UNIT 2  APPROACHES TO CRIME

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2.1  INTRODUCTION

Crime is a relative concept and a changing one too. Approaches to crime have been different at different stages of human civilisation and even at a given time they have been different in various societies. The attitude towards crime has always been marked by extreme type of emotions displayed by society and its people. What constitutes crime varies from culture to culture, and from time to time. Traditional approach defines crime in terms of violation of public law, whereas modern approach to crime emphasizes upon functional aspect of law. Theoretical explanation to crime involves individualistic and environmental approaches to crime. Beginning with the pre-classical approach of demonological theory to the extremely plausible theories based on socio-economic factors at the other end. The study of different approaches to crime makes it clear that it is not possible to lay down all the causes of crime which will give foolproof answers to all questions of crime causation in general. Different types of offences have different kinds of motivations and all of them cannot be explained by the same approach.

In this unit we will not only explain traditional approach to crime but also modern approach to crime including theoretical, punitive, therapeutic and preventive approaches to crime.

2.2  OBJECTIVES

After reading this unit, you should be able to:

- assess the meaning of crime;
- examine various approaches to crime;
- analyse usefulness of understanding approaches to crime;
- identify policy issues with regard to crime and criminals;
• describe lacunas in existing policies dealing with crime; and
• suggest policy reforms for dealing with crime.

2.3 TRADITIONAL APPROACH TO CRIME

To understand approaches to crime, it is necessary to understand crime. Etymologically speaking the word crime originates from the Latin crîmen (genitive: crîminis), from the root of Latin cernô = “I decide, I give judgement” and Greek ἐγκέμενος = “I judge”. Originally the Latin word crîmen meant “charge (in law), guilt, accusation”. Ernest Klein (citing Karl Brugmann) suggests crîmen, which would originally have meant “cry of distress.” Some people regard the definitional problem as the most important task in criminology for deciding the criminal policy. Some of the most common definitional approaches are-

A crime may be an act of disobedience to a law forbidding or commanding it. But disobedience to civil law may not be a crime, for instance disobedience of civil laws or laws of inheritance or contracts. Therefore a crime would mean something more than a mere disobedience of law. “It means an act which is both forbidden by law and revolting to the moral sentiments of the society.” Robbery or murder would be crime, because they are revolting to the moral sentiments of the society. Then again ‘moral sentiments of the society’ is a flexible term as it changes from time to time with the growth of public opinion and the social necessities of time. It may also differ from country to country. Adultery, incest, sati, female foeticide, polygamy etc are not crime in every legal system of the world. It means content of crime changes from time to time in the same country and from country to country at the same time. A virtue of yesterday may become crime tomorrow or vice versa.

All efforts to define crime beginning with Blackstone down to Kenny in modern times has proved abortive. Russel observes that-“to define crime is a task which so far has not been satisfactorily accomplished by any writer. In fact, criminal offences are basically the creation of the criminal policy adopted from time to time by those sections of the community who are powerful or astute enough to safeguard their own security and comfort by causing the sovereign power in the state to repress conduct which they feel may endanger their position.”

Crime needs to be defined in the true sense of the term which gives “the whole thing and the sole thing” true of every crime and yet not to be true of any other conceivable non-criminal breach of law. Crime may be defined in terms of its attributes and characteristics by first distinguishing crime from civil and moral wrong and secondly by critically examining definitions given by eminent criminal jurists from time to time.

Distinction between moral, civil and criminal wrongs

There are certain acts which a large majority of civilized people in the society look upon with approbation as they tend to reduce the sum total of human happiness. Such acts as lying, gambling, cheating, stealing, homicide, proxying in the class, gluttony etc. are wrongs. Some of these wrongs are not serious

1 Stephen, General View of Criminal Law of England, p.3
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enough as to attract the notice of law. We only disapprove of them. Such wrongs may be designated as moral wrongs for instance, lying, overeating, disobedience of parents or teachers and so on. Moral wrongs are restrained and corrected by social laws and the laws of religion.

There are other wrongs which are serious enough to attract the notice of the law. The reaction in the society is grave enough and is expressed either by infliction of some pain on the wrongdoer or by calling upon him to make good the loss to the wronged person. In other words, law either awards punishment or damages according to the gravity of the wrong done. If the law awards a punishment for the wrong done, we call it a crime, but if law does not consider it serious enough to award a punishment and allows only indemnification or damage, we call such wrong as a civil wrong or tort.3

Definitions of crime

Sir William Blackstone in his classical work, commentaries on the Laws of England, volume IV defines crime as “an act committed or omitted in violation of a public law forbidding or commanding it”. Definition given by Blackstone has been criticized to be too wide as it will include every legal wrong or violation of law. Another definition given by Austin is “a wrong which is pursued at the discretion of the injured party and his representatives is a civil injury; a wrong which is pursued by the sovereign or his subordinates is a crime.” This definition was observed to be not of substance but of procedure only. Besides there are several offences which cannot be pursued except by the injured party.

Prof. Kenny modifies Austin and defines crime to be “wrongs whose sanction is punitive and is in no way remissible by any private person, but is remissible by the crown alone if remissible at all.” This definition is also not without criticism. Prof. Winfield says that definition breaks down on the word “remission”. He says that only crown can remit a punishment by pardon and in English common law only those crimes are pardonable which are against the public laws and statutes of the realm. In India also various offences under Indian Penal Code are compoundable by private individuals even without the intervention of the court.

An American author Miller has defined “crime to be the commission or omission of an act which the law forbids or commands under pain of a punishment to be imposed by the state by a proceeding in its own name”. This definition seems to be less open to criticism than others. Prof. Paton observes-

“In crime we find that the normal marks are that the state has power to control the procedure, to remit the penalty or to inflict the punishment.”

Prof. Keeton says “a crime today would seem to be any undesirable act which the state finds it most convenient to correct by the institution of proceedings for the infliction of a penalty, instead of leaving the remedy to the discretion of some injured person.”

It can be observed that all attempts to define crime have not been very fruitful. It can only be defined in terms of its attributes. Firstly, it is harm brought about by some anti social act of a human being, which sovereign power desires to prevent. Secondly, preventive measures taken by the state may be in the form of a threat

of a sanction or punishment; and thirdly, wherein guilt of the accused is determined in a special kind of proceedings governed by special rule of evidence. 4

Self Assessment Questions

1) “Crime is an act committed or omitted in violation of a public law forbidding or commanding it”. Explain.

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2) Distinguish between moral, civil and criminal wrongs.

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2.4 MODERN APPROACH TO CRIME

The traditional approach to crime had been to formulate a definition of crime. Therefore all the jurists beginning with Blackstone down to Kenny attempted to define crime. But more or less all of them failed to bring in within the narrow compass of a definition the flexible notion of a crime which is conditioned by the changing moral values and social opinions of the community from time to time. Moreover, the traditional approach to crime suited a society which had not developed into a complex society. Earlier number of crimes were fewer which could be roped in within the four corners of a definition. But with rapid industrialisation and means of communications and modern scientific investigations crime also have taken a new turn. They have not only multiplied in numbers but also have grown more complex, complicated and even involve a lot of technology and science. Formerly crimes were committed out of greed, lust and land, but now such crimes have relegated to the category of traditional crimes. Modern crimes committed by persons belonging to the higher social status by beguiling people or practising fraud or misrepresentation or by adopting other known or unknown ways to amass money by fair means or foul have all appeared. Some new categories of crime like cyber crime and theft of intellectual property have appeared too. Therefore, a modern approach to combat such crimes has become absolutely necessary.

Defining crime, being a traditional approach, has to be given up. The modern conception is that crime is a public wrong i.e. a wrong which offends against the public generally. The modern approach is not to bother about a definition of a crime but to lay stress on its functions. In other words, the modern approach is
functional approach to the crime. In 1958, the Wolfendon committee Report has
highlighted the functional approach to crime in England and lays down clearly
both positively and negatively what it should be and what it should not be. It
observes that the function of criminal law is-

“...to preserve public order and decency, to protect citizens from what is offensive
or injurious and to provide sufficient safeguards against exploitation and
corruption of others, particularly those who are young, weak in body or mind,
inexperienced or in a state of physical, official or economic dependence.”

By way of explanation Committee itself observed that-

“Opinions will differ as to what is offensive or injurious or inimical to the common
good and as to what constitutes exploitation or corruption and those opinions
will be based on the prevailing moral, social or cultural standards.”

This explanation fits in with the growing needs of the society. The criminal law
will not concern itself with what a man does in private unless it can be shown to be
contrary to the public good that the law ought to intervene in its functions as
the guardian of the public good. Private morality or immorality is not the concern
of criminal law. It appears we are again reverting to what Blackstone said that
crime is a public wrong because the modern notion of criminal law is concerned
with behaviour which is normally reprehensible and is inimical to law and order.
A search for a definition of crime, being a traditional approach to crime, should
now in modern times be given up as being a futile approach and instead a real
search should be for the norms, ethics and practical expediency. In this sense it
includes violation of conduct norms and social norms.

Conduct norms

In this view, popularised by a 1938 book written by Thorstein Sellin5 crime is
just one form of conduct norm violations. Every group one belongs to, regardless
of political boundaries, regardless of embodiment in law, has conduct norms.
Norms are the unspoken rules of right (normal) and wrong (abnormal) that are
contained in custom, tradition, ethics, religion, family, and other social institutions.

Social harm — This view is most closely associated with Sutherland’s interests
in white collar crime6. To Sutherland (and to most criminologists), it is clearly
unfair that white collar criminals get off with civil fines rather than criminal
punishments. Corporations that pollute the environment have to pay a million
dollar penalty (nothing more than a slap on the wrist to them) while someone
who shares a marijuana cigarette with a friend gets 6 years in prison for trafficking
(quite a lengthy restriction of liberty). Criminologists adhering to this sense of
unfairness tend to believe that crime is any socially harmful act or analogous
social injury, whether legally permissible or not. In this view, crime includes
untimely death, illness or disease, deprivation of food, shelter, clothing, medical
care, racism, sexism, and tobacco, etc.

Human rights violation — This view is most closely associated with the
arguments made by Herman and Julia Schwendinger7 although there are other

5 Sellin, Thorstein, *Culture Conflict and Crime*, Social Science Research Council, NY
7 Herman and Schwendinger, Julia, “Defenders of Order or Guardians of Human Rights” in
Critical Criminology, ed. by Ian Taylor, Paul Walton & Jock Young, (1975), pp. 113-46
influences. For the Schwendingers, not only anything that causes social injury (imperialism, sexism, racism, poverty) is crime, but also anything that thwarts the right to a dignified human existence (freedom of movement, free speech, a good education, employment, the right to unionise, life, liberty, happiness, and so on). The concept of human rights has the advantage of cutting across cultures and over time.

**Deviance and Social Control** — The view that crime is deviance, or norm-violating behaviour is associated most with sociological criminology. The norms can originate from any source; religion, political belief, etiquette, fashion, or criminal law. In fact, deviance occurs whenever there is stigmatization, isolation, rejection, segregation, punishment, treatment, or rehabilitation. Social control can be coercive (forceful), normative (attitudinal), or an exchange solution (sets of rewards and incentives). Not all deviant acts are criminal (and vice versa). Deviance is in the eye of the beholder. Law is but one form of social control, a coercive, governmental solution. The term “criminalisation” refers to the process whereby criminal law is selectively applied to certain behaviours, and many criminalisation specialists adhere to a deviance and social control viewpoint, asking the question if criminalisation is a neutral process or if it serves the interests of the powerful. Other forms of social control are sometimes studied, like dispute resolution, mediation, therapeutic, counselling, rehabilitation, reconciliation, restitution (self-help, avoidance, negotiation, settlement, and toleration). Deviance and social control specialists tend to focus on distinguishing kinds of acts (contextual explanations) from kinds of people (compositional explanations). Those who adhere to a compositional explanation used to be called social pathologists, and studied the three D’s (delinquent, defective, and dangerous classes).

**Social problem** — Crime is but one of many enduring conditions that seems to have always been there and show no signs of going away (like homosexuality, teenage pregnancy, poverty, or aging). The social problems approach tries to avoid “reductionism”, or explaining crime by virtue of any one explanation, biological, psychological, or even sociological. It tends to look at the social meanings, or collective definitions of crime. It therefore closely studies things like media polls or public opinion. Media portrayals, images of crime, and the measurement of crime are serious concerns to social problems specialists.8

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**Self Assessment Question**

3) Critically examine whether modern approach to crime includes violation of conduct norms and social norms?

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8 C. Wright Mills, *The Sociological Imagination*, (1959)
2.5 THEORETICAL APPROACH TO CRIME

It is not only important to define crime but also important to know why crimes are committed and why a person becomes a criminal? Theoretical explanation of crime helps in dealing with crime and criminal. Criminals have been various things to different people throughout time — heroes, villains, fools, revolutionaries, deviants, scumbags. Most policy-making in criminal justice is based on criminological theory. In fact, most of the failed policies in criminal justice are due to misinterpretation, partial implementation, or ignorance of criminological theory. Much time and money could be saved if only policymakers had a thorough understanding of criminological theory.

Every criminological theory contains a set of assumptions (about human nature, social structure, and the principles of causation, to name a few), a description of the phenomena to be explained, and an explanation, or prediction, of that phenomenon. Criminological theories are primarily concerned with etiology (the study of causes or reasons for crime), but occasionally have important things to say about actors in the criminal justice system also, such as police, attorneys, correctional personnel and victims. Some important theoretical approaches are—

2.5.1 Individualistic Approach to Crime

a) Demonological Theory — Pre Classical Approach

The theory that the crime, was the result of a man acting under the influence of and succumbing to the blandishment of evil spirits is perhaps the oldest one. During 17th Century the idea of religion was dominating the social thinking. The views of St. Thomas Aquinas had a great influence. The monarch was treated as a divine power on the earth and the human beings were treated as devoid of any power as they were under the control of some other super spirit. A criminal was regarded under the control of some demon spirit prompting him to do the misdeeds. The criminal was regarded as a deprave person deserving deterrent punishment.

b) Free Will Theory — Classical Approach

Beccaria, Bentham and Romilly are the pioneers of the classical school. According to this school, the man is possessed of free-will and he acts on the basis of the pleasure and pain (i.e., hedonism). This school rejected the theory of offenders acting under the influence of some devilish spirit. The punishment is a discouragement to the man to commit the crimes as there will be no gain by the crime. The State should alone have the power to keep the force and prosecution. By bearing the punishment, the criminal becomes a free man as by paying the penalty he repurchases his freedom. To Beccaria, basis of the punishment is to restrain the individuals from encroaching upon the freedom of the others which they enjoy by virtue of a social contract. The punishment aims to preserve the existence of the society.

The punishment must be prompt and effective as it is not the cruelty of punishment but its certainty so that the accused may not derive any gain by committing the crime.
c) **Organic Deficiency Theory – Positivist Approach**

Cesare Lombroso is the main exponent of this approach. He explained the concept of Atavism. Lombroso’s general theory suggested that criminals are distinguished from non-criminals by multiple physical anomalies. He postulated that criminals represented a reversion to a primitive or subhuman type of man characterised by physical features reminiscent of apes, lower primates, and early man and to some extent preserved, he said, in modern “savages”. The behaviour of these biological “throwbacks” will inevitably be contrary to the rules and expectations of modern civilized society.

Through years of post mortem examinations and anthropometric studies of criminals, the insane, and normal individuals, Lombroso became convinced that the “born criminal” (“reo nato”, a term given by Ferri) could be anatomically identified by such items as a sloping forehead, ears of unusual size, asymmetry of the face, prognathism, excessive length of arms, asymmetry of the cranium, and other “physical stigmata”. He believed that specific criminals, such as thieves, rapists, and murderers, could be distinguished by specific characteristics. Lombroso also maintained that criminals had less sensibility to pain and touch; more acute sight; a lack of moral sense, including an absence of remorse; more vanity, impulsiveness, vindictiveness, and cruelty; and other manifestations, such as a special criminal argot and the excessive use of tattooing. Besides the “born criminal” Lombroso also described “criminaloids”, or occasional criminals, criminals by passion, moral imbeciles, and criminal epileptics.

Another exponent Enrico Ferri accepting the views of Lombroso, gave emphasis on environment also. He described the crimes as the synthetics product of physical or geographical, anthropological and psychological and social factors.

According to Ferri, punishment is only one form of influencing behaviour and therefore he laid the emphasis on a detailed crime prevention programme by removing those conditions due to which the crime is caused.

Ferri described the following kinds of criminals:

i) insane,

ii) born,

iii) habitual,

iv) passionate,

v) occasional.

Professor Earnest A. Hooton said the physical and racial factors as important in the crime. Criminals have inferior physical composition and thus they differ from non-criminals. According to him the ‘criminal stock’ needs to be eliminated. The sterilisation of defective type of persons and breeding the better race is necessary to check the criminality.

The positivists’ main contribution is regarding the theories of treatment that the juveniles and adults must be treated in different manner. The execution of sentence

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9 Atavism means resemblance with remote ancestors having primitive and savage qualities.
of the juveniles and adults has been left to the psychiatrists, criminologists and social workers. Fines, probation and parole as alternatives to incarceration are better. The positivist approach suggests recasting of the role of judiciary. The positivist reformers emphasise separation of guilt determination from the sentence. The former is to be done by a qualified Judge while the latter by a social physician.

d) Mental Deficiency Theory

In 1838, Jena Esquirol of France pointed out in his book “Mental Diseases” the distinction between mental defect and mental disease. The similar view was taken by Issac Ray in U.S.A. and he raised the question whether the criminal act could be imputed to a man who was incapable of knowing the intent or consequences of the act. The studies made by Richard Dugdale and Henry H. Goddard in some of the alleged mentally retarded families give the impression of a proximity between the mental retardation and the crime. The less intelligent persons can be moulded as delinquents or law abiding persons. Mentally retarded persons easily become criminals.

Criminals have also been as more intelligent class as compared to the general public. The serious delinquents have been found not of lower intelligence. Dr. William Healy out of 4,000 case study in Chicago and Boston found 72.5% normal and 13.53 retarded. In another study of 400 cases of delinquents only two were morons. Distribution of intelligence among criminals was found the same as among the general population in a study by Weiss and Sampliner.

e) Emotional Disturbances

The abnormality of mind may occur due to physical and psychological reasons. The physical reasons may be brought about by diseases, toxic or poisonous products in the system, the age factor, malfunctioning of endocrine glands may cause pathological excitability, abnormal apathy, etc. By syphilis paresis may result affecting motor sensory-responses whereby it becomes difficult for an individual to control normally his reflexes. Senility may also affect the normal responses. Physical handicapness may also generate the criminality but this is not generally true. Majority of the physically handicapped persons adjust them with the norms operating in the society. The criminality in handicapped persons may develop because of certain other factors also when they are not accepted properly by their parents and guardians. The experiences, which a man has faced in his life from very childhood may create mental reactions, i.e., complexes thereby making it difficult for him to face adult responsibilities. Extreme poverty, frustration, insecurity, rejection, failure in love, professional failures and economic conditions may create such problems. Suffering from the mental torture, the individual may tend to escape from the intolerable reality and may live in mental fantasy Sometimes, such persons may develop aggressiveness and cruelty in behaviour.

f) Psycho-Analytical Theory

Sigmund Freud is the propounder of this theory. In committing a crime the ‘id’ and ‘ego’ play important roles. ‘Id’ is present from the birth. ‘Id’ is the basic biological and physical urge e.g. hunger, sex, auction, etc. It always operates in unconscious manner. ‘Ego a conscious personality for which a man remains aware that only a rightful way if getting these things is proper otherwise the society will cast aspersion on him. The relationship between ‘id’ and ‘ego’ brings out ‘super-ego’ which is a controlling factor of human beings. Thus the ‘super-ego’ acts as a self-restraint in every human being. A conflict between ‘id’, ‘ego’ and ‘super-ego’ goes on constantly. Due to weakness or ‘ego’ the personality problems arise resulting in the behaviours that are disapproved by the society.

The individualistic approaches to crime have lost much of the credibility with the advent of more sophisticated environmental theories. Their main weakness lies in the fact that they failed to understand that crime represents a socio-cultural phenomenon which is not associated with physical or mental capacities of an individual as such. But their importance lies in the fact that for the first time attention was paid to the personality of the offender which laid the foundation of modern criminology.

Self Assessment Question

4) “Individualistic approach to crime laid the foundation stone of modern criminology.” Do you agree? Explain.

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2.5.2 Environmental Approaches to Crime

a) Differential Association Theory

Edwin H. Sutherland presented a theory of ‘differential association’ in his ‘Introduction to Criminology’. Sutherland asserts that the criminal behaviour is learnable and learned in interaction with other deviant persons. Through this association, they learn not only techniques of certain crimes, but also specific rationale, motives and so on. These associations vary in frequency, duration, etc. Differential association theory explains why any individual forwards toward deviant behaviour. His assertion is most useful when explaining peer influences among deviant youths or special mechanism of becoming certain criminal. Sutherland did not mean that mere association with criminals would lead to criminal behaviour, but he viewed crime as a consequence of conflicting values.

Differential association theory was Sutherland’s major sociological contribution to criminology.

b) Anomie Theory

The term ‘anomie’ was used by Durkheim. It means the state of normlessness or lack of regulation. The normlessness results in deviant behaviour. In the

16 1939 Ed.
17 Emile Durkheim, ‘Suicide’ (1951)
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transformation of folk society to the modern one, the groups operating between the individual and the State e.g., local government, church, etc. lose their significance. The relations of the individual with the State become disorderly for not conforming to the social norms. The rules and regulations do not remain of any importance because of discontinuity between the experience and expectation.

Merton who based his theory on ‘anomie’ did not emphasise the ‘anomie’ as the discontinuity between Experience and expectation but the anomie he said are the values and norms of the society which do not suit an individual creating confusion in him.

According to Durkheim anomie is a temporary feature which emerges in course of society’s development but for Merton anomie is a permanent feature of all modern industrial societies. Durkheim said anomie only endemic in industrial societies which develops due to economic crises or burgeoning industrialism.

c) Conflict Theory

Ralf Dahrendorf’s book ‘Class and Class Conflict in Industrial Society’ was published in 1959. He realised that all changes occur due to class conflict and the change is in a revolutionary manner. Dahrendorf did not accept the manifestation of antagonism between the classes as they may vary in their intensity. There may be unrecognised or latent antagonism of different interests or there may be acute or violent conflicts.

In capitalist society, the basis of classification is control over the means of production but in post-capitalist society, the exercise of authority or exclusion from it is the basis of social classification. Thus the conflict arises due to authority subject relations in different contexts not because of individual conflict. Those having the authority have the power to dominate and those not have to accept the commands as they are in subjection. So there are two sets of position one domination and the other subjection. Every individual is either in a dominating position or in subjection. Dahrendorf has rehabilitated conflict approach for criminologists. In every society, there is a coercion by some or others and dissent and conflict are normally present in every society. Although Dahrendorf was not concerned with crime problem yet his thought reoriented criminology in a broader perspective ending its isolation from social sciences.

The conflict approaches of Dahrendorf was also acknowledged by Richard Quinney. The diversity, conflict, coercion and the change in social order were noted by him. Quinney sought to study the problem of crime and criminality with focus on the conflicts of groups in the context of various institutions e.g. political, economic, religious, kinship, educational aid public. Quinney rejected the pluralistic notion of law as representing the diverse interests rather the law supported the interests of some only at the expense of others.

Walter W. Miller worked on gang delinquency and street corner groups. His work on inner city delinquency problem makes it clear that the cultural transformation is relevant to the modern problems. He has described delinquency as a result of group-conflict. There are three groups — one is the law abiding street corner group, another is the aspiring but conflicted group and the third is the group which becomes successful in upward aspiring. The group which seeks to aspire but is blocked in its aims gives birth to delinquency.
d) Geographical Theory

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According to geographers, the climate and topography affect human behaviour very much. This theory focuses on criminal patterns within particular built environments and analyses the impacts of these external variables on people’s cognitive behaviour. Montesquieu said that the criminality was more near the equator and drunkenness more near the poles. Adolph Quetlet, the father of statistics, in his ‘Thermic Law’ of crime said that in the countries with warm climate, the crimes of human violence were more in number while in the cold countries, the crimes against property were more in number. The crime rates variation according to the weather, months, north and south, cold and warm, rural and urban areas have also been noted.

The environmental approach was developed in the 1980s by Paul and Patricia Brantingham, putting focus on environmental or context factors that can influence criminal activity. These include space (geography), time, law, offender, and target or victim. These five components are a necessary and sufficient condition, for without one, the other four, even together, will not constitute a criminal incident.

e) Economic Theory

Economic factors are related to the crime. People in the society are seen to strive for the material goal to meet out their basic needs. The income which is not proportionate to the basic needs of man or the income which is less than that of which a man is accustomed or the income which is not to the level of others is the cause of dissatisfaction. The materialism is the main cause of dissatisfaction. Satisfaction as the highest wealth is no more true due to materialistic attractions. The deviation from the sacred path is leading to criminalistic activities. The white collar criminals are mainly the effects of degradation of values in the society. Unemployment is also a factor for crimes relating to property even involving violence. Although the poverty is one of the causes of the crime yet the crimes are increasing even in those countries which are prosperous.

Karl Marx described the law violations generally ‘the off-spring of the economical agencies beyond the control of the legislation’.

William Bonger—The Dutch criminologist, William Bonger, known as ‘father of conflict criminology’, said that the enactment of the law is according to the wishes of the ruling class. The division is the result of the production system. The capitalist system generates egoism instead of altruism and the criminal tendencies develop in all. Since the egoistic tendencies of the bourgeoisie are legitimised, they are more criminals than the proletariats. The bourgeoisie need not steal since they have lucrative and surer means of gaining money. The proletariats have underdeveloped moral sense; they commit the crime whenever they get the opportunity to gain.

Bonger stressed on the poverty as a motivating factor of crime in a capitalistic structure of the society and excessive alcoholic use by the poor resulting the crime more in number. According to a study made by Dr. Cyril Burt in London.

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18 Montesquieu, ‘Spirit of Laws’
19 Barnes and Teeters, ‘New Horizons in Criminology’, Illrd Ed., pp. 143-146
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19% of the delinquent children came “from the very poor families and 37% from moderately poor when the total population of very poor was 8% and moderately poor 22%. The total delinquency was over 50% from the very poor and moderately poor families. The most of delinquents from the comfortable class succeed in avoiding official inquiry. The majority of the needy do not become delinquents and therefore the majority of the delinquents are not needy.22

It has been found in U.S.A. that many girls adopt prostitution because they want to live in luxurious way and the boys resort to criminal tendencies because they want to have automobiles or they desire to keep sex relations with the young girls under the influence of money.

f) Social Disorganisation Theory

The society is not static. With the changes in society, the values also change. The urbanisation and industrialisation have accelerated the dynamic nature of the society. The persons of different races, cultures, religions and communities come in contact with one another resulting in breakdown of traditional patterns of living and values. The family attitude has changed into individualistic attitude. It is social disorganisation which creates deviant behaviours. Sometimes some components of one culture go ahead of others. Sometimes values are imposed by the Government on the traditional values and sometimes the values are imported. All these things create the problem of social disorganisation and therefore delinquency.

g) Ethnic Theory

The ethnic causes are also important in creating the criminal behaviours. Various races with difference in their cultures lead to conflict amongst themselves because of non-adjustment underrating one another. The local race tries to subjugate the migrants. The denial of equality of opportunity and subordinate status to Negroes by the Whites in the American society has resulted in a lot of discrimination generating a sense of revolt against the Whites and sometimes revolt in their own community by Negroes.23 In India also the racial discrimination has been a vital factor. Post-independence India has witnessed several sectarian riots leading to blood-shed and anarchy in the various parts of the country which are glaring examples of it.

h) Juvenile Gang Delinquency Theory

According to Frederick M. Thrasher, juvenile delinquents belong more to lower class i.e., the juveniles in the poverty-belt. The poverty is the cause of delinquency. According to Albert K. Cohen, there is a peculiar culture in America, ‘delinquent sub-culture’.24 The member of this class have some expectations and ambitions because the boys of this class find themselves having not the advantages of the same standard as the boys of the middle-class society. The delinquency may be caused due to family atmosphere, school atmosphere, economic factors, mass communication media etc.

i) **Home and Community Influence Theory**

Home and community atmosphere influence the children and their behaviour. The lose control, the lack of parental insights, low income, poverty, poor housing, high rental houses and overcrowding of the population, etc. are responsible for criminal behaviour in the children. It has been seen that the parents living in strained relations or behaving indecently influence the tender mind of their children. The broken-homes where parents live separately or who are divorced or where one of the parents is step, fail to provide the natural love and affection and careful attention to the children. These things create problems and the children become delinquents.

There are secondary community influences also which mould the behaviour of the children.\(^\text{25}\) The role of the school, the company in which the child moves, the games which he enjoys, the motion pictures, profess, television and radio all have important roles to play. The sex and pornographic advertisements add to the sensations of the children causing them delinquency. The roles of the criminals and their Activities in the movies leave a very bad impact on the young susceptible to mental affliction.

j) **Multiple Causation Theory**

The cause of the crime cannot be attributed to any particular factor. Crime is, committed due to various reasons. The theories discussed hereinbefore lead us to the different causes of crime. Enrico Ferri classified, the factors of the crime as individual or anthropological, physical or natural and social, the age, sex, civil status, profession, domicile, social rank instruction, education and the organic constitution are the anthropological factors. The race, climate, fertility, meteoric conditions and temperature are the physical factors. The density of population, emigration, public opinion, customs and religion, public order, economic and industrial conditions, agricultural and industrial production, public administration of public safety, public instruction and education, public beneficiaries, and in general, civil and penal legislations are the social factors. Ferri however said that to these factors we could add many more as it might not be exhaustive list.\(^\text{26}\)

On a true analysis we and that the crimes are caused due to variety of factors. The white collar crimes and the crimes involving violence are the two different things and their causes are different. The white collar crimes are committed more due to greed than the need. The crimes involving violence may be committed due to many reasons sometimes due to sudden impulse, sometimes due to revengeful attitude, sometimes due to greed of inheriting the property, sometimes due to gratifying sexual lust, etc. Sheldon and Eleanor Glueck\(^\text{27}\) and Prof. Vold\(^\text{28}\) are also supporters of multiple causation approach.


\(^{26}\) Enrico Ferri, ‘Studies on City in France from 1826 to 1878, quoted in ‘Modern Theories in Criminality’ by C. Bernaldo de Quiros. (1911) pp. 20, 21


\(^{28}\) George B. Vold. ‘Theoretical Criminology’ (1958), pp. 313-314
2.6 PUNITIVE APPROACH TO CRIME

Punitive approach is very traditional approach to crime, which is universal in nature. It regards the criminal as a basically bad and dangerous sort of person. The object of this approach is to punish the offender so that the society may be saved from his misdeeds. The punitive approach has its focus of attention on the damage caused to the victim and danger posed to society. The criminal is treated as something incapable of being reformed. He is judged on the basis of his past conduct and not on what improvements he is capable of in future. This approach even today is recognised as a potent force to contain the crime.

According to Donald R. Crassey justification for punitive approach to crime lies in the fact that the criminal is made a scapegoat to give relief or gratification to the members of the community. He is of the view that this relief or gratification is due to their sense of freedom from their own guilt feelings about the crime, as a result of punishment given to the offender. This is based on the theory that all human beings have criminal propensities though in most cases they may not be reflected in actual behaviour. If no outlet is provided to such feelings by punishment, even lynching may be resorted to by the people. Another view is that the hostile reaction to the criminal works as a bond between non-criminal members of the community. The bond represents the reassertion of moral principles common to the members of the society and serves as a reminder of the taboos to all of them.

The justification for the punitive approach to crime is also offered on the ground of “grim necessity”. The pure and extreme retributionists perceive punishment as inherently good, i.e. per se and believe that no justification is required for punishing an offender. Justification for punitive approach is also argued on the basis of “social contract” which creates a situation of give and take. In order to enjoy individual rights and liberties it is only reasonable and inevitable that individuals curtail their freedom vis-à-vis others and in case of their failure to do so, punishment must be inflicted on them.
In brief punitive approach may be divided into two classes on the basis of retributive and utilitarian theories. While the retributionists assert that the infliction of punishment is justified in itself since offenders should be given their just due, the utilitarians regard punishment as an evil which should be used only if it serves some real purpose like deterrence from the commission of crime. In olden days man has devised a great variety of methods for the punishment of criminals. The most common ones have been death, physical torture, mutilation, branding, public humiliation; fines, forfeiture of property, banishment, transportation, and imprisonment, but each of these had many forms. Thus death has been accomplished by flaying, crucifixion, beheading, hanging, impaling, drowning and burning; physical torture by flogging, dismemberment, and starvation; public humiliation by stocks, pillory, ducking, stools, banks and branding and imprisonment by confinement in dungeons, galleys, ‘hulks’, jails, houses of correction, work houses and penitentiaries. A few of these, however, have survived in modern society, and during the past few decades in western civilisation the principal methods of punishment have been death, whipping, transportation, fines, restitution, imprisonment, probation, and parole.

In modern society punishment is the penalty inflicted by the State upon a person adjudged guilty of crime. Its administration always involves the intention to produce some kind of pain, which is justified in terms of its assumed values. The pain intended may be partly physical, as in a whipping, but today most methods of punishment are designed primarily to cause; mental suffering, as in imprisonment, where there is loss of freedom, reputation, and perhaps of the property.

Under Indian Penal Code Section 53, the offenders may be subjected to following types of punishments:

1) Death
2) Imprisonment for life
3) Imprisonment which may be
   a) Simple
   b) Rigorous
4) Forfeiture of property
5) Fine

Self Assessment Question
7) Discuss justifications for the punitive approach to crime. What kinds of punishments are provided to deter the criminal from committing the crime?

Ahmad Siddique’s *Criminology & Penology*, (2009), pp 128-29
2.7 THERAPEUTIC APPROACH TO CRIME

Therapeutic approach to crime is of relatively recent origin, which considers the criminal as a victim of circumstances and a product of various factors within the criminal and society. With growing humanitarianism, increasing impersonality in social relationships and growing belief in the powers of science, capital and corporal penalties have become unacceptable and ineffective and have been largely replaced with imprisonment, probation and parole. Since this approach regards the criminal as sick person requiring treatment, it is termed as the therapeutic approach.

The ultimate objective of the therapeutic approach or correctional administration is the rehabilitation of offenders in the main stream of social life. The person in a prison is often a victim of circumstances and his detention period needs to be utilised for giving him training and equipping him with skills which would help him to rehabilitate himself in the society. The modern theory of Reformation and Rehabilitation emphasizes the need for training not only in custodial and security aspects, but also in the scientific methods of treatment of offenders. Therefore, today jails are not penitentiaries but reformation houses. Sri Sri Ravi Shankar is of the view that “expand your vision and see that inside every culprit is a victim crying for help. If you heal the victim, you will eliminate crime from the planet.” Prisoners are provided with an opportunity to integrate into the mainstream society and heal themselves. Various programmes run in the prison features self development workshops with an emphasis on human values, and vocational training programmes.

In India the prisoner rehabilitation programme was initiated in 1999 in Tihar Jail, home to some of India’s most notorious criminals. The programme is active in eight of the 17 jails in Tihar, and more than 30,000 inmates have participated in the programmes and benefitted from it. A programme SRIJAN (Social Rehabilitation of Inmates in Jail and Aiding the Needy) has been initiated in some of the jails of India, which offers inmates a variety of opportunities such as theatre, music and dance workshops, and personality development. The initiative also offers vocational training in commercial arts, costume jewellery, fashion technology, and weaving.

Three SRIJAN workshops were recently held in New Delhi, where inmates were trained to produce items such as office stationary, gift boxes and lampshades. The prison administration works with local NGOs and partners to market handicrafts prepared by prisoners in India and abroad. All proceeds go to the craftsmen, thus making them economically independent. It is giving these people the skill to live, support themselves, and develop a life style which is fitting to live in society.

Probation and parole also have the objective of rehabilitation of offenders and protection of society from his actions at the same time. In both the techniques, skilful supervision of selected offenders is involved outside the prisons. The advantages of probation and parole have been mentioned in terms of protection of the offenders’ personality from the contaminating influence of prison life. The released offender has the advantage of continuing to have normal social

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30 Sabnis M.A., Planning and Administration of Aftercare Services, The Children’s Act Society, Bombay, (1958)
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relationships and his employment. The offender is also spared of the stigma of a prison sentence making the task of rehabilitation easier. It is also pointed out that unlike the dependants of an offender sent to prison, the dependants of a probationer do not have to be supported by welfare agencies.

Probation and parole have great therapeutic value for the offenders as well as for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Release of offenders on Probation or parole reaffirms the fact that in every individual resides a human being which should be given prominence to.

Another important aspect of therapeutic approach to crime is to ensure justice to the victims. Now it is being realised that the victim should also be given substantial right to participate in the criminal proceedings. Therefore criminal justice system must focus on the right of the victim to participate in cases involving serious crimes and to adequate compensation.

Various Reports of Law Commission of India as well of Committees on Reforms of Criminal Justice administration have played a pivotal role in developing compensatory jurisprudence in India. The Law commission of India in its hitherto submitted Reports on the Indian Penal Code, 1860 (IPC) and the Code of Criminal Procedure, 1898 and of 1973 has deliberated upon the issue of justice to victims of crime and has also suggested some proposals for reform. The Malimath Committee (2003) on Reforms of Criminal Justice System in India has also laid emphasis on the participation of victims in the criminal justice processes and has advocated for compensation and restitution of the victims.

Self Assessment Question
8) Discuss in detail aims and objectives of therapeutic approach to crime.

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2.8 PREVENTIVE APPROACH TO CRIME
Prevention is always better than cure. Prevention of crime and delinquency like any other phenomenon of an unpleasant and destructive nature is much better than their subsequent control when they occur. When an offender is sent behind bars or is given capital punishment, he is prevented from committing further crimes during the period of his incarceration or forever, as the case may be.

32 Government of India, Committee on Reforms of Criminal Justice System, (2003), p.271
Two methods of reducing the frequency of crimes have been suggested and tried. One method aims at reducing the amount of repeated crime, the other at forestalling commission of first crimes. The name ‘crime prevention’ has been given to both methods. Programmes for the prevention of crime and delinquency are to be directed not only to those who have already indulged in criminal behaviour sufficient enough to warrant cognisance by law enforcement authorities but also to those who either have manifested some tendency to suggest possible delinquency by them in future or who may be otherwise normal but because of individual or environmental factors operating against them, criminal or delinquent behaviour can be expected from them. Preventive approach to crime is more relevant and useful with regard to young persons in view of the fact that the chances of a person turning criminal after reaching a certain age, when the values and attitudes are more or less fixed, are somewhat lower than in the case of persons of immature age and understanding.\(^{33}\)

Though punishment is one method of building up anti-criminal attitudes in the general public, it is not the most efficient method for preventing crime. Preventive Approach to Crime instead of focussing attention on particular offenders seeks to eliminate those conditions which are responsible for the causation of crime. The development of habits and attitudes by education, by the spreading of traditions, by the contacts and interactions between those who appreciate the values and those who do not is probably a more efficient method. In other words, prevention in this sense includes the efforts to improve family relationship, promote better adjustments in school, provision of education and recreation designed to produce useful and upright citizens and the use of aids in the fields of social work, medicine and psychiatry.

As we find out more about crime causation, we shall have a better basis for the determination of specific policies for this purpose. These policies, if carried out consistently may be expected to protect society from crime in three ways:

1) First, they would secure a relatively permanent segregation, or gross lack of appreciation of conventional values or social situations and constitute the greatest menace to the group;

2) Second, these policies would restore to society without alienating them a large proportion of those who have not definitely broken away from the general anti-criminal culture of the organised society

3) Third, these policies would define the type of personality and the social situations from which crimes are most likely to issue, and would make it possible to deal with such persons in advance of crime and ‘to attack and eliminate those social situations’.

Thus protection against crime would be secured by modifying those who could be modified by available techniques, segregating those who could not be so modified, and correcting or segregating in advance of crime those who were proved to be most likely to commit crime, and attacking and eliminating the social situations which were most conducive to crime. Such policies would be as much evidence that the organised society disapproved of crime as would punishment, and it is this disapprobation, rather than punishment of individual criminals, which tends to deter the large majority of the population from crime.

\(^{33}\) Ibid, p.310
Self Assessment Question

9) “Prevention is always better than cure”. What preventive measures can be taken to combat the crime in the society?

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2.9 SUMMARY

• Crime is an act which is both forbidden by law and revolting to the moral sentiments of the society.

• Crime is a relative concept and a changing one too. Approaches to crime have been different at different stages of human civilisation and even at a given time they have been different in various societies.

• Traditional approach defines crime in terms of violation of public law, whereas modern approach to crime emphasizes upon functional aspect of law. Theoretical explanation to crime involves individualistic and environmental approaches to crime.

• Crime may be defined in terms of its attributes and characteristics by first distinguishing crime from civil and moral wrong and secondly by critically examining definitions given by eminent criminal jurists from time to time.

• If the law awards a punishment for the wrong done, we call it a crime, but if law does not consider it serious enough to award a punishment and allows only indemnification or damage, we call such wrong as a civil wrong or tort.

• It is not only important to define crime but also important to know why crimes are committed and why a person becomes a criminal. Theoretical explanation of crime helps in dealing with crime and criminal.

• Individualistic approach to the crime for the first time paid attention to the personality of the offender which laid the foundation of modern criminology.

• Environmental approach to crime represents a socio-cultural phenomenon which is not associated with physical or mental capacities of an individual as such.

• Punitive approach is very traditional approach to crime, which is universal in nature. It regards the criminal as a basically bad and dangerous sort of person. The object of this approach is to punish the offender so that the society may be saved from his misdeeds.

• Therapeutic approach to crime is of relatively recent origin, which considers the criminal as a victim of circumstances and a product of various factors within the criminal and society. It regards the criminal as sick person requiring treatment.
Basic Issues

- Prevention of crime and delinquency like any other phenomenon of an unpleasant and destructive nature is much better than their subsequent control when they occur.
- Programmes for the prevention of crime and delinquency are to be directed not only to those who have already indulged in criminal behaviour but also towards potential criminals and delinquents.
- Different approaches to crime provide better basis for the determination of specific policies for dealing with crime and criminals.

2.10 TERMINAL QUESTIONS

1) “The modern approach to crime is not to bother about a definition of a crime but to lay stress on its functions”. In this light critically examine the drawbacks of traditional approach to crime.

2) Discuss in detail contributions of environmental approaches to crime.

2.11 ANSWERS AND HINTS

Self Assessment Questions

1) Blackstone’s definition of crime. Section 2.3.

2) Moral wrongs are restrained and corrected by social laws and the laws of religion.

   If law awards punishment for the wrong done, it a crime but if allows only indemnification or damage, it is called wrong or a civil wrong.

3) Refer to Section 2.4 of the reading material.

4) For the first time attention was paid to the personality of the offender by the individualistic approach of Lombroso, Garofalo and Ferri etc. which laid the foundation of modern criminology. According to them it is the peculiar physical and mental characteristics of offender which distinguishes him from non offenders.

5) Differential association theory was Sutherland’s major sociological contribution to criminology. Besides conflict in groups and situation of normlessness in the society also aggravates crime.

6) Bonger stressed on the poverty as a motivating factor of crime in a capitalistic structure of the society. Economic factors are related to the crime. Although the poverty is one of the causes of the crime yet the crimes are increasing even in those countries which are prosperous.

7) The punitive approach has its justification in the damage caused to the victim and danger posed to society. This approach even today is recognised as a potent force to contain the crime. In modern society types of punishments are- death, imprisonment for life, imprisonment which may be simple or rigorous, forfeiture of property and fine.

8) Therapeutic approach to crime considers the criminal as a victim of circumstances and a product of various factors within the criminal and
society. It regards the criminal as sick person requiring treatment. See section 2.7 of the material.

9) Prevention of crime and delinquency is much better than their subsequent control when they occur. Two methods of reducing the frequency of crimes can be adopted. One by reducing the amount of repeated crime and other by forestalling commission of first crimes. See Section 2.8 of the material

Terminal Questions
1) Refer to Sections 2.3 and 2.4 of the reading material.
2) Refer to Sections 2.5.2 of the reading material.

2.12 REFERENCES AND SUGGESTED READINGS


