change the boundaries of the state and union territories. The union Home ministry also decides the name of the state and the union territory and can change the name so decided.

There are also para military forces under the central government the central home ministry runs the administrative officers academy at Missouri and an academy at Hyderabad to train top class Police officers. The prime investigative agency Central Bureau of Investigation is not established by central Home ministry but it was established under Delhi Police Establishment Act 1946. It now functions under Department of Personnel and Training, government of India. This agency can be directed by high court of a state or the supreme court of India to file offences and enquire against anybody however so big. The Central Home Department also is the parent department of the Para military organizations viz. central reserve police force, Assam Rifles, Indo-tibetan border police.

The Police forces in India draw their style of working and hierarchy from the Police Act 1861. The Police organization in each state has a distinct uniform, equipment, and resource base in terms of funding etc. but yet on a broader scale there appears marked similarity in pattern and functioning.

A Director General of Police (acronym DGP) in each state heads the Police organization. He must report to the Home Secretary of the state.
Territory of Delhi does not have its own police. The Central Police is deployed in NCT Delhi and it is headed by commissioner of Police Delhi.

Under the director general of police in each state a number of police "ranges" composed of three to six districts, headed by Special Inspector General of Police. Arise created. The high officers gives orders to the lower officers. They have discretionary powers. They are also responsible for the all types of criminal investigations. All districts also have Additional Superintendents Assistant Superintendents and several deputy superintendents of Police. Police stations are headed by Police Inspector. In metropolitan cities there are Police commissioners Deputy Police commissioners and Assistant Police commissioner.

Because the police force is inadequate always the Home Guards are called who are poorly paid and who have poor diet and consequently poor physical strength.

In all the states are civil as well as the armed police divisions. The farmer are attached to police stations, do the job of investigation, answer and redress routine complaints of citizens, manage traffic on roads, and patrol the town and its lanes. Policemen usually carry batons called lathis made by bamboos or plastics.

The division of armed police in each state are divided in to two groups, 1) armed police attached to District Police Headquarter and 2) the state Reserve Police. The armed police in the district are organized as per the military rules. They are posted temporarily by rotation to police stations and do the protection of citizens and the state property. Presently even there are many women working in the police department.

They were first time introduced by union Public service commission in 1972. Kiran Bedi was the first IPS officer who rose to the rank of IGP and created an imprint on contemporary society. Woman officers like Addl. DGP Maharashtra state Meeran Chaddha Borwanker are holdig important offices. However their numbers is comparatively small.
The enforcement of law and management of law and order and it is security, prevention of offence and detection of offence are necessarily enforced the police authority. The role and performance of police is governed by the following three major laws:

- Indian Penal Code, 1860
- Indian Evidence Act, 1872

Apart from these, to cater to various specific needs, several new laws have been enacted. As such several Special laws - applicable to a particular subject i.e. Arms Act, Narcotics Drugs and Psychotropic Substances Act, etc-and Local laws-applicable to a particular part of India-have been enacted from time to time to meet the growing crimes prevention needs.

SECTION B – THE OPERATIONAL CONCEPTION THE SYSTEM OF PUNISHMENTS

The expression: ‘system of punishments’ refers to the body of rules and regulations which represent the principles of justice and the procedures of deterrence oriented retribution. The system of punishments is concerned with such types of punishments by which the criminals are punished with, judicially by fines, imprisonment, deportation etc.

Though the expression ‘punishment’ is wide enough to refer to any kind of unpleasant consequence the specific area envisaged in this research however is the work relating to the courts of law with the object of securing due compliance with the laws.
In the specific area of criminal justice punishment refers to the work of the criminal courts whereby certain kinds of punishments as specified in the law of crimes are imposed on persons for contravening the penal laws.

Relating the system of punishments to the concept of justice it may be pointed out that there are two types of justice, one civil and the other criminal, which means there are two types of wrongs, one known as civil wrongs and the other known as criminal wrongs. Criminal wrongs are public wrongs while civil wrongs are private wrongs.

A crime is an act which is deemed by law to be harmful to the society in general, even though its immediate effect is on an individual. The proceedings against such persons who commit crime are taken by the state and if convicted they are punished. In the case of civil wrongs only the rights of the individual wronged are infringed and therefore the remedies are sought by the aggrieved parties themselves.

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 criminal justice in somewhat different set of course. 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. While criminal proceedings when successful result in one of a number of punishments ranging from a fine to hanging.

There are two incidents of punishment, it can be regarded as a method of protecting society by reducing the occurrence of criminal behaviour or it can be regarded as an end in itself. Punishment can protect society by deterring potential offenders, by preventing the actual offender from committing further offences and by turning and reforming him into a law-abiding citizen. Various theories of punishment have been propounded to justify ends of criminal justice and punishment details of which have been described in the research report. The application of the provisions of
criminal law to new types of crimes and the new procedures has raised the question of reforming the system of punishment.

Though punishment is a kind of power exercised by various institutions apart from the courts, the specific area envisaged in this proposal is the work belonging to the courts of law. The need for reform of the law has arisen owing to new kinds of crimes about which the existing system of punishment is found to be inadequate and the rising trend of criminality about which the existing system of prevention is found to be ineffective. The significance of this research is that it will be meeting the acute necessity which has arisen of dealing with the crime problem by revising the laws on the system of prevention and punishment of crime. The subject of these two branches of criminal law viz. prevention and punishment are clubbed together. Punishment by courts follows culpability. Without culpability proved beyond reasonable doubt, there can be no punishment given by courts.

The punishments which the courts of criminal jurisdiction may award are of two kinds, one which is provided for in the Indian Penal Code 1860 and the other punishments which are provided for in the Special laws of crime.

As far as punishments provided by the Indian Penal Code 1860 are concerned, they are the punishments of Death, Imprisonment for life, Imprisonment which may be simple or rigorous, Solitary Confinement, Forfeiture of Property and Fine.

As far as punishments provided by the special laws are concerned they are of a wide variety; some of them may be described as Disqualification from holding an office, Disqualification from contesting an election, internment etc.

There is demand for introducing various new punishments for certain crimes with a view to improve the system of criminal justice and make the criminal law strong enough to deal with criminality. This is where the need arises of making a thorough study keeping in view what was the system of punishment previously and what it is at present.
Punishment generally is the name of something unpleasant or undesirable imposed upon an individual by a legal authority for his or her behaviour which is in violation of the norms already laid down by the authority. Punishment is intended for enforcing good behaviour by the concerned authority. Although punishments are administered for various purposes, the one particular purpose for which it is inflicted is to bring the behaviour of the wrong-doer in conformity with the prescribed rules of conduct. In this sense, even the family members of tender age children, parents, guardians, and teachers, are also punished by their rules.

The theoretical conception of Punishment is it is a kind of power exercised by the appropriate authority besides several other institutions of state to bring a person to account for his misbehaviour and to do justice to other members of society. There are a good number of institutions and officers besides private agencies which perform the work of imposing punishment on persons for their behaviour which is contrary to the norms of that institution.

The object of punishment by these institutions and agencies is to enforce the rules of discipline and set right the behaviour of a person. Punishment is inflicted on the violator with the intent to secure the observance of discipline by rest of the people in the society.

(i) **The Meaning & Definition of Punishment**

Various ancient medieval and contemporary philosophers have defined punishments in their own style.

Punishment is an authoritative forceful infliction of physical pain upon the prisoner of war or the civilian by a perpetrator who may have custody and control over the body of that person. There are following conditions:

1. it be imposed by an authority,
2. it involves some loss or loss of life to the supposed receiver of punishment.
3. it be in response to an offence or sheer disobedience which may not be an offence.
4. The concerned person or criminal must be responsible for the offences.
5. If authority is senseless, capricious and whimsical, even innocent victims can be punished with death or loss of limb without any fault on their part.
6. Punishment can be segregation from property or family

The search for a precise definition of punishment that composed by some philosophers is yet come. Punishment include fines, deprivations and infliction of pains.

Exception to this phraseology is the holocaust in Nazi Germany where million people were punished with death just because they were born as Jews.

According to 17th Century’s most respected legal thinker Hugo Grotius punishment is for improving the human character.

Professor Jerome Hall has set out a detailed description of punishment in the following terms:

“First, punishment is a hardship; second, it is coercive; third, it is inflicted in the by state; fourth, punishment presupposed rules, their contravention, and a minimum and maximum proper strength of mind of that, expressed in a judgment. Fifth, it is inflicted upon an offender who has committed harm, and this presupposes a set of values by reference to which both the harm and the penalty are fairly significant. Sixth, the extent or type of punishment is in some defended way related to the commission of the harm, and motivated or mitigated by location to the individuality of the offender, his object and attraction.”

Jeremy Bentham says, “Punishment, whatever shape it may assume, is an evil. The two objects, constantly accompanying each other, require being distinguished; —
The act by which the evil is considered as being produced and 2 what is considered as being the result of that same act, the evil itself which is thus produced?

Punishment may be defined—an evil resulting to an individual from the direct intention of another, on account of some act that appears to have been done or omitted”

Eminent Penologists Benn and Flew have given some elements of punishment:

1. It must involve pain and its consequences must normally be considered unpleasant.
2. It must be for an offence against legal rules.
3. It must be given to an actual offender who has committed the offence.
4. It must be imposed by an authority con by the legal system

Rawls sets out succinctly the necessary and sufficient conditions of state coercion in a civilized society. It is only through the observance of these conditions, the infliction of punishment is held to be legitimate and in accordance with law. He states that due process of law should be followed while adjudicating the charge of offence committed by an accused person. The adjudicating court must be a competent regular court and the quantum of punishment must have been clearly mentioned in sections of offences and the sections describing punishment of those offences.

Sutherland and Cressy have mentioned two essential ideas while defining the concept of punishment they are:

“(a) it is inflicted by the group in its corporate capacity upon one who is regarded as a member of the same group. War is not punishment for in war the action is directed against foreigners. The loss of status which often follows crime is not punishment, except in so far as it is administered in measure by the group in its corporate capacity.
(b) Punishment comprises of pain, suffering or loss produced by design and justified by some social or political value attached to that suffering. If the pain or suffering is merely accidental, it is not punishment. A pain inflicted for larger permanent benefit is not punishment. Surgical operation performed on a prisoner or an under-trial to correct a physical defect or ailment is not punishment, for the pain is regarded as necessary for greater comfort and pleasurable satisfaction later."

The ancient and medieval wars had unwritten rule that defeated army's generals and soldiers were beheaded though they had fought the war bravely though on opposite side. The queen of a defeated king automatically became the property of a winner king against her will.

Unfortunate incident cannot be concerned as a punishment. For punishment to occur at least three ingredients must be present. (i) intention (ii) authority superior to the sufferer (iii) the sufferer of pain, must have committed some breach or must have broken some promise

After the perusal of the above quoted definitions one would arrive at the conclusion that Punishment involves the infliction of pain or forfeiture, the judicial visitation with a penalty, chastisement or castigation. It includes a kind of sort of social censure and not necessarily the involving or inflicting of physical pain. It is ideal if the idea behind it is to improve or reform the wrongdoer, and if it really is of such character that it does not degrade, but elevates and is really potent at leading to the desired result. Such information of the offender as leads him to realize the wrong done by him and to repent and atone for it, thus neutralizing the effect of his wrongful act and making him realize that a bad act will lead its doer to his own damnation and that the best thing is to abstain from wrong doing.
Objectives of Punishment

There are two aspects of punishment, it can be regarded as a method of protecting society by reducing the occurrence of criminal behaviour or it can be regarded as an end in itself. Punishment can protect society by deterring potential offenders, by preventing the actual offender from committing further offences and by turning and reforming him into a law-abiding citizen. Various theories of punishment have been propounded to justify ends of criminal justice and punishment. They are as follows:-

1. **Deterrent Theory** According to this theory the evil-doer should be given such a punishment that he becomes an example and warning to others that might similarly feel inclined to deviate from the straight path of duty. Here punishment is to create fear among potential offenders and more hardened a criminal, the severer should be his punishment. Deterrent theory justifies exemplary punishment because it not only dissuades the offender from repeating the crime but also determines others from indulging in criminal activities.

2. **Preventive Theory** This theory is based on the idea of preventing repetition of crime by disabling the offender through measures such as imprisonment, death sentence, etc. The object of punishment according to this theory is to deprive the offender, either temporarily or permanently of the power to repeat the offence. Death punishment is the most effective mode of preventing offences by an offender but it is awarded only in those offences which are of very grave nature, such as murder or treason. In these cases, the repetition of the offence would be highly dangerous. In modern times, certain other preventive measures have been adopted in various offences such as forfeiture, suspension or cancellation of licence etc.
(3) **Reformative Theory**  According to this theory punishment should serve as a means of social education. It emphasizes on reformation of criminals through the methods of individualization. It says that offences are committed under the influence of motive upon character. Therefore, they can be checked either by a change of motive or by changes of character. According to this theory, crime is the result of a disease and the criminal is a patient who should be given proper treatment. The legitimate purpose of punishment according to this theory is to reform the character of the wrongdoer so that he will desire to do what is right instead of yearning to do what is wrong.

According to Salmond, reformative element in punishment is important and should not be overlooked but at the same time it should not be allowed to assume undue importance. He says that crime cannot be treated purely as a disease.

(4) **Retributive Theory**  This particular aspect of punishment is recognized for centuries as per most popular principle of ancient penology. An eye for an eye and a tooth for a tooth it is the philosophy there should be which is also a famous maxim on which primitive society proceeds. The theory of punishment involves two conceptions:

(i) That punishment is an end in itself, and

(ii) That the primary justification of punishment is found in the fact that an offence has been committed and not in any future advantages to be gained by its infliction, whether for society or for the offender as an individual.

Kant and Plato are the main exponents of this theory. Kant gave an illustration for this theory. “Even if a community of citizens dissolves with the consent of every member, they must first execute the last murderer in the prison so that everyone gets what is his due according to his deeds.”
If deterrence is the object of punishment then logical question will be why recidivism should exist. prevention of crime cannot be sought by punishment and thus reform in the criminals cannot be sought.

Sir John Salmond has criticized this theory. He says that “Retribution is in itself not a remedy for the mischief of the offence but an aggravation of it. The infliction of pain and suffering, if unredeemed by some corresponding and compensating good can only add to the sum total of misery already occasioned by the offence of the criminal. Sir John Salmond’s circumlocutory argument concept can be answered. The pleasure by punishing mischief monger reduces the misery caused by mischief.

(5) The theory of compensation to victims of crime: According to this theory the object of punishment must not be merely to prevent further crimes but also to compensate the victim of the crime.

(iii) History Of Punishments

History of Punishments is related in several ways to the history of Administration of Justice. From ancient days War and Administration of Justice have been considered as two most essential functions of a state. If a state is incapable of performing these two functions it cannot be called a state. Dispensation of justice implies the sustainment of peace and harmony oriented neatness within a political community by means of physical force of the state. For sound administration of justice physical force of the state is the prime requirement. Other factors which help administration of justice and command obedience to the authority of the state and its laws include social sanction, public opinion, convenience etc.

Thomas Hobbes believed that a common power was necessary to keep people within control in the community. He said, unless men are under a common power to keep them all in awe, it is impossible for men to live together except in the most
primitive forms of society where life would be ‘solitary, poor, nasty, brutish and short’. The fact is unlimited and unrestrained liberty leads to a state of anarchy; therefore some kind of external coercive authority is needed to keep men within their limits and restrain their unfettered liberty.

In civilized societies administration of justice has evolved through stages. In the first stage, when society was primitive and private vengeance and self-help were the only remedies available to the wronged persons against the wrong-doer he could get his wrongs redressed with the help of his friends and relatives.

In the second stage of origin of administration of justice the rise of political states took place but these infant states were hardly powerful to regulate crime and to inflict punishment on the criminal. The law of private vengeance and self-help continued to have influence. For example, in the days of the Saxons, vengeance was not totally absent but it was merely regulated and restricted.

In the third stage, the state began to act as a judge to assess liability and to impose penalty. There was a transformation from private justice to public justice through the agency of the state. With the growth of the state’s power, private vengeance and violent self-help were substitute for the administration of civil and criminal justice.

(iv) The Kinds of Punishment

The implementation of the sections of criminal law to specific new types of crimes emerging from the technological advances and compatible social changes give rise to new procedures for the adjudication of offences of criminally oriented accused persons. This situation has raised the question of reforming the system of punishment.

Though punishment is a kind of power against a section of people exercised by multiple institutions apart from the courts viz. Prisons, probation officers, governor’s office (in respect of remission), The President of India’s office (in respect of mercy
petition) the specific area envisaged in this proposal is the work belonging to the courts of law. The need for reform of the law has arisen owing to new kinds of crimes about which the existing system of punishment is found to be inadequate and the rising trend of criminality about which the existing system of prevention is found to be ineffective.

The significance of this research is it will be meeting the acute necessity which has arisen of dealing with the crime problem by revising the laws on the system of prevention and punishment of crime. The subject of these two branches of criminal law would be the system of punishments as inflicted by the courts of criminal jurisdiction when culpability in respect of accused persons is discernible.

The punishments which the courts of criminal jurisdiction may award are of two kinds, one which is provided for in the Indian Penal Code 1860 and the other punishments which are provided for in the Special laws of crime.

As far as punishments provided by the Indian Penal Code 1860 are concerned, they are the punishments of Death, Imprisonment for life, Imprisonment which may be simple or rigorous, Solitary Confinement, Forfeiture of Property and Fine.

As far as punishments provided by the special laws are concerned they are of a wide variety; some of them may be described as Disqualification from holding an office, Disqualification from contesting an election, Internment, etc.

There is demand for introducing various new punishments for certain crimes with a view to improve the system of criminal justice and make the criminal law strong enough to deal with the criminality. This is where the need arises of making a thorough study keeping in view what was the system of punishment previously and what it is at present.

The litigating public, the human rights organizations, Bar associations etc. have been demanding changes with regard to chastisement such as imposing collective
fines, ordering convict of non serious crime to do community service, barring persons from holding public office, etc.

**SECTION C - MEANING & DEFINITION OF PENAL REFORM**

According to the Cambridge dictionary, meaning of the word penal reform is the attempt “the attempt to improve the system of legal punishments”.

One must aver that there are three basic requirements that are present in each attempt at penal law reform. First there must be kindling. The people in a given geographic area at a specific period of time must be prepared for a change. Their receptivity can frequently be attributed to various conditions which are political in nature. Second, there must be a torch. An idea must be present to set fire to the minds of the people. Third, there must be an incendiary: there must emerge an unusual man, a leader to touch the fagots with the torch and fan the flame of criminal reform.

Law is never static. Since human society constantly undergoes changes 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 present times and should reflect current values and philosophies of the society. Otherwise dichotomy will arise between law and society 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 them and re-enact them in order to bring them up to-date. After codification, the function of the courts undergoes some change. 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 parliamentary language.
The need for reform of the system of punishments arises owing to the several problems which the authorities of the state have to face in the matter of enforcing the criminal law. One of the problems which have arisen is the rising trend in the incidence of crime for which Criminal law is blamed that it has not been able to control the problem of crime. Apart from the increase in crime there are also new kinds of crime which call for an effective system of dealing with the problem.

The nature and characteristic of new crimes have thrown new challenges before the law enforcement authorities. The complicated nature of crimes has made it difficult for the law enforces to find the offender of crime and how the crime has been committed. The developments owing to scientific and technological advance have ushered in new types of criminality owing to which there is need for amendment of the criminal law of our country.

Agencies working at the international level for penal law Reform.

There are various agencies working nation-wise and globally for the reform of law. As far as these agencies are concerned, they undertake research on various aspects of the crime problem and they suggest reforms to all countries of the world. One particular subject on which the international agencies are working is the human rights law and the other subject is the Criminal law proper. As far as the human rights perspective is concerned the discussion on the role of international agencies for developing the human rights law is covered sufficiently in Chapter IV of this Thesis. However, the work of international agencies on developing the Criminal law is presented in this chapter.

(1) international penal & Penitentiary commission (IPPC) Among the popular agencies working at the international level are the international penal and penitentiary commission This was the first commission to have been set up by the League of Nations to work on international criminal law and other criminal law matters.
In the beginning of twentieth century, as large police establishments, huge adjudicating machineries and sprawling penitentiaries began appearing in the megalopolises, sociologists became worrisome and started studying on the causes of and remedies to crimes. The sprawling prisons bloating with numbers of prisoners comprising convicts and under-trial criminals drew widespread attention of the criminologists to the fields of criminology and penology.

A substantial number of conferences beginning from congress held in London (1872) on prevention and repression of crimes brought together social scientists and legal scholars and thinkers from the entire world. Main problems under debate comprised managing penitentiary, control of prison population, possible alternatives to high wall maximum security prisons. Modes of rehabilitating convicts, ways of treating juvenile offenders, extraditing criminals hiding in other nations and the Capitalistic repression of working class and the middle class.

Well known Critical Philosopher Richard Quinney (Professor of Critical Philosophy at Wisconsin University USA) suggests that the capitalists control the middle and working class people by conditioning their minds. Quinney cites two research studies which were done in 1960s. According to these studies American People wanted police to have more freedom for controlling street crime and wanted American Police to use more force even at the expense of a few innocent. The middle class people in America were given to understand that more freedom the police have more protection the people will get especially the middle class people.

But what happened was quite opposite. Police used the greater freedom to harass middle class. According to Quinsky the state works to serve the interest of the ruling capitalist class. Criminal law is the instrument of that capitalist ruling class to perpetuate the current social and economic order. Quinney also remarked that coercion and violence of the legal system are necessary to maintain the interests of ruling classes because of inherent contradictions of advanced capitalism. Quinney also
quipped that crime control is not possible in capitalist system until the capitalism is replaced by Socialistic order.

When the London conference on prevention and repression of crime ended, a new commission was formed with nomenclature as international prison commission. The IPC would be responsible to collect data on prisons and press reforms in punishments and also in prison conditions worldwide. In 1935 IPC was renamed as IPPC (international penal and penitentiary commission). In 1950, the international penal and penitentiary commission was dissolved by UN general assembly due to which 75 year data and research findings were destroyed. From start to end of the second world war II (1939-1945) there were plethora of crimes occurring on mass scale. These crimes included holocaust, genocide, enslavement of prisoners of war, aggression, seizure etc. The entire human race was in crisis.

UNODC united nations Office on Drugs and crime was formed with a brief that included the control and prevention of crime. Bizarre theories and stories on the racial and cultural and geopolitical roots of crime have emerged along with barbaric, draconian measures for suppression and control of crimes.

(2) united nations crime Congress

The committee that monitored internationally the prison reforms and crime control known as international penal and penitentiary commission was dissolved in 1950 by general assembly of united nations. The work was taken over by UN body known as UNODC which is working hard on all aspects of criminal law.

Among the important things done by the UN Congress on crime prevention are that the congress has drafted standard minimum rules for several problems plaguing the nations. These rules include treatment of prisoners; treatment of juvenile delinquents, prison labour, parole and rehabilitation. The issues also comprise
criminality arising from social change related with and economic development such as displacement of aboriginal.

**3) International Law Commission** yet another agency working at the international level for the cause of improving the Criminal law is the international law commission. The object of the commissions enshrined in Article 1, paragraph 1, of the Statute of the international law commission which provides that the “commission shall have the objective of promoting a strong draft with a set of rules followed with consequences of breaking those rules.

**ii) Agencies working at the national level for penal law Reform**

Discussion on this aspect of the subject is presented in Chapter VIII of this Thesis under the broad head of the work of the committees and commissions on penal law Reform in India.