

**CHANGES IN INDIAN PENAL CODE, 1860,
BY JUDICIAL AND PARLIAMENT DECISIONS: A CASE
STUDY**

**THESIS SUBMITTED TO THE
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**SUBMITTED BY
VISHAL LAXMAN KOLEKAR**

**UNDER THE GUIDANCE OF
DR.SHARAD VASUDEO KHARE**

**NEHRU INSTITUTE OF SOCIAL SCIENCES
TILAK MAHARASHTRA UNIVERSITY
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CERTIFICATE

This is to certify that the research work incorporated in this thesis entitled “**CHANGES IN INDIAN PENAL CODE, 1860, BY JUDICIAL AND PARLIAMENT DECISIONS: A CASE STUDY**” is submitted to **Tilak Maharashtra University, Pune 37** by **Vishal Laxman Kolekar** for the award of **Master of Philosophy** and it was carried out by him under my supervision from **2004 to 2009**.

Such material as has been obtained from various sources has been duly acknowledged in the thesis.

Date:
Place: Pune

Dr. Sharad Vasudeo Khare
Guide

DECLARATION

I declare that my thesis on the topic entitled “**CHANGES IN INDIAN PENAL CODE, 1860, BY JUDICIAL AND PARLIAMENT DECISIONS: A CASE STUDY**” is submitted to the **Tilak Maharashtra University, Pune 37** for the award of the **Degree of Master of Philosophy** in Political Science.

This thesis has not been submitted by me elsewhere for the award of any degree or diploma- part or full time.

The information gathered by me elsewhere for the thesis is original. Such material which has been obtained from other sources has been duly acknowledged in the thesis.

Date:
Place: Pune

Vishal Laxman Kolekar
Research Student

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Date
Place: Pune

Vishal Laxman Kolekar
Research Student

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C O N T E N T S

CHAPTER 1	INTRODUCTION	PAGE. NO.
	1. a. Significance of the study.	1-4
	1. b. Objectives of the study.	4
	1. c. Review of Literature on Indian Penal Code,1860	4-5
	1. d. Hypothesis.	5
	1. e. Methodology.	5-6
	1. f. Limitations of the study.	6
CHAPTER 2	EVOLUTION OF INDIAN PENAL CODE, 1860	
	2. a. Origin and Growth of Indian Penal Code,1860	7-11
	2. b. Relations between Judiciary and Parliament.	11
	2. c. Salient Features of Indian Penal Code.	11-12
	2. d. Classification of Provisions of Indian Penal Code,1860	12-18
CHAPTER 3	COMMISSION OF CRIME AND PENALTY	
	3. a. Commission of Crime.	19-22
	3. b. Penalties under Indian Penal Code, 1860	23-26
	3. c. Penalties against Crime under Indian Penal Code, 1860	26-32
	3. d. Provisions of Amendment.	32
CHAPTER 4	CHANGES IN INDIAN PENAL CODE, 1860	
	Changes Brought about in the Indian Penal Code, 1860 in Selected Section.	33
	List of Cases	33-34
	4.A. (i) Section 120A Criminal Conspiracy.	34
	(ii) Definition of Criminal Conspiracy.	34-35
	(iii) Development of Law of Conspiracy.	35-37
	(iv) Scope of Law of Conspiracy.	37-39
	4.B. (i) Section 303 Punishment for Murder by life convicts.	39-40
	(ii) Scope of Section 303 of Indian Penal Code, 1860.	40-43
	(iii) Applicability of Section 303 of Indian Penal Code, 1860.	44
	(iv) Important Citations of the Apex court.	44-50
	4. C. Section 309: Attempt to commit Suicide.	50-60
	4. D. Section 375: Rape.	60-64
	4. E. Section 498A: Cruelty.	64-69
CHAPTER 5	CONCLUSION	70-88
	BIBLIOGRAPHY	89
	APPENDIX I: CHAPTERWISE AMENDMENTS IN INDIAN PENAL CODE, 1860	90-97
	APPENDIX II: YEARWISE AMENDMENTS IN INDIAN PENAL CODE, 1860.	98-99

CHAPTER 1

INTRODUCTION

1. a. SIGNIFICANCE OF THE STUDY

In Indian judicial system Indian Penal code has been playing an important role deciding the adjudication between the state and the individual. Indian Penal Code is full of sections which provide punishment for wrong doer. This research work has carried out the historical background of Indian Penal Code. Significance of the study and review of literature on Indian Penal Code is included. Secondly, the objectives of the study as well as Hypothesis and methodology are included and in the later part limitation of the study is also included.

Hindu Criminal Law:-

Even though existence of Indian Penal Code is of recent origin, the germs of criminal jurisprudence were found in ancient India. It trace back to-the time of settlement of '*Aryans*' in India. They had fully developed and matured judicial system including criminal justice system. Manu, a great Hindu Law giver says that. it was the duty of the king to punish the criminals'. Even King was also subject of the law; he could also be punished for wrong done by him according to the rule of '*Raj-Dharma*'. Manu has recognized assault, battery, theft, robbery, false evidence, slander, libel, criminal breach of trust, adultery, gambling and homicide, as crimes. '*Yagnavalakya*' and '*Nilkanta*' has also recognized the same.

However, Manu's criminal justice system was a special code. He gave special consideration to the Brahmins and also Kshatriyas and allowed them exemption from some punishments because of their involvement in the field of education, training and ruling. It appears that there was no rule of law then as is perceived in the Western legal philosophy. There was '*Dharma*' and '*Vishesh Dharma*.' prescribed for the society.

Many principles, which are corner-stone of modern Criminal Jurisprudence, were well known to Hindu jurists and were made part of a Hindu Criminal Justice system.

Mohammedan Criminal Law; -

After the establishment of Mohammedan rule in India, the Muslim Criminal justice system started in India. The Muslim Criminal justice system was based on Koran. The administration of criminal justice system was left in the hands of Kazis. The punishment varied according to the nature of the crime. While administering 'justice', the rules were not fixed; therefore, the punishment for the crime was different at different places, and Kazi-to – Kazi. The power and money were determinant factors in deciding case.

Criminal Law in Modern India :

Two different systems of administration of criminal justice were in existence in India before commencement of The Indian Penal Code in 1860. The English system in Presidency Towns of Bombay, Madras and Calcutta, and Islamic system in Mofussil and interior parts of India. Moreover, since 1827, a new criminal justice system was applied to Presidency of Bombay. This led chaos in administration of criminal justice system.

The Indian Penal Code replaced these different systems by one general law, applicable every where in British India. The Indian Penal Code was drafted by the first Indian law commission with Lord Macaulay as its President and Millet and Sir John McLeod and Anderson were the rest members. The commission prepared and submitted the draft of Indian Penal Code to the Governor-General of India in 1837. The Indian Penal Code eventually came into statute book in 1860, and its enforcement started from 1st of January 1862.

It is one of the criticisms leveled against Indian Penal Code that, Macaulay's draft was based essentially on British notions. It was also remarked by Sir James Stephen that the "Indian Penal Code may be described as the criminal law of England free from all technicalities and superfluities systematically arranged and Modified in some particulars, to suit the circumstances of British India".

But it is not true all together because while preparing the Indian Penal Code, the Commission had not only relied on English-notions but on Indian notions also. It had taken in to consideration Livingstone's Louisiana Code and the Code of Napoleon. The Indian Penal Code is outcome of all these notion, and we can mark its success from the fact that, India is still following

the same Code, and the principles, which were relevant at that time they are equally relevant in today's time. Thus Indian Penal Code reflects different social values, i.e. the values of India, Britain, and France etc. No doubt it requires through reshuffle, to make it more useful in today's time.

The Santhanam Committee on Prevention of Crime felt that the Indian Penal Code, though a very comprehensive compilation does not-fully meet the requirements of our society after a century of its codification. It does not cover many segments of our socio-economic life with which we are required to contend today".

Indian Penal code provides several types of punishments under this Act. Out of them section 309 of the Indian Penal Code provides the provisions against attempt to commit suicide. This is only provision under Indian Penal Code under which commission is not an offence whereas attempt is an offence, because after commission nobody remains for punishment. Till now judiciary has taken different views with respect to this section. In the case of Maruti Shripati Dubal v/s. State of Maharashtra (Ref: 1987 Cr.L.J. P. No. 743) Hon'ble High Court headed by P.B.Savant J and Kolse Patil J. has took viewed when man has right to go somewhere of course he has right not to go somewhere. When man has right to do something of course he has right not to do something. When man came on this earth alone and it is presumed that he will live on this world alone. Like the same thing man has right to live in the society of course he has right to terminate his own life. i.e. he has right to commit suicide. This was decided in the year 1987 so it become law of Bombay High Court that attempt to commit suicide is not an offence. In the year 1994 the issue came before supreme court i.e. P. Ratilam V/s. Union of India (Ref: 1994 Vol. 3 SC P.No. 392) which carries the same fact. In this case Supreme Court has taken view that Bombay High Court has given appropriate view in the case Maruti Shripati Dubal v/s. State of Maharashtra (Ref: 1987 Cr.L.J. P.No. 743). In this manner Supreme Court has upheld view taken by the Bombay High Court.

In the year 1996 an issue Gyan Kaur v/s. State of Punjab (Ref: 1996 Vol 3 SC P.No. 339) came before the Supreme Court. In the said case Supreme Court has overruled its own decision given in the case of P. Ratilam V/s.

Union of India. In the said matter Supreme Court says, "A man is a husband, son, daughter, mother or father or somebody else of course he has created an number of relative in the society. That is why he is a part and parcel of the society. His act to leave the society may affect all those relatives mentioned herein above. That is why man has not right to terminate his own life unnaturally, i.e. he has no right to commit suicide. In this manner the provisions prescribed in 309 again came into existence by this judgment given in 1996.

1. b. OBJECTIVE OF THE STUDY

1. To study the role of judiciary in the interpretation of section of Indian Penal Code.
2. To study the power of judiciary regarding striking down of the provisions of the various sections of Indian Penal Code, 1860.
3. To study the role of parliament regarding the amendment in the provision of section of Indian Penal Code.

1. c. REVIEW OF LITERATURE

The review of literature on Indian Penal Code has been discussed below:

1. R.P. Kathuria (2004) in his book "Law of Crimes and Criminology" stresses upon the case laws related to the provisions Indian Penal Code. He beautifully describes the section 309 and 498A with the recent case laws as well state amendment more specially section 309 of Indian Penal Code. But he has not given more stress upon the commentary of the section 309 and 498A especially. Regarding section 498A of Indian Penal Code he laid stress upon general explanation.
2. Ratanlal and Dhirajlal (2007) in his recent edition of his book. The Indian Penal Code argues upon the case laws and comment, but he fails to give examples in describing the each and every section. In this present study, example with case laws and comment is included to complete this research work.
3. Bhagirathi Ratha E.L. (2000) describes the provision relating to crime against women and children. But he fails to describe the rest of the crime and

he does not even include the amendment of the provision of Indian Penal Code. But without the inclusion of judicial amendments, the present research work is not completed.

4. Ezaj Ahmed (1999) in his book the Law of Crimes endeavors to provide definition of various concepts of criminal law in short, clear and compact but easily understandable way so that the commentary becomes more complete and useful to all the research workers. He also added the updated case law with reference and news heading and sub-heading under the Synopsis of the commentary on various sections are evolved to logically distribute the case to make it easier to get the case law a given point of law. But he does not mention the parliamentary and judicial relation regarding the making and interpretation of law. In the present study, all the aspects of parliamentary and judicially act is added with the recent case laws.

1. d. HYPOTHESIS

1. The role of judiciary and parliament in the amendment of sections of Indian Penal Code, 1860 is positive and sensible.
2. The Parliament has the right to repeal and make necessary changes in the provisions of Sections of Indian Penal Code.
3. The Apex judicial authority while making a judicial review struck down the provisions of sections of Indian Penal Code, 1860.
4. All the sections of Indian Penal Code are interpreted by Apex judicial authority.

1. e METHODOLOGY:

This is a case study which is essentially a library study. The data for this Dissertation gathered from the primary and secondary sources. Under primary sources the discussions has taken places with the judges has been adopted. The selected questions are asked to the respondent. Formal discussions have been taken place with the judges and senior counsels. The reason for adopting the interview method is that the questions asked to the respondents are able to articulate whenever necessary so that each respondent could understand what he is asked.

And the secondary data are collected a source of information from newspapers, periodicals, documents, journals, reported judgments of the Apex court, reference books and internet.

1. f. LIMITATION OF THE STUDY

1. The present case study includes only few provisions of sections of Indian Penal Code.
2. The case study does not include the role of lower judiciary in the changes of the section of Indian Penal Code.
3. The case study does not include the entire functions of parliament. The study deals only with some legislative functions.

CHAPTER 2

EVOLUTION OF INDIAN PENAL CODE

2. a. ORIGIN AND GROWTH OF INDIAN PENAL CODE

The second chapter contains history of Indian Penal Code. Here origin and growth of Indian Penal code is included. Just after this, relation between judiciary and Parliament is included with the description of separation of power between the various organs of the Law formulating body. Salient features and Classification of provisions of Indian Penal Code is also included which describes Indian Penal code constitutes 23 chapters and 511 sections. Penal law did exist in society in one or the other form. The existence of penal law may be traced to the inception of society itself. With the change in society law underwent necessary changes. The origin of penal legislation may be traced to different stages of civilization. The criminal law system is as old as human being. It is interesting to note that Jurist Jeromy Taylor has said "A herd of wolves is quieter and more at one than so many men together unless they have common reason amongst them or common power among them all." As the common reason is not possible because of conflict of interest common power is the only element to keep them in awe. The function of penal law is to keep such members of society together by maintaining the cohesive force among them.

The development of penal laws may be traced out to-

- 1) During primitive stage.
- 2) During medieval stage.
- 3) Development as per Roman law.
- 4) Development as per English law.
- 5) Development in India.
 - 1) Primitive stages: At the early stage in formation of society. During this stage the development was based in four principles.
 - a) Any offense committed by wrongdoer was treated as wrong to the society. It was treated as collective injury. However, revenge was allowed to be taken by the wronged person or his kin.
 - b) Any offence or wrong committed was treated as collective injury. However, the revenge was allowed to be taken not by the wronged person or

the victim. Such a function was delegated to the society to a defined agency. Such agencies were conferred power to deal with such Offences under delegated power. In the run of time, such delegation was in individual cases.

c) Offences committed by the wrongdoer was treated as collective injury. There was no individual revenge. The society delegated the function to some agency. However, there was permanent agency created as distinguished from second phase.

d) Offences committed by the wrong-doers were treated as Offences committed against the society. Such collective injury necessitated collective action. For this purpose penal institutions came to be established.

2) Medieval stage: During this stage the principles of criminal law came to be crystallized. The classification of Offences was provided based on the seriousness of the offences, accordingly, the extent of punishment was determined with reference to the extent of injury caused.

3) Roman law development: The Roman Laws for a pretty long time influenced the world. Especially so in the matter of criminal law. The development of criminal law is to be traced to the year 420 B.C. The Roman criminal law was in the form of twelve tables. These tables provided for classification of crimes, establishment of courts, and inflicting of punishment. For the purpose of imposing the death penalty there was a court constituted called the *Comitia centuriata*. For less serious offences there were other courts established.

Roman criminal law was divided into three parts-

- 1) *Pubica Judicia*
- 2) *Extraordibnaria Crimina*
- 3) *Privata Delicta*

Depending on the nature of Offences classified as-

- 1) Offences against public at large or society
- 2) Offences of serious nature
- 3) Offences against private individuals
- 4) Development of criminal law in England: The history as to criminal law in England has no authentic record. It is said that English criminal law is based on Roman law in this behalf.

English law provided for uncoded law called, *Leges, Henrici Primi*. It was a compilation of existing criminal Offences. It provided for a set of rules containing two parts-1) Classification of crimes and 2) Punishment for cutch crimes.

Deterrent punishment was the salient feature of the English criminal law system.

Establishment of King's Court- In the course of development of criminal courts called *curia Regis* i.e. King's Court came to be established. Trials by Jury: The criminal cases were conducted by institution of jury system.

5) Development of criminal law system in India: The development may be classified into three parts:

- 1) Development under Hindu system
- 2) Development under Muslim system
- 3) Development under British period.

1) Development under Hindu system: The origin and development of criminal law in India may be traced to the period of Manu. In *Manusmriti*, the principles of law including criminal law have been clearly laid down and explained. The principles of administration of justice have been minutely enumerated in the *Manusmriti*, 18 categories of Offences have been defined.

He provided for various forms of punishment as to:

- 1) Censure
- 2) Rebuke
- 3) Fine
- 4) Forfeiture of Property
- 5) Corporeal Punishment

The law of crime and punishment was much developed in the ancient period under Hindu rule.

2) Development under Muslim rule: the basic principles mostly of criminal law are to be found in the holy Quran. In the advent of Muslim rule of India especially after the 13th century the Muslim criminal law system dominated the administration of justice in India.

3) Development during the British period: After the constitution of the East India Company, the British traders provided for various establishments in

India. In course of time large territories came under the control of British people. However they maintained a policy of non-interference so as not to have the displeasure of the natives the English rulers adopted this policy.

The existing law was allowed to be administered by the existing courts. Thus criminal administration of justice was dominated by principles under Muslim law.

Historical Background of the Indian Penal Code

I) The history of the Indian Penal code may be traced to the year 1827.

Contribution of Lord Elphinstone: Lord Elphinstone was the Governor of the Bombay province. The criminal administration of justice was in a sorry state of affairs. Lord Elphinstone took the initiative for drafting of penal law of Bombay Province. Thus Bombay Province was the first Province to have its own modern penal law.

II) Development in the province of Punjab-

The Province of Punjab was annexed to the British Empire in the year 1844. So as to provide for criminal administration of justice in the Province of Punjab, criminal law as provided for that Province in the year 1844.

III) In Bengal- Muslim criminal law was recognized and enforced.

IV) In North-West provinces- new criminal law was made enforceable.

V) In the charter of 1853:

Indian Law Commission: Supreme Legislature was provided for British India. A Law Commission was constituted for making recommendation to the Legislature, T.B Macaulay was appointed as the chief of the law commission comprising of Lord Macaulay, J.M Melod, G.W. Anderson and F. Millet as commissioners therein.

VI) First Report of Law Commission:

The Law Commission submitted its first report on 15th June, 1835.

VII) First Draft of Penal Code:

The Law Commission submitted the draft of the penal code on 2nd May, 1837

VIII) The Draft Penal Code submitted by the Law Commission was returned by the Legislature to the Law Commission for reconsideration and revision.

Accordingly they submitted that revised draft on 23rd July, 1846 and again on 24th June, 1847.

IX) Reference to the Supreme Court:

The revised draft of the penal code was referred to the judges of the Supreme Court at Madras, Calcutta and Bombay.

X) Proceedings in the legislature:

(A) The bill was circulated in the Legislative Council on 28th December 1856.

(B) The bill was considered on 3rd January 1857.

(C) The bill was referred to select committee on 21st April 1857.

(D) The bill received the assent of the Governor-General on 6th October 1860.

(E) The Code came into force on 1st January 1862.

2. b. RELATION BETWEEN JUDICIARY AND PARLIAMENT

As per constitutional provisions are concerned legislature has been assign the work to make enactment while judiciary has to interpret those enactment with considering the intention of the legislature and the executive has to exercise the power given by the legislature.

In the situation up till now legislature has enacted the various laws which are interpreted by the judiciary. Very few times, the laws enacted by the legislature may cancel or took a view to amend in the enactment. e.g. as per article 42, 43, and 44 of Constitution of India legislation and judiciary has been made various changes as per facts and circumstance were concerned. When the legislation is powerful as per majority concern at that time of judiciary became weak vice-versa situation were happened in the past. Till now, judiciary has assigned properly to protect the constitution by executing the power of judicial review. In the comparison with U.K. unwritten constitution Indian Judiciary has protected much better then the constitution of India.

In Indian context nobody is supreme i.e. legislature, executive and judiciary, each of them directly or indirectly put the control for the absolute power of one another.

2. c. SALIENT FEATURES OF INDIAN PENEL CODE.

The Indian Penal Code is a comprehensive piece of legislation. It comprises 23 chapters and 511 sections. The Indian Penal Code embodies the general

penal law of India. It lays down the general conditions of the penal liability, the definitions of specific offences, the conditions of exemptions from criminal liability etc. some crimes are cognizable and some are not. Indian Penal Code comprises the traditional and conventional crimes rooted in customs i.e. theft, murder, rape etc. the Code prohibits a vast range of anti social behavior. This Code is supplemented by local and special statutes to punish certain acts of individuals that are prejudicial to the interest of the citizens and states.

The Code is fine compilation of a substantial criminal law and most of its provisions are as suitable today as they were, when enacted in 1860. But many new offences have emerged in flux off time. The Code needs through revision of these offences to make Code more progressive and practical. But, these new offences, like, white collar and socio-economic crimes, scams, bank frauds, hawala and criminalization of politics, cyber crimes, food adulteration etc. has been punished by passing special laws such as, Anti Corruption Act, Cyber Crimes Act, Prohibition of Food Adulteration Act etc, to supplement Indian Penal Code.

2. d. CLASSIFICATION OF PROVISIONS OF INDIAN PENAL CODE, 1860

The provisions of Indian Penal Code can broadly be classified into two categories viz.

i) General principles:

It relates with basic principle of criminal law and criminal liability viz.

1. Territorial operation of the Code
2. General Explanations
3. Punishments
4. General Exceptions
5. Abetment
6. Criminal Conspiracy
7. Attempt to commit offences

These general principles are applicable to all offences through-out Code.

ii) Specific Offences:-

There are six categories of specific offences discussed in the Code. Viz.

1. Offences affecting the state etc.
 2. Offences affecting the common welfare.
 3. Offences affecting the human body
 4. Offences affecting property
 5. Offences relating to marriage
- Offences affecting reputation.

The Indian Penal Code is the substantive law, the procedure of which is provided in the Criminal Procedure Code, which provides for setting up of Criminal Procedure Code, which provides for setting up of criminal court and the procedure for investigation inquiry and trial of the offences.

I. TITLE AND EXTENT OF OPERATION OF THE CODE :

S.1 Declares that the name of the code shall be the 'Indian Penal Code' and it will have operation throughout the territory of Indian except the State of Jammu and Kashmir. The State of Jammu and Kashmir enjoys a special status. It has its own penal Code. The Indian Penal Code came into force in 1860.

II. JURISDICTION OF THE CODE:

Jurisdiction of the Code is personal as well as territorial.

A. Personal application of the Code:-

The Code applies to 'every person who may be guilty of any act or omission contrary to the provisions of this Code, within India.

It provides the general principle of criminal jurisdiction over persons, 'every person' irrespective his nationality, allegiance, rank, status, caste, color or creed, is liable to punishment under this Code for an offence committed within India. The term 'every person' includes not only citizens, but even non-citizens (foreigners) and a company or an association or body of persons whether incorporated or not. However a company or body corporate cannot be indicated for offence, which can not be committed by its very nature of artificial personality like treason, murder, rape etc, or for offences which are compulsorily punishable with imprisonment or corporal punishment.

A foreigner is as much liable for committing an offence as a resident of India. A foreigner can not take defense of ignorance of law not that the same act is not crime in his State.

In Crown V. Esop. (Sujata Law Book, Allahabad)

Facts : - A person was indicated for an unnatural offence committed on board and East India ship, laying in St. Ketherine's Dock (Calcutta, India). It was argued that he was a native of Baghdad where his act would not have amounted an offence.

Calcutta High Court held :-

That is was not a legal defence.

An English men committing adultery in India can not plead that, in his country, adultery is not offence, he can be held liable for adultery in India.

To held foreigner liable his corporal presence in India at the time of commission of actual offence is not necessary.

There is no exception in favour of anyone in the Penal Code, but the following persons are always exempted form the jurisdiction of criminal courts of every country.

1. President and Governors : -

The President and Governors of India are exempted from the jurisdiction of the courts in India under Art. 361 of the Constitution. No criminal proceeding whatsoever shall be instituted or continued and no process for arrest or imprisonment shall be is sued against these high dignitaries of the State.

2. Foreign Sovereign –

A foreign sovereign cannot be punished under the Code according to the rules of International law. It is because, it would be incompatible with the independence and sovereignty of the sovereign to exercise jurisdiction on him by court of any other nation. Secondly, one sovereign being in no respect amenable to another, since, he enters in that country only under an express license or in the confidence that his independence and sovereignty will be respected.

3. Foreign Ambassadors and other diplomatic representatives:

The immunity of an ambassador from the jurisdiction of the court of the country to which he is accredited is based upon his being representative of the independent sovereign or State. The State which sends him upon the faith of his being admitted to be clothed with the same independence of and

superiority to all adverse jurisdictions as the sovereign authority to whom he represents would be.

4. Alien Enemies :-

In respect of war alien enemies can not be tried by criminal courts. If an alien enemy commits any offence unconnected with war e.g. theft etc. he would be tried by ordinary criminal court. They are usually dealt with Martial Law (Military Law.)

5. Foreign Army :-

When army of one State is by consent on the soil of a foreign State it is exempted from the jurisdiction of the State on whose soil it is.

6. Warships:

Men-of-war of a State in foreign waters are exempted from the jurisdiction of the State within whose territorial jurisdiction they are.

A) Territorial Jurisdiction:

a) Intra-Territorial operation of the Code :-

The words "within India" used in S.2 denotes the intra territorial application of the Code, in India.

It is well recognized principle of criminal jurisprudence that the exercise of the criminal jurisdiction depends upon the place of the offence and not the nationality or domicile of the offender. Thus, to invoke the provisions of the Code, it must be established that the offence for which the accused is charged was committed within the territory of India. The territory of India for the application of its laws, would not only comprise its lands, its internal waters, such as rivers, lakes and canals but also that portion of sea lying along and washing its coast, which is commonly called as its Maritime Zone.

The Maritime Zones of India Act 1981, extends the limit of maritime zone up to 200 nautical miles into the sea from the shore base line.

In *Kastya Ram V. Sate*. (Ref: Sujata Law Book Allahabad)

Facts : In this case decided in 1871; the accused sailed into the sea within three miles of the coast, and removed the fishing stake belonging to the complainant.

Bombay High Court held :-

That an offence committed on high seas but within three miles from the coast of India, being committed within three miles from the coasts of India, being committed within three miles from the coasts of India, (being committed within the territorial limits of the India), was punishable under the provisions of the Indian Penal Code.

b) Extra territorial operation :-

Ss. 3 and 4 extend to the extra territorial operation of the Code. As discussed earlier, in order to invoke liability under S.2, the offence should have been committed in India. However there are some persons enumerated in S.4 of the Code, who are liable to be tried by Indian Courts, even though the offence is committed by them outside India.

Thus, the offence though committed outside India may be tried as an offence committed in India, in following cases :-

1. If it is committed by any citizen of India in any place and beyond India. Therefore, the act of foreigner committed by him in territory beyond the limits of India do not constitute an offence against the Penal Code, and consequently, a foreigner can not be held criminally responsible under the Code by the tribunal of India for act committed by him beyond its territorial limits.
2. If it is committed by any person on any ship or aircraft registered in India, wherever it may be For the purpose of this section, the word "offence" includes every act committed outside India which, if committed in India, would be punishable under the Indian Penal Code.

Illustration :

"A" who is a citizen of India, commits a murder in Uganda. He can be tried and convicted of murder in any place in India in which he may be found.

If an offence is committed outside India, by the persons mentioned above and if he is found within India.

He may be :-

- i. Given up for trial in the Country where the offence is committed. (Extradition) or
- ii. Tried in India (extra-territorial operation).

i.) Extradition: -

When a criminal (whether citizen or non citizen of India), after having committed an offence in a foreign State with which India is on friendly terms, found in India, he can be sent back on proper requisition of that State, to stand the regular trial there. This is known as extradition proceedings effected in pursuance of extradition treaties entered with that State.

In India there is extradition Act of 1962, to deal with extradition proceedings. Before the Act, there was the Fugitive offender's Act, 1881, which provided for extradition of fugitive criminals within common wealth countries.

In Dharma Tejas Case: (Ref: Sujata Law Book Allhabad)

Facts : -

The accused Dharma Teja after committing serious offence of cheating a Shipping Corporation to India and misappropriation of Crores of rupees escaped to Cuba. Cuba refused extradition to India, but when he came to England, English police caught him and extradited to India by the English court of Indian Governments application.

However, the extradition is not available to purely political offences.

ii) Extra territorial Operation : -

Indian Courts are empowered to try offences committed out of India (a) on land (b) on high Seas, or (c) on aircraft.

1) On Land :-

At the time of the commission of the offence, the person, committing it, is a citizen of India, then, even if the offence is committed outside India, he is subject to the jurisdiction of the Courts of India. It clearly indicates that, the jurisdiction of courts does not lose by reason of committing offence in any other place beyond India. Thus, if an Indian citizen commits adultery in England, may be punished in India. Though in England adultery is not offence it is offence in India. Therefore a great Indian Freedom fighter Savarkar was tried by Britishers in Nasik for escaping from the custody of lawful authority in France.

Facts: - The accused of British India, the Savarkar was being brought by police officers from London to Bombay. On the way, he escaped at Marseilles,

Port in France, but was rearrested there, and brought to Bombay, and committed for trial for escaping from the custody of lawful authority.

Held :- The trial is valid though the offence of escaping was committed in France.

2. On high seas (Admiralty Jurisdiction) :-

The jurisdiction to try offences committed on the high seas is known as the admiralty jurisdiction. It is founded on the principle that the ship on the high seas is a floating island belonging to the nation whose flag she is flying.

Admiralty jurisdiction extends over –

- 1) Offences committed on Indian ships on the high sea.
- 2) Offences committed on foreign ships in Indian territorial water.

Piracy :

Piracy jure gentium is an offence against all nations. According to Stephen a person is guilty of *piracy jure gentium* who –

- a) Seizes or attempts to seize any ship by violence or by putting those in possession of such ship in fear, or
- b) Takes and carries away or attempts to take and carry away any of the goods thereon by violence to those in possession of such ship or by putting them in fear.

Irrespective of the nationality, pirate can be tried anywhere.

3. On aircraft : -

The provisions of the Code are made applicable to any offence committed by any person on any aircraft registered in India, wherever it may be. Criminal Procedure Code is an instrument to implement Indian Penal Code.

CHAPTER 3

COMMISSION OF CRIME AND PENALTY

3. a. COMMISSION OF CRIME

The third chapter contains stages in the commission of crime where it includes the different stages and punishment against crime under Indian Penal Code. Secondly, Kinds of punishment is included where it contains five different kinds of punishment. In the later part Provisions of amendment is also included with recent amendment.

An offence is committed either after premeditation or at the spur of the moment. It is in connection with the former (i.e. when offence is committed after premeditation), it is necessary to consider the different stage of the actual commission of the offence.

There are following four stages involved in commission of actual crime.

1. Intention :-

Mere intention to commit a crime is not punishable According to observation of Lord Mansfield, "So long as an act rests bare in intention it is not punishable". The reason is obvious that it is impossible to prove the mental state of a man and court can not punish a man for that which it can not know; Brian C. J., observed that "the thought of a man is not traceable for the devil himself knoweth not the thought of a man" (i.e. thought of man is not traceable to devil and hence not to man).

But when such intention is expressed in words and can be inferred from his acts, the person can be held responsible Indian Penal Code., provides punishment to a person for criminal intimidation, which is mere expression of one's intention to inflict punishment, loss or pain on another e.g.. A for purpose of inducing B to desist from prosecuting a civil suit against A, threatens to burn B's house. A is guilty of criminal intimidation.

2. Preparation :

Preparation consists in devising or arranging means or measures necessary for commission of crime. Generally, preparation to commit offence is not punishable, because proving preparation for commission of particular crime is difficult for prosecution. The other reason may be that the person prepared for crime, may repent and give up idea of committing crime.

Taking into consideration, the gravity of following offences, preparation to commit them is made punishable viz.

1. Preparation to wage war against Government of India
2. Preparation to commit depredation on the territories of the friendly country.
3. Making, selling or being in possession of instruments for counterfeiting of coins or stamps.
4. Preparation to commit Dacoity.

3. Attempt :

An attempt is the direct movement towards the commission of the offence, after preparation is over.

Stephen observed, "An attempt to commit crime is an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted".

A) Ingredients of an Attempt : -

Following are essential ingredients of an offence of an attempt.

a) Intention :-

There must be intention or Mens Rea to commit the crime

b) Act.:-

He must have done some act, which constitutes an act of a criminal attempt.

c) Failure :-

He must have failed in bringing the intended result. i.e. actual crime.

B) Offence of attempt under Indian Penal Code :-

An offence of attempt has dealt with in three different ways in the Indian Penal Code

1) Same Section, Same Punishment:-

In some cases the commission of an offence as well as the attempt to commit it are dealt within the same section and the extent of punishment prescribed is also the same for both. Such Twenty – seven sections are there in a code e.g. S. 121, 124, 124 A, 125, 130 etc.

2. Different sections, different punishment : -

In some cases attempts are treated as separate offences and mentioned in different sections. The punishment provided to that offence and to an attempt

differs in such circumstance. Following four such offences are there in the Indian Penal Code.

- 1) Attempt to commit murder.
 - 2) Attempt to commit capable Homicide.
 - 3) Attempt to commit suicide .
 - 4) Attempt to commit Robbery.
- 3) General Provision :-

Thirdly, the offences of attempt which are not covered by above two classes are governed by the general provisions contained under S. 511. This is the residuary section providing punishment for those attempts of offences not mentioned in earlier sections.

C) Tests of Separation between preparation and attempt:-

The line of difference between preparation and an attempt is very thin. Therefore it becomes very difficult to make distinction as to when predation is over, and attempt started. To solve this problem some following tests has been evolved by the court namely.

i) Proximity test : -

To constitute an offence of attempt, the act of attempt must be sufficiently proximate to the crime intended; it must not be remotely leading towards the commission of an offence. E.g., A intends to murder Z, buys a gun and loads it with the intention to kill Z. A. is not yet guilty of an attempt to murder. A fires at Z., but misses him for want of skill or due to defect in gun itself, A has committed an attempt to murder.

In R. V. Nidha, (Ref: Sujata Law Book Allhabad)

Facts : - The accused Nidha along with another person, fired at a chowkidar (policemen) who had attempted to arrest them. Nidha had pulled the trigger of the gun, the cap exploded but the bullet did not go off. Nidha arrested and tried for attempt to murder.

Held : - Court held that there was sufficient proximity between offence intended and attempt. He was convicted for attempt to murder under S. 307.

ii) Impossibility test :

An act which is impossible to commit cannot be attempted and so is not punishable. Accordingly, to shoot at shadow, to administered sugar mistaking

it for poison, to kill man by witchcraft are not attempts in law. The impossibility however, must be absolute and not relative, e.g., inadequate poison administered to the victim is an offence of attempt to kill, even though it was proved that the poison was not sufficient to kill the victim.

iii) Social danger test :

Many a times, the seriousness of the crime attempted and the apprehension of the social danger involved in it, is taken in to consideration while separating attempt from preparation. E.g. A tries to put bomb in crowded place, while he was apprehended by the police. A would be held guilty of attempt to make blast since the very act of putting bomb is very dangerous to the society and it causes immediate alarm in society.

iv) Equivocality test :

To constitute an attempt, the act must be such as to clearly and unequivocally indicate the intention to commit the offence. In other words, an act must point towards perfect intension of an accused to commit the crime and not to repentance. In above case of Nidha, the fact of Accused's firing gun, unequivocally points towards his intention of killing to Chowkidar.

D. Distinction between preparation and attempt:

1) Definitions :-

Preparation consists in division and arranging the means or measures necessary for the commission of the offence.

Whereas an attempt is the direct movement towards the commission of the offence after preparation is made.

2. Punishable/Non Punishable :-

Preparation is not generally punishable whereas, attempt is punishable.

4) Actual Commission:-

The last stage in commission is actual commission of crime. In other words, getting the intended consequences completed e.g. committing actual murder dacoity etc, which in all cases is punishable.

3. b. PENALTIES UNDER INDIAN PENAL CODE

i. PENALTIES: AIMS AND OBJECTS:

According to R.C. Nigam, "Punishment is the suffering in the person (physical) or property, inflicted by the society on the offender who has been adjudged the guilty of crime under the law". The suffering in property may be forfeiture or fine. (Ref: Ratanlal and Dhirajlal, Law of Crime)

Punishment aims to protect society from mischievous elements, by deterring potential offenders, and preventing actual offenders from committing further offences, to eradicate evils, to reform criminals and turn them into law abiding citizens.

However, the amount of punishment is not uniform in all cases. It changes time-to time and place-to place. It depends upon the values, which that society preserves. Therefore, an adultery is offence in India which is not so in England. The punishment for any offence in India is not that much severe as it is in Arabic countries. Punishments also vary according to the nature of offence, intention, age, mental condition of the person and the circumstance in which the offence is committed. For instance, a boy of ten years will be treated differently from the grown up man, for committing the same offence. Like wise, a person of unsound mind would be treated differently from a man of sound mind for commission of murder. Similarly, habitual offenders, professional offenders will be punished severely than first time offender.

ii. THEORIES OF PUNISHMENT

Protection of the society from anti-social behavior and reduction in crime rate is the object of the punishment. This object or purpose is achieved by deterrence, prevention, retribution and reformation of criminal. These are also called as the justifications for punishments. Among these objects, deterrent is regarded as main function of punishment and others being merely secondary.

a. Deterrent theory:

According to this theory, the object of punishment is not only to prevent the wrongdoer from doing a wrong again, but also to make him an example to other persons who have criminal tendencies, so that the other would also deter from committing crime in future. Therefore a general (i.e. to the other potential criminals in the society) and particular (i.e. particular criminal)

deterrence is the object behind deterrent theory. The instances or kinds of such punishment maybe death, or having in public, stoning till earth, whipping in public, maiming etc. According to Justice Brunet-“thief is not punished for having stolen a house but, in order that other houses may not be stolen”.

However, this theory has been criticized on several grounds such as this theory is ineffective in reducing crimes, excessive harshness of punishment create sympathy in minds of public about criminal, it is likely to harden the criminal instead of creating in his mind the fear of law.

b. Preventive Theory:

Another object of the punishment is preventing or disabling. The offenders are disabled from repeating the crime by punishment like death, exile or jail imprisonment etc. it has been criticized on the ground that preventive punishment has the undesirable effect of hardening the first time offenders or juvenile offenders by putting them in the association of hardened criminals.

c. Retributive Theory:

In primitive society, punishment was mainly retributive. The victim was allowed to take revenge (retribution) against a wrongdoer. The principle of ‘an eye for eye, and tooth for tooth’ was the basis of the criminal administration.

According to this theory, criminal deserves to suffer punishment. In modern times, the satisfaction of individual victim's revenge is made by inflicting punishment on offender by the state. Thus, this theory gratifies the instinct of revenge, which exists not merely in the individual wronged, but also in the society at large.

However, this theory has been criticized on the ground that, the punishment in itself is not a remedy for a wrong. It merely aggravates the mischief. Punishment in itself is evil and cannot be justified if it does not yield better results.

d) Reformatory Theory:

According to this theory, the object of punishment is to reform criminal. This object can be achieved by convincing futility of crime (i.e. crime doesn't pay) and by breaking habit that criminal have formed of continuing crime. Reformation may be defined as “The effort to restore an offender in a society as a better and wise man and a good citizen”. According to this theory,

criminal is treated as patient and his tendency to commit crime is disease, which can be cured by well-designed administration of medicine of punishment. It treats punishment as a medicine to reform criminal. For this purpose from lenient to severe punishment are taken into consideration. This theory suggest for giving some vocational training in art, craft or industry in jail, so he may be able to lead good life and become a respectable citizen after his release.

The judge should take into consideration while awarding the punishment the character and age of the offender, his early breeding, family background, his education and environment, the circumstances under which he committed crime, the motive, which prompted him to indulge in criminal activities etc. it is to be done to acquaint judge to know the nature of offender and administer a suitable punishment to achieve the ends of justice.

In *Sunil Batra V. Delhi Administration*: (AIR 1978 SC P.No. 1675)

Facts: A letter was sent by a prisoner to the Supreme Court, for brutal assault by a Head Warden of jail on another prisoner. The letter was treated by the court as a writ of Habeas Corpus.

Justice Krishna Iyer Observed: -

The object of the punishment is to correct the wrong doer and not wrecking vengeance on him. Punishment is no longer be regarded as 'retributive' or 'deterrent' but it is regarded as reformatory or 'rehabilitative' (Sujata Law Book Allahabad)

According to Mahatma Gandhi "Hate the sin, but not the sinner. Offender be treated as a patient and punishment is to be so administer to cure the disease of him".

Criticisms on following grounds are leveled against this theory, viz.

Firstly, Reformists are concerned solely with criminal but they don't consider the plight of victim. Thus, if a young girl is raped, they will follow rapist and take care of him to cause reformation in him but what about the suffering of raped girl and her family. In short, a reformist shows their sympathy to criminal but not to victim.

Secondly, the importance of deterrent theory cannot be forgotten. Reformation is an important object of punishment, but it is not a sole end in itself.

Thirdly, Reformative treatment is more likely to succeed in educated and orderly society than uneducated and under developed communalities.

Fourthly, Reformation costs more to the state funds.

Fifthly, the success of reformative treatment is doubtful.

In conclusion, only one theory of punishment will not cause proper effect unless it is administered with any other or rest of the theories.

3. c. PENALTIES AGAINST CRIME UNDER INDIAN PENAL CODE

Chapter III of the Indian Penal Code from Ss. 53 to 75 deals with the general provisions relating to punishment. The Code has provided graded system of punishment to suit different categories of crimes. S. 53, provides for five types of punishments that can be awarded to a man convicted of an offence under Indian Penal Code. Viz.

1. Death.
2. Imprisonment for life.
3. Imprisonment with or without hard work.
4. Forfeiture of property.
5. Fine.

Out of these five kinds of punishments first three concerns with the body of the offender. Whereas the latter two concern his wealth or property. A wide discretionary power has been given to the courts to award any punishment within the maximum limits prescribed for an offence by the Code. The Code, generally does not provide for a minimum limit of punishment to be imposed but lays down the maximum limit beyond which the court cannot award punishment. Therefore, the Code provides the sentence as "shall be punished with imprisonment which may extend to years" or "with fine which may extend to Rupees"

While exercising its discretion, in awarding punishment the court shall take into consideration the nature of the offence, the circumstance in which it was

committed the degree of deliberation, the age, sex, character and antecedent of the offender, i.e. whether he is first-time offender, or a habitual or a professional etc.

In State of UP. V. M.K. Anthory (Ref: AIR 1985 SC P. Nzo 48)

Facts: - The accused killed his ailing wife, as he could not provide the money for her operation. He also killed his two children, as there would be no one to care for them after their mother. However the offence was committed out of poverty and not for lust, vengeance or gain.

Supreme Court held: - that the life imprisonment and not capital punishment was the appropriate sentence.

1. Death sentence. (Capital Punishment).

a) Introduction -

Various forms of punishment have been evolved and applied through-court ages. Torture, sadistic forms of executing death sentence and all sorts of cruelties in prison were the distinguishing features of the penal philosophy all over the world unless until recent time. In it capital or death punishment is mostly debated since long ages even from the time of Lord *Budha* when principles of *Ahinsa* were prevalent. There are arguments for and against the retention of capital punishment. There are merits as well as demerits in retention of capital or death punishment

b) Death (Capital) Punishment under Indian Penal Code.

The sentence of death is most extreme punishment provided under the Code. This punishment occupies topmost position among the grades of punishments. It is imposed in extreme and grave cases. Indian Penal Code. provides death punishment as an alternative in following offences. Viz.

1. Waging war against the Government of India
2. Abetting mutiny, actually committed .
3. Giving and fabricating false evidence upon which an innocent person suffers death.
4. Murder.
5. Abatement of suicide of a minor, insane or intoxicated person.
6. Attempt to murder by a person under sentence of imprisonment for life if hurt is caused.

7. Dacoity accompanied with murder.

However, there appears to be great controversy since ages amongst judges, lawyers, administrator and social reformists. They question the utility of death punishment. In most of the developed countries the death punishment has been abolished from the penal statutes on arguments of these persons. We will discuss some of the arguments for and against the retention of capital punishment.

c) Arguments in favour of capital punishment.

The supporters of capital punishment base their claim on following arguments.

i. Deterrence.

Prima facie penalty of death has a deterrent effect on prospective offenders than any other kind of punishment.

ii. Elimination of dangerous criminals,

Death is only punishment to eliminate dangerous and habitual criminals from society forever.

iii. Reduce expenditure of State.

Capital punishment reduces unwanted increase of crowd in jail and increase expenditure of state.

iv. Justice to Victim.

Capital punishment by eliminating offenders assuages the vengeance of victim's family, thereby rendering full justice to them. Recently constituted Malimath Committee on 'reforms of Criminal Justice System', has also suggested the need to make criminal justice system more victim oriented by providing participation to them in proceeding and also giving compensation to them.

v. Sense of protection.

Elimination of offenders provides sense of protection and justice in society.

vi. Constitutionally valid.

Capital punishment is held constitutionally valid by Supreme Court in *Bachan Singh v. State of Punjab*.

vii. Pardon or commutation

S. 54 of Indian Penal Code. Empowers the appropriate government i.e. either Central or State, to commute sentence of death to any other punishment.

Moreover, the constitution of India invested the President of India and the Governors of states under Art. 72 and 161 respectively, with the power to grant pardon (absolute or conditional) reprieve (temporary suspension of punishment), respite (postpone punishment to future date), remission (to reduce amount of punishment) or to suspend, remit or commute the sentence of any person convicted of any offence. These powers are purely executive in nature and the judiciary has nothing to do with it. However, the Governor, can not grant complete pardon to death sentence.

viii. 'Rarest in rare case'.

In India capital punishment is not awarded in all offences-wherein capital punishment is provided as an alternative punishment but only in 'rarest of rare cases'. The rarest of rare case doctrine Js evolved by Supreme Court in Bachan Singh's case (Ref: Times of India, 23rd September, 2003). Therefore, in each and every murder case death punishment is not, awarded but only in rarest and rare case, e.g. Anjana Gavit's case, decided in Kolhapur, wherein the accused woman with her two daughters, having themselves women used several children for committing pickpocket and eventually killed them. High Court, of Mumbai has recently confirmed, punishment of death on other two female accused (Anjanabai has already died); Similarly, in recent case of State of Orissa v Darasingh. Court awarded Capital punishment (death) to main accused Darasingh, and rest of twelve member's were awarded life imprisonment. In recent 'Dhananjai Chaterji's case, the capital punishment is executed on accused Dhananjai, who raped and killed mercilessly a teenager girl. Therefore, awarding capital punishment is not general trend but an exception. In my view, this doctrine, rather prohibits execution of capital punishment in general cases,-even though capital punishment is provided therein.

d) Arguments against capital punishment.

Following are some of the arguments leveled against the retention of capital punishment.

i. Cruel and Inhuman:

Capital punishment is most cruel and inhuman type of punishment by which the life of person is put to an end through legal process. In short, capital punishment is a cold-blooded legal murder. According to Baccaria the state has no right to take life since it cannot put life to any body except God.

ii. No reformation:

Reformists more stress on need of reforming criminal than eliminating him. Capital punishment doesn't provide any chance of improvement to criminal.

iii. Misuse.

According to Justice Douglas 'mostly poor persons get capital punishment than richer.

iv) Cold blooded legal murder.

According to some, capital punishment is cold blooded legal murder.

v) According to metaphysic.

According to metaphysic, life in all creatures is put by God alone, and God alone has to take it out. Life can not be taken away by any other person or body (State etc) than God.

2) Imprisonment for Life: -

Imprisonment for life technically means a sentence of imprisonment running throughout the remaining period of a convict's natural life. But the appropriate government may commute the life imprisonment sentence up to fourteen years; in case of offender's good conduct. Imprisonment for life is rigorous imprisonment and not-simple imprisonment,

3] Imprisonment:

There, are three kinds of imprisonments,

i. Rigorous.

In this form of imprisonment the offender is put to hard labour, such as-grinding, digging earth, drawing water etc.

ii. Simple.

In simple imprisonment the offender is given lighter work or not given work at all.

iii. Solitary confinement

It is an aggravated form of imprisonment wherein an offender is put in isolated cell. Thus, his all contacts with other world are severed. It is given for harsh and hardened convict.

However, the solitary confinement shall not exceed.

- i. Beyond 3 months in a whole.
- ii. Maximum 14 days -at one time, and next with interval of not less than 14 days.
- iii. 7 days in a month with intervals of not less than 7 days, if the substantive imprisonment sentence exceeds 3 months but does not exceed 6 months.

Solitary imprisonment is awarded for offences committed under Indian Penal Code only, but not under any other 'special' or 'local laws'. It cannot be awarded where imprisonment is not part of the substantive sentence (i.e. where imprisonment is awarded in default of fine) or where the imprisonment awarded is simple.

However, according to many criminologists this kind of punishment is inhuman and .perverse. If used in excess, it might turn a man of sound mind into lunatic.

4] Forfeiture of property.

Forfeiture of property is inflicted in following four types of offences-

- i. Committing depredation on territories of any power at peace with the government of India (i.e. friendly State)
- ii. Waging war against any Asiatic power in alliance with the, Government of India.
- iii. Receiving property taken by war or depredation as mentioned above.
- iv. Improper purchase by a public servant of property which by virtue of his office he is legally prohibited from purchasing.

5] Fine.

Fine is forfeiture of money, -by way of penalty. The court may impose fine along with or without imprisonment. The Indian Penal Code provides fine as punishment for several offences.

Where, no maximum limit of fine is laid. The amount of fine in such case is unlimited. But such amount of fine should not be excessive.

Imprisonment in default of Fine:

Court can also award imprisonment in default of fine. In this case imprisonment is not in lieu of fine, but it is in default therefore, i.e., it is the penalty for the non-payment of fine and not a substitute punishment thereof. Imprisonment in default of payment of fine does not liberates an accused from his liability to pay fine imposed upon him. Such imprisonment does not serve as a discharge of fine but is imposed as a punishment for nonpayment. Fine, awarded can be recovered within six years from its award. Even his death doesn't discharge his liability for fine, it can be recovered from, his property afterward.

When an offender is awarded with imprisonment as well as fine, imprisonment in default of fine shall not exceed on forth of the term of imprisonment which is the maximum fixed for the offence. Such extra punishment may be rigorous or simple according to the substantive term of imprisonment.

When the offence is punishable with fine only imprisonment in default of fine shall always be simple and.

- i. It shall not exceed 2 months when the fine does not exceed Rs. 50; and
- ii. Shall not exceed 4 months when the fine does not exceed Rs. 100 and
- iii. Shall not exceed 6 month in any other case .

But when offender is under going imprisonment in default of fine and pays fine, his remaining imprisonment in default of fine shall be terminated forthwith.

3. d. PROVISION OF AMENDMENT

The Central Legislation has right to amend in the Indian Penal Code,1860.

Even State Legislation has right to amend but such amendment shall not contradictory to the basic provision.

CHAPTER 4

CHANGES IN INDIAN PENAL CODE, 1860.

This Chapter deals with sections 120 A, 303, 309, 375, 498A of the Indian Penal Code, 1860 and changes/amendments brought about thereof.

Amendment/Section	Judicial	Executive	Legislative	Year of Amendment
Section 120 A			Parliament	1913
Section 303	Supreme Court			1955
Section 309	Supreme Court			1996
Section 375			Parliament	1983
Section 498 A			Parliament	1983

List of Cases :

1. Mulealy V/S R. (Ref: Sujata Law Book Allhabad)
2. R. V/S Delaval (Ref: 1863 Vol. (iii) Burr. Page No. 138)
3. Haradham Chakrabarty V/S Union of Indian (Ref: 1990 Vol. (2) S.C.C. Page No. 143)
4. Bhagwan Swarup Lal Bishanlal V/S State of Maharashtra (Ref: A.I.R. 1995 S.C. Page No. 682)
5. Parveen Kumar V/S State of Punjab (Ref: 1979 Cr.L.J. Page No. 1395)
6. Sohansing Nansing V/S State (Ref: A.I.R. 1965 Punj, Page No. 156)
7. Karnail Singh V/S State of Punjab (Ref: 1982 Cr.L.J. Page No. 1364)
8. Shaikh Abdul Azeez V/S State of Karnataka (Ref: A.I.R. 1977 S.C. Page No. 1485)
9. Mithu V/S State of Punjab, (Ref: A.I.R. 1983 SC Page No. 473)
10. Menka Gandhi V/S Union of India (Ref: AIR 1978 SC Page No. 597)
11. Sunil Batra V/S Delhi Administration (Ref: AIR 1978 SC Page No. 1675)
12. Maruti Sharipatidubal V/S State of Maharashtra (Ref: 1987 C.R.L.J. Page No. 743)
13. P. Rathinam V/S Union of India (Ref: 1994 Vol. iii S.C. Page No. 392)

14. Shrimati Gyan Kaur V/S State of Punjab (Ref: 1996 Vol. iii S.C. Page No. 339)
15. Pawan Kumar V/S State of Haryana (Ref: 1998 Vol. I S.C. Page No. 565)
16. Rajayyan V/S State of Kerala & Others (Ref: 1998 Vol. iv S.C.C. Page No. 85)
17. Sakashi Case (Ref: 2004 Vol. V S.C.C. Page No. 518)
18. Ram Sunder Dubey V/S State (Ref: A.I.R. 1962, All Page No. 262)

4. A. (i) SECTION 120A CRIMINAL CONSPIRACY

The chapter fourth carried out with the pecuniary changes in Indian Penal Code. In this chapter section 120 A of Indian Penal Code explain criminal conspiracy. It also includes definition and then the development of law of conspiracy and later scope of law of conspiracy and section 303 which says punishment for murder by life convict. Lastly, section 309 which says attempt to commit suicide is also included.

Explanation:-

It is immaterial whether the illegal act ultimate object of such agreement or is merely incidental to that object.

This section 120-A was enacted by the Indian Criminal Law Amendment Act 1913. This section is directly deal with the subject of conspiracy. It is an offence to conspire to commit any of the offence punishable by section 121 of the Indian Penal Code.

(ii) DEFINITION OF CRIMINAL CONSPIRACY

When two or more persons agree to do or cause to be done –

- 1) An illegal act or
- 2) An act, which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Ingredients:-

The ingredients of this offence are –

- 1) That there must be an agreement between the persons who are alleged to conspire and
- 2) That agreement should be
 - (i) for doing of an illegal act or,
 - (ii) for doing by illegal means an act which may not itself be illegal.

Two or more persons needed –

To constitute the offence of conspiracy there must be an agreement of two or more persons to do an act which is illegal or which is to be done by illegal means for one cannot conspire with oneself.

(iii) DEVELOPMENT OF LAW OF CONSPIRACY

Conspiracy at common law had its origin primarily as a civil wrong but was subsequently made punishable as a criminal wrong. Conspiracy was originally used to explain the acts of agreement of those who combined to carry on legal proceeding in a improper way.

According to the English law, if two or more persons agree together to do something contrary to law or wrongful and harmful towards another person or to use unlawful means in the carrying out of an object not unlawful, the persons who so agree commit the crime of conspiracy.

The House of Lords in the famous case of *Mulcahy V/S R.* Stated :- (Ref: Sujata Law Book Allahabad)

A conspiracy consist not merely in the intention of two or more but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only it is not indictable when two agreed to carry it in to effect, the very plot is an act in itself and the act of each of the parties promise against promise (*actus contra actum*) capable of being enforced it lawful, punishable it for a criminal object or for the use of criminal means.

English Law :-

Conspiracy is an offence to the English law and its present form has been gradual and marks three distinct stages in its. In its first stages (A.D. 1290 – A.D. 1611) the offence though formulated at common law it appears to have been confined to a conspiracy to obstruct or prevent or defeat or delay justice. And even as such it remained without any adequate sentence. The offence a

more concret from in A.D. 1611. In the Poultern case it was for the first time settled that the agreement for a conspiracy was indictable as a substantive offence even well nothing had been done to execute it. And the third and final stage in its development was reached some years back in A.D. 1965.

A conspiracy to corrupt the morals of a particular individual is an offence at common law.

In R. V/S Delaval (Ref: 1863 (iii) Burr. Page no. 138) Lord Mansfield said,

It is true that many offence of the incontinent kind fall properly under the jurisdiction of the Ecclesiastical Court and are appropriated to it. But if you except those appropriate cases, this court is the *custos morum* of the people and has the superintendely of offence and upon this ground both Sir Charles Sedley and Curl who had been guilty of offence against good manner were prosecuted here. In the present case a conspiracy and confederacy amongst the defendants which are clearly and indisputably within the proper jurisdiction of this Court.

Difference between English Law and Indian Law:-

Criminal conspiracy has been the subject of legislation from a very early period in England. In A.D. 1305 an ordinance was passed to punish persons conspiring to corrupt the course of justice. Several statutes now exist prescribing penalties for criminal conspiracies to commit various offence as murder to cause explosion or those related to unions. It is of the essence of a conspiracy that two or more persons should agree to do an unlawful act which agreement is then stated to be an overt act sufficient to complete the offence. The proviso to this section is intended to overrule this view so far as it relates to a conspiracy other than a conspiracy to commit an offence and limit that offence to an overt act done independently of the conspiracy.

But accordingly to the Indian definition is narrower than its English law. In another respect the offence here is wider and criminal conspiracy is punishable. Indian statute law furnishes no corresponding analogy.

In the case of Haradham Chakrabarty V/S Union of India (Ref: 1990 (2) S.C.C. page no. 143 and A.I.R. 1990 S.C. page no.1210)

It was laid down that "two or more persons must be parties to such an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself."

It also appears to be held that these two persons must be natural persons so that there could be an agreement between two or more minds. It is not an ingredient of the offence under this section that all parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Where the Accused are charged with having conspired to do three categories of illegal acts. The mere facts that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They can all be held guilty of the offence of conspiracy to do illegal acts though for individual offence all of them may not be liable.

Where the agreement between the accused is a conspiracy to do or continue to do something which is illegal. It is immaterial whether the agreement to do any of the acts with connection of the commission of the offence do not strictly amount to an offence. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. It is not necessary that each member of a conspiracy must know each other or all the details of the conspiracy. It is also not necessary that every conspirator must have taken part in each and every act done in with the connection of a conspiracy.

(iv) SCOPE OF LAW OF CONSPIRACY

Section 120-A of the Indian Penal Code which defines criminal conspiracy enacts that an agreement to commit an offence may itself amount to a criminal conspiracy even if no acts follow on the agreement. The second class of cases is that in which conspiracy is formed in order to do an illegal act or an act not illegal by itself means this sort of conspiracy in no case amounts to abetment and does not amount to a criminal conspiracy unless some agreement is done in with connection. This section 120-A of the Indian Penal Code provides a definition of criminal conspiracy covering acts which do not amount to abetment by conspiracy within the meaning of section 107 of the Indian Penal Code.

Section 120-B of the Indian Penal Code provides a punishment for criminal conspiracy where no express provision is made in this court for the punishment of such a conspiracy. Where a criminal conspiracy amounts to abatement under section 107 of the Indian Penal Code then it is unnecessary to invoke the provision of section 120-A and 120-B of the Indian Penal Code because the code has made specific provision for the punishment of such a conspiracy.

Section 120-A of the Indian Penal Code provides that when two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means. Such an agreement is designated a criminal conspiracy. Therefore criminal conspiracy is an agreement to do an illegal act. Conspiracy is a matter of the circumstantial evidence from the acts and conduct of the parties agreement could be inferred. For example, if it can be proved that the accused pursued by similar act the same object often by the same means, one performing one part of the act and the other another part of the same act so as to complete it with a view to the achieve the object which they were pursuing the court will be at perfect liberty to conclude that they had conspired together to effect that object.

The main thing of the offence under section 120-A of the Indian Penal Code is an agreement to brake the law. The parties to such an agreement will be guilty of criminal conspiracy though the illegal act agreed to be done has not been done. So it is not an ingredient of the offence that all the parties should agree to do single illegal act. It may comprise the commission of a number of acts under section 43 of the Indian Penal Code an act could illegal if it is an offence or it is prohibited by law.

In the case of Bhagwan Swarup Lal Bishanlal V/S State of Maharashtra (Ref: A.I.R.1965 S.C. page no. 682)

The proof requisite in a case of conspiracy with reference to section 10 of the Evidence Act. In the above case Supreme Court has observed as follows, "There is no difference between the mode of proof of the offence of conspiracy and that of any other offence."

Criminal conspiracy may be proved either by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act deals with the doctrine of agency and if the conditions laid down therein are satisfied then the act done by one is admissible against the co-conspirators. Section 10 of the Evidence Act will come in to play only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong i.e. there should be a prima facie evidence that a person was a party to the conspiracy before his act can be used against his co-conspirators. Once a reasonable ground exists anything said, done or written by one of the conspirators in reference to the common intention after the said intention was entertained is relevant against the other not only for the purpose of proving the existence of the conspiracy but also for proving that the other persons was a party to it. The evidentiary value of the said act is limited by two circumstances that the act shall be in reference to their common intention and in respect of a period after such a intention was entertained by any one of them.

It is further observed by the Supreme Court is that,

- 1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy.
- 2) If the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other.
- 3) Anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them.
- 4) It would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it.
- 5) It can only be used against a conspirator and not in his favor.

4. B. (i) SECTION 303 PUNISHMENT FOR MURDER BY LIFE CONVICT

Whoever being under sentence of imprisonment for life commits a murder shall be punished with death.

Procedure:-

This offence is cognizable and warrant should be a ordinarily issued in the first instance. It is non bailable and non compoundable and is exclusively triable by the Court of Session.

This section prescribed punishment for murder committed by a life convict. It says that whoever being under sentence of imprisonment for life, commits a murder shall be punished with death. It means the Section make the capital sentence compulsory when a murder is committed by a person who is undergoing a sentence of imprisonment for life.

The section does not apply to a person whose sentence has been commuted under section 55 of the Indian penal code or section 433 of the criminal procedure code. When an accused person has been convicted of murder and sentenced to imprisonment for life and the remainder of that sentence has been remitted without conditions by the Government under section 432 of criminal procedure code. He can no longer be said to be under a sentence of imprisonment for life, that sentence having in effect been served and if he commits a second murder then the provisions of this section can not apply.

(ii) SCOPE OF SECTION 303 OF INDIAN PENAL CODE

Section 149 provides that if an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object. Every person who, at the time of the committing of that offence is a member of the same assembly is guilty of that offence. It is true that the basis of constructive liability imposed by section 149 is mere membership of the unlawful assembly, on the basis of the constructive liability contemplated by section 34 is participation in the same action with the common intention of committing a crime. It does not make any difference in the legal position that if a murder is committed by one member of an unlawful assembly in prosecution of the common object of that assembly all members of the unlawful assembly who at the time of the commission of that offence were members of such assembly would be guilty of the offence of murder. If again where a person is convicted under section 302 of the Indian Penal code or section 149 of the Indian penal code, the true legal position is that in law is

he must be deemed to have committed the murder as much as the actual murder. Therefore section 303 of the Indian penal code cannot be confined only to cases where a person undergoing sentence of imprisonment for life actually and infact himself commits an act which results in the death of the victim. The said section would apply even in cases where a person undergoing sentence of imprisonment for life is convicted either under section 302 read with section 34 of the Indian Penal Code or under section 302 read with section 149 of the Indian Penal Code.

It is clear that the expression "whoever being under sentence of imprisonment for life" in section 303 of the Indian Penal Code means that whosoever is undergoing the sentence of imprisonment for life which is operative at the time when any court whether at the stage of trial or appeal is called upon to announce its decision in the second murder held to have been committed by the accused.

In the case of Parveen Kumar vs. State of Punjab (Ref: 1979 Cr.L.J. page no. 1395)

The accused committed a murder and was convicted under section 302 of the Indian Penal Code and awarded life imprisonment by the session Judge. His appeal was dismissed by the High court on 2nd November 1977. Against that decision special leave petition was admitted by the Supreme Court on 28th March 1978. Though the Special leave was granted only to the limited extent. As it was confined to the nature of offence and sentence. The second murder was committed by the said accused on 20th November 1977 for which he was tried in the court of the session Judge, who by his judgment dated 28th July 1978 held him guilty of the murder and convicted and awarded him death penalty under section 303 of the Indian Penal Code on the ground that at the time of the award of the sentence and the decision of the case accused was already undergoing life sentence in connection with the first murder. It was held that the conviction was proper.

When a person who is sentence to imprisonment for life commits a murder. The previous conviction assumes a graver proportion and becomes an aggravating circumstance. But the aggravation is on the assumption that the previous conviction is lawful and valid. An order of acquittal in regard to the

previous offence wipes out the guilt and attaching to the previous conviction for the true implication of an acquittal is as if offender did not commit the offence for which he was tried no matter whether the acquittal is founded on benefit of doubt or rests upon an overall rejection of the prosecution case. That the order of acquittal implies the innocence of the accused is not dependent upon the stage of the court proceeding at which the order was passed but it depends upon the fact of acquittal itself therefore If a court whether of the first instance finds on the date on which it records its decision that the accused before it is no longer under a sentence of life imprisonment, it cannot under section 303 of the Indian Penal Code sentence him to death. On the date when the subsequent offence of murder was committed the accused might have been under a sentence of life imprisonment but such a sentence would cease to have in existence in the eye of law. If on the subsequent stage the conviction on which the sentence of life imprisonment is set aside or the conviction is maintained but the sentence of life imprisonment is reduced to a lesser sentence. More than one offence in the Penal Code is punishable with life imprisonment and not all sections of the code which provide for the sentence of life imprisonment make it obligatory to impose that sentence. For example an offence under section 304 part – I or section 326 is punishable with life imprisonment and the court of first instance may sentence the offender under those sections to life imprisonment. The higher Apex Court may set aside the conviction in its entirety and acquit the accused in maintain the conviction and reduce the sentence to a lesser term which under those sections is permissible in either event the offender would be no longer be under a sentence when that sentence is set aside or reduced. The court dealing with the proceeding relating to the subsequent offence of murder will have to take that circumstance into account. The date of murder has relevance but that is in the limited sense that the murder has to succeed and not precede. The offence for which the accused was sentenced to life imprisonment. This sequence is fixed by the pre-condition of Section 303 that a person under sentence of imprisonment for life must be found guilty of murder. But in between the date on which the subsequent offence of murder is committed & the proceeding in respect is terminated then sentence of life

imprisonment of previous conviction may have been set aside, in which section 303 would cease to have application.

It is a well principle that a court seized of a proceeding must take into account events subsequent to the inception of that proceeding. That position is accepted in civil law and there is no reason why the principle should not be extended to criminal proceedings with appropriate changes. When on the conclusion of a session trial, the session judge finds the accused guilty of murder, he will have no option save to act under section 303 of the Indian penal code. He finds that at the date of the offence the accused was under a sentence of life imprisonment for some other offence. The High Court dealing with an appeal from the judgment of the session court may find that the sentence of life imprisonment which was in operation on the date when the session court delivered its judgment has been in the mean while set aside by apex court seized of the previous case. The High court shall have to take the subsequent event of acquittal into consideration and by reason of that event section 303 would seized to have application. It may so happen that this court seized of an appeal against the high court judgment may find when it records its own judgment that the sentence of life imprisonment imposed by the trial court but set aside by a higher court has been re-imposed in a further proceeding. In that event this court shall have to proceed on the basis that at the time when the accused is alleged to have committed murder, he was under a sentence of imprisonment for life. If the conviction for murder is upheld by this court. Section 303 of the Indian Penal Code would come into picture and the accused shall have to be sentence to death.

When Section 303 of Indian Penal Code speaks of a person under sentence of imprisonment for life. It means a person under an operative, executable sentence of imprisonment for life. A sentence once imposed but later set aside is not executable and therefore the court convicting an accused of murder cannot take such a sentence into account for imposing the sentence of death by the application of Section 303 of the Indian Penal Code.

(iii) APPLICABILITY OF SECTION 303 OF INDIAN PENAL CODE

The provision of section 303 of the Indian Penal Code are attracted only to the facts of a given case. It is not necessary that the accused should be actually undergoing sentence for imprisonment for life when he commits murder.

(iv) IMPORTANT CITATIONS OF THE APEX COURT

In the case of *Sohansing Narsing V/S State* (Ref: A.I.R. 1965 Punj. Page no.156 at P.159), the court held that, perusal of the above section goes to show that it would cover the case of a person who being under sentence of imprisonment for life, commits murder. It is not essential for the application of the section that the person should be actually undergoing the sentence of imprisonment for life when he commits murder.

Section 303 of the Indian Penal Code is applicable only to an accused who on the date of commission of the second offence of murder had earlier committed a murder for which his conviction and sentence of imprisonment for life were beyond judicial controversy and were operative section 303 of the Indian Penal Code creates a most aggravated form of offence when committed by a person under sentence of imprisonment for life to be punished only with death, the maximum penalty under the law.

The expression 'sentence' in the phrase being under sentence of imprisonment for life must be restricted to a sentence which is final as to the judicial remedies are concerned. Section 303 of the Indian Penal Code is like a proviso to section 302 of the Indian Penal Code and court trying a person for murder can apply the provisions of section 303 of the Indian Penal Code if it is brought to its notice that the person being tried is under a sentence of life imprisonment. The punishment for an offence under section 302 of the Indian Penal Code is either death or a life imprisonment and section 303 of the Indian Penal Code removes the alternative punishment and makes a sentence of death compulsory. There is no need to frame a further charge under Section 303 of the Indian Penal Code.

In the case of *Karnail Singh V/S State of Punjab* (Ref: 1982 Cr. L.J. page no. 1364)

The appellant Karnail Singh was sentenced to death in the previous murder case but his death sentence was later on commuted to life imprisonment by

the President of India. The appellant was released from the jail on 23rd May 1980 on bail under the order of the Supreme Court and at that time according to the jail record the balance of his sentence was two years, one month and 23 days, which he was yet to undergo. Thereafter till 25th April 1981 when Karnail Singh was admitted in jail as under trial in the present case. He was not re-admitted as convict in the previous case. Even allowing further remission given by the government in the meantime. The balance of his sentence on 25th April 1981 worked out one year, nine month and 12 days. Accordingly the sentence of the appellant in the previous murder case had not yet expired, when he committed the second murder. It was held that the appellant being a lifer at that time of the commission of the second offence of murder was correctly convicted with the penalty of death under section 303 of the Indian Penal Code.

No Discretion to the court:

In the matter of passing a sentence against a life convict which has to be sentence of death only. The provision shows that the framers of the Indian Penal Code intended to treat the murder committed by an ordinary person and those by a life imprisonment convicted person. In the first case the Court is empowered to award either a life imprisonment or a death sentence. The same discretion is not available while Court has to be passed a sentence against the life convict who has been held guilty of murder.

Under Sentence of Imprisonment for Life:

The question of interpretation of the words 'Being under sentence of imprisonment for life' was involved in the case of :

Shaikh Abdul Azeez Vs State Of Karnataka (Ref: AIR 1977 SC Page no. 1485)

Where the Supreme Court held that where the Appellant sentenced to imprisonment for life for murder, is later released by the State Government by conditional remission of the sentence under section 401 of Criminal Procedure Code. The appellant does not continue to be under sentence of imprisonment for life for the purpose of section 303 of Indian Penal Code and if he commits a murder during remission period and thus contravenes the condition of remission Sec. 303 of Indian Penal code is not attracted and Court is not obliged under that Section to impose sentence of death.

An accused could not be under a sentence of imprisonment for life at the time of commission of the second murder unless he was actually undergoing such a sentence or there was legally extant a judicially final sentence which he was bound to serve without the requirement of a separate order to breathe life into the sentence which was otherwise dead on account of remission under Sec. 401 of Criminal Procedure Code. Sec. 303 of Indian Penal Code is applicable only to an accused who on the date of commission of the second offence of murder had earlier committed a murder for which his conviction and sentence of imprisonment for life were beyond judicial controversy and were operative. For the purpose of Sec. 303 of Indian Penal Code it does not make any difference whether the remission under Sec. 401 of Criminal Procedure Code is with or without condition. It is manifest from Sec. 401 (3) of Criminal Procedure Code that on breach of any condition of the remission there is not an automatic revival of the sentence. The Government is not under a legal obligation to cancel the remission. It is only when the Government chooses to pass an order of cancellation of the remission of sentence that the convict is arrested and is required to serve the unexpired portion of the sentence. During the interregnum the accused who is released cannot be said to be under a sentence of imprisonment for life.

In the case of Sec. 75 of Indian Penal Code, Sec. 303 does not contemplate a mere enhanced punishment for a convict with a past criminal history for the same offence. Section 303 created a most aggravated form of offence when committed by a person under sentence of imprisonment for life to be punished only with death, the maximum penalty under the law. A person must be actually and irrevocably a lifer beyond the pale of judicial controversy at the time of commission of the second offence of murder to be visited with the penalty of death under Sec. 303 of Indian Penal Code. If the sentence of a convict had already been remitted at the time of commission of the second murder he would cease to be an actual lifer to come within the scope of Sec. 303 of Indian Penal Code. For the purpose of Sec. 303 there can be no warrant for introducing a legal fiction of being deemed to be under a sentence of imprisonment for life.

We have to refer this case only because, for the observation how the provision of Sec. 303 of Indian Penal Code changed. This is a land mark case in the history of this Section. Honorable Supreme Court laid down the principle that when any person finally held guilty by Court of Law after that he commits same offence i.e. murder which is punishable for death or life imprisonment then he is liable for punishment of death without considering the alternative of life imprisonment.

When person is not held guilty for life imprisonment prior to it though he commits the same offence then his prior character cannot be attracted for death sentence. Here Supreme Court analyze the strict rule of interpretation which is very important for criminal interpretation.

Commits Murder:

This Section is applicable only when lifer commits a murder. Consequently, where a life convict is held guilty of culpable homicide not amounting to murder. This Section is not attracted because even though he has caused death he has not committed murder. It has been held by the Supreme Court that Section applies not only in cases where an accused is guilty of the offence of murder simplicities but also in cases of his constructive or joint guilt of murder under provision like Section 302 read with Section 34 of the Indian Penal Code.

Constitutionality of Section 303:

The question of unconstitutionality of Sec. 303 was raised in the Mithu Vs. State of Punjab, (Ref: AIR 1983 SC page no. 473) on the ground that it is violative of Article 14 and 21 of the Indian Constitution. The chief Justice Chandrachud who delivered the judgment on behalf of the Four of the Judges including himself held that Section 303 violates the guarantee of equality contained in article 14 as also the right conferred by Article 21 that no person shall be deprived of his life or personal liberty except according to the procedure established by Law. The Learned Judge observed that the section was originally convinced to discourage assault by life convict on the prison shall but the legislature choose a language which far exceed its intention. The action also assumes that life convict are dangerous breed of humanity as a class. The assumption is not supported by any scientific data. Justice Reddy,

who gave a separate but concurring judgment, observed that section 303 particularly offends Article 21 and new jurisprudence which has sprung around it ever since the Bank Nationalisation Case freed it from the confined of Gopalan. Section 303 excludes judicial discretion. The scale of justice is removed from the hands of the Judge so soon as he pronounced the accused guilty of the offence. So final, so irrevocable and so irresistible in the sentence of death that no law which provides for it without involvement of the judicial mind can be said to be fair just and reasonable. Such a law must be necessarily being stigmatized as arbitrary and oppressive.

In the view of the above decision all murder convicts whether ordinary or life are to be punished only under Section 302 of the Indian Penal Code now for which there is always a judicial discretion available to choose between imprisonment for life and sentence of death.

In Menka Gandhi VS. Union of India (Ref: AIR 1978 SC P.No. 597) it was held by seven judge bench that a statute which merely prescribed some kind of procedure for depriving a person of his life or personal liberty cannot ever meet the requirements of Article 21. The procedure prescribed by law has to be fair, just and reasonable, non fanciful, oppressive or arbitrary. Justice Bhagwati observed in that case that the concept of reasonableness must be projected in the procedure contemplated by Article 21, having regard to the impact of Article 14 on that Article. In Sunil Batra Vs. Delhi Administration(Ref: AIR 1978 SC P.No.1675), while dealing with the question as to whether a person awaiting death sentence can be kept in solitary confinement, Justice Iyer said that, though our constitution did not have a due process clause as in the American Constitution. The same consequence ensued after the decision in the Bank Nationalisation case (Ratanlal and Dhirajlal, Penal Law Book) and Menka Gandhi. (Ref: AIR 1978 SC P.No. 597)

The word 'law' in the expression procedure established by law in Article 21 has been interpreted to mean in Menka Gandhi's case that the law must be right, just and fair and not arbitrary, fanciful or oppressive. Otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied. If it is arbitrary, it would be violative of Article 14. It also clear that no person

shall be deprived of his life or personal liberty except according to just and reasonable procedure established by valid law.

The decision have expanded the scope of Article 21 in a significant way and it is no too late in the day to contended that it is a legislature to prescribe the procedure and for the Courts to follow it, that it is the legislature to provide the punishment and for the Courts to impose it. Two instances, undoubtedly extreme may be taken by way of illustration for the purpose of showing how the Courts are not bound and are indeed not free, to apply a fanciful procedure by a blind adherence to the letter of the Law or to impose a savage sentence. A law providing that an accused shall not be allowed to lead evidence in self evidence to be hit by Article 14 and 21. Similarly it is law were to provide that the offence of theft will be punishable with the penalty of the cutting of hands, that law will be bad a violating Article 21. A savage sentence anathema to the civilized jurisprudence of Article 21. Of course, these are extreme illustration and we need have no fear to our legislature will ever pass such laws. But these examples serve to illustrate the last word on the question of justice and fairness does not rest with the legislation. Just as reasonableness of restriction under clauses (2) to (6) of Article 19 is for the Court to determine, so is it for the Courts to describe whether the procedure prescribed by law for depriving a person of his life or liberty is fair, just and reasonable. The question which then arises before us is whether the sentence of death prescribed by Sec. 303 of the Indian Penal Code for the offences of murder committed by a person who is under a sentence of life imprisonment is arbitrary and oppressive so as to violative of the fundamental right conferred by Article 21.

Mithu's case (Ref: AIR 1983 SC P.No. 473) is very land mark case in the history of India. Through which Supreme Court suspended the provision of Section 303. It took an active part as a protector of the Constitution.

Article 14 promises about the equality before law. But when with considering the previous bad character of the person there is a higher punishment is given. In this situation equal treatment cannot be considered. That's why Supreme Court unanimously removed the provision.

Article 21 is theoretically very short provision in the Constitution. But by judicial decision maximum amendments were taken place in this Article Supreme Court going to widen the scope of this Section from time to time, this journey still continuous. No provision cannot be violated the provision of Constitutional law. On the basis violative of Article 14 and 21 of the Constitution of India. Supreme Court suspended the Section 303 of Indian Penal Code.

Before Section 303 was declared unconstitutional it was a cognizable non-bailable and non-compoundable offence which was triable by Court of Session.

4. C. SECTION 309: ATTEMPT TO COMMIT SUICIDE

It defines and describes the punishment for an attempt to commit suicide. The punishment for attempting to commit suicide has been discussed in India. This is only Section in Indian Penal Code which attempt is an offence but commission is not an offence because as per criminal liability is concerned after the death of the accused liability comes to an end means after commission in this offence nobody remains there.

William Horkey says, "I am the master of my fate. I am the Captain of my soul." (Ref: Sujata Law Book Allhabad)

J.S. Mill says that, "Over himself and over his body and mind the individual is sovereign." (Ref: Sujata Law Book Allhabad)

Mahatma Gandhi says that, "Death is our friend, the trust of our friend." He delivered us from agony. I don't want to die of a creeping paralysis of my father. (Ref: Sujata Law Book Allhabad)

All above quotations delivered by eminent political leaders, Philosophers show that every person shall have a right to remove his own life attempt to commit suicide is a last step of an aggrieved person. Such as a person struggles in the society for his existence. Psychologist opine that the people who commit suicide or attempt to commit suicide do not have criminal intention. Such a people commits this offence due to the defect of psychology. Due to chronic disease, failure in love, heavy bankruptcy etc. is the reasons behind the suicide. Hence such people who attempt to commit suicide and fail in such an attempt require social help and remedies rather than punishment.

The Parliament of England enacted The Suicide Act, 1961. In the Act they treat the attempt to commit suicide as a psychological and social problem but not as a criminal problem. Hence by the above Act, England Parliament abolished the punishment to attempt to commit suicide.

In 1971 Law Commission of India recommended to remove section 309 from the Indian Penal Code. The bill was introduced in the Parliament for removal of Section 309 from the Indian Penal Code; however, the Bill was not passed.

Section 309: Attempt to commit suicide

Whoever attempts to commit suicide and does any act towards the commission of such an offence shall be punished with simple imprisonment for a term which may extend to 1 year or with fine or with both.

The words or with fine or with both were substituted for the words and shall also be liable to find by the Amendment Act of 1882. This Amendment has had the effect of overruling the Bombay case in which the sentence of imprisonment was held to be compulsory.

Sir James Stephen defined an attempt to commit a crime as an act done with intent to commit that crime and forming part of series of acts which would constitute its actual commission, if it were not interrupted.

Principle :-

The law safeguards the lives of a man as not only valuable to their own possessors but as also valuable to the state which protects them. Therefore it to prevent persons from taking their own lives and to prevent them from taking the lives of others.

Attempted Suicide :-

Suicide is no crime under the code. Its attempt alone is punishable under this section. The fact that an attempt to commit suicide is made criminal shows that in the eye of the law suicide is not necessarily the outcome of deranged but it may be a crime committed by a person in his simple manner and this is the view of medical man and of many psychologists. There can be no doubt but that person is often driven to commits suicide owing to distress or poverty or loss of honor.

What is an attempt to commit suicide? :-

When the question of attempt is considered then two questions naturally arise i.e.

- 1) What is an attempt?
- 2) When does the preparation end and attempt begin?

A person who feels moody and threatens to commit suicide may have that intention but he cannot be convicted of an attempt. An attempt implies at least an act towards the commission of suicide i.e. poisoning or shooting oneself. If the person throws himself in to well with a view to drowning himself and if he is rescued. Then such a person is guilty of such an attempt as is punishable under this section. But if he runs to a well with a view to drown himself, but he is rescued before he throws himself into it then he cannot be convicted of an attempt. For his act was a mere preparation to commit an act and before committing which he might have changed his mind.

Every hunger – striker will not incur the penalty under this section. When a person goes on hunger-strike a stage may be reached at which death is certain unless prompt action is taken to prevent it by administering nourishment to that sinking person. If at critical stage the person still refused nourishment it could be said that there is an attempt to commit suicide. Mere refusal to take food even for a short period would not amount to any conscious efforts to put an end to one's life. It would merely be the stage of preparation after the stage of intention.

In the case of *Ram Sunder Dubey V/S State* (A.I.R.1962 All. Page No. 262)

Where the accused went on hunger-strike in order to get his demands fulfilled by his employers. The questions before the court was whether any offence under section 309 of the Indian Penal Code was made out. The court observed that the peculiar difficulty about suicide by starvation is that it is a long drawn out process. Which can be given up at any stage. Unless there is a some declaration by the accused of his intention to persevere to the bitter end. If there is an intention at the beginning one has always to make allowance for the possibility of the accused changing his mind and breaking his fast before it becomes dangerous.

If a person openly declares that he will fast to death and then proceeds to refused all nourishment until the stage is reached when there is danger of

death. He can be held guilty of the offence of attempted suicide. But where the evidence falls short of this it can be said to be sufficient to the charge.

Procedure:-

This offence is cognizable. It is bailable but non compoundable and it is triable by any Magistrate.

Proof :-

The points requiring proof are –

- 1) That the act in question was an attempt.
- 2) That the attempt was by doing an act towards the commission of suicide.

Measure of Punishment:-

Compared to the gravity of the crime the punishment here provided is light.

Is Section 309 of the Indian Penal Code unconstitutional?

In a judgment,

Maruti Shripati Dubal Vs State Of Maharashtra (Ref: 1987 CR. L.J. Page no.743)

Handed over by the Bombay High Court the very foundation and constitutionality of Section 309 of Indian Penal Code was questioned. The Court declared Section 309 of Indian Penal Code is ultra virus being violative of Article 21 of the Constitution which guarantees right to life and liberty. Broadly speaking the right to life includes the right to live as well as the right to end one's life if one so desires.

Justice P. B. Sawant observed that Section 309 of the Indian Penal Code is violative of Article 14 as well as Article 21 of the Constitution. The provision was held to be discretionary in nature and also arbitrary so as to violate the equality guaranteed by Article 14 and 21 was construed to include the right to die or to terminate one's own life. For this reason it was held to violate Article 21 also.

The discriminatory nature of Section 309 becomes particularly prominent when provisions are compared with Sec. 300 of Indian Penal Code while defining murder, the legislation has taken pains to make a distinction between culpable homicide amounting to murder and one not amounting to murder and prescribed different punishment for the two. However, Sec. 309 prescribes the same punishment to all individuals irrespective the different sets of

circumstances under which the suicide attempt is made. This strange although murder is heinous offence with consequences to the other member or members of the society.

Sec. 309 punishes the attempt to commit suicide with simple imprisonment for a term which may extend to one year or with fine or with both. The purpose of the prescribed punishment is to prevent the prospective suicides by deterrence; it is difficult to understand how the same can be achieved by punishing those who have made the attempt. Those who make the suicide attempt on account of the mental disorder require psychiatric treatment and not confinement in the prison cells where their condition is bound to worsen leading to further mental derangement. Those on the other hand who make the suicide attempt on account of acute physical ailments, incurable diseases, torture or decrepit physical state induced by old age or disablement need nursing homes and not prisons to prevent them from making the attempts again. No deterrence is further going to hold that those who want to die for a social or political cause or to leave the world either because of the loss of interest in life or for self deliverance. Thus in no case the punishment serves the purpose and in some cases it is bound to prove self defeating and counter productive. On this account also the provisions of the section are unreasonable and arbitrary.

The Bombay High court judgment striking down Section 309 of the Indian Penal Code as provoked a heated debate among jurists, social scientists, the medical profession and public as a whole. While some have welcome the judgment, others have expressed strong reservation.

In another case:

P.Rathinam Vs Union Of India (Ref: 1994 vol.3 SC Page no.392)

The two Petitioners before the Court assailed the validity of Section 309 by contending the same to be violative of Article 14 and 21 of the Constitution and the prayer was declared the section as void. Additional prayer was to quash the proceeding initiated against the lateral petitioner under Sec. 309.

A Division Bench of Supreme Court observed that Sec. 309 of the Indian Penal Code deserves to be effected from the statute book to humanize our penal laws. It is a cruel and irrational provision and it may result in punishing a

person against who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then act of suicide cannot be said to be against the religion, morality or public policy and act of attempt to suicide has no baneful effect on society. Further suicide or attempt to commit it causes no harm to others because of which State interference with the personal liberty of the concerned person is not called for. It was, therefore, held that Sec. 309 violates Article 21 and so it is void.

The Justice Hansaria speaking for the Division Bench rejected the challenge to the constitutional validity of Sec. 309 based on Article 14 but upheld the challenge on the basis of Article 21 of the Constitution. The earlier decisions of the Bombay High Court and the Andhra Pradesh High Court were considered and agreement was expressed with the view taken by the Andhra Pradesh High Court as regards Sec. 309 qua Article 14. The decision then proceeds to consider the challenge with reference to Article 21 of the Constitution. It was held that Article 21 has enough positive content in it so that it also includes the right to die which inevitably leads to the right to commit suicide. Expressing agreement with the view of the Bombay High Court in respect of the content of article 21. It was held that right to live of which Article 21 speaks can be said to bring in its trial the right not to live a forced life.

On the basis of what has been held and noted above we state that Sec. 309 of the Indian Penal Code deserves to be effaced from the statute book to humanize our penal laws. It is a cruel and irrational provision and it may result in punishing a person again who has suffered agony and would be undergoing ignominy because of his failure to commit suicide. Then an act of suicide cannot be said to be against religion, morality or public policy and an act of attempted suicide has no baneful effect on society. Further suicide or attempt to commit it causes no harm to others because of which states interference with the personal liberty of the person concerned is not called for. Therefore, Section 309 violates Article 21 and I so it is void may it be said that the view taken by us would advance not only the cause of humanization which is a need of the day but globalization also as by effacing Section 309 we would be attuning this part of our criminal law to global wavelength.

In the case of :

Shrimati Gyan Kaur Vs State Of Punjab (Ref: 1996 (3) SC Page no. 339)

The first appellant and her husband, second appellant were convicted by the trial Court under Sec. 306 of the Indian Penal Code abetting the commission of suicide of a woman. On appeal their conviction was maintained but sentence of the first appellant was reduced. They both appealed to the Supreme Court by Special Leave. It was urged that right to die being included in Article 21 of the Constitution as held in Rathinam's case by Division Bench of the Supreme Court declaring Sec. 309 of the Indian Penal Code to be unconstitutional any person abetting the commission of suicide by another is merely assisting in the enforcement of the fundamental right under Article 21 and therefore, Section 306 is equally violative of Article 21. Thus a reconsideration of that decision becomes inescapable. In view of the significance of this contention involving a substantial question of law as to the interpretation of Article 21. The division bench before which the appeal came referred the matter to a constitution Bench and ultimately a Constitution Bench of five members heard the matter.

Senior advocate Nariman and Sorabji were invited to appear as amicus curiae. Justice J.S. Varma delivered the judgment. It was observed by the Court that desirability of retaining Sec. 309 is a different matter and non-sequitur in the context of its constitutionality which has to be tested with reference to the constitutional provision.

In the case of Maruti Shripati Dubal VS. State of Maharashtra (Ref: 1987 Cr. L.J. P.No. 743) Justice P.B. Sawant and Justice Kolse Patil interpreted Article 21 i.e. no person can be deprived his life and personal liberty except the procedure established by law. In very wider and liberal manner judicial bench specifically point out that when we considered other fundamental rights specifically right to liberty and right to life.

Every person irrespective his citizenship Chandrika Das Vs. Union of India (Ratanlal and Dhirajlal, Penal Law Book) he has right to go somewhere of course he has full right not to go somewhere even though when anybody has a right to do something of course he has also discretion not to do something. Precisely

we can explain the intention of Bombay High Court that the consciousness and the liberal view of human being is important.

The same thing applied by Court of Law to Sec. 309 stating and drawing the inference when somebody has right to life of course he has right to terminate his own life through unnatural way.

The Bombay High Court held Sec. 309 as violation of Article 14 because of two reasons. First, which act or acts in series of acts will constitute attempt to suicide where to draw the line, is not known some attempt may be serious while others non-serious. It was stated that in fact philosophers, moralists and sociologists were not agreed upon what constituted suicide. The want of guide lines, made Sec. 309 arbitrary as per the Learned Judges. Another reason given was that Sec. 309 treats all attempts commit suicide by the same major without referring to the circumstances in which attempts as made. With taking such a type of view the Court crack the basic intention of the principle laid down by a Committee headed by Lord Macaulay. After a gap of long period en-number of Jurists and legal experts stating that their familiarity with the decision delivered before nearly about 18 years back.

India is developing country. It has second largest population in the World. As per population increasing ratio is concerned India is on the top of the World. In another side in comparison with developed countries like America, France and Russia it has less natural resources. More than 60% population of India residing below poverty line. They are facing en-number of problems including health and basic amenities. How we can expect that without having desire man forcefully run his life.

In many countries specifically in Middle East countries the responsibility of citizen's health depends upon State. It means State is vicarious liable for the expenditure with respect to health.

There was a controversial argument that attempt to commit suicide has various views. It is relative concept as per religion and locality is concerned but while delivering this judgment Honorable Court rejects all the objections. In the case of P. Rathinam VS. Union of India (Ref: 1994 Vol. 3 SC P.No. 392) same situation was before Supreme Court. In this Case there was same issue

for the consideration before Supreme Court whether attempt to commit suicide is an offence or not.

In India before various High courts the same issue was for the consideration. Different High Courts delivered their judgments in different manner. In this situation there was no unanimous law for whole India. Because the decision of High Courts become law of the territory. While the decision of Supreme Court become law of the land. Up to that movement there was no case before Supreme Court with respect to this Section.

In this case, there was a question before Supreme Court that whether attempt to commit suicide is an offence or not. There were various controversial views before Supreme Court. Specifically it was stated that this provision is violative of Article 21 i. e. right to life. Supreme Court unanimously held that attempt to commit suicide is not an offence. In this way Supreme Court upheld the decision given by Bombay High Court seven years before. While delivering this judgment reject to define the concept of suicide. Supreme Court held that the concept of suicide is very relative. This Section is not arbitrary in nature. Because it indicates the liberal view of judicial interpretation. It is also observed here that it is not against religion, morality or public policy. Here Supreme Court took same view which was taken by Bombay High Court stating person cannot be forced to enjoy life against his will.

According to Justice R. A. Jahagirdar laid down his view with respect to Sec. 309 as a un-constitutional section. In support of his view he stated few reasons, neither academicians nor jurists are agreed on what constitutes suicide, much less attempted suicide, *Mens Rea*, without which no offence can be sustained is not clearly desirable in such acts, temporary insanity is the ultimate reason of such acts which is a valid defence in homicides and individuals driven to suicide require psychiatric care. (Ref: Ratanlal and Dhirajlal, Penal Law Book).

There are many situations in the life of patient who is suffering from incurable diseases in such situation there were controversial things happened. Everybody especially doctors very well know that such a person will not survive but lack of mercy death provision cannot terminate their own lives unnaturally.

Supreme Court can suspend any provision from any law including Indian Penal Code. But Supreme Court cannot insert as well as cannot remove permanently. Because this is a privilege of legislation that's why Sec. 309 is in existence in Indian Penal Code Statute but it is inactive only because of Supreme Court can overruled its own decision.

In the case of Shrimati Gyan Kaur Vs State of Punjab (Ref: 1996 Vol. 3 SC P.No. 339) in 1996 this case was before Supreme Court. It took today different view with overruling its own decision given in P. Rathinam case. It held that attempt to commit suicide is an offence.

Supreme Court has given various reasons in support of its decision. Man is related with society having en-number of relations. He may be husband, brother, father of somebody else. Ultimately he is a part and parcel of the society. When he terminates his own life unnaturally, it affects the constitution of society and society gets disturbed.

Supreme Court took a view that any human being has gone from up and downs in his life for few seconds the subscribing circumstances may compel him for terminating his life. Next movement it can be taken contradictory view. In short same situation it may be good or bad cannot be continued for pretty long time. Through this decision Supreme Court again enacted Sec. 309 of Indian Penal Code.

This Section is not violative of Article 14, 21 and not arbitrary in nature. As per Article 14 is concerned it treats equality before law and equal protection of law. Even if those facts over weigh, the severity of the provision is mitigated by the wide discretion in the matter of sentencing, since there is no requirement of awarding any minimum sentence and the sentence of imprisonment is not even compulsory. There is also no minimum fine prescribed as a sentence, which alone may be the punishment awarded on conviction under Sec. 309 of Indian Penal Code. It provides imposition of punishment for attempt to commit suicide is not violative of Article 14 of the Constitution.

Sec. 309 of Indian Penal Code support to Article 21 of the Constitution. Article 21 is precise in nature or by wording but we can say that large number of decisions given by Supreme Court are with respect to Article 21.

Section 309 is clear reflection of Article 21 of the Constitution. Which promote right to life does not mean mere life but it includes dignified and humanitarian life.

4. D. SECTION 375: RAPE

Mahatma Gandhi says, (Ref: Sujata Law Book Allhabad) "When a women walks in street in the mid-night then only it means that we achieve full independent to our country". Today, any woman cannot walk in the day-light, even accompanying with her father or brother or husband. Day by day the activities of rape are growing. From time to time the legislature have been bringing new Acts and making amendments to the old laws. The Supreme Court and High courts have been giving newer guide lines and instructions. However, it is very sad to say that all of them become in vain. Sexual offence are enhancing day by day. Their graph in every police station has been increased. There may be several multitude sexual offences unreported. Every day in newspaper the news of rape, abductions, kidnapping, suicide due to rape are published. Women irrespective of their age from 2 year child to 8 years age are subjected to rape. It is very hateful even to utter or to write that in some of the occasion the father / brothers / teachers are raping the children.

There is no doubt to say rape is the worst sexual abuse against woman. It is a very heinous and brutal. Such a activity show no difference between man and animal. Animals are somewhat better compared with the man.

Definition of Rape:

A man is said to commit "rape" who except in the case hereinafter excepted has sexual intercourse with a woman under circumstances following under any of the following six descriptions.

- First : Against her will
- Secondly : Without her consent
- Thirdly : With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- Fourthly : With her consent, when the man knows that he is not her husband, and that her consent is given because she

believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly : With her consent, when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequence of that to which she gives consent.

Sixthly : With or without her consent, when she is under 16 years of age.

Explanation : Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception : Sexual intercourse by a man with his own wife, the wife not being under 15 years of age is not rape.

Amendment :-The age of consent in the fifth clause which was originally "10 Years" was raised to "12 Years" by section 1 of the criminal law (amendment) Act X of 1891; to "14 Years" by section 2 of the Amending Act, XXIX of 1925. And to "16 Years" by section 3 of the Amending Act, XLII of 1949.

The age limit in the exception was raised from "12 Years" to "13 years" by section 2 of the Amending Act, XXIX of 1925 and to "15 Years" by section 3 of the Amending Act, XLII of 1949.

Principle :-

The simple definition of raped is that it is the having of sexual intercourse with a woman without her consent. The phrase "against her will" in the first clause is taken from the definition of Lord Hale. Rape destroys the woman's supreme honour.

What is Rape? :-

The word rape literally means a forcible seizure and that element is a essential feature of the offence. It is a completed definition of the offence and the five clauses to this section are merely explanatory of non consent which is of the essential factor of the crime. The offence is said to be raped when a man has carnal intercourse with a woman i.e. (i) against her will or (ii) without her consent. The meaning of these two clauses may not be apparent but they

are intended to cover two separate. If the sexual intercourse was without the consent of the girl or against her will then her age is immaterial for the offence of rape.

The definition of "rape" under section 375 of the Indian Penal Code being entirely on the basis of common law. The law as to the meaning of "sexual intercourse" and "Penetration" has been no different from that in England.

Statutory Interpretation by Francis Bennion :- (Ref: K.D. Gaur, Penal Law of India)

In construing an ongoing Act. The interpreter is to presume that parliament intended the Act to be applied at any future time in such a way also to give effect to the true original intention. Accordingly the interpreters is to make allowances for any relevant changes that have occurred since the Acts passing in law, social conditions, technology, the meaning of words and other matters just as the constitution is regard as "A living Act". The reality and effect of dynamic proceeding provides the gradual adjustment. It is constituted by judicial interpretation year in and year out. It is also comprises processing to executive officials.

Justice Cardozo says :- (Ref: K.D. Gaur, Penal Law of India)

(Cardozo, "The nature of other judicial Process, 1921.)

In countless litigations the law is so clear that Judge have no discretion. They have the right to legislate within gaps. But often there are no gaps. We shall have a false view of the landscape if we look at the waste spaces only and refused to see the acres already shown. Undoubtedly a judge should not make a fortress out of the dictionary but then in the pursuit of melody its notes cannot be ignored. The plain or ordinary grammatical meaning of an enactment still affords the best guide though where the language is contradictory, ambiguous or leads really to observed results other methods of extracting the meaning can be resorted to so as to keep at the real sense and meaning. It is also to be remembered that penal statutes are to be construed strictly. The court has to see that the thing charged is an offence within the plain meaning of the words used and must not strain the words to put it in other words. The rule of strict construction requires that the language of a statute should be so construed that no case shall be held to fall within it which does not come within the reasonable interpretation of the statute. It is also a

cardinal principal that in construing a penal statute in case of doubt the construction favourable to the subject should be preferred.

IN SAKSHI CASE (Ref: 2004 [5] SCC Page No. 518)

Sakshi is an eminent non-governmental organization (NGO) working in legal side. This NGO filed a public interest litigation in Supreme Court contending the re-definition of rape.

They argued that the rape definition provided in Section 375 of the Indian Penal Code is not sufficient. This NGO is especially expressed its view with the respect to the necessity of 'penetration' for commission of rape. The penetration should not be mandatory for the commission of rape. It demanded that even though there is not penetration but when there is a assault by a person with intent to rape shall be considered as a rape.

It is well settled principle that the intention of the legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence a construction which requires for its support addition or substitution of words or which results in rejection of words as meaningless has to be avoided. It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. It is a wrong and dangerous to proceed by substituting some other words for words of the statute. It is equally well settled that a statute enacting an offence or imposing a penalty is to be strictly construed. The fact that an enactment is a penal provision is in itself a reason for hesitating before ascribing to phrases used in it a meaning broader than that they would ordinarily bear.

The entire legal fraternity of India, lawyers or judges have the definition as contained in section 375 of Indian Penal Code ingrained in their mind and the cases are decided on the said basis. The first and foremost requirement in Criminal Law is that it should be absolutely certain and clear. An exercise to alter the definition of rape as contained in Section 375 of Indian Penal Code by a process of judicial interpretation and that too when there is no ambiguity in the provision of the enactment is bound to result in a good deal of confusion, cause delays, and will not be in the interest of the society at large.

Supreme Court held that we agree with the view of the Petitioner but the framing law is the responsibility of legislature. Judiciary as only right to interpret the law. Hence, Supreme Court dismisses the Petition even though agreed the view of the Petitioner.

4. E. SECTION 498 A: CRUELTY

Husband or Relative of Husband of a woman subjecting her to cruelty

Whoever being the husband or relative of the husband of a woman subject such woman to cruelty shall be punished with imprisonment for a term which may be extended to 3 years and shall also be liable to fine.

Explanation:-

For the purpose of this section "Cruelty" means –

- A) Any willful conduct which is of such a nature as is likely to drive the woman to commits suicide or to cause grave injury or danger to life, limb or health (mental or physical) of the woman.
- B) Harassment of the woman where such a harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.

Scope of Section :-

Section 498 (A) was inserted in the Penal code through Act 46 of 1983. It provides punishment to the husband or the relatives of the husband of a woman who was subjected to cruelty by them.

Object and Reasons:

The increasing number of dowry deaths is a matter of serious concern nature. Case of cruelty by the husband and the relatives of the husband which culminates in suicide by or murder of the helpless woman concerned. Therefore, propose to amend the Indian Penal Code suitably to deal not only with the cases of dowry deaths but also cases of cruelty married woman by their in-laws.

The following are the changes which are proposed to be made:

- 1) The Indian Penal Code is proposed to be amended to make cruelty to a woman by her husband or any relative of her husband punishable

with imprisonment for a term which may extend to 3 years and also with fine.

- 2) Willful conduct of such nature by the husband or any relative of the husband as is likely to drive woman to commit suicide or cause physical or mental injury to her and harassment of a woman by her husband or by any relative of her husband with a view to coercing her or any of her relatives to meet any unlawful demand for property would be punishable as a cruelty.
- 3) The offence will be cognizable if information relating to the commission of the offence is given to the office in charge of a Police Station by the victim of the offence or a relative of the victim of the offence or in the absence of such relative by any public servant authorized in this behalf by the State Government. It is also provided that no Court can take cognizance of the offence except upon a Police Station report or complaint made by the victim of the offence or by her father, mother, brother, sister or by her father's or mother's, brother or sister or with the leave of the Court by any other person related to her by blood.
- 4) Postmortem is also being provided for in all cases where a married woman has died within 7 years of her marriage and a relative of such a woman has made a request to magistrate.
- 5) A woman has committed a suicide within a period of 7 years the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty. The Court may presume that such a suicide had been abetted by her husband or by relative of her husband.
- 6) The India Evidence Act, 1872 is being amended to provide that where a woman has committed suicide within a period of seven years from the date of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty. The court may presume that such suicide had been abetted by her husband or by such relative of her husband.

Relation between Section 304 B and Section 498 A:

Section 304 (B) of the Indian Penal Code provides that when death of a woman is caused by any burns or bodily injury under normal circumstances within 7 years of her marriage such a death shall be called "Dowry death". If it is shown that before her death she was subjected to cruelty or harassment by her husband or any relative of the husband in connection with any demand of dowry. Section 113 (B) of the Evidence Act provides that the court shall presume that such a person has caused the dowry death.

Section 304 B directly deals with "Dowry Death". In certain other occasions the husband or his relatives will not commit the dowry deaths directly but ill-treat the wife, torture her demanding dowry and directly or indirectly force her to commit suicide. When a wife is unable to bring dowry from her parents due to poor economical condition, she decides to end her life. It is called matrimonial cruelty. Section 498 of the Indian Penal Code explain "Matrimonial Cruelty" that is the cruelty of husband and his relatives on the wife and imposes punishment on husband or relatives of husband who tortured the wife cruelly and forced her to commit a suicide.

The above given problem is not only an examination problem but real burning problem in India. Demanding for dowry to burn housewife by kerosene or compelling them to commit suicide etc. have become very common matter in every region and religion in India. Mother-in-laws and Sister-in-laws even though they too woman are the first to harass the daughter-in-laws for very minute matters. They treat her very cruelly. They force her to commit suicide. Every day in every newspaper news of dowry death, dowry suicide, dowry harassment are appearing in the newspapers.

Cruelty:-

As the offence under section 498 (A) of the Indian Penal Code is concerned it is not every kind of cruelty which constitutes an offence under this section. Explanation given below section 498 (A) of the Indian Penal Code provides that cruelty means any willful conduct is of such nature as is likely to drive the woman to commits suicide or to cause grave injury or danger to life, limb or health or harassment of the woman whether such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security or is on account to

failure by her or any person related to her to meet such demand. The explanation consists of two kinds. The first kind of cruelty is that which is detrimental to life, limb or health of woman and the second kind of cruelty consists of harassment with a view to coerce her or any person related to her for fulfillment of any unlawful demand or such harassment on her failure or of any person related to her to fulfill the unlawful demand. Desertion of wife by the husband does not fall under section 498 (A) of the Indian Penal Code. The well-known principle is that the penal provisions should be construed strictly. The explanation given below under section 498 (A) of the Indian Penal Code does not warrant the view that simple desertion of wife by the husband amounts to cruelty.

The offence of subjecting a woman to cruelty by husband or relatives of husband has been defined under section 498 (A) of the Indian Penal Code for the purpose of this offence under section 498 (A) 'cruelty' means willful conduct which is of such a nature as is likely to drive a woman to commit suicide or to cause injury or danger to her life, limb or health. If woman is subjected to harassment with a view to coerce her or her relatives to meet any unlawful demand for property or valuable security or on account of failure to meet such demand then such harassment is also covered under the definition of 'cruelty' given in the explanation of section 498 (A) of the Indian Penal Code. If repeated demand for dowry is made and harassment is meted out to a woman which may be physical or mental. It is an act of cruelty. It is not necessary that the husband or his relatives must be present at the time when the housewife is subjected to cruelty. If their act or conduct, omission or commission is of such a nature which results in mental and physical harassment. It will amount to an act of cruelty to a woman and it is immaterial that the woman is living at that relevant time at her matrimonial house or at her parent's house.

In the case of Pawan Kumar V/S State of Haryana (Ref: 1998 [i] S.C. Page No. 565)

Cruelty or harassment need not be physical. Even mental torture in a given case would be a case of cruelty and harassment within the meaning of section 304 (B) and 498 (A) of the Indian Penal Code. Explanation (a) to section 498 (A) itself refers to both mental and physical cruelty. In view of explanation (a)

the argument is before it constitutes to be a cruelty there has to be willful conduct. Again willful conduct means conduct willfully done may be inferred by direct or indirect evidence which could be construed to be such, it is found in the present case on account of not satisfying the demand of the goods, right from the next day and she was repeatedly taunted or mal-treated and mentally tortured by calling her ugly. A girl dreams a great days a head with hope and aspiration when entering into a marriage and if from the very next day the husband starts taunting for not bringing dowry and calling her ugly, there can be greater mental torture, harassment or cruelty for any bride. There was a quarrel a day before her death. This by itself would constitute to be a willful act, to be a cruelty within the meaning of Section 498 (A) and Section 304 (B) of the Indian Penal Code.

IMPORTANT POINTS:

Section 498-A was inserted in the Indian Penal Code by the Criminal Law (Amendment) Act, 1983 (Act NO. 46 of 1983) to prevent cruelty on wife and dowry suicide. By the same Act Section 113-A has been added to the Indian Evidence Act which raises the presumption regarding the abetment of suicide by a married woman. Section 304-B, 498-A of the Indian Penal Code and Section 113-A and 113-B of the Evidence Act are woven by the framers having connection with each other so that the accused should not escape from the eye of the law. Even though Section 498-A and 304-B create distinct offence but cruelty is the common element in both. A person charged under Section 304-B can also be convicted under Section 498-A without any charge under that Section. The object of this Section is to prevent the matrimonial cruelty against the married woman.

When any Act enacted by the Parliament its implementation never considered and implement in retrospective manner because when any punishment is mentioned then with applying it retrospectively it will violative his natural rights. This strict interpretation is with respect to substantive laws. Which always relates with right, duties and liabilities. Section 498-A is exception for that. Legislation took a view applying it for pending matter. Legislation clears that it is not only substantive but the procedural aspect. We are applying it in retrospectively for the procedural aspects.

In the case of: Rajayyan Vs State Of Kerala & Others (Ref: 1998(4) SCC Page No. 85)

This is land mark case in the history of this section. Previously it was before the Kerala High Court later on it challenged in Supreme Court.

There was marriage took place in 1983. After their marriage a few days passes smoothly. Unfortunately her husband and his another relative started demanding money. Husband's mother and real sister was for the help of him. All of them started giving cruel treatment to wife in harassing her. Ultimately she died on 5-10-1987 by falling in well in her matrimonial home. Of course, it was unnatural and tragedy death of his wife. Immediately the father and brother of the wife filed a complaint to the Police alleging that it was a dowry death and that her husband, month-in-law and two sisters-in-law who were residing with him were responsible for the happened case. The matter goes in the Court of law. Ultimately the trial Court convicted the husband under Section 304-B for 7 years rigorous punishment. Husband challenged the decision of trial Court on appeal. The High Court and Supreme Court confined the same decision given by the trial Court.

CHAPTER 5

CONCLUSION

In this dissertation on Indian Penal Code, 1860, there has been an attempt to analysis the important amendments made by the Union legislature in the text of the Indian Penal Code,1860. Similarly the Judicial interpretation of the provisions of the Indian Penal Code, 1860 have been analysed. The following five provisions under the Indian Penal Code,1860 viz., section 120A, 303, 309, 375 and 498A, have been referred to with reference to the observations and verdicts of the Judiciary i.e. Supreme Court and the Parliament. These have been studied in the preceding chapters in the thesis. However, a further analysis is made as followings:

Section 120 A of Indian Penal Code, 1860

Chapter VI-A comprising of only two section 120 A and 120 B was inserted in the Indian Penal Code, 1860 by section 3 of the criminal law (Amendment Act 1913) prior to this chapter there was no offence known as criminal conspiracy and this amendment has been carried out in order to fill a gap in section 107 of Indian Penal Code, 1860 which defines abetment. Prior to the introduction of this chapter conspiracy was a mere species of abetment for the cases provided by section 121-A, 311, 400, 401 and 402 of Indian Penal Code, 1860 where an act or an illegal omission took place in pursuance of that conspiracy and amounted to a distinct offence. However this chapter introduced a new offence and defined the same by section 120-A as the offence of conspiracy and section 120-B provides for the punishment of criminal conspiracy. As per section 107 of the Indian Penal Code, 1860 is not an offence but abetment of an offence is an offence.

The offence of a conspiracy to commit a crime is an offence different from the crime which is the object of the conspiracy the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients.

The essence of the offence of conspiracy is the bare agreement and association to break the law or to do an illegal act. The offence of criminal conspiracy consists in the combine. When two or more persons agree to carry

it into effect the very plot is an act in itself. The offence is complete though no further act is done in pursuance of the agreement or even where the parties do not settle means to be employed. The agreement is the rock bottom of the offence of criminal conspiracy under this section and unless it is shown that the several accused persons had agreed either to do an illegal act or an act which is not illegal by illegal means then no charge of criminal conspiracy can succeed.

According to Nelson's in *Yash Pal Vs State of Punjab* (Ref: 1977 SC pg no. 2433) his Lordship of the Supreme Court observed that the very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy. There may be so many device and techniques adopted to achieve the common goal of the conspiracy and there may be division of performance in the chain of action with one object to achieve the real end of which every collaborator must be aware and in which each of them must be interested. There must be unity of object or purpose but there may be plurality of means sometime even unknown to one another amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others the only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy. (Ref: Indian Penal Code, 1860, Nelson's, The Law Book Company, Allahbad, 1981, Rs. 280)

Section 303 of Indian Penal Code, 1860

The amendment in section 303 of Indian Penal Code, 1860 was carried out in the year 1955. The amendment is made to insert the words "imprisonment for life" for the words "transportation for life". India became a republic state on 26th Jan. 1950. In British India the punishment for certain offence was prescribed as transportation for life. After independence and more particularly when India became a republic state the punishment "transportation for life" became redundant therefore the said amendment was sought in order to avoid contradictions in the situation. For example Mr. X was punished for an offence for transportation for life and Mr. X while undergoing the punishment of transportation for life he commits murder then in that case he is only liable to

be punish with death sentence. But because of the redundant ness of the punishment the amendment in section 303 of the Indian Penal Code, 1860 was carried out and the words “imprisonment for life” were inserted in the place of words “transportation for life.”

However the Supreme Court of India in the case of *Mitu vs State of Punjab* (Ref: AIR 1983 SC P.No. 473) held that section 303 of the Indian Penal Code, 1860 is void and unconditional because it violates Article 14 i.e. Right to equality and Article 21 Right to life and Personal liberty of the constitution. The Supreme Court interpreted that the section has taken away all the rights of the Judiciary and judiciary has no discretion rather than to inflict death punishment to the person or accused who is undergoing the punishment as imprisonment for life. The Supreme Court further held that the section has no scientific basis and hence violative of Article 14 of the Constitution similarly it also takes away the right of the citizen guaranteed by Article 21 of the Constitution as the section is mandatory which provides only that punishment for the life imprisonment.

Another peculiar feature of the Application of this section is that if a life prisoner commits any other offence but not the murder in that case the question of inflicting mandatory death punishment does not arise. for e.g. if a life prisoner commits an offence of Culpable Homicide not amounting to murder then he cannot be subjected to the compulsory death punishment.

the provision contained in section 303 of Indian Penal Code, 1860 not just reasonable fair as required by law. The word law as interpreted in *Maneka Gandhi* case (Ref: AIR 1978 SC p. no. 597) must be right, just and fair and it should not be arbitrary, fanciful or oppressive from the wording of the section 303 of Indian Penal Code, 1860. It is crystal clear that the provision is not right, just and fair on the contrary it is arbitrary, fanciful and oppressive. The provisions make a class of the persons under going a life imprisonment committing the murder and makes another class of the person under going imprisonment for life not committing the murder. This classification has no any base or scientific justification for compulsory infliction of death penalty for the person who commits murder when he is a life prisoner.

In Part III of the Constitution of India under Fundamental Rights and under Article 21 of the Constitution though a very short Article in the Constitution so many things have been covered under this Article as regards to the provisions of section 303 of the Indian Penal Code, 1860. The same violates Article 21 of the Constitution. Article 21 protects right of life and personal liberty of an individual. On the contrary section 303 of Indian Penal Code, 1860 directly takes away right to life of a person committing murder while under going punishment for imprisonment for life. Article 21 envisages that the life and personal liberty of a person shall not be deprived without due procedure of law. The provisions of section 303 of Indian Penal Code, 1860 without providing due procedure takes away life for a person committing murder while under going life imprisonment. The provisions provides mandatory capital punishment for such a accused without providing the accused a procedure much less a due procedure. Section 303 of Indian Penal Code, 1860 has also taken away. The discretionary power of the judges and in turn of the judiciary.

Section 309 of Indian Penal Code, 1860

The function of judiciary is to interpret the law at the time when those ambiguities in the provisions of law. One peculiar example of perfect drafting of Indian Penal Code, 1860 when apex court of India has also changed its views is the interpretation of Sec. 309 of Indian Penal Code, 1860. In 1987 in the case of Maruti Shripati Dubal Vs. State of Maharashtra (Ref: 1987 Cr. L.J. Page No. 743) Hon'ble High Court of Bombay held that "Man has right to terminate his life and attempt to commit suicide is not an offence" This section was struck down by Bombay High Court during the period of 1987 to 1996. But 1987 to 1993 for this period only for state of Maharashtra such provision was not applicable and rest of the states such provision was applicable and therefore suicide was not an offence in Maharashtra after Bombay High Court ruling until Supreme Court struck down Bombay High Court verdict and therefore suicide once again became an offence in Maharashtra. (After Supreme Court ruling in 1996) In the case of P. Ratilam Vs. Union of India (Ref: 1994 Vol. 3 S.C. Page No. 392) the Supreme Court of India upheld the view taken by

the Bombay High Court in Maruti Shripati Dubal case. In the year 1966 in the case of Gyan Kaur Vs. State of Punjab (Ref: 1996 Vol. 3 S.C. Page No. 339) Supreme Court of India overruled its earlier decision given in P. Ratilam Case and held that “Man has no right to commit suicide”. Thus Section 309 of Indian Penal Code, 1860 again came into existence in the year 1996.

Whatever amendments has been made till today in the Indian Penal Code, 1860 are made only due to the changes in the circumstances, Section 498 A has been inserted in the Code in the year 1983 for the purpose of provisions of dowry death. The amendment is carried out to achieve the social goal of the State.

Section 375 of Indian Penal Code, 1860

The word ‘Rape’ is derived from the Latin term ‘Rapio’, which means ‘to seize’. Thus, rape literally means a forcible seizure and that is the essential characteristic feature of the offence. In common parlance, it means intercourse without her consent by force, fear or fraud. In other words, rape is violation with violence of the private person of a woman.

Rape laws in India are antiquated; Instances where justice has failed the victim because of interpretation of law, assessment of evidence, long delays at the trial and harsh and humiliating cross-examination of the victim are reported with alarming frequency. This report deal with the incumbencies in the existing laws relating to rape in India and certain recent developments in this field.

Rape is a weapon that distorts a woman's sexuality, restricts her freedom of movement and violates her human rights. It leaves a woman feeling exposed, humiliated and traumatised. A rapist not only violates the victim's privacy and personal integrity, but also causes serious physical and psychological damage. The law must take a fresh look at itself and take positive steps to make it more difficult for an accused to get judicial reprieve. . What is sad about rape in India is the lack of seriousness with which the crime is often

treated. Statistics from 2000 showed that on average a woman is raped every hour in India

As observed by Justice Arjit Pasayat:

"While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.

"Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. (Ref: Indian Penal Code, Law Book Company, Allahabad 1983 Rs. 280,).

In 1997, Sakshi, an organisation involved in issues on women and children, approached the Supreme Court through a writ petition asking for directions concerning the definition of rape in the IPC. Although the Supreme Court did not interpret the provisions of Section 375 IPC to include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vagina penetration, finger/anal penetration, and object/vaginal penetration within its ambit. Instead, the judges sought refuge behind the strict interpretation of penal statutes and the doctrine of state decisis - a view that any alteration [in this case, of the definition of rape] would result in chaos and confusion, it directed the Law Commission of India to respond to the issues raised in the petition. The Law Commission, under the chairmanship of Justice P. Jeevan Reddy, responded by saying that the 156th Law Commission Report had dealt with these issues. The Supreme Court, however, agreed with Sakshi that the 156th Report did not deal with the precise issues raised in the writ petition. In August 1999, it directed the Law Commission to look into these issues afresh. (Ref: Sakshi v. Union of India 2004 Vol. V SCC Page No. 518)

After detailed consultations with the organisations, the Law Commission released its 172nd Report on the Review of Rape Laws, in 2000. The Law Commission recommended changing the focus from rape to 'sexual assault', the definition of which goes beyond penile penetration to include penetration

by any part of the body and objects, taking into account cunnilingus and fellatio.

The report recommended the deletion of Section 155(4) of the Indian Evidence Act, which would prevent a victim of rape from being cross-examined about her 'general immoral character' and sexual history. It suggested graded sentences, with higher punishment for rape committed by the relatives and persons in 'trust or authority', public servants, and superintendents, management and staff of hospitals. It introduced a new Section 376(E), which would include sexual harassment at the workplace.

The commission recommended shifting the burden of proof of consent to the accused. It suggested specific provisions that would deal with the medical examination of the victim as well as the accused by a registered medical practitioner. It said that girls who are victims of rape should be questioned only by a female police officer, in the absence of whom a qualified woman from a recognised social organisation should do the questioning. The commission suggested that the law relating to sexual assault be made gender neutral, that is, men and women can be charged with the rape of men, women and children. This meant that for the first time the sexual assault of minor boys was made prosecutable under the law. It asked for Section 377 of the IPC to be dropped, thus decriminalising sodomy.

However, the recommendations did not take into account marital rape. It raised the age of consent of the wife from 15 to 16 years, after which the woman is not protected from rape by the husband. It also continues to provide a window for Judges to reduce the sentence in case of convictions below the minimum sentence specified, as suggested by the commission which states: "Any number of situations may arise, which the Commission cannot foresee th Based on the Law Commission's recommendations, the government enacted an amendment in the winter session of Parliament in 2002, which deleted Section 155(4) and inserted a proviso to Section 146 of the Indian Evidence Act, which means that a victim of rape can no longer be questioned about her past sexual conduct and her 'general immoral character'.

Section 498-A of Indian Penal Code, 1860

498 A is a new addition in the Indian Penal Code, 1860. In the recent years the formidable increase in the number of dowry deaths did alarming disturbance in the Parliamentary debates. There was a growing demand for the redressal measure to be taken by the government. This demand was expressed in the Union legislature debates. The Parliamentary concern forced the Executive to bring forward a new provision in the Indian Penal Code, 1860 in the form of section

Object underlined for insertion of chapter XXA under the heading of cruelty by husband or relative of husband is to Prevent the touch and harassment to a woman by her husband or by relatives of her husband. Sec. 498-A of Indian Penal Code, 1860 was added with view to punish the husband and his relatives who harass or touch the wife to succumb and to satisfy unlawful demands of dowry. Basically this amendment was carried out for the purpose of eradication of a vicious tradition of dowry to prevent dowry deaths in the society. In *Wazir Chand V. State of Haryana*, (Ref: AIR, 1989 SC Page No. 378), there was death of a newly married woman. The facts and circumstances of the case could not establish either the offence of murder or an abetted suicide and thus the in-laws escaped from the application and conviction under the provisions of section 300 and 306 of Indian Penal Code, 1860, but they were caught in the web of this newly enacted section for prevention of harassment for dowry.

Though, cruelty is a distinct ground for obtaining divorce under the marriage laws for different religions, by amendment in the year 1983, the chapter XXA concerning cruelty of husband and his relatives has been added to achieve the social goal of the State. In *State of Karnataka V. H.S. Srinivasa*, (Ref: 1996 Cr. L.J. Page No. 3103 Karnataka) the Hon'ble High Court said that, "The expression cruelty postulates such a treatment as to cause reasonable apprehension in the mind of the wife that her husband will be harmful and injurious to her life. To decide the question of cruelty the relevant factors are the matrimonial relationship between the husband and wife, their cultural and temperamental state of life, state of health and their inter-action in daily life.

In R.P. Bidhan V. State of Maharashtra (Ref: 1993 Cr. L.J. Page. No. 3019 Bombay) it was held that Mere harassment or mere demand for property etc. is not cruelty. It is only where harassment is shown to have been caused for the purpose of coercing a woman to demands that it amounts to a cruelty which has been made punishable under this section.

In Ramesh Chand V. State of U.P. (Ref: 1992 Cr. L.J. Page No. 1444 Allahabad) it was held that in the absence of any agreement or settlement for dowry at the time of marriage, a demand constitutes no offence. The demand must come within the definition of dowry. (Ref: Law of Cruelty, Abetment of Suicide And Dowry Deaths, Vijayrao Mohite and Vandana Chavan, The Bar Council of Maharashtra and Goa, 1993.

By the Amendment in 1983 in Indian Penal Code, 1860 the Indian evidence Act, was also amended and section 113A was inserted, which provides for presumption regarding abetment of suicide by a married woman. When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

All the amendments show the political will of the draftsman of the law to completely eradicate the tradition of demand of dowry of deaths causing thereby.

Indian Penal Code, 1860 is a Penal Code. A code is a set of rules and various conditions which bind the behaviour of the individuals failing which he will face punishment. This code was originally passed in British Parliament. After 15th of August 1947, the day of independence of India, this Code and other enactments were made in force in India by virtue of an order passed by the Governor-General in exercise of powers conferred by sections 9 and 18 of the Indian Independence Act, 1947 and later by article 372 of the Constitution of India on and from 26th January 1950. (Ref: Indian Penal Code, 1860 Professional Bare Act Page No. 1)

Crime is a social and economic phenomenon and is as old as human society. Crime is a legal concept and has a sanction of law. Crime or an offence is "A legal wrong that can be followed by criminal proceeding which may result into punishment." The hallmark of criminality is that, it is the breach of the criminal law. (Ref: Law of Crimes, Ratanlal and Dhirajlal, Wadhwa Publications).

The ethics are the rules of human conduct, the positive moral code. A legal system cannot be the fancy of a society. It has to be a practical thing capable of dealing with realities of human life. No doubt the system follows its own ethics but at the same time this ethical values were not allowed to prevent its growth with time. The positive morality always allowed the developing society to effect change in values and make the system capable of promoting proper development of the Society. The morality was most relative term allowed to change from places to places and time to time. There were some never changing the rules of law which allowed no encroachment. While there were other rules which were open to changes.

A very positive concept it was the learned and the thinkers were to lead the Society in the right direction and hence, were enjoying certain privileges and at the same time shouldering certain responsibilities. So long as men do not try to give up obstinacy, deceit and do good to one another, there cannot be growth of happiness.

The word 'state' is defined in Article 12 of the constitution of India and which includes the government and Parliament of India and Government and the legislature of each states and all other authorities within the territory of India or under the control of the Government of India. The purpose of the state is to keep law and order situation and maintain peace in state in social, Political, economical and cultural sphere. In order to achieve the above purpose the state must require a mighty and strong law which touches and take care of all the above aspects so as to avoid failure of law and order situation and assures permanent peace in the state.

The Indian Penal Code, 1860 is one of the laws which deals with all the facets of the state, which deals with maintenance of peace in the state and also assures the individuals the protection of their rights.

The Indian Penal Code, 1860 was enacted in the year 1860. The president of the first Indian Law commission Lord Macaulay said that “Our Principle is simply this- uniformity when you can have it; diversity when you must have it; but in all cases certainty”. (Ref: Law of Crimes, Ratanlal and Dhirajlal, Wadhwa Publications). The Indian Penal Code, 1860 is a role model in the matter of Certainty. We can certainly Say that, the Indian Penal Code had helped the central Government as well as Government of states as a tool, as a weapon for maintenance of peace so a keeping law and situations intact.

The Indian Penal Code, 1860 has taken steps to eradicate some evil practices existing in the society such as “Sati” and the practice of dowry. New provisions were brought into the code to eradicate such inhumane practices. Though the law has its own limits to bring about the social reforms, the Indian Penal Code, 1860 has succeeded in the same also. Generally the state has to enact reformative laws, declare alluring policies schemes for the purpose of achieving the goal of social reform, the Indian Penal Code, 1860 a legislation has contributed and helped the state to achieve the social reforms.

If we look into the scheme of the Indian Penal Code, 1860 and peruse the provisions of chapter VI to X of the code. We came to know that each chapter deals with the offences related to the essential and important aspects required for the good governance of a state. After perusal of all the chapter it is crystal clear that, those is an unbreakable relation between the state and the Indian Penal Code, 1860 for achievements of the goal of the state of good governance and maintenance of peace in the state.

As clarified hereinabove the functions of the state is to protect the rights of the individuals with utmost care and the Indian Penal Code, 1860 helps the state to perform this function smoothly. It we peruse the provisions of chapter XVI and XVIII of the Indian Penal Code, 1860 which very meticulously defines the offences relating to the property respectively and provides punished for the same. These provisions are pivoted for the protection of the individuals and for the protection of the property of the

individuals and for keeping peace and harmony in the society and in turn in the state.

In the ancient period law of Jungle was prevailing. There was no concept of society or state. As the time passed and with the complex nature of living of people they found it was necessary to have some controlling authority to regulate the behaviour of the people. Thus, there was concept of state evolved out of necessity to have some peace and order in the living of people. The basic purpose or cause for the evolution of concept of state was that, as there is human tendency to have control over others or attack the weaker sections of society. So there was necessary to regulate this human behaviour.

The concept of the State is different according to the kind of the Society. The functions of State also depend on the nature of society.

The definition of state according to Article 12 of constitution of India is "The state" includes the government and parliament of India and the Government and the Legislature of each of the state and all local or other authorities within the territory of India or under the control of the Government of India. (Ref: The constitution of India, P.N. Bakshi, Universal Law Publishing Company 2003- Rs. 120).

Thus, there is a comprehensive meaning of the concept of state in India. Previously the concept of state was taken into consideration in narrow sense i.e. the police state. Nowadays with the advent of judicial interpretations the meaning of state has changed from "Police state" to "welfare state". Thus, the reasons for the protection of the rights of the individuals are to provide welfare amenities necessary for the betterment of life of the individuals.

The basic and foremost function of the state is, safety of the individuals and to give them freedom from fear. The state also ensures the protection of Human Rights of the individuals.

The UN Declaration of Human Rights declared various human rights of the individuals India is a signatory to the UN declaration and hence it has endeavored to enforce those rights. For this purpose there is a need of some agency or organization under the control of state.

The other aspect of the State covers that for the protection of life and property of individuals there is a necessity of instrument which has some

binding force. This binding force became legitimate force when it gets sanction of law through legislation.

The legislative authority is entrusted with the function of making laws when the law is created then its implementation is done through the executive body. Thus, the force used by the executive i.e. by the controlling body, it is legitimate and is immune as it has the sanction of law.

Legitimate law is supreme and cannot be challenged in the courts of law unless it is an arbitrary law. Such legitimate law if violated by any individual then there is a sanction or punishment provided.

Such breach of law or violation of law can be in two ways: a) Against Individuals, b) Against State

When there is public wrong, then it has a corresponding right in rem and when there is private wrong then there is corresponding right in personam. Generally criminal offences are public wrongs, while civil offences are private wrongs.

In case of criminal offences it is the State which institutes action against the offender for the protection of rights of victims and state is party to the criminal proceedings. Thus, state plays very vital role in the prevention and minimizing of the crime in the society. This function is mainly fulfilled with the help of Indian Penal Code, 1860.

Indian Penal Code, 1860 is exhaustive code. It is multidimensional in nature. It is a substantive law and it also provides for the punishment for the offences.

The Indian Penal Code, 1860 mainly deals with a) Meaning and definition of crime, b) Preventive actions and c) Penal actions in case of breach.

Indian Penal Code, 1860 also plays role of social Legislation as there are provisions which protect women and children from the ill-practices of the criminals. It also provide for the deferent provisions against the offences against women. Thus, it gives sensitive social dimension as well.

From the above study we come to the conclusion that, changes in the Indian Penal Code by the Judiciary and the parliament have got independent place in the field of development of law in India.

Both, the Judiciary and the legislature function in their allotted fields. The judiciary has at times changed the provisions of the law if any question arises or any issue comes before it. On the other hand parliament has amended the law as per the needs or aspirations of the society and taking into consideration an act, code, provision or law is enacted by the parliament. The parliament before and after independence of India, has brought about many changes in various Acts or codes. But when we go through the provisions described in the of Indian Penal Code by taking review it came to be known that changes in comparison with other enactments, in the Indian Penal Code has very few amendments.

Whereas there are few other sections which are not offences in the Western Countries, e.g. section 497 of Indian Penal Code, 1860, prescribes punishment for adultery. Adultery is not an offence in India. But every act, law, code reflects the beliefs and morality of the society and aspirations of the people. Like the same thing husband has possessing of his own wife. This view has taken by the legislation as per Indian Custom and Culture is concerned.

The role of both the organs i.e. judiciary and legislature are independent in their respective fields under the Constitution. In respect of interpretation of the statute, the parliament has no right even though the provisions are ambiguous in nature. It is to be noted that the judiciary has no right to amend the section but it has the right to strike it down. On the other hand parliament has the right to frame the law where as judiciary has the right of interpretation of the enacted law.

Regarding the section 309 in the year 1987, the Honorable Bombay High Court struck down the provision of the said section and the same was upheld by the Supreme Court but later in the case of P. Rathinam vs. Union of India, the Supreme Court overruled their earlier decision. The power of interpretation of the statute is vested in the hands of the Apex judiciary. By virtue of the power of judicial review of the statute, the Apex judiciary has made various observations in several cases. According to the said views the Apex judiciary had put soil in the boiled water by providing number of

examples of the views taken in those judgments depending on the wording of the section for which the measure called *OBITER DICTA* helped a lot.

Indian Penal Code came into being in the year 1860 which was postulated as a comprehensive legislation defining all the penal offences existing in the political and social context. The Indian Penal Code, 1860 also prescribed sentences to be imposed for the various offences. The offences covered under the law in variety of offences committed against the State, Public Justice, Law and Order, Currency, Weights and Measures, public corruption, offences against body, property and social morals. The penal statute provides for a harsher punishment than any other statute and consequently it follows that there is a greater danger that it would interfere with the life and liberty of the citizens.

Indian Penal Code, 1860 is the substantive law and Criminal Procedure Code, 1973 is a procedural law.

India is a democratic nation Administration and Judiciary are the essential pillars for parliamentary democracy. In independent India Parliament makes the law and the administrative authorities have to abide by the law made by the Parliament and the Judiciary interprets the law as and when there is an ambiguity in law.

According to Ratanlal and Dhirajlal, where the language of an Act is clear, the preamble must be disregarded. Where the object or meaning of an enactment is not clear the preamble may be resorted to explain it. Where very general language is used in an enactment which, it is clear, must be intended to have a limited application, the preamble may be used to indicate to what particular instance the enactment is intended to apply. The Courts cannot, therefore, start with the preamble for construing the provisions of an Act, though they would be justified in resorting to it, they will be required to do so, if they find that the language used by Parliament is ambiguous or is too general though in point of fact Parliament intended that it should have a limited application. The preamble of an Act set forth the reasons for the particular Act of the legislature and foreshadows what is intended to be effected by the Act. It is a key to open the minds of the framers of the Act. It may be referred for the purpose of clearing up any ambiguity or to fix the

meaning of the words which may have more than one or to keep the effect of the Act within its real scope whenever the enacting part is in any of these respects open to doubt. It is to the preamble, more especially, that we are to look for the reason or spirit of every statute, rehearsing this as it ordinarily does, the evil sought to be remedied or the doubt purported to be removed by the statute and so evidencing in the best and most satisfactory manner, the object or injunction of the legislature, in making and passing the statute itself. But a preamble cannot cut down the meaning of an enactment. The preamble of a statute is an excellent aid to the construction of an ambiguous statute or a statute of doubtful meaning. It cannot be made use of to control the enactment themselves where they are expressed in clear and unambiguous terms. But the preamble is the key to the statute and affords a clue to the scope of the statute when the words construed by themselves without the aid of the preamble are fairly capable of more than one meaning. A preamble does not show the entire scope or the intension of the Act as a whole. The preamble cannot restrict or extend the enacting part where the language and scope of the Act are not open to doubt.

The function of the preamble is to clear any ambiguity in the enacting part but not to create it. If the enacting part is not exactly co-extensive with the preamble and cannot be reconciled with it, the question is which is to prevail. When the enacting part is clear and unequivocal, the preamble can neither restrict nor enlarge the scope of the enacting provision. The provision must therefore be construed according to its plain meaning without recourse to the preamble. The position of the preamble in a statute as an aid to construction was exhaustively examined by the full bench decision of the Supreme Court while dealing with the topics generally, Sikri, C.J. (as he then was) observed that the preamble of the constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble. Shelat, J, observed that the true function of the preamble is to expound the nature and extend and application of the powers actually conferred by the constitution and not substantially to create them. Ray, J, held that preamble can expound the nature, extend and application of the powers actually conferred by the constitution and not

substantively create them. The preamble will furnish a guide to the construction of the statute where the words are ambiguous or even where the words are unambiguous to aid a construction which will not lead to an absurdity. Where the preamble conveys a clear and definite meaning, it would prevail over the enacting words which are relatively obscure or indefinite or if the words are capable of more than one construction, the construction which fits the preamble may be preferred. The preamble illumines the entire rubric of the statute. (Ref: Law of crimes, Ratanlal and Dhirajlal, Bharat Law House, New Delhi, 1987, page No. 2-3).

After Independence the Indian Parliament has drafted so many laws covering so many subjects in order to achieve the goal of independent India, but we found the Parliament itself was constrained to amend the laws from time to time because of ambiguity in the provisions of law, because of discrepancy in law, because of loop holes in law.

We have noted that the Indian Penal Code has been drafted in the era of British India in 1860. By way of Indian Penal Code the Criminal Law in India was codified for the first time. Though 150 years have been relapsed, the Indian Penal Code, 1860 continues to be a comprehensive codified Criminal law.

As compared to the other laws and amendments carried out to the other laws drafted by the Indian Parliament, the Indian Penal Code, 1860 has undergone least amendments.

The Indian Penal Code, 1860 has been so meticulously and carefully drafted that there is little scope for the amendment in the Code. If we peep into the subject of amendment to Indian Penal Code, 1860 we find few amendments in the provisions of the Indian Penal Code, 1860. During the vast period of 150 years. There was no scope for the Parliament to amend the Indian Penal Code, 1860.

Another very important aspect in respect of the amendment to the Indian Penal Code, 1860 is that, the Apex court of India has not also found any major scope for the amendments in last 60 years.

The Indian Penal Code, 1860 represents the high watermark of supreme draftsmanship, excellent and thoughtful piece of legislation and it is

the fruit of legal scholarship. It has for more than one and half century been a paragon of Code enskied by all discerning critics as unparallel in the realm of Codes. Naturally the Code has not been subjected to any major amendments.

The Indian Penal Code, 1860 is a piece of perfect and excellent drafting towering above all codes in the World. The Indian Penal Code, 1860 is a masterpiece of this literary craftsmanship emerged out of the profound knowledge and experience of Lord Macaulay.

In 511 Section, each one of which is a masterpiece of clear and precise expression, the code traverses the entire field of criminal law. It is in daily use in Criminal Court of every grade in India.

Chapter IX–A comprising of Sections 171–A to 171–I has been added in Indian Penal Code in the year 1920. In the year 1919 the Improvement Act came into existence by which elections were provided in India and hence in order to avoid the offences relating to elections and punish the same the above chapter was added in Indian Penal Code, 1860.

Political Science deals with the science of Government. It gives what kind of policies to be framed for the better protection of the individuals.

It deals with the political will of the legislature to enact any law on any subject for the people in that country.

According to Bentham, “There should be greatest happiness of greatest number”. Thus it is the law which should attempt to achieve the happiness of greatest number of people.

At the same time, it should be considered while enacting any law that it should not encroach on the minority rights. This means it should endeavour to protect the rights of people who are in minority groups.

Thus, if we consider Indian Penal Code, 1860 this Code is very exhaustive and provisions are made so meticulously considering all sections of Society. It is a document which is applicable anywhere in the world. It could be said that it is a secular document which could be applied irrespective of religion, caste, creed, language etc.

The Indian Penal Code, 1860 was applicable to the whole of British India and it is applicable to the independent India except the State of Jammu and Kashmir.

It gives rights to the people in case of violation of their rights i.e. against body and against property and other rights and provide punishment to wrong doers.

Thus, the Indian Penal Code, 1860 has in a true sense achieved a aim of law and thereby secured the rights of people.

BIBLIOGRAPHY

1. The Indian Penal Code, 1860 Ratanlal and Dhirajlal, Wadhwa and company Napur, 2004, Rs.360
2. Criminal Laws in Maharashtra, A.K. Gupte, Hind Law Publication, Pune, 2007, Rs.5100
3. Supreme court Criminal Digest, R.K.Sharma, Ganpati Law House, Meerut (U.P) Rs.325
4. Yearly Criminal Law Digest, S.K. Sinha, Premier publication, Allahabad, 2005, Rs.450
5. The Indian Penal Code,1860 M.L. Singhal J. and Sabiha's, Premier publication, Allahabad, 1999, Rs.850
6. Criminal Major Acts, Premier publication, Allahabad, 2005, Rs.330
7. The Indian Penal Code, 1860 Ratanlal and Dhirajlal,Wadhwa and company Napur, 2003, Rs.1395
8. The Indian Penal Code,1860 Ratanlal and Dhirajlal, Wadhwa and company Napur, 2002, Rs.295
9. The Indian Penal Code,1860 Dr. Bhattacharya, Central Law agency, Allahabad, 2003, Rs.165
10. The Indian Penal Code,1860 Dr. Srivastava s.s., Central Law agency, 2003, Rs.80
11. The Indian Penal Code, S.V.Kulkarni, Ashok Grover and Son's, Aurangabad, 2008, Rs.199
12. The Indian Penal Code,1860 Jaspal Singh, pioneer publications, Delhi, 2000, Rs.140
13. The Indian Penal Code,1860 Dr.B.N. Mani Tripathi, Pioneer publication 2000, Rs.140
14. Law of Crime and criminology; R.P. Kathuria; Vinod Publication (p) Ltd.; Delhi; 2004
15. Indian Penal code; Sarkar; Dwivedi Law Agency; Allahabad; 2006
16. Indian Penal code; Saha; Dwivedi Law Agency; Allahabad; 2004
17. Indian Penal code; Dr. Bhattacharya; Central Law Agency; Allahabad; 2005
18. Indian Penal code; Srivastava; Central Law Agency; Allahabad; 2008
19. Criminal Major Act; Dr. Arshad Subzwari; Ashok Grover and sons Law book seller and publisher; Aurangabad; 2008
20. Law of crimes; Ejaz Ahmed; Dwivedi Law Agency; Allahabad; 1999
21. The Indian Penal code; R. A. Nelsons; The law Book Company Pvt. Ltd.; Allahabad; 1998
22. Law of Cruelty, Abetment of Suicide And Dowry Deaths, Vijayrao Mohite and Vandana Chavan, The Bar Council of Maharashtra and Goa, 1993, Rs. 450/ -.

APPENDIX I:

CHAPTERWISE AMENDMENTS IN INDIAN PENAL CODE, 1860.

Sr. No.	LIST OF CHAPTERWISE AMENDMENTS IN INDIAN PENAL CODE, 1860	Page No.
Chapter I Preliminary		
1.	Substituted by the Act 3 of 1951, S 3 and Sch, for “the whole of India except Part B States”.	1
2.	Substituted by A.O.1948,for repealed by Act 12 of 1891,S 2 and Sch,I.	
3.	Substituted by Act 3 of 1951,S 3 and Sch for “except Part B States”.	
4.	Substituted by Act 3 of 1951,S 3 and Sch for “the States”.	
5.	Substituted by A.O.1937,for “law passed by the Governor-General of India in Council”.	
6.	Substituted by Act 3 of 1951,S 3 and Sch for “the States”.	2
7.	Substituted by Act 4 of 1898,S 2 for S 4.	
8.	Substituted by A.O. 1950, for the original Cls.(1) to (4).	
9.	Substituted by Act 36 of 1957,S 3 and Sch. II.	
10.	Substituted by A.O.1948, for “a coolie, who is a Native Indian subject”.	
11.	Substituted by A.O.1950, for a “British subject of Indian domicile”.	
12.	Substituted by A.O.1950, for S 5.	
Chapter II General Explanations		
13.	Substituted by A.O.1950,for S 14.	3
14.	Substituted by A.O.1950,for S 17.	
15.	Substituted by Act 3 of 1951, S 3 & Sch., for S 18.	
16.	Substituted by Act 10 of 1927,S.2 & Sch., I, for “or Naval”.	4
17.	Substituted by A.O.1948, for “of the Queen while serving under any Government in British India or the Crown Representative”.	
18.	Substituted by Act 40 of 1964, S.2, for clause Third (wef. 18.12.1964).	
19.	Inserted by Act 40 of 1964, S.2 (wef.18.12.1964).	
20.	Substituted by A.O.1950, for “the Crown”.	5
21.	Inserted by Act 39 of 1920, S 2.	
22.	Substituted by Act 40 of 1964, S.2, for clause Twelfth (wef. 18.12.1964).	
23.	Inserted by Act 39 of 1920, S.2	
24.	Explanation 4 inserted by Act 2 of 1958, S.2	7
25.	Substituted by Act 1 of 1889, S.9 for the original Explanation.	
26.	Inserted by act 21 of 2000, 91 & Sch. I (wef. 17 10.2000).	

27.	Substituted by Act 27 of 1870, S.1, for S.34.	8
28.	Substituted by Act 27 of 1870, S.1, for S.40.	10
29.	Substituted by Act 8 of 1930, S.2 & Sch. I, for "Chapter".	
30.	Inserted by Act 8 of 1913, S.2.	
31.	Inserted by Act 8 of 1882, S.1.	
32.	Inserted by Act 10 of 1886, S.21 (1).	
33.	Substituted by A.O. 1948, for "British India".	11
34.	Substituted by Act 3 of 1951, s.3 & Sch., for "the States".	
35.	Inserted by Act 8 of 1942 S.2 (wef.14.02.1942).	
Chapter III Of Punishments		
36.	Substituted by Act 26 of 1955, S.117 & Sch., for "Secondly-Transportation", (wef.01.01.1956).	12
37.	Inserted by Act 26 of 1955, S.117 & Sch. (wef.01.01.1956).	
38.	Substituted by Act 36 of 1957, S.3 & Sch. II, for "1954" (wef.17.09.1957).	
39.	Substituted by A.O. 1950, for " <i>the Central Government or the Provincial Government of the Province</i> within which the offender shall have been sentenced'. The words in italics were substituted by A.O.1937, for "the Government of India or the Government of the place".	13
40.	substituted by Act 26 of 1955, S 117 & Sch for "transportation" (wef.01.01.1956).	
41.	Substituted by A.O.1950, for S.55-A.	
42.	Substituted by Act 8 of 1882, S.2, for "In every case in which an offender is sentenced to a fine".	14
43.	Inserted by Act 10 of 1886, S 21 (2).	
44.	Inserted by Act 8 of 1882, S.3.	
45.	Added by Act 8 of 1882, S. 4	15
46.	Substituted by Act 8 of 1882, S.5, for "be less than a".	16
47.	Substituted by Act 3 of 1910, S.2, for S.75.	
48.	Substituted by Act 3 of 1951, S.3 &., Sch., for "the States".	
49.	Substituted by Act 26 of 1955, S.117 & Sch., for 'transportation for life"(wef.01.01.1956).	
Chapter V Of Abetment		
50.	Added by Act 4 of S. 3.	28
51.	Substituted by Act 3 1951 , S.3 & Sch., for "the states".	
52.	Substituted by Act 26 of 1955, S.117& Sch., for "transportation for life"(wef.01.01.1956).	31
53.	Inserted by Act8 of 1913, S.3	33

Chapter VI Of Offences Against The State		
54.	Substituted by A.O. 1950, for "Queen".	34
55.	Substituted by Act 16 of 1921,S.2, for "& shall forfeit all his property".	
56.	Substituted by Act 36 of 1957, S.3 & Sch., II, for "Illustrations" (wef.17.09.1957).	
57.	Illustration (b) repealed by A.O.1950.	35
58.	Inserted by Act 27 of 1870, S.4.	
59.	Substituted by Act 3 of 1951, S.3 & Sch., for "the States".	
60.	Substituted by A.O.1937, for "the Government of India or any Local Government".	
61.	The words "or the Government of Burma" repealed by A.O.1948.	
62.	Inserted by Act 16 of 1921, S.3.	
63.	Substituted by Act 16 of 1921,S.3, for "& shall forfeit his property".	
64.	Substituted by A.O.1950,for "Governor General".	
65.	Substituted by Act 3 of 1951,S.3 & Sch., for "Governor".	
66.	The words "or a Lieutenant-Governor" repealed by A.O.1937.	
67.	The words "or a Member of the Council of the Governor General of India" repealed by A.O.1948.	
68.	The words "or of the Council of any Presidency" repealed by A.O.1937.	36
69.	The words "Governor General, Governor, Lieutenant-Governor or Member of Council" have successively been amended by A.O.1937, A.O.1948 & A.O.1950 to read as above.	
70.	Substituted by Act 4 of 1898,S.4, for S.124-A which had been inserted by Act 27 of 1870, S.5.	
71.	The words "Her Majesty or" repealed by A.O.1950. The words "or the Crown Representative" inserted after the word "Majesty" by a.O.1937 were repealed by A.O.1948.	
72.	Substituted by Act 3 of 1951, S.3 & Sch. for "the States".	
73.	The words "or British Burma" inserted by 1937 repealed by A.O.1948.	37
74.	Substituted by Act 3 of 1951, S.3 & Sch., for "the States".	
Chapter VII Of Offences Relating To The Army, [Navy & Air Force]		38
75.	Substituted by Act 10 of 1927, S 2 and Sch I, for "AND NAVY"..	
76.	Substituted by Act 10 of 1927, S 2 and Sch I, for "or sailor".	38
77.	Substituted by Act 10 of 1927, S 2 and Sch I, for "or Navy"	
78.	Inserted by Act 26 of 1870, S 6.	
79.	Substituted by Act 10 of 1927,S 2 and Sch I, for "and soldier".	
80.	Substituted by Act 10 of 1927,S 2 and Sch I, for "Articles of war for the better Government of Her Majesty's Army ,or to the Articles of war contained in Act No.5 of 1869".	

81.	Substituted by Act 3 of 1951, S.3 and Sch., for “the Indian Army Act,1911”.	
82.	Inserted by Act 35 of 1934, S.2 and Sch.	
83.	Substituted by Act 14 of 1932, S.130 and Sch., for “or the Air Force Act”.	
84.	Substituted by Act 3 of 1951, S.3 and Sch., for “the Indian Air Force Act, 1932”.	
85.	Substituted by Act 10 of 1927, S.2 & Sch. I, for “or sailor”.	39
86.	Substituted by Act 10 of 1927, S.2 & Sch. I, for “or Navy”.	
87.	Substituted by Act 10 of 1927, S.2 & Sch. I, for “any Articles of war for the Army or Navy of the Queen, or for any part of such Army or Navy”.	40
88.	Substituted by Act 3 of 1951, Sch., for “the Indian Army Act,1911”.	
89.	Inserted by Act 35 of 1934,S.2 & Sch.	
90.	The words “or that Act modified by” repealed by A.O.1950	
91.	Now see the Navy Act, 1957(62 of 1957).	
92.	Substituted by Act 14 of 1932, S.130 & Sch., for ‘or the Air Force Act”.	
93.	Substituted by Act 3 of 1951, S.3 & Sch., for “the Indian Air Force Act, 1932”.	
94.	Inserted by Act 10 of 1927,S.2 & Sch. I.	
95.	Substituted by act 10 of 1927, S.2 & Sch. I for “or Naval”.	
Chapter VIII Of Offences Against The Public Tranquility		
96.	Substituted by A.O.1950, for “the Central or any Provincial Government or Legislature”.	44
97.	Substituted by Act 35 of 1969, S.2, for S.153-A (wef.04.09.1969).	
98.	Inserted by Act 31 of 1972, S.2(wef.14.06.1972).	
99.	Inserted by the Code of Criminal Procedure (Amendment) Act, 2005(25 of 2005), S. 44(a).	45
Chapter IX Of Offences By Or Relating To Public Servants		
100.	Substituted by Act 2000, S.91 & Sch., I, for “such public servant, charged with the preparation or translation of any document, frames or translates that document” (wef.17.10.2000).	48
Chapter IX-A Of Offences Relating To Elections		
101.	Chapter IX-A inserted by Act 39 of 1920, S.2	49
102.	Substituted by Act 40 of 1975, S.9 for Cl.(a) (wef.06.08.1975).	
103.	Inserted by Act 24 of 2003, S.5 (wef.22.09.2003).	50
Chapter X Of Contempt's Of the Lawful Authority of Public Servants.		
104.	Substituted by Act 21 of 2000, S.91 & Sch. I for “produce of document in a Court of Justice” (wef.17.10.2000).	51
105.	Substituted by A.O.1950, for “Supreme Court”.	52
106.	Substituted by A.O.1950, for “Zila Judge”.	

107.	Inserted by the Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005), S. 44 (b)(wef.23.06.2006).	53
108.	Added by Act 22 of 1939, S.2.	
109.	Repealed by Act 17 of 1862.	54
110.	Added by Act 3 of 1894,S.5	
111.	Substituted by Act 3 of 1951, S. 3 & Sch., for "the State".	
112.	Inserted by Act 10 of 1873, S.15.	
113.	Substituted by Act 3 of 1895, S. 1, for S.182.	55
Chapter XI Of False Evidence And Offences Against Public Justice		
114.	Substituted by Act 21 of 2000, S.91 & Sch. I, for "makes any false entry in any book or record, or makes any document containing a false statement" (wef.17.10.2000).	59
115.	Substituted by A.O.1948, for "by the law of British India or England".	60
116.	Inserted by the Criminal Law (Amendment) Act, 2005 (2 of 2006), S.2 (wef.16.04.2006).	
117.	Added by Act 3 of 1894, S.6.	63
118.	Substituted by Act 21 of 2000, S.91 & Sch. I, for "document" (w.e.f.1-10-2000).	
119.	Inserted by Act 3 of 1894, S.7.	66
120.	Substituted by Act 42 of 1953, S.4 & Sch. III, for "to restore or cause the restoration of" (wef.23.12.1953).	67
121.	Substituted by Act 8 1882, S.6, for original Exception.	
122.	Illustrations repealed by Act 10 of 1882, S.2 & Sch. I.	
123.	Inserted by Act 10 of 1886, S.23.	68
124.	Inserted by Act 3 of 1894, S.8.	
125.	Inserted by Act 27 of 1870, S.8.	70
126.	Ss. 225-A & 225-B substituted by Act 10 of 1886, S.24 (1), for S.225-A, which had been inserted by Act 27 of 1870, S.9.	72
127.	Inserted by Act 43 of 1983, S.2 (wef.25.12.1983).	73
128.	Inserted by the Code of Criminal Procedure (Amendment) Act, 2005 (25 of 2005), S.44(c) (wef.23.06.2006).	74
129.	Chapter XII Of Offences Relating To Coin And Government Stamps	
130.	Substituted by Act 19 of 1872, S.1, for original paragraph.	
131.	Substituted by A.O.1950, for former paragraph.	
132.	Substituted by A.O.1950, for "the Queen's coin".	
133.	Inserted by Act 6 of 1896, S.1 (2).	
134.	Inserted by Act 3 of 1895, S.2.	81
135.	Substituted by Act 42 of 1953, S.4 & Sch. III, for "may be seized &" (wef.23.01.1953).	

Chapter XIV Of Offences Affecting The Public Health, Safety, Convenience, Decency & Morals		
136.	Substituted by A.O.1937, for “by the Government of India, or by any Government”.	83
137.	The words “Central or any Provincial” repealed by A.O.1950.	
138.	The words “or the Crown Representative” repealed by A.O. 1948.	
139.	Substituted by Act 8 of 1925, S. 2, for S.292.	87
140.	Inserted by Act 36 of 1969, S. 2(wef.07.09.1969).	
141.	S.292 renumbered as sub-S. (2) of that section by Act 36 of 1969,S.2(wef.07.09.1969).	88
142.	Substituted by Act 36 of 1969, S.2, for certain words (wef.07.09.1969).	
143	Substituted by Act 36 of 1969, S.2, for Exception (wef.07.09.1969).	
144.	Substituted by Act 8 of 1925, S. 2, for S.293.	90
145.	Substituted by Act 3 of 1895,S.3, for S.294	91
146.	Inserted by Act 27 of 1870, S.10.	
147.	Substituted by A.O. 1937, for “not authorized by Government”.	
148.	Substituted by Act 3 of 1951, S.3 & Sch., for “a lottery organized by the Central Government or the Government of a Part A State or a Part B State” which had been substituted by A.O.1950, for “a State lottery”.	
149.	Substituted by A.O.1950, for “provincial”.	
Chapter XV Of Offences Relating To Religion.		
150.	Inserted by Act 25 of 1927, S.2.	92
151.	Substituted by A.O.1950 for “His Majesty’s subjects”.	
152.	Substituted by Act 41 of 1961, S.3, for “by words, either spoken or written, or by visible representations” (wef.27.09.1961).	
153.	Substituted by Act 41 of 1961, S.3, for “two years” (wef.27.09.1961).	
Chapter XVI Of Offences Affecting The Human Body		
154.	Inserted by Act 27 of 1870, S.122.	99
155.	Inserted by Act 43 of 1986, S.10 (wef.19.10.1986).	
156.	Inserted by Act 27 of 1870, S.11.	101
157.	Inserted by Act 12 of 1891, S.2 & Sch. II.	
158.	Substituted by Act 8 of 1882, S.7, for “and shall also be liable to fine”.	102
159.	Substituted by Act 8 of 1882, S.8.	108
160.	Substituted by Act 3 of 1951, S.3 & Sch., for “the States”.	114
161.	Substituted by Act 42 of 1949, S.2, for “fourteen”.	
162.	Substituted by Act 42 of 1949, S.2, for “sixteen”.	
163.	Inserted by Act 52 of 1959, S.2 (wef.15.01.1860).	115
164.	Inserted by Act 42 of 1993, S.2 (wef.22.05.1993).	116
165.	Substituted by Act 24 of 1995, for “any other person” (wef. 26.05.1995).	

166.	Added by Act 20 of 1923, S.2.	117
167.	Inserted by Act 20 of 1923, S.3	
168.	Substituted by Act 3 of 1951, S.3 & Sch., for “the States”.	
169.	Inserted by Act 3 of 1951,S.3 & Sch.	
170.	Substituted by Act 18 of 1924, S.2, for “minor under the age of eighteen years with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful & immoral purpose, or knowing it to be likely that such minor will be”.	118
171.	Inserted by Act 18 of 1924, S.3.	119
172.	Inserted by Act 18 of 1924, S.4.	
173.	Substituted by Act 43 of 1983, S.3, for the heading “ <i>of rape</i> ”(wef.25.12.1983).	
174.	Substituted by Act 43 of 1983, S.3, for Ss.375 & 376(wef.25.12.1983).	
Chapter XVII Of Offences Against Property		
175.	Inserted by Act 40 of 1973, S.9 (wef.01.11.1973).	132
176.	<i>Explanation</i> renumbered as <i>Explanation 1</i> by Act 38 of 1975,S.9(wef.01.09.1975)	
177.	Inserted by Act 33 of 1988, S.27 (wef.01.08.1988).	
178.	Inserted by Act 33 of 1975, S.9 (wef.01.09.1975).	
179.	The words “the” & “offence of” repealed by Act 12 of 1891,S.2 & Sch., I & Act 8 of 1882,S.9,respectively.	134
180.	Inserted by Act 8 of 1882, S.9.	141
181.	Inserted by Act 8 of 1882, S.10	
Chapter XVIII Of Offences Relating To Documents And To Property Marks		
182.	Substituted by Act 21 of 2000, S.91 & Sch., I for “Whoever makes any false documents or part of a document with intent to cause damage or injury”(wef.17.10.2000).	148
183.	Substituted by Act 21 of 2000, S.91 & Sch. I, for the portion beginning with “A person is said to make a false document” & ending with “by reason of deception practiced upon him, he does not know the contents of the document or the nature of the alteration” (wef.17.10.2000).	
184.	Substituted by Act 21 of 2000, S.91 & Sch. I (wef.17.10.2000).	150
185.	Substituted by Act 21 of 2000, S.91 & Sch., I for “Whoever forges a document” (wef.17.10.2000).	
186.	Substituted by Act 21 of 2000, S.91 & Sch., I for “document forged” (wef.17.10.2000).	151
187.	Substituted by Act 21 of 2000, S.91 & Sch., I for “intending that the document forged” (wef.17.10.2000).	
188.	Substituted by Act 21 of 2000, S.91 & Sch., I for “document” (wef.17.10.2000).	

189.	Substituted by Act 21 of 2000,S.91 & Sch., I for the portion beginning with “Whoever has in his possession any document” & ending with “if the document is one of the description mentioned in section 466 of this Code”,(wef.17.10.2000).	152
190.	Substituted by Act 21 of 2000, S.91 & Sch., I for “any document” (wef.17.10.2000).	153
191.	Added by Act 3 of 1895, S.4.	
192.	Substituted by Act 21 of 2000, S.91 & Sch., I for “book, paper, writing” (wef.17.10.2000).	
193.	Substituted by Act 4 of 1889, S.3, for the original heading & Ss.478 to 482.	154
194.	Substituted by Act 4 of 1889, S.3, for Ss.483 & 484.	
195.	Substituted by Act 43 of 1958, S.135 & Sch., for S.485 (wef.25.11.1959).	155
196.	Substituted by Act 4 of 1889, S.3, for S.486.	
197.	Substituted by Act 43 of 1958, S.135 & Sch., for certain words (wef.25.11.1959).	
198.	Substituted by Act 4 of 1889, S.3 for Ss.487 & 488.	
199.	Substituted by Act 4 of 1889, S.3 for S.489.	156
200.	Substituted by Act 35 of 1950, S.3 & Sch., II, for S.489-C & 489-D”.	
201.	Added by Act 12 of 1899, S.2.	
202.	Inserted by Act 6 of 1943, S.2.	157
203.	Chapter XX-A inserted by Act 46 of 1983, S.2 (wef.25.12.1983)	160
Chapter XXII Of Criminal Intimidation, Insult And Annoyance		
204.	Substituted by Act 4 of 1898, S.6, for S.505.	164
205.	S.505 renumbered as sub-S. (1) of that section by Act 35 of 1969,S.3 (wef.04.09.1969).	
206.	Substituted by Act 10 of 1927, S.2 & Sch. I, “or sailor”.	
207.	Substituted by Act 10 of 1927, S.2 & Sch. I, “or Navy”.	
208.	Substituted by A.O.1950, for “of Her Majesty or in the Imperial Service Troops”. The words “or in the Royal Indian Marine” occurring after the word “Majesty” were repealed by Act 35 of 1934,S.2 & Sch.	
209.	Substituted by Act 41 of 1961, S.4, for “two years” (wef.12.09.1961).	
210.	Inserted by Act 35 of 1969, S.3 (wef.04.09.1969).	
Chapter XXIII Of Attempts to Commit Offences.		
211.	Substituted by Act 26 of 1955, S.117 & Sch., for “transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence” (wef.01.01.1956).	166

(Ref: Professional Book Publishers, 2008, East Patel Nagar, New Delhi.110008)

APPENDIX II:

YEARWISE AMENDMENTS IN INDIAN PENAL CODE, 1860

Sr. No.	Year	No. of Amendments in the year
1.	1860	-
2.	1861	-
3.	1862	1
4.	1863	-
5.	1864	-
6.	1865	-
7.	1866	-
8.	1867	-
9.	1868	-
10.	1869	1
11.	1870	10
12.	1871	-
13.	1872	1
14.	1873	1
15.	1874	-
16.	1875	-
17.	1876	-
18.	1877	-
19.	1878	-
20.	1879	-
21.	1880	-
22.	1881	-
23.	1882	11
24.	1883	-
25.	1884	-
26.	1885	-
27.	1886	4
28.	1887	-
29.	1888	-
30.	1889	5
31.	1890	-
32.	1891	1
33.	1892	-
34.	1893	-
35.	1894	4
36.	1895	4
37.	1896	1
38.	1897	-
39.	1898	3
40.	1899	1
41.	1900	-
42.	1901	-
43.	1902	-
44.	1903	-
45.	1904	-
46.	1905	-
47.	1906	-
48.	1907	-
49.	1908	-

Sr. No.	Year	No. of Amendments in the year
50.	1909	-
51.	1910	1
52.	1911	1
53.	1912	-
54.	1913	2
55.	1914	-
56.	1915	-
57.	1916	-
58.	1917	-
59.	1918	-
60.	1919	-
61.	1920	3
62.	1921	3
63.	1922	-
64.	1923	2
65.	1924	3
66.	1925	2
67.	1926	-
68.	1927	14
69.	1928	-
70.	1929	-
71.	1930	1
72.	1931	-
73.	1932	2
74.	1933	-
75.	1934	-
76.	1935	-
77.	1936	-
78.	1937	-
79.	1938	-
80.	1939	1
81.	1940	-
82.	1941	-
83.	1942	1
84.	1943	1
85.	1944	-
86.	1945	-
87.	1946	-
88.	1947	-
89.	1948	11
90.	1949	2
91.	1950	26
92.	1951	21
93.	1952	-
94.	1953	2
95.	1954	-
96.	1955	5
97.	1956	1
98.	1957	4

99.	1958	2
100.	1959	1
101.	1860	-
102.	1961	3
103.	1962	-
104.	1963	-
105.	1964	3
106.	1965	-
107.	1966	-
108.	1967	-
109.	1968	-
110.	1969	7
111.	1970	-
112.	1971	-
113.	1972	1
114.	1973	1
115.	1974	-
116.	1975	-
117.	1976	-
118.	1977	-
119.	1978	-
120.	1979	-
121.	1980	-
122.	1981	-
123.	1982	-
124.	1983	4
125.	1984	-

126.	1985	-
127.	1986	1
128.	1987	-
129.	1988	-
130.	1989	-
131.	1990	-
132.	1991	-
133.	1992	-
134.	1993	1
135.	1994	-
136.	1995	1
137.	1996	-
138.	1997	-
139.	1998	-
140.	1999	-
141.	2000	13
142.	2001	-
143.	2002	-
144.	2003	1
145.	2004	-
146.	2005	3
147.	2006	2
148.	2007	-
149.	2008	-
150.	2009	-

(Ref: Professional Book Publishers, 2008, East Patel Nagar, New Delhi.110008)