## CONTENTS

1. Introduction. .............................................. 1-10

2. Theories of Punishment. ................................... 11-69
   (With Special Reference to Capital Punishment)

2.1. Nature of Punishment. .................................. 11

2.2. Purpose of Punishment. ................................ 12
   (a) Punishment as a means of crime prevention. .... 12
   (b) Punishment as a means of sustaining the morals of confirmist. 12
   (c) Punishment as means reforming the offenders. 12

2.3. Theories of Punishment. ............................... 15

2.4. Retributive Theory. ................................... 15

2.5. Retributive Theory and Capital Punishment. ....... 18

2.6. Deterrent Theory. ...................................... 22

2.7. General Deterrence. ................................... 24

2.8. Specific Deterrence. .................................. 25

2.9. Deterrent Theory and Capital Punishment. ....... 32

2.10. Preventive Theory. ................................... 32

2.11. Preventive Theory and Capital Punishment. ...... 34

2.12. Death Penalty for prevention of crime and financial factor. 34

2.13. Reformative Theory. ................................ 35

2.14. Reformative Theory and Capital Punishment. ... 36

2.15. Future of the Punishment. ............................ 42

2.16. Arguments for Retention and Abolition of Capital Punishment. 43

2.17. Arguments for Retention. ............................ 43
   (a) Capital Punishment has religious sanction. .... 44
(b) Reprobation of Society demands Capital Punishment. 44
(c) Retribution satisfies the public conscience. 44
(d) Capital Punishment is deterrent. 45
(e) Life sentence is not an alternative. 46
(f) Capital Punishment is more humane than life imprisonment. 46
(g) Studies of abolitionists are biased. 46
(h) Miscarriage of justice is ruled out. 47
(i) Social defence is more important than the offender’s life. 47
(j) Abolition of Capital Punishment is a risk to the officers. 47
(k) Capital Punishment is more economical. 47
(l) Capital Punishment prevents murders. 47
(m) Many states reintroduced Capital Punishment. 47
(n) Public opinion is in favour of retention. 47
(o) Victim’s feelings should be given preference. 47
(p) Capital Punishment serves the purpose of atonement. 49
(q) Abolition of Capital Punishment is a risk to innocent persons. 49
2.18 Arguments for Abolition of Capital Punishment.
(a) Religious, moral and ethical grounds. 49
(b) Right of life and the State. 49
(c) Capital Punishment is barbarous. 49
(d) Capital Punishment is not ethical. 51
(e) Capital Punishment is inhuman. 51
(f) Retribution is no answer. 52
(g) Capital Punishment is not deterrent. 52
(h) Capital Punishment vis-a-vis the family of the victim. 53
(i) Capital Punishment is degrading and futile. 53
(j) Capital Punishment and the likelihood of uncertainty. 54
(k) Life imprisonment is a good alternative.

(l) Irreversible error may result in Capital Punishment.

(m) Capital Punishment and biased jury.

(n) Power of commutation in Capital Punishment cases.

(o) Revocability is impossible.

(p) Death Penalty is a lazy answer.

(q) Capital Punishment does not serve the purpose of social defence.

(r) Capital Punishment is discriminatory.

(s) Capital Punishment rules out the possibility of reformation.

(t) Many states abolished Capital Punishment.

Summary.


3.2. Introduction of Neck-verse.

3.3. Tyburn executions.

3.4. Towards abolition.

3.5. The Royal Commission, 1949.


3.9. The abolition move.

3.10. The present situation in America.

3.11. Origin of Capital Punishment in India.


3.13. The Muslim Period.


1. Qatl-i-amd.

2. Diva or blood-money
3. Hadd.

4. Tazir.

3.15. British Period.

3.16. The move to abolish death penalty in India.

Summary.


4.1. Capital offences under the Indian Penal Code.


4.3. Pardoning power under the Constitution and Judicial Review regarding Capital Punishment.

   (a) Pardon.

   (b) Commutation.

   (c) Remission.

   (d) Respite.

   (e) Reprieve.

4.4. Article 72 of the Indian Constitution.

4.5. Article 161 of the Indian Constitution.

Summary


5.1. American Supreme Court on Capital Punishment.

5.2. The Mode of Execution was challenged as unconstitutional.

5.3. Penalties other than death sentence were challenged as being against the VIII Amendment.


5.5. Gregg v. Georgia: The product of New Laws.

5.6. Mandatory death sentence and unconstitutionality.

5.7. Imposition of death penalty is not unusual and cruel.

5.8. Aggravating and mitigating factors in imposition death penalty.
5.9 Death Penalty on Juvenile offender.
5.10 Legitimacy of death penalty.

5.11 Indian Supreme Court on Capital Punishment.
5.12 Age of the offender and Capital Punishment.
5.13 Gender of the accused and Capital Punishment.
5.14 Infidelity of the spouse and destruction of matrimonial home.
5.15 Motive and manner.
5.16 Constitutional validity challenged.
5.17 The doctrine of rarest of rare cases.
5.18 The constitutional validity of Section 303 of Indian Penal Code.
5.19 Delay in Execution of Capital Punishment.
5.20 Validity of mode of execution of Capital Punishment.
5.21 Hanging.
5.22 Hanging and Constitutional validity.
5.23 Electrocution.
5.24 Introduction Electric chair as a mode of execution.
5.25 The constitutional validity of electrocution was challenged.

Summary.
6 Conclusions and suggestions.

6.1 Historical background of the problem of Capital Punishment.
6.2 The problem.
6.3 Objectives of the study.
6.4 Methodology.
6.5 Capital Punishment in England.
6.6 Towards abolition.
6.7 Capital Punishment in America.
6.8 Capital Punishment in India.
6.9. Capital Punishment under the Indian Penal Code. 219
6.10. American Supreme Court and Capital Punishment. 219
6.11. Indian Supreme Court and Capital Punishment. 220
6.12. Delayed Executions. 221
6.13. Suggestions. 221
List of Cases 224-232
Bibliography 233-240