Directorate of Distance Education
NALSAR University of Law, Hyderabad
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Reading Material

M.A. (Criminal Law & Forensic Science)

1.1.1. Criminology and Restorative Justice

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FOREWORD

Law regulates the misconduct, misbehaviour and mischievous acts perpetrated by few people against the humanity or the government or the nature by violating accepted norms of normal human behaviour and code of conduct. Whenever such acts exceed the limits of tolerance, new acts are being passed such as Nirbhaya Act, Anti Ragging Act, Elderly Care and Maintenance Act etc. in the recent times.

Science constantly generates new knowledge about the nature of men and materials in the universe through observation, experiments and research which will be put to use for further development and application by people. Application of such scientific knowledge is converted into new technologies like information technology, biotechnology, nuclear technology, nanotechnology etc. as well as cutting edge technologies recently emerged such as artificial intelligence, machine learning, internet of things, virtual reality, augmented reality, drone technology and so on, that have now gone beyond the imagination of science fiction. Misuse and abuse of these new technologies as we witness in our day-today life can be countered through appropriate legislations coupled with application and use of modern forensic science and technology tools that are constantly being developed by the same scientists and technologists.

With such technologies embedded into daily life, the new generation of law students must think creatively and innovatively to come up with suitable legislations to counter the risks, threats and vulnerabilities faced by the individuals, groups and the nation as a whole.

The course is designed to provide various methods to enforce the new and upcoming laws to prevent, detect, defend the victims and punish the wrong doers indulging in such technology-based crimes with proper application of modern advances in forensic sciences and technology.

This M.A. Course in Criminal Law and Forensic Science currently offered enables legal professionals to hone their skills by gaining comprehensive insights coupled with knowledge and expertise of forensic experts and technologists equipped with state-of-the-art equipment.

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UNIT I
UNDERSTANDING CRIMINOLOGY

Learning Objectives:

After going through this lesson, you will be able to:

- Know about the nature and fundamental concept of criminology
- Familiarize the readers with the Socio-legal aspects of crime

1.0 Introduction

The crime generates lots of curiosity in the minds of people. The study of the crime and criminal behaviour is multidisciplinary. Many agencies and professions are involved in the scientific study of criminal behaviour. In this **Unit** we would discuss various conceptual backgrounds, definitions of criminology and nature of criminology.

1.1 Definition of Criminology

Criminology is a combination of two Latin words: ‘Crimen’ or crime and ‘Logus’ or logy mean ‘Science’. Raffaele Garofalo, was the first person to coin the term “criminology”. Broadly, Criminology is the systematic study of crime in all its aspects. Criminology is a scientific study of crime, criminality and criminal justice. It deals with the nature, extent, cause, consequences and control of criminal behaviour. Criminology as a branch of knowledge deals with following issues.

- Crime , criminal and victim
- Crime causation
- Crime prevention
- The efficacy of the criminal justice system

Criminology is concerned with the conduct of individuals which is prohibited by society and law. It is a socio-legal study which seeks to discover the causes of criminality and suggests appropriate remedies. **Stephen Schafer** (1911–1976),a criminologist and sociologist, born in Hungary. Schafer was professor of criminology at Budapest University (1947–51). He defined criminology in his ‘Introduction to Criminology' (1976) as "Criminology, in general terms, is the study of crimes, criminals, and victims; it indicates a long and eventful way: from the factors that precipitate crime, through the actual law breaking to the rehabilitation of the offender".

Edwin H. Sutherland (1883–1950)

Criminology has been defined in various ways by its scholars. The definition provided by Sutherland, one of the founding scholars of American criminology, is widely accepted: According to Sutherland ‘’Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, breaking laws and reacting towards the breaking of laws ‘’ (Edwin H. Sutherland, Principles of Criminology, 4th ed. Chicago, J.B. Lippincott Co.1947)

From Sutherland’s definition, it is apparent that criminology is a combination of how the society defines and deals with crime within a social and legal context. The objective of criminology is the development of a body of general and verified principles regarding the process of law, crime and treatment of offender.

Criminology is the scientific study of crime as a social phenomenon or criminal and his behavior and other conditions. Criminology is an academic discipline that employs scientific methodology to study crime, its major forms, and its reasons for existence or causation of crime and how the criminal justice system can respond to crime. In its narrower sense, criminology looks at criminal behavior of individuals in society and how they come to be perceived as such as social, cultural and economic background. In a wider sense, it looks at how the criminal is dealt with legal system.

With the rising numbers of crime and rapid diversification in the nature of crime, criminology is gaining importance in today’s society.

Nature and scope of Criminology

Crime is inevitable in any society. The universality and inevitability of the phenomenon of crime has been explained by **Emile Durkheim** (Rules of Social Methods (1950) “There is no society that is not confronted with the problem of criminality”. The problem of crime control essentially involves the need for a study of the forces operating behind the incidence of crime and a variety of correlated factors influencing the personality of the criminal. This belief has eventually led to development of criminology. The study of the criminology is aims to analyse deferent aspects of crime and device effective measures for treatment of offenders and serve for formulation of penal policies.

The purpose of studying criminology is for the social, biological and psychological factors that cause people to commit crimes and research into approaches to rehabilitation work and its viability and to seek responsive solutions through crime prevention or control and punishment or reintegration.

Society has always reacted to law breaking; the scientific study of law-breaking is of very recent origin. Today criminologists analyze the existing methods and procedures that society uses in reacting to crime. Criminology is a discipline that focuses on the study of crime, the study of those who commit crime, the study of the criminal justice and penal system

Is Criminology a Science?

There are two different views on this question. One viewpoint is that criminology is not a science. They argue that the validity of a science is based on two concepts:

I. **Stability**. i.e. it must be firmly established with unlikelihood of ad hoc and unpredictable changes.

II. **Homogeneity**. i.e. the quality of being alike all of the same type. Since crime is neither stable, nor homogenous, i.e. not all actions amounting to a crime in one jurisdiction will amount to crime in all jurisdictions, it is therefore concluded by the said proponents that criminology cannot be a science.

George Wilber (The Scientific Adequacy of Criminological Concepts George L. Wilber, Social Forces Vol. 28, No. 2 (Dec., 1949), pp. 165-174, Oxford University Press) contended that anti-social behavior in society cannot be scientifically interpreted. He further stated that, general propositions of universal validity are the essence of a science. Such propositions can only be made regarding stable and homogenous units. Crime is not a stable homogenous unit but varies from place to place and from time to time. What may be regarded as a crime in one jurisdiction may not be a crime in another. For that reason, anti-social behaviour in society cannot be scientifically construed.

Max Weber (1864–1871) argued that criminology as a branch of sociology merely researches into components of human behavior without providing for solutions unlike normal sciences. Thus by offering an analysis of criminal acts without puritive answers it merely exposes a situation without a solution and thus cannot be called a science. Max Weber's views were opposed as penology which offers solutions, and arguments for rehabilitation and reintegration into society, decriminalization, which are advanced by criminologists, it is therefore not entirely true that criminology does not offer solutions in any case do all sciences offer puritive solutions.

Herman Manheim argues that criminology is not a science as it has no techniques and methods of its own and that it borrows heavily from others e.g. medicine, psychology etc. He argues that so far criminology has developed no scientific methodology of its own; its techniques of research are on the whole identical with those used in other social sciences. (Herman Manheim, Comparative Criminology (1965).

A question often raised is as to whether criminology is a science or not. The other viewpoint is that **criminology is a science**. In response to Manheim's arguments; Ellaenburger states that even amongst the natural sciences there are some like botany and zoology which deal with the study of facts which are not strictly unique and individual and which do not deal with general phenomena. Criminology is based on other social sciences just like medicine is based on anatomy, physiology, physics, chemistry etc. Neither medicine nor criminology is purely theoretical. They have a meaning which derives from their practical application. The justification for medicine lies in the therapeutics and public health and that of criminology in penal reform, penology and prevention of crime.

1.3 Evolution of Criminology

Scholars have speculated about the causes of crime and possible remedies since ancient times.
History reveals that Socrates and Plato made comments on crimes in the fourth century B.C. Criminologist traditionally consider that their field has its origins as a science in the eighteenth century.

Criminology developed in the late 18th century, when various movements, infused with humanitarianism. During the end of 18^{th} century intellectuals were questioned the arbitrariness, inhuman and inefficiency of the criminal justice. In this period social reformers such as Cesare Beccaria in Italy and John Howard, and Jeremy Bentham in England (Utilitarian thinkers) sought legal and prison reform.

Their principal aims were to compel judges to observe the principle of "due process of law", to reduce the application of capital punishment, and to humanize penal institutions.

They (classists) were moderately successful, but, in their desire to make criminal justice more "just and fair", they tried to construct rather abstract and artificial equations between crimes and penalties, ignoring the personal characteristics and needs of the individual criminal defendant.
Another milestone in the history of development of criminology was that in the early 19th century the first annual national crime statistics were published in France. Adolphe Quetelet (1796–1874) was among the first to analyze these statistics, found considerable regularity in the crime statistics.

Cesare Lombroso (1836–1909) Italian medical doctor studied individual criminals in order to determine “why they committed crimes”. His research conclusions were that people with certain physical malformations were “born criminal”. Lombroso theory was ultimately rejected by social scientists.

These social scientists contended that there were multiple causes of crime and that most offenders were not born criminal but instead were shaped by their environment. Present criminological thinkers, are emphasizing on the multiple causes of crime.

Criminology incorporates a number of disciplines, drawing on methods and techniques developed in both the natural sciences and the social sciences. The relationship of criminology to various other disciplines has resulted in considerable diversity in its academic placement within universities.

In Europe Universities have tended to treat criminology as part of legal education. In the United Kingdom, for example, the Institute of Criminology is part of the law faculty of the University of Cambridge; in other schools criminological research and teaching have usually been divided between departments of sociology or social administration, law faculties, and institutes of psychiatry. In South America, criminology has most often been placed in departments of sociology.

Various institutes or universities offer criminology courses in India. Knowledge of criminology can be applied to various professions and academic fields related to the study of the society on the whole. A few major areas of interest in the criminological studies are -

- Causes of crime
- Prevention of crime
- Crime Statistics
- Criminal Behavior
- Penology
- Evaluation of criminal justice agencies
- Sociology of Law
- Criminal careers and desistance

1.4 What does a criminologist do?

Criminologist is an expert in the scientific study of crime and criminals. Criminology has very little to do with "catching a criminal". It is incorrect to assume that criminology involves detective work. Inspite of the fact of that it involves at times investigative observation and reporting of the phenomenon of crime. Basically, criminologist is in the domain of academia.

Primarily criminologist is a social scientist and not a forensic science expert.

The field of criminology examines broader knowledge about crime and criminals. For instance, criminologists have tried to understand “why some people are more or less likely to involve in criminal or delinquent behaviour”. Criminologists have attempted to explain changes in crime rates and the criminal laws between societies and changes in rates and laws over time.

The scientific study of lawbreaking is of very recent origin. At present, criminologists analyze the existing methods and procedures that society uses in reacting to crime.

Several criminologists consider themselves to be neutral public policy experts. Some criminologists advocated in favour of legal reforms, some criminologists have campaigned against death penalty. Criminology advanced its reach by devoting significant attention to the study of the victims of crime and criminals and the role of victims in the criminal events themselves.

A criminologist’s responsibilities involve analyzing data to determine why the crime was committed and to find ways to prevent further criminal behavior. Majority of a criminologist’s time will be spending in collecting data to be used in criminal investigations and policymaking.

Criminologists typically work at universities organizing research and teaching classes on corrections, juvenile justice, law enforcement administration, criminal ethnography, drug abuse, theoretical criminology, and other related courses.

Crime and Criminal Behaviour

There is no universal acceptable definition of the crime. Defining the crime is one of challenge to the scholars of all times. For the purpose of understanding the nature of the crime this part of the readings provides the information on legal and sociological perception of crime. Legal idea of crime has been developed by courts and legal thinkers over the centuries, and it further developed and being further refined by social and behavioral scientists.

1.5 The Concept of Crime

Historically, the concept of crime seems to have always been changing with the variations on accordance with social conditions.

Early English society in 12th and 13th centuries included only those offences which were committed against the State or the religion. Early societies did not recognize any distinction between the law of crime and torts.

Later, the King claimed the responsibility of apprehending the criminals. The changes in civilization, culture and advancement in scientific knowledge, brought a change in concept of crime which eventually led to the emergence of criminology as an independent branch of knowledge.

What is Crime?

What constitutes criminal behaviour varies from country to country and time to time. For example, homosexuality is a crime in Saudi Arabia, although it is not in Western countries (England). Similarly, behaviour which historically amounted to a criminal offence, may not amount to a crime presently. For example, Adultery constituted a criminal offence till the Supreme Court struck down the Sec. 497 of IPC. (The law became defunct on 27 September 2018 by Supreme Court of India)

Defining what constitutes crime is a difficult task. In commentaries on the Law of England (Vol. II), **Blackstone** stated crime as a 'public wrong'. Crime is defined as 'an act committed or omitted in violation of Public Law forbidding it or commanding it'. This definition has been criticised as vague. **Sir James Fitz Stephen** defined, "A crime is violation of a right, considered in reference to the evil tendency of such violation as regards the community at large". Critics on Stephen's definition of crime state that, if this is definition accepted, civil wrongs which are not crimes also affect the community in certain cases; and again in certain cases though the act is beneficial to the community it is considered as a crime. **Kenny** defined a crime as "a wrong whose sanction is punitive and which is in no way remissible by any private person but is remissible by the Crown". **Keeton defined** a crime as "an undesirable act which the state finds most convenient to correct by the institution of proceedings for the infliction of a penalty rather than leaving the remedy to the discretion of the injured person".

The concept of crime is essentially concerned with social order. Generally, a crime can be defined as an act fit for serious condemnation or an act that is frowned upon by society it may start off as a moral wrong that is then elevated to a prohibited act for which the society ascribes specific sanctions.

Ingredients of Crime

Based on various definition of crime enunciated by the criminologists and jurists and its simplified explanations, it may put forth the essential elements of crime. Jerome Hall, an exponent of the theory that a human event in his "General Principles of Criminal Law". According him, in order to qualify as a crime, the action must meet seven basic requirements. These are as follow;

1. The Act Requirement;
2. The Legality Requirement;
3. The Harm Requirement;

4. The Causation Requirement;
5. The Mens Rea Requirement;
6. The Concurrence Requirement; and
7. The Punishment Requirement.

Theories of Crime

In recent years, some criminologists have focused attention on why offenders choose to commit one offense rather than another at a given time and place. They stress the important distinction between theories of crime and theories of criminality.

Theories of crime identify the conditions under which those who are susceptible to commit crime will in fact do so. This part of discussion emphasis on the ‘rational choice theory’ and “Routine activities theories” are primarily focused. Crimes are events, crime occurs at a specific time in a specific place. The presence of an offender is only one of the necessary components of a crime. For incident of crime, the criminologist identified many necessary components. Theories of crime, according to Gottfredson and Hirschi, “acknowledge the ability of society to control crime without fundamental reconstruction of itself or the individuals within it."

Crimes require many conditions that are independent of the offender, such as the availability of properties to be stolen, availability of persons to be assaulted. Some experts have argued that if crimes are to be prevented and sound crime control policies should be developed, the study of criminal behavior must be closely tied to the decision-making process of offenders and to the criminal acts themselves.

Rational Choice

The rational choice perspective, developed by **Cornish and Ronald Clarke**, takes into account the entire criminal event, which includes the criminal, the motivation, and the situational factors surrounding the crime. "Rational” refers to ‘the fact that criminals process information and evaluate alternatives. "Choice” suggests that they make decisions. According to Cornish and Ronald Clarke; an individual, who is capable of taking a rational decision whether to do or not to do, will have weighed the risks and benefits of the act and selected a particular offense according to various criteria. Based on the above exponent that before committing property offence, an offender may consider

- capability needed;
- his expertise with the chosen method;
- monetary benefits per crime;
- number of targets and their accessibility;

- physical danger involved;
- Risk of apprehension.   and
- time required to commit the act;

Routine Activities

The routine activities theory has similar approach to the rational choice perspective. Both theories focus on the characteristics of the crime rather than on those of the offender. According to **Lawrence Cohen and Marcus Felson,** there will always be an ample supply of motivated offenders. 'What we need to understand is the range of options among which offenders choose when they decide to commit a crime'.

Felson says, "Criminals unduly find victims in certain settings." This approach focuses on the circumstances in which crimes are committed. Each criminal requires the convergence of three elements

1. Likely and motivated offenders;
2. Suitable targets; and
3. An absence of capable guardians to prevent the offender from committing the crime.

This theory point out that crime rates rise in tandem with the number of suitable targets and the absence of people to protect those targets. Cohen and Felson argue that if one component is missing, the crime is unlikely to be committed. At the same time, changes in the routine activities of everyday life have left most of those targets unguarded a good part of the day. If all components are in place and one of them is strengthened, crime is likely to increase.

Both the rational choice and the routine activity perspectives demonstrate that the commission of crime is not related solely to the biological and psychological characteristics of individuals or to social and economic factors.

This approach is particularly important for the development of crime-control policy and situational crime prevention, which consists of changing the conditions and circumstances under which crime is committed. Situational crime prevention includes such measures as target hardening, steps taken to make it more difficult for offenders to carry out crimes against specific targets, organizing neighborhood watch groups, whose members are alert to any non-routine activity at neighboring homes; and changing environmental designs of buildings and streets to afford more protection.

Summary:

Criminology is a scientific study of crime, criminality and criminal justice. It deals with the nature, extent, cause, consequences and control of criminal behaviour

Lack of an exact definition of 'Crime' is one of the challenges of criminology.

With the increasing numbers of crime and rapid diversification in the nature of it, criminology is gaining importance in today's society.

Model Questions:

1. Discuss whether criminology is a Science.
2. Enumerate various concepts of crime.

References

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2. George L. Wilber., The Scientific Adequacy of Criminological Concepts, Social Forces Vol. 28, No. 2 (Dec., 1949), pp. 165-174, Oxford University Press
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UNIT II

CRIMINOLOGICAL SCHOOLS OF THOUGHT

Objectives:

After going through this chapter the reader will be in a position

- To understand the evolution of school of criminology
- To explain the nature and scope of classical and positive school of criminology
- To know the Bio-criminology

2.0 Introduction

Scholars have speculated about the causes of crime and possible remedies since ancient times. Classical criminologists consider that criminology has its origins as a science in the eighteenth century, when "Cesare Beccaria" established what came to be known as the "classical school of criminology".

Various scholars have attempted to explain the causation of crime and criminal behavior. Each school of criminology explains crime in its own manner and suggests punishment and measures to suit its beliefs. Each school represents the social attitude of people towards crime in a given time.

2.1 Classical School

Classical Criminology, a school of thought based upon utilitarian ideas of 'free will' and the greatest good for the greatest number. At its central, classical criminology refers to a belief that a crime is committed after an individual weighs the pros and corns. The decision to commit an offence is "rational decision", and is best opposed through a deterrence based system.

Pre-Classical School of Criminology

During the period of the seventeenth century, Europe was characterized by a dominance of religion in state activities. At this stage, scientific knowledge was yet unknown. The concept of crime was vague and obscure. Society was at the time, largely unable to explain criminal behavior. An explanation of criminal conduct was therefore sought through spirits, demons, and other unknown powers. The principle behind this concept was that a man commits a crime due to the influence of some external power and is not subject to the control or understanding of man. Since the spirit world is not one that is easily understood or discernable, it formed a perfect explanation for crime.

No further attempts were made to probe the real cause of crime. Worship, sacrifices, ordeals by fire and water were usually prescribed to pacify the spirit and relieve the victims of its evil influence. Trial by battle was also used as a method of deciding the fate of the criminal. The criminal was therefore treated as a person who could only be cured through torture and pain. The pre-classical thinking has however withered away with the lapse of time and advancement of knowledge.

During the middle of the eighteenth century, Beccaria, the pioneer of modern criminology expounded his naturalistic theory of criminality by rejecting the theory propounded by the pre-classical school. He laid greater emphasis on the free will of the individual, arguing that intelligence and rationality are the fundamental characteristics of man and therefore the basis for the explanation of human behavior, whether individual or collective.

Origin of Classical School of Criminology

Earlier thinkers about crime: Socrates made some observations on delinquent youth 2,300 years ago. This school of criminology grew out of a reaction against the barbaric system of law, punishment and justice that existed before the French Revolution of 1789.

Before the French Revolution, there was no real system of criminal justice in Europe. There were crimes against the state, crimes against the church, and crimes against the crown. Most of those crimes were not defined. Judges had discretionary power to convict. Royal family often issued what were called in French '**Lettres de cachet',** under which an individual could be imprisoned for almost any reason or for no reason at all.

Unwritten Laws and Penal Practices

Many criminal laws were unwritten, and did not specify the kind or amount of punishment associated with various crimes. Arbitrary and often cruel sentences were imposed by powerful judges. While there was some general consensus on what constituted crime, there was no limit to punishment. For example, in England a person might receive the death penalty for any of more than two hundred offenses. Public punishments were popular events. Torture to elicit confessions was common.

The Emergence of the Classical School

As Europe grew increasingly modern in the 18th century, it still adhered to its medieval penal practices. With prosperity came an increasing division between the rich and the poor.

Just before the Revolution, social turmoil raised. One of the few ways in which the established upper class could protect itself was through ruthless oppression of those beneath them; but the ruthless oppression created more problems. The crime rates rose and so did the brutality of punishment. Both church and state grew increasingly tyrannical, using violence

to conquer violence. The crime problem worsened.
The growing educated classes began to see the inconsistency in these developments. If terrible tortures were designed to deter crime, why were people committing even more crimes? The problem could not be insufficient punishment; there must be something wrong with the underlying reasoning. By the mid-eighteenth century, social reformers were beginning to suggest a more rational approach to crime and punishment. One of them, Cesare Beccaria (1738-1794), laid the foundation for the first school of criminology.

An Enlightened Criminal Justice System

Cesare Bonesana, Marchese di Beccaria,(1738-1794) after graduating with a law degree from the University of Pavia, and joined a group of articulate and radical intellectuals. Disappointed with contemporary European society, they organized themselves into the "Academy of Fists". It was one of many young men's clubs that flourished in Italy at the time. Baccaria inspired by the works of English and French writers David Hume, John Locke, Voltaire, Montesquieu, and Rousseau.

In March 1763 Beccaria was assigned to prepare a report on the prison system accordingly, his observations were recorded and published in July 1764 under the title 'Dei delitti e delle pene' (On Crimes and Punishment). Beccaria presented to the world a coherent, comprehensive design for **an enlightened criminal justice system** that was to serve the people rather than the monarchy. Beccaria's work ultimately exploded the barbaric traditions that had enslaved the people for centuries and Cesare Beccaria became the "**Father of Modern Criminology**."

Beccaria's book supplied a blueprint that defined and placed limits on the legal system. That blueprint was based on the assumption that people freely choose what they do and that they are responsible for the consequences of their behavior.

Beccaria proposed the following Ideas:

- **All people should be treated equally:** the punishment of a nobleman should in no wise differ from that of the lowest member of society."
- **Capital punishment and** the **use of torture** to gain confessions should be abolished .It is better to prevent crimes than to punish them:
- **Judges should impose punishment only in accordance with the law:** " No magistrate, can with justice inflict on any other member of the same society punishment that is not ordained by the laws."
- **Judges should not interpret the laws**: "Judges, in criminal cases, have no right to interpret the penal laws.
- **Laws should be used to maintain the social contract**: "Laws are the conditions under which men, naturally independent, united themselves in society.

- **Only legislators should create laws**: "The authority of making penal laws can only reside with the legislator, who represents the whole society united by the social contract."
- **Punishment should be based on the act, not on the actor**: "Crimes are only to be measured by the injuries done to the society. **The punishment should be determined by the crime**:" If mathematical calculation could be applied to the obscure and infinite combinations of human actions, there might be a corresponding scale of punishments descending from the greatest to the least".
- **Punishment should be based on the pleasure and pain principle**: "Pleasure and pain are the only springs of actions in beings endowed with sensibility
- **Punishment should be prompt and effective:** "The more immediate after the commission of a crime a punishment is inflicted, the more just and useful it will be. An immediate punishment is more useful; because the smaller the interval of time between the punishment and the crime, the stronger and more lasting will be the association of the two ideas of crime and punishment."

Influence of Beccaria's Law and Punishment

Possibly, no other book in the history of criminology has had so great an impact as Beccaria's. The English version appeared in 1767. After the French Revolution, Beccaria's basic tenets served as a guide for the drafting of **the French Penal Code,** which was adopted in 1791.

The Russian empress Catherine II (the Great) convened a commission to prepare a new code and issued instructions, penned in her own hand, to translate Beccaria's ideas into action.

The Prussian king Frederick II (the Great) devoted his reign to revising the criminal and civil law.

Emperor Joseph II had a new code drafted for Austria in 1787-the first code to abolish capital punishment.
Beccaria's treatise influenced the first ten amendments to the US Constitution i.e. the Bill of Rights).

Jermy Bentham (1748-1832) Jurist, philosopher, prominent in the eighteenth and nineteenth centuries.

He was a radical utilitarian and believes in the greatest happiness for the greatest number of people. Bentham rely on that prevention of crime was the only justifiable purpose of punishment.

The classical school of criminology, developed in the middle of the eighteenth century. It is based on the assumption that criminals choose to commit crimes after weighing the consequences of their actions.

According to classical criminologists, individuals have 'free will' to choose their act and the fear of punishment can deter people from committing crime; and society can control behavior by making the pain of punishment greater than the pleasure of the criminal gains.
An understanding of the foundations of modern criminology helps us to understand contemporary developments in the field. Let us begin with the developments that led to the emergence of the classical school.

Classical criminology was considered to provide a rational, logical, and philosophical alternative to what was often cruel, inhumane, and arbitrary system of justice. It is believed in the assumptions that individuals have the ability to make a rational choice to do an act or not to do an act. A penal system is necessary to deter individuals from committing crimes.
Mostly, the present criminal justice system relies on the classical criminological point of view.

Criticism of the Classical School

The classical school assumes freedom of the will in a manner which gives little of further investigation of the cause of crime.
The classical ideologists claim that all those who violated a law should receive identical punishment without considering status or circumstances, it is unfair to treat an unequal equal.
The theory is not constructed upon empirical research.

2.2 Positivist school of criminology

Early biological theories view criminal behaviour as the result of a defect in the individual. This imperfection can be biological or genetic in nature; present biological theories focus more on differences in genetic and other biological factors in dealings with the environment. In these theories punishment serves a different goal. As per these theories punishment will not have any deterrent effect because of an inherent abnormality in the individual.

Origin of Positivist School of Criminology

In the end of the 19th century, theories of classical school of criminology began to be challenged by Positivists. Positivist criminology assumes that criminal behaviour has its own distinct set of characteristics. As a result, most criminological research conducted within a positivist model has sought to identify key differences between 'criminals' and 'non-criminals'. Cesare Lombroso, Enrico Ferri, and Raffaele Garofalo <u>are</u> frontrunners of this school. Biological theories trace back to Lombroso, and vary in the amount of determinism built in.

Biological Determinism

Biological theories emphasis that individuals commit crimes due to biological defects and assumes that crime is a result of biological or genetic abnormalities, and not a rational choice of an individual.

At the end of the 19th century significant advances in knowledge of both the physical and the social world influenced thinking about crime. The intellectual climate became charged with the excitement of discovery.

Auguste Comte (1798-1857), a French sociologist, firmly rooted the application of the modern methods of the physical sciences in the social sciences with his "**Cours de philosophie positive**" (Course in Positive Philosophy), published between 1830 and 1842. Comte argued that there could be no real knowledge of social phenomena unless it was based on a positivist (scientific) approach.

Charles Darwin (1809-1882) challenged the doctrine of creation with his theory of the evolution of species did the next generation of criminologists have the tools with which to challenge classicism.

The turning point was publication of Darwin's Origin of Species (1859). Darwin's theory was that God did not make all the various species of animals in two days, but that all had evolved through a process of adaptive mutation and natural selection. **The theory of evolution** challenged traditional theological philosophy. Darwin traced human origins to an animal of the anthropoid group the apes.

Scientific Point of View

The old ideas that demons and animal spirits could explain human behavior were substituted by new scientific principles as the social sciences came into being and positivism and evolution moved the field of criminology from a philosophical to a scientific perspective. The early search for criminal traits Throughout history a variety of physical characteristics and disfigurements have been said to characterize individuals of 'evil' disposition. In the earliest pursuit of the relationship between biological traits and behavior,

The belief that criminals are born, not made, and that they can be identified by various physical irregularities is reflected not only in scientific writing but in literature as well.

Physiognomy and Phrenology

The sixteenth century that Giambattista della Porta (1535-1615) founded the school of **human physiognomy**, the study of facial features and their relation to human behavior. Porta described a thief as had large lips and sharp vision. This idea was further carried and revived by the Swiss theologian Johann Kaspar Lavater (1741-1801).

Franz Joseph Gall (1758-1828) and Johann Kaspar Spurzheim (1776-1832), whose science of phrenology suggested that bumps on the brain, were indications of psychological propensities. Charles Caldwell (1772-1853), who was searched for proof that brain tissue and cells regulate human action. Thus by the nineteenth century, the sciences of both physiognomy and phrenology had introduced specific biological factors into the study of crime causation.

Cesare Lombroso (1835-1909)

Cesare Lombroso incorporated Comte's positivism, Darwin's evolutionism, and the many pioneering studies of the relation of crime to the body. In 1876, 'L'uomo delinquent" (The Criminal Man) published in 1876, by this authoritative work criminology was permanently transformed from an abstract philosophy of crime control through legislation to a modern science of investigation into causes.

Lombroso replaced the concept of free will, which had reigned for over a century as the principle that explained criminal behavior, with that of determinism. Together with his followers Enrico Ferri and Raffaele Garofalo, Lombroso developed a new orientation, the Italian or positivist school of criminology, which seeks explanations for criminal behavior through scientific experimentation and research.

The Theory of Born Criminal

Lombroso's theory of the born criminal emphasized that criminals are an inferior form of life, they are nearer to their apelike ancestors than non-criminals in traits and dispositions.

The criminals are distinguishable from non-criminals by various **atavistic stigmata**, physical features of creatures at an earlier stage of development, before they became fully human. Lombroso argued that criminals frequently have huge jaws and strong ' canine teeth, characteristics common to carnivores that tear and devour meat raw. The arm span of criminals is often greater than their height, just like that of apes.

Lombroso turned to empirical research, measuring thousands of live and dead prisoners, in his search for determinants of crime changed the nature of the questions asked by the generations of scholars who came after him. Lombroso theorized that an individual who is born with any five stigmata is a born criminal. This was not merely an idea, but a disclosure. Criminal women, according to Lombroso, are different from criminal men.

Classification of Criminals: Lombroso classified criminals as follows:

1. Born criminal
2. Insane criminal and
3. Criminoloids

Born Criminals

This type of criminal is the most dangerous, and can be identified through their identifying characteristics.

Insane criminals
Insane criminals are not criminal from birth; they become criminal as a result of some change in their brains which interferes with their ability to distinguish between right and wrong.

Criminoloids
Habitual criminals, criminals by passion come under this type of criminals

Criticism of Lombroso theory
Lombroso theory that criminals were placed at the lower rungs of the evolutionary ladder did not stand up to scientific scrutiny. Even though, his influence continues in contemporary European research. Lombroso "the father of modern criminology" had espoused biological determinism.

Enrico Ferri (1856-1929)
Another chief exponent of the positive school of criminology was Enrico Ferri. His "Criminal Sociology" is an outstanding work in the field of criminology. Ferri agreed with Lombroso on the biological bases of criminal behavior, his interest in socialism led him to recognize the importance of social, economic, and political determinants. His contribution was his attack on the classical **doctrine of free will**, which argued that criminals should be held morally responsible for their crimes because they must have made **a rational decision** to commit these acts.

Ferri believed that criminals could **not be held morally responsible because they did not choose to commit crimes**, but rather were driven to commit them by conditions in their lives and he advocated conventional punishments and even the death penalty for those individuals who he assumed would never be fit to live in society.

During Mussolini's regime Ferri prepared a new Penal Code for Italy in 1921. He challenged Lombrosian view of criminality, through his scholarly researches, Ferri proved that simple biological reasons were not enough to account for criminality. He firmly believed that other factors such as emotional reaction, social infirmity or geographical conditions also play a vital role in determining criminal tendencies in men. It is for this reason that he is sometimes called the founder of 'criminal sociology'. The major contribution of Ferri to the field of criminology is his "Law of Criminal Saturation". This theory presupposes that the crime is the synthetic product of three main factors:

(1) Physical or geographical
(2) Anthropological and

(3) Psychological or social

Ferri emphasised that criminal behaviour is an outcome of a variety of factors having their combined effect on the individual. According to him, social change, which inevitable in a dynamic society, results in disharmony and cultural variations. As a result of this, social disorganization takes place and traditional patterns of social control mechanism totally break down. In the wake of such rapid social changes the incidence of crime is bound to increase tremendously. The heterogeneity of social conditions destroys the congenial social relationship, by creating a social vacuum which proves to be a fertile ground for criminality. Many critics, however, opposed Ferri's law of criminal saturation, stating that it is nothing more than a statement that the law of cause and effect equally applies to criminal behaviour as well.

Ferri emphasised that a criminal should be treated as a product of the conditions which played his life. Therefore, the basic purpose of crime prevention programme should be to remove conditions making for crime. Ferri worked out a five-fold classification of criminals namely:

(l) born criminals ;
(2) occasional criminals ;
(3) passionate criminals ;
(4) insane criminals ; and
(5) habitual criminals.

Recommendations for Penal System

Ferri suggested an intensive programme of crime prevention and recommended a series of measures for treatment of offenders. He asserted that punishment could be one of the possible methods of reforming the criminal. He favoured indeterminate sentence keeping in view the possible chances of inmate's re-adjustment in the community.

He also recommended controlling crime through preventive measures. Ferri argued that strict adherence to preventive measures designed by scientific methods would eventually reduce crime and allow people to live together in society with less dependence on the penal system.

Though his prescription for crime reduction was overly optimistic, Ferri's importance to the development of modern criminology is undeniable.

Raffaele Garofalo (1852-1934)

Another follower of Lombroso was Raffaele Garofalo. He was a positivist who **rejected the**

doctrine of free will and supported the position that the only way to understand crime was to study it by scientific methods. Raffaele Garofalo was one of the three main exponents of positive School of criminology. He stressed the need for a closer study of the circumstances and living condition of criminals. He firmly **believed that a criminal is a creature of his own environment**. He was the only positivist who had varied experience as an eminent jurist, a senator and a professor of criminal law. He therefore, approached the problem of crime and criminals in an altogether different manner than those of his contemporaries.

Influenced by Lombroso's theory of atavistic stigmata, in which he found many shortcomings, Garofalo **traced the roots of criminal behavior not to physical features but to their psychological equivalents, which he referred to as moral anomalies.** According to this theory, natural crimes are found in all human societies, regardless of the views of lawmakers, and no civilized society can afford to disregard them. Natural crimes, according to Garofalo are those that offend the basic moral sentiments of probity i.e. respect for the property of others and Piety i.e. revulsion against the infliction of suffering on others. As to the classification of criminals he rejected Ferri's classification and placed offenders into four main categories namely:

1. **Murderers**: whom he called "endemic" criminals;
2. **Violent criminals**: Who are affected by environmental influences such as prejudices of honour, politics and religion:
3. **Criminals lacking in sentiment of probity** ; and
4. **Lascivious or lustful criminals**: who commit crimes against sex and chastity.

Penal Policy of Garofalo

According to Garofalo, an individual who has an organic deficiency in these moral sentiments has no moral constraints against committing such crimes. Garofalo argued that these individuals could not be held responsible for their actions. He also stressed that society needed protection and that penal policy should be designed to prevent criminals from inflicting harm.

Garofalo suggested that the death penalty could free society of its maladapted members. He, therefore, strongly pleaded for elimination of habitual offenders who were incapable of social adaptation as a measure of social defence. For less serious offenders, capable of adapting themselves to society in some measure, other types of punishments were transportation to remote lands, loss of privileges, institutionalization.

Although Lombroso, Ferri, and Garofalo did not always agree on the causes of criminal behavior or on the way society should respond to it, their combined efforts marked a turning point in the development of the scientific study of crime. These three criminologists were responsible for developing the positivist approach to criminality which influences criminology to the present day.

Nevertheless, they had their critics. By introducing the scientific method for purposes of exploring crime causation, they paved the way for criminologists to support or refute the theories they themselves had created. The major challenge to Lombrosian theory resulted from the work of Charles Buckman Goring.

An appraisal of Positive School of Criminology

It would be seen that the positive school of criminology emerged essentially out of the reaction against earlier classical. The advocates of this school completely discarded the theories of omnipotence of spirit and free will on the ground that they were hypothetical and irrational.

Alternatively, they attributed criminality to anthropological, physical and social environment. The greatest contribution of positive school to the development of criminal science lies in the fact that the attention of criminologists was drawn for the first time towards the individual rather crime.

This certainly paved way for the modem penologists to formulate a criminal policy embodying the principle of individualisation as a method and reformation. Thus positivists introduced the methodology and logic of natural science in the field of criminology.

The objects of punishment were radically changed in as much as retributory methods were abandoned and therapeutic methods were introduced rather than punitive. Protection of society from criminals was the primary objective which could be achieved by utilizing reformatory methods for different classes of criminals in varying degrees.

It is in this context that positive school is said to have given birth to modern sociological or clinical school which regards criminal as a by-product of his conditions and experience of life. The exponents of this school accepted that there could be extenuating circumstances under which an individual might be forced to commit crime. Therefore, besides looking to the crime strictly from the legal standpoint the judicial authorities should not lose sight of the circumstantial conditions of the accused while determining his guilt and awarding punishment.

Table: 1. Differences between classical school and positive school:

S. No	**Classical School Positive School**	**Positive School**
1	The main exponents of classical school were Beccaria and Bentham.	Main exponents were and Lombroso, Ferri and Garofalo.
2	It was an 18th century philosophy which made an effort to reform the criminal justice system.	It was a 19th century doctrine which emphasised on scientific method of study
3	Defined crime in legal terms	It rejected legal definition of crime and preferred sociological definition.
4	It placed reliance on free-will theory as an explanation of crime.	It explained crime in terms of biological determination.
5	It assumed in deterrent and definite punishment for each offence	advocated treatment methods for criminals
6	Focused on crime rather than the criminal.	It placed greater emphasis on personality of the offender rather than his criminal act

Criticism of Positive School of Criminology

Gabriel Tarde (1843-94) was a critic of positive school of criminology. He asserted that influence of social environment was most emphatic on the criminal behaviour and the biological and physical factors only had a casual effect on it. He pointed out that law of insertion and imitation was responsible for the incidence of crime.
Lombroso's research did not provide for adequate control group constituted from the noncriminal population.

Psychological Determinism

Scholars during nineteenth and early twentieth century centuries were far more interested in the human body than the human mind. In this period, however, several research contributions were made in the area of psychology and psychological explanation of criminal behaviour and crime.

Some of the earliest researches were made in the legal liabilities of insane. Gradually, psychologists started applying their knowledge and new techniques to study of criminals.

Pioneers in Psychcriminology

Isaac Ray (1807-188), recognized to be America's first forensic psychiatrist, has applied psychiatric principles to law. His book, 'The Medical Jurisprudence of Insanity' on criminal responsibility which has become influential.

Henry Maudsley (1835-1918)

Maudley, believed that for many persons crime is an "outlet in which their unsound tendencies are discharged. He focused on the borderline between insanity and crime.
Psychologists used their new techniques of measurement to the study of offenders. They used intelligence tests to inmates of prisons. These new techniques were provided an objective basis for differentiating criminals from noncriminal.

Intelligence Testing and Crime

Alfred Binet (1857-191 1) a distinguished French psychologists carried out experiments in psychological laboratory on the persisting problem of retardation due to individual differences and introduced the concept of 'Mental Age', and 'Intelligence Quotient' (IQ) and its influence on criminal behaviour.

Prof. Jerman, an American psychologist worked further on the researches of Alfred Binet and observed that the idea of 'mental age' is basically sound common sense in the children. On an average, a child of twelve years age can comprehend and tackle more difficult and abstract problems than an average young person. The same is equally true for other ages as well. With each year of age, ability continues to grow and develop constantly. Prof. Gillin suggests that physical abnormalities in criminals drive them to commit crime.
These ideas were dominated until they were challenged during World War-I. Later IQ measures disappeared as a basis for emplaning criminal behaviour.

Sociological Determinism

During the nineteenth and early twentieth centuries, some scholars began to search for the social determination of criminal behaviour. Sociological school of criminology emerged in recent time and which seeks to locate causation of crime in social environment.
Adolphe Quetelet (1796-1874)

Quetelet did an elaborate analysis of crime in France, Belgium, and Holland. After anlysing criminal statistics (the first modern criminal statistics were published in France in 1827), he concluded that if we look at overall patterns of behaviour of groups across a whole society, we find a starling regularity of rates of various behaviours. By focusing on groups rather than individuals, he discovered that behaviour is indeed predictable, and understandable.

Gabrial Tarde (1843-1904)

One of the earliest sociological thinkers of criminal behaviour was formulated by Tarde. He was the first to reject the anthropological approach of positivists and held that crimes were the outcome of human tendency to imitate others. Sociologists, however, carried their researches and attempted to co-relate variations in crime-rate to changes in social-organisation. They successfully established that other factors such as

- Mobility.
- Culture
- Religion.
- Economy.
- Political ideologies.
- Density of population.
- Employment situations, etc.

These above said factors have a direct bearing on the incidence of crime in a given society. Placing reliance on these multiple causes, Sutherland sought to explain various processes through which a person becomes a criminal.

Sutherland's Differential Association

Theory of Differential Association Sutherland suggested that human personality and culture are directly related and a person becomes a criminal mostly by the chain of circumstances in which he associates or moves. It is for this reason that sociological school has often been characterised as a **rational school of criminology** which recommends the application of humanitarian methods for treatment of offenders.

The persons proved to criminality should be corrected through persuasive methods rather than traditional punitive methods. However, the advocates of recent **'Multiple Factor Theory',** while explaining causation of crime, contemplate that crime is a product of a great variety of factors which cannot be reduced into general propositions.

The central idea of the multiple factor theory is that **no specific theory of criminal behaviour is ever possible**. Thus crimes are caused due to the combination of a number of factors or circumstances.

Criticism

Views of multiple factor theorist has been vehemently criticised by **Cohen** on the ground that, the advocates of multiple factor theory have confused ‘factors' with ‘causes’ of crime. He further states that it is erroneous to locate ‘causes’ of crime in the ‘factors' because the latter can readily be eliminated without changing the social environment.

2.3 Modern Criminology

As modern science discovered more and more about cause and effect in the physical and social universe, the classical school ideas began lose favour. The positivists search for determinants of crime in biological, psychological, and sociological factors. In early part of the twentieth century, and emerged again in the 1970s, with studies of hormone imbalances, diet, environmental pollution etc.

In recent years, there seems to have been a transformation of criminological views regarding somewhat cynical question of criminal accountability. Modern critics attack the traditional criminological views on the ground that their search for characteristic differences between the class of criminals and the class of non-criminals rests upon erroneous assumption. ('Law and Society -The Crisis in Legal Ideals', edited by Kainenka. Robert Brown and Alice Tay, p. 81.)

This false dichotomy has been based on a misconceived characterization of criminals as “criminal type’. As Michael Phillipson aptly observes that to take crime out of its social context and to try to explain it as a product of physical characteristics or mental deficiencies is a myth. He summarizes his criticism of traditional criminology by suggesting that it contains four false assumptions, namely;

1. That there are universal causes of crime.
2. That the human population can be divided into two groups, criminals and non-criminals;
3. That crime can be located by the study of individual criminals.
4. That the official statistics are indices of trends in crime.

The supporters of new criminology decisively believe that distinction between criminals and non-criminals is the direct outcome of a mistaken notion of labeling certain individual offenders as ‘criminal types’.

Modern criminologist prefer to identify the criminal with a particular social type who has been a victim of well-known inequalities between social classes, private wealth, private property, social power, and life chances; Thus there is nothing like ‘criminal type' as suggested by traditional criminologists. The modern criminologists have succeeded in substituting the traditional belief regarding crime causation by social deviance as a cause of criminal behaviour.

The modern criminologists lay greater stress on multiple causation theory because they consider crime as a social phenomenon, the political society reacting through punishment, treatment or preventive measures as the sequence of interaction is the ultimate object of criminology.

They suggest that social control mechanism must be very selective in the legal norms for enforcement in their disposition of law violators.
They advocate restructuring the existing social arrangements to eliminate crime from society.

Bio-criminology

Bio-physical Factors and Criminality

Biological differences in human personality also account for criminality in human beings. The logic behind biological explanation of crime is that structure determines function and persons behave differently due to the fact that they are someway structurally different. The physical and biological abnormalities are generally responsible for criminal behaviour.

The criminal is viewed as a biological organism characteristically different, abnormal, defective and inferior, both biologically and physiologically.
The physio-biological explanation of criminal behaviour inspired Prof.Hanz Joseph Gale to develop the **doctrine of phrenology** showing relationship between head conformation and personal characteristics of a person.

An American 'criminologist Dr. Coldwell showed keen interest in phrenology and published his "**Elements of Phrenology**' in 1824. The doctrine highlighted three basic assumptions: -

1. the exterior of the skull conforms to the interior and to the shape of the brain;
2. the mind consists of faculties and
3. These faculties are related to the brain and skull.

Dr. Coldwell emphasized that sentiments control the propensities and are aided by will to govern the whole conduct or act of a person. Thus 'will' and 'spirit' were supreme in controlling the human behaviour.

The theory has, however, been disapproved being purely hypothetical in nature and has now fallen into disuse.

Physiological factors such as age, sex and certain endocrinal imbalances also seem to have a correlation with the criminality of offenders.

Personality Type of Criminals

Earnest A. Hooton was an anthropologist of Harward University, is regarded a major contribution to the school of constitutional criminology. Who published his book "Crime and the Man" (1939) after an intensive 'twelve years' study and proposed the idea that crime is caused by physical inferiority.

He seemed to justify Lombroso's anthropological findings about criminal behaviour and disposed of Goring's study as unscientific. Hooton attempted to show that crime and other anti-social behaviours are due to physical and social factors. After an intensive study about the prison inmates, he concluded that prisoners differ from non-criminals in various physical particulars that composed definite pattern of physical inferiority. Hooton's work was, however, criticised by sociologists, criminologists and anthropologists and characterized as an outcome of his deep rooted prejudices against the criminals. He was also criticised for excluding White collar criminals who are admirable mental specimen in many cases and biologically superior.

Yet another social scientist, **William H. Sheldon**, tried to establish a co-relation between physical structure of the criminal and the crime through what he called application of constitutional theory to human behavioural problems. He developed his ideas from the fact that life begins in the embryo which is made up of three different tissue layers. viz,

1. An inner layer called endoderm,
2. A middle layer known as mesoderm and
3. An outer layer or ectoderm.

He correlated a corresponding physical and mental typology consistent with the known facts from embryology and the physiology of genetic development. He pointed out that physiologically, the endoderm gives rise to the development of digestive viscara, the mesoderm to bone, muscle and tendous of the motor-organ system, the ectoderm to connecting tissues of nervous system, skin and related appendages.

He summarized the basic characteristics of physique-and temperament of these types of physical structures as follows:

1. Endomorphic structure
2. Mesomorphic structure and
3. Ectomorphic Sructure

1. **Endomorphic structure**:

   Endomorphic are persons with fatty or bulky body having short tapering limbs, small bones, soft and smooth skin and are usually of a mild temperament and comfortable persons.
2. **Mesomorphic structure:**

   Mesomorphic structure persons with such structure are strongly built with prominent muscles and bones and connective tissues. They have heavy chest and large wrists and hands. These persons are temperamentally somotonic active, dynamic, assertive and behave aggressively.

3. **Ectomorphic:**

   Ectomorphic structures are constitutionally lean and fragile with delicate body, small face, Sharp nose and fine hair. They are sensitive by temperament and avoid crowds.

Sheldon further asserted that these shysical structures were directly related to temperament of the person who committed crime. Sheldon's analysis has been criticised by Sutherland on the ground that it closely resembles the heredity considerations of Criminals which has lost its Significance in modem criminology.

While discussing the personality aspect of the criminal **Donald Taft** lays emphasis on the effect of intelligence and its impact on crime causation. He asserts that persons lacking in average intelligence are generally not aggressive, anti-social or sexually promiscuous, but are rather inactive and nervous. They easily lend into criminality because they cannot foresee the possible consequences of their acts and are unable to adjust to the complexities of modern life.

Their incapability to distinguish between right and wrong or to foresee the danger of detection is yet another cause of their criminal behaviour. (**Donald Taft** Criminology (4th Ed.) p. 94) But it has been sufficiently established by now that feeble-mindedness forms a very small proportion of delinquencies and in fact crimes are mostly committed by persons of considerable intelligence and sharp outlook.

Genetics and Criminal Behaviour

In the law court, arguments based on genetic misendowment have been unhappy battle grounds. The technical arguments are complex, the amount of research and available experts have been prodigious, and it has been repeatedly shown that an adequate environment is crucial for compete manifestation of genetic endowment, (Michael Craft-Genetic

Endowment and XXY Syndrome in Michael and Ann Craft (Ed), Mentally Abnormal Offenders (1984)

Several early research studies conducted in the year 1961 by A. A. Sanberg and his associates, on the XYY phenomenon reported that XYY males tended to be very tall with disproportionate inclination to commit crimes of violence.

In 1982 Shah and Roth survey found that men in mental institutions suggested that the rate of instutionalized men with an extra Y chromosome was greater than the rate estimated for general population.

Patrica Jacobs in 1965 in her study of mental hospital in Scotland reported that 12 of the 196 men on the subnormal wing of the hospital had chromosomal abnormalities, which including 7 with the XYY abnormality. Jacobs and her team described the XYY male as having dangerous, violent or criminal propensities.

Criticism
Present research has cast doubt on the XYY hypothesis.

Summary:
Theories of Classical school, advances the views that crime is the result of a rational choice. According to this notion, the criminal weighs the pleasure and pain, and the criminal will make rational choice to commit the crime.

Positivist **rejected the doctrine of free will and supported the position** that the only way to understand crime was to study it by scientific methods.

Biological theories states that individuals commit criminal act due to biological defects. Criminal behaviour is a result of these defects, and not a choice of the offender. Biological determinism assumes that crime can be prevented by treatment, isolating and physically eliminating.

Model Questions:

1. Explain the historical background of classical school?
2. What is positivism?
3. Discuss psychological and sociological determinism.

Glossary:

Evolution theory: A view that certain types of criminal behaviour are genetic and passed down from one generation to next generation to through evolutionary processes of natural selection and survival.

Atavism: primitive man is a throwback to an earlier stage of human evolution.

Born criminal: One of three criminal types identified by Lombroso.

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UNIT III

THEORIES OF CRIMINAL BEHAVIOUR

Objectives

- To understand psychological theories
- To know personality theories
- To understand the social structure
- To know the concept of anomie
- To understand sociological theories and Cultural deviance theories

Introduction:

Strain theories suggest that there are certain socially generated pressures that drive persons to commit crimes. Strains are severe among the groups with the highest crime rates. This theory viewed crime as a result of inability to achieve social and financial goals.

3.0. Psychological Explanation of Criminality

Psychological theories of crime begin with the view that individual differences in behaviour may make some people more predisposed to committing criminal acts. These differences may arise from personality characteristics, biological factors, or social interactions.

According to Sigmund Freud (1856-1939), who is recognized with the development of **psychoanalytic theory** all human have natural and urges repressed in the unconscious. Furthermore, all humans have criminal predispositions. Through the process of socialization, however, these tendencies are curbed by the development of inner controls that are learned through childhood experiences. Freud theorized that the most common element that contributed to criminal behaviour was faulty identification by a child with her or his parents. The importantly socialized child may develop a personality disturbance that causes him to direct antisocial impulses inward or outward. The child who directs them outward becomes a criminal, and the child at directs the inward becomes a neurotic.

Psychoanalytic Theories

Origin

The Psychoanalytic School of Criminology is based upon the psycho-analytic theory of the Austrian neurologist Sigmund Freud, August Aichorn the Viennese psycho-analyst also shed some light on crime, and from the psychoanalytic stand point in his famous book "Wayward Youth" (1935) other important psychoanalysts to contribute to criminological thought were Alfred Adler, Carl Jung, Erik Ericson, Healy and Nonner.

The Concept

The psychoanalytic theories argue that criminal behaviour originate primarily in the personality of offenders rather than in their biology or in situation.

Personality denotes to the reasonably stable patterns of behaviour, including thoughts, feelings and emotions that distinguish people from one another. Personality control a person's way of adapting to life experiences and therefore, separates people on the basis of their behaviour.

Psychocriminologists connects criminality to disturbances of the personality. They maintain that persons with an abnormal personality will be more likely to engage in anti social behaviour because they view the world differently. Psychoanalytical model of the criminal offenders depicts an aggressive, frustrated person dominated by events that occurred early in childhood.

3.1 Personality Theories

Sigmnd Freud's Psychoanlysis

Freud sees emotional imbalance as the main factor for the causation of rime. The mentally and emotionally defective is more prone to crime than emotionally stable. He postulated a three point structure for the human personality.

The "Id" the primitive part of people's mental make-up is present at birth. It represents unconscious biological drives, such as food, sex, and sleep. The Ego is the part of the personality that compensates for the demands of the id by helping people guide their actions to remain within the acceptable social norms. The superego is the force of self-criticism and conscience and it develops wen an individual assimilates the moral standards and values of parents and the community.

Freud did not devote much time to crime theory but he did in link criminality to an unconscious sense of guilt a person retains because of the childhood Oedipus complex or Electra complex.

August Aichore was the psychoanalyst who perhaps wrote the most on delinquency. He examined number of juvenile delinquent youths. Aichorn concluded that societal stress however damaging, could not alone result in a crime, unless a predisposition existed that prepared youths psychologically for anti social acts. He labeled this ''latent delinquency'.

Latent delinquency is found in youngsters whose personality compel them to seek immediate gratification, consider satisfaction of their personal needs more important than relating to others, and satisfy instinctive urges without consideration of rights and wrong.

According to Aichorn the important causes of crime are as followings:

1. **Defective methods of child training**. Here, Aichorn argues that when parents do no give or give love too easily, the child does not learn to give up his instinctual demands and will become a criminal.
2. **If the parents of children are criminals**: if a child having criminal parents, may find his moral judgment upset, and therefore, take to crime itself.

3. **A child constitutionally incapable**: A child may sometimes be constitutionally incapable of making the identifications with his parents which social adaptations demand and out of frustration may take to crime.

Aichorn's Recommendations

Aichorn recommendations are based his treatment techniques, such as providing a happy and pleasurable environment, so as to promote the type of identification with adults that the child failed to experience earlier. Aichorn also contended that any attempt to improve the person through criminal force, fear or punishment without rewards of love are ill-fated to failure because such tactics only exaggerates what the parents had already created lack of "true" love.

Alfred Adler (1870-1937), the founder of individual psychology saw inferiority complex as a crime causative factor. He contends that crime is taken up due to the inferiority complex of a person and that the crime embodies a sense of achievement, hostility and revenge and, therefore, reinforces the person's ego.

Carl Jung (1875-1961)

CarlJung developed 'analytical psychology and according him the cause of criminal behavior can be traced to early life emotional disturbances.

Erik Erikson's (1902-1984)

Erikson, who developed the 'theory of psycho social development" holds the persons go through eight stages of ego development, and he specifically highlighted that 'identity crisis' as a period of serious personal questioning people undertake in an effort to demine their own values and sense of direction. According to Erikson's eight stages of ego development, viz.

1. Trusting their mother
2. Becoming acclimated to surrounding
3. Master fundamental skills
4. Learning careers
5. Committing to love
6. Being creative

7. exhibiting wisdom
8. Exhiniting dignity

Criticism

Psychoanalytic explanations of behvaiour are made after the behaviour has already occurred and depend on greatly on interpretations of unconscious motivations. Psychoanalysis is not a scientific explanation of human behaviour. There are objections on religious issues also.

3.2. The Anomie

We look at the structure of a society to see how it functions. If the society is stable, its parts running smoothly, the social arrangements are functional. Such a society is marked by unity, cooperation, and consensus. But if the components of the society are arranged in such a way as to threaten the social order, the arrangements are said to be dysfunctional.

This structural-functionalist perspective was developed by Emile Durkheim before the end of the nineteenth century.

According to Durkheim human misconduct lies not in the individual but in the group and the social organization. It is in this context that he introduced the term “anomie”
The term anomie means ‘’as the breakdown of social order as a result of the loss of standards and values’.

Durkheim was focused on the effects of social change, believed that when a simple society develops into a modern and urbanized one, the intimacy needed to sustain a common set of norms declines.

As initially developed by Durkheim, anomie was a condition of relative normlessness in a society or valueless in the groups.

According to Durkheim an anomic condition as arising when the existing structure of the society could no longer establish and maintain control over individual’s needs and desires. Groups become fragmented and in the absence of a common set of rules, the actions and expectations of people in one sector may clash with those in another. As it becomes unpredictable, breaks down and the anomie occurs.

Access to legitimate means is bound by class and status. Thus those who are locked out of the lawful opportunity structure develop a strain leading to criminal solution to the problem of attaining goals. The strain falls tend to be more concentrated among persons in the lower socio-economic groups in the society.

Anomie and Suicide

Durkheim best illustrated his concept of anomie in a discussion not of crime but of suicide. He suggested several reasons why suicide was more common in some groups than in others. When he analyzed statistical data, he found that suicide rates increased during times of sudden fiscal change, whether that change was major depression or unexpected wealth. In periods of rapid change people are abruptly thrown into an unfamiliar way of life. Rules that once guided behavior no longer held.

Consider the events of the 1920s. Wealth came easily to many people in those heady, prosperous years. But on October 24, 1929, a day history records **as Black Thursday**, the stock market crashed. Businesses went insolvent. People lost their jobs. Lifestyles changed overnight. Suddenly the norms by which people lived were no longer relevant. People became disoriented and confused.

He argued that we have developed social rules that put a realistic cap on our ambitions. These regulations are incorporated into the individual conscience and thus make it possible for people to feel fulfilled. But with a sudden burst of wealth, people's expectations change.

When the old rules no longer determine how rewards are distributed among members of society, there is no longer any restraint on what people want. Once again the system breaks down. Consequently, whether sudden change causes great prosperity or a great depression, the result is the same-anomie.

Strain and Cultural Theories

The biological and psychological theories of criminal behaviour do not explain why crime rates differ from group to group. Sociological theories seek the reasons for differences in crime rates.

Strain and cultural theories formulated during 1925-1940 and even popular today. These theories focus on the social factors and forces that cause people to engage in criminal activities. Strain theories argue that all members of society subscribe to one set of cultural values. Some group of people do not have legitimate means to reach this goal, they become frustrated and tend to illegitimate means in extreme anxiety.

Like Durkeim, Robert Merton related the crime problem to anomie. At the same time Merton's concept of anomie was different. Merton barrowed the term "anomie" from Durkheim to describe this type of breakdown of the normative system of society, **Strain theory assumes** that people are law-abiding, but under great pressure they will resort to crime; disparity between goals and means provides that pressure.

Strain Theory

Like Durkheim, Robert Merton related the crime problem to anomie. But Merton's conception of anomie differs somewhat from Durkheim's.

Merton writing in the mid of 1950s, he argued that two elements of all modern cultures interact to produce potentially anomic conditions. Culture defined goals and socially approved means for obtaining them.

The real problem, he contended, is created not by sudden social change but by a social structure that holds out the same goals to all of its members without giving them equal means to achieve them. This lack of integration between what the culture calls for and what the structure permits, the former encouraging success and the latter preventing it, can cause norms to break down because they no longer are effective guides to behavior. Merton borrowed the term "anomie" from Durkheim to describe this breakdown of the normative system.

Merton maintained that in a class-oriented society, the opportunities to get to the top are not equally distributed. Very few members of the lower class ever get there. His anomie theory emphasizes the importance of two elements in any society as follows:

1. Cultural aspirations, or goals that people believe are worth striving for; and
2. Institutionalized means or accepted ways to attain the desired ends.

If a society is to be stable, these two elements must be reasonably well integrated. Disparity between goals and means raises frustration, which leads to strain.

Thus from this perspective the social structure is the root of the crime problem. **The assumption** of **Strain theory** is that people are law-abiding, but under great pressure they will resort to crime; disparity between goals and means provides that pressure.

Merton's theory explains crime in the United States in terms of the wide disparities in income among the various classes.
According to Merton, all people in the society share the same goals. He argued that lack of legitimate means for everyone to reach the material goals exemplified by these success stories does create problems; he also made it clear that the high rate of deviant behavior cannot be explained solely on the basis of lack of means.

The world has produced more rigid class systems than our own and societies that limit people's ability to achieve their goals much more strictly without causing the problems the United States faces.

In reality, everyone in society experiences some pressures and strains, and the amounts are inversely related to one's position in the hierarchy: the lower the class, the higher the strain.

To be sure, not everyone who is denied access to the society's goals becomes deviant. Merton outlined five ways in which people adapt to society's goals and means.

According to him there are several ways in which an individual can respond to the strain and the resulting anomie, depending on his attitude the cultural goals and the institutional means to attain those goals. Merton enumerated the responses to the strain as follows:

- Conformity
- Innovation
- Ritualism
- Retreatism and
- Rebellion

Conformity

Conformity is the most common mode of adjustment. Conformity occurs when an individual accepts both the culturally defined goals and the prescribed means for achieving those goals.

Innovation

Innovation occurs when an individual accepts the goal of the society but rejects using legal means to attain them. Individuals who choose the adaptation of **innovation** accept society's goals, but since they have few legitimate means to achieve them, they innovate, or design their own means to get ahead.

Ritualism

A third possible adaptation involves rejecting the possibility of ever achieving wealth. But retaining loyalty to the norms of hard work, honesty etc. People who adapt by **ritualism** abandon the goals they once believed to be within reach and resign themselves to their present lifestyles.

Retreatism

Retreatism is the adaptation of people who give up both the goals. It is involves simply dropping out of the entire game. They have internalized the value system and therefore are under internal pressure not to innovate. The retreatist mode allows for an escape into a nonproductive, non-striving lifestyle. The pressure was too great, the Opportunities were unacceptable. They became drug addicts or vagabonds.

Rebellion

Rebellion occurs when adaptation involves the substitution of alternative set of goals and means for the accepted ones of society. Both the cultural goals and the legitimate means are rejected.

Merton's theory of describes, how the social structure produces strain that may lead to deviant behavior. His theory has challenged researchers for half a century.
The stain perspective adopted by Merton and his followers has influenced both research and theoretical developments in criminology.

Criticism

Merton does not explain why people differ in their choice of behavior. His theory cannot explain why a particular individual in an anomie susceptible circumstances becomes a criminal while another remains a conformist. In other words, this theory fails to explain the question why one chooses rebellion and another innovation.

3.3. Cultural Deviance Theories

Strain theorist opinions that criminal behavior in the United States and other parts of the world to the striving of all its citizens to obey to the conventional values of the middle class, primarily financial success. **Cultural deviance theories**, on the other hand, attribute crime to a set of values peculiar to the lower class.

Both **strain and cultural deviance theories** find the causes of crime in the disadvantageous position of persons at the lowest stratum in a class based society.

Cultural Deviance Theorists and Theories

Researchers who view crime as resulting from cultural values that permit, or even demand, behavior in violation of the law are called cultural deviance theorists.

There are **three major cultural deviance theories** those are:
1. Social disorganization
2. Differential Association and
3. Culture conflict.

Social Disorganization Theory

Social disorganization theory concentrations on the development of high crime prone areas associated with the disintegration of conventional values caused by rapid industrialization, increased in immigration population, and rapid urbanization.

Differential Association Theory

Differential association theory focuses that people learn to commit crime as a result of contact with antisocial values, attitudes, and criminal behavior patterns.

Culture Conflict Theory

Culture conflict theory maintains that different groups learn different conduct norms and rules, and that the conduct norms of some groups may clash with conventional middle-class rules.

All three theories contend that criminals and delinquents in fact do conform but to norms that deviate from those of the dominant middle class.

The Nature of Cultural Deviance

Cultural deviance theorists argue that our society is made up of numerous groups and sub groups, each with its own standards of norms and rules. Cultural values and traditions emerge within communities most affected by social disorganization.

Conduct or behavior considered normal in one culture may be considered deviant by another. As a result, persons who conform to the standards of cultures that are considered deviant are behaving in accordance with their own norms, but by doing so may be breaking the law-the norms of the dominant culture.

Social Disorganization Theory

Scholars associated with the University of Chicago in the 1920s became interested in socially disorganized neighborhoods where criminal values and traditions replaced conventional ones and were transmitted from one generation to the next.

They studied the neighborhoods and the people living in them. In their classic work “The Polish Peasant in Europe and America”, W. I. Thomas and Florian Znaniecki described the difficulties Polish peasants experienced when they left their rural old. Thomas and Znaniecki attributed this result to social disorganization to the breakdown of effective social bonds, family and neighborhood associations, and social controls in neighborhoods and communities.

Their study greatly influenced other scholars at the University of Chicago. Among them were **Robert Park and Ernest Burgess**, who advanced the study of social disorganization by introducing an **ecological analysis** of human society. Ecologists study these interrelationships, how the balance of nature continues and how organisms survive.

Criticism

Though their influence has been great, the scholars who initiated the ecological approach to crime research have not been immune to encounters.
Their work has been **criticized** for its dependence on official data, which may primarily reflect zealous police surveillance in disadvantaged neighborhoods, and for its focus only on how crime patterns are transmitted, not on how they start in the first place.
The approach has also been faulted for failing to explain why delinquents desist from crime as they grow older, why most people in socially disorganized areas do not commit criminal acts, and why some deteriorated neighborhoods seem to be insulated from crime. Finally, critics have claimed that this approach does not come to grips with middle-Class delinquency.

Undoubtedly, modern criminology owes a debt to social disorganization theorists, particularly to Shaw and McKay, who in the 1920s began to look at the characteristics of people and places and to relate both to crime. They have stimulated research not only in crime causation but also in crime prevention.

Social Disorganization Theory and Practice

Theorists of the Chicago school were the first social **scientists to suggest** that most crime is committed by normal people responding in expected ways to their immediate surroundings, rather than by abnormal individuals acting out individual pathologies.

If social disorganization is at the root of the problem, crime control must involve social organization. The community, not individuals needs treatment. Helping the community, then, should lower its crime rate.

Social disorganization theory was translated into practice in 1934 with the establishment of the Chicago Area Project (CAP), an experiment in neighborhood reorganization. The project was initiated by the Institute for Juvenile Research, at which Clifford Shaw and Henry McKay were working.

The project coordinated the existing community support groups, local schools, churches, labor unions, clubs, and merchants.
Special efforts were made to control delinquency through recreational facilities, summer camps, better law enforcement, and upgrading of neighborhood schools, sanitation, and general appearance"

In 1984 this first community-based delinquency-prevention program celebrated its fiftieth anniversary. South Chicago, its largest area, physically remains very much the way it was over half a century ago. The pollution from the surrounding steel mills has been cleaned up, but the urban decay has not. Boarded-up buildings, trash-littered lots, and badly deteriorated housing still characterize the poverty area with which Shaw and McKay were originally concerned. CAP still works as a self-help group, committed mainly to community treatment of juvenile delinquency.

Differential Association Theory

Very large extents the social influences that people encounter determine their behavior. Whether a person becomes law-abiding or criminal, then, depends on his contacts with criminal values, attitudes, definitions, and behavior patterns. **This proposition underlies one of the most important theories of crime causation in American criminology is differential association**.

Edwin Sutherland, in 1939 **introduced differential association theory** (Principles of Criminology), this theory, which claimed to explain the development of all criminal behavior. The under laid idea of this theory is that crime is learned through social interaction. People come into constant contact with definitions favorable to violations of law and definitions unfavorable to violations of law. The ratio of these definitions criminal to noncriminal determines whether a person will engage in criminal behavior. Differential association is based on nine propositions.

Differential association and Nine Propositions

1. Criminal behavior is learned.

2. Criminal behavior is learned in interaction with other persons in a process of communication. A person does not become a criminal simply by living in a criminal environment.

3. The principal part of the learning of criminal behavior occurs within intimate personal groups. Families and friends have the most influence on the learning of deviant behavior.

4. When criminal behavior is learned, the learning includes (a) techniques of committing the crime and (b) the specific direction of motives, drives, rationalizations, and attitudes. In other words, criminals, too, learn skills and gain experience.

5. The specific direction of motives and drives is learned from definitions of the legal codes as favorable or unfavorable.

6. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law.

7. Differential associations may vary in frequency, duration, priority, and intensity. The extent to which one's associations will result in criminality is related to the frequency of contacts, the extent of their duration, and their meaning to the individual.

8. The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.

9. While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since noncriminal behavior is an expression of the same needs and values.

Tests of Differential Association Theory

Since Sutherland presented his theory more than fifty years ago, researchers have tried to determine whether the principles of differential association lend themselves to empirical measurement. James Short tested a sample of 126 boys and 50 girls at a training school and reported a consistent relationship between delinquent behavior and frequency, "duration", "priority", and "intensity" of interactions with delinquent peers.

In another test Albert Reiss and A. Lewis Rhodes found that the chance of committing a delinquent act depends on whether friends commit the same act. Similarly, Travis Hirschi established that boys with delinquent friends are more likely to become delinquent.

Adults have also been the subjects of differential association studies. Charles Title conducted research. Evaluation of differential association theory many scholars have tried to validate Sutherland’s differential association theory. Much of the criticism stems from errors in interpretation.

From theory to Practice

According to differential association theory, a person can become criminal by learning definitions favorable to violating laws, it follows that programs that expose young people to definitions favorable to conventional behavior should reduce criminality. Such educational efforts as Head Start and the Perry Preschool Program have attempted to do just that. The same theory underlies many of the treatment programs for young offenders in facilities throughout the country, both residential (the Highfields Project in New Jersey) and nonresidential (the Provo Program in Utah). In group treatment sessions in these programs criminal behavior is attacked and conventional behavior is promoted.

Differential association theory is based on the learning of criminal or deviant norms or attitudes. Culture conflict theory focuses on the source of these criminal norms and attitudes.

Culture Conflict Theory

Thorsten Sellin conducted norms that control our daily lives. Those norms are rules that reflect the attitudes of the groups to which each of us belongs. Their purpose is to define what is considered appropriate or normal behavior and what abnormal behavior is.

Sellin argues that different groups have different conduct norms and that the ‘conduct norms of one group may conflict with those of another.

Individuals may commit crimes by conforming to the norms of their own group if that group’s norms conflict with those of the dominant society. According to this reasoning, the main difference between a criminal and a noncriminal is that each is responding to different sets of conduct norms. Sellin distinguishes between primary and secondary conflicts. Primary conflict occurs when norms of two cultures clash.

Glossary

Anomie: as the breakdown of social order as a result of the loss of standards and values.
Deviance: the fact or state of diverging from usual or accepted standards, especially in social.

Model Question:

1. Critically evaluate the concept of white collar crime propounded by Edwin Sutherland and how it is different from the conventional theory of crime.
2. Discuss the significance of Strain theories and Physco analytical theories in explaining the criminality of violent criminals.
3. Write short note on:
    a. Tarde imitation theory
    b. Garaffalo theory
    c. Ceasarebeccaria

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UNIT IV

JUVENILE JUSTICE

Objectives:

- To learn the details of the evolution of the Juvenile Justice
- To understand the juvenile justice system
- To able to analyses various concept of juvenile justice system
- To Procedure relating to the inquiries
- To Obtain knowledge on rehabilitation process

4.0 Introduction

This unit 'juvenile justice' outlines the juvenile justice system and the factors that make juvenile to commit crimes. Discuss how young offender is different from adult offenders and key concepts like lack of maturity, age responsibility and victimization.

4.1 Juvenile Delinquency

General attitude of public towards children is to behave obediently, show respect towards elders, others and absorb behaviour having high moral values but due to various reasons and circumstances children are being diverted from social and general norms. Recently, juvenile delinquency has become an important aspect of criminology. Juveniles have got serious forms of delinquent behavior which may hamper the stability of the society.

The word "delinquency" has its origin from the Latin word "delinquere" meaning "away' and "linquere" means 'to leave' or "to abandon". Primarily, the word was applied to abandoned and neglected children. In later days, even in present days, it is applicable to all children who are involved in illegal activities. 'Juvenile' means a child who has not completed a specific age under the law. A different country prescribes different age criteria for fixing the criminal responsibility.

"Delinquency' is unwelcomed action, omission or moral behaviour of a juvenile which is socially not permitted. Because of various factors, there is no single general acceptable definition for it.

Here some of the definitions are given for understanding of the concept of 'delinquent behaviour'. **Social workers** define, "delinquency consisted of socially unaccepted acts". **Psychiatrist** suggests that "delinquent behaviour is activity which deviates from the normal". **Legal** professional would say "juvenile delinquency is what the law says it is".

W.H. Sheldon, Defines delinquency as "behaviour disappointing beyond reasonable expectation".

Robison Holt, "we use the term delinquent as we sometimes use the term ''love'' as though it were a simple concept whereas it actually embraces complex patterns of behaviour."

Frederick B. Sussmann defines as "violation of any law or ordinance, habitual truancy, association with thieves, vicious or immoral persons, and incorrigible beyond control of parent or guardian and so on".

Edwin Powers and Helen Witmer found in their study that "in order to define the real delinquents it was necessary to take into consideration three concepts or criteria namely, the seriousness of the behaviour, its frequency and the attitude of the offender toward a lawfully constituted society".

The Sociological Approach

The sociological approach on delinquency is as follows:

Clyde B. Vedder defines, "juvenile delinquency refers to the anti-social acts of children and of young people under age. Such acts are either specifically forbidden by law or may be lawfully interpreted as constituting delinquency, or as requiring some form of official action".

The 'juvenile' is a child who has allegedly violated certain laws which declares his act or omission as an offence. A juvenile and a minor are used in different perspective in legal terms. The term juvenile is generally used in reference to a young offender and minor is related to legal capacity of a person.

Legal Approach of Understanding Delinquency

Juvenile Delinquency is a legal term that was first defined in 1889, when Illinois passed the first law on Juvenile Delinquency: since then every state has passed the delinquency laws. The Illinois law defines "a child or delinquent as a person who is incorrigible or who is growing up in idleness, one wonders about the streets in night time without being on any lawful business, or one who is quietly of indecent or lascivious conduct.

Further, in the legal perception it may be said "any act prohibited by law for children up to prescribed age limit is Juvenile Delinquency" and it follows, that if a child found to have committed an act of Juvenile Delinquency then he must be produced before the court which is specially set up for Juvenile Delinquent.

'Gibbons' defines "Juvenile Delinquency consists of acts or infractions which are prohibited in statutes of individual states".

Prof. Walter C. Reckless has suggested stand to resolve the problem of defining delinquency. These three problems are:-

1. Delinquency as a social problem
2. Delinquency as a behavioural problem
3. Delinquency as a legal problem

The above definition by Prof. Walter C. Reckless has been considered delinquency problems in three distinct steps as follows:

Firstly, "legal definition of crime and delinquency"
Secondly, "delinquent behaviour as a social problem" and
Thirdly, and lastly one is "causative behavior".

It is true that it is not possible to provide a universal acceptable definition. But one can say behaviour is an observable phenomenon. Where as in the case of legal definition of the delinquency is as it covered by criminal law and sanctions.

Juvenile Offending Differs from Adult Offending?

It is clear that the characteristics of juvenile offending are different from those of adult offending in a variety of ways. Few of the special characteristics mentioned below:

- Adolescence
- Risk taking
- Peer influence
- Risk-taking and peer influence
- Incapacity (mental and physical)

Adolescence

Research on adolescent brain development demonstrates that of rapid change,

particularly in the areas of the brain associated with response inhibition, the calibration of risks and rewards and the regulation of emotions.
Research divulge two important aspects that the difference between juvenile and adult. First, these changes often occur before adolescents develop competence in decision making. Some of the authors, especially Romer & Hennessy described the period of life as "This disjuncture, it has been argued, is akin to 'starting an engine without yet having a skilled driver behind the wheel'. Second, in divergence with the widely held belief that adolescents feel 'invincible', recent research indicates that young people do understand, and indeed sometimes overestimate, risks to them as mentioned by Reyna & Rivers 2008.

Peer Influence

Most of this age group involves drugs and alcohol consumption, illegal sexual activities, rough and rash driving, and anti- social behaviour. Another notable thing is that peers further encourage risky behaviour. As Haigh (2009) explains, adolescence is a time of complex physiological, psychological and social change. Progression through puberty has been shown to be associated with statistically significant changes in behaviour in both males and females and may be linked to an increase in aggression and delinquency.

Mental and Physical Capacity

Research shows that children of fewer than or 10 years of age are immature in terms of moral and brain development. Criminalising children adversely affects their future prospects and makes them more likely to repeating the criminal behaviour as adults.
Juvenile delinquency may be caused by multitude of factors. Few explanations focus on the individuals, and include biological, psychological and rational choice theories. Social explanations of delinquency focus on in the structure of society, cultural difference, and social process. Other theories explain delinquency as a mal function of the society, reaction of the society to deviance. The Causes of delinquencies:

- Poverty
- Unemployment
- Parental negligence
- Peer pressure
- Delinquent gangs and
- Drugs

Criminologist and sociologists have worked for years to better understanding and explanations of complex nature and origin of crime and deviance.
The number of theories has tried to explain the delinquency causes. In actuality none of these theories can sufficiently explain all the reasons for the delinquent behaviour. Recently, criminologists have developed integrated theories of crime.

The Challenge of Responding to Juvenile Crime

Preventing children from having repeated contacts with the legal system and intervening to support minors desist from crime are therefore critical policy issues. Assisting juveniles to grow out of crime—that is, to minimise repeat offending and to help minors become 'disasters' and also a key policy areas for ensuring safety of the society. Juvenile offenders often require more intensive interventions than adult offenders, for a range of reasons.

Juvenile Justice System

This part of the unit discusses the answers to the questions 'what is the meaning of juvenile justice'? How it works? And what are the procedures? Juvenile justice is the area of criminal law, and it's applicable to persons not old enough to be held responsible for criminal acts. In most states, the age for criminal culpability is set at 18 years. Juvenile law is mainly governed by state law and most states have enacted a juvenile age of responsibility differently. Hereinafter, this discussion shifts to the age of responsibility in different countries. Age of responsibility denotes to the minimum age that a child can be prosecuted and punished by law for a crime.

Age of Criminal Responsibility in UK

A juvenile and a minor are used in different perspective in legal terms. The term juvenile is generally used in reference to a young criminal offender and minor is related to legal capacity of a person.

The age of criminal responsibility in England, Wales and Northern Ireland is 10 years old. This means that children under 10 can't be arrested or charged with a crime.

In other words, a child is considered capable of committing a crime and old enough to stand trial for a criminal offence. Their case will be dealt with by a youth court and if they are convicted, their sentence will take their age into account.

The age of criminal responsibility in the UK is the lowest in Europe, which contravenes international juvenile justice standards. The age of responsibility and its developments can be seen as under:

- Pre-20th century: children under 7 were deemed incapable of crime.
- Children aged 7 to 14 years were presumed to be "doli incapax" – (incapable of appreciating the criminal wrongfulness of their actions unless proven otherwise by the prosecution).

- 1930s: Age of Criminal Responsibility raised to 8 years.
- 1960s: A Juvenile Justice review led to an increase in the age of criminal responsibility to 10 in England, Wales and Northern Ireland. In Scotland, ACR remained at 8 but the Children's Hearings System was introduced. „
- 1990s: Children under 12 in Scotland cannot be prosecuted. „
- 1998: Abolition of defence of doli incapax.
- Now all children above the ACR are assumed accountable for offending behaviour.
- 2018: Scotland introduces a Bill to raise the ACR to 12 years.(House of Parliament**,** Number 577, Post Note, June 2018 Further information See; https://yjlc.uk/wp-content/uploads/2018/06/ACR.pdf)

Raising the Age of Criminal Responsibility

The Scottish government established an expert advisory group in 2015 to identify the key issues arising from an increase in the age of criminal responsibility from 8 to 12, expert advisory group made several recommendations. As a result of recommendations, the bill was introduced to the Scottish Parliament in 2018.

The Scottish government claiming that it has committed to protecting and promoting the rights and interests of children and young people, and, indicated that the State under taking preventing steps for offending behaviour by young people.

The Age of Criminal Responsibility (Scotland) Act 2019

The age of responsible law has passed by the Scottish Parliament. Here the time line of law making provided as follows:

- The Age of Criminal Responsibility (Scotland) Act 2019
- Act was passed unanimously by the Scottish Parliament
- The Parliament passed it on 7 May 2019 and
- The Act, 2019 was received Royal Assent on 11 June 2019.

The expectations of the above said law is that the Act will rise the age of criminal responsibility in Scotland from 8 to 12. The State has also started that it preparations for switching on the new disclosure regime under the Act and we intend for this to be commenced by summer 2020.

The Minister for Children and Young People has stated the government constituted an advisory group for an inquiry and suggestion for possibilities of further increase of criminal responsible age.

USA: Age of Criminal Responsibility

In United States of America, every state has the authority and competency to determine the age of juveniles. Therefore, in the USA different states have different age criteria. E.g. in the Mississippi age of criminal responsibility is 10, whereas in the New York it is set as 7 years".

Indian Law and Juvenility

In the past, before the Children Act, 1960 there was no uniformity as regards to age of a child. Different laws defined age of a child as differently.

The Juvenile Justice Act, 1986 provided different age for boy and girl according to this law "a juvenile or child, who in case of a boy has not completed age of 16 years and in case of a girl 18 years of age". Indian signed the Child Rights Convention for fulfill the obligation under the Convention on the Rights of Child. The JJ Act was amended in the year 2000. The Government of India has enhanced the age of a juvenile, "in Juvenile Justice (Care and Protection) Act, 2000, to 18 years for both boy and the girl in fulfillment of its commitment to the United Nations declarations". Under the JJ Act, 2000 : A juvenile in conflict with law "a juvenile who is alleged to have committed an offence but has not completed 18 years of on the date of commission of said offence".

The latest position of legal age of juvenile as declared Under **the Juvenile Justice (Care and Protection of Children) Act 2015**, juvenile means a child below the age of eighteen years, the term 'juvenile' defined under section.2 (35) of Act, 2015.

4.2 Evolution of Juvenile Justice System

Juvenile justice is the area of criminal law applicable to persons not old enough to be held responsible for criminal acts. In most states, the age for criminal culpability is set at 18 years. Juvenile law is mainly governed by state law and most states have enacted juvenile laws. The juvenile court was created in Cook County Illinois in 1899, but the concept dates back to seventeenth century Europe.

Evolution of Juvenile Justice System

This part of the unit deals with historical background of juvenile justice. In fact, preventing juveniles from having repeated contacts with the criminal justice system and intervening to support juveniles desist from crime are always critical policy issues in any given State.

In fact, law and legal procedures relating to juvenile offenders have a long history. The Code of Hammurabi 4,000 years (2270) ago discussed about runaway child, and children who disobeyed their parents.

In Rome, 2000 years ago Roman Civil Law and Cannon Law distinguished between juveniles and adults based upon the age criterion. Early Jewish law also discussed the law relating to the juvenile.

Anglo-Saxon common law in 11^{th} and 12^{th} centuries in England was much influenced by Roman civil law and canon law. It is particularly for American Juvenile Justice System, the American legal system by and large had its roots in English common law.

Doctrine of Parens patriae

The first juvenile court in the world was established in Cook County, Illinois in the year 1899. It is to note that the concept of special treatment to the children dates back to 17th century Europe.

The term "Parens patriae'' originated in the 12th century with the King of England. The literal meaning of parens patriae is "the father of the country." It was applied to juvenile matters, as the king is responsible for and in charge of everything involving a young person. Parens patriae was often used in England. Children were often seen as property and were thus subject to the wishes of the king or his agents.

Early English common law, states that parents had the primary responsibility of raising their children in any manner they deemed fit. However, when children reached 7 years of age or committed a crime, chancellors, acting in the name of the king, adjudicated matters concerning the youth. The youth has no legal rights and were essentially wards of the court. As such, the courts were meant for safeguarding their welfare. While parents were merely responsible for childbearing, the State had the obligation in the upbringing of the children.

In 15^{th} century the Chancery Courts were created to consider petitions of woman and children, those in need of aid and help. Through these courts the king could exercise the right of parens patriea. This principle later became a basis for the juvenile courts in America.

Parens Partriae in the USA and its Transformation

The special system of justice for juveniles has evolved in America. This system primarily followed the English law. The concept of parens patriae had a substantial influence on the child-saving movement, houses of refuge, and reform schools in the USA. These movements are discussed in detail in forthcoming parts of this chapter.

The doctrine of parens patraie can be seen evolving from “king as a father” to a more general ideology, that of the state “acting in the best interest of the child.” Subsequent matters relating to the children revolve around this idea of acting in the best interest of the child, whether children were taken away from wayward parents, sent to reform schools for vagrancy, or even held in institutions until they attain the age of majority. The idea is that the state is acting in their best interest, protecting the young persons from growing up to be antisocial elements, though court’s intervention.

American judiciary in the 19^{th} century, criminal law applied to adult and juveniles equally and during those days, there was no legal term of juvenile. Children were punished equally as adults’ criminals. It means there was no separate system to deal with young offenders.

A number of developments during the 19^{th} century laid the way for a separate system of justice for the juveniles.

In the 19th century, children were gradually seen as vulnerable and in need of special care and protective supervision. On this premise, a ‘’house of refuge’’ in New York City in 1825 was established. These were urban establishment used to round up children who were roaming the street unsupervised or who had been referred by the courts for supervision and care.

Reform Schools

When the parents could not properly handle and controls the children and disciplining their children, the Government was given the authority to take over the children responsibility. In this process of development in 1825 the New York House of Refuge was established to house the neglected and delinquent youth. These kinds of houses were established in Boston and Philadelphia within shortest time.

Soon after the above development different states were created Reform Schools. In Massachusetts reformation school was opened in 1847.

The 1850s ushered in the development of reform schools or institutions used for the housing of delinquent and dependent children. In New York, reformative school was established in 1853.

The schools were structured around a school schedule rather than the work hours that defined the workhouses and houses of refuge. The structure is still used in some youth correction institutions today, however, back in the nineteenth century; children were often exploited for labor and many of the school de-emphasis formal education. Additionally, the emphasis of the reform school was on the strength of the family and they believed that by reinserting a strong family presence in the lives of the youth, they would be deterred from further criminal pursuits, the popularity of reformatories continued to grow. The state had the legal authority to commit children and youth to reform schools based under parens patriae.

Child Saving Movement:

In the 19th century, following the Civil War, humanitarian concern was directed toward troubled children and their treatment. An important development of the juvenile justice system in America was what became known as the ‘child saving movement’ (Faust & Brantingham, 1979; Law Enforcement Assistance Administration, 1976)

The child savers were a group of reformers from various fields like professionals, philanthropists and general people especially from middle class people.

The Juvenile Court

The Illinois Juvenile Court Act of 1899 was the first statutory provision in the United States to provide for an entirely separate system of juvenile justice. The court was created to have jurisdiction over all matters pertaining to youth- dependent, neglected, and delinquent youth.

4.3 Juvenile Justice in India

When we referred the historical backgrounds of the juvenile justice, it reveals that there were several legislative strategies for juvenile justice. These legislations can be classified as pre- independent and post-independent laws. We can trace the historical development of juvenile justice in India as to the English Federal courts of High Chancery. Under the English laws of Equity, the courts of High Chancery were given the responsibility by the crown to serve as parens-patriae

The English Federal Courts of High Chancery extended their protection to other areas of general child welfare and incorporated the neglected and dependent child within their jurisdiction. Under the common law, a child under 7 years of age was considered incapable of developing the required criminal intention, and a child between the ages of 7 and 14 was also deemed incapable of developing the required intent unless it could be shown by his maturity and understanding that he was aware of the consequences of his actions.

The Juvenile Justice System in India originated during the British rule and was the direct consequence of western ideas. The changes introduced by British in India to deal with delinquent juveniles.

Indian First Law on Juvenile

Influenced by the juvenile jurisprudence in Europe and America, the Apprentices Act, 1850 was the first legislation that laid the foundation of juvenile justice system in India and followed by Indian Penal Code, 1860, and Reformatory Schools Act, 1897
A separate and special law was enacted by the Madras Province in 1920 and juvenile court was established under the Madras Children Act, 1920.

The Indian Jail Committee (1919-1920), which firmly suggested that the juvenile offender should be treated in a different way from an adult offender.

The "Madras Children Act 1920" was the first Children Act to be enacted which was followed by Bengal and Bombay in 1922 and 1924, respectively. And after that many states enacted their own Children laws, covering the two categories of children, viz.

1. Delinquent children and
2. Neglected children

These two categories of children are handled by the juvenile courts. These children were to be kept in rehabilitative and remand homes or can be released on their good character.

At this point of time, by and large, the "welfare" approach was adopted for children whether they are delinquent or neglected. The British law providing separate provisions for juvenile offenders was passed on to India in the late nineteenth century.

- The Apprentices Act, 1850" was the first law to deal with the children in distresses that are to be trained for trade and commerce.
- The Indian Penal Code 1860: Under Sec. 82: children under the age of seven years are exempted from criminal responsibility.
- Sec.83 of IPC: Children between the age of seven to twelve years, who have not attained sufficient maturity to understand the nature and consequences of their wrong act.
- The Reformatory School Act, 1876 and it was modified in 1897
- The Indian Jails Committee 1919-20, recommendations also helped in the development of the juvenile justice in India.

The Post -independence Developments

The Government of India enacted the Children Act 1960. During this period there was no uniform application of this law, States have their own laws. The need for uniform law was recognized by the Supreme Court and directed the union government for uniform law in the country. Accordingly, Indian Parliament passed the Juvenile Justice Act 1986.

India became party to the Convention on the Rights of the Child (CRC) 1989" and it was ratified by the Government of India in 1992. To fulfill the international obligation under Convention on the Rights of Child, the Juvenile Justice (Care and Protection of Children) Act, 2000 was passed, which was amended in 2006. In 2012 the Nirbhaya case (Delhi gang rape case). Again the government reviewed the juvenile law "The Juvenile Justice (Care and Protection of Children) Act, 2015".

Juvenile Justice in India and Legislative History of JJ Act, 2015

The Legislative Process of JJ Act, 15

Nirbaya case in December 2012 had tremendous impact on public perception of the Juvenile Justice Law. One of the accused in the case was minor and he case was inquired by the JJB and sent for three years to a reform home. On the issue of criminal responsibility under Juvenile Act its constitutional validity were questioned through eight writ petitions and were dismissed by the Supreme Court, holding the Act to be constitutional. Another issue raised was for reductions of the age of juveniles from 18 to 16 years was also were turned down by the Supreme Court. A Public Interest Litigation (PIL) filed by Subrhamainian Swamy a politician in the year 2013, seeking that the boy be tried as an adult in a criminal court. The Court turned down the request again.

Varma Commission

The Justice JS Varma commission was constituted by the Union Government after the Nirbaya case, for review of the law relating to the women protection. The committee made several recommendations and government has accepted the said suggestions made by the committee. Accordingly, the Criminal Law Amendment Act, 2013 was made. The committee was not in favour of reduction of the age of juvenile.

The Juvenile Justice (Care and Protection of Children) Bill, 2015 was passed by Lok Sabha on 7^{th} May, 2015; was passed by Rajya Sabha on 22^{nd} December, 2015 and received Presidential assent on 31^{st} December, 2015 and Came into force from 15 January 2016.

Criticism

The Bill was criticized by the section of the people. During the debate in the Lok Sabha in May 2015, a Member of the Parliament, argued that" the law was in contradiction with international standards and that most children who break the law come from poor and illiterate families. He said that they should be educated instead of being punished".

Child Rights Activists have called the bill a regressive step and have criticized the Bill. Many experts and activists viewed post December 2012 Delhi Gang Rape responses as creation of media sensationalisation of the issue, and cautioned against any regressive move to disturb the momentum of Juvenile Justice Legislation in the Country.

However some sections in the society felt and expressed that in view of serious offences like terrorism and other serious crimes, Juvenile Justice Act of 2000 needed to be modified to include 'punitive approaches' instead of 'therapeutic approaches' in the existing Juvenile Justice Law.

Key Provisions of the JJ Act, 2015

The JJ Act of 2015 has introduced few new principles and procedures, and intended to cover both categories of children namely;

1. "children in need of care and protection" and
2. "Children in conflict with law".

Aims of the JJ Act

This law enacted with aims to focus and change the law related to Juvenile's i.e. children who are supposed and found to be in conflict with the law, children in need of Care &

Protection by fulfilling their basic necessities through proper care and nourishment, protection, treatment, social integration, trainings and also by adopting a child-friendly approach.

Change in Nomenclature

The word ‘juvenile’ in old law has changed to ‘child’ or ‘child in conflict with law’, across the Act with intention to remove the negative connotation associated with the word “juvenile”;

New Definitions

The Juvenile Justice Act, 2015 included several new definitions such as “orphaned”, “abandoned” and “surrendered children”; and “petty”, “serious” and “heinous offences”.

General Principles of Care and Protection of Children [Chapter II of JJ Act]

The juvenile justice Act of 201 have certain fundamental principles. These principles invoked in the second chapter of the Act and it stated that all authorities under the Act should be directed by these principles as per the Sec. 3 of the Act, principles to be followed in administration of Act.

The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:

i. Principle of presumption of innocence:
ii. Principle of dignity and worth:
iii. Principle of participation
iv. Principle of best interest
v. Principle of family responsibility
vi. Principle of safety
vii. Positive measures
viii. Principle of non-stigmatising semantics
ix. Principle of non-waiver of rights
x. Principle of equality and non-discrimination
xi. Principle of right to privacy and confidentiality
xii. Principle of institutionalisation as a measure of last resort
xiii. Principle of repatriation and restoration

xiv. Principle of fresh start
xv. Principle of diversion
xvi. Principles of natural justice

Powers and Functions of the JJB and CWC

The Act also provided more clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC) than the previous laws;

- clear timelines for inquiry by Juvenile Justice Board (JJB);
- Special provisions for heinous offences committed by children above the age of sixteen year;
- The concept of preliminary assessment
- separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children;
- Insertion of new offences committed against children; and
- Mandatory registration of Child Care Institutions (CCI).

Preliminary Assessment and Placing in Child Care Institution

Section 15 of JJ Act, 2015 special provisions has been made to heinous offences committed or allegedly committed by the child in the age group of 16-18 years. The Juvenile Justice Board is given the selection to transfer cases of heinous offences by such children to a Children's Court or Court of Session after conducting **preliminary assessment**. If JJB opts retaining of inquiry by itself, there is no need to transfer. Juvenile Justice Board may take assistance of psychologists and socio-psychologist to decide whether a juvenile criminal in the age group of 16–18 should be tried as an adult or not.

There are certain provisions provided for placing children in a 'place of safety' both during and after the trial till they attain the age of 21 years after which an evaluation of the child shall be conducted by the Children's Court. After the evaluation, the child is either released on probation; if the child is not reformed then the child will be sent to a jail for remaining term. The law will act as a deterrent for child offenders committing heinous offences.

Adoption

To streamline adoption, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively.

The development in this regard is to compliance with the Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993. A separate and special chapter (Chapter-VIII: Adoption) added on Adoption. It contains detailed provisions relating to adoption and **punishments for not complying with the laid down procedure**. The adoption processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption.

In adoption, disabled children and children who are physically and financially incapable will be given priority. Parents surrendering their child for adoption will get 2 months time to take back the decision.

Under the Act, once prospective adoptive parents living in India or abroad accept a child, an adoption agency files an application in a civil court to obtain the adoption order. The adoption order issued by the court is final.

In cases where a person living abroad intends to adopt a child from his relative in India, he is required to obtain an order from the court and apply for a no objection certificate from the Central Adoption Regulation Authority. The Act requires the court to ensure the following:

1. The adoption is for the welfare of the child
2. Due consideration is given to the wishes of the child
3. No party to the adoption has received any payment in consideration of the adoption.
4. Adoption proceedings have to be disposed of by the court within a period of two months from the date of filing an application.

In the recent time, union government proposed amendment to the Juvenile Justice Act, 2015, and an amendment proposed in the year 2018. The Bill seeks to transfers these duties from the court to the district magistrate. The Juvenile Justice (Care and Protection of Children) Act, 2015 states that adoption of a child is final once a civil court issues an adoption order. The Bill provides for the district magistrate to issue such adoption orders.

Rehabilitation and Reintegration

Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including the following.

- Counselling,
- De-addiction,
- Education,
- Health,

- Life skill education,
- Nutrition,
- Skill development,
- Treatment of diseases,
- Vocational training,

The above services are to help the child in conflict with law, which assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment. For the appointing the foster care and group foster care, it should be selected after inquiry. Such families will be monitored and shall receive financial aid from the state.

New Offences

Under the juvenile justice Act, a separate chapter (Chapter-IX: Other Offences against Children (Sec, 74- 89) is provided on offences against children and several new offences added. These include: sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, use of child by militant groups, offences against disabled children and, kidnapping and abduction of children.

Registration of the Child Care Institutions

All child care institutions, whether run by State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially for housing children, regardless of whether they receive grants from the Government, are to be mandatorily registered under the Act within 6 months from the date of commencement of the Act. Stringent penalty is provided in the law in case of non-compliance.

4.4 The Pretrial and Trial Stage of Juvenile Justice

Pre Inquiry Trial

The claim of juvenility is one of the important issues for providing benefits under the Act. The part of the study begins with the determination of the age of juvenile and its procedure. Under juvenile justice laws the word arrest is not used. Taking into the custody of a child by lawful authority is generally known as apprehension. The law relating to the apprehension of a child is discussed hereunder .On the whole, juveniles are more frequently apprehended by police in relation to offences against property than offences against the person. The proportion of juveniles who come into contact with the police for property crimes varies across country.

Determination of Age of Child

Whenever 'Plea of Juvenility' is raised; courts to conduct Inquiry regarding Age Determination. The JJB and CWC are competent authorities under the Act to determine the juvenility.

Sec.94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

Sec. 94 (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to is the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.

Procedure in Relation to Children in Conflict with Law [Chapter IV of JJ Act]

Select Provisions:
§10. Apprehension of child alleged to be in conflict with law.

1. As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

2. The State Government shall make rules consistent with this Act,—
    i. to provide for persons through whom (including registered voluntary or nongovernmental organisations) any child alleged to be in conflict with law may be produced before the Board;
    ii. to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

§12. Bail to a person who is apparently a child alleged to be in conflict with law.

1. When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

    Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

2. When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

3. When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.
4. When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

§13. Information to parents, guardian or probation officer.

1. Where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform —

    i. the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and
    ii. the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.

2. Where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board.

Inquiry procedure

§14. Inquiry by Board regarding child in conflict with law

1. Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

2. The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.
3. A preliminary assessment in case of heinous offences under section 15 shall be

disposed of by the Board within a period of three months from the date of first production of the child before the Board.

4. If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

   Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

5. The Board shall take the following steps to ensure fair and speedy inquiry, namely:—
   a. at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;
   b. in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;
   c. every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;
   d. cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;
   e. inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973;
   f. inquiry of heinous offences,—
      ii. for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);
      iii. for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

§15. Preliminary assessment into heinous offences by Board.

1. In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence,

ability to understand the consequences of the offence and the circumustances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.or the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

2. Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973:

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

§17. Orders regarding a child not found to be in conflict with law.

1. Where a Board is satisfied on inquiry that the child brought before it has not committed any offence, then notwithstanding anything contrary contained in any other law for the time being in force, the Board shall pass order to that effect.
2. In case it appears to the Board that the child referred to in sub-section (1) is in need of care and protection, it may refer the child to the Committee with appropriate directions.

§18. Orders regarding child found to be in conflict with law.

1. Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—
   a. allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
   b. direct the child to participate in group counselling and similar activities;
   c. order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

d. order the child or parents or the guardian of the child to pay fine:

    Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

e. direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

f. direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

g. direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

    Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

2. If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—
    b. attend school; or
    c. attend a vocational training centre; or
    d. attend a therapeutic centre; or
    e. prohibit the child from visiting, frequenting or appearing at a specified place; or
    f. undergo a de-addiction programme.
3. Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

§21. Order that may not be passed against a child in conflict with law.

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

§24. Removal of disqualification on the findings of an offence.

1. Notwithstanding anything contained in any other law for the time being in force, a child who has committed an offence and has been dealt with under the provisions of

this Act shall not suffer disqualification, if any, attached to a conviction of an offence under such law:

Provided that in case of a child who has completed or is above the age of sixteen years and is found to be in conflict with law by the Children’s Court under clause (i) of sub-section (1) of section 19, the provisions of sub-section (1) shall not apply.

2. (2) The Board shall make an order directing the Police, or by the Children’s court to its own registry that the relevant records of such conviction shall be destroyed after the expiry of the period of appeal or, as the case may be, a reasonable period as may be prescribed:

Provided that in case of a heinous offence where the child is found to be in conflict with law under clause (i) of sub-section (1) of section 19, the relevant records of conviction of such child shall be retained by the Children’s Court.

§101. Appeals.

1. Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children’s Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

   Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.
2. An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.
3. No appeal shall lie from,—
   a. any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or
   b. any order made by a Committee in respect of finding that a person is not a child in need of care and protection.
4. No second appeal shall lie from any order of the Court of Session, passed in appeal

under this section.

5. Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

§109. Monitoring of implementation of Act.

1. The National Commission for Protection of Child Rights constituted under section 3, or as the case may be, the State Commission for Protection of Child Rights constituted under section 17 (herein referred to as the National Commission or the State Commission, as the case may be), of the Commissions for Protection of Child rights Act, 2005, shall, in addition to the functions assigned to them under the said Act, also monitor the implementation of the provisions of this Act, in such manner, as may be prescribed.
2. The National Commission or, as the case may be, the State Commission, shall, while inquiring into any matter relating to any offence under this Act, have the same powers as are vested in the National Commission or the State Commission under the Commissions for Protection of Child Rights Act, 2005.
3. The National Commission or, as the case may be, the State Commission, shall also include its activities under this section, in the annual report referred to in section 16 of the Commissions for Protection of Child Rights Act, 2005.

4.4. Institutionalization and Alternatives

This part of deals with the one of the important issue is that institutionalization and the scope of the custody of the child under our legal system. This unit also discuss on alternatives available to the institutionalization.

Whenever a child brought before the JJB or CWC for inquiry, during such inquiry, if child need to keep in custody the said child should keep in an institution established or registered under the Act. Some of the relevant provisions of the Act discussed hereunder.

Age of criminal responsibility in India

The criminal responsibility is based on the age, mental capacity and nature of the crime committed by the child. In the case of heinous crime committed by a child, the JJ Act, 2015 provides the criminal responsibility from the age of 16 to 18 years and it is subject to the decision of out of the preliminary inquiry under the section, 15.

The Preliminary Assessment under section.15 of the Act, 2015 and its consequences

This section prescribes the procedure for assessing the capacity to commit the crime. Preliminary assessment into heinous offences by Board as follows:

In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of 16 years, the Board shall conduct a preliminary assessment with regard to child's mental and physical capacity to commit such offence. At the same time it also assess the ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and JJB has power to pass an order in accordance with the provisions of subsection (3) of section 18. For the assessment the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

After Transfer of the inquiry to the Children's Court

The section 18 (3) of the JJ Act, 2015 deals with power of the JJB, it may order transfer of the trail of the said child as an adult, it may transfer the case to the Children's Court having jurisdiction to try such offence.

Law also clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

Power of the Children's Court

Where the Board after preliminary assessment and pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences

After the inquiry or trial the Children's Court may pass the order. If court thinks 'there is need for trail of the child as an adult as per the provisions of the Criminal Procedure Code, 1973 and pass suitable order. Subject to the limitations imposed by the law i.e. No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.

Obligatory Enrollment of Child Care Institutions

All child care institution, whether it is running by State Government or by Non-Governmental Organisation, it is required to be registered under the Act. Failure to register the institution under the law stringent punishment is given.

The State Government is required to issue a temporary enrollment endorsement to the organization within one month from the date of commencement. There is additionally punishment gave of one year detainment or fine of at the very least Rs. 1 lakh for non enlistment of a Child Care Institution (Section 42).

A few restoration and social reintegration measures have been given. Under the institutional care, children are given different administrations including instruction, wellbeing, and sustenance, treatment of infections, professional preparing, ability improvement, and vocational training.

The JJ Act, 2015 incorporated a new chapter for "offence". Selling and purchasing of children will be a culpable offense. Beating, abusing, inside a Child Care Institution will be a culpable offense.

Summary:

The Juvenile Justice System (JJS) has primary developed on the doctrine of 'parence patriae'in United States of America and United Kingdom. The JJ Act, 2015, provided new definitions like 'heinous crime, 'safe home', 'preliminary inquiry'. The word "juvenile"" has replaced with CCL in recent time.
The procedure adopted by the JJB and CWC is unique. There are multilevel institutions created under the JJ Act, 2015 for realizing the aims and objectives of the Act.

Learning outcome:

After reading this unit you have acquainted with

- Evolution of Juvenile Justice
- Juvenile justice jurisprudence
- USA and UK modals of Juvenile Justice Systems (JJSs)
- Various definitions under the JJ Act
- Procedural aspects of juvenile justice

Model Questions:

1. Write a short note on the age of responsibility?
2. Critically analyze the Juvenile Justice (Care & Protection of Children) Act, 2015 .
3. Discuss the main purposes of the Act,2015
4. What is the age of criminal responsibility in India according to the Juvenile Justice (Care & Protection of Children) Act, 2015? Discuss.
5. Describe the functions of the authorities under the Juvenile Justice Act, 2015
6. Analyse Preliminary Inquiry? And its consequences?

Glossary

Doli incapax = incapable of committing an offence

Surrendered child = a child, who is relinquished by the parent of guardian to the Committee, on account of physical, emotional and social factors beyond their control, and declared as such by the Committee.

References

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UNIT V

RESTORATIVE JUSTICE

Objectives:

After reading this unit reader will be in a position to:

- Understand the meaning and definitions of the restorative justice
- Know the historical background and various theories
- Think on values of restorative justice
- Familiarize with the philosophy of Restorative Justice

5.0 Introduction

In a recent time, the Restorative Justice has become an important new way of thinking about crime. Restorative justice aims to address the consequences of crime by encouraging victims and offenders to communicate and discuss the harm caused by the crime.

This unit presents evidence based arguments on social reform and critical thinking on contemporary criminal justice and principles of restorative justice.

5.1 Meaning and Scope

Restorative justice has become an important new way of thinking about crime. The new movement is worldwide show of new programs, initiatives, and special projects aimed to restore victims.

The swiftness with which restorative justice and related strategies have captured the imagination of justice system reformers is striking. At present, **concepts associated** with restorative justice principles as follows:

1. Community participation,
2. Victim-offender interaction,
3. Reparative sanctions, and
4. A firm part of mainstream justice system priorities.

Restorative justice targets to address the consequences of crime. At the same time it encourages victims and offender's dialogue. In the majority of cases, restorative justice is facilitated by direct and indirect negotiation between victims of crime and perpetrator of the crime, but it also includes support networks and sometimes involves professionals such as police, lawyers, prosecutors, social workers, judges and community at large.

In theory, the victim is a central participant in restorative justice and the restoration of the harm is a first concern. **In practice**, questions arise as to whether the victim is actively involved in the process, what restoration may need, and it is required to understand whether there is a risk of secondary victimisation and whether the victim is truly at the heart of the restorative response, or whether the offender remains as the focal point of attention.

Definitions:

Restorative justice is an innovative movement in the fields of victimology and criminology. Recognizing that crime causes injury to people and societies, it insists that justice repair those injuries and that the parties be legitimate to participate in that process. Restorative justice programs, therefore, enable the victim, the offender and affected members of the community to be directly involved in responding to the crime.

Victim and offender become central to the criminal justice process, with governmental and legal professionals serving as facilitators of a system that aims at offender accountability, reparation to the victim and full participation by the victim, offender and community.

"Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by a criminal. It is best accomplished through cooperative processes that include all stakeholders."

A restorative process is any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.(Handbook on Restorative Justice Programmes, United Nations publication, United Nations New York, 2006,.p.6)

Tony Marshall defined as "Restorative justice is a process whereby all the parties with a stake in a particular offense come together to resolve collectively how to deal with the aftermath of the offense and its implications for the future".

Defining restorative justice can be elusive because it is a philosophical framework. Some thinkers explained the conceptual understanding of definition as "a way of thinking about crime and conflict, rather than a distinct model or system of law". It goes beyond how we think about crime and conflict, to how we think about ourselves communally, how we react to crime and how we restore the balance after a crime has been committed.

The Restorative Justice Procedure

The restorative process of involving all parties, often in direct and meaningful meetings, it is a powerful way of addressing not only the material and physical injuries caused by crime, but the social, psychological and relational injuries as well.

In many countries, the idea of community participation enjoys a great consensus. In many developing and under developing countries, restorative justice practices are applied through traditional and customary law. By adopting, restorative approaches may serve to strengthen the capacity of the prevailing justice system. A fundamental challenge for participatory justice is, however, to find ways to effectively mobilize the involvement of local communities, while at the same time safeguarding the rights and interests of victims of crime and offenders.

Significance

The principles of restorative justice are essential reading for academics and students involved in the study of justice, victimology, social worker, and legal studies. The knowledge of restorative justice is useful to policymakers and professionals such as social workers, lawyers and mediators, conciliators.

The Differences between Restorative Justice and Existing Justice System

S.No.	Existing Justice System	Restorative Justice
1	'crime' is seen as a violation of criminal law, and a harm to the State	'crime' is seen as a harm to the victim and communities
2	offender, victim and Community remain inactive	offender, victim and community are actively participate in the resolution.
3	controlled and administered by the state and professionals	usually driven by local communities
4	Regret and forgiveness are rarely considered	Regret and forgiveness are encouraged
5	Offender is liable, stigmatized and punished	Also focused on the reintegration of the offender into the community and preservation of his dignity
6	win-loss outcome	win-win outcome

Use of Multiple Methods in Restitution of Justice Process

The role and the position of the victim in restorative justice practices should be taken into consideration by focusing on legislative, organisational and institutional frameworks of victim and offender mediation and conferencing programmes at a local level, as well as the victims' personal needs and experiences.
If we take restorative justice seriously, it involves a different way of thinking about traditional ideas of crime prevention, deterrence, rehabilitation.

5.2 Historical Account of Restorative Justice

The restorative justice is a most important development in human thought grounded in traditions of justice from ancient Arab, Greek and Roman civilizations that accepted a restorative approach to crime. Indian Vedic civilization (6000-2000 B.C.) also has some aspects of approach restorative justice.

The ancient Palestinian restorative justice institution of the Sulha, still practiced in Galiee today.

5.3 Principles and Values of Restorative Justice

The approach of restorative justice also means transformed foundations of criminal justice knowledge. The growing prominence of restorative justice interventions necessitates changes in present criminal justice. However, a predominant theory of criminal justice in these terms needs to be complemented by more involving great attention to detailed theoretical explanations of how and why conventional and alternative criminal justice interventions work the way they do.

The age old question relating to the problem of crime and criminal is **what is a fair and just response to a wrongful and criminal act?** According to traditional wisdom, the just and fair response to a criminal act is best determined by criminal justice and its professionals. The main deficiencies of this approach are discussed as follows.

1. Criminal justice professionals and bureaucrats inevitably operate with bureaucratic and procedural priorities that usually fail to reflect the justice needs of the primary stakeholders involved. As a result, outcomes and resolutions imposed by professionals tend to prove unhelpful, sometimes even counterproductive, for the people who are already in considerable serious trouble and distress, and who have the most to lose or gain by the criminal justice reaction.

2. Professionals, no matter how competent they may be in their respective fields, typically do not possess the detailed knowledge and appreciation required for addressing successfully the specific justice i.e. welfare and needs of the principal parties i.e. victim and offender in the criminal justice. Only the parties themselves and their family members and friends have the requisite detailed knowledge of their personal needs and circumstances to come up with truly constructive and adequate responses and solutions to the criminal incident, its causes, and its many consequences.

3. Traditional processes of the criminal justice system disempower both parties in the conflict and create a sense of isolation and unnecessary alienation between them, thus exacerbating feelings of helplessness, anger, hatred and fear, which in turn worsen the plight of everyone involved on both sides.

4. The parties feel no rights over responses and outcomes that are decided, and are forced on them, by others.

5. Traditional criminal justice systems have responded to victim justice issues with too little or too late.

6. Customary criminal justice processes fail to acknowledge that seriously wrongful and criminal acts are primarily a violation of specific people, namely the victims of crime, not the state,

Last decade, has seen the rapid proliferation of restorative justice interventions around the world.

The concept of restorative justice may be 'the new wisdom with which these interventions come to us holds the opposite of the old, that the critical decisions of a criminal justice response relating to justice, prevention, and welfare are best made by the principal parties i.e. victim and offender themselves, most preferably in dialogue with one another in the presence of their respective communities. The restorative justice process is not applicable in general.

- Where there is no identifiable victim,
- The responsibility for offence is in dispute
- Parties to criminal dispute i.e. offender and victim are willing to meet in an attempt to settle the matter through a process of discussion and negotiation in ways that are meaningful and right for them, on condition that their agreements fall within the law and are not obviously harmful to the public interest.

It is only when one or more of these conditions are not met, or where there is no mutually satisfactory agreement between the parties, should a case be dealt with through traditional processes of the criminal justice system.

Emotional and Moral Psychological Healing

Criminologists Retzinger and Scheff have observed that there are two processes occurring simultaneously in a restorative justice consultation, viz.

1. Process of Material reparation and
2. Symbolic reparation

1. Process of Material Reparation

The process of material restitution results in a final settlement between offender and victim and typically consists of specific agreements about compensating the victim, community service, etc.

2. Symbolic reparation

The process of symbolic reparation is less visible. It is composed of gestures and expressions of courtesy, respect, regret, and pardon.

According to Retzinger and Scheff, the core sequence of restorative justice process, consisting of the **offender's apology** and the **victim's forgiveness**, is the crucial to reconciliation, victim satisfaction, and decreasing reoffending.

Restorative Values

The ideas of Restorative Justice as a model of bringing together all the parties in dialogue about the consequences of injustice and what is to be done to their rights is important, the restorative justice as an alternative to the punitive justice, so it has different values.

The core value is that the restorative process should win restorative values where the outcome of the restorative process involves no breach of fundamental rights and human rights.

According to John Braithwaite (Restorative Justice & responsive Regulationn (2002) Oxford,USA). Restorative values include the following values to be found in international human rights.

1. Restoration of human dignity
2. Restoration of injury
3. Restoration of property
4. Restoration of human relationship
5. Restoration of freedom
6. Restoration of compassion or caring
7. Restoration of peace
8. Restoration of empowerment or self- determination
9. Restoration of a sense of duty as a citizen

Restorative Justice in India

In India, informal settlement procedures have their roots to settlement in villages through panchayat which made the parties come to a dispute, make their case informally and decide upon it based on their own customs and conventions.

But the restorative justice with certain exceptions here and there (for example, rehabilitation of juveniles), in the Indian criminal jurisprudence is more or less redundant. The reason is that the system of criminal justice in India is not in favor of victim.

There is no separate law in this country enabling the victim to have their say in the criminal justice process. The compensation, restitution and restoration are still not very common in practice.

The main reason is possibly that the procedural law, it does not provide much scope for these practices. As regards compensation, few inadequate and restricting provisions are available in the Sections 357, 357A, 357B and 358 of the Criminal Procedure Code, 1973.

Sec. 357 of Criminal Procedure Code: Order to pay compensation

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of

1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;
(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

The procedure to get the prescribed compensation is too difficult to practically help the victim. The amount of fine imposed on the offender, the main source of compensation, has remained unrevised since 1860, the year when the Indian Penal Code was enacted.(G.S. Bajpai, Victim in the Criminal Justice Process: Perspective on Police and Judiciary (Egully.com, 1997).

Compounding of Criminal Cases

The compounding of offences is now popularly being voiced as one of the mechanisms to achieve restorative justice.(Mehak Bajpai, Advancing of Restorative Justice in Criminal Law in India and Germany: A Comparative Study, Journal of Victimology and Victim Justice 1(1) 102–112 2018 NLU, Delhi, SAGE Publications sagepub.in/home.nav DOI: 10.1177/2516606918765495 http://journals.sagepub.com/home/vvj)

Offenders can reach to settlement of the matter in accordance with the Section 320 of the Criminal Procedure Code, 1973. Compounding essentially means, a process whereby, the offender and the victim come to an agreement to put an end to the litigation.

Section 320 of Cr.P.C allows the parties to take recourse to 'compounding of cases' in certain offences without the consent of court and in some cases with the approval of the court.

Plea Bargaining

Chapter XXI A of the Criminal Procedure Code 1973 has established a procedure for plea bargaining in India under Sec.265A – 265L of Cr.P.C.

There is, however, a long list of reasons as to why plea bargaining actually exists, or what motivated the legislature to include plea bargaining in criminal cases. It is said that the main inspiration for this enactment is the successful system of plea bargaining used in the USA.

Summary

Restorative justice theories are indicative that it provides long term resolutions to criminal behaviour.
There is need to understand the success or failure of a criminal justice intervention.
Restorative justice works towards supporting emotional and moral psychological healing from the trauma of the criminal incident through interaction between the parties and symbolic reparation.

Learning Outcome:
After reading this sub-unit the reader is in a position to;

- think on values of restorative justice analytically
- Learn how restorative justice plays an important role in the criminal justice system.
- Learn the principles of problem solving under restorative justice

Glossary:

Justice = a concept on ethics and law that means that people behave in way that is fair, equal and balanced for everyone

Restorative Justice = An approach to justice in which the response to a crime is to organize a meeting between the offender and victim, sometimes with representatives of the wider community

Perpetrator = a person who carries out an illegal or immoral act

Model Questions:

1. How does Restorative Justice play an important role in the Criminal Justice? Explain.
2. Discuss the main ideas of Restorative Justice.
3. Explain the values of restorative justice.

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