1. GENERAL INTRODUCTION

Research is proposed to be carried out for Ph.D. in the Department of Law of Shri Jagdish Prasad Jhabarmal Tibrawala University of Rajasthan on the topic: ‘The System of Punishments and the Need for Reform in India’. The specific branch of law in which research is proposed to be done is the Criminal Law of India with reference wherever necessary to the relevant provisions of Constitutional Law and a few other branches of Public Law. In the area of Criminal Law the two main branches of law covered will be the General Law of Crimes and the Special Law of Crimes.

Punishment generally is a kind of power by the courts of law besides several institutions of State and in certain cases by private agencies. The specific area envisaged in this proposal however is the work relating to the courts of law. The need for reform of the system of punishments has arisen owing to the several problems which the authorities of the State have to face in the matter of enforcing the criminal law. One of the problems which have arisen is owing to the rising trend in the incidence of crime for which Criminal Law is blamed that it has not been able to control the problem of crime. Apart from the increase in crime there are also new kinds of crime which call for an effective system of dealing with the problem.

The nature and characteristics of new crimes have thrown new challenges before the law enforcement authorities. The complicated nature of crimes has made it difficult for the law enforces to find the offender of the crime and how the crime has been committed. The developments owing to scientific and technological advance have ushered in new types of criminality owing to which there is need for amendment of the criminal law of our country.

Before proceeding with various aspects of the problem of reforming the penal law of our country the researcher considers it necessary to offer a brief comment on the elements of the system of punishments, i.e. -

Concept of Punishment

(i) Meaning & Definition of Punishment

(ii) Object of Punishment

(a) Deterrent Theory

(b) Preventive Theory

(c) Reformative Theory

(d) Retributive Theory

(e) The theory of compensation to victims of crime:

(IV) History of Punishments

(V) The Kinds of Punishment
Meaning of Penal Reform

According to the Cambridge dictionary, meaning of the word penal reform is the attempt “the attempt to improve the system of legal punishments”.

One must aver that there are three basic requirements that are present in each attempt at Penal law reform. First there must be kindling. The people in a given geographic area at a specific period of time must be prepared for a change. Their receptivity can frequently be attributed to various conditions which are political in nature. Second, there must be a torch. An idea must be present to set fire to the minds of the people. Third, there must be an incendiary: there must emerge an unusual man, a leader to touch the fagots with the torch and fan the flame of criminal reform.

Law is never static. Since human society constantly undergoes changes because of socio-economic pressures law must also change keeping pace with social changes. The system of law under which people live should be responsive to the social needs of the present times and should reflect current values and philosophies of the society. Otherwise dichotomy will arise between law and society which will adversely affect social stability and progress. Even when law has been codified, there is no finality about law. As Maine points out, the sign of a progressive human society is whether law keeps on growing after its codification. A country with codified law needs to look into the statutes from time to time, revise them and re-enact them in order to bring them up to-date. After codification, the function of the courts undergoes some change. It becomes less creative. Instead of developing the law to embrace new relationships or new set of facts, the courts confine themselves by and large to the narrower task of interpreting parliamentary language.

(i) Agencies working at the international level for Penal Law Reform.

There are various agencies working at the national and international levels for the reform of law. As far as these agencies are concerned, these agencies undertake research on various aspects of the crime problem and they suggest reforms to all countries of the world.

(1) International Penal & Penitentiary Commission (IPPC) Among the popular agencies working at the international level are the International Penal and Penitentiary Commission (IPPC). This commission was the first commission to have been set up by the League of Nations to work on international criminal law and other criminal law matters.

In the nineteenth century, as large-scale police forces, court systems and prisons began appearing in the major cities, studies on the causes of crime drew widespread attention to the field of criminology. A series of conferences in Europe, of which the most notable was the First International Congress on the Prevention and Repression of Crime (London, 1872), brought
together experts and professionals from various countries. Leading issues under consideration included the proper administration of prisons, possible alternatives to imprisonment, modes of rehabilitating convicts, treatment of juvenile offenders, extradition treaties and the "means of repressing criminal capitalists".

At the close of the London conference, the International Prison Commission (IPC) was formed with a mandate to collect penitentiary statistics, encourage penal reform and convene further international conferences. It later affiliated with the League of Nations and held three conferences in European capitals from 1925 to 1935. At the last of these it was renamed the International Penal and Penitentiary Commission (IPPC).

As the League of Nations foundered on the rocks of global conflict leading to the Second World War, so did the IPPC. At the end of the war, the UN was formed with a brief that included the control and prevention of crime. However, the new Organization declined to affiliate with the IPPC for understandable reasons. Seventy-five years of valuable work and research were tarnished by the heavy hand wielded by the Axis powers in the Commission throughout the Second World War. Having furnished a substantial part of IPPC's funding, the Axis powers used the Commission to publicize their bizarre theories on the racial and biological roots of crime and on draconian measures for its control.

The General Assembly dissolved the IPPC on 1 December 1950, while incorporating its functions and archives within the new Organization's own operations.

(2) United Nations Crime Congress

Following the dissolution of the International Penal and Penitentiary Commission (IPPC) by the General Assembly in 1950, the UN continued the former body's practice of holding international conferences on crime control matters. The Crime Congress set up at the instance of the United Nations is working hard on all aspects of criminal law.

Among the important things done by the UN Congress are the Standard Minimum Rules for the Treatment of Prisoners; the Prevention of Juvenile Delinquency, Prison Labour, Parole and after care and criminality resulting from social change and economic development.

(3) International Law Commission yet another agency working at the international level for the cause of improving the Criminal Law is the International Law Commission. The object of the Commission is enshrined in Article 1, paragraph 1, of the Statute of the International Law Commission which provides that the "Commission shall have for its object the promotion of the progressive development of international law and its codification".

ii) Agencies working at the national level for Penal Law Reform
Stating from the beginning of 18th century there has been a spurt of reformatory steps in the matter of the criminal law of our country. The first agency which was at work was the Law Commission of India which was set up by the British regime and it was this Commission which had taken great pains for the codification of laws in India. The Indian Penal Code of 1860 was the work of the Law Commission which the Britishers had set up in our country.

After independence of the country we had many laws enacted by the British Parliament which were not abrogated but given effect by Art 372 of the Constitution. The idea was to maintain legal continuity and fill up the legal vacuum. But the law has to be adjusted to the Indian scenario and to the tune of the principles cherished in the Indian Constitution. The dire necessity of reforming all the laws was felt and on Dec 2, Dr. Harisingh Gour moved a resolution in the parliament recommending the establishment of a statutory law revision committee. Finally on November 19, 1954, the Lok Sabha discussed non—official resolution to appoint a law commission with the object of modernization of laws criminal, civil and revenue, substantive, procedural or otherwise and in particular the civil and Criminal Procedure Codes and the Indian Penal Code to reduce and resolve the conflicts in the decisions of the High Court’s on many points.

The commission was organized into two sections: statute Revision Section and the Section to deal with the reform of judicial administration. The first law commission was appointed in September, 1955 under the chairmanship of Attorney General Setalvad. Since then the law commission has been functioning. So far seventeen commissions are appointed. The commission conducted thorough survey into various aspects like criminal procedure code, civil procedure code, administration of justice, marriage laws, tenancy laws, taxation laws, insurance laws, evidence etc. …

Despite the efforts of the Law Commissions the law has been suffering from various shortcomings; it is found to be inadequate and ineffective. Ever since India attained independence there is an urge on the part of the authorities to deal with the problem of crime in its various forms. Officially, several committees and commissions have been appointed so far to suggest changes in the criminal law and improve the system of punishment and prevention of crimes. Some such committees and commissions include the Santhanam committee, the Mallimath Committee, the Justice Verma Committee etc. and extensive reports have been submitted by these committees on the crime problem. Each of these committees was appointed on a specific subject of crime and punishments therefore. The recent developments in the field of Penal Law Reform were to the following matters.
A committee appointed by the Government of India to deal with the problem of crime against the women at workplace submitted its report in February 2013 based on which the Parliament passed a Bill protecting millions of India’s working women from sexual harassment which aimed at tackling unwelcome behaviour such as sexual advances, requests for sexual favours and sexual favours and sexual innuendos made at workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, passed by the Parliament aims to ensure a safe environment for women working in both the public and private sectors. Under the new law -- which also covers students in schools and colleges, patients in hospitals, maids in private residences and agricultural labourers -- employers have to set up grievance committees to investigate all complaints. Employers who fail to comply will be fined up to 50,000 rupees. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.

This research work meets the need for carrying out changes in the criminal law on the subject of punishment. There is no doubt need for dealing with the subject of prevention of crimes, but this research work is not about prevention of crimes as such, it is about punishment for crimes.

**BACKGROUND TO THE STUDY**

As stated in the introductory part above punishment basically is the name of an ‘evil’ which visits upon a person for the wrong committed by him in the course of dealing with any matter. The legal system of our country lays down punishments for various wrongs under various provisions of law. The following are instances of how the system of punishment is operated by different branches of law in different situations.

Starting with the Legislature, which is one of the main pillars of our democracy, the rule regarding punishment may be explained by referring to the authority of the legislature to punish a person through a legal process called Impeachment. The whole body of legislature may examine the conduct of a person who has committed a certain wrong which is an impeachable offence. In certain cases a committee of the legislature called the Privileges Committee may also punish the persons committing wrongs against the House by committing a wrongful act.

The next important branch of State Administration is the Executive branch. The officers of this branch may exercise their penal powers to punish the misconduct of their subordinates. The wrongs punished under this system are the Misconduct of the officials which are in contravention of these Service Laws or the laws relating to the discipline of the officials. Usually,
an enquiry committee or a disciplinary committee is appointed and after enquiring into the conduct of a person punishment is inflicted on the delinquent officer.

The third branch of State Administration which is concerned with the system of punishment in a big way is the Judicial Branch. The Courts of law established under the Constitution and the Statutes deal with criminal cases and exercise their power of inflicting the punishment. Such a power is exercised by them under two kinds of law, namely, the General Law and the Special Law. By general law is meant the Indian Penal Code 1860 which was the earliest Statute to talk about the system of punishment. This Code contains the provisions regarding punishments as well as the principles on the method of Sentencing and a few principles on the system of Criminal Justice. The Code contains the principles for the resolution of conflict between various provisions of the Penal Code and the other laws. The Code also contains the principles with regard to commutation of punishment.

The procedure for the prosecution of persons under the Penal Code is laid down in the Code of Criminal Procedure and the Evidence Act.

Apart from the provisions contained in the general law of crimes there are provisions in the special law of crimes which establish a certain system of punishments. The special laws contain the rules regarding punishments for a specific subject, place or thing and these are very large in number. Whereas the procedure for the prosecution of persons under the Penal Code is in accordance with the Law of Evidence and the Criminal Procedure Code the procedure for the prosecution and punishment of offenders under the special laws may be both under the special law itself or under the provisions of the Law of Evidence and the Criminal Procedure Code.

In order to have an exhaustive study of the System of Punishments in India and to find an answer to the question about the need for reform of its provisions it is necessary to study the provisions of the Indian Penal Code, 1860 which is the basic law supplemented by a reference to wherever necessary to the provisions of the special law of crimes.