

Criminology

Teaching Material

Prepared by:

Mrs. Glory Nirmala.k

**Prepared under the Sponsorship of the Justice and Legal
System Research Institute**

2009

TABLE OF CONTENTS

UNIT I- SCOPE AND DEVELOPMENT OF CRIMINOLOGY.....	1
Introduction.....	1
Section.1. Understanding Criminology.....	3
1.1 Defining Criminology.....	3
1.2 Nature and Scope of Criminology.....	3
1.3 Significance of Criminology.....	4
1.4 Definitions Important Terms.....	8
1.5 Inter-Relation between Criminology Penology and Criminal Law.....	9
1.6 Criminology and Criminal Justice System.....	10
1.7 Historical Development of Criminology.....	11
Section 2- Early Explanations of Criminology-Schools of Thought.....	15
2.1 Pre-Classical School of Criminology.....	16
2.2 The Classical School.....	17
2.3 Neo-Classical School.....	25
2.4 Positive School.....	27
2.5 Clinical School of Criminology.....	37
2.6 Sociological School of Criminology.....	38
2.7 The Modern Criminology.....	38
Unit Summary.....	39
References.....	42
UNIT II- THEORIES OF CAUSATION OF CRIME.....	43
Introduction.....	43
Section 1-Biological Theories of Crime.....	44
1.1 Genetics and Criminality.....	45
1.2 Constitutional (Body Type) Determinants.....	47
1.3. Constitutional Interactionist View.....	49
Section .2.Psychological Theories of Crime.....	51
2.1. Criminal Thinking Patterns.....	52

2.2. Personality Defects.....	53
2.3. Psychoanalytic Explanations.....	53
Section 3- Sociological Theories of Crime.....	57
3.1. Structural Explanations.....	57
3.2. Sub-Cultural Explanations.....	60
3.3. Multiple Factor Approach.....	64
3.4. Crimes in Urban and Rural Areas.....	72
3.5 Neighborhood influences.....	73
Section.4. Social-Psychological Theories of Crime	74
4.1. Control Theories.....	75
4.2. Learning Theories.....	78
Unit Summary.....	82
References.....	84
UNITIII- THE TYPOLOGIES AND MEASUREMENT OF CRIME.....	85
Introduction.....	85
Section 1- The Typologies of Crime-A General Overview.....	85
Section.2. Victimless-Crimes or Public Order Crimes.....	90
2.1. Definition and Nature.....	90
2.2. Justification and Limitation for Criminalizing Victimless Crimes.....	93
2.3. Decriminalization of Public Order Crimes.....	94
Section 3- Juvenile Delinquency.....	101
3.1. Definition.....	101
3.2. Theoretical Perspectives on Juvenile Delinquency.....	101
3.3. Juvenile Delinquency as a Male Phenomenon.....	104
3.4. Risk factors.....	105
3.5. Delinquency Prevention.....	107
Section 4 White-Collar Crime.....	107
4.1. Defining White Collar Crime.....	108
4.2. Relationship to Other Types of Crime.....	109
4.3. Principles of Liability and Defences.....	110

Section.5. Organized/Organizational Crime.....	111
5.1 Definition and Scope.....	111
5.2 Organized and International Crime.....	113
5.3 Corporate Crime.....	115
5.4 Political Crime.....	122
Section 6- Other Important Categories of Crime.....	123
6.1. Crimes against International Law.....	123
6.2. Newest Crimes.....	126
Section 7-Measurement of crime.....	129
Unit Summary.....	133
References.....	135

UNIT IV- VICTIMS, VICTIMIZATION AND VICTIMOLOGY

AND RESTORATIVE JUSTICE.....	137
Introduction.....	137
Section1. Crime Victims.....	138
1.1 Types of Victims.....	138
1.2 Psychological Consequences affecting Crime victims.....	139
1.3 Reluctance of Victims to Report Crimes.....	139
Section.2. Victimization.....	141
2.1. Definition and Nature.....	141
2.2. Theories of Victim Blaming.....	142
2.3. Victimization and Its Effects.....	143
Section.3. Victimology.....	149
3.1. Definition and Scope.....	149
3.2. Victimology and Its Variants.....	150
Section 4- Restorative Justice.....	154
4.1. Definition of Restorative Justice.....	154
4.2. Historical Foundations of Restorative Justice.....	155
4.3. Three principles form the foundation for restorative justice.....	156

4.4. Applications of Restorative Justice.....	156
4.5. Programs to Attain Restorative Justice.....	158
4.6. Key Values Restorative Programs.....	163
Unit Summary.....	163
References.....	165

**UNITV- CORRECTIONAL ADMINISTRATION AND
TREATMENT OF CRIMINALS.....166**

Introduction.....	166
Section 1-Correctional Administration.....	168
1.1 Institutional Treatment of offenders.....	171
1.2 Treatment of Young Offenders.....	188
Section 2- Punishment.....	196
2.1. Meaning and Definition.....	196
2.2. Essential Elements of ‘Punishment’.....	197
2.3. Philosophies of Punishment.....	197
2.4. Objectives of Different Types of Punishment.....	203
2.6 Rehabilitate or punish: How Should Society Treat Criminals?.....	21
Section 3- Alternatives to Imprisonment.....	219
3.1. Parole System.....	220
3.2. Probation.....	222
3.3. Community-Based Rehabilitation.....	226
Section 5- Essentials of an Ideal Penal System.....	240
Unit Summary.....	244
Case Comments.....	245
References.....	247
ANNEXURE.....	249

UNIT-I

SCOPE AND DEVELOPMENT OF CRIMINOLOGY

Introduction:

The word 'Criminology' originated in 1890. The general meaning of the term is "the scientific study of crime as a social phenomenon, of criminals and of penal institutions". Prof. Kenny (analyzed /defined/ described) that 'Criminology is a branch of criminal science which deals with crime causation, analysis and prevention of crime'. Criminology as a branch of knowledge is concerned with those particular conducts of human behaviour which are prohibited by society. It is, therefore, a socio-legal study which seeks to discover the causes of criminality and suggests the remedies to reduce crimes. Therefore, it flows that criminology and criminal policy are interdependent and mutually support one another. Thus criminology seeks to study the phenomenon of criminality in its entirety.

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 co-related factors influencing the personality of the offender. This has eventually led to development of modern criminology during the preceding two centuries. The purpose of study of this branch of knowledge is to analyze different aspects of crime and devise effective measures for treatment of criminals to bring about their re-socialization and rehabilitation in the community. Thus criminology as a branch of knowledge has a practical utility in so far as it aims at bringing about the welfare of the community as a whole.

The principles of criminology serve as effective guidelines for formulation of penal policy. The modern clinical methods and the reformatory measures such as probation, parole, indeterminate sentence, open prisons, and other correctional institutions are essentially an outcome of intensive criminological researches during the twentieth century. These measures have sufficiently demonstrated the futility of dumping offenders inside the prisons and infliction of barbaric punishments. *Prof. Gillin* has rightly observed that *it is not the humanity within the criminal but the criminality within the human being which needs to be curbed through effective administration of criminal*

justice. More recently, criminologists and penologists seem to have agreed that “individualization of the offender should be the ultimate object of punishment, while treatment methods, the means to attain this end”.

The study of crime and criminal must proceed on a scientific basis by carefully analyzing various aspects associated therewith and must necessarily suggest measures proposed to suppress criminality. It must be added that with new crimes emerging in the modern complexities of life, we seem increasingly concerned about the problem of crime. Today destructive acts of vandalism, highway, train and bank robberies, looting, bomb blasts, rape, illegitimate terrorist activities, white-collar crimes, cyber crimes, criminalization of politics, hijacking, etc., are constantly increasing which have posed a positive danger to human life, liberty and property. Modern criminologists, therefore, seem to be seriously concerned with the problem of crime to protect the society from such anti-social activities of criminals. It is for this reason that the two sister branches of criminal science, namely, criminology and penology work hand in hand to appreciate the problem of criminality in its proper perspective.

Objectives:

The purpose of this unit is to make the students understand the concepts of crime and schools of thought about explanation of criminal behaviour. The unit defines criminology and other important terms necessary to appreciate the subject. The discussions under this section also include a brief outline of the historical development of the branch of criminology, its purpose and scope.

By the end of this unit, students will be able to:

- explain the meaning of criminology and define its nature and scope.
- distinguish the fields of criminology, penology, criminal law and their inter-relationship;
- have a basic understanding of the historical development and the branches of criminology;

- describe the major and school of thought about the criminal behaviour.

Section. 1. Understanding Criminology

1.1. Defining Criminology

Criminology maybe defined as “*the scientific study of the causation, correction, and prevention of crime*”. **Criminology** (from Latin *crīmen*, "accusation"; and Greek -λογία, *-logia*) is the social science approach to the study of crime as an individual and social phenomenon. Although contemporary definitions vary in the exact words used, there is considerable consensus that criminology involves the application of the “scientific method” to the study of variation in criminal law, the causes of crime, and reactions to crime (Akers 2000).

Criminological research areas include the incidence and forms of crime as well as its causes and consequences. They also include social and governmental regulations and reactions to crime. Criminology is an interdisciplinary field in the behavioral sciences, drawing especially on the research of sociologists and psychologists, as well as on writings in law. An important way to analyze data is to look at quantitative methods in criminology. In 1885, Italian law professor Raffaele Garofalo coined the term "criminology" (in Italian, *criminologia*). The French anthropologist Paul Topinard used it for the first time in French (*criminologie*) around the same time.

1.2. Nature and Scope of Criminology

Criminology is an inter-disciplinary field of study, involving scholars and practitioners representing a wide range of behavioral and social sciences as well as numerous natural sciences. Sociologists played a major role in defining and developing the field of study and criminology emerged as an academic discipline housed in sociology programs. However, with the establishment of schools of criminology and the proliferation of academic departments and programs concentrating specifically on crime and justice in the last half of the 20 century, the criminology emerged as a distinct professional field with a broad, interdisciplinary focus and a shared commitment to generating knowledge through systematic research.

One ultimate goal of criminology has been the development of theories expressed with sufficient precision that they can be tested, using data collected in a manner that allows verification and replication.

As a subdivision of the larger field of sociology, criminology draws on psychology, economics, anthropology, psychiatry, biology, statistics, and other disciplines to explain the causes and prevention of criminal behavior. Subdivisions of criminology include *penology*, the study of prisons and prison systems; *bio-criminology*, the study of the biological basis of criminal behavior; *feminist criminology*, the study of women and crime; and *criminalistics*, the study of crime detection, which is related to the field of Forensic Science. Much research related to criminology has focused on the biological basis of criminal behavior. In fact, bio-criminology, attempts to explore the biological basis of criminal behavior. Research in this area has focused on chromosomal abnormalities, hormonal and brain chemical imbalances, diet, neurological conditions, drugs, and alcohol as variables that contribute to criminal behavior.

Criminology has historically played a reforming role in relation to Criminal Law and the criminal justice system. As an applied discipline, it has produced findings that have influenced legislators, judges, prosecutors, lawyers, Probation officers, and prison officials, prompting them to better understand crime and criminals and to develop better and more human sentences and treatments for criminal behavior.

Criminologists also study a host of other issues related to crime and the law. These include studies of the Victims of Crime, focusing upon their relations to the criminal, and their role as potential causal agents in crime; juvenile delinquency and its correction; and the media and their relation to crime, including the influence of Pornography.

1.3. Significance of Criminology

The true effect of criminology upon practices in the criminal justice system is still subject to question. Although a number of commentators have noted that studies in criminology

have led to significant changes among criminal laws in the various states, other critics have suggested that studies in criminology have not directly led to a reduction of crime.

In *Mc Cleskey v. Kemp*, 481 U.S. 279, 107 S. Ct. 1756, 95 L. Ed. 2d 262 (1987), an individual who had been sentenced to death for a murder in Georgia demonstrated to the U.S. Supreme Court that a criminologist's study showed that the race of individuals in that state impacted whether the defendant was sentenced to life or to death. The study demonstrated that a black defendant who had killed a white victim was four times more likely to be sentenced to death than was a defendant who had killed a black victim. The defendant claimed that the study demonstrated that the state of Georgia had violated his rights under the EQUAL PROTECTION CLAUSE of the Fourteenth Amendment, as well as under the Eighth Amendment's protection against Cruel and Unusual Punishment.

The high court disagreed. Although the majority did question the validity of the findings, of study's it held that the study did not establish that officials in Georgia had acted with discriminatory purpose, and that it did not establish that racial bias had affected the officials' decisions with respect to the death sentence. Accordingly, the death sentence violated neither the Fourteenth Amendment nor the Eighth Amendment.

Criminology has had more of an effect when states and the federal government consider new criminal laws and sentencing provisions. Criminologists' theories are also often debated in the context of the death penalty and crime control acts among legislators and policymakers. In this light, criminology is perhaps not at the forefront of the development of the criminal justice system, but it most certainly works in the background in the determination of criminal justice policies.

- **Sociology and Criminology** During the twentieth century, the sociological approach to criminology became the most influential approach. Sociology is the study of social behavior, systems, and structures. In relation to criminology, it may be divided into social-structural and social-process approaches.
- **Social-Structural Criminology** Social-structural approaches to criminology examine the way in which social situations and structures influence or relate to criminal behavior. An

early example of this approach, the ecological school of criminology, was developed in the 1920s and 1930s at the University of Chicago. It seeks to explain crime's relationship to social and environmental change. For example, it attempts to describe why certain areas of a city will have a tendency to attract crime and also have less-vigorous police enforcement. Researchers have found that urban areas in transition from residential to business uses are most often targeted by criminals. Such communities often have disorganized social networks that foster a weaker sense of social standards.

Another social-structural approach is the *conflict school of criminology*. It traces its roots to Marxist theories that saw crime as ultimately a product of conflict between different classes under the system of capitalism. Criminology conflict theory suggests that the laws of society emerge out of conflict rather than out of consensus. It holds that laws are made by the group that is in power, to control those who are not in power. Conflict theorists propose, as do other theorists, that those who commit crimes are not fundamentally different from the rest of the population. They call the idea that society may be clearly divided into criminals and non-criminals a dualistic fallacy, or a misguided notion. These theorists maintain, instead, that the determination of whether someone is a criminal or not often depends on the way society reacts to those who deviate from accepted norms. Many conflict theorists and others argue that minorities and poor people are more quickly labeled as criminals than are members of the majority and wealthy individuals.

Critical criminology, also called *radical criminology*, shares with conflict criminology a debt to Marxism. It came into prominence in the early 1970s and attempted to explain contemporary social upheavals. Critical criminology relies on economic explanations of behavior and argues that economic and social inequalities cause criminal behavior. It focuses less on the study of individual criminals, and advances the belief that existing crime cannot be eliminated within the capitalist system. It also asserts, like the conflict school, that law has an inherent bias in favor of the upper or ruling class, and that the state and its legal system exist to advance the interests of the ruling class. Critical criminologists argue that corporate, political, and environmental crime are underreported and inadequately addressed in the current criminal justice system.

Feminist criminology emphasizes the subordinate position of women in society. According to feminist criminologists, women remain in a position of inferiority that has not been fully rectified by changes in the law during the late twentieth century. Feminist criminology also explores the ways in which women's criminal behavior is related to their objectification as commodities in the sex industry.

Others using the social-structural approach have studied Gangs, juvenile delinquency, and the relationship between family structure and criminal behavior.

- **Social-Process Criminology** Social-process criminology theories attempt to explain how people become criminals. These theories developed through recognition of the fact that not all people who are exposed to the same social-structural conditions become criminals. They focus on criminal behavior as learned behavior.

Edwin H. Sutherland (1883–1950), a U.S. sociologist and criminologist who first presented his ideas in the 1920s and 1930s, advanced the theory of differential association to explain criminal behavior. He emphasized that criminal behavior is learned in interaction with others, usually in small groups, and that criminals learn to favor criminal behavior over noncriminal behavior through association with both forms of behavior in different degrees. As Sutherland wrote, "When persons become criminal, they do so because of contacts with criminal patterns and also because of isolation from anti-criminal patterns." Although his theory has been greatly influential, Sutherland himself admitted that it did not satisfactorily explain all criminal behavior. Later theorists have modified his approach in an attempt to correct its shortcomings.

- **Political Criminology** Political criminology is similar to the other camps in this area. It involves study into the forces that determine how, why, and with what consequences societies chose to address criminals and crime in general. Those who are involved with political criminology focus on the causes of crime, the nature of crime, the social and political meanings that attach to crime, and crime-control policies, including the study of the bases upon which crime and

punishment is committed and the choices made by the principals in criminal justice.

Although the theories of political criminology and conflict criminology overlap to some extent, political criminologists deny that the terms are interchangeable. The primary focus points in the new movement of political criminology similarly overlap with other theories, including the concerns and ramifications of street crime and the distribution of power in crime-control strategies. This movement has largely been a loose, academic effort.

1.4. Definitions of Important Terms

Deviance: Deviance is a violation of social norms defining appropriate or proper behaviour under particular set of circumstances. Deviance often includes criminal acts. Deviance is also referred to as deviant behaviour. It is behavior that is sharply different from a customary, traditional, or generally accepted standard.

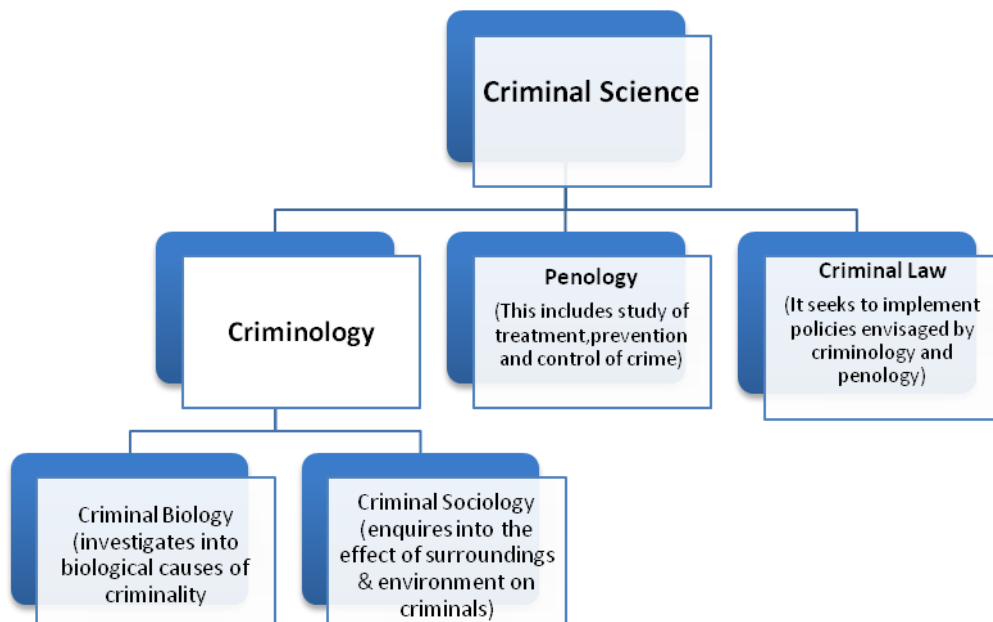
Delinquency: Delinquent means one who fails to do that which is required by law or by duty when such failure is minor in nature. A delinquent is often used to refer to a juvenile who commits a minor criminal act—juvenile delinquents.

Juvenile Delinquency: It refers to criminal acts performed by juveniles. Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. Juvenile delinquency may refer to either violent or non-violent crime committed by persons who are (usually) under the age of eighteen and are still considered to be a minor. There is much debate about whether or not such a child should be held criminally responsible for his or her own actions.

Crime: Crime is an ‘act’ or ‘omission’ which is prohibited by criminal law. Each State sets out a limited series of acts (crimes) which are prohibited and punishes the commission of these acts by fine, imprisonment or some other form of punishment. In exceptional cases, an omission to act can constitute a crime, such as failing to give assistance to a person in peril or failing to report a case of child abuse.

1.5. Inter-Relation Between Criminology, Penology and Criminal Law

It must be reiterated that criminology is one of the branches of criminal science which is concerned with social study of crimes and criminal behavior. It aims at discovering the causes of criminality and effective measures to combat crimes. It also deals with custody, treatment, prevention and control of crimes which, for the purposes of this study, is termed as penology. The criminal policies postulated by these twin sister branches (i.e., criminology and penology) are implemented through the agency of criminal law. Thus for the sake of convenient study the entire subject may be classified under the following heads:



It is generally said that criminal law is an index of civilization because it is sensitive to the changes in social structure and reflects mental fiber of a given society. This is why *Prof. Friedman* calls it a barometer of moral thinking. According to *Wechsler*, “crime is a formal social condemnation of forbidden conduct buttressed by sanction calculated to prevent it”. Criminologists are thus confronted with three major problems, namely:

1. What conducts should be forbidden and an inquiry into the effect of environment on these conducts ;
2. What condemnation is appropriate in such cases ; and

3. What kinds of sanctions are best to prevent these conducts?

It is thus evident that criminology, penology and criminal law are inter-related and one cannot really function without the other. The formulation of criminal policy essentially depends on crime causation and factors correlated therewith while its implementation is achieved through the instrumentality of criminal law. It has been rightly observed by *Prof. Sellin* that the object of criminology is to study the sequence of law-making, law-breaking and reaction to law-breaking from the point of view of the efficacy of law as the method of control. According to *Donald Taft*, criminology is the scientific analysis and observation of crime and criminals whereas penology is concerned with the punishment and treatment of offenders. In his view, the development of criminology has been much later than that of penology because in early periods the emphasis was on treatment of offenders rather than scientific investigation into the causation of crime.

1.6. Criminology and Criminal Justice System

The term ‘Criminal Justice System’ is relatively new. It became popular only in 1967, with the publication of the report of the President’s Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in the Free Society*. The discovery that various ways of dealing with law breaking form *a system* was itself the result of criminological research. Research into the functioning of the system and its component parts, as well as into the work of functionaries within the system, has provided many insights over the last few decades.

Scientists who study the criminal justice system are frequently referred to as ‘criminal justice specialists.’ This term suggests a separation between criminology and criminal justice. In fact, the two fields are closely interwoven. Scholars of both disciplines use the same scientific research methods. They have received the same rigorous education, and they pursue the same goals. Both fields rely on the cooperation of many other disciplines, including sociology, psychology, political science, law, economics, management, and education. Their origins, however, do differ. Criminology has its roots in European

scholarship, though it has undergone refinements, largely under the influence of American sociology. Criminal justice is a recent American innovation.

The two fields are also distinguished by a difference in focus. Criminology generally focuses on scientific studies of crime and criminality, whereas criminal justice focuses on scientific studies of decision-making processes, operations, and such justice-related concerns as the efficiency of police, courts, and corrective systems; the just treatment of offenders; the needs of victims; and the effects of changes in sentencing philosophy.

1.7. Historical Development of Criminology

The history of primitive societies and early medieval period reveals that human thinking in those days was predominated by religious mysticism and all human relations were regulated through myths, superstitious and religious tenets prevailing in a particular society. This in other words, meant that little attention was devoted to the motive, environment and psychology of the offender in the causation of crime. Moreover, in absence of any definite principle for the guidance of those who were concerned with the criminal justice administration, punishments were often haphazard, arbitrary and irrational. This situation prevailed until the end of seventeenth century. Thereafter, with the change in human thinking and evolution of modern society, certain social reformers took up the cause of criminals and devoted their attention to analysis of crime causation. This finally led to the emergence of criminology as a branch of knowledge through development of different schools of criminology.

The theoretical dimension of criminology has a long history and ideas about the causes of crime can be found in philosophical thought over two thousand years ago. For example, in Politics, Plato's student, Aristotle (384-322 B.C.), stated that "poverty engenders rebellion and crime (Quinney 1970)." Religious scholars focused on causes as diverse as natural human need, deadly sins, and the corrupting influence of Satan and other demons. The validity of such theories was founded in religious authority and they were not viewed as theories, subject to verification through any form of systematic observation, measurement and analysis.

Rational, naturalistic philosophies about people and society grew in prominence during the 18 century. Enlightenment philosophers such as Montesquieu, Voltaire, Cesare Beccaria and Jeremy Bentham criticized political and legal institutions and advocated social reforms based on the assumption that people were rational, deliberative beings. Such ideas constituted the first major school of organized, “naturalistic” thought about criminal law, criminality, and appropriate responses to crime--the Classical School. Such perspectives were called “naturalistic” because they constructed theories locating the causes of crime in natural characteristics of human beings as opposed to “supernatural” theories emphasizing demonic causes. Classical theorists assumed that most people were capable of rational calculation of gains and costs and that criminality was a choice. Laws were to be designed and enforced based on that principle. Contemporary “deterrence theory,” “rational choice theory,” and “social learning theory” in criminology incorporate these same assumptions.

The origins of a more systematic criminology, however, are located in the late-eighteenth-century writings of those who sought to reform criminal justice and penal systems that they perceived as cruel, inhuman, and arbitrary. These old systems applied the law unequally, were subject to great corruption, and often used torture and the death penalty indiscriminately.

The leading theorist of the classical school of criminology, the Italian CESARE BONESANO BECCARIA (1738–94), argued that the law must apply equally to all, and that punishments for specific crimes should be standardized by legislatures, thus avoiding judicial abuses of power. Both Beccaria and another classical theorist, the Englishman Jeremy Bentham (1748–1832), argued that people are rational beings who exercise free will in making choices. Beccaria and Bentham understood the dominant motive in making choices to be the seeking of pleasure and the avoidance of pain. Thus, they argued that a punishment should fit the crime in such a way that the pain involved in potential punishment would be greater than any pleasure derived from committing the crime. The writings of these theorists led to greater codification and standardization of European and U.S. laws.

Criminologists of the early nineteenth century argued that legal punishments that had been created under the guidance of the classical school did not sufficiently consider the widely varying circumstances of those who found themselves in the gears of the criminal justice system. Accordingly, they proposed that those who could not distinguish right from wrong, particularly children and mentally ill persons, should be exempted from the punishments that were normally meted out to mentally capable adults who had committed the same crimes. Along with the contributions of a later generation of criminologists, known as the positivists, such writers argued that the punishment should fit the criminal, not the crime.

Later in the nineteenth century, the positivist school of criminology brought a scientific approach to criminology, including findings from biology and medicine. The leading figure of this school was the Italian *Cesare Lombroso* (1836–1909). Influenced by Charles R. Darwin's theory of evolution, Lombroso measured the physical features of prison inmates and concluded that criminal behavior correlated with specific bodily characteristics, particularly cranial, skeletal, and neurological malformations. According to Lombroso, biology created a criminal class among the human population. Subsequent generations of criminologists have disagreed harshly with Lombroso's conclusions on this matter. However, Lombroso had a more lasting effect on criminology with other findings that emphasized the multiple causes of crime, including environmental causes that were not biologically determined. He was also a pioneer of the case-study approach to criminology.

Other late-nineteenth-century developments in criminology included the work of statisticians of the cartographic school, who analyzed data on population and crime. These included Lambert Adolphe Quetelet, (1796– 1874) of France and André Michel Guerry, of Belgium. Both of these researchers compiled detailed, statistical information relating to crime and also attempted to identify the circumstances that predisposed people to commit crimes.

The writings of French sociologist *Emile Durkheim* (1858–1917) also exerted a great influence on criminology. Durkheim advanced the hypothesis that criminal behavior is a

normal part of all societies. No society, he argued, can ever have complete uniformity of moral consciousness. All societies must permit some deviancy, including criminal deviancy, or they will stagnate. He saw the criminal as an acceptable human being and one of the prices that a society pays for freedom.

Durkheim also theorized about the ways in which modern, industrial societies differ from nonindustrial ones. Industrial societies are not as effective at producing what Durkheim called a collective conscience that effectively controls the behavior of individuals. Individuals in industrial societies are more likely to exhibit what Durkheim called *anomie*—a Greek word meaning "without norms." Consequently, modern societies have had to develop specialized laws and criminal justice systems that were not necessary in early societies to control behavior.

Early efforts to organize criminologists in the United States attracted law enforcement officials and others who were interested in the criminal justice system. In 1941, a group of individuals in California organized for the purpose of improving police training and the standardization of police-training curricula. In 1946, this movement developed into the establishment of the Society for the Advancement of Criminology, which changed its name to the American Society of Criminology in 1957. Initial efforts of this organization focused upon scientific crime detection, investigation, and identification; crime prevention, public safety, and security; law enforcement administration; administration of criminal justice; traffic administration; and probation.

The American Society of Criminology has since attracted thousands of members including academics, practitioners, and students of the criminal justice system. Studies of criminology include both the theoretical and the pragmatic, and some combined elements of both. Although some aspects of criminology as a science are still considered radical, others have developed as standards in the study of crime and criminal justice.

Review Questions:

1. Define 'criminology' and distinguish it from penology, sociology, and criminal justice system.
2. Explain the nature and scope of criminology.
3. What do you understand about the importance of criminology from the case of *Mc Cleskey v. Kemp*?
4. Trace the development of criminology as a branch of criminal science.

Section.2. Early Explanations of Criminology-Schools of Thought

It has been generally accepted that a systematic study of criminology was first taken up by the Italian scholar, Cesare Bonesana Marchese de Beccaria (1738-94) who is known as the founder of modern criminology. His greatest contribution to the science of criminology was that he, for the first time, proceeded with the study of criminals on a scientific basis and reached certain conclusions from which definite methods of handling crime and criminals could be worked out. Thus the 'theories of criminology' or 'the schools of criminology' are of a later origin.

Meaning of the 'School of Criminology'

Edwin Sutherland pointed out that a school of criminology connotes "*the system of thought which consists of an integrated theory of causation of crime and of policies of control implied in the theory of causation*". Therefore, a school of criminology implies the following three important points:

1. The adherents of each school try to explain the causation of crime and criminal behavior in their own way relying on the theory propounded by the exponent of that particular school.
2. Each school of criminology suggests punishment and preventive measures to suit its ideology.
3. And, each of the school represents the social attitude of people towards crime and criminal in a given time.

In an attempt to find a rational explanation of crime, a large number of theories have been propounded. Various factors such as evil spirit, sin, disease, heredity, economic maladjustment etc. have been put forward either singly or together to explain criminality. With the advance of behavioral sciences, monogenetic explanation of human conduct is no longer valid and the modern trend is to adopt an eclectic view about the genesis of crime. However, some criminologists still tend to lay greater emphasis on physical traits in order to justify exclusive resort to correctional methods for the treatment of offender.

2.1. Pre-Classical School of Criminology

The period of seventeenth and eighteenth century in Europe was dominated by the scholasticism of Saint Thomas Aquinas. The dominance of religion in State activities was the chief characteristic of that time. In political sphere, thinkers such as Hobbes and Locke were concentrating on social contract as the basis of social evolution. The concept of Divine right of king advocating supremacy of monarch was held in great esteem. As scientific knowledge was yet unknown the concept of crime was rather vague and obscure. There was a general belief that man by nature is simple and his actions are controlled by some super power. It was generally believed that a man commits crime due to the influence of some external spirit called 'demon' or 'devil'. Thus an offender commits a wrongful act not because of his own free will but due to the influence of some external super power. No attempt was, however, made to probe into the real causes of crime. This *demonological theory* of criminality propounded by the exponents of pre-classical school acknowledged the *omnipotence of spirit*, which they regarded as a great power.

The pre-classicals considered crime and criminals as an evidence of the fact that the individual was possessed of devil or demon the only cure for which was testimony of the effectiveness of the spirit. Worships, sacrifices and ordeals by water and fire were usually prescribed to specify the spirit and relieve the victim from its evil influence. An *ordeal* is an ancient manner of trial in criminal cases. When an offender pleaded "not guilty", he might choose whether he would put himself for trial upon God and the country, by 12 men or upon God only, and then it was called '*the judgment of God*', presuming that God would deliver the innocent. Examples of such ordeals are, throwing into fire, throwing

into water after tying a stone to his neck, administration of oath by calling up God's wrath, trial by battle, etc.

Trial by battle was common mode of deciding the fate of criminal. The oaths and ordeals played a very important role in the ancient judicial system in determining the guilt of the offender. The justification advanced for these rituals was the familiar belief that "when the human agency fails, recourse to divine means of proof becomes most inevitable". Though these practices appear to be most irrational and barbarous to the modern mind, they were universally accepted and were in existence in most Christian countries till thirteenth century. The Roman law completely ignored the system of ordeals and it was forbidden in Quran.

The right of society to punish the offender was, however, well recognized. The offender was regarded as an innately depraved person who could be cured only by torture and pain. The evolution of criminal law was yet at a rudimentary stage. Hobbes suggested that fear of punishment at the hands of monarch was a sufficient deterrent for the members of early society to keep them away from sinful acts which were synonymous to crimes. Thus the theosophists, notably St. Thomas Aquinas and the social contract writers such as Donte Alighieri, Machiavelli, Martin Luther and Jean Bodin provided immediate background for Beccaria's classical school at a later stage. The pre-classical thinking, however, withered away with the lapse of time and advancement of knowledge.

2.2. The Classical School

The **Classical School** in criminology is usually a reference to the eighteenth-century work during the Enlightenment by the utilitarian and social contract philosophers Jeremy Bentham and Cesare Beccaria. Their interests lay in the system of criminal justice and penology and, indirectly through the proposition that "man is a calculating animal", in the causes of criminal behaviour. The Classical school of thought was premised on the idea that people have free will in making decisions, and that punishment can be a deterrent for crime, so long as the punishment is proportional, fits the crime, and is carried out promptly.

Beccaria, the pioneer of modern criminology expounded his *naturalistic theory of criminality* by rejecting the omnipotence of evil spirit. He laid greater emphasis on mental phenomenon of the individual and attributed crime to 'free will' of the individual. Thus he was much influenced by the utilitarian philosophy of his time which placed reliance on hedonism, namely, the "pain and pleasure theory". As Donald Taft rightly put it, this doctrine implied the notion of causation in terms of free choice to commit crime by rational man seeking pleasure and avoiding pain.

Main Reforms Advocated by the Classical School

The system of law, its mechanisms of enforcement and the forms of punishment used in the eighteenth century were primitive and inconsistent. Judges were not professionally trained so many of their decisions were unsatisfactory being the product of incompetence, capriciousness, corruption or political manipulation. The use of torture to extract confessions and a wide range of cruel punishments such as whipping, mutilation and public executions were commonplace. A need for legal rationality and fairness was identified and found an audience among the emerging middle classes whose economic interests lay in providing better systems for supporting national and international trade.

John Locke

John Locke considered the mechanism that had allowed monarchies to become the primary form of government. He concluded that monarchs had asserted the right to rule and enforced it either through an exercise in raw power, or through a form of contract, e.g. the feudal system had depended on the grants of estates in land as a return for services provided to the sovereign. Locke proposed that all citizens are equal, and that there is an unwritten but voluntary contract between the state and its citizens, giving power to those in government and defining a framework of mutual rights and duties. In *Leviathan*, Thomas Hobbes wrote, "the right of all sovereigns is derived from the consent of every one of those who are to be governed." This is a shift from authoritarianism to an early model of European and North American democracy where police powers and the system of punishment are means to a more just end.

Cesare Beccaria (1738-1794)

In 1764, Beccaria published *Dei Delitti e Delle Pene* ("On Crimes and Punishments") arguing for the need to reform the criminal justice system by referring not to the harm caused to the victim, but to the harm caused to society. In this, he posited that the greatest deterrent was the certainty of detection: the more swift and certain the punishment, the more effective it would be. It would also allow a less serious punishment to be effective if shame and an acknowledgement of wrongdoing was a guaranteed response to society's judgment. Thus, the prevention of crime was achieved through a proportional system that was clear and simple to understand, and if the entire nation united in their own defence. His approach influenced the codification movement which set sentencing tariffs to ensure equality of treatment among offenders. Later, it was acknowledged that not all offenders are alike and greater sentencing discretion was allowed to judges. Thus, punishment works at two levels. Because it punishes individuals, it operates as a specific deterrence to those convicted not to reoffend. But the publicity surrounding the trial and the judgment of society represented by the decision of a jury of peers, offers a general example to the public of the consequences of committing a crime. If they are afraid of similarly swift justice, they will not offend.

In his book "On Crimes and Punishments" Beccaria presented a coherent, comprehensive design for an enlightened criminal justice system that was to serve the people rather than the monarchy. According to Beccaria, the crime problem could be traced not to bad people but to bad laws. A modern criminal justice system should guarantee all people equal treatment before the law. Beccaria's book supplied the blue print. That blue print was based on the assumption that people freely choose what they do and are responsible for the consequences of their behavior. Beccaria proposed the following principles:

- **Laws Should Be Used To Maintain Social Contract:** "Laws are the conditions under which men, naturally independent, united themselves in society. Weary of living in a continual state of war, and of enjoying a liberty, which became a little

value, from the uncertainty of its duration, they sacrificed one part of it, to enjoy the rest in peace and security.”

- **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 compact.”
- **Judges Should Impose Punishment only in Accordance with the Law:** “[N]o magistrate then, (as he is one of the society), 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, because they are not legislators....Everyman has his own particular point of view and, at different times, sees the same objects in very different lights. The spirit of the laws will then be the result of the good or bad logic of the judge; and this will depend on his good or bad digestion.”
- **Punishment Should be Based on the Pleasure/Pain Principle:** “Pleasure and pain are the only springs of actions in beings endowed with sensibility....If an equal punishment be ordained for two crimes that injure society in different degrees, there is nothing to deter men from committing the greater as often as it is attended with greater advantage.”
- **Punishment Should be Based on the Act, not on the Actor:** “Crimes are only to be measured by the injuries done to the society they err, therefore, who imagine that a crime is greater or less according to the intention of the person by whom it is committed.”
- **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 punishment descending from the greatest to the least.”
- **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.”

- **All People Should be Treated Equally:** “I assert that the punishment of a noble man should in no wise differ from that of the lowest member of the society.”
- **Capital Punishment Should be Abolished:** “The punishment of death is not authorized by any right; for....no such right exists....The terrors of death make so slight an impression, that it has not force enough to withstand forgetfulness natural to mankind.”
- **The Use of Torture to Gain Confessions Should be Abolished:** “It is confounding all relations to expect...that pain should be the test of truth, as if truth resided in the muscles and fibers a wretch in torture. By this method the robust will escape, and the feeble be condemned.”
- **It is Better to Prevent Crime than to Punish Them:** “Would you prevent crimes? Let the laws be clear and simple, let the entire force of the nation be united in their defence, let them be intended rather to favour every individual than any particular classes.... Finally, the most certain method of preventing crimes to perfect the system of education.”

Perhaps no other book in the history in the history of criminology has had so great an impact. 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.

Jeremy Bentham(1748-1832)

Legal scholars and reformers throughout Europe proclaimed their indebtedness to Beccaria, but none owed more to him than the English legal philosopher Jeremy Bentham. Bentham had long and productive career. He inspired many of his contemporaries, as well as criminologists of future generations, with his approach to rational crime control.

Bentham devoted his life to developing a scientific approach to the making and breaking of laws. Like Beccaria he was concerned with achieving “the greatest happiness of the greatest number.” His work was governed by utilitarian principles. **Utilitarianism** assumes that all human actions are calculated in accordance with their likelihood of

bringing happiness (pleasure) or unhappiness (pain). People weigh the probabilities of present future pleasures against those of present and future pain.

Bentham proposed a precise pseudo-mathematical formula for this process, which he called "felicific calculus." According to his reasoning individuals are "human calculators" who put all the factors into an equation in order to decide whether or not a particular crime is worth committing. This notion may seem rather whimsical today, but at a time when there were over 200 capital offences, it provided a rationale for reform of the legal system. Bentham reasoned that if prevention was the purpose of punishment, and if punishment became too costly by creating more harm than good, then penalties need to be set just a bit in excess of the pleasure one might derive from committing a crime, and no higher. The law exists in order to create happiness for the community. Since punishment creates unhappiness, it can be justified only if it prevents a greater evil than it produces. Thus, Bentham suggested if hanging a man's effigy produced the same preventive effect as hanging the man himself there would be no reason to hang the man.

In this context, the most relevant idea was known as the "felicitation principle", i.e. that whatever is done should aim to give the greatest happiness to the largest possible number of people in society. Bentham argued that there had been "punishment creep", i.e. that the severity of punishments had slowly increased so that the death penalty was then imposed for more than two hundred offences in England (Landau, Norma, 2002). For example, if rape and homicide were both punished by death, then a rapist would be more likely to kill the victim (as a witness) to reduce the risk of arrest.

Bentham posited that man is a calculating animal who will weigh potential gains against the pain likely to be imposed. If the pain outweighs the gains, he will be deterred and this produces maximal social utility. Therefore, in a rational system, the punishment system must be graduated so that the punishment more closely matches the crime. Punishment is not retribution or revenge because that is morally deficient: the hangman is paying the murderer the compliment of imitation.

But the concept is problematic because it depends on two critical assumptions:

- if deterrence is going to work, the potential offender must always act rationally whereas much crime is a spontaneous reaction to a situation or opportunity; and
- if the system graduates a scale of punishment according to the seriousness of the offence, it is assuming that the more serious the harm likely to be caused, the more the criminal has to gain.

In this context, note Bentham's proposal for a prison design called the "panopticon" which, apart from its surveillance system included the right of the prison manager to use the prisoners as contract labor.

Spiritualistic understandings of crime stem from an understanding of life in general, that finds most things in life are destiny and cannot be controlled, we are born male or female, good or bad and all our actions are decided by a higher being. People have held such beliefs for all of recorded history, "primitive people regarded natural disasters such as famines, floods and plagues as punishments for wrongs they had done to the spiritual powers" (Vold, G. Bernard, T. and Snipes, J. 1998). These spiritual powers gained strength during the middle ages as they bonded with the feudal powers to create the criminal justice systems. Under a spiritualistic criminal justice system, crime was a private affair that was conducted between the offender and the victim's family. However this method proved to be too revengeful, as the state took control of punishment. Spiritual explanations provided an understanding of crime when there was no other way of explaining crime. However, the problem with this understanding is it cannot be proven true, and so it was never accepted.

The main tenets of classical school of criminology why noted below

1. Man's emergence from the State's religious fanaticism involved the application of his reason as a responsible individual.
2. It is the 'act' of an individual and 'not his intent' which forms the basis for determining criminality within him. In other words, criminologists are concerned with the 'act' of the criminal rather than his 'intent'. Still, they could never think that there could be something like crime causation.

3. The classical writers accepted punishment as a principal method of infliction of pain, humiliation and disgrace to create 'fear' in man to control his behavior.
4. The propounders of this school, however, considered prevention of crime more important than the punishment for it. They therefore, stressed on the need for a Criminal Code in France, Germany and Italy to systematize punishment for forbidden acts. Thus the real contribution of classical school of criminology lies in the fact that *it underlined the need for a well defined criminal justice system.*
5. The advocates of classical school supported the right of the State to punish the offenders in the interest of public security. Relying on the hedonistic principle of pain and pleasure, they pointed out that individualization was to be awarded keeping in view the pleasure derived by the criminal from the crime and the pain caused to the victim from it. They, however, pleaded for equalization of justice which meant equal punishment for the same offence.
6. The exponents of classical school further believed that the criminal law primarily rests on positive sanctions. They were against the use of arbitrary powers of Judges. In their opinion the Judges should limit their verdicts strictly within the confines of law. They also abhorred torturous punishments.

Thus classical school propounded by Beccaria came into existence as a result of the influence of writings of Montesquieu, Hume, Bacon and Rousseau. His famous work '*Essays on Crime and Punishment*' received wide acclamation all over Europe and gave a fillip to a new criminological thinking in the contemporary west. He sought to humanize the criminal law by insisting on natural rights of human beings. He raised his voice against severe punishment, torture and death penalty. Beccaria's views on crime and punishment were also supported by Voltaire as a result of which a number of European countries redrafted their penal codes mitigating the rigorous barbaric punishments and some of them even went to the extent of abolishing capital punishment from their Penal Codes.

Major Shortcomings of the Classical School

The contribution of classical school to the development of rationalized criminological thinking was by no means less important, but it had its own pitfalls.

1. The classical school proceeded on an abstract presumption of free will and relied solely on the act (i.e., the crime) without devoting any attention to the state of mind of the criminal.
2. It erred in prescribing equal punishment for same offence thus making no distinction between first offenders and habitual criminals and varying degrees of gravity of the offence.

However, the greatest achievement of this school of criminology lies in the fact that it suggested a substantial criminal policy which was easy to administer without resort to the imposition of arbitrary punishment. It goes to the credit of Beccaria who denounced the earlier concepts of crime and criminals which were based on religious fallacies and myths and shifted emphasis on the need for concentrating on the personality of an offender in order to determine his guilt and punishment. Beccaria's views provided a background for the subsequent criminologists to come out with a rationalized theory of crime causation which eventually led the foundation of the modern criminology and penology.

2.3 . Neo-Classical School

In criminology, the **Neo-Classical School** continues the traditions of the Classical School within the framework of Right Realism. Hence, the utilitarianism of Jeremy Bentham and Cesare Beccaria remains a relevant social philosophy in policy term for using punishment as a deterrent through law enforcement, the courts, and imprisonment

The 'free will' theory of classical school did not survive for long. It was soon realized that the exponents of classical school faltered in their approach in ignoring the individual differences under certain situations and treating first offenders and the habitual alike on the basis of similarity of act or crime. The neo-classists asserted that certain categories of offenders such as minors, idiots, insane or incompetent had to be treated leniently in matters of punishment irrespective of the similarity of their criminal act because these persons were incapable of appreciating the difference between right and wrong. This tendency of neo-classists to distinguish criminals according to their mental depravity was indeed a progressive step inasmuch as it emphasized the need for modifying the classical view. Thus the contribution of neo-classical thought to the science of criminology has its own merits.

When crime and recidivism are perceived to be a problem, the first political reaction is to call for increased policing, stiffer penalties, and increased monitoring and surveillance for those released on parole. Intuitively, politicians see a correlation between the certainty and severity of punishment, and the choice whether to commit crime. The practical intention has always been to deter and, if that failed, to keep society safer for the longest possible period of time by locking the habitual offenders away in prisons (see Wilson). From the earliest theorists, the arguments were based on morality and social utility, and it was not until comparatively recently that there has been empirical research to determine whether punishment is an effective deterrent.

The main tenets of neo-classical school of criminology can be summarized as follows

1. Neo-classists approached the study of criminology on scientific lines by recognizing that certain extenuating situations or mental disorders deprive a person of his normal capacity to control his conduct. Thus they justified mitigation of equal punishment in cases of certain psychopathic offenders. Commenting on this point, Prof. Gillin observed that neo-classists represent a reaction against the severity of classical view of equal punishment for the same offence.
2. Neo-classists were the first in point of time to bring out a distinction between the first offenders and the recidivists. They supported individualization of offender a treatment methods which required the punishment to suit the psychopathic circumstances of the accused. Thus although the ‘act’ or the ‘crime’ still remained the sole determining factor for adjudging criminality without any regard to the intent, yet the neo-classical school focused at least some attention on mental causation indirectly.
3. The advocates of this school started with the basic assumption that man acting on reason and intelligence is a self-determining person and therefore, is responsible for his conduct. But those lacking normal intelligence or having some mental depravity are irresponsible to their conduct as they do not possess the capacity of distinguishing between good or bad and therefore should be treated differently from the responsible offenders.
4. Though the neo-classists recommended lenient treatment for “irresponsible” or mentally depraved criminals on account of their incapacity to resist criminal tendency but they

certainly believed that all criminals, whether responsible or irresponsible, must be kept segregated from the society.

5. It is significant to note that distinction between responsibility and irresponsibility, that is the sanity and insanity of the criminals as suggested by neo-classical school of criminology paved way to subsequent formulation of different correctional institutions such as parole, probation, reformatories, open-air camps etc. in the administration of criminal justice. This is through this school that attention of criminologists was drawn for the first time towards the fact that all crimes do have a cause. It must, however be noted that though this causation was initially confined to psychopathy or psychology but was later expanded further and finally the positivists succeeded in establishing reasonable relationship between crime and environment of the criminal.
6. Neo-classists adopted subjective approach to criminology and concentrated their attention on the conditions under which an individual commits crime.

Thus it would be seen that the main contribution of neo-classical school of criminology lies in the fact that it came out with certain concessions in the 'free will' theory of classical school and suggested that an individual might commit criminal acts due to certain extenuating circumstances which should be duly taken into consideration at the time of awarding punishment. Therefore, besides the criminal act as such, the personality of the criminal as a whole, namely, his antecedents, motives, previous life-history, general character, etc., should not be lost sight of in assessing his guilt. It may be noted that the origin of jury system in criminal jurisprudence is essentially an outcome of the reaction of neo-classical approach towards the treatment of offenders.

As to the shortcomings of neo-classical school of criminology, it must be stated that the exponents of this theory believed that the criminal, whether responsible or irresponsible, is a menace to society and therefore, needs to be eliminated from it.

2.4 . Positivists School/The Italian School

The Positivist School has attempted to find scientific objectivity for the measurement and quantification of criminal behavior. As the scientific method became the major paradigm in the search for all knowledge, the Classical School's social philosophy was replaced by

the quest for scientific laws that would be discovered by experts. It is divided into Biological, Psychological and Social.

➤ **Biological positivism**

If Charles Darwin's Theory of evolution was scientific as applied to animals, the same approach should be applied to "man" as an "animal".

➤ **Physical Characteristics**

Historically, medicine became interested in the problem of crime, producing studies of *physiognomy* and the science of *phrenology* which linked attributes of the mind to the shape of the brain as reveal through the skull. These theories were popular because society and any failures of its government were not the causes of crime. The problem lay in the propensities of individual offenders who were biologically distinguishable from law-abiding citizens. This theme was amplified by the *Italian School* and through the writings of Cesare Lombroso (see *L'Uomo Delinquente*, *The Criminal Man* and Anthropological criminology) which identified physical characteristics associated with degeneracy demonstrating that criminals were atavistic throwbacks to an earlier evolutionary form. Charles Goring (1913) failed to corroborate the characteristics but did find criminals shorter, lighter and less intelligent, i.e. he found criminality to be "normal" rather than "pathological" (cf the work of Hooton found evidence of biological inferiority). *William Sheldon* identified three basic body or somatypes (i.e. endomorphs, mesomorphs, and ectomorphs), and introduced a scale to measure where each individual was placed. He concluded that delinquents tended to mesomorphy. Modern research might link physical size and athleticism and aggression because physically stronger people have the capacity to use violence with less chance of being hurt in any retaliation. Otherwise, such early research is no longer considered valid. The development of genetics has produced another potential inherent cause of criminality, with chromosome and other genetic factors variously identified as significant to select heredity rather than environment as the cause of crime (see: *nature versus nurture*). However, the evidence from family, twin, and adoption studies shows no conclusive empirical evidence to prefer either cause.

With the advance of behavioral sciences, the monogenetic explanation of human conduct lost its validity and a new trend to adopt an eclectic view about the genesis of crime gradually developed. By the nineteenth century, certain French doctors were successful in establishing that it was neither 'free will' of the offender nor his innate depravity which actuated him to commit crime but the real cause of criminality lay in anthropological features of the criminal. Some phrenologists also tried to demonstrate the organic functioning of brain and enthusiastically established a co-relationship between criminality and the structure and functioning of brain. This led to the emergence of the positive school of criminology.

The main exponents of this school were three eminent Italian criminologists namely: *Cesare Lombroso*, *Raffaele Garofalo* and *Enrico Ferri*. It is for this reason that this school is also called the Italian School of Criminology.

➤ **Cesare Lombroso (1836-1909)**

The first attempt to understand the personality of offenders in physical terms was made by Lombroso of the Italian School of criminological thought, who is regarded as the originator of modern criminology. He was a doctor and a specialist in psychiatry. He worked in military for sometime handling the mentally afflicted soldiers but later he was associated with the University of Turin. His first published work was *L'Uomo Delequente* which meant "the Criminal Man" (1876). He was the first to employ scientific methods in explaining criminal behavior and shifted the emphasis from crime to criminal.

Lombroso adopted an objective and empirical approach to the study of criminals through his anthropological experiments. After an intensive study of physical characteristics of his patients and later on of criminals, he came to a definite conclusion that *criminals were physically inferior in the standard of growth* and therefore, developed a tendency for inferior acts. He further generalized that criminals are *less sensitive to pain* and therefore they have little regard for the sufferings of others. Thus through his biological and anthropological researches on criminals Lombroso justified the involvement of Darwin's *theory of biological determinism* in criminal behavior. He classified criminals into three main categories:

1. The Atavists or Hereditary Criminals Lombroso also termed them as born-criminals. In his opinion born-criminals were of a distinct type who could not refrain from indulging in criminality and environment had no relevance whatsoever to the crimes committed by the Atavists. He, therefore, considered these criminals as incorrigibles, i.e., beyond reformation. In his view, the criminal reflected a reversion to an early and more primitive being that was both mentally and physically inferior. He resembled those of apes and had ape-like characteristics. Lombroso's theory used physical characteristics as indicators of criminality. He enumerated as many as sixteen physical abnormalities of a criminal some of which were peculiar size and shape of head, eye, enlarged jaw and cheek bones, fleshy lips, abnormal teeth, long or flat chin, retreating forehead, dark skin, twisted nose and so on. Though he moderated his theory of physical anomaly in later years but his emphasis throughout his work was on human physical traits which also included biology, psychology and environment. He revised his theory of atavism in 1906 and held that only one-third of criminals were born criminals and not all the criminals. Finally, he conceded that his theory of atavism was ill-founded and held that they were in fact *occasional criminals*.

Enrico Ferri subsequently challenged Lombroso's theory of atavism and demonstrated that it was erroneous to think that criminals were incorrigibles. He believed that just as non-criminals could commit crimes if placed in conducive circumstances so also the criminals could refrain from criminality in healthy surroundings.

2. **Insane Criminals:** The second category of criminals according to Lombroso consisted of insane criminals who resorted to criminality on account of certain mental depravity or disorder.
3. **Criminoids:** The third category of criminals, according to him, was those of criminoids who were physical criminal type and had a tendency to commit crime in order to overcome their inferiority in order to meet the needs of survival.

Lombroso was the first criminologist who made an attempt to understand the personality of offenders in physical terms. He employed scientific methods in explaining criminal

behavior and shifted the emphasis from crime to criminal. His theory was that criminals were physically different from normal persons and possessed few physical characteristics of inferior animal world. The contribution of Lombroso to the development of the science of criminology may briefly be summed up in the following points:

1. Lombroso laid consistent emphasis over the individual personality of the criminal in the incidence of crime. This view gained favour in subsequent years and modern criminological measures are devised to attain the aim of individualization in the treatment of criminals. It has been rightly commented that the sociologists' emphasis on the external factors, psychologists on the internal factors, while Lombroso held that both had a common denominator__ the "individual".
2. While analyzing causes of crime, Lombroso laid greater emphasis on the biological nature of human behavior and thus indirectly drew attention of criminologists to the impact of environment on crime causation.
3. At a later stage Lombroso himself was convinced about the futility of his theory of atavism and therefore extended his theory of determinism to social as well as economic situations of criminals. Thus he was positive in method and objective in approach which subsequently paved way to formulation of multiple-causation theory of crime by the propounders of sociological school of criminology.

➤ **Criticism on Lombroso's Theory**

Gabriel de Tarde, the eminent French criminologist and social psychologist, criticized Lombroso's theory of criminal behavior, and offered a social explanation of crime. He asserted that criminal behavior is the result of a learning process, therefore, any speculation regarding direct relationship between physical appearance and criminal propensities of criminals would mean overlooking the real cause of criminality. He also denounced the proposition of phrenologists who tried to establish a correlation between the skull, the brain and the social behavior of a person.

By the time of Lombroso's demise, in 1909, it became abundantly clear that his theories were over-implication of facts and rather naïve, hence the notion that criminal is physically atavistic-type lost all credence. The assumption that there is some nexus between atavism and criminal behavior had no scientific basis. The modern positivism in criminology has developed its own systematic views in which there is little scope for Lombroso's atavism. Some modern writers even speak of it as "Lombrosian myth" in criminology.

Criticizing Lombrosian views, Prof. Sutherland observed that by shifting attention from crime as a social phenomenon to crime as an individual phenomenon, Lombroso delayed for fifty years the work which was in progress at the time of its origin and in addition, made no lasting contribution of his own.

Be that as it may, it hardly needs to be reiterated that contribution of Lombroso to the development of criminology is by no means less significant. Commenting on this point Donald Taft observed, "the importance of Lombroso's work lies in the great influence it had upon criminology and also upon penal practice". The importance of Lombroso's work lies in its scientific methodology and his rejection of free-will theory.

➤ **Enrico Ferri (1856-1928)**

Another chief exponent of the positive school of criminology was Enrico Ferri. He challenged Lombrosian view of criminality. Through his scholarly researches, Ferri proved that mere 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.

Thus Ferri emphasized that criminal behavior is an outcome of a variety of factors having their combined effect on the individual. According to him social change, which is inevitable in a dynamic society, results in disharmony, conflict and cultural variations. As a result of this, social disorganization takes place and a traditional pattern of social control mechanism totally breaks 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, 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 behavior as well.

Ferri emphasized 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:

- a. Born criminals;
- b. Occasional criminals
- c. Passionate criminals
- d. Insane criminal and
- e. Habitual criminals.

He 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 favored indeterminate sentence keeping in view the possible chances of inmate's re-adjustment in the community.

In his 'Penal Project' Ferri denied moral responsibility and denounced punishment for retribution and moral culpability.

Raffaele Garofalo (1852-1934)

Raffaele Garofalo was one of the three main exponents of positive school of criminology. Born in Naples in 1852, Garafalo started his career as a Magistrate in Italian courts and rose to the position of Minister of Justice in 1903. 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. Rejecting the classical theory of free-will as a cause of crime, Garofalo defined crime as an act which offends the sentiments of pity and probity possessed by an average person and which are injurious to the society. He emphasized that lack of pity generates crimes against person while lack of probity leads to crimes against property. As to the classification of criminals, he rejected Ferri's classification and placed offenders into four main categories, namely:

1. Murders 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.

As a member of the Italian 'judiciary' Garofalo was well acquainted with the then existing criminal law and procedure in the administration of criminal justice and recommended death, imprisonment for life or transportation and reparation as three modes of punishment for criminals. Out of his experience as a Judge and having witnessed total failure of correctional measures in France, Garofalo was not very optimistic about reformation of offenders. He therefore, strongly pleaded for elimination of habitual offenders who were incapable of social adaptation as a measure of social defense.

Gabriel Tarde (1843-94)

Gabriel Tarde was a critic of positive school of criminology. He asserted that influence of social environment was most emphatic on the criminal behaviour out that law of insertion and imitation was responsible for the incidence of crime. The members of society are prone to imitate the behaviour of their associates. Likewise, the subordinate or inferior members have a tendency to imitate the ways of their superiors just as the children imitate their parents and elder members of the family. Consequently, as regards crimes, the beginners have a tendency to imitate the acts of habitual criminals and thus they lend into criminality. The effect of imitation is still worse on youngsters who are prone to fall an easy prey to criminality. Particularly, the impact of movie, cinema and television is so great on teenagers that it perverts their mind and actions which eventually makes them delinquents. Thus there is considerable truth in Tarde's assertion that, "crime, like other social phenomenon starts as a fashion and becomes a custom". He classified criminals into urban and rural types and expressed a view that crimes in urban areas are far more serious in nature than those of rural places. Despite the fact that the views of Tarde were logical and nearer to truth, they were discarded as over simplification of facts.

Major Contributions of Positive School of Criminology

It would be seen that the positive school of criminology emerged essentially out of the reaction against earlier classical and neo-classical theories. The merits of this school were:

1. 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.
2. 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, that is, the personality of criminal rather than his act (crime) or punishment. This certainly paved way for the modern penologists to formulate a criminal policy embodying the principle of individualization as a method and reformation. Thus positivists introduced the methodology and logic of natural science in the field of criminology.

3. With the predominance of positive school, the emphasis was shifted from penology to criminology and the objects of punishment were radically changed in as much as retributory methods were abandoned. Criminals were now to be treated rather than punished. Protection of society from criminals was to be the primary object 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.
4. The positivists suggested elimination of only those criminals who did not respond favorably to extra-institutional methods. 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.

Main Distinctions between Classical School and Positive School

The positive school differed from the classical school of criminology in the following manner:

1. **Defining Crime:** Classical school defined crime in legal terms. Where as, the positive school rejected legal definition of crime and preferred sociological definition.
2. **Explanation of Crime:** Classical school placed reliance on free-will theory as an explanation of crime. Positive school explained crime in terms of biological determination.
3. **Nature of Punishment:** Classical school believed in deterrent and definite punishment for each offence and equal punishment for all criminals committing the same offence. Positive school advocated treatment methods for criminals instead of punishment and held that criminal be punished not according to gravity of his crime but according to the circumstances associated with it.

4. **The Focus of the School:** Classical school focused greater attention on crime, namely, the act rather than the criminal. Whereas, the positivists laid greater emphasis on personality of the offender rather than his criminal act.
5. **The Founders of the School:** The main exponents of classical school were Beccaria and Bentham. The main exponents of positive school were Lombroso, Ferri and Garofalo.
6. **Contribution to the Field:** The classical school was an 18th century dogma which attempted to reform the criminal justice system in order to protect criminals against arbitrary discretion of judges. The positive school was a 19th century doctrine which emphasized on scientific method of study and shifted emphasis from crime to criminal and from retribution to corrective methods of treatment.

2.5.Clinical School of Criminology

More recently, with the development of human psychology, there is greater emphasis on the study of emotional aspect of human nature. This branch of knowledge has enabled modern criminologists to understand the criminal behavior of offenders in its proper perspective. *Prof. Gillin*, therefore, rightly remarked that the theory of modern clinical school on the side of criminologists presupposes offender as a product of his biological inheritance conditioned in his development by experiences of life to which he has been exposed from infancy up to the time of the commission of crime. Thus, clinical school takes into account variety of factors. It further suggests that the criminals who do not respond favorably to correctional methods must be punished with imprisonment or transportation for life while those who are merely victims of social conditions should be subjected to correctional methods such as probation, parole, reformatories, open-air camps etc. Thus, briefly speaking, individualization has become the cardinal principle of penal policy in modern penology. The main theme of clinical school is that personality of man is a combination of internal and external factors; therefore, punishment should depend on personality of the accused. This is known as correctional trend of reformation through individualization.

2.6 Sociological School of Criminology

2.7 The Modern Criminology

In recent years, there seems to have been a transformation of criminological views regarding somewhat skeptical question of criminal accountability. Modern critics attack the traditional criminological view on the ground that their search for characteristic differences between the class of criminals and the class of non-criminals rests upon erroneous assumption. 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; and
4. That the official statistics are indices of trends in crime.

The proponents of modern criminology attempt to explain criminality in terms of social conflict. Engels (1971) pointed out that resentment among the deprived class of society due to their exploitation and demoralization was one of the reasons for growing criminality. Therefore, there was need to change the whole of the social and economic structure of society. Thus modern criminology attributes societal reasons for general criminality and suggests a pragmatic approach to the resolution of the problem.

The advocates of modern criminology firmly believe that distinction between criminals and non-criminals is the direct outcome of a mistaken notion of labelling certain individual offenders as ‘criminal types’. Modern criminologists 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 behavior.

Unit Summary

Criminology, as a branch of knowledge, is concerned with those particular conducts of human behaviour which are prohibited by society. It is, therefore, a socio-legal study which seeks to discover the causes of criminality and suggests the remedies to reduce crimes. The principles of criminology serve as effective guidelines for formulation of penal policy. Criminology is an inter-disciplinary field of study, involving scholars and practitioners representing a wide range of behavioral and social sciences as well as numerous natural sciences.

A school of criminology means “the system of thought which consists of an integrated theory of causation of crime and of policies of control implied in the theory of causation”. Pre-classical, classical, neo-classical, positive, clinical and sociological schools of criminology can be traced down through the development of criminology. The pre-classical school was dominated by the spiritual mysticism.

The pioneer of Classical school, Beccaria, expounded his *naturalistic theory of criminality* by rejecting the omnipotence of evil spirit. He laid greater emphasis on mental phenomenon of the individual and attributed crime to ‘free will’ of the individual. The classical writers accepted punishment as a principal method of infliction of pain, humiliation and disgrace to create ‘fear’ in man to control his behavior. This school, however, considered prevention of crime more important than the punishment for it. The classical school had some shortcomings.

The neo-classists asserted that certain categories of offenders such as minors, idiots, insane or incompetent had to be treated leniently in matters of punishment irrespective of the similarity of their criminal act because these persons were incapable of appreciating the difference between right and wrong. This tendency of neo-classists to distinguish criminals according to their mental depravity was indeed a progressive step inasmuch as it

emphasized the need for modifying the classical view. Thus the contribution of neo-classical thought to the science of criminology has its own merits.

Positive School tried to find criminality in the physical characteristics of criminals. Lombroso adopted an objective and empirical approach to the study of criminals through his anthropological experiments. 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, that is, the personality of criminal rather than his act (crime) or punishment.

The theory of modern clinical school on the side of criminologists presupposes offender as a product of his biological inheritance conditioned in his development by experiences of life to which he has been exposed from infancy up to the time of the commission of crime.

The recent sociological school of criminology seeks to locate causation of crime in social environment. Sociologists, however, carried their researches and attempted to co-relate variations in crime rate to changes in social organization. They successfully established that other factors such as mobility, culture, religion, economy, political ideologies, density of population, employment situations, etc., have a direct bearing on the incidence of crime in a given society.

Finally, however, the modern criminologists 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.

Review Questions:

1. Define a 'school of criminology'. What are the characteristics of school of thought?

Write short notes on:

- a. Demonological theory
- b. Trial by battle
- c. The judgment of God

What are the main reforms contributed by the classical school?

Critically analyze *Beccaria's blue print* of a modern criminal justice system.

What do you understand by *utilitarianism*? Explain the consequential formula of "felicific calculus."

Do you agree with his proposition that individuals are "human calculators"?

Do you find any errors committed by the classical school in their criminological thinking?

What is 'new' about the neo-classics from the classics in their contribution to criminology?

9. Point out the distinctions between the contributions of classical and positive schools.
10. How does the modern criminology differ from the traditional

Brain Storming!

1. According to Utilitarian principles, is capital punishment preferable to a life sentence?

Can you think of a way to use utilitarian principles to reduce the use and duration of imprisonment?

References:

Books:

1. Adler, M. L. (2001). "Criminology" 4th ed. New York: McGraw-Hill Companies.
2. Sutherland, E. H. (1939) "*Principles of Criminology*". Philadelphia: J.B. Lippincott,
3. Gottfredson, M. and T. Hirschi. (1990) "*A General Theory of Crime*". CA: Stanford University Press,
4. Carrington, Kerry, and Russell Hogg, eds. 2002. "*Critical Criminology: Issues, Debates, Challenges*". Portland, Ore.: Willan Publishing.
5. Landau, (2002). "*Law, Crime, and English Society, 1660-1830*". Cambridge University Press, p. 118.
6. Vold, G. Bernard, T. and Snipes, J. (1998) "Theoretical Criminology", Oxford. University Press. Oxford:

Articles:

1. Hirschi, & Gottfredson, M. (1993). "Commentary: Testing the General Theory of Crime". *Journal of Research in Crime and Delinquency*, 30. 47-54.
2. Akers, Ronald L. (1990). "Rational Choice, Deterrence, and Social Learning Theory: The Path Not Taken". *Journal of Criminal Law and Criminology*. 81(3), 653-676.

UNIT-II

THEORIES OF CAUSATION OF CRIME

Introduction

Psychologists argue that in order to do something about the crime problem, we must first understand its “causes”. Their aims are in conformity with that of ‘Criminologists’. The questions are – Why does crime happen? What motivates people to commit illegal acts?

Several theories are advocated to answer these questions. For example, in case of theft, the biological explanations say that the thief has bad genes and the psychological explanations may maintain that he has a personality defect. Like wise the sociological explanations may argue that he’s got in with a bad crowd. These kind of explanations led to different kinds of theories:

- I. Biological theories of crime,
- II. Psychological theories of crime,
- III. Sociological theories of crime,
- IV. Social-Psychological theories of crime.

However, no single theory can possibly be applicable to all illegal acts and actors and therefore, an evaluation of the limitations of each theory is appropriate.

Objectives:

By the end of this unit, students will be able to:

- Understand different theories developed historically to explain the criminal behaviour.
- Differentiate between the objective and subjective factors that influence the behaviour of people.
- Appreciate the limitations to the explanation of criminal behaviour.
- Identify the importance of personal circumstances in determination of punishment in order to give effective to the principle of individualization of criminal justice.

Section. 1. Biological Theories Of Crime

The use of biological determinants in explaining crime clearly contrasts with the sociological approach. The biological emphasis may seek to discover common physical characteristics among criminals. For example, a study of thirteen men and two women convicted of murder found that all had experienced severe head injuries earlier in life and that twelve of them displayed neurological problems of varying magnitude.

But more often this perspective focuses on genetic inheritance, on chromosomal abnormalities, on psychological irregularities or on constitutional (body type) determinants. Biological explanations are appealing for reasons:

1. they are simple, and
2. they attempt to distinguish clearly between the criminal and the non-criminal.

For example, some people are tempted to believe that criminals “look different” from the rest of us; we recall that Shakespeare warned us to be wary of men who had a lean and hungry look. And if check the Sunday Comic strips, we find that the conventional burglar “. . . is bald, wears a sporting cap that was fashionable in 1930, weighs 300 pounds and a jetting lower jaw, broken nose, low fore head and isn’t bright”. But like most of the simplified approaches, the biological theories, at best, fall short of comprehensiveness.

➤ Historical Background

With the development of scientific researches during 19th century certain French doctors were successful in establishing that the real cause of criminality lay in anthropological feature of the criminal. Certain phrenologists also tried to demonstrate the organic functions of brain and enthusiastically established a co relationship between ‘criminality’ and ‘structure and functions of brain’. This led to the emergence of Positive School of criminology. The main exponents of the school were three eminent Italian criminologists, namely, *Cesare Lombroso (1836-1909)*, *Rafalo Garofalo (1852-1934)*, *Enricho Ferri(1856-1928)*. It is for this reason that this school is also called the Italian School of criminology.

Of the several different biological explanations of criminal behaviors, the following are important.

1. Genetics and Criminality, (Ceasare Lombroso)
2. Constitutional (Body Type) Determinants, (William Sheldon)
3. Constitutional Interactionist View. (Wilson and Herrnstein)

1.1. Genetics and Criminality: Ceasare Lombroso

Ceasare Lombroso is often referred to as pioneer of the positive school or Italian school of criminology. He was considered the father of ‘Modern Criminology’ for he emphasized biological causes and correlates of crime and set in motion a view point that remains in more sophisticated versions, prevalent today. He was an Italian psychiatrist who was a physician in the Army. Basing on his observations, he published a book titled “The Criminal Man” first published in 1876 and the recent edition in 1911. He adopted an objective and empirical study of criminals through his anthropological experiments. After an intensive study of physical characteristics of his patients and later on of criminals, he came to a definite conclusion that criminals were physically inferior in the standard of growth and therefore developed a tendency for inferior acts. He further generalized that criminals are less sensitive to pain and therefore they have little regard for the sufferings of others. Lombroso’s early conception included his belief in the similarity of the criminals could be savages, the insane and epileptic persons, and he believed that criminals could be distinguished from other people on the basis of anatomical oddities, such as small craniums, big ears and abnormal secondary sex characteristics. Lombroso also believed women lacked the initiative to break laws, and therefore crime by a woman was a deviation from her basic nature.

1.1.1. Genetic Inheritance

At a later stage Lombroso himself was convinced of the futility of his theory. The search for obvious physical differences between criminals and non-criminals did not work. In his later edition of his book (The Criminal Man) he gave more credit to environmental influences such as the climate and local laws. He extended his theory of determinism to social as well as economic situations of criminals. His focus shifted to an approach proposing that certain inherited qualities predisposed certain people to act in criminal ways. How such genetic differences would be explained?

1.1.2. Pedigree Analysis

An analysis of ancestry done on certain families led many readers to conclude that a propensity for crime was inherited. But such analysis failed to separate the effects of genetics and environment. Remarkable contemporary examples of crime that runs in families do little to resolve the question.

➤ All in the Family

Effie Ramsey has ten sons. Nine are in prison. The tenth one is in a halfway house for law violators. Most of their crimes were of moderate severity, like robbery and burglary and two of them were charged with first degree murder. They average four criminal convictions each. Authorities don't know exactly where the family went wrong. The family was poor but always had food. The ten brothers were raised by both parents living together. In fact, one or the other of the parents participated at almost all their sons hearings in juvenile courts; they made sure that the boys attended juvenile courts counseling sessions. Their mother was cooperative with the police and often helped locate her sons when they were wanted by law officers.

But the authorities said that the parents did not supervise their children and the sons *lacked role models*. Once the older brother turned to crime the others followed. Despite the statistical improbability that ten out of ten siblings would be law breakers, the simplistic explanation--- that they had each inherited criminal tendencies from their parents---is less likely than an explanation using social learning theory.

1.1.3. Genetic Anomalies

Another explanation given to support the theory of hereditary criminality is genetic anomaly such as an extra chromosome, that might lead to mental retardation or pathological behavior.

Some time before, research seemed to implicate one particular genetic abnormality as a possible cause of some cases of anti-social or criminal behavior. Samplings of the genetic characteristics of men in prisons in the United States, Australia, and Great Britain showed that small percentage of these men, but a significantly greater percentage in the general population had an extra 'Y' chromosome (Court-Brown 1968). The normal

person has 46 chromosomes per cell—22pairs of “regular” chromosomes, or autosomes, and two sex chromosomes. In the female both sex chromosomes are ‘X’ chromosomes; in the male they are ‘X’ and ‘Y’. When the sperm fertilizes the ovum, the zygote receives a ‘X’ from the mother and either a ‘X’ or a ‘Y’ from the father. As the zygote begins its cell division, a chromosomal abnormality may occur; instead of producing two rows of 23each, the cell division may leave an extra ‘X’ or ‘Y’ chromosome in one row.

The aberrant XYY pattern, which was first identified in Great Britain in 1961, seems to produce men who are average in height, below average in IQ, and possibly aggressive and ant-social in behavior. Since the ‘Y’ chromosome determines ‘maleness’, the idea developed that the extra ‘Y’ chromosome constituted “super male”, ---a person more aggressive and therefore potentially criminal. If this is true then the incidence of XYY abnormalities should be somewhat higher in prison populations, and this did appear to be the case. The rate has also been found to be slightly higher among institutionalized mentally retarded males. However, as research continued, these findings were largely refuted.

Even if a relationship between XYY chromosome makeup and conviction for crime be clearly demonstrated, both theoretical and practical questions would remain. For example;

- How does heredity interact with the environment to produce anti-social behavior?
- Should a criminal be punished as severely if he has a chromosomal abnormality?

In several murder trials the defendant was acquitted or given a lesser sentence because of an XYY chromosome abnormality.

1.2. Constitutional (Body Type) Determinants: William Sheldon

A different approach to crime causation, but one still linked to biological determinants is through *a typology of body physiques*. A typology is descriptive system in which all people are classified into limited set of categories. The person’s type supposedly describes a central or overriding characteristic of all aspects of individual’s life.

William H. Sheldon, a professor in Columbia University tried to establish a relationship between body structure and behavior. He identified three basic dimensions of body build. He developed his ideas from the fact that life begins in the embryo which is made up of three different tissue layers, namely, an inner layer or *endoderm*, a middle layer or *mesoderm*, and an outer layer or *ectoderm*. He co-related facts from embryology and the physiology of genetic development. He pointed out that the physiologically, the endoderm gives rise to the development of viscera, the mesoderm to bone, muscle and tendons of the motor organ system, the ectoderm to connecting tissues of nervous system, skin and related appendages. He observed that a person's physical structure may be dominated by the basic characteristics of any of these layers in varying degrees. The variations in body build may lead to the following three types of physical structures:

- **Endomorphic Structure:** The person high in endomorph is soft, round and overweight. They are persons with fatty or bulky body having short tapering limbs, small bones, soft and smooth skin and usually of a mild temperament and comfortable persons.
- **Mesomorphic Structure:** Here the physique is hard and muscled, as the athletic. The Mesomorphic body is strong and tough. These persons are strongly built with prominent muscles and bones and connective tissue. Thus, they have hairy chest and large wrists and hands. These persons are *temperamentally serious, active, dynamic often assertive and behave aggressively*.
- **Ectomorphic Structure:** The third variable is characterized by a flat chest, a long thin body and a little in the way of muscular development. These persons 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 physical structures were directly related to the temperament of the person who committed crime. Thus, according to him endomorphics are moody and accommodative by temperament while the mesomorphics had a rigid and somewhat serious temperament. The ectomorphics on account of their delicate physical build up are often shaky in their decisions and are short tempered.

From a comparison of 200 delinquents and 200 non-delinquents Sheldon concluded that the mesomorphic physique was more likely to manifest criminal behaviors— that the

aggressiveness of the mesomorph along with his lack of inhibitory controls contributed to criminality. Sheldon did not propose that a mesomorphic physique was sufficient for crime, nor did he neglect the environment as an explanation. But *he wished to advance recognition of the role of biological determinants* that he felt were being neglected by criminologists at that time.

➤ **Limitations of Body Typologies**

- Not all the mesomorphics are criminals and not all criminals are mesomorphic. When we use a few all- or- none categories, we force on nature an over simplified scheme. Even if an individual can with some accuracy, be described as basically introverted type or aggressive type, such a description is inadequate because of two reasons:
 - It essentially ignores hundreds of other attributes of the individual by selecting only one or a few to use in categorizing that person.
 - It assumes that two individuals put into the same psychological category have the same attributes. Almost always, we find that it is not a matter of black and white; it is a question of shadings.
- When physique is proposed as direct cause of criminal behavior, further problems emerge. Even if there is a correlation between these two, it does not necessarily mean that one causes the other. For example, it is quite likely that, as children males with mesomorphic physique were more likely to find that aggressive and physical ways of demanding what they wanted were the way that “worked” when they find such ways as successful to get their things done, as adults they are likely to continue the same methodology of terrorizing their peers. In that case Sheldon’s findings should be referred to as social learning theory explanation rather than constitutional one.

1.3. Constitutional Interactionist View: Wilson & Herrnstein

Two social scientists at Harvard University, James Wilson and Richard J. Herrnstein, deny the existence of one gene that causes criminal behavior, but they do conclude that some people have a predisposition toward crime “if they don’t go in their directions”. Their book “*Crime And Human Nature*”(1985) proposes three factors that contribute to crime:

- **Social Environment:** Broad societal values are often neglected as explanations, but these scholars believe that the shift in the culture of the society valuing restraint and discipline to more recent “me first” orientation has exerted great influence at the level of the individual and contributed to the skyrocketing crime rate.
- **Family Relationships:** This is the second factor. Parents who are uncaring, inconsistent in the treatment of their children, or unskilled in dispensing rewards and punishment contribute to the eventual criminal behavior of their children. That a child comes from a broken home or has only a single parent is, they find, not particularly influential; rather, it is the parent’s failing to teach children the consequences of their actions.
- **Biological Makeup:** It is the determinant and the most controversial. Among the specific qualities that they see as at least partly hereditary and as influential are gender intelligence, impulsiveness and body type.
 - **Gender,** as a correlate of criminal behavior, is so obvious that its significance is often disregarded. It is a well known fact that more men than women are repeated law offenders. Throughout all countries where records are kept, men are arrested anywhere from five times to fifty times as often as women. Whether this gender difference in criminal arrests results from hereditary or socialization is impossible to say, because these two factors inextricably mixed.
 - **Intelligence:** Wilson and Herrnstein’s detailed review of extreme research leads to the conclusion that criminals have an average IQ of 92, about 8 points below the mean for the entire population, and they believe this low IQ means that criminals cannot think past “short-time horizons” or may be cannot understand society’s rules or the consequences of their actions.
 - **Impulsiveness:** These researchers note that criminals may also be characterized as impulsive; they have a “short fuse”, their criminal acts often show little planning, and they are less able to delay gratification than most people. Such deviant behavior appears early; often it is evident before age eight.

- **Body Type:** The last of the biologically determined factors that make men more likely to be offenders is an athletic, mesomorphic body physique. Most of the research on which Wilson and Herrnstein base this conclusion comes from studies done back in the 1940s and 1950s by William Sheldon and others.

Review Questions:

1. Bring out clearly the limitations of different biological theories.
2. If criminal behaviour is attributed to the mesomorphic structure of the criminal, what use might the crime-preventions strategists make of such information?
3. Explain the constitutional Interactionist view of criminal behaviour give by Wilson and Herrnstein. Do you think it is convincing?

Section.2. Psychological Theories of Crime

A psychological explanation of crime can refer to a variety of approaches and concepts. But as Nietzel (1979) notes, these theories all share the basic belief that “crime is the result of some personality attribute uniquely possessed, or possessed to a special degree, by the potential criminal”. In some variants of this approach, the cause is an extreme one, such as a mental illness or a personality disorder. Some of the psychological approaches even rely on hereditary determinants.

Psychologists have considered a variety of possibilities to account for individual differences such as defective conscience, emotional immaturity, inadequate childhood socialization, maternal deprivation, poor moral development etc.

They study how aggression is learned, which situations promote violent or delinquent reactions, how crime is related to personality factors and the association between various mental disorders and criminality. Of the several psychological explanations the following are important ones:

1. Criminal Thinking Patterns,
2. Personality Defects,
3. Psychoanalytic Explanations.

2.1. Criminal Thinking Patterns: Samuel Yochelson & Stanton E. Samenow

These psychiatrists propose that, criminals possess a different way of thinking; that is, criminals operate out of a unique set of cognitive patterns that, though internally logical and consistent, is erroneous according to responsible thinking. The consistent lawbreaker sees himself and the world differently from the way the rest of us see them.

Yochelson and *Samenow* psychiatrists at St. Elizabeth's Hospital in Washington, D. C, reject environmental explanations of criminality, such as a broken home or unemployment. They claim "criminals are criminals"—people become criminals as a result of a series of choices they start making at an early age. It is these patterns that result in criminality. Crime is like alcoholism: "Once a criminal always a criminal".

The psychiatrists saw the criminals they studied as very much in control of their actions, rather than being "sick". These criminals were portrayed as master manipulators who try to assign the blame for their own behavior to others. For Yochelson and Samenow, criminals simply don't play the game the ways the rest of us do. They are such inveterate liars that they can no longer separate fact from fiction. They use words to control and manipulate, not to represent reality.

➤ **Limitations of the Theory:**

- The psychiatrists based their conclusions on intensive interviews with a relatively small number of offenders, most of whom were incarcerated "hard-core" criminals or men who were hospitalized after having been acquitted of major crimes by reason of insanity. They carefully portrayed one type of criminal, but whether their analysis accurately represents the majority of lawbreakers is doubtful.
- The criminal thinking patterns theory does not explain how these choices are made in the beginning.
- All criminals may not have a tendency to repeat or continue the same pattern of behavior.

2.2. Personality Defects

Many lay persons explain the cause of crime as some form of personality defect in the offender. Taken to its extreme degree, this explanation forms the basis for theories that attributes a basic anti-social nature of the criminal. This conception of psychopathy has a long history. Generally, it refers to persons who have frequent and repetitive criminal activity. More recently, the focus has been on the underlying unsocialized character, the lack of conscience that brings such persons into repeated conflict with society. They are unable to learn from experience or feel guilt. They lack loyalty to individuals, groups, or society's values. As Nietzel observes, they are grossly selfish, callous, and irresponsible. They tend to blame others or to offer plausible rationalizations for their behavior. All this combines to give them an arrogance that can lead to their down fall and capture.

According to Goleman, about 80% of psychopaths are men. The person characterized by a personality disorder, or psychopathic personality, is relatively easy to identify but very difficult to rehabilitate. Fortunately, psychopaths account for a very small percentage of law violators. However, they commit a disproportionately large percentage of violent crimes, and their acts are such that they attract massive publicity.

For years, researchers have sought some physical or physiological characteristics that distinguish psychopathic personalities from others. A study concluded in 1987, has shown that psychopaths seem to have an unusual and characteristic pattern of brain organization, in that the neurological centre that controls language demonstrates signs of irregular development.

2.3. Psychoanalytic Explanations

Sigmund Freud (1856-1939), the founder of psychoanalysis, suggested that criminality may result from either an over active conscience or too weak conscience. In treating his patients, Freud noticed that those who were suffering from unbearable guilt committed crimes in order to be apprehended and punished. Once they had been punished, their feelings of guilt were relieved (a way of punishing themselves).

Sigmund Freud's Psychoanalysis: The 'id', 'ego', and 'superego'-The Warring Components of the Personality:

In 1920, when he was nearly 65 years old, Freud proposed a new conception of the personality, one that contained three systems- the *id, the ego, and the superego*. These systems do not exist physically; they are only concepts, or ways of looking at personality.

The *id* is the only part of the personality that is present at birth. It is inherited, primitive, inaccessible, and completely unconscious. The 'id' contains two kinds of *instincts*:

- *The life instincts*, which are sexual instincts and biological urges such as hunger and thirst, and
- *The death instinct*, which accounts for our aggressive and destructive impulses. The 'id' operates according to *pleasure principle*; that is, to seek pleasure, avoid pain, and gain immediate gratification of its wishes. The 'id' is the source of the *libido*, the psychic energy that fuels the entire personality; yet the 'id' cannot act on its own. It can wish, image fantasize, demand.

The *ego* is the logical, rational, realistic part of the personality. The 'ego' evolves from the 'id' and draws its energy from the 'id'. One of the 'ego's' functions is to satisfy the 'id's' urges. But the 'ego', which is mostly conscious, acts according to the *reality principle*. It must consider the constraints of the real world in determining the appropriate times, places and objects for gratification of the 'id's' wishes. The art of the possible is its guide, and sometimes compromises must be made, for example, a chicken sandwich instead of fish curry.

When the child is age 5 or 6, the *superego*—the moral component of the personality—is formed. The 'superego' has two parts:

- The *conscience* consists of all the behaviors for which we have been punished and about which we feel guilty;
- The *ego ideal* contains the behaviors for which we have been praised and rewarded and about which we feel pride and satisfaction. At first the 'superego' reflects only the parent's expectations of what is good and right, but it expands over time to incorporate teachings from the broader social world. In its quest for moral perfection, the 'superego' sets moral guidelines that define and limit the flexibility of the 'ego'.

The psychoanalytic theory of criminality attributes delinquent and criminal behavior to a conscience so overbearing that it arouses feelings of guilt or so weak that it cannot

control the individual's impulses and to a need for immediate gratification. For example, in *Richard's case*, Richard was six when he committed his first delinquent act: he stole a comic book from the corner drug store. Three months before the incident his father, an alcoholic, had been killed in an automobile accident. After that, his mother became unable to care for the family, and had abandoned the children. For the next ten years the state welfare agency moved Richard in and out of foster homes. During this time, he actively pursued a life of crime, breaking into houses during day light, and stealing cars in the night. By age 20 while serving a ten year prison sentence for armed robbery, he had voluntarily entered psychoanalysis. After two years Richard's analyst suggested three reasons for his criminality:

- Being caught and punished for stealing made him feel less guilty about hating his father and mother for abandoning him.
- Stealing did not violate his moral and ethical principles.
- Stealing resulted in immediate gratification and pleasure, both which Richard had great difficulty resisting.

Richard's psychoanalyst suggested that Richard's anger over his father's death and his mother's abandonment created unconscious feelings of guilt which he sought to relieve by committing a crime and being punished for it.

The psychoanalyst also offered an alternative explanation for Richard's persistent criminal activities: "his conscience was perhaps not too strong but too weak".

The '*Conscience*, or '*Super ego*' was so weak or defective that the '*ego*' (which acts as a moderator between 'super ego' and 'id') was unable to control the impulses of the *id* (the part of the personality that contains powerful urges and drives for gratification and satisfaction) because the *super ego* is essentially *an internalized personal image*, developed when the child assumes the parent's attitudes and moral values, it follows that the absence of such an image may lead to an *unrestrained id* and thus to delinquency.

Psychoanalytic theory suggests yet another explanation of Richard's behavior—an insatiable need for immediate reward and gratification. A defect in the character formation of delinquents drives them to satisfy their desire at once, regardless of the consequences. This urge, which psychoanalysts attribute to the 'id', is so strong that

relationships with people are important only so long as they help to satisfy it. Most analysts view delinquents as children unable to give up their desire for instant pleasure.

Sigmund Freud's influential theory about the development of personality provides a different explanation for criminal acts. Freud hypothesized that the three sets of forces:

- The selfish, irrational ones,
- The rational forces, and
- The moralistic ones...

are always struggling for control of behavior. He believed that the criminal suffers from a compulsive need for punishment to alleviate the guilt feelings. Other psychoanalysts, especially *Franz Alexander* emphasize the inability to postpone immediate gratification in the criminal, who has never come to internalize the reality principle.

One of the reasons that psychoanalytic theory has had such an influence is its comprehensiveness as a description of the nature and processes of human personality. In spite of criticism, three basic principles still appeal to the psychologists who study criminality are:

- The actions and behavior of an adult are understood in terms of childhood development.
- Behavior and unconscious motives are intertwined, and their interaction must be unraveled if we are to understand criminality.
- Criminality is essentially a representation of psychological conflict.

➤ **Limitations to Psychoanalytical Theory:**

1. Though it is a thorough explanation it is very difficult to test or validate the theory through empirical work.
2. The actual patterns of criminal conduct usually differ generally from Freud's explanation. Law breakers go to extremes to avoid detection. This fact makes his hypothesis of that criminal suffers from a compulsive need to be punished and be cleansed from their guilty feelings.

Review Questions:

1. “Once a criminal always a criminal”. Do you agree with this opinion of psychiatrists *Yochelson* and *Samenow* ?
2. Explain the personality defect theory.
3. “Criminality may result from either an over active conscience or too weak conscience.” Critically analyze this suggestion made by Sigmund Frued.

Section.3. Sociological Theories of Crime

These theories adopt an objective approach to explain criminality. They emphasize factors that affect many criminals in common. American criminologists prefer this approach. They attribute criminality to the social conditions of the criminal. Crime-causation depends considerably on social interactions. At times persons violate the provisions of law knowing fully well that they will have to face penal consequences for their acts. This phenomenon is more conspicuous in times of political strategy. For example in the freedom struggle of India Mahatma Gandhi and other national leaders broke the laws made by the English and were imprisoned. Similarly, cases of hunger strikes, demonstrations of protests, self-immolations all are glaring instances of deliberate law violations by responsible persons of the society. Sociological theories of criminal behavior can be explained under three heads:

- Structural Explanations
- Sub-cultural Explanations
- Multiple Factor Approach

3.1. Structural Explanations

These arguments maintain that criminality is the result of structural defects in the society or family etc. Structural defects here mean the general breakdown of normal social conditions. These explanations emphasize on the existence of fundamental inequality in the structure of the society. Inequalities are experienced in the opportunities to achieve

the goals valued by the society. In the society, all people have aspirations or goals to be wealthy, successful, educated, hope to possess material possessions such as nice clothes, cars, bungalows, all luxuries. But not everybody is having the opportunities. Some have greater opportunities, for instance, being from affluent families have greater chances to get good education.

Some may have greater abilities to achieve their goals. People with good looks are more likely to achieve goals through legitimate means. Some others, who have lesser opportunities and cannot attain their thorough legitimate means, may face a compulsion to rely on illegal means.

➤ **Merton's Theory of Social Structure and Anomie**

Robert K. Merton (1938) explains this through his popular explanation of “Social Structure and Anomie”. He explains the collapsing of social conditions brought by severe economic conditions is responsible for criminal behavior. He rejects the notion that crime is an intrinsic and individual behavior. He looks beyond the immediate personal environment of the criminals to the broader context of ‘Social Structure and Anomie’ for explanation of criminal behavior. Merton borrowed the term **anomie** from Emile Durkheim a French sociologist. Durkheim had studied the French and American culture after the Industrial Revolution. In his study he noted that economic crisis and a general breakdown of the normal social conditions created “deregulation” of social and moral rules. This deregulation which he called “anomie”, could lead to all sorts of social deviance including suicide and crime.

Anomie is a condition which exists when norms no longer control people's behavior, when people no longer have clear rules. When normlessness exists then controls on behavior and aspirations cease to exist. Merton maintained that anomie is especially likely to exist in a society where there is unequal opportunity and an emphasis on material success; and he claimed that it can explain a broad range of socially deviant behavior. Merton explains that society establishes institutionalized goals – usually understood to be financial success which society emphasizes and reinforces. To achieve these goals there are ‘socially structured methods’ which can be called “means”. When such goals are over emphasized and highly praised but the “means” to achieve them are unavailable to a considerable part of that population then anomie is likely i.e. when

success is blocked by the unavailability of “means” individuals experience strain and show two kinds of reactions, either they must adjust their aspirations downward or devise alternative routes to achieve goals. In such an environment deviant behavior is wide spread. According to Merton, five modes are adopted by the people to achieve goals:

1. Conformity,
2. Innovation,
3. Ritualism,
4. Retreatism, and
5. Rebellion.

Conformity is a path taken by most people, even if they realize that the means to achieve their goals are restricted. **Innovation** is where a person accepts a goal but rejects the accepted, legitimate means to achieve the goal. For example, a child wants a Bicycle, the legitimate means are to ask parents or grand-parents or save money by doing a part time job etc. If all these means are not available an alternative, innovative means may be chosen such as ‘theft’. In **Ritualism**, a person continues to follow the institutionalized means such as hard work and thrift but loses sight of the goals or rejects them. This may describe the so called rat- race, in which people work diligently in socially approved ways but have no hope of success in achieving their goals, or no longer identify with long term goals. In **Retreatism**, both goals and means are rejected. The retreatist’s response to an inability to reach goals is to drop out, or to quit trying. This may lead to extreme retreatist behaviour such as alcoholism, drug addiction or vagrancy. **Rebellion** is an option for people who reject the approved goals and means to achieve them for new goals and means. Rebels and revolutionaries are disappointed individuals who view accepted goals as unattainable or undesirable and socially approved means of reaching them as demeaning or unworkable. Therefore, these persons substitute new, socially unacceptable goals and means, such as redistribution of wealth through socialist political structure.

➤ **Evaluation of Merton’s Theory**

The strain perspective developed by Merton and his followers has influenced both research and theoretical developments in criminology. Yet, as popular as this theory

remains, it has been questioned on a variety of grounds. By concentrating on crime at the lower levels of the socioeconomic hierarchy, for example, it neglects crime committed by middle and upper –class people.

Other critics question whether a heterogeneous society does have goals on which everyone agrees. Some theorists argue that some subcultures have their own value systems. If this is the case, we cannot account for deviant behavior on the basis of Merton's cultural goals.

Other important questions raised are, if we have an agreed upon set of goals, is material gain the dominant one? If crime is a means to an end, why is there so much of useless, destructive behavior, especially among teenagers?

No matter how it is structured, each society defines goals for its members. For example, the United States is not only the society in which people strive for wealth and prestige. Yet, while some people in the other cultures have limited means for achieving goals, not all these societies have high crime rates. Two such societies –Japan and Switzerland—are among the most developed and industrialized in the world. Although the United States has quite a bit in common with them, it does not share their very low crime rates.

Despite the many critical assessments, strain theory, as represented by Merton's formulation of anomie, has had a major impact on the contemporary criminology.

3.2. Sub cultural Explanations

The second type of sociological approach focuses on sub cultural explanations, with emphasis on the discrepancy in the norms for different groups.

➤ Meaning of Sub culture

A sub culture is sub-division within the dominant culture that has its own norms beliefs and values. Sub cultures typically emerge when people in similar circumstances find themselves isolated from the main stream and band together for mutual support. Sub cultures may form among members of racial and ethnic minorities, among prisoners, among occupational groups, among ghetto dwellers. Sub cultures exist within a larger society, not apart from it. They therefore share some of its values. Nevertheless, the life styles of their members are significantly different from those of in the dominant culture.

According to Albert Cohen, an American Sociologist, deviant behavior is supported by sub culture. A sub culture of criminals has its own norms which stand over against the norms of the larger group (the dominant culture). The deviance does not appear unusual or abnormal from their point of view. Indeed, most sub cultures have a vague notion that the larger society is unjust and corrupt. Important types of deviant behaviors are juvenile delinquency, drug addiction, and crime against persons and property etc. The laxity of norms the anonymous nature of cities and multiple standards of behaviors are often responsible for it.

➤ **Basis of the Sub cultural Theory**

Strain theorists (structural explanations) explain criminal behavior as a result of the frustrations suffered by lower class individuals deprived of legitimate means to reach their goals. Cultural deviance theorists assume that:

- Individuals become criminal by learning the criminal values of the groups to which they belong.
- In conforming to their own group standards, these people break the law of the dominant culture.

These two perspectives are the foundations of the sub cultural theory.

Nietzel (1979) explains that the sub cultural theory is based on the fact that there is a lack of agreement between norms of different groups. He describes as follows:

“The sub cultural perspective holds that the conflict of norms, which engenders criminal behavior, is due to the fact that various ethnic or class groupings of people adhere to cultural patterns of behavior that are inconsistent with the dominant injunctions against certain types of crime. These illegal patterns of behavior are supported by the particular sub cultural norms that actually exert pressure toward deviation from the consensual norms underlying the criminal law.”

Gangs, for example, possess norms about how to behave. For some young people, the gang takes the place of parents as the giver of norms, even when the parents attempt to instill their own values.

➤ **Walter Miller’s Theory of Focal Concerns**

This theme of cultural conflict is made salient in **Walter Miller's Theory of Focal Concerns, (1958)** which attributes the criminal activities of lower- class adolescent gangs to their attempt to achieve the ends that are valued in their culture through the behaviors that appear to them to be the most feasible means of obtaining those ends. Thus, adherence to the traditions of the lower class is essential. Miller labels them as trouble, toughness, smartness, excitement, fate and autonomy. For example, lower-class boys pick fights to show their toughness, and they steal to demonstrate their shrewdness and daring.

MILLER'S "FOCAL CONCERNS" OF LOWER- CLASS CULTURE

S. No	AREA	DESIRABLE	UNDESIRABLE
1	Trouble	Law-abiding behavior	Law-violating behavior
2	Toughness	Physical prowess; skill; "masculinity" fearlessness; bravery; daring	Weakness; ineptitude; effimacy; timidity; cowardice; caution
3	Smartness	Ability to outsmart, dupe, gaining money by "wits"; shrewdness;	Gullibility, "conabilty"; gaining, money by hard work; slowness; dull- wittedness; verbal maladroitness
4	Excitement	Thrill; risk; danger; change; activity	Boredom; "deadness"; safeness; sameness; passivity
5	Fate	Favored by fortune; being "lucky"	Ill-omened; being; "unlucky"
6	Autonomy	Freedom by external constraint; freedom from super ordinate authority; independence	Presence of external constraint; presence of strong authority; dependency; being "cared for"

➤ **Limitations to the Focal Concerns Theory**

- The theory of focal concerns applies to a restricted range of crimes. It does not crime by individuals not socially disadvantaged, such as a business man or stock broker.
- The key concepts are vague as in the case of structural explanations. How do these cultural standards originate? How are they transmitted from generation to generation? And how do these standards control the behavior of any one individual?
- According to Nietzel, the most troublesome concept is the central one that is, the sub culture. Some critics reject the assumption of value differences among groups. For example, some sociologists suggest that American society is really not as culturally diverse as the theory implies.

3.3. Multiple Factor Approach

Despite repeated attempts on the part of criminologists propounding different views to formulate a singular theoretical explanation for criminal behaviour, no hypothesis could answer the issue satisfactorily. Eventually, the sociologists made use of ‘multiple-factor approach’ to explain the causation of crime. The supporters of this view believe that crime is a product of a combination of a variety of factors which can not be narrated in terms of general propositions. This view finds support from the writings of eminent American criminologist *William Healy*, expressing his views on multiple causation theory, Pro. Healy observed that it is not one or two factors which turn a man delinquent but it is a combination of many more factors_ say eight or ten__ which cumulatively influence him to follow criminal conduct. He, however, agreed that all the factors associated with a particular crime may not have equal importance as a cause of that crime. The extent of their influence on crime may be in varying degrees, some exerting greater influence on the crime while the others, the least. But this theory has been vehemently criticized by Albert Cohen on the ground that it offers no single explanation which can explain crime causation. Moreover, it is fallacious to believe that crimes generate only in deplorable surroundings. The greatest shortcoming of the

multiple factor approach to crime according to Cohen is that the adherents of this theory confused 'factors' with those of 'causes' of crime.

From the foregoing analysis it is evident that sociologists consider crime as a product of environmental deviations and varying social conditions. The inter-relation between criminality and some of these conditions may be discussed under the following heads:

1. Mobility:

The rapid growth of industrialization and urbanization in recent years has led to expansion of means of communication, travel facilities and propagation of views through press and platform. Consequently, human interaction has gone beyond intimate associations with increased chances of mobility. Migration of persons to new places where they are strangers offers them better opportunities for crime as the chances of detection are considerably minimized. Mobility, therefore, serves as a potential cause of social disorganization which may result in deviant behaviour due to lack of family control.

2. Culture Conflicts:

In a dynamic society social change is an inevitable phenomenon. The impact of modernization, urbanization and industrialization in modern dynamic society may sometimes result in social disorganization and this may lead to culture conflicts between different sections of society. The difference may be between old and new values, local and imported values and traditional values and the government imposed values.

Criminality arising out of cultural conflict theory has been well explained by *Shah* and *Mckay* through their *Cultural Transmission theory of crime* which was a dominant criminological theory of the 20th century. The theory simply states that "traditions of delinquency are transmitted through successive generations of the same inhabitation in the same way as language and attitudes are transmitted." The inability of local communities to appreciate the common values of their residents or solve commonly experienced problems causes tension leading to deviant behaviours. This is how criminal traditions get embedded into the functioning of a community and they co-exist alongside conventional values. Sutherland has termed this phenomenon as "differential social

disorganization” which is more common with lower-class neighborhoods. He attributes three main causes for the culture conflict, namely, (1) residential instability; (2) social or ethnic heterogeneity; and (3) poverty.

The shift of population due to migration or immigration quite often affects the crime rate of a given place. The culture conflict between inhabitants and immigrants results in deviant behaviour. In a recent study *Ruth* and *Cavan* found that Eskimos who were free from the problem of crime until recently, now frequently indulge into deviant behaviour such as, loitering, drunkenness and sex-offences due to their migration to urban areas and social contact with non-Eskimos.

3. Family Background:

Sutherland holds that out of all the social processes, the family background has perhaps the greatest influence on criminal behaviour of the offender; the reason being that children spend most of their time with their parents and relatives within the family. Children are apt to imbibe criminal tendencies, if they find their parents or members of the family behaving in a similar manner. The institution of family is expected to cater to the basic needs of the children. Therefore, the child should feel that he enjoys a certain privilege and protection in his family and that he is loved and liked by his parents and members of the family. This feeling of security, warmth and reliance makes children to learn the virtues of love, respect and duty towards others. Thus, it is through the institution of family that the child unconsciously learns to adjust himself to the environment and accepts the values of life such as respect for others, faithfulness, trustworthiness and co-operation through his own life experiences. It, therefore, follows that a child brought up in a broken family is likely to fall an easy prey to criminality. Lack of parental control over children due to death, divorce or desertion of parent or their ignorance or illness may furnish soothing ground for the children to resort to criminal acts. Again, frequent quarrels amongst parents, undue domination of one over the other, step-motherly treatment with children, frequent births in the family, immorality of parents, misery, poverty or unwholesome family atmosphere and the like may also lead to the neglect of child and finding no adequate outlet for his talents, he may tend to become criminal in his life. To add to the above list, unemployment, low income or parent’s continued long

absence from home for the sake of livelihood is some other causes for child delinquencies.

After a careful study of the family background of a number of delinquents, *Donald Taft* deduced the following generalizations which are significant from the point of view of crime causation:

1. Mobility among criminals is far greater than those of non-criminals. In other words, delinquents change their place more frequently than the law-abiding persons.
2. The delinquents usually prefer to stay away from their family, parents and homes.
3. The homes of delinquents are often ill-maintained, insanitary and display poor standard of living.
4. The family life of most delinquents is usually disrupted and their parents are either dead, separated or divorced.
5. Experience has shown that most of the delinquents are subjected to physical punishment by the parents in their childhood. Consequently, they hardly show any respect for the members of their family.
6. A large percentage of criminals are usually hostile and indifferent towards their brothers and sisters.
7. Delinquents are encouraged to follow criminality in their homes in either of the following ways:
 - a. The parents may not themselves be associated with the criminal act but they might deliberately avoid preventing their children from indulging into criminal acts.
 - b. Children may learn criminal patterns through the process of imitation. They begin to learn similar behaviour from their parents or other members of the family.
 - c. The parents who have embraced criminality as a way of life like those of professional thieves, pickpockets, prostitutes, etc. often train their children for the vocation. It is, however, true that a reverse process may also operate where criminal parents take all steps to ensure that their children do not follow their foot-steps and keep away from criminality. To

take an illustration, it is often seen that prostitutes usually take care to keep their children away from the dubious profession so much so that they take all precautions to ensure that their children do not even come to know that their mother is a prostitute. So also, most of the notorious dacoits prefer to dissuade their children from following similar criminal traits and provide them best education for an upright and honest living. This change in their attitude is perhaps due to the impact of education and social transformation in recent decades.

Those who disagree with the influence of family surrounding on criminality may argue that this hypothesis is incorrect because cases are not wanting when persons brought up in most down-trodden and deplorable family situations have become most useful members of the society and have held prestigious positions. It may be noted that family is only one of the multiple factors affecting criminal behavior. Therefore, if a child living in degraded family situations finds other surroundings favorable to his upright growth, he adapts himself to those norms and eventually becomes a law abiding citizen. Thus if other conditions of the child remain conducive to his upright living, the evil influences of degenerated family are held in check by other stronger forces.

4. Political Ideology:

It is well known that the Parliamentarians who are law-makers of the country are also politicians. They succeed in mobilizing public opinion in the desired way through the media of press and platform and finally enact suitable laws to support their policies. Thus political ideologies gain strength through legislative process thereby directly influencing the criminal patterns in a given society. The liberalization of abortion law, protection of women against violence including harmful traditional practices, etc. are some of the examples to show as to how the concept of criminality changes with the changed ideologies of the politicians and the government in power. With the change in ideologies what was unlawful and illegal till yesterday may become lawful and legal today and vice versa. The law-makers justify these changes for the good of the society keeping in view the changing norms of civilization and culture. Again, political changes in a country may give rise to new political offences. The excessive interference of politicians in executive

functions of the Government weakness the morale of the administrators as well as the police, with the result there is spontaneous growth in crime-rate.

5. Religion and Crime:

The changes in religious ideologies also have a direct bearing on incidence of crime in a particular region. It has been rightly said that morality can best be preserved in a society through the institution of religion. The bond of religion keeps persons within their limits and helps them to keep away from sinful and criminal acts. The declining influence of religion in modern times has tended to leave men free to do as they like without any restraint or fear. Consequently, they do not hesitate to resort to criminality even for petty materialistic gains. Despite the fact that all religions speak of communal harmony and peaceful co-existence, most wars on this earth are fought in the name of religion. The war between Iran and Iraq for over eight years, the wars in Lebanon, and the continuing fight between Catholics and Protestants in Northern Ireland and even terrorist activities in India are being carried out in the name of hidden religious overtones. These divisive forces contribute considerably to the incidence of murder, mass killing, destruction of public and private properties and other anti-social behaviour.

6. Economic Conditions:

Economic conditions also influence criminality to a considerable extent. Present day industrial progress, economic growth and urbanization have paralyzed the Ethiopian domestic life. The institution of family has disintegrated to such an extent that control of parents over their wards has weakened thus leaving them without any surveillance. Under the circumstances, those who lack self-control fall an easy prey to criminality. The need for economic empowerment of women leads to employment of women and their other outdoor activities. This in turn enhanced the opportunities for sex crime. Again crimes such as hoarding, undue profiteering, black-marketing, etc., are essentially an outcome of economic changes. Now-a-days money is the paramount consideration to assess the social status of a person in society. Crimes in higher circles of society can easily be wiped off through money. Unemployment among the youths is yet another cause of increase in crime rate. If the energies of these young persons are properly channelized, surely the crime rate among this age group will decrease.

It has been generally accepted that there is a strong relationship between criminality and economic or income inequality as also between crime and unemployment. But poverty *per se* (in/by itself) is not the sole cause of criminality; it is only a major factor in crime causation. It is the social disorganization which accounts for criminality among the poorest and not their poverty. Undoubtedly, there is close relationship between unemployment and criminality and particularly, accounts for an unprecedented rise in property crimes and a consequential increase in the arrest rate of juveniles and youth. Those who are jobless or have less secure employment such as casual and contract workers, are more likely to be involved in property crimes.

Analyzing the impact of economic conditions on criminality, **Prof. Hermann Mannheim** observed that if we leave aside traffic offences, three-fourth of the time and energy of the criminal law administrators of the world shall have to be devoted to economic crimes. Focusing the importance of economic factors in the causation of crime, he pointed out that poverty contributes both directly and indirectly to the commission of crime. However, poverty alone may not be a direct cause of crime because other factors such as frustration, emotional insecurity and non-fulfillment of wants often play a dominant role in giving rise to the criminal tendency.

The Marxist theory has emphasized that all human behaviour is determined by economic factors. Supporting this view, **Fredrick Engels** attributed increase in the incidence of crime in England in mid-eighteenth century to the deplorable economic condition of the workers due to class exploitation. **W.A. Bonger** also adopted the same approach in explaining crime causation and asserted that a criminal was a product of capitalistic system, which created selfish tendencies. In such a system each person tries to extract maximum from others in return of the minimum from himself. Thus, Bonger identified many evils in the capitalistic systems which were responsible for generating crimes. In fact, *the theory of Radical Criminology* is based on this concept which further explains that crime occurs due to the exploitation of the poor by the rich.

7. Ecology of Crime:

Ecology is the study of people and institutions in relation to environment. Topographical conditions also affect the incidence of crime in a particular region or

locality. After a series of researches *Enrico Ferri*, the eminent Italian criminologist analyzed the crime index of his country and concluded that in the same country the crime rate varies considerably from one region to another. Some typical crimes are more peculiar to a particular region than other parts of the country. Similar observations were made by criminologists in France, England and U.S.A. which sufficiently established the influence of ecology on crime. It is well known that violating of customs, excise and drug laws are more common in border areas and coastal regions than in plains. Illegal felling of trees and violation of forest laws is an every day occurrence in forest regions.

The impact of ecology on crime can apparently to be seen in dacoit-infested forest regions where opportunities for escape and avoid detection are plenty. Similarly, pilgrim places are the breeding ground for all sorts of anti-social activities such as cheating, stealing, exploiting, etc.

The proponents of ecological theory attribute social disorganization as the main cause of criminality. They therefore believe that treating or punishing the individual offenders would do little to alleviate the problem and the solution is to be found in making efforts to stabilize the social organization and promoting community feeling, particularly among youths. As *Durkheim* rightly put it, “the overall disorder and disorganization, social and personal, shifts behaviour in the direction of crime”.

The regional comparisons of crime rate in different parts of the country sufficiently indicate that certain crimes are peculiar to a particular location. It can, therefore, be inferred that ecology of crime consists in the study of influences such as neighborhood, population, topographical factors, etc., on criminals considered from the point of view of location. Commenting on this aspect, *Donald Taft* observed that “*ecology of crime may be studied in terms of location of criminal or residences of delinquents or some supposed influence upon crime which has distribution in terms of space and topography*”. He further observed that criminals are often mobile and there seems to be a causal relationship between location of delinquency and the criminal. It may, however, be pointed out that ecology of crime need not be confused with the proximity of crime and social conditions. The predominant consideration in the ecology of crime is topographical conditions of different regions and their impact on causation of

crime peculiar to those places. Thus ecology is undoubtedly one of the multiple factors of crime causation.

8. Influence of Media

The importance of mass media in influencing human mind has been repeatedly emphasized by some experts. Experience has shown that television and films have the maximum impact on the viewers due to combined audio-visual impact. Most of serials or films shown on television or cinema halls depict scenes of violence which adversely affect the viewers, particularly the young boys and girls who often tend to imitate the same in their real life situations. The rising incidence of juvenile delinquency is essentially the result of evil effect of violence and vulgarism and undesirable sex exposures depicted in movies or television. Likewise, pornographic literature also has an unwholesome influence on the impressionable minds of the youth which generates criminality among them.

Most criminologists believe that films and television are major contributors to violent behaviour. A survey conducted by the Broadcasting Group of the House of Lords indicated that exposure to media violence was closely linked with aggressive behaviour. But Hagell and Newbury opposed the view that there was a link between violent media images and criminality after finding that persistent offenders watch films or television far less than non-criminals. Gillin has expressed doubt about any real link between media violence and criminality. According to him films, T.V. and other media teach methods of violence to those who are already susceptible to them but it does not go further than that.

Nevertheless, it would be seen that in recent years the media has a powerful effect on public perceptions of the dangers posed by particular events, actions or behaviors. The emotive power of the media may, however, sometimes lead to illogical and ill-conceived conclusions. At times, it may be noticed that crime depiction in the media is deliberately distorted to suppress reality. Again, there may be occasions when an act committed by an influential person or a politician may not be given coverage or condemnation despite being blatantly criminal or anti-social.

3.4. Crimes in Urban and Rural Areas

Ecological aspects of crime can best be demonstrated by an analysis of a variety of crimes operating in urban as well as rural areas. Many crimes which are common in urban areas are unknown to rural setting. The concentration of industry and commercial activities in urban region has given rise to the problems of immigration, mobility of population and scarcity of residential accommodation. The availability of quick means of transport in cities offers better opportunities for delinquents to escape detection and arrest. The incidence of juvenile delinquency, shop lifting, petty thefts and sexual offences are more common in slum areas and poverty-stricken homes. That apart, the recurrence of white collar crimes, bank-offences, frauds, embezzlement, racketeering (a system of organized crime that is traditionally involved in extortion of money from businessmen by intimidation, violence or other illegal methods) and the like are mostly confined to urban regions. Conversely, some crimes are exclusively confined to rural areas and they rarely occur in cities. Thus the thefts of crops and cattle, arson and trespass are predominately the offences of rural setting. Commenting on the incidence of crimes in urban and rural regions Donald Taft opines that the number of crimes committed in rural areas are far fewer than those committed in urban cities because of the greater homogeneity of rural population, lesser mobility and absence of adequate opportunities for the criminal to escape. Greater mobility due to migration and immigration of labour, overcrowding in urban dwelling, the absence of effective family or community control and lack of constructive influences are the main causes for multiplicity of crime in urban regions.

The rural migrants in new cities are unable to easily adjust to the impersonal heterogeneity of urban life. They are no longer controlled by the traditional norms and family loyalties. They become restless persons without associates. In the words of Durkheim, they become small particles in that world of “disorganized dust”. Thus heterogeneity of urban life destroys their earlier congenial social relationships, creating a social vacuum which proves to be a fertile ground for criminality. Under such conditions, violence and crime proliferate.

Again, the inhabitants of rural areas are by nature simple and law-abiding as compared with their urban counterparts, probably because of illiteracy and their modest living. Moreover, limited contact with outside world keeps them unaware of the technicalities of criminal life. It is generally believed that crimes relating to property are predominantly committed in urban areas while those against person are more common in rural regions. However, this hypothesis does not seem to be wholly correct. Property crimes are as common in villages as in towns. Likewise, crimes relating to person are as rampant in cities and towns as in rural areas.

3.5. Neighborhood Influences

Neighborhood influences also have much to do with the nature of crimes in a particular locality. Thus thickly inhabited areas, town and cities offer frequent opportunities for sex offences and crimes relating to theft, bootlegging, burglary, kidnapping, cheating, and deceit and so on. Cases of pick-pocketing are common in railway stations, bus stands and other halt places. Thefts of footwear are too common in temples and worship places in India.

Ecological study of prisons further reveals that certain types of crime are peculiar to the prison-life. For example, homo-sexuality is common among the prisoners because of their inability to resist biological needs due to the deprivation of family life. That apart, the convicts quite often indulge in mutual fights and quarrels in an attempt to show their muscle power and establish dominance over other prisoners in regard to their skill in criminality. Violent offenders generally resort to destruction of prison property and offend prison authorities on petty issues.

Another significant feature of these delinquent areas is the location of certain anti-social institutions in the neighborhood. These include prostitution houses, gambling dens, brothels and similar other dubious institutions. These areas of vices are delinquency-ridden and offer a fertile ground for organized criminals. The inhabitants of nearby locality are easily influenced by these vicious activities and thus lend themselves into the life of criminality.

W.I. Thomas, the famous sociologist of the Chicago School asserted that inability of a neighborhood to solve its problems together leads to social disorganization leading to unconscious motivations for crime. Inability of a group to engage in self-regulation turns them towards delinquency.

More recently, there has been a tendency to correlate certain places of recreation with the ecology of crime. The cinema theaters, swimming pools, sport grounds, and race courses generally offer a favorable atmosphere for delinquencies. But this is rather an oversimplification of facts. As a matter of fact, the frequency of crime in these places has little to do with their location. In fact, it is the environmental and not the ecological influence which generates crime in these places. Moreover, there are quite a large number of law-abiding members of the society who do not become criminals even after coming into contact with delinquents in these places of recreation and entertainment.

Review Questions:

1. How far are the sociological criminologists justified in completely externalizing the factors of criminal behaviour?
2. Explain Robert Merton's theory of "Social Structure and Anomie." How far can it explain the criminal behaviour? If this explanation should be agreed up on who should be made punishable for the in harmful consequences of the criminal behaviour?
3. Define a sub-culture. Critically discuss Walter Miller's theory of focal concerns?
4. Write short notes on:
 - a. Cultural Transmission theory of crime
 - b. Ecology and crime
 - c. Religion and crime

Section.4. Social-Psychological Theories of Crime

Social-psychological explanations of criminality view the criminal behavior, as a learned one acquired through a process of *social interaction*. Sometimes they are referred to as *Social-process theories*, in order to draw attention to the processes by which an individual becomes a criminal. These explanations bridge the gap between the unqualified environmentalism of the sociological theories and the narrow individualism of the psychological and biological approaches. Thus, they stress those reciprocal transactions between people and their social environments that would explain why some people behave criminally and others do not.

Social-psychological theories can be divided into two categories:

- Control Theories,
- Learning Theories.

4.1. Control Theories

Control theories assume that the motive to deviate is relatively constant across people, and hence people will frequently behave antisocially unless they are trained not to. Some never form attachments or bonds with significant others, so that necessary controls are never internalized. There are two important theories under these explanations.

Control theory, developed in the 1960s and 1970s, attempts to explain ways to train people to engage in law-abiding behavior. Although there are different approaches within control theory, they share the view that humans require nurturing in order to develop attachments or bonds to people and that personal bonds are key in producing internal controls such as conscience and guilt and external controls such as shame. According to this view, crime is the result of insufficient attachment and commitment to others.

4.1.1. Hirschi's Model (1969):

The sociologist Travis Hirschi has developed his own control theory that attempts to explain conforming, or lawful rather than deviant, or unlawful behavior. He stresses the importance of the *individual's bond to society* in determining conforming behavior. His research has found that socioeconomic class has little to do with determining delinquent behavior, and that young people who are not very attached to their parents or to school

are more likely to be delinquent than those who are *strongly attached*. He also found that youths who have a *strongly positive view of their own accomplishments* are more likely to view society's laws as valid constraints on their behavior.

His explanation stresses four *control variables*, each of which represents a major social bond:

1. Attachment,
2. Commitment,
3. Involvement, and
4. Belief.

These variables explain the social bondage i.e. attachment to others in the society. Particularly, young people are bonded to the society at several levels. However, the extent and strength of such bondage differ in the following ways:

- The degree to which they are affected by the opinions and expectations by others.
- The payoffs they receive for conventional behavior, and
- The extent to which they subscribe to the prevailing norms.

As represented in the work of Travis Hirschi, the Social Control Theory proposes that exploiting the process of socialization and Social Learning Theory builds self-control and reduces the inclination to indulge in behaviour recognized as antisocial. It is based on Functionalist theories of crime and proposes that there are three types of control:

- **Direct:** by which punishment is threatened or applied for wrongful behaviour, and compliance is rewarded by parents, family, and authority figures.
- **Indirect:** by which a youth refrains from delinquency because his or her delinquent act might cause pain and disappointment to parents and others with whom he or she has close relationships.
- **Internal:** by which a person's conscience or sense of guilt prevents him or her from engaging in delinquent acts.

4.1.2. Walter Reckless's Containment Theory (1961):

Walter C. Reckless developed one version of control theory, called *containment*. He argued that a combination of internal psychological containments and external social containments prevents people from deviating from social norms. In simple communities, social pressure to conform to community standards, usually enforced by social ostracism, was sufficient to control behavior. As societies became more complex, internal containments played a more crucial role in determining whether people behaved according to public laws. Furthermore, containment theorists have found that internal containments require a positive self-image. All too often, a sense of alienation from society and its norms forms in modern individuals, who, as a result, do not develop internal containment mechanisms.

Reckless proposes two types of *containments*. According to him it is largely external or outer containment –that is, *social pressure*-- that controls crime. If a society is well integrated, with well- defined social role and limits on behavior, effective family discipline and supervision and reinforcement for positive accomplishments, crime will be contained. But if the external controls weaken or disappear, restraint of crime becomes increasingly a matter of internal restraints, or the individual's superego. Thus a positive self-concept becomes an insulator against delinquency.

The presence of robust inner containment is inferred from the following indicators:

- A good self-concept,
- Self-control,
- Ego strength,
- Ability to tolerate frustration,
- Active goal direction,
- Ability to find substitute satisfactions,
- Tension reducing realizations, and
- Retention of norms.

Reckless suggests that the probability of deviance is directly related to the extent to which *internal pushes*, (such as need for immediate gratification, restlessness and hostility) *external pressures* (such as poverty, unemployment, and blocked opportunities) *and external pulls* are controlled by one's inner and outer containment.

The primary containment factor is found in self-concept, or the way one views oneself in relation to others and the world as well. A strong self-concept, coupled with some additional inner controls (such as a strong conscience and sense of responsibility) plus, outer controls, make delinquency highly unlikely.

➤ **Evaluation of the Reckless Theory**

Sociologists like containment theory because it is a good in-between view, are neither rigidly environmental nor entirely intrapersonal. But containment theory explains only a part of delinquent or criminal behavior, as even its own advocates such as Hirschi. Another criticism is that the terminology used is vague and poorly defined. It is also difficult to test the theory empirically.

4.2. Learning Theories

As a type of social-psychological approach, learning theory focuses on mechanisms by which criminal behavior is learned. One example is Edwin H. Sutherland's (1947)

4.2.1. Differential Association Approach: Edwin Sutherland

Edwin H. Sutherland (1883–1950), a U.S. sociologist and criminologist who first presented his ideas in the 1920s and 1930s, advanced the theory of differential association to explain criminal behavior. He emphasized that criminal behavior is learned in interaction with others, usually in small groups, and that criminals learn to favor criminal behavior over noncriminal behavior through association with both forms of behavior in different degrees. As Sutherland wrote, "When persons become criminal, they do so because of contacts with criminal patterns and also because of isolation from anti-criminal patterns." Although his theory has been greatly influential, Sutherland himself admitted that it did not satisfactorily explain all criminal behavior. Later theorists have modified his approach in an attempt to correct its shortcomings.

According to Sutherland's theory, criminal behavior requires socialization in to a system of values conducive to violating the law; thus the potential criminal learns "definitions" (the actions that define) that is favorable to deviant behavior. If these definitions of the criminal acts as acceptable are stronger than the definitions unfavorable to deviant behavior, then the person is likely to commit a criminal act. Sutherland was suggesting that the difference between those who break the law and those who don't "lies not in their personal fiber but in the content of what they have learned". For example, all of us value money, but some of us acquire it legally, others illegally. What is relevant is the values we place on specific behaviors by which to obtain money. But these definitions need group support; crime will not persist in the absence of "sub culture of violence."

But it is not necessary to associate with criminals directly. Children might learn pro-criminal definitions from middle-class parents, by watching their father's pocket too much change or hearing their mother boast about exceeding speed limit.

➤ **Postulates of the Differential Association Theory:**

1. Criminal behavior is learned.
2. Criminal behavior is learned in interaction with other persons in a process of communication.
3. The influential aspect of the learning of criminal behavior occurs within intimate social groups.
4. When social behavior is learned, the learning includes:
 - a. Techniques of committing the crime, which are sometimes very complicated, sometimes very simple, and
 - b. The specific direction of motives, drives, rationalizations, and attitudes.
5. The specific direction of motives and drives is learned from definitions of the legal code 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, intensity, and priority.

8. The process of learning criminal behavior by association with criminal and anti-criminal patterns involves all the mechanisms that are involved in any other learning.
9. Although criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since non-criminal behavior is an expression of the same needs and values.

➤ **Merits of the Theory:**

- This theory has survived because of its broad scope and its ability to organize masses of research findings.
- The theory is admirable with respect to its attempt to explain crime in places where it would not, on first blush, be expected—for example, among law breakers who grew up in affluent environments and who were granted their material wants. Because they commit crime by learning from the peer group etc.

➤ **Criticism of the theory:**

Many researchers have attempted to validate Sutherland's differential association theory. Others have criticized it. Much of the criticism stems from errors in interpretation:

- Some critics ask why it is that not everyone in heavy and prolonged contact with criminal behavior patterns becomes a criminal. For example, Correctional Officers in Prisons, Police Officers etc. They come in to contact with more criminal associations than non-criminal ones. How do they escape from learning to be law-violators themselves?

The answer is, of course, that Sutherland does not tell us that individuals become criminal by associating with criminals or even by association with behavior patterns. He tells us, rather, that a person becomes delinquent because of an "excess of definitions favorable to violation of law." The key word is "definitions."

- The theory does not explain all types of criminal behavior. It has difficulty in explaining crimes of passion or impulsive violence.

4.2.2. Social Learning Theory:

This theory emphasizes the interaction between person and environment, in a quest not so much to learn why people violate the law but, rather, to identify the conditions under which they might do so. Development of a particular orientation, criminal or non-criminal, reflects an accumulation of reinforcements in a variety of situations. *Patterson* (1980) claims, “children do not out grow extreme anti-social behavior, they remain deviant unless they are punished.”

But other social learning theories are more positive, proposing that child-reasoning practices can be influential, in that the child learns adult behavior patterns, values, and anxieties through observing the experience of the adulthood. However, the interaction between children and their parents can be a two-way street, in which each changes the behavior of the other.

Imitation, or modeling, serves social-learning theory as one useful way to explain the development of certain kinds of behavior. *Bandura* and *Walters* (1963) showed that personality traits such as aggression or dependency can be learned through watching others and seeing what kinds of rewards or punishments they receive for their actions. Responses that lead to valued outcomes (or positive reinforcement) are likely imitated.

But the learning that takes place may be influenced by the situation in which it occurs or by the specificity of reinforcements, or rewards. Individuals learn to discriminate one situation from another. Bandura, in studying the behavior of highly aggressive boys, found that it was often *stimulus-bound*. Some of these children had parents who punished the child when he displayed aggression toward them; at the same time, these parents characteristically acted aggressively themselves and encouraged their child to do so with his peers. This pattern of behavior produced boys who are showed little aggression at home but a great deal at school.

In contrast to the differential association type of-psychological approach, some advocates of social-learning theory see children as active participants in their own socialization

holding that delinquents are, in fact, capable of establishing behavior patterns to be followed by others. Gerald H. Patterson (1980) concludes from his research:

“Antisocial children train their parents. The antisocial behavior typically has an impact; they are very effective in training adults and peers alike to cease making demands. The child does not have to do chores or to conform to house rules. Similar techniques are used by the child to train teachers and adults in general to believe that it is not necessary for [the child] to go to school or to achieve a reasonable level if he or she does attend.”

➤ **Criticism:**

The social-learning theory has been criticized for its failure to give an independent definition of reinforcement. And studies of some types of crime---embezzling, for example, researchers have found no indication of positive reinforcement for that act in the criminal’s social background and environment.

Unit Summary:

In attempting to explain criminal behavior, a number of theories have been advanced, ranging from environmental to hereditary to personality factors as the proposed determinants.

Biological explanations focus on genetic inheritance on chromosomal abnormalities, or psychological irregularities or on constitutional (body type) determinants. Cesare Lombroso, the father of modern criminology unsuccessfully sought physical qualities that distinguished criminals from non-criminals. Hereditary predisposition to criminal behavior has recently been reintroduced an explanation in a book by two influential social scientists, James Q. Wilson and Richard Herrnstein. There is some relationship between William Sheldon’s mesomorphic body type and aggressive behavior, but this may be best explained through a social-learning perspective.

A variety of psychological explanations have been advanced. Samuel Yochelson and Stanton E. Samenow, psychiatrists, proposed that criminals possess a different way of thinking, one in which they manipulate matters for their behavior is shifted to others.

Freud believed that the criminal suffers from a compulsive need for punishment, and so crimes are committed to permit the offender to be cleansed of guilt.

In contrast, Sociological theories of crime assume that cultural conflict is the root cause. Individual difference is given little attention; instead, environmental factors that manifest massive influences are central. Sociological explanations can be divided into structural and sub cultural types. A key concept of structural explanations is the fundamental inequality in the opportunities to achieve the goals dictated by society.

Sub cultural explanations focus on the discrepancy among groups in what is considered normative, or appropriate, behavior. An analysis of the socio-cultural and economic explanation of crime suggests that no single theory can offer a satisfactory explanation for crime causation. The reasons being that these theories are more or less of a general type and cannot explain particular situation of delinquency. It, therefore, follows that delinquent behaviour is an outcome of the combination of a verity of factors which create situations conducive to crime.

It must, however, be emphasized that crime is an index of social pathology. Crime and violence reoccur when society is disorganized, floundering and beset with social and economic problems. Social disorganization is reflected by the conflict in social values which interrupts harmony of the society. Therefore, crime must be understood on the basis of human behaviour and the social and emotional needs of the person.

Social-psychological explanations of criminality view it as a learned behavior, acquired through the process of social interaction. Among these, as an example of control theory, Reckless' containment theory sees social pressure as controlling crime. In contrast, social-learning theory places more emphasis on reinforcement of responses, learned from observing the rewards and the punishments others receive for their acts.

Review Questions:

1. Explain the importance of the *individual's bond to society* in determining conforming behavior. Analyze the criminological theory relating to this concept.
2. Discuss the containment theory advocated by Walter Reckless. List out the indicators of a strong internal containment.

Bring out the merits and demerits of differential association theory.

3. Do you think that the social learning theories can explain all criminality? Are you convinced by the suggestion that criminality is learnt behaviour?

References:

Books:

1. Adler, Muller,& Laufer 2001 -"Criminology", 4th ed. Mc 2001.Graw-Hill Companies, New York,
2. Lawrence S. Wrightman- California "Psychology and the Legal System", 2nd ed. Brooks/Cole Publishing Company.
3. Hirschi, Travis. (1969). "Causes of Delinquency", Berkeley: University of California Press. (Transaction Publishers reprint edition). ISBN 0-7658-0900.
4. Wilson, Q. & Herrnstein, Richard. (1985). "Crime and Human Nature", New York: Simon and Shuster.

Articles:

1. Akers, Ronald L. (1990). "Rational Choice, Deterrence, and Social Learning Theory: The Path Not Taken". *Journal of Criminal Law and Criminology*. 81(3), 653-676.
2. Hirschi, Travis. & Gottfredson, M. (1993). Commentary: Testing the General Theory of Crime". *Journal of Research in Crime and Delinquency*, 30. 47-54.

UNIT-III

THE TYPOLOGIES AND MEASUREMENT OF CRIME

Introduction

The general term “crimes” covers a wide variety of types of crimes, with their own distinct features. Murder and arson, for example, both are crimes. They have the same essential elements, including a criminal intent (*mens rea*) and a harm element. But these elements take different forms in different crimes. In murder the criminal intent takes the form of intending to kill another human being wrongfully, while in arson the intent is that of wrongfully burning the property of another. Lawyers and criminologists have searched for a system of grouping the many types of crimes into coherent, rational categories, for ease of understanding, of learning, and of finding them in the law books, and for purposes of studying them from both a legal and a criminological perspective. Such categorizations are called *typologies*.

Objectives:

By the end of this unit the students will be able to:

- Identify general typologies of crime.
- Realize the philosophy behind the classification of crimes as blue collar crime and white collar crime.
- Discuss the policies of criminalizing different harmful conducts.
- Explain the concept of juvenile delinquency and factors contributing to juvenile delinquency
- Identify organizational criminality and goals of corporate criminality.
- Appreciate the concept of international crimes and facts about the International Criminal Court.
- Make out the importance and role of crime statistics in the criminology.

Section. 1. The Typologies of Crime-A General Overview

The ancient Romans classified their crimes as, those ‘*against the gods*’ and those ‘*against other human beings*’. As late as the eighteenth century, some English

lawyers simply listed crimes alphabetically. The French of the early nineteenth century created a typology with three categories:

- Serious crimes (felonies),
- Medium serious crimes (misdemeanors), and
- Crimes of a petty character (violations)

The more serious crimes were grouped into categories based on the harm those crimes entailed, such as harm against life, against physical integrity, against honor, against property, and so on.

Nowadays the French categorization is generally accepted worldwide, although lawyers and criminologists may differ on the desirability of lumping various crime types together into categories. Lawyers, after all, may be much more interested in the procedural consequences that flow from the categorizations, while criminologists may be much more concerned with criminological implications for studying different types of perpetrators and devising schemes of crime prevention.

There are also political considerations in devising a typology. For example, the criminal codes of the former communist countries had large categories of political crimes, which were given the most prominent place in those codes. They included many crimes that in Western democracies are grouped in other categories, such as property crimes or crimes against the person, or that may have no counterpart at all.

The typology in US law seeks to accommodate both the established legal typology__ for example, which used in the Model Penal Code __ and the criminological objectives that are so important for the study of crime from a sociological and behavioral perspective. These categories are:

- Violent crimes,
- Crimes against property,
- Organizational criminality, and
- Drug-, alcohol-, and sex-related crimes.

The United States has more than a single crime problem. One problem is high, though currently declining, rates of street crime (including homicide, assault, rape,

robbery, and burglary). Much of this type of crime is committed by an alienated and self-destructive underclasses. Another is the drug-crime problem, which is linked to the first problem. Some drug-intoxicated individuals commit crimes because they have lost their inhibitions while under the influence.

There are also crimes that stem from the drug business (for example, money laundering) and crimes that arise from economic necessity, because users need money to buy more drugs. Then, too, there is the organized-crime problem, which is intertwined with the drug-crime problem insofar as drug trafficking is the major source of income for organized-crime groups. In addition, there is a white-collar-crime problem. It, too, is linked to other types of crime. For example, federal investigators uncovered a scheme in 1998 by two New York crime families and half dozen Wall Street stockbrokers to commit stock fraud.

Generally speaking, the following types of crimes can be identified:

2. Blue Collar:

(Otherwise known as crimes in the streets)

In criminology, *blue-collar crime* is any crime committed by an individual from a lower social class as opposed to white-collar crime which is associated with crime committed by individuals of a higher social class. These are easier to detect, people are more afraid of these crimes. Blue collar crimes are more sensational crimes and there by put more pressure on police due to fear.

The Opportunity To Commit Crime

Every potential criminal is limited in the opportunity to commit crime by the "situation" in which he or she occupies in society. If the individual is employed in a low or unskilled job and lives in an inner-city environment, stealing inventory from the workplace may not produce value and not many neighbours may have valuable property to steal. This has significance both for the type of crimes likely to be committed and for law enforcement. Because there are fewer opportunities to use skill, more blue-collar crime may involve the use of force and, because more people are injured, there is a greater chance that the victim will report the crime. In contrast, in cases of white-collar crime it shades into corporate crime and there is less chance

that any crime will be reported.

Street crime:

The most common forms of predatory crime—rape, robbery, assault, burglary, larceny, and auto theft—occur most frequently on urban streets. Racial minority citizens account for a disproportionately high number of the arrests for street crimes.

Types of Blue Collar Crimes:

2.1 Crimes Against Person: Crimes against the person involve violence or the threat of violence against others, violence including homicide, rape, robbery, causing grave and ordinary injuries and aggravated assaults etc.

2.2 Crimes against Property: Crimes against property involve theft of goods belonging to others, including burglary, theft, motor vehicle theft, and arson etc.

2.3 Victimless Crime: This category involves violation of laws in which there are no readily apparent victims, a misnomer, including prostitution, gambling and drug abuse.

2.4 Juvenile Delinquency: Offences committed by persons under 16 years of age. Juvenile delinquency may be described as a status in a juvenile or a young person characterized by anti-social behavior, waywardness and incorrigibility.

3. White-Collar Crimes:

(Otherwise known as crime in suits)

These crimes are also known as business/economic and political crimes. These are crimes committed by people of high social position in the course of their occupations. They rarely involve violence, but they involve significant public harm. White collar crime victimizes everyone and no one, economic costs spread over large population; estimate of cost: 200 billion, 14 x cost of street crime.

Types of White Collar Crimes:

3.1 Workplace Crime: These include crimes committed against employers by employees for individual gain; and

Occupational Crime: an individual or group's illegal use of their professional position to secure something of value, found at all levels of the labour force, e.g. fraud;

3.2 Organizational Crime: Committed by the decision-makers of a corporation. Or it may involve government engaging in illegal activity for corporate or organizational advantage as opposed to personal gain. Other types of offences falling under this class are terrorism, selling products which are known to be unsafe or defective.

3.3 Strategic Bankruptcy: A company which is successfully sued, declares bankruptcy and thus avoids having to pay up and company is then reorganized into new company which is clear of personal/company liabilities.

3.4 Patriotic Crime: These crimes are committed in the name of achieving important national goals, actions taken outside legitimate channels, e.g. violation of international law, "protecting" national security, undeclared warfare, false imprisonment, failure to regulate pollution, tax laws, etc.

Other Important Categories of Crime:

3.1. Crimes against International Law: The international crimes are the major criminal offences so designated by '*the community of nations*' for the protection of interests common to all human kind.

3.2. Newest Category of Crimes:

3.2.1 Hate Crime: A criminal act motivated by racial or other bias such as religion, ancestry, sexual orientation or physical disability.

3.2.2 Computer Crimes or Internet or Cyber Crimes: Just as computers can serve legitimate commerce, governments, and researchers, the global Internet is also accessible for criminal Schemes, exploitation, and use by organized crime. Computer crime generally refers to criminal activity where a computer or network is the source, tool, target, or place of a crime.

Now we can have a detailed discussion on some of the important types of crimes in the following sections. Since, crimes against person, crimes against property etc., will be covered by the criminal law courses these categories do not need extensive discussions under this course. Due to the enormity of the topic only certain important categories shall be discussed here.

Section.2. Victimless-Crimes or Public Order Crimes

2.1. Definition and Nature

Consensual acts (in which people are willing participants) and violations in which only the perpetrator is hurt, such as the personal use of illegal drugs, are called victimless crimes.

In criminology *public order crime* is defined by Siegel (2004) as "...*crime which involves acts that interfere with the operations of society and the ability of people to function efficiently*", i.e. it is behaviour that has been labelled criminal because it is contrary to shared *norms*, social values, and *customs*. Robertson (1989:123) maintains that a crime is nothing more than "...an act that contravenes a law." Generally speaking, *deviancy* is *criminalized* when it is too disruptive and has proved uncontrollable through informal sanctions.

Public order crime should be distinguished from political crime. In the former, although the identity of the "victim" may be indirect and sometimes diffuse, it is cumulatively the *community* that suffers, whereas in a political crime, the state perceives itself to be the victim and criminalizes the behaviour it considers threatening. Thus, public order crime includes consensual crime, victimless vice, and *victimless crime*. It asserts the need to use the law to maintain order

both in the legal and moral sense. *Public order crime* is now the preferred term as against the use of the word "victimless" based on the idea that there are secondary victims (family, friends, acquaintances, and society at large) that can be identified.

For example, in cases where a criminal act subverts or undermines the commercial effectiveness of normative business practices, the negative consequences extend beyond those at whom the specific immediate harm was intended. Similarly, in environmental law, there are offences that do not have a direct, immediate and tangible victim, so crimes go largely unreported and unprosecuted because of the problem of lack of victim awareness. In short, there are no clear, unequivocal definitions of 'consensus', 'harm', 'injury', 'offender', and 'victim'. Such judgments are always informed by contestable, epistemological, moral, and political assumptions (de Haan, 1990: 154).

Following the work of Schur (1965), the types of crime usually referred to include the sexually based offences of prostitution, paraphilia (i.e., sexual practices considered deviant), underage sex, and pornography; and the offences involving substance abuse which may or may not involve some element of public disorder or danger to the public as in driving while intoxicated. The significance of these two areas is that all societies moralize over sex, and most prohibited substances act as disinhibitors and either encourage antisocial behaviour or reduce the sense of guilt. This classification of crime contains many instances of criminality where the only injured party appears to be the accused who has made the personal choice to engage in some form of self-destructive behaviour, e.g. private recreational drug use. Thus, there is continuing political debate on criminalization versus decriminalization, focusing on whether it is appropriate to use punishment to enforce the various public policies that regulate the nominated behaviours. After all, society could deal with unpopular behaviour without invoking criminal or other legal processes.

When deciding whether harm to innocent individuals should be prohibited, the moral and political beliefs held by those in power interact and inform the decisions to create or repeal crimes without apparent victims. These decisions change over time as moral standards change. For example, Margaret Sanger who founded the first birth control clinic in New York City was accused of distributing obscene material and violating public morals. Information about birth

control is no longer considered obscene (see the U.S. case law examples). Within the context of a discussion (Feinberg: 1984) on whether governments should regulate public morals in the interest of the public good, Meier & Geis (1997) identify which social problems might be deemed appropriate for legal intervention and the extent to which the criminal law should enforce moral positions which may lack societal consensus. Respect for the law in general can only be maintained if the law is worthy of respect. For example, Ericsson (1980:338-9) argues If two adults voluntarily consent to an economic arrangement concerning sexual activity and this activity takes place in private, it seems plainly absurd to maintain that there is something intrinsically wrong with it.

This reflects a more fundamental problem of legal consistency. People have the right to engage in some self-destructive activities. For all its carcinogenic qualities, tobacco is not a prohibited substance. Similarly, the excessive consumption of alcohol can have severe physical consequences, but it is not a crime to consume it. This is matched in gambling. The state and its institutions often rely on lotteries, raffles, and other legal forms of gambling for operating funds, whether directly or indirectly through the taxation of profits from casinos and other licensed outlets. Qualitatively, there is nothing to distinguish the forms of gambling deemed illegal. A side effect of turning too many people into criminals is that the concept of crime becomes blurred and genuine criminality becomes less unacceptable. If the key distinction between real crime and moral regulation is not made clearly, as more consensual activities become crimes, ordinary citizens are criminalized for tax-evasion, illegal downloading, and other voluntary rule-breaking. A further perceptual problem emerges when laws remain in force but are obviously not enforced, i.e. the police reflect the consensus view that the activity should not be a crime. Alternatively, if the activities prohibited are consensual and committed in private, this offers incentives to the organizers to offer bribes in exchange for diverting enforcement resources or to overlooking discovered activity, thereby encouraging political and police corruption. Thus, any deterrent message that the state might wish to send is distorted or lost.

More generally, political parties find it easier to talk dismissively about crimes if they are classified as victimless because their abolition or amendment looks to have fewer economic and political costs, i.e. the use of the word "victimless" implies that there are no injuries caused by these crimes (Robertson 1989:125) and, if that is true, then there is no need to create or retain

the criminal offences. This may reflect a limited form of reality that, in the so-called "victimless crimes", there are no immediate victims to make police reports and those who engage in the given behaviour regard the law as inappropriate, not themselves. This has two consequences:

- Because these crimes often take place in private, comprehensive law enforcement (often including entrapment and the use of agent provocateurs) would consume an enormous amount of resources. It is therefore convenient for the law enforcement agencies to classify a crime as victimless because that is used as a justification for devoting fewer resources as against crimes where there are "real" victims to protect; and
- These crimes usually involve something desirable where large profits can be made, e.g. drugs or sex.

2.2. Justification and Limitation for Criminalizing Victimless Crimes

Criminalization is intended as a pre-emptive, harm-reduction device, using the threat of punishment as a deterrent to those proposing to engage in the behaviour causing harm. The state becomes involved because the costs of not criminalizing (i.e. allowing the harms to continue unabated) outweigh the costs of criminalizing it (i.e. restricting individual liberty and so minimizing harm to others). The process of criminalization should be controlled by the state because:

1. Victims or witnesses of crimes might be deterred from taking any action if they fear retaliation. Even in policed societies, fear may inhibit reporting or co-operation in a trial.
2. The victims may only want compensation for the injuries suffered, while being indifferent to the more general need for deterrence: see Polinsky & Shavell (1997) on the fundamental divergence between the private and the social motivation for using the legal system.
3. Even if the victims recognize that they are victims, they may not have the resources to investigate and seek legal redress for the injuries suffered: the enforcers formally appointed by the state have the expertise and the resources.

Victims do not have economies of scale to administer a penal system, let alone collect any fines levied by a court (see Polinsky (1980) on the enforcement of fines). But Garoupa & Klerman

(2002) warn that a rent-seeking government's primary motivation is to maximize revenue and so, if offenders have sufficient wealth, a rent-seeking government is more aggressive than a social-welfare-maximizing government in enforcing laws against minor crimes (usually with a fixed penalty such as parking and routine traffic violations), but more lax in enforcing laws against major crimes.

The 'Hidden Crime Factor' of the Victimless Crimes

Because most of these crimes take place in private or with some degree of secrecy, it is difficult to establish the true extent of the crime. The "victims" are not going to report it and arrest statistics are unreliable indicators of prevalence, often varying in line with local political pressure to "do something" about a local problem rather than reflecting the true incidence of criminal activity. In addition to the issue of police resources and commitment, many aspects of these activities are controlled by organized crime and are therefore more likely to remain hidden. These factors are used to argue for decriminalization. Low or falling arrest statistics are used to assert that the incidence of the relevant crimes is low or now under control. Alternatively, keeping some of these "vices" as crimes simply keeps organized crime in business.

2.3. Decriminalization of Public Order Crimes

Maguire and Radosh (1999: 146/7) accept that the public order crimes that cause the most controversy are directly related to the current perceptions of morality. To assert that the shades of behaviour represented by such "crimes" should be retained or decriminalized ignores the range of arguments that can be mustered on both sides, but the most fundamental question remains whether the government has the right to enforce laws prohibiting private behaviour.

- **Arguments In Favor of Decriminalization**

Those who favor decriminalization or legalization contend that government should be concerned with matters affecting the common good, and not seek to regulate morality at an individual level. Indeed, the fact that the majority ignore many of the laws, say on drug-taking, in countries founded on democratic principles should encourage the governments elected by those majorities to repeal the laws. Failure to do so simply undermines respect for all laws, including those laws

that should, and, indeed, must be followed. Indeed, when considering the range of activities prohibited, the practical policing of all these crimes would require the creation of a police state intruding into every aspect of the peoples' lives, no matter how private. It is unlikely that this application of power would be accepted even if history showed such high-profile enforcement to be effective. Prohibition did not prevent the consumption of alcohol, and the present War on Drugs is expensive and ineffective. Those who favor decriminalization also point to experience in those countries which permit activities such as recreational drug use or prostitution. There is clear evidence of lower levels of substance abuse and disruptive behavior.

1. The presence of public order crimes encourages a climate of general disrespect for the law. Many individuals choose to violate public order laws, because they are easily violable, and there is no victim to complain. This encourages disrespect for the law, including disrespect for laws involving crimes with victims.
2. To criminalize behavior that harms no other or society violates individual freedom and the human/natural rights of the individual. The right of the individual to do what they will, so long as they harm no other, or society as a whole, is a generally accepted principle within free and democratic societies ^[1]; criminalization of acts that others feel are immoral, but are not clearly proven to be harmful, is generally violative of that principle; although exceptions may--and do--apply. (For example, the simple possession of child pornography or engaging in animal cruelty is criminal, In most civilized nations; however, there is no direct victim (except the animal, whose rights are not cognizable by law); the reason for its criminalization is the "bad tendency" of these acts; persons who derive pleasure from acts such as these often have depraved desires--it can be inferred that people who abuse animals, rarely stop there--and that people who possess child pornography will seek more than just mere depictions.)
3. The cost of enforcing public order crimes is too high to individual and societal freedom, and will inevitably result in coercion, force, brutality, usurpation of the democratic process, the development of a carceral state, and finally, tyranny. Due to public order crimes not having a victim, someone aside from a victim has to be used to report public order crimes, and someone other than the sovereign people itself has to be delegated to enforce the public order laws. This results in the development of an apparatus of

coercion, a class of "law enforcers" within society, but separate from society, in that they are tasked with enforcing laws upon the people, rather than the people enforcing their own law. This inevitably results in violations of individual freedom, as this class of "law enforcers" seeks more and more power, and turns to more and more coercive means.

4. Public order crimes often pertain to behavior engaged in especially by discernible classes of individuals within society (racial minorities, youth, poor people), and result in the criminalization or stigmatization of those classes, as well as resentment from those classes against the laws, against the government, or against society.
5. Public enforcement of morality will inevitably lead to individuals developing no moral compass of their own, instead resulting in external restraint substituting for internal restraint, and, thus, greater immorality, deviance, and societal decadence.

- **Arguments Against Decriminalization:**

Those who oppose decriminalization believe that the morality of individuals collectively affects the good of the society and, without enforcement, the society will be damaged and lead to decadence. They believe that law shapes morality and builds a national character. If laws are not enforced, that is not the fault of the law. If people knew that they were likely to be arrested, they would modify their behavior. That current laws criminalizing theft do not deter thieves is not an argument for decriminalizing theft (although theft is not in any way a victimless crime). Rather it is an argument in favor of devoting more resources into enforcement so that there is greater certainty of arrest and punishment. Thus, in public order crimes, it is simply a lack of priority in current enforcement strategies that encourages such widespread public disobedience which, in all likelihood, would increase if the behavior was to be decriminalized.

- **Specific Examples:**

Meier and Geis (1997) contrast the view that prostitution, drugs, and homosexuality are crimes without victims, with the view that the participants involved are victims without crimes. The use of the term "public order crime" grew out of the research to test the hypothesis underlying the term "victimless crime". So-called victimless crimes or crimes without victims were tested to determine whether a case could be argued that the behaviour produced harmful consequences for

innocent people (p19) recognizing that there was substantial disagreement both about the degree of culpability inherent in the behaviour and the proper role for the law. Consequently, the effectiveness and scope of the law has proved limited, both creating and solving problems. The following are examples of the research findings used to construct arguments that there are victims. It is accepted that there are other arguments that many consider equally convincing (as an example).

1. Prostitution:

Prostitution is listed among the crimes some refer to as victimless or consensual crimes, because no one present at the crime is unwilling, but research shows that may not be the true picture of prostitution. In most countries, prostitution -- exchanging money for sex among adults -- is legal. It is illegal in only a few countries -- in the United States (except for ten counties in the state of Nevada), India, Argentina, some Muslim and Communist countries. The reason it is legal is the general attitude that prostitution does no harm, has no victims, and is sex among consenting adults.

Prostitution Is not a Victimless Crime:

Melissa Farley, PhD of Prostitution Research & Education, argues that prostitution is hardly a victimless crime. In her "Prostitution: Fact sheet on Human Rights Violations" Farley says that prostitution is sexual harassment, rape, battering, verbal abuse, domestic violence, a racist practice, a violation of human rights, childhood sexual abuse, a consequence of male domination of women and a means of maintaining male domination of women.

"All prostitution causes harm to women," Farley writes. "Whether it is being sold by one's family to a brothel, or whether it is being sexually abused in one's family, running away from home, and then being pimped by one's boyfriend, or whether one is in college and needs to pay for next semester's tuition and one works at a strip club behind glass where men never actually touch you -- all these forms of prostitution hurt the women in it."

Prostitutes Are Biggest Victims:

To believe prostitution has no victims, one must ignore these statistics published in Farley's Fact Sheet:

- 78 percent of 55 women who sought help from the Council for Prostitution Alternatives in 1991 reported being raped an average of 16 times a year by pimps, and were raped 33 times a year by johns.
- 62 percent reported having been raped in prostitution.
- 73 percent reported having experienced physical assault in prostitution.
- 72 percent were currently or formerly homeless.
- 92 percent stated that they wanted to escape prostitution immediately.
- 83 percent of prostitutes are victims of assault with a weapon.
- 75 percent of women in escort prostitution had attempted suicide.
- 67 percent meet diagnostic criteria for posttraumatic stress disorder (PTSD).

Prevalence of Incest

In short, the victims of prostitution are mostly the prostitutes themselves. It just may be that they no longer have the ability left to "consent" to be a willing participant in their so-called victimless crime.

Estimates of the prevalence of incest among prostitutes range from 65 percent to 90 percent. The Council for Prostitution Alternatives, Portland, Oregon Annual Report in 1991 found that: 85 percent of their prostitute clients reported history of sexual abuse in childhood while 70 percent reported incest.

Self Determination

As feminist Andrea Dworkin has written "Incest is boot camp. Incest is where you send the girl to learn how to do it. So you don't, obviously, have to send her anywhere, she's already there and she's has nowhere else to go. She trained."

But not all feminist back prostitution laws. Some believe prostitution is an act of self-determination. They demand decriminalization and de-stigmatization, because laws against

prostitution discriminate against women's ability to make their own choices.

2. Drugs

The use of drugs for religious and recreational purposes is historically verified among a wide range of cultures. In more modern times, Inciardi (1992: 1-17) reports that the use of opium, cocaine, and, later, morphine were common ingredients of patent medicines, and "opium dens" were not uncommon in the larger urban areas. Extracts from the coca leaf were included in the original Coca-Cola and, in 1900, heroin was promoted as a cough medication and a treatment for lung diseases. But problems flowing from addiction led many to perceive the drug element of medications to be morally destructive. In the United States, the Supreme Court decisions of *Webb et al v U.S.* 249 U.S. 96 (1919) [1] and *U.S. v Behrman* 258 U.S. 280 (1922) [2] drove the use of narcotics underground and consolidated their criminal status.

In the terms adopted by Schur (1965), drug dealing is now victimless because neither the buyer nor the seller is likely to report it. However, the majority of criminologists argue that there are victims. The consumption of drugs can damage the health of users and, in some cases, cause death through overdose. Some argue that if drugs were available legally, they would be less harmful (see the drug policy of the Netherlands). When drugs are illegal, the price is higher, and maintaining the habit takes the money that would otherwise be spent on food, shelter, and clothing. The resultant neglect is a contributory factor to the addict's physical deterioration. In Australia, Walker (1991) finds a strong link between substance abuse and crime. In general, making drugs illegal results in an exponential increase in their price so that addicts must indulge in theft, robbery, and burglary to support their habits. Those people who experience those crimes are indirect victims of the drug taking. The need to fund addiction also drives some into distribution where they are more prone to violent attack and murder. These findings are matched elsewhere. Meier and Geis (1997) confirm that drug dealing is an area where victims are third parties who experience harm only indirectly through, say, losses from drug-related crime, and the costs of enforcing drug laws and of treating addiction, and the public health costs for treating illness and disease consequent on the addiction, e.g. HIV infection through using the same needles. In Australia, for example, the National Campaign against Drug Abuse (see Collins & Lapsley 1991) gives a figure of just over \$1.2 billion for total costs of the abuse of illicit drugs

in Australia in 1988, including treatment of drug-related illness, accidents resulting from drug use/misuse, loss of productivity due to absenteeism, premature death, property crime and damage, and excluding justice system costs. Conklin (1997: 100) reports the cost of illegal drug use in the U.S. in 1989 at \$60 billion a year, a 20% increase over the estimate in 1985. The rise in cost to the state can only be met out of tax revenue, but the burden is not shared equally. Income actually spent on drugs is displaced from purchases that would otherwise have generated sales tax revenue. Similarly, the substantial profits made by the dealers are not taxed. Thus, the citizens who declare income for tax purposes must pay more to offset the cost of drug taking in their society.

As with prostitution, drug dealing also affects the amenity of a neighborhood, destroying property values and causing the flight of the middle class to the "safer" suburbs. If the police do intervene, they may alienate law-abiding community members who are stopped and questioned, and only displace the drug dealing indoors, thus making it more resistant to police interventions. Further, Sampson (2002) comments that because intensive police enforcement is by its very nature temporary, the impact is often only short-term and dependent on the resiliency of the market and the buyers which has been shown to be strong. Some officers have argued that intensive enforcement shows the community that the police care about the problem; however, some of the unintended effects may, in fact, have the opposite result. For a more general exposition, see arguments for and against drug prohibition.

Review Questions:

1. Give a brief account of typologies of crime.
2. What is a victimless crime? Does it satisfy the essential ingredients of criminal liability?
3. Is prostitution a victimless crime? Should it be criminalized?
4. What is your stand relating to drug addiction, is it victimless? Should it

Section 3. Juvenile Delinquency

3.1. Definition

Juvenile delinquency refers to criminal acts performed by juveniles. Most legal systems prescribe specific procedures for dealing with juveniles, such as juvenile detention centers. There are a multitude of different theories on the causes of crime, most if not all of which can be applied to the causes of youth crime. Youth crime is an aspect of crime which receives great attention from the news media and politicians. Crime committed by young people has risen since the mid-twentieth century, as have most types of crime. The level and types of youth crime can be used by commentators as an indicator of the general state of morality and law and order in a country, and consequently youth crime can be the source of ‘moral panics’ Theories on the causes of youth crime can be viewed as particularly important within criminology. This is firstly because crime is committed disproportionately by those aged between fifteen and twenty-five. Secondly, by definition any theories on the causes of crime will focus on youth crime, as adult criminals will have likely started offending when they were young. A Juvenile Delinquent is one who repeatedly commits crime; however these juvenile delinquents could most likely have mental disorders/behavioral issues such as schizophrenia, post traumatic stress disorder or bipolar disorder.

3.2 Theoretical Perspectives on Juvenile Delinquency

3.2.1. Rational Choice Theory

Classical criminology stresses that causes of crime lie within the individual offender, rather than in their external environment. For classicists, offenders are motivated by rational self-interest, and the importance of free will and personal responsibility is emphasized. Rational choice theory is the clearest example of this approach. It states that people weigh the pros and cons of committing a crime, and offend when the former outweigh the latter. A central deficiency of rational choice theory is that while it may explain when and where people commit crime, it can't explain very well why people choose to commit crimes in the first place. Neither can it explain differences between individuals and groups in their propensity to commit crimes. James Q. Wilson said the

conscience and self-control of a potential young offender must be taken into account, and that these attributes are formed by parental and societal conditioning. Rational choice does not explain why crime should be committed disproportionately by young people, males, city dwellers, and the poor. (Walklate: 2003 p.2) It also ignores the influence a young persons peers can have on them, and the fact that some youths may be less able to accurately foresee the consequences of their actions than others. Rational choice theory does not take into account the proven correlations between certain social circumstances and individuals' personalities, and the propensity to commit crime.

3.2.2. Social Disorganization Theory

Current positivist approaches generally focus on the cultural and socio-economic environment to which a young person has been exposed, and how these conditions may be criminogenic. These theories de-emphasize individual agency, and stress criminal behaviour is largely determined by factors outside a young person's control. Social ecology or social disorganization theory says crime is generated by the breakdown of traditional values and norms. This was most likely to occur in urban areas with transient populations and high levels of migration, which would produce the breakdown of family relationships and community, competing values, and increasing impersonality.

3.2.3. Strain theory

Strain Theory is associated mainly with the work of Robert Merton. He felt that there are institutionalized paths to success in society. Strain theory holds that crime is caused by the difficulty those in poverty have in achieving socially valued goals by legitimate means. As those with, for instance, poor educational attainment have difficulty achieving wealth and status by securing well paid employment, they are more likely to use criminal means to obtain these goals. ^[4] Merton's suggests five adaptations to this dilemma:

1. **Innovation:** individuals who accept socially approved goals, but not necessarily the socially approved means.
2. **Retreatism:** those who reject socially approved goals and the means for acquiring them.

3. **Ritualism:** those who buy into a system of socially approved means, but lose sight of the goals. Merton believed that drug users are in this category.
4. **Conformity:** those who conform to the system's means and goals.
5. **Rebellion:** people who negate socially approved goals and means by creating a new system of acceptable goals and means.

A difficulty with strain theory is that it does not explore why children of low-income families would have poor educational attainment in the first place. More importantly is the fact that much youth crime does not have an economic motivation. Strain theory fails to explain violent crime, the type of youth crime which causes most anxiety to the public.

3.2.4. Sub-Cultural Theory

Related to strain theory is sub cultural theory. The inability of youths to achieve socially valued status and goals results in groups of young people forming deviant or delinquent subcultures, which have their own values and norms. (Eadie & Morley: 2003 p.552) Within these groups criminal behaviour may actually be valued, and increase a youth's status. (Walklate: 2003 p.22) The notion of delinquent subcultures is relevant for crimes that are not economically motivated. Male gang members could be argued to have their own values, such as respect for fighting ability and daring. However it is not clear how different this makes them from 'ordinary' non-lawbreaking young men. Furthermore there is no explanation of why people unable to achieve socially valued goals should necessarily choose criminal substitutes. Sub cultural theories have been criticized for making too sharp a distinction between what is deviant and what is 'normal'. (Brown: 1998 p.23) There are also doubts about whether young people consciously reject mainstream values. (Brown, 1998 p.23)

3.2.5. Differential Association Theory

The theory of Differential association also deals with young people in a group context, and looks at how peer pressure and the existence of gangs could lead them into crime. It suggests young people are motivated to commit crimes by delinquent peers, and learn criminal skills from them. The diminished influence of peers after men marry has also

been cited as a factor in desisting from offending. There is strong evidence that young people with criminal friends are more likely to commit crimes themselves. However it may be the case that offenders prefer to associate with one another, rather than delinquent peers causing someone to start offending. Furthermore there is the question of how the delinquent peer group became delinquent initially.

3.2.6. Labeling Theory

Labeling theory states that once young people have been labeled as criminal they are more likely to offend. The idea is that once labelled as deviant a young person may accept that role, and be more likely to associate with others who have been similarly labelled. (Eadie & Morley: 2003 p.552) Labelling theorists say that male children from poor families are more likely to be labelled deviant, and that this may partially explain why there are more lower-class young male offenders. (Walklate: 2003 p. 24)

3.3. Juvenile Delinquency As A Male Phenomenon

Youth crime is, disproportionately, committed by young men. Feminist theorists and others have examined why this is the case. One suggestion is that ideas of masculinity may make young men more likely to offend. Being tough, powerful, aggressive, daring and competitive may be a way of young men expressing their masculinity. Acting out these ideals may make young men more likely to engage in antisocial and criminal behavior. Alternatively, rather than young men acting as they do because of societal pressure to conform to masculine ideals; young men may actually be naturally more aggressive, daring etc. As well as biological or psychological factors, the way young men are treated by their parents may make them more susceptible to offending. According to a study led by Florida State University criminologist Kevin M. Beaver, adolescent males who possess a certain type of variation in a specific gene are more likely to flock to delinquent peers. The study, which appears in the September 2008 issue of the *Journal of Genetic Psychology*, is the first to establish a statistically significant association between an affinity for antisocial peer groups and a particular variation (called the 10-repeat allele) of the dopamine transporter gene (DAT1).

- Edie & Morley, 2003 P.553
- Brown, 1998
- Walk late, 2003 P.83
- Walk late, 2003 P.35

3.4. Risk Factors

3.4.1. Individual Risk Factors:

Individual psychological or behavioural risk factors that may make offending more likely include intelligence, impulsiveness or the inability to delay gratification, aggression, empathy, and restlessness. (Farrington, 2002)

- **Low Intelligence:**

Children with low intelligence are likely to do worse in school. This may increase the chances of offending because low educational attainment, a low attachment to school, and low educational aspirations are all risk factors for offending in themselves. (Walklate: 2003 p. 2) Children who perform poorly at school are also more likely to truant, which is also linked to offending. (Farrington: 2002 p.682) If strain theory or sub cultural theory are valid poor educational attainment could lead to crime as children were unable to attain wealth and status legally. However, it must be born in mind that defining and measuring intelligence is troublesome.

- **Impulsiveness:**

Young males are especially likely to be impulsive which could mean they disregard the long-term consequences of their actions, have a lack of self-control, and are unable to postpone immediate gratification. This may explain why they disproportionately offend. Impulsiveness is seen by some as the key aspect of a child's personality that predicts offending. However is not clear whether these aspects of personality are a result of “deficits in the executive functions of the brain”, or a result of parental influences or other social factors.

- (Farrington: 2002 p.682) (Walk late, 2003 p. 36)

- (Farrington: 2002 p.682)
- (Farrington: 2002 p.667)
- (Graham & Bowling: 1995 p.32)

3.4.2. Family Environment:

Family factors which may have an influence on offending include; the level of parental supervision, the way parents discipline a child, parental conflict or separation, criminal parents or siblings, parental abuse or neglect, and the quality of the parent-child relationship. Children brought up by lone parents are more likely to start offending than those who live with two natural parents, however once the attachment a child feels towards their parent(s) and the level of parental supervision are taken into account, children in single parent families are no more likely to offend than others. Conflict between a child's parents is also much more closely linked to offending than being raised by a lone parent. (Walklate: 2003 p. 106) If a child has low parental supervision they are much more likely to offend. (Graham & Bowling: 1995) Many studies have found a strong correlation between a lack of supervision and offending, and it appears to be the most important family influence on offending. When parents commonly do not know where their children are, what their activities are, or who their friends are, children are more likely to truant from school and have delinquent friends, each of which are linked to offending. A lack of supervision is connected to poor relationships between children and parents, as children who are often in conflict with their parents may be less willing to discuss their activities with them. Children with a weak attachment to their parents are more likely to offend.

- (Graham & Bowling: 1995 p.33)
- (Graham & Bowling: 1995 p.35)
- (Farrington: 2002 p.610) (Graham & Bowling: 1995 p.38)
- (Graham & Bowling: 1995 p.45,46)
- (Graham & Bowling: 1995 p.37)
- (Graham & Bowling: 1995 p.37)

3.5.Delinquency Prevention

Delinquency Prevention is the broad term for all efforts aimed at preventing youth from becoming involved in criminal, or other antisocial, activity. Increasingly, governments are recognizing the importance of allocating resources for the prevention of delinquency. Because it is often difficult for states to provide the fiscal resources necessary for good prevention, organizations, communities, and governments are working more in collaboration with each other to prevent juvenile delinquency.

With the development of delinquency in youth being influenced by numerous factors, prevention efforts are comprehensive in scope. Prevention services include activities such as substance abuse education and treatment, family counseling, youth mentoring, parenting education, educational support, and youth sheltering.

Review Questions:

1. Define juvenile delinquency and explain its theoretical perspectives.

“Low educational attainment, a low attachment to school, and low educational aspirations in juveniles are all risk factors for offending in themselves”.

Explain. Do you agree with this type of analysis of delinquency in juveniles?

Section. 4. White-Collar Crime

White-collar crimes are offenses that persons commit while acting in their legitimate jobs and professions. White-collar criminals behave in unethical ways for self-gain (for example, embezzlement) or for the benefit of a business (for example, corporate price-fixing). Victims of white-collar crime include the economy, employers, consumers, and the environment.

4.1. Defining White Collar Crime

White collar crime is a term that was first used by a sociologist in 1939 to describe criminal activity by members of the upper classes in connection with their professions. His point was that this type of crime was barely acknowledged by the criminal justice system and rarely prosecuted. Today, the most common definition of white collar crime no longer focuses on the social status of the offender but rather on the type of conduct involved: illegal acts using deceit and concealment to obtain money, property, or services, or to secure a business or professional advantage.

Within the field of criminology, *white-collar crime* has been defined by *Edwin Sutherland* as "a crime committed by a person of respectability and high social status in the course of his occupation" (1949). Sutherland was a proponent of Symbolic Interactionism, and believed that criminal behavior was learned from interpersonal interaction with others. White-collar crime therefore overlaps with corporate crime because the opportunity for fraud, bribery, insider trading, embezzlement, computer crime, and forgery is more available to white-collar employees.

Generally, however, white collar crime is defined as '*violation of the law committed by a person or group of persons in the course of an otherwise respected and legitimate occupation or business enterprise.*' (See James W. Coleman, 1989)

➤ **Limitation of the Term “White Collar Crime”**

Modern criminology generally rejects a limitation of the term by reference to type of crime and the topic is now divided:

- By the type of offense, e.g. property crime, economic crime, and other corporate crimes like environmental and health and safety law violations. Some crime is only possible because of the identity of the offender, e.g. transnational money laundering requires the participation of senior officers employed in banks. But the Federal Bureau of Investigation has adopted the narrow approach, defining white-collar crime as "those illegal acts which are characterized by deceit, concealment,

or violation of trust and which are not dependent upon the application or threat of physical force or violence" (1989, 3). Because this approach is relatively pervasive in the United States, the record-keeping does not adequately collect data on the socioeconomic status of offenders which, in turn, makes research and policy evaluation problematic. While the true extent and cost of white-collar crime are unknown, it is estimated to cost the United States more than \$300 billion annually, according to the FBI.

- By the type of offender, e.g. by social class or high socioeconomic status, the occupation of positions of trust or profession, or academic qualification, researching the motivations for criminal behavior, e.g. greed or fear of loss of face if economic difficulties become obvious. Shover and Wright (2000) point to the essential neutrality of a crime as enacted in a statute. It almost inevitably describes conduct in the abstract, not by reference to the character of the persons performing it. Thus, the only way that one crime differs from another is in the backgrounds and characteristics of its perpetrators. Most if not all white-collar offenders are distinguished by lives of privilege, much of it with origins in class inequality.
- By organizational culture rather than the offender or offense which overlaps with organized crime. Appelbaum and Chambliss (1997; 117) offer a twofold definition:

Occupational crime occurs when crimes are committed to promote personal interests, say, by altering records and overcharging, or by the cheating of clients by professionals. *Organizational or corporate crime* occurs when corporate executives commit criminal acts to benefit their company by overcharging or price fixing, false advertising, etc.

4.2. Relationship to Other Types of Crimes

- **Blue-Collar Crime**

The types of crime committed are a function of the opportunities available to the potential offender. Thus, those employed in relatively unskilled environments and living in inner-

city areas have fewer "situations" to exploit (see Clarke, 1997) than those who work in "situations" where large financial transactions occur and live in areas where there is relative prosperity. Note that Newman (2003) applies the Situational Crime Prevention strategy to e-crime where the opportunities can be more evenly distributed between the classes. Blue-collar crime tends to be more obvious and attract more active police attention (e.g. for crimes such as vandalism or shoplifting which protect property interests), whereas white-collar employees can intermingle legitimate and criminal behavior and be less obvious when committing the crime. Thus, blue-collar crime will more often use physical force whereas in the corporate world, the identification of a victim is less obvious and the issue of reporting is complicated by a culture of commercial confidentiality to protect shareholder value. It is estimated that a great deal of white collar crime is undetected or, if detected, it is not reported. In the truest sense, the terms white and blue collar crime refers to police slang for an arrest of a suspect, or collar. Blue collar crimes are those that involve local police (known for wearing blue, or, "Men in Blue") and white collar crimes are those involving Federal agents, such as FBI (who typically wear suits and ties with white shirts.)

- **State-Corporate Crime:**

Because the negotiation of agreements between a state and a corporation will be at a relatively senior level on both sides, this is almost exclusive a white-collar "situation" which offers the opportunity for crime.

4.3. Principles of Liability and Defences:

White collar crimes follow the general principles of criminal liability in that each crime requires a bad act, a criminal intent, and causation. The defenses to white collar crime are the same ones applicable to all crimes and include incapacity, insanity, intoxication, and duress. Of particular note for white collar crime prosecutions is the defense of entrapment. *Entrapment* occurs when the government has enticed a person to commit a crime he or she otherwise would not have committed. The majority of courts look at the defense of entrapment through the eyes of the individual defendant and the focus

becomes the propensity of that defendant to commit the crime in determining whether he or she has been entrapped. Other courts focus on the government's conduct from the perspective of whether it is outrageous in terms of convincing a person to commit a crime.

Review Questions:

1. Define white collar crimes. Are there any limitations to the usage of the term?

Is white collar crime in any way related to blue collar crime? If so, how?

Section.5. Organized/Organizational Crime

5.1. Definition and Scope

The term “organized crime” refers to the unlawful activities of members of criminal organizations that supply illegal goods and services. Organized crime or criminal organizations are groups or operations run by criminals, most commonly for the purpose of generating a monetary profit. The *Organized Crime Control Act* (U.S., 1970) defines organized crime as "The unlawful activities of ... a highly organized, disciplined association..."

Some criminal organizations, such as terrorist organizations, are politically motivated. Gangs sometimes become "disciplined" enough to be considered "organized". An organized gang or criminal set can also be referred to as a mob. The act of engaging in criminal activity as a structured group is referred to in the United States as racketeering.

5.1.1. Criminal Organizations and Crimes Against Humanity

Another use of the term "criminal organization" exists in human rights law and refers to an organization which has been found guilty of crimes against humanity. Once an organization has been determined to be a criminal organization, one must only

demonstrate that an individual belonged to that organization to be punished and not that the individual actually individually committed illegal acts.

This concept of the criminal organization came into being during the Nuremberg Trials. Several public sector organizations of Nazi Germany such as the SS and Gestapo were judged to be criminal organizations, while other organizations such as the German Army High Command were indicted but acquitted of charges. This conception of criminal organizations was, and continues to be, controversial, and has not been used in human rights law since the trials at Nuremberg.

5.1.2. Ideological Crime

In addition to what is considered traditional organized crime involving direct crimes of fraud swindles, scams, racketeering and other acts motivated for the accumulation of monetary gain, there is also non-traditional organized crime which is engaged in for political or ideological gain or acceptance. Such crime groups are often labeled terrorist organizations and include such groups as *Al-Qaeda*, *Lashkar- e -Toiba* and *Hamas*.

5.1.3. Typical Activities of Criminal Organizations

Organized crime often victimize businesses through the use of extortion or theft and fraud activities like hijacking cargo trucks, robbing goods, committing bankruptcy fraud (also known as "bust-out"), insurance fraud or stock fraud (inside trading). Organized crime groups also victimize individuals by car theft (either for dismantling at "Chop shops" or for export), burglary, credit card fraud, and stock fraud ("pump and dump" scam). Some organized crime groups defraud national, state, or local governments by bid-rigging public projects, counterfeiting money, smuggling or manufacturing untaxed alcohol (boot legging) or cigarettes (butt legging), and providing immigrant workers to avoid taxes. Organized crime groups seek out corrupt public officials in executive, law enforcement, and judicial roles so that their activities can avoid, or at least receive early warnings about, investigation and prosecution.

Organized crime groups also provide a range of illegal services and goods, such as loan sharking of money at very high interest rates, bookmaking and gambling, prostitution, drug trafficking, gunrunning, providing murder for hire, illegal dumping of toxic waste, people smuggling and trafficking in human beings . Organized crime groups also do a range of business and labor racketeering activities, such as casino skimming, Insider trading, setting up monopolies in industries such as garbage collecting, construction and cement pouring, bid rigging, getting "no-show" and "no-work" jobs, using non-union labor and pocketing the wage difference, money laundering, political corruption, bullying and ideological clamping.

Drug Crimes

The drug-crime category encompasses a range of offenses connected with the use, transportation, purchase, and sale of illegal drugs. Illegal drugs are related to crime in multiple ways. Most directly, it is a crime to use, possess, manufacture, or distribute drugs classified as having a potential for abuse (such as cocaine, heroin, morphine and amphetamines). Drugs are also related to crime as drug trafficking and drug production are often controlled by drug cartels, organized crime and gangs.

5.2. Organized and International Crime:

Organized crime reaches into communities and ruins lives by driving other crime and instilling fear. It manifests itself most graphically in drug addiction, sexual exploitation and gun crime, but is also strongly linked to:

- Immigration crime
- Fraud
- Money laundering
- Internet-related crime
- Other threats – including armed robbery, kidnap and extortion, vehicle crime, freight crime, cultural property crime, counterfeit currency and environmental crime.

Organized crime groups are essentially businesses that exist to make money. Players at the top often resort to extreme violence, intimidation and corruption to protect their businesses. These groups operate across global frontiers in tight-knit gangs, display in-depth knowledge of law enforcement methods and exploit sophisticated technologies to conceal their activities from the authorities.

The two most profitable and harmful enterprises controlled by organized crime groups are drugs trafficking, and people smuggling.

5.2.1. Drug Trafficking:

Trafficking in heroin and cocaine, particularly crack cocaine, poses the greatest single threat to the different parts of the world in terms of the scale of serious organized criminal involvement, the illegal proceeds secured and the overall harm caused. Home Office (The Serious Organized Crime Agency (SOCA UK) estimates put the harm caused by Class A drugs at around £13bn a year. This largely arises from the profits from sales, the crimes addicts commit to fund their habit, and the damage caused to family life and communities, as well as from costs to addicts' health.

5.2.2. Fraud-Individual & Private Sector:

Fraud involves the obtaining of other people's money or assets by deception. A lot of fraud is committed directly against the Government “against the tax and the benefits systems. Fraud is also committed against individuals and companies, in a wide variety of ways, and often by organized gangs. Some examples of such frauds include:

- against banks, often involving false or stolen identities;
- investment and advance fee frauds, in which individuals are enticed to pay over money against false promises of returns; and
- forms of e-fraud exploiting the use of the internet by banks and commerce.

Much fraud goes unreported, and despite the fact that frauds can cause companies and individuals significant damage, it is sometimes, mistakenly, seen as victimless. As well as

generating money that can be used for future crimes, fraud means that everyone pays for more goods and services. In addition, it can cause significant personal difficulties and distress.

5.2.3. Money Laundering:

Money laundering is any action taken to conceal, arrange, use or possess the proceeds of any criminal conduct. Criminals try to launder 'dirty money' in an attempt to make it look 'clean' in order to be able to use the proceeds without detection and to put them beyond the reach of law enforcement and taxation agencies.

5.2.4. Internet-Related Crime/Cyber Crime/Hi-tech Crime:

Internet-related crime is a term used to describe a range of different crime types that are committed or facilitated online, including:

- Paedophilia,
- internet fraud,
- junk email or 'spam',
- viruses, and
- hacking.

This sort of crime is also referred to as cybercrime, e-crime and hi-tech crime. The cost of Internet crime in human and economic terms is high, and it's still growing. In 2006-07, the vast majority of all credit card fraud cases involved so-called 'card not present' fraud, in which cards were used illegally either online or over the phone. This has been the largest type of card fraud in the UK for more than four years.

5.3. Corporate Crime

5.3.1. Definition and Scope

Corporate crime refers to crimes committed either by a corporation (i.e., a business entity having a separate legal personality from the natural persons that manage its

activities), or by individuals that may be identified with a corporation or other business entity. Corporate crime overlaps with:

- *White-collar crime*, because the majority of individuals who may act as or represent the interests of the corporation are employees or professionals of a higher social class;
- *Organized crime*, because criminals can set up corporations either for the purposes of crime or as vehicles for laundering the proceeds of crime. Organized crime has become a branch of big business and is simply the illegal sector of capital. It has been estimated that, by the middle of the 1990s, the "gross criminal product" of organized crime made it the twentieth richest organization in the world -- richer than 150 sovereign states (Castells 1998: 169). The world's gross criminal product has been estimated at 20 percent of world trade. (de Brie 2000); and
- *State-corporate crime* because, in many contexts, the opportunity to commit crime emerges from the relationship between the corporation and the state.

Criminal liability of corporations has become one of the most debated topics of the 20th century. The debate became especially significant following the 1990s, when both the United States and Europe have faced an alarming number of environmental, antitrust, fraud, food and drug, false statements, worker death, bribery, obstruction of justice, and financial crimes involving corporations. The most recent and prominent case in the United States has been the Enron scandal in which one of the largest accounting firms in the world, Arthur Andersen LLP, was charged with obstruction of justice (Arthur Andersen LLP v. U.S., 544 U.S. 696 (2005)). McWane Inc., one of the world largest manufacturers of cast-iron pipes, has an extensive record of violations causing deaths. (David Barstow & Lowell Bergman, *Deaths on the Job, Slaps on the Wrist*, N.Y. Times, Jan. 10, 2003, at A1.) These corporate crimes resulted in great losses. The consequences that most directly affect our society are the enormous losses of money, jobs, and even lives. At the same time, the long-term effects of these crimes, such as the damaging effects upon the environment or health, which may not severely affect us now, should not be underestimated.

The reaction to this corporate criminal phenomenon has been the creation of juridical regimes that could deter and punish corporate wrongdoing. Corporate misconduct has been addressed by civil, administrative, and criminal laws. At the present, most countries agree that corporations can be sanctioned under civil and administrative laws. However, the criminal liability of corporations has been more controversial. While several jurisdictions have accepted and applied the concept of corporate criminal liability under various models, other law systems have not been able or willing to incorporate it. Critics have voiced strong arguments against its efficiency and consistency with the principles of criminal law. At the same time, a large pool of partisans has vigorously defended corporate criminal liability.

5.3.2. Goals of Corporate Criminal Liability:

The main goals of criminal liability of corporations are similar to those of criminal law in general as enumerated below:

- The first characteristic of corporate criminal punishment is deterrence—effective prevention of future crimes.
- The second consists in retribution and reflects the society’s duty to punish those who inflict harm in order to “affirm the victim’s real value.”
- The third goal is the rehabilitation of corporate criminals.
- Corporate criminal liability should achieve the goals of clarity, predictability, and consistency with the criminal law principles in general.
- The fifth goal is efficiency, reflected by the first three goals mentioned above, but also by the costs of implementing the concept.
- Finally, it is the goal of general fairness.

5.3.3. Policy to Enforce the Law against Corporations:

Corporate crime has become politically sensitive in some countries. In the United Kingdom, for example, following a number of fatal disasters on the rail network and at sea, the term is commonly used in reference to corporate manslaughter and to involve a

more general discussion about the technological hazards posed by business enterprises (see Wells: 2001). Similar incidents of corporate crime, such as the 1985 Union Carbide accident in Bhopal, India (Pearce & Tombs: 1993) and the behaviour of the pharmaceutical industry (Braithwaite: 1984).

The Law Reform Commission of New South Wales offers an explanation of such criminal activities:

"Corporate crime poses a significant threat to the welfare of the community. Given the pervasive presence of corporations in a wide range of activities in our society, and the impact of their actions on a much wider group of people than are affected by individual action, the potential for both economic and physical harm caused by a corporation is great."

Similarly, Russell Mokhiber and Robert Weissman (1999) assert:

"At one level, corporations develop new technologies and economies of scale. These may serve the economic interests of mass consumers by introducing new products and more efficient methods of mass production. On another level, given the absence of political control today, corporations serve to destroy the foundations of the civic community and the lives of people who reside in them."

5.3.4. Type of Corporate Behavior to Be Criminalized:

Behavior can be regulated by the civil law (including administrative law) or the criminal law. In deciding to criminalize particular behavior, the legislature is making the political judgment that this behavior is sufficiently culpable to deserve the stigma of being labelled as a crime. In law, corporations can commit the same offences as natural persons. Simpson (2002) avers that this process should be straightforward because a state should simply engage in victimology to identify which behavior causes the most loss and damage to its citizens, and then represent the majority view that justice requires the intervention of the criminal law. But states depend on the business sector to deliver a

stable economy, so the politics of regulating the individuals and corporations that supply that stability become more complex.

The majority of crimes are committed because the offender has the 'right opportunity', i.e., where the offender simply sees the chance and thinks that he or she will be able to commit the crime and not be detected. For the most part, greed, rather than conceit, is the motive, and the rationalization for choosing to break the law usually arises out of a form of contempt for the victim, namely that he, she or it will be powerless to prevent it, and has it coming for some reason. For these purposes, the corporation is the vehicle for the crime. This may be a short-term crime, i.e., the corporation is set up as a shell to open credit trading accounts with manufacturers and wholesalers, trades for a short period of time and then disappears with the revenue and without paying for the inventory. Alternatively and most commonly, the primary purpose of the corporation is as a legitimate business, but criminal activity is secretly intermixed with legal activity to escape detection. To achieve a suitable level of secrecy, senior managers will usually be involved. The explanations and exculpations may therefore centre around rogue individuals who acted outside the organizational structures, or there may be a serious examination of the occupational and organizational structures (often hinged on the socio-economic system, gender, racism and/or age) that facilitated the criminal conduct of a corporation.

Bribery and corruption are problems in the developed world, and the corruption of public officials is thought to be a primary cause of crime in developing societies, where massive foreign debt often undermines the provision government services. Peèar (1996), in discussing the implications for policing in Eastern Europe as it seeks to adapt its laws to match a capitalist model, points to the difficulty of distinguishing between lack of morality and criminality in economic crimes that tend to emerge from the structural relationships in modern commerce.

5.3. State-Corporate Crime:

5.3.4. Definition:

The concept of **state-corporate crime** or **incorporated governance** refers to crimes that result from the relationship between the policies of the state and the policies and practices of commercial corporations. The term was coined by Kramer and Michalowski (1990), and redefined by Aulette and Michalowski (1993). These definitions were intended to include all "socially injurious acts" and not merely those that are defined by the local criminal jurisdiction as crime. This is not universally accepted as a valid definition so a less contentious version has been adopted here. As an academic classification, it is distinguished from:

- *Corporate crime*, which studies deviance within the context of a corporation and by a corporation;
- *Political crime*, which is crime directed at the state; and
- *State crime or "state-organized crime"*, which studies crimes committed by government organizations (Chambliss: 1989).

One of the assertions made by those involved in this work is that a focus on the actual relationship between the state and corporations dependent on the state for their profitability can expose a more complete range of criminal activity than might be provided by independent analyses of corporate or state-organized crimes.

To be able to operate as a commercial business entity, the modern corporation requires a legal framework of regulation and oversight within which to exploit the relevant markets profitably. The infrastructure of law and commerce are provided by the government of each state in which the corporation desires to trade, and there is an inevitable linkage between the political and commercial interests. All states rely on businesses to provide an economic base consistent with each government's political policies. Without policies that are supportive of economic activity, businesses will not be profitable and so will not be able to provide the economic support that the state desires. In some cases, this symbiosis may lead to the commission of crimes. The research studies situations where, for various reasons, the oversight of corporate and/or state organizations by independent bodies has

been manipulated or excluded, and either existing criminal activity is redefined as lawful, or criminal activity results but is not prosecuted.

Harper and Israel (1999) comment: “...*societies create crime because they construct the rules whose transgression constitutes crime. The state is a major player in this process.*” i.e. the way in which crime is defined is dynamic and reflects each society's immediate needs and changing attitudes towards the local varieties of conduct. The process depends on the values underpinning the society, the mechanisms for resolving political conflict, the control over the discourse, and the exercise of power. Snider (1999) notes that capitalist states are often reluctant to pass laws to regulate large corporations, because this might threaten profitability, and that these states often use considerable sums to attract regional or national inward investment from large corporations. They offer new investors:

- preferential tax concessions not available to the ordinary citizen or local business if foreign investment is sought;
- loans, guarantees and other financial support on preferential terms;
- directly targeted grants and other subsidies; and
- a purpose-built infrastructure to subsidize the set-up costs.

Once the state is committed to this offer, it can be difficult to enforce local laws against pollution, health and safety or monopolies. Green and Ward (2004) examine how the debt repayment schemes in developing countries place such a financial burden on states that they often collude with corporations offering prospects of capital growth. Such collusion frequently entails the softening of environmental and other regulations. The debt service obligation can also exacerbate political instability in countries where the legitimacy of state power is questioned. Such political volatility leads states to adopt clientelistic or patrimonialist patterns of governance, fostering organized crime, corruption, and authoritarianism. In some third world countries, this political atmosphere has encouraged repression and the use of torture. Exceptionally, genocide has occurred. But Sharkansky (1995) is careful to maintain a strict definition of "crime" for these purposes. Many

individuals and organizations may disapprove of what governments do or fail to do, but such acts and omissions are not necessarily criminal.

5.4. Political Crime:

The political-crime category contains both crimes by the government and crimes against the government. Political goals motivate political criminals.

In criminology, a political crime is one involving overt acts or omissions (where there is a duty to act), which prejudice the interests of the state, its government or the political system. It is to be distinguished from state crime when it is the states that break both their own criminal laws and/or public international law (Ross, 2000).

At one extreme, crimes such as treason, sedition, and terrorism are political because they represent a direct challenge to the government in power. But offenders do not have to aim to overthrow the government or to depose its leaders to be acting in a way perceived as "political". A state may perceive it threatening if individuals advocate change to the established order, or argue the need for reform of long-established policies, or engage in acts signifying some degree of disloyalty, e.g. by burning the nation's flag in public. But the scope of such crimes can be rather less direct. Functionalist criminologists recognize that states invest their resources in maintaining order through social conformity, i.e. a particular culture is encouraged and maintained through the primary social discourses which may include religious, economic, social, or other less formal concerns. Any interference with the media of communication or the sets of meanings embedded in the communications themselves may be perceived as a threat to the political authority of the state. Hence, whether in hard copy or electronically, if individuals distribute material containing uncensored information which undermines the credibility of state-controlled news media, this may be considered threatening. Moreover, even an offence against non-governmental institutions, persons, or practices may be deemed political. Violence or even discrimination against an ethnic or racial group, as well trade union strikes or picketing against private employers, can be perceived as a political crime when those in power see such conduct as undermining the political (and economic) stability of the state.

- **Terrorism:**

People convicted or suspected of certain crimes classified as *terrorism* by the government of their country (or some foreign countries) reject that classification. They consider that their fight is a legitimate one using legitimate means, and thus their crimes should be more appropriately called political crimes and justify special treatment in the penal system (as if they were soldiers in a war and therefore covered by the Geneva Convention. States tend to consider the political nature of the crimes an aggravating factor in the sentencing process and make no distinction between the terrorists and "ordinary" offenders, e.g. the convicted murderers of Action Directe consider themselves political prisoners.

Review Questions:

1. Illegal hazardous waste practices may be punished by fining the company or the industry. Should the individuals be punished as well?
2. Why organized crime is is the world's largest business?
3. What efforts to control the rise of organized crime seem most promising?
4. What are the principles governing corporate criminal liability?
5. What is state-corporate crime? How do we control them?

Section 6. Other Important Categories of Crime

6.1. Crimes Against International Law

A number of **crimes against international law** are created by treaty and convention. Some of these crimes are prosecuted before international courts and tribunals. But more difficult questions of jurisdiction arise when the issue is whether a person, natural or

fictitious, can be prosecuted for breach of public international law in the municipal courts of the state in which an arrest is made.

The international crimes are the major criminal offences so designated by '*the community of nations*' for the protection of interests common to all human kind. They may be found in precedent (much like the Anglo-American Common Law Of Crimes) or in written form in international conventions. They can be tried in the courts of countries that recognize them, or they can be tried by international courts. The *war crimes tribunals* that tried German and Japanese war criminals after the World War –II were such courts. In 1993 the Un Security Council ordered the establishment of an International tribunal, to sit in the Netherlands, for war crimes committed on the territory of the former Yugoslavia; a court for the trial of persons charged with genocide in Rwanda was added. These courts have issued several; hundred indictments-the exact number is unknown because they are sealed. Several trials have been held, leading to convictions as well as acquittals. Some other powerful indicted war criminals are still in hiding, but they cannot leave the small territories under their control, for fear of likewise being taken into custody under outstanding international arrest warrants.

For five decades the world's governments have tried to reach agreement for the establishment of a permanent international criminal court with jurisdiction over the most heinous international crimes. Finally, The **International Criminal Court (ICC or ICCT)** was established in 2002 as a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression, although it cannot currently exercise jurisdiction over the crime of aggression. The Court came into being on 1 July 2002 — the date its founding treaty, the Rome Statute of the International Criminal Court, entered into force — and it can only prosecute crimes committed on or after that date.

As of January 2009, 108 states are members of the Court; A further 40 countries have signed but not ratified the Rome Statute. However, a number of states, including China, Russia, India and the United States, are critical of the Court and have not joined.

The Court can generally exercise jurisdiction only in cases where the accused is a national of a state party, the alleged crime took place on the territory of a state party, or a situation is referred to the Court by the United Nations Security Council. The Court is designed to complement existing national judicial systems: it can exercise its jurisdiction only when national courts are unwilling or unable to investigate or prosecute such crimes. Primary responsibility to investigate and punish crimes is therefore left to individual states.

To date, the Court has opened investigations into four situations: Northern Uganda, the Democratic Republic of the Congo, the Central African Republic and Darfur. The Court has issued public arrest warrants for twelve people; six of them remain free, two have died, and four are in custody. The Court's first trial, of Congolese militia leader Thomas Lubanga, began on *26 January 2009*.

The official seat of the Court is in The Hague, Netherlands, but its proceedings may take place anywhere. The ICC is sometimes referred to as a "world court"; it should not be confused with the International Court of Justice, also known as the World Court, which is the United Nations organization that settles disputes between states.

The jurisdiction the International criminal Court extends only to the most serious international crimes such as crimes against humanity, genocide and war crimes. Concerned countries have the right to bring persons accused of these crimes to trial in their own courts or to hand them over to the permanent international criminal court. Except for the few major international crimes over which the international criminal court has jurisdiction, all others are triable only before national criminal courts.

- **Crimes that Are Listed as International Crimes**

The Draft Code of Crimes lists the following as crimes against the peace and security of humanity:

- Crimes against humanity
- Aggression (by one state against another)

- Threat of aggression
- Intervention (in the internal or external affairs of another state)
- Colonial domination and other forms of alien domination
- Genocide (destroying a national, ethnic, racial or religious group)
- Apartheid (suppression of racial or an ethnic group)
- Systematic or mass violations of human rights
- Exceptionally war crimes
- Recruitment, use, financing and training of mercenaries (soldiers of fortune)
- International terrorism
- Illicit traffic in narcotic drugs
- Willful and severe damage to the environment

These crimes occur in many forms, “systematic or mass violation of human rights” may be organized, large scale rapes of women in occupied territories, as in Bosnia in 1992 and 1993. In addition to the listed international crimes, many others are recognized by convention;

These include the cutting of undersea cables, the transportation of women for purpose of prostitution (white slavery), and fisheries offences. There is now a considerable body of research and scholarship on international crimes.

6.2. Newest Crimes:

6.2.1. Hate Crime:

Hate crimes (also known as bias motivated crimes) occur when a perpetrator targets a victim because of his or her membership in a certain social group, usually defined by racial group, religion, sexual orientation, disability, ethnicity, nationality, age, gender, gender identity, or political affiliation(Stotzer, 2007). Hate crime can take many forms. Incidents may involve physical assault, damage to property, bullying, harassment, verbal abuse or insults, or offensive graffiti or letters (Home Office | Hate crime).

6. 2.1.1. History of Hate Crime:

Concern about hate crimes has become increasingly prominent among policymakers in many nations and at all levels of government in recent years, but the phenomenon is not new. Examples from the past include Roman persecution of Christians, the Ottoman genocide of Armenians, and the Nazi "final solution" for the Jews, and more recently, the ethnic cleansing in Bosnia and genocide in Rwanda. Hate crimes have shaped and sometimes defined world history. In the United States, racial and religious biases have inspired most hate crimes. As Europeans began to colonize the New World in the 16th and 17th centuries, Native Americans increasingly became the targets of bias-motivated intimidation and violence. During the past two centuries, some of the more typical examples of hate crimes in the US include lynchings of African Americans, cross burnings to drive black families from predominantly white neighborhoods, assaults on gay, lesbian and transgender people, and the painting of swastikas on Jewish synagogues, as well as attacks against European Americans, such as the Murder of Channon Christian and Christopher Newsom and the Wichita Massacre.

6.2. 1.2. Hate Crime Victims:

In the United States, anti-black bias was the most frequently reported hate crime motivation. (African-Americans constitute the second-largest minority group; Hispanics are the largest).^[4] Of the nearly 8,000 hate crimes reported to the FBI in 1995, almost 3,000 of them were motivated by bias against blacks. Other frequently reported bias motivations were anti-white, anti-Jewish, anti-gay, and anti-Hispanic.

6.2.2. Computer/Internet/Hi-Tech Crimes:

Computer crime, cybercrime, e-crime, hi-tech crime or electronic crime generally refers to criminal activity where a computer or network is the source, tool, target, or place of a crime. These categories are not exclusive and many activities can be characterized as falling in one or more category. Additionally, although the terms computer crime and cybercrime are more properly restricted to describing criminal activity in which the computer or network is a necessary part of the crime, these terms are also sometimes used

to include traditional crimes, such as fraud, theft, blackmail, forgery, and embezzlement, in which computers or networks are used. As the use of computers has grown, computer crime has become more important.

Computer crime can broadly be defined as criminal activity involving an information technology infrastructure, including illegal access (unauthorized access), illegal interception (by technical means of non-public transmissions of computer data to, from or within a computer system), data interference (unauthorized damaging, deletion, deterioration, alteration or suppression of computer data), systems interference (interfering with the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data), misuse of devices, forgery (ID theft), and electronic fraud.

Computer crime issues have become high-profile, particularly those surrounding hacking, copyright infringement through warez, child pornography, and child grooming. There are also problems of privacy when confidential information is lost or intercepted, lawfully or otherwise.

Review Questions:

1. Explain the concept of 'International Crime'.
2. Write a brief essay on the International Criminal Court.
3. What is a hate crime? Trace the development of this concept.
4. Define a Hi-Tech crime. What harmful activities can be covered under this expression?

Section. 7. Measurement of Crime:

7.1. Crime Statistics:

Crime statistics are the indices of intensity of crimes recorded annually in a particular country, region or place. It reflects upon the ascending or descending trends in crime and also gives information as to how new forms of crime are emerging and the old ones are disappearing or assuming new dimensions. Thus crime statistics are indicative of the general moral-tune of a given society and throw light on the general efficacy of police, prosecuting agencies and law courts. Therefore, the role of crime statistics in analyzing causation of crime and devising measures to combat criminality need not be over-emphasized. The statistics of crime help the law enforcement agencies to spot out the preponderance of crime at a particular time, place and region.

Criminologists, however differ as to their views about the scope of criminal statistics. Some of them assert that the data should mainly concern with offences and offenders, administrative actions and decisions of the Courts, while others maintain that it should only be limited to offenders and convicted persons. But the generally accepted view is that crime statistics should not only be confined to data on offences and offenders but also include numerical figures pertaining to the criminal law administration agencies such as police, prosecution, courts, parole and probation services, juvenile delinquency, prisons, drug law violations and trafficking records etc. The data so presented should be scientifically classified, tabulated and analyzed so as to present a realistic picture of crime situation of a particular region or country. The periodical publication of such statistics is equally important so that the criminal law agencies may utilize it to the best of their advantage for combating crimes.

Emphasizing the need for statistics in the field of criminology *Donald Taft* observed that, “quantification which includes counting, measuring and collating the phenomena under study is the basic process in modern scientific approach to criminal science. Without this process, investigative efforts would hardly serve any useful purpose. Crime statistics also depict the picture of distribution of crimes in different

areas, regions, and locations. It must, however, be stated that mathematical accuracy of crime figures at a given place and time is rather difficult to ascertain. The statistics only present an over-all picture of incidence of crime and make it possible to compare the crime rate at regional, national and international level”.

Speaking about the importance of periodical statistical records of prisons and prisoners *Bentham* observed:

“The ordering of these returns is a measure of excellent use in furnishing data for the legislature to work upon. They will form together a kind of political barometer by which the effect of every legislative operation relative to the subject may be indicated and made palatable. It is not till lately the legislators have thought of providing themselves with necessary documents.

Thus, it would be seen that crime statistics provide a useful guideline for the legislators and criminal law administrators to fight against criminality and find effective anti-dote of crimes.

Pointing out the significance of statistical data on crime and criminals, *Edwin Sutherland* observed that, “these statistics are sometimes usefully utilized in the formulation of social policies and theories of criminality. Besides, it also provides valuable source-material for crime investigators. The social information contained in them forms the basis of extensive research in the field of criminology. In the absence of statistical record of crime it would become virtually impossible to form any valid opinion about the crime picture in a given place”.

7.2. Sources of Crime Statistics:

Available statistics of crime may broadly be classified into two major categories, viz., serious crimes and minor crimes. Serious crimes generally cause greater alarm in the society and huge revenue loss to the State such as tax evasion, bank frauds, scams etc. The minor offences, on the other hand, are less alarming and are generally viewed mildly by the society.

Considered from the point of view of different agencies connected with the administration of criminal justice, criminal statistics may be placed under three broad heads, namely:

- (i) Police statistics;
- (ii) Judicial statistics or Court statistics; and
- (iii) Penal statistics.

Police statistics are primarily concerned with the number of crimes reported, the number of persons apprehended and the number of offences cleared or accounted for by the arrests made.

The *judicial or Court statistics* are concerned with the number of offences prosecuted the number convicted and the method of procedure followed in determining guilt, the number not convicted and the stage at which cases were dropped. These statistics also account for the number of convictions and the type of sentences imposed upon guilty persons.

Penal statistics comprise the details of different types of custodial measures, the characteristics of inmates, time spent in custody, number of escapes and offence-wise number of recidivists.

It may be stated that equally important is the data of post-correctional criminal behaviour but it is practically not feasible to follow up the post-release conduct of the convicted offenders. But the Government should at least make efforts to collect the statistical data concerning repletion of crimes which may help the administration in suitably dealing with the habitual

7.3. Reasons for Unreliability of Crime Statistics:

The magnitude of the problem of various forms of crime in a particular country can be ascertained after an analysis of the criminal statistics. But the fact remains that these statistics deal mainly with recorded crimes. It is, therefore, not possible to detect all criminal acts committed by people in a country. It is for this reason that it is generally

believed that statistics of crime and criminal are most deceptive of all the statistics and hardly present a true picture of crime position. Some of the reasons generally attributed to unreliability of crime statistics are as follows:

1. The concept of crime being dynamic, it is difficult to determine the quantum of crime with accuracy.
2. Quite a large number of crimes committed remain undetected, there are others which are detected but not reported and many more are reported but not recorded. There are several reasons for not reporting crimes. The offence may be considered trivial; the police-post might be too far away; one sincerely wants that the culprit should be punished but he may apprehend harassment from him or he may not be willing to go through the cumbersome process of criminal trial or he or she may feel embarrassed, as in case of sex offences. The victim may also not be interested in reporting crime because he may not have confidence in the criminal justice system.
3. At times, there is a deliberate non-registration of crimes because lesser number of crimes projects a better image of police performance.
4. Quite a large number of crimes are lost between arrest and prosecution and many more are lost between prosecution and conviction. Explaining this point further, Leon Radzinowicz observed that crimes fully brought out into the open and punished, “represent not more than fifteen per cent of the great mass actually committed”.
5. The crime statistics at different places do not present a true picture of volume of crimes because of the socio-economic differences and variations in the criminal law. The behaviour which may be a crime at one place may not be necessarily so in another place or time. This reduces the significance of crime-index for the purposes of comparison. It is primarily for this reason that comparisons of the crime rates of various countries are seriously limited by wide variations in their national legal systems.
6. The crime figures for the purpose of comparisons are to be stated in proportion to population or some other base and as E.H. Sutherland rightly points out,

determination of this base is often difficult. The accuracy of population figures is equally a matter of doubt and suspicion.

7. The judicial statistics or the statistical data given by law courts regarding number of convictions do not generally tally with the statistics of prisoners compiled by prison authorities because all convictions do not necessarily result into imprisonment. Many of the convicted persons are let off after admonition or fine or released on probation or parole or booked to a correctional institution.
8. The prison statistics often give a distorted picture of criminality. They are least reliable to be used for appreciating the magnitude of the real crime problem or the types of crimes committed, or the types of offenders booked for crimes. In fact, they are simply indicative of the persons who are institutionalized rather than having any bearing upon actual number of crimes or criminals. Moreover, these statistics are reflective of why people are caught and prosecuted rather than of why they commit crimes, which is the central concern of criminologist.

It would thus appear that accuracy of crime-statistics depends, by and large, upon the societal reaction towards different crimes and the honesty, efficiency and working of Police Department and other investigating agencies. Crime being concerned with behavioural patterns, accuracy of crime figures is a myth. Statistics, therefore, depict only a general picture of criminality at a given place and time. Commenting on the unreliability of crime statistics, *B. Wehner* observed that, “unreported crimes vary between a minimum of twice and maximum of four-times the number actually shown in criminal statistics”.

Unit Summary:

Lawyers and criminologist have searched for a system of grouping the many types of crimes into coherent, rational categories for purposes of studying them from both a legal and a criminological perspective. Such categorizations are called typologies. *Blue-collar crime* is any crime committed by an individual from a lower social class as opposed to white-collar crime which is associated with crime committed by individuals of a higher

social class. Juvenile delinquency refers to criminal acts performed by juveniles. Crime committed by young people has risen since the mid-twentieth century, as have most types of crime. There are several theories which try to explain the delinquency conduct in young offenders. Low intelligence, impulsiveness and family background are other factors that contribute to juvenile delinquency.

Organized crime or criminal organizations are groups or operations run by criminals, most commonly for the purpose of generating a monetary profit. The act of engaging in criminal activity as a structured group is referred to in the United States as racketeering. Another use of the term "criminal organization" exists in human rights law and refers to an organization which has been found guilty of crimes against humanity. The drug-crime category encompasses a range of offenses connected with the use, transportation, purchase, and sale of illegal drugs. Illegal drugs are related to crime in multiple ways. Organized crime reaches into communities and ruins lives by driving other crime and instilling fear. It manifests itself most graphically in drug addiction, sexual exploitation and gun crime. Money laundering is any action taken to conceal, arrange, use or possess the proceeds of any criminal conduct. Internet-related crime is a term used to describe a range of different crime types that are committed or facilitated online.

Corporate crime refers to crimes committed either by a corporation by individuals that may be identified with a corporation or other business entity. The concept of state-corporate crime or incorporated governance refers to crimes that result from the relationship between the policies of the state and the policies and practices of commercial corporations. The political-crime category contains both crimes by the government and crimes against the government. Political goals motivate political criminals. The international crimes are the major criminal offences so designated by '*the community of nations*' for the protection of interests common to all human kind. Hate crimes occur when a perpetrator targets a victim because of his or her membership in a certain social group, usually defined by racial group, religion, sexual orientation, disability, ethnicity, nationality, age, gender, gender identity, or political affiliation.

Computer crime, generally refers to criminal activity where a computer or network is the source, tool, target, or place of a crime.

Crime statistics are the indices of intensity of crimes recorded annually in a particular country, region or place. It reflects upon the ascending or descending trends in crime and also gives information as to how new forms of crime are emerging and the old ones are disappearing or assuming new dimensions.

Review questions:

1. Define crime statistics. How far they are indicative of the crime incidence in a country?
2. What are the different sources of crime statistics?
3. What are the reasons for the unreliability of crime statistics?

References:

Books:

1. Adler, M, L,(2001) “Criminology”, 4th ed, Newyork., The McGraw-Hill Companies, Inc.
2. Siegel, Larry J. (2006). *Criminology: Theories, Patterns, & Typologies*, 9th edition. Belmont, CA: Wadsworth Publishing. ISBN 0-495-00572-X
3. Leap, Terry L. (2007) *Dishonest Dollars: The Dynamics of White-Collar Crime*. Ithaca: Cornell University Press. ISBN 978-0-8014-4520-0
4. Collins, D.J. & Lapsley, H.M. (1991). *Estimating the Economic Costs of Drug Abuse in Australia* Canberra: Dept. Of Comm. Health and Services.
5. Conklin, John E. (1997). *Criminology*. 6th edition. Allyn & Bacon. ISBN 0-205-26478-6.
6. Meier, Robert F. & Geis, Gilbert. (1997). *Victimless Crime? Prostitution, Drugs, Homosexuality, Abortion*. Los Angeles: Roxbury. ISBN 0-935732-46-2.
7. Schur, Edwin M. (1965) *Crimes Without Victims: Deviant Behavior and Public Policy: Abortion, Homosexuality, Drug Addiction*. Prentice Hall. ISBN 0-13-192930-5.

8. James W. Coleman, *The Criminal Elite: The Sociological White-Collar Crime*, 2nd ed. New York: St. Martin's Press, 1989.
9. Eadie, T. & Morley, R. (2003) 'Crime, Justice and Punishment' in Baldock, J. et al (eds) *Social Policy* (3rd edn.) Oxford: Oxford University Press.
10. Walklate, S (2003) *Understanding Criminology – Current Theoretical Debates*, 2nd edition, Maidenhead: Open University Press.
11. Farrington, D.P. (2002) 'Developmental criminology and risk-focused prevention' in M. Maguire et al (eds) *The Oxford Handbook of Criminology* (3rd edn.). Oxford: Oxford University Press.
12. Graham, J. & Bowling, B. (1995) *Young People and Crime*, Home Office Research Study No. 145, London: Home Office.
13. Braithwaite, John. (1984). *Corporate Crime in the Pharmaceutical Industry*. London: Routledge & Kegan Paul Books. ISBN 0-7102-0049-8
14. Stotzer, R.: "Comparison of Hate Crime Rates Across Protected and Unprotected Groups", The Williams Institute, 2007-06. Retrieved on 2007-08-09.

Articles:

10. Polinsky, A. Mitchell. (1980). "Private versus Public Enforcement of Fines." *The Journal of Legal Studies*, Vol. IX, No. 1, (January), pp105-127.

Websites:

<http://www.homeoffice.gov.uk/crime-victims/reducing-crime/organised-crime/>-Accessed on 15-102009.

<http://www.soca.gov.uk/orgCrime/drugTraffic.html>

<http://www.soca.gov.uk/orgCrime/sectorFraud.html>

<http://www.homeoffice.gov.uk/crime-victims/reducing-crime/internet-crime/>

<http://www.icc-cpi.int>

http://en.wikipedia.org/wiki/International_Criminal_Court

UNIT-IV

VICTIMS, VICTIMIZATIONS, VICTIMOLOGY AND RESTORATIVE JUSTICE

Introduction

Thirty years ago, it would have been difficult to have found any criminological agency (official, professional, voluntary or other) or research group working in the field of victims of crime, or which considered crime victims as having any central relevance to the subject apart from being a sad of the activity under study-criminality. To officials the victim was merely a witness in the court case, to researchers either the victim was totally ignored or was used as a source of information about crime and criminals. Until very recently there was a striking lack of information about victims, and even now the knowledge is sketchy, limited to certain crimes and often to certain types of victim. This ignorance is astonishing when one considers that the criminal justice system would collapse if victims were to refuse to cooperate. Some victims have found that their treatment by the officials in the criminal justice system-the police, lawyers, court officials, judges and compensation boards,-to be too stressful, demeaning, unfair, disregarding of their feelings, rights needs and interests. Some times they see the system as a second victimization which can be more unpleasant than the original crime. In such cases they may well choose not to report or to cooperate in the future; their experiences may also affect their friends and family, and even the general public, spreading a general reluctance to cooperate. This syndrome is best known in rape cases but also exists in other areas (Katherine s. Williams, 2001).

As a method of countering the problem of crime and of dealing with the numerous victims left in their wake, criminologists turn to the study of victims and their relationship to the criminal act. While caring and understanding the pain and anguish of the victim and their circle of social influence is of essential, as is providing treatment and counseling, criminologists now view the role of the victim in the criminal process as imperative to understanding crime itself. Studying and researching victimology helps in

gaining a better understanding of the victim, as well as the criminal, and how the crime may have been precipitated.

Objectives:

By the end of this Unit the students will be able to:

- Realize the importance of victim's role in the criminal justice system.
- Define the key terms victim, victimization and victimology.
- Explain the theories of victimization and the concept of victim blaming.
- Identify the scope and concerns of the sub-branch of criminology called 'victimology'.

Section1. Crime Victims

A **victim of a crime**, or **crime victim**, is in criminology and criminal law, the identifiable person who has been harmed individually and directly by the perpetrator or defendant, rather than merely society as a whole. However, this may not always be the case, as with victims of white collar crime, who may not be clearly identifiable or directly linked to the crime, and are often denied their status as victims by the social construction of the concept. (Croall, 2001).

1.1 Types of Victims:

The term 'crime victim' refers to any person, group or entity who has suffered injury or loss due to illegal activity of someone. The harm can be physical, psychological or economic. Such a person may be called a '*primary victim of crime*'. Besides, there are also '*secondary crime victims*' who suffer harm or injury as a result of injury or harm to the primary crime victim. For example, the children of a raped woman or a battered woman suffering from lack of paternity and are secondary victims.

➤ **Society as Crime Victim:**

There is one strain of thought that society itself is the victim of many crimes, especially such homicide felonies as murder and manslaughter. This sentiment has been espoused by many lawyers, judges, and academics. Some district attorneys feel they represent all of society, while some feel they are the lawyer for the crime victim. *John Donne* wrote that when one

hears a funeral bell, one should not wonder "for whom the bell tolls," because "it tolls for thee," meaning that a part of everyone dies when one person in society dies. In other words, crime is harm to society.

Von Hentig (1948) carried the work of *Mendelson* further and placed victims in *five* main categories as follows:

- The *innocent* who fell a victim in crime being in the wrong place at the wrong time.
- The *depressive* types who are an easy target, being careless and unsuspecting.
- The *greedy* type who are easily duped because of craze for money and easy gain.
- The *wanton* type who are particularly vulnerable to stresses of life such as juvenile victims.
- The *tormentor* type who is the victim of attack from the target of his/her abuse such as battered women.

1.2 Psychological Consequences affecting Crime Victims:

Emotional distress as the result of crime is a recurring theme for all victims of crime. The most common problem, affecting three quarters of victims, were psychological problems, including: fear, anxiety, nervousness, self-blame, anger, shame, and difficulty sleeping.^[2] These problems often result in the development of chronic PTSD (post-traumatic stress disorder). Post crime distress is also linked to pre-existing emotional problems and socio-demographic variables. This has known to become a leading case of the elderly to be more adversely affected. Victims may experience the following psychological reactions:

- Increase in the belief of personal vulnerability.
- The perception of the world as meaningless and incomprehensible.
- The view of themselves in a negative light.

The experience of victimization may result in an increasing fear of the victim of the crime, and the spread of fear in the community.

1.3 Reluctance of Victims to Report Crimes:

The reluctance of victims to report cases to the police remains an issue to be probed in by victimologists. Some of the reasons for non-reporting of crimes are:

1. People's apathy and attitude of indifference;
2. The effect of crime being insignificant or petty;
3. Identity of the offender being unknown;
4. Apprehension of threat or harassment from the culprit;
5. Social and public indignation, particularly in cases of rape, illegal abortion and other sexual offences;
6. Considerable loss of time, money in prolonged criminal litigation;
7. Reluctance of witnesses to testify or possibility of their turning hostile;
8. Lack of faith and confidence in police action.

Needless to say that apathy of victims to report against the offender encourages criminality. Therefore, victimologists should concentrate the problems which hinder victim's approach to the agencies of criminal justice system for redressal of their woes and sufferings. Since the ultimate end of penal justice is to protect and add to the welfare of the people and society as a whole, victims' rights should not only be recognized by the State but they should be well protected by the law and victims' services should be further extended. The emergence of compensatory jurisprudence is indeed a welcome step from the point of view of human rights philosophy.

Review Questions:

1. Define a victim of crime. What are the affects of crime on the victim?

Discuss different classes of victim.

Why are some victims never resort to seek justice from the law enforcement mechanism?

Section.2. Victimization

2.1. Definition and Nature

The noun "victimization" has two meanings, "an act that exploits or victimizes someone" and "adversity resulting from being made a victim" (Victimization, N.d). Despite these two descriptions of the same word, both illustrate the problem of victimization. One of the most controversial sub-topics within the broader topic is victimization. The concept of "victim-proneness" is a "highly moralistic way of assigning guilt" to the *victim of a crime*, also known as *victim-blaming*. Victim blaming is holding the victims of a crime, an accident, or any type of abusive maltreatment to be entirely or partially responsible for the unfortunate incident that has occurred in their life, often when the victim had performed no actions to facilitate the incident. It is also about blaming individuals for their personal distress or for social difficulties, rather than the other parties involved or the overarching social system in place.

There have been some studies recently to quantify the real existence of *victim-proneness*. Contrary to the urban legend that more women are repeat victims, and thus more victim-prone than men, Actually men in their prime (24 to 34 year old males) are more likely to be victims of repeated crimes. While each study used different methodology, their results must be taken seriously and further studies are warranted.

The study of victimology may also include the "culture of victimhood," wherein the victim of a crime reveals in his status, proclaiming that self-created victimhood throughout a community by winning the sympathy of professionals and peers. In the case of juvenile offenders, the study results also show that people are more likely to be victimized as a result of a serious offense by someone they know; the most frequent crimes committed by adolescents towards someone they know were sexual assault, common assault, and homicide. Adolescents victimizing people they did not know generally committed common assault, forcible confinement, armed robbery, and robbery.

One particularly well known example of a class at increased risk to varying forms of attacks is the prostitute. These people have been known anecdotally to have an

abnormally high incidence of violent crime, and such crimes go unresolved frequently. Victimological studies of the matter might investigate current societal mores (expectations, roles, social status), legal status of prostitutes, typical working/living conditions, statistical analysis of the actual increased risk and secondary risk factors, and the economic activity of a prostitute. Another example is when the victim actively precipitates or initiates the crime scene, for example, by starting a fight or baiting another individual.

2.2. Theories of Victim Blaming:

These theories explain the universal rejection of victims. There appears to be resistance to believing the innocence of victims. People feel helpless and vulnerable when exposed to senseless violence and need to find rational explanations for the incident. Blaming the victim helps by providing an explanation. People also have an irrational fear of contamination by the victim. Rejection of the victim becomes a defensive maneuver.

2.2.1. Just-World Hypothesis:

It has been proposed that one cause of victim-blaming is the "Just World Hypothesis". People who believe that the world has to be fair may find it hard or impossible to accept a situation in which a person is unfairly and badly hurt. This leads to a sense that, somehow, the victim must have surely done 'something' to deserve their fate. Another theory entails the need to protect one's own sense of invulnerability. This inspires people to believe that rape only happens to those who deserve or provoke the assault (Schneider et al., 1994). This is a way of feeling safer. If the potential victim avoids the behaviors of the past victims then they themselves will remain safe and feel less vulnerable. A global survey of attitudes toward sexual violence by the Global Forum for Health Research shows that victim-blaming concepts are at least partially accepted in many countries. In some countries, victim-blaming is more common, and women who have been raped are sometimes deemed to have behaved improperly. Often, these are countries where there is a significant social divide between the freedoms and status afforded to men and

women. This theory dates from very ancient times: the biblical Book of Job offers a canonical exploration of it.

Supporters of this view (once referred to as "Job's comforters") must perforce accept that to do otherwise would require them to give up their belief in a just world, and require them to believe in a world where bad things – such as poverty, rape, starvation, and murder – can happen to good people for no good reason. The cognitive dissonance in doing this becomes too great, and results in victim-blaming.

2.2.2. The Assumptive World Theory (Invulnerability Theory):

This theory refers more particularly to the crime of rape. The invulnerability theory states that rape victims are a glaring reminder of our own vulnerability. No one likes to think they could lose control over their own body or life. By deciding a rape victim did something concrete to deserve the assault the observer creates a false sense of safety. If they can avoid doing that particular thing or action then they create the illusion of invulnerability for themselves.

According to the World Book Encyclopedia 2007 entry for "Rape" only 2% of accused rapists are convicted. In contrast FBI studies indicate that only 2% of all rape reports are false. "Low conviction rates result from insufficient evidence to prosecute, dismissal of trial due to technicalities and reluctance of victims to testify. For these reasons, low conviction rates do not imply false reporting". According to The New Encyclopædia Britannica, rapists also have high acquittal rates due to the fact that there are often no witnesses to the crime. A recent poll found that a third of respondents believe women who flirt are partially responsible for being raped (Rape Crisis Information Pathfinder, 2009).

2.3. Victimization and Its Effects:

Victimization is a highly complex process encompassing a number of possible elements: **The first element** (often referred to as 'primary victimization') comprises whatever interaction may have taken place between offender and 'victim' during the commission

of the offence, plus any after effects arising from this interaction or from the offence itself.

The second element encompasses 'the victim's' reaction to the offence, including any change in self-perception that may result from it, plus any formal response that s/he may choose to make to it.

The third element consists of any further interactions that may take place between 'the victim' and others, including the various criminal justice agencies with whom s/he may come into contact as a result of this response. Where this interaction has a further negative impact on the victim, it is often referred to as 'secondary victimization'.

2.3.1. Primary Victimization and Its Consequences:

With regard to the 'primary victimization' phase of the process, it may be helpful to begin by distinguishing between the 'effects' or consequences that are known to result from crimes of different kinds and their 'impact' on victims themselves. It is a relatively straightforward task (see e.g. Newburn, 1993) to identify and categorize the different types of *effects* with which various crimes may be associated, even though in practice (and particularly from the victim's own perspective) it may be much more difficult to compartmentalize them in this way. Certain crimes entail physical effects, which are likely to involve some degree of pain and suffering, and may also entail loss of dexterity, some degree of incapacity and/or possible temporary or permanent disfigurement. Many crimes also have financial effects, which may be either direct – where they are attributable to the theft of or damage to property – or indirect. Very often crime can result in additional costs that might be incurred, for example, in seeking medical treatment or legal advice, or loss of income as a result of attending to the crime and its aftermath, or possible loss of future earning potential.

Certain crimes can also have psychological and emotional effects upon victims including depression, anxiety and fear, all of which can adversely affect their quality of life. Finally, though it is often overlooked, crime can also adversely affect victims' social relationships with family, work colleagues and friends. In principle, at least, it should be possible to quantify most of these effects reasonably objectively, though in practice it is methodologically very difficult to do this (see Maguire, 1991: 387–402), particularly in

the case of those effects that do not have direct financial consequences. The measurement of any emotional effects is particularly problematic, not least because both the emotional experience itself and the extent to which people are willing and able to discuss it are themselves highly subjective and, to some extent, culturally specific (see Wortman, 1983).

One additional general observation is that the effect of crime specifically on victims' social relationships with family friends and associates has largely been neglected by researchers, or if acknowledged has been treated merely as an aspect of the psychological effect of crime. This is somewhat surprising as crime and its aftermath are known to be a stressful experience for victims, and social relationships are also known to be adversely affected by stress of different kinds.

2.3.2. Victims' Responses to Victimization:

Having discussed the effects of crime and its impact on different categories of victims, we will now examine the way victims respond to their initial victimization and its impact. These responses may take a number of different forms including the possibility of changes in the attitudes and behaviour of the victim, changes in the victim's own self-perception and even self-identity, and attempts to elicit support or reactions from others including formal agencies such as the police and the courts. Once again we will consider each of these in turn. It is reasonably well established that being the victim of a crime is frequently associated with attitudinal changes. Victims of violence and victims of burglary are especially likely to be worried about those particular categories of crime, respectively, though they are also significantly more likely than non-victims to be worried about all other conventional categories of crime as well. Victims of motor vehicle crime, on the other hand, tend to be rather more specifically worried than non-victims about these particular crimes, but are only marginally more concerned than non-victims about other types of crime. Victims of crime are also more likely than non-victims to perceive that they are at risk of being victimized in the future, and once again the general pattern for different offence types is broadly comparable to that described above. Moreover, victims of violence and burglary are also far more likely than non-victims to be afraid of walking alone in the area after dark and to feel insecure when

alone at home during the night, whereas victims of motor vehicle crime do not feel any less safe than non-victims in either respect.

In terms of behavioural changes, such evidence as there is mostly relates to the more serious kinds of conventional offences and is mainly based on intensive interview studies involving victims of more serious forms of violence including rape. Shapland et al. (1985), for example, found that 14 per cent of victims experiencing some form of assault responded by going out much less frequently than before the offence. Rape victims appear to be particularly likely to undergo major behavioural changes including moving house or changing jobs. Williams and Holmes (1981), for example, found that one in four victims identified in a sample drawn from police records moved house following the assault, while Burgess and Holmstrom (1976) found that just under half of their small sample of rape victims (19 out of 45) had changed jobs within six weeks of the attack. Other behavioural effects include withdrawal from social contacts and drug or alcohol abuse (Peters et al., 1976; Herman, 1981; Briere, 1984, all cited in Newburn, 1993).

With some types of offences the behavioural consequences can be even more severe. This is particularly true of crimes involving serious physical or sexual abuse that is directed against child victims. In both instances there is evidence that a cycle of abuse may be instigated, whereby some of those who have been victimized as children go on to perpetrate the abuse against succeeding generations of victims. Indeed, this is another illustration of the fact that, in reality, victims and offenders often belong to overlapping categories rather than the mutually exclusive camps to which they tend to be assigned by popular stereotypes. More generally, another behavioural response that is not restricted to a particular category of offence types is for the victim to engage in direct retaliatory action against the offender or suspected offender (Miers, 2000). While such behaviour may be relatively uncommon, it, too, serves as a reminder that we should not rush to dichotomize too rigidly between victims and offenders when considering how each needs to be dealt with.

Quite apart from any direct behavioural consequences it might have, however, one of the most important issues when considering the impact of a specific criminal offence is whether it causes the person(s) against whom it is directed to think differently about

themselves. Does it result in them seeing themselves as ‘a victim’ and actively seeking to assume the identity and status of a victim, with all that entails, or not? And, if they do seek such status, will it be conferred on them by those who have the power to authoritatively bestow it?

Becoming a victim, in other words, is a social process that starts with a criminal offence but also requires a cognitive decision by the person(s) against whom it is directed to see themselves as, and assume the status of, victims as part of their strategy for coping with it. Not everyone who has been offended against will necessarily regard themselves as a victim. Some, for example, may not recognize that they have in fact been offended against. This could be because the crime itself might not conventionally be recognized as such, as in the case of ‘corporate manslaughter’. Or it might be that the behaviour in question forms such an intrinsic part of their everyday experience that the person against whom it is directed does not consider it to be criminal or even abnormal. Children who have been sexually abused by a relative, for example, may not appreciate at the time that they have been victimized. Similarly, women who were raped by their husbands or beaten by their partners were not, until relatively recently, encouraged to think of themselves as victims of criminal offences. Others may consciously reject the victim ‘label’, either because they consider it to be pejorative or because they prefer to pursue or promote other ‘coping strategies’. Some of those who work with women who have experienced rape or domestic violence, for example, have deliberately renounced the ‘victim’ label and prefer to use the term ‘survivors’. Still others may consider a potentially victimizing incident too trivial to bother about or would prefer to deal with it themselves. For example, over half (55 per cent) of those who had experienced a potentially victimizing incident over the previous 12 months reported that they did not want any help or support in dealing with it (Maguire and Kynch, 2000: 8).

2.3.3. Secondary Victimization

Assuming that a person who has been offended against does actively seek to be recognized and treated by others as a victim, this will normally set in motion a range of other processes over which the victim has little or no control. These processes may or

may not result in victim status being granted but, even where successful, they may inflict additional costs and further hardship on the victim: a consequence that is often referred to as 'secondary victimization'.

A careful analysis of the victimization process may help us to identify an additional range of criteria by which we may seek to assess the performance of various victim-focused measures (including restorative justice) that are designed to alleviate the harmful consequences of victimization. The most obvious of these concern the extent to which they are capable of addressing the following kinds of harm that may result either directly or indirectly from the commission of a criminal offence:

- Financial loss or additional short or longer term economic hardship;
- Physical harm including pain and suffering plus any longer term incapacity;
- Short and longer term psychological and emotional effects;
- Damage to social relationships, particularly those involving the victim and other family members, colleagues and acquaintances but also including the offender where known to the victim;
- Subjective impact of any of the above from the victim's own standpoint;
- Any longer term legacy including feelings of insecurity, concern about crime in general or fear of being (re-)victimized;
- Any negative consequences that might be associated with a person's self-perception as a victim;
- The negative consequences associated with any possible 'secondary victimization'.

Review Questions:

1. What do you understand by victimization? Discuss the theories of victimization.

Write short notes on the following:

- a. Victim proneness
- b. Primary Victimization
- c. Secondary victimization

Section.3. Victimology

3.1. Definition and Scope

Victimology in a broader sense describes the study of people who have experienced any of the wide range of victimization experiences from any one of the following perspectives: the victim, the offender, family and society.

Victimology is the study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system that is, the police and courts, and corrections officials -- and the connections between victims and other societal groups and institutions, such as the media, businesses, and social movements (Andrew Karman, 2003). A *victim of a crime* (or *crime victim*) is in criminology and criminal law, the identifiable person who has been harmed individually and directly by the perpetrator or defendant, rather than merely society as a whole. However, this may not always be the case, as with victims of white collar crime, who may not be clearly identifiable or directly linked to the crime, and are often denied their status as victims by the social construction of the concept. (Croall, 2001). Not all criminologists even accept the concept of victimization or victimology.

The aim of victimology as a science is to help such sufferers of crime and remove the social confusion by addressing to the problems of victims of crime. It is a relatively new area which is considered as a field of specialization within criminology. In other words, criminology encompasses within it the study of law making, law-breaking and societal reactions to law-breaking whereas victimology forms a part of specialized study in the field of societal reaction to law-breaking. Thus it has been generally accepted that criminology comprises four sub-fields:

1. Penology and the sociology of law;
2. Delinquency;
3. Comparative and historical criminology; and
4. Victimology.

Victimology as a branch of criminology encompasses the study of the following:

1. Victimization;
2. Victim-offender relationships;

3. Victim-criminal justice relationships;
4. Victim and the media relationship;
5. Victims and costs of crime;
6. Victims and societal reactions; and
7. Compensatory remedy for victims.

3.2. Victimology and Its Variants

Victimology as a field of study is a recently developed sub-discipline of criminology. Whereas the latter is very broadly concerned with the study of crime and criminals, victimology focuses equally broadly on crime and its victims. As within criminology itself, however, individual victimologists have tended to focus on very different sets of issues, as a result of which a number of variants within the sub-discipline may now be differentiated.

The position within victimology is further complicated by the fact that the academic study of victimology is closely intertwined with – and is consequently almost impossible to disentangle from – the equally diverse philosophies and practices that have been adopted by various sets of activists who have championed the cause of victims (Fattah, 1989). In this section, three principal variants within the field of victimology – positivist, radical and critical victimology – are briefly described and linked with the discrete tendencies within the diverse victims' movement with which they are most closely associated.

3.2.1. Positivist Victimology

Positivist victimology, like its counterpart in criminology (see Cavadino and Dignan, 2002: 49) is influenced by the view that crime, along with all other natural and social phenomena, is *caused* by factors and processes which can be discovered by scientific investigation. But whereas positivist criminologists attribute the causes of crime to various forces (including environmental and genetic factors) that act upon *offenders* and are beyond their control, early positivist victimologists were interested in the possibility that certain *victims* might in some way contribute to their own victimization. Von Hentig (1941, 1948) and Mendelsohn (1956, 1974), for example, were interested in observing

and identifying regularities or non-randomized patterns of victimizing events, and in linking these to particular types of victim who could then be categorized within various typologies.

For instance, victims were classified according to how ‘victim prone’ they were, in von Hentig’s case, or even (and far more controversially) according to the degree of ‘culpability’ exhibited by the victim, in Mendelssohn’s case. The influence of positivist victimology can be discerned at the policymaking level with regard to both the development and deployment of victim survey techniques and also the launch of official campaigns to encourage victims who may be susceptible to various types of victimization to take steps to reduce the risks involved.

A major weakness with positivist victimology, however, is that it assumes that the identity of victims is self-evident, since it is linked to the harm that they have sustained and the fact that their status is defined and recognized by the criminal law. Thus, there is a tendency to concentrate almost exclusively on victims of conventional interpersonal crimes, particularly those involving violence and predatory attitudes towards the property of others.

1.2.3. Radical Victimology

Radical victimology likewise resembles its criminological counterpart in rejecting the theoretical underpinnings of positivist victimology. Instead of seeing victimization as a product of the personal attributes of individual victims, early radical criminologists such as Quinney (1972) drew attention to structural factors relating to the way society is organized, and also the role of the state itself and the legal system in the social construction of both victims and offenders. Viewed from this perspective, the definition and identity of victims is far from self-evident since it extends to those who are oppressed, and thus victimized, both by ‘the powerful’, and also by those who act on behalf of the state, including the police and correctional agencies. For many radical criminologists (see, for example, Taylor et al., 1973; Platt, 1975; Pearce, 1976), such insights resulted in a tendency to see offenders as the principal victims of state oppression and to downplay or ignore altogether those who were in turn victimized by them. For

others, including a group who became known as 'radical left realists' (see, for example, Lea and Young, 1984; Young, 1986) the findings of the first British Crime Survey alerted them to the fact that most predatory crime was directed not against the wealthy bourgeoisie but against the poorest members of society who tend to live among those responsible for such crime. Other radical victimologists have been motivated less by empirical findings than their own normative predilections. Robert Elias (1985) for example, sought to place a human rights perspective on the victimological agenda. His aim was partly to devise a more objective and less parochial criterion by which victimization might be defined and measured, and partly to mobilize support in favour of measures 'to relieve human suffering' on the part of victims.

This realignment within the field of radical victimology is also reflected in certain specific tendencies within the wider victims' movement. At a political and policymaking level the concerns of new left realism were mirrored in a commitment to improving the lot of 'ordinary' victims without necessarily adopting the highly repressive responses towards offenders that are associated with more conservative law and order advocates. At a practitioner level, the quest for a human rights approach was manifested in a search for more constructive ways of dealing with both victims and offenders that sought as far as possible to meet the needs and interests of both. Thus, certain strands within radical victimology are reflected in more liberal approaches with regard to penal policy, such as the promotion of state-funded compensation schemes, support for restitution or compensation for victims by their offenders and even attempts at reconciliation (see also Karmen, 1990: 8). In this respect, some of the early progenitors of the restorative justice movement espoused aims that were certainly consistent with, even if they were not directly inspired by, some of these developments within radical victimology.

However, radical victimology has in turn been criticized for its partial and incomplete portrayal of the processes of victimization since it tends to confine its analysis to the impact of social class relationships while neglecting other factors such as gender, race and age (Jefferson et al., 1991; see also Mawby and Walklate, 1994: 16). Attempts to overcome these limitations have drawn on two main perspectives: the first derived from

an approach within critical criminology that is known as ‘symbolic interactionism’ (see e.g. Miers, 1989, 1990a); and the second from feminist accounts (see e.g. Mawby and Walklate, 1994). Despite the differences between them, both approaches have appropriated the label ‘critical victimology’, which represents the third main variant within the field of victimology.

3.2.3. Critical Victimology

For David Miers, the key questions for a critical victimology are ‘who has the power to apply the label?’, and ‘what factors are significant in determining whether or not to bestow it?’ While acknowledging that such questions represent an advance on positivist victimology by emphasizing the contingent and culturally specific nature of our assumptions about who victims are Mawby and Walklate do not accept that it takes us far beyond the portrayal provided by radical victimologists. This is mainly because it fails to explain how those labels are constituted and why it is that certain conceptions of who, really, are the victims, come to prevail at different times and in different sets of social and political circumstances. Mawby and Walklate (1994) themselves have been inspired by a feminist perspective rather than one derived from symbolic interactionism as in David Miers’s case. Although not initially directly concerned with criminal victimization per se, feminism did highlight the importance of neglected issues such as rape, sexual harassment, domestic violence and child abuse. It also drew attention to an additional pervasive mechanism – patriarchy – which, like social class, helps to shape both the process and pattern of victimization and also our ability or willingness to recognize them for what they are. It is by no means the only one, however. Race, for example, is another factor that, like gender, is implicated in the process of victimization and, through its effect on social attitudes, one that may also obscure these processes unless and until they are revealed by campaigners, social commentators and other opinion formers. Critical victimology has highlighted the importance of historical and cultural contexts in shaping both victimizing practices and our sensitivities towards them. Even more importantly, perhaps, critical victimology should alert us to the fact that concepts such as ‘victim’ and ‘victimization’ are contested and, being historically and culturally specific, are both malleable and far from universal. It is also worth pointing out that, perhaps because of the

sympathy that it evokes, the image of ‘the victim’ is capable of being invoked and sometimes even manipulated or exploited, whether to serve the interests of victims per se, particular groups of victims or even other objectives altogether. We will come across examples of all of these tendencies in the two chapters that follow, which examine ‘victim-focused policymaking’.

Review Questions:

1. Define victimology. What are the sub-fields of victimology?
Discuss the scope of victimology.

Section. 4. Restorative Justice

Restorative Justice is a theory of criminal justice that focuses on crime as an act against the individual or community rather than the state. Dialog between the offender and the victim is crucial to restorative justice. The person who has harmed takes responsibility for his/her action and the person who has been harmed may take a central role in the process, in many instances receiving an apology and reparation directly or indirectly from the person who has caused them harm.

4.1. Definition of Restorative Justice

"**Restorative justice** is a broad term which encompasses a growing social movement to institutionalize peaceful approaches to harm, problem-solving and violations of legal and human rights. These range from international peacemaking tribunals such as the South Africa Truth and Reconciliation Commission to innovations within the criminal and juvenile justice systems, schools, social services and communities. Rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships. Restorative justice seeks to build partnerships to reestablish mutual responsibility for constructive responses

to wrongdoing within our communities. Restorative approaches seek a balanced approach to the needs of the victim, wrongdoer and community through processes that preserve the safety and dignity of all."

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders. Restorative justice is very different from either the adversarial legal process or that of civil litigation. "Court-annexed ADR (Alternative Dispute Resolution) and restorative justice could not be philosophically further apart" because lawyers seek to reduce issues between offenders and victims to only legally relevant ones and to protect their offending client, whereas restorative justice seeks "expanding the issues beyond those that are legally relevant, especially into underlying relationships."

Citing Greif, Liebmann has written that

“ a way of looking at restorative justice is to think of it as a balance between a number of different tensions:

- a balance between the therapeutic and the retributive models of justice
- a balance between the rights of offenders and the needs of victims
- a balance between the need to rehabilitate offenders and the duty to protect the public.”

4.2. Historical Foundations of Restorative Justice

Restorative approaches to crime date back thousands of years.

- In North America, the first traces of restorative justice have been attributed

to the First Nations communities.

- In Israel, the Pentateuch specified restitution for property crimes.
- In Sumer, the Code of Ur-Nammu (c. 2060 BC) required restitution for offenses of violence.
- In Babylon, the Code of Hammurabi (c. 1700 BC) prescribed restitution as a sanction for property offenses.
- In Rome, the Twelve Tables (449 BC) ordered convicted thieves to pay double the value of stolen goods.
- In Ireland, under the Brehon Laws (first recorded in the Old Irish period) compensation was the means of restitution for most crimes.
- In Germany, tribal laws promulgated by King Clovis I (496 AD) called for restitutive sanctions for both violent and nonviolent offenses.
- In England, the Laws of Ethelbert of Kent (c. 600 AD) included detailed restitution schedules.

Retributive justice began to replace this system following the Norman invasion of Britain in 1066 A.D. William the Conqueror's son, Henry I, issued laws detailing offenses against the "king's peace." By the end of the 11th century, crime was no longer perceived as injurious to persons, but rather was seen as an offense against the state.

4.3. Three principles form the foundation for restorative justice

1. Justice requires that we work to restore those who have been injured.
2. Those most directly involved and affected by crime should have the opportunity to participate fully in the response if they wish.
3. Government's role is to preserve a just public order, and the community's is to build and maintain a just peace.

4.4. Applications of Restorative Justice

Restorative justice takes many different forms, but all systems have some aspects

in common. In criminal cases, victims have an opportunity to express the full impact of the crime upon their lives, to receive answers to any lingering questions about the incident, and to participate in holding the offender accountable for his or her actions. Offenders can tell their story of why the crime occurred and how it has affected their lives. They are given an opportunity to make things right with the victim—to the degree possible—through some form of compensation.

In social justice cases, restorative justice is used for problem solving. In these cases, impoverished people such as foster children are given the opportunity to describe what they hope for their futures and make concrete plans for transitioning out of state custody in a group process with their supporters.

In criminal cases, types of compensation include, but are not limited to: money, community service in general, community service specific to the deed, self-education to prevent recidivism, and/or expression of remorse.

In the courtroom, a case in relation to *petty or first-time offenses* may be referred to restorative justice as a pretrial diversion, with charges being dismissed after fulfillment of the restitution agreement. *In more serious cases,* restorative justice may be part of a sentence that includes prison time or other punishments.

In the community, concerned individuals meet with all affected parties to determine what the experience and impact of the crime were for all. Those called out for offenses listen to others' experiences first, preferably until they are able to reflect and feel what those experiences were for the others. Then they speak to their experience: how it was for them to do what they did. A plan is made for prevention of future occurrences, and for the offender to heal the damage to the injured parties. All agree. Community members hold offender accountable for adherence to the plan.

Most academic and government definitions of restorative justice restrict that definition to those programs that involve an encounter between the offender and the victim. Some grassroots organizations, like the Mennonite Central Committee Canada, define restorative justice programs less on who the clientele of the program is, and more on the programs values. This means that programs that only serve victims (or offenders for that matter), but have a restorative framework, are considered a restorative justice program. Restorative justice pioneer Howard Zehr was honored as the recipient of the 2006 Community of Christ International Peace Award.

Many Libertarians support restorative justice because it is a victim-centric rather than state-centric approach to law enforcement.

4.5. Programs to Attain Restorative Justice:

Practices and programs reflecting restorative purposes will respond to crime by:

1. Identifying and taking steps to repair harm,
2. Involving all stakeholders, and
3. Transforming the traditional relationship between communities and their governments in responding to crime.

The following are some such programs aiming at ensuring restorative justice.

4.5.1. Victim-Offender Mediation:

Victim-offender mediation, or VOM (also called victim-offender dialogue, victim-offender conferencing, victim-offender reconciliation, or restorative justice dialogue), is usually a face-to-face meeting, in the presence of a trained mediator, between the victim of a crime and the person who committed that crime. This system generally involves a small number of participants, and often is the only option available to incarcerated offenders, due to limits on visitors. VOM

originated in Canada where it formed part of an alternative court sanction in a 1974 Kitchener, Ontario case involving two accused vandals who met face-to-face with their many victims.

4.5.2. Family Group Conferencing:

Family group conferencing (FGC) has a much wider circle of participants than VOM. In addition to the primary victim and offender, participants may include people connected to the victim, the offender's family members, and others connected to the offender (for example, friends, and professionals). FGC is often the most appropriate system for juvenile cases, due to the important role of the family in a juvenile offender's life. Examples of the use of FGC in a juvenile justice setting can be found in the statutory scheme operating in New South Wales (Australia) under the Young Offenders Act 1997, and in New Zealand under the Children, Young Persons, and their Families Act, 1989. The New South Wales scheme has been favourably evaluated by the New South Wales Bureau of Crime Statistics and Research.

4.5.3. Restorative or Community Conferencing:

Restorative Conferencing has a much wider circle of participants than VOM. Restorative conferences, which have also been called restorative justice conferences, family group conferences and community accountability conferences originated as a response to juvenile crime (Doolan, 1999; O'Connell, 1998).

A conference is a structured meeting between offenders, victims and both parties' families and friends, in which they deal with the consequences of the crime and decide how best to repair the harm. Neither a counseling nor a mediation process, conferencing is a victim-sensitive, straightforward problem-solving method that demonstrates how citizens can resolve their own problems when provided with a constructive forum to do so (O'Connell, Wachtel, & Wachtel, 1999).

Conferences provide victims and others with an opportunity to confront the offender, express their feelings, ask questions and have a say in the outcome. Offenders hear firsthand how their behavior has affected people. They may begin to repair the harm by apologizing, making amends and agreeing to financial restitution or personal or community service work. Conferences hold offenders accountable while providing them with an opportunity to discard the "offender" label and be reintegrated into their community, school or workplace (Morris and Maxwell, 2001).

Participation in conferences is voluntary. After it is determined that a conference is appropriate and offenders and victims have agreed to attend, the conference facilitator invites others affected by the incident—the family and friends of victims and offenders (O’Connell, Wachtel, & Wachtel, 1999). In some cases, if a victim is unwilling to participate in a face-to-face meeting, he may make a written statement to be used in the conference, or a surrogate victim may take his place.

The conference facilitator sticks to a simple script and keeps the conference on focus, but is not an active participant. In the conference the facilitator asks the offenders to tell what they did and what they were thinking about when they did it. The facilitator then asks victims and their family members and friends to tell about the incident from their perspective and how it affected them. The offenders' family and friends are asked to do the same (O’Connell, Wachtel, & Wachtel, 1999).

In Brazil, a style of restorative conferencing inspired by Nonviolent Communication has begun to be used in the youth criminal justice system and in the schools. Like other restorative conferencing practices, the Brazilian "restorative circles" minimize the role of the facilitator, in the interest of empowering circle participants to own the process and feel that in the future they can use the process without an outside facilitator. The approach strives to break free from the retributive model more fully than is in the case in some other restorative practices by emphasizing thinking of participants as human beings,

rather than being an "offender," "victim," or other label, and by focusing on each person's choices and the human needs that motivated them. Each person is encouraged to take responsibility for their part in what happened and co-create what will happen next.

The International Institute for Restorative Practices provides training in restorative conferencing and other restorative practices throughout the world.

4.5.4. Community Restorative Boards

A community restorative board, also referred to by other names internationally such as community justice committees in Canada and referral order panels in England & Wales, is typically composed of a small group of citizens, prepared for this function by intensive training, who conduct public, face-to-face meetings with offenders who have been sentenced by the court to participate in the process or who have been referred by police officers on a pre-charge basis or as part of a peripheral, extra-judicial process. Victims of the offender are invited to participate in the process by meeting with the board and offender, or by submitting a written statement which is shared with the offender and the board. During a meeting, board members discuss with the offender the nature of the offense, impact of the behavior, and negative consequences. Then board members discuss a set of actions with the offender, until they reach agreement on the specific actions the offender will take within a given time period to make reparation for the crime. Subsequently, the offender must document his or her progress in fulfilling the terms of the agreement. After the stipulated period of time has passed, the board submits a report to the court on the offender's compliance or a written documentation to the referring police officer, with the agreed upon sanctions. At this point, the board's involvement with the offender is ended.

4.5.5. Restorative Circles

In Hawaii, Restorative Circles are provided for individual imprisoned people who

meet with their families and friends in a group process to address their needs for a successful transition back into the community. One of the needs addressed is the need for reconciliation^[11] A *Modified Restorative Circle* has also been developed and used in Hawaii for individual incarcerated people whose loved ones are unable or unwilling to attend full Restorative Circles. Instead other imprisoned friends sit in the Circle and are supporters in developing a transition plan that includes how the incarcerated individual having the Circle may reconcile with those harmed by the crime and/or imprisonment.

4.5.6. Circles of Support and Accountability

Circles of Support and Accountability (COSA) originated as a project of the "Welcome In," a Mennonite church in Hamilton, Ontario. This thoroughly Canadian innovation is now an internationally regarded, evidence-based practice with a demonstrable capacity to enhance the safe integration of otherwise high-risk sex offenders with their community. In Canada, some sex offenders are released to the community after serving their entire sentence. They have been judged too dangerous to be released on any form of conditional release (e.g. a parole certificate), and have therefore been "detained." Upon further reconviction (and therefore, further victimization), many of these offenders would likely be designated as a "Dangerous Offender," under current Canadian law. Prior to 1994 many of these offenders were released without any form of meaningful community-based support or accountability network apart from police surveillance. Since 1994, COSA has assisted with the integration of well over 120 such offenders by offering them support while holding them accountable. Research now indicates that surrounding a 'core member' with between 5 and 7 carefully selected and trained volunteer circle members significantly reduces sexual re-offence by upwards of 50%. Further, a significant "harm reduction" effect has also been noted in those cases where sexual re-offence has occurred. Offences were less invasive and less brutal in nature than previous offences. COSA projects now exist in every Canadian province and every major urban

centre. COSA projects are also operational in several U.S. states.

4.6. Key Values of Restorative Programs

1. **Encounter:** Create opportunities for victims, offenders and community members who want to do so to meet to discuss the crime and its aftermath.
2. **Amends:** Expect offenders to take steps to repair the harm they have caused.
3. **Reintegration:** Seek to restore victims and offenders to whole, contributing members of society.
4. **Inclusion:** Provide opportunities for parties with a stake in a specific crime to participate in its resolution.

Unit Summary:

Criminologists turn to the study of victims and their relationship to the criminal act, as a method of countering the problem of crime and of dealing with the numerous victims left by such criminal acts. The term 'crime victim' refers to any person, group or entity who has suffered injury or loss due to illegal activity of someone. The harm can be physical, psychological or economic. It is not far from reality to say society itself is the victim of many crimes, especially such homicide felonies as murder and manslaughter.

The concept of victimization includes victim-proneness also known as victim-blaming. Victim blaming is holding the victims of a crime, an accident, or any type of abusive maltreatment to be entirely or partially responsible for the unfortunate incident that has occurred in their life, often when the victim had performed no actions to facilitate the incident.

Victimology is the study of victimization, including the relationships between victims and offenders, the interactions between victims and the criminal justice system -- that is, the police and courts, and corrections officials -- and the connections between victims and other societal groups and institutions, such as the media, businesses, and social

movements. There are several sub- branches within field of victimology such as, positive victimology, radical victimology and critical victimology.

Restorative justice is a theory of justice that emphasizes repairing the harm caused or revealed by criminal behaviour. It is best accomplished through cooperative processes that include all stakeholders. The concept dates back to the Pentateuch the Israel. Restorative justice operates on three important principles namely, justice requires that we work to restore those who have been injured, those most directly involved and affected by crime should have the opportunity to participate fully in the response if they wish, government's role is to preserve a just public order, and the community's is to build and maintain a just peace.

Over the past decades, there has been growing interest in new approaches to justice, which involve the community and focus on the victim. The current system, in which crime is considered an act against the State, works on a premise that largely ignores the victim and the community that is hurt most by crime. Instead, it focuses on punishing offenders without forcing them to face the impact of their crimes.

Review Questions:

1. Explain the concept of restorative justice and trace its development.
2. What are the main principles that guide the restorative programs?
3. Explain the different programs and practices developed in different countries to achieve restorative justice.
4. Can you suggest any restorative program more effective than the present practices?

References:

Books:

1. Katherine S. W. (2001) "A Text Book On Criminology", 4th ed. Oxford: Oxford University Press,
2. Adler, Mueller, Laufer, "Criminology", 4th edition, 2001, The McGraw-Hill Companies, Inc. Newyork.
3. Lokesh Rana, -"Encyclopaedia of Criminology", Anmol Publications Pvt. Ltd. New Delhi, India , 2007.
4. N.V. Paranjape-"Criminology and Penology", 13th ed. Central Law Publications, Allahabad, India, 2008.

Websites:

Rape Crisis Information Pathfinder, UNC Chapel Hill, N.C., on <http://www.ibiblio.org/rcip/> Accessed 22-1-2009

<http://www.mcgraw-hill.co.uk/openup/chapters/0335209807.pdf>.

<http://www.restorativejustice.org/intro>

<http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/welcome.htm>. Accessed on 27-1-2009

UNIT-V
CORRECTIONAL ADMINISTRATION AND TREATMENT
OF CRIMINALS

Introduction

Corrections in general refer to society's handling of persons after their conviction of a criminal offense. The components of the criminal justice system that serve to punish criminal offenders involve the deprivation of life, liberty or property after due process of law. Sentences imposed upon offenders range from probation to serving time in prison, with intermediate sanctions, including sentences to a halfway house or community corrections program, home confinement, and electronic monitoring. Financial penalties may include fines, forfeiture, and restitution.

Various correctional approaches developed in the wake of causation theories. The old theological and moralistic theories encouraged punishment as retribution by society for evil. This attitude, indeed, still exists. The 19th-century British jurist and philosopher Jeremy Bentham tried to make the punishment more precisely fit the crime. Bentham believed that pleasure could be measured against pain in all areas of human choice and conduct and that human happiness could be attained through such hedonic calculus. He argued that criminals would be deterred from crime if they knew, specifically, the suffering they would experience if caught. Bentham therefore urged definite, inflexible penalties for each class of crime; the pain of the penalty would outweigh only slightly the pleasure of success in crime; it would exceed it sufficiently to act as a deterrent, but not so much as to amount to wanton cruelty. This so-called calculus of pleasures and pains was based on psychological postulates no longer accepted.

The Bentham approach was in part superseded in the late 19th and early 20th centuries by a movement known as the neoclassical school. This school, rejecting fixed punishments, proposed that sentences vary with the particular circumstances of a crime, such as the age, intellectual level, and emotional state of the offender; the motives and other conditions that may have incited to crime; and the offender's past record and chances of

rehabilitation. The influence of the neoclassical school led to the development of such concepts as grades of crime and punishment, indeterminate sentences, and the limited responsibility of young or mentally deficient offenders.

At about the same time, the so-called Italian school stressed measures for preventing crime rather than punishing it. Members of this school argued that individuals are shaped by forces beyond their control and therefore cannot be held fully responsible for their crimes. They urged birth control, censorship of pornographic literature, and other actions designed to mitigate the influences contributing to crime. The Italian school has had a lasting influence on the thinking of present-day criminologists.

The modern approach to the treatment of criminals owes most to psychiatric and case-study methods. Much continues to be learned from offenders who have been placed on probation or parole and whose behavior, both in and out of prison, has been studied intensively. The contemporary scientific attitude is that criminals are individual personalities and that their rehabilitation can be brought about only through individual treatment. Increased juvenile crime has aroused public concern and has stimulated study of the emotional disturbances that foster delinquency. This growing understanding of delinquency has contributed to the understanding of criminals of all ages.

During recent years, crime has been under attack from many directions. The treatment and rehabilitation of criminals has improved in many areas. The emotional problems of convicts have been studied and efforts have been made to help such offenders. Much, however, remains to be done. Parole boards have engaged persons trained in psychology and social work to help convicts on parole or probation adjust to society. Various states have agencies with programs of reform and rehabilitation for both adult and juvenile offenders.

Many communities have initiated concerted attacks on the conditions that breed crime. Criminologists recognize that both adult and juvenile crime stem chiefly from the breakdown of traditional social norms and controls, resulting from industrialization, urbanization, increasing physical and social mobility, and the effects of economic crises

and wars. Most criminologists believe that effective crime prevention requires community agencies and programs to provide the guidance and control performed, ideally and traditionally, by the family and by the force of social custom. Although the crime rate has not drastically diminished as a result of these efforts, it is hoped that the extension and improvement of all valid approaches to prevention of crime eventually will reduce its incidence.

Objectives

By the end of this unit the students will be able to:

- Identify the main objectives of the correctional administration;
- Distinguish between the concepts of punishment and treatment of offenders;
- Explain the objectives of the institutional and the community based treatment of offenders;
- Gain a clear understanding of the strengths and weaknesses as well as needed reforms in the prison administration in Ethiopia;
- Explain the basic differences in the approaches of juvenile corrections and treatment of adult criminals;
- Describe the philosophies of punishment;
- Identify the ideological foundations of different types of punishment.

Section 1. Correctional Administration

➤ Meaning and Objectives

Punishment and *rehabilitation* are, generally speaking, two main objectives of correctional administration. However, objectives shift from time to time depending on public opinion and the type of political leadership. In modern times generally rehabilitation seems to gain more attention, though this varies from country to country. From the legal point of view, there are different objectives of punishment. These include revenge or retribution, deterrence (specific and general) and rehabilitation or reformation. The penal philosophy in Ethiopia gradually shifted from *retribution* and *deterrence* to reformation and rehabilitation. Prior to the seventeenth century, the Ethiopian penal

system was mainly based on diverse customary practices. The Fetha Negest or The Law of the Kings was introduced in the seventeenth century. In Ethiopia, though *retribution* and *deterrence* dominated penal philosophy, already, to some extent, the Fetha Negest had gone a little beyond the elements of retribution by partially individualizing punishment to the individual guilt of the offender. But it had retained retribution to a large extent by prescribing rather crude punishments. The provisions of the Penal Code of 1930 further individualized punishment by “relating it to the objective factors of intent, motive and personal status”. Still the elements of reform of the criminal were missing in the code of 1930.

The emphasis on retribution started changing very gradually. Even the 1930 Code had shown concern for the welfare of the injured parties. This could be observed from the provisions of Article 18. The Revised Constitution which was issued in 1955, further de-emphasized retribution. Article 37 of the Constitution stated that “no one shall be denied the equal protection of the laws”. This made it clear that all people are to be treated equally by the law. Article 54 of the Constitution also provided that no one shall be punished without due process of the law. Punishment follows only after a person has been duly proved to have committed an act against the law. Even when one has been proved to have committed an act against the law, the Constitution, under Article 57, provided that “no one shall be subjected to cruel and inhuman punishment” (Andargatchew, 1976a: 411).

The Ethiopian penal philosophy is based on the above constitutional provisions. The objectives of penal law are clearly stated in the first article of the Penal Code of 1957 which article tried to remove the elements of uncertainty as to the objectives of the penal law. It does not leave any doubt as to whether the philosophy behind penal law is punitive or reformative. It clearly indicates that the law has to protect society and also punish and reform those members of society that may fail to respect the provisions. The provisions of the Penal Code are generally inspired by the principle that “reformative justice” is preferable to “punitive justice.” This does not exclude the use of penalties in the general struggle against criminality. In fact, the Codification Commission has strongly expressed that punishment should remain “the pillar of Ethiopian law.” This means that except where the purpose of law cannot be achieved other than by the use of

steps such as incarceration, capital punishment, and flogging, the rule that guides the application of the Code should be the general concern for the prevention and suppression of crime without disregard for the welfare and rehabilitation of the individual accused of crime.

Purpose of Criminal Law and objectives of punishment have been redefined by the latest Revised Criminal Code of 2004. The code states that the purpose of Criminal Law is to preserve the peace and security by *preventing* the commission of crimes and a major means of preventing the commission of crime is punishment. Punishment can *deter* wrongdoers from committing other crimes; it can also serve as a warning to prospective wrongdoers. Although imprisonment and death are enforced in respect of certain crimes the main objective is temporarily or permanently to prevent wrongdoers from committing further crimes against society. And in such cases with the exception of the death sentence even criminals sentenced to life imprisonment can be released on parole before serving the whole term. In certain instances convicts can be released on probation without enforcement of the sentence pronounced. This helps wrongdoers to lead a peaceful life and it indicates the major place which the Criminal Law has allocated for their *rehabilitation*. The fact that wrongdoers, instead of being made to suffer while in prison, take vocational training and participate in academic education, which would benefit them upon their release, reaffirms the great concern envisaged by the Criminal Code about the *reform* of criminals. These express provisions in the new Code are included with intention that the Courts should, on passing sentence, take into account the purpose of the Criminal Law and the different aims of punishment.

Further the new criminal code has done away with flogging as punishment and public hanging of criminals complying with the Constitutional mandate on prohibition of cruel, inhuman degrading penalties and treatment of criminals.

➤ **Correctional theory**

The basic use of sanctions, which can be either positive (rewarding) or negative (punishment), is the basis of all criminal theory, along with the main goals of social control, and deterrence of deviant behavior.

Many facilities operating in the United States adhere to particular correctional theories. Although often heavily modified, these theories determine the nature of the facilities' design and security operations. The two primary theories used today are the more traditional Remote Supervision and the more contemporary Direct Supervision Models. *The Remote Supervision Model (RSM)* consists of an officer(s) observing the inmate population from a remote position, e.g., a tower or secure desk area. *The Direct Supervision Model (DSM)* positions the Corrections Officer within the inmate population, creating a more pronounced presence. The following are the important types of correctional administrations:

1.1. Institutional Treatment of fenders

1.1.1. Treatment of Adult Offenders

Gradually societies resorted to treatment. But the conflict between the punitive and treatment reactions of society, as pointed out by Edwin Sutherland, continued to be unabated. There are those who argue that, despite the shift to the treatment approach, crime is on the increase. Actually since there is no evidence to support this view, one can as well argue that crime rates are high because of the survival of the punitive reaction. Though the arguments against the treatment approach are mere reactions to perpetuate the justifications of punishment prior to the emergence of the treatment, in present day societies both the punitive reactions and treatment reactions are used side by side. Therefore, correctional procedures and programs are neither exclusively punitive nor exclusively treatment. But variations exist from society to society (Sutherland, 1960: 314-17).

1.1.1.1. Prisons

- **Meaning and Definition of the Term 'Prison'** A **prison penitentiary, correctional facility** is a place in which individuals are physically confined or interned and usually deprived of a range of personal freedoms. Prisons are conventionally institutions, which form part of the criminal justice system of a

country, such that **imprisonment** or **incarceration** is a legal penalty that may be imposed by the state for the commission of a crime.

The word *prison* can be traced back to the Latin word *prēnsiō*, “the action or power of making an arrest.” This in turn is derived from the verb *prehendere* or *prēndere*, which meant “to take hold of, take into custody, arrest.” *Prēnsiō* then surfaces in the Old French of the 12th century with the form *prison* and the senses “capture” and “place of imprisonment.” This new sense could have already been developed in Latin and not been recorded, but we have to wait until the 12th century to see it, the sense “captivity” being added in the same century. From Old French as well as the Medieval Latin word *priso*, “prison,” derived from Old French, came our Middle English word *prisoun*, first recorded in a work written before 1121 in the sense “imprisonment.” The sense “place of imprisonment” is recorded shortly afterward in a text copied down before 1225 but perhaps actually written in the Old English period before the Norman Conquest.

In popular parlance of many countries, the term **jail** (gaol) is considered synonymous with prison, although legally these are often distinct institutions: typically jails are intended to hold persons awaiting trials or serving sentences of less than one year, whereas prisons host prisoners serving longer sentences.

A criminal suspect who has been charged with or is likely to be charged with a criminal offense may be held *on remand* in prison if he or she is denied, refused or unable to meet conditions of bail, or is unable to post bail. This may also occur where the court determines that the suspect is at risk of absconding before the trial, or is otherwise a risk to society. A criminal defendant may also be held in prison while awaiting trial or a trial verdict. If found guilty a defendant will be convicted and may receive a custodial sentence requiring imprisonment.

Prisons may also be used as a tool of political repression to detain political prisoners, prisoners of conscience, and "enemies of the state", particularly by authoritarian regimes. In times of war or conflict, prisoners of war may also be detained in prisons. A **prison system** is the organizational arrangement of the provision and operation of prisons, and depending on their nature, may invoke a corrections system. Although

people have been imprisoned throughout history, they have also regularly been able to perform prison escapes.

- **History of Prisons** most of history, imprisoning has not been a punishment in itself, but rather a way to confine criminals until corporal or capital punishment was administered. There were prisons used for detention in Jerusalem in Old Testament times. Dungeons were used to hold prisoners; those who were not killed or left to die there often became galley slaves or faced penal transportations. In other cases debtors were often thrown into debtor's prisons, until they paid their jailers enough money in exchange for a limited degree of freedom.

Only in the 19th century, beginning in Britain, did prisons as we know them today become common place. The modern prison system was born in London, as a result of the views of Jeremy Bentham. The notion of prisoners being incarcerated as part of their punishment, and not simply as a holding state till trial or hanging, was at the time revolutionary.

The first "modern" prisons of the early 19th Century were sometimes known by the term "penitentiary" (a term still used by some prisons in the USA today): as the name suggests, the goal of these facilities was that of penance by the prisoners, through a regimen of strict disciplines, silent reflections, and perhaps forced and deliberately pointless labor on tread wheels and the like. This "Auburn system" of prisoner management was often reinforced by elaborate prison architectures, such as the separate system and the panopticon. It was not until the late 19th Century that rehabilitation through education and skilled labor became the standard goal of prisons.

- **Types of Prisons:** (Refer to Art. 110 of the Criminal Code of FDRE of 2005)
- **Juvenile Facility:** Prisons for juveniles (people under 18) are known as young offender's institutes and hold minors who have been convicted, many countries have their own age of criminal responsibility in which children are deemed legally responsible for their actions for a crime.

- **Military Prison:** Prisons form part of military systems, and are used variously to house prisoners of war, unlawful combatants, those whose freedom is deemed a national security risk by military or civilian authorities, and members of the military found guilty of a serious crime.
- **Political Prison:** Certain countries maintain or have in the past had a system of political prisons; arguably the gulags associated with Stalinism are best known. The definition of what is and is not a political crime and a political prison is, of course, highly controversial.
- **Psychiatric Facility:** Some psychiatric facilities have characteristics of prisons, especially when confining patients who have committed a crime and are considered dangerous. In addition, many prisons have psychiatric units dedicated to housing offenders diagnosed with a wide variety of mental disorders.

➤ **The Modern Concept of Open Prisons:**

Criminologists have expressed different views about the definition of open prison. Some scholars have preferred to call these institutions as open air camps, open jail or parole-camps. The United Nations Congress on Prevention of Crime and Treatment of Offenders held in Geneva in 1955, however, made an attempt to define an open prison as follows;

An open institution is characterized by the absence of material and physical precautions against escape such as walls, locks, bars and armed-guards etc., and by a system based on self-discipline and innate sense of responsibility towards the group in which he lives”.

Thus, open prisons are ‘*minimum security*’ devices for inmates to rehabilitate them in society after their final release.

1.1.1.2. Prison Administration in Ethiopia

After the establishment of the Federal Government in 1995, Proclamation No. 41/1993 that defined the powers and duties of the various ministries was repealed and replaced by Proclamation No. 4/1995. Under the new proclamation, the Ministry of

Internal Affairs was abolished and Prisons Administration was placed under the Ministry of Justice. The new Proclamation provided that the Ministry of Justice shall have the following powers and duties:

But, how wise and safe is it to lump together all the components of the criminal justice system under one ministry? The Prison Study Committee, in 1976 suggested that having Prisons and the Police under one Ministry may be open to abuses and suggested that Prisons should either be under an autonomous bureau or be placed under the Ministry of Labor and Social Affairs in order to de-emphasize security and emphasize the social and correctional aspect of prison work. The proposal was not considered, particularly because the then Minister of Labor and Social Affairs opposed the proposal, possibly because of the sensitive conditions of prisons in those days. But now, the Police Force and Prison Administration are almost merged. In fact the very fear of the Committee seems to have come to be true. There are strong complaints, in the private news papers and human rights reports, that the police are using the prisons for detaining even people the Court had ordered to be released.

➤ **Size of Prisoners and the States of Prisons:**

Though prisons were re-established, there is hardly any information regarding the number and types of prisons, and how they are administered and what re-educational and rehabilitative programs are provided. The only available information, therefore, are occasional reports on private newspapers and reports of some human rights organizations regarding the number of prisons and the size of inmates. For instance, Sue Pollock, in a paper delivered to a Seminar on the Human Rights Situation in Ethiopia in December 1996 claimed the existence of a large number of secret detention centers in many of the regions in addition to the regular prisons.

Recently it was reported that some additional prisons have been opened, even at *woreda* levels, particularly in North Shoa (*Tobia*, A Weekly Newspaper, No. 47,

Hidar 11, 1990 E.C.). The practice was to have prisons at regional and *awraja* (zonal) levels (Andargachew, 2004).

1.1.1.3. Needed Reforms in Prisons:

Serious problems exist in prisons which need immediate attention and reform.

The following are some important ones:

- **The Problem of Overcrowding in Prisons:**

It is a known fact that prisons in most parts of Ethiopia are overcrowded. The overcrowding problem first and foremost leads to lack of sanitation and unhygienic atmosphere. Prison facilities have not been expanding with the increase in crime.

The other baneful effect of overcrowding is that it does not permit segregation among convicts (Art. 110 of the Criminal Code), those punished for serious crimes and for minor crimes. As a result of this, hardened criminals may spread their influence over other inmates. The juvenile offenders, who are kept in jails because of inadequacy of alternative places where they can be confined, come into contact with hardened criminals and are likely to become professional offenders. It is in this backdrop that the problem of overcrowding in prisons needs to be tackled in right earnest.

Some recommendations for easing congestion in prisons include:

- Liberalization of conditions of release on bail, particularly release of certain categories of under trials on bail.
- Other methods of reducing overcrowding in prisons may include extensive use of fine as an alternative punishment for imprisonment, civil commitment and release on probation.
- Overcrowding may also be reduced by release on parole a prisoner after he has served part of the sentence imposed upon him. It is a conditional release of an individual from prison.

- The system of remission, leave and premature release may also be useful in tackling the problem of overcrowding in prison institutions.

- **Classification of Prisoners:**

At the time when reaction to crime was purely punitive, there was no need for classifying prisoners and all of them were flocked together in a single prison. This system of singular treatment of criminals, however, turned the prisons into a living hell on earth with all sorts of vices. The sole object of imprisonment in those days was to subject the inmates to maximum torture and pain and therefore there was no need to classify them. With the evolution of penal science during the late eighteenth and early nineteenth century, the offenders were classified into different categories according to their sex, age and gravity of offence. Even at this time, objective approach to prisoners was not known. It was towards the end of 19th century that the idea of individualization of prisoners drew attention of penologists and this principle has since then been firmly established into practice. Individualization of offender as a method of his rehabilitation has now become the cardinal principle of modern penology. Evidently, in the changed circumstances the earlier classification of criminals on the basis of their physical differences serves no useful purpose. Therefore, modern penologists have worked out an objective classification of prisoners according to differential treatment. In spite of being lodged in maximum security prisons, the modern prisoners are placed in quasi-penal and even non-penal institutions for their reformation. The prisoners are now classified according to the treatment to which they are likely to respond most favorably. In the modern context, social-defense, namely, the protection of society from criminals is the prime object of punishment while classification of prisoners for treatment is the method of it. To achieve this end, the criminals are classified into two broad categories, viz.,

1. Hardened criminals who are fit for treatment in a conventional jail, and
2. Casual criminals, who are fit for treatment in a medium-custody jail or even fit to be sent to a Borstal or Reformatory or released on probation.

Under the present correctional system in United States the task of classifying inmates for their rehabilitation is performed by the following agencies:

- The Central Classification Centre;
- The Classification Committee; and
- The Reception Centre

All the convicted persons are first brought before the Central Classification Centre where their antecedents, past history and mental attitude etc. are thoroughly examined by the expert psychologists and psychiatrists. If in the opinion on these experts the inmate is considered responsive to reformation, he is sent to an appropriate correctional institution as recommended by the Central Classification Center.

There is a Classification Committee associated with each correctional institution which decides the outline of treatment program for individual inmate according to his mental attitude, psychology and possible reaction to the treatment.

The Reception Centre at each correctional institution, on the other hand, receives the new inmate on a trial basis for a month or so and plans to prepare him for his subsequent stay in the institution. Thus the major function of Reception Centre according to Donald Taft is “inmate-orientation through group meetings, pictures, booklets and interviews”.

It may be suggested that if this pattern of classification of prisoners is adopted in Ethiopia, the prison authorities may find it easy to tackle the problems of prison and prisoners and at the same time it may also accelerate the reformation of prisoners.

➤ **Segregation of Prisoners Under the Criminal Code of 2004:**

Classification of criminals is not just a strategy to handle the problems of prison discipline it is the requirement of the substantive criminal law under Articles 53, 110 and 130.

Art. 110 intends to segregate the following categories of criminals and keep them either in different prisons or where it is not possible to keep them so, at least in “different section” of the same prison. This provision suggests at the following classes of criminals:

- Male and female prisoners,
- Criminals sentenced to rigorous imprisonment or special confinement,
- Adult prisoners who are serving a sentence of simple imprisonment,

- Prisoners under the age of 18 years,
- Prisoners awaiting judgment,
- Persons detained for civil debts,
- Public servants who, by virtue of their official duty, had contact with prisoners, and who are in prison for a crime or detained for civil debts.

This classification basically aims at avoiding sexual deviances, differences in treatment, prison discipline, evil influences on the young criminals etc. Unfortunately, in practice there are no serious steps which are taken to materialize these requirements of the substantive laws. The state should take immediate steps in this direction and ensure segregation of prisoners and thereby fulfillment of objectives of punishment.

- **The Problem of Prisoners' Health:**

The state of health of prisoners is also an important issue which needs attention of the prison authorities. The term "state of health" includes the description regarding past and present suffering of the disease of the new entrants and its duration and treatment taken etc. Normally, prison administration rules require that prisoners at the time of their entry in prison be asked about their health, particularly relating to Tuberculosis and AIDS etc. and the treatment which they have undergone for the disease, so that such prisoners apart from being given special treatment may be segregated from rest of the inmates. It is the duty of the State to ensure that such type of serious diseases are cured and not allowed to spread, not only to other prisoners but also the other persons living outside the prison.

The following factors account for increase in the number of prisoners exposed to infection of tuberculosis, HIV and other contagious diseases in prisons:

- Delay in diagnosis, neglect of prisoner's health problems, insufficient health services in prison and inadequate sputum smear microscopy facilities;
- Failure of medical services to refer disease suspects for diagnosis or to initiate timely treatment;
- Transfer of prisoners with infectious tuberculosis between and inside prisons;
- Overcrowding and prolonged confinement inside cells;
- Failure to segregate infectious cases from other prisoners;

- Sub-standard treatment resulting in failure to cure patients and prolonged infectiousness;
- Poor ventilation and poor nutrition may also lead to cause of disease.

In order to tackle the problem of prisoners suffering from serious diseases, volunteers may be trained in prison for nursing so that they effectively help the suffering inmates and develop among them a system of self-help for protection against diseases like T.B. or AIDS etc. They can identify the cases as early as possible and take necessary steps to segregate them and start their treatment.

- **The Problem of Prison Discipline:**

The problem of prison discipline has always been engaging the attention of penologists throughout the world. The main object of imprisonment is undoubtedly negative insofar as it aims at generating a feeling of dislike for prison life among the members of society, the object being to dissuade people from doing acts which may lead them into prison. Expressing his view about the prison administration, Donald Taft commented that prisons are deliberately so planned as to provide unpleasant compulsory isolation from general society. A prison, according to him, characterizes rigid discipline, provision of bare necessities, strict security arrangements and monotonous routine life. The prison personnel are usually without any specialized training in their field. Although with the modern facilities available to inmates, the rigors of prison-life are considerably mitigated nevertheless they are likely to become restive if not kept under proper discipline. There is yet another reason to justify the need for strict discipline in prison. One might be imprisoned either for the purpose of custody, control and discipline or from being prevented to escape or being sent to a correctional institution for treatment. Whatever be the object, it is certain that the life inside prison necessarily pre-supposes certain restrictions on the liberty of inmates against their free will. This consciousness of subjection to compulsive forces of the State through the agency of prison often leads to scuffle between prison officials and the inmates. The custody of prisoners should, therefore, ensure their safety and security as also minimize the chances of conflict with prison administrators.

Another problem which is so often faced by the prison authorities is to guard against the possibility of prison-riot which is essentially an outcome of the combined venture of inmates. In early times when prisoners were lodged in separate cells, this possibility was completely ruled out as they had no chance of communicating with each other in the modern sense. Today, the difference between the prison life and free life is reduced to such an extent that even the prisoners have become conscious of their rights and obligations of prison authorities towards them. Their free intermingling with the outside world provides them opportunities to unite and raise a common front against the prison administrators and slightest provocation is sufficient to stimulate unrest. The general causes of such riots and disturbances are political instigations, crude disciplinary incidents, monotonous routine of prison life, separation from members of the family, differences with the prison staff and step-motherly treatment of wardens and guards towards certain inmates.

- **The Problem of Criminality in Prisons**

Yet another problem relating to prison discipline is criminality among inmates inside the prison.

- **Sexual Deviations** The continuous and long absence from normal society and detachment from members of the family deprives the inmates of their sex gratification which is one of the vital biological urges of human life. Not being able to control this sex desire, the prisoners quite often resort to unnatural crimes such as homosexuality, sodomy etc. Therefore, such crimes and personal assaults are common inside prison walls. To suppress this menace, some of the advanced countries have permitted periodical conjugal visits for inmates so as to offer them a legitimate opportunity to pacify their sex urge and thus eliminate crimes of this nature in prisons. Some penologists have, however, opposed the idea of '*conjugal visits*' on the ground that sexual deprivation must continue as one of the inevitable suffering of imprisoned life. That apart, conjugal visits seem unnecessary for some obvious reasons, namely, most prisoners are imprisoned for six months or less, quite a large number of them are unmarried or separated from their wives; and the provision of "home leave" and parole offers a much better and more natural solution than conjugal visits in the unfamiliar and embarrassing atmosphere of a prison. That apart, such conjugal visits

cannot be appreciated for the reason of morality and ethical considerations. The release of prisoners on furlough and parole better solves the problem so as to maintain unity of their family life.

- **Frequent Fights:** Another cause of criminality among prison inmates is their frequent quarrelling inside the institution. Every inmate tries to establish his superiority over his fellow prisoners. Therefore, prisoners often narrate with exaggeration the tales of their adventure and the dangers overcome by them while committing crime. The conversation on the subject often leads to a heated discussion and eventually results into use of force and intimidation. At times, the situation takes the shape of a group rivalry resulting into clashes between the inmates. There are occasions when inmates quarrel on trifling matters like those of distribution of bread, toilets, etc. or the differences of their opinion about a particular warden, guard or jailor.

- **Petty Offences:** The offences of petty thefts are also common in prisons because the inmates are supplied with only the articles of bare necessities. Obviously, the articles stolen are usually soap, oil, utensils or a few loaves of bread which are supplied to inmates in prisons.

- **Disobedience to Prison Officials:** Last but not the least, the distrust and lack of faith among inmates for the prison authorities is yet another cause of tension in prisons. The tendency of disobedience to prison officials and defiance of prison regulations is common with prisoners. The officials of the prison, namely, the jailors, superintendents, wardens and guards on their part, are generally rough and tough with the inmates. Some of them even resort to corrupt practices and extend undue favors to certain inmates in exchange for petty gains. This obviously causes resentment among other prisoners and thus a kind of cold war ensues between the inmates on one hand and the prison authorities on the other.

➤ **Strategies to Handle Prison Indiscipline and Criminality:**

a. Self-Government in Prisons:

In order to ensure discipline and obedience among inmates experiments on self-government in prisons have recently been carried out in America and elsewhere. The

underlying purpose is to ensure complete freedom to prisoners from external control. Under the system of self-government in prisons, the inmates are to elect some of their colleagues as their representatives and the entire prison management is run by this elected body of inmates. They have complete control over food services and are expected to look after the interests and welfare of their fellow prisoners. The self-government of prisoners in Osborn (U.S.A.) jail indicated that the system proved very successful and the number of escapes was almost negligible. The inmates generally behaved well and never tried to misuse the liberty extended to them.

Other countries like India, instead of introducing complete self-government system, have adopted a system of partial self-government in its prisons. Under this system, the prisoners who have good prison record are attached to work with wardens and guards of the institution and thus they act as a common link between the prison authorities and the fellow inmates. They are extended certain facilities and are even allowed to move out of the prison occasionally during the course of their work. This proves helpful in many ways. Firstly, it develops a sense of duty, honesty, trust and loyalty among the prisoners and secondly, it has a psychological effect on other inmates as they are convinced that a disciplined behaviour in prison would entail them certain facilities including some reduction in their term of sentence like their fellow prisoners.

b. Prison Labour:

Utilization of prisoners in productive work has been accepted as one of the best methods of bringing about rehabilitation of offenders. The XIIth International Penal and Penitentiary Conference held at Hague in 1950 suggested 'work' as the best alternative for channelizing the potential of prisoners for a useful purpose. Keeping the prisoners engaged in for productive work would be helpful for their physical and mental fitness. It would also infuse self-confidence among them and they can think of returning to society as a law abiding citizen. The greatest advantage of putting inmates to work as suggested by the penitentiary Conference is that the wages earned by the prisoners can be utilized for supporting their family and dependents. Thus it would save the entire family of the prisoner from being ruined. In this way the inmates can help and support their family from inside the prison itself. In short, work would be beneficial to inmates and at the same time remunerative to the State. It is further suggested that the working conditions of

prisoners should be at par with free workers so that the values of human dignity are respected and they are adequately compensated for the injuries sustained or professional sickness suffered by them during work. The system of parole and probation and other treatment methods have helped considerably in the rehabilitation of prisoners.

c. The Prison Community:

Talking about the prison community, Dr. Sutherland observed that an offender entering a prison for the first time is introduced to the culture in much the same way as a child is introduced to the ways of behaving with his elders. According to him, the general process by which a child is taught the behaviors of his group is called 'socialization' and the comparable process among inmates is named 'personalization'. Every new prisoner has to learn the technical rules of the prison in which he is lodged. Gradually he adapts himself to the conditions of prison life. He is expected to be friendly and loyal to his fellow prisoners. He is to be co-operative with the prison officials and one who does not follow these traits is ridiculed by his fellow inmates. It is interesting to note that prisoners classify themselves informally into different groups according to their reaction to prison life and participation in prison activities. A few of them assume the role of 'leaders' and pose to look after the interests of other inmates. They often win the confidence of wardens and guards of the prison and enjoy certain privileges unofficially. It is usually said that in matters of food, other essential articles and toilet facilities these so called 'leaders' manipulate things and even act as racketeers in collusion with the prison staff and earn huge profits. In return, they secure certain unofficial privileges for their fellow prisoners. Thus an understanding is reached between the prison community and the prison officials through these leaders which helps in maintaining harmony inside the institution. The prisoners who are sentenced for political reasons often assume this role by virtue of their superior status and knowledge. As Sutherland puts it "the administrator assigns powers unofficially to certain inmates who control other inmates and thus he enlists some inmates to aid and control other inmates".

- **Food Service:**

The quality and quantity of food served in prisons are very low mainly due to the minimal budget allocated per head. In fact most prisoners depend on food brought in by family members and relatives, almost on daily basis. Prisoners who receive their own food usually share with others who do not receive due to varied reasons.

Apart from budget constraints, another reason for poor supply of food is, though not openly said, to be used as a sort of punishment, because there is an attitude, on the part of the prison authorities, that the criminal deserve anything better. Some even argue that the food provided in prisons encouraged recidivism because some ‘jail birds’ purposely returned to prisons because of the free food. There is no evidence to support this assumption. Even the poorest of the poor will not exchange his freedom for prison life for the kind of food offered in Ethiopian prisons.

Another problem connected with food is the method of distribution of the food from the prison kitchen. In some of the prisons the day’s ration is distributed once a day. The amount of food allotted for the day is passed around to each prisoner, at noon. The prisoners have to wait ready with their utensils. They keep part of their food they received, for the next meal, near their individual beds. In most cases prison dormitories are not free from vermin and the likelihood of the food being infested is very high.

- **Need for Recreational Services:**

Recreation was another mostly neglected program in Ethiopian prisons. Recreation is most of the time avoided deliberately due the fear of escapes. Relaxation and bodily movements are basic needs of human body. Therefore, denying prisoners such a need is morally reprehensible. In fact if the prisoners are engaged during their spare time there would be less risk of escape because they will not have to brood about ways and means of escape. Unfortunately the police background of the most of the prison officers and guards proves it rather difficult to instill the concept of rehabilitation in Ethiopian prisons. It is unfortunate that even the visits to other countries by Ethiopian prison officials, to observe how other countries run their prisons, did not bring much reform.

- **Preparation for Release and Aftercare:**

Aftercare of prisoners had not been part of the correctional system in Ethiopia. Once a prisoner completes his terms of imprisonment, he was simply turned out of the prison compound, and it was not uncommon, in some of the prisons, to see some prisoners back, in a few days, for fresh offences because they would not know how to reach their relatives after spending so many years in isolation. They cannot even be certain how their families, relatives, friends and even the community will receive them. Some may not even know how to get their daily meals in the outside world from which they were detached for years. Prisoners may have lost contact with their families or relatives due to along period of separation and they may not have the means of subsistence even for a few days. Prisoners may have been working for a number of years in one of the prison workshop but they were not paid for their labor though legally entitled to get a certain percentage out of the sales of the goods they had produced. Therefore, at the time of release prisoners may not have enough money for their meals and transport to reach their destination. It is for this sort of prisoners that an after care program becomes essential. Prisoners must be prepared, well in advance of their release, by prison officials, about life outside prison. If possible, relatives must be contacted. But all these were never thought about. Therefore, the whole correctional system was a waste of resources (Andargachew, 1976a: 450-60).

Therefore, it follows that well organized after care programs are a necessity for the successful achievement of the purposes of criminal law.

1.1.1.4. Prison Conditions and the Concept of Cruel and Unusual Punishment:

Like the rest of us, prisoners have the absolute right to be free from *cruel and unusual punishment* under **Art 18 of the Constitution**, which states that “Everyone has the right to protection against cruel, inhuman or degrading treatment or punishment.” Accordingly, Art 87 Para of the Criminal Code of FDRE, 2004 prohibits such treatment by declaring that, “The penalties and measures shall always be with respect due to human dignity.”

But it has been very difficult to persuade the courts to act when faced “with anything less than barbaric prison conditions” (Bronstein, 1980, p.26). At present the courts appear to

use *three principal tests* to determine whether there have been violations of prisoners' rights to be free from cruel and unusual punishment (Rudovsky, 1973):

1. Whether the punishment shocks the general conscience of a civilized society,
2. Whether the punishment is unnecessarily cruel,
3. Whether the punishment goes beyond legitimate penal aims.

What conditions, then, amount to “cruel and unusual punishment”? In an Arkansas case, the courts concluded that these conditions exist whenever the prison official cannot provide convicts safety from being seriously injured, sexually assaulted, or killed while in prison. More recently, focus has been on the totality of conditions in the prison. In a Pennsylvania case, the courts ruled that general conditions could be so cumulative in their effect that *they qualify for “cruel and unusual punishment”*__ overcrowded conditions, with wet and rat-infested cells, in sufficient medical treatment, and random beatings by guards. But solitary confinement, in and of itself, is not ruled as ‘cruel and unusual,’ nor is the deprivation of opportunities for sexual intercourse. In an Alabama case, the court labeled as cruel and unusual punishment any “*prison conditions [that] are so debilitating that they necessarily deprive inmates of any opportunity to rehabilitate themselves or even maintain skills already possessed*” (quoted in Bronsterin, 1980, p.27).

Review Questions:

1. Explain the meaning and objectives of the correctional administration.

Write a brief note on RSM and DSM models of criminal administration. Which model, according to your opinion, is more effective for

1.2. Treatment of Young Offenders:

The juvenile justice system in our country is in not conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice adopted by the Seventh UN Congress on the Prevention of Crimes and Treatment of offenders held in 1985. This document owes much to the tireless efforts made at international level with an object and intention to devolve human rights on the children. Article 36 of the FDRE Constitution incorporates The Criminal Code of 2004 has, indeed, made definite provisions by adding a new dimension of human rights of the child to the jurisprudence of juvenile justice in Ethiopia. However, so far implementation aspect is concerned; the things are not in good shape. The Executive has utterly failed to give effect to the intent and objective of this law. The infrastructural requirements which are making the law lame and children sufferers are yet to be met with.

The reality is that even today the prison population is composed of a considerable percentage of juvenile offenders, who stay with the aged and hardened criminals. Juvenile courts and Boards have not been constituted every where. Judges in the existing juvenile courts are not properly trained in the correctional methods of treatment. Police Department does not have much regard to this special law. On most of the occasions for police, an offender is an offender and it makes no difference for them that he/she is a child or an adult. It is a reality that the child offender is always is a victim of certain circumstances. He commits an offense only when he gets into difficulties because of some kind of situations in his environment. Hence, the whole approach for treating juvenile offenders including neglected must necessarily be a psychological and correctional one. They must not be punished but treated and rehabilitated" for any offense committed by them has to be strictly handled only according to the special provisions of the law authorized by the Constitution (Art 36), Criminal Code of 2004, other special proclamations like, vagrancy proclamation of 2002, and well within the parameters of the relevant International documents. All aspects of juvenile justice including the approach of the legislature as well as the courts, institutional structure, training of personnel reorganization of arrest and detention processes, defence lawyer and legal aid et cetera assume prime importance and require matching legislative and administrative steps on the part of the government.

1.2.1. Juvenile Treatment Under the Revised Criminal Code:

The Criminal Code of 2004 makes the objectives, treatments and penalties designed for the young offenders very clear. From Art 165, it is obvious that the measures are intended for the following purposes:

1. Curative,
2. Educational: General, moral as well as vocational (Art.160), and
3. Corrective.

The provisions prescribing these measures (Arts 157-168) emphasize on the reformative and rehabilitative objectives as opposed to the adult penalties which focus more on the deterrent and preventive purposes.

The Constitution prohibited corporal punishment and any organ of Government or individual handling matters pertaining to children should be guided only by the Constitution and thus Art 172 of the 1957 Penal Code which prescribed infliction of physical pain by strokes of cane was rightly eliminated by the Revised Criminal Code of 2004.

Another important observation to be made is, while Arts. 117 and 176 quite rightly prohibit the imposition of death penalty on a young criminal who is below 18 years of age, there is no such prohibition on imposition of solitary confinement on the offenders of this age group. It is possible for a child of 15 to 18 years of age to be sentenced to solitary confinement. Obviously, solitary confinement is a very serious form of imprisonment which can have very serious psychological effects on the prisoner and a young child definitely will be subject to serious psychological and emotional disturbances. It is to be considered seriously and a prohibition should be placed on sentencing the young children under 18 years to solitary confinement should be eliminated for the statute book.

1.2.2. Lack of Adequate Number of Juvenile Courts:

Ethiopia did not have a juvenile court per se. The federal court comprised different divisions, including a family division. However, currently every criminal division could handle juvenile cases in order to expedite matters. Regional governments were following the same system. The higher courts handled only a very limited number of more serious cases, such as those involving a life sentence Convention on the Rights of Child, 2001).

1.2.3. Juvenile Treatment Institutions in Ethiopia:

The provisions under the Criminal Code of 2004 refer to curative institutions (Art 158), Corrective Institution (Art162) and Observation/supervisory authorities (Art 208, Charitable Organizations, etc) and special detention institution (Art 168/2/b). In addition, there is a prohibition in Art 55 and Art 110/2 of the Criminal Code that young offenders should not be kept in the penitentiaries meant for adult criminals. These special institutions designated for young offenders are supposed to be specially equipped with trained staff and other recreational and training facilities that are helpful in reformation and rehabilitation of these children. Well and good! But the questions are, are there any such homes functioning in the country? If so, how many, in which places, and how efficient are the facilities and the staff functioning there? Though no proper information is available on the point, it is clear that a lot has to be done by the government in this direction. Obviously there are no such institutions in reality except for some in sufficient juvenile facilities in Addis Ababa.

It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country- it is the atmosphere of the jail which has highly injurious effect on the minds of the child estranging him from the society and breeding in him aversion bordering on hatred against a system which kept him in jail ... On no account should the children be kept in jail and if State Government has not got sufficient accommodation in the remand home the children should be released on bail instead of being subjected to incarceration in jail.

1.2.4. Juvenile Treatment Institutions Abroad:

Generally speaking the following types of juvenile facilities are in use in different countries of the world for the treatment of the juvenile offenders:

- **Observation Homes:**

The juveniles who need only a short -term custody during inquiry or trial are kept in an Observation Home. This institution is also used for the custody of under trial children and juveniles in conflict with law about whom inquiry is pending are who awaiting trial or removal to an appropriate home or Borstal.

There are Children's Homes for the treatment of neglected children for whom a short-term regulatory protective care is necessary but a long term residential training is not necessary. This reform, however, not resolved the contradictory approaches of welfare and punishment which still persist. The emphasis in this institution is on strict discipline rather than constructive training. The system has, however, been subjected to severe criticism in Britain due to enormous increase in juvenile crimes in recent years.

Observation Homes serve as temporary holding facilities for juveniles who were arrested by the police or found to be living in neglect. Juveniles "in conflict with the law" remain there awaiting trial. Children "in need of care and protection" stay there pending the completion of a government investigation aiming to track down their parents and collecting information on their family background. If the parents turn out to be dead, untraceable, unfit, or simply unwilling to take the child back, the Juvenile Welfare Board arranges for the child's placement in a Juvenile Home, where the government is responsible for providing room, board, education, and vocational training. While it distinguishes juveniles "in conflict with the law" from those "in need of care and protection," the law effectively criminalizes both by putting them under the jurisdiction of the criminal justice system. The two groups are generally housed together in Observation Home for months on end: adolescents who have committed serious offenses are kept together with children — mostly much younger — whose only crime is that of being neglected. In practice, there is no difference in the nature of their detention. The law simply prescribes the confinement of both as the only means by which they can be rehabilitated. In addition to attending to the children's primary needs, the observation homes also provide with the materials and the personnel necessary to entertaining the boys and allowing them spend their time in a constructive way.

- **Special Homes:**

The special Homes are established for the custody of the delinquent juveniles. Basic amenities such as accommodation, medical care, educational and vocational training are available to delinquent juveniles in these homes.

- **Certified Schools:**

The certified schools are the modified form of the nineteenth century reformatories are Industrial schools for homeless, destitute and delinquent children. These schools are run with the purpose of catering to the needs of delinquent children of different age, sex and religion. The purpose of this approved School is to provide training to those juveniles who are unfit for release on probation. The Schools are open-institutions' where young offenders are educated and trained for normal living. The duration of stay and training in a Certified School varies according to inmate's requirement depending on the discretion of the School Administrator. This normally ranges from a minimum of six months to a maximum of three years. In practice majority of inmates are released much earlier.

Certified Schools are warranted criticism from several quarters. Some people criticize the working of these institutions on the ground that they are far more comfortable than the homes of the delinquents. But it must not be forgotten that the loss of liberty these institutions is in itself a heavy punishment. On the whole, more than two-thirds of the inmates return to normal life after their release from the institutions. These Schools provide training facilities for inmates to make them proficient in different trade so that they can engage themselves in some useful occupation.

- **Correctional Institutions/Reformatories:**

Reformatory is a term that has had varied meanings within the penal system, depending on the jurisdiction and the era. It may refer to a youth detention center, or an adult correctional facility. The term is still in popular use for adult facilities throughout the United States, although most reformatories have been renamed *correctional centers* (or similar) in recent years. The term reformatory (or reformatory school) was also commonly used during the 19th century throughout the United Kingdom in reference to penal facilities for children under the age of 14.

- **Borstal Schools:**

A 'Borstal' is yet another correctional institution for the long term treatment of juvenile offenders. The term "Borstal" owes its origin to Borstal Village in England where Rochester Prison was first converted into a reformatory for boys in 1902. The prevention

of Crime Act, 1908 expressly prohibited the lodging of young delinquents between 16 and 21 years in ordinary prisons and directed that they should instead be sent to the Borstal. It was due to strenuous efforts of *Sir. Alexander Paterson* that a few more Borstals were opened in England in subsequent years.

Borstal training is exclusively meant for adolescents between the age group of 15 and 21. Only such offenders who are found guilty of offences punishable with imprisonment may be sent to Borstal Institution for training. The maximum period is now two years and release is possible only after the expiry of six months. After release the offender remains subject to supervision and recall for next two years from the date of his release. Before recommending a delinquent for Borstal training, his suitability and physical as well as mental fitness is thoroughly examined.

Though booking to a Borstal provides for an effective deterrent to the potential offender, it is certainly not a prison. Borstals are usually open institutions having no walls, no bars and no closed cells. There are, however, a few closed Borstals also which are meant for the treatment and training hardened offenders.

Borstal institutions prepare the offender for normal life in society by providing him facilities for industrial training and disciplined life. It is an institution meant for salvation of young offenders under State tutelage. Adequate facilities for work, education and recreation are available to inmates in every Borstal and possible efforts are made to make the place homely. Borstals provide for a phased training program to inmates. When the inmate reaches the final stage of training he is allowed sufficient liberty to move in the society.

1.2.5. Ethiopia Bound by Several International Conventions Relating to Juvenile Justice:

Ethiopia has ratified the most important international treaties on human rights, foremost among which are the International Human Rights Covenants of 1966 (the Covenant on

Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child (Supreme Court Juvenile).

In addition to the Convention on the Rights of the Child, Ethiopia had ratified the ILO Minimum Age Convention, 1973 (No. 138) and was in the process of ratifying the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) which demonstrated its commitment to protecting children and improving their well-being. The fact that the Convention had not been published was not due to an absence of commitment on the part of the Government. Ethiopia was a party to various international conventions and they were as binding as any other piece of legislation. The Government was aware that they should be published in order to raise public awareness; however, it had not been done, usually due to general technical difficulties (Convention On the Rights of Child, 2001).

A child is a 'national asset' and , therefore, it is a duty upon the State to look after the child with a view to ensuring - full development of its personality and the government must take necessary steps so as to setting up adequate number of courts. The detention and maltreatment of children in violation of the law is far too serious a matter to be looked at with any complacency and unfortunately, a stage has now been reached where the court cannot be content with the expectation of compliance with its orders in these proceedings but would have to go further and exact it. The State has to be more honest about its obligations to the delinquent children. Children misbehave, perhaps, the society and elders have (may be) behaved worse. Society is becoming increasingly inhospitable to its weak. By ignoring the non-custodial alternative prescribed by law and exposing the delinquent child to the trauma of custodial cruelty, the State and society run the serious risk of sending the child to criminal clan. This is no more matter of concession to the child, but its constitutional and statutory right. Even so unduly hard and coercive measures against the State and the authorities might themselves become courts.

Review Questions:

1. Write a critical essay on the status of treatment of young offenders under Ethiopian legal system referring to the relevant legal instruments.
2. What do you know about the juvenile treatment institutions abroad? How effective they are to reform the juvenile delinquents? Do you suggest the adaption of any of those

Section 2. Punishment

2.1. Meaning and Definition

The word is the abstract substantiation of the verb “to punish”, which is recorded in English since 1340, deriving from Old French *puniss-*, an extended form of the stem of *punir* "to punish," from Latin *punire* "inflict a penalty on, cause pain for some offense," earlier *poenire*, from *poena* "penalty, punishment of great loss" .

Colloquial use of “to punish” for "to inflict heavy damage or loss" is first recorded in 1801, originally in boxing; for “punishing” as "hard-hitting" is from 1811.

The Stanford Encyclopedia of Philosophy defines punishment as, *an authorized imposition of deprivations — of freedom or privacy or other goods to which the person otherwise has a right, or the imposition of special burdens — because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent.*"

The most common applications of the term are in legal and similarly 'regulated' contexts, being the infliction of some kind of *pain* or *loss* upon a person for a misdeed, i.e. for

transgressing a law or command (including prohibitions) given by some authority such as the state, an educator, employer or supervisor, public or private official.

2.2. Essential Elements of ‘Punishment’:

Punishment is the infliction by the state of consequences normally considered unpleasant, on a person in response to his having been convicted of a crime” (Snarr, 1992: 53). The important elements of punishment, according to Hart, are the following:

1. It must involve pain or other consequences normally considered unpleasant;
2. It must be administered for some offence against legal rules;
3. It must be administered to an actual or supposed offender for his offence;
4. Persons other than the offender must intentially administer it;
5. It must be imposed and administered by an authority constituted by a legal system against which the offence is committed (as summarized by Dae H. Chang, 1976: 108).

2.3. Philosophies of Punishment

The history of criminal law shows that what is considered to be the purpose of criminal law has been changing from time to time with the development of human knowledge about the criminal mind i.e. the development of criminology. There are various theories concerning the purpose of punishment ranging from retribution, through prevention, deterrence, reformation and education to rehabilitation. The following have been considered as the specific purposes of punishment in almost all criminal laws.

2.3.1. Retribution

Revenge or retribution is one of the oldest justifications for punishment. The assumption is that since the victim has suffered so much the offender. Revenge may be understandable from the victim’s point of view or his loved ones. However, the determination of the severity of the punishment, or the attempt to make the punishment fit the crime is not easy (Cox and Wade, 1989: 215-17).

The origin of retributive theory lies in the primitive notion of vengeance against the wrong-doer. Punishment satisfies the feeling of revenge. It largely stems from the Biblical saying of “an eye for an eye: a tooth for tooth; and life for life”. Many old forms of punishments have been imposed based on this need to avenge the victim of a crime by

punishing the criminal in the same manner as he committed the crime. For example, in olden times, when a man injured another, it was the right of the injured to take revenge on the person causing injury. The Mosaic Law of the Bible has been, in fact, overemphasized, to explain the retributive theory of punishment. Consider the following comment:

Lex talionis:

“An eye for an eye... is never in the Old Testament of *Savagery*, as it is sometimes portrayed, *but of equity*. It is always offered as guidance for the judge in determining appropriate sentence, never as a rule for personal reaction. There is no evidence in the Old Testament that the terms of the law were ever carried out exactly (eyes put out, teeth extracted, etc.). It functions rather as a vivid statement of the principle of exactitude: the equivalence of crime and penalty. This principle was lost in English law when a person could lose his wife for stealing a sheep. It is lost today when judicial ferocity awards a disproportionately harsh sentence (lengthy imprisonment for shoplifting), or when judicial leniency awards a sentence plainly less than a serious offence merits (a short sentence for rape or for causing death driving under the influence of alcohol). It was up to the judge in Old Testament days--as in ours--to determine how the principle should be applied in any given case. (Ref: “The Message of Proverbs”—David Atkinson)

However, in modern times retribution is used in more than one sense. In the first sense, the idea is that of satisfaction by the state of the victim’s desire to be avenged; in the second, it is that of the states marking its disapproval of the breaking of its laws by a punishment proportional to the gravity of the crime. In modern penological thought retribution is not so much considered in the sense of vengeance but in the sense of reprobation.

2.3.2. Deterrence

Deterrence is defined as “*A justification for punishment based on the idea that crime can be discouraged or prevented by instilling in potential criminals a fear of punishing consequences. Punished offenders, it is hoped, will serve as examples to deter potential criminals from antisocial conduct*” (Vetter and Silverman, 1986: 572). The idea of deterrence is best illustrated by the words of an eighteenth-century judge who told the

defendant at a sentencing, “You are to be hanged not because you have stolen a sheep but in order that others may not steal sheep” (Inciardi, 1987: 452).

The purpose of the punishment is to deter the criminal from committing crime in future and to set as an example to the prospective criminals. It carries the message that those who violate the law will be punished like wise. The idea is that punishment will curb the criminal activities of the potential criminals. In olden times severe punishments and public executions were held mainly with the object to deter others and to set an example that violation of law will be punished. Thus punishment serves as deterrence in two ways:

A. General Deterrence:

The punishment of one criminal and the publicity given to it are assumed to discourage other potential law breakers. Advocates of the death penalty, for example, believe that fear of death may serve as a serious threat to people, and thus the death penalty serves the function of general deterrence of serious crimes.

B. Specific / Individual Deterrence:

Punishment of the criminal is assumed to keep that specific criminal from committing other crimes in the future. Some theories assume that criminals lack internal inhibitors, and hence unpleasant sanctions must be used to teach them a lesson.

2.3.3. Prevention:

According to this conception, the purpose of punishment is to prevent the criminal from committing crimes by physically disabling him by separating him and keeping him in seclusion from the society for a certain period of time. This way the society is spared from the disturbance created by the criminal. If a convicted offender is sent to prison, society can feel safe and confident that the criminal will not be committing further crimes.

The difference between the deterrent theory and preventive theory has to be understood clearly. According to deterrent purpose the criminals and the prospective criminals learn a lesson by the fear of severe punishment and voluntarily abstain from committing crimes. In prevention they are physically incapacitated or disabled since they lack self-

control and must be restrained. Here the restraint is external by deprivation of their liberty.

Prevention or incapacitation is a more general objective of correctional administration. Prisons are usually viewed as institutions in which prisoners are isolated or incapacitated, i.e., prevented from committing further crimes. This is the custodial, as opposed to the rehabilitative function of corrections. Many of the problems that surround prisons today revolve around the contradictions of these two objectives. Incapacitation has two major problems. One is the failure to consider crimes committed by one inmate against another as further crimes. And thousands of such crimes are committed, around the world, annually. Secondly, incapacitation being temporary, most inmates will be released eventually, whether they are rehabilitated or not (Cox and Wade, 1989: 217).

2.3.4. Reformation/Rehabilitation:

Punishment the purpose of which is to change the character of the offender is known as reformatory punishment. This theory is also known as corrective or rehabilitative theory'. Reformation means "the effort to restore a man to society as a better and wiser man and as a good citizen." According to this theory, punishment attempts to make the criminal harm less by supplying him the understanding he lacks and cures him of those drawbacks which made him to commit crime. If a criminal is morally degenerated his tendencies also become, if not, extinct then at least less sensitive. Punishment has, for that reason, been defined as "a physical measure adopted to excite in the soul of the guilty true repentance, respect for justice, sympathy for their fellow creatures and love of mankind." (Oppenheimer. "Rationale of Punishment," p.244) By reformation of the criminal is meant his moral regeneration, and developing the sense of honesty. A person, who commits a crime and suffers punishment for that, comes back to the society and lives in along with his other fellow beings. Therefore, punishment must aim at making a man worthy of living in the society.

The philosophy behind rehabilitation rests on the assumption that "persons who commit crimes have identifiable reasons for doing so, and that these can be discovered, addressed and altered". Rehabilitation suggests to the offender that crime does not pay and that

there is a better way. The aim of rehabilitation is to modify the behavior of the individual and reintegrate him into the society as a productive member (Inciardi, 1987: 452).

The goals of rehabilitation are widely supported because in contrast to other sentencing philosophies, it takes a positive approach in the attempt to eliminate criminal behavior. Supporters of rehabilitation argue that unlike “the false hope of deterrence or the temporary measure of retribution and isolation” it is the only humanitarian mechanism for altering the criminal behavior of offenders.

However, the effectiveness of rehabilitation has been seriously questioned. Some argue that efforts to modify the behavior of offenders are of questionable value because the causes of crime are not fully understood. Others argue that correction has only little and limited value since rehabilitative services in institution and community based programs are either minimal or nonexistent. Others argue that rehabilitation never demonstrated and will never demonstrate its ability to prevent or reduce crime.

The advocates of reformatory theory aim at the rehabilitation of the criminal in the society. This theory admits only such types of punishments which are educative and discipline the criminal, not those which inflict pain on him. Rehabilitative element of the punishment includes restoration of the criminal to effectiveness or normal life by training etc. In modern time's reformatory measures are adopted in cases of juvenile offenders. In prison they are given some education and are subjected to some such prison programs so that they can learn some kind of work which may help them in earning their livelihood after coming out of the prison. The advocates of this theory emphasize that when the prisoner goes to jail he finds himself quite cut off from the rest of the world. The confinement the deprivation of social intercourse and other ways of subjection to rigid discipline never allow him to develop his character. Therefore, what is important is the reformation of the criminal by making him worthy of living in the society.

2.3.5. An Integrative View:

We have discussed above various theories regarding the purpose of punishment. However, while each one of them has some value of its own none of them is universally acceptable. If correction alone is emphasized, the retributive and deterrent elements become ineffective. In official circles, deterrence is strongly supported as a necessary and

potent defense of social values. Pure retributionist view makes punishment barbaric and leaves little room for reformation. On the other hand, such treatment is likely to make these criminals feel bitter and turn to habitual criminality.

It is now recognized that 'the prevention of crime and protection of society' are ends asserted by every one. Thus, an inclusive theory' which is a cultivation of all the elements of retribution, deterrence, prevention and reformation has been gaining ground in recent years.

➤ **Purposes of Punishment under the Criminal Code of 2004:**

The principles of Criminal law regarding the purpose of punishment we discussed above are clearly incorporated in the provisions of the Criminal Code of 2004. Art.1. Para 2 of the Code sets out the specific objectives of the Code in the following way:

“It aims at the prevention of crimes by giving due notice of the crimes and penalties prescribed by law and should this be ineffective by providing for the punishment of criminals in order to deter them from committing another crime and make them a lesson to others, or by providing for their reform and measures to prevent the commission of further crimes.”

This provision makes a general statement of the aims and objectives of the Criminal Code. Further, the purposes of deterrence, prevention, reformation and rehabilitation are specifically mentioned in the provisions relating to different types of punishments.

Review Questions:

1. Define punishment and explain the essential elements of punishment.
2. What purposes does the criminal punishment serve? Which objectives of the punishment are victim and society oriented and which of them focus on the offender?
3. Write short notes on the following:

2.4. Objectives of Different Types of Punishment:

Punishment is meant to produce some sort of justification for the suffering of the offender in actualizing the correctional objectives such as retribution, deterrence protection, and reformation or rehabilitation. In the course of history, societies, as point out earlier, have used the following as punishment: “(1) financial loss; (2) physical torture; (3) restitution and reparation; (4) imprisonment; (5) banishment and transportation; (6) capital punishment (7) social degradation; (8) removal from the group; (9) reduction to a lower social status; (10) enslavement; (11) deprivation of privileges, i.e., voting or marriage rights; and (12) hard labor”. We shall now see details of some important types of punishments.

2.4.1. Capital Punishment:

Capital punishment, the **death penalty** or **execution**, is the killing of a person by judicial process for retribution and incapacitation. Crimes that can result in a death penalty are known as *capital crimes* or *capital offences*. The term *capital* originates from Latin *capitalis*, literally "regarding the head" (Latin *caput*). Hence, a capital crime was originally one punished by the severing of the head.

Execution of criminals and political opponents has been used by nearly all societies—both to punish crime and to suppress political dissent. In most places that practice capital punishment it is reserved for murder, espionage, treason, or as part of military justice. In some countries sexual crimes, such as rape, adultery, incest and sodomy, carry the death penalty, as do religious crimes such as apostasy in Islamic nations (the formal renunciation of the State religion). In many countries that use the death penalty, drug trafficking is also a capital offense. In China, human trafficking and serious cases of corruption are punished by the death penalty. In militaries around the world courts-martial have imposed death sentences for offenses such as cowardice, desertion, insubordination, and mutiny.

Capital punishment has been practiced in virtually every society, excluding those with state religious proscriptions against it. It is a matter of active controversy in various states, and positions can vary within a single political ideology or cultural region. A major exception is in Europe, where Article 2 of the Charter of Fundamental Rights of the European Union prohibits the practice.

Today, most countries are considered by Amnesty International as abolitionists, which allowed a vote on a resolution to the UN to promote the abolition of the death penalty. But more than 60% of the worldwide population lives in countries where executions take place in so far as the four most populous countries in the world (such as People's Republic of China, India, United States and Indonesia) apply the death penalty.

As a rule punishability, by and large, depends on the degree of culpability of criminal act and the danger posed by it to society as also the depravity of the offender. The risk of penalty is the cost of crime which the offender has to pay. When this cost (suffering) is

high enough as compared to the benefit which the crime is expected to yield, it will deter a considerable number of people. This is true with crimes punishable with death sentence as well.

A dispassionate analysis of criminological jurisprudence would reveal that capital punishment is justified only in extreme cases in which a high degree of culpability is involved causing grave danger to society. It must, however, be added that a mere objective consideration of act's dangerousness to society by itself would not be enough to assess perpetrator's culpability but his personal attributes and circumstances and gravity of the offence have also to be taken into consideration to decide whether or not he deserves capital punishment. Thus the punishment should be commensurate among other things, with the gravity of offender's act and societal reaction to it.

Experience has shown that despite fullest consciousness about the desirability of reformatory justice, at times unequivocal stand is unavoidable in extreme cases where offender has been fully aware of the fatal consequences of his gruesome and brutal crime and there were no mitigating circumstances. In such aggravating situations, law must take a firm stand and not hesitate even to award the extreme sentence of death to the offender. These situations have found expression in the penal laws of several countries of the world.

2.4.8.1 Retributive Effect of Death Penalty:

Death sentence has been used as an effective weapon of retributive justice for centuries. The justification advanced is that it is lawful to forfeit the life of a person who takes away another's life. A person who kills another must be eliminated from the society and, therefore, fully merits his execution. Thus the motive for death penalty may indeed include vengeance which is a compensatory and reparatory satisfaction for an injured party, group or society. When regulated and controlled by law, vengeance is also socially useful. Legal vengeance solidifies social solidarity against law-breakers and probably is the only alternative to the disruptive private revenge of those who feel harmed.

Commenting on the effectiveness of death penalty, *Thorsten Sellin* observed that it has failed as a measure of social protection, so also as an instrument of retributive justice. Citing illustrations from United States to support this contention, he argued that the

number of executions is far less than the number of murders committed annually which clearly indicates that death sentence is no longer looked with favour and is falling into disuse rapidly. Another argument which needs attention regarding declining effect of death penalty is that even after the award of this sentence, in most cases, it is either commuted or pardoned in the last resort and its final execution is seldom carried out.

2.4.8.1 Deterrent Effect of Capital Punishment:

The fear of being condemned to death is perhaps the greatest deterrent which keeps an offender away from criminality. Death penalty in case of murder serves as an effective deterrent to remind the murderer about the severity of law towards this heinous crime and certainly helps in reducing the incidence of *homicide*. The old methods of public execution though abandoned today, were directed to make the sentence as frightening as possible. The present trend, however, is to keep the number of offences punishable by death to a minimum and avoid death penalty as far as possible although its retention in the statute book is favored even to this day.

2.4.8.1 Modes of Execution:

An appraisal of the administration of criminal justice of ancient times reveals that death penalty was commonly used in cases of heinous crimes. However, there was great divergence as to the mode of its execution. The common modes of inflicting death sentence on the offender were crucifixion, drowning, burning, boiling, beheading, throwing before wild beasts, flaying or skinning off alive, hurling the offender from rock, stoning, strangling, impelling, amputating, shooting by gun or starving him to death. Hanging the offender till death in public places has been a common mode of putting to an end to the life of an offender. These draconian and barbarous methods of punishing criminals to death were justified on the ground that they were the quickest and easiest modes of punishment and at the same time carried with them an element of deterrence and retribution. They have, however, fallen into disuse with the advance of time and modern humanitarian approach to penology.

Deterrence has been defined by Dr. Johnson as discouraging the offender by terror or naked fear from repeating his crime and at the same time preventing others from following his path. It must, however, be remembered that deterrence is a relative term, its

seriousness depending on the category of the offender. Thus the stigma attached to arrest, trial, conviction and sentence may have little effect on habitual offenders or hardened criminals but may act as a powerful deterrent to an average law-abiding citizen. Undoubtedly, of all the punishments, death penalty appears to be the strongest deterrent for there can be nothing for which a man would be willing to give his life.

➤ **Methods of Execution Currently in Use:**

At present, the common modes of execution of death sentence which are in vogue in different parts of the world are electrocution, guillotine, shooting, gas chamber, hanging, lethal injection etc.

The method of execution by *electrocution* consists in subjecting the condemned prisoner to heavy charge of electric current. The method was first used at Auburn State Prison, New York on August 6, 1890 and is now being extensively used in USA, UK, USSR, Japan, and most of the European countries.

The device of *Guillotine* for execution of criminals was introduced in France- in 1792. It was a kind of machine erected for execution of criminals in western countries, particularly in France, Scotland and England.

Shooting as a mode of execution of a condemned person was used for offences tried in Military Courts. In Russia and China and some East European countries death by firing squad is the customary mode of execution.

More recently, *gas chambers* are being used in the western world for execution of death sentence. The condemned prisoners are put to death by being stripped in a chair in a sealed gas chamber into which poisonous fumes of cyanide are injected. The method prevailed in USA and was extensively used by Nazi Germany in killing Jews and other unwanted minorities.

The method of *hanging* the condemned prisoner till death has been commonly in use in almost all the countries since ages. In India public hanging is now held to be unconstitutional.

Death sentence by means of *lethal injection* is relatively a later development. It was first adopted in Oklahoma (USA) in 1977. The injection is administered intravenously

with delicate skilled operation. It is preferred because it ensures instantaneous death without any suffering. It is in use in USA, UK, Canada and other developed countries.

2.4.1. Capital Punishment in Ancient Rome and Greece:

In ancient times, the law administrators unflinchingly executed murderers because they believed that "the life of each man should be sacred to each other man"? They realized that it is not enough to proclaim the sacredness and inviolability of human life, it must be secured as well, by threatening with the loss of life of those who violate what has been proclaimed inviolable-the right of innocent to live. Murder, being the worst of crimes, must deserve the highest penalty which is death sentence. This shall also be in accordance of the principle that punishment must be in proportion to the gravity of the crime.

Ancient Romans accepted the deterrent value of death penalty. Under the Roman criminal law, the offender was put to public ridicule and his execution took the form of a ceremony. Death was caused to the condemned person in a most tortuous manner. For example, one who killed his father was sewn in a sack along with a live dog, cat and a cobra and thrown into river. The object was to make him die most painfully. The sentence of death could be awarded even to a debtor who was unable to payoff the debt of his creditor. Thus a creditor, who found that his debtor was unable to payoff the debt, could vent his wrath upon the debtor by marching him up the Tarpeian rock and hurling him from there to death.

The Greek penal system also provided death sentence for many offences. The offenders were stripped, tarred and feathered to death publicly. Execution of death penalty in public places was favored because of its deterrent effect.

2.4.2. Continental View on Death Penalty:

The history of crime and punishment in England during the medieval period reveals that infliction of death penalty was commonly practiced for the elimination of criminals. Henry VIII who reigned in England for over fifty years was particularly infamous for his

brutality towards the condemned prisoners. He used to boil the offenders alive. His daughter Queen Elizabeth, who succeeded him, was far stiffer in punishing the offenders. The offenders were not put to death at once but were subjected to slow process of amputation by bits so that they suffer maximum pain and torture. The condemned offenders were often executed publicly. These brutal methods of condemning the offenders were, however, abandoned by the end of eighteenth century when the system of transporting criminals to distant American Colonies at their option was firmly established.

Dr. *Fitzgerald* observed that the history of capital punishment in England for the last two hundred years recorded a continuous decline in the execution of this sentence. During the later half of the eighteenth century as many as two hundred offences were punishable with death penalty. The obvious reason for the frequency of execution was the concern of the ruler to eliminate criminals in absence of adequate police force to detect and prevent crimes. The methods of putting offenders to death were extremely cruel brutal and torturous.

As the time passed, the severity of capital punishment was mitigated mainly in two ways: **Firstly**, this sentence could be avoided by claiming the '*benefit of clergy*' which meant exemption from death sentence to those male offenders who could read and were eligible for holy Order. **Secondly**, the prisoners who were awarded death sentence could be pardoned if they agreed to be transported to American Colonies. Thus, by 1767 condemned felons could be transported for seven years in lieu of capital sentence. In course of time, death punishment for felony was abolished and in 1853, the system of transporting criminals also came to an end and a new punishment of penal servitude was introduced.

Commenting on the frequency of executions during the eighteenth century *Donald Taft* observed that during no period in the history of western civilization were more frantic legislative efforts made to stem crime by infliction of capital punishment as in that century. In his opinion, the growing importance of this punishment was owing to the

agrarian and industrial changes in the English society resulting into multiplicity of crimes which had to be suppressed by all means. Supporting this view *Radzinowicz* observed that more than 190 crimes were punishable with death during the reign of George III in 1810.

In nineteenth century, however, the public opinion disfavored the use of capital punishment for offences other than the heinous crimes. *Bentham* and *Bright*, the two eminent English law reformers opposed frequent use of capital punishment. *Sir Samuel Romilly* also advocated a view that the use of capital punishment should be confined only to the cases of willful murder.

The irrevocable and irreversible nature of death penalty gave rise to a number of complications which invited public attention towards the need for abolition of this sentence. Consequently the British Royal Commission on Capital Punishment was appointed in 1949 to examine the problem. As a result of the findings of this Commission death sentence was suspended in England and Wales for five years from 1965 and was finally abolished by the end of 1969.

However, the constant rise in the incidence of crime in recent years has necessitated Britain to re-assess its penal policy regarding death penalty. The two latest decisions! of the Privy Council emphatically stressed that the award of death sentence is not violative of human rights or fundamental rights.

2.4.3. The Italian View:

Italian criminologists, however, expressed divergent views about the utility of capital punishment. *Lombroso* supported application of capital punishment for habitual offenders and incorrigibles. In his view, death sentence served as an effective deterrent for such offenders. *Garofalo* opposed capital punishment on grounds of morality while *Beccaria* denounced it because it had a demoralizing effect on society. He believed that life of an individual is too precious to be ended by the award of death sentence.

2.4.4. The French Position:

France has abolished capital punishment recently after a considerable debate and discussion among penologist and law reformers. They feel that retention of death sentence is not in keeping with the modern reformatory trend of penology.

2.4.5. Death Sentence in U.S.A:

Available literature on capital punishment in United States testifies that in modern times the sentence of death is being sparingly used in that country. This, however, does not mean that capital punishment is altogether abolished in United States. The retention of death penalty is still considered to be morally and legally just though it may be rarely carried into practice. American penologists justify the retention of capital punishment for two obvious reasons. Firstly, from the point of view of protection of society, death penalty is needed as a threat or warning to deter the potential murderers. Secondly, it also accomplishes the retributive object of punishment inasmuch as a person who kills another has perhaps forfeited his claim for life. It is, however, generally argued that the risk of being executed in fact serves no deterrent purpose because the murderer often plans out his crime in such a way that the chances of his detection are rare and he is almost sure of his escape without being punished. The retention of death penalty for capital murderers is justified on the ground that if not executed, they will remain menace and potential danger to society.

Recent trend in America is to restrict capital punishment only to the offence of murder and rape. Another noticeable change in trend is to make the process of execution private, painless and quick as against the old methods of public execution which were brutal, painful and time consuming. At present, the common modes of inflicting death penalty in United States are electrocution, hanging, asphyxiation with lethal gas and shooting. Several American States have abolished death punishment with beneficial results. *Mr. Justice Brennan* and *Mr. Justice Marshall* of the US Supreme Court in a well-known decision *Furman v. The State of Georgia*, observed that death penalty should be outlawed on the ground that it was an anachronism degrading to human dignity and unnecessary in modern life. But most of the Judges did not agree with the view that the Eighth Amendment of the American Constitution which prohibits capital punishment for all

crimes and under all circumstances is a good law. Some of the American decisions suggest that the courts are convinced that death penalty *per se* is not violative of the Constitution. However, in some parts of the United States death penalty has been retained only for the murder of a prison officer by a life convict.

2.5.7. Retention vs. Abolition of Capital Punishment:

An international survey carried out in 1962 by the United Nations, however, confirmed that neither suspension nor abolition of death penalty had any immediate effect in increasing the incidence of crimes punishable with sentence of death. The countries which had abolished capital punishment, notably, Germany, Austria, Scandinavia, Netherlands, Denmark and some Latin American States reported no ill-effects of abolition.

In the modern reformatory era, retaliation and retribution, apart from being outdated are also against the accepted norms of modern criminal justice. *Beccaria* was perhaps the first criminologist who raised a crusade against capital punishment in 1764. He strongly protested against the use of cruel and barbarous modes of punishing the offenders and emphasized the need of individualized treatment. He expressed a view that death as a sentence symbolizes man's cruelty and insignificance of human life. In course of time *mens rea* became the guiding principle for determining the guilt and punishment of the offender though it is true that in certain cases it is difficult to determine *mens rea* of the offender.

Yet another reason for discarding retribution as a principle of criminal justice is to be found in the fact that putting a person to death virtually amounts to killing him deliberately. That apart, experience has shown that more than eighty per cent of the persons committing murder are not really murderers but are persons who have fallen a prey to this heinous crime due to circumstances such as passion, provocation, jealousy, sexual impulsiveness, poverty or intoxication. Obviously, death sentence is hardly an appropriate punishment for such offenders. *Prof Scot* has expressed doubts about the adequacy of capital punishment as it involves the risk of innocent person being sent to guillotine. *Bona fide* errors of judgment as to guilt of the accused are known to have occurred. If an innocent person is hanged due to miscarriage of justice, his life is lost for

ever and the loss is obviously irredeemable. Perhaps it is for this reason that slightest doubt about the guilt of the accused entitles him for an acquittal on the plea of '*benefit of doubt*' under the criminal law of most countries.

The abolitionists strongly argue that since death penalty is irrevocable, it should not be awarded. But the elaborate safeguards provided in the procedural law clearly indicate that though the sentence of death is irrevocable, it is awarded only after a thorough scrutiny at every stage of the case and, therefore, chances of human error or judgment are not only minimized but reduced to almost nil. Slightest doubt about the guilt of the accused who is to be sentenced to death is sufficient to entail him benefit of doubt. As such, abolition of death penalty on the ground of irrevocability hardly seems to be justified.

The safeguards provided under the law to eliminate any possibility of erroneous judgment regarding award of death sentence which may briefly be stated as follows:

Firstly, death penalty is awarded very sparingly only in cases of aggravated homicide and offences against **the State**;

Secondly, Sentence of death shall be passed only in cases of grave crimes and on exceptionally dangerous criminals, in the cases specifically laid down by law as a punishment for completed crimes and in the absence of any extenuating circumstances (Art 117/1).

Thirdly, the death sentence shall not be carried out unless confirmed by the Head of State. It shall not be executed before ascertainment of its non-remission or non-commutation by pardon or amnesty (Art 117/2).

Fourthly, accused person has an opportunity to put-forth his plea for award of life-imprisonment as an alternative punishment for death sentence on an appeal;

It is quite often argued that death penalty "brutalizes" human nature and cheapens human life! Thus it vitiates the humanitarian sentiments concerning the sacredness of human life. It is for this reason that *David Pannick* strongly argues that death penalty should be declared *per se* unconstitutional as cruel and violative of due process of law.

The arguments for and against death sentence may be summarized as follows:

➤ **Retentionists' Arguments:**

1. Elimination of murderers by execution is fair retribution and saves potential future victims.
2. Punishment must match the gravity of offence and worst crimes should be severely punished.
3. Societies must establish deterrents against crime. Death sentence serves as a n effective deterrent.
4. Death is a just punishment and death penalty has been held constitutionally valid to ensure justice for condemned offenders.

➤ **Abolitionists' Arguments:**

1. An execution arising out of miscarriage of justice is irreversible.
2. Capital punishment is lethal vengeance which brutalizes the society that tolerates it.
3. Capital punishment does not have deterrent effect. Hired murderers take the risks of criminal justice system whatever the penalties. Thus it has no rational purpose.
4. Death penalty is unjust and often discriminatory against poor who cannot defend themselves properly.

A perusal of arguments for and against the retention of capital punishment in a penal system makes it abundantly clear that at least its retention in the statute book would better serve the ends of justice, though in practice it may be used sparingly.

2.2.2. Imprisonment:

Imprisonment presents a most simple penal and common form of sentencing for incapacitating the criminals. It proved to be an efficient method of temporary elimination of criminals apart from being a general deterrent and an individual deterrent. Conditions of imprisonment in civilized countries have undergone radical changes in recent decades. The minimum security institutions such as open air prisons and prison hostels are being increasingly used as modified forms of incarceration of offenders.

Despite being a corrective measure, the most intricate problems involved in imprisonment as a measure of punitive reaction to crime is the 'prisonization' of offenders. The prisoner is confronted with the most crucial problem of adjustment to new norms and environment of prison life. He loses his personal identity in the process of adjustment and is converted into a mere impersonal entity.

Yet another set back of imprisonment as a mode of punishment is its damaging effect on family relationship of the offender. The offender loses contact with the members of his family and if he happens to be the sole bread-winner, the result is still worse. The members of his family suffer misery, starvation and financial crisis. Depriving the offender of his family life for a considerably long period creates new problem for prison discipline in form of homosexuality, bribery, corruption, revolt etc.

Prisonization of woman offenders presents many-fold problems before the prison administration. Particularly, the women prisoners who are pregnant or have babies need special care and attention as regards their food, medical treatment, health and nourishment of the child. This acts additional financial burden in the prison administration. This is one reason why the prison authorities are more liberal in granting remissions, furloughs, parole etc. to the women prisoners.

In India, parole and furlough are now being extensively used as a part of penal substitutes for mitigating the rigors of prison inmates. The All India Jail Reforms Committee has further observed that the prisoners should be released on furlough after undergoing a specified period of imprisonment so that they maintain contact with their relatives and friends and may not feel uprooted from society and thus saved from the evil effects of imprisonment.

The social stigma attached to prisoners makes their rehabilitation more difficult. Prisoners quite often feel that the real punishment begins after they leave the prison institution. *Sir Lionel Fox*, the noted prison reformist of Britain introduced Hostel system for inmates to prevent them from stigmatization and ensure them an honorable life in society.

Be that as it may, the fact remains that imprisonment is still one of the most accepted forms of punishment throughout the world. With the modern correctional techniques introduced in prison institutions, it serves as an efficient measure of reforming the criminal and at the same time protecting the society from anti-social elements. Thus it serves the dual purpose of preventive and reformative justice at one and the same time.

2.6. Rehabilitate or punish: How Should Society Treat Criminals?

Every criminal is a person. Every person is different from every other person. Every criminal is therefore different from every other criminal. There is not single solution to the problem of criminal behavior. Although criminal activity can be easily broken down into neat categories, criminals as people can not.

Let's look at punishment. In different countries there are different types of punishment. Some are more effective than others. In the Unites States there are very few options when it comes to punishment (prison, probation, house arrest or in rare occasions execution), and due to the pitifully easy punishments there is very little deterrent to avoid crime. In countries where corporal punishment and maiming are implemented, citizens are much more motivated to do the right thing. Punishment does work...sometimes.

What about rehabilitation? Some of those people in prison are people who just make mistakes. They saw an opportunity and took it, or caved in to temptation. People committing property crime and white collar crime can sometimes be in this category. The "one time only mistake" type of criminal usually decides in prison that they will not repeat their mistake. Some of them decide not to break the law again. For them punishment was all the rehabilitation needed. Others will just use the prison time think of new ways to get away with crime. There is no rehabilitation for people without integrity.

People convicted of sexual crimes may actually be easier to rehabilitate than those who do not have any regard for personal property or governmental funds. There have been some great advances in the field of abnormal psychology, and I applaud the efforts of those researchers. This does not mean that we should trust our children with a "cured" child molester, but it does indicate that terribly long prison terms might not be the only solution.

Some prisoners are in complete denial. They refuse to accept that they did anything wrong when they broke the law. They refuse to accept the law of the land as applicable to them. No amount of psychological assistance or legal punishment (by United States standards, anyway) will deter them from future criminal activity.

If you have read this far and are thinking that there must be hundreds of types of criminals that have not been addressed, then you are correct. There are almost as many types of criminals as there are criminals. The chance that a convicted prisoner will change is completely up to that particular convicted prisoner. We, unfortunately, do not get to decide.

The institution of prison serves a dual purpose of eliminating criminals from society and reformation and rehabilitation of the offenders under the institutional treatment by blanketing out conditions which in the first place turn them into law-violators. It has now been generally accepted that “After Care” service must form an integral part of penal program. As a part of correctional service it presupposes active help and guidance to the discharged prisoners through counseling and surveillance. The process has, therefore, been called the “released person’s Convalescence”.

The system of parole as a corrective measure a rehabilitative process has now been expanded in the form of open jails and open air camps in recent years. Open air-institutions are essentially a 20th century device for rehabilitating offender’s normal life in the society through an intensive After-Care program.

Review Questions:

1. What different purposes does the capital punishment serve? Do you agree with the efficacy of death penalty?
2. Write an essay on the modes of execution of death penalty. Do you think any mode of execution fits into the Constitutional mandate against ‘cruel and inhuman’ punishment? Basing on this mandate how do you

Section 3. Alternatives to Imprisonment:

➤ The Prisons and the African Experience:

The criminal justice system...the police, the courts and prisons, in the formal connotation we know them today were introduced into Sub-Saharan Africa by colonialist or were adopted as a result of European influence over the past one and half century or so.

Otherwise prisons were alien to the cultural practices of African as far as the administration of justice was concerned. Elders, in accordance with customary law, dealt with offenders. Traditional sanction such as the payment of compensation or blood money by the offender to the victim was customary in many of the African countries. For instance, as recorded by Jomo Kenyatta, on the basis of Kikuyu law “Nine sheep or goats had to be paid for adultery or rape and one hundred sheep or ten cows for homicide, and that this rate did not vary with the wealth or age of the victim, nor with the intention or motive of the killer” (Read, 1969: 104). Similarly in Ethiopia certain tribal groups paid what they called “*gumma*” or blood money to the aggrieved individual or clan without ever referring the offender to the courts, until the government, through the promulgation of the 1957 Penal Code declared all offences to be crimes against the state and the practice was declared illegal. African customary law, according to T.O. Elias, never recognized and even considered prisons as wasteful:

The payment of compensation, blood- money, by the offender to the offended was customary in many cases, even in the unlawful killing of human being. The reason for this is partly to be found in the social policy of the African peoples, which centers around the land and its produce in the largely agricultural communities on the continent. (Elias, 27:18, 1969)

Once the prison system was introduced into Africa, its use gradually became widespread and major reliance was placed on it, in the attempt to control and prevent crime. Imprisonment grew steadily in the century as the major method of punishment of hardened criminals. Urbanization and the various aspects of socio-economic change that have been taking place in the continent weakened traditional sanctions. The alien criminal justice system which was never adapted to local conditions was more retaliatory rather than conciliatory. As a result, courts imposed excessively severe sentences, which overcrowded prisons. More and more reliance was made upon imprisonment to fight the increasing rate of crime. This led to the expansion of the police and the judicial system which in turn led to the arrests of more and more offenders making the expansion inevitable (see Clinard and Abbot, 1973: 231-37; Read, 1969: 128).

Though the prison system was a foreign import and to some extent an imposition of colonialism, it still remains to be the major method of handling criminals in Sub-Saharan

Africa. After independence many of the African countries had the intention of either abolishing or, at least, changing the feature of prisons because of their repressive nature which were considered an affront to human dignity. Particularly, those African leaders, who themselves had suffered imprisonment in the process of their fight for independence, were bent on doing something after independences. But realities were different than intentions and prisons still persist even in much more uglier states.

Parole and probation have been tried by different countries and have been proved to serve best alternatives for the imprisonment to bring back the criminal to the society as a law abiding citizen. These strategies seem to appeal to his mind persuasively as he gets a lenient and compassionate treatment from the law enforcement system.

3.1. Parole System:

Parole may have different meanings depending on the field and judiciary system. All of the meanings originated from the French *parole*, meaning "(spoken) word." Following its use in late-medieval Anglo-French chivalric practice, the term became associated with the release of prisoners based on prisoners giving their word of honor to abide by certain restrictions. Before being granted the privilege of parole, the inmate must first agree to abide by the conditions of parole set by the paroling authority. These conditions usually require the parolee to meet regularly with his or her parole officer or community corrections agent, who assesses the behavior and adjustment of the parolee and determines whether the parolee is violating any of his or her terms of release (typically these include being at home during certain hours, maintaining steady employment, not absconding, refraining from illicit drug use and sometimes, abstaining from alcohol). In some cases, a parolee may be discharged from parole before the time called for in the original sentence if it is determined that the parole restrictions are no longer necessary for the protection of society (this most frequently occurs when elderly parolees are involved).

➤ Early History of Parole:

Alexander Maconochie, a Scottish geographer and captain in the British Royal Navy, introduced the modern idea of parole when, in 1840, he was appointed superintendent of

the English penal colonies in Norfolk Island, Australia. He developed a plan to prepare them for eventual return to society that involved three grades. The first two consisted of promotions earned through good behavior, labor, and study. The third grade in the system involved conditional liberty outside of prison while obeying rules. A violation would return them to prison and starting all over again through the ranks of the three grade process.

➤ **Modern History of Parole:**

In the United States, courts may specify in a sentence how much time must be served before a prisoner is eligible for parole. This is often done by specifying an indeterminate sentence of, say, "15 to 25 years," or "15 years to life." The latter type is known as an indeterminate life sentence; in contrast, a sentence of "life without the possibility of parole" is known as a determinate life sentence.

In most states, the decision of whether an inmate is paroled is vested in a paroling authority such as a parole board. Mere good conduct while incarcerated in and of itself does not necessarily guarantee that an inmate will be paroled. Other factors may enter into the decision to grant or deny parole, most commonly the establishment of a permanent residence and immediate, gainful employment or some other clearly visible means of self-support upon release (such as Social Security if the prisoner is old enough to qualify). Many states now permit sentences of life imprisonment without the possibility of parole (such as for murder and espionage), and any prisoner not sentenced to either this or the death penalty will eventually have the right to petition for release (one state – Alaska – maintains neither the death penalty nor life imprisonment without parole as sentencing options). At the same time, most other nations, such as European nations and Mexico, have abolished life without the possibility of parole because it is considered cruel.

Before being granted the privilege of parole, the inmate must first agree to abide by the conditions of parole set by the paroling authority. These conditions usually require the parolee to meet regularly with his or her parole officer or community corrections agent,

who assesses the behavior and adjustment of the parolee and determines whether the parolee is violating any of his or her terms of release (typically these include being at home during certain hours, maintaining steady employment, not absconding, refraining from illicit drug use and sometimes, abstaining from alcohol). In some cases, a parolee may be discharged from parole before the time called for in the original sentence if it is determined that the parole restrictions are no longer necessary for the protection of society (this most frequently occurs when elderly parolees are involved).

The institution of prison serves a dual purpose of eliminating criminals from society and reformation and rehabilitation of the offenders under the institutional treatment by blanketing out conditions which in the first place turn them into law-violators. It has now been generally accepted that "After Care" service must form an integral part of penal program. As a part of correctional service it presupposes active help and guidance to the discharged prisoners through counseling and surveillance. The process has, therefore, been called the "released person's Convalescence".

The system of parole as a corrective measure a rehabilitative process has now been expanded in the form of open jails and open air camps in recent years. Open air-institutions are essentially a 20th century device for rehabilitating offender's normal life in the society through an intensive After-Care program.

3.2. Probation:

Probation is the suspension of all or part of a jail sentence; the criminal who is "on probation" has been convicted of a crime, but instead of serving jail time, has been found by the Court to be amenable to probation and will be returned to the community for a period in which they will have to abide to certain conditions set forth by the Court under the supervision of a probation officer; or has served part of the sentence but has been released before its end. General conditions may include maintaining employment, abiding to a curfew, living where directed, abstaining from unlawful behavior, following the probation officer's orders, not absconding, and refraining from contact with other individuals, who may include victims of the original crime (such as a former partner in a

domestic violence case), potential victims of similar crimes (such as minors when the crime involves child sexual abuse), potential witnesses, or those who have partnered with the offender in the earlier crime. In some cases the offender on probation is fitted with an electronic tag which signals his or her whereabouts to officials.

➤ **History of Probation:**

The concept of probation, from the Latin word *probatio* - meaning testing period - has historical roots in the practice of *judicial reprieve*. In English Common Law the Courts could temporarily suspend the execution of a sentence to allow the defendant to appeal to the Crown for a pardon. Probation first developed in the United States when John Augustus, a Boston boot maker, persuaded a judge in the Boston Police Court in 1841 to give him custody of a convicted offender, a "drunkard," for a brief period and then helped the man to appear rehabilitated by the time of sentencing. Even before John Augustus, the practice of suspended sentence was used as early as 1830, in Boston, Massachusetts and became widespread in U.S. Courts, although there was no statutory authorization for such a practice. At first, judges, most notably Peter Oxenbridge Thatcher of Boston, used "release on recognizance" or bail and simply failed to take any further legal action. In 1878 the mayor of Boston hired a former police officer, one "Captain Savage," to become what many recognize as the first official probation officer. By the mid-19th century, however, many Federal Courts were using a judicial reprieve to suspend sentence, and this posed a legal question. In 1916, the United States Supreme Court held that a Federal Judge (Killets) was without power to suspend a sentence indefinitely, which is known as the Killets Decision. This famous court decision led to the passing of the National Probation Act of 1925, thereby, allowing courts to suspend the imposition of a sentence and place an offender on probation.

Massachusetts developed the first state wide probation system in 1880, and by 1920, 21 other states had followed suit. With the passage of the National Probation Act on March 5, 1925, signed by President Calvin Coolidge, the U.S. Federal Probation Service was established to serve the U.S. Courts. On the state level, pursuant to the Crime Control and Consent Act passed by Congress in 1936, a group of states entered into agreement by

which they would supervise probationers and parolees for each other. Known as the Interstate Compact for the Supervision of Parolees and Probationers, the agreement was originally signed by 25 states in 1937. In 1951, all the states in the United States of America had a working probation system and ratified the Interstate Compact Agreement. In 1959, the newly adopted states, Alaska and Hawaii, in addition the Commonwealth of Puerto Rico, U.S. Virgin Islands and the territories of Guam and American Samoa ratified the act as well.

Probation began as a humanitarian effort to allow first-time and minor offenders a second chance. Early probationers were expected not only to obey the law but also to behave in a morally acceptable fashion. Officers sought to provide moral leadership to help shape probationers' attitudes and behavior with respect to family, religion, employment, and free time. They aimed to ensure that this was enforced as well, and early probationers were given the opportunity to prove themselves and possibly even reduce their sentence.

During the 1920s through the 1950s, the major developments in the field of psychology led probation officers to shift their emphasis from moral leadership to therapeutic counseling. This shift brought three important changes. First, the officer no longer primarily acted as a community supervisor charged with enforcing a particular morality. Second, the officer became more of a clinical social worker whose goal was to help the offender solve psychological and social problems. Third, the offender was expected to become actively involved in the treatment. The pursuit of rehabilitation as the primary goal of probation gave the officer extensive discretion in defining and treating the offender's problems. Officers used their judgment to evaluate each offender and develop a treatment approach to the personal problems that presumably had led to crime. Many states offered to dismiss or expunge the conviction if the probationer fulfilled the terms of the probation.

During the 1960s, major social changes swept across the United States. These changes also affected the field of community corrections. Rather than counseling offenders, probation officers provided them with concrete social services such as assistance with employment, housing, finances, and education. This emphasis on reintegrating offenders

and remedying the social problems they faced was consistent with federal efforts to wage a "War on Poverty." Instead of being a counselor or therapist, the probation officer served as an advocate, dealing with private and public institutions on the offender's behalf.

In the late 1970s the orientation of probation changed again as the goals of rehabilitation and reintegration gave way to "risk management." This approach, still dominant today, seeks to minimize the probability that an offender will commit a new offense. Risk management reflects two basic goals. First, in accord with the deserved-punishment ideal, the punishment should fit the offense, and correctional intervention should neither raise nor lower the level of punishment. Second, according to the community protection criterion, the amount and type of supervision are determined according to the risk that the probationer will return to a life out of compliance with the law.

Prisoners may be released on parole before the end of their sentence, and are normally on probation until the end of the sentence.

➤ **Probation Violations:**

A probation officer may at his discretion issue a probationer a warning, or order him to appear before a court for a probation violation hearing. At the hearing, the probation officer will typically request additional punishment, usually involving incarceration. A prisoner released on parole may have parole revoked, and be recalled to prison. There is no "hard and fast" rule for what type of violation will result in a hearing. One violation that is almost always considered serious is failure to appear for scheduled meetings with the probation officer. Being found in possession of illegal drugs, or being arrested for another crime, is likely to result in a hearing. How seriously the violation is regarded may depend upon the facts of the original offense – for example, if a person has been convicted of a gang-related offense, "association with known criminals" may be viewed as a more serious violation than if the person were on probation for driving a car with a suspended license.

3.3. Community-Based Rehabilitation:

Community-based corrections are a general term that refers to various types of non-institutional correctional programs for criminal offenders. These include, among others, such options as diversion, pretrial release, probation, restitution and community services, temporary release, halfway houses, furlough, and parole. These are considered useful in dealing with offenders in the community.

Many criminologists argue that courts are too harsh on non-violent offenders, and usually a large majority of offenders that serve time in prisons are non-violent. Haas and Alpert argued:

There are three factors that are usually cited in favor of **community-based** corrections. Community supervision is considered to be cheaper than incarceration. However, costs vary from country to country. But there is a claim that prison is three to ten times more expensive than community supervision. Secondly, if we are to measure rehabilitation by the rate of recidivism, prison is no more effective than community supervision. Thirdly, incarceration is more harmful to both the individual and the society. Besides, there is the suffering of family members, particularly that of the children of women offenders (Cole, 1986: 578).

3.3.1. Objectives of Community-Based Rehabilitation:

1. Reintegration:

The types of correctional options mentioned above try to sanction and control criminals without confining them. This will allow offenders to maintain existing contacts and establish new ones in the community. This objective is known as **reintegration**. The meaning of reintegration was cogently summarized, by the 1967 US President's Commission on Law Enforcement and Administration of Justice.

Reintegration is based on the assumption that crime and delinquency are the consequences of community disorganization as well as the psychological and behavioral problems of the offenders. The community's failures are considered to have deprived "offenders of contact with the institutions that are, basically responsible for assuring development of law abiding contact: sound family life, good schools, employment, recreational opportunities, and desirable companions". The psychological problems that are often

manifested by offenders are viewed to be, at least partially, the influence of the environment in which offenders live.

2. Community Protection:

Another objective of community-based corrections is community protection. Even though reintegration is the main feature of community based correctional programs, there are other objectives. The control of offenders, while they remain in the community is an important objective aimed at protecting the society from further harm. Various control mechanisms may be applied to impose prescriptive and proscriptive restrictions on the offender's behavior. Conditions like curfews or demands that the offender attend school, secure a job, avoid substance abuse and contact with undesirable characters engaged in illegal activities can be imposed. Sometimes offenders may be required to stay in supervised environment, such as a halfway house or a diversion center where daily movements are structured.

Enforcing such conditions is not simple. It requires daily visits to the offender at his work place and at home. It may require regular contacts with family members, employers and other relevant associates. In this way it is possible to deter the offender sufficiently enough to protect the community from any risk, though it may not be as much an incapacitation, as a prison commitment may provide with all its dehumanizing effects. In fact *"prisons should be repudiated as useless for any purpose other than locking away persons who are too dangerous to be allowed at large in a free society"* (cited by Haas and Alpert, 1991: 373).

3. Intermediate Punishment:

Intermediate punishment is another objective of community-based corrections. Intermediate punishments are 'alternatives to traditional probation or incarceration. In the continuum of sanctions, which range from probation to incarceration, selected community-based programs such as intensive supervision, house arrest, electronic monitoring, and boot camps provide mid-range dispositions that better reflect the severity of the offence than prison or probation alone. While many offenders require reiterative efforts to facilitate a law-abiding way of life, and many persons cannot be safely released to the community without supervision, many offenders deserve a punishment that is less

harsh than prison but more severe than a fine or minimum supervision probation” (McCarthy and McCarthy, 1991: 4).

Probation and parole have traditionally been considered to comprise correction at the community level. They are still the backbone of community-based corrections. However, recent developments have come up with new additional developments constituting community-based corrections. But the central theme is to provide services within a setting of community involvement. This is carried out without a person experiencing incarceration or as a supplement to or following a period of incarceration. Thus, community-based corrections are those activities that involve the community in the efforts to reintegrate offenders. The mere fact that a community-based program is going on within the community does not make the program community-based (Snarr, 1992: 224).

Intermediate punishments are also used as alternatives to revocation for probationers and parolees who run into difficulties. It is possible to send to prison probation or parole violators. But it is often not desirable to do so. For instance, a probationer who has been obeying the law, and is sticking to a job, but fails to refrain from substance abuse should not be sent to prison, since many aspects of his life are working for him (McCarthy and McCarthy, 1991: 4).

4. Cost-Effectiveness:

Cost-Effectiveness is one of the reasons why community-based corrections are considered to be a better alternative to imprisonment. The problem of prison overcrowding is almost a world wide problem. Therefore, before ever thinking to build new prisons, it may be wise to consider community-based corrections as an alternative. Increased construction of prisons would inevitably lead to more accelerated rate of incarceration with no recognizable impact (McCarthy and McCarthy, 1991: 6).

There are potential conflicts among community-based correctional programs. Current practices, including probation and parole, particularly if one ignores probation and parole violations, are less costly than intermediate punishments. Reintegration requires genuine efforts to assist offenders, "a carefully calculated strategy that involves much more than

control of offenders". The following passage from Cox and Wade (1989) illustrates the conflict, referred to earlier, regarding community-based corrections:

Despite such criticisms of community-based corrections, efforts have grown, over the years, to develop community-based treatment and correctional programs for offenders, in many of the developed countries like the Scandinavian countries, particularly Denmark, and Japan have opted for alternatives to incarceration. Even the American Bureau of Prisons, a strong defender of the prison system, has started to implement community-based corrections and has this to say:

We in corrections know that offenders can change-can be reintegrated in to the community-if provided the necessary assistance, support and supervision. The focus of this effort is, of course, the community-based programs. We must continue and expand these programs and develop new ones of promise... (As cited by Richard Quinney, 1979:370).

3.3.2. Types of Community-Based Corrections:

There are various types of community-based corrections. But we can have an understanding of a few of the major types.

3.3.2.1. Diversion:

Vetter and Silverman defined diversion as *"The removal of an offender from the criminal justice system by channeling him/her into a social casework, mental health, or other type of agency. The term has also been used to describe the handling of juveniles in a system separate from the adult criminal justice system and sentencing of offenders to community based correctional facilities rather than to prison"* (1986: 572).

Thus, diversion implies the formal removing or suspending of criminal proceedings against criminals who have violated the criminal law, in favor of processing them through non-criminal disposition or means. It is a pre-adjudication disposition (Inciardi, 1987: 625).

Inciardi claims that diversion is not a new practice. It is believed to have existed, in an informal fashion, for thousands of years. For instance, a police officer removes a public drunk to an institutional shelter; a prosecutor may decide to *nolle prosequi* a petty theft; a

magistrate may release after admonishing an individual who assaulted a neighbor; etc. "These are discretionary decisions, undertaken at random and off the record, and they tend to be personalized, standard less, and inconsistent. ... (Besides) they serve only to remove offenders from the application of criminal penalties with no attempt to provide appropriate jurisprudential alternatives".

The unsystematic approach in the use of diversion continued for some time. However, a system of formalized diversion, imposing social-therapeutic programs in place of conviction and punishment, in which the offender was placed under the supervision of community agencies, was introduced later on. A Chicago Boy's Court first introduced it, in 1914. This is how one of the judges summarized the advantages of the program:

As arguments in favor of diversion increased, it continued to evolve. It was believed that its use would reduce Court backlog, it would allow early intervention before the development of full-fledged criminal careers, it reduces the costs of criminal processing, and it reinforces the offender's chances for community reintegration. Besides, it had been acknowledged that the criminal justice system was promoting the very opposite of what it was expected to achieve. It had failed to protect society. McBride summarized the failure:

3.3.2.2. Restitution:

Restitution is an ancient principle: "If anyone sins and commits a breach of faith... through robbery... he shall restore it in full, and shall add a fifth to it, and give it to whom it belongs" (Leviticus 6). According to the laws of Hammurabi, 2100 BC, "if a man has stolen an *ox...if* (it belongs) to a god (or) a palace, he shall pay thirty fold; if of a villain...ten fold. If the thief has not the means of payment, he shall be put to death." (McCarthy and McCarthy, 1991: 137).

Restitution is "compensation for injury one has inflicted, in the form of either a payment of money to the victim or the performance of service to the community" (Cole, 1986: 657). There are various rationales for restitution as Gilbert Geis presented them:

1. While fines go directly to courts or government treasuries, monetary restitution goes to the victims of crime, compensating them for injuries, time lost from the work and other losses.
2. It compels the offender to accept personal responsibility for his/her crime.

3. It is likely to reconcile victims and offenders.
4. It can be carried out along with a probation program without an additional program and expenditure. In fact it is carried out as one of the conditions of probation.
5. It provides a chance for including the victim in the administration of justice. (Inciardi, 1987:637)

There are also those who claim that restitution might improve crime reporting if victims were convinced that they would be repaid for what they lost. Restitution, by easing public hostility towards the offender, might reduce the isolation of the offender from the society, thus facilitating his/her reintegration. Restitution would minimize the burden on the taxpayer (Conklin, 1995: 432).

Despite the advantages cited above there are criticisms against restitution. It is suggested that restitution can be a punitive sanction rather than a rehabilitative one because it imposes an additional burden on offenders that they might not ordinarily have. Even more seriously, it has the potential for nullifying any deterrent effect of punishment by allowing criminals to "write a check" and "pay a fee" for their offences. In addition, it is argued that restitution serves the interests of those who are financially better off, thus barring the option for those who are indigent. Though the latter argument may have some truth, there are alternatives that make restitution available to offenders at all socio-economic levels. For instance, juvenile vandals can work to repair the damage caused, drunken drivers can work in alcohol detoxification centers, other offenders can work in hospitals, nursing homes etc. (Inciardi, 1987: 637).

Restitution is used in most cases for economic offences. The goods or money taken from victims and the damages done to their property can be restored through financial payment. Restitution can be used in cases of violence, but there is difficulty of putting price tags on physical injury, and psychological trauma, thus, it is difficult putting limits to the use of restitution in such cases. However, community service can be utilized for all types of offences (McCarthy and McCarthy, 1991: 138).

Though restitution is not yet accepted by the criminal justice system, it is being used widely in many of the developed countries. The factors for its wide application are the growing need for the recognition to respond to the losses suffered by victims, the need to

make offenders more accountable for their crimes, and the need to provide effective alternatives to the use of overcrowded prisons.

3.3.2.3. Temporary Release Programs:

Temporary release programs are the means of preparing inmates for eventual release from institutions and return them to the community by releasing them for specific period of time. The release may be of different nature depending on what the inmate wants to do during the release. The most common types of contemporary release are work release, study release, and furlough. During the release period the inmates may work, attend school, visit with family or make other preparations for final release (ibid., 166).

3.3.2.4. Work Release:

Work release is known under various names. Inciardi described *work release* as follows:

...work release is an alternative to total incarceration whereby inmates are permitted to work for pay in the free community but must spend their nonworking hours back in the institution.

Work release is not a recent innovation. It was initiated ...in 1913 [in Wisconsin, USA]. However, the idea has been only slowly accepted, and it was not until the early 1970s that work release became a widespread correctional practice for felony (serious offences) offenders (Inciardi, 1987: 661).

McCarthy and McCarthy also corroborated Inciardi's description and made it a little more specific (1991:166-67):

...Regardless of the specific term employed, any program that provide for the following conditions may be defined as work release:

1. The labor of prison or jail inmates in the community,
2. Under conditions of relaxed supervision, and
3. For which inmates are paid prevailing free-world wages.

While at work, however, they work under conditions similar (and many times identical) to those of free persons. They must meet the same job requirements set for the employees, and they work with and are supervised by civilians.

In most cases inmates are paid directly by their employers, but they are required to turn their paychecks to the institutional administration. The administration will make deductions of 5 to 10 per cent to reimburse the state for room and board. Payment may also be made to cover cost of maintenance of the family of the inmate or any debts he/she may owe etc. Whatever remains is deposited in a savings account in the name of the inmate to be withdrawn at the time of release. However, the inmate can withdraw a certain amount during incarceration.

The types and locations of institutions are likely to have some influence on work release programs. Institutions located in and around urban areas are likely to have wider access to a variety of employment opportunities. A rural setting, apart from restricted job opportunities, may make it difficult for inmates to mix unnoticed into the local labour force of a tightly knit community.

Work release participants have to be carefully selected. They have to be screened and interviewed to make sure that the right types of inmates are selected. The necessary checks are made to determine that they are not disqualified because they are:

- more than six months from release;
- an escape risk;
- charged with other serious offences;

Further, precautions to be taken are to check whether they have other jurisdictional detainer, or have physical or emotional problems making them incapable of performing in the program; or were revoked from the program in the past (Snarr, 1992:237).

Some countries have been using work release for some time now. For instance, in the United States, as of June 30, 1988 out of total inmates of slightly more than 500,000 almost 15,000 state inmates were on work release. This is about three per cent.

However, despite such uses, there is some opposition to the use of work release. One of the grounds for opposition is that prisoners take away jobs from law-abiding citizens. It is also argued that releases have been exploited because some employers believed convicts should not be paid at normal wage levels. Besides, prison-based training has not always been accepted for modern employment markets (Inciardi, 1987: 662).

3.3.2.5. Furlough:

Furlough is defined by Inciardi as *"an authorized, unescorted absence from prison for work or study, visiting with one's family, or for some other reason deemed rehabilitative by correctional authorities, for a specified period of time"*.

Furloughs are usually allowed, at regular intervals, for 24 to 72 hours. However, the duration and frequency for furlough will depend on statutes, administrative regulations, inmate's custody status and the individual's needs. Usually all overnight furloughs are to the inmate's home or to that of a family member (McCarthy and McCarthy, 1991: 170).

The grant of furloughs may be basing on reasons including some or all of the following:

- To maintain or re-establish family ties;
- To solve family problems;
- To prepare for final release, to attend employment interviews, to search for housing, to obtain a driver's license etc.;
- To attend a short-term educational, or vocational program;
- To attend a special event in the community (e.g. to speak to a civic or student group)

There are some problems that make release on furlough difficult, if not impossible. Inmates released on furlough face transportation problems since, in most cases, they have to make their own arrangements. Even more serious is the problem faced by inmates that do not have families to visit on furlough. Occasionally volunteers or charitable organizations are permitted to provide housing for inmates on furlough. Though there are no statistics, furloughs are used in many countries because they are considered to allow inmates to "wet their feet before plunging into the main stream of society" (McCarthy 170-71).

In most cases, furlough release is granted to selected inmates that are not security risks. Although limited, furlough release provides additional avenue for incarcerated individuals to maintain relationships to minimize some of the controversial issues that surround issues regarding conjugal visits (Snarr, 1992: 147).

3.3.2.6. Study Release:

Study release programs are similar to work release programs. The difference is in the type of placement inmates receive. "Study release inmates are students rather than workers and employees. Like work release inmates, however, they fulfill two roles - students by day and inmates by night" (McCarthy and McCarthy, 1991: 169).

Study release is a natural extension of the work release principle. It is offered to minimum security, parole-eligible inmates that have demonstrated motivation for vocational or academic studies. Study release provides inmates opportunities for full-time, on-site participation in vocational or college education (Inciardi, 1987: 662).

The possibility for offering study leave will depend on the location of the institution and the availability of educational programs. Usually urban areas offer better possibilities than rural areas where, usually, maximum security prisons are more common, and needed resources including physical facilities, such as quiet study areas, counseling and support services are difficult to come by. Besides, schools are also far apart in rural areas. In urban areas minimum-security institutions are more likely to provide such resources (McCarthy and McCarthy, 1992: 169).

The major difference between work release and study release is mainly an economic question. Work release programs reduce the cost of incarceration and enable inmates to get funds, while study release programs increase institutional expenses because of the payment of tuition fees for the courses inmates have to take, unless inmate students obtain financial aid or have their own personal financial resources. Because of the limited availability of funds, the use of study release, even in countries where the program is operational, the program is not extensively used. But funds are not the only limiting factors. Most inmates would probably prefer work release than study release, if given the choice. Work release will most readily result in immediate financial return, whereas study release would provide only long-term and uncertain returns. For all these reasons study releases are much fewer than releases for work (ibid.).

3.3.2.7. Halfway House:

Though the exact origin of **halfway houses** is difficult to establish, its use is said to have begun by the acts of Christian charity. However, during the second half of the 19th

century, the Quakers were supposed to have started community corrections in some of the states in Northeastern United States.

But, the development of halfway houses was the outcome of the efforts of some voluntary or non-governmental organizations. During the first half of the 20th century, groups like the Salvation Army, the YMCA, and YWCA etc. in the United States were operating halfway houses. Gradually, with the availability of government funds, the use of halfway houses became widespread. Governmental halfway houses were more exclusively used to deal with some individuals who were under some sentence obligations such as probation, parole, furlough etc. Privately run halfway houses had greater latitude in operation. They admitted both offenders and non-offenders such as drug-addicts and alcoholics (Snarr, 1992: 237).

➤ **Objectives and Benefits of Halfway Houses:**

Halfway houses have a number of benefits to the individual offender, the community and the justice system. Providing the ex-offender with food, shelter, clothing and other necessities is a very humane act than simply returning the offender to the community without identifying whether he can locate a job or a place to live in on his own. Though it is a prior condition for a parolee to have a place to live in, it is not usually a realistic plan. There may be problems with family members that make such arrangements difficult to maintain for the ex-offender. Stresses of adjustment might also make living with family members untenable. An offender, hoping to gain release on parole may accept any job just to facilitate his release. But once on parole he may not be very happy with the job resulting in early termination. Halfway houses can help such things from happening by providing the ex-offender with basic necessities until he can locate housing and employment suitable enough for his needs (McCarthy and McCarthy, 1991: 209-10).

Halfway houses can also provide the emotional support offenders may need in the management of demands and pressures of readjustment. Informal counseling is provided and staff is always ready to listen to and discuss residents' problems and dilemmas. Besides, the offender is in a setting where he can be sure of being understood and get support. Halfway houses can provide more structured therapeutic programs to those who need intensive intervention. The offender can get such programs as drug, alcohol or

family counseling to develop skills and resources to meet community demands while he is still in a semi-protected environment.

Halfway houses can also assist ex-inmates find community services. "The Halfway house staff can act as advocates for ex-offenders, providing them with support, security, and direct assistance while plans for education, training, employment services, financial assistance, and counseling from community agencies are being developed and implemented". Community programs may have large applicants and ex-offenders cannot afford such delays. Halfway house staff can help bridge bureaucratic processes while it meets the individual's most immediate needs.

Halfway houses provide services to the community in two ways. In the first place they provide a secure environment to protect the community from ex-offenders. The activities of residents are properly monitored. In addition, "support services, staff role models, and recreational pursuits are available". Persons supervised under such conditions are less likely to involve themselves in criminal behavior. Secondly, the facilitation of adjustment of the resident inmates to the community, by the staff of halfway houses, will reduce recidivism.

Halfway houses, like other community treatment centers and minimum security facilities, will provide low-cost alternatives to prison systems for handling non-dangerous offenders. Therefore, halfway houses are considered to be reasonable and cost-effective ways of expanding the capacities of prisons by minimizing over-crowdedness without having to build additional prisons.

Despite the advantages cited above, there are some criticisms against halfway houses centered around public safety and deterrence. Many critics express concern about the potential continued criminal behavior from ex-offenders living together in halfway houses in residential areas. Other critics consider halfway houses as being "soft" on offenders and unable to provide the same deterrent effect as incarceration in prisons. These are real concerns that have to be seriously considered by administrators of halfway houses (Snarr, 1991: 236).

➤ **Programs of Halfway Houses**

Though programs of halfway houses vary greatly, some generalization can be made as pointed out by Snarr. Nearly all halfway houses operate with reintegration model. For those halfway house programs that serve offenders who have just been released from incarceration, the notion of decompression applies. The experience of incarceration often conditions the offender to norms, expectations, and behavior patterns that are unacceptable in the "free world". The halfway house operates to ease the transition from incarceration to society.

Halfway houses also recognize "**self correction**" as a program. Offenders, given the chance and conducive atmosphere, are less likely to recidivate. In some cases halfway house programs do not go beyond providing temporary shelter and minimal support to assist offenders. In other cases, they "provide or assist residents in obtaining shelter, food, clothing, counseling, education, vocational training, employment, and temporary financial assistance". Halfway house programs tend to be structured as a phased reentry approach as summarized below:

Phase I: This phase provides orientation and maximum supervision, with limited freedoms and a very structured day. Emphasis is placed upon learning the rules and beginning a program (length of time varies from a few days to a few weeks).

Phase II: Phase II marks initial entry into halfway house activities. There is a lessening of restrictions; residents enter programs and seek employment. The supervision level is lowered, but attention is given to individual adjustment.

Phase III: During this phase, residents experience full participation in halfway house program activities and outside employment. They qualify *for* extended hours, home visits, and additional freedoms.

Phase IV: The final phase marks an exit from the halfway house, although a person may remain involved through aftercare (i.e., outpatient and outreach programs)"

The length of stay in each phase will depend on the policy of the halfway house, individual adjustment and the condition of placement. But generally inmates stay from three to four months. In some cases it may range from a few weeks to two years.

The effectiveness of halfway houses varies from country to country and on the effective planning and execution of the programs. The question of qualified and committed staff

and the availability of community resources are also crucial. Generally, successes prevail over failures. As a result, more and more countries are trying it out.

Review Questions:

1. Write a short note on the African experience of prison system.
2. What do you understand by parole system? Do you think that it is an effective reformatory system? How do you justify the victim's dissatisfaction on the early release of his offender on parole?
3. Explain the concept of probation. Refer the provisions of Criminal Code relating to probation and prepare a short a essay on the probation system of Ethiopia.
4. What do you understand by community based rehabilitation? Explain its objectives.
5. Explain different types of community based rehabilitation. Investigate how
6. many of them are in use in Ethiopia and how effective they are?

Write short notes on:

Restitution

Diversion

Temporary release programs

Se

By way

be assessed in the light of its impact on society in general and the criminal in particular.

Punishment of offenders though necessarily arduous, is inevitable in the interest of the community at large; therefore, every civilized nation must have a definite penal program.

An ideal penal system must essentially include the following characteristics:

1. A rational penal policy should aim at protecting the society from crimes and reclaim criminals by removing imperfections in the penal law of the country. Greater emphasis should be on prevention rather than cure. Necessary steps should be taken to ensure

that people do not get opportunity to commit crime rather than trying to reform criminality. The law must provide according to variations in culpability.

2. Expressing his concern for the efficacy of punishment. *Bentham*, the well known English law reformer commented that penal policy must be in conformity with the principle of hedonism, that is, the utilitarian doctrine of *pain* and *pleasure*. The pleasure derived from criminal act must not outweigh the pain inflicted by way of punishment; otherwise the punishment is bound to lose its significance. That apart, punishment to be effective should be proportionate to the gravity of the offence.
3. It is an accepted fact that delay defeats justice. Inordinate delay in sentencing negates its deterrent effect. It is, therefore, desired that punishment must follow the crime. Elimination of delay in awarding punishment is perhaps the most fundamental requirement of an ideal penal program. It must be noted that inordinate delay in disposal of cases by courts is causing untold miseries to poor litigants, particularly in India, as a result of which people are losing faith in these institutions of justice.
4. Punishment connotes society's disapprobation for a particular human conduct and penal sanctions act as a threat to the aggressor to refrain from committing such forbidden acts of violence. Thus the ultimate object of punishment is to protect society against law-breakers. As *Beccaria* puts it, the purpose of punishment is 'to make crime an ill-bargain for the offender'.
5. Experience has shown that the principle of equal punishment for similar offences does not prove effective for all types of criminals. The young and the first offenders must be treated differently than the recidivists and habitual offenders. The justification for this differential treatment lies in the fact that the effect of punishment varies from criminal to criminal depending on his age, sex, intellect, mental depravity, responsive attitude and social circumstances. It is for this reason that classification of criminals into different categories is deemed necessary so that they could be reformed through adequate correctional measures.
6. It is significant to note that efficacy of punishment essentially depends on the proper functioning of agencies which administer criminal justice. These agencies must command respect among the public. Everyone including the criminal himself should feel convinced that justice has been done to him. Disproportionate and unduly harsh

punishment shall make the members of community feel that their life is unsafe and insecure in the hands of criminal law administrators and their distrust for law and penal institutions shall jeopardize the cause of criminal justice. Unfortunately, the position in India in this regard is far from satisfactory. Particularly, the functioning of the police and prisons needs improvement so that people regain their lost faith in these august institutions of law and justice.

7. Reformation of criminals should be the object of punishment while 'individualization' the method of it. Thus reformation in case of juveniles, first offenders and women offenders and deterrence for hardened criminals and recidivists should be the ultimate object of penal policy. The State has to rehabilitate the offender rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalization. The punishment to be efficacious must include the combination of deterrence, prevention and reformation so that it prevents a future wrong besides bringing a change in the attitude of the offender through reformatory measures during the period of his incarceration.
8. While appreciating the need for reformatory approach towards criminals, a word of caution as to the extent to which the principle is to be applied, seems necessary. It is generally observed that in their enthusiasm to reform the criminals, the authorities associated with penal institutions such as prisons and reformatories convert these institutions into an earthly paradise providing all sorts of comforts to inmates. Consequently, inmates often take the institution as an easy resort to spend their life comfortably without shouldering any responsibilities. This obviously defeats the very object of reformation. It is therefore, desired that life in these institutions must involve certain degree of hardship and rigour so that the inmate is always reminded of his bitter experiences of institutional life after his release. This will help in keeping him away from repetition of criminal acts. The penal system should be designed so as to ensure that offenders improve by suffering for their offences. Unfortunately, the trend of judicial sentencing in India is towards excessive reformation with the result punishment is losing all its effect and consequently there is steep rise in crime rate.
9. The authorities concerned with the criminal justice administration should refrain from projecting the image of offenders as "big shot". It must be remembered that

punishment fails when it raises the status of the convicted offender in his group. This is particularly true with criminal gangs. The rewards so often announced by the Government on the heads of notorious murderers, dacoits and criminals seem to undermine this aspect of penal policy.

10. Most of the modern penologists are opposed to retention of capital punishment on humanitarian ground. They argue that killing of man is inhumane. That apart, if an innocent person is executed due to erroneous justice that will do irreparable harm. Some argue that putting an offender to death virtually amounts to a cold-blooded murder which serves no useful purpose. The real object of punishment being reformation and not destruction of the criminal, death sentence hardly serves any purpose. Thus enlightened view is averse to the retention of capital punishment since it is grossly unjust and against the principles of humanity.

But it must also be pointed out that despite growing disinclination for awarding death penalty, there is a growing reluctance to abolish it. It is so because of a general feeling that threat of infliction of death sentence itself proves as an effective deterrent. Therefore, the ideal policy is to retain capital punishment in the Statute Book to be used in 'rarest of rare' cases. It is true that the test of 'rarest of rare cases' has not been acceptable to many because of the fact that what may appear to be a rarest of rare case to one Judge may not necessarily appear to be so to another Judge.

11. Punishment should include both compensation as well as imprisonment. As a matter of general policy, it would be ideal to prescribe reparation or payment of compensation for offences relating to property while penal sentence with or without fine may be awarded for crimes against person, particularly for crimes against women and children.
12. The efficacy of punishment, by and large, depends on its impartiality. The penal policy should, therefore, be completely free from considerations as to the caste, creed, religion or status of the offender.
13. As a sound principle of criminal justice, it is for the legislature to prescribe maximum limit of punishment for every offence in the Criminal Code without laying down any minimum limit. This will enable law courts to award punishment according to the

requirements of individual offender thus infusing an element of discretion in judicial sentencing which is sine qua non for individualized treatment model.

14. The system of solitary confinement has now become obsolete and outdated. It is discarded because it is tortuous and imposes excessive suffering on the offender. Modern penologists treat solitary confinement as a method of putting offenders to death without bloodshed. Confining convicts in isolated prison-cells without any work makes them idle and aggressive and they return to society as more dangerous and aggressive criminals after their release. The torture of solitude and isolation is so painful that it completely destroys the personality of the offender and he turns hostile and indifference to the community.
15. Punishment should always serve as a measure of social defence. This in other words, means that elimination of incorrigibles and rehabilitation of corrigible should be the ultimate object of penal justice. An ideal penal policy should have enough elasticity so as to mold itself with the changing needs of time and place.

The above verbalizations with regard to punishment amply suggest that no single theory whether deterrent, preventive, retributive, retributive or reformative can help in eliminating crimes and criminals from society. It is only through an effective combination of two or more of these theories that an ideal penal program can be drawn to combat crimes. Some socialist countries have explicitly mentioned in their criminal codes the aims of sentencing the offender. This is indeed a welcome step which other countries should take note of while formulating their penal policy.

More recently, British and American penologists have shown considerable concern for plight of the 'victims' by focusing their attention on the diverse aspects of victimology. This relatively new concept covers within its ambit not only the victims of individual criminality, but also those of the abuse of criminal process and administration of justice. For this purpose it is necessary to develop human rights consciousness among the law-enforcement personnel particularly, the police and jail authorities.

Unit Summary:

Punishment and *rehabilitation* are, generally speaking, two main objectives of correctional administration. However, objectives shift from time to time depending on

public opinion and the type of political leadership. In modern times generally rehabilitation seems to gain more attention, though this varies from country to country. Gradually societies resorted to treatment. But the conflict between the punitive and treatment reactions of society, as pointed out by Edwin Sutherland continued to be unabated. There are those who argue that, despite the shift to the treatment approach, crime is on the increase.

Prisons are conventionally institutions, which form part of the criminal justice system of a country, such that imprisonment or incarceration is a legal penalty that may be imposed by the state for the commission of a crime.

The juvenile justice system in our country is in not conformity with the UN Standard Minimum Rules for the Administration of Juvenile Justice adopted by the Seventh UN Congress on the Prevention of Crimes and Treatment of offenders held in 1985. The Revised Criminal Code provides for many reasonable and welcome instructions for juvenile treatment. But there is serious problem with infrastructure and proper will of the authorities concerned to take steps towards the implementation of such provisions.

There are various theories concerning the purpose of punishment ranging from retribution, through prevention, deterrence, reformation and education to rehabilitation. However, while each one of them has some value of its own none of them is universally acceptable. Different types of punishments are designed do achieve different aims of punishment.

Parole and probation have been tried by different countries and have been proved to serve best alternatives for the imprisonment to bring back the criminal to the society as a law abiding citizen. These strategies seem to appeal to his mind persuasively as he gets a lenient and compassionate treatment from the law enforcement system.

Community-based corrections are a general term that refers to various types of non-institutional correctional programs for criminal offenders. These include, among others, such options as diversion, pretrial release, probation, restitution and community services, temporary release, halfway houses, furlough, and parole. These are considered useful in dealing with offenders in the community.

Review Questions:

Write an essay on the essential features of an effective criminal justice system.

Case Comments:

Study the cases given below. Discuss each case and decide the following:

1. Was justice done?
2. If you were the judge, what other facts and circumstances would you like to be informed of?
3. If you were the judge, would you give a different sentence?
4. How would you have felt if you had been the victim of the crime?
5. How would you have felt if you had been the defendant?

1. Crime of Passion:

Binyam Bahiru, a thirty-six-old man, while preparing dinner became involved in an argument with his drunken wife. In a fit of a rage Binyam, using the kitchen knife with which he had been preparing the meal, stabbed and killed his wife. He immediately called for assistance, and readily confessed when the first policeman appeared on the scene with the ambulance attendant. He pleaded guilty of the crime. The investigation indicated that

Binyam was a rigid individual who never drank, worked regularly, and had no previous criminal record. His thirty-year-old deceased wife, and mother of three children, was a “fine girl” when sober but was frequently drunk and on a number of occasions when intoxicated had left their small children unattended. After due consideration of the background of the crime and especially of the plight of the three motherless youngsters, the judge placed Binyam on probation so that he could work, support and take care of the children. On probation Binyam adjusted well, worked regularly, appeared to be devoted to the children and a few years later was discharged as “improved” from probation.

2. Homicide:

In Addis Ababa two young men decided to rob a bank. They were Cherinet Chla, aged 16, and Dereje Dawit, 19. During the robbery they were disturbed by Seom Mengistu, a policeman. Cherinet produced a gun and killed the policeman. After the trial and conviction of both the accused, Cherinet was sentenced to life imprisonment because he was under 18. Dereje who had never touched the gun, was over 18. He was sentenced to death and was hanged.

2. Shop-lifting:

In June 2002 Ms. Selma Sultana, a well-known TV personality was convicted of stealing a tin of tuna fish and a carton of cream, total value 100 Birr, from a small shop. The case was given enormous publicity due to her celebrity personality. She was fined 400 Birr and had to pay 200 Birr towards the cost of the case. A few days later she killed herself.

3. Unusual Charges:

A woman was treated by a psychiatrist, became romantically involved with him, and subsequently married him. After more than five years of marriage they divorced, at which time the woman sued her ex-husband for psychiatric malpractice and negligence claiming that the romantic or sexual relationship between them started before the formal psychiatric treatment ended. She contended that her ex-husband had breached the

standard of care as a psychiatrist by becoming romantically involved with her, and sought punitive damages. The court rejected her claim.

References:

Books:

1. Andargachew Tesfaye, *The Crime Problem in Ethiopia* (1998)
2. Adler, Muller, Laufer - "Criminology", 4th ed. Mc Graw-Hill Companies, New York, 2001.
3. Andargachew Tesfaye, -"The Crime problem And Its Correction", Vol. II, Addis Baba University Press, Addis Ababa, 2004.
4. Edwin H. Sutherland and Donald R. Cressey, *Principles of Criminology* (6th ed, 1960)
5. Freda et al, *Criminology*, (2nd ed, 1995)
6. Don C. Gibbons, *Society, Crime and Criminal Behavior* (1992)
7. Paranjape. N.V- "Criminology and Penology", 13th ed. Central Law Publications, Allahabad, India, 2007

Articles:

- COMMITTEE ON THE RIGHTS OF THE CHILD, Twenty-Sixth Session, Summary record of the 676th meeting: Ethiopia. 18/01/2001. CRC/C/SR.676. (Summary Record). Accessed on 2-4-2009 from:
[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/01c9b4b4b3b92440c12569df003abf32?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/01c9b4b4b3b92440c12569df003abf32?Opendocument)
- **Supreme Court Juvenile. Accesses on 2-4-2009 from:**
<http://www.fsc.gov.et/Juvenile/index.html>
- **Shriniwas Gupta, 'JUVENILE OFFENDERS: RIGHT TO PREFERENTIAL TREATMENT IN INDIA'**. Accessed on 2-4-2009 from:
<http://www.cili.in/article/download/1660/1273>.

Recommended Readings

Sue T. Reid, *Crime and Criminology* (9th ed., 2000)

John E. Conklin, *Criminology* (5th ed, 1995)

Clinnard and Meier, *Sociology of Deviant Behavior* (1992)

Laws

The Ethiopian Constitution of 1995

The Ethiopian Criminal Code of 2004

ANNEXURE

SUPREME COURT JUVENILE

Telephone 553400Ext-205 OR
565603
Fax 6166
560295

Background and Justification:

Ethiopia today has a Constitution which it adopted in 1994 with the participation of the representatives of all segments of society: trade unions, professional associations, the private sector, etc. The Constitution, among other things, consists of a chapter on human rights. As such, it tells readers all what these rights constitute and how they should be respected – very much like what the Bill of Rights does.

Furthermore, Ethiopia has ratified the most important international treaties on human rights, foremost among which are the International Human Rights Covenants of 1966 (the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights) and the Convention on the Rights of the Child.

It goes without saying that these Covenants and the Ethiopian Constitution provide the legal framework necessary to ensure the respect of the rights of Ethiopians in general and of Ethiopian children in particular. The respect of children's rights as practiced in Ethiopia, however, leaves much to be desired. The main reason behind this is that the laws of the land, having been enacted some 50 years back, are not in total agreement with the provisions of the Covenants and the Constitution mentioned above with regard especially to the treatment of children is in conflict with the law. In light of the fact that this situation is prejudicial to the care, protection, and wellbeing of our children, it cannot be allowed to continue. Something must be done about the discordance, and done immediately. Nevertheless, it calls for the concerted effort of all concerned government and non-governmental institutions as well as society.

To spearhead this effort and bring about the desired change, a Project Office has been established in the middle of 1999 within the Federal Supreme Court with financial and technical support from donor organizations. The office is headed by a Project Officer who is responsible to the Vice President of the Supreme Court and receives instructions from a Steering Committee formed for this purpose. The Committee's members are drawn from various concerned governmental and non-governmental institutions.

II. Objectives of the Project Office

Long -Term Objectives

- To propose ideas towards reforming the juvenile justice system of the country to adequately protect the rights of children in line with the international child right standards;
- To enable the juvenile justice system of the country to develop the necessary infrastructure and specialized capacity for the realization of the provisions of the UN Convention on the Rights of the Child, the Constitution of the FDRE and the working laws of the country pertaining to children.

Short- term objectives

- To improve the existing mode of operation of the judiciary, the police and reformatory organizations in dealing with cases of children;
- To improve the institutional linkage among the judiciary, the police, reformatory organizations and other concerned bodies for the effective realization of the provisions prescribed in the working laws of the country pertaining to children;
- To enable the judiciary, the police and staff members of reformatory organizations to acquire adequate professional knowledge and skills on child protection and influence their attitude towards children and their practice.

III. Activities

To realize the objectives mentioned above, the Project Office shall accomplish the following activities:

- Prepare project proposals to enable the Project Office to secure funds from donor organizations and Embassies for implementing the planned activities of the office.
- Prepare timely activity and financial reports of the Project Office and ensure that all project reports are communicated to the Office of the Vice President, partners, donor organizations etc. in a complete and timely manner.

- Organize national workshops on juvenile justice for representatives of concerned government and non-government organizations to discuss the legal and other practical problems related to the protection of the rights of children.
- Cause an assessment on the provisions prescribed in the working laws of the country pertaining to children and compare their status with the international child right standards.
- Based on the outcome of the assessment, identify the articles from the penal code, the civil code and the criminal and civil procedures that need reform.
- Assess the structural framework of the judiciary and the police dealing with children and come up with a proposal on how to improve their mode of operation, including suggestions for new structures, if necessary.
- Examine the institutional linkages among the courts, the prosecutors' offices, the police and reformatory organizations and propose ideas on how to strengthen the working relations among these organizations towards reforming the juvenile justice system of the country.
- Cause an in-depth assessment of problems related with the Remand Home in the country and develop a proposal for improving the existing mode of operation and for the establishment of additional homes in other places, if necessary .
- Organize training programs for the judiciary, the police and staff members of reformatory organizations on child right issues and child protection programs.
- Liaise with and try to create a working relationship between the Federal Supreme Court and relevant government and non-government organizations conducive to the realization of the objectives of the Project Office.

Accomplish other activities as per the instruction of the Vice President Office and the steering committee.

IV. Strategies

- A Steering Committee comprising representatives of the Federal Supreme Court, the Ministry of Justice, the Ministry of Labour and Social Affairs, the Addis

Ababa Administration Police Commission, the British and the Netherlands Embassies, Rädä Barnen, Redd Barna and Forum on Street Children-Ethiopia shall be established to support the Project Office. The Steering Committee will be chaired by the Vice President of the Federal Supreme Court and the Project Officer shall be the committee's secretary.

- The Steering Committee shall solicit and secure funds for the realization of the planned activities of the Project Office and provides other technical support to the office.
- The Steering Committee shall approve annual plan of action and budget for the Project Office and monitor the implementation of the planned activities of the Office through periodic activity and financial reports.

V. Output

- The mode of operation of the judiciary, the police and reformatory organizations dealing with children shall be improved.
- The institutional framework of the courts shall be improved and be in a better position to work in the best interest of children.
- The institutional linkage of the concerned bodies involved in juvenile justice shall be improved.
- The problems in the operation of the remand homes shall be identified.
- Selected staff members of the judiciary, police and reformatory organizations shall be trained on child right issues and child protection program

➤ **Accessed on 2-4-2009 from: <http://www.fsc.gov.et/Juvenile/index.html>**