CHAPTER - I
1.1 INTRODUCTION

“The anger felt any anger at the outrageous behavior of a society which is hardly an effective system of law should enjoy”

(Salmon)

"Every saint has a past, every sinner has a future"

(V.R.Krishna Iyer.J)

Punishment means the penalty transgression of the law, any damage or pain inflicted on an offender through judicial procedure. Sole purpose of the punishment is to cause physical pain to the wrong doer. It is the judicial arm of the state chastisement or castigation.

“Punishment itself was an evil, but a necessary evil”. Putting the offender to death to teach other minds a lesson.

(Banthum)

The purpose of this study is your personal attitude towards the death penalty, rather than think about what is to invite you to tell you that. The death penalty is the only Indian award judges 'rarest of rare cases', a formula that works very well. This restraint shows the maturity of our judiciary. Some of the documents in the case of restricted and banned the death penalty, at least in its use of the death penalty is much debate over the appropriate punishment for a heinous crime, politics, the international law, the not yet. The issue of capital punishment also dubbed as death penalty always draws fierce debate amongst the supporters and the protests as the death penalty. The death penalty is the ultimate human right, arguing against forgiveness.

Community life is sacred and that the capital punishment, that the state's right to act in self-defense to protect the innocent, but not the obligation to and one way to
protect the life of the innocent is to have exemplary punishment for those who indulge in heinous crimes.

In recent years, the debate and the fact that large numbers of innocent people sentenced to death have shown that the use of new technologies inflamed.

Recently the Supreme Court has while taken a serious note of the spate of kidnapping for ransom across the country, by asking the Law that allows judges to say, hard to punish traffickers in the country, to award Even though they are not involved in murder, kidnapping for ransom, in exceptional cases, the death penalty. A bench comprising justice H.S.Bedi and J.M.Panchal observed that "Statistics kidnapped for ransom has become a lucrative and well in tough times, according to the court a duty to the other dealt with." The Court confirmed the death penalty as a rough rule of justice can be found in the opinion of the kidnappers, a 16-year-old school student from Hoshiarpur who killed for money and then killed him.

Both national and international level from the time of this long, there was a controversial question. That capital punishment discuss as legal philosophers, Justice, judges and other intellectuals as social scientist commented on the forum. In many countries, the death sentence it is an essential measurement of the criminal righteousness system. It is a form of geography, culture and the reasons may be different, although the passing of time is not acceptable form of justice through the ages.

When penalties are imposed to deter the offender should be given a chance to reform the Indian jurisprudence that the offender is part of the Indian criminal jurisprudence, expression and the combination of different theories. Bearing in mind these basic principles, the Registrar legislature draft. 354 (3) Cr.P.Code. base on the individual purpose of this sub-capital offenses and lays down the death penalty that the court may have to register. Therefore, CR.p.c and legal status. Very special cases when the death penalty was imposed in 1973, the general rule was that a life sentence.

1.2 IS CAPITAL PUNISHMENT ETHICALLY ACCEPTABLE?
Majority of the citizens of any state government in the country, although of course it may face the worst criminals to death, it's just the right place, all states are sentenced to death in the our police weapons (kill the people is the State to), and the people of death in the outs them.

The majority of recent studies support the idea of representing around 65-70% by volume, is generally in favor of the death penalty. Other People's Government, as they believe that it is wrong to kill.

Cause that is conveniently ignored by the anti-death penalty Campaigners believe that all of us will eventually die and many of us will know about it in advance and suffer great pain and emotional distress in the process. This is particularly true of those who had cancer. It seems Socially acceptable 'to be sentenced to death without any offense at all, but totally unacceptable, "a doctor sentenced to death judges as guilty of Due to the first-degree murder after the procedure. Resistance to another - alternative to the death penalty and the execution of the fallacies and their normal daily life, walking away is the implication that the detainees themselves. At this time, of course, is not true - they usually have to spend it behind bars. However, for the pro and anti arguments are obvious advantages.

Beccaria and Bentham, not Bradlay and Bosanquet, are the torch bearers in this area. No great cause is ever lost, no sublime thought ever dies. The moving finger writes and having writ moves on, and the human story is a chronicle of moral consciousness fighting and losing and fighting and winning, in a rising zigzag. The battle is on, in parliaments and courts, in conferences and literatures. And the very stillness, chillness and silence of the cold cadaver—a quondam pulsating person of latent goodness, remember, one of us, urges the abolition of death sentence.

That solemn summons has drawn us here to speak for our fellowmen in the death-grip of the law, though endowed with creativity suppressed circumstantially and to condemn decapitation, sanctioned by court seal, as stupid and satanic and, therefore, a crime of punishment. If obscu-rentism is dubiously legitimated as illumination, if 'unlaw', as ntriloquist of 'law' decrees death and, if socratal sadism is ublimated by 'institutionalised and constitutionalised lethality mankind may be doubly damaged, firstly by being doped into a dull delusion that crimes will be exiled by fear of follow-up death
and secondly by being side-tracked from the search for the real diagnosis of the delinquencies of its members.

The pathology of mortal crime will remain unresolved and seeming solutions will fail to reveal the true etiology, viz. environmental pollutions, domestic tensions, social pressures, explosive stresses and psychic crises, breaking out into anti-social brutality, passionate violence and malignant aberration,—omitting for a moment, the qualitatively different daring deeds of those great cross-bearers of the ages who have, by suffering the extreme penalty and by defying brute force through soul force, promoted human progress and liberation. My emphatic entreaty, in the name of Man and God, is to liquidate life-taking lex talionis and spiritualize criminal jurisprudence. Social science and spiritual science substantiate this transformation.

Various methods of death penalty of the convict had been in practice in society, different countries and different time’s many methods are burning. Death on the wheel headmen’s axe strangle action, Elephant leg crush, throw from a high cliff, firing and shooting of the head, electric shock of the chair, hot oil boiling, suffocating in gas chamber, stoning to death, drowning in water lethal injection etc. But hanging of neck till death method is simple to execute. It is scientific the process takes 40 min. to announce prisoner to be lifeless is carried in India death sentence there are two method, hanging and firing u/s 354 (5) execution is carried out under Cr.P.C.1973 u/s 368 (1) and 354(5).

“When any person is sentenced to death the sentence shall be ordered to be hanged by neck till death”.

The Indian penal code 1860 (I.P.C.) drafted by Lord Macualy which provides alternative punishment, to death sentence, in to life imprisonment which are of two types 1) Rigorous 2) Simple, and one case K.M.Nanawati v/s State, defines ‘life imprisonment is never simple only rigorous’.

The Forfeiture of property. Doctrine of ‘mens rea’ and ‘actus reus’. It means that cardinal rule and principles of criminal law are as that “Actus non facit reum nisi sit rea”. It clear that the act itself does not make a man guilty unless his intention is like that the criminal act it mostly accompanied by a guilty mind the ways of criminal 1) Actus reus (bodily act) 2) Mens rea (guilty of mind).
They are situations in which capital punishment award under The (I.P.C.)1860 Waging war against the states u/s 121, u/s 194, Abetting mutiny actually committed u/s 132, Murder u/s 302, u/s 305, u/s 307 u/s 369, and the act of Explosive Act, Drugs And Psychotropic drugs Act, etc..

1.3 THEORIES OF PUNISHMENTS

The criminal part of the society needs to be changed in order to reform and make them sober citizen and allow them to enjoy rights as normal citizens. There are theories of punishments such as 1) Rehabilitative theory, 2) Preventive theory, 3) Deterrent theory, 4) Retributive theory, 5) Reformative theory. All these theories to protect the society against the criminals.

The Object of all these theories is capital punishment one of the examples in the society that if any one committed crimes, he will be punished in the same manner. India has adopted deterrent and reformative theories. The reason, is that offender, who has committed crime, should be given opportunity to reform himself.

Such is my broad thesis—we must cry halt to the gory theta policy which defiles inborn dignity and point a finger of guilt at penal codes which enjoin killing. We must go to the root of pathology of delinquency and offer the healing of crimelessness through structuring of consciousness, relying on expanding inner awareness, rather than on torturing outer censoriness. Stressologists tell us' by scientific and sociological research that the cause of crime in most cases is inner stress mental disharmony and unresolved tension. I have one more aspect to press in this context No man, hanged or shot or electrocuted, really dies, for post-mortem survival as astral personality, is a scientifically near-proven variety and killing by law is a crude misunderstanding of life and after life, based on a myth that the gross alone exists because it is s. sorry and the fine is invisible and so false.

May, I, with your leave, explain briefly the multifaceted case f JKt out tersely? Of tender my grateful appreciation of Amnesty onals campaign for the abolition of killing by law's this harsh world of legal good behavior forced through terror and horror. I also thank the organisation for affording me this opportunity to express my personal perspective.
Our developmental decade must turn its benignant eye on life's right as a problem of the third world's within every nation. And cannot be ruled out and so the bar and the bench must professionally purge themselves of the blood on the seal of justice. A narrow perspective misleads. A wider world-view illuminates. Right's writ must run, in the long run even against Might's fist. With these prefatory observations I move on to a discussion of the divergent approaches all of which reach Destination Abolition.

Before I essay this task in a bried compass it is but met that I clear a functional ambiguity. My oath of office obligates my upholding the country's Constitution and the laws. Judicial humanism has often only limited potency or play within the parameters set by the penal code of the nation concerned. Speaking for India, death penalty starkly lingers on the statute book although optional humane engineering by judges is still permissible, as proved by Ediga Annamma, Raghubir Singh and other rulings. As jurist I argue for abolition; as justice I obey the corpus juris.

1.4 RETAINED OR ABOLISHED

There are certain typical situations in which Innocent person are also found guilty and executed conviction is based on diverted manipulated evidence and misconception of circumstantial evidence. The man living in the society needs to protect the society from the deviant behavior, as the society wants a peaceful existence.

Another point of view in the rape crime is that people want death penalty for the criminal as rape is a assault to a woman who is irreparable mentally hurt and has to face mental tortures. The Indian court rule classifies /declares for the capital punishment ‘rarest of the rare cases’. Person committed a rape must be convicted with death punishment.

The fact is that when a woman is raped her life is worse than being dead she faces the social inhumanity and loss of her character. The death punishment should be applicable to the rape cases especially when the victim is minor and when the victim is either threatened or killed.

The land mark decision in Bachan Singh case Bhagwati.J. Expressed his view The capital punishment is not dishonored of articles 21,19,14. Of Indian constitution it is
another punishment for murder and it is not difficult under article 19 clause (2) to (4) that defines ‘law and order’.

Mahatma Gandhi used the phrase ‘An eye for an eye’ and as the effect the whole humanity would be blind it means that looked the criminal is not looked as human favour of reformatory theory of punishment. It is the correction of first time offenders and the juveniles.

The capital punishment must be applied for the gravest offences against the state and must be a special reason for brutal murder. The theory of great jurist Bentham should be adopted the unbearable pain of offender will prevent him from the pleasure and enjoyment of crime.

According to Indian laws, the death sentence ought to be well-defined in ‘the rarest of the rare’ case and special reason U/A 72 constitution of India 1950 confirms the President’s supremacy to grant pardon etc.

In the case of Bachan Singh case supra P. N. Bhagwati J., says; in article 21, of a man and the fundamental right art 19 constitution of India. It further observes that article 21,14,19 are not interpret in water-tight compartment and as a result, the law prescribes a procedure. The three articles with result procedure are contemplate.

It seems that P.N. Bhagwati J., Death penalty sentence is not violated under article 14, 19, 21, of the Indian constitution and it is valid.

There may be some circumstances in which punishment should be inflicted. In self defense or provocation in absence of bad intention in security of close friends, drunkenness, transgression in women to save their character and the self defense submission to authority, submission to menaces, and childhood, before deciding the punishment ‘the rarest of the rare’ is uncontrolled and unguided concept as the judge has discretion to pronounce the capital punishment. Death punishment is the most controversial penal practice in the modern world as there are diverse opinions regarding death penalty all over the world.
The capital punishment is a barbaric and painful method. The criminal could be punish only for white collar offences, opposed to social crime and only against hardened criminals. The rights of man consist of natural rights. Political rights, civil rights, economical rights, cultural rights and social rights. All these rights are violated in the capital punishment.

Offences of the capital punishment are murder, high way dacoity, robbery, atrocities on women and gang rape or kid’s internet obscenity, economic offences and white collar offences. The sentences should be awarded at first life Imprisonment and then in certain cases in particular, death penalty should be the Punishment is very old punishment; it can be seen previously in Ancient India when man is an animal nature and his living style was just like animals. After the period of medieval of India there are the Moghal period and British period. There had been a committee and one man the king, would declare death penalty for murder cases.

The Indian constitution in pledge on behalf of people declares we the people of the India solemnly affirm socialist, secular, sovereign, democratic, republic, all Indians are free from dictatorship. The supreme power has three pillars of the Government the Execution, the Administrative, and the Legislative (judiciary).

The significance of the Judiciary is that it is totally independent irrespective of the other faculties of the government in India. The prime purpose of judiciary has to maintain peace and control the crime against the secure life in society.

The government has made her own laws and changed the law of the Britishers. Death punishment is a very old concept. India has changed the policy of the punishment. The Supreme Court considered the view of Bachan Singh case has “special reasons” and the ‘rarest of the rare’ cases other than it is has not clear which type of case ‘rarest of the rare’ case. The court has to grant capital punishment in addition to mention the special reasons from that point of view of the case. The power of the death punishment depends upon the judges and their views. India is one of the countries approving the death punishment and life imprisonment.
The punishment award ‘the rarest of the rare’ case, in the exceptional category of cases and ‘special reasons’ it is to be defined as circumstantial evidence direct evidence and gravity of the offences, for proof. If all reasons and evidences are against the accused, the death sentence must be awarded. The court considers it as the last option of capital punishment because the motive of the punishment is abolishing the crime rather than the criminal. It is said “Hate the sin and not the sinner. It simple to understand that the man is born not a criminal, some circumstance arises before him and he is compelled for offences.

This doctrine is very clear it means crime is to be hated but the sinner means criminal, should be treated from humanitarian point of view. The prisoner is stone-hearted from the view of law, and the court considers in the eyes of law the prisoner as a man and not an animal. He is to be shaped into a good social person; at least the court should lead the law and help in justice to try to make him one good person worth living in a civilized society.

Legally or practically speaking the society wants to establish peace, harmony and lead normal life. It necessary that at the same time as using rule of law the human aspect should not be totally neglected, and consequently the decision of sentence be taken. On 9th Feb. 2013 Afzal Guru’s execution of the death penalty was completed but the state did not inform Afzal Guru’s family members. The rule, in the rule of law is not obeyed.

The law provides proper procedure which must be reasonable in society, the failure and the loopholes in the system should not be neglected in the execution of any law and just procedure for death penalty should not be only to please the people or the government. In fact judiciary thinks less of public opinion and emotional blackmail.

The delay in execution is to be avoided for the mercy petition to the president remains pending for many years. In the execution of the criminal the timing chosen has some overt and covert motives. The long pending cases should be instantaneously decided by giving a deaf year to the essential formalities.

1.5 CAPITAL PUNISHMENT—A SOCIAL NECESSITY
Long and heated debate on capital punishment for abolition in the past two centuries, has provoked strong conflicting views, has been a difficult and controversial subject. History of human civilization, everywhere, knows no period of time when capital punishment was discarded completely as a mode of punishment and it were only the number of offences which have varied from time to time, State to State, according to the prevalent notions of justice and needs of the society. Capital punishment has generally been regarded to embody society’s strongest condemnation for specified acts of the individuals to make them disentitled even for continuing as a member of the orderly or civilised society.

There was a time when such condemnation was achieved and ends of justice deemed to be satisfied, if the society got rid of such persons by their transportation to uninhabited places or banishment. The idea was probably to provide them an opportunity to start a new life and still be punished by remaining away from the Crimes and Punishment in New Perspective near ones.

The system must have been adopted and found useful for inhabitation of the non-occupied or non-sovereign lands for future progress and occupation by the criminals desired by the society to be civilly dead. But in the present day world such ideas, for transportation or inhabitation in the unoccupied lands, are no longer possible and all have to consider the limits of punishment for more serious crimes which excite a sentiment of horror in the community. In any organised society man is generally law abiding and it is only the crime which upsets the balance of human behavior to make it disorderly and unpeaceful. To restore peace and order, punishment is needed to deter the odd and violent elements of the society from committing crimes.

Three purposes, generally assigned for sentence, have been retribution, deterrence and reformation. Out of these, reformation has been and continues to be useful for minor offences. But for more serious crimes, either where the interests of the society have been involved or where the interests of the Government have been jeopardised, more severe punishments have become necessary and as the people feared death more than whatever else, the capital punishment was regarded as the most effective deterrent. Such penalty also met the feelings of human vengeance against the criminals in cases of certain serious crimes, which affected his person or property.
In different parts of the world a huge scholastic literature has been piled up against the retention of capital punishment, though for a long time the problem has been regarded as a purely academic or political one. Besides the earlier individual attempts, the current wave of reformation, set at motion at the end of the second World War, is based on humanitarian tendency. Many a good arguments have been advocated for abolishing the capital punishment and as asserted by the Italian publicist, Baccaria, Since man is the creator of his own, individually or collectively, has the right to demolish human life. Gandhi also said Harijan long ago quote:

"He is alone, because God alone can take life."

Further to make room for reformatory possible even in the most terrible crimes, the advocates for the abolition of the capital punishment argue that every saint has a past and every sinner a future. But, do all these arguments not clearly establish that the doer of the ghastly offences make he abnormal for living among the normal members of the society?. But the word, 'human' preceding 'life' denotes a rational person and if a person loses his rationality by doing an unconscionable act, he loses the right to be called a human being and thereafter, the interest of the society as well as public order, cannot be risked only on uncertain future expectations for humanitarian considerations.
The Death Penalty makes killers of us all.
The controversy, regarding the abolition of capital punishment in India, might have become concluded the report of, 1967 as after taking into account all the aspects of the problem, modern developments in penology and humanitarian arguments, observed:

"And the diversity of its people, its area is vast-ness, education level of the country's moral and social culture of its people and the diversity of the various Indian conditions, primarily in the present circumstances require, in India abolition of the death penalty not be able to test."

Earlier, in England, the Royal Commission also, after construction a systematic study of this complex and many fold problems and collecting information from a large number of countries, reached the conclusion that for the protection of the society, retention of the capital sentence is justified. From the report of the Commission it will be evident that some of the important and experienced judicial witnesses were not only of the Protection of the community to see that the death penalty should be retained, but their interference of the judiciary as an administrator, the prerogative of the free use of the narrow limits they have expressed strong disapprobation argued.

In India, the abolitionists, having failed to gather support again and again from the British Government as well as the Government of the state of India and also the members of Parliament directed themselves to the Supreme Court of India by inviting it to hold the capital punishment as unconstitutional or to restrict it in such a way that it may virtually abolish the capital punishment. Though the Supreme Court of India rejected the contention of unconstitutionality in Jagmohan Singh's case, it has nearly strangulated the award of capital punishment in a majority of cases by putting restrictions on judicial discretion in Rajendra Prasad's case.

Here it may be distinguished that the Provide for the burden of the capital punishment provisions of the Indian Penal code only for eight types of specified offences and the death sentence is mandatory only in one case, namely, for murder. In other words, there has been a wide discretion for the Courts to award death sentence or life imprisonment in suitable cases and yet another safeguard, provided by section 353(3) of the Code of Cri. Pro. Code, 1973, for recording of reasons where a human being originate responsible of murder is punished with death sentence, should have been regarded to establish a proper balance between the social necessity or protection of the
society from the criminals on the one hand and the humanitarian considerations on the other. But the controversy does not seem to end in the current wave of reformation and increasing emphasis on human "dignity and life. Many point of view, which would be suitable in respect of highly developed countries, may not hold good in deference of developing or under-developed countries due to difference in civilization, development, economic conditions, population, and moral values and so on.

In the ultimate analysis whatever arguments may be raised by human ingenuity or for humanitarian considerations, it cannot be denied that in the deteriorating law and order situation all around the world and specially in the developing countries, the luxury of maintaining larger number of criminals for longer terms will unbearable burden for the Governments facing many socio-economic problems. It may not be denied that punishment is a social necessity not only for expiation by the criminals but also for the protection of the society from the criminals and the criminality.

Moreso, punishment has to commensurate with the crime and to maintain law and order, prompt and effective punishment is necessary not only to satisfy the sentiments of those affected by the criminality but also to prevent others from taking recourse to similar criminal course of action. A simple review of serious crimes will clearly reveal that whenever the law has failed to deal with criminals strongly and effectively it has led to a series of similar crimes in retaliations. Therefore, to reduce the causes of explicit violence in the society even if the implicit violence of capital punishment is used to curb criminality, regardless of the ideals involved, it will serve the cause of non-violence and reduction in crimes. Briefly analysed, the death penalty, even though repugnant, shock provoking and against human values, is a necessity for the suffering of society on account of the following reasons:

1. In the light of Indian legislative and constitutional history neither the capital punishment is cruel and unusual nor the death penalty can be called unreasonable. The report of the Royal Commission in England and that of Law Commission in India have conclusively established the reasonableness and expediency of the capital punishment.

2. Life imprisonment cannot be a suitable alternative for capital punishment as the normal period of imprisonment for a lifer is 10 to 11 years and in most cases it may
not be regarded to commensurate with the ghastly crime committed by a person
and pacify the emphatic disapproval of the society.

3. Transportation for life or banishment, the other alternative to capital punishment,
is no more practicable or useful in the present situation of the world, as there
remains no unoccupied land and no country will be ready to receive the criminals
of the other.

4. In under-developed countries or developing countries like India, the economic
conditions are not such that the luxury of larger number of criminals for longer
durations may be borne by the Governments facing multitudinous problems.

5. With the increasing population and high rates of serious crimes in developing
economies, the liquidation of hardened and diabolical criminals will be better than
their maintenance under the expectation of their future good behavior.

6. The recent in the economic crimes, food and drug adulteration, which has been the
cause of great sufferings and also large number of deaths every year, still remain
crimes without proper punishment. Such crimes though not very common in
Western countries, need to be treated like mass killings for personal gains which
are to cripple future generations and eliminate many a precious lives.

7. The religious or caste wars and group clashes resulting in-series of murders cannot
be stopped unless and until the persons responsible for them are promptly and
effectively liquidated. Such murders have become quite common only for the sake
of the exercise of influence in a particular area.

8. Religious killings (sacrifices), dowry deaths and crippling of children for begging
are the crimes to attract exemplary punishment for all the members of the society
and any punishment short of death sentence is not to relieve the society of the
inherently criminal elements and prevent others to fall in their line.

9. The increasing number of hired assassins or professional criminals for the
commission of serious crimes like murders, drug adulterations, dacoities etc.,
without any personal malice is another reason for continuing the capital punish-
ment to eliminate the number of professional criminals.

10. In the present day social structure the easy money in crimes and the luxuries of
over-night lords attract many a good citizen in the quick-sand of crimes and
neither such persons try to get rid of it nor the crime kings allow them to get out
and deeper they enter the world of crimes, more acute becomes the need of their
quicker liquidation.

11. The abolition of death sentence will not only secure the criminals for their return
in the society with more experience, but will also prepare their sufferers for
revenge and the later will also be secured to come back in society. It is likely to
increase or perpetuate more crimes in the society.

12. The present conditions in the Modern or Model Jails are not such that a person
may be afraid of going over there and not rejoicing the hospitality at the cost of
the society. Actually the criminals spend their time in Jails to gain more
experience for committing greater crimes and learning more tricks from the more
experienced persons. iMoreso, in many cases their families are also looked after
by their hirers.

13. The abolition of death sentence will become in the language of professional
criminals the longer stay in the Government Guest Houses (Modern or Model
Jails) and with the elimination of the greatest of all fears i.e. death, there will be
no fear at all to retard or check their criminality.

There can be cited many more reasons for awarding the death penalty to maintain
social order and the only question for consideration can be for mitigating the harshness of
death sentence while retaining its efficacy. In India, where the machinery of police as
well as the magistracy are inadequate to tackle the problems of criminality effectively, the
continuance of capital punishment is inevitable and the present safeguards for the life and
liberty of the individuals are more than sufficient. Today, the need of the time is not for
abolition of death sentence but for prompt and effective enforcement of criminal laws to
create better confidence and respect for law in the masses. No reappraisal of criminal
justice system can be complete without a reference to the issue of capital punishment.
The wisdom of abolishing or retaining death penalty has become a matter of sharp debate all over the world.

The fact that the subject has found its way to the agenda of several United Nations’ agencies is an ample evidence of the global concern. In India too, the topic has received the attention of legal luminaries and several apex expert bodies including the Law Commission, the Supreme Court has also delivered in recent past several historic judgments, pronouncing on the constitutional, sociological and humanitarian aspects of capital punishment.

Plato has written "when a man is never innocent but in sleep it is better that he should die than live." Garofalo has insisted on deterrent values of capital punishment. Lombroso has selected a middle course by holding that capital punishment must be held as a threat to habituals, incorrigible and the intractable. Achaffenberg is of the opinion that capital punishment is justifiable from the stand point of security. Even in Mahabharata (Shanti-parva) there is a reference of capital punishment where there is a King Satyavan and his father king Dyumatsena

These were inter alia:

(i) The inherent unrighteousness of taking life for life;

(ii) The unrighteousness of punishing innocent people such as children and dependents by taking the life of the breadwinner of the family; and

(iii) The loss to the state of the individual who might have been reformed and become useful citizens.

1.6 LAW COMMISSION REPORT

In 1967, the Indian Law Commission's is popular social upbringing various Indian conditions, the death penalty and thus also to retain its end Justified execution of a study conducted by the government in its 35th report, its people and the current situation of the country and maintaining law and order are primarily the need, for diversity in the region, the area, the difference, between the moral and the educational level, the abolition of the death penalty can not be tested in India.
187th Execution Matters between the death penalty and the Indian Law Commission's Report In October, 2003 speaks about different scientific modes of executions & yet it does not speak about complete abolition of Death penalty in India.

Shri Arun Jaitley Minister of Justice and Law at the opening ceremony stressed the need for a debate on how to carry out the death penalty in light of Ice changing times, needs and technology. He stressed the need to change the archaic laws relevance today. The focus is on changing the mode of enforcement of the death penalty by the existing methods by hanging a mirror over. He also said that the debate on the abolition of the death penalty has lost its sting as "we have been on a cross-border terrorism receiving end." Hanging from condemnation until a time consuming and painful process become obsolete. He noted that the manner proposed by the Commission immediately. Resulting in the death of civilization immediately on the electric chair or lethal injection or firing squad, the method should be considered. Enter "hanging of a convicted prisoner is becoming a chronic method and replace with a value must be discussed." This refers to indication that the complete abolition of death penalty in inevitable in the present context.

1.7 CRIMES AGAINST WOMEN

The frail looking female has borne the brunt of the miseries of life since time immemorial inspite of the total submission she has offered to her male counterpart. Man has not only provided a second rate treatment to his companion but also destroyed her identity by suffixing his name to her. Perhaps this is what prompted him to use her as a commodity belonging only to him and thereby exercising his dominance over her.

But the entire world is now awaken to the fact that law must protect this fraction of the society if it has to ensure a peaceful life. It is the statute which has to incarnate a shield for the frail female counterpart of the male. The United Nations has already taken initiative in the direction of providing equal status to the women. Through its charter, the United Nations expresses faith in the fundamental human rights. It caters to the dignity and equality of the human person and envisages the significance of equal rights for men and women both in law and in fact. Merely formulating the laws is not enough; the awareness must be created among the females towards their rights and means adopted to enforce implementation of the law.
In 1952, the U.N. General Assembly evolved the first legal instrument dealing exclusively with women's rights in a convention on political rights of women. An important milestone in this direction was the 1962 convention on consent to marriages. In 1965, it was recommended to prohibit child marriages and to safeguard the principles of free consent to marriage. The year 1975 was celebrated all over the world as the International Women's Year and subsequently the decade 1976-85 has been declared as the United Nation's Decade for women. In proclaiming this there was a call for intensified action to promote equality, full integration of women in the development, efforts and recognition of their role in strengthening world peace. A beginning has been made and it is now for the world to follow. Projects must be undertaken for the benefit of the rural women and the poor women in the urban areas of the developing and underdeveloped countries of the world.

The subject of crime prevention against women should be carefully studied in the context of the present civilization as well as the behavior pattern of the criminal as compared to society in which he has been living at the time of commitment of the crime. The crux of the problem lies in understanding the various components of the subject in all its tenderness and dealing with them at social level as well as amending the law accordingly. Briefly the aim should be:

(a) To study and define the various categories of the crimes against women with particular reference to the education and economy of a particular civilization.

(b) To evolve various procedures and instruments for detection of such crime, punishment to the offender and prevention of recurrence. A separate code is needed for this purpose.

(c) To rehabilitate the victim and change the venue of trial from court to special cells created for this purpose, preferably in hospitals.

The various categories of the crime need to be redefined and evaluated. Broadly speaking the various crimes against women may be classified as under:

(i) Heinous crimes including sexual offences and homicides; (ii) Torture, which may be physical, mental or both;
(iii) Other crimes which the present law considers insignificant but they have gained importance through the passage of time.

Sexual offences may range from carnal knowledge of a female body to as brutal crimes as lust murders. The subject of rape has lately gained significant awareness all over world. The very definition of rape has been subjected to controversy for quite some time. Various experts on law and forensic science do not agree on the ‘consent’ and the age of the victim. It is a disgrace that the victim who in many cases happens to be a ‘minor’ or ‘innocent’ girl who has never thought of going to police station or a court of law is supposed to narrate the incident in front of an ordinary court and the culprit who usually is either a habitual criminal or a more resourceful person has only to plead not guilty. Thus in the absence of the proof the benefit of doubt goes in favour of the offender who is set free to repeat the crime. Hence it would not be out of context to suggest that the onus of proving not guilty must be kept on the offender and not the vice versa.

Not less significant is the study of the criminal and his psycho-diagnosis. Literature on Forensic Medicine throws light on the Psychopathic perversions. In sadism, both torture and cruelty act as a stimulus to the sexual act. In extreme cases of sadism, the Victim's murder stimulates the sex instinct and the entire act is accompanied by sexual gratification. It is not essential that the murderer may commit the offence of rape. Schizoid or neurotically inhibited persons exhibit aggressive sexual reaction to inner fear. The crime behavior pattern is similar to many respects in all age groups and in all socio-economic strata. Many a time there is a blending of one or more psychopathic but the behavior of the criminal at a particular time varies with the predominance of a specific condition over the other.

There exists a direct relationship between the psychopathology of the criminal and the social structure of the community.

Whenever there is an incompatibility between the two it precipitates into anomalies initiating the commitment of the offence. Thus many of the crimes against women, including rape, are a result of the psychological, economic and social affliction influencing the offender. It is not a subject of study only for the legal and forensic experts. It concerns equally the family physician, the social scientist, the reform homes and the general hospitals. A peep into the deep can illuminate the factors responsible for
converting a normal human into a criminal or a habitual offender. The research should aim at exploring new strategies for crime prevention and imposing proper justice! The impact of inflation on socio-economic development has to be carefully studied and international standards for criminal justice have to be established.

Torture of women is becoming a universal phenomenon resulting in more and more broken homes. Physical Torture is an age old social enigma but the law alone cannot curb this domestic affliction. Even divorce cannot do justice in many cases especially where the woman is unemployed or not having any monetarily sound background. The poor lady has no option but to tolerate the torture and compromise with the situation. Mental torture is more painful.

It is like a smoldering fire which slowly destroys the soul and engulfs the body. Ironically, the torture of women by women is gaining more heights in this part of the world. Bride burning is a phenomenon not heard of in the past. But now it calls for an intelligent study and adequate protection of the bride through law. Certain classes of the society indulge in monetary transactions or dowry at the time of marriage. As the inflation is on the increase, the demands of the groom from the bride's side constantly hang like a sword on the poor girl until she forces her parents to gratify their lust for money. Here the torture of the bride by the mother-in-law creates circumstances for the poor girl to commit suicide or in some cases the in-laws actually burn her. The law, only comes in the picture when the tragedy has actually occurred. Does it not warrant a revised and more rational approach towards this problem? It is here that the physician and the social scientist play a very significant role. In his daily practice a general practitioner or family physician has a comparatively closer relationship with the patient and her family. A competent and cautious physician can assess the mental state of a particular patient by inspection and probing history in confidence much before the tragedy occurs.

A social scientist can devise means to take advantage of this report and can certainly help in estimating the quantum of the problem. Once the span of this social enigma is defined, its management will not be difficult exercise.

Besides the above mentioned crimes, a few crimes perpetuate unnoticed in certain pockets and need considerations with regard to local circumstances. Only a mother can feel the pain of labour but certain social customs many a time compel a woman to repeat
this dreaded experience again and again for of either a male or a female baby as the in-
laws or the husband wish. It appears as if her womb is a flesh moulding machine 
producing babies as desired. In times to come it may acquire significant proportions in 
terms of crime.

Hence when crime is changing its behavior pattern, the statute has to modify itself 
to evolve various instruments to curb the crime effectively. As an essential prerequisite 
for this, it is nonetheless most important to have a separate code for crimes against 
women. An old proverb goes to suggest that a society where the women's sentiments are 
not respected, cannot live in peace and thus can't prosper. The law makers shall save 
several lives if the crimes against women are covered under separate laws and special 
courts are attributed the job of handling such cases.

The United Nations while dealing with the subject of crime prevention and 
criminal justice aims at two main aspects:

(i) to minimize the high cost of crime and its impact on socio-economic development 
and to provide international standards for criminal justice;

(ii) to impart training in crime prevention and stress research as a prerequisite for 
effective crime prevention and control.

There is no reason why an effective procedure can't be adopted on these lines. The 
基本 principle of Indian criminal law and jurisprudence is the presumption of innocence 
of the accused in every criminal prosecution which casts the burden of proving the guilt 
of the accused on the prosecution.

But in the case of crimes against women, the onus of proving not guilty should be 
on the accused and not vice versa.

Delays in procedure are also detrimental to the complainant at least in cases where 
complainant can request damages in connection with criminal cases, because inflation 
makes the awarded damages negligible. Moreover delay in court may bring the offender
certain advantages at least in the short run. Hence a speedy trial is more important today than ever before, as the entire concept of time has now changed.
Police efficiency is essential for imparting effective criminal justice. In Japan, the personnel who are responsible for criminal investigations are different from those who manage the police Jails, and both perform their duties separately. In the operation of the criminal procedure the protection of the lights of suspects and other persons involved is an essential element. It accomplishes the objective of securing public safety and at the same time protects the rights of the suspects. That is why the protection of human rights in criminal procedure is said to be proportional to the level of civilization in a country.

Implicating an innocent person into a crime on a false charge, is not uncommon and it is in such cases that the right of the suspects should be protected. A team of medical personnel, social scientists and legal experts can prove to be a better investigating team than the police which can take up the matter later on especially in cases of torture before the crime of homicide or suicide is committed. The suspects must be carefully investigated and interrogated by this team on the receipt of the first information report. An attempt can be made to create an amicable settlement. But more stubborn cases may be referred to the police and the special cells created for this purpose working according to the special code for justice to the women.

Today in practice at several places the criminal law is applied in differential, selective and oppressive way. Criminal law does not protect a woman but is rather directed against her in all its force and severity. Even when the law of procedure establishes guarantees for basic human rights, these do not apply to the women. Illegally obtained evidence, corruption and influence play a very significant role at the time of delivering justice. Hence detection of the crime, modifying the procedure of the trial, the execution of the punishment to the offender are important mile-stones in the prevention of the crime.

But there is still a very important aspect of the subject which has hitherto been ignored. It is the rehabilitation of the victim. It is not surprising that for fear of social structure and insults a victim of rape may prefer to remain silent, thus giving a chance to the accused who in many cases is a rich, resourceful and influential man. The trauma inflicted upon the girl in proving the guilt is not less than the tragedy itself. Thus for the sake of safety and rehabilitation it is imperative that a psychiatric treatment preferably in a hospital ward should be given on a priority basis and the venue of interrogation be
changed to places other than police station. Here again the psychiatrist and the social worker play a vital role.

In the end it is submitted that a thorough research into the subject of crimes against women is an essential prerequisite for evolving a viable instrument to deal with the problem. Without this it may leave lacunae in the statute which may jeopardise the basic tenderness of the problem.

These lacunae may lead to involvement of innocent persons on one side of the scale or may leave enough margin for resourceful or influential criminal to move the court in his favour. A fresh code for these crimes has to be evolved with a far reaching aim of diluting the crime density, punishing the offender effectively to avoid recurrence and rehabilitating the victim by creating new social horizons. Hence the public at large must play a definite role in curbing this social enigma. Only then the peace can prevail and a real justice can be rendered to this fraction of the society which is facing humiliation today at the hands of its guardians.

1.8 CONSTITUTIONAL CHALLENGE TO THE CAPITAL PUNISHMENT

In Bachan Singh case in the capital punishment in 1980, the Constitution Bench of the Supreme Court majority ruling does not challenge the view, that continues to be
important not only to determine the legality of the issue date. The Supreme court in India 1970 for a period of time in the environment. ADM Jabalpur v Emergency, Indira Gandhi announced the judgment of the Supreme Court banned this time. Shivkant Shukla (1207 1976 SC, FN AIR) and "Public Interest Litigation" witnessed the rise. The law on the death penalty to reduce the severity. Bachan Singh passed, the judges clearly Krishna Iyer, Chinnappa Reddy, Bhagwati and Desai brought about by stimuli, including the question of the descriptions to understand the legal requirements relating to the capital punishment for the most part outside Bachan Singh chose to take a safety line.

In Bachan Singh case, the Supreme Court set forth in Section 302 IPC to be unconstitutional, the death penalty, (ii) Section 354 penalty (3) million, provided (i) the issues dentified. PCI unguided and unfettered discretion and the court allowed the execution of arbitrary investment to be freakishly imposed. Justice Sarkaria's majority ruling, dismissed the challenge ' In the 1980s the Supreme Court recognized that a third party could directly petition the Court and seek its intervention in matters of "Public Interest" where another party's fundamental human rights were being violated.

The Capital punishment, Art. 21,19,14. Despite the amendments unconstitutional and subject to review at the discretion of the courts, and found that it can not be arbitrary or freakish.

The majority of the ruling majority in the paragraph below perspective, explains one of the most quoted parts.

"If, sociologists, legislators, judges, magistrates and even more committed to the protection of society is worth and the death penalty is essential confidence from administrators on the contrary, people have a very large section, around the world, to make the abolition of view, let alone crime in India in the practice perspective, the parliamentary representatives of the people through the formalities contemporary public opinion, in the last three decades, again and again, if the cancellation or the death of control recently made, including one rejected all efforts convicted, sentenced to death and we present them to death was on balance will have to show that the Indian constitution, the generation is fully aware of the murder of a recognized legal sanction or in the world of civilized nations, most of the killing, there is some kind if the 35th report and after the reports section 302 the murder of an alternative punishment retention, suggest the
punishment of the Indian penalty under the law for the murder conviction, the criminal Procedure Act, unfair and in the public interest is."

As highlighted in this chapter, the global environment has changed markedly since the 1980 ruling in the majority, two-thirds of the world's countries abolished the capital punishment. That retaining of the death penalty due to the use of public opinion is no longer acceptable. Rational deterrence is increasingly blamed for the rise of the abolition of the capital punishment following a low penalty deters crime better than the non-slave states, the lack of scientific evidence that it will continue considering the situation, is the question.

Unfortunately, in the Indian law, the death penalty is said as the legality of all four judges for policy discussion which begins and ends with the majority ruling. Bachan Singh was the sole dissenting judgment of Justice Bhagwati. Almost in all of their arguments, he differed with other four judges.

The issue of prevention and punishment: his dissenting judgment, Justice Bhagwati, was against majority decision Bachan Singh to discuss in detail the issue of the death penalty, preventive value. There are two judgments about whether the death penalty can not be justified is the three broad categories; i) reform ii) punishment, and iii) stop. Justice Bhagwati on the issue of penalty, "the punishment of modern penological thought discounts revenge" for the death penalty and concluded that the 1949-1953 Royal Commission referred to in the UK. Hanging reflection - he says - the removal of the death penalty, Arthur Koestler's quote about revenge on the study and the 'eye for an eye,' when you have to pick one to admit that there are times that deep down in the personalities. But despite this, he, on the contrary, our law dictating that one would not have such a person. Ironically, the Indian Supreme Court in the recent judgment of vengeance and revenge gets a large number to appear and reflect such a trend.

Deterrence on the issue; Justice Bhagwati death penalty is applied or not and execution, the death penalty is often whether or not "the death penalty in the Royal Commission quotes the great American criminologist Professor Thorsten Sellin, the report cited states and the abolition of the states, the rates of death penalty other than factors that conditioned the (murder) rate "show, and" we have reached the general conclusion that the Royal commission's own report, "there is no clear evidence of an
increase in the murder rate figures have led to the abolition of the death penalty, or have examined the re-introduction would lead to a fall. A new assessment of the talent that we have in '15, is clearly to reduce crime and criminals sentenced to death.

The Capital Punishment; criminologists, social scientists and jurisprudentences tend generally to be opposed. The extreme punishment, collective reprisals and a mixture of prevention, scientifically traditional crimes, particularly in the context of its usefulness have not been functionally lost for penological purpose. Many outstanding and socially significant at a global level, it lives and it's still sluggish, especially where governments are dictatorially hysteric and continuous in the third world countries. Some groups kill the state or if the political will, it is unlikely that it can be justified.

Oftentimes and Justice: Justice Bhagwati cites only national and international rules and regulations and therefore unconstitutional, the death penalty would not be held, the practice of the death penalty process and an environment that oftentimes created and it has no power to deliver secure, indicated that a fowl and then the judges – who depart criminal justice systems of managing resource system. He must follow the laws that govern the practice of providing guidelines and sentenced according to the judges pointed. He described the murder of a judge to be charged or to be allowed that option exercise is called upon, "therefore, is clear, his hair, his attitude and approach to a large depend that, his predilection and highlighted, his importance system and common philosophy and penological legislation, dignity evolving regulations, developing new concepts and ideas in his reply ".

In theme expanding, Bhagwati brought before the problems they highlighted the fact that various approaches and responses to the judges. Bhagwati pointed out in his inimitable style:

"A judge every man Divine is an embodiment of the Upanishad policy must be confident and he's every offender reclaimed and love that can transfer Mahatma Gandhi confidence and that another judge, the moral and kill him unfairly, it's criminal the way out of the kindness of another clemency did he show that should keep the social security that is essential for confidence. Judge Naxalites, murders, however, was devoted to the feel they have no self-interest through, but a burning desire to drive as ordinary criminals, completely different from the soul with thoughts and by eliminating a revolution brought
about, another judge Naxalites that while it may take the corporal presence to keep out not dissolve the eligible community, so innocent men, women and a threat to the cold planning. Specialized purposes considered doing what judges that the opinions of its value, depending on the judgment from the judge to vary the resulting system and social philosophy that "live or die trying the case of a person on the bench system is highly dependent on the uninformed and capricious imposition of the capital punishment that renders.

According to Bhagwati, the actual conduct of the investigation grew out of the problems in many areas poruppattatu in place. As he pointed out, the investigation once it was in 1982 that the police have tinted a number of administrator bodies, truly representative of 2008 in the context of today, there are crude and archaic technological advances and scientific basis for the investigation, gathering evidence of modern no great methods to resort to the third stage of torture. He clearly explained the rules.

"They caste, communal and gang motivated by considerations that our beliefs are often witnesses oral evidence-based. Often, witnesses to perjure. Sometimes they even cop a real case would have to be prove what the police found. Sometimes mistaken eyewitness identification and the sources ever cross hard to shake - .. after testing their enemies innocent men up one frame is likely an overzealous prosecutor to disclose if the events are in the innocence that he knows, but security is not evidence. judgment error likely and therefore no theoretical considerations rule out.'s actually a very live possibility.

Justice Bhagwati raised concerns about the inherent weaknesses of the criminal adjudicatory process thirty years ago, reflecting concerns raised by legislators.

Justice Bhagwati warned: "You can implement the law before the death penalty may set the security pirakale careful, it can not be ruled out and therefore no possibility of judicial error in judgment can not eliminate the possibility of killing the theoretical considerations. Actually a very live chance and it's very long, executed the penalty is a constitutionally suitable different tool for the court or the court of the state, performing through the blood to the conscience that an innocent man is not at all unlikely".
This arbitrary death penalty system render individuals inherent problems in the organization of criminal justice it was a clear recognition. unluckily the preponderance of the judges supported this view and that cases of 'rarest of rare' should not be used except, instead of executing that, the constitution favours to sentence to death. Following the study, the rare 'creation of these "rare, it helps to highlight these issues and continue to render arbitrary process.

The death penalty is an assumption based on historically exhausting the traditional theory that was founded by the progress of science and the sociology of thinking about human nature and behavior facts squared pattern.

Death penalty, originally emerging out of superstition, grow through the classical theory on the basis of collective retribution against the violator who chooses freely to go brutally and survives as a deterrent in addition to the fulfilling of social Death sentence which is principally associated with the offence of murder. The effect of death sentence as a deterrent is scientifically doubtful first, in relation to the persons whose mental geometry is unfit to appreciate their activities criminal or otherwise; Secondly, in relation to situational automated persons and thirdly, in relation to those who are victims of social habits and subculture goals that have deprived them of their sense of socially approved responsibility and the normal value placed on human life that might grow under the influence of various criminogenic factors to which one may add family feuds, caste prejudices, religious fanaticism, political rivalries, and ecological under worlds particularly in the Indian context.
1.9 OBJECTIVES OF RESEARCH

1. To study roots of execution of death penalty in Indian laws.

2. To analyse contemporary conditions in India that imposes capital punishment.

3. To compare background of Indian retentionist’s mode with other abolitionist countries.

4. To suggest corrective measures for minimizing executing in India with any alternative to capital punishment.

5. To study whether capital punishment is ethically acceptable, can it ever be humane?

6. To study different modes of execution procedure in different countries.

7. To analyse the position and status of capital punishment in various countries.

8. Whether ‘the rarest of the rare’ case formula suits Indian psyche.
1.10 SCOPE OF THE RESEARCH

The abolition of death penalty has received strong backing in international arena however India is still retaining capital punishment as a allowed and lawful form of punishment. Retention of death penalty in India has strong background because of many factors which approve and hail death penalty as an indispensable part of Indian penal system.

Due to increase in crime rate in India, particularly heinous crimes like murder for ransom and the terrorist’s activities the retentionists have an upper hand than those who are in favour of abolishing death penalty. Therefore through this research certain pertinent questions on both sides of retention and abolition of the death penalty are to be explored and analyzed.

1.11 HYPOTHESIS
1. Death penalty legally facilitates to remove from society someone who would
   cause more harm, and who is incapable of rehabilitation.

2. Death penalty helps to deter other from committing crimes, attracting capital
   punishment.

3. Death penalty is the only way to punish the criminal for heinous crimes.

4. The principle of the rarest of the rare is good in the criminology in India.

5. The rarest of the rare cases test suits Criminological conditions in India

6. The death penalty is constitutional and therefore used more aggressively.

7. It is a just punishment for someone who has unjustly taken the life of another.

8. The Hon’ble President power to commute death penalty is often politicized.