Penology and Victimology

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Introduction:

Each society has its own way of social control for which it frames certain laws and also mentions the sanctions with them. These sanctions are nothing but the punishments. 'The first thing to mention in relation to the definition of punishment is the ineffectiveness of definitional barriers aimed to show that one or other of the proposed justifications of punishments either logically include or logically excluded by definition.' Punishment has the following features:

- It involves the deprivation of certain normally recognized rights, or other measures considered unpleasant
- It is consequence of an offence
- It is applied against the author of the offence
- It s applied by an organ of the system that made the act an offence

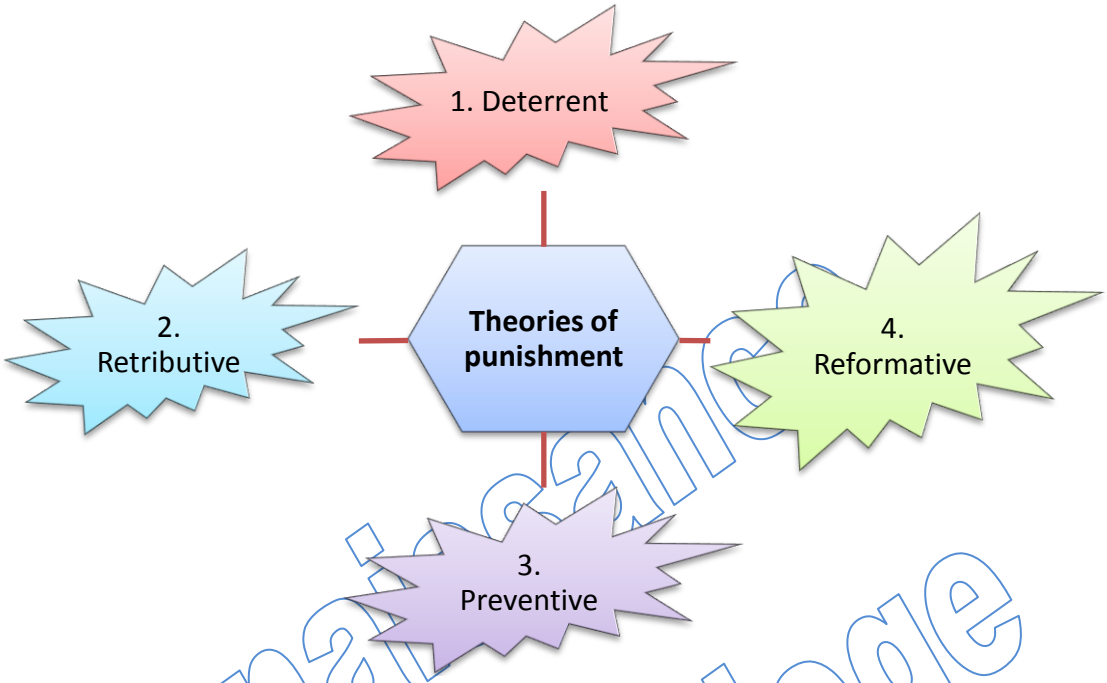
The kinds of punishment given are surely influenced by the kind of society one lives in. Though during ancient period of history punishment was more severe as fear was taken as the prime instrument in preventing crime. But with change in time and development of human mind the punishment theories have become more tolerant to these criminals. The law says that it does not really punish the individual but punishes the guilty mind.

Theories of Punishment

With change in the social structure the society has witnessed various punishment theories and the radical changes that they have undergone from the traditional to the modern level and the crucial problems relating to them. Kenny wrote: "it cannot be said that the theories of criminal punishment current amongst our judges and legislators have assumed...."either a coherent or even a stable form. B.Malinowski believes all the legally effective institutions....are....means of cutting short an illegal or intolerable state of affairs, of restoring the equilibrium in the social life and of giving the vent to he feelings of oppression and injustice felt by the individuals.

The general view that the researcher finds is that the researcher gathers is that the theories of punishment being so vague are difficult to discuss as such. In the words of Sir John Salmond, "The ends

of criminal justice are four in numbers and in respect to the purposes served by them", punishment can be divided as:



a) **Deterrent theory-**

The term "Deter" means to abstain from doing an act. The main purpose of this theory is to deter (prevent) the criminals from doing the crime or repeating the same crime in future. Under this theory, severe punishments are inflicted upon the offender so that he abstains from committing a crime in future and it would also be a lesson to the other members of the society, as to what can be the consequences of committing a crime. This theory has proved effective, even though it has certain defects.

b) **Retributive theory-**

This theory of punishment is based on the principle- "An eye for an eye, a tooth for a tooth". Retribute means to give in turn. The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim. This theory aims at taking a revenge rather than social welfare and transformation.

This theory has not been supported by the Criminologists, Penologists and Sociologists as they feel that this theory is brutal and babric.

c) **Preventive theory -**

This theory too aims to prevent the crime rather than avenging it. As per this theory, the idea is to keep the offender away from the society. This criminal under this theory is punished with death, life imprisonment etc. This theory has been criticized by some jurists.

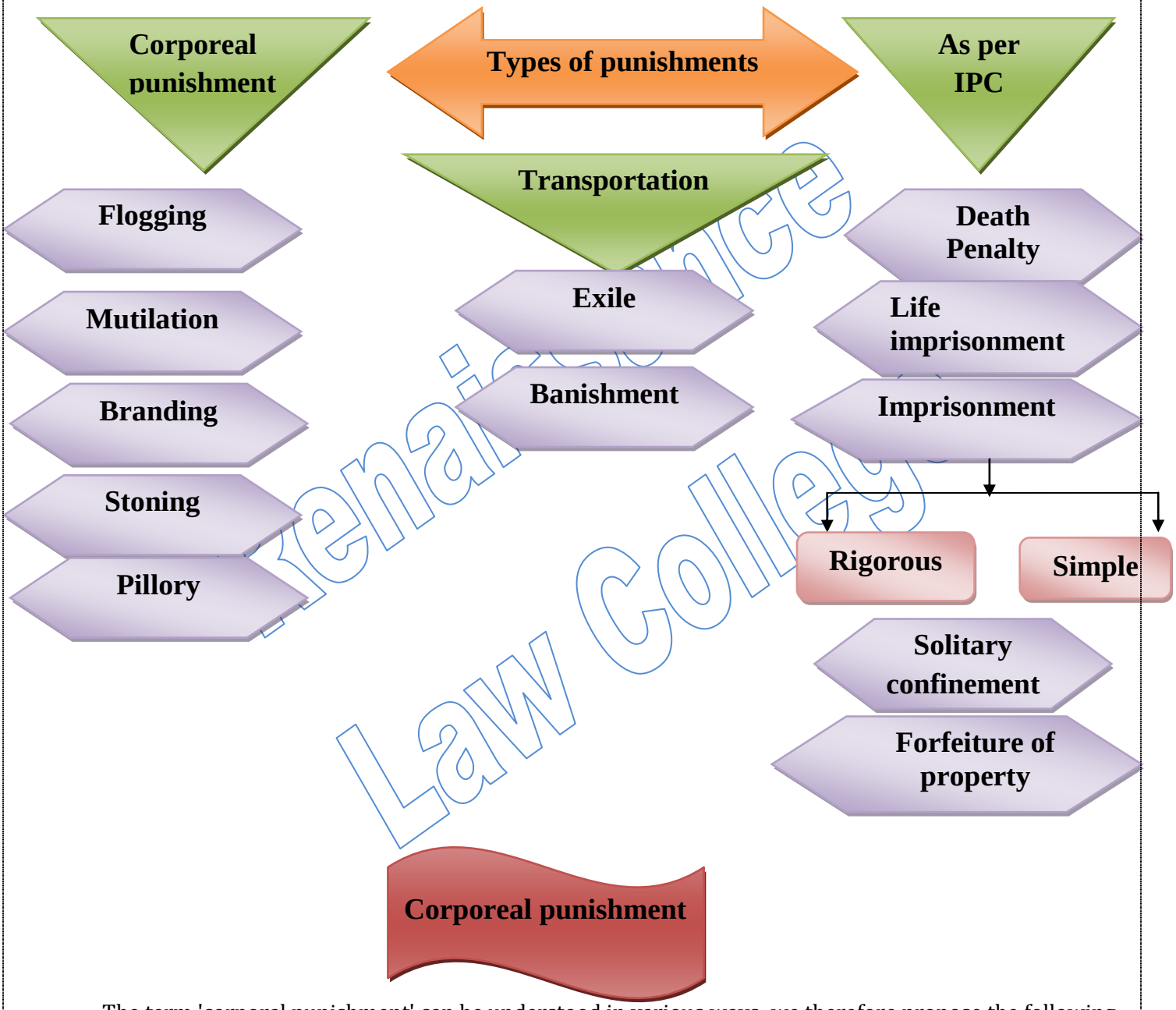
d) **Reformative theory -**

This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. The idea behind this theory is that no one is a born Criminal and criminals are also humans. Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists.

e) **Expiatory theory -**

Under this theory, it is believed that if the offender expiates or repents and realizes his mistake, he must be forgiven.

Various kinds of punishments are prescribed for various types of Crimes. Various Punishment theories are proposed with the various intentions. The variations in the modality of punishment occur because of the variation of societal reaction to law breaking.



The term 'corporal punishment' can be understood in various ways; we therefore propose the following definition: “Corporal punishment is the use of physical force causing pain, but not wounds, as a means of discipline.” Spanking, rapping on the head and slapping are forms of corporal punishment which we do not classify as abuse.

This history of early penal systems of most countries reveals that punishments were tortuous, cruel and barbaric in nature. It was towards the end of eighteenth century that humanitarianism began to assert its influence on penology emphasising that severity should be kept to a minimum in any penal programme.

The common modes of punishment prevalent in different parts of the world included corporal punishments such as flogging, mutilation, branding, pillories, chaining prisoners together etc. Simple or rigorous imprisonment, forfeiture of property and fine were also recognized as modes of punishment.
There are two factors to be taken into consideration when distinguishing between corporal punishment and physical abuse:
• **Intensity**: the extent to which injuries have resulted from the use of violence.
• **Intention**: the extent to which the intention is to teach/discipline.
Corporeal punishments are of following types:-

- Flogging
- Mutilation
- Branding
- Stoning
- Pillory

Flogging:

Of all the corporal punishments, flogging was one of the most common methods of punishing criminals. In India, this mode of punishment was recognized under the Whipping Act, 1864, which was repealed and replaced by similar Act in 1909 and finally abolished in 1955.
The English penal law abolished whipping even earlier. In Maryland (U.S.A.) whipping was recognised as late as 1953 although its use was limited only to "wife-beating". Flogging as a mode of punishment is being used in most of the middle-east countries even to this day.
The instruments and methods of flogging, however, differed from country to country. Some of them used straps and whips with a single lash while others used short pieces of rubber-hose as they left behind traces of flogging. In Russia, the instrument used for flogging was constructed of a number of dried and hardened, thongs of raw hide, interspersed with wires having hooks in their ends which could enter and tear the flesh of the criminal. Flogging as a punishment has now been discontinued in all civil societies being barbarous and cruel in form.
Penological researches have shown that whipping as a method of punishment has hardly proved effective. Its futility is evinced by the fact that most of the hardened criminals who were subjected to whipping, repeated their crime. There is a general belief that whipping may serve some useful purpose in case of minor offences such as eve-teasing, drunkenness, vagrancy, shop-lifting, etc. but it does not seem to have the desired effect on offenders charged with major crimes.

Mutilation:

Mutilation was yet another kind of corporal punishment commonly in use in early times. This mode of punishment was known to have been in practice in ancient India during Hindu period. One or both the hands of the person who committed theft were chopped off and if he indulged in sex crime his private part was cut off. The system was in practice in England, Denmark and many other European countries as well.
The justification advanced in support of mutilation was that it serves as an effective measure of deterrence and retribution. The system, however, stands completely discarded in modern times because of its barbaric nature. It is believed that such punishments have an inevitable tendency to infuse cruelty among people.

Branding:

The convicts were branded as a mask of indelible criminal record leaving visible marks such as scars in the body parts which are normally noticeable. These permanent indelible marks not only served as a caution for the society to guard against such hardened criminals but also carried stigma which deterred them from repeating the offence.

Branding of prisoners was commonly used as a mode of punishment in oriental and classical societies. Roman penal law supported this mode of punishment and criminals were branded with appropriate mark on the forehead so that they could be identified and subjected to public ridicule. This acted as an effective weapon to combat criminality. England also branded its criminals until 1829 when it was finally abolished.

The system of branding was not uncommon to American penal system also. The burglars were punished by branding letter "T" on their hand and those who repeated this offence were branded "R" on the forehead. In Maryland (U.S.A.) blasphemy was punishable with branding the letter "B" on the forehead. In India, branding was practiced as a mode of punishment during the Moghul rule. This mode of corporal punishment now stands completely abolished with the advent of humanitarianism in the field of penology.

Stoning:

Stoning the criminals to death is also known to have been in practice during the medieval period. This mode of sentencing the offender is still in vogue in some of the Islamic countries, particularly Pakistan, Saudi Arabia etc. The offenders involved in sex-crimes are generally punished by stoning to death.

The guilty person is made to stand in a small trench dug in the ground and people surround him from all sides and pelt stone on him until he dies. Though it is a punishment barbaric in nature, but due to its deterrent effect, the sex crimes, and particularly, the crimes against women are well under control in these countries.

Pillory:

Pillory was yet another form of cruel and barbaric punishment which was in practice until the end of the 19th century. The criminal was made to stand in a public place with his head and hands locked in an iron frame so that he could not move his body. The offender could also be whipped or branded while in pillory.

He could be stoned if his offence was of a serious nature. At times, the ears of the criminal were nailed to the beams of the pillory. Restraining physical movements of the criminal had the most agonising effect on him and it was believed that the deterrence involved in this mode of punishment would surely bring the Offender to books.

The system of pillory existed slightly in different form during the Mughal rule in India. The hardened criminals and dangerous offenders were nailed in walls and shot or stoned to death. The punishment undoubtedly was more cruel and brutal in form and therefore, it finds no place in modem penal systems.

Hanging condemned prisoner to death in a public place was common mode of pillory punishment in most part of the world until the middle of the twentieth century. This mode of punishment is still in vogue for execution of death sentence. But hanging of a condemned convict to death in public is strictly prohibited and it has to be carried out in closed jail premises.

Transportation

Exile:

It was a measure to keep the convict away from his country, state or city, being threatened by imprisonment or death upon his unauthorized return. The system of exile was extensively used in middle ages during the supremacy of Church and special forms of exile were in vogue on a declaration by Church. It was used particularly for political opponents of those who were in power. However, exile

as a form of punishment fell into disuse by the end of the nineteenth century. It now exists in milder form, which is known as banishment.

Banishment:

The practice of transporting undesirable criminals to far-off places with a view to eliminating them from society has been commonly used in most parts of the world for centuries. In England, war criminals were usually transported to distant Austro-African colonies. The terms transportation, banishment, exile and outlawry though similar, have different connotations. The difference, however, seems immaterial for the present purpose. Exile as a device merged into outlawry with earlier religious element largely supplanted by a political motive.

French criminals were transported to French colonies in Guiana and New Caledonia during nineteenth century. This mode of punishment was used only for hopeless criminals, political offenders and deserters. There was no question of these criminals returning alive as they were sure to die labouring in dense fever-infested forests of the African island. The French system of deportation was most brutal, cruel and inhumane. The system was abolished after the World War II when free French Government was installed in that country.

Russian countries transported their criminals to Siberian penal camps. The condition of these camps was far worse than those of French in Guiana. They were virtually hell on the earth and have been called "House of the Dead" by Dostoevksi. These camps were mostly meant for political prisoners who were completely deprived of their civil rights and were long termers.

The practice of transportation is known to have existed in penal system of British India as well. It was popularly called 'Kalapani'. Dangerous criminals were despatched to remote island of Andaman and Nicobar. It had a psychological effect on Indians because going beyond the seas was looked with disfavour from the point of view of religion and resulted in out-casting of the person who crossed the seas. The practice came to an end during early forties after these islands came in occupation of Japanese. It was finally abolished in 1955.

Though as a part of retributive justice, transportation as a method of punishment has been defended by some criminologists particularly, Lombroso and Garofalo. Lombroso favoured the system as it eliminates hopeless incorrigibles from native criminal population and thus prevents them from demoralising influences. Garofalo supported transportation as a punishment because of its deterrent effect.

Considered from the practical point of view the practice of transportation seems to have failed to deliver the goods. It was not only primitive, cruel and barbaric but involved considerable burden on State exchequer as it required regular establishment of penal settlements. The practice has been abandoned by most countries excepting some Latin American States where it still prevails as one of the vestiges of outmoded correctional justice.

It must, however, be noted that the practice of banishment still persists in mini form called "externment". The object of this method of punishment is to disassociate the offender from his surroundings so as to reduce his capacity to commit crime. This form of punishment has been accepted under the Indian penal system but it cannot extend beyond India.

As per IPC

Capital punishment

The punishment of death may be imposed on the following offences:—

(a) Waging or attempting to wage war or abetting the waging of war against the Government of India -Section 121 I.PC.;

(b) Abetment of mutiny actually committed – Sec. 132 of I.P.C.;

(c) Giving or fabricating false evidence upon which an innocent person suffers death – Sec. 194
(d) Murder – Section 302; We
(e) Punishment for murder by a life-convict – Sec. 303,This Section was struck down by the Supreme Court holding that it was unconstitutional, while disposing the case Mithu v. State of Punjab, AIR 1983 SC 4731;
(g) Attempt to murder by a person under sentence of imprisonment for life, if hurt is caused – Sec. 3071.PC;
(h) Dacoity with murder – Sec. 396 I.P.C.

The Courts have a high range of discretionary powers in passing death sentences. The death punishment is also called "Capital Punishment". The word "capital" means "the head or top of the column". Thus the capital punishment means "removal of head", "death penalty" or "beheading".

It is the maximum punishment possible to be imposed on a criminal. This punishment occupies topmost position among the grades of punishments. This punishment can be imposed in extreme cases and rarely that too in extremely grave crimes.

The capital punishment can be imposed on a criminal who commits a pre-planned and premeditated murder in cold blood. The offences with sections in which the death penalty can be imposed are explained above.

Most of the developed countries have removed death sentences from their respective penal code due toagitations caused by the suggestions of sociologists, reformists, criminologists, etc.

In India too, there is a serious discussion on this topic. Sections from 366 to 371 of the Criminal Procedure an. Code, 1973 explain the "Submission of Death Sentences for Conformation". Sections from 413 to 416 of Code, 1973 explain the provisions for "execution, suspension, postponement of capital sentences"

(f) Abetment of suicide of a child, an insane or intoxicated person – Sec. 305 of IPC;

Imprisonment for Life:

Before 1955, the words "transportation for life" was used. The Code of Criminal Procedure Amendment Act, 1955 (Act No. 26 of 1955) substituted the words "Imprisonment for life" in place of "transportation for life".

The general public thinks that imprisonment for life means only 14 years imprisonment, and the convict shall be released as soon as the 14 years period is lapsed. It is wrong presumption.

Actually, the punishment under the Imprisonment for Life means imprisonment for the whole of the remaining period of the convicted person's natural life. During the British Rule, the convicts under "transportation for life" was used to be deported to the Andamans and other Colonies and were taken for ever from the society of all who were acquainted with him.

After independence, such system was stopped. Now the convicts under imprisonment for life are imprisoned in the Prisons of the States concerned. The life convict is not entitled to automatic release on completion of fourteen years' imprisonment, unless on special occasions, the Government may pass an order considering the good behaviour and conduct of the convict remitting the balance of imprisonment for life.

Imprisonment:

The next kind of punishment is "Imprisonment". It is of two descriptions, viz.—

(i) Rigorous, i.e., with hard labour; and
(ii) Simple.

(i) Rigorous Imprisonment i.e. with Hard Labour:

There are certain offences defined in the Indian Penal Code, for which rigorous imprisonment may be imposed by the Courts. Examples: House- trespass under Section 449 of IPC; fabricating false evidence with intent to procure conviction of an offence which is capital by the Code (Sec. 194); etc.

For such offences, rigorous imprisonment may be imposed. In rigorous imprisonment, the convicted person is put to do hard labour such as digging earth, cutting stones, agriculture, grinding corn, drawing water, carpentry, etc. The Supreme Court suggested that the offenders imposed hard labour should be paid minimum wages.

The trial Court, while disposing Bombay Blast Case (2007), sentenced Sanjay Putt, a Bollywood Hero, for rigorous imprisonment for a period of six years. Until the Supreme Court gave the Bail, Sanjay Dutt did carpentry work for 30 days and earned Rs. 39/- during that period.

While disposing the case Sunil Batra v. Delhi Administration (AIR 1980 SC 1675), the Supreme Court observed: "Hard labour in Sec. 53 has to receive a humane meaning.

A girl student or a male weakling sentenced to rigorous imprisonment may not be forced to break stones for nine hours a day. The prisoner cannot demand soft jobs but may reasonably be assigned congenial jobs. Sense and sympathy are not enemies of penal asylums."

(ii) Simple imprisonment:

1. This punishment is imposed for the lighter offences. **Examples**: public servant unlawfully engaging in trade or unlawfully buying or bidding for property (Sections 168-169); absconding to avoid service of summons or other proceedings, or not attending in obedience to an order from a public servant (Sections 172-174); to obstruct traffic or cause public nuisance; eve- teasing, drunken brawls, etc.; refusing oath when duly required to take oath by a public servant (Section 178); wrongful restraint (Sec. 341); defamation (Sec. 500) etc.

Solitary Confinement:

Section 73 of the Code empowers the Courts to impose solitary confinement to certain persons and in relation to certain offences. This punishment is also part of the imprisonment.

A harsh and hardened convict may be confined in a separate cell to correct his conduct. He is put separately without intercourse with other prisoners. All connections are severed with other world.

The object of this punishment is to reform the hardened and habitual offender and in order to experience him with loneliness. There are certain restrictions in imposing solitary confinement. They are:—

(a) Solitary confinement should not exceed three months of the whole term of imprisonment.

(b) . It cannot be awarded where imprisonment is not part of the substantive sentence.

(c) It cannot be awarded where imprisonment is in lieu of fine.

(d) It cannot also be awarded for the whole term of imprisonment. Further according to Section 73, the following scale shall be adhered,—

(i) Time not exceeding one month if the term of imprisonment shall not exceed six months;

(ii) A time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year;

(iii) A time not exceeding three months if the term of imprisonment shall exceed one year.

In several European countries, including Great Britain, this punishment was repealed.

Section 74 limits the solitary confinement. If it is imposed for a long time, it adversely affects on human beings and creates mental derangement.

This Section says that solitary confinement shall in no case exceed fourteen days at a time with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, such confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Forfeiture of Property:

"Forfeiture" is the divestiture of specific property without compensation in consequence of some default or act of forbidden by law. The Courts may order for forfeiture of property of the accused in certain occasions.

In white collar crimes, and where a Government employee or any private person accumulates black money and black assets, and there is no genuine answer and proof for such money and properties with such person, the Court may award for forfeiture of property.

In cases of smugglers, goondas, anti-national personalities, etc., the Government or the Courts are empowered to forfeiture of property of such anti-social elements.

Fine:

The Courts may impose fine along with or without imprisonment. The Indian Penal Code mentions the punishment of fine for several offences, generally with or without imprisonment.

Amount of fine:

According to Section 63, where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

Sentence of imprisonment for non-payment of fine:

According to Section 64, in every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

Limit to imprisonment if fine imposed is not paid:

Section 65 lays down that the term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one- fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Description of imprisonment for non-payment of fine:

Section 66 lies down that the imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Imprisonment for non-payment of fine when offence punishable with fine only:

According to Section 67, if the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale,—

When the fine shall not exceed fifty rupees – the term of imprisonment shall not exceed two months;

Termination of imprisonment on payment of fine:

According to Section 68, whenever the fine is paid the imprisonment shall be terminated forthwith.

According to Section 69, if, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Illustration:

A is sentenced to a fine of one hundred rupees and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired.

If seventy five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged.

If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time, while A continues in imprisonment, A will be immediately discharged.

Fine vs. Imprisonment:

It is the general presumption that if the offender passes the imprisonment in default of fine imposed upon him, such imprisonment shall liberate the fine. It is wrong presumption. Section 70 says that fine and imprisonment for default of fine are two different things.

Imprisonment for default of fine shall not liberate the offender from his liability to pay the full amount of fine imposed upon him. Imprisonment in default of fine is not a satisfaction for the fine, but it is a punishment for non-payment or contempt or resistance to the due execution of the sentence.

Such fine shall be recoverable from the offender within six years from the date of sentence passed by the trial Court or during imprisonment. Fine may be recovered from the property of the offender. Death of the offender shall not discharge property from liability.

Forfeiture of Property:

Section 53 of the Indian Penal Code provides forfeiture of property as a form of punishment. There are two offences specified under Sections 126 and 169 of IPC which provide for confiscation of property besides the punishment of imprisonment with or without fine. These sections are as follows:—

Section 126 provides that a person committing depredation on territories of Power at peace with the Government of India shall be punished with imprisonment of either description for a term which may extend to seven years and also liable to fine and the property so used or intended to be used in committing such depredation or acquired by such depredation, shall be liable to forfeiture.

According to the provision contained in Section 169, IPC, a public servant who being a public servant is legally bound not to purchase or bid for certain property, if he does so either in his own name or in the name of another, or jointly, shall be punished with imprisonment which may extend to two years or with fine, or with both, and the property, if purchased, shall be confiscated.

Capital Punishment

Of all forms of punishments, capital punishment is perhaps the most controversial and debated subject among the modern penologists. There are arguments for and against the utility of this mode of sentence. The controversy is gradually being resolved with a series of judicial pronouncements containing elaborate discussion on this complex penological issue. However, looking to the variety of considerations involved in the problem, a detailed discussion on the subject is deferred to succeeding chapter of the Book.

The offences which are punishable with death sentence under the Indian Penal Code include:

(i) Waging war against the State (Sec. 121);

(ii) Abetment of mutiny (Sec. 132);

(iii) Giving or fabricating false evidence leading to procure one's conviction for capital offence (Section 194);

(iv) Murder (Section 302);
(v) Abetment of suicide committed by a child or insane (Sec. 305);
(vi) Attempt to murder by life-convict, if hurt is caused (Sec. 307);
(vii) Kidnapping for ransom, etc. (Sec. 364A), and
(viii) Dacoity with murder (Sec. 396).

It is significant to note that though the aforesaid offences are punishable with death but there being alternative punishment of life imprisonment for each of them, it is not mandatory for the Court to award exclusively the sentence of death for any of these offences. In fact, where the Court is of the opinion that the award of death sentence is the only appropriate punishment to serve the ends of justice in a particular case it is required to record "special reasons" justifying the sentence stating why the award of alternative punishment i.e. imprisonment for life would be inadequate in that case.
The recent penological trend is to give primacy to reformative methods of punishment which were hitherto used merely as supplementary measures. Hungary is perhaps the first country to initiate the reformative educational method for its prisoners, besides fines, which Prof. Jescheck considered to be central sanction of an up-to-date penal policy, the collateral sanctions such as prohibition from pursuing a profession, disqualification of driving, local punishment and confiscation of property are also being extensively used as sophisticated modes of punishment.
According to Dr. Joseph Folvari, these sanctions (measures) would refrain the perpetrator from committing a further crime and at the same time would put an end to the possibility of a further criminal act being committed. Needless to say that these measures would be equally effective if adopted in the Indian penal system.

Life imprisonment as an alternative punishment to Death sentence:
The vexed question of award of death sentence to a cold blooded murderer or life sentence once again came up before the Supreme Court in Swamy Shraddananda alias Murli Manohar Mishra v. State of Karnataka. The Court in this case, made it explicitly clear that a convict punished with life imprisonment means imprisonment till his last breath.
But once the judgment is pronounced the matter passes into the hands of the executive and is governed by different provisions of law and there is no guarantee that the sentence awarded to the convict by the Court after considerable deliberation would be carried out in actuality.
The remissions granted by the executive to a life convict virtually reduces the sentence to not more than 14 years. It is a matter of serious judicial concern that the sentence of life imprisonment awarded to the convict as a substitute for death should be treated alike with the ordinary life imprisonment given as the sentence of first choice.
The Apex Court in this judgment referred to the Report entitled "Lethal Lottery, the Death Penalty in India", compiled jointly by Amnesty International India and Peoples Union for Civil Liberties, Tamil Nadu and Pondicherry based on the Supreme Court judgments, on death penalty from 1950 to 2006. The Report highlights the lack of uniformity and consistency in the award of death sentence and/or its substitution by imprisonment for life. Some of the illustrative judgments of the Supreme Court are as follows:
In Subhash Chander v. Kishanlal and others, four accused persons including Kishanlal were convicted for multiple murders and sentenced to death by the trial Court and the High Court confirmed the sentence In appeal, the Counsel for Kishanlal, on instructions from the convict, submitted that Kishanlal, if sentenced to life imprisonment instead of death, would never claim premature release or commutation of his sentence on any ground i.e., under Section 401 of Cr. P.C., Prison Act, Jail Manual or other Statutes or rules meant for the grant of remission. The Supreme Court agreed to the plea of the Counsel and sentenced Kishanlal for imprisonment for rest of his life.
In Mohd. Munna v. Union of India, the Apex Court held that in the absence of an order of remission formally passed by the appropriate government, there is no provision in I.P.C. or Cr. PC. under which a

sentence of life imprisonment could be treated as for a term of 14 years or 20 years and that a life convict could not claim remission as a matter of right.

The Court expressed its anguish for States of Bihar and Karnataka life convicts being granted remission and released from prison on completion of 14 years without any sound legal basis and remission is being allowed to them in a routine manner without any sociological or psychological, appraisal.

Having reviewed the law on award of life imprisonment as a substitute for death, the Court in Swamy Shraddananda case, convicted him for life and directed that he shall not be released from prison till the rest of his life.

It may, however be stated that most European countries have prescribed a minimum period of incarceration after which a lifer may apply for release on parole provided he had exhibited good behaviour during the period he spent in prison. Thus, in Germany, the minimum time to be spent by a person sentenced to imprisonment for life is 15 years whereas it is ten years under the criminal law of Finland. Similar law may be adopted in India so as to provide a humanitarian touch to the sentencing of convicts with imprisonment for life.

The constitutionality issue

The 5th (and the 14th) amendment state that "no person shall be deprived of life, liberty, or property without due process of law", while the 8th amendment prohibits 'cruel and unusual punishment." Since 5th and 8th amendments were passed at the same time it seems that:

- The Constitution allows the death penalty.
- The Constitution, at least as understood by its proponents, does not consider the death penalty cruel and unusual punishment.

The Constitution *only allows* capital punishment and does not require it.

The issue of interpreting the Constitution:

1. Originalism
    - Textualist approach
    - Purposivist approach
2. Non-originalism: the idea of evolving standards.

The common reading of the "cruel and unusual punishment" clause renders a punishment cruel and unusual if it is *severe* and at least one of

- Degrading
- Inflicted arbitrarily
- Clearly rejected by society
- Patently unnecessary.

The issue of death penalty has been debated, discussed, studied from a prolonged time but till now no conclusion can be drawn about the retention or abolishment of the provision. Death penalty has been a mode of punishment from time immemorial which is practiced for the elimination of criminals and is used as the punishment for the heinous crimes.

India is one of the 78 retentionist countries which have retained death penalty on the ground that it will be awarded only in the 'rarest of rare cases' and for 'special reasons'. Though what constitutes a 'rarest of rare case' or 'special reasons' has not been answered either by the legislature or by the Supreme Court.

The constitutional validity of the death penalty was challenged from time to time in numerous cases starting from *Jagmohan Singh v. State of U.P* where the SC rejected the argument that the death penalty is the violation of the "right to life" which is guaranteed under article 19 of the Indian constitution. In another case *Rajendra Prasad v. State of UP*, Justice Krishna Iyer has empathetically stressed that death penalty is violative of articles 14, 19 and 21. But a year later in the landmark case of *Bachan Singh v. State of Punjab*, by a majority of 4 to 1 (Bhagwati J.dissenting) the Supreme Court overruled its earlier decision in Rajendra Prasad. It expressed the view that death penalty, as an alternative punishment for murder is not unreasonable and hence not violative of articles 14, 19 and 21 of the

Constitution of India, because the "public order" contemplated by clauses (2) to (4) of Article 19 is different from "law and order" and also enunciated the principle of awarding death penalty only in the 'rarest of rare cases'. The Supreme Court in *Machhi Singh v State of Punjab* laid down the broad outlines of the circumstances when death sentence should be imposed.

Similarly in various other cases the Supreme Court has given its views on death penalty and on its constitutional validity. But the punishment of death penalty is still used in India, some time back the death penalty was given to Mohammad Ajmal Kasab. The Pakistani gunman convicted in 2008 Mumbai attacks was sentenced to death by hanging and after a long discussion, politics and debate was finally hanged on 21 November 2012. Next in the row is Afzal Guru, convicted in 2001 Parliamentary attacks was also hanged after a huge political discussion on 9 February 2013.The next convict in the death row is Devendra Pal Singh Bhullar, convict of 1993 car bombing will be hanged in the coming days as his mercy petition was rejected by the Supreme Court by holding that in terror crime cases pleas of delay in execution of death sentence cannot be a mitigating factor.

There has been a diverse opinion regarding the death penalty in India as some are in the favour of the retention of the punishment while others are in the favour of its abolishment. Those who are in the favour of death penalty argue that it should be given in the most heinous and rarest of the rare crimes as for example the Delhi gang rape case the demand for death penalty for the accused was raised . But the people who are against the capital punishment argue on the religious, moral and ethical grounds and declare it inhuman and callous investment by unsure and unkempt society. It is also suggested that it should be replaced with life imprisonment or any substitute must be brought out.

Sanction is an essential ingredient of law. Punishment is a social custom and institutions are established to award punishment, after following criminal justice process. Governments prohibit taking life, liberty or property of others and specify the punishments, threaten those who break the law. Death penalty in India is not completely abolished but given in rarest of the rare cases which in my opinion must be retained for incorrigibles and hardened criminals but its use should be limited to rarest of rare cases so as to reduce the chances of arbitrariness in judicial process and failure of justice.

Minority judgement of justice Bhagwati

"*Our convictions are based largely on oral evidence of witnesses. Often, witnesses perjure themselves as they are motivated by caste, communal and factional considerations. Sometimes they are even got up by the police to prove what the police believe to be a true case. Sometimes there is also mistaken eyewitness identification and this evidence is almost always difficult to shake in cross-examination. Then there is also the possibility of a frame up of innocent men by their enemies. There are also cases where an overzealous prosecutor may fail to disclose evidence of innocence known to him but not known to the defence. The possibility of error in judgment cannot therefore be ruled out on any theoretical considerations. It is indeed a very live possibility...*"

Justice Bhagwati's concerns in 1982 reflected concerns raised 35 years earlier by members of India's Constituent Assembly when they drew up its constitution. In this case the Supreme Court also ruled that the death penalty should be used only in the "rarest of rare" cases. More than a quarter of a century later, it is clear that through the failure of the courts and the State authorities to apply consistently the procedures laid down by law and by that judgment, the Court's strictures remain unfulfilled.

In 1991, a Supreme Court bench again upheld the constitutionality of the death penalty in *Smt. Shashi Nayar v. Union of India and others12*. The Court did not go into the merits of the argument against constitutionality, arguing that the law and order situation in the country had worsened and now was therefore not an opportune time to abolish the death penalty. An argument which assumes executions address such situations.

In recent years, the Supreme Court has reversed two practices that had been observed for several decades in capital cases. The first practice was not to impose a death sentence where the judges hearing the case had not reached unanimity on the question of sentence or of guilt. The second was not to impose a death sentence on a person who had previously been acquitted by a lower court. Since 1999 and 2003 respectively, the Supreme Court has imposed or upheld death sentences in such cases.

In a 1994 Supreme Court judgment *Rampal Pithwa Rahidas v. State of Maharashtra13*, the Court observed that 'the manner in which the investigating agency acted in this case causes concern to us. In every civilised country the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. In this case, the trial court had sentenced eight people to death. The High Court upheld the sentences of five of them, but the Supreme Court acquitted them all, noting that the main evidence against them was not trustworthy. The Court noted sarcastically that the main witness's memory constantly improved his testimony at the trial three years after the incident was observed to be far more detailed than his confessional statement recorded a few days after the incident). The Court concluded that the witness was pressured by the police to give evidence because "the investigation had drawn a blank and admittedly the District Police of Chandrapur was under constant attack from the media and the public."

In a judgment in 2001 *Sudama Pandey and others v. State of Bihar14* relating to a case in which the trial court had sentenced five people to death for the attempted rape and murder of a 12-year-old child, the High Court had commuted the sentences, but the Supreme Court noted that it was unfortunate that the High Court did not also properly review the evidence. Acquitting the accused, the Supreme Court noted that both the trial court and the High Court had committed a serious error by appreciating circumstantial evidence, resulting in a miscarriage of justice. In an indictment of the lower judiciary, the Supreme Court remarked: "The learned Sessions Judge found the appellants guilty on fanciful reasons based purely on conjectures and surmises. It is all the more painful to note that the learned Sessions Judge, on the basis of the scanty, discrepant and fragile evidence, found the appellants guilty and had chosen to impose capital punishment on the appellants."

In *Krishna Mochi and others v. State of Bihar15* a three-judge bench disagreed over the sentence imposed on one of the appellants, while agreeing on the conviction and upholding the death sentence awarded to three other appellants. In a dissenting judgment, Justice Shah argued that the shortcomings in the investigation and the evidence that only proved the presence of the accused at the scene of the offence meant that this could not be a fit case for imposing the death penalty. On the other hand, he observed, "this case illustrates how faulty, delayed, casual, unscientific investigation and lapse of long period of trial affects the administration of justice which in turn shakes the public confidence in the system."

Exemption to minor and mentally retired person:

The ICCPR prohibits the use of the death penalty against people who were under 18 years old at the time of the crime16, as well as the Convention on the Rights of the Child, another international human rights treaty to which India acceded in 199217 . Indian law came into conformity with this prohibition in 2000 with the passage of the Juvenile Justice (Care and Protection of Children) Act 2000. Before that, it was lawful for a boy of 16 to be sentenced to death, but prior to 1986 there was no minimum age prohibition, contrary to India's obligations as
a party to the ICCPR.

While the current legal position must be welcomed, the practice has not been clear-cut due to disputes over the age of offenders (birth registration in India is at about 50 per cent, but the level varies considerably across states). In such cases, as shown by the present study, the Supreme Court has not given individuals the benefit of the doubt and has upheld death sentences in cases in which there was

evidence that the individuals may have been under 18 at the time of the offence. One such person - Amrutlal Someshwar Joshi - was executed in Pune Central Jail on 12 July 1995; the Supreme Court had dismissed the defence counsel's plea that a medical examination be carried out to determine his age *Amrutlal Someshwar Joshi v. State of Maharashtra II18*.

Safeguard 3 of the UN Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty states that "the death penalty shall not be carried out on persons who have become insane." In resolution 2005/59, adopted on 20 April 2005, the UN Commission on Human Rights urged all states that still maintain the death penalty 'not to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person'. The study found that while the Supreme Court had looked at various facets of mental health as a factor in adjudicating on sentencing, there was no consistent response to concerns about mental health, and no established practice of seeking medical evidence in the face of such concerns. In several cases the Court commuted sentences on grounds of questions over the mental health or state of mind of the appellant, while in other cases such questions were ignored. Access to mental health professionals by condemned prisoners or by the accused at trial stage is extremely limited in India. There is no current research on the subject.

The study identified a number of concerns about legal representation in capital cases. The concerns included lawyers ignoring key facts of mental incompetence, omitting to provide any arguments on sentencing, or failing to dispute claims that the accused was under 18 years of age at the time of the crime despite evidence to the contrary. These facts came to light only because they were observed by the Supreme Court in their judgments. On other occasions the Supreme Court may have disregarded evidence of the absence or ineffectiveness of counsel, leading the authors of the study to conclude that the number of accused in capital trials who were been served by inadequate counsel is probably high but remains unknown.

It should not be necessary to underline the importance of adequate legal representation for those facing trial in capital cases, particularly at the earliest stages. For them it can literally be a matter of life or death. Crucially, the higher judicial fora hearing appeals in India are constrained by being able to consider only the evidence brought before the trial court. Although a High Court has the powers to issue directions for fresh evidence to be introduced, these powers are rarely used. Hence the quality of defence evidence at the trial stage is of utmost importance. It is not just evidence relating to the innocence or culpability of the accused which can be vital, but also evidence relevant to the court's consideration of mitigating factors when deliberating on sentence -- social, personal, psychological or cultural information that shows the context of the crime and the character of the accused. The absence of such evidence in the sentencing process can seriously prejudice the way in which the case is treated through the remaining judicial process.

With a large number of the accused in capital trials poor and illiterate reflecting the general picture for the criminal justice system as a whole, even where individuals may be able to afford legal representation, the quality, ability and experience of counsel in capital cases are unknown variables. This is particularly problematic as regards legal aid counsel. The study noted the lack of legal aid and legal representations immediately after arrest and during remand and bail proceedings. Legal representations at these stages can play a vital role in preventing torture and ill-treatment, which can result in forced confessions. This is particularly problematic in cases where detainees are detained under anti-terrorism legislation, where the law has allowed for long periods in police detention and for confessions made to a police officer to be used as evidence.

Furthermore, the study noted that the need for legal aid and legal representation during preparation of mercy petitions and in filing writ petitions in the Supreme Court or the High Court after completion of the appeals stage has not been adequately addressed, either by the state which has responsibility for ensuring provision of such services or by the Supreme Court in its adjudication of individual cases.

Terrorist Activities and Capital Punishment:

The study highlighted cases of people sentenced to death under successive special antiterrorist laws. Major concerns include the broad definition of 'terrorist acts' for which the death penalty can be imposed; insufficient safeguards on arrest; provisions allowing for confessions made to police to be admissible as evidence, unlike the provisions under ordinary criminal procedure; obstacles to confidential communication with counsel; insufficient independence of special courts from executive power; insufficient safeguards for the principles of presumption of innocence; provisions for discretionary *in camera* closed trial; provisions for secrecy of witnesses' identity; and limits to appeal.

The cases examined in the study that have been tried under special anti-terror laws not only reveal capital trials in which safeguards for fair trial have been inadequate; they also raise concerns that the suspension of safeguards has been resorted to far too broadly, encompassing cases that should not have been tried under special legislation at all, such as kidnapping and communal violence. The fact that the death penalty is involved only serves to heighten the concern.

Devender Pal Singh v. State, N.C.T. of Delhi and anr19 Devinder Pal Singh Bhullar was sentenced to death by a designated court in 2001 under the Terrorist and Disruptive Activities (Prevention) Act 1987 after being found guilty of involvement in the 1993 bombing of the Youth Congress Office in Delhi, which led to the deaths of many persons. The prosecution's case was that he had voluntarily confessed to his role in the bombing to the police. The prosecution relied almost solely on this alleged confession by the accused, which he subsequently retracted. The Supreme Court, sitting as a court of first appeal under the TADA, confirmed the death sentence in 2002. In a dissenting judgment, Justice Shah of the Supreme Court recommended acquittal of the accused, doubting the veracity and voluntary character of a confessional statement made to a police officer. Justice Shah concluded that there was no evidence to convict Bhullar and that a dubious confession could not be the basis for awarding the death sentence. But the majority bench, upholding the sentence, merely suggested that such concerns could be taken into account by the executive during their decision on clemency. Devinder Pal Singh Bhullar's mercy petition remains pending before the President. He is currently on death row in Tihar Jail, Delhi.

Judicial Discretion and Capital Punishment:

While successive Supreme Court constitutional benches have favoured judicial discretion rather than the setting out of detailed guidelines on sentencing, the study demonstrated that judicial discretion has proved inadequate as a safeguard against arbitrariness. The judgments in numerous cases demonstrate that the courts, including the Supreme Court, have not always followed the existing law and jurisprudence on death penalty cases consistently. In the same month, different benches of the Supreme Court have treated similar cases differently, often apparently reflecting their own positions for or against the death penalty. While in one case the defendant's youth could be a mitigating factor sufficient to commute the death sentence, in another it could be dismissed as a mitigating factor. In one case the gruesome nature of the crime could be sufficient for the Court to ignore mitigating factors and in another case a similar crime was clearly not gruesome enough.

Dhananjoy Chatterjee alias Dhana v. State of West Bengal20, In August 2004, Dhananjoy Chatterjee was executed for the 1990 rape and murder of a girl in the apartment building where he worked as a guard. He was the first person to be hanged in India for over six years, ending a *de facto* moratorium on executions.

Three days after the execution, a similar case of rape and murder of a child was heard on appeal by the Supreme Court *Rahul alias Raosaheb v. State of Maharashtra21* The victim in the former case was 13 years old; in the latter she was four-and-a-half. Neither of the accused had a previous criminal record, and in neither case was any report of misconduct while in prison. Yet the Supreme Court deemed Dhanajoy Chatterjee a menace to society and not only was his sentence upheld by the Court but he was subsequently hanged. In Rahul's case, he was not deemed a menace, and his sentence was commuted to life imprisonment. It is ironic that even while upholding Dhananjoy Chatterjee's death sentence in 1994, Justice Anand of the Supreme Court accepted that there were huge disparities in sentencing. He noted:

'Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby weakening the system's credibility.'

Two contradictory events over three days show that a decade later, the inconsistencies remain. Dhananjoy Chatterjee had completed over 14 years in prison, most of them under sentence of death and in solitary confinement, before he was executed in August 2004. No action had been taken on his case for nine years because the West Bengal state officials had failed to inform the High Court of the rejection of his mercy petition by the state governor. These facts were not considered a ground for commutation by the Supreme Court, which refused to be drawn on the issue of delay in dismissing appeals on his behalf in 2004.

In the case of *Gurmeet Singh v. State of Uttar Pradesh22* the Supreme Court similarly refused to take into account a delay of a number of years, caused in this case by the negligence of staff of the High Court of Allahabad. In March 1996 Gurmeet Singh had sought special leave from the High Court to appeal to the Supreme Court after the High Court had confirmed his death sentence. Despite several reminders sent by the jail authorities, there was no response from the High Court. Finally, after a petition had been filed in the Supreme Court, an inquiry was ordered which found that officials of the High Court had been negligent in failing to respond, and action was initiated against the officers responsible. Nonetheless, the Supreme Court refused to commute the sentence on the ground of delay, relying on the position that only delays in mercy petitions would be material for consideration. Gurmeet Singh is currently on death row in Uttar Pradesh.

In a judgment delivered in December 2006, a Supreme Court bench admitted the Court's failure to evolve a sentencing policy in capital cases *Aloke Nath Dutta and ors. v. State of West Bengal23*. The bench examined judgments over the past two decades in which the Supreme Court adjudicated upon whether a case was one of the 'rarest of the rare' or not and concluded: "What would constitute a rarest of rare case must be determined in the fact situation obtaining in each case. We have also noticed hereinbefore that different criteria have been adopted by different benches of this Court, although the offences are similar in nature. Because the case involved offences under the same provision, the same by itself may not be a ground to lay down any uniform criteria for awarding a death penalty or a lesser penalty as several factors therefore are required to be taken into consideration." The frustration of the Court was evident when it stated: "No sentencing policy in clear cut terms has been evolved by the Supreme Court. What should we do?'

In that particular ruling, the Court commuted the appellant's death sentence. On the same day, however, another bench of the Supreme Court upheld the death sentence imposed on an appellant who had convicted of murdering his wife and four children *Bablu @ Mubarik Hussain v. State of Rajasthan24*. After referring to the importance of reformation and rehabilitation of offenders as among the foremost objectives of the administration of criminal justice in the country, the judgment merely referred to the appellant's declaration of the murders as evidence of his lack of remorse. There was no discussion of the specific situation of the appellant, the motive for the killings or the possibility of reform in his case.

Mercy petition and Capital Punishment:

An appeal to a higher court during the judicial process is based on a challenge to the evidence heard at trial that has a bearing on the guilt of the accused or on the sentence imposed. The process focuses on the appreciation of evidence placed before the courts and is therefore circumscribed both by the nature of the evidence and by the rules for assessment of the evidence.

In contrast, the commutation powers of the executive are not limited by the evidence that can be considered by the courts. Mercy petitions to the executive are therefore often based on background personal and social factors that explain the conduct of the convicted person, their psychological and cultural background and other special features, including material that could not be placed before the courts. In practice, the exercise of clemency has even more potential for arbitrariness than the judicial process, especially since there is no requirement to give reasons for either accepting or rejecting mercy

petitions, and decisions are neither reported widely nor published. The absence of transparency in the clemency process is a serious concern, especially since the executive may be subject to pressures extraneous to the case.

In the case of Gurmeet Singh v. State of Uttar Pradesh*25* the Supreme Court similarly refused to take into account a delay of a number of years, caused in this case by the negligence of staff of the High Court of Allahabad. In March 1996 Gurmeet Singh had sought special leave from the High Court to appeal to the Supreme Court after the High Court had confirmed his death sentence. Despite several reminders sent by the jail authorities, there was no response from the High Court. Finally, after a petition had been filed in the Supreme Court, an inquiry was ordered which found that officials of the High Court had been negligent in failing to respond, and action was initiated against the officers responsible. Nonetheless, the Supreme Court refused to commute the sentence on the ground of delay, relying on the position that only delays in mercy petitions would be material for consideration. Gurmeet Singh is currently on death row in Uttar Pradesh.

The Criminal Procedure Code 1973 also contains a provision of death sentence. Section 354 (3) of the code provides that while awarding the sentence of death, the court must record, "a special reason" justify the sentence and state as to why and alternative sentence would not meet the ends of justice in that particular. Commenting on this provision of the code Mr. Justice V.R Krishna Iyer of the Supreme Court OF India observed that the special reasons with Section 354(3) speaks of provides reasonableness as envisaged in Article 19 as a relative connotation dependent on a variety of variables, cultural, social, economical and otherwise26.

The rationale of the above procedural safeguards and the awful consequences of a death sentence on the convict, his family and society were considered by the Supreme Court once again in the case of Allauddin Mian v. State of Bihar27 in this case the Apex Court held that when the court is called upon to choose between the convict cry 'I, want to live' and the prosecutor's demands "he deserves to die ", it must show a high degree of concern and sensitiveness in the choice of sentence.

The Supreme Court further observed that special reason clause contained in Section 354(3) of Cr. P. C. implies that the court can imposed extreme penalty of death in fit cases. The provision of section 235(2) of the code calls upon the court that the convicted accused must be given an opportunity of being hurt on the question of sentence. This provides the accused an opportunity to place his antecedents, social and economic background and mitigating and extenuating circumstances before the court.

Besides the statutory provisions the Constitution of India also empowers the President and the governor28 of the state to code of offenders in appropriate cases. These powers are, however co-extensive with the legislative powers, the power to cut short a sentence by an act of executive clemency is not subject to judicial control. It is exclusive domain of the executive in India and elsewhere.

The magistracy has more offend than not use Section 354(3) of the code of Cr.P.C to justify its stand either in support of or against capital punishment. The abolitionists see these provisions of green signal for dilution of capital punishment while for the receptionists the special reasons contemplated by Section 354(3) implicitly suggest that death sentence is legally and constitutionally permissible.

Conclusion:

In India Capital Punishment plays an important role in the rarest of rare cases. If we find out ratio of the capital punishment in India, very few cases in which this sentence is granted. There are so many cases in which the Supreme Court converted capital punishment into life imprisonment, these grounds may be as under-

- it constitutes a cruel, inhuman and degrading punishment;
- secondly, it is irrevocable;
- thirdly, it is capable of being inflicted on the innocent;
- fourthly, it does not act as a deterrent to crime;
- Fifthly it is a violation of the right to life provisions of the Universal Declaration of Human Rights and other international covenants.

Turning to the international situation, we find that the UN General Assembly has taken the official position that it is desirable to abolish the death penalty in all countries, that it should not be introduced for crimes to which it does not already apply, that the crimes to which it applies should be progressively reduced and that it should be employed only for the gravest of crimes.
But a large number of UN member states including India have not respected this decision.

Unit-III

1. Prisons in India
2. Indian Jail Reforms Committee Report 1919-20 (Recommendations)
3. Plea for setting up Prison Panel
4. Role of Prisons in Modern Penology
5. The problem of Overcrowding in prisons
6. The problem of prison Discipline
7. The problem of Prisoners' Health
8. The problem of Criminality in Prisons
9. Self-Government in Prisons
10. Prison Labour
11. The Prison Community
12. Classification of Prisoners and Jail Reform Committee's Report (1980-83), Views on classification of prisoners
13. The Problem of Undertrial Prisoners
14. Prison Reforms
15. Custodial torture in Prisons
16. Open Prisons in India

Prisons in India

Prisons in India and their administration, is a state subject covered by item 4 under the State List in the Seventh Schedule of the Constitution of India. The management and administration of prisons falls exclusively in the domain of the State governments, and is governed by the Prisons Act, 1894 and the Prison manuals of the respective state governments. Thus, states have the primary role, responsibility and authority to change the current prison laws, rules and regulations. Day-to-day administration of prisoners rests on principles incorporated in the Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950. An Inspector General of Prisons administers prison affairs in each state and territory.

The Central Government provides assistance to the states to improve security in prisons, for the repair and renovation of old prisons, medical facilities, development of borstal schools, facilities to women offenders, vocational training, modernization of prison industries, training to prison personnel, and for the creation of high security enclosures.

The Supreme Court of India, in its judgments on various aspects of prison administration, has laid down 3 broad principles regarding imprisonment and custody. Firstly, a person in prison does not become a non-person. Secondly, a person in prison is entitled to all human rights within the limitations of imprisonment. Lastly, there is no justification for aggravating the suffering already inherent in the process of incarceration.

Types of Prison

Prison establishments in India comprise of 8 categories of jails. The most common and standard jail institutions are Central Jails, District Jails and Sub Jails. The other types of jail establishments are Women Jails, Borstal Schools, Open Jails and Special Jails.[3]

Central jail

The criteria for a jail to be categorised as a Central Jail varies from state to state. However, the common feature observed throughout India is that prisoners sentenced to imprisonment for a long period (more than 2 years) are confined in the Central Jails, which have larger capacity in comparison to other jails. These jails also have rehabilitation facilities.

Maharashtra and Tamil Nadu have the highest number of 9 Central Jails each followed by Karnataka, Bihar, Madhya Pradesh, Rajasthan and Delhi with 8 each. Arunachal Pradesh, Meghalaya, Andaman & Nicobar Islands, Dadra & Nagar Haveli, Daman & Diu and Lakshadweep do not have any Central Jails.

District jail

District jails serve as the main prisons in States/UTs where there are no Central Jails.

States which have considerable number of District Jails are Uttar Pradesh (53), Bihar (30), Maharashtra and Rajasthan (25 each), Madhya Pradesh (22), Assam (21), Jharkhand (17), Haryana (16) and Karnataka (15).

Sub jail

Sub jails are smaller institutions situated at a sub-divisional level in the States.

Ten states have reported comparatively higher number of sub-jails revealing a well organized prison set-up even at lower formation. These states are Maharashtra (172), Andhra Pradesh (96), Tamil Nadu (94), Madhya Pradesh (92), Karnataka (74), Odisha (66), Rajasthan (60), West Bengal (31), Kerala (29) and Bihar (16). Odisha had the highest capacity of inmates in various Sub-Jails.

8 States/UTs have no sub-jails namely Arunachal Pradesh, Haryana, Manipur, Meghalaya, Mizoram, Sikkim, Chandigarh and Delhi.

Borstal School

Borstal Schools are a type of youth detention center and are used exclusively for the imprisonment of minors or juveniles. The primary objective of Borstal Schools is to ensure care, welfare and rehabilitation of young offenders in an environment suitable for children and keep them away from contaminating atmosphere of the prison. The juveniles in conflict with law detained in Borstal Schools are provided various vocational training and education with the help of trained teachers. The emphasis is given on the education, training and moral influence conducive for their reformation and prevention of crime.

Ten States namely, Andhra Pradesh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Maharashtra, Punjab, Rajasthan and Tamil Nadu have borstal schools in their respective jurisdictions. Tamil Nadu had the highest capacity for keeping 667 inmates. Haryana and Himachal Pradesh are the

only states that have the capacity to lodge female inmates in 3 of their Borstal Schools. There are no borstal schools in any of the UTs.

Open jail

Open jails are minimum security prisons. Prisoners with good behaviour satisfying certain norms prescribed in the prison rules are admitted in open prisons. Prisoners are engaged in agricultural activities.

Fourteen states have functioning Open Jails in their jurisdiction. Rajasthan reported the highest number of 23 open jails. There are no Open Jails in any of the UTs.

Special jail

Special jails are high security facilities that have specialized arrangements for keeping offenders and prisoners who are convicted of terrorism, insurgency and violent crimes. Special jail means any prison provided for the confinement of a particular class or particular classes of prisoners which are broadly as follows:

- Prisoners who have committed serious violations of prison discipline.
- Prisoners showing tendencies towards violence and aggression.
- Difficult discipline cases of habitual offenders.
- Difficult discipline cases from a group of professional/organised criminals.

Kerala has the highest number of special jails - 9. Provision for keeping female prisoners in these special jails is available in Tamil Nadu, West Bengal, Gujarat, Kerala, Assam, Karnataka and Maharashtra.

Prison Reforms in India

Punishing the offenders is a primary function of all civil societies. The drama of wrong doing and its retribution has indeed been an unending fascination for human mind. However, during the last two hundred years, the practice of punishment and public opinion concerning it has been profoundly modified due to the rapidly changing social values and sentiments of the people. Thus, punishment can be used as a method of reducing the incidence of criminal behaviour either by deterring the potential offenders or by incapacitating and preventing them from repeating the offence or by reforming them into law-abiding citizens. And the objective of punishment can only be achieved by the prison institution. The existence of prisons can be traced back to the ancient period. Initially there was a belief that rigorous isolation and custodial measures would reform the offenders. In due course it is being substituted by the modern concept of social defence.

Development of Thought:

Custody, care and treatment are the, three main functions of a modern prison organization. For over 100 years; there was emphasis on custody which, it was believed, depended on good order and discipline. The notion of prison discipline was to make imprisonment deterrent. Consequently, hard punitive labour with no regard for the human personalities and severe punishments were the main basis of prison treatment. More than 40 prison offences have been listed in the jail manuals of many States and any infraction was visited by quite a few barbaric punishments. Gradually, the objective of imprisonment changed from mere deterrence to deterrence and reformation. This led to the abandonment of some of the barbaric punishments and introduction of the system of awards for good work and conduct in the form of remission, review of sentences, wages for prison labour, treatment in open conditions, parole, furlough, canteen facilities etc. Revision has now been made to meet adequately the basic needs of food, clothing, medical care etc. Educational and vocational training programmes along with training in scouting etc, have been introduced in jails. Custodial requirements

for individuals are now at some places determined on the basis of their antecedents, conduct and performance etc.

Call for Prisoners Reforms at International Level:

The earlier United Nations Standard Minimum Rules for the Treatment of Prisoners,1955 consists of five parts and ninety-five rules. Part one provides rules for general applications. It declares that there shall be no 'discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. At the same time there is a strong need for respecting the religious belief and moral precepts of the group to which a prisoner belongs. The standard rules give due consideration to the separation of the different categories of prisoners. It indicates that men and women be detained in separate institutions. The under- trial prisoners are to be kept separate from convicted prisoners. Further, it advocates complete separation between the prisoners detained under civil law and criminal offences. The UN standard Minimum Rule also made it mandatory to provide separate residence for young and child prisoners from the adult prisoners.

United Nations Standard Minimum Rules for the Treatment of Prisoners,1990 or Tokyo Rules (passed by General Assembly Resolution 45/110 on 14 Dec, 1990)aimed at implementation of non-custodial measures as an alternative to strict imprisonment.

Prisoners Reforms: Prior independence and Post-independence

The modern prison system in India was originated by TB Macaulay in 1835. A committee namely, **Prison Discipline Committee**, 1836 was appointed, which submitted its report on1838. The committee recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners. Following the recommendations of the **Macaulay Committee** between 1836-1838, Central Prisons were constructed from 1846.The contemporary Prison administration in India is thus a legacy of British rule. It is based on the notion that the best criminal code can be of little use to a community unless there is good machinery for the infliction of punishments. In 1864, the **Second Commission of Inquiry** into Jail Management and Discipline made similar recommendations as the 1836 Committee. In addition, this Commission made some specific suggestions regarding accommodation for prisoners, improvement in diet, clothing, bedding and medical care.

The Indian Jail Reforms Committee 1919-20 which was appointed to suggest measures for prison reforms was headed by Sir Alexender Cardio. It visited many prisons and came to the conclusion that prisons should have not only deterring influence but they should have a reforming effect on inmates. As a measure of prison reform, the Jail Committee further recommended that the maximum intake capacity of each jail should be fixed, depending on its shape and size3.

A Jail Reform Committee, 1946 was constituted in the year 1946 for the formation of the jails. This committee gave the suggestions as:

a) The child offenders should be treated differently

b) Modern jails should be constructed

c) The classification of offenders should be scientific such as; Women offenders, Habitual offenders, Handicapped offenders.

Accordingly, the Government of India appointed the **All India Jail Manual Committee** in1957 to prepare a model prison manual. The committee submitted its report in 1960. In 1957, the Eighth Conference of the Inspector Generals of Prisons also supported there commendations of Dr. Reckless regarding prison reform. The report made forceful pleas for formulating a uniform policy and latest methods relating to jail administration, probation, after-care, juvenile and remand homes, certified and reformatory school, borstals and protective homes, suppression of immoral traffic etc. The report also suggested amendments in the Prison Act 1894 to provide a legal base for correctional work.

Prison reforms after independence of India:

After independence of India, the work on the reformation of jails speeded up. It was accepted that prisoners are also human beings and have right of humanitarian. So in 1956 the punishment of transportation (Kala-pani) was substituted by the imprisonment for life.

In 1949 **Pakawasha Committe** gave the permission to take work from the prisoners in making the roads and for that wages shall be paid. The treatment of prisoners on psychological and psychiatric basis received some attention as a measure of prison reform during 1950's. As G. B Vold rightly observed, "the rehabilitation activities of the modern prison are generally of two kinds, namely

(1) psychological and psychiatric treatment and

(2) Educational or vocational training programmes.

The Government of India invited Dr. W. C. Reckless, a technical expert of the United Nations on Crime prevention and treatment of offenders, to male recommendations on Prison reforms in 1951. Later on the Committee was appointed to prepare an **All India Jail Manual** in 1957 on the basis of the suggestions made by the Dr. Walter Rackless.

The All India Jails Manual Committee 1957-59 was appointed by the government to prepare a model prison manual. The committee was asked to examine the problems of prison administration and to make suggestions for improvements to be adopted uniformly throughout the India. The report was presented in 1960.they not only enunciated principles for an efficient management of prisons, but also lay down scientific guidelines for corrective treatment of prisoners.

Central Bureau of Correctional Services:

The establishment of a Central Bureau of Correctional Services at the Central level in 1961(renamed as the National Institute of Social Defence in 1975) was yet another important development. This was the first Central agency to undertake research, training, documentation etc, in social defence and assist and advise the States on matters relating to social defence.

Mulla Committee:

All India Committee on Jail Reforms 1980-83 was constituted by the government of India under the chairmanship of Justice Anand Narain Mulla. The committee suggested setting up of a National Prison Commission as a continuing body to bring about modernisation of prisons in India. The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with hardened criminals in prisons. To constitute an All India Service called the Indian Prisons and Correctional Service for the recruitment of Prison Officials. After-care, rehabilitation and probation should constitute an integral part of prison service. The Mulla Committee submitted its reportin1983. Some other recommendations of Mulla Jail Committee were as follows:

1. The conditions of prison should be improved by making adequate arrangements for food, clothing, sanitation and ventilation etc.
2. The prison staff should be properly trained and organised into different cadres.
3. The media and public men should be allowed to visit prison so that they may have first hand information about the conditions inside prison and be willing to co-operate with prison officials in rehabilitation work.
4. Lodging of undertrial in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners.
5. The Government should make an endeavour to provide adequate resources and funds for prison reforms.

Krishna Iyer Committee:

In 1987, the Government of India appointed the Justice Krishna Iyer Committee to undertake a study on the situation of women prisoners in India. It has recommended induction of morewomen in the police force in view of their special role in tackling women and child offenders.

Reform in Prison Labour Scheme:

The objectives of 'prison labour' have varied from time to time. The Indian Jail Reforms Committee of 1919-20 recommended that the main objective of prison labour should be the prevention of further crime by the reformation of criminals, for which they were to be given instruction in up-to-date methods of work enabling them to earn a living wage on release. The other objectives were to keep the offenders use fully engaged to prevent mental damage and to enable them to contribute to the cost of their maintenance. Work was allotted to prisoners on the basis of their health, length of sentence prior knowledge of a trade, and the trade which was most likely to provide a living wage on and if they chose to work they were to be paid wages. But in practice when they opt to work, they are employed on prison services and are in lieu thereof given labouring diet and no wages. Recently, the criminal law has provided that the period of detention as under trial shall be counted towards the sentence of imprisonment. This will mitigate some hardship but will not by itself encourage under trials to volunteer for work. Quite a large number of under trial prisoners are detained in jails for long periods as they are unable to afford fees of lawyers to defend them. In recent years the government has given some attention to this problem and efforts are being made to give free legal aid to the poor. If this facility is extended to a large number of poor persons, it would not only in the long runresult in the shortening of the period of detention of under trials but might in some casesresult in acquittal also.

Reformation of Women Prisoners:

The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep tem mentally fit and respond favourably to the treatment methods. A liberal correctional and educational programme seems necessary in case of women delinquents. Particularly, the women, who fall prey to sex offences, should be treated with sympathy and their illegitimate children should be assured an upright life in the society. The idea of setting up separate jails for women provides the free environment for providing special treatment to them. The first women jail was established in Maharashtra at Yarwada.

Reformation of Juveniles Offenders:

For the reformation of juveniles, correctional institutions, like Special homes (under the Juvenile Justice Act, 2000), certified schools and borstals are constituted for providing the special treatment, medical care, education, accommodation and vocational training to juveniles. Particularly, the States of Gujarat, Maharashtra and Tamilnadu have done acommendable work in direction of encouraging Borstal system through a well planned strategy. The young offenders in these States are released on license or parole after they have served at least two-thirds of commitment in a certified correctional school. These States have also established After-care Associations and Children Aid Societies to rehabilitate and reform the juvenile offenders.

Programmes to boost the reformation tendencies in prisoners:

There are some programmes as initiated by various State governments for the reforms of the prisoners as follows:

- **Educational Facilities**

The prison administration has provided facilities for education of inmates by getting affiliatedwith the Indira Gandhi National Open University and the National Open School. There arealso computer-training centres for the inmates. The most important aspect of the educationsystem in Jail is that educated

prisoners voluntarily teach less educated prisoners. An illiterateprisoner can look forward to being literate if his stay is more than a week. Library facility hasbeen provided with the support of non-governmental organizations. Vocational classes inEnglish/ Hindi typing and Commercial Arts are conducted by Directorate of Training &Technical Education and certificates are issued to successful students.

- **Prisoners' Panchayats**

Prisoners' bodies called "Panchayats" are constituted to help prison administration in the field of education, vocational education, legal counselling, kitchen, public works etc. Co-operative canteens at many prisons have been running successfully and the profits made are used for the recreation and welfare of prisoners. Prisoners are encouraged to participate in the management of their welfare activities. Sense of responsibility is inculcated in the prisoners to prepare them for social integration after release.

- **Vocational Training**

Training on pen manufacturing, book binding, manure making, screen printing, envelope making, tailoring and cutting, shoe-making etc. are regularly provided to the inmates. These training programmes have not only resulted in learning of different trades but also provided monetary gains to the prisoners. For the post-release rehabilitation of the prisoners, the Social Welfare Department of State Govt. provides loans for setting up self-employed units.

- **Yoga and Meditation**

The concept of introducing Yoga and meditation in the jail has created history and has received wide accreditation by various national and international human rights organization. For cleansing and disciplining mind, yoga and meditation classes are conducted in a big way with the help of various voluntary organizations. In the year 1994 Tihar Jail created a history by organizing a Vipassana Meditation camp for more than one thousand prisoners.

- **Facility for Psychological Treatment**

The prison authorities have started special psychological treatments for prisoners. Creative Art Therapy, which is psychotherapeutic in nature, is used in several settings. In respect to prison setting, the therapy serves as a reformatory process in several ways. Firstly and most importantly, it helps the inmates to express, channelize and ventilate their anger, grievances and feelings. One has to keep in mind that anyone convicted or otherwise exiled from the rest of the world is initially bound to have tremendous anger, aggression, and sense of helplessness, hopelessness and emotional problems. Therefore, by practicing Creative Art, the individual is able to release his pent up emotions and realise his worth.

- **Prisoners' Grievance Cell**

A prisoner grievance cell is working effectively under the charge of Petition Officer and immediate remedial steps are taken on the complaints/ grievances of the prisoners. Prisoners have been provided facilities to write complaints and send them to senior officers either through fixed complaint boxes located at convenient places or through the mobile petition box meant for petitions addressed to D.G. / Addl. I.G. (Prisons), which is taken to all the enclosures every day. Jail Superintendent, Deputy Superintendent and even senior officers have frequent meetings with the prisoners openly where prisoners' grievances are listened carefully and solutions provided.

- **Community Participation**

As a part of community participation in the reformation and social integration of prisoners after release, a large number of respectable members of non-governmental organisations, retired Major Generals, Eminent Psychiatrists, Psychologists, Principals and Teachers of various educational institutions have been conducting various activities in the jail. These programmes have very sobering and positive impact on the psyche of the prisoners, who have been shown the positive and constructive approach to life after interaction with them. NGOs' participation is mainly concentrated in the field of education, vocation and counselling. Apart from the formal education with the NGO support, the classes in various languages like Urdu, Punjabi, German, French etc. are also held. Some of the NGOs have trained selected prisoners on various trades and have been bringing job for them against payment of remuneration. They also rehabilitate these prisoners after their release.

- **Periodical Visit of Medical Officers:**

The reform initiatives taken up in Jail shows that force is always not necessary to control and correct the prison inmates. The manner in which the prison administration has taken up the system of rehabilitation, it becomes important for other prisons of the nation to follow suit. The central as well as state governments must also take the initiatives to take actions so that this system of rehabilitation is encouraged, promoted and practiced.

Role of Non-custodial Methods in Reformation of Prisoners:

The earlier penological approach held imprisonment, that is, custodial measures to be the only way to curb crime. But the modern penological approach has ushered in new forms of sentencing whereby the needs of the community are balanced with the best interests of the accused: compensation, release on admonition, probation, imposition of fines, community service is few such techniques used. About 80 per cent of convicted prisoners are sent to jails for short periods not exceeding three months, which only expose them to moral contamination and result in economic hardship and distress to their dependents. There is thus need for greater use of existing alternatives to imprisonment such as warning, probation, suspension of sentence, fines, release on personal bond etc., and also for introducing other alternatives of a non-custodial nature such as service to the community, payment of compensation to the victim of crime etc. Such punishments will involve the positive cooperation of the offender which is likely to be effective in his reformation. The addition of such punishment will add a new dimension to the penal system which will emphasize the idea of reparation to the community. Some of the main non-custodial measures are follows:

- **Probation**

The *Central Correctional Bureau* observed the year 1971 as *"Probation Year"* all over the country. Probation seeks to socialize the criminal, by training him to take up an earning activity and thus enables him to pick up those life-habits, which are necessary for a law-abiding member of the community. This inculcates a sense of self-sufficiency, self-control and self-confidence in him, which are undoubtedly the essential attributes of a free-life. The Probation Officer would guide the offender to rehabilitate himself and also try and wean him away from such criminal tendencies. The probation system plays a very important role in the prison reform.

- **Parole**

The parole system is an excellent way to allow prisoners to rehabilitate and get in touch with the outside world. Parole is a legal sanction that lets a prisoner leave the prison for a short duration, on the condition that she/he behaves appropriately after release and reports back to the prison on termination of the parole period. It must be noted that a parole is different from a "furlough". While parole is granted to a prisoner detained for any offence irrespective of the duration of imprisonment, a furlough is only granted to prisoners facing long sentences, five years or more. Furlough is matter of

right, but parole is not. However, an abuse of the system is a drag on the country. The urgent need of the hour is for police officials to acknowledge that the parole system is being misused and find ways to ensure that parole laws are properly enforced in prisons across the country.

- **Open Prisons**

Taking inspiration from Anglo-American developments in the correctional field of penology, the Indian penologists were convinced that India also cannot tackle its crime problem by putting criminals in prison cells. The institution of open prisons seems to be viable alternative to harsh imprisonment system. The whole thrust in these open-prison institutions is to make sure that after release the prisoners may not relapse into crimes and for this purpose they are given incentives to live a normal life, work on fields or carry on occupation of their choice and participate in games, sports or other recreational facilities. These are the minimum-security prisons. In this liberal remissions are given to extent of 15 days in a month. The State of Uttar Pradesh was first to set up an open air camp attached to Model Prison at Lucknow in1949. Other States, like Andhra Pradesh, Assam, Gujarat, Punjab, Kerala etc. are also set up open-air camps.

- **Remission**

Prisoners get remissions periodically for good conduct and work. Special remissions are also given for specific special services. The sentences are reviewed from time to time according to various rules and the prisoners are released before time if they satisfy the prescribed conditions.

- **Work Release**

Work release is considered to be a very effective reformation tool in modern criminal justice. In this method, the prisoner is allowed to work for pay in the society for part time basis. This gives him an opportunity to mix up with the society in a normal manner without any limitations. The control of the prison authorities in, however not completely taken away since he has to work within the permitted parameters and during non-working hours, he has to return the concerned correctional institution. The correctional authorities collect his earnings and which are paid to the prisoner on the completion of sentence. However it differs from parole as inmates continues live in and subject to control of jail authorities except the working hour. This helps the prisoner to adjust in the situation at the work place after the release.

It should be realized that if jail services in respect of reformative schemes are improved and facilities given, they can do a very important constructive job of rehabilitation. Developmental activities of the prison department, particularly in respect of welfare and production, should be incorporated in the five year plans.

The need for introducing radical changes in legal and administrative procedures to prevent long detention of under trials has been stressed. Legal aid to needy prisoners is also being given due importance. There is thus a clear trend to reduce the number of under trials and to expedite their trial in recognition of their human rights.

After-care for prisoners will assume greater importance when correctional programmes in prisons are enforced properly. Both voluntary and statutory after-care will have to be organised in future.

Suggestion on Prison Reform

Nowadays imprisonment does not mean to break the stones or grind the chakkies but the sense has changed. Undoubtedly, the condition of modern prison system is far better than that in the past but still much remains to be done in the direction of prison reforms for humane treatment of prisoners. The

following modification in prison administration can be suggested for improving the efficiency of these institutions:

1) The maintenance of prison establishment is an expensive affair. It is in fact an burden on the public. Therefore the offender should be confined to the prison for only a minimum period which is absolutely necessary for their custody. The elimination of long term sentences would reduce undue burden on prison expenditure. It is further suggested that where the term of imprisonment exceeds one year, a remission of one month or so per year be granted to the inmate so as to enable him home town and meet his relatives. This will help in his rehabilitation and after his release he can face the outside world courageously casting aside the stigma attached to him on account of imprisonment.

2) The women prisoners should be treated more generously and allowed to meet their children frequently. This will keep them mentally fit and respond favourably to the treatment methods. The woman who fall prey to sex offence should be treated with sympathy and their illegitimate children should be assured an upright life in the society. Women prisoners should also be allowed to meet their sons and daughters more frequently, particularly the attitude in this regard should be more liberal in case of under-trial prisoners. Women prisoners should be handled only by women police or prison officials. The idea of setting up separate women jails exclusively for women prisoners, however does not seem to be compatible keeping in view the heavy expenditure involved in the process.

3) The prisoners belonging to peasant class should be afforded an opportunity to go to their fields during harvesting season on temporary 'ticket on leave' so that they can look after their agriculture. This would enable them to keep in touch with their occupation and provide means of living to the other members of their family. Thus the unity of family life can be maintained which would help rehabilitation of the prisoner after his release from jail.

4) Thought the prisoners are allowed to meet their close relatives at a fixed time yet there is further need to allow them certain privacy during such meeting. The meeting under supervision of prison guards is really embarrassing for inmates as well as the visitors and many thoughts on the both sides remain unexpressed for want of privacy. The rights of prisoners to communicate and meet their friends, family, relatives and legal advisers should not be restricted beyond a particular limit.

5) The present system of limiting the scope of festivals and other ceremonial occasions merely to delicious dishes for inmates needs to be changed. These auspicious days and festivals should be celebrated through rejoicings and other meaningful programmes so that the prisoners can at least momentarily forget that they are leading a fettered life.

6) The existing rules to the restrictions and scrutiny of postal mail of inmates should be liberalized. This shall infuse trust and faith among inmates for the prison officials.

7) The prison legislation should make provision for remedy of compensation to prisoner who are wrongfully detained or suffer injuries to callous or negligent acts of the prison personnel. It is gratifying to note that in recent decades the Supreme Court has shown deep concern for prisoners right to justice and fair treatment and requires prison officials to initiate measures so that prisoners basic right are not violated and they are not subjected to harassment and inhuman conditions of living..

8) The education in prisons should be beyond three R's and there should be greater emphasis on vocational training of inmates. This will provide them honorable means to earn their livelihood after release from jail. The facilities of lessons through correspondence courses should be extended to inmates who are desirous of taking up higher or advanced studies. Women prisoners should be provided training in tailoring, doll making, embroidery etc. The prisoners who are well educated should not be subjected to rigorous imprisonment, instead they should be engaged in some mental cum manual work.

9) On completion of term of sentence, the inmates should be placed under an intensive 'After Care'. The process of After Care will offer them adequate opportunities to overcome their inferior complex and save them from being ridiculed as convicts. Many non penal institutions such as Seva Sadans, Nari Niketans and Reformation Houses are at work in different places in India to take up the arduous task of After Care and rehabilitation of criminals.

10) There is dire need to bring about a change in the public attitude towards the prison institutions and their management. This is possible through an intensive publicity programmes using the media of press, platform and propaganda will. It will certainly create a right climate in society to accept the released prisoners with sympathy and benevolence without any hatred or distrust for them. The media men should be allowed to enter into prison so that their misunderstanding about prison administration may be cleared. The Supreme Court, in its landmark decision in Ramamurthy v. State of Karnataka, has identified nine major problems which need immediate attention for implementing prison reforms. The court observed that the present prison system is affected with major problems of;

a) Overcrowding
b) Delay in trial
c) Torture and ill treatment
d) Neglect of health and hygiene
e) Insufficient food and inadequate clothing
f) Prison vices
g) Deficiency in communication
h) Streamlining of jail visits and
i) Management of open air prisons.

With legal and social referral services, to honor his right to be consulted and to offer his opinions when the prosecutor plea bargains with the accused, and to totally revamp the compensation-restitution idea. Some police departments report to victims the progress being made in investigating and solving their cases, and communities may provide such services as rape crisis centers and spouse abuse shelters to assist crime victims by intervening in the crisis and referring the victims to community and others resources in the case of rape, the women's movement has spurred victimologists-mostly males-to give more equitable and balanced attention to the issues surrounding what some have called "the most despicable but least punished crime."

Attention to the victim calls for an examination of the appropriate remedies forvictimization. Too often the remedies offered to poor victims reflect middle-class values. The victim‟ s point of view should be sought when systems are developed for compensating crime victims, and the concept of relative loss should be introduced indebate and deliberations for compensation.

Major Problems of Prisons Relevant to India

Despite the relatively low number of persons in prison as compared to many other countries in the world, there are some very common problems across prisons in India, and the situation is likely to be the same or worse in many developing countries.

Overcrowding, prolonged detention of under-trial prisoners, unsatisfactory living conditions, lack of treatment programmes and allegations of indifferent and even inhuman approach of prison staff have repeatedly attracted the attention of the critics over the years. Overcrowding

Congestion in jails, particularly among undertrials has been a source of concern. The Law Enforcement Assistance Administration National Jail Census of 1970 revealed that 52% of the jail inmates were awaiting trial (Law Commission of India 1979). Obviously, if prison overcrowding has to be brought down, the under-trial population has to be reduced drastically. This, of course, cannot happen without the courts and the police working in tandem. The three wings of the criminal justice system would have to act in harmony.

Speedy trials are frustrated by a heavy court workload, police inability to produce witnesses promptly and a recalcitrant defence lawyer who is bent upon seeking adjournments, even if such tactics harm

his/her client. Fast track courts have helped to an extent, but have not made a measurable difference to the problem of pendency. Increasing the number of courts cannot bring about a desired difference as long as the current `adjournments culture' continues (Raghavan 2004).

1. **Corruption and extortion**

Extortion by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems are predictable, but the low salaries that guards are generally paid severely aggravate them. In exchange for contraband or special treatment, inmates supplement guards' salaries with bribes. Powerful inmates in some facilities in Colombia, India, and Mexico enjoyed cellular phones, rich diets, and comfortable lodgings, while their less fortunate brethren lived in squalor. An unpublished PhD dissertation from Punjab University on The Functioning of Punjab Prisons: An appraisal in the context of correctional objectives" cites several instances of corruption in prison. Another article suggested that food services are the most common sources of corruption in the Punjab jails. Ninety five percent of prisoners felt dissatisfied and disgusted with the food served (quoted in Roy 1989)

2. **Unsatisfactory living conditions**

Overcrowding itself leads to unsatisfactory living conditions. Although several jail reforms outlined earlier have focused on issues like diet, clothing and cleanliness, unsatisfactory living conditions continue in many prisons around the country. A special commission of inquiry, appointed after the 1995 death of a prominent businessman in India's high-security Tihar Central Jail, reported in 1997 that 10 000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities and a shortage of medical staff (Human Rights Watch 2006)

"No one wants to go to prison however good the prison might be. To be deprived of liberty and family life and friends and home surroundings is a terrible thing."To improve prison conditions does not mean that prison life should be made soft; it means that it should be made human and sensible.Staff shortage and poor training Prisons in India have a sanctioned strength of 49030 of prison staff at various ranks, of which, the present staff strength is around 40000. The ratio between the prison staff and the prison population is approximately 1:7. It means only one prison officer is available for 7 prisoners, while in the UK, 2 prison officers are available for every 3 prisoners.

3. **Inequalities and distinctions**

"Though prisons are supposed to be leveling institutions in which the variables that affect the conditions of confinement are the criminal records of their inmates and their behaviour in prison, other factors play an important part in many countries" (Neier et al 1991). This report by the Human Rights Watch, specifically cite countries like India and Pakistan, where a „rigid" class system exists in the prisons. It states that under this system, special privileges are accorded to the minority of prisoners who come from the upper and middle classes irrespective of the crimes they have committed or the way they comport themselves in prison.

4. **Inadequate prison programmes**

Despite the problems of overcrowding, manpower shortage and other administrative difficulties, innovative initiatives have been undertaken in some prisons. For e.g. the Art of Living has been carrying out a SMART programme in Tihar Jail. This includes two courses per month and follow up sessions every weekend. Two courses are annually conducted for prison staff. But these are more by way of exceptions and experiments. A Srijan project there is aimed at providing social rehabilitation. However, such programmes are few and far between. Many prisons have vocational training activities, but these are often outdated. Hardly any of the prisons have well planned prison

programmes providing structured daily activities, vocational training, pre-discharge guidance and post-prison monitoring.

5. Poor spending on health care and welfare

In India, an average of US$ 333 (INR 10 474) per inmate per year was spent by prison authorities during the year 2005, distributed under the heads of food, clothing, medical expenses, vocational/educational, welfare activities and others.(National Crime Records Bureau 2005). This is in contrast to the US, where the average annual operating cost per state inmate in 2001 was $ 22,650 (the latter presumably also includes salaries of prison staff). The maximum expenditure in Indian prisons is on food. West Bengal, Punjab, Madhya Pradesh, Uttar Pradesh, Bihar and Delhi reported relatively higher spending on medical expenses during that year, while Bihar, Karnataka and West Bengal reported relatively higher spending on vocational and educational activities. Tamil Nadu, Orissa and Chattisgarh reported relatively higher spending on welfare activities.

The scheme for modernisation of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel. The components include construction of new jails, repair and renovation of existing jails, construction of additional barracks, improvement in sanitation and water supply and construction of staff quarters for prison personnel. Activities under the scheme have been construction of 168 new jails, renovation, repairs and construction of 1730 new barracks, construction of 8965 staff quarters as well as improvement of water and sanitation in jails. The scheme was extended upto 31.3.2009 without affecting the total outlay of Rs.1800 crores (Govt. of India, Ministry of Home Affairs). A second phase has been envisaged in 2009 with a financial outlay of Rs 3500 crores. However, questions have been raised whether modernisation can bring about change without integrity of purpose. Can isolation of any institution from public support and scrutiny make it transparent and attentive to its objectives? Any government that claims attempting to integrate the felon into society first of all should declare prison is as much a public institution as that of a university or hospital; remove its isolation and integrate it functionally and physically into society; make police, judiciary, medical and educational departments, conscious of their accountability for pathetic prison conditions (Karnam 2008). Otherwise things are not going to change just with allocation of crores of rupees and launching of schemes.

6. Lack of legal aid

In India, legal aid to those who cannot afford to retain counsel is only available at the time of trial and not when the detainee is brought to the remand court. Since the majority of prisoners, those in lock up as well as those in prisons have not been tried, absence of legal aid until the point of trial reduces greatly the value of the country‟ s system of legal representation to the poor. Lawyers are not available at the point when many of them mostly need such assistance. A workshop conducted by the Commonwealth Human Rights Watch in 1998 in Bhopal, focused on several aspects related to legal aid. It was pointed out that 70% of the prison population is illiterate and lacks an understanding of prisoner's rights. Thus the poor in prison do not always get the provisions in law though the State is obliged to provide legal aid. As also observed by the Mulla Committee, most prison inmates belong to the economically backwards classes and this could be attributed to their inability to arrange for the bail bond. Legal aid workers are needed to help such persons in getting them released either on bail or on personal recognizance. Bail provisions must be interpreted liberally in case of women prisoners with children, as children suffer the worst kind of neglect when the mother is in prison.

The lack of good and efficient lawyers in legal aid panels at that time was also a concern raised. Several suggestions were made to speed up trial processes so that the population of undertrials could be reduced. Some of the suggestions provided were expeditious holding of trials, making it possible for undertrials to plead guilty at any stage of the trial, system of plea bargaining. In a

seminar, efforts made at the Tihar Jail by the University of Delhi faculty and students of law in the field of legal aid were highlighted. These included imparting legal literacy to the prisoners, sensitizing the prison administration, taking up individual prisoners to provide legal aid, involving para-legal staff to work with prisoners, both convicts and undertrials. The seminar suggested for Lok Adalat involvement to be greater and that constant monitoring of prisons was necessary to identify inadequacies and shortcomings in the prison administration. It finally suggested the need for law reform as essential to the entire system of legal aid.

A similar finding was noted in the NIMHANS-National Commission for Women study in the Central Prison, Bangalore. Many of the women were illiterate, had never stepped out of their houses, had no financial resources and many had been arrested on petty charges. Most had no idea about legal procedures, such as, what is the process of trial, how to arrange for a defense lawyer, what laws exist to protect their children or property etc.

7. Abuse of prisoners

Physical abuse of prisoners by guards is another chronic problem. Some countries continue to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. In many prison systems, unwarranted beatings are an integral part of prison life. Women prisoners are particularly vulnerable to custodial sexual abuse. The problem was widespread in the United States, where male guards outnumbered women guards in many women's prisons. In some countries, Haiti being a conspicuous example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence.

A book reviewing prison services in Punjab, reported that, „to get food supplements, or blankets in winter, class c-prisoners must fan the convict officers, or massage their legs, or even perform sexual favours for them. The enslavement of other prisoners to the convict officers who effectively run the prisons is particularly severe for new comers (known as amdani). They are teased, harassed, abused and even tortured as part of the process of breaking them in (Human Rights Watch 2001).

8. Consequence of prison structure and function

In many places, non-governmental organisations provide rehabilitation programmes and a few provide aftercare. Some notable examples include the Prison Fellowship International. Most prisoners are ill prepared for release. No steps are taken to minimise their chance of committing re-offences. Programmes to develop a set of values, the ethos of honest labour and to build pro-social ties with the community are essential. Well-established prisons with continuous good leadership generally impart literacy to the illiterate inmate and offer facilities for higher education to those who are already reasonably educated and are willing to improve on their knowledge so that they are usefully employed after getting back to the community.

GRIEVANCES AND PROBLEMS OF VICTIMS

The grievances of the victims can be summarized as follows-

1. Inadequacy of the law in allowing the victim to participate in the prosecution in a criminal case instituted on a police report.
2. Failure on the part of the police and prosecution to keep the victims informed about progress of the case.
3. Inconvenience during interrogation by the police and lengthy court proceeding.
4. Lack of prompt medical assistance to the victims of body offences and victims of accident.
5. Lack of legal assistance to the victim.
6. Lack of protection when the victims are threatened by the offender.
7. Failure in restitution of victim.

Along with these grievances, the victims of crimes faced multifarious problems:

I Economic strain of the family

II Change in Social role of dependents.
III Frustration and helplessness leading to suicide.
IV Social stigma.
V Emergence of criminal behavior.

An important aspect of investigating a violent crime is an understanding of thevictim and the relation that their lifestyle or personality characteristics may have contributed to the offender choosing them as a victim. Please do not misunderstand the previous statement. In no way are victims being blamed for becoming a victim of a violent crime. Even high risk victims (to be described shortly) have the right to live how they wish without becoming a victim of the type of offenses described on this site. Yet the fact remains, that to understand the offender, one must first understand the victim.

Victims are classified during an investigation in three general categories thatdescribe the level of risk their lifestyle represents in relation to the violent crime that has been committed. The importance of understanding this in an investigation is directly related back to the level of risk to the offender during the commission of the crime. This information is important to the investigation to better understand the sophistication or possible pathology of the offender. High Risk Victims - Victims in this group have a lifestyle that makes them a higher risk for being a victim of a violent crime. The most obvious high risk victim is the prostitute. Prostitutes place themselves at risk every single time they go to work. Prostitutes are high risk because they will get into a stranger's car, go to secluded areas with strangers, and for the most part attempt to conceal their actions for legal reasons. Offenders often rely on all these factors and specifically target prostitutes because it lowers their chances of becoming a suspect in the crime. Therefore, in this example, the prostitute is a high risk victim creating a lower risk to the offender. Moderate Risk Victims - Victims that fall into this category are lower risk victims, but for some reason were in a situation that placed them in a greater level of risk.

A person that is stranded on a dark, secluded highway due to a flat tire that accepts a ride from a stranger and is then victimized would be a good example of this type of victim level risk. Low Risk Victims - The lifestyle of these individuals would normally not place them in any degree of risk for becoming a victim of a violent crime. These individuals stay out of trouble, do not have peers that are criminal, are aware of their surroundings and attempt to take precautions to not become a victim. They lock the doors, do not use drugs, and do not go into areas that are dark and secluded.

The victim is essentially an inseparable part of crime. Therefore the phenomenon of crime cannot be comprehensively explained without incorporating the victim of a crime. Crime victim, despite being an integral part of crime and a key factor in criminal justice system, remained a forgotten entity as his status got reduced only to report crime and appear in the court as witness and he routinely faces postponements, delays, rescheduling, and other frustrations. All their means loss of earnings, waste of time, payment of transportation and other expenses, discouragement, and the painful realization that the system does not live up to its ideals and does not serve its constituency, but instead serves only itself. Many believe that the victim is the most disregarded participant in criminal justice proceedings. It is, therefore, the Indian Higher Courts have started to award the compensation through their writ jurisdiction in appropriate cases.

Open Prison

An open prison, also called minimum-security prison, open camp, or prison without bars, is a prison which is open in four respects:

(i) Open to prisoners, i.e., inmates can go to market at sweet will during the day but have to come back in the evening;

(ii) Open in security, i.e., there is absence of precautions against escape, such as walls, bars, locks and armed guards;
(iii) Open in organisation, i.e., working is based on inmates' sense of self-responsibility, self-discipline, and self-confidence; and
(iv) Open to public, i.e., people can visit the prison and meet prisoners. It is the kind of authority and the nature of management transferred to the inmates and the degree of freedom from physical restraints (to escape) that should be the real measure of openness of an open prison.
The main objectives of establishing open prisons are: to reduce overcrowding in jails, to reward good behaviour, to give training in self-reliance, to provide dependable permanent labour for public works, to prevent frustrations and create hope among long-termers, to provide training in agriculture and industry, to examine the suitability of releasing offenders from prisons, and to enable prisoners to live with their family members (in some states).
The first open prison was established in Switzerland in 1891, in the United States in 1916, in Britain in 1930, and in the Netherlands in 1950. By 1975, there were 13 open prisons in England, 25 in the United States, four each in Sri Lanka and the Australia, three in Hong Kong, two each in New Zealand, China, Japan, Malaysia, Pakistan, Philippines and Thailand, and 23 in India (Ghosh, 1992: 9-10).
In India, the first open prison was started in 1905 in Bombay Presidency. The prisoners were selected from the special class prisoners of Thane Central Jail, Bombay. However, this open prison was closed in 1910. The state of Uttar Pradesh established the first open prison camp in 1953 for the construction of a dam over Chandraprabha River near Benaras (now Varanasi).
After completing this darn, the prisoners of the °Pen camp were shifted to a nearby place of constructing the dam over Karamnasa River. The third camp was organised at Shahbad for digging a canal.
Encouraged by the success of these temporary camps, a permanent camp was started on March 15, 1956 at Mirzapur with a view to employing prisoners on the work of quarrying stones for Uttar Pradesh government cement factory at Churk, Mirzapur.
The initial strength of prisoners in this camp was 150 which went up to 1,700 but has now come down to 800. Another permanent camp-called Sampurnanad Shivir-was established in 1960 at Sitarganj in Nainital district in Uttar Pradesh.
At the time of its establishment, Sampurnanand camp had 5,965 acres of land but later on 2,000 acres of reclaimed land were handed over to the Uttar Pradesh government for the rehabilitation of displaced persons. At present, thus, the Sitarganj camp has 3,837 acres of land and is one of the largest open prisons in the world.
Prisoners selected for the camp from different jails of the state are transferred to district jail, Bareilly, from where they are shifted to the camp.
The camp staff at present consists of one superintendent, five jailors, 12 deputy jailors, 16 assistant jailors, three assistant medical officers, six pharmacists, 126 warders and accountants, etc. The camp has capacity to accommodate 1,000 prisoners. However, on an average about 650 prisoners live in the camp during the year.
Uttar Pradesh was followed by many other states in establishing j open prisons. In 1996, there were 24 open prisons (excluding semi-open camps) found in 12 states in India. Of these, three prisons are located in Maharashtra Yeravada (1955), Paithan (1968) and Chandrapur (1972), three in Rajasthan Durgapur (1955), Sanganer (1963), and Suratgarh (1964), two in Karnataka Sanmdathi (1968) and Koramangala (1971), two in Uttar Pradesh Mirzapur (1956) and Sitarganj (I960), two in Tamil Nadu Singanallar (1956) and Salem (1966), two in Gujarat Amreli (1968) and Ahmadabad (1972), two in Andhra Pradesh Hyderabad (1954) and Anantapur (1955), two in Bihar, two in Punjab, one in Kerala Nettukeltheri (1962), one in Assam Qorhat (1964), and one in Himachal Pradesh Bilaspur (I960).
The area of open prisons in different states varies from 10 to 50 acres except in Andhra Pradesh (which has 1,427 acres), and Sitarganj camp, Nainital, Uttar Pradesh (which has 3,837 acres). The open prisons,

usually located on the outskirts of a town fall within five kilometers of the nearest town, except in Kerala and Uttar Pradesh where they are situated 15 to 35 kilometres from the nearest towns.

The capacity of prisons varies from less than 100 to 1,000 prisoners. The nature of accommodation also differs from place to place. Assam, Kerala, and Himachal Pradesh prisons have permanent barracks; Mysore prison has pre-fabricated structure, and Andhra Pradesh and Maharashtra prisons provide dormitories with asbestos roofs.

Some of these prisons provide work only in agriculture, some in industries, and some both in agriculture and industries.

Eligibility conditions for admission to open prisons vary from state to state. The main conditions are:

(1) Prisoners should be willing to abide by the rules of open prisons;

(2) They should be physically and mentally fit to work;

(3) They should have been sentenced for terms of one year or more and must have spent at least one-fourth of the total term of imprisonment in jail;

(4) They should have record of good behaviour in prisons;

(5) They should not be below 21 years or above 50 years as prescribed by the state;

(6) They should not have been convicted for certain types of crimes (like dacoity, forgery, counterfeiting, etc.);

(7) They should not have any case pending in the courts;

(8) They should not be habitual offenders; and (9) they should not be class I (one) prisoners or women prisoners.

The procedure for selection of prisoners for open prisons is simple. The superintendents of prisons prepare lists of prisoners to be sent to open prisons on the basis of the eligibility conditions (as described above).

These lists are sent to the selection committees which examine each case-history and make the final selection.

About 60 per cent of prisoners in open prisons are those who have been sentenced for more than 10 years, while about 85 per cent are those who have been imprisoned for more than 5 years. The average stay in the prison varies from two to three years. The wage system also varies from prison to prison.

It may thus be maintained that open prisons differ from the ordinary prisons in four respects: in structure (affecting organisation and administration), in role systems (affecting work and interaction in everyday life), in normative systems (affecting social restrictions and expectations guiding behaviour), and in value orientations (affecting conduct and training).

While inmate system in ordinary jails is dominated by a set of values and norms which are largely anti-social and anti- administration the inmate system in open prisons is pro-adiainisttition. Open prisons are characterised more by consensus among inmates.

Ghosh (1993) studied 200 prisoners from two open prisons (Sitarganj and Mirzapur) in Uttar Pradesh in 1991 for analysing attitudes, Personality traits, and ref- Tnation of prisoners in open jails. For a comparative study (control group), she select 200 prisoners from two central jails of Banaras (Varanasi) and Bareilly in the same slate.

She focused on two aspects: personality variables and adjustment level. In Personality variables, she studied three aspects: (a) self-esteem, (b) Suilt-feeling, anxiety and insecurity, and (c) extroversion, neuroticism, and psychoticism. She found that:

i. More prisoners in open prisons indicate a high level of adjustment to personal problems as well as to co-inmates and the staff than those in closed prisons. The high adjustment is the result of better facilities and free environment.

ii. Inmates in open prisons exhibit more positive self-esteem and positive attitude towards co-inmates than those in closed prisons.

iii. Anxiety, insecurity and guilt-feelings are found more among the inmates of closed jails than open camps.

iv. Attitude towards authorities is more cooperative among prisoners in open camps than those in closed jails.
v. Psychoheism, neuroticism and extroversion among convicts are found to be much less in open prisons than in closed prisons.
vi. Inmates of open prisons show more positive attitude towards society than those in closed prisons.
These findings thus point out the positive use of open prisons in the reformation and rehabilitation of criminals. It may, however, be noted that open prisons need to be restructured and reorganised. What really needed is:
1. Establishing open prisons in all those states where they do not exist at present.
2. Framing common rules of eligibility for admission and providing facilities for offenders in open prisons in all states.
3. Laying down common rules of remission for inmates. For instance, a prisoner in Sitarganj camp, Nainital (Uttar Pradesh) and Sanganer prison, Jaipur (Rajasthan) earns remission at the rate of one day for one day stay. In addition, he is entitled to fifteen days' remission for good conduct every year. Besides, the superintendent and Inspector General of Prisons are also empowered to grant special remission. The prisoners are also permitted to keep their families with them, if they so desire.
4. Checking biases, pressures and corruption in preparing lists of prisoners to be sent to open prisons by superintendents.
5. Assigning powers to the courts for sending certain types of offenders directly to open prisons.

Unit-IV Victimology

1. Nature and Development, categories
2. Compensation
3. Compensation to persons groundlessly arrested
4. Exgratia payment
5. Application of articles 21 and 301A - Comparison
6. National Police commission 1977-80

In ancient period, criminal law was victim oriented and they enjoyed the dominant position in entire criminal legal system with certain short comings. Even certain trees and animals were considered sacred and cutting and killing them were considered heinous sin and criminal had to pay heavy compensation and undergo rigorous punishment. That's why Stephen Schafer calls it 'Golden Age' of victims.

Subsequently in 16th and 17th century, with the advent of the industrial revolution, renaissance and French revolution, a sea change was noticed in every walk of life's. This gave birth to 'Adversarial System'. This was the period, in Stephen Scafer's terminology, of decline in victim's role in 'criminal justice system'. Now the criminal law became offender oriented and the suffering of victim, often immeasurable, were entirely overlooked in misplaced sympathy for the criminal. The victim became the forgotten men of our criminal justice system.

It was in 20th century, after the close of the Second World War some criminologist took upon themselves, the task of understanding the importance of studying the criminal-victim relationship, in order to obtain a better understanding of crime, its origin and implication. Because of their efforts, U.N passed a charter for victim's right and on similar line the European convention on the compensation of victims of violent crime'. Therefore many states of Europe and America enacted their legislations for victims compensation in criminal justice system. Therefore, victim's movement has been regaining momentum in whole world but with different shapes and been regaining momentum in whole world but with different shapes and nature.

Victimology as concept

Definitions-

- 'Victim' means natural person who, individually or collectively, have suffered harm including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under scope.
- A person is a victim regardless of whether the crime is reported to the police, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between perpetrator and the victim. The term 'victim' also includes, where appropriate the immediate family or dependants of the direst victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization.

Definition of victim under *Victims Rights Act* means

- A person against whom an offence is committed by another person;
- A person who, through, or by means of an offence committed by another person, suffers physical injury, or loss of, or damage to, property;
- A parent or legal guardian of a child, or of a young person; and
- A member of the immediate family of a person who, as a result of an offence committed by another person, dies or is capable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

Victimology is a relatively young branch of academic research. Its objective is to gain knowledge about victims of crime and abuse of power. Victimology has from its inception adopted an interdisciplinary approach to its subject matter. Contributions are being made by experts from fields as diverse as academic lawyers, criminologists, clinical and social psychologists, psychiatrists and political scientists. There are specialized international journals for victimology; there is a world society of victimology and there are a number of regional and national societies of victimology. The purpose of the study of victimology is to enhance our understanding regarding victims and impact of crime on them. The aims of victimology relate to the meaning and issues of victimology. Therefore, the study of victimization is the study of crime giving importance to the role and responsibility of the victim and his offender.

1. To analyse the magnitude of the victims problems;
2. To explain causes of victimization; and
3. To develop a system of measures to reduce victimization.

Today, the concept of victim includes any person who experiences the injury, loss, or hardship due to any cause. Also the word victim is used rather indiscriminately; e.g. cancer victims, accident victims, victims of injustice, crime victims and others. The thing that all these kinds of usages have in common is an image of someone who suffered injury and harm by forces beyond his or her control. The rapidly developing study of criminal- victim relationship has been called "victimology" and it is treated as an integral part of the general crime problem. The word victimology was coined in 1947 by a French lawyer, Benjamin Mendelsohan. Victimology is basically a study of crime from the point of view of the victim, of the persons suffering injury or destruction by the action of another person or a group of persons.

According to Viano, there is a rather well-developed vocabulary in English connected with the idea of victim:

Victimhood: the state of being victim.
Victimizable: capable of being victimized
Victimization: the action of victimizing, or fact of being victimized, in various senses.
Victimizer: one who victimizes another or others.

Victimology focuses on the victims' relationship to the criminal. Hence, there can be two major sub-areas of victimology.

1. The one relating to the scientific study of criminal behaviour and the nature of the relationships which may be found to exist between the offender and the victim; and
2. The other relating directly to the administration of justice and the role of system of compensation and restitution to the victim.

Scope of Victimology

Shinder, 1982- "…it investigates the relationship between offender and the victim in crme causation. It deals with the process of victiminzation, of becoming a victim, and in this context directs much of its

attention to the problem victim-offender, sequence, i.e. the question of whether or not victimization can have crimogenic effects or can encourage crime".

Hence, the definition above given makes it clear that victims are the predominant concern of the victimology. They are central figures in victimology. The study of victims I relation to the legal system of particular country is main subject matter of study of the victims. Victimology has come of age. Victims, their needs and their rights, are being constantly acknowledged in words if not in deed. The victim has become a political tool or weapon depending upon ones point of view, but the concept and issue have, in a few short years moved from the domain of a hand full of pioneers to the Council chambers of the United Nations. And the people we know have made the difference.

1. Victimology is study of crime from victim's point of views
2. Victimology analysis the victim-offender relations and the interactions between victims and the criminal justice system.
3. Victim of abuse of power.
4. Victimology is also study of restitution and compensation or reparation of the damages caused to him by perpetrator of crime.

The victimology is study of victimological clinic.

CONTRIBUTIONS MADE BY THE UNITED NATIONS

The basic purpose of United Nations is to protect the human rights of people and to maintain the peace in this world. Therefore, for the improvement of the humanity, United Nations has been playing a great role in protecting the human rights of the victims of crime. From time to time it has been calling the international conventions, declarations and other forms of international seminars. One of the most important developments in the field of victimology in the last twenty years has been the formal approval by the General Assembly of the United Nations on November 11, 1985 of the "UN Declaration of basic Principles of Justice for Victims of Crime and Abuse of Power". In the Declaration the broadest definition of victim has been given in paragraphs 1&2. The victim is not the person who himself suffered harm physical, emotional or economic loss but term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and person who have suffered harm in intervening to assist victims in distress or to prevent victimization. Following rights have been granted to victims:

- ***Access to justice and fair treatment***

It is said that victims should be treated with compassion and dignity. They are entitled to justice and prompt remedy provided under national legislation. It is important o provide the information to the victims regarding his role, scope, timing and progress of proceedings and disposition of their cases; while allowing the views and concerns of victims to be presented at appropriate stages when their personal interests are affected without prejudice to accused. It is also important to provide proper assistance to victims throughout the legal process and to take measures to minimize inconvenience to victims and more importantly protect their privacy and ensure their safety. Of course, avoiding unnecessary delay in the disposition of cases and execution of orders or decrees granting awards to victim

- ***Restitution***

Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

- ***Compensation***

When compensation is not fully available from the offender or other sources, states should endeavor to provide financial compensation to:

1. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
2. The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
3. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the state of which the victim is a national is not in a position to compensate the victim for the harm.

Victim participation in crime

Dr Hans Von Hentig made the first ever study of the role of victims in crime and found some general characteristics among them which may be summarized as follows-

1. The poor and ignorant and those who are greedy are the victims of offences involving fraud.
2. The victim of larceny (theft) or intoxicated or sleeping persons.
3. Wanton or sensual persons may become victim due to situations precipitated by themselves.

Mendelsohn studied victim on the basis of their contribution to crimes and classified them into following categories-

1. Completely innocent victim, e.g. children, person in sleep.
2. Voluntary victim, e.g. who commit suicide.
3. Victims who are more guilty than the offenders, e.g. who provoke others to commit crimes.

Persons needing special attention

Certain categories of vulnerable persons and victims needs special and greater attention-

1. Elderly Victims

In western countries elderly persons tend to be in lower income groups and have, therefore, needs special attention. In U.S.A. the problem of crimes against elderly persons is sufficiently serious to have drawn the attention of White House Conference on Ageing held in 1973.

These factors may not be much relevant in traditional countries like India where elderly people by and large, live with their children and they do not generally have to face any peculiar problems of physical insecurity. Even though Indian Parliament have enacted legislation for protection of old age persons in 2007, namely- "Maintenance and Welfare of Parents and Senior Citizens Act, 2007."

2. Child Victims

The problem requires attention regarding offences involving violence in general and sexual abuse in particular. They need special attention because inept handling by the law enforcement agencies may prove to be even more damaging than the crime committed against the child. Some special measure are, therefore called for which may do away with the appearance and cross-examination of the child in the law court. An innovation in this area has been introduced in Israel regarding the 'Reception of the Evidence Revision (Protection of Children) Act, 1955. The purpose of law is to protect the child from the undesirable effects of testimony in the police station or the court. Under this law a child is examined by a young "interrogator" who decides as to under what conditions the child should, 3if at all, appear before the court.

3. Victim of Sex Offences

Offences against women in particular serious offences such as that of rape have been increasing everywhere including in traditional societies like India and greater attention is now being given to the problem of victims vis-à-vis to the criminal justice system. Perhaps this class of victims, irrespective of the age factor, deserves the maximum consideration in view of the emotional, psychological and human problems involved. The police and court proceedings may be as traumatic as the offence itself which led to the proceedings. The feeling is almost universal among the victims that instead of being treated as victims, they are treated by the police and law agencies as if they themselves are the culprits. The rules of criminal law and evidence, for all practical purposes are titled against the victim as evident by the requirements given below;

- It is for the prosecution to prove the lack of the consent on the part of the victim. The courts often insist that proof to be given of the resistance offered by the victim.

- The credit of rape victim may be impeached by showing that she was of generally immoral character. Highly humiliating and scandalous questions are often put to the victim despite the legal bar against the questions. Lastly, some legislative measures have been introduced in order to alleviate the sufferings of the rape victims.

Disclosing the identity of the victim of the offence of rape has been made punishable. Proceedings in a rape trial are to be held in camera. A new provision has been introduced in the Evidence Act, 1872 laying down the presumption that there is no consent of a victim of rape if the offence was committed by the husband during judicial separation from the victim and in cases where the offence was committed while the victim was in custody of the police or were in hospital or in a rehabilitation home.

In USA one significant development has been the creation of 'Rape Crisis Centers , these Centers' have all female participants including some Rape Victims whose common concern is the problem of Sex Crimes and they aim at providing counselling and other therapeutic measures to the victims.

4. Female Victim

In western society, the issue regarding criminality against women generally pertain to and are confine to sexual offences but in Indian setting, women are exposed to gang rape by police men or by dominant cast groups, sati, wife beating, prostitution and even occasional witch-hunting. Legislation exists but effective enforcement of the laws is not forthcoming.

Dowry death caused by the husband and in-laws of the helpless women, who are unable to fulfill their husband's or in-laws' demand based on greed, are quite often given the color of suicide.

5. Weaker section

Members of ethnic, religious or linguistic minorities in pluralistic societies may be especially vulnerable to crime, in conflict resulting from socio-economic imbalance and political factors. A number of caste and communal riots occur each year in the country and lead to the murder, rape and looting of property

on a large scale in which the main sufferers obviously are those belonging to minority and weaker sections. Hardly any administrative or legal action is possible and even lesser is the possibility of the protection of victims and of punishment to the perpetrators of the ghastly crimes.

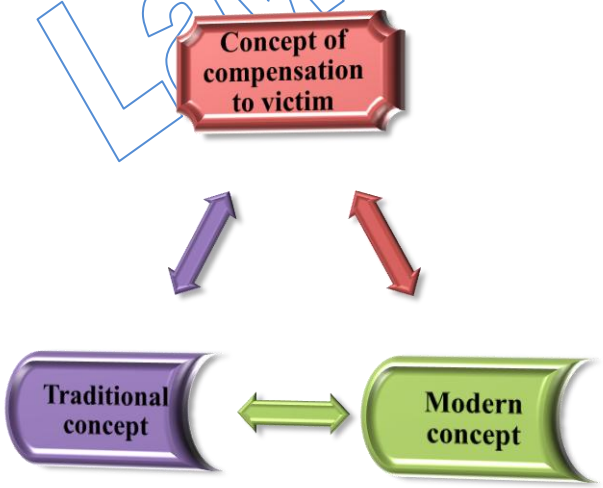
Compensation under Indian Constitution

Recently the Supreme Court of India has given a new dimension to the Article 21 by interpreting it dynamically so as to include compensation to the victims under its scope. Indian constitution has several provisions which endorse the principle of victim compensation. In one case the Supreme Court, considering the plight of many rape victims in the country, wanted the National Commission for Women to draw up a scheme for compulsory payment to victims of sexual violence. Despite the sympathy expressed in several circles, victim compensation law continues to be in an unsatisfactory acknowledging in criminal justice with the result there is very little interest shown by them in successful prosecution of criminal cases.

Besides the many judgments of various High Courts and the Supreme Court of India, the Law Commission of India has also submitted the crucial Reports in which it has recommended to provide the compensation to the victims of crime. Among many reports, 142nd, 144th, 146th, 152nd, 154th and 156th are very important reports which have made very important contributions towards compensation of victims. Following the various reports and judicial decisions, the Government of India has made amendments in the Code of Criminal Procedure and s.157A has been inserted in 2009.

Fifth Law Commission, in 42nd report dealt with compensation to victim of crime in India. While dealing, it referred to and highlighted the "three patterns" of compensating victims of crime as reflected in Code of Criminal Procedure of France, Germany, and (Former) Russia. The three patterns are:

- Compensation by the state;
- Compensation by the offender either by asking him to pay it from the fine imposed or a specified amount; and
- 3) Duty to repair the damage done by the offender.



a. Traditional concept

"Ubi remedium ibi jus" principle was traditionally applicable for awarding compensation. Almost in all primitive society the concept of true criminal law was unknown. Every crime including murder could be paid for by way of pecuniary redress. Indeed every crime was a civil wrong and not an offence against

society at large. All old codes- Roman, German, English or Islamic gave emphasis on the question of compensation and restitution.

b. Modern concept

"Ubi jus ibi remedium" principle is now applicable. Modern concept of compensation is that no one should left without remedy.

In U.K, Compensation are payable in under the 'criminal injuries compensation scheme, 1964.' The basis of quantum of compensation is same as that of damages in civil injuries and the money payable is for pain and suffering& loss of earning capacity. Under the revised scheme of 1973, it is now possible to give compensation for injuries caused by one family member to another. The Criminal Justice Act of U.K. provides that if a court contemplates to impose both fine and compensation order, and the offender lacks the capacity for both the payments, the court is to issue compensation order only. Since 1988, the law requires the court to record reason if no order for compensation is passed.

In U.S.A, California was the first State to introduce laws to compensate victims of violent crimes in 1965 and as of now, 45 out of 50 States have such programmes and restitution. Legislations have been passed by all the states to empower the courts to order compensation by the offender to the victim and reasons must be recorded when the compensation order is not passed.

In India following legislations are there which talks about victim compensation scheme.

1) Code of Criminal Procedure,1973-

Section 357 is the main provision dealing with compensation to crime victims. It says that whenever criminal court imposes a fine….the court may order the whole or any part of the fine recovered to be applied in the payment of any person of compensation for any loss or injury caused by the offence when compensation is, in the opinion of the court, recoverable by such person in a civil court. Further sub section (3) of section 357 provides that when a court imposes a sentence of which fine does not form a part, the court may, when passing judgment, order the accused person to pay , by way of compensation such amount as may be specified in the order , to the person who has suffered any loss or injury by reasons of the act for which the accused person has been sentenced. Again section 357-A lays down the "Victim Compensation Scheme."

The court has very limited discretion u/s 357(1); it can give compensation only out of the fine if imposed on the offender. The court has, however, much more discretion u/s 357(3); though only if fine does not form a part of the sentence. Theoretically the power of the court is unlimited, though practical consideration would prevail. A Magistrate can order for higher compensation than the amount of fine he can impose.

In **Sarvan singh v/s State of Punjab** it was said by the court that in awarding compensation the court should just consider what compensation ought to be awarded to the heirs of the deceased and then impose fine which is higher than the compensation. The court laid down that the amount of fine should be determined on the basis of various factors including the nature of crime, number of injuries and the paying capacity of the offender. In **Mohammed Shah v/s Emperor** the offender was awarded one years' imprisonment and a fine of Rs 500 out of which Rs 400 was awarded to the heirs of the victim. The judicial attitude is, however, reflected somewhat differently in **Guruswami v/s State of T. N**. it was held that in a case of murder it is only fair that proper compensation should be provided for the dependents of the deceased. A perusal of a subsequent case, **Baldev Singh v/s State of Punjab** also indicates that quite often Supreme Court prefers to substitute a severe punishment given to offender in award of compensation to the victim in death resulting due to family feud. Further, in **Dr Jacob George v/s State of Kerala** where a homeopath attempting to procure an abortion by operating upon a woman caused her death, the Supreme Court, reduced the imprisonment to the two months already undergone. The fine imposed upon the petitioner was increased from Rs 5000 to one lakh required to nurse the child of the deceased reasonably well.

i) The Probation of offenders Act,1958-

The Act lays down that while releasing an accused on probation or on admonition the court may order offender to pay compensation and cost to the victim concern.

ii) The Motor Vehicles Act,1939-
Act empowers the Government. to establish and administer a "Solatium Fund" out of which compensation can be paid in cases of death or grievous hurt.
iv) Fatal Accident Act, 1955
v) Indian Railway Act, 1890
vi) Workmen's Compensation Act,1923 also talks about the victim compensation scheme.
vii)-Article 21 of the Constitution of India Supreme Court has expanded article 21 and incorporated new branch of study from Rudal shah to Chandrima Das wherein Supreme Court evolved the "Victim compensation scheme." Although it has been criticized by various scholars in the name of unbrinded expansion of life and personal liberty.
Hence, as we know that this issues of 'victimology' is gaining importance, we need to give our due share of attention and help the study of victimology develop and be efficiently functionally. Though many rules and provision have been made by many governments still there is not much improvement in the plight of the victims. Victims that go through mental and physical trauma suffer throughout their lives, as there place is in the society changes. It is the states duty to counter balance the sufferings of various victims all over the country. If the status of victims is alleviated, it would be the first step in the reduction in crime and hence will lead to a certain amount of control over the crimes. So to alleviate the status of the victims and develop the subject of victimology, the following measures should be adopted:

1. Proper implementation on various established laws;
2. Since majority of crimes are against women, women empowerment in the fields if crime is necessary; and
3. A separate law should be made for the victims such that speedy justice and relief is assured.

Unit-V White Collar Crimes

1. Historical Background, Definition
2. Contributing factors
3. White collar crime in India
4. Hoarding, Black marketing and adulteration.
5. Tax evasion
6. White collar crime in certain profession – medical, engineering, legal, educational, Business deal
7. Disposal by anti-corruption and vigilance departments of state & UTs under Prevention of corruption Act 1983 and related sections of I.P.C.

Meaning Of White Collar Crime

This notion was laid down for the first time in the field of criminology by Prof. Edwin Sutherland in 1941. He defined white collar crime as "crime committed by persons of respectability and high social status in course of their occupation". Examples of it include fraudulent advertisements, infringement of patents, publication of falsified balance sheet of business, passing of goods, concealment of defects in the commodity for sale etc. These white collar crimes by nature are such that the injury or the damage caused as a consequence of them is so widely diffused in the large body of citizens that their enormity as regards personage victim is almost trifling.

Hartung defines a white-collar offense as a violation of law regulating business, which is committed for a firm by the firm or its agents in the conduct of its business."

Types of White Collar Crime in India

The white collar crimes which are common to Indian trade and business world are hoardings, profiteering and black marketing. Violation of foreign exchange regulations and import and export laws are frequently resorted to for the sake of huge profits. That apart, adulteration of foodstuffs, edibles and drugs which causes irreparable danger to public health is yet another white collar crime common in India. Some of the crimes are mention below:-

- **Bank Fraud**: To engage in an act or pattern of activity where the purpose is to defraud a bank of funds.

- **Blackmail**: A demand for money or other consideration under threat to do bodily harm, to injure property, to accuse of a crime, or to expose secrets.

- **Bribery**: When money, goods, services, information or anything else of value is offered with intent to influence the actions, opinions, or decisions of the taker. You may be charged with bribery whether you offer the bribe or accept it.

- **Cellular Phone Fraud**: The unauthorized use, tampering, or manipulation of a cellular phone or service. This can be accomplished by either use of a stolen phone, or where an actor signs up for service under false identification or where the actor clones a valid electronic serial number (ESN) by using an ESN reader and reprograms another cellular phone with a valid ESN number.

- **Computer fraud**: Where computer hackers steal information sources contained on computers such as: bank information, credit cards, and proprietary information.

- **Counterfeiting**: Occurs when someone copies or imitates an item without having been authorized to do so and passes the copy off for the genuine or original item. Counterfeiting is most often associated with money however can also be associated with designer clothing, handbags and watches.

- **Credit Card Fraud**: The unauthorized use of a credit card to obtain goods of value.

- **Currency Schemes**: The practice of speculating on the future value of currencies.

- **Embezz1ement**: When a person who has been entrusted with money or property appropriates it for his or her own use and benefit.

- **Environmental Schemes**: The overbilling and fraudulent practices exercised by corporations which purport to clean up the environment.

- **Extortion**: Occurs when one person illegally obtains property from another by actual or threatened force, fear, or violence, or under cover of official right.

- **Fake Employment Placement Rackets**: A number of cheating cases are reported in various parts of the country by the so called manpower consultancies and employment placement agencies which deceive the youth with false promises of providing them white collar jobs on payment of huge amount ranging from 50 thousands to two lakhs of rupees.

- **Forgery**: When a person passes a false or worthless instrument such as a check or counterfeit security with the intent to defraud or injure the recipient.

- **Health Care Fraud**: Where an unlicensed health care provider provides services under the guise of being licensed and obtains monetary benefit for the service.

  Insider Trading: When a person uses inside, confidential, or advance information to trade in shares of publicly held corporations.

- **Insurance Fraud**: To engage in an act or pattern of activity wherein one obtains proceeds from an insurance company through deception.
- **Investment Schemes**: Where an unsuspecting victim is contacted by the actor who promises to provide a large return on a small investment.
- **Kickback**: Occurs when a person who sells an item pays back a portion of the purchase price to the buyer.
- **Larceny/Theft**: When a person wrongfully takes another person's money or property with the intent to appropriate, convert or steal it.
- **Money Laundering**: The investment or transfer of money from racketeering, drug transactions or other embezzlement schemes so that it appears that its original source either cannot be traced or is legitimate.
- **Racketeering**: The operation of an illegal business for personal profit.
- **Securities Fraud**: The act of artificially inflating the price of stocks by brokers so that buyers can purchase a stock on the rise.
- **Tax Evasion**: When a person commits fraud in filing or paying taxes. The complexity of tax laws in India has provided sufficient scope for the tax-payers to evade taxes. The evasion is more common with influential categories of persons such as traders, businessmen, lawyers, doctors, engineers, contractors etc. The main difficulty posed before the Income Tax Department is to know the real and exact income of these Professionals. It is often alleged that the actual tax paid by these persons is only a fraction of their income and rest of the money goes into circulation as 'black money.
- **Telemarketing Fraud**: Actors operate out of boiler rooms and place telephone calls to residences and corporations where the actor requests a donation to an alleged charitable organization or where the actor requests money up front or a credit card number up front, and does not use the donation for the stated purpose.
- **Welfare Fraud**: To engage in an act or acts where the purpose is to obtain benefits (i.e. Public Assistance, Food Stamps, or Medicaid) from the State or Federal Government.
- **Weights and Measures**: The act of placing an item for sale at one price yet charging a higher price at the time of sale or short weighing an item when the label reflects a higher weight.

White collar crime in various professions

- **Medical profession**: White collar crimes which are commonly committed by persons belonging to medical profession include issuance of false medical certificates, helping illegal abortions,

secret service to dacoits by giving expert opinion leading to their acquittal and selling sample-drug and medicines to patients or chemists in India.

- **Engineering Profession**: In the engineering profession underhand dealing with contractors and suppliers, passing of sub-standard works and materials and maintenance of bogus records of work-charged labor are some of the common examples of white collar crime. Scandals of this kind are reported in newspapers and magazines almost every day in our country.

- **Educational Institutions**: Yet another field where collar criminals operate with impunity are the privately run educational institutional in this country. The governing bodies of those institutions manage to secure large sums by way of government grants of financial aid by submitting fictitious and fake details about their institutions. The teachers and other staff working in these institutions receive a meager salary far less than what they actually sign for, thus allowing a big margin for the management to grab huge amount in this illegal manner.

- **Legal Profession**: The instances of fabricating false evidence, engaging professional witness, violating ethical standards of legal profession and dilatory tactics in collusion with the ministerial staff of the courts are some of the common practices which are, truly speaking, the white collar crimes quite often practiced by the legal practitioners.

White Collar Crime in India

White collar criminality has become a global phenomenon with the advance of commerce and technology. Like any other country, India is equally in the grip of white collar criminality. The recent developments in information technology, particularly during the closing years of the twentieth century, have added new dimensions to white collar criminality. There has been unprecedented growth of a new variety of computer dominated white collar crimes which are commonly called as cyber crimes. These crimes have become a matter of global concern and a challenge for the law enforcement agencies in the new millennium. Because of the specific nature of these crimes, they can be committed anonymously and far away from the victims without physical presence. Further, cyber-criminals have a major advantage: they can use computer technology to inflict damage without the risk of being apprehended or caught. It has been predicted that there would be simultaneous increase in cyber crimes with the increase in new internet web sites. The areas affected by cyber crimes are banking and financial institutions, energy and telecommunication services, transportation, business, industries etc. in India

Reasons for Growth of White Collar Crimes in India

There are several reasons behind white collar crimes, some of them are:-

- White collar crimes are committed out of greed. The people who usually commit these crimes are financially secure.

- Financial or physical duress.
- White collar crimes are estimated to cost society many times more than crimes such as robbery and burglary. The amount of death caused by corporate mishap, such as inadequate pharmaceutical testing, far outnumbers those caused by murder.
- The emergence of cutting edge technology, growing businesses, and political pressures has opened up new avenues for these criminal organizations to prosper.
- This increase is due to a booming economy and technological advancement such as the Internet and fast money transfer systems. Law enforcement is sometimes reluctant to pursue these cases because they are so hard to track and investigate.
- It is very difficult to detect as white collar crimes always committed in privacy of an office or home and usually there is no eyewitness.
- But naturally a question arises that if we have specific legislations to trace out White Collar Criminality then why these offenders go unpunished.

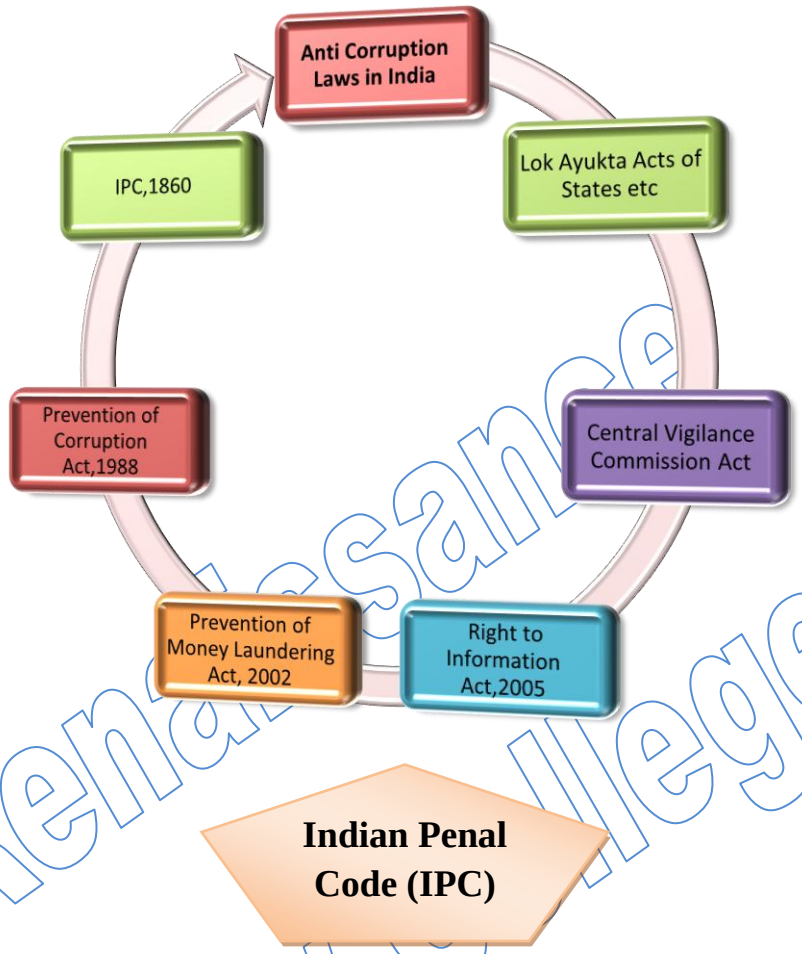
Main reasons for which these white Collar criminals or occupational criminals go unpunished are:-

i) Legislators and the law implementers belong to the same group or class to which these occupational criminals belong;
ii) Less police effort;
iii) Favorable laws;
iv) Less impact on individuals.

The judiciary is equally, if not more, guilty of delaying justice. With white-collar crimes on the rise, it is necessary for the judiciary and police to distinguish between white-collar crimes, petty crimes and acts of homicide and violence. Sending everyone to the same jail is also unfair. India needs different detention centers for different kinds of criminal misconduct. At this present juncture what we need is the strengthening of our enforcement agencies such as Central Bureau of Investigation, the Enforcement Directorate, The Directorate of Revenue Intelligence, The Income-tax Department and the Customs Department. Concentration and distribution of national wealth must be done in a proper manner. Speedy trial should be arranged by appointing more Judges. Central Vigilance Commission must keep a constant vigil on the workings of the top ranking officers. General public must not avoid being engaged themselves in the prosecution of the White-collar criminals as the offence in general is directed towards them.

Anti-Corruption Laws in India

It is deeply rooted, cancerous, contaminating, and impossible to eradicate. It is as old as governance itself. It is a global phenomenon. It is colorless, shapeless, odorless, collusive, secret, stealthy, and shameless.



Under Indian Penal Code (IPC) relevant Provisions are:-

1. **Dishonest misappropriation of property-** Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.(Section 403)
2. **Criminal breach of trust-** Whoever, being in any manner entrusted with property, or with anyv dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust". (Sec. 405)
3. **Punishment for criminal breach of trust**- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. (Section 406)
   Illustrations :(e) A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.
4. **Criminal breach of trust by clerk or servant**- Whoever, being a clerk or servant or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Section 408].

5. **Criminal breach of trust by public servant, or by banker, merchant or agent**- Whoever, being in any manner entrustedv with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits breach of trust in respect of that property, shall be punished with imprisonment for life , or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Section 409]
6. **Dishonestly receiving property stolen in the commission of a dacoity**- Whoever dishonestly receives or retains any stolenv property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person, whom he knows or has reason to believe to belong or to have belonged to a gang of dacoity, property which he knows or has reason to believe to have been stolen, shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Section 412]
7. **Cheating**- Whoever, by deceiving any person, fraudulently or dishonestlyv induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat". [Section 415]
   Explanation- A dishonest concealment of facts is deception within the meaning of this section.
   Illustration: (a) A, by falsely pretending to be in the Civil Service,v intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.
8. **Punishment for cheating**- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. [Section 417].

The Prevention of Corruption Act, 1988

The Prevention of Corruption Act, 1988 (No. 49 of 1988) is an Act of the Parliament of India enacted to combat corruption in government agencies and public sector businesses in India. Its object is to consolidate and amend the lawv relating to the prevention of corruption and for matters connected therewith. It is Applicable to Public Servants (S.3.), Power of State/Central governments to appoint special Judges (not below the rank of an Assistant Session Judge - a special Judge shall, as far as practicable, hold the trial of an offence on day-to-day basis).

Section 3: Appointment of special Judges[edit]
Power To Appoint Special Judges: The Central and the State Government is empowered to appoint Special Judges by placing a Notification in the Official Gazette, to try the following offences: · Any offence punishable under this Act. · Any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified under the Act. The qualification for the Special Judge is that he should be or should have been a Session Judge or an Additional Session Judge or Assistant Session Judge under the Code of Criminal Procedure, 1973

Section 4: Cases triable by special Judges

The offences punishable under this act can be tried by special Judges only. When trying any case, the special Judge is empowered to try any offence other than an offence punishable under this act, with which the accused may be charged at the same trial. It is recommended that the special Judge should hold the trial daily.

Case Trial By Special Judges:

Every offence mentioned in Section 3(1)shall be tried by the Special Judge for the area within which it was committed. When trying any case, a Special Judge may also try any offence other than what is specified in S. 3, which the accused may be, under Cr.P.C. be charged at the same trial. The Special Judge has to hold the trial of an offence on day-to-day basis. However, while complying with foretasted, it is to be seen that the Cr.P.C. is not bifurcated.

Section 5: Procedure and powers of special Judge

The following are the powers of the Special Judge: He may take cognizance of the offences without the accused being commissioned to him for trial. In trying the accused persons, shall follow the procedure prescribed by the Cr.P.C. for the trial of warrant cases by Magistrate. he may with a view to obtain the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence, tender pardon to such person provided that he would make full and true disclosure of the whole circumstances within his knowledge or in respect to any person related to the offence.

Except as for S. 2(1), the provisions of Cr.P.C. shall apply to the proceedings before a Special Judge. Hence, the court of the Special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Judge shall be deemed to be a public prosecutor. The provisions of sec. 326 and 475of the Cr.P.C. shall apply to the proceedings before a Special Judge and for purpose of the said provisions, a Special Judge shall be deemed to be a magistrate.

A Special Judge may pass a sentence authorized by law for the punishment of the offence of which a person is convicted. A Special Judge, while trying any offence punishable under the Act, shall exercise all powers and functions exercised by a District Judge under the Criminal Law Amendment Ordinance, 1944.

Power to try summarily:

Where a Special Judge tries any offence specified in Sec. 3(1), alleged to have been committed by a public servant in relation to the contravention of any special order referred to in Sec.12-A(1) of the Essential Commodities Act, 1955 or all orders referred to in sub-section (2)(a) of that section then the special judge shall try the offence in a summarily way and the provisions of s. 262 to 265 (both inclusive) of the said code shall as far as may be apply to such trial. Provided that in the case of any conviction in a summary trial under this section this shall be lawful for the Special Judge to pass a sentence of imprisonment for a term not exceeding one year. However, when at the commencement of or in the course of a summary trial it appears to the Special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or it is undesirable to try the case summarily, the Special judge shall record all order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear and re-hear the case in accordance with the procedure prescribed by the said code for the trial of warrant cases by Magistrates. Moreover, there shall be no appeal by a convicted person in any case tried summarily under this section in which the Special Judge passes a sentence of imprisonment not exceeding one month and of fine not exceeding Rs. 2000.

Offences and penalties

The following are the offences under the PCA along with their punishments:-

- Taking gratification other than legal remuneration in respect of an official act, and if the public servant is found guilty shall be punishable with imprisonment which shall be not less than 6 months but which may extend to 5 years and shall also be liable to fine.
- Taking gratification in order to influence public servant, by corrupt or illegal means, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Taking gratification, for exercise of personal influence with public servant shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Abetment by public servant of offences defined in Section 8 or 9, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Public servant obtaining valuable thing without consideration from person concerned in proceeding or business transacted by such public servant, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Punishment for abetment of offences defined in Section 7 or 11 shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.
- Any public servant, who commits criminal misconduct, shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to 7 years and shall also be liable to fine.
- Habitual committing of offence under Section 8, 9 and 12 shall be punishable with imprisonment for a term which shall be not less than two years but which may extend to 7 years and shall also be liable to fine.

Investigation

Investigation shall be done by a police officer not below the rank of:

- In case of Delhi, of an Inspector of Police.
- In metropolitan areas, of an Assistant Commissioner of Police.
- Elsewhere, of a Deputy Superintendent of Police or an officer of equivalent rank shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a magistrate of first class, or make any arrest therefore without a warrant.

If a police officer not below the rank of an Inspector of Police is authorized by the State Government in this behalf by general or special order, he may investigate such offence without the order of a Metropolitan Magistrate or Magistrate of First class or make arrest therefor without a warrant.

Provided, further that an offence referred to sec 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. And such investigation without the order of a SP of above rank will be dismissed.

The Prevention of Money Laundering Act, 2002

Offence of Money-Laundering - Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the

proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering." [Section 3]

Punishment for Money-Laundering - "Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine which may extend to five lakh rupees: Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted." [Section 4]

Obligations of Banking Companies, Financial Institutions and Intermediaries of securities market [Section 12]

1. Every banking company, financial institution and intermediary shall –
(a)maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other, and where such series of transactions take place within a month;
(b) furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;
(c) verify and maintain the records of the identity of all its clients, in such a manner as may be prescribed. Provided that where the principal officer of a banking company or financial institution or intermediary, as the case may be, has reason to believe that a single transaction or series of transactions integrally connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.
2. (a) The records referred to in clause (a) of sub-section (1) shall be maintained for a period of ten years from the date of transactions between the clients and the banking company or financial institution or intermediary, as the case may be.
(b) The records referred to in clause (c) of sub-section (1) shall be maintained for a period of ten years from the date of cessation of transactions between the clients and the banking company or financial institution or intermediary, as the case may be. Substituted for sub-section (2) vide Prevention of Money-laundering (Amendment) Act, 2009

No civil proceedings [Section 14]
Save as otherwise provided in section 13, the banking companies, financial institutions, intermediaries and their officers shall not be liable to any civil proceedings against them for furnishing information under clause (b) of subsection (1) of section 12.

Appeals

- Section 26 - Appeal to Appellate Tribunal
- Section 42 of the Prevention of Money Laundering Act, 2002 providesv for appeal to High Court. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order: Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.-For the purposes of this section, "High Court" means-

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."

Lokayukta Act in states

The Andhra Pradesh Lokayukta and UPA-Lokayukta Act, 1983

An Act to make provision for the appointment andv functions of Lokayukta and Upa-Lokayukta for the investigation of Administrative action taken by or on behalf of the Government of Andhra Pradesh or certain Local and Public Authorities in the State of Andhra Pradesh (including any omission and commission in connection with or arising out of such action) in certain cases and for matters connected therewith.

Matters which may be investigated by Lokayukta or Upa-Lokayukta [Sec.7]

(1) Subject to the provisions of this Act, the Lokayukta may investigate any action which isv taken by, or with the general or specific approval of, or at the behest of,-

(i) a Minister or a Secretary; or

(ii) a Member of either House of the State Legislature; or

(iii) a Mayor of the Municipal Corporation constituted by or under the relevant law for the time being in force; or

(iv) any other public servant, belonging to such class or section of public servants, as may be notified by the Government in this behalf after consultation with the Lokayukta, in any case where a Complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Lokayukta, the subject of an allegation.

(2) Subject to the provisions of this Act, the Upa-Lokayukta may investigate any action which is taken by, or with the general or specific approval of, any public servant, other than those referred to in sub-section (1), in any case where a complaint involving an allegation is made in respect of such action, or such action can be or could have been, in the opinion of the Upa-Lokayukta, the subject of an allegation.

(3) Notwithstanding anything in sub-section (2), the Lokayukta may, for reasons to be recorded in writing, investigate any allegation in respect of an action which may be investigated by the Upa-Lokayukta under that sub-section, whether or not complaint has been made to the Lokayukta in respect of such action.

(4) Where two or more Upa-Lokayuktas are appointed under this Act, the Lokayukta may, by general or special order, assign to each of them matters which may be investigated by them under this Act: Provided that no investigation made by the Upa-Lokayukta under this Act and no action taken or thing done by him in respect of such investigation shall be called in question on the ground only that such investigation relates to a matter which is not assigned to him by such order.

Matters not subject to investigation by Lokayukta or Upa-Lokayukta [Sec.8]

(1) The Lokayukta or Upa-Lokayukta shall not investigate any allegation,-

(a) in respect of which a formal and public inquiry has been ordered under the Public Servants (Inquiries) Act, 1850 (Central Act 37 of 1850);
(b) in respect of a matter which has been referred for inquiry under the Commissions of Inquiry Act,1952(Central Act 60 of 1952); In case where the Lokayukta or Upa-Lokayukta, as the case may be, has given his prior concurrence for such inquiry: Provided that if, on an application for such concurrence, no intimation of withholding it is communicated within ninety days after the receipt of the application by the Lokayukta or Upa-Lokayukta, as the case may be, the concurrence shall be deemed to have been given.
(2) The Lokayukta or Upa-Lokayukta shall not investigate any complaint involving an allegation, if the complanint is made after the expiry of six years from the date on which the action complained against is alleged to have been taken place.

Provision relating to complaints [S.9]
(1) Subject to the provisions of this Act, a complaint may bev made by any person under this Act to the Lokayukta or UpaLokayukta relating to an allegation in respect of any action: Provided that where the person aggrieved is dead or is for any reason unable to act for himself, the complaint may be made by any person who in law represents his estate, or as the case may be, by any person who is authorised by him in this behalf.
(2) Every complaint shall be made in such form and shall be accompanied by such affidavits as may be prescribed.
(3) Notwithstanding anything in any other law for the time being in force, any letter written to the Lokayukta or UpaLokayukta by a person in police custody, or in a goal or in any asylum, or other place for insane persons shall be forwarded to the addressee unopened and without delay by the police officer or other person in charge of such goal, asylum or other place and the Lokayukta or Upa-Lokayukta, as the case may be, may treat such letter as a complaint made in accordance with the provisions of sub-section (2).

Procedure in respect of investigations [S.10]
(1) Where the Lokayukta or Upa-Lokayukta after making such preliminary verifications as he deemsv fit, proposes to conduct any investigation under this Act, he,-
(a) shall forward a copy of the Complaint or, in the case of any investigation which he proposes to conduct on his own motion, a statement setting out the grounds therefor, to the public servant concerned and the competent authority concerned;
(b) shall afford to the Public servant concerned an opportunity to offer his comments on such complaint or statement; and
(c) may make such orders as to the safe custody of documents relevant to the investigation as he deems fit.
(2)(a) Every perliminary verification referred to in sub-section (1) shall be conducted in private and in particular, the identity of the complainant and of the public servant affected by the said preliminary verification shall not be disclosed to the public or the press, whether before or during the preliminary verification, but every investigation referred to in sub-section (1) shall be conducted in public: Provided that the Lokayukta or Upa-Lokayukta may conduct any such investigation in private, if he, for reasons to be recorded in writing thinks fit to do so.
(b) Every such investigation shall be completed within a period of six months, unless there is sufficient cause for not completing the investigation within that period, so however, that the total period for completing such investigation shall not exceed one year.
(3) Save as aforesaid, the procedure for conducting any investigation shall be such as the Lokayukta or, as the case may be, the Upa-Lokayukta considers appropriate in the circumstances of each case.
(4) The Lokayukta or Upa-Lokayukta may, in his discretion, refuse to investigate or discontinue the investigation of any complaint involving any allegation if in his opinion,-

(a) the complaint is frivolous or vexatious, or is not made in good faith; or
(b) there are no sufficient grounds for investigation or, as the case may be, for continuing the investigation; or
(c) other remedies are available to the complainant and in the circumstances of the case it would be more proper for the complainant to avail of such remedies.
(5) In any case where the Lokayukta or Upa-Lokayukta decides not to entertain a complaint or to discontinue any investigation in respect of the complaint, he shall record his reasons therefor and communicate the same to the complainant and the public servant concerned.

Evidence [s.11]
(1) Subject to the other provisions of this section, for the purpose of any investigation (including thev preliminary verification if any, before such investigation) made under this Act, the Lokayukta or Upa-Lokayukta may require any public servant or any other person, who in his opinion is able to furnish information or produce documents relevant to the the investigation to furnish any such information or produce any such document.
(2) For the purpose of any such investigation (including the preliminary verification) the Lokayukta or UpaLokayukta shall have all the powers of a Civil Court while trying a suit under the code of Civil Procedure, 1908 (Central Act 5 of 1908) in respect of the following matters, namely,-
(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of any document;
(c) receiving evidence on affidavits;
(d) requisitioning any public record or copy thereof from any Court or Office;
(e) issuing commissions for the examination of witnesses or documents;
(f) such other matters as may be prescribed.
(3) Any proceedings before the Lokayukta or Upa-Lokayukta shall be deemed to be a judicial proceeding within the meaning of Section 193 of the Indian Penal Code, 1860 (Central Act 45 of 1860).
(4) Subject to the provisions of sub-section (5), no obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to the Government or any public Servant, whether imposed by or under any law or by any instrument having the force of law, shall apply to the disclosure of information for the purpose of any investigation made under this Act and the government or any Public Servant shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by any law or instrument as aforesaid in legal proceedings: Provided that no person shall be compelled for the purpose of any investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in any proceedings before a Court.
(5) No person shall be required or authorised by virtue of this Act, to furnish any such information or answer any such question or produce so much of any document,-
(a) as might prejudice the security or defence or international relations of India (including India‟ s relations with the Government of any other country or with any international organisation); or
(b) as might involve the disclosure of the proceedings of the Council of Ministers of Government or any Committee of that Council; and for the purpose of this sub-section a certificate issued by the Chief Secretary to the Government certifying that any information, answer or portion of a document is of the nature specified in Clause (a) or Clause (b) shall be binding and conclusive.

Reports of Lokayukta or UpaLokayukta [Sec.12]
(1) If, after investigation of any allegation in respect of any action under this Act, thev Lokayukta or Upa-Lokayukta is satisfied that such allegation is substantiated either wholly or partly, he shall by a report in writing, communicate his findings and recommendations along with the relevant documents, materials or other evidence to the competent authority.

(2) The competent authority shall examine the report forwarded to it under sub-section (1) and without any further inquiry take action on the basis of the recommendation and intimate within three months of the date of receipt of the report, the Lokayukta or, as the case may be, the Upa-Lokayukta, the action taken or proposed to be taken on the basis of the report.
(3) Where,in a report forwarded by the Lokayukta or Upa-Lokayukta, any recommendation imposing the penalty of removal from the office of a Public Servant falling within sub-clause (iv) or sub-clause(v) of clause (k) of Section 2 has been made, it shall be lawful for the Government without any further inquiry to take action on the basis of the said recommendation for the removal of such Public Servant from his office and for making him ineligible for being elected to any office specified by the Government in this behalf, notwithstanding anything contained in any law for the time being in force.
(4) If the Lokayukta or Upa-Lokayukta is satisfied with the action taken or proposed to be taken on his findings and recommendations referred to in sub-section (1), he shall close the case under intimation to the complaint, the Public Servant and the competent authority concerned; but where he is not so satisfied and if he considers that the case so deserves, he may make a special report upon the case to the Governor and also inform the complainant.
(5) The Lokayukta and the Upa-Lokayukta shall present annually a consolidated report on the work done under this Act to the Governor.
(6) On receipt of the special report under sub-section (4) or the annual report under subsection (5), the Governor shall cause a copy thereof together with an explanatory memorandum to be laid before each House of the State Legislature.
(7) Subject to the provisions of sub-section (2) of Section 10, the Lokayukta may, at his discretion make available, from time to time, the substance of cases closed or otherwise disposed of by him or by the Upa-Lokayukta, which may appear to him to be of a general, public, academic or professional interest, in such manner and to such persons as he may deem appropriate.

Prosecution for false Complaints [Sec. 13]
(1) Notwithstanding anything in Section 10 or any other provisions of this Act, whoever willfully or maliciously makes any false complaint under this Act, shall, on conviction, be punished with imprisonment for a term which may extend to one year and shall also be liable to fine.
(2) No Court, except a Court of the Judicial Magistrate of the First Class shall take cognizance of the offence under sub-section (1).
(3) No such Court shall take cognizance of any such offence except on a complaint made by a person against whom false complaint was made, and after obtaining the previous sanction of the Lokayukta or Upa-Lokayukta, as the case may be.
(4) Such Court, on conviction of the person making false complaint, may award, out of the amount of the fine, to the complaint such amount of the compensation as it thinks fit.

Secrecy of Information [Sec.15]
(1) Any information obtained by the Lokayukta or Upa-Lokayukta or any member of their staff in the course of, or for the purposes of, any preliminary verification made under this Act, and any evidence recorded or collected in connection with such information, shall, subject to provisions of Clause (a) of sub-section (2) of Section 10, be treated as confidential; and notwithstanding anything in the Indian Evidence Act, 1872, (Central Act 1of 1872) no court shall be entitled to compel the Lokayukta or Upa-Lokayukta or any Public Servant to give evidence relating to such information or produce the evidence so recorded or collected.
(2) Nothing in sub-section (1) shall apply to the disclosure of any information or particulars:-
(a) for purposes of the investigation or in any report to be made thereon or for any action or proceedings to be taken on such report; or
(b) for purposes of any proceedings for an offence under the Official Secrets Act, 1923 (Central Act of 19 of 1923) or an offence of giving or fabricating false evidence under the Indian Penal Code, 1860 (Central

Act 45 of 1860) or for purposes of any trial of an offence under Section 13 or any proceedings under Section 16, of this Act; or

(c) for such other purposes as may be prescribed.

(3) An officer or other authority prescribed in this behalf may give notice in writing to the Lokayukta or Upa-Lokayukta, as the case may be, with respect to any document or information specified in the notice or any class of documents so specified , that in the opinion of the Government the disclosure of the documents or class of documents or information would be prejudicial to public interest; and where such a notice is given the Lokayukta or Upa-Lokayukta may, for reasons to be recorded, decide as to whether the disclosure of such document / or class of documents or information involves public interest. In case the disclosure of any document or information so specified is held to involve public interest, the Lokayukta, the Upa-Lokayukta or any member of their staff shall not communicate to any person any such document or information.

Intentional insult or interruption to, or bringing into disrepute, Lokayukta or Upa-Lokayukta [Sec.16]

(1) Whoever, intentionally offers any insult or causes anyv interruption to the Lokayukta or Upa-Lokayukta while the Lokayukta or Upa-Lokayukta is conducting any investigation under this Act, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(2) Whoever, by words spoken or intended to be read makes or publishes any statement or does any other act, which is calculated to bring the Lokayukta or Upa-Lokayukta into disrepute, shall, on conviction, be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

(3) The provisions of Section 199 of the Code of Criminal Procedure, 1973, shall apply in relation to an offence under sub-section (1) or sub-section (2) as they apply in relation to an offence referred to in sub-section (1) of the said Section 199; subject to the modification that no complaint in respect of such offence shall be made by the Public Prosecutor, except with the previous sanction-

(a) in the case of an offence against Lokayukta, of the Lokayukta;

(b) in the case of an offence against Upa-Lokayukta, of the UpaLokayukta concerned.

Protection of action taken in good faith [Sec.17]

(1) No suit, prosecution or other legal proceedings shall lie againstv the Lokayukta or Upa-Lokayukta or against any officer, employee, agency or person referred to in Section 14 in respect of anything which is in good faith done or intended to be done under this Act.

(2) No proceedings of the Lokayukta or Upa-Lokayukta shall be deemed to be invalid by reason only of a defect or infirmity in his appointment or with the conduct of the Proceedings.

(3) No proceedings, decision, finding or recommendation of Lokayukta or Upa-Lokayukta shall be liable to be challenged, renewed, quashed or called in question in any Court or Tribunal.

The central Vigilance Commission Act 2003

The central Vigilance Commission Act 2003 Created to tackle governmental corruption in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K. Santhanam. Not an investigating agency, and works through either thev CBI or through the Departmental Chief Vigilance Officers [except the investigation carried out by the CVC is that of examining Civil Works of the Government which is done through the Chief Technical Officer] Headed

by a Central Vigilance Commissioner who isv assisted by two Vigilance Commissioners Commission‟ s Jurisdiction under CVC Act - Membersv of All India Services serving in connection with the affairs of the Union and gazetted officers of the Central Government etc

The RTI Act 2005

The Right to Information Act (RTI) is an Act of the Parliament of India *"to provide for setting out the practical regime of right to information for citizens*" and replaces the erstwhile Freedom of information Act, 2002. The Act applies to all States and Union Territories of India except Jammu & Kashmir. Under the provisions of the Act, any citizen may request information from a "public authority" (a body of Government or "instrumentality of State") which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerise their records for wide dissemination and to proactively certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 12 October 2005. The first application was given to a Pune police station. Information disclosure in India was restricted by the Official Secrets Act 1923 and various other special laws, which the new RTI Act relaxes. It codifies a fundamental right of citizens.

Freedom of Information Act 2002

The establishment of a national-level law, however, proved to be a difficult task. The Central Government appointed a working group under H. D. Shourie and assigned it the task of drafting legislation. The Shourie draft, was the basis for the Freedom of Information Bill, 2000 which eventually became law under the Freedom of Information Act, 2002. This Act was severely criticised for permitting too many exemptions, not only under the standard grounds of national security and sovereignty, but also for requests that would involve "disproportionate diversion of the resources of a public authority". There was no upper limit on the charges that could be levied. There were no penalties.

State-level RTI Acts

The state-level RTI Acts were first successfully enacted by the state governments of Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Delhi (2001), Maharashtra (2002), Assam(2002), Madhya Pradesh (2003), Jammu and Kashmir (2004), Haryana (2005) and Andhra Pradesh(2005).

Scope

The Act covers the whole of India except Jammu and Kashmir, where J&K Right to Information Act is in force. It cover all constitutional authorities, including the executive, legislature and judiciary; any institution or body established or constituted by an act of Parliament or a state legislature. It is also defined in the Act that bodies or authorities established or constituted by order or notification of appropriate government including bodies "owned, controlled or substantially financed" by government, or non-Government organizations "substantially financed, directly or indirectly by funds" provided by the government are also covered in the Act.

Private bodies

Private bodies are not within the Act's ambit directly. In a decision of *Sarbjit roy vs Delhi Electricity Regulatory Commission*,[1] the Central Information Commission also reaffirmed that privatised public utility companies continue to be within the RTI Act- their privatisation not with standing.

Political parties

The Central Information Commission (CIC), consisting of Satyanand Mishra, M.L. Sharma and Annapurna Dixit, has held that the political parties are public authorities and are answerable to citizens

under the RTI Act. The CIC, a quasi-judicial body, has said that six national parties - Congress, BJP, NCP, CPI(M), CPI and BSP and BJD - have been substantially funded indirectly by the Central Government and have the character of public authorities under the RTI Act as they perform public functions In August 2013 the government introduced a Right To Information (Amendment) Bill which would remove poiltical parties from the scope of the law. In September 2013 the Bill was deferred to the Winter Session of Parliament. In December 2013 the Standing Committee on Law and Personnel said in its report tabled in Parliament.

"The committee considers the proposed amendment is a right step to address the issue once and for all. The committee, therefore, recommends for passing of the Bill."

Process

The RTI process involves reactive (as opposed to proactive) disclosure of information by the authorities. An RTI request initiates the process.

Each authority covered by the RTI Act must appoint their **Public Information Officer** (PIO). Any person may submit a written request to the PIO for information. It is the PIO's obligation to provide information to citizens of India who request information under the Act. If the request pertains to another public authority (in whole or part), it is the PIO's responsibility to transfer/forward the concerned portions of the request to a PIO of the other authority within 5 working days. In addition, every public authority is required to designate **Assistant Public Information Officers** (APIOs) to receive RTI requests and appeals for forwarding to the PIOs of their public authority. The applicant is required to disclose his name and contact particulars but not any other reasons or justification for seeking information.

The Central Information Commission (CIC) acts upon complaints from those individuals who have not been able to submit information requests to a Central Public Information Officer or State Public Information Officer due to either the officer not having been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refused to receive the application for information.

The Act specifies time limits for replying to the request.

- If the request has been made to the PIO, the reply is to be given within **30 days** of receipt.
- If the request has been made to an APIO, the reply is to be given within **35 days** of receipt.
- If the PIO transfers the request to another public authority (better concerned with the information requested), the time allowed to reply is **30 days** but computed from the day after it is received by the PIO of the transferee authority.
- Information concerning corruption and Human Rights violations by scheduled Security agencies (those listed in the Second Schedule to the Act) is to be provided within **45 days** but with the prior approval of the Central Information Commission.
- However, if life or liberty of any person is involved, the PIO is expected to reply within **48 hours**.

Since the information is to be paid for, the reply of the PIO is necessarily limited to either denying the request (in whole or part) and/or providing a computation of "further fees". The time between the reply of the PIO and the time taken to deposit the further fees for information is excluded from the time allowed. If information is not provided within this period, it is treated as deemed refusal. Refusal with or without reasons may be ground for appeal or complaint. Further, information not provided in the times prescribed is to be provided free of charge. Appeal processes are also defined.

Fees

A citizen who desires to seek some information from a public authority is required to send, along with the application, a demand draft or a bankers cheque or an Indian Postal Order of Rs.10/- (Rupees ten) payable to the Accounts Officer of the public authority as fee prescribed for seeking information

The applicant may also be required to pay further fee towards the cost of providing the information, details of which shall be intimated to the applicant by the PIO as prescribed by the RTI ACT.

Exclusions

Central Intelligence and Security agencies specified in the Second Schedule like IB, Directorate General of Income tax(Investigation), RAW, Central Bureau of Investigation (CBI), Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Directorate of Enforcement, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, Special Branch (CID), Andaman and Nicobar, The Crime Branch-CID-CB, Dadra and Nagar Haveli and Special Branch, Lakshadweep Police. Agencies specified by the State Governments through a Notification will also be excluded. The exclusion, however, is not absolute and these organizations have an obligation to provide information pertaining to allegations of corruption and human rights violations. Further, information relating to allegations of human rights violation could be given but only with the approval of the Central or State Information Commission.

Information Exclusions

The following is exempt from disclosure under section 8 of the Act:-

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, "strategic, scientific or economic" interests of the State, relation with foreign State or lead to incitement of an offense;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign Government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual (but it is also provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied by this exemption);

Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. However, this does not apply to disclosure of "trade or commercial secrets protected by law ".