INTRODUCTION

The word “Crime” has been adopted by the people from the Latin word “cerno” which means that I take decision, I judge and give judgement. The original meaning of the Latin word crimen is “to charge” or “to cry with grief”. There is a “krima” (kpiua) word which belongs to American Greek mix language from which the Latin cognate has been taken, precisely translate that a mistake committed intellectually an offence against the community instead of committing wrong act committed against a private person or moral values.

Crime means an act which is against the laws of the land and on doing such act the person who has done that becomes liable to be punished according to the provisions provided in the relevant laws of land. In other words the crime denotes an act which is against the law as well as liable to be punished by the Government of concerned country or state. Although, the word crime does not have any specific and universally known and accepted definition yet the crime has been defined by different people in different ways coming out with a common meaning that the crime is an act which declared wrong as well as liable to be punished by the law. The crime is also known as offence and the same is harmful not only to an individual but also to the entire society in any state. The commission of such kinds of acts is forbidden and punishable according to the law of the state for example Murder, Rape and Theft etc. are the acts which comes in the category of offence or crime and commission of these acts is forbidden as well as punishable by the law of the state. The declaration about the acts whether that is falling in the category of crime or offence or not depends upon a country to country. Certain acts the commission of which is a grave offence in India may not be in the category of offence or crime in other country/ countries and similarly the certain acts which are punishable offences in other countries may not be in the category of offence in India, but certain acts are such which are universally considered as offence or crime and punishable by the law of the country on whose soil the act is committed such as Murder, Rape, Theft. These are the acts which have been universally declared as offences and are punishable by laws of all countries. However, the punishment for the offence again different as per the different
laws of different countries. The judicial procedures are not same in all the countries. Their ways of punishing people are different. The acts which are of criminal nature are declared as crime by the criminal law of that country and the same country may also have the list of crimes called as criminal code and the provisions of offence wise punishments are known as penal code. The government of concerned state is empowered to curtail, stop, limit and restrain the liberty of people for prevention of commission of crimes. That is why in the today’s society it has become compulsory to follow the criminal procedures during the investigation and trial of any matter and if anybody is found that he/she has committed the wrong the wrong doer may be punished according to prevailing trends in the society such as Social Punishment which are also known as Community Punishments, sending to jail, sentenced to imprisonment for life or in some authorised region even the Capital Punishment can be awarded to the wrong doers.

This has to be decided whether an act is to be considered or defined as crime which is an act that results something bad and the same must be stopped that the act which is committed with an intention to cause something bad or damage to another person or something bad with some exceptions or liabilities which may be strictly imposed to the wrong doer. While all the crimes disobey the legal provisions, not all the violations of the law are counted as crime. The offenders of breach of private law (tort and breach of contract) are not automatically punished by the state but can be enforced by adopting the procedures of Civil Laws.

When informal ways and methods are found unable to establish and maintain necessary rules and procedures of social orders a Government or the State may make or constitute such system and implement them strictly in order to have proper and strict control over the society which may be known Social Control. At the disposal of institutions and machinery of legal system various agencies of the state may force the general population to abide by the code and have an option of punishing the people who do not abide by or have the power to bring necessary reforms in the system to make the people conform the procedures.
Authorities of the state adopt various methods and employ several mechanisms for regulation of certain behaviours such as encouraging or discouraging the people to do something or not to do something. For prevention of occurrences of crime in the society the Governing and Administering agencies of the state codify the rules into different laws and policies. The police and citizens have to make sure that they act upon the laws which have been laid down and enforce all the policies and to bring them into practices which have been formulated by the legislators and administrators with an objective of crime prevention. Apart from that the authorities provide solutions and other remedial actions which together formulate the system which provide the criminal justice in the society. In order to bring reform in convicts the legal sanctions widely vary according to their severity which may involve incarceration of temporary character. Many jurisdiction are having penal codes in order to impose permanent punishment to the wrong doers such as Mutilation, Life Imprisonment without parole or rigorous imprisonment and Capital Punishment. It has been found through various data records that crimes are committed or perpetrated often by natural persons but sometimes persons of legal background may also commit crime. According to the law of United States of America the animals cannot commit any crime.

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.

The criminal law of India has been codified 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 can 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.
Nature and Concept of 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 regulates 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 Penal Law of India does not define anywhere what a crime is?

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.

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 characterizes 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.

**Distinction between Crime and other Wrongs**

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.

History of Crime:

Crime is as old as the civilization on this Earth. According to Hindu mythology even in the age when the Devi and Devtas were present on the Earth the crimes were committed by the Asuras who were the traditional opponents of the Devtas used to obtain power from Tridevas i.e. Lord Brahma, Lord Vishnu and Lord Shiva by doing Tapsya (Hard Worship) and after obtaining the power the Asuras used to misuse that power and harming the Devtas, Human beings and other creatures on the Earth. In that age also there
was system of Tridevas to punish the wrong doers and do justice with the entire nature. Thereafter, since the ancient time of the existence of civilization on the Earth there has been occurrences of crimes and for the prevention of crimes there used to system of punishment to the criminals and do justice with victims in every age on this Earth. The reality is that the crime takes birth with the human life and remains constantly in existence everywhere and all the times, but sometimes, somewhere the volume of crime increases when the law and order is weak and the rate of crime decreases when law and order is strong. It has been a perpetual process prevailing along with human life in the society at every place and all the times since the birth of life in this Universe. Even today the crime is everywhere in our surroundings, adjoining states and neighbouring countries. Whenever we open our eyes, we find criminals and whenever we open our ears we hear about the occurrence of crime. Either you open the news channel on the television or see the news paper there would be innumerable news of crime and criminals. This has become the part of everybody’s life and sometimes we feel that the people have accustomed to hear, watch and feel the crime in the society, but still we just cannot let the society drawn into the darkness of the crime. Eliminating the crimes and criminals is our duty. Every wrong doer must be punished and justice to be done with everyone.

Neither any criminal have born as a criminals nor criminality an hereditary problem on this Earth. It is the circumstances or social environment of person who makes him/ her criminal and crimes take place in the society. It is the society which provides circumstances and living environment to the people who lives there and due to those circumstances good and bad personalities of the people develop and according those personalities some of them become good citizens of the country and those who develops in adverse circumstances unfortunately become criminals and commit crimes against the society. There have been chances when the people have not been properly be exposed to develop their intellect, aesthetics, emotions, spirituality and common social life, they have turned into criminals. There have also been the chances when the society provided a congenial atmosphere to the criminals, they turned into responsible citizens of the society and the nation as well.
In some communities the commission and omission of certain acts is considered as “sin” and the every “sin” is considered as a crime and in other way round some are taking the “crime” as a “sin”. This is also learnt that in the early ages according to old traditions as well as religious acceptances that any act which is coming under the category of crime will be counted as “sin” on the part of their person who commits or committed that act. One group of the society who commits a crime may become a cause to give birth to war or conflict. However, the olden civilization had also the laws for punishing the criminals or sinners and that to both kinds of laws such as civil and these rules formulated for punishing the criminals have been clubbed together but no record was maintained for them. The oldest written rules to punish the criminals had been created by the Sumerians, Urukagine reigned short chronology of the codes long ago which did not survive and later king known as Urnammu left the olden law system in written form as code of Urnammu, which prescribed a formal system about the punishment or penalties of specific matters.

Afterward the Sumerians had again issued another codes which had also included the “codes of Lipit-Ishtar” which had formed the 20th century in which there were around 50 articles and scholars have re-created the same through many sources. The Sumerian was very much seriously conscious about his rights provided to him in person and he had opposed any interference and violation into those by anyone irrespective of his level either his King, his superior, or his equal level wonder that those were the Sumerians who were the first to compile laws and rules regulations.

The rules of Babylon succeeded the rules made by the Sumerians. The rules of Babylon has included the “code of Hammurabi which reflected Mesopotamian society which believed that the law has been taken from the will of God or whatever is the law followed by them is the only will of God and the people are following the will of God as well the every law is the God’s directions to the people which have to be inevitably adhered. During that period several countries had been functioning under theocracy with the specific laws which were originated from the religious acceptances and traditions at large. Sir Henry Maine in the year 1861 studied that at that time available laws or rules
during the ancient period and he found that there was any criminal law in the “modern” sense of the word while the modern system of law offences committed against the state are different from the offences committed against the society and the individuals, hence the prevailing criminal law or the community’s penal law in force at that time did not deal with “crimes” which was known as *criminal in Latin*.

The assault and violent robbery including trespass and breach of such laws was regarded as *vinculum juris* which means an obligation of law that only the compensating the victim through money for damages caused to him/her even in the matters of rape with slaves and slaves used to be treated as property and raping a slave was regarded as trespass to the property which could be compensated by providing monetary compensation. Similarly, in the matters of Tribes of Germanic had a complex system of compensation through payment of money to the victims in those matters which are in the modern age considered as criminal offence against the person.

About 400 AD Rome abandoned the provinces of Britania and Hired Soldiers (who could be known as professional soldiers who have been hired to serve the foreign army) of Germanic who had been playing a significant role in implementation of Roman laws in Britania which had acquired there the ownership of land and implemented mixture of Roman and Teutonic Law in the form of written laws under the early Anglo Saxon Kings. The centralized Kingdom of English emerged as result of invasion of Norman and then the English Emperor approved the authority to take decision about the land and its people and developed the prevailing concept that anything wrong which has been committed against an individual will be considered as an offence against the state. This idea has been taken from the common law and the criminal laws of the old age has been enforced in the case of such important and major events and the state had to take by force illegally the daily activities of the civil tribunals and issued directions for a making a special laws in order to provide special privileges to the people of England against the offenders. In all the trials against those offenders who were nationals of England who
used to be tried by the courts exceptionally and in the way they wanted without following law which have been established by the legislature and other side in the civil matters the law operated highly developed and consistent way. The practice of the “State” dispenses justice in the court has developed simultaneously or after trends of providing liberty under the principles of sovereignty.

The Roman jurisprudence was modified in order to meet the requirements of justice and needs of emerging political climate at that time. Before that in the parts of Europe which were situated on the different continents where the Roman Law was in force but under a heavy pressure of Churches which had been coupled with more defused political system and structure which was fully constituted according to feudalism in smaller units, various prevailing legal procedures which born at that time and established with strongly rooted in. In the Scandinavia upto 17th century the Roman Law was not prominent and the courts could be developed unusually with gatherings of people. The people used to decide the matters but these practices gradually took the shape of a system that a Royal Judge will nominate the names of such persons who are influential in the society as well having high esteem according to their status who were from the Parish. It was a practice in the Greece and Scandinavia that if a person who has been accused of some offence could be able to arrange the sufficient number of people who could take oath for him as not guilty.

Punishment:-

The punishment basically is the name of an ‘evil’ which is given or implemented upon a person who has committed something wrong in the course of dealing with any matter. The legal system of every our country or State lays down punishments for all kinds of wrongs committed by the people against the society or the State violating the provisions provided under various laws constituted by the State. The working system of
the legal system which implement the punishment is run by different branches of law in different situations.

The Legislature is one of the main pillars of democracy in the country like India, the laws and rule about the punishment can be explained by referring to the various authorities of the legislature to punish a person under a legal process which is known as impeachment. The complete details of commencement of an offence committed by a person are examined. In certain matters a committee of the legislature called the Privileges Committee can also punish persons or persons committing wrongs against the House by committing a wrongful act.

The next important branch of State Administration is the Executive branch which has a vital role in executing any punishment to the wrong doers. The hierarchical system of superior and subordinate of this Administrative Branch can exercise their penal powers to punish the offenders who commit any such acts which falls under the category of misconduct of their subordinates. The offences committed by the officers which amount to punishable under this system are the Misconduct of the officials which are in contravention of established and amended from time to time the Service Laws and Rules or the laws relating to the discipline of the officials. In such matters often, an enquiry committee or a disciplinary committee is constituted and appointed to enquire into the matter in order to find the facts and after enquiring into the conduct of a person punishment is inflicted on the delinquent officer.

The third branch of State Administration which is the main branch which exclusively performs the functions awarding punishment in a big way is the Judicial Branch. The Courts of law established under the Constitution and the Statutes deal with criminal cases and exercise their power of inflicting the punishment to the offenders. This is a power is exercised by the Judiciary under two kinds of law, namely, the General Law and the Special Law. By general law is meant the Indian Penal Code 1860 which is the main Statute according to which the system of punishment is working. This Code contains the provisions regarding award of punishments as well as the principles for the
ways of punishing and it also provides the principles for the system of Criminal Justice. The Code also explains about the principles for the resolution of conflict between various rules and procedures provided in the penal laws of India and the other laws. The penal laws of India have also the provisions regarding principles to be followed with regard to commutation of punishment. The prosecution procedure of the offenders for commission of any such act which is punishable under the law has been laid down in the laws related to criminal procedure as well as laws related to evidence system. There are provisions in the special law beside the provisions provided in the general law of crimes there are provisions provided in the special law of crimes which establishes a certain system of punishments. The special laws provide the provisions and the rules regarding punishments for a specific subject, place or thing and these are very large in number. Whereas the procedure for the prosecution of persons under the penal laws are in accordance to with the procedures, rules and methods mentioned in the Act related to evidences in Indian Legal System and the rules and procedures related to criminal proceedings. The procedure for the prosecution and punishment of perpetrator under the special laws may be according to the provisions provided in both laws such as under the special law itself as well as under the provisions of the laws related to evidences and the rules and procedures related to criminal proceedings. In order to have an exhaustive study of the System of Punishments in India and to know about the need for reform of its provisions it is inevitable to study the rules and procedures mentioned in the Penal Laws of 1860 which is the basic law supported by a references to wherever necessary to the provisions of the special law of crimes.

Punishment is not only the remedy to stop crimes and finish criminals, because every criminal is also a human being sometimes creating an atmosphere which favours or suits to the personality of an individual that may also convert a criminal into a good human being. The objectives of the punishment are also not to punish the criminals, but the punishment are imposed to the criminals in order to prevent the crimes in future that is why one slogan is often seen in every Prison “HATE THE CRIME NOT THE CRIMINAL”. It means that crimes are imposed to the wrong doers to prevent them from repeating the same offence for which one has been punished as well as to send a message
to the society by setting example of punishment of committing offence that others should also take a lesson from the punished one and refrain from committing the same offence. According to Salmond the chief ends of the criminal justice are fourfold;

**Deterrent Theory:**

According to this theory, the objective of criminal justice in punishing is to deter/keep away the people from committing crime. The dint of punishment is to serve a check on the person/persons who would commit the crime. The penalty is imposed to deviate a person/persons from going that path of rectitude. However, this theory of punishment failed to accomplish the objective as it was desired. A hardened criminal becomes accustomed to the severity of the punishment and no amount of deterrence prevent him from committing the crime. It has been observed that most of the crimes are committed in a moment of excitement and this theory has also failed to account for them.

**Preventive Theory:**

As per this theory the punishment is imposed to the person convicted of a crime in order to prevent him from repeat the same crime again in future. If an offender is a habitual thief, his hands are chopped off just to prevent him from steeling again and the repetition of the offence by the same person is just stopped. The punishment in this sense is preventive or disabling. According to modern socialists, the death sentence should be abolished. A large number of the murders committed by the accused are not pre-planned but those are committed due to impulsiveness in grave and sudden provocation or in a moment of excitement due to anger or fear. The torrent of anger and provocation deadens his (criminal’s) intellect, finishes his senses, debases his soul but such state of mind of that person is only temporary and after he gets over the temporary insanity, the murderer becomes not only a normal human being but he also repent on what he has committed.

**Retributive Theory:**
Formerly this theory was based on principles of revenge such as Eye for Eye, Hand for Hand, Blood for Blood so it was known as Revenge Theory. The doctrine that offender should be made to suffer the same pain which he has given to other in same proportion to the injury caused to the victim. This has been the source of the enactment of several penal laws. This theory which justifies that “if someone has taken anyone’s life in that case the punishment will be equal i.e. by taking the life of that person or death punishment, if anybody has broken anyone’s hand so the punishment for the that offender will be that his hand also shall be broken and if anybody has damaged someone’s eye in that case punishment shall be completed by damaging the eye of offender who has damaged anybody’s eye.”. It has been regarded by modern thinkers as relic of barbarism. It is cruel form of punishment and dupe the extreme ignorance of the cause of crime. It is the superficial method of dealing with criminality instead of curing the disease scientifically. Today the Retributive Theory has been constituted on the basis of idea that punishment is necessary alkali to neutralize the acid of evil effect of the crime. The purpose behind the retributive punishment is that the moral order of the criminal could be restored and appease the disturbed conscience of the society itself and the maintenance of concerning power of the State which is an aggrieved when crime is committed against the society and inflicts punishment to set the matters right.

Reformative Theory:

This theory considers the crime as a disease which must de diagnosed and cured through scientific treatment like all other diseases of the body or mind of the people. The punishment must not be considered as the ultimate end of the crime but it is only a mean to remove the crime from the society. The objective of the punishment according to this theory must not be wreck vengeance (retaliation/ revenge) but to reform the criminal by changing his mindset and prevent his committing further crime. Crime is a malady and the aim of the every punishment should be the reclamation or improvement of offender by prescribing and inducing and imparting proper treatment. The perfect system of criminal justice is based neither the deterrent nor the reformative principle exclusively but it is the result of compromising between them. In this compromise predominant
influence is possessed by the principle of deterrent theory. The reformatory elements must not be ignored as well as should not be given undue importance also.

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.

It is the affection of people towards each other living in similar type of life at the same neighbouring places and collectively adopt the shape of society which has been developed on the basis of love, affection, respect to each other and care for all. Every religion in this world talks of these ethics and moral values of behaviour in connection with their behaviour or interaction with each other as part of the same society but the modern law, policies, judicial system and punishment ignore these values instead of bank on the negative emotions of lust, greed, jealousy and fear coupled with emphasis on these negative emotions is the brutal but highly popular culture of “toughness” that derives lot of demands for “hard” justice and maximum punishment. There are no signs of “culture of forget and forgive”

There was a huge debate on the death penalty in the year, 2013 which has been brought with renewed concept. The demand of Death penalty has also increased manifolds in India for the crimes other than murder especially crimes against women groups such as rape, rape and murder, cruelty and domestic violence etc. and several organisations working for social development of women have welcomed these demands at the same times. The judiciary has also awarded death sentences for violent crimes against women.

The effects of executing the death sentences or capital punishment by hanging on the society are as under:-
Poverty as social factor affecting award of capital punishment

It has been highlighted through the various study reports that numbers of poor persons are more than the rich persons who have been awarded death sentence. Justice Bhagwati has said in his dissenting judgment in the case (1982) The study says that the death penalty is awarded maximum to those people those who hail from poor and rural background and are not properly aware of the rules and procedures and they are not able to manage proper lawyer to defend themselves as well as no relation and liaisining with Government Officials and opposite to this, the people who are rich and having links with high profile people of the society as well as in Government Machineries are less inflicted with the death punishment despite committing the similar number of crimes as the poor and rural background person is committing but the poor gets punishment and the rich get acquitted due to money power, proper awareness and education as well as influence of the high profile liaisining and relationships. This shows that an inherent inequality is prevailing in the society as well as in the awarding of the capital punishment in India, creating a discrimination amongst and to the citizens of same nation who are given equal right by the Constitution of India but a large part of the society is deprived of availing their constitutional rights and other side a specific category of people belonging to high classes are enjoying more that their rights provided by the constitution. These are the socio-legal factors which indirectly affecting the award of punishment by the courts such as poverty, illiteracy, place of living, influence of few high handed persons in the society and lack of basic facilities to the people provided by the government. It is not that the only poor people are committing crimes and punished to death but the fact is that the rich people are also involved in the crimes perhaps more than the poor people of the society but the rich people with the influence of wealth are able to manage and manipulate the legal system and machineries through misuse of executive and administrative powers.

Although there have been innumerable studies carried out, several researches and plenty of experiments on the acceptance of the capital punishment yet there is no conclusions till date could take place whether the death punishment has been accepted morally and legally by the society. So many discussions in seminars and conferences are
taking place across India. In the case of Rajeev Gandhi, who was brutally killed by the bomb blast during an election campaign in the year 1991 in Sri Perumbudur of Tamil Nadu state and all the 26 assassins were sentenced to death. In another matter recently, the court left five policemen dead in the attack outside the American Centre for the Aftab Ansari who is living in Dubai and closely linked to the underworld and six other people has been punished to death.

In the case of occurred in the West bengaline which the offender was punished to death who was convicted of raping and killing a girl student of a School. The convict who was a security guard at a housing society in West Bengal who raped and murdered a school girl of that housing society who was executed in the year, 2002 and there was a huge debate all over India once again.

This research led to the institutionalization of human rights, globalization and comprehensively with a holistic perspective of the death penalty debate.

*The death penalty under the Penal Laws of India*

The provisions have been provided under penal laws of India under certain circumstances for punishing an offender to the death sentence and the life imprisonment is an alternate of death sentence as provided in the penal laws of India. Section three hundred three of the Indian Penal Code has provided the provision for death to a person who has been sentenced to be jailed for whole life and he causes kills anyone then can be given a punishment of sentence to death. There are limitations for punishing a person against the offence has been proved that he has caused an offence of above mentioned categories. Any guidance should not be provided by statutory provisions of the judges, or award a lesser punishment of imprisonment for the execution of imprisonment imposed for the selection. The judicial adjudication process is allowed to exercise its discretion and logic.
Section One Hundred Twenty One of Indian Penal Code provides that person may be given death punishment or jailed for whole of his life who has been convicted of declaring and starting war, or attempting to start war, or supporting/instigating to start war against the Government of India.

Section One Hundred Thirty Two of Indian Penal Code 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 provoking to work against the own countries’ forces either Army, Air Force and Navy, if rebellion is declared in consequences thereof shall be given death penalty or jailed for whole of life or either description for a term which may be upto ten years, as well as shall also be liable to fine.

Under section One Hundred Ninety Four of Penal Laws 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 proved that he has caused the crime and punished to death on the basis of false evidences provided.

The section Three Hundred Five of Penal Laws of India has provided provisions of death punishment or Jail for whole of the life or Jail for the period upto ten years and shall also be punishable with fine who has been found guilty of provoking or misguiding to commit suicide by a child who has not completed 18 years of his/ her age or a person who has consumed toxic substance and due to
being in state of intoxication one is not able to understand difference between right and wrong.

- The section **Three Hundred Seven** of Indian Penal Code has provided provisions of death sentence or jailed for whole of his life or Jailed for the period upto ten years and shall also be punishable with fine who has been proved as 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.

- Causing robbery/ dacoity as well as murder under Section Three Hundred Ninety Six of Penal Laws of Indian is an offence punishable to death or Jail for whole of the life for life or to be in Jail under rigorous circumstances for the period upto 10 years, and shall also be punishable to fine.

**Sentence and clemency appeals of commuting**:

The Constitution of India under Articles 72 and 161 have provided that a person who has been proved as guilty of causing any wrong which due to which one can be punished to death can file an application to the Constitutional Head or Governor of the concerned State or the President of the country by way filing a Mercy Petition for forgiveness of convicted. Constitutional Head of the concerned State or the India on his own judgment may pass an order of forgiveness of an offender prisoner who has been awarded death punishment by the Hon’ble Court but It is also necessary that ministers’ council must also provide the support and the decision of the Constitutional Head of concerned state or the India and also the Constitutional head of the concerned state or the of India should also keep in mind the advice of the council of ministers regarding the
matter and the give the decision accordingly. According to the Hon’ble Supreme Court the mercy petition or the application for forgiveness from the death sentence submitted by the death row convicts/convicts under the provisions provided Article 72 and 161 of the Indian Constitution or under Article 432 and 433 must be decided or disposed off fast without causing any delay.

The views of the Commission constituted for Legal Matters of India in this regard can be seen in the Thirty Fifth report of the Commission submitted in the year One Thousand Nine Hundred Sixty Seven in this report the Law Commission has recommended the retention of the section Three Hundred Three of Penal Laws of India which provides that the capital punishment is mandatory to be awarded to the offenders committing offences punishable to death according to Penal Law Of India. The Indian Commission for legal matters has the view in this regard that the Section Three Hundred Three of Penal Law of India should not be amended as the same is mandatory for an offence under the section and the question of the sentence should not be left on the discretion of the court as well as the operation of the judicial process under this section should not be confined to previous offence of the offenders for which he was liable to punished to death.

Further this may also be brought into the notice that in one case related to State of Punjab the apex Court of India has said that by considering the several situations elaborated in this verdict the court has an opinion about the Section Three Hundred Three of Penal Law of India that the provisions of this section of Penal Law of India are violating the provisions provided in the Article Fourteen of the Indian Constitution as well as it is also violating the rights provided under Article Twenty One of the Constitution that nobody should be prevented from enjoying the right of living peaceful life with full freedom except according to the rules and procedures and other provisions as laid down by the law.
Initially this section was brought for the purpose to provide the safety to the staff of prison because keeping in view the provisions of section Three Hundred Three that if any prisoner who is in the prison for committing an offence for which he would have been awarded death sentence and if the same person assaults on anyone of the staff members working in the prison shall be certainly punished to death, but later on the legislature has inserted such a language in the rules and procedures mentioned under the section Three Hundred Three of Penal Law of India which has exceeded its intention.

**Whether the death penalty is right or not according to constitution**

The constitutional validity was challenged before the Apex Court in a famous case in which the convict was awarded death penalty and there was an argument on the issue that the ‘right to live’ is the Fundamental Right according to the provisions provided in the Article Twenty One of the Indian Constitution. The argument was disapproved by the apex court on the pretext that if any act is violative to the Article Twenty One of Constitution that cannot be allowed as a Fundamental Right. In the case State of UP the court has said that the capital punishment is against the provisions of Articles Fourteen, Nineteen and Twenty One of the Constitution. Although, if the murder has been committed with pre-plan which is committed in a gruesome manner and there are no extenuating circumstances, in such cases the wrong doer is liable to be sentenced to capital punishment.

Accordingly, the Supreme Court of India as provided in the case of Bachchan Singh that the punishment for the person who has been convicted of committing murder is imprisonment for life but if any convicts of committing murder has been awarded capital punishment that would be an exception. In the reality it is always tried to avoid the situation that human life is taken by the law in order to protect the dignity of human life. Even the in the rarest of rare cases also the life of any human being should not be taken by the law but this happens only in the circumstances when there is no alternative of death sentence. About the rarest cases the Supreme Court of India in the case of Machchhi Singh has
• The death sentence will not be imposed on a person unless it is inevitable keeping in view the seriousness of the guilt.

• It becomes inevitable for the court to consider the prevailing situations in which one has done the crime and the offender before taking a decision about the punishment and proclamation of the decision of punishment to the person convicted of an offence.

• It is a rule to award imprisonment for life but the capital punishment is an exception.

• The complete exercise has to be done for making an balance between of circumstances which have injured the victim i.e. how much injury has been caused to the victim as well as kind of injury caused and the circumstances the circumstances of the offence which can reduce the pain of the injured or a victim.

The Supreme Court of India has laid down the guidelines for the all subordinate Courts in a hierarchical way such as guidelines for Sessions Court, High Court and Supreme Court and their jurisdiction has also been decided about all kinds of matters. Another unsuccessful attempt has been applied in order to get the capital punishment declared as an unconstitutional by the Union named as India which belonged to Shashi Nair.

In connection with the act of murder the court has stated that making the standard and establishing the degree of gruesomeness of the offence committed is not possible as well as classification of criminal cases which are unlimited and uncertain cannot be done. It is matter of policy which will belong to the legislature regarding following of norms and rules about classification of judicial punishment, and discretion of the courts about standardization and awarding sentence to the criminals.
In the cases which are to be brought under the category of those case which are known as ‘most unusual amongst the unusual cases’ the guidelines have been formulated, and according to those guidelines the factors are considered for deciding whether the commission of a murder or crime is anti-social activity or an act which is considered hideous in the society and the another factor intensity of crime and personality of the victim who has been murdered, the purpose or reason of the commission of murder. The Supreme Court of Indian is working according to the principles established while deciding the above two cases. That the Division Bench of the Apex Court in the case of Assam stae decided on, April 8, 2005 the appeal was dismissed and the sentence to death was maintained which was confirmed by the High Court of Assam.

*Arguments from both perspectives: for and against the death penalty*

The death sentence of 15 convicts who were awarded death punishment was converted into life imprisonment on January 21, 2014. The Supreme Court of India has converted the capital punishment these above mentioned 15 death convicts to imprisonment for at the time of giving decision on their appeals filed by all those appellant/ convicts and that was the last effort of the convicts for getting their death punishment into imprisonment for life because these convicts who were awarded capital punishment had approached the apex court as a final try for the life after the rejection of their mercy petition by the Constitutional head of the Country. After confirmation of death punishment of above 15 convicts by the Apex Court so many supervening circumstances have developed in cases of the above mentioned 15 convicts the. These convicts were awarded death punishment long ago but the procedural delay was caused by the Government of concerned states or centre in execution of the sentences and the delay caused was an inadvertent which had made the lives of convicts worse than hell because every when they got up from the night sleep they were broken by the thought of their death sentence and that continued for years, so they have been killed innumerable times which has amounted to violation of their Fundamental Rights.
In the recent past the Supreme Court of India has avoided the execution of at least 19 noted and famous criminals in the time of very short span. No execution took place in India for about 8 years before the execution of two convicts who were convicted of declaring the war against the Government of India who were convicted for invading the Parliament of India and another had invaded on Mumbai and took hostages of several people of India as well as foreign nationals in a Hotel and killed more than hundred people at several places of Mumbai including Hotel, Hospital, and Railway Station. He has also killed top officials of the ATS Chief of the Mumbai along with many senior officials of Mumbai Police along with a Major of Indian Army. Both of them have been executed in the year, 2013 and the period of 8 years before execution of these two offenders that period was known as an execution free run for a period of 8 years. Many people have argued with the examples of these two executions that the India must understand the utility and desirability of provisions provided in the Indian Penal Code of capital punishment. These commutations awarded by the Supreme Court of India have once again given fire to the debate on death penalty as well as the people have started to speculate about the ultimate objective of keeping a penalty such as death sentence on the statute book. This issue has also become so hot all of a sudden that has given birth to considerable debate in the all channels of Televisions as well as the Print media not only across India but also at the international level. Editorials in several eminent newspapers have been published and inviting people’s opinion on the death penalty.

A serious and deep study should be carried out on the subject of death punishment which would very useful and create a respectful contribution to cause of the debate taking place in the common public. Such kinds of study would also be helpful to the law makers as well as Judges.

The death sentence has become a big challenge before the Supreme Court of India in the last 10 years because the this subject-matter has become so significant that serious focus of the Apex Court is inevitably required. In several times and circumstances the Supreme Court has not faced crucial situation with the disparate application of law on the capital punishment as well as fairness in judgments from the constitutionality point of
view for implications of the judgments. There is an immense need of systematic and deep research work on this subject and for that the court has specifically requested to the Law Commission to that honest and fair research work may lease be carried out on this issue.

**Why the capital Punishment should not be abolished:-**

Following are the certain cases in which capital punishment was awarded to the wrong doers for example case of West Bengal who was working as Security Guard with an Housing Society and had raped and murdered an innocent as well as defenceless school going girl, and in the case of Sony Thomas, in which rape was committed by co-paying guest on a girl who was murdered after raping and in the case of Mohammad Chaman's case in which the Court awarded a sentence of Jail for whole of the life to the convict for causing the murder and rape of a half-year-old girl. These murders have been committed brutally, to the innocent and defenceless minor girls with the heights of cruelty which has left the entire society in the state of shock and if logical thoughts are given to these above cited matters all these matters are coming in the category of 'rare of the rarest' which must be punished to death and the entire society has opined for the same.
Death Punishment is against Humanity which degrade the human beings:

The death punishment is more deterrent of crimes than the other punishments. Rather all another punishments are less effective in comparison to the capital punishment for prevention of crimes. The death sentence still is able to create fear in the minds of the offenders and they refrain from committing the heinous crime which is punishable by death. The death punishment is an effective deterrent punishment has been proved by the scientific studies. At the same time the large part of society thinks that the capital punishment is a cruel form of punishing the criminals and keeping in view this opinion several countries have abolished the death penalty from their country’s penal code. Although it is considered that the omitting the capital punishment is harmful to the society, but no study could provide any figure till date in the recent carried out studies that how much harmful is the abolition of the death punishment.

**Long delay in execution**

As provided in the article Twenty One of the Constitution that every person has a right to live peacefully and if a person has been found and proved to be guilty of an offence punishable to death as well as has been awarded capital punishment will never live a comfortable life after the date of proclamation of his punishment to death. If the procedural lackness are causing delay in the execution of death penalty of any person in that case the provisions of article Twenty One are violated. That is why as per the article Twenty One of the Constitution inadvertent delay caused in execution of death sentence of any convict makes him entitled for conversion of his death sentence into punishment of Jail for the whole of the life.

**Approach should be reformatory:**

In a case of Punjab State the Apex Court has taken the under mentioned view of bringing reforms in the behaviour of a person " the objective of the law should be to bring
reforms and rehabilitate the criminals by making them realise that whatever they have committed was wrong and in future they should not repeat the same and live a life like a common man of the society in this way the rehabilitation is to promoted over punishment without damaging the community conscience and the social justice must be secured in this way. Law is not meant for punishing the people rather every law is guideline to the society which prevents them to commit unlawful acts as well as tells the way and procedures of committing the right things in right manner.

**Why the death punishment should be abolished:**

**Abolish the death penalty for delay is no ground:** Enforcing the punishment and the real implementation of the capital punishment in time between the procedural excuses required in such cases is inevitable are in fact in favor of the prisoners. The procedural delay in any execution of death penalty would lead to the commutation of death penalty into imprisonment for life like recently the Hon’ble Supreme Court of India has changed the death penalty into the punishment to be jailed for whole of the life of at least 19 persons who had been awarded death sentence long ago and filed applications for pardon and begged for mercy before the President which has taken very long time in deciding the mercy petitions, till then all those convicted for death penalty have led their lives in the state of ambiguity which is a sort of cruelty on the prisoners. The delay in decisions is the procedural delay which is never a fault of any prisoner who has been awarded death sentence. In that case keeping in view the fact that if our procedures of execution are so lethargic or uncertain and inappropriate, so we should not have the provision of death penalty in the penal Code.

In another case related to Madhya Pradesh the Hon’ble Apex Court of India has given a direction that appropriate sentence for the protection of society is an unavoidable. The fear expressed by the Supreme Court is that the leniency in judicial system would render the country in a doubtful state and the people of the society will lose their trust from the judicial system. The common people do not understand the reformative jargon more than the language difference appreciates.
The court further said that the punishment to the criminal should be awarded according to the people’s hate against the crime committed by the criminal then only the people could have the confidence in the judicial system. Imposition of appropriate punishment in the courts when considering the rights of criminals in society at large, but also the rights of those who have been victims of crime committed by the criminal, and should be kept in mind. In this connection, it follows that the Rajasthan, Ravji one in the state Supreme Court’s observation is relevant to note: proper punishment has been committed, the crime is not given "the court would be failing in its duty to individual victims but society in return, the criminal and the victim in the relationship." 

**Judiciary, the impossibility of error is not possible**

Supreme Court of India has stated a the case that it is not possible to avoid possibilities of judicial error in the judgments given by the judges. The punishment should be awarded about complete examination of the situation and circumstances and know in detail about the offence, offender, intention and objective of commission, the circumstance in which the offence was committed and to whom it was committed accordingly the punishment should be decided and awarded to the wrong doers. In these details it is always possibilities that certain facts might not come in to the knowledge of the judge and some other might be exaggerative and the court has to believe on the available facts and give its judgment accordingly.

**Right to Life:**

The provisions provided in the Article Twenty One of the Constitution say that nobody should be forced to live his/ her life without freedom and everyone in India has the right to live peacefully and liberally without any mental or physical hindrances
created by anyone except according to the procedures laid down under the laws of the land.

**Volume of awarding death sentences in India:-**

The Afzal Guru who was convicted and executed for the offence opening war and provoking war against the Government of India by way of attacking on Indian Parliament on 13th December 2001 and he was sentenced to death and kept in prison at Tihar Jail, New Delhi where he was executed clandestinely on February, 09, 2013 by the Indian which has exposed as a discriminatory act of the Government with respect to the behaviour with those prisoners who have been punished to death. According to the provisions provided in the Jail Manual it is mandatory to inform the relatives of the convict prior to his execution and provide them opportunity to have last meeting with their relative convict but the Government of India has failed to follow those guidelines and executed his without the prior information of his family which amounted as inhuman as well as unconstitutional.

The President of India Shri Parnab Mukharjee has rejected the mercy petition of the convicts of four blast in 1993 and landmine blast in 2002 in Karnataka and have been awarded death punishment for committing murder of 21 Police Men their names are Gnanprakasham, Simon, Meesekar Madaiah and Bilavendran accused. Initially the convicts were awarded life imprisonment later on the death sentence given to them by the Hon’ble Supreme Court.
Although it is not passed directly to the abolition of the classification, the document was clear abolitionist perspective. Therefore, classification abolished the death penalty in the first step towards the international trend.

Then, a grave violation of human rights, considering that the number of exceptional joined the ranks of the abolitionist. A matter of fact, in many countries the legal systems. Death sentences for human rights and the importance of explaining the laws of the death penalty is abolished inscribed on behalf of the killing was a "premeditated" means considered the implementation of all the methods executed person a lot of pain is composed of the punishment. It nature of the 'savage' is; So the immediate implementation of advanced technology 'painless' can not be construed that the death penalty is not to give way.

Supporters of the death penalty, which is the main purpose is that the death penalty will create fear amongst the minds of criminals and they will refrain from doing wrong acts due to fear of the death penalty. Death sentence 'adequate legal representation issues, many are denied the chance of a fair trial, or that the contract runs the risk of irrevocable error as.

Therefore, the international community 131 countries, in law or in practice, the death penalty might be cancelled Amnesty International, the violation. According to human rights reports on the ground, the death penalty has been condemned and the use of the death penalty in other countries and territories, but in fact, in any one year prisoners executed in several countries. So, now the international disapproval of the sentenced to death and this sentence is in minority. In addition, as evidenced by a number of international agreements, the decisions that will allow smaller. Countries call for their abolition. Gaining momentum against the death penalty can be found in the form of the adoption of international and regional agreements.

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:

“ In connection with the situations occurring in India in the shape of social development of people inhabited those days, to the inequality in the moral level of the people as well as field of education in the country, to the largeness of its area, to the multiformity of the people living in it within the country in the shape of its population.

However, in 1986, change took places in connection with hanging the convict publically. It would be violative of Article 21 which have been imposed on the judgment.

The accused then acquitted by the High Court, convicted of murder and rape is planned, however, refused to award death penalty in case of State of Maharashtra, India, a moderate stand, was taken by the court. The defendant was acquitted by the High Court, the judges in this case because perilously " rare cases rarest" of the region was the fact that, even though it was not very impressive fine. Less option unquestionably foreclosed because it was not, however, sentenced to life imprisonment was changed.

How is forgiveness, subject to life imprisonment, after an extended option to seek shelter, are grossly inadequate. Three of the case only reduces the possibility of awarding a death penalty in the landmark case, But in the end, be able to eliminate the death penalty in India.
The sentence selection:

As its commitment to individual capital punishment, capital cases, the Court's concern for heightened procedural reliability Furman Justice Brennan also mainly solo is built on consensus. Sufficient information to inform the selection of a neutral court fines need to be generated by pointing out that, at the stage of issue of inadequate procedural protections.

The Court's approach to capital punishment cases because of the serious nature of his firm and a heightened protection, reveals. Therefore, the formation of a layer sentences. At, capital and non-capital sentences in the case of sentences by the court in favour of two different approaches are useful for non-capital and capital punishment sentences from the courts because it requires a greater degree of reliability and honesty of capital defendants and, more procedural protection has to offer. According to scholars, the highest protection for prisoners on death row, capital punishment. The all the concerns raised by the rule fails, as always, to the extent of the death penalty does not address the main problems with the administration.

According to the court in awarding punishment, protection guaranteed under Article Fourteen and Twenty One can be applied as strictly as possible. After the death penalty is given to the selection of the defendants to remove discrimination and inequality, if not laudable goal of reducing the effort.

The refusal of the Court to assign weights to sentencing, if particular situation deteriorated amplifier to reduce the capital reduction weights assigned in the context of the death penalty represents a unique feature, will cause him to avoid contact with a false sense of precision.
Aggravating and mitigating factors in the hierarchy of the establishment of the court in detail the excess should be noted that the judgment defendants. The second aspect of the death penalty on moral responsibility, hiding in the direction tilted system, Wave sub-section two of section Two Hundred Thirty Five and sub-section Three of section Three Hundred Fifty Four of procedures provided for the criminal proceedings mandates bifurcated trial length and court death inclined to punish the event "special reasons", indicating that this element of the pre-sentence investigation.

Furthermore, evidence, their social, economic and environmental crime, including, but not criminal, only to see.

Finally, it does not compromise on the truth, while recapture the spirit of compromise that encourages violence is probably advisable. Albie Sachs only "microscopic truth" is to be related to the need to recognize the limitations of the judicial system. For a lasting peace in the reformatory theory of punishment is that it is never too late to realize the importance

Conditions in regard to its residents for a variety of social education, the morals and the difference in level of education, the vastness of the area, its population having the highest diversity and the To maintain law and order in the present circumstances, the death penalty will not be able to cancel the test.

In the Supreme Court, nineteen, twenty-six of murder and convicted of any crime, they were all found innocent of the crime. Including the murder of a woman in charge of the prison, seven, four, accused, was sentenced to death. The judges felt that the prisoners did not deserve the maximum sentence of three separate opinions, Thomas, wrote there. It's one of the reasons that weighed with him was old and was educated woman, she 's playing on her emotions were in a conspiracy, he played a dominating
role, she continued her husband became the A-3 (Murugan) and then brainwashed by father of her child, she offered her help to the work carried out by the conspirators believe the score was. Another consideration that had to be rescued orphan who was the mother of a female child.

There were other charges that are considered to be relevant. Adopt the pattern followed by the trial court, they just grew out of the aggravating circumstances of the crime.

A pre-sentencing hearing to ensure that safety requirements are strict and faithful. A track record in the area of the judiciary is not very encouraging.

Second. Non-compliance with the requirements of the pre-sentencing hearing.

Death penalty notice in the conversation at s.235 (2 pre-sentencing hearing as spelled out under the mandatory procedural requirement to comply with the generally unaware of the failure of the court, and especially the trial court) s.354 read (3) Cr. PC. The object was to enable the provision of clearly. Information on the selection of an appropriate sentence, the court reached a decision to be concerned with.

The Law Commission in its report of 48 symptoms of a deficiency in the system, and the culprit was a lack of information that is widely accepted as the background. The goals of punishment, even more confused than before. Thus it is "concerned with the circumstances of the taking of evidence and conduct the fair trial of the in the interest of justice and the accused were encouraged to cooperate in the process should be both " became the more imperative

Logic of S.235 (2), the Supreme Court explained, the court heard the accused in respect of mitigating or aggravating factors and can pass the trial to a different stage of
the sentence. The imagine Sessions judge what he wanted to say on the question of punishment to the accused not out of any serious effort

    The judge only " on the question of punishment of the accused was told he did not say anything , " the record deplored the attitude of the Supreme Court”.

    Of the Cr.PC s.235 (2) is placed by the court on the question of sentence to hear what they have to say on the question of punishment for the accused is discharged by a formal question . The judge finally put to the accused, the judge can sentence that would bear on the question of questions , to elicit information from the accused must make a real effort under s.235 ( 2 ) , answers the questions of the accused makes Act out of the narrow barrier .

    The inviolability of the pre- sentencing stage of the trial and not Bihar dispensability firmly reiterated. This requirement was intended to satisfy the court pointed out that the Rule of natural justice.

**Uncertainty of the Mercy Jurisdiction**

    Under our Constitution, the President and the Governor to grant clemency executive power is vested in both .The challenge is that Indira Gandhi was accused of killing a sequence of decreasing empathy Kehar Singh v. Union of India , which was reiterated therein.

    The order of the President of the Court on its merits except within strict limits defined in Maru Ram judicial review can not be that obvious . The president of the court case and the decision of the President court. However to give an independent judgment on the quality of the court 's decision did not in any way circumscribed by the plan , the
court refused to exercise any of the powers under Article 72, the Court of guidelines to regulate the exercise of counsel for the applicant that the request should be deleted. The court said: "It's enough signal with the provision of article 72 and those enshrined in the current case law seems to us that there is power in terms of history.

**And do not necessarily spell out specific guidelines**

In the case between Swaran Singh and State of UP Guilty to the crime of murder of the governor of the state Assembly member was given a life sentence.

The Supreme Court order of Governor interdicted. The subtle rules of constitutionalism such as power malafide or in full defiance, have been used arbitrarily, passed by the Governor under Article 161 of the sequence was admitted to the touch, the product may not be allowed by law and in such cases the judicial arm of the law it must be up. It is the order of the governor "arbitrariness on the coast," he says.

In case between State and Gentela Vijayvardhanrao, the Appellants for the purpose of robbery set afire bus boys who were oppressed. The other passengers were killed, 23 passengers and serious burns.

The execution of the crime, the brutality is considered a misdemeanour, the aggravating factors, both as victims and greed and their support of the death penalty.

Human rights groups have been campaigning against the death penalty when the two boys at the mercy petition is pending. Writ Petitions were made to bring the issue to the Supreme Court. This did not succeed. The President, however, that the waiver of his sentence commuted to life imprisonment deemed fit. They should be, such as the
decisions were announced, it will help to know the factors in favor of a death sentence is not finished, and provide guidance for the future.

If a highly selective basis to combat the arbitrary exercise of authority is able to use that can give rise to a reasonable apprehension. Acting on the advice of the Cabinet to the President of the jurisdiction, the decision to exercise clemency with the weight of political considerations can not be ruled out. I really pity the jurisdiction of the judiciary, arbitrary application of the rarest of rare test is not really a corrective mechanism that does not give a reliable answer to the charge.

**The bearing condition**

Five retentionists continue to dominate public opinion and, therefore, the legal requirements of Bachan Singh, one unmistakable fact. Introduced a series of legislative measures that are going to either

With the death penalty for various offenses. Extending the death penalty for the crime of rape, and certain women's groups has been increasing demand. Deterrence as a softer alternative to incarceration that he mistakenly believed that, because of academic and judicial circles can be seen as a necessary purpose. Some of the harsh condition for overcoming the five Abolitionists have yet proved to be the biggest obstacle.

**Non-violence and Peace**

Defendant has an opportunity rather than arbitrary and capricious circumstances, the defendant's criminal and moral responsibility depends on the extent of a surprise. this system, from beginning to end with indifference permeated, that is, so it is incomplete.
It's an overburdened judicial system, legal aid and assistance to poor prison conditions and an insufficient network with its local problems that beset our country with these observations apply. Before they are executed on the initial Supreme Court, in order to eliminate cases of public interest litigation, criminal justice and penitentiary systems. Prisoners in our prisons was highlighted both the harshness die a thousand deaths. Sentenced to long terms of imprisonment to the death penalty, compared to a less severe form of which is a common misconception.

Thus far, the development of the legal aid system within the criminal justice system constitute the highest percentage of litigants are not held out much promise for the poor. Legal Services Authorities Act, 1987 are not entitled to legal aid to get a person into custody. However, this law only in November 1995 by the government and its effectiveness seen. The Cr. PC applied to unrepresented accused to the Sessions Judge may request that the lawyer is said to provide. The client has the choice of a lawyer because of unsatisfactory working of the system.

On a different plane, grapple with some of the drawbacks of the conventional, rather than admit the domains of abolitionists and retentionists evidence to the debate on the death penalty, it introspect and to resurrect the values of non-violence may be necessary and in our constitutional core values of respect for human dignity. We question the usefulness of retaining the death penalty deep into the South African Constitutional Court's approach has influenced the search for indigenous values could learn from 'Ubuntu' Madala drawing on the concept saying, "The Constitution says in his post Canter: "there is a need for understanding, but not revenge, and for reparation but not for retaliation, unubuntu but need to sell." Concept 'ubuntu ' post in canter found for the first time, but it is usually more entrenched fundamental human rights, in particular in Chapter three, which is a concept that permeates the structure, the idea humaneness, social justice and fairness to the ideas."

As previously observed, the death penalty once and for all, "no good" as condemning, and brought them to death row and the gallows, criminals who rejects the
possibility of improvement. Possibility of improvement as a rejection of the concept of Ubuntu must ask whether it is in harmony with.

After the "death penalty does not belong to the society as envisaged in the Constitution, it is clearly in conflict with the Constitution and common counter 'Ubuntu' is going to realize that," concluded.

The mood and temper of the public in regard to the treatment of crime and criminals in the country's culture is the most specific tests. Charged with the duty of punishment by the continuous heart-searching - the accused, and it is also against the state criminal conviction, dispassionate recognition of the rights of a peaceful world coins rehabilitate the desire and curiosity, tireless efforts in ensuring you only every man's heart, he could not find it it is a treasure that, to the discovery of curative and regenerative processes. The crime and the criminal, Mark and treatment measures, symbols.

On 13 March 2012, 75-year-old woman raped and then murdered her by gagging her mouth with a shawl and her salwar neck, strangling her to death with a 22-year-old Nikka Singh condemned Sirsa, Haryana, a court on 11 February 2011.and sessions judges."The grandmother was accused of rape and cold-blooded murder of a woman who, in the rarest of rare cases." Court Nikka Singh whose "existence on earth was a serious threat to society," he tried to rape two other women in the village was "crucial" that is planned.

On the death penalty debate in the recent past has acquired renewed vigor. The day of the murder, especially the increased use of the death penalty for crimes other than rape has been recommended. Some women's groups are welcome. With increasing regularity, the judiciary too has been awarding the death penalty for violent crimes. Progress towards abolition of the death penalty is essential that the International Covenant on Civil and Political Rights (ICCPR), despite the party, India seems to be heading the other way.
The death penalty is a cruel punishment that the need to revisit the area of contention is inspired by two recent developments. The death penalty is a cruel and inhuman punishment and therefore declared to be unconstitutional, the South African Constitutional Court 's ruling in 1995. Despite strong public opinion against this, Death penalty as a punishment for the genocide was rejected by the International Criminal Court, online law is signed by 120 countries, crimes against humanity and war crimes. Finally, it does not compromise on the truth, while recapture the spirit of compromise that encourages violence is probably advisable. Albie Sachs only "microscopic truth" is to be related to the need to recognize the limitations of the judicial system. For a lasting peace in the reformative theory of punishment is that it is never too late to realize the importance.