CHAPTER-I

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1.1 General Introduction:

The history of crime is as old as the human civilization. Every society and country has its own notions of crime. Crime is inevitable in every society, because there is always some violation or other of a prescribed code of conduct for every society. Crime is a perennial and universal problem of all societies. The concept of crime is rooted in men’s rudimentary attempts to distinguish between right and wrong in his interaction with fellow humans. The basic problem in criminology concerns is the definition of crime. The dictionary definition of crime is “an act punishable by law as being forbidden by Statute” On the other hand the dictionary of behavioral science defines crime as “major transgression of law which is punishable”¹ The Indian Penal Code does not define crime per se but contents itself defining an offence as a thing made punishable by the code. Whereas the punishment is defined by various jurists and authors on various ways. According to the Walter C. Reckless², punishment is a means of social control. He says in his book “The crime problem” that the sanctions applied to the erring individual represent a show of authority by the society. Society believes that its show of authority through redress is efficacious.

According to Grunhut three components must be present in punishment to act as reasonable means of checking crime. Firstly, speedy and inescapable detection and punishment must convince the offender that crime does not pay. secondly after punishment, the offender must have a fair chance for a fresh start.

and thirdly the State which claims the right of punishment must hold superior values which the offender can reasonably be expected to acknowledge. Cesare Becaria in his book ‘On Crimes and Punishments’ has mentioned that “no lasting advantage is to be hoped for the political morality if it is not founded upon the ineradicable feelings of mankind. Any law that deviates from these will inevitably encounter a resistance that is certain to prevail over it in the end- in the same way that any force, however small, if continuously applied, is bound to overcome the most violent motion that can be imparted to a body. One of the earliest and most simplistic definition of punishment was given by Hugo Grotious who defined punishment as the infliction of an ill, suffered for an ill done. However, from a criminological point of view, punishment can be defined as “penalty or sanction given for any crime or offence”. So punishment is necessary to law as law is necessary for the society. Customs are more important source of law. But with the progress of society they gradually diminished. Then the legislation and judicial precedents became the main sources.

When Queen Elizabeth-I assumed the throne of England in 1558 she inherited a judicial system that stretched back through the preceding Middle Ages to the Anglo-Saxon era. The penal laws grew out of the English Reformation and specifically from those acts established royal supremacy in the Church of England in the reigns of Henry-VIII and Elizabeth -I. The concept of incarcerating a person as punishment for a crime was a relatively novel idea at that time. The greatest and most grievous punishment used in England, for such as offence against the State is drawing from the prison to the place of execution upon an hurdle or sled, where they are hanged till they be half dead and then taken down and quartered alive. After that some of their body parts used to cut and thrown
into a fire provided near hand and within their own sight. English common Law is a conglomerate mass of rules based upon the ancient common law of England as modified and extended by the authoritative decisions of the judges in the long passage of history and vastly enlarged by the addition of statutory enactments made by Parliament from time to time to meet the needs of the movement.

Law reform has been continuing process particularly during the religion and customary law occupied the field, reform process had been ad-hoc and not institutionalized through duly constituted law reform agencies. However, since the 3rd decade of the nineteenth century, the British Government started to constitute Law Commissions from time to time and empowered to recommend legislative reforms with a view to clarify, consolidate and codify particular branches of law, where the Govt. felt the necessity for it.

In the evolution of punishment the most primitive agency for administering the justice has been the kin group. Family and Clan groups frequently do seek blood revenge or satisfaction from the kin group of the offender, and kinsmen are frequently collectively responsible for injurious inflicted by one of their members on members of another kinship group. But in the Tribes there were blood feuds or blood revenge. Punitive procedures used to administer by elders, councils, chief, or kings for those offences considered to be crimes against the Tribe rather than private injuries. The accepted theory of the evolution of punishment states that crimes such as murder and its related offences were the responsibility of the kin group and other crimes such as witchcraft, treason, violation of the sex taboos were the responsibility of the tribe. Feuds were often started as a result of one

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2 www.lawcommissionofindia.noc.in/main.
Clan attempting to retaliate for the injury or wrong done by an offending member of a different clan. Frequently payment in kind was extracted from the offending person or his clan for the murder or theft or other injury committed. This was a form of compensation and represented an effort to compromise the difference between contending parties, so as to prevent blood feud. Later, presumably the Chiefs and Kings were supposed to act themselves or assigned a third party to act as final adjudicators of the composition of wrongs. Thus, the idea of court was born. When this happens the Tribal group or the 'State' assumes responsibility for all offences within its jurisdiction.

The penal law of any country will tend to change according to views, desires and wishes of the rulers of that particular country basing on the circumstances and situations prevailed in that country. Accordingly, change of rulers or government or change in the views of the same Government will be reflected in the recognition of an act as an offence and in the severity of the punishment of the same offence. When the views held by one Government and its successor differs fundamentally, a corresponding change can be expected in the law of crime and in the administration of criminal laws. Such fundamental change took place between 1773 and 1861 in India.

Before the advent of the British, the Mohammedan penal law was prevailing in the most parts of India. The Muslim rulers after the conquest of India imposed their own criminal law. The primary source of Mohammedan criminal Law was the 'Qoran' which was believed to be of Divine origin. But the

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1 Harry Elmer Barnes and Negley K. Teeters, 'New Horizons of Criminology', 3rd Ed. P. 78
Laws of Qoran were found inadequate to supply the needs of large civilized community. In this regard, the Mohammedan rulers introduced the Sunna, or rules of conduct, deduced from the oral precepts, actions and decisions of the Prophet.

The Mohammedan Jurisprudence had four broad principles of punishment. Kisas, or retaliations, Diyut or blood money, Hadd or fixed punishment and Tazeer and Siyasa or discretionary or exemplary punishments. The Mohammedan law allowed very cruel and severe punishments such as punishments of crucification, mutilation, stoning to death, retaliation for murder, and the like. But rule of evidence often made it difficult to get a conviction.

For the first few years of its administration the East India company did not interfere with the criminal law of the country. In the year 1772, during the administration of Warren Hastings, the Company for the first time interfered, and also from time to time, the British Govt. altered the Mohammedan law up to 1862, when the Indian Penal Code came into operation. The Mohammedan law was undoubtedly the basis of criminal law excepting in the Presidency towns. Thus, Muslim Criminal Law extended to a considerable time in India. Warren Hastings opined that the punishments were very severe and hard under the Mohammedan Criminal law1 The provisions of Mohammedan penal law were of such a nature that their continuance could not be allowed on grounds of humanity and justice.

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1 A letter of W.Hastings to Lord Mansfield, dt.21-3 -1774.
Only the most glaring defects in the indigenous systems were gradually removed by Regulations and a 'patched up and modified' law was put in its place.

In 1790, Corn Wallis also advocated the abolition of the punishment of mutilation, but nothing was done till 1791 when the Government resolved that the punishment of mutilation should not be inflicted on any criminal in future, and all criminals sentenced by the courts to lose two limbs were to suffer instead of it hard labor in prisons for 14 years, and those sentenced to lose one limb were to be imprisonment with hard labor for 7 years in lieu of it.

On May 1, 1793, the famous code of Cornwallis was passed, but as regards the penal law not much additional change was made. The Mohammedan law with the necessary modifications continued to govern the people of India for a considerable period of the East India company's administration. The provisions of Mohammedan Criminal Law were superseded only in cases, where the Regulations and Mohammedan law prescribed distinct penalties for the same offence. Then, Lord William Bentink, when he came to India as Governor General was determined to do what his predecessors had left undone.

It was from the year 1832, that the people of Bengal, Bihar, Orissa, Bombay and Madras Presidencies not professing Mohammedan faith were absolved, if they so desired. From the operation of the Mohammedan criminal law an attempt was made for consolidation of the British empire in India, moreover necessitated unity of administrative control and uniformity of the laws and judicial systems in all parts of the British India. The Governor General became the sole authority for promulgating laws for all persons and courts of justice. Later on, a

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1 Article-5 of Regulation iv of 1832.
2 Sec.38 of Charter Act of 1833, Sec.44 of Indian Council Act 1861.
sort of legislative council was established to enact all laws whether provincial or all India application. This State of things continued till 1861 when legislature power was restored to the Government of Bombay and Madras. The Bengal Legislative Council was also constituted on 17th January 1862.

The increasing powers of different provincial Governments from 1813 onwards were responsible for the growth of a heterogeneous system of laws, both substantive and procedural. The conflict laws created difficulties in the administration of the country as a whole. The Statute of 1833 provided for the appointments of the Law Commission and from time to time Commissions to enquire fully into the State of laws in force and the administration of justice in the British possession in India and to make reports thereon. The 1st Indian Law Commission with presidentship of T.B. Macaulay and J.M. Macleod, G.W. Andarson and F. Millet as members submitted the report on the Penal Code on the 2nd day of May 1837 as per the orders of the British Government on 15th June 1835 to the Governor General in Council. The first Law Commission commented that 'The Criminal law of the Hindus was long ago superseded by that of the Mohammedans. The Mohammedan criminal law has in its turn been superseded to a great extent by the regulations. The printed draft penal code was prepared by Indian Law Commission and submitted to Govt. of British India on 14th October 1837. The findings of new commissioner by name C.H. Cameron and D. Eliott, were appended, to the first Report as a post script dated
5th November, 1846. The second and concluding report on the Indian Penal Code proceeded on all the chapters, offences not before examined and was submitted to C.H. Comeron and D. Eliot on 24th June 1847.

The Law Commissioners concluded that the draft Penal Code was sufficiently completed with slight modifications. The revised edition of the penal code was then forwarded to the judges of Supreme Court at Calcutta on 30th May, 1851, for the favor of any observations or suggestions on its provisions which might appear to be necessary. This edition was the draft Act of the Criminal law prepared by Mr. Bethune who was the then member of the Legislature Council of India. Two eminent English Judges by name Lawrence Peel and Buller of the Calcutta Supreme Court made their observations on the Draft Act prepared by Mr. Bethune. Mr. Justice Colvile forwarded his opinion on the revised edition of the penal code in June 1852. The revised edition of the penal code with copies of the Minutes, recorded by the Governor General and the other Members of the Govt. on the subject was sent to the Company in London on 9-8-1851. The committee consisting of J.P. Grant, B.P. Peacock, James Williams Colvile, D. Eliott and U.I. Moffatt Williams to whom the Penal code had been referred on 7-7-1854 stated that, they had come to the conclusion to recommend to the council that the penal code as originally proposed by the Indian Law Commissioners when Mr. Mecaulay was the President of the Commission should form the basis of the system of penal law to be enacted for India.

1. C.H. Comeron & D. Eliott
2. Chief Justice Lawrence letter to the Hon'ble President to the Legislative Council of India, Dt.11-9-1851.
3. East India Company's letter to the Government of India, Dt.4-2-1852.
The revised Penal Code prepared and brought by B.P. Peacock and other 4 members was read first time on the 28th December, 1856 and after 2nd read it was referred to a select committee who were to report thereon and it was published as Indian Penal Code Bill on 21st, 24th and 28th January, 1857. Then the Indian Penal Code was passed by the Legislative council of India and received the assent of the Hon'ble Governor-General on 6th October, 1860 and it was due, to come into force from 1-5-1861. But in order to enable the people, the judges and the administrators to know the provisions of the new penal code, the enforcement of the code was deferred till the 1-1-1862, by enactment of Act VI of 1861.

All the Englishmen having the legal knowledge, holding position of responsibility in different parts of India took an interest in the preparation of penal code which emerged in 1860 was mainly the work originally proposed to the Law Commission when T.B. Macaulay was the President of the Commission. No opportunity was given to the Indian Community, though they are equipped and actively interested even from the 1st quarter of the 19th century in the making of the IPC of 1860. The Hindu Patriot of Jan.29, 1857 alleged that the promises of simplicity, completeness and general intelligibility, which codifiers made of their work, failed grossly when the penal code brought to the test of practical application.

After Independence the Constitution of India with its Fundamental Rights and Directive Principles of State policy gave a new direction to law reform as per the needs of democratic order in a plural society. The Constitution of India
stipulated the continuation of pre-constitutional laws till they are amended or repealed.¹ There had been demands in Parliament and outside for establishing a Central Law Commission to recommend, revision and updating of the inherited laws to serve the needy of the country. Then the Government of India appointed first Law Commission.

The penal code is one of the much praised Acts of the Indian Legislature and it served its purpose fairly well. Since the Indian Penal Code was enacted in the year 1860, many developments have taken place, new forms of crimes have come into existence, punishments of some crimes are proving grossly inadequate. Thus, due to long period of its application, the advent of globalization and technological development, it needs some comprehensive changes in the area of punishments. The need to renovate the criminal justice system has been felt to quite some as it has come under severe stress and strain due to the changing aspiration of the citizens and the resulting social transformation. The fundamental principles and aspects of Criminal Justice System is revealing that the punishment must be with the demands of the times and in harmony with the aspirations of the people of India. The system which has been following in India for dispensation of Criminal Justice System is the adversarial system of Common Law inherited from British colonial rulers. The entire existence of the ordinary society depends upon sound and effect functioning of Criminal Justice System.

Law which is made by men himself for his individual and social development should aim at bringing about the deserved change. The nature of the law is to flow and not to freeze. Law cannot remain stagnant and thus falls to the judge to constitute the law with a contemporary approach.

¹ Article 372 of Indian Constitution.
Lord Dennings said. Law does not stand still. It moves continuously "once it is recognized, then the task of the judge is to put it on a higher place. He must commonly seek to mould the law so as to serve the needs of the time"\(^1\).

Social change envisages the change in the existing pattern of social life. Laws must be interpreted in context to the current contemporary understanding by keeping in mind the revolutionary changes in science and technology.

'Time and tide waits for none'. So also the law must change in line with the time and it should be redefined from time to time.\(^2\) All the laws in ancient India were customary law and every law has certain historical background and it will connect with the social and economic system in that particular period. The modern industrial society is characterized by the revolutionary nature of modern industry. Scientific and technological progress has no end by keeping in view the social relations which are changing endlessly.

The criminal law of England underwent different changes from time to time but the I.P.C. prepared by the English authors basing on their common law ignoring the indigenous criminal laws not subjected to considerable changes since about 149 years. Supreme Court of India several times directed the trial courts and the High Courts to mould the sentencing system to meet the challenges while disposing some of the criminal cases. But the courts can act only with in the frame work of the statute.

According to Cessare Baccaria who is supposed to be the intellectual progenitor of today's freed sentencing movement- "Crimes are only to be

measured by the injury done to the society”. But the 20th Century sociologists do not wholly agree with the view.”

The most of the provisions which are denoting punishments are giving uncontrolled, unregulated discretions to courts without any standards or guidelines. So there is immense need to fix minimum sentence at least to grave offences to strengthen the confidence on the sentencing system. Supreme Court of India has said, while delivering judgements in number of cases that any liberal attitude by courts by imposing lesser punishment to the accused in various crimes by taking sympathetic view will be result wise counter productive in the long run and against the interest of society. V.R.Krishna Iyyer, great jurist and retired judge of Supreme Court of India, stated that “we shall behave colonially in our imperial judicial jurisprudence.”¹ The Chairman of Law Commission of India Justice A.R.Lakshman recently asked the Chief Ministers of several states to set up law commissions to review the out-dated laws and to update the legal system. Hence there is a need to update the legal system in the fast changing, social, economic and political scenario in the country and to meet the ever increasing aspirations of the common man. Otherwise it would lose its efficiency and adequacy and consequently cease to be an instrument of dynamic social order. The I.P.C which has been in force in India since about 149 years needs immediate amendments in the area of punishments in view of changed and changing circumstances. The amount of fine as fixed in 1860 has not at all been revised. Money value has gone down. Income have increased and crime has become low risk and high return adventure particularly in matter relating to

economic offences and offences like misappropriation, breach of trust and cheating. Time has come to revise the amount of fine fixed statutorily.

The Indian Jurisprudence is a blend of reformative and deterrent theories. Hence the punishments are to be imposed to detect the offenders. The Criminal justice system is essentially an instrument of social control. Society considers some behaviors are dangerous and destructive. It is the job of the Criminal justice system to prevent these behaviors by apprehending and punishing transgressors or determining their future occurrences.

To understand the correlation of crime and punishment there is need to understand the object of punishment. According to Ralf Waldo Emerson “Crime and punishment grow out of one stem.” Punishment is awarded in order to achieve any or as many as possible of the four objectives namely to serve as deterrent, to be preventive, to be reformative and to be retributive. Punishment must make the evil doer feel that his act was an ill-bargain for him.

The change in the outlook in the matter of punishments with the emphasis of being shifted from the offence to the offender will naturally lead to recasting the provisions of substantive law relating to definitions of offences as well as responsibility. The penal code today provides for a gradation of punishments according to specific criminal acts and the criminal intent demonstrated by them. The meticulous setting down of supposedly appropriate dosage of punishments based upon the degrees of the vicious will lose most of its significance. The new approach to punishments would necessitate a re-examination of the splitting up of offences into degrees.

The object of punishment of criminals by the courts in all progressive civilized societies is, all the attending circumstances should be taken into
account for determining the proper and just sentence. The real issue in present day rural theory arises from more recent development which flow from the concept of rehabilitation. In other words men are punished or imprisoned in order to remake them but not because of vengeance. Rehabilitation assumes that the offender must be treated by some kind of psychological or social therapy in such a manner as to develop or reorganize the better part of his personality.

Sir Henry Main\(^1\) observed that “social necessity and social opinion are always in advance of law and the degree of happiness of the people is in direct proportion to the speed and promptitude with which the gulf between the law and progressive law is bridged. Jermy Bentham\(^2\) the great English reformist also propagated the similar view in his utilitarian theory. As per the modern jurisprudence there is direct interaction between law and public opinion and law and social change. One of the means by which the State can effect social change is by social legislation, “social legislation endeavors to bring the concept of welfare State” as enshrined in the Constitution.

There are different kinds of punishments which are evolved and applied in various forms. They are fine, forfeiture and confiscation of property, death, imprisonment for life, banishment, mutilation, branding, flogging and pillory which are well recognized. With the rise of humanitarianism in penal philosophy, fine, forfeiture and confiscation of property, imprisonment for life are the remained common forms of punishments implicated for almost all offences in many parts of the World. Imprisonment as a form of punishable gained prominence. In India

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\(^1\) Henry Main (1822-1888), A representative of Historical Movement in England.

\(^2\) Champion of Codified Law Reformer of English Criminal Law, 1742-1832.
almost all the offences under the IPC and most of the offences under special and local laws are punished with imprisonment. Deterrence and reformation are the primary social goals which make deprivation of life and liberty reasonable as penal panacea.

Society survives by security for ordinary life. So the judges are entitled to hold their own views, but it is the bounden duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as measure of social necessity as a means of deterring other potential offenders. The various sections in the Indian Penal Code prescribe different punishments for different offences that are punishable under the code, the reason for that is that all the offences do not cause the same degree of shock to the consciousness of the society. The measure of harm which are individual action causes to society is the measure of condemnation. The plight of victims under the present criminal justice system in India is very pitiable. The post crime disaster does not end with the conviction of the criminal. Mere punishment to the criminal does not give full justice to the victim. The system must responsive to the needs of the victim.

In Dhanraj Chatterjee Vs. State of West Bengal\(^1\) the Supreme Court categorically declared that imposition of appropriate punishment is the manner in which the courts respond to the society cry for justice against the criminals. Justice demands that the courts should impose punishments be fitting to the crime so that the courts reflect public abhorrence of the crime. The Apex Court stated in several recent cases that the courts should award the appropriate

\(^1\) (1994) 2SSC 2.
sentence to the criminals, the sentencing system must reflect the consciousness of the society and it should be stern where it should be.

United State of America occupied first place in keeping the offenders long time behind the bars. U.S. has been implementing sentencing system very perfectly to maintain the law and order. The punishments which are fixed to the offences defined in Indian Penal Code are quite different for the same offences which are defined under other foreign penal legislations such as in England, France, Canada and U.S.A.

The process of sentencing system changed in developed and in developing countries to a major extent since more than one and half century. For instance in Canada the 1st Prime Minister, Sri John A. Macdonald identified the significance of codified uniform penal code to all the provinces of Canada when they were confederated in 1867. A complete criminal code was finally achieved in July, 1892 under the leadership of the Minister of Justice and soon to be Prime Minister Sir John Thompson. This was a major event in Canadian legal history. The 1892 Canadian criminal code copies much of the English 1878 bill and it has since been revised numerous times, to accommodate the needs of changing times. In 1955, a major reform was carried out and the Code was reduced from 1100 Sections to 753. Still there have been many calls for comprehensive reform of Canada’s Criminal Code. The advancement in attitudes towards crime is clear. The earliest trials were short and most ended with death sentence for the accused in order to simply try deterring future crime. Further advances in punishment are made obvious as well; initial views of punishment
were centered on retributive acts such as death or public humiliation. In 19th century the punishment system started to change in the western society.¹

The Indian Penal Code which consists of 511 sections and 23 Chapters, underwent 75 amendments so far since 1862 to 2010 by repealing and omitting 21 sections, by adding 51 new Sections and three new chapters. Along with substitution and insertion of new words in certain sections. The latest amendment was done to IPC in the year 2009 with the name of “The Information Technology” (Amendment) Act,2008 (10 of 2009) Through this Amendment Section 4, Section 40, Section 118, Section 119 and Section 464 are Amended by adding some words relating to Information Technology Act, previous to this Amendment the IPC was Amended with the name of “The Code of Criminal Procedure (Amendment) Act 2005”. Through this Amendment 4 more Sections were added viz., 153 AA, 174A, 195A and 229 A. Now the Code contains 541 sections in total, but numerical there are 511 sections.

Justice is the natural urge of all human beings. The Constitution of India in its preamble solemnly resolved to secure to all citizens, social, economic and political justice. The Constitution of India which is supreme law of the land contains some provisions which dictate the limits of criminal law. Article 21 which is otherwise called as 'Mini Magna Carta' says that “no person can be deprived of his life or personal liberty except according to procedure established by law”. This means that a person can be deprived of his life, personal liberty, provided his deprivation was brought about in accordance with the procedure prescribed by law. Article 22 of Indian Constitution provides those procedural requirements

¹ http://Georgian-victorianbritain.suite101.com
which must be adopted and included in any procedure enacted by the Legislature. If these procedural requirements are not complied with, it would become deprivation of personal liberty which is not in accordance with the procedure established by law. Article 22 deals with two separate matters 1) persons arrested under the ordinary law of crimes 2) persons arrested under the law of Preventive detention. Article 361(2) of Indian Constitution immune President of India and Governors of States from any prosecution of any criminal act, while they hold office. So Section 2 of Indian Penal Code is not applicable to them along with some other specially exempted persons under International Law.

Supreme Court of India delivered several judgements relating to several provisions of Indian Penal Code and elaborately discussed about different provisions of the Code in number of decisions. In AIR 1970 SC 1876 stated that the principles of common law cannot be resorted to invent exemptions which are not expressly provided by IPC. In Mobarak Ali Ahmed v.State of Bombay¹ their Lordships opined that Section 2 of the Code must be understood as comprehending every person without exemption barring such specifically exempt from criminal proceedings or punishment by virtue of the Constitution, statutory provisions or some well recognized principles of International Law.

The Apex Court stipulated several principles for award of punishments in several cases among them some of the important cases are:

In Modiram vs. State of M.P², Sukhdev Singh Sodi Vs. Chief Justice³, Supreme Court Bar Association Vs. Union of India and others⁴, Ashok Kumar vs.

¹ AIR 1976 SC 2438
² AIR 1954 SC 186
³ AIR 1998 SC 1895

The Indian judiciary has been following the vintage justice system in general and punishment system in particular even though the concerned law in England changed to keep pace with modern practice of justice.

Justice P.N. Bhagwati stated in Bachan Sing vs. State of Punjab⁶ Judicial conclusions emanate from the judicial philosophy of those who sit in judgment and not from the language of the constitution. In E.Annamma Vs. State of Andhra Pradesh⁷ over which presently blow strong winds of aspiration and change.⁸ The Union Law Minister M.Veerappa Moily said Judicial reforms cannot be done in a partial or fragmented way. There has to be holistic approach. Former Chief Justice of India and present Chairman, National Human Rights Commission K.G.Balakrishnan opined that enormous damage has been done to India by the maintenance of largely unreformed colonial institutions hence widespread reform is needed.

Security of persons and property of people is an essential function of the State. It could be achieved through instrumentality of the criminal law. The living law can find an answer to new challenges and Courts are required to mould the sentencing system to meet the challenges. The systematic thinking about legal theory reveals that it is linked at one end with philosophy and at the other end

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¹ AIR 1980 SC 636, 637.
² AIR 1957 SC 614
³ AIR 1958 SC 998
⁴ AIR 1952 SC 14
⁵ AIR 1997 SC 610
⁶ (1980) 2 SCC 684
⁸ Krishna lyer,V.R., ' Indian Justice perceptive and problem', P.100.
with the social theory. It changes with the change in social relations. Law is to be formed according to the needs of the society. Historical research would often show that a particular existing law fully justifiable at the time when it was passed may be no longer justifiable. Now, the Indian Penal Code was enacted in the year 1860, since then many changes and developments have taken place. Hence most of the punishments prescribed to the offences defined in the code become inadequate. So that the review of the punishments mentioned in the code become necessary. Even after 149 years of Indian Penal Code came into existence, appropriate changes in the punishment area have not been brought. Now it is high time for the government of India to bring comprehensive changes in the punishments confirmed for various offences to suit the present day circumstances.

1.2. Significance of the Problem

More than 62 years have passed since India came out from the clutches of British Rule. The Indian Penal code was passed on 6th October 1860 and it was due to come into force on the first day of May 1861. But its operation was postponed from 1-5-1861 to 1-1-1862. It applies to all courts including the Supreme Court. The Indian Penal Code has been implementing in India since 149 years. The amendments made to the code are very minute either by the Central or by State Legislatures.

This Code was prepared by Lord Macaulay as a prominent member of the 1st Indian Law Commission appointed in 1834. Sir Pitz Zames Stephen who was the eminent English jurist described the Code as the criminal law of England
freed from all technicalities and superfluities, systematically arranged and modified to suit the circumstances of British India.

The punishments fixed for the offences defined in the I.P.C. have to be reviewed to suit the present day situation and circumstances to the people of India who became free and independent about 62 years ago. The authors of the penal code fixed the quantum of punishment basing on the social conditions prevailed on those days such as economical, technological, sociological etc. The legislatures who scrutinized and passed the Act also taken the social conditions and situations prevailed on those days. The scale used by the so called authors and legislatures to measure the offences is time barred and the gap between appropriation of fine and imprisonment is more widen and became meaningless due to lack of proper amendments from time to time and punishments fixed to some of the offences is very low and not suitable to the present changed circumstances in India. The other countries such as U.S.A, Canada and France amended from time to time in consonance with the changing circumstances in their respective societies. The penal law of England also changed from time to time in view of the changing circumstances. In the above circumstances the imminent need arise to select this topic. Hence the present study has its own significance.
1.3. Objectives of the Study

Law has been said to be an instrument of social reconstruction and social change. The criminal justice system which is one of the important branches of the law has to be changed in appropriation with the changing society. The Indian Penal Code which has been covering most of the offences in the society has to be re-vitalized through comprehensive revision to the punishments mentioned in it, to make them more suitable to present changing circumstances in the country.

The insufficiency of the Governmental efforts to minimize and reduce the committing of offences, to enhance the social security as envisaged by the eminent authors of the Indian Constitution, a comprehensive amendment has to be made to the Indian Penal Code. The following objectives were kept in mind of the researcher while taking up the problem for study.

1. To trace out the historical background and development of punishment system in India.
2. To critically examine the reliability, reasonability and suitability of punishments for the offences defined in I.P.C. fixed about 149 years ago to the present day offenders.
3. To find out the variation by comparing the punishments confirmed to the offences defined in Indian Penal Code with the Penal Laws of other selected countries.
4. To find out the effect of punishments and its system on the society.
5. To trace out the difference of punishment for the same offences in different penal legislations of India.
6. To find out the problems, if the Punishments mentioned for some of the offences defined in the Indian Penal Code are not amended even after a long gap of 149 years.

7. To analyse the steps taken constitutionally, legislatively and judicially for the improvement of the sanctioning system in India.

1.4. Scope and Limitations of the Study

The Researcher had chosen a problem which has the extensive scope. The Researcher does not hesitate to criticize the inter relation between fine and imprisonment confirmed for several offences in the Indian Penal Code by its authors. The researcher felt to select this topic to expose the need to bring to comprehensive change in punishments in the light of changed and changing circumstances in the society. The researcher tried his best to collect extensive information for analysis of the problem chosen. As the geographical area of India is vast and because of so many constraints such as time, energy, co-operation and finances confined the problem to certain areas keeping the main object of the thesis. However the researcher has taken all possible care to overcome the limitations.

1.5. Hypotheses

1) Amendments suitable to the present day circumstances to the quantum of punishment to some of the offences lead to strengthening the Indian Penal Code.

2) Due to lack of reasonable and justifiable variation between fine and imprisonment, the Courts cannot award suitable punishment to concerned offenders.
3) There is need to fix the minimum and maximum limit of punishment to all the offences which are covered in IPC to avoid lesser punishments by using the abnormal discretion of the courts to enhance the security of person and property in the society.

4) The Central and State amendments done so far to Indian Penal Code by altering the punishments to less number of offences are not sufficient as they did not cover other offences, which require alteration of their punishments to make them suitable to the present society.

1.6. Methodology

The problem is selected with great interest keeping in view the significance and impelling need to bring the comprehensive amendment to the Indian Penal Code by reviewing the punishments attributed to different kinds of offences defined in it in the light of present day conditions and circumstances in the society. In view of the objectives mentioned above a close and critical study has been conducted regarding the punishments prevailed in India prior to Indian Penal Code and after it came into effect.

In the present study, the most suitable methods are the hypothetico-deductive, descriptive and historical methods. The nature of the problem being socio-legal, it is not possible to study it by purely experimental method. Hence doctrinal method is used for the study.

The relevant material is collected from the primary and secondary sources and material and information also is collected from both vertical and horizontal sources like law books, journals, original judgements of the Supreme Court and High Courts different reports of various Law Commissions, Foreign judgements,
recommendation of statutory agencies, documents and other periodicals, reports and relevant information published in newspapers, statistical data published in journals, material from sociology, philosophy and other disciplines relevant to the study. Relevant information also collected from various websites by using Internet. The data collected from different sources is analyzed and placed in appropriate chapters so as to arrive at definite conclusion.

1.7. Review of Literature

Literature in connection with the present problem is reviewed from the earlier studies. They are published works on punishments such as commentaries on Indian Penal Code, Judgments of Supreme Court and various High Courts, Law Commission reports, Reports of special committees, Criminal Law Books, foreign judgments, foreign journals, various websites, newspapers, magazines, are some of the main sources.

Importance of punishments for offences has been deeply rooted in ancient mythologies, philosophies of various kingdoms. The available literature exhaustively dealt with different kinds of punishments in different countries including India and the methods of their implementation since ancient periods to present modern period and the changes took place in punishments along with changing society in some of the selected countries.

The researcher has probed into these aspects and made an attempt to analyse the problem in the present context and to focus the need to bring the comprehensive amendment to the punishments for some of the offences mentioned in the Indian Penal Code in the light of changing circumstances in the society.
Sharma Shastri, Dr. R who rediscovered the great treatise “Kautilya ArthaSastra” which was written between 321 and 300 B.C., explained nature and scope of punishment which were practiced in ancient days. According to Kautilya Arthasastra punishment alone can procure safety and security of persons in the society when the law of punishment is kept in abeyance it gives rise to law of fishes. In his treatise he gave exception to proportionate punishment rule basing on the social rank of the offender. In this book he explained types of punishments which were in practice in ancient India. This book is useful to the research to get some information regarding the historical background of the punishments but it is not covered all historical aspects of punishments.

Subba Rao G.C.V in his book “Jurisprudence and Legal Theory” (1975) explained the difference between sanction and punishment in Chapter 28 and in Chapter 30 he explained the object of criminal proceedings in very narrow manner. He stated that according to different theories of punishments its main purpose is the prevention of crime and they can be achieved in three ways 1) Punishments act on the body of the offender so as to incapacitate him for a repetition of the crime. 2) By the punishment of criminal the others are deterred by fear from infringing penal law. 3) Punishment minimizes crime by reforming the character of the criminal.

Jain M.P. in his book ‘Indian Legal History’ gives the growth, evolution and development legal system in India. In which he gave brief information about the development of criminal justice system during the Hindu, Muslim and British periods. In this book the circumstances which made the British rulers to codify some of the laws are mentioned very briefly. In his book he gave some
information about the origin of Indian Penal Code which makes the beginning of the period of codification of substantive law.

Atchuthan Pillai P.S. in chapter one of his book 'Criminal Law' incorporated some information about the Historical background of Indian Penal Code.

Chandrasekharan Pillai Prof.K.N. in his book with the heading 'Essays on the Indian Penal Code' which was revised and published by the Indian Law Institute in 1962 and reprinted in 2008 with some review and revised information contains huge body of literature regarding different aspects of Indian Penal Code, along with brief account of qualitative literature relating to the aspects of punishments.

In part 4 of this book with the title 'Reform' the author of the topic Benarji Eric. H. stated that, the draftsmen of the Code contemplated that at periodic intervals, the difficulties arising in the interpretation of the Code should be examined and legislation should remove those difficulties. But no such periodic attempt have been made during the last 147 years except for dealing with some of new situations. But he could not able to brought into existence those difficulties which have to be examined by the legislation.

Gowr Dr. H.S.in his book ‘The Penal Law of British India’ clearly explained history of the draft penal code of India very clearly and also covered brief note regarding the punishment for the offences defined in I.P.C.

Mahesh Kumar Dr.S in his Book “Court procedure in ancient India on the basis of Dharma Shastra Literature", published by Ahinov publications mentioned types of punishments which were used in ancient days by Hindus as per their Dharmasastras. Kenny, Prof. In "Kenny's outlines of Criminal Law" (1966) the
defined Criminology, Criminal policy and Criminal law. In his book there is brief reference regarding the development of punishment system in England.

Reports of various Law Commissions and committees contains abundant literature regarding the development and changes in Criminal Justice System since several years. The 18th Law Commission of India under the Chairmanship of Dr. Justice Lakshmanan A.R worked with one of the objective that to review and repeal of absolute laws. The Ministry of Home Affairs, Govt. of India constituted the committee on the reforms of Criminal Justice System to make a comprehensive examination of all the functionaries of the Criminal Justice System, the fundamental principles and the relevant laws. This committee popularly called as Malimath Committee.

Beccaria, Cesare Bonesana Marchese de (1738-1794) in his great olden treatise called 'On crimes and punishments' mentioned some literature regarding the jurisprudence of punishments. The entire world is treating this treatise as a guide to Criminal Justice. Malanjanis Prof. V. D in his book "British Rule in India and After" contains some information relating to the administration of criminal justice in India. But treatment of subject is basically in historical prospective. In the books relating to Constitution of India written by various authors such as Sheerwai H. M., Durgadas Basu, Pandya J. N. containing some literature regarding the research subject.

The Committee on Reforms of the Criminal justice system was constituted by the Govt. of India, Ministry of Home Affairs, to its order dated 24th November 2000, under the Chairmanship of Justice Mahamath V. S and other members submitted its report on 31.3.2003. This Committee examined the present Criminal Justice System in view of whether there is need to rewrite the code of
Criminal Procedure, The Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India" contains some literature regarding the research subject. The committee did not examine the relevancy of punishments of all the offences in IPC clearly by keeping in view the changing aspirations of the people.

Though there were several works on the Indian Penal Code most of them are giving detailed commentaries regarding the provisions of the Code. Bholeswar Naths's 'Indian Penal Code' is one of the latest classic work. This book being voluminory giving elaborate comment on all the provisions of the Code. But there is no comment on the measurement of punishment, justifiability of punishment in view of contemporary change in the social scenario, reasonability and justifiability in imposing the punishments which are fixed about 149 years ago to the offenders in present days.

1.8. Scheme of the Study

The present study confined to cover all aspects regarding the punishment and its nexus with changing society and the need to change the punishments for some of the offences which are defined in Indian Penal code to enhance the strength, efficiency and justification to the Indian Criminal justice system. The entire study is divided into six chapters by keeping different dimensions of problem in view.

First Chapter deals with the general introduction, significance of the problem, Review of the literature, objectives of the study, Scope and limitation of the study, methodology, hypotheses, and review of literature.
The second chapter highlights the origin and development of punishment system in India, concept of punishment, kinds and nature of punishments, development of jurisprudence of sanctions in India and new trends evolved in punishment system.

The third chapter discusses the way in which the punishments control the wrong doers in the society, role of punishments in the society, the suitability of the punishments which were fixed in colonial period to modernized present Indian society, the need to introduce new forms of punishments, flight of victims and human rights perspective of punishments.

The fourth chapter focuses the comparative analysis of the punishments enumerated in Indian Penal code with penal laws of, England, Canada, France and America.

The fifth chapter explains the initiation taken constitutionally, legislatively and judicially for the development of punishment system in India in view of changing scenario.

In Chapter six of the study deals with the conclusions arrived and plausible recommendations for the suitable changes to be carried out in India penal code with regard to punishment.