

PREFACE

In the curricular structure introduced by this University for students of Post-Graduate degree programme, the opportunity to pursue Post-Graduate course in Subject introduced by this University is equally available to all learners. Instead of being guided by any presumption about ability level, it would perhaps stand to reason if receptivity of a learner is judged in the course of the learning process. That would be entirely in keeping with the objectives of open education which does not believe in artificial differentiation.

Keeping this in view, study materials of the Post-Graduate level in different subjects are being prepared on the basis of a well laid-out syllabus. The course structure combines the best elements in the approved syllabi of Central and State Universities in respective subjects. It has been so designed as to be upgradable with the addition of new information as well as results of fresh thinking and analyses.

The accepted methodology of distance education has been followed in the preparation of these study materials. Co-operation in every form of experienced scholars is indispensable for a work of this kind. We, therefore, owe an enormous debt of gratitude to everyone whose tireless efforts went into the writing, editing and devising of proper lay-out of the materials. Practically speaking, their role amounts to an involvement in invisible teaching. For, whoever makes use of these study materials would virtually derive the benefit of learning under their collective care without each being seen by the other.

The more a learner would seriously pursue these study materials the easier it will be for him or her to reach out to larger horizons of a subject. Care has also been taken to make the language lucid and presentation attractive so that they may be rated as quality self-learning materials. If anything remains still obscure or difficult to follow, arrangements are there to come to terms with them through the counselling sessions regularly available at the network of study centres set up by the University.

Needless to add, a great part of these efforts is still experimental—in fact, pioneering in certain areas. Naturally, there is every possibility of some lapse or deficiency here and there. However, these to admit of rectification and further improvement in due course. On the whole, therefore, these study materials are expected to evoke wider appreciation the more they receive serious attention of all concerned.

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Paper XII

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Unit-1 □ Concept of Crime, Criminal and Criminology

Classification of Crime : Crime as a Social Problem in India : Major Factors

Structure :

- 1.1 Concept of Crime**
- 1.2 Concept and Classification of Criminals**
- 1.3 Criminology**
- 1.4 Crime as a Social Problem in India**
- 1.5 Major factor Leading to Crimes**
- 1.6. References**
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1.1. Concept of Crime

Crime is associated from the very dawn of civilisation. Crime is almost common to every society. Nature of crime has been changed according to the changing phase of the society. Administration of “Rule of Law” postulated by Dicey and administrations of justice has evolved various processes to culminate crime in the civil society. One of the major objects of law is to protect the innocent and to punish the guilty. It provides a machinery for punishment of offenders under criminal laws for making the administration of justice fair and effective by avoiding all possible chances of error.

Crime are many and varied. The legal definition of crime is that it is behaviour or, an activity in violation of legal code. Paul Tappan (1960) has defined crime as an intentional act or omission in violation of criminal law committed without defence or, justification and sanctioned by the State for punishment as a felony or a misdemeanour. Following essential ingredients are manifested through this definition :—

- [1] The act should be actually committed or, it should be an omission of a legal duty, i.e. a person cannot be punished for his/her thoughts. Example : X on invitation from his friend Y went to Y’s house to dine with the members of Y’s family, During the time of the dinner X got a serious heart attack and died without any medical aid. Y did not get ample opportunity to call a doctor. Here Y cannot be held responsible any way as moral obligation to call a doctor. Moral duty

will not suffice for prosecution. But the situation will be different when a person runs a home or shelter for old-aged persons. An old-aged person falls sick and died without medical care. The owner of home for old-aged persons or, the shelter be responsible for omission of his legal duty to save the old person's life.

- [2] The act must be voluntary and committed when the actor has control over his actions. Suppose a person has a dog and he always keeps it chained. A neighbour's, child approaches the dog, teases it and throws stones at it. The dog breaks the chain and bite the child. The dog owner cannot be prosecuted. But in the reverse case, the dog-owner knowing well that the dog is in the habit of biting people, does not chain the dog. The unchained dog bites a visitor. The dog-owner will be held responsible and be prosecuted. The visitor can also file a case.
- [3] The act should be intentional, whether the intent be general or, specific. A person may not have specific intent to kill or injure another person, but he is expected to know that his action might result in injury or death or others. Thus, if he shoots a person even when having no specific intent to kill him, he commits a crime because he knows to well that his action might injure or, cause the death of a person.
- [4] The act must be a violation of a criminal law of the land. In a criminal wrong, the state brings an action against the accused wrong doer. It signifies a person who assaults another person can be prosecuted by the state as well as the assaulted person for damages.
- [5] The act should be committed without cause of defence and justification. If the act is proved to be in self defence or, to have been committed in insanity, it will not be considered a crime even if it causes harm to others.
- [6] The act should be sanctioned by the state as felony or, misdemeanour e.g. A child of 5 years of age who has killed his mother cannot be convicted for crime because the state has granted no penalty for a child of this age, even if the act is socially harmful.

Socio-Legal definition Crime

The crime may be analysed from the stand-point of socio-legal or, social or, non-legal perspective. From stand-out of social view crime is that behaviour or, activity that offends the social code of a particular community. Mower (1959) has defined it as "an anti-social act". Cladwell (1956) has expounded it as "an act or, a failure to act that is considered to be so detrimental to the well-being of a society, as judged by its prevailing standards, that acts on against it cannot be entrusted to private initiative or, to haphazard methods but must be taken by an organised society in accordance with tested procedures." The legal or, non-legal definition of crime donot always coincide because the legal and social codes of

a society can often differ. For example, giving and taking bribes are both illegal, but in reality it is found to be prevalent in our society, even if it is within the knowledge of the rulers or persons who are at the high helm of the administration.

Thorsten Sellin (1938) View :

Sellin propounded cross-cultural aspect of crime. He said crime is caused by conflicts among norms. He suggested that criminologists should study crime not as “Violation of Law” violation of conduct or, norms”—which are the rules that prohibit persons from acting in a certain specified way in certain circumstances. Such norms are not necessarily embedded in criminal law, and if they are not, their violation should not be termed crime. Sellin further adds, to retain the term “crime” for the offence made punishable by the criminal law and to use the term “abnormal conduct” for the violation of norms whether legal or not.

Sellin further said to think of culture conflict as a conflict of conduct norms. Such conflict may arise as a result of a process of differentiation within a cultural system or area or, as a result of conflict or process of differentiation within a cultural systems or areas.

Sellin distinguishes between “Primary conflict” and “Secondary conflict”. The former is the conflict of culture and norms. When two different cultures clash, later occurs within the evolution of a single culture. For example, a man from Italy who while living in America killed a man who seduced his adolescent daughter. The father was arrested because in the United States it was a crime. But in Italy, such an act by a father was the expected behaviour for the purpose of defending the honour of the family. This is the apt case of conflict between the norms of two different cultures. The second type of conflict occurs during the normal growth of cultures from homogeneous to heterogeneous.

There are many other definitions of crime. Such as, statistical definition of crime by Wilkins (1964), a Labelling definition by Howard Becker (1963), Human Rights definition by Herman and Julia Schwendinger (1975) Utopian and Anarchist definition by Ian Taylor, Paul Watson, Jock Young (1973) etc.

1.2. Concept and Classification of Criminal

Performer and Planner of crime is known as criminal. Sometimes laws are confronted as a habitual malicious practice. Ordinarily a Criminal means a person who commits a crime. This definition is apparent. Legally speaking, a criminal is one who is convicted by a court for violating the law of the land. A person who is arrested by the police and left off by the court cannot be designated as criminal i.e. technically the term criminal cannot be applied to one who has not been convicted of a crime. However the law has never specified whether the criminal status of a person ends after completing the term of imprisonment imposed upon him. A person who commits the crime and subsequently convicted by the court and completes the term of imprisonment is usually being stigmatised as criminal. Society is not always prepared to erase the label of criminal. In practice a person who is once labelled as criminal is often not permitted to forget that status. Those who commit crime as a matter of choice or, as a means of livelihood are few indeed. A

large number of criminals are victims of situations or, criminals by accident who entertain in the heart of their hearts the same ideal, the same hopes and the same ambitions which ordinary people have sometime people confronts Law out of ignorance or, out of compelling circumstance. For example, boarding a Railway train compartment without proper tick if is an offence. But under compelling circumstances people are to board into train compartment due to unusual delay in issuance of railway tickets.

Classification of Criminals

Law does not specifically classify criminals. Sociologist have classified criminals into different heads analysing this different nature of crime. Criminals are basically classified as first offenders, casuals, habituals, professionals and white-colour criminals. However different criminologists, criminals on the basis of variegated features. Garofalo has classified criminals into four groups :- murderers, violent criminals, criminals deficient in probity and lascivious (feeling of lust) criminals. Another criminologist, Ferri has classified them as follows : the insane, the born, the habitual, occasional and the passionate.

Alexander and Stub have classified criminals as : the accidental and the chovonic. The accidental criminal is one who commits a single crime or, only a few crimes because of unusual circumstances, while the choronic criminals is one who commits crime repeatedly because of his association with criminals or, because of his anxieties, guilt feeling and personality conflicts (neurotic criminals) or, who are engaged in criminal behaviour because of an organic condition (Pathological criminal).

Apart from the above classification Ruth Cavan has classified criminals in the under-mentioned Six Categories :—

- [1] Criminal who are casual usually live in non-criminal world. They usually violates minor laws or, local laws.
- [2] Professional—who has taken the profession of crime and earned experties, skills. They earns their livelihood upon crime and develops a Philosophy in support of their crime.
- [3] Organised — (racketeer) who systemises his criminal activities just as the businessman does in case of his business.
- [4] Habitual — who repeats his crime.
- [5] Mentally abnormal whose committance of crime statisties his psychological needs.
- [6] Non-malicious, who is Law-abiding in terms of the norms of the own group and in general conforms to the laws of the larger society except in few cases where his small group norms contradict these laws.

Victimology

The study of **Victimology**, includes the relationships between victims and offenders, the interactions between victims and the system which is entrusted of controlling crime in our society—

that is, the police and courts, and corrections officials. The study also includes the connections between victims and the various social groups and institutions, such as the Family, religion, business, and social movements. Victimology also deals with the significant issues related to human rights violations as well. In India victimology has no wide application because of political & judicial apathy stringency.

It is a very scientific way of analyzing a criminal act. It is a way to understand the trend of crime in a particular society and identify those factors which may be responsible to increase someone's chances of becoming a victim.

Victimology is crucial not only for awaring the citizens about the behaviours that may increase their chances of becoming victims, but it also helps those professionals working in the field of criminal justice, law enforcement and mental health. By a deeper understanding about the psychological effects that a victim often undergo the personnel who are engaged in the criminal justice system may become well equipped to deal with it with great competency.

Who is a victim- Any person who has been subjected to physical or emotional harm, property damage, or economic loss as a result of a crime is a victim.

Following individual may be considered as a victim—

- A person whose personal rights have been violated by criminal, violent or aggressive acts.
- Family and close friends of person(s) who have undergone an injury or killed as a result of a serious accident.
- Family and close friends of person who have been injured or killed as a result of crime.
- An individual who has viewed or been affected by a violent or traumatic incident;
- Family and close friends of person(s) who have been injured or killed as a result of a hostile situation.

1.3. Criminology

Criminology has very steadily grown to meet the challenges of modern Complex Society. Crime is common to every society in some form or the other. Applied sociology deals with crime which hinders in social growth and destabilises the society. Criminology is a branch of applied and dynamic social science which studies crimes in different societies and analyses the crimes and trace the reasons behind their commission. Criminology refers to scientific study of crimes from sociological point of view and from the legal science point of view so as to redress the social menace of crime and to dislodge criminality from man as far as practicable by applicable scientific methods and principles. Criminology also studies the weakening.

Criminology helps us to explain the characteristics of criminals and delinquents and their background (sex, age, marital status, education, occupation, income, motives, nature and psychological traits, residence etc) to enable us to compare criminals with non-criminals. Thus from the

study of Criminology we gain some insight into possible causes of crime and also juvenile delinquency. It also indicates the kind of preventive and remedial measures. That are needed to cope with these problems.

Criminology also points out the weakening of motives for conformity to social norms and the disruption of social relationships and social bonds. The unrest is increasing almost in all sections of our society. There is unrest among youth, peasants, industrial workers, students, teachers, Government employees and minorities. Social unrest increases frustrations and strains which lead to violation legal and social norms. Criminology studies these social problems and crimes and suggests possible measures to seal these loopholes. That is why as a branch of applied social science and legal science criminology is so much important.

1.4 Crime as a Social Problem in India

A characteristic feature of Indian criminal scene shows an upward trend in organised crime and emergence of large-scale organisations for criminal activities. What is being systematically organised is the control and distribution of illicit goods and services—drugs (narcotics), girls for prostitutions (in India and in the Arabian countries), smuggling of gold etc. In addition to these, there are the organised efforts of mafia groups to control various legitimate business activities, such as coalmines, unions in industries and the like. Mostly organised crimes are found in cities and major towns.

Of the total crime committed in India every year, about 16.5 lakh are cognizable crimes under the Indian Penal Code (I.P.C.) including theft, burglary, robbery, dacoity, murder, riot, kidnapping, cheating, breach of trust etc and about 38 lakh are offences under the local acts and special laws like Dowry Prohibition Act, Gambling Act, Excise Act, Arms Act, Immoral Traffic Act, Narcotic Drugs Act, Explosive substances Act. All these statistics are gathered from the Report of Crime Bureau of India in 1993-94. By 2005-06 all these reported crimes have increased almost 2.2 times : This picture poses very alarming scenario in socio-political and economic fields. The rising graph of crime might cause alarm among the public but our police and our politicians remain unaffled about the deteriorating law and order situation.

The act of gender based violence, particularly violence against women is growing day by day whether at home, at work, on the street, at work place, in custody or, elsewhere. Some statistical data from Indian scenario will reveal the true picture.

National Crime Record Bureau—This Bureau is responsible for analysing the crime data and it is a part of the Ministry of Home Affairs, Government of India National Crime Record Bureau in a national repository of all Crime and Criminal information. It is framed with a Mission to empower. This bureau is responsible for training police force in various aspects of crime managements like crime record managements, computer related training, assessments of finger prints, sharing crime & criminal informations, the provide information for easier & faster analysis and to improve the service delivery system & make a safer crime free society : The Present Director of NCRB is ARK Kinni Crime.

According to National Crime Record Bureau, 2013 :

- In 2012, Kerala highest Cognizable crime rate of 455.8 was reported; while Nagaland was recorded lowest amongst the state of India i.e. 47.7.
- Out of 92 women raped in India, every day one was from Delhi.
- According NCRB the total number of rape cases reported in India in 2013 was 33,707 in comparison to 2012 where the total number of rape cases was 24,923.
- The age of the rape victims of 15,556 cases were between 18-30 in 2013.

Violence against women may be categorised as :

- [1] Criminal Violence— Rape, abduction, murder.
- [2] Domestic violence— Dowry-death, wife-battering, sexual abuse, maltreatment of widows and/or, elderly women.
- [3] Social violence— Forcing the wife/daughter-in-law to go for female foeticide, eve-teasing, refusing to give a share to women in property. Harassing the daughter-in-law to bring more dowry. Causing other forms of domestic violence.

1.5 Major Factors Leading to Crimes

- [1] Acute poverty and social imbalance and lack of social security creates unrest among a section of people who are tempted to commit crime to get rid of dire poverty and social insecurity.
- [2] Gender specific violence is increasing due to failure of the society as well as the Government affirm dignity of women. Women are beaten, mutilated, burned, sexually abused and raped. To overcome the problem a massive education drive is required which should include sensitisation to common people, police, judiciary, legislators etc.
- [3] Disorganisation and disintegration of the family and society is another major factor for deteriorating social values which in turn leads to commission of crime and continuous suffering from social insecurities.
- [4] Environment in the work place also sometimes contribute to sexual torture.
- [5] Four important emotional abuse can also be identified as major factors leading to commission of crime. They are : poverty, 'deficient' parental control and non-co-ordial relations within family, maltreatment in childhood and alcoholism, drug addiction etc.
- [6] Illiteracy and lack of social commitment and social consciousness also accelerate crime.
- [7] Growing Lawlessness in the society.
- [8] Criminalisation of politics and political corruption also responsible for various types of corruption.

1.6. References

- (i) Ram Ahuja Sociology and Criminology.
- (ii) Neera Desai and Usha Desai—Women in Indian Society—National Book Trust of India, New Delhi
- (iii) Any book of IPC and GPC

1.7 Exercises

- (i) Define crime, criminal and criminology. State the reasons behind committance of major crimes in India.
- (ii) Classify the various crime. Suggest measures to control and prevent crimes for effectively combating social problem.
- (iii) State the nature of violent crimes committed against the women in India.

Unit-2 □ Concept, nature and extent of Juvenile Delinquency in India, major factors, legal provision and Juvenile justice system, programme for control and prevention of delinquency

Structure :

- 2.1 Concept, Nature and extent of Juvenile Delinquency in India**
- 2.2 Major factors**
- 2.3 Legal provision and Juvenile Justice System**
- 2.4 Programme for Control and Prevention of Delinquency.**
- 2.5 References**
- 2.6 Exercises**

2.1 Concept, Nature and extent of Juvenile Delinquency in India

(a) Concept :

Juvenile delinquency is not the problem of ours and theirs. It cuts across the political boundaries. Juveniles, constitute almost one third of total population of every country. Juvenile delinquency is an universal problem. It is not ours or, theirs. It cuts across the boundaries of the countries. Juvenile delinquency has become a serious concern to Indian society and the administration like other countries. Since 1961, the Government of India has been postulating to redress the problem of juvenile delinquency through the promulgation of new legislation. Committance of crime by the child and young persons and corresponding penal measure was seriously considered by the Indian Government. It was also reflected through the Children's Act 1960 which is regarded as first and significant legislation in India concerning the children and the young persons and juveniles.

The Encarta Dictionary states that juvenile delinquents are young persons who habitually breaks the law, especially somebody repeatedly charged with vandalism or, other anti-social behaviour.

(b) Nature :

Juvenile Delinquency or, youth deviance is one of the major problems facing contemporary Indian society. Juvenile Delinquency refers to the violation of legal notion and social norm by a

juvenile that is a child. According to the Children's Act 1960, a child means a boy who has not attained the age of 16 years and a girl who has not attained the age of 18 years. The word "juvenile" is a traditional and conventional usage. The word "youth" is a contemporary usage. Thus crime or, violation of the law by a child or, young person is called juvenile delinquency.

The word "juvenile" has been derived from the Latin word 'Juveniles' meaning 'young'. The dictionary meaning of the 'Juvenile' is 'characteristics of youth' & "relating to young people." The word 'delinquent' comes from the Latin word "delinquere" meaning "to offend". The etymological sense of delinquency is unlawful, criminal anti-social behaviour or, illegal acts especially by young people. Crimes committed by children and adolescents under statutory age are referred to as delinquencies.

(c) Extent of Juvenile Delinquency in India.

Juvenile Delinquency has been increasing steadily since last few decades. Juveniles have been found committing various forms of crimes like murder, violent form of activities, drug trafficking, sex violence etc. The trend of crime during the sixties showed a rise which has steadily increased from nineties into 21st century. In fact crimes recorded under the Indian penal code show that crime rates are increasing more rapidly than the population growth rate : Juveniles are held responsible for a small percentage of the total cognizable crime but this percentage is showing a sharp increase in recent years. The recorded rate of problem, however, does not reveal the full picture. There are many deviant problems which are unreported and it is certainly greater than the official delinquency rate. The hidden delinquency is more dangerous than the open deviance. This problem is of great concern to social scientists, social workers, policy makers, correctional administrators and the public since if it goes unchecked it could gravely endanger the social order and security of the people. The increasing Juvenile offences makes it essential that they are not mixed with adult ones but treated separately. The age factor shows that the antisocial behaviour of an illegal nature, often a minor criminal offence is the main type of Juvenile Delinquency. The onset of delinquent behaviour in children usually starts in the early teens and if goes unabated, continues upto adulthood.

2.2 Major factors influencing Juvenile Delinquency

Juvenile delinquents usually commit minor crimes though they may assist adults in major felonies. In rare cases they may be involved in heinous offences like murder, manslaughter, armed robbery, rape, drug dealing etc.

The sex of the offender is another factor influencing Juvenile delinquency. Relatively fewer females are convicted of delinquency. Some possible explanations for this phenomenon are greater passivity of women, the greater exposure of men to crime—producing situations & differences in Cultural training. An additional factor is the greater leniency of police officials and courts towards female offenders. Other offences caused by juveniles include violating traffic laws,

using banned substances, damaging public property, petty theft etc. Recent technological progress has allowed for emergence of new types of crime involving the use of computers, Mobile phones, the internet etc. The young being more technologically advance, have been quick to adapt such criminal techniques.

In the general field of social sciences to search for a single cause for delinquent behaviour among criminals has long been abandoned causation of such behaviour is not due to one isolated factor but it is a multi-factored condition. Different patterns of crime require different causal examination.

The following factors have been identified as the major causes of Juvenile Delinquency.

- [1] **Biological Factors** : Individuals are not born as delinquents, yet studies and research point out that inheritance of unfavourable physiological & mental traits may increase the probability that a person will engage in illegal acts if he is exposed to life situations that encourage criminality. Volavka 1977, Kessler and Moss 1970 stated that people who behaved counter to prescribed social norms did so out of certain hereditary pre-dispositions. Nonetheless most experts and researchers believe that the entire problem of delinquency is social fact dependent on the structural content of society and the dynamicity of the prevailing laws. The causes which trigger anti-social acts are multidimensional and socio-psychological in character. The significance of heredity is most marked in cases of persistent criminality and in those cases where criminal tendencies are associated with personality defects.
- [2] **Physiological Factors** were first given prominence during the last part of 19th century by Lombroso, an Italian Physician, who advanced the theory that criminals possessed a greater number of physical traits of an atavistic or, apelike nature than did the general population. Among the 'Stigma of degeneration' listed were high pointed head, low and retreating forehead, large, outstanding ears. Damaging evidence against Lombrosian doctrine was presented in 1913 by Goring, the English investigator. More recently, the Lombroso theory of biological inferiority has been received by the American expert Hooten. His findings, however, have received limited acceptance and extensive criticism. Race as a biological factor influencing criminality also failed to exhibit a direct link.
- [3] **Social factors** : In the case of social sciences, it is pertinent to note, as social scientist have pointed out, that much law breaking activity has its roots in childhood development processes of the individual. The majority of offenders may be said to be individuals who at some point of time and in certain ways have failed to grow up & behave in the required manner. 3 major sources of influences during the formative period are—home, school and neighbourhood. The disruption of family life of delinquents is characterised by disorganisation, discord and general instability. Most researchers have found that delinquents are often non-delinquents, are reared in homes broken through desertion, divorce, separation or the death of one or, more

parents. Several psychiatrists stated that delinquents rarely come from happy homes with a wholesome emotional atmosphere. The making of a delinquent takes place during the individual's multi-dimensional propulsion into society. The need for psychological communication between the child and his parents calls for an overt expression of love and affection on part of the parents. Mere physical comforts do not necessarily fulfil the need of the child. The loosening of the joint family system has contributed in large measures in aggravating juvenile delinquency in India. Social disorganization is another important factor. Highest rates of delinquents are found in disorganised slum areas in and around the city centre.

- [4] **Economic Factors :** It has been observed that the majority of delinquents come from poor households whose adult members are either unemployed or, engaged in unskilled or, low-income occupations. This may be an incentive to offences against property. As a result of economic development and rapid industrialisation and social disorganisation has increased poverty, broken, neglected or, overcrowded homes, slum culture contributes to juvenile delinquency. A recent survey by the International Labour Organisation that there are almost 38 million child labourers in India. Many of them are exploited and exposed to crime leading to an increase in Juvenile delinquency. A similar situation is found in the street children many of whom are forced into prostitution, beggary and petty crimes. Indeed socio-economic factors are largely responsible for growing juvenile delinquency in India.

2.3 Legal Provision and Juvenile Justice System

Juvenile justice system is primarily-guided by the Juvenile Justice Act 2000 (Amended). The basic purpose of Juvenile Justice Act is to look into the care, protection, treatment. Development and rehabilitation of juveniles and delinquent juveniles. The major purpose of this Act is to see that a juvenile delinquent or, a child is not lodged in jail or, police custody even for 1 hour. This Act is a uniform legislation applied through out the country. The Act has been amended to attune the spirit of the minimum standard of the United Nations Organisation. One of the major objective of the J. J. Act is to secure unique blending between the Governmental activities to that of the Non-Governmental activities in dealing with the varigated juvenile problems including juvenile delinquent problem. The J. J. Act provides complete separate Judicial System for juvenile delinquents.

The problem of Juvenile delinquency, till recently confined to a few metropolitan cities has now become an all-India problem whose dimensions are growing rapidly. Treatment of juvenile delinquency is a state subject. It is administered by the welfare departments in states. The control of Juvenile delinquency depends upon judicial system of a nation. The system of Juvenile Justice is in fact a part of larger criminal justice system criminal justice means administrator & enforcement of Law & reinforcement of behaviour of criminals into pro-social being. It also involves the

making of Law, establishing of courts & deciding criminality of the individuals through the process of judge and jury.

The difference between the criminal justice system & the Juvenile Justice system is decided primarily by the age of an individual coupled with an assumption that a person below a certain age is incapable of having criminal intent. It is assumed that since children are incapable of criminal intent special punishment need to be given.

Juvenile delinquent is distinguished from the adult criminal in the following manner.

In most jurisdictions the cut-off point between delinquency and criminality is marked by age, usually by 18 years. Juvenile delinquents are generally considered less responsible for their behaviour than adult offenders & hence less culpable.

In the handling of a juvenile delinquent the emphasis is more on the youth personality and the factor that motivated his illegal act rather than his offence itself. The opposite is true of an adult offender.

Treatment of the Juvenile delinquent has been directed more towards the therapeutic programmes than punishment.

Although there has been recent modification by the Juvenile Justice Act 2000, the judicial process for a juvenile has been tended to de-emphasize legal aspects, of due process. It has been geared to a more informal and personalized court procedure : with this end in view the J. J. Act provides greater importance on the functioning of Juvenile welfare Board which takes all round care of the juvenile Particularly, delinquent juvenile.

The philosophy of Juvenile Justice system, according to Tappan, “is by no means a direct borrowing from chancery & common law” but on the contrary has emerged largely from the “Philosophy and techniques of modern case work” more particularly the ideologies of the child welfare movement considering the rights of the children and the devices that should be used to meet their needs.” Infact, the operation of the specialized juvenile court reflects the contemporary impact of case work.

To administer the Juvenile Justice system separate juvenile courts were established with the following essential characteristics—

1. A separate hearing for children cases.
2. Informal or, chancery procedure.
3. Regular probation service.
4. Separate detention of children in Homes (special).
5. Special Courts and probation records.
6. Provision for mental and physical examination.

The Juvenile court has to perform two functions one as a court of law and the other as a social

service agency. The role of the police is very important in the Juvenile justice system and part of the criminal justice. Police as an agent of the Government, is also suppose to discharge its obligation as agency of social control. In juvenile court Judges are also required to the sensitised properly so that they can consider the problem of juvenile delinquency more intensely.

2.4 Programme for Control and Prevention of Delinquency

Control and prevention of juvenile delinquency is considered to be of paramount importance for the purpose of social control of crimes by teen agers. This is directly connected with the “Rule of Law” and administration of justice. For effective control economic, social, psychological matter be kept in mind by the appropriate authorities as envisaged by the J. J. Act 2000 and various forms of Psychopathic treatment be given to the accused. Parents of the delinquents be given family counselling treatments. Many experts believe that the cause of crime is best sought in the adjustment of the individual to his environment.

Prevention of juvenile delinquency involves the supression, removal or, minimisation of those problems which are the causal problems which are the casual factors of such delinquent behaviour in children. Prevention should ideally begin in the family environment where the child learns his first social skills. Family should provide a feeling of love, affection and security which are absolute necessity for the growth of healthy, integrated and whole personality. The child get satisfaction of his basic emotional needs and companionship of his parents with who he can identify and whom he can emulate. Similarly school which is another factor in socialisation.

Modern scientific researches reveal that if social and economic development go hand in hand then juvenile delinquency be automatically prevented.

Following measures be adopted to prevent and control Juvenile delinquency.

- [A] Family environment—Family environment should be such where parents will discourage anti-social tendencies in their children by maintaining a favourable atmosphere at home. They should guide their children is such a way so a moral training is automatically done to make them morally high.
- [B] Neighbourhood & peer group relation—In second phase of development of the children, their neighbour and peer-group relation plays and an significant part. Parents must be aware of the effect of these relationship.
- [C] The early discovery and treatment of potential delinquents, and guidance in the early stages. Prevents Juvenile delinquents from transforming into adult criminals.
- [D] Disorganised and disintegrated society also tends children towards delinquencies. Such slum area or, crime prone areas allures children to join in criminal activities.
- [E] Good Governnace and legal reforms also prevents juvenile delinquencies.

[F] Social and political environment must consider juvenile delinquencies as natural phenomenon.

In India, 40% or more of its one billion population are children. Therefore, the responsibility of the government to provide a child protective environment along with ensuring Child Rights becomes necessary. Children are the most vulnerable segment of our society. They need proper care and protection for their overall growth and development. The Constitution of India as well as the legal systems, provides several provisions for ensuring that the children are not deprived of their basic human rights.

There have been many acts which came up in our country to deal with children, in order to provide justice and secured life.

Some of these Acts are- The Apprentice Act 1850, Reformatory Schools Act, 1897, Indian Jail Committee (1919-1920), Children Act in Madras in 1920, The Central enactment, the Children Act, 1960 and finally on 22nd August, 1986.

The Juvenile Justice Act 1986.

This Act was enforced keeping in mind the Beijing Rule 1985. This Act prescribed that a boy who is 16 years of age and a girl who has attained the age of 18 shall be termed as a child. In this Act children were categorized as neglected as well as delinquent children. The juvenile welfare board dealt the neglected children while the Juvenile court became the adjudicating authority for the children who were delinquent.

After the United Nation Convention on the Rights of the child in 1992, there was an urgent need to review the JJ Act 1986 for the interest of the children, without restoring to judicial proceedings. In the year 2000 this law was replaced and stress was given on need for Care and Protection to both the categories of children. According to this Act any person who has not completed the age of 18 years shall be called a child. The Act gave the provision for treating the children in need of care and protection and children in conflict with Law separately through Child welfare committee and Juvenile Justice Board respectively.

Further in 2006 this Act again amended. The Act emphasised on special treatment and rehabilitation measures for the children and to plan effective mechanisms for extending care, protection and other support.

Need for Juvenile Justice Act 2015

According to the National Crime Records Bureau (NCRB) data there has been a significant increase of offences committed by juveniles, especially in the age group of 16-18. One of the perpetrators in the Delhi gang rape of December, 2012 popularly known as the NIRBHAYA CASE, was few months short of 18 years' age and he was tried as juvenile. He was sent to reformation home for three years and was released in December 2015. This raised the public demand for lowering the age of juveniles under the act. This Act underwent some major changes like. It treats all the children below 18 years equally, except that those in the age group of 16-18 can be tried as adults if they commit a heinous crime.

A child of 16-18 years' age, who commits a lesser offence (a serious offence), may be tried as an adult.

A heinous offence attracts a minimum seven years of imprisonment.

A serious offence attracts three to seven years of imprisonment and a petty offence is treated with a three year imprisonment.

No child can be awarded the death penalty or life imprisonment.

It mandates setting up of Juvenile Justice Boards (JJBs) in each district with a metropolitan magistrate and two social workers, including a woman. The JJBs will conduct a preliminary inquiry of a crime committed by a child within a specified time period and decides whether he should be sent to rehabilitation centre or sent to a children's court to be tried as an adult.

The board can take the help of psychologists and psycho-social workers and other experts to take the decision.

2.5 Reference

- (i) Juvenile Justice Act — Asoke Mukherjee
- (ii) Ram Ahuja—Social Problems in India, Rawat Publication, New Delhi.
- (iii) Nature of Problems of Juveniles and Statutory Management by Dr. Reeta Vurma.

2.6 Exercises

- (i) State the major factors influencing juvenile delinquency in India.
- (ii) State the legal measures for effective control and prevention of juvenile delinquency problem in India.
- (iii) State the major objectives of juvenile justice Act 2000.
- (iv) What is meant by Juvenile Justice System.

Unit-3 □ Emergency of Crime in Europe, Contribution of Cesare Beccaria, Jeremy Bentham, Enrico Ferri

Structure :

- 3.1 Emergence of Crime in Europe**
- 3.2 Contribution of Cesare Beccaria**
- 3.3 Contribution of Jeremy Bentham**
- 3.4 Contribution of Enrico Ferri**
- 3.5 References**
- 3.6. Exercises**

3.1. Emergence of Crime in Europe

Emergence of the concept of crime and its development in Europe started from later part of sixteenth century. Industrial Revolution in England reverberated the corridors of the world history. Industrial Revolution has also consequent effect on the crimes particularly economic crimes in England and rest of the Europe. The classical school represented by Bentham and Beccaria came into existence as a result of barbarity and arbitrariness in the criminal law. Bentham, the English Philosopher, propounded the theory that greatest good for greatest number of people should be the ultimate object. Punishment must be at par with the offence and in no circumstances should not be more what is necessary in a case. Beccaria (1738-94) was an Italian nobleman and mathematician. He was terribly influenced by the principles of utilitarian hedonism propounded by Bentham. Beccaria was of the opinion that punishment try to strike a balance between illegal act of crime and punishment. He considered punishment also as a evil act. That much punishment also creates a reverse as well unwanted effect to the criminal and the society. Punishment should be inflicted only in the cases where it is absolutely necessary.

In the Nineteenth century there grew neo-classical school depending upon the appreciable contribution of Beccaria towards crime and criminal. This school was responsible for emphasizing that the mental element ought not to be ignored while dealing with certain types of offenders. As a consequence of which due protection was provided to the child and insane offender under the Penal Law and the Question of Premeditation or, lack of it, also became relevant in the commission of certain offences.

In the middle of nineteenth century gradually developed the positive school of Italy. Positive school focussed its attention many towards the personality of the offender and thereby

rejected the free will theory and by that time other postulations and theories provided back-ground preparations for the development of positive school and the stage was well set. The positive school owes its origin to the contributions Cesare Lombroso (1836-1909), Enrico Ferri (1858-1928) and Raffaele Garofalo (1852-1934). These criminologists and other contemporary criminologists analysed the crime from different angle of vision. They ignored external factors altogether or, gave them secondary importance. They considered physical, mental and biological factors as of prime importance in case of commission of a crime.

3.2. Contribution of Cesare Beccaria (1738-94)

Cesare Beccaria immensely contributed to the growth of modern criminology : He was pioneer in the establishment of classical school of criminology which had four important principles. First and foremost the rights and liberties of an individual must be protected. Secondly all persons who commit the same crime should be punished alike. Third, crime is a judicial abstraction and therefore a definite penalty should be attached to each crime and invariably inflicted. Fourthly, Punishment should be limited by the social need, Cesare Beccaria and Jeremy Bentham are two noted contributors and propounders of classical criminology. Cesare Beccaria was an Italian thinker. He was terribly influenced by the writings of John Howard. Beccaria pointed the following fundamentals :-

(i) Human nature is rational, free and governed by self interest (ii) Social order is based on consensus and social contract (iii) crime is the infringement of legal code and norms of social norms (iv) distribution of crime is limited and to be ascertained through “due process”. (v) Crime is caused by an individual’s rational motivation. (vi) crime must be judged by a jury of one’s peers i.e. by other rational and equal individuals. The judges should be guided by a clear and systematic legal code and (vii) In punishing the offender, the Principle of “restraint” should be observed i.e. sentencing should be limited in applying a prior, agreed and fixed set of penalties.

Following are the essential ingredients of Beccaria’s classified theory :—

- [1] Basically man is purposive guided by the rationality and his behaviour is based on hedonism or, pleasure pain principle, that he consciously chooses pleasure avoids pain.
- [2] Each and every crime should not go unpunished but punishment should be limited to the actual injury caused to the public welfare by the criminal punishment outweigh any pleasure derived from commission of crime.
- [3] Punishment should not be very severe and deterrent and it should be proportionate to crime, predetermined, prompt and public. Torture should be abolished, more use should be made of imprisonment instead of corporal punishment and all arrangement should be made for a fair trial.
- [4] Law must be equally applied to all citizens.
- [5] Legislatures should clearly enact the law and prescribe specific punishment for its

violation judges should not interpret the laws according to their preconceived idea but should apply their free and judicial mind for the sake of justice they refer punishment accordingly.

- [6] Considering the loftiest contribution of Beccaria, he was regarded as a modern thinker. McDonald estimated that Beccaria laid emphasis on two basic causes of crime i.e. displorable economic conditions and bad laws. Beccaria emphatically mentioned that most of crimes on property is made by the people who economically insolvent and poor and they commit this crime out of necessity. Beccaria emphasised that a careful matching of the crime and its punishment be made, in keeping with general interest of the society. He discouraged imposition of severe punishment for a crime.

3.3. Contribution of Jeremy Bentham (1748-1832)

Jeremy Bentham is regarded as a leading contributor and greatest thinker of classical school of criminology. Bentham emphasised on true good of the people. Bentham was physically challenged person since his early age. He wrote with abandon. He is stated to be to some extent excentric. Bentham sometimes compared to Adam Smith and stated that Bentham was to the field of law what Adam Smith was to the world of economics. Truly speaking Bentham was a reformer. He pointed out that Law has a distinguished part of science as well as arts. He stated that Public good ought to be the basis of reasing to legislator principles evolved in this score is science where as means of realising public good is the arts. He further pointed out legislation be based on the sound principle of utility.

Bentham's basic proposition greatest's good for the greatest number of people drew the attention of the consideration section of legal luminaries through out the world. Beccaria join with Bentham to boost up and propound this idea more concretely through Pseudomathematical concept the called "felicity calculus". The "Calculus" was intended a means of estimating the goodness or, badness of acts. Law at that time was mostly disorganised and contradictory. Bentham intended to make the law an efficient, indeed economical and means of preventing crime. Like Beccaria, Bentham insisted that prevention was the only justifiable purpose of punishment and furthermore that punishment was too "expensive" when it produced more evil than good, or, when the same good could be obtained at the price of less suffering. Bentham published his celebrated works "The principles of Moral and Legislation" first in year 1789. Through his works he reconmended that penalties be fixed so as to impose an amount of pain the excess of the pleasure that would deter crime. Bentham recommended that capital punishment would be inflicted only in the case which created highest degree of shock in the public mind. He was against the punishment of hanging as it was an act of cruelty and strongly recommended that capital punishment be given only in cases of crime which created maximum effect.

Bentham's propositions are not free from contradictions and he has unusual ideas about

imprisonment. He spent most of his life trying to convince authorities that an institution of his design, called the “Panopticon Prison” would solve the Problem of correction. In the latter part he developed his ideas and recommended for establishment of the office of public prosecutor. He stressed the point that crimes are committed against the society not the individuals. He argued that many crimes were imaginary rather than real offences, suggesting for example, that “offences which originate in the sexual appetite, when there is neither violence, fraud, nor interference with the rights of others and also offences against one’s self, may be arranged under this head. He strongly argued that offences against society must be covered through the appropriate formulation social policy and law. In fact, understanding Bentham requires more examination of the thoughts and principles he propounded with intense desire. Actually he showed us the way to study crime and its due prevention for social and public good.

3.4 Contribution of Enrico Ferri (1856-1929)

Enrico Ferri was a legal philosopher of nineteenth century. He is infact the leader of the positive school of criminal sciences which attempted to explain crime “in its reality on a scientific bases.” Enrico Ferri expressed his view point in his great work “New horizons of criminal law and Penal procedure”. In the completion of this great works he drew inspiration of the thought of Lombroso. Ferry’s commendable works on mainsprings of human behaviour published in 1878—a 476 page dissertation, titled as “The Denial of Free will And The Theory of Imputability.” Ferry suggested to identify and understand. Crime a serious study of the manifold causes is require. Surface study of the problem will not do any good to the social malady. Depending upon his grave concern. Ferry stated that factors of crime be classified into (a) individual on anthropological (b) Physical or natural and (c) social.

Enrico Ferri emphatically said that crime is the result of biological, physical and social conditions. Ferri gave 5 classifications of criminals :—

- (i) Criminal lunatics
- (ii) Criminal born incorrigibles
- (iii) Habitual criminals from acquired habits.
- (iv) Occasional criminals and (v) Emotional criminals.

We deeply consider modern times the term ‘social defence as means of prevention of crime. This term was used first by the Enrico Ferri of the Positivist school. Social defence means and includes the following (a) the personality of the offender. (b) The Penal Law (c) the manipulation of environment for social betterment as well as prevention of crime. Social defence presupposes that the means of dealing with crime should be conceived as a method of protecting society, rather than punishing the individual.

He pointed out that the protection of society can better be accomplished by rehabilitation and socialization than by punishment and vengeance. The method of social protection,

he mentioned, the neutralisation of the offender, either by removal and segregation or, by applying remedial and educational methods Ferri suggested various ways of removing Biological and social abnormalities of the individual. He stressed the need of the study “Criminal Social Pathology.” Ferri also developed the idea of preventive measures, such as free trade, abolition of monopolies, build and accommodation, for men’s dwelling, freedom of marriage, public savings bank, better street, lighting, public recreation and others. Detection of criminals was also part of Ferri’s catalogue of practical reforms. He recommended the application of another efficient instrument of Police enquiry, the sphygmograph. Close to the end of life Ferri proudly admitted that he was an idealist, for him life without an ideal is not worth living.

3.5. References

- (i) Crime as social control—American Review by Black, Donald and Albert Reiss.
- (ii) Modern Criminology—John Hagen, McGraw Hill Book Company.

3.6 Exercises

- (i) State the contribution of Jeremy Bentham.
- (ii) Why Enrico Ferri suggested to identify and understand crime as a serious study.
- (iii) Trace the contribution of Cesare Beccaria in growth of modern criminology.
- (iv) State process of emergence of crime in Europe.