Chapter – 1

INTRODUCTION

Statement of the Problem

Love for life is a basic feature of human behavior. It is the most valuable treasure for a human being and not only an human being, even an animal does not want to lose it. Everyone wishes to enjoy it up to the fullest extent. For a human being nothing can be dearer than life and death penalty is that form of punishment which snatches this dearest property.

Capital punishment means a sentence of death. It is the severest i.e. an extreme point of sentence. The punishment is extreme because it extinguishes the very existence of human life. This irreversible punishment is to be awarded only for very wicked, gruesome, horrifying, anti-social, grievous and disgusting crimes against humanity. Though the definition and extent of such crimes vary from country to country and time to time, the implication of capital punishment has always been death sentence. There is probably no country in world where death penalty has never existed. It has been in practice from the time immemorial. According to Clarence Patrick who studied 128 countries on the use of Capital Punishment came to this conclusion that 109 countries resorted to it for a total of 109 crimes.

The very object of punishment has always been to guard the society against the criminal and unsocial elements. A punishment awarded to a particular person becomes a source of security to all and helps in instilling some kind of fear or apprehension in like minds 'Punishment, thus, cannot be regarded as an act of wrath or vengeance
against a guilty or unfortunate individual who has given way to mischievous inclinations but as an indispensable sacrifice to common safety.

For thousands of years, capital punishment has been a dominated penalty and was in practice as an effective measure to combat crime and for centuries its legitimacy was not questioned. The ancient kings believed that if the offenders were leniently let off, crimes were bound to multiply. It was thought that the best way of protecting society from dangerous criminals was to sentence them to death. Its acceptance, in ancient societies, seems to have depended on three principles: Firstly, insignificant value attached to human life, or at least to the life of any particular individual. Secondly, death of the criminal was considered to be just and fair because for deviation he must pay. Thirdly, the death penalty was to find natural support by the arrival or gradual establishment of an all powerful state. These three reasons made the recourse to death penalty necessary. But with the advancement of society the voices against the death penalty began to arise and since last century capital punishment has become a very hot and debatable matter in legal world.

The measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminals. The courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal, but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.
India stands poised between the global trend to end the penalty and those nations that continue to execute, like many of the diminishing number of nations that still apply the death penalty, over the last two decades, India has reduced the number of executions carried out.

The Indian judiciary has ruled that the death penalty for murder must be restricted to the "rarest of rare" cases, but this instruction has been contradicted by the legislature increasing the number of offences punishable by death. The death penalty is mandatory under two of the relevant laws, including for drug-related offences. There are grave concerns about arbitrariness and discrimination in the processes that lead to people being sentenced to death. Such factors would render India's use of the death penalty. Amnesty International is urging the Government of India to declare an immediate moratorium on executions with a view to abolishing the death penalty. As an emerging global and regional power and a party to the International Covenant on Civil and Political Rights and other international human rights treaties, India has an opportunity to exercise regional leadership and to strong signal of its determination to fully uphold human rights by abolishing the death penalty.

In the past three decades, great strides have been made towards a world free from executions. In 1980, only 25 countries had abolished the death penalty for all crimes. That figure now stands at 91, with a further 11 countries having abolished the death penalty for 'ordinary' crimes. 33 countries are considered to be 'abolitionist in practice' in that they retain the death penalty for ordinary crimes such as murder but have not executed anyone during the last 10 years and are believed to have a policy or established practice of not carrying out executions, meaning that a total of 135 of the world's nations have turned their back on capital punishment in law or practice.
Though India is among the 58 countries or territories that still retain the death penalty, only 18 are known to have carried out execution in 2009. Almost all the liberal democracies of the west, including the entire European Union region, have long outlawed what they consider to be a cruel and inhuman punishment.

At independence in 1947, India retained the 1860 Penal Code which provided for the death penalty for murder. In 1973, the Supreme Court of India upheld the constitutionality of the death penalty for the first time in the case of Jagmohan Singh vs. State of UP. In the same year, a new Code of Criminal Procedure was adopted. In 1980, the Supreme Court again upheld the constitutionality of the death penalty in the key case of Bachan Singh vs. State of Punjab, and emphasised that the death penalty should be used only in the 'rarest of the rare' cases.

The Indian judiciary is following the global trend of moving away from the option of capital punishment and veering towards 'whole-life-in-prison' sentences. Recently, the lesser sentences imposed on the killers of the law student Priyadarshini Matoo, Bangalore call-centre employee Pratibha Srikanthamurthy and Punjab Chief Minister Beant Singh shows that Indian judiciary is moving away from the option of death penalty.

It might seem so from the disappointment expressed by family members of each of those victims, who declared that nothing less than capital Punishment would have satisfied their quest for justice. As reflected in the media, this sentiment was shared by a vast section of public opinion. It was indeed an act of courage on the part of judges to defy such a clamour of death. Yet, their verdicts have given much cause for concern to liberal as well.

It appears that judges in the lower courts are also getting increasing
averse to use the capital punishment in several high profile cases. Cases involving premeditated cold blooded murder, rape and murders of minors during rioting, terrorist bombings etc have not attracted the death penalty. But activists reveal a flaw, that due to the absence of sentencing guidelines in what constitutes "rarest of rare", in some less gruesome murders, the lower courts have awarded death sentences possibly due to poor defence presented by the lawyers of the economically backward.

Although there was widespread disappointment that the capital punishment was not announced in the heart-wrenching cases of Priyadarshini Mattoo and Pratibha Srikanthamurthy, how sure are we that the death penalty is the best punishment for the worst of our criminals? Recently some social activists and social reformers are demanding the imposition of capital punishment for corruption, graft, bribe, scam and money stash cases.

The death sentence of former law student Santosh Singh for the rape and murder of 23 years old Delhi law student Priyadarshini Mattoo was commuted to life imprisonment by the SC. In the case of the 22 years old newly married BPO employee from Bangalore, Pratibha Srikanthamurthy, the cab driver who raped and murdered her, was sentenced to the life imprisonment till death.

The general consensus was that the two cold-blooded criminals deserved nothing less than the death penalty. The courts, in their wisdom, however, did not see the crimes as the "rarest of the rare" which would have invited such a punishment.

There is finality about the death sentence that seems to satisfy the popular perceptions of justice in matters of crime and punishment. This also explains the populist stance of some political parties who demanded
that the 26/11 terrorist Mohammed Ajmal Kasab be "publicly hanged from the Gateway of India without a trial."

According to the report of the Amnesty International in U.S.A. as on May 1, 1970 death penalty can be imposed for aggravated murder in 35 states. Drawing upon the penal statutes of the States in U.S.A. framed after *Furman v. Georgia*, in general and clause 2(a), (b), (c), and (d) of the Indian Penal Code (Amendment Bill) passed in 1978 by Rajya Sabha, in particular. Dr. Chittle has suggested the aggravating circumstances, where, capital punishment can be awarded "(a) if the murder has been committed after previous planning and involves extreme brutality; or (b) if the murder involves exceptional depravity; or (c) if the murder is of member of any of the armed forces of the union or of a member of any police force or of any public servant and was committed while such member or public servant was on duty; or (ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or (d) if the murder is of a person who had acted in the lawful discharge of his duty under section 43 of the Code of Criminal Procedure, 1973 or who had rendered assistance to a Magistrate or a Police Officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code."

After the perusal of the aforesaid study, the research scholar’s view that keeping in view the structure of the Indian society capital punishment should be retained. Protection of society and deterring the criminals is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. A duty is cast upon the Court to impose a proper
punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity and as a means of deterring other potential offenders.

The author is of the view that imprisonment should be the rule and the capital punishment should be given in 'rarest of rare' cases. Whenever Court imposes the capital punishment, it should record special reasons for the same. The capital punishment should be given only, when the act of accused is of extremely brutal, inhuman, barbaric, exceptional depravity and when the offence has been committed in a very cruel manner, such as rape followed by murder of a girl of very tender age," dacoity followed by vehemently killing of innocent persons, extremist persons killing innocent persons, murder of politicians, killing of person in a very barbaric manner and socio-economic offences etc. The Supreme Court has very pertinently observed in Jai Kumar v. State of M.P. That civilization and the due process of law along with social order ought not to permit the Courts to be hasty in awarding capital punishment but act as a speed breaker in the use of this type of punishment.

The author is of the view that in agricultural based countries like India, the problem of death penalty arises in case of murders committed during agrarian riots and disputes relating to possession or ownership of land-property, in such cases, the offenders are well aware of the consequences of their act but they fall a prey to criminality due to passion, excitement or anger for the victim whom they want to put out of their way once for all. Thus, these persons though aware of the consequences, in fact do not intend those consequences to follow, hence they-cannot be categorized as professional killers and death penalty can hardly serve any useful purpose in such cases, specially where act was not pre-mediated.
Likewise, when the death has been committed by the accused in sudden provocation or on account of heat exchange of talks and if he do not have any criminal antecedents capital punishment should not be imposed in such cases.

Arguments in favor of the death penalty rest on the call for permanently eliminating the worst criminals from society, not wasting public exchequer on their imprisonment and providing a strong deterrence against serious crimes.

The global trend, however, favors the abolition of capital punishment, considering it as inhuman on the part of the State, irrespective of the crimes committed. Coincidentally, on the very day that the Supreme Court commuted the death sentence in the Mattoon case, European Parliament president Jerzy Buzek spoke against death penalty stating that "Death can never ever be considered an act of justice."

The European Parliament has been in the forefront for the abolition of the death penalty and has observed that barely 43 countries retain this punishment- According to it, the highest number of executions in 2009 took place in China (500) followed by Iran (402), Iraq (77) and Saudi Arabia (69).

India has not had a single execution in the last 10 years, and in that sense has been moving away from capital punishment, although more than 50 people were sentenced to death in 2009, In the Asian subcontinent, Nepal and Bhutan have abolished the death penalty.”

The large numbers of nations which have abolished capital punishment believe that the principle of *Lax talons* (an eye I for an eye) is no longer appropriate in modern society, innumerable voices have questioned this practice. In July this year, former president APJ Abdul
Kalam added his voice to the call for a national debate on the need to continue with the death penalty.

Life Imprisonment till death (life without parole) is not a soft sentence as it seems but is often considered a harsher punishment than the death sentence. In 2007, 311 Italian prisoners who were sentenced to life imprisonment till death petitioned the government for the right to be executed. They described life without parole a "living death".

It is natural for the relatives of victims to support the death sentence as a part of their pursuit for justice. Not all, however, feel that imprisonment for life is a soft verdict. As a victim's relative commented following the Pratibha verdict, the sentence will force the criminal to ponder daily "on the diabolic act he committed."

Is the abolition of the death penalty part of the civilization process and the evolution of the human mind to higher levels of thought? Although we still have the barbaric practice of death-by-stoning in parts of the Islamic world today, death penalty as a policy and practice has reduced substantially over the last two centuries.

Crime and punishment have a deeper aspect to it. This is the redemptive power and potential of the human soul. The story of the bandit-turned-sage Valmiki, who escaped the death penalty and gave Hinduism the epic Ramayana, conveys this aptly.

In the 21st century, we are finding new ways to create life and prolong life. But we still can't make up our minds about whether it is right, ethical or good to take someone's life, even when it is dignified by a court of law.

As the world moves away from the use of the death penalty, the time has come for the Indian authorities to abolish this from of
punishment.

One fears that the Indian leaders may lack the political courage to abolish the death penalty. Public opinion often supports retention of the death penalty, based on the erroneous view that it deters violent crime. It is up to the nation's leadership to explain the futility of retaining executions on this basis and to convey the unacceptability of such a 'grave human rights violation committed in the name of the people via the country's judicial system.

**Socio-Economic Crimes**

Socio-economic crimes are those crimes which affect the health and material welfare of the community as a whole and are generally committed by the members of upper class of the people/ during the course of their occupational or professional activities. These crimes are the outcome of greed/ avarice and rapacity.

The socio-economic offences have been incepted since times immemorial but remained dormant until the beginning of World War II. Nevertheless the statute of this newer form of Criminality was for the first time shaped by a well-known criminologist Prof. Edwin H, Sutherland in 1939. Sutherland described these newer crimes as white collar crimes.

The two world wars badly affected the whole set-up of our community at large resulting in the sudden upsurge of many problems- One of the major problems was the scarcity of the essential things and a mounting demand for them.

"Promulgating false or misleading advertising illegal exploitation of employees mislabeling of goods violation of weights and measures statutes, conspiring to fix prices selling adulterated food stuffs and evading corporate taxes etc".
The present century is well known for the remarkable development in the field of science and technology; simultaneously industry and commerce have also spreaded the wings of revolution all over the world. This Industrial Revolution abruptly changed the entire social economical and political structure of our society throughout the world, such that people have abandoned the high cultural goals and socially approved techniques of achieving them, because an over helming emphasis is made on achieving certain objectives e.g. political powers, monopolistic control over business and high economic status without due regard to the question of whether they can be achieved by legally approved means or not. Therefore, high ethical standards and moral values were discarded in favour of power, money and material things- Such circumstances have made the environment more conductive for the monstrous growth of the newer form of criminality particularly in developing countries like India. Thus all sorts of anti-social activities i.e. frauds. Corruption adulteration of food stuffs misappropriation and misrepresentations are now carried on a large scale by the persons of upper and middle socio-economic class in the course of their trade commerce, industry and other professions as well.

The policy of Laissez-faire or non interference of the state in the material pursuits of the individuals and associations created an atmosphere of extreme business competitiveness for monopolistic advantages; which resulted in the multiplicity of the socio-economic offences beyond recognition specially in the industrial countries. Thus unbridled capitalism posed a serious threat to the social welfare.

Today, the state being a welfare state tends to control a vast number of means of production and distribution of goods and material services, etc. Therefore the activities of the state multiplied to a greater
extent. Therefore the activities of the state multiplied to a greater extent. But unfortunately the heavy responsibility of the state over burdened its administration, which led to the inefficient functioning of the governmental machinery. In addition to the above, some incompetent, dishonest and in scrupulous persons made their way in to various public services. Both the aforesaid factor became fertile grounds for the expansion of socio-economic crimes, e.g. bribery, corruption, favoritism and nepotism in public services and among persons in high authority, trafficking in licenses, permits and quotas, embezzlement, misappropriation and frauds relating to public property and violation of specifications in public contracts etc.

Besides the fields of socio-economic crimes mentioned above there are many other areas where new crimes are emerging in menacing proportions such as smuggling and isolations of foreign exchange regulation, under-invoicing, over-invoicing, black marketing and hoardings, profiteering, racketeering, share pushing, tax evasion, adulteration of drugs and cosmetics narcotic drugs peeding, and many other isolations by men in legal profession.

**Retention of the Capital Punishment need of the day:**

The retention of the 'Death Penalty' is necessary in view of the deteriorating law and order situation in the country. Those who advocate abolition of death penalty however suggest that it shall be a fitting tribute to the memory of late Mahatma Gandhi if death penalty is abolished. But the receptionists argued that the cause of non violence is equally served if the causes of explicit violence regardless of ideals involved are visited with implicit violence of capital punishment and stressed on its application in such a manner that its harshness is mitigated but efficiency
The report of the convention of International Congress of Criminal Law sponsored by International Law Association, held at New Delhi on 8, 9 and 10th February 1982, suggests that the general consensus was clearly in favour of retention of death penalty though its use is to be restricted to "rarest of rare cases". Despite strong plea for abolition by Mr. V.R. Krishna, the former judge of the Supreme Court of India, the Convention justified retention of capital punishment though to be used sparingly. Inaugurating the Congress Mr. Hidayatullah, the then Vice-President of India and former chief justice of the Supreme Court of India observed that the doctrine of "rarest of rare cases" evolved in the Indian Jurisprudence for the use of death penalty is capable of discounting the possible errors and abuse of this sanction and therefore a dispassionate approach to this problem in the content of the mounting crime was most necessary.

This mid way approach seems to be most appropriate particularly in the context of modern Indian society where

The machinery of police as well as the magistracy is hardly adequate to tackle the problem of crime and criminals effectively. The object of punishment should be achieved by extending necessary safeguards to the life of individual but at the same time by limiting their liberty so as to eliminate crime.

The world today seems to be fighting a battle against the horror of spurious drugs menace. A threat to the quality of life as it is today. Keeping with the prevailing socio-cultural and economic conditions. Drugs are beneficial when used wisely by people. But the use of the spurious drugs spells disaster for individuals, families and the society as a
whole. It is often cited that spurious drugs leads food poisoning, heart problems, intestinal problems, uneasiness, repulsion towards food and death. It is effects the family life, law and order economic structure of the nation and society at large.

The increasing number of spurious drugs business is an indication of socio-economic crisis of the future. The use of drug not only adversely affect the health but it also causes the loss of man power and retards the moral and economic growth of the nation. The spurious drugs business is like a sweet poison in the society and parasite for national economy. Increasing spurious drugs problem has also added a burden on the national economy both in terms of loss of productivity and expenditure on the care of the affected individual.

Now, in the wake of its proliferation among various social, cultural and economic strata and widespread awareness about its disruptive influence on both the individual and society, spurious drug's has emerged as an issue of vital public concern at various levels.

Article 21 of the constitution though it does not expressly contain the right to health, it has now been well settled through a series of cases that this includes the right to health further, Articles 38, 42, 43 and 47 of the constitution also provide for the promotion of the health of individuals in society.

A number of laws have been enacted to protect the health interest of the people. These include:

- The Indian Penal Code 1860
- The fatal accident act 1855
- The Indian Medical Degrees Act 1916
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- The Dangerous Drugs Act 1930
- The Drugs and Cosmetics Act 1940
- The Dentists Act 1948
- The Drugs (Control) Act 1950
- The Pharmacy Council of India Regulations 1952
- The Prevention of Food Adulteration Act 1954
- The Drugs and Magic Remedies (Objectionable Advertisements) Act 1954
- The Indian Medical Council Rules 1957
- The Medical Termination of Pregnancy Act 1975
- The Dentists Code of Ethics & Regulations 1976
- The Consumer Protection Act 1986
- The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994
- The Transplantation of Human Organs Act 1994 etc.

Modus Operandi:

The spurious drug business is flourishing mostly in northern India. The states of Punjab, Haryana, Himachal Pradesh, Delhi, Uttar Pradesh, Bihar, Gujarat and to some extent Madhya Pradesh have a large numbers of spurious drug manufacturing units. In U.P. the major sale of spurious drug takes place in Agra, Lucknow and Varanasi. The fake medicines are circulated to the whole country and also to neighbouring countries like Bangladesh and Myanmar. Nearly one fourth of drugs seized in Delhi and Haryana are found to have Russian markings. Delhi is a hub for the thriving market. A large number of cheap tourist hotels in the congested
Paharganj and Karol bagh areas are found to cater the traffic from Uzbekistan, Kazakhstan and other nations. A middleman picks up the consignment from these hotels and money with the tourists changes hands smoothly. According to a recent newspaper report, Aligarh has of late emerged as the main centre from where such drugs are being brought into Delhi and the nearby areas, and pushed into circulation, Bathinda has emerged as heaven for the manufacture of spurious drug. The location of the town is beneficial for the smugglers as the district shares its border with Haryana and Rajasthan.

Many of the international woman couriers indulge in prostitution to earn money and to please the custom officials to smuggle the spurious drugs. After reaching their destination like Tashkent these couriers hand over the smuggled drugs to the local traders which sell them after putting Russian markings.

More than half of the country's spurious drug trade is conducted at Bhagirath Palace, Delhi. As per the estimate of CII (The Confederation of Indian Industries), spurious drugs worth 2500 crores are annually thrown into the market from Bhagirath Palace, the wholesale market of drugs. In 1997 there were 198 pharmaceutical distributors at Bhagirath Palace, which shot up to 693 in 2001. Raising the issue in Delhi legislative assembly, Ms. Kiran Chaudhary said that the racket of producing and distributing spurious drugs was thriving in the capital and the Government was turning a blind eye to it. Citing a recent incident, Ms Chaudhary said 54 samples were lifted, during a surprise raid, from Bhagirath Palace and out of them only four were found to be genuine. This indicated the state of affairs in the administration and called for more vigil. She pointed out that cases have come to light where even reputed companies have been found to be involved in the manufacture of
spurious drug.

The government institutions like defence, hospitals, dispensaries etc. make bulk purchases of drugs through the tender system and settle for the lowest bids. Due to the presence of corrupt purchase officials in these deals and in the absence of any appropriate system of monitoring the quality of drug, spurious and sub-standard drugs find the way into these places.

Most of the spurious drug manufacturers do not register their companies with the drug controller and it is difficult to detect them. Some of the licensed manufacturers, which operate the legal business, produce counterfeit drugs and it makes the matter even more complicated.

The manufacturer of spurious drugs are equipped with the latest techniques like desk-top publishing (DTP) to copy any innovations to reproduce exact replicas of new packaging labels and holograms. The reproduction is so perfect that even the experts cannot tell the counterfeit from the genuine packing. The manufactures and traders use modern communication system like cellular phones and Internet to avoid detection. The production is also carried out at different locations for the same reason. Due to a high margin of profit the producers of spurious drugs are rich and they are able to pay handsome amount to the corrupt officers. They are using chalk powder, saw dust, salt, jaggery etc for producing spurious drugs. These products may not produce adverse effects on the health of consumers and are being used to reduce the penalty in case they are caught.

The counterfeit drugs are no longer restricted to tablets and capsules of antibiotics, antiprotozoa, anit-malarial, hormones, steroids etc but are covering inhalers, sophisticated injections and expensive tablets.
used for the treatment of cancer. Recently the lifestyle drugs have also come into its fold. They include, health tonics, fairness lotions, pills for body building and impotence drug or erectile dysfunction drug like Viagra. These drugs are taken by a large number of people and therefore can affect a large population of the world.

Recycling is one of the common practices adopted by small timers engaged in the manufacture of spurious drug. The recycling is mostly used in products like powder injections, e.g., beta-lactam antibiotics, which are expensive, and over-the-counter products like lodex, Gripe-water, cough syrups, pain balms, analgesics, anti-inflammatory tablets etc. An individual having knowledge of marketing of Pharmaceuticals carries out this business. The process involves collection of used vials with intact labels, removing the closures, filling the containers with enough material and resealing it by using hand operated sealing machines. The activities are restricted to two or three districts and don’t have a large networking. It’s a cottage level operation involving small quantity of product. The products are sold to hospitals, nursing homes and practicing quacks.

Another method in this trade is refilling and relabelling. The culprits identify the expensive branded drugs and substitute them with cheaper drugs having the same composition, remove the labels from the recycled bottles or vials, pack the cheaper products and affix the label of the branded product, e.g., Garamycin injection. Sometimes the packing may look similar to the branded or a generic product in appearance, but may contain a cheaper generic drug e.g., Indomethacin capsules relabeled as Chloramphenicol capsules. 'Phensedyl', a cough syrup, is a trade mark of Nicholas Piramal. The people in North-eastern states get empty bottles from Bangladesh and they sell after refilling them with higher content of
narcotics. The counterfeit version is sold as 'Phensedyl plus' and is supplemented with extra doses of narcotic codeine. The spurious drugs, which are cheaper substitutes of biotech drugs like Neupogen are available at nearly half the price from across the border and are smuggled into India.

The use of drugs after their expiry date is yet another method used by these people. Mostly they are circulated in areas where the people are illiterate.

Some of the dispensing chemists are also partners in this racket as they get 30 to 50% margins from the spurious drug manufacturer.

The counterfeiters prey more on the vulnerable semi-literate and illiterate belts where people think that the death is due to the disease and not due to the drug.

The entire spurious drug industry managed to flourish mainly due to two factors, first due to the incompetent or corrupt bureaucrats and secondly due to the political support. Besides, making punishment more severe, it is essential to tighten the noose around the corrupt people in the establishment who aid and abet such activities and to expose the politicians, who support the trade. In September, 2000 when the drug control authority raided at Sitamarhi in the state of Bihar and made four arrests, the greatest resistance came from people close to a Member of Parliament. During 2000-2001, 11 drug samples were found to be spurious in Delhi while the illegal trade is flourishing here.

Another reason for the increase in the illegal trade is the delay injustice in the courts and release of culprits on bail, due to which they manage to restart the business. A total of 1291 cases relating to drug & cosmetics including cases of spurious drug are pending in Maharashtra
The spurious drugs are not restricted to allopathic medicines alone, in April 2003 the Delhi police arrested one Dr H K Sachdeva who was allegedly involved in the manufacture and sale of spurious homeopathic medicines. Similar cases have also been reported relating to sale of spurious Ayurvedic and Unani medicines.

An interim report from an expert committee to India's health minister revealed that 9% of drug samples tested by state government inspectors last year were of poor quality. The committee recommended stiffer penalties such as death for selling or producing fake medicines.

The drug control department of the Delhi government carried out 618 inspections of chemists and manufacturing units in January. As a result, licenses of 112 chemists and three manufacturing units were suspended for violations of the Drugs and Cosmetics law (sale of schedule 'H' drugs without prescription). According to Delhi health minister Yoganand Shasli, the testing laboratory of the government took 132 samples of drugs and cosmetics, of which eight were found to be substandard. Prosecutions followed for the chemists and manufacturers found in violation. The government has decided to coordinate better with the Delhi police in curbing the manufacturing and sale of spurious drugs as well as the sale of drugs without prescription.

**Contraceptive Patches**

The website, www.rxpharmacy.ws, apparently operated by American Style Products of New Delhi, is selling counterfeit contraceptive patches online that contain no active ingredients. The US FDA is investigating other products sold on the website that purport to be versions of FDA-approved drugs, the FDA urges consumers to treat any
drugs purchased from this firm as being suspect. According to the Associated Chambers of Commerce and Industry of India (ASSOCHAM), 20% of medicines sold in India are fake. Of those, 60% do not have active ingredients, 19% have incorrect ingredients, and 16% have either harmful or inappropriate ingredients, like talcum powder. Approximately 38% of medicines in government hospitals are counterfeit, and 35% of drugs sold worldwide come from India.

**Eltroxin (Thyroxin)**

At the urging of patients in Maharashtra and Gujarat, the State FDA opened an inquiry in December 2006 about GlaxoSmithKline's Eltroxin, a thyroid hormone supplement used to treat people that have a deficiency of the hormone. According to the Assistant Commissioner of State with the FDA, large quantities of counterfeit versions of the drug were found during raids in Kandivli and Mumbai in January 2007, with one person arrested. The investigation is ongoing.

In some surveys of medicines bazaars in the country, more than 90% of the medicines are found to be fakes. With only 35 drug inspectors at the national level and slightly more than 1000 at the state level, there are approximately 500 medicines outlets per inspector.

According to data samples tested by State authorities from 1995-2003, substandard drugs account for approximately 8.19 – 10.64% of the market, while spurious drugs account for approximately 0.24 – 0.47%.

**Paracetamol**

Approximately Rs. 20 million (USD $509,000) worth of fake drugs were seized in Orissa's Bolangir district. Among the medicines seized was paracetamol, a common fever reducer and pain reliever.

In a joint study between the Delhi Pharmaceutical Trust and
SEARPharm Forum, 10,743 samples from 243 retail outlets in 15 states were collected. Approximately 20% of the samples were sent for testing at government labs, and 3.1% were found to be counterfeit.

Dr. Anbumani Ramadoss, India's health minister, reported that the government is launching a study to determine the extent of substandard and spurious medicines in India. Approximately 300,000 samples are to be taken.

In a study conducted by the office of the Deputy Drugs Controller, Western Zone, a total of 3,246 samples were collected. Of those, 5 were counterfeit and 2 did not comply with standards.

* According to the Associated Chambers of Commerce and Industry of India (ASSOCHAM), the market for fake and spurious drugs is growing at a rate of 10 – 25%.

* A man found guilty of manufacturing spurious drugs and selling them as brand name products was sentenced to 15 years in jail and fined. The medicines seized from him were confirmed to be substandard after laboratory testing.

Shalini had a long history of epilepsy. She was free of seizures for the last four years during which she was under medication but got one after taking medicines bought in Lucknow.

Jagmohan was very sick and was asked to take some antibiotics. His condition did not improve even after a week's medication. All kinds of antibiotics were tried out. Nothing worked. He died soon after.

Richa, a high BP patient was highly dependent on tablets. Suddenly her BP became erratic and she required immediate hospitalisation. This despite her taking the prescribed tablets dutifully. Doctors could control her BP but could not figure out why she developed
complications.

Shalini, Jagmohan and Richa are not some isolated cases. Incidents such as these are becoming commonplace and would soon become a norm rather than an exception. And the reason — spurious medicines. "One out of five strips sold in North India is a spurious one," pointed out Ranjit Sahane, President of Organisation of Pharmaceutical Producers of India (OPPI) and also the Vice Chairman of Novartis India Ltd. "It's a perfect crime with little evidence left behind in many cases."

The spurious drug industry is becoming well established in India. According to World Health Organisation's (WHO) 2001 statistics, 35 per cent of the world's spurious drugs are produced in India, followed by Nigeria at 23 per cent. By all accounts the magnitude of this problem would have only increased in the last two years.

North India already shows signs of this industry doing brisk business at the consumers' cost. And its tentacles are spreading far and wide. Unfortunately, consuming a spurious drug unlike buying a counterfeit designer shoes or apparel has mind-boggling ramifications. "There is no safe counterfeit. Spurious drugs are life threatening and not life saving drugs," said Mr. Sahane succinctly.

Even when spurious drugs do not endanger life, they can leave the patient seriously ill and those with inadequate potency do bigger harm to the society in general. Drug resistance develops when patients consume drugs with inadequate potency forcing them to look for costlier new generation drugs. And these patients could put the entire society at risk by spreading drug resistance.

Unlike other cases where the consumer knows his intent, the spurious drug industry thrives on consumers' ignorance, lack of stiff
penalty for indulging in such activity and finally on lax regulatory system. Packaging is no nearly perfect that distinguishing a spurious drug from a genuine one is almost impossible. "They spend nearly 5-15 per cent of their investment in packaging. They even have the batch numbers right," Mr. Sahane noted.

Filling spurious drugs in used medicine bottles is another modus operandi. "We at Nicholas Pirmal face this peculiar problem with phensidyl cough syrup. People in north-eastern states get empty bottles from Bangladesh and refill them with a higher content of narcotics and sell them," said Mr, Sikka.

Cheaper substitutes for biotech drugs are another area of concern. "IMeupogen for instance is available for nearly half the price. These spurious drugs are made available from across the border," pointed out Swati Piramal, Marketing Manager at Nicholas Piramal India Ltd. Nicholas Piramal is trying to beat these people using advanced technology and distribution system. Alu-alu packaging, patented sugar coating on certain medicines and having its own clearing and forwarding (C&F) in all states have made it difficult for the counterfeiters.

Incidently, the consequences are not restricted to consumers alone. With a market share of nearly 20 per cent of the total drug market in India (it is worth nearly Rs. 4000 crores) the spurious drug industry's thirst for more is clear to see. It has already set its eye on the export market and succeeded in taking spurious drugs beyond our shores,

For instance, Africa and Latin America have taken cognizance of the increased export of spurious/substandard drugs from India and have started complaining about it. And worse, nearly 3-5 per cent of the drugs landing in the U.S. are spurious. The U.S. has already put India in the 301
watch list threat some months ago. If implemented it would totally ban export of drugs from India and sound the death knell for the Indian drug industry.

The low-risk, high-return spurious drug industry is bound to grow. Though belatedly, the Government is slowly waking up. It plans to advocate death penalty for spurious drug racketing. Plans are afloat to reward anyone providing evidence of spurious drug manufacturing or selling, and finally to educate the public about the ills of spurious drugs through the electronic media.

In the meanwhile the consumers can become more proactive by buying medicines only from reputed and well-established chemists.

So the next time before you pop a pill or take a jab spare a moment. Do you want to consume chalk powder, sub-standard drugs or medicines after their expiry date? It's your health and the nation's future at stake. Chemists are a part of the chain and shunning the bad guys is one sure way to kill the spurious drug industry. Are the consumers game for it?
OBJECTIVE OF STUDY

- To identify the problems which are responsible for spurious drugs.
- To calculate the pernicious impact of spurious drugs over the society and economic fabric of the nation.
- To critically analysis the existing penal policy for spurious drugs dealers and suggests stringent punishment fort them having regard to the socio-economic conditions of India.
- To assess and evaluate the role of drugs regulatory authority in India.
- To examine the impact of some landmark judgments on death sentence (and spurious drugs) in socio-economic offences, especially in spurious drugs related matters.

HYPOTHESIS

1) Liberalization, globalization, privatization and digitalization have increased the problems of socio-economic offences and gave birth to the new concept of sentencing policy in India.

2) Speedier trial and severe punishment will lead to protect the health of the people and to develop the country’s economy.

3) Application of death sentence in socio-economic offences is justifiable because it is more severe and heinous than traditional nature of crime.

4) Spurious drugs business in India is flourishing due to ineffective and unreviewed existing legislations concerning to drugs business.
5) Corruption and mal practices involved from lower level to higher level help in flourishing of dirty business of spurious drugs.

6) Keeping in view the serious health hazard the judiciary appears to be in favour of imposing stricter “Stricter than Strict” punishment.

7) Capital punishment will help to curb the increasing rate of socio-economic offences specially in drugs business.

8) An effective drug regulatory system will prove to be a watch dog and will help in curbing substantially the menace of spurious drugs business.

9) Public awareness regarding the standard and quality of drugs and cosmetics products will also be helpful to face the menace of the spurious drugs.

**RESEARCH METHODOLOGY**

The present study is based on the doctrinal method of research. The research has drawn help from various books, articles, newspapers, gazettes, report of commissions & committees and judicial decisions.

**CHAPTERIZATION**

The study is organized into seven chapters.

**Chapter I**

The application of death sentence in socio-economic offences specially with reference to spurious drugs dealer is presented in the introduction.

It also states objectives of study hypothesis and methodology adopted to conduct this study.

**Chapter II**

This chapter deals with the genesis of socio-economic offences
white collar crimes and scope and application of mens rea in statutory offences. Apart from this meaning definition reasons for commission of white collar crimes and spurious drugs business have been explained. Further, R.A. Mashelkar Committee report has been explained in this chapter.

Chapter III

This chapter is devoted to the historical background of death sentence in Hindu Law, Muslim Law, British regime and its position in India. The retention and abolition of death sentence in India and various countries have been discussed in this chapter. Death sentence for spurious drugs and human right law in international perspective is discussed in detail.

Chapter IV

In this chapter the constitutional validity of death sentence in India in the light of the Historical Judgment Bachan Singh case and the concept of “rarest or rare cases” have been discussed.

Chapter V

This chapter deals with the conceptual context of spurious drugs and right to health under constitutional framework.

This chapter also includes the discussion on feasibility of imposition of death sentence in socio-economic offences and other species of its like Drugs and Cosmetics, food adulteration etc.

Chapter VI

This chapter contains the analysis of responses of judiciary in India regarding death sentence and offences relating to spurious drugs.

Chapter VII

Conclusion and suggestions devoted to summary of findings. It is aimed at to eliminate/reduce the dirty practice of spurious business. After
an analytical study of existing provisions under various statutes dealing
with socio-economic offences and judicial pronouncement, many
recommendations and suggestions have been made in order to develop
the economy of the country and health and wealth of society at large.
There are certain offences which are of grave nature keeping in view the
health and life of the people. If the accused is not punished adequately in
such cases, it would encourage the commission of more offences of
serious nature, under this background the feasibility of death sentence
have been elaborately discussed and recommendation/suggestions have
been accordingly.