Unit-04 ❑ Emergence of Crime in North America, Theories of Crime

Structure :

4.1. Introduction

Crime is a common phenomenon in each and every society. Hence concept of crime and consequent development of criminology become a subject of serious study and observation to every society. Crime is stated to be an indicator of social progress. The crime can tell us about the society we live in. Thus the way in which a society responds to crime can tell us much about what the society values and disvalues, what the society sets in priority and how society strives to main social stability through Law and the administration of justice and between the achievement of social order and personal freedom. The rise and decline of particular kind of crime can tell us much about the way a society is changing and with what consequences. Similarly, the social location and distribution of different types of crime and the strategies used in their control, can reveal a great deal about how a society is organised and about whose interests its organisation serves. Thus the purpose of criminology is not simply to solve the problem but suggest remedial and preventive measures. Crimes in North America is of manifold involving social, moral and economic crimes. North America is a developed country with decentralised economy. Since its independence from 1776 for almost during 230 years it had to witness varigated form of crimes. And as a natural consequence the vast country had given birth many renowned schools of criminology which have during the passage of time endevoured to institutions on sound footing to give the world new light on criminal science and criminology and relevant criminal law.

4.2. Emergence of crime in North America

Dr. William Henry and the Child Guidence Clinics

In American child guidance clinics provided positivist roots for dealing with Juvenile problems. Dr. William Henry established first ‘‘child guidance’’ clinic in 1909 in Chicago. The work

of the clinics was organised on a case study approach, involving a psychiatrist, physician, psychologist and social worker to collect information on the "multiple causes" of individual cases of Juvenile Delinquency. Healy published an account of his methods and findings in 1914, under the appropriately positive title, ''The Individual Delinquent''. Healy's work became a model for establishment of such clinics in a number of major cities. Healy is considered to be a pioneer in establishing child guidance clinics in massive scale.

Another land-mark event in the history of juvenile study in America in the Natural Conference of Criminal Law and Criminology which was held in the year 1909 at the law school of North Western University. The conference was attended by various noted personalities from the field of sociology, psychiatry, medicine, penology, criminology and distinguished members of the Bench and the Bar of the criminal courts. Another important Institute came into being in the year 1920. The name of the Institute is American Institute of Criminal Law and Criminology. Subsequently their "Journal of Criminal law and Criminology was published to highlight and analyse various problems pertaining to Juveniles and Juvenile delinquency. This publication continued for almost seven decades. The Institute considered it as a prime task to publish various works of European criminologists and psychiatrists including Ferri and Lombroso. The first American text book on crime written for academic use was authored by Maurice Parmelle in 1981. Although Richard Quinney (1975) creolits Parmelle's criminology with focussing attention more clearly on sociologial aspects of crime. From the beginning the fields of sociology and criminology were closely linked in North America (clinard) 1951) and both were product of what is called the "progressive era" in American History (Gibbons, 1979). The progressive era was characterised by a growing awareness of the harsh social consequences of American's rapid industrialisation and urbanization.

The names of Edwin Sutherland's and John Gillin deserve mentioning. Midurstern roots of American Criminology exactly through these two great personalities. In 1924 Edwin Sutherland published "Criminology" and 1926 John Gillin published criminology and penology. Southerland received doctorate from the University of Chicago and spent most of his career at Indiana University. Actually various social theories for dealing juvenile problems of scientifically given during twentinth century. It is known as modern era in study and explanation various psychological social problem and criminal problems, sociol-legal problems.

The Chicago School

The Chicago school is an esteemed institution in generating real coherence and subtained development in the field of criminology and social psychology. Since 1920 eminent sociologists Robert Park, Ernest Burgess and W. I. Thomas Park, all were attached to Chicago University. Department of Sociology. They all contributed to development and study of social psychology concerning the child and juvenile and juvenile delinquenncy. Criminal research came into full flourish in Chicago in 1930. Two giants of this period were Clifford Show and Henry Mcjat. They continued their scientific research in the child guidance clinic emphasising greatly on social dis-organisation and its effect on juvenile delinquency.

Show and Mckay (1931, 1942) found that Juvenile Court referral rates followed a gradient through the zones; that is the rates were highest in the inner-city or, code areas and declined with distance outward from the city-centre. It could better be said that the research of Shaw and Mckey influenced and eventually was influenced by various contemporary theories added with Mckey and Shaw to give new shape to the Chicago School and the Gang provided an important antidote to an increasingly grim portrayal of the urban criminal and delinquent.

Conflict and Contradictions in the Study of Crime

The initial stage of the study of North American Criminology was positivist in character—emphasizing and focussing on criminal behaviour more than criminal law, on determining causes of such behaviours, and on differentiation of criminals from non-criminals—more recent event have seen a return of criminological interest to its classical roots, with a particular focus on the role of criminal law in generating legal labels that may constitute the clearest distinctions which exist between criminals and non-criminals. This embarks upto analytical study of the criminals and their crime pattern.

It is agreed on all hands that criminology as a subject of study and observation and analysis is continually changing. An important change in criminological work has been a disagreement about the role that process of consensus and conflict play in our society, particularly in the definition of crime and in the role that criminologists should play in influencing these events. Many of the early criminological theories were premised on the implicit assumption that there is a consensus of values and interests in the definition of crime. Recall, for example, that Garofalo of "natural crimes" that violated two basic "altruistic sentiments". The assumption was that these sentiments were widely shared and reflective of mutual interests in all parts of society. In recent years this assumptions has been questioned in a variety of ways and often replaced by the assumption that values and interests, particularly between social and economic classes, are in conflict (e.g. Turk-1969, Quinney 1975). This had led to a renewed interest in the criminal law, and to a questioning to a social and economic purposes to which the criminal law is put.

In consequence of the discussion in the foregoing paras, the study of crime, often called the "new" "critical" or "conflict" criminology. It is to be remembered that this type of demand has led to some very serious conflicts among academic criminologists themselves, particularly involving the roles they should play in modern society. One way of understanding these conflicts is to note how they developed in the United States, particularly in the School of Criminology at Berkeley and more generally in Britain.

Conflict between Berkely and Britain

The School of Criminology of Berkley opened on 1949 with no anticipation of the turbulance that would eventually follow. During the first decade of its existence it offered a strong vocational emphasis, with most of its programme directed to the training of persons to work, particularly at the administrative levels, the law enforcement and correction agencies, criminology was ex-

pected here to influence government policy by influencing the very people who would carry out. However, by 1961 the school came under attack from the university for being too vocational. The eventual outcome was a reorganisation of the school on an interdisciplinary basis that was to be more theoretical and academic in character. The new orientation that persisted for much of the second decade of the school's existence focussed on social scientific and legal approaches to the study of crime. As well, the emphasis of the school's programme now shifted from undergraduate to graduate instruction. This had implication to the teachers. Researchers as well government law policy makers. Three British criminologists—Ian Taylor, Pol Walton and Jock Young—authored book titled "The new criminology" (1973) which again called upon criminologists to assume more and more active role, this time in ending the part played by the state in defining "human diversity" as crime. In its place, the new criminologists called for a ''crime-free society'' based on ''Socialists diversity.''

4.3. Theories of Crime

Theories developed in the early and mid nineteenth century examined the question "why". The theories of under control try to explain, ''would any one violate rules of social conduct that nearly all of us accept? The theories talk about how and why some of us are beyond or, out of control. Thus the theories we consider here can be regarded as ''consensus theories'' and why exist in opposition.

There are at least three kinds of theories and each explains lawbreaking in different way.

a) Social Disorganisation Theory

This theory originated from the Chicago school and the work of several of its most important members. W. I. Thomas; Fredrick Thrasher and Clifford Shaw and his associates. Prominent in the work of all the early Chicago criminologists was the idea of social control. Like Durkheim, these theories believed that it was the absence or, failure of controls that explained deviant behaviour.

W. I. Thomas and the unadiusted Girl/Women :—Social control is necessary according to Thomas (1923), because there is an inevitable contradiction between the wants and needs of individuals and society. In particular, individuals pursue their wishes for four things—(a) Security (b) New-experience (c) Response (d) Recognition—while "an organised society seeks...to regulate the conflicts and competition inevitable between its members in the pursuit of their wishes." The instruments of social control or regulation are "definitions of situations these comprise a moral code that for Thomas are society's defence against social disorganisation. However Thomas also observed that modern, urban, capitalist societies are characterised by competing and socially disorganising definitions of individual behaviour, including such ideas as "women's right?" Thomas saw young women seeking new opportunities previously unavailable settings. This movements

away from the home and its primary relationships was seen as weekending traditional social controls and subjecting young women to conflicting definitious of situations.

Thomas was interested in using these ideas to explain the involvement of young women in prostitution.

In the unadiusted girls, Thomas argued that the process of social change that were occurring in cities like Chicago were destroying older social controls and the force of definitions favouring such ideas as ‘‘virginity’’ and ‘‘puberty’’. Particularly for young women whose economic resources are limited, Thomas argued that sex now took on new condition of the realization of other wishes. It is their capital. Thus Thomas saw sex as a medium through which improvised young women could achieve their wishes for security, new experience and response. In fine postutation was seen as a product of the socially disorganising forces of the city. The theories of social disorganisation saw informal society as requiring formal control that is laws to take their place.

b) Differential Association Theory—

Edwin Suther Land, Propounded the ‘‘Differentist Association’’ theory. According to this theory, individual learn the values, attitudes, and motives for criminal behaviour through interaction with others. This theory in one of the major theories of deviance. Although this theory deals with how an individual becomes a criminal, but it does not focus on the cause of becoming a criminal. The theory Suggests that criminal behaviour is learned, in interaction with other people through communication. In most of the carer such interaction takes place within intimate personal group. The learning of the criminal behaviour may include techniquer of Commetting the crime, which are guided by some kind of drives, atttudes & motives. There drives or motives in learned from definition of legal codes an favourable or unfavorable. The process of learning of criminal behaviour in just similar to learning of any other type of behaviour. The theory also emphasis that it may very in frequency, priority or intensity. Thus this theory does not take into account the personal traits and only based on the influence of environment the individual.

c) Social Control Theory

The theory of Social control though does not deal with the cause of crime, but its main four is an how to make the people of a society to obey the Social norms. Travis Mirschi, viewed that due to strong social bonds, people obey the rules and regulation of the society. The social bonds includes Attachment, Commitment, involvement and Belief.

This theory complains, that if people’s relationship within the society is strong enough, then it is more likely that people will obey the law but if these relationship are weak, there right be occasions, where the laws may not be obeyed. Further it suggests that, lack of commitment to a particular life style like marriage etc, may lead to duration from lifestyle. Therefore if a person is motivated to be engaged in law abiding behaviour, and is socialised to obey the expected social norm, then the chancer of involvement in crime will reduce.

d) Lebelling Theory—Labelling theory explains that, people’s behaviour is greatly influenced by how they are lebelled by others. This theory is an important approach for understanding

delinquent behavioral patterns. Criminal act is desigrated as deviant in nature by the people who are in power and formulate Laws. These powerful group of people, formulate, execute & apply brands or labels on the subordinate group, as according to them they break the rules of the Society. Eg. Amongst the rich & affluent societies, the act of breaking window glasses, climping up into neighbour's yard by children may be tagged as "Innocence" or "Naughty", However; if same act in done by children who belong to Socio-Economically poor Societies, they as branded or lebelled as" "Juvenile Delinquents."

Once an individual is labelled as deviant it becomes difficult to remove it. They are considered as criminals and are never trusted in future. Even the individual accepts tho fact as and acts that way.

Another point that may draw our attention, as being the students of Social Work, is that even if an individual who was in a correctional home for commiting some crime, & gets releored, as still lebelled as "ex-criminal". They are not accepted by the Society even though they repent on what they did & does not commit any further criminal act.

4.4 Exercises

[i] State the contribution of Dr. William Henry and the child guidance clinic in the context of emergence of crime in North America.

[ii] Trace the growth and development of THE CHICAGO SCHOOL.

[iii] State the proposition W. I. Thomas in connection with unadjusted girl/women for social control.

[iv] Write short notes on social disorganisation theory & Labelling Theory.

Unit-05 ❑ Concept and Importance of Correctional Service, Correctional Legislation—IPC, CR PC, Prison Act, Reformatory School, Probation of offenders Act.

Structure :

5.1 Concept and importance of correctional service

Social psychologists, social scientists, criminologists led to the developments of the concept of correctional service. This concept got wide acceptance in the early part of 20th century. Cesare Lombroso (1836-1909) is regarded as the father of modern criminology. He was the first to employ scientific method in explaining criminal behaviour and he shifted the emphasis from criminal act to criminal man : He developed the idea of classification of criminals. He was quite confident in the belief that many of criminal may be transformed into ideal citizen if scientific correctional methods are applied.

The Indian administration of criminal justice system began to assume new form and dimension with the advent of British. The East India Company was interested in reforming the criminal justice system. Lord Macaulay drew the attention of the British Government towards terrible conditions of the jails and on his recommendation a jail committe was set up in 1836. The committee gave a number of recommendations but rejected any reformative programme. The 2nd jail committee was set-up in 1864 which also gave a number of recommendations, especially for the space of living, diet, clothing, bedding and insisted on regular medical inspection. The Indian Prison Act was passed in 1870. The 3rd and 4th All India Jail Committe were appointed in 1877 and 1889. The Reformatory School Act was passed in 1897. In India 'Probation' received

statutory recognition for the first time in 1898 through section 562 of the code of criminal procedure 1898 (now section 360 of CR PC 1973). Under the provision of this section the offender convicted for the 1st time on charges of theft, dishonesty, misappropriation or, any other offence under the Indian Penal Code would be punishable with not more than 2 years imprisonment and could be released on probation of good conduct. The 6th ALL INDIA JAIL COMMITTEE 1919 observed that the aim of Penal administration is the Prevention of future crime and the restorations of the criminals to society as reformed character. The report has laid down the foundation stone of modern penal system in India. The enactment of Brostal Act, Probation Act and the Provisional release Act are the result of desire for reformation and bringing back the offenders to the main stream of the Society.

After Independence, the Constitution of India provides elaborate provisions for reformation of offenders as well prison to give effect of Article 21 of the Constitution of India.

In 1957 All India Jail Manual Committee was set up and National Institute of social Defence was set up in 1961-62. The Juvenile Justice Act enacted the Parliament provides for the laying down of the uniform legal frame for Juvenile Justice in the country so as to ensure that no child under any cricumstances is lodged in jail or, police lock-up. With this end in view provisions have been made for establishing Juvenile Welfare Boards and Juvenile courts. Universal Declaration of Human Rights, and civil liberties movement further encroached the arena of criminal justice system to ensure human rights amongst offender and prisoners.

National Human Rights Commission has time to time made significant recommendations on all matters of Criminal Justice system including the (i) the investigating agency (ii) the prosecuting agency (iii) the justice delivery system in the court (iv) the correctional services or, the Jails. It has been revealed that the prosecution system, after separation of the executive from Judiciary in 1973 has remained unstructured and lacks accountability.

On receipt of recommendations, of the National Human Rights commission, the government has a recently appointed a 6 member committee headed by Justice Malimath to suggest measures to improve the criminal justice system. Major recommendation all above noted 4, segments of criminal justice system. It has been emphasised a paradigm shift of criminal justice system will be quest of truth and not just assessor of evidence. The Judge must play the significant role and the police as the investigative and law enforcing agency need to be insulated from political and other extraneous influence. Finally the recommendation stressed the need of main streaming the offers and the criminal and giving them the basic human rights.

5.2 Importance of Correctional Service

Correctional service has gone tremendous change due to continuous research work of social psychologists, social scientists and criminologists. Correctional services include prevention

of criminal activities through government departments, police and voluntary organisations. Prevention can be punitive, corrective, reformative or, rehabilitative in nature. This requires effective concerted effort of all the government department. It also includes probation. Co-ordination among all the department for correctional service has got tremendous bearing on criminal justice system.

Correctional service further reveals that justice is not to punish criminals or offenders only. It essentially aims to reasserting fundamental principal of a just society. Since crime involves not only criminals but the victims and the society as well. Effective correctional service takes a comprehensive view of the individuals involved as well the circumstance that provide backdrop for such a crime. Correctional service has imbibed the understanding of the causation of crime. Crime causation theories are now closely linked with Anthropology, Psychiatry, Sociology and Social Psychology. There has been systematic and purposive attempt to know the criminal.

In this context the contribution of Barker ought to the remembered Barker defines corrections as the attempt to transform offenders into non-offenders through imprisonment, probation education programmes and social service. Thus the emphasis has been shifted from retribution of the offenders. It is also pertinent to mention that increasing awareness of civil liberties and human rights have led to the development of correctional services leading to institutional and non-institutional methods for reforming the offenders with a view to reinstate them to the main stream of the society.

5.3 Correctional Legislation

History of correction legislation in India date back to British regime. English common law system and criminal law and procedure had direct penetration into Indian law and correctional laws. Exactly codification started from British rule. They strictly imposed criminal laws and procedure to all Indians regardless of their caste, colour, religion, race, language, etc. Reformers welcome these progressive measures.

The Indian Penal Code (IPC) was enacted in 1859 and criminal procedure code was enacted in 1860. These were later amended after independence. “The code of criminal procedure 1973 came into force on 1st April 1974. This legislation deals with legal procedures on investigation, bail, conviction, punishment etc. This code is applicable in all states of India except part of Assam, Nagaland, Jammu and Kashmir. It aims to punish offenders and administer justice.

Major provisions of section 125 of Cr PC, 1973 are complaint of wife if she is not maintained by her legally married husband. Section 125 also includes change of circumstances for wife for receiving or, maintenance and other remedial measures. The criminal procedure code distinguishes between cognizable and non-cognizable offence, bailable and non-bailable offences. Sec 493 to 497 of the IPC deals with rape which is a non-cognizable and non-bailable offences. In amended Cr PC 1973 probation has social ...recognition under 360. Under for provision of

the section, an offender convicted for the first time of theft, dishonesty, misappropriation or, any other offence under the IPC Punishable with not more than two years imprisonment could be released on probation of good conduct.

Amendment to IPC acts on prostitution. Prevention of Immoral Traffic Act 1988 provides that prostitution itself is not an offence but soliciting in public places is punishable. Rehabilitation facilities for the prostitutes are almost ''non-existent'' and life for rescued ''women'' often turn into a nightmare. The Supreme Court in Upendra Baxi Vs State of U.P. (1986) 4 (Scc 06) issued guidelines to enforce human rights of protective home inmates changes in IPC and Cr PC has brought about significant change in correction services as well as correctional administration.

As the students of Social work we must know the following sections of IPC-

Section 302 in The Indian Penal Code

302. Punishment for murder.—Who ever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine

Section 306 in The Indian Penal Code

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine

Section 307 in The Indian Penal Code

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to i[imprisonment for life], or to such punishment as is hereinbefore mentioned. Attempts by life convicts.—2[When any person offending under this section is under sentence of i [imprisonment for life], he may, if hurt is caused, be punished with death.]

Section 304B in The Indian Penal Code

304B. Dowry death,—

Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death. Explanation.—For the purpose of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

Section 313 in The Indian Penal Code

313. Causing miscarriage without woman's consent.—Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with i[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 314 in The Indian Penal Code

314. Death caused by act done with intent to cause miscarriage.—Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; If act done without woman's consent— And if the act is done without the consent of the woman, shall be punished either with 1 [imprisonment for life], or with the punishment above mentioned. Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

Section 354 in The Indian Penal Code

354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 358 in The Indian Penal Code

358. Assault or criminal force on grave provocation.—Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both. Explanation.—The last section is subject to the same

Section 361 in The Indian Penal Code

361. Kidnapping from lawful guardianship.—Whoever takes or entices any minor under i[sixteen] years of age if a male, or under 2[eighteen] years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship. Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Section 366 in The Indian Penal Code

366. Kidnapping, abducting or inducing woman to compel her marriage, etc.—Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years,

and shall also be liable to fine; i[and whoever, by means of criminal intimidation as defined in this Code or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable as aforesaid

Section 366A in The Indian Penal Code

366A. Procuration of minor girl.—Who ever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

Section 375 in The Indian Penal Code

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

(First) — Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

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

(Sixthly) — With or without her consent, when she is under sixteen years of age.

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

(Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

Section 376 in The Indian Penal Code

1. Who ever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not he less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.
2. Who ever,—

a. being a police officer, commits rape—

   i. within the limits of the police station to which such police officer is appointed; or ii. in the premises of any station house; or

   iii. on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

b. being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

c. being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

d. being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

e. being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

f. being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

g. commits rape during communal or sectarian violence; or

h. commits rape on a woman knowing her to be pregnant; or

i. commits rape on a woman when she is under sixteen years of age; or

j. commits rape, on a woman incapable of giving consent; or

k. being in a position of control or dominance over a woman, commits rape on such woman; or

l. commits rape on a woman suffering from mental or physical disability; or

m. while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

n. commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Section 405 in The Indian Penal Code

405, Criminal breach of trust.—Who ever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the

mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"

Section 417 in The Indian Penal Code

417. Punishment for cheating.—Who ever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 420 in The Indian Penal Code

420. Cheating and dishonestly inducing delivery of property.—Who ever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 441 in The Indian Penal Code

441. Criminal trespass.—Who ever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass"

Section 494 in The Indian Penal Code

494. Marrying again during lifetime of husband or wife.—Who ever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 497 in The Indian Penal Code

497. Adultery.—Who ever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

Section 498A in The Indian Penal Code

498A. Husband or relative of husband of a woman subjecting her to cruelty.—Who ever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, "cruelty" means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Crpc

Under the code of criminal procedure Act the offences are categorized in the following way-

Cognizable and Non-cognizable Offences

Cognisable offence refers to the kind of offence .where a police officer has the authority to make an arrest without a warrant and may even start the investigation with or without the permission of a court.Usually the crime committed is of a serious nature and usually carry a sentence of 3 years or more.

On the other hand, in the case of a non-cognisable offence, a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without a court order. The police can file a First Information Report (FIR) only for cognisable offencesFor non-cognizable cases the police officer may arrest only after being duly authorized by a warrant. Non-cognizable offences are, generally, relatively less serious offences than cognizable ones.

Summons-Case and Warrant-Case

All criminal cases are divided into summons cases and warrant cases. "Warrant case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

"Summons case" means a case relating to an offence, and not being a warrant case a warrant case relates to a serious offences while a summons case relates to a comparatively less serious crime.

In a summons case a summon is to be issued to the accused and in a warrant case a warrant of arrest is normally to be issued for the arrest of the accused.

Bailable and Non-bailable

According to Section 2(a), bailable offence are offences listed under the First Schedule as bailable or made bailable under any other law for the time being in force. All other offences are non-bailable.

5.4 Prison Act

A prison is a unisex world where every inmate is stigmatized and has to carry on tightly scheduled activities in the company of strangers. The inmates are deprived of liberty, privileges, emotional security and hetero-sexual relations. Formal code of prison can not always cope with the situation. The conditions in Indian jail were horrible upto 1919-20. 1st prison Act was enacted in 1894. It could not provide sufficient remedial measures to the 80% of the Prisoners

who are undertrials and a majority of them live in overcrowded prisons where medical facilities are poor and inadequate. There are many jails where prisoners are packed together with no space even to sleep and having no comfortable living with minimum standard of diet. The National Expert Committee on Women Prisoners with justice Krishna Iyer as its chairman in 1987 stated after visiting many women prisoners that both prisoners and the prison staff suffer from ‘‘a pathology of misinformation or, ignorance of their rights and limitation.’’ This often leads to callous disregard of human rights. Prison Act 1994 governs the administration of prisons. The All India committe of Jail Reforms 1980-83 has recommended, inter alia, the upgrading and updating, revision and consolidation of all prison laws. However action towards developing a uniform legal framework has been hampered, because the subject of prisons falls in the state list of the seventh schedule of the constitution and the central government was reluctant to intervene. After amending the constitution the subject prison has been brought to concurrent list. There after a national concesus on various aspect evolved through an active interaction with legislator, policy makers, administrators and experts and human right activists.

Prison Act also provides the policy formulation and principles of prison administration. While the police and judiciary play the major role of convicting and sentencing the offender, it is the prison where the prisoner is controlled and reformed. A prison today serves the purpose of being custodial, a detterent, coercive, lurative, reformative, correctional, rehabilitative and for resocialization. It is not an independent system of power, but an instrument of the state shaped by its social milieu and by the stage of economic, social and political development. It is a structure of rulling caste and subordinate caste.

The casual executive staff superintendent (from administrative code)

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Jailor (from Jail cadre)

|

Assistant Jailor (from Jail Cadre)

|

Sub-assistant jailor (Jail Cadre)

|

Chief Head Warden (Jail Cadre)

|

Wardens (mail) wardens (female)

|

Sweeper

Apart from aforestated executive staff pattern there are several correctional staff who offer welfare services to prisoners or, perform routine clerical job at the prison following the Prisons Act. Yet maltreatment of prisoners is common through out India.

5.5 Reformatory School

Reformatory schools are also known as certified school for rendering correctional service to the teenage oftender and juvenile delinquents. Juveniles given detention order by court are kept in reformatory schools for a minimum period of 3 years and maximum period of seven years. Each school having a capacity of 80-100 inmates decided into 4-5 domitories and each domitory has 4-5 cells.

The executive staff pattern of the reformatory school includes a superintendent, deputy superintendent, deputy jailor, assistant jailor doctor, 3-4 constructions, 3-4 ... and some wardens. Training is given in tailoring, toy making, manufacturing leather goods and agriculture. Each training programme is of 2 years. Inmates were provided with the raw materials they require for their vocational training and production. Their produce is sold to the market. The profit so earned is deposited in the credit of the trainee. The inmates are given the share of profit and this is credited in their account. Recently initiative has been taken from the government to improve the conditions reformatory schools as well as inmates keeping in view of minimum standard set forth by the united nations.

5.6 Probation of Offenders Act 1958

History

The first statutory expression to the penal system reflecting probation philosophy is to be found in section 562 of the crimal procedure code 1898. Later the children Act, 1908 also empowered the court to release certain offenders on probation of good conduct. The scope of provisions of probation law was extended further by legislation in 1923 consequent to the Indian Jails committee's Report (1919-1920). In 1931 the government of India prepared a Draft probation of offenders Bill and circulated it to the then provincial governments for their views. However, the Bill could not the processed due to pre-occupation of provincial governments. Later the Government of India in 1934, informed the provincial governments that there were no prospects of central legislation being enacted on probation and they were therefore free to enact suitable laws on the lines of the Drafted Bill. As a result of the recommendations of the Jail committee the government of India decided to have a comprehensive legislation on Probation law in India. To attain this objective, a Bill on probation of offenders was introduced in Lok Sabha on Nov. 18, 1957. On recommendation of the joint committe the probation of offenders Bill was introduced and sulsequently passed in the Parliament in 1958.

Objects and Reasons

Basic object of this Act is the release of offenders on probation of good conduct.

[1] Instead of sentencing to imprisonment.

[2] There has been an increasing emphasis on the reformation and rehabilitation of the offender as a useful and self-reliant member of society without subjecting him to the deleterious effect of jail life. In view of the wide spread interest in the probation system in the country, this question has been re-examined and necessity was felt to have a central law on the subject which should be uniformly applicable to all the states.

[3] It has been proposed to empower courts to release an offender after admonition in respect of certain specified offences. It has also been proposed to courts to release on probation, in all suitable cases, an offender found guility of having committed an offence not punishable with death or, imprisonment for life.

[4] In respect of offender under 21 years of age, special provision has been made putting restrictions on their imprisonment. During the period of probation, of the probation officers in order that may be reformed and become useful members of society.

The Bill seeks to achieve these objects.

Power of the Court to release certain offenders after admonition.

When any person found guilty of having committed an offence punishable under section 379 or, section 380 or, section 381 or, section. 404 or, sec 420 of Indian Penal Code or, any offence punishable with imprisonment for not more than two years or, with fine or, both, under Indian Penal Code or, any other law, and no previous conviction was proved against him and the court by which he is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence, and the character of the offender, it is expedient to do so, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or, releasing him on probation of good conduct under section 4 release him after due admonition. Provided that the .. release of an offender unless it is satisfied that offender or, his surety, if any, has a fixed place of abode or, regular occupation in the place over which the court exercises jurisdiction or, in which the offender is likely to live during the period for which he enters into bond.

Before making any order under sub-section (1), the court shall take into consideration the report, if any of the probation officer concerned in relation to the case.

When an order under sub-section (1) is made, the court may, if it is of the opinion that in the interest of the offender and of public it is expedient so to do, in addition pass a supervision order

directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year.

This is the power of court to require released offenders to pay compensation and costs.

A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or, recovered as compensation under sub-section (1) in awarding damages.

Probation Officer

A Probation officer under this act shall be

(a) a person appointed to be a probation officer by the state government or, recognised as such by the state government, or,

(b) a person provided for this purpose by a society recognised in this behalf by the state government or,

(1) In any except that case, any other person who, in the opinion of the court, is fit to act as a probation officer in the special circumstances of the case.

(2) A court which passes an order under sec. 4 or, the District Magistrate of the District in which the offender for the time being resides may at any time, appoint any probation officer in the place of the person named in the supervision order.

(3) A probation officer, in the exercise of his duties under this Act, shall be subject to the control of the District Magistrate of the district in which the offender for the time being resides.

Duties of Probation Officers

A probation officer shall, subject to suit conditions and restrictions, as may be prescribed—

(a) inquire, in accordance with the directions of the court, into the circumstances or, home surroundings of any person accused of an offence with a view to assist the court in determining the most suitable method of dealing with him and submit reports to the court.

(b) Supervise probationers and other person placed under his supervision and where necessary endeavour to find them suitable employment.

(c) advise and assist offenders in the payment of compensation or, costs ordered by the court.

(d) advise and assist in such cases and in such manner as may be prescribed, persons who have been released under section 4, and

(e) perform such other duites as may be prescribed.

Every probation officer is deemed to be public servant.

5.7 Reference

(i) Bare Act of probation of offenders Act

(ii) Any books of IPC and CrPC

(iii) Correctional services in India—P. Ahuja

5.6 Exercises

(i) State the importance of correctional services. What are the basic objects of correctional services.

(ii) What are the basic objective of the prison act? What are its recent amendments

(iii) Write short notes on Reformatory school.

(iv) Trace the history and development of probation of offenders act.

(v) State the duties of probation officer.