CHAPTER - II

LITERATURE REVIEW

Amar Ujala Bureau (2014) Father – in – Law who had raped his Daughter – in – Law has been punished to imprisonment for the term not less than 10 years. In the Jagadhri of Haryana a man has been sentenced to jail for the term of not less than ten year after he has been proved guilty of committing rape on his own daughter-in-law by the Fast Track Court, the convict has also been fined for Rs.50,000/- along with the jail of 10 years. The incidence occurred in the month of May 2013. An F.I.R was registered on the complaint of a woman on 07-05-2013 in the City Police Station of Jagadhri that the woman was raped by her own Father-in-Law in the night when her husband was away from home due to some work. That day on 28-04-2013 in the night at about 08:00 p.m. her father-in-Law came to home and asked for food, she gave him food and after that along with her children she had gone to her room to sleep along with the children. Late in the night at about 11:00 p.m. as her husband was not in house her father-in-law called her to his bedroom with a glass of water to drink when she brought him a glass of water he bolted the door of the room from inside and threatened with locally made Gun called Desi Katta. Thereafter he committed rape on her. In this matter the court has decided the matter within one year. In this case 12 persons were examined as witness in the Fast track Court and the father in law was found guilty of raping his Daughter-in-Law. The woman was married on 06-05-2011 in village of Dirtrict Kuruksheter of Haryana State after some time they had shifted to Jagadhri and started living in colony of Jadaghri City where this incidence had happened.

In another the smugglers of have been awarded rigorous imprisonment for the term not less than 10 years by the Kuruksheter Court. Three persons including two residents of Himachal Pradesh have been punished to 10 years each rigorous imprisonment for smuggling Cherus along with fine of Rs. 100000/- The spokesman of Police has given this information to the Amar Ujala Bureau that the resident of Saini Mohala, Pehowa of Kuruksheter that toe person resident of Himachal Pradesh were arrested by the Police
along with Sumo of Kothi Mandi (Himachal Pradesh). It took about one year and three months to decide the case in which the Judge of the kurukshter Court found three persons guilty and punished them to jail for the term not less than 10 year each along with fine of Rs.100000/- each.

**Amar Ujala Bureau (2014)** A man has killed his pregnant wife along with her lover by attacking with a Kassi/ Fawda (an instrument used in agricultural work) the wife died on the spot and her lover is seriously injured who has been got admitted to the hospital for treatment. In district Bahadurgarh of Haryana State a young man has under impulsive reaction killed his pregnant wife and injured her lover when he found them in objectionable conditions. The husband hit her continuously several times with the Fawda the wife died on the spot whereas the lover of deceased wife was admitted in hospital in very seriously injured condition. The offender husband has run away from the spot after committing the crime and the Police on 13-07-2014 (Sunday) immediately after getting the news has reached to the place of occurrence registered a case of double murder. The Police started investigation and search for the murderer husband of deceased pregnant lady.

In the village Kusali of District Bahadurgarh of Haryana a person namely Mangal was living with his 22 years old wife Pooja along with his other family members. Due to very hot all the family members were sleeping in open area of the house. In the night at about 02:00 a.m. Mangal got up for passing the urine but he did not find his wife on her bed, he thought that she might also have gone for passing the urine or drinking water but he did not find her at both places, meanwhile felt some movements inside one room of his house, he went to that room and found a young man named Kuldeep of 24 years old in an objectionable condition with his wife. Mangal could not tolerate that and impulsively he took the Fawda and started hitting one after another on both of them with that. After hearing noise the other members of the family also assembled there along with some other neighbours. The entire room was red with blood the wife of Mangal Pooja had died and the lover of Pooja namely Kuldeep was serious injured. The accused has run away from the place of occurrence and the assembled people took the injured Kuldeep to
Braham Shakti Hospital of Bahadurgarh. Later on the police arrested the accused Mangal and he would be produced before the Magistrate today. At the time obtaining this news the S.H.O. Ran Singh Dahiya was present at the spot of crime along with his Police Force.

**Amar Ujala Bureau (2014)** Illegal collection of Toll Tax, on opposing and asking for the reason of toll the miscreants have shoot at the Truck Driver and his assistant. In the Tehsil Narnaul, District Mohindergarh on Nangal Chaudhary – Nizampur Grant Trunk (G.T.) Road the staff of Toll Plaza were collecting Toll Tax before the Toll Tax payment point from the Truck Drivers, when it was opposed by the Truck Drivers there was an altercation between the staff of Toll Plaza and Truck Drivers and during that altercation one party opened the fire from its Gun in which one man resident of Mukundpura Village was injured due to Gun Shot injury who was given First Aid and referred to Trauma Centre. It has been alleged that after half hour later then the informing the police reached to the place of occurrence but in front of Police the Toll Plaza staff claimed that they were not collecting Toll Tax but they were checking whether all the Trucks have paid Toll Tax or not. The Haryana State Road and Bridge Development Corporation had issued a letter vide office memo No. 7341-44 dated 08-07-2014 vide which orders have been passed to establish Toll Briers on the border of Haryana – Rajasthan Border near Nizampur Road. The tender of this Toll Barrier was issued to Shri Om Prakash Hudda of Village Sanghi of District Rohtak @ Rs. 4.95 Crores. The owner of the Toll has established a Toll Barrier in Village Karoli.

It has been alleged that on Friday night the workers of Toll Plaza made a barrier on the border of the city and started collection of money from the trucks. On the name of Narnaul – Nizampur they started collecting money on the other road also which was leading to another Nangal Choudhary Road. It was alleged that two workers seating on Chairs with a Table near Saini Dharam Kantra and collecting Rs.200/- from each truck Driver and they created a heavy road jam on all the roads coming from three directions.
When reason of money collection was asked by the truck drivers they opened fire from their gun. Some of the truck drivers along with other people opposed this collection and asked the reason of collection, the people seating on the Chairs pointed towards the Car parked nearby and asked the people to talk there reagring collection of money. When the people went there the person who was sitting inside the Car did not reply and there was an altercation between the Truck drivers and Toll workers during that one person took out his gun and fired thrice.

**Amar Ujala Bureau (2014)** man killed himself after shooting at his wife. Tehsil Gohan, District Sonipat of Haryana in colony on the name as Chopra Colony on 22-06-2014 a man killed his wife with his own licensed Doga Gun and after that he soot at himself and committed suicide. The entire matter is a story of Domestic Contention at the time of incident only duo husband and wife were present in the house whereas his mother had gone on the roof of the house to do some work. On getting the information the S.H.O. City Police Station, Sonipat and Deputy Superintendent of Police Rajeev Deswal arrived along with their team at the place of occurrence after preliminary inspection the dead bodies were taken into custody by the Police and sent to Hospital for postmortem.

On Rohtak Road near Drain No. 8 Chopra Colony is situated where lived mr. Kapil Bedwal 37 years old along with his wife Kusum and their two children. Kapil had a small hotel near the house of his father Rajkumar and younger brother Sunil. In the afternoon Rajkumar and Sunil had gone to Hotel and wife of Rajkumar and mother of deceased Kapil Vidya Devi had gone to roof the house for some work at that time Kapil and his wife Kusum only were in the house. At that time nobody knows what wrong had taken place between husband and wife, the people could know about by listening the sound of fire when the deceased killed himself after killing his wife. After listening the sound of fire the mother Vidya Devi and other neighbours arrived there and the people found that Kusum was lying dead at the gate and inside the room Kapil was lying dead. On getting information the father of deceased Rajkumar and brother Sunil had also reached there. Deputy Superintendent of Police Rajeev Deswal and S.H.O. City Sitender Kumar along with their team also reached there and inspected the place of occurrence. Team of
SFL was also called at the spot. Police is investigating on all the aspects of the case. The dead bodies of both husband and wife were taken into custody by the Police and sent to Hospital for autopsy. The Police has not given any opinion so far, the matter was investigated but apparently it seems the matter of domestic and personal problems which have taken the horror shape and destroyed the happy family giving birth to another social problems. The old parents and the younger brother along with two children of the deceased husband and wife are in shock and astonished with the happening. However, the family members have accepted that there was some tension between the both husband and wife.

**Amar Ujala Bureau (2014)** Near Palwal Town of District Faridabad of Haryana in Village Teharki one young man has set a girl on fire and burnt her alive because she had opposed her molestation and sexual harassment by that young man. After committing this crime the accused had run away from the place of occurrence. According to the information received one 13 years old girl was living in the Village Teharki along with her parents in the same village a young man namely Bhoora resident of Village Baharana, District Mathura (U.P.) was living with his maternal Uncle Baljeet on 24-06-2014 (Tuesday) Bhoora reached to the house of girls where she was alone at home and finding the girl alone Bhoor had started molest her, the girls opposed the Bhoora and threatened him to narrate all this to her parents. Bhoora picked up a Jerkin of Kerosene oil and poured the kerosene oil on the girls, the moment she could understand he set her on fire. The neighbourers saw the girl burning rushed to her and tried to save her life and taking the advantage of situation the accused ran away from the spot. The neighbourers gave the information of this incident to Bhagwati the mother of the victim girl, who took her daughter to the hospital where after some times the girls had died. On getting the information of crime the Police arrived at the Hospital and took the dead body into custody and sent for post-mortem. The police on the complaint of mother of deceased girl registered a case under various sections of IPC, later on after conducting the post-mortem the dead body was handed over to the relatives of the deceased and the accused was absconding till the news was printed.
In another incident a lovers couple has committed suicide by jumping in front of a train in Panipat of Haryana. The Man lover was the resident of Village Nara who was unmarried and the lady was mother of four children and both were doing labour work together. On the previous night both of them had eloped from the homes and next day dead bodies of both were found on railway track near Gaushala. The General Railway Police registered a case and the relatives of deceased lovers have finalised the last rituals by doing cremation of the both. On Panipat – Jind Railway track between Shiv Gaushala and Village Nara on 24-06-2014 Tuesday morning dead bodies of a woman and a young man were found. The villagers on getting this news assembled near the track and identified the both deceased persons. After that GRP Panipat reached there the police has identified them as Jasbir aged 22 years resident of Nara Village and Kavita aged 33 years resident of Nara Village. The atmosphere of the village was hot with gossips. According to the villagers both had committed suicide by jumping before a train on previous night at that some farmers of the same village were irrigating into their fields. The Driver of Train which came late night blew the horn for a long time and slowed down the train at that time the farmers doubted of occurring some accident and arrived near the spot but the bodies could not be identified due to dark in the night and they all went away from there.

Khurana (2014) the Bar Council of India in the country does the work of regulating of legal education. The Bar Council is a statutory body constituted under the established law i.e. Advocates act, 1961. There are two ways to obtain degree to practice law and enrol with Bra Council:-

(1) Three years LL.B. Course to which the admission can be taken on the basis of graduation in any stream.

(2) Five years integrated course i.e B.A., LL.B. programme to which one can take admission immediately after completion of secondary or 10+2

Several universities are there which are offering both the courses i.e three years degree after graduation and five years’ integrated programme after secondary level.
To practice the profession of law only those advocates are entitled in India who have enrolled themselves, which not only limited to appearing before courts and giving legal advice as an attorney, but also includes drafting legal documents, advising clients on international standards and carrying out customary practices and transactions.

The Bar Council of India performs oversight functions at the state level as well as lays down the criteria for enrollment etc. Every state of India has its own Bar Council which regulates the admissions and removal of names from its roll. Getting enrolled with a Bar Council as an advocate makes a lawyer eligible to practice before all Courts and Tribunals across the country.

As per provisions provided in the Advocates Act there are two types of Advocates i.e. Senior Advocate and Advocate. A Senior Advocate is designated by the Supreme Court or any High Court based on his abilities or special knowledge.

Section 6 of the Advocates Act reads as under:-

(1) There shall be two categories of advocates namely senior advocates and other advocates.

(2) An advocate with his consent can be designated as Senior advocate if the Supreme Court or a High Court has an opinion about the advocate that by virtue of his abilities standing at the Bar or special knowledge or experience in law, one is deserving of such distinction.

(3) There are certain restrictions for the senior advocates in the matter of their practice as the Bar Council of India may in the interest of legal profession prescribe.
An advocate of the Supreme Court who was senior advocate of that Court immediately before the day of appointment shall for the purpose of this section be deemed to be senior advocate.

Provided that where any such senior advocate makes an application before the 31st December, 1965 to the Bar Council maintaining the roll in which name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly.

There are provisions which divide the Bar into Senior Advocates and the other Advocates. The status of a senior advocate is conferred by the Supreme Court or High Court on merit only. A Senior Advocate is prohibited from accepting certain kinds of petty legal work such as drafting, notices, affidavits etc. A saving provision has been made in respect of the available senior advocates of the Apex Court who shall continue to be designated as Senior Advocate.

The lawyer practicing in District Courts are equally eligible for consideration for the purpose of conferment of the distinction being senior advocate subject to their fulfilling the conditions which have been laid down and required to be fulfilled prior to applying for the same.

Once difference between senior and other advocates is identified under the provisions of the Advocates Act wearing a distinct gown or a coat by senior advocate with different design cannot be assailed as discriminatory or violative of Article 14 of the Constitution of India.

The significance of the duties of an advocate is equal to a judge. Advocates have a great responsibilities towards the society. A client’s relationship with his/ her advocate is underlined by maximum belief. An advocate is expected to act with maximum sincerity
and respect. In all professional functions, an advocates should be diligent and his conduct should also be diligent and should conform to the requirements of the law by which an advocate plays a significant role in the preservation of the society and system of justice. An advocate is under obligation to maintain the rule of law and ensure that public justice system is enabled to function at its full capacity. No violation of the principles of professional ethics by an advocate is acceptable and if any takes place that is unfortunate on the part of violating advocate. Ignoring, even minor violation/ misconduct militates against the fundamental foundation of the public justice system. An advocate should maintain his dignity through his behaviour and conduct in his dealings to the court as well as with fellow lawyers and litigants. He should have integrity in abundance and should never do anything that destroys his credibility. An advocate has a duty to support and encourage the juniors in the profession. An ideal advocate should believe that the legal profession has an element of service also and associates with legal the service activities. Most importantly, one should sincerely abide by the standards of professional conduct and etiquette laid down by the Bar Council of India.

The Senior Advocate is expected to act with much more higher standards of professional ethics, conduct and etiquettes.

A senior advocate shall not file a Vakalatnama or an act in any court or Tribunal or before any person or other authority. A senior advocate shall not appear without an advocate on record in the Supreme Court or without an advocate in any Court or Tribunal etc. A senior advocate shall not accept instructions to draft pleadings or affidavit, advice on evidence or to do any drafting work of an analogous kind in any Court. He shall not undertake any convincing work of any kind whatsoever. But he can do these work in consultation with an advocate.

A senior advocate shall not accept instructions directly from a client any brief or instructions to appear in any court or tribunal or before any person or other authorities in India.
A senior Advocate who had acted as an advocate in case, shall not advise on ground of appeal or in the Supreme Court, except with advocate after he has been designated as a Senior Advocate.

A senior advocate may in recognition of the services rendered by an advocate pay him a fee which he considers reasonable for appearing in any matter. Although, this is not mandatory yet it has become a moral and professional duty of the senior advocates to support, promote, educate, guide and encourage the junior advocates to learn the professional skills and provide financial support to their subsistence in their nascent stage of career.

**Chauhan B. S., J (2014) the order passed by the Karnataka High Court has been opposed by filing criminal appeals in the Supreme court** in which the High Court of Karnataka had confirmed the death punishment awarded by the District and Session Judge and for the offences committed by the appellants which are punishable under section Three Six Four read with section Thirty Four of penal law of India sentence to undergo tough conditioned Jail for seven years and a fine of Rs.Twenty Five Thousand each and in case of failure of the payment of Rs.Twenty Five Thousand as fine the additional term of jail will to be undergone for period of eighteen month. The appellants have been further convicted under Section Two Zero One read with Section Thirty Four of Penal Law of India and sentenced to undergo Tough Conditioned Jail term for five years and fine of Rs.Ten Thousand and in case of failure of payment of fine an additional quantum of imprisonment will be twelve months. All the three appellants have further convicted under section Three Zero Two of Indian penal law read with section Thirty Four and they have been punished with death sentence. Following are the facts and prevailing situations which gave rise to the appeal:-

The deceased had gone to Anandpura to Sagar on being asked by his uncle (PW 1) to collect the outstanding dues in respect of sale and purchase of ginger from (PW 2) to collect the outstanding dues in respect of sale and purchase of ginger from K.B. Sreenath (PW 2) and (PW. 12) as victim deceased did not turn up, (PW1) started worrying about
the victim deceased because he had gone for collection of payment. Uncle contacted to the persons to whom he sent victim deceased for collection of payment namely (PW 2) and (P.W. 12) who confirmed that victim deceased had already left from them after getting the payments of Rs. 2,50,000/- plus Rs. 1,50,000/- respectively. When the deceased did not return then an FIR was lodged against unknown person suspecting that victim deceased has been kidnapped. Meanwhile rumor started about the kidnapping of deceased. Some of the witnesses had confirmed that they had seen victim deceased was with the appellant in a Maruti Van. The Police has started its investigation and the dead body of victim deceased was traced by the Police and appellants were also arrested under the charges of murder of the deceased. Police enquiry was completed and challan was filed against the appellants and trail had started. On the basis of circumstances and evidences the appellants were convicted under section for Kidnapping for committing murder, Committing murder, Destroying the evidence and giving false information and for act done by more than one persons for common purpose. The aggrieved appellants preferred appeal before the High court of Karnataka, Bangalore which has been dismissed by the impugned judgment and order with respect to death sentence while maintaining the other sentences as well. However the court commented that the charge should have been framed under section Three Six Four of penal law of India instead of Section Three Zero Two of penal law of India, that is why the appeal was filed. The court found that in the case there were no such conditions that the case could be brought under category of rarest of rare and the court has converted death sentence into Jail of 30 years without remission and the appeal was disposed off.

**Law Commission of India (2014)** A reference to this effect was made to the Law Commission when a debate was held in the parliament of the third Lok Sabha on the resolution moved by Member, Lok Sabha for the banning the death sentence in the year 1962, the Law Commission did an extensive exercise in favour of consideration of the issue of abolition of death sentence from the statute books. The Law Commission released its 35th report in 1967 recommending retention of death penalty.
The law commission arrived at several conclusions which were based on elimination of general elements of cultural and social life of that time prevailing in the society of Indian people living in various part of the country. The Law Commission considered some of the indicators such as those related to education of the people, crime rates existed in the society which have brought drastic changes in the last half of the century. The much quoted view of the Law Commission, for example is distinctly rooted in the social-political environment prevailing in those days and to that extent is very limited in how it can be used in the existing time today is following:

**Law Commission of India (2014)** There was also suggestion in the report also that the death sentence may be abolished for a specific time period as an experiment which was the risk as between abolition and reintroduction of the capital punishment and there could be an era of violence intervening therein and reintroduction of death penalty may not have the that effect of restoring law and order which was expected. No case of execution occurred in India during those 8 years computed from 2004 and 2013. During that period there was no execution took place as a natural experiment which comes close to a *de facto* moratorium. The crime data from National Crime Records Bureau did not do any particular spurs in crime rate. But at the same time, we must have to keep in our mind that during this period, the award of death sentences could not take place or upheld by the Courts at the normal rate. To that extent, this period, if at all, can only be considered as a moratorium of sorts only on the actual executions and not on the application of capital punishment awarded by Courts and effect thereof on crime rates may have to be considered as such.

The death sentence of 15 convicts who had been awarded capital punishment was converted into life imprisonment on January 21, 2014. The Supreme Court of India in the case of *Chauhan*, commuted death sentences of these 15 death convicts to life sentence while deciding on their appeals which were the last effort applied by the convicts for life because their these death row convicts had approached the apex court as a final resort after they were not allowed pardon on their application for mercy by the president. In cases of the above mentioned 15 convicts the Court held that various supervening
circumstances which had arisen since the punishment of death sentence was ruled. There has been infringement of Fundamental Rights in the cases of these prisoners who have been punished to death by delaying inadvertently in the actual execution of their sentences which is unfair with the prisoners who have been punished to death. Soon after this decision, the Supreme Court has also commuted the death sentence of all three prisoners who have been punished to death because their applications for forgiveness have not been allowed by the President of India in the case of Sriharan and the apex court once again invoked this strand of death jurisprudence to commute the death sentences of all the three prisoners who had killed Rajeev Gandhi. Likewise, in the case of Devender, the Court has also commuted the death sentence of the convict on the ground of prolong pending execution in the of sentence as well as petitioner’s mental health is not good.

The Supreme Court of India through these rulings have averted at least 19 imminent executions in the time of very short span during the recent past. In the India there was no execution for last 8 years before the execution of Kasab and Afzal last year.

Radhakrishanan K. S., J (2014) mere raising charge sheet against someone and convicting for death sentences without considering the important factors of the matter will deprive the accused of getting justices and in this case the accused has only been charge sheeted and not convicted,

Radhakrishanan K. S., J (2014) The offence under section Three Seventy Seven is proving that the murder was caused in very strange, devilish and recreant way and the accused was in stronger than the victim and the accused controlled the victim and the victim was an innocent and defenceless before the muscle power and physical strength of the accused because at that time the accused of 35 years old who was in the peak of his young life with full body and mind power. The boy who was the only son of his mother. The accused took away the life of innocent and only son of his mother in a gruesome and barbaric manner which picks not only the judicial conscience but also the conscience of the society. In this case of offence committed u/s Three Seventy seven of penal law of
India has been fully proved as well as under the section three zero two of penal law of India. The Indian Society as well as the International Society abhorred the pederasty of the accused who did the unnatural sex between a man and a minor boy. The present case is concerned with the a gruesome murder of a minor boy aged ten years after sodomising and then strangulating him to death. The accused was charge sheeted with an offence punishable u/s Three Zero Two, Three Seventy Seven and Two Zero One of the penal law of India.

**Thomas Hubert (2014)** The regional developments have been highlighted in the Annual General Meeting of the world Coalition held in the Surinam in the June, 2014 which has given encouragement to the activities who have been fighting for abolition of capital punishment in the Caribbean Island of Puerto Rico where a bill has been presented before the Parliament in favour of abolition of capital punishment and the Surinam will very soon bring necessary changes in its Criminal Code for abolition of death punishment. Ruth Wijdenbosch, the Vice-Chairman of the National Assembly of Surinam has announced about the bill that it is with special committee and the supporters are hopeful that the bill will be passed on 10th October, 2014 on the occasion of World Day Against Death Penalty. One Parish based NGO Together Against the Death Penalty through added that the authorities of Haiti have already abolished the death penalty assured that Raphel Chenuil-Hazan of the said NGO that during a country visit in June that Port-au-Prince would fast-track the ratification of the UN Protocol on the eliminating of the capital punishment.

**Johnson D.T. (2014)** an article based on report of new study The Death Penalty Project it has been found that in Taiwan death penalty has violated human right standards in the country. It has been known during the event which was organised by the National Taiwan University in which the representatives from the British Trade and Cultural Office, advocates, diplomats, academicians and NGOs have participated in the month of June, 2014.
This report has been co-authored by Professor Wen-Chen Chang from the National Taiwan University and Professor David Johnson from the University of Hawaii, who have highlighted the specific aspects of domestic legal orders of Taiwan which have failed to meet the minimum level of standards.

Taiwan has passed law in order to implement the ICCPR into their legal orders issued in connection with the domestic affairs of Taiwan in 2009, and the current death penalty practice is contemporary to the standard as prescribed. An example of five prisoners has been given who have been executed on 29 April 2014, and after this execution the total number of execution in Taiwan has reached to 26 which has been calculated from the year 2010. It has come in the light after a period of four years from 2006 to 2009 when there was a de facto moratorium. According to Saul Lehrfreund, co-executive director of The Death Penalty Project, has revealed that the Taiwan’s capital punishment policy is totally going against the trends established and followed at world level which needs to be improved by reducing the numbers of executions.

**Sathasivam, CJI (2013)** In reference to confirmation of death sentence, the High Court must examine the entire evidence for itself independent of the session Court’s view. Death sentence on the doctrine of rarest of rare confines two aspects and when both the aspects are satisfied only then the death penalty can be imposed. Firstly, they case must clearly fall within the ambit of “rarest of rare” and secondly, when the alternative option is unquestionably foreclosed. These appeals are filed against the common final judgment and order dated 30-05-2008 passed by the high Court of Punjab and Haryana at Chandigarh in Muder Reference No. 8 of 2007 and Criminal Whereby the High Court as accepted the reference of murder case and confirmed the capital punishment awarded by the Session Court Ludhaina, Punjab imposed on the appellant by order dated 22-11-2007 in Session Case No.32 of 2006 and dismissed the appeal filed by the appellant.

The court has significantly considered the fact in favour of the appellant/ accused that he did not harm the other daughter, the appellant/ accused was frustrated due to behaviour of his deceased wife and children who did not allow him to stay in the house along with his
family. The deceased wife of the appellant/accused was adamant to make his life difficult. She did not want him to lead a happy married life and he was a poor man had to spend money on the rent of that house in which he was living which could have been saved by allowing him to stay in the same house in which the other family members were living and that money could have been spent on the family. If he would have been allowed to stay with the family perhaps reformation could have prevailed.

Sathasivam, CJI (2014) in this case Murder – death penalty – Rajeev Gandhi Assassination case – delay of eleven years in taking decision on the petition filed for begging for mercy and forgive the convicts by changing their death sentence into life imprisonment.

Murder- Death penalty – Death RO convicts are not under legal obligation to prove the sufferings and harm caused to them on account of prolonged delay in execution of capital sentence, by itself, give rise to mental sufferings and agony which renders the subsequent execution of death sentence inhuman and barbaric.

Sathasivam, CJI (2014) Death Penalty – Delay in execution of sentence – held that unwanted and unreasonable delay in implementation of punishment is equal to torturing the convict in prison which against the provisions provided in the Articles twenty one of the Constitution of India, thus the convict is entitled to get his death sentence converted into lifelong jail, who has been kept waiting for his death after awarding the sentence. He was neither given death nor allowed to live peacefully. The person who has been awarded death sentences will never be able to live peacefully because the convict will be always having fear in his mind that today or tomorrow he would be executed and he will be no more in this world and so many emotions will arise in his mind. Thus it is a cruelty on a death convict to keep him alive after awarding death punishment. The Procedures codified regarding proceedings of criminal matters under section Four Hundred Thirty Three Death Penalty – Supervening circumstance for converting the capital punishment into imprisonment for life on following grounds:-
Regarding Solitary Confinement of a prisoner the apex court in the case of Supreme Court held that it would be against the spirit of the constitution as well as against the provisions of twenty one of the Constitution of India, if a convict who has been awarded capital punishment is kept lonely or single man cell before the application for forgiveness has been rejected. Although, every Jail has Jail Manuals provided to the prisons of every state in India are containing necessary rules regarding handling of prisoners awarded death sentence yet the court has directed that the rules should not be interpreted to run counter to the rules provided in the Jail Manuals as well as Article Twenty One of the Constitution of India.

The Constitution of India has high value for its articulation and the Article 21 has provided that every human being has inherent right to life and mandates that no person shall be forced to be deprived of his right to life and personal liberty except according to the provisions provided by the law.

Several writ petitions have been filed under Article Thirty two of the Indian Constitution which relate to the delay in execution of death sentence based on the rejection of Mercy petitions by the Government or the President of India. These writ petitions have been
filed either by the convict himself, his. In all the writ petitions the main prayer made by or from the side of convicts is that the punishment for death may kindly be converted into imprisonment for life on the basis of pendency of implementation of punishment which is also against the spirit of Indian Constitution after the application for forgiveness not approved.

**Aftab Alam, J (2013)** Appellant / accused has been convicted of causing rape and inflicting injuries to a four years old girls child causing her death. The death penalty has been converted into life imprisonment, the court held – The determining factor for bringing an offence under the category of such crimes for which the imposition of capital punishment is appropriate and that is not the only nature of the offence alone. In the overall facts of the case as well as all the reasons examined the court held that it would be quite unsafe to confirm the death sentence awarded to appellant, and the court has ordered to set aside the the order of High Court which had confirmed the death sentence to appellant under the section Three Hundred Seventy Six and Three hundred two of penal laws of India and the death penalty was substituted by jail for life term which should not be less than actual period of eighteen years and the case of the appellant for any remission under the procedures laid down for criminal proceedings can be taken into account only after completion of period of eighteen years of actual imprisonment and the appeal was dismissed subject to modification in sentence. The commutation of death sentence was awarded on following factors:-

(i) Deficiencies in investigations i.e there was no medical, forensic report as an evidence except post-mortem report as well as no torch used to create light to identify the offender in cold and fuggy night produced before the court.

(ii) Lapses in framing the charges: Charges could not be framed properly, hence these lapses have also made the case weak for getting the appellant punished.
(iii) Lapses in examination of appellant according to section Three Hundred Thirteen of the procedures laid down for the criminal proceedings according to the evidences produced by the prosecution before the court regarding examining the appellant that after most cruelly and sexually abused the child was seen in the arms of the appellant and the appellant was asked to explain this vital circumstance against him but the examination made u/s Three Hundred Thirteen of the provisions laid down for criminal proceedings in this case falls short as per the requirements of the law.

(iv) Appellant is poor fellow and did not have sufficient to engage a lawyer of his own choice and manage a defence for him before the court. However, the appellant was represented before the trial court by the lawyer provided by the court from the penal of advocates but he was not satisfied with the lawyer provided to him. So facing death penalty he did not file the appeal before the High Court and his appeal directly came to Supreme Court through the Jail Superintendent presuming that the appellant does not have resources to engage a lawyer to get himself defended upto his satisfaction.

Sharma (2013) appeal before the Court of Sessions, Bhiwani (Haryana) against the judgment dated 19-12-2012 passed on criminal complaint no.299-1 of 2008 titled as Dharampal Vs. Mahender u/s 499, 500, 501 IPC by Sh.Puneet Sehgal JMIC Bhiwani vide which the accused was acquitted giving the benefit of doubt from the charges leveled against him, the judgment is wrong ,against law, facts and procedure, not maintainable and the same is to be quashed and accused/respondent is liable to be convicted on the grounds given in the appeal, complaint and evidence came on the file of lower court.

That the appellant is resident of village Pantawas Tehsil Dadri & Distt. Bhiwani and filed this complaint against the accused.
That the judgment given by the lower court is wrong, against law, facts and procedure as such same is not maintainable and liable to be reversed.

That the judgment of lower court is not a speaking one as no reasoning was given in support of judgment which were necessary to be given.

That the judgment is against the evidence came on the file as it is sufficient enough to convict the accused.

That the statement of witnesses and record was not given true and correct appreciation by the lower court as the case was fully proved and established against the accused.

That the rulings cited on behalf of the complainant were not appreciated and not discussed in the judgment.

That the lower court have ignored the fact that the accused is political person and knowing fully well being sarpanch of the village that house situated with the school is not relating to the complainant and it was belonging to brother of the complainant and the wall of house of brother of complainant was existing prior to coming of school wall in front of this wall and school have utilized the wall of Mukhtayar Singh and Muktayar Singh did not utilize or constructed his roof on school wall as deposed by the Panchayat also as well as other responsible person of the village and Head Master of the school and it has come in the enquiry report also but even then the Hon’ble lower Court have given much weight to this fact and the accused even then leveled the false allegations against the complainant lowering the image in the society, staff and students and relatives and villagers and the complainant had to come before the court.
That the evidence produced by the complainant is believable, cogent and convincing and same cannot be ignored only on the ground of the relation of brother with the complainant as such judgment is not maintainable and liable to be reversed.

That the enquiry report was never challenged by the accused so far and it amount admission on the part of the accused. Moreover it is not a case of encroachment which was to be decided by the lower court rather lower court was required to go through the seriousness of the allegations levelled against the complainant by the accused and how far and upto what extent allegations were true and supported evidence by the accused and the lower court have further decided as a civil case that revenue documents were not perused and not brought on record and not considered as there was no dispute of revenue record in the application of the person who is an accused and the accused has also not produced the revenue record in support of his application and it was duty of the accused to prove his application before the authorities, once the application was proved false and allegations were not supported by the accused then the accused was liable to be convicted under the offences levelled in the complaint.

That no case of exception as discussed in the judgment was ever set-up by the accused and it was not made out and there was no bonafide belief of the accused in filing the defamatory application and in absence of any such plea or defence in the case no such protection is available to the accused. Moreover this case is not covered under exception no.8 of 499 IPC as such judgment is liable to be reversed.

That the lower court has given this judgment on the basis of presumption and assumptions, conjuncture and surmises as such same is not maintainable and liable to be reversed.
That the imputations made by the complainant were public and these were enquired in the public and the allegation lowered the image publicly and the application was given knowing fully well regarding the entire facts that the house situated with the school does not belong to the Appellant/complainant and the disputed wall is belonging to the house owner and the accused have not only levelled this very allegation of encroachment but other serious defamatory allegations were also levelled by way of application and further these allegations were not proved by the accused which shows the intention of the accused.

That the lower court have only remained upto the question of wall and not gone through the other allegations leveled in the application which has resulted in arrival at a wrong conclusion.

That all the ingredients for invoking section 499, 500 were fully complied with and all requirements were complete rather the lower court have not considered the material placed on the file in right perspective as such judgment of lower court is not maintainable and liable to be reversed.

That the facts pleaded in the complaint were fully proved on the file by examination of the witnesses and production of enquiry report of B.E.O. in which it has been clearly mentioned that allegation were found false and baseless and were wrongly levelled against the complainant which is sufficient to establish the guilt of the accused on the file and same was not liable to be ignored by the lower court as done in the judgment.

That it was established on the file that the complainant himself appeared as witness and produced the other witnesses and fully proved the case and every aspect of the complaint was well explained but the lower court did not give sufficient weight to the evidence produced by the complainant as such the judgment dated 19-12-12 is not maintainable and liable to be reversed.
That no other appeal is pending or decided between the parties on the same matter.

That the appeal is well within time.

It is, therefore, prayed that the appeal of the appellant may kindly be accepted and the impugned judgment of acquittal dated 19-12-12 passed by the learned trial court JMIC Bhiwani by giving benefit of doubt may kindly be reversed and accused/respondent be convicted. Any other relief to which the appellant may also be granted in the interest of justice.

**Manning (2013)** The annual report of 2012 of Amnesty International has been released on death sentence mentioning the information about the different ways how the various countries are handling the convicts of the death sentence and how those are being executed. The five methods of the giving death punishment facts from last year are as elaborated below:-

United States of America is just behind the China one of the leading country famous for execution of people for death sentence, here are some more countries who are also having significant place in the list of most executions in the world last year i.e. Iran, Iraq, and Saudi Arabia for the, sitting ahead of Yemen and the Sudan.

According to the director of A.I. on the Death Sentence Removal Movement, who has told that the same countries are in the top eight every year, so there is no surprise in finding these countries in the top eight this year too..

But it is a matter of surprise about the United States of America which claims itself the most civilized, educated, cultured, systematized, awakened ahead of the rest of the world in the field of political matters, cultural matters, and geographical location as well is always in the top five?
As told by Mr. Evans, that the America is very strict as far as question of punishing of the offenders is concerned.

Methods of execution are different according to region, country, the prevailing cultural traditions and available technology, and the methods which they often use for execution, such as execution by hanging with a rope in the neck, chopping off the head, bullet killing, and injecting the lethal medicine through injection and in the Saudia Arbia this is the practice of displaying the body after being beheaded which is called as crucifixion.

Reasons behind execution of convicts also differ in the world. In the Pacific Countries it is a common practice that those who are accused of sorcery, particularly women, they have to face a very painful and horrible death.

The China is clever and cunning country which is also a notorious and in this country the government keeps the statistics or data related to number of persons executed in the previous year, in this way the China has forced the Amnesty International to rank China the lowest execution country based on the minimum number of executions which have been provided by the Government of China and this fact could be confirmed by the researchers. Keeping in view the lowest number of execution in China which is far away from the reality.

According to this data the report shows that the estimated number of death in China through execution last year were 2012 report is the criminals killed in the China by the Government provided punishment were in thousands whereas rest of the world stands at 682.
Although the number of execution of criminals all over the world has declined yet the Japan along with other notable countries like India and Pakistan has resumed the execution and killed seven people last year.

**Aftab Alam, J. and Prasad C. K., J. (2012)** Death Penalty was awarded in the Mumbai Terror Attack in the case of State of Maharashtra decided on 29/08/2012. The appellant was a Pakistani national who was awarded five death penalties and the same numbers of life imprisonments for committing multiple crimes of horrendous in India. The appellant has been leveled several charges but the major charges against him were as under

(i) conspiracy to declare the war against the Government of India

(ii) waging and abetting the waging of war against the Government of India

(iii) commission of terror attacks

(iv) criminal conspiracy to commit murder

(v) criminal conspiracy common intention and abetment to commit murder

(vi) committing murders of number of persons

(vii) attempt to murder with common intention

(viii) criminal conspiracy and abetment

(ix) abduction for murder
(x) robbery/ dacoity with an act which confirms that the offender wanted to cause grievous hurt.

(xi) causing explosions punishable under the Explosive Substance Act, 1908

The appellant was found guilty of all the above charges along with many other charges and the appellant was awarded the capital punishment on five counts, life imprisonment of five counts along with number of higher sentences of imprisonment for other charges. The court expressed that there is myth of absolute certainty in all human affairs, all exactness is also false. Very rarely anybody come across the case when court does not report to “certain probability” as working alternative of proof are beyond all reasonable doubts. Although, in the present case from all the evidences oral and documentary, references of which have been made in abundance by my learned Brother Aftab Alam, J who has made me to trust all the evidences creating “absolute certainty” which cannot be wrong in all cases but can be reality.

In this case as an exception the court is more than sure that planning and conspiracy to commit crime were hatched in the Pakistan and all the criminals have been trained in Pakistan at various training centers and devastation which took place at several places in Mumbai has been executed by the appellant.

Jain (2012) Maintenance of peace and order is an inevitable need of human beings living in any society in order to live peacefully and free from fear of injury or any sort of damages to their lives, limbs and property. To live with peace and free from fear is possible only in States where the law and order is strong enough and to make law and order strong and effective necessity of effective penal law is there. The effective and strong enough penal law helps to deal with the violators of law. In fact, the identity of a ‘State’ depends upon the effectiveness and the method how it discharges its primary function of maintaining peace in the land by keeping law and order. It is perhaps possible for the people in a State to live with peace without a highly developed system of constitutional law, or property law, but without the system of penal law it is never
possible to ensure the people their living condition which can be called peaceful and free from all kinds of fear.

Criminal law is also known as a branch of public law which authorizes the infliction of punishment imposed by the State on the people who are found guilty of violating any law, causing damages or injury to others. State is a party in the criminal proceedings, as crime committed by any offender is a wrong not only a wrong against the individual but also against the entire society. Criminal law of any State has been confined within very narrow limits, which could be applied only to definite overt acts or omissions capable of being to which the State has definitely declared as punishable by an act of the Legislature. In other words, there is no such thing called as ‘crime’ which is apart from legislative recognition thereof.

Codification of the criminal law of India has been done in the Indian Penal Code, 1860, and in the Criminal Procedure Code, 1973. Whereas the Penal Code is the substantive law which guides and explain about the kinds and quantum of punishment for any wrong committed by anybody and the Criminal Procedure Code is the adjective or procedural law which explains about the procedures how the courts function and how the perpetrator or offenders can be brought to justice in order to give justice to the victim. The provisions of the Penal Code are neither interfering or affecting the provisions of any special or local law.

Though by virtue of Sec. two of the Penal Code “every person” is liable to be punished under the Penal Code of Indian, the criminal courts do not have jurisdiction to try certain persons even if they have transgressed the provisions of the Code, e.g. President and Governors, Foreign Sovereigns, Ambassadors, Diplomatic agents, Alien enemies, Foreign army and Warships. The word “person” includes a company or association. Therefore, a corporation is liable to punishment under the provisions provided in the Code. In criminal law, the principal or master canm
be held responsible for the acts of his agents or servants only where it is proved that he had instigated or otherwise abetted the acts of the person who actually committed the crime.

Since the origin of human civilization, crime has been a perpetual and challenging problem. There is no such society which is not facing criminal problems. The problem of committing violation of rules and regulations in the society is also a common problem of the society.

The concept of crime is inevitably and directly concerned with the social phenomenon. Mutual trust and rights of the members of the society regulate the conduct and mutual behavior of members of the society. It is true that most of the people believe in peaceful and harmonious living of their life but in every society and every place few people will be always found who deviate from this normal behavioural pattern of living of people in the society and they feel pleasure in creating disturbances in the peaceful and harmonious lives of the people in the society and they only become the instruments of making the society full of problems as well as crime. This situation created by the few people of negative attitude in the society imposes an obligation on the State to maintain normalcy in society, which can only be maintained by the instruments of law.

Social policies of a given time give the birth to the concept of crime. The concept of crime also gets changed along with continuous changes in the social ideology as well as social and cultural values of the people. It is possible that commission of an act is amounting to commission of crime to day may become a permissible conduct tomorrow other way round the commission of an act which is a permissible act today may become crime tomorrow.

In such matters the significance of criminal law is like a barometer which gauge the moral turpitude of the society at a given time. In other words, the social and morale level of the society can easily be understood by studying the criminal policy adopted by a society. The legislative measures to about abortion in certain cases i.e. in case of
emergency and need for saving the life of a pregnant woman the act of abortion is an authorized act but the same is a punishable offence when fetus of female child is aborted. In this way it is sufficiently reflecting the changing concept of morality in Indian society. More recently, the stringent anti-dowry laws which have been enforced in order to stop the occurrences of dowry-deaths and bride-burning as a deterrent legislation against the anti-social practice like sati providing for death sentence, etc., it is apparently indicating that the society is no longer going to tolerate atrocities against women and wants to assure them a dignified place in the community, whereas in earlier days there used be solemnization of Sati Functions by burning the women alive which was not only permissible act but also a cause to feel proud including in the Royal Families of ancient India particularly in Rajputana Families of Rajasthan State

The crime is a term which is interpreted differently at different places. That is to say, what is wrongful (crime) at one place may not be so at another place. Thus, adultery is a criminal offence in India and punishable to imprisonment whereas in England it is merely a civil wrong redressible by payment of compensation. This example further reflects that the concept of crime depends upon the prevailing traditions on the social values, accepted norms and behavioural patterns of a particular society at a given time.

In the recent past during few decades the rate of crimes has been increased in the society, the reason of which can be the existing change in social values brought about the modernization, globalization and industrialization of the present society. In today’s age of competition the people of the society as competitive as today’s, one is often compelled to go for ‘unfair means’ to raise one’s status in the society and according to incoming new social practices the person who is still sticking with his old values and moral system is being made an odd man out of the society rather he is being nominated as mean minded and orthodox person. Perhaps that is reason that “white-collar crimes” have become more prominent and prevalent in recent times. As the people of India are growing economically the trust for earning and accumulating more and more wealth to become richer and to arrange all kinds of luxuries of the life has increased beyond the limits of available resources with the people. perhaps the rates of criminal incidences is higher
than the India in western countries because the social and cultural disparities are more in those countries. There are various factors which have affected the numbers of occurrences of criminal acts and kept at lower level such as control of the elders of the families over the children, respect for their morale values, religion and other social and cultural traditions prevailing in the society of Indians which have acted as effective restraints to reduce the incidence of crime in India. On the basis of these facts it can be concluded that the criminal law is the index of socio-economic progress of the society.

**Definition of Crime**

It is difficult to give a specific definition of ‘crime’ because of the changing nature of ‘crime’ (an outcome of the equally dynamic criminal and penal policy of a State, see above). A human conduct that is believed to be inimical to the social interests and which is not acceptable to the society is labelled as a crime. However, most of the writers, often agree that every act which is coming under the category of criminal act, that is constituting and involving some sort of law-violation.

The objective of criminal law is to tell about a formal social condemnation of forbidden acts and conducts, buttressed by sanctions calculated to prevent it. The

A ‘crime’ may be defined as an act of commission or omission, which is against the provisions provided by the law, intending to cause some kinds of damage or loss to the community, for which punishment can be inflicted as the result of judicial proceedings taken in the name of the State. In case a person does anything wrong then he is liable to be punished.
In the broad sense, there are two kinds of definitions of crime i.e. legal definition and sociological definition. The definition which has been given legally is considered to be more acceptable, due to its elaborative, precise nature with element of certainty.

However, both these definitions have been criticized by the several learned people because of the essential characteristic of a crime is not an infringement of rights as in civil cases but, the causing those acts which are prohibited. There are some instances of crimes which do not violate anyone’s right are also found falling in the category of crime. Also, damage or injury to the community is truth of many crimes, but not every crime. Even transactions of civil nature will also cause the loss to the community. In the way, every unlawful act, even a small commission of breach would often injure the community.

Crimes are those wrongful acts whose sanctions are liable to be punished and is in not remissible in any case by any private person, but is remissible by the Crown alone, if remissible at all’. However, under the Penal Law of India, a number of offences are remissible by individuals without even the court’s intervention. In such offences, private individuals, and not the State, are allowed to remit the punishment. However, the controlling power of the State with regard to the criminal prosecutions is an undeniable fact.

According to Professor Paton, ‘In crime we find that the normal marks are that the State has power to control the procedure to remit the penalty or to inflict punished by the State. It is still the protection of the public welfare rather than the support of private interests, which is the dominant purpose of this branch of law.

Russell has said that crime is the result of acts and conducts of human being living in the society and they only decide what to do and what not to do and when someone from them only breaches the established norms and harm other fellow members of the society that act of breaching the norms and damaging others comes under the category of the crime which is prevented by the rules and the penal policy of the State. It is defined here that
the crime as an unlawful act which is an offence against the common public of the society and the perpetrator of that act is liable to punishment through legal procedures.

It has also been defined that the crime is as ‘an intentional act or omission in violation of law formulated for crime prevention which is committed without defence or justification, the same is sanctioned by the law as felony or misdemeanor.

This definition seems to be narrow because it has ignored socio-economic aspect of the crimes where the nature of intention to commit an offence different and extent than the intention while committing against individual and damaging or causing injury to specific individual crimes such as murder and theft etc. It is, therefore, not necessary that an act or omission should be intentional in all forms of crime.

Further, there is no question of violating the criminal law if some defence or justification is available for a particular act or omission in certain circumstances. So, his legal definition would be specific if he only had said that crime is ‘an act or omission in violation of criminal law’.

It has been characterized that the crime as a symptom of social disorganization. Another definition given by a learned author is that the crime as an act which is both forbidden by law and revolting to the moral sentiments of the society.

According to another school of thought, crime is an act which a particular social group regards as sufficiently harmful to its fundamental interests, to justify formal reaction (i.e. legal action) to restrain the violator. The tendency of modern sociological criminologists is to treat crime as a social phenomenon which receives disapproval of the society.
In the conclusion the legal definition of crime has been criticized because of its relativity and variable content. The categories set up by it are unscientific.

However, the advocates of legalistic approach criticizes the sociological definition because of its inaccuracy and implement character because social norms and values are relative and changes with time.

The legal definition appears to be more correct because of its expanded and precise nature and element of certainty. Criminal law not only gives particular definition of banned acts that constitute crime, but also has the machinery and procedure to determine violators, and therefore able to pinpoint the wrong doers. For example, convicted criminals represent the closest possible approximation to those who have in fact violated law, even if this group may not be fully representative of all those who have committed crime. This is not possible in cases where certain conduct branded as criminal in social terms. Moreover, the criminal law establishes substantive norms of behavior, and more clear-cut, specific and detailed standard than the norms in any other category of social controls.

**Jain (2012)** The According to Austin said that the offence which is initiated and proceeded by the injured party or anyone who is pursuing on behalf of the injured party acting as a representatives of that injured party shall be called as civil injury whereas the action or proceedings against any offence are initiated against the commission of the offence by the State will be called as crime. The Salmond has further said that the difference between criminal and civil wrong is based not on any variance in the nature of the right which has been violated or encroached, but it depends on a variance in the nature of the remedy applied for the solution of the problem arose due to commission of any wrong.

The distinction between crimes and civil wrongs is often that crimes are the wrongful acts committed against the common public the result of which is harmful the society as a whole and the action against the commission of any crime is being initiated by the state in
which the Police of the place where crime has been done shall register a criminal case under related sections of Penal Laws of India and produce the accused before the court within 24 hours of his arrest and the whole prosecution process will be under the supervision and control of the state the Public Prosecutor appointed by the state will be proceeding the prosecution before the court of jurisdiction and civil wrongs are also known as private wrongs (Blackstone) which is committed against the individual and the same is brought before the court by the affected person and the affected person is only responsible to prove the allegations as well as proceed the whole matter till the final disposal. A crime is an act considered by law to be wrong and harmful to the common public in the society as a whole, although the immediate affected person and victim is an individual. Murder injures are caused to the particular individual victim, but the act of committing murder or attempting to commit murder is an act which causes the disregard to the human life puts it beyond a matter of mere compensation between the murderer and the victim’s family. Those who commit such acts are proceeded against by the State in order that, if convicted they may be punished. Civil wrongs such as breach of contract or trespass to land are deemed only to infringe the rights of the individual wronged and not to injure society in general, and consequently the law leaves it to the victim to sue for compensation in the courts.

Generally, five points of distinction between the two have been put forward:

1. Crime is a wrong against the common public, while civil wrong is a wrong committed and affecting a private body.

2. The remedy against a crime is punishment through the legal process and procedures but the remedy against the civil wrongs is damages compensation to the affected person.

3. Procedural difference – The proceedings in case of crime are criminal proceedings in different court whereas in case of civil wrong, civil proceedings will be
initiated in the civil court. The civil and criminal proceedings take place in two different types of courts i.e. Criminal Courts and Civil Courts

4. The liability in a crime is measured by the intention of the wrongdoer, but in a civil wrong the liability is measured by the wrongful act and the liability depends upon the act and not upon the intention.

5. All criminal liability is punishable under penal law whereas the civil liability is sometimes penal and sometimes remedial

Functional Differences:

Most of the points of distinction between civil and criminal liability are not well founded. A clear line cannot be drawn between the two.

1. There are wrongs against the State or society, but they are not considered as crimes, for example, a breach of a contract by an individual made with the State is not a crime. A refusal to pay taxes is an offence against the State but it is a civil wrong.

2. A criminal proceeding does not always result in punishment and on the contrary sometimes civil proceeding result in punishment. For example, in the case of disobedience of an injunction granted by a court, punishment is awarded although it is a civil proceeding. A criminal proceeding may result in an order against the accused to make restitution or compensation, while civil proceeding may result in an award of exemplary or punitive damages.
3. Some civil wrongs can cause greater general harm than some criminal offences. The negligence of a contractor resulting in widespread injury and damage may be far more harmful than a petty theft. Furthermore, the same act may be a civil injury and a crime, both forms of remedy being available, e.g., libel and assault.

4. To say that the measure of criminal liability is intention and of civil liability is the wrongful act itself is also not correct. In modern times mens rea (intention) has gone under an eclipse and the question of intention has become more of a form than of a substance.

The distinction on the basis of proceeding is more sound and contains substantial truth. From a practical standpoint the importance of the distinction lies in the difference in the legal consequences of crimes and civil wrongs. Civil justice is administered according to one set of forms, criminal justice according to another set.

Though in some cases civil and criminal both the proceedings can be instituted for the same act they are always different and are regulated by two different sets of rules.

Remedial and Penal liability – In the case of penal liability the purpose of the law is or includes the punishment of a wrongdoer; in the case of remedial liability, the law has no such purpose at all, its sole intent being the enforcement of the plaintiff’s right, and the idea of punishment being wholly irrelevant. The liability of a borrower to repay the money borrowed by him is remedial; that publisher of a libel to be imprisoned or to pay damages to the person injured by him, is penal. All criminal liability is penal; civil liability, on the other hand, is sometimes penal and sometimes remedial.

Dutta H.L., J (2012) The Constitution of India, 1950, Article 21 in the present case the accused was denied legal aid of counsel during the trial. The court should have seen the matter and ensure that the hearing of the case against the accused as well as accused was dealt with justly and fairly during the proceedings before the court keeping in view the 38
the cardinal principles that the accused who cannot afford the legal counsel due to financial reason or any other reason is entitled to avail the facility of counsel provided by the court from the advocates’ penal made for such purposes which can be unavoidable for his defence, as well as to facts as to law but the same principle may not be made applicable in the case of economic matters or in the matters where the punishment is not imprisonment rather it is fine only. The necessity of counsel is very vital as well as imperative upto the level that the if the trial court is not able to provide the counsel means the process of law and court has failed. The absence of proper and fair trial would be violation fundamental principles of judicial procedure on the basis of breach of mandatory provisions of section Three Hundred Four in on the provisions laid down for the proceedings of criminal matters. In the present case the convict is foreign national who is an illiterate person and unable to afford or manage to engage a counsel to defend himself. He is tried, convicted and awarded death punishment by the ASJ, Delhi without providing him the mandatory aid of assignment of a counsel for his defence in spite of this is part of judicial process. The High Court has also confirmed the punishment by dismissing the appeal filed by the appellant/ accused vide his order. The convict was charged, found guilty proved and awarded to be punished to death according to sections Three Hundred Two, Three Hundred Seven of penal laws of India as well as section three of Explosive Substance Act, 1908. The High Court considered the case of prosecution as accurate. The incident happened on 30-12-1997 at about 6:20 p.m. that one blueline bus No. DL-IP3088 carrying passengers on its rout to Nangloi from Ajmeri gate. The bus stopped at its scheduled stop point at Ram Pura Bus Stand on Rohtak Road for passengers to dismount. As the bus stopped an explosion took place inside the bus because of which thje floor of the bus got ripped apart consequently four passengers died and twenty four injured including the conductor of the bus. Initially nobody was arrested but the intelligence agencies became more active to find out the culprits consequently on the basis of information received from the intelligence agencies the police raided at a place from where they arrested some foreign nationals along with the explosive material which was also used in the blast of bus on 30-12-1997. The persons arrested have confessed that they belonged to a terrorist organization and came to India for Jehad and create terror through explosions. On the basis of information provided by the arrested
people the police made some more arrest including Mohammed Hussain who is now appellant in the present case. He was charged under section Three Hundred Two and Three Hundred Seven of Penal law of India and under the Explosive Substance Act, tried, convicted and awarded death penalty without providing him the legal aid of counsel because being a foreign national and illiterate he was not able to manage a counsel for his defence. The punishment was also upheld by the High Court of Delhi. The appellant/accused filed an appeal before the highest Court of India and there the appeal is accepted and the punishment was set aside on the basis of unfair and unjust trail at lower level. Further order was passed that matter is to be forwarded to the Chief Justice of India to constitute a bench for fair and just trial of the case.

Patnaik A.K., J (2012) The wrong act was done after properly pre-planning with complete ignorance of human lives and to only to get money. Although, the appellant in this case is young, yet his criminal tendencies are of such level which are impossible to be changed and the appellant is great threat to the society. The Trail Court as well as High Court have took decision and reached to the conclusion that the crime committed by the appellant is falling in the category of rarest of rare cases and for that punishment to death is the appropriate punishment. The Turban and T-Shirt having presence of human blood of the appellant seized from the place of occurrence. The iron rod, and axe have been searched according to the information provided by the appellant while recording the statement given by the appellant which was also having blood stains. The mother of the PW1 was cooking food in the kitchen she came by hearing some noise of commotion and she saw and heard that the appellant was pressurizing to give money from the father of PW1 and the father gave him the entire amount which was with him in his pocket. There is definite and clear proofs which are proving that to show that the appellant was the main leader of that entire episode of crime the offence committed under section Three Hundred Ninety Six of the penal law of India. In this case of decided on 23-02-2012, the appellant filed the appeal against the judgment of High Court. The appellant along with his four aide robbed in the house of Shamim and killed him, his wife and two other family
members with axe and iron rods. The Trial Court has recorded the following special reasons under sub-section three of the section Three Hundred Fifty Four of the provisions provided for criminal proceedings which has made the court to awarding the death sentence on the appellant:-

(i) The crime was committed under a complete pre-planned strategy.

(ii) The crime has created the terror in minds of public

(iii) The victims were helpless and defenceless woman and two minor children aged 8 and 4 along with two men were brutally murdered.

(iv) The driver of the Shamim who was waiting for his food and he was also killed brutally

(v) The appellant / accused entered into the house and he was allowed to enter due to earlier business relations that advantage was taken by the criminals.

(vi) The intention was to kill whole family surprisingly six months old baby and four years child remained alive

Keeping in view the aggravating circumstance the Trial Court could get convinced that there is no other punishment other than death penalty for the appellant.

**Sharma (2012)** appeal against the judgment dated 6-10-2012 passed by Sh. Balwant Singh S.D.J.M, Siwani at Bhiwani on criminal case 36-1-C/2009 instituted on dated 15-04-2009 on the complaint of the appellant vide which the accused respondents were
acquitted, with the prayer to set-aside the judgment of lower court and for holding guilty and sentencing the respondents/accused by accepting the appeal of the appellant.

The appellant most respectfully submits as under:-

- That the appellant is resident of Sewa Nagar colony Bhiwani Tehsil & Distt. Bhiwani and a senior citizen aged around 62 years.

- That the lower court have not rightly decided the case and the accused were acquitted without going in to the material placed on the file and the statement recorded of the prosecution witnesses and the correct appreciation to the evidence was not given by the lower court and balance of lower court tilted towards the accused.

- That the circumstances of the case warrants that maximum punishment as provided in section 499,500,501, 34 IPC ought to have been given to the accused.

- That the complainant had to pass through a long ordeal and suffered harassment and humiliation for a long time and loss of reputation as discussed, deposed and detailed in the application submitted by the respondents to the D.C., S.P. ,Municipal Committee and other authorities.

- That there were no discrepancies in the information provided by the witness of the prosecution through his statement and the discrepancies pointed out by the lower court are not discrepancies in the eyes of law as such the judgment of lower court requires reversal in the present circumstances.

- That the present was not a civil case where it requires a long trail of witnesses because the documents produced on the file itself proved the case beyond
reasonable doubt as such the respondent accused were liable to be convicted under the provisions of law as mentioned in the complaint.

• That the lower court have gone against the fact and circumstances and mind of the court was prejudiced and this prejudice seems to have affected the decision of the case.

• That the judgment is not based on reality rather it is based on conjunctures and surmises, presumptions and assumptions as shown in various paras of judgment as such the judgment is not maintainable and sustainable in the eyes of law as such same may please be set-aside.

• That the judgment is against the principle of natural justice and against the criminal jurisprudence and against the principles of stopping the criminal tendency of citizens as such same may please be set aside and respondent accused may please be held guilty.

• That the complainant was able to prove the charge under section 499,500,501, 34 IPC.

• That the case is strong enough and fully proved and established against the accused and the charges could be proved by the prosecution beyond reasonable doubt against the accused as such the respondents/ accused were required to be held guilty.

• That the lower court have gone wrong in deciding the case and failed to appreciate the material evidence came on the file as such the judgment of lower court is required to be reversed.

• That no other appeal is pending or decided between the parties in the present matter.
• That appeal is well within time.

It is, therefore, prayed that appeal of the appellant may please be accepted and respondent accused may please be held guilty to the maximum punishment provided u/s 499, 500, 501, 34 IPC may please be awarded to the respondents/accused in the interest of justice. Any other relief to which the appellant/complainant is found entitled may also be granted in the interest of justice.

_Parmar & Sharma (2011)_ appeal against the judgment dated 21-12-2011 and order dated 22-12-2011 passed by Mrs. Rajni Yadav, Sub-Divisional Judicial Magistrate Loharu, in criminal Case no.23-2/20-1-2011 titled as State Vs. Hawa Singh, FIR No.4 dated 6-1-2011 Police Station Loharu under section three of the Prevention of Damage to Public Property Act, 1984 (P.D.P.P. Act) by virtue of which the appellant has been held guilty for commission of offence punishable under section three of the Prevention of Damage to Public Property Act, 1984 and convicted there under and further awarded a punishment of sentence to undergo tough conditioned Jail for a period of 2½ years and to pay fine of Rs.3000/- for the commission of offence is punishable according to provisions provided in the section three of the Prevention of Damage to Public property Act, 1984 and in default of payment of fine to undergo simple Jail for a term of three months.

With the prayer that the appeal be accepted, the impugned judgment dated 21-12-2011 of conviction and order dated 22-12-2011 of sentence passed by the learned trial court may please be cancelled and the appellant be freed from accusation of the charge and the amount of fine already paid be ordered to be refunded to the appellant on the grounds given below.

The appellant most respectfully submits as under:-
That the impugned judgment dated 21-12-2011 of conviction and order dated 22-12-2011 of sentence passed by Mrs. Rajni Yadav, Sub Divisional Magistrate Loharu, in Criminal Case No.23-II/2011 titled as State Vs Hawa Singh in FIR No.4 dated 6-1-2011 PS Loharu under section 3 of Prevention of Damage to Public Property Act, 1984 (P.D.P.P.Act) by virtue of which the appellant has been held guilty for commission of offence punishable under section 3 of the Prevention of Damage to Public Property Act, 1984 and convicted there under and further sentenced to undergo rigorous imprisonment for a period of 2½ years and to pay fine of Rs.3000/- for the commission of offence punishable under section 3 of the Prevention of Damage to Public Property Act, 1984 and in default of payment of fine to undergo simple imprisonment of three months, are wrong against law, and facts, arbitrary and the same are liable to be set aside and the appellant is entitled to be acquitted of the charges.

That the learned trial court has erred in holding that the prosecution has successfully proved the evidence beyond all reasonable shadow of doubt and further erred in holding the appellant guilty under section 3 of the Prevention of Damage to Public property Act, 1984 and convicted there under. The impugned judgment of conviction and order of sentence suffer from illegalities and infirmities.

That there is no evidence worthy of credence on the file which may connect the appellant with the alleged crime. The charges of alleged crime could not be established by the prosecution and has completely failed against the appellant that on 6-1-2011 at about 4:30 PM in the area of Loharu the appellant was driving the overload truck (Dumper) No.HR-61A-1387, exceeding the load 26 Tones, 6 quintal, 85 kgs. Causing damage to the public property i.e. public road. The learned trial court has somewhere committed some error in adopting wholly wrong approach while holding the appellant guilty.

That the learned trial court has erred in ignoring the fact that no apparent damage of the overloading appeared are proved by the prosecution in reference to the public road and
identity of the appellant has not been proved on the file. Even overloading is not proved by the prosecution, because there is no word coming from the witnesses of the prosecution as that actually was the permitted load of the said truck. As per prosecution story that on 6-1-2011 when PW-4 ASI Parkash Chander along with constable Rajender Singh PW-2 was on petrol duty at near Ishwar Singh Hospital Loharu, towards Surajgarh side, a Dumpher No.HR- HR-61A-1387 came was spotted coming with load and the truck was stopped and the driver gave his name as Hawa Singh and thereafter a driver was arranged and the truck loaded with stones was taken to good luck Dharam Kanta situated at surajgarh road Loharu and weight. No such alleged arranged driver has been produced by the prosecution to support the prosecution case.PW-2 Constable Rajender Singh being interested witness is not reliable witness .There is no corroborative evidence of the prosecution to link the appellant in the present case. No such cogent and clinching evidence has been placed on the file to prove that the appellant was driving the alleged truck when he caught with overload running on the public road. The prosecution has to stand on its own leg, no benefit could be given to the prosecution of weaknesses of the defence if any.,

That the learned trial court has further ignored that there was no identification parade and nor the investigating officer bothered to hold any test Identification parade and the identification of the appellant by the witnesses for the first time in the court is of no consequence. Hence identity of the appellant that the aforesaid truck (Dumper) No.HR-61A-1387 was being driven at the time of alleged stopping the vehicle with overload stone does not establish the identity, mere arresting the appellant and involving does not mean that the appellant has committed the offence punishable under section 3 of the Prevention of Damage to Public Property Act.

That no apparent damage of the overloading appeared or proved by the prosecution in reference to the public road and the entire evidence coming on the file does not prove the ingredients under section 3 of Prevention of Damage to Public property Act,1984 against the appellant. The P.D.P.P Act apply only in case public commotions ,riots ,etc. as is apparent from its statement of objects and reasons and hence it is not all applicable to the
facts of the present case where there is no question of any public commotions, riots etc. Section 3 of the Prevention of Damage to Property Act, 1984 is with respect to the place where mischief causing damage had taken place, but the said provisions does not include road, but in spite of the aforesaid fact a false FIR has been lodged under the aforesaid provisions. There are no allegations in the FIR of damages to any public property.

That the learned trial court has further erred in ignoring the fact that overloading of the truck is not proved by the prosecution by leading any cogent and clinching evidence. The alleged loaded truck was weight at Good Luck Dharam Kanta weighing 51685 KGs, but the question of overloading is not proved by the prosecution, because there is no word coming from the witness of the prosecution as what actually was the permitted load of the said truck. The receipt of Dharam kanta is not proved on the record file and adverse inference ought to have been drawn by the learned trial court and it was also required to be proved that the Dharam kanta is duly licensed and stamped and giving correct weight.

That even otherwise as per the provisions of section 138 of Motor Vehicle Act, no rule has been made by the State Govt. and such matter are dealt with only by executive instructions, but the learned trial court has traveled much beyond the scope of the Motor Vehicle Act specially when damage to the roads is not a separate question, rather it is incidental to the violation of permit with regard to overloading, which is covered under the Motor Vehicle Act, vide Article 19 (1) (g) of the Constitution, prosecution has been guaranteed to the citizens to practice any profession or to carry on any occupation, trade or business according to their own free will and hence the impugned action of the prosecution involving the appellant under section 3 of the Prevention of Damage to Public Property Act, 1984 is not sustainable in the eyes of law.

That the prosecution evidence does not inspire confidence. The statement of PWs suffer inherent contradictions and the learned trial court ignored the same. The conviction is based sole testimonies of PW-3 and PW-4, which suffer from major contradictions and discrepancies and they are interested witnesses, being the Govt. employees and their
testimonies are not believable. The learned trial court ought to have given the benefit of doubt and should have acquitted the appellant.

That the learned trial court has nor relied upon the authorities produced by the defence counsel in its true perspective, which were fully applicable to the facts of the case. Even the argument advanced by the defence counsel has not been discussed in impugned judgment. The prosecution evidence has been blindly believed, without any basis. The impugned judgment is passed in utter disregard of the Cardinal Principles of Criminal justice. The learned trial court has grossly erred in not accepting the defence version, which is highly on better pedestal then the prosecution evidence.

That without prejudice to the rights of the appellant, even otherwise, in the alternative, in any case sentence awarded to the appellant is too excessive. Keeping in view the age, antecedents and lenient view ought to have been taken in the matter of sentence by granting the benefit of probation.

That amount of fine has already been deposited with the learned trial court.

It is, therefore, prayed that the appeal may kindly be accepted, the impugned judgment of conviction dated 21-12-2011 and order of sentence dated 22-12-2011 be set aside and the appellant be acquitted of the charge and the amount of fine already paid be ordered to be refunded to the appellant.

Application under section 389 Cr.PC for suspension of sentence and for release of accused/appellant on bail during the pendency of the appeal.

The appellant most respectfully prays as under:-
That the appellant preferred an appeal against the judgment dated 21-12-2011 and order of sentence dated 22-12-2011 passed by the learned trial court in this Hon’ble court, which stands on merits and the same is likely to succeed and the grounds detailed in the memo of appeal may be read and treated as part of this application.

That the appellant remained on bail during the trial and the sentence awarded to the appellant has been suspended for a period of three months. The appellant has also deposited the amount of fine with the trial court on 22-12-2011.

That final disposal of appeal is likely to take sufficient long time.

That the appellant has not misused the concession of bail during the trial of the case.

There is no possibility of the appellant to flee from justice.

That appellant undertakes to attend each and every hearing of the appeal and he shall not misuse the concession of bail.

That appellant shall abide by all the terms and conditions of the bail order.

It is, therefore, prayed that the sentence awarded to the appellant may kindly be suspended and the appellant be enlarged to bail till the final decision of the appeal.


injured witness – testimony of – it tends more credence, because normally he would not falsely implicate a person thereby protecting the actual assailant – The train Court held not justified in holding that because PW 11 was an injured witness he may have reason to falsely implicate the accused.

The Division Bench of the Bombay High Court had dismissed the appeal of the appellants who were convicted under sections for charges of causing murder, causing effort to murder, forcibly entering into the house and causing grievous hurt read with several persons for the purpose of common to all under the penal law of India by the learned Additional Session Judge of Satara (Maharashtra) for the offices committed by the appellant and punishable under the sections as mentioned above of Indian penal Code, 1860. The appellant have been sentenced for first two offences by the Jail for life term along with fine each. For the offences of forcibly entering into the house and causing grievous hurt each was sentenced to undergo imprisonment for one year and to pay fine with default stipulation. The case which led to the trial of the appellant was as under:-

The complainant and accused were in relatives and there was family feud between the family of complainant and accused. The suits are filed and suits were pending before the court and fixed on 10-10-1996. At about 12:00 p.m. victim one of the injured person was assaulted by accused persons and when the mother-in-law of victim intervened the accused absconded from the spot of occurrence and the injured victim was taken to hospital by a rickshaw by relative (hereinafter may be referred as deceased) on the way the accused stopped the rickshaw and the victim was beaten up and assaulted. The assault was witnessed by wife of deceased victim and she filed a complaint against the accused before the Police. After all investigations were completed the accused persons were charged of committing murder of deceased and grievous hurt to victim.

The prosecution examined 18 witnesses in this matter for the purpose of establishing version of prosecution PWs 11, 12, and 13 were stated as eye witnesses of the incidence in addition to PW 9 who also claimed to have eye witnessed the incidence.
The version of prosecution was accepted by the trial court and held that the PWs 11,12, 13 clearly establish the prosecution version, it was noted that PW 11 was injured in the incident. It was submitted before the High Court that there was contradiction and omission of falsifying the prosecution version but the version was not accepted by the High Court and upheld the conviction and maintained their sentence.

In the support of the appeal, learned counsel for the appellants submitted that PWs 9 presence was doubtful whether he has witnessed the incidence happening there and the PW 11 was injured in the same occurrence so there was allegation of falsely implication of the accused in the matter. It was also presented from the side of accused that the PW11 had also not witnessed the incidence but she was told by her husband about that he was beaten up by the accused and the husband of the PW9 died of those injuries.

The court observed that the PW 9 and 11 might have exaggerated the matter before the court because the former was the widow of the deceased and later was injured victim of the same contention. The evidence of PW 12 and 13 established the version of prosecution.

The trial was not justified in holding that PW 11 was an injured witness he may have reason to falsely implicate the accused. However, as rightly noticed by the trial court and the High Court that evidence of PW 13 does not suffer from any lackness.

The trial court as well as the High Court have rightly placed reliance on the evidence of eye witnesses and as noted above the High Court their evidence were clear and cogent.

That being so, the impugned judgment of the High Court does not suffer from any infirmity to warrant inference.

The appeal fails and dismissed.
Majumdar (2008) During the empire of Mughals in India Fatwa –E- Alamgiri has compounded the offence against the state as well as and private persons of the society. In those days the punishment for murder was death only which was very unusual but the same could be compensated by paying money to the relatives of deceased and on getting money the relatives of the deceased were not willing to retaliate but if the relatives refused to accept the money then the case used to be decided by the Quazi’s Court. But in the prevailing laws and practices in those courts of Quazis the judgments were discriminated such as if a Muslim had murdered a non Muslim person the convict would not be punished to death. There are innumerable instances of offenders of various kinds were employed to elicit confession.

Sohal (2008) Neither anybody on this earth takes birth as a criminal nor the hierarchical background related to crimes of the forefathers or any other family member elder to him/her affects on the nature of a person and make him a criminal. It is the environment and prevailing circumstances in which one has been brought up intentionally or unintentionally. The kind of environment at the place where one has been educated as well as the place where one has been brought up are the main factors which makes and man of kind which he is, whether a saint, preacher, teacher, administrator or a criminal. There may be defect in in one’s education, training or breeding while growing from child to an adult. One might have not got the proper chance to exposed to develop his/her intellect, aesthetics and emotional, spiritual quotient. One might have been pushed to the line of crime by the society itself due to discriminate and unequal behavior and has been deprived of those learnings which were necessary to prevent a person from going to the world of crime and make him a good citizen. Many times the people commit crime to survive in the society. It is not the duty of State only to punish the offenders for committing crimes but it is also expected from the society to bring the offenders to the justice and every member of the society to discharge the duty of true citizen of the country by getting such people punished who have infringed the rules and norms of the society as well as from mischievous elements by deterring potential offenders from committing further offences to rededicate evils and to reform criminal and turn them into law abiding citizens.
Sharma (2008) appeal has been filed to challenge the judgment and order dated 29-04-08 passed on criminal case no. 106/2002 by report of Sh. Rajeev Goyal J.M.I.C Siwani camp at Bhiwani vide which the appellants were convicted according to provisions provided under the section Three Hundred Twenty Three read with section One Hundred Forty Nine of IPC and Rs 1,000/- as fine was imposed upon the appellants, the judgment and order is wrong against law facts and procedure and same is not maintainable and liable to be set-aside and accused are entitled to the acquitted/discharged, with the prayer to set-aside the judgment and order dated 29-4-08 by accepting the appeal of the appellants in the interest of justice.

The appellants most respectfully submit as under:-

- That the judgment and order passed by the lower court is wrong against law facts and procedure as such same is not maintainable and liable to be set-aside.

- That the judgment and order of lower court is not a speaking one vague, incomplete as such same is not maintainable and liable to be set-aside.

- That the lower court have failed to discussed the material came on the file and it is against the material came on the file and based on presumptions & assumptions, conjectures and surmises and no person can be convicted on such baseless findings which are not supported by reasoning as such same is not maintainable and liable to be set-aside.

- That as per statement of witnesses came on the file no case of conviction is made out against the appellants as such same is not maintainable and liable to be set-aside.

- That the statement of witnesses are not corroborating each other and they are giving different version of the incident and they have failed to explain the
injuries cause to the appellant no.1 which itself shows that version of the complainant cannot be believed and this ground is enough to acquit the appellants as such same is not maintainable and liable to be set-aside.

- That the witnesses of the complainant have failed to ascribe and describe and attribute the injuries to the appellants and they have also failed to point out the weapons also as such same is not maintainable and liable to be set-aside.

- That the lower court have failed to appreciate the contention of the appellants that the alleged weapons were not produced in the court which fatal to the case as such same is not maintainable and liable to be set-aside.

- That the lower court has included the material which was never argued and stated before the court as none of the accused have stated or suggested that they have caused injuries in self defense as such same is not maintainable and liable to be set-aside.

- That the contents of section 323 and 149 are not made out and not proved even as such same is not maintainable and liable to be set-aside.

- That there is no link evidence in this case which can prove the case beyond reasonable doubt rather, the prosecutions have failed to prove its case against the appellants as such same is not maintainable and liable to be set-aside.

- That the appellants are quit young persons and one of the appellant is a senior citizen and all this fact was not considered and given weight by the learned lower court and undue unnecessary and unwanted weight was given to the contention of the respondents resulting in miscarriage of justice as such same is not maintainable and liable to be set-aside.
• That statement made before the court were improbable, unbelievable and the same were not inspiring confidence as such same is not maintainable and liable to be set-aside.

• That the procedure prescribed under Cr. PC for trial and decision of case was not followed by the lower court and the judgment was passed in violation of provisions of Cr.PC as such same is not maintainable and liable to be set-aside.

• That the accused have deposited the fine on the day of announcement of judgment and order.

• That the appeal is well within time.

It is therefore, prayed that the appeal of the appellants may kindly be accepted and judgment and order of sentence dated 29-4-08 may please be set-aside and the appellants /accused may please be acquitted and fine deposited may please be ordered to be retuned / refunded in the interest of justice.

**Haag,** “An Article on Deterrence and Death Penalty” in which the author has explained that the Punishment to death is such punishment which helps to maintain a fear in the minds of the criminals. It has been observed correctly that one refrain from committing dangerous acts. Everybody frightened to death including animals would also strive hard to save their lives and they abstain from going such places where they feel any threat to their life. The death penalty plays a vital role in reducing crimes as well as bringing perpetrators to justice and provide justice to victims. The death penalty is not awarded to convicts of killing but for murder, the killing is justified when it has been committed in self defense or beyond one’s recognings. The meaning of killing is to cause death to someone which may be due to circumstance where one cannot avoid or prevent the same but the murder is brutal killing of someone with preplanned intention and specific motive behind it. The purpose must be served to provide justice to the victims. A lot of changes
have taken place in the judicial system during the past thirty years in order to make sure that the rightly accused has been convicted and punished. Death Penalty is important to keep the brightness of justice and public safety shining brightly on our society.

**Lal Harbans, J. (2007)** In the present case between State of Haryana decided on 6\textsuperscript{th} November, 2007 under sections 302/34 of Indian Penal Code and Sections 32 (1) of Indian Evidence Act, 1872 High Court Rules and Orders, Volume II Chapter 13-A, appeal against acquittal – Murder – Dying Declaration – Opinion of Doctor not taken that ‘S’ was educated instead of obtaining her signature on the statement her thumb impression obtained – According to PW investigator father of the deceased and other persons from her village were present when the Dying Declaration was being recorded. The statement of sister of the deceased not in consonance with the dying declaration, there was no cogent, convincing and clear evidence on the record to demonstrate that the accused had committed cruelty on the deceased – the record quite barren to reveal any overt act on the part of accused persons that they abetted the commission of any such crime. The judgment appeal against neither perverse nor is based on wrong appreciation of evidence – no inference is warranted in judgment of acquittal.

In the present case the socio-legal factors have played a vital role and affected and helped the accused in safeguarding from being awarded an appropriate punishment for the crime committed on the deceased.

**Universal (2007)** Offences related to enemy and punishable with death under the Army Act, 1950 have been provided in section 34 of Chapter VI of the Act which are as enumerated below:-

(a) Giving up the duty shamefully to which one soldier or officer has been detailed and that is his duty to do the duty honestly.
(b) Knowingly use any means to compel any person who is member of Indian Armed Forces to prevent him from taking action against the enemy.

(c) Cowardice and shameful behavior in presence of the enemy

(d) Treacherously holds correspondence or communication with enemy and share the secret information.

(e) Extending any help to the enemy directly or indirectly by supplying ration or ammunition which would be used against his own army.

(f) Giving signal to the enemy which shows the cowardness or acceptance of defeat.

**Narayana P.S., J (2007)** The procedure of conducting trail before the Court of Session has been provided under the sections from 225 to 237 of Criminal Procedure Code which has been enumerated as under:-

**Beginning of Trail by the Public Prosecutor:** Section Two Hundred Twenty Five of Cr. P. C. provides that trail before the Session Court in all cases shall be started by the Public Prosecutor.

**Beginning the case for Prosecution:** Section 226 of Cr. P.C. the accused is produced in front of the Magistrate in the court and the trail of the case is under section Two Hundred Nine, the case shall be opened by the Public prosecutor by mentioning the charges leveled against the accused as well as the Public Prosecutor shall propose the accused as guilty on the basis of evidences and the statement of evidences will be produced before the court.

**Discharge:** As per the provisions provided in the section 227 of cr. P.C. The judge after hearing both the parties i.e. the complainant through Public Prosecutor and the accused
and the judge on the basis of documents submitted and statement of accused as well as complainant consider the all aspects whether there are sufficient evidences against a person or not, if there are sufficient evidences and material against the accused which may indicate that the accused is involved in the matter then the Judge allow the case for further proceedings to prove the charges leveled against the accused. If the judge is satisfied that there are no sufficient ground for making a case against the accused the Judge will discharge the accused. This is to noted here that the discharge can be done only after considering averments in charge sheet and the relevant case law.

**Framing of charges:** The sub-section one of the section Two Hundred Twenty Eight procedures provided in the criminal code has provided that after considering the and hearing prosecution and the accused both, if the Judge thinks that there are sufficient grounds to proceed further against the accused

**Jain M.P. (2004)** the Indian Constitution has provided the Fundamental Rights to the citizens of India. Since the 17th century, if not earlier, human thinking has been veering round to the theory that man has certain essential, basic, natural and inalienable rights or freedoms and it is the function of the state in order liberty of human being can be secured, develop the personality of human beings, and promote the such kind of social life which is effective in the society, to recognize these rights and freedoms and allow them a free play.

The concept of Human Rights can be traced to the natural law philosophers, such as , Locke and Rousseau. The natural law philosophers philosophized over such inherent human rights and sought to preserve these rights by propounding the theory of, “social compact”.

The declaration of the French revolution, 1789, which may be regarded as a concrete Political Statement on Human Rights and which was inspired by the Lockeian Philosophy declared: “The aim of all political association is the conservation of the natural end inalienable rights of man.”
The concept of Human Rights protects individuals against the excesses of the state. The concept of Human Rights represents an attempt to protect the individuals from oppression and injustice. In modern time, it is widely accepted that the right to liberty is the very essence of free society and it must be safeguarded at all times. The idea of guarantying certain rights is to ensure that a person may have minimum guaranteed freedom.

The underlying idea entrenching certain basic and fundamental rights is to take them out of the reach of transient political majority. It has, therefore, come to be regarded as essential that these rights be entrenched in such a way that day may not be violated, tempered or interfered with by an oppressive Government. With this end in view some written constitutions guaranty a few rights to the people and forbid governmental organs from interfering with the same. In that case, a guaranteed right can be limited or taken away only by the elaborate and formal process of constitutional amendment rather than by ordinary legislation. These rights are characterized as Fundamental Rights.

*Rajender Sachar, J (2003)* Abolishing the death penalty the article published in the online edition of an English Daily News Paper named as The Hindu regarding the government has made an announcement recently that the government is not in favouring the idea of abolition of death penalty which was very much published in the newspapers and other medial channels.

The capital punishment was confined as part of penal law of India enacted in 1861. The provisions of capital punishment was taken in the assembly of Bihar and it was challenged very seriously by a member of Bihar Assembly and he brought a bill before the house for abolition of the death sentence in the year 1931, however the Member of Bihar Assembly could not be successful in presenting the bill drafted by him and the support in favour of the capital punishment was strong and again 15th August, 1946, the then Minister of Home Affairs of the Centre government clarified that the Government would not be thinking of abolition of the capital punishment.
And after passing a long period of ten years the centre government again sought for the opinion of states regarding abolition of death penalty from the country but all the states have opined in favour of keeping the death penalty in existence.

According to 35th report of the Law Commission which was produced in 1967, the capital punishment has worked for the society as a deterrent to crime. Although, there is such data available which can prove that the capital punishment has worked as deterrent to the crime yet it is accepted that the capital punishment is deterrent to crime in India.

Although, the death penalty had created unpleasantness and discomfort in the society yet consequently one change in the law was brought in the year 1955 which has given the liberty to the court by adding the provisions that the court would not need to explain in any case the reason for not awarding the capital punishment and thereafter, in the year, 1973 this was provided to make it compulsory for the court to explain specifically why the death punishment has been awarded.

In one case (1973) the Supreme Court of India has not even raised the question about death penalty awarded to the convict but it has agreed with Law Commission that capital punishment will not be removed and that would be kept as it is. But subsequently in the cases in the year 1974 and another in the year 1979, there were numerable voices against the capital punishment in the court which was working on hearing of the convict in the year 1980 case by a Constitutional Bench of the Supreme Court. Out of the five judges of that constitutional bench four had voted with the opinion that the the capital punishment is not violating the provisions of articles 14 and 21 but the Supreme Court warrened the judges not to be cruel and give death sentence which must be used only in the rarest of rare otherwise alternate remedies must be applied and the capital punishment is to be awarded only in the condition when the alternative remedy is unquestionably foreclosed. But some judges tried to develop the alternative of capital punishment as well as demanded that the decision of
capital punishment may be quashed by holding after two years of that in the event of the death sentence the convict could invoke Article 21.

In the year 1989 in connection with the case in the Supreme Court has upheld the capital punishment without any oppose to it and that has been declared as constitutional. The period of delay would be counted from the day the judgment of Supreme Court has been pronounced. In other words, when the judicial process has been completed. The Court added that the time spent in the hearing of a caveat on the repeated petitions at the instance of the convicted person will not be considered as delay in execution.

In the case (1988) convict had assassinated the Partap Singh Kairon, former Chief Minister of Punjab the Supreme Court in April 1991 converted the death penalty as Jail for life term because of the delay factor.

In the case (1994) who was convicted of raping and killing a school going girls of the society where the convict was working as Security Guard, a different noise was noticed the Supreme Court of India at the time of confirmation of the death penalty, it was declared that the courts must understand the public’s reaction towards the crime committed and accordingly the decisions of punishment should be announced for the criminals.

Ironically, after the "rarest of rare" doctrine was propounded in 1980, the death penalty was confirmed by the Supreme Court in 40 per cent of the cases during 1980-90, 37.7 per cent from 1970 to 1980. For the High Court the figures confirming death sentence rose from 59 per cent in 1970-80 to 65 per cent during 1980-90.

**Akalank’s (2002)** as provided in the Indian Penal Code, 1860 under section Three Hundred Seventy Seven for causing Offences which are against the nature that whoever doing carnal intercourse is done voluntarily which is against the order of
nature with any man, woman, or animal and the same is punishable offence with Jail of life term or with the jail of either description for a term which can be upto the period of ten years as well as along with fine also. The penetration of sex organ inside the body of other living being for carnal intercourse will complete the offence and same is necessary to the offence as explained in this section.

Akalank’s (2002) Criminal Courts are empowered in Inquiries and trials are as under:

Section One Hundred Seventy Seven 177 of procedures of criminal code. In case of simple inquiry and trial—Every offence shall be simple tried by the court within whose local jurisdiction the offence has been committed.

Section One Hundred Seventy Eight of procedures mentioned in the criminal code of India regarding Place of Inquiry of Trial—

(a) When it is not sure that in which area the offence was caused.

(b) When the offence has been caused partly in one area and partly in other area.

(c) Where an offence is being committed continuously and continue in local areas more than one.

(d) Where it consists of many acts which have been performed in different parts of local region which may be probed into or tried by a Court under whose Jurisdiction over any of such local areas.

Section One Hundred Seventy Nine of Procedures provided in the criminal code of India. Offence is triable in the court in whose jurisdiction act is done or consequence ensues.
Section One Hundred Eighty of procedures provided in the criminal code of India. Offence is triable in the court in whose jurisdiction act is done or consequence ensues.

Section One Hundred Eighty One of procedures provided in the criminal code of India.

Section One Hundred Eighty Two of procedures provided in the criminal code of India offences committed by the letters etc.

Section One Hundred Eighty Three of procedures provided in the criminal code of India offence committed on journey or voyage

Section One Hundred Eighty Four of procedures provided in the criminal code of India Place of trail for offence triable together.

Section One Hundred Eighty Five of procedures provided in the criminal code of India Power to order cases to be tried in different sessions divisions

Section One Hundred Eighty Six of procedures provided in the criminal code of India High Court to decide, in case of doubt district where inquiry or trial shall take place.

Section One Hundred Eighty Seven of procedures provided in the criminal code of India. Power to issue summons or warrant to for offence committed beyond local jurisdiction.

Section One Hundred Eighty Eight of procedures provided in the criminal code of India Offence committed outside India
Section One Hundred Eighty Nine of procedures provided in the criminal code of India. receipt of evidence relating to offences committed outside India.

**Indian Bar Review (2002)** Hebrew laws prescribed death sentence for crimes like adultery, rape, bestiality. Blasphemy and non observance of rituals. The Greek law generally regarded homicide treason and sacrileges as offences which are liable to be punished to death. The lemons were very hard in punishing the criminals. There are no reference of capital punishment found in the ancient Indian Epics such as Ramayana and Mahabharata.

**Lakshmanan, J (2002)** Two hundred Second Report of Law Commission (Government of India) has provided that following are the sections of Indian Penal Code under which the provisions for capital punishment have been prescribe:

(i) Sec. One Hundred Twenty One under which a person can be punished to death who has been convicted of found guilty of declaring war or has attempted to wage war or abated someone to wage war against the Government of India.

(ii) Section One Hundred Thirty two of penal law of India has provided the provisions for death penalty or imprisonment for life whoever member of Armed Forces either as an officer or soldier in Army, Sailor in Navy and Airmen in Air Force who has been convicted of Abetment of mutiny, if mutiny is committed in consequences thereof shall be punished to death or imprisonment for life of imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(iii) Under section One Hundred Ninety Four of Penal Law of India any such person shall be liable to be punished to death who has provided such false
evidences against any innocent person who has been convicted and executed on the basis of false evidences provided.

(iv) The section Three Hundred Five of Penal Laws of India has provided provisions of death sentence or imprison for life or imprisonment for the term not exceeding ten years and shall also be liable to fine who has been convicted or found guilty of abetting to commit suicide by a child less than the age of eighteen years or a person in state of intoxication.

(v) The section Three Hundred Seven of Penal Law of India has provided provisions of death sentence or imprison for life or imprisonment for the term not exceeding ten years and shall also be liable to fine who has been convicted or found guilty of committing any such act with the knowledge that the act committed by him has caused or may cause death to any person to whom that act has been committed.

(vi) Section 364 A under this section of IPC a person can be punished to death or imprisonment for life and shall also be liable to fine whoever has been convicted or found guilty of kidnapping or abduction of any person or keeps in detention after such kidnapping or abduction, and threats to cause the death of person kidnapped or abducted and kept in detention or it is apprehended that the death of the person may be cause by the kidnapper.

(vii) Committing Dacoity with murder under Section 396 of Indian Penal Code is an offence punishable to death or imprisonment for life or rigorous imprisonment for the term which may extend to ten years, and shall also be liable to fine.

Agrawal R. K. (1998) There are three different stages of a crime as mentioned below:
However, there is a fourth stage also i.e. preparation which is very important as the lying that separate attempt from preparation is not very distinct and precise. The Courts are often with the difficulty as to whether the act in question constitutes an attempt or amounts to preparation only which generally arises because the law punishes only commission and attempt of the offence but not intention and preparation. These four stages may be arranged in the natural order of their succession as follows:

(i) Intention

(ii) Preparation

(iii) Attempt

(iv) Commission

(i) Intention : There is a chain of acts between intention and commission. Mere intention to commit a crime not followed by any act does not amount to an offence. The will is not to be taken for the deed unless there be some external acts which show that progress has been made in the direction of it or towards maturing and effecting it. The first is consist of the guilty intention or designed to commit the offence. But as stated above it is not punishable because the Judges cannot look into the heart or mind of the individuals.
Preparation: The next stage is preparation to commit an offence; it is the device or arrangement of the means or measures necessary to complete the offence. Generally, the Indian Penal Code makes no provision for declaring the preparation as an offence except in the following three cases:

(a) Preparation to wage war against the Government of India (sec. 122)

(b) Preparation to cause depredation on territories of any power at peace with the Government of India (sec. 126)

(c) Preparation to commit dacoity (sec. 399)

The third stage is the direct initiation towards the causing of the crime after the making all preparations. It is the last stage when but for some interventions foreign to the will of the offender, stop the act of the offender from maturing into the intended offence. An example will make the position clear: ‘A’ intends to kill ‘B’ and purchases poison for that purpose. He mixes it in ‘B’s food. It is preparation up to that stage. It is open to ‘A’ to retrace his steps from the stage and if he does so, the act in question will not cease to be preparation. A may part with the food, so mixed with poison before he has done the last act which lay in his power to accomplish his object. But if ‘B’ does not take food, not being inclined to take it, or being called to sit another place by his friend, or say the food gets defiled and is taken away while the food is actually served to ‘B’, it shall be an attempt on the part of ‘A’ because it fails to mature into the intended offence by intervention of circumstances foreign to the will of ‘A’.
Distinguish between Preparation and Attempt: preparation widely differs from attempt as preparation consists of formulating the plan making arrangements of the means or measures for the causing or completion of the offence while attempt is the movement which made directly towards the causing or completion of an offence after the preparation are made. Attempt, is therefore, preparation plus something more. Attempt begins where preparation ends. Attempt excludes the possibilities of a change in the intention of the accused and the possibilities that it is for an innocent purpose. A preparation is generally not punished while every attempt is punished, the reason being that a preparation is apart from its motives would generally be a harmless act.

Mens rea :- The conditions of penal liability are sufficiently indicated by the common law maxim, actus non facit reum, nisi mens ist rea i.e. the act itself does not constitute the guilt unless done with a guilty intent. A man is responsible not for his acts in themselves, but for his acts which has been committed with having some intention in the mind which is known as mens rea or the bad intention with which he does them. The law must be fully confident before the imposition of any punishment for committing any offence by anybody and ensure that the act has been committed with intention or without intention and if the intention has been there so what was the intention whether bad or good at the same time that has also to be satisfied something wrong has been committed by anybody without intention or by mistake which one aws not intending to cause but due to unavoidable circumstances or without the knowledge of the person the act has been committed unintentionally.

The various offences set out in the Indian Penal Code have a guilty intention or knowledge as an essential element. Words such as, ‘dishonestly’; ‘fraudulently’; ‘voluntarily’; intentionally’; knowingly etc in the various sections of the code incorporate the principle, “there must be guilty mind to constitute the crime”. The expression “having reason to believe” in some of the sections of IPC has modified the above principle so that in cases to which such words have references, guilty
intention is not essential to constitute that crime. He may be guilty even when circumstances exists from which any man of ordinary prudence may draw the inference that the offender could have reason to believe that the law imputes to him and holds him guilty of.

There are many offences which, however, do not have intention or knowledge as a necessary ingredient. The various offences of which mens rea is not an essential ingredient may be classified as under:

(i) Acts and commissions which are not criminal in any real sense but are prohibited as penal concern of the public interest and welfare.

(ii) Public nuisance

(iii) Civil rights protected by criminal law for which a summary remedy is provided by incorporation as offence having regard to the importance and urgency of maintaining such rights. Offences which incorporate the principle of vicarious liabilities are notable for omissions of mens rea from them.

SCI (1994) In the case of State of West Bengal the Court dealt with the case of a convict who was convicted of raping and killing a girl who was a student of a school and was of eighteen years old of the society in which the girls was raped and murdered after raping by a Security Guard who was deployed in the same Housing Society in which the girls was residing in West Bengal. This is a cold blooded murder of an innocent, helpless and defenceless girl who trusted the same man that he was for her safety and security, if any problems is coming across but the same man if commits rape and kills that act of the convict shows that he has no value for human life. The apex court has said that after committing rape on an innocent and defenceless young girl of eighteen years old fell in the category of
rarest of rare which has no punishment, other than the capital punishment. In the judgment it indicate that this court was more on crime test, not on criminal test which has been enumerated below:-

**According to para 14 of the judgment** of State of West Bengal the court said that in these the rates of crime against women have increased as well as the crimes against women have been observed becoming violent and it is a matter of deep concern for the court.

**According to para 15 of the judgment of** state of West Bengal the court has expressed that the measure of punishment in a given case must depend upon the atrocity, heinousness, gruesomeness and public abhorrence of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. The courts are responding to the pain and cry of the society due to commission of any crime in the society and imposition of the punishment to the convict is proportionately in the same volume in which the entire society has cried due to the pain existed due to commission of the crime by a criminal. Justice demands that courts should impose punishment which is fitting to the crime in the same proportion in which the criminal has given a pain to the society and the public abhorrence of the crime. While awarding punishment to any criminal the courts must remember the rights of victims along with the rights of the criminals.

**SCI (1991)** in the case of State of Utter Pradesh the court in the hearing of writ petition filed by a convict praying for that the death penalty awarded to him may please not be extended for execution of the convict but court has dismissed the writ petition when the court has read the order passed by the lower court and confirmed by the High Court in S.L.P. (Criminal), the court has confirmed the death sentence of the convict/ petitioner by knowing the degree of criminality committed by the convict in reprehensive and gruesome way. In this case the convict/ petitioner had done a crime on a child of six years old and at this age the child does not understand that anybody may commit any crime the child of this
age knows only to be loved by all but her the the child was killed with highest level of cruelty, gruesomeness, the child was unable to defend himself as well as unable to understand what and why that happened with him. In this case the criminal test is not prima facie seen satisfied but only crime test.

**Louis (1991)** In the number of cases the Supreme Court of India has held that foreigners are entitled to the protection of Article 21 and 22.

(2000) On the question of applicability of Article 21 to those who are not the Indian Citizens the Supreme Court of India has emphasized that all the foreign nationals even those who come to India as tourists are also having the right to live as the Indian Citizens are enjoying and the foreigners can also enjoy this right so long as they are in India with human dignity. It would be duty of the state to provide them security and safety and ensure that they are not stopped to enjoy freedom of life and living with full peace and comfort similarly the state is also under obligation to provide safety to those who are not citizens of India, but living in India either for time being or permanently they have the equal right to live with assurance of safety and security from the Indian Government as the Indian nationals can claim.

**Oza (1989)** the court dismissed the special leave petition as well as and review petition filed thereafter. The application for forgiveness filed to the Hon’ble President and Hon’ble Governor who have not allowed the same. After rejecting their application for forgiveness by the Hon’ble President and the Hon’ble Governor they knocked at the door this Court by way of Writ Petitions for setting aside the death sentence and converting the death sentence into sentence of Jail for life term on the ground that they have been awarded death penalty long ago and since the day they have been awarded death punishment every day, every moment they are dyeing with the fear of death about which they have been told that they would be killed one day. Till they are not killed they are constantly experiencing a fear of death which is a mental torture as well as cruelty and
violation Fundamental Right of freedom of life that is because of prolonged delay in the execution. They contended that they have been sentenced to death but they were not executed on time which was never their fault rather it was the fault of the Government, other side they had been dehumanized by forcing them to wait for the death every day in the jail and their sentence was delayed for prolonged period but during this waiting period for execution how much mental tension, torture they had to suffer due to fear that any time they will be punished to death and they were kept confinement in jail had rendered the execution unconstitutional.