6.1 INTRODUCTION

Accountability is a concept in ethics and governance with several meanings. It is often used synonymously with concepts like responsibility, answerability, liability, and other terms associated with the expectation of accounting. The term accountability in Criminal Justice System is the duty of different legal institutions to maintain the rule of law and to promote a sense of security among the members of the society. Further, in Criminal justice system accountability means effective discharge of functions by the instrumentality of the state for good governance.

Criminal Justice System is an agency of social control to prevent crime. In the past few decades, the criminal justice system has come to face a number of challenges, due to a variety of reasons. There has been a considerable increase in crime rate. This phenomenon however is not peculiar to India alone. The recent crime statistics all over the globe have been recording a similar trend. In this context there is a great responsibility on all the legal institutions such as, legislature, police, courts, prisons, Human Rights Commissions, media and people to make a reasonable effort to prevent and control crimes.

6.2 OBJECTIVES

After reading this unit, you should be able to:

- identify different legal institutions and their accountability in criminal justice;
- study the role of law enforcing agencies in prevention and control of crime;
Principles of Criminal Jurisprudence

- explain the special role played by police in administration of criminal justice;
- study and appreciate the role of Human Rights Commissions in this field; and
- explain the role of media and the people in helping and assisting in prevention of crime.

6.3 CRIMINAL ACCOUNTABILITY—AN OVERVIEW

Justice is administered as per the law enacted by the legislature. Law in a changing society should change according to the needs and aspirations of the people. There is a rapid increase in the activities of modern state, due to industrialisation. Further due to socio-economic and political reasons new crimes are coming up. Some of them are custodial crimes, Insurgency Crimes, Terrorism, Organised Crimes, Political Crimes, Cyber Crimes and white-collar crimes etc. There is also an enormous increase in the rate of traditional crimes like murder, rape, cheating, dacoity, domestic violence. The present criminal justice system has failed to deliver speedy and prompt justice to the people. The Criminal cases are pending in the courts for several years and some criminal cases more than fifteen years. The number of under trial prisoners is increasing day by day. The different agencies of criminal justice system are not in a position to meet their desired goals. Therefore, people are slowly losing their faith in the existing system.

In India, we have a number of substantive and procedural criminal laws to regulate, prevent arrest, prosecute, punish and reform the violators of the law. Constitution is an important source of law. All laws in force in the territory of India should be in conformity with the Constitution. Therefore, the Constitution and the laws enacted by the state play a significant and important role in criminal administration of justice. It is a well know that prevention of crime essentially needs the services of law-enforcement agencies to detect, investigate, apprehend and prosecute criminals in the courts of law. Generally, the violation of law is brought to the attention of the police. Police prepares grounds for criminal investigations. The courts record evidence and decide whether the charge against the accused is proved or not. In case the guilt is proved, the accused is convicted by the court and sent to prison or some correctional institutions to undergo the term of sentence. Thus, a number of functional agencies, notably the police, the courts and the prisons or after-care institutions are involved in the administration of criminal justice.

Before, entering into a detailed discussion about the functioning of these law-enforcing agencies it must be stated that all criminal trials do not necessarily involve the services of the above agencies. In several cases the offender is discharged by the police after preliminary investigation. In some cases the prosecution against the accused is dropped by the court at the stage of framing of the charges. In some cases the accused will face the prosecution and trail. Finally, after hearing evidences from both the sides the court may grant punishment or acquit the accused. Again after conviction many offenders are released on probation. Those who are sent to the prison may also be given parole. Apart from these agencies the press, print-media and public also contribute their services for healthy functioning of criminal justice system.
Self Assessment Question

1) a) Justice is administered as per the .....................................................
    enacted by the legislature.

    b) Generally, the violation of law is brought to the attention of the
    ..........................................................................................................

6.4 TECHNICAL TERMS

**Parole:** Parole is the release of an offender from a jail, who shall remain under the control of correctional authorities. The objective of parole are to enable the prisoner to meet his family members, to avoid evil effects of continuous stay in prison and to retain self confidence and active interest in life. Therefore, parole is release of a prisoner from imprisonment, but not from legal custody.

**Probation:** The term Probation means “to test or to prove”. Probation is a matter of discipline and treatment. The probation is a release of offender as a treatment devise prescribed by the court for persons convicted of offences under law, during which the probationer lives in the community and regulates his own life under the condition imposed by the court.

**Accused:** A person who is blamed for a wrong doing. Legally speaking, an accused is a person charged with a criminal offence. A person who has been arrested or formally charged for violation of any law.

**Conviction:** Conviction is the result of an order of the court stating that the accused is guilty of a crime.

**Acquittal:** The act of freeing a person from the charge of an offence by means of a decision, judgment or other legal process.

**Substantive law:** Substantive law is a written law of the state defining rights, duties, immunities, privileges and responsibilities of its subjects (Citizens). In the context of criminal law substantive law defines crimes and punishments (in the criminal law). It is codified in the form of statute e.g., Indian Penal Code 1860.

**Procedural Law:** Procedural law deals with the means and method by which substantive law is administered and enforced. Basically, it deals with the procedure to prosecute and punish the accused person. It also deals with different functionaries involved in the administration of criminal justice system. E.g., Code of Criminal Procedure, 1973.

**Approver:** An approver is a person who is involved in a crime, but who confesses and offers to serve as a witness for the prosecution. Technically, an approver is an accomplice. His involvement in the crime may be in planning, execution and concealment of material facts. Approver generally, pleads for mercy of the court.

**Correctional Institutions:** An institution where juvenile(Children) offenders can be held temporarily usually under the supervision of a juvenile court. Correctional institutions includes: Observation Homes, Juvenile homes, Special Homes, Reformatory Homes, and Borstal Schools.
Legislature is an important source of law. Laws are the rules which the State makes for controlling the activities of the people in a society. If the laws made by the State are disobeyed then the State exercises its sovereignty to punish the guilty. The laws enacted by the Indian Parliament and various State Legislative Assemblies are known as Statutory Laws. In fact majority of laws existing in our country belong to this category. The law making power may be delegated to the executive. Under this power the executive makes rules, regulations, orders, by-laws etc. Laws are obeyed because of their utility. Most of the people obey laws as they are beneficial to the society. Law may be classified as constitutional law, Civil Law, Criminal Law, Consumer law, Property Law, Family law, Labour Law etc.

Under the Constitution of India criminal law is a concurrent subject; therefore the State and Central Governments are competent to make legislation. In order to prevent, regulate, prosecute and punish the offenders the State and Central governments passed a number of legislations. The accountability of legislature demands to bring out proper legislations for the welfare of the society. This accountability includes intent and content of the legislation. In respect of criminal accountability some of the important legislations passed by Central Government are mentioned below:

**The Explosives Act, 1884:** It deals with the control of the Manufacturing, possession, sale, use, transport of material which damages the nature and human beings.

**Indian Penal Code, 1860:** It is an important substantive law while deals with nearly 400 offences. It is a major substantive law which regulates criminal justice system in India.

**The Indian Evidence Act, 1872:** It deals with the relevancy, admissibility, examination and proof of facts to know the existence or non-existence of any fact or facts. It helps the court to find out the truth.

**The Preventive Detention Act, 1950:** This was a popular legislation passed by the central government to arrest any accused person in anticipation of any apprehension, danger or threat to the sovereignty, integrity and national security of India.

**The Arms Act 1959:** This Act was enacted to consolidate the law relating to arms and ammunition in India.

**Maintenance of Internal Security Act, 1971:** This Act was passed in order to prevent foreign inspired sabotage, terrorism and threats to national security.

**The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974:** This Act was passed to regulate certain payments in dealings in foreign exchange and securities, transactions.

**The Code of Criminal Procedure, 1973:** The code of criminal procedure deals with machinery and procedure to prosecute and punish the offender who breaches the substantive criminal law.
Foundations of Criminal Accountability

The above legislations are illustrative. There are a number of state and central legislations to deal with prevention, detention, prosecution and punishing the criminals. Therefore, the criminal accountability first of all vested with the legislature to deal with crimes.

Self Assessment Question
2) Who is an Approver?

6.6 POLICE AND POLICING

The role of police as an agency in the administration of criminal justice system needs to be explained. The police come first in the sequence of criminal procedure. The role of the police in the present environment is considerably increased. The police are required to perform a multitude of functions. They are required to deal with all kinds of community conflicts ranging from family quarrels to large scale riots. They have to regulate traffic, provide emergency services to the citizens in distress or danger, protect important persons and organise security services for the safety and protection of persons and property, apart from the routine crime prevention, detection and prosecution duties. Some of the duties of the police under law are mention below:

- Every citizen has a legal right to lodge an oral or a written complaint of an offence to the Station House Officer or his superior at any police station.
- It is the duty of all the police officers and the police personnel to give a patient hearing to all citizens who visit or come to clearly inform them about the action taken on the complaint.
- After a complaint of a cognizable offence is given, it should be immediately registered and it is the right of complainant to receive a copy of the First Information Report (FIR). Similarly, in case of a non-cognizable offence, after registering the same in the register of non-cognizable offence registered is given to the complainant and he is advised to approach the court.
- Police cannot evade registering an offence on the plea of want of jurisdiction. It is necessary that the offence is registered and the same is sent to the police station concerned.
- To understand the mode of working of the different sections of the police station boards displaying general information in this regard are displayed in the police stations as well as in the office of Deputy Commissioner of Police.
Principles of Criminal Jurisprudence

- When an accused is arrested he should be informed of an offence for which he is arrested and also about the section of the Act pertaining to that offence.

- While making an arrest or investigating a crime the police officers or personnel should show their identity cards and also display the name plate showing their name and designation on their uniforms so as to be clearly visible.

- If requested by the accused person, the information of his arrest should be given to his relatives or persons at his home and a note of having done so should be made in the police station diary.

- While arresting a person, medical examination of all the old and fresh injuries on his body should be done and a note thereof be taken.

- On being arrested the accused should be medically examined once in every 48 hours, while in police custody.

- While an accused is in the police custody, his lawyer should be permitted to visit him.

- Information of the arrest of an accused should be given to the District Control Room and the State Police Headquarters.

- The accused should be presented before the judicial Magistrate/Judge concerned within 24 hours of his arrest.

Police has a professional responsibility with the highest standards of conduct and character, particularly those of honesty, impartiality and integrity. The development of modern techniques has thrown new responsibilities and challenges for the police department. The scientific devices have made the law barking more successful and difficult to catch. The police should therefore, be thoroughly conversant with the new techniques of crime-control. The use of scientific technology in investigation would serve a useful purpose for strengthening the police efficiency.

### 6.7 EXECUTIVE MAGISTRATES

An Executive Magistrate is an officer of the Executive branch, who is invested with specific powers under CrPC and the Indian Penal Code (IPC). The following kinds of Executive Magistrates are assigned a number of powers under Code of Criminal Procedure:

- one District Magistrate (DM)

- one or more Additional District Magistrates (ADM)

- one or more Sub divisional District Magistrates (SDM) and

- Executive Magistrates

These magistracies are normally conferred on the officers of the Revenue Department, although an officer can be appointed exclusively as an Executive Magistrate. Normally, the Collector of the district is appointed as the DM. Similarly, the Sub-Collectors are appointed as the SDMs. Tahsildars and Deputy/Additional Tahsildars are appointed as Executive Magistrates.
These officers cannot try any accused nor pass verdicts. A person arrested on the orders of a court located outside the local jurisdiction should be produced before an Executive Magistrate who can also set the bail amount for the arrested individual to avoid police custody, depending on the terms of the warrant. The Executive Magistrate also can pass orders restraining persons from committing a particular act or preventing persons from entering an area (Sec 144 CrPC). There is no specific provision to order a “curfew” The Executive Magistrates alone are authorised to use force against people. In plain language, they alone can disperse an “unlawful assembly”; technically, the police are to assist the Executive Magistrate. They can direct the police about the manner of force (baton charge/tear gas/blank fire/firing) and also how much force should be used. They can also take the assistance of the Armed Forces to quell a riot. The Executive Magistrates are also empowered to deal with disputes relating to any land or water or the boundaries of the land, which includes building, markets, fisheries, crops etc.

When the officer, in-charge of a police station receives the information that a person has committed suicide or has been killed by other person or by an animal or by suspicion that some other person has committed an offence, he shall immediately give information thereof to the nearest Executive Magistrate to empower to hold inquest, shall proceed to the place where the body of such deceased person lies.

An Executive Magistrate is playing an important role in the administration of justice particularly in the maintenance of law and order, therefore the law imposes accountability to such officers.

6.8 CRIMINAL COURTS

The role of court as an agency of justice particularly in criminal administration is more vital, important and significant than that of the police or the prison. The prime function of the court is to impart fair and impartial justice. The judges have to discharge this arduous task with utmost care and caution so that public confidence in judicial process is not shattered. The presiding judge must be aware that his verdict in the case is going to make a lasting impression upon the accused about justice or injustice depending on his rightful or wrongful acquittal or conviction. His future reformation or continuance of a life of crime depends to a large extent upon his court experiences.

In India there is one unified Judicial System with Supreme Court as the highest or apex court. Supreme Court and High Courts are impartial and independent bodies which deal with various civil, criminal and constitutional issues. An independent judiciary is essential for ensuring human rights and protection of democracy. In a representative democracy like India, administration of justice assumes special significance in view of rights of individuals which need protection against executive or legislative interference. The Indian Judiciary has adopted an active and dynamic role in the matters of interpretation of human rights. The judiciary has been transformed from an instrument of State to instrument of governance through its activism.

There are judgments of Supreme court and High courts covering a variety of subjects like human rights, custodial deaths, illegal detentions, prison conditions,
right to shelter, rehabilitation of mentally retarded and physically handicapped persons, issues concerning the rights of the community the right to livelihood, the right to the clean and pollution free environment, maintaining the ecological balance, the right of women and children, guidelines for inter-country adoption, right to education, emancipation of bonded labour, the right to better working conditions, protection against exposure to hazardous substance, the regulation of blood banks and blood donors, consumer rights, functioning of Lok Adalats, protection of ancient monuments, issues relating to public administration and public life road safety and traffic regulation, adherence to municipal and building laws by builders, corruption the nexus between criminals and politicians, criteria for allotment of government accommodation, telephone tapping, and issues relating to public policy the privatising of telecommunications, disinvestments to public sector companies, Foreign collaborations in core industrial sectors licensing policy. In all these cases the courts acted legally, constitutionally with accountability.

6.9 PRISON

A prison is a place in which people are physically confined and, usually, deprived of personal freedoms. Prisons are conventional institutions which form part of the criminal justice system of a county, such that imprisonment or incarceration is a legal penalty that may be imposed by the state for the commission of a crime. The object of imprisonment in the modern day is to protect the society from criminals, to reform the offenders, to deter them and extract retribution for criminal acts to the satisfaction of the society.

The real purpose of sending criminals to prison is to transform them into honest and law abiding citizens by promoting among them a distaste for crime and criminality. But in actual practice the prison authorities try to bring out reformation of the inmates by use of force and compulsive methods. Consequently the change in inmates is momentary and lasts only for the period during which they stay in prison and as soon as they are released their trend is to lay greater emphasis on psychiatric conditions of the prisoners so that they may be rehabilitated to normal life in the community. This objective can be successfully achieved through the techniques of probation and parole. The sincerity, devotion and tactfulness of the prison officials also help considerably in the process of offender’s rehabilitation.

Systematic organisation of crime control is the prerequisite of the State. In India the Police, Jails, Administration of courts, Law and Order are the state subjects as per the Seventh Schedule of the Constitution. The policies relating to crime control, therefore differ from the State to State. Three types of reactions can be preserved from different states of our country. First, is the Judicial reaction, of a universal nature which can be termed as punitive approach. It regards the criminals, as the basically and dangerous sort of persons and the object under this approach is to inflict punishment on the offender in order to protect the society from his onslaughts. The Second approach, of relatively recent origin, considers the criminal as a victim of circumstances and a product of various factors within the society. This approach, since it regards criminal as a sick person requiring psychological treatment. Finally, there is a preventive approach which instead of focusing on a patricidal offender, seeks to eliminate those conditions which are responsible for crime causation. In this direction the State government may formulate policies and undertake activities for the control of crime.
6.10 CORRECTIONAL INSTITUTIONS

Probation as a correctional measure occupies an important place in reformatory justice. It seeks to reconcile the conflicting claims of ‘punitive’ and ‘treatment’ reaction to crime. The suspension of sentence and probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time of the threat of being subjected to unexhausted sentence acts as a sufficient deterrent to keep him away from criminality. It also enables the probation officer in getting deeper insight of the problems of the criminals.

In India probation is used as an institutional method of treatment which is a necessary appendage of the concept of crime the reason being that if the power of probation is delegated to extra judicial agencies which lack judicial techniques, it would create some problems since these agencies are guided by their own value considerations. Sociologists and psychologists are concerned only with the problems of reformation of the criminals but are not able to appreciate the legal implications of reformatory measures. The Western view is that it completely disfavors the use of institutional method. According to their opinion probation service should be exclusively used by voluntary organisations and welfare boards comprising of sociologists, psychologists, psychiatrists etc., and judges should not be associated with the in functioning of these agencies.

Parole is the release from a jail of an offender who remains under the control of correctional authorities. The objectives are to enable the prisoner to meet his family members, to avoid evil effects of continuous prison and to retain self confidence and active interest in life. Release of a prisoner is from imprisonment, but not from legal custody.

**Juvenile Homes**: it shall not be out of place to review the functions of various institutions which are presently engaged in handling juvenile offenders. Reformation of offenders is the central theme of domiciliary treatment in these correctional institutions. The institutions such as observation homes, Juvenile home, special home, reformatory schools and borstals are meant to eliminate prison sentence to children and adolescents under a particular age limit.

**Observation Homes**: the juveniles needing only short-term custody are kept in an observation homes. This institution is also used for the custody of under-trial children and young persons about whom inquiry is being made or who are awaiting trial or removal to an appropriate home or borstal.

There are juvenile homes for treatment of neglected juveniles for whom a short term regulatory protective care is necessary but a long term residential training is necessary for the reform of ‘care order’ has not resolved the contradictory approaches of welfare and punishment which still persists. The emphasis in this institution is on strict discipline rather than constructive training.

**Special Homes**: The Juvenile Justice Act also provides for setting up of special homes for custody of delinquent juveniles. Basic amenities such as accommodation, medical care, education and vocational training are available to delinquent juveniles in these homes.
**Certified Schools:** the certified schools are modified form of the 19th century reformatories or industrial schools for homeless, destitute and delinquent children. These schools are now run under the State tutelage for catering for the needs of delinquent children of different age, sex and religion. The purpose of these approved schools is to provide training to those juveniles who are unfit for release or probation. The schools are open-institutions where young offenders are educated and trained for normal living. The durations where young offenders receive training in certified schools varies according to inmate’s requirement depending on the discretion of the school administrator. This normally ranges from a minimum of six months to a maximum of three years. In actual practice majority of inmates are released much earlier.

Certified schools have warranted criticism from several quarters. Some people criticize the working of these institutions on the ground that they are far more comfortable than even the homes of the delinquents. But it must not be forgotten that the loss of liberty in these schools is in itself a heavy punishment. On the whole, more than two-thirds of the inmates return to normal life after their release from the institution. These schools provide training facilities for inmates to make them proficient in different trades so that they can engage themselves in some useful occupation.

**Borstal Schools:** A “Borstal” is yet another correctional institution for the long term treatment of juvenile offenders. The term “Borstal” owes its origin to Borstal village in England where Rochester prison was first converted into a reformatory institution for boys in 1902. The Prevention of Crime Act, 1908, expressly prohibited the lodging of young delinquents between sixteen and twenty-one years in ordinary prisons and directed that they should be sent to Borstal instead. It was due to strenuous efforts of Sir Alexander Paterson that a few more Borstals were opened in England in subsequent years.

**6.11 PUBLIC PARTICIPATION**

There is a need for public participation in crime detection. Lack of public cooperation in police work makes it difficult for the policemen to discharge their functions effectively. The criminal cases mostly fail because of lack of public cooperation. People in general are not willing to come forward as witnesses and assist the courts in prosecuting the criminals. This indirectly helps the offenders to escape from the hands of law. The members of the society must realise that it is their social responsibility to help the police in the prevention of crimes. Public participation is possible in either of the following ways:

- The law enjoins a duty upon every person to assist a Magistrate or a Police Officer in preventing the escape of a person whom they want to arrest or help in preventing breach of peace.
- People are required to inform the nearest Magistrate or Police Officer about the commission of an offence or about the intention of a person to commit certain offence.
- Certain provisions of the Code of Criminal Procedure empower a private individual to arrest a person who in his presence commits a non-bailable and cognizable offence, and to handover such arrested person to police without unnecessary delay.
Every officer employed in connection with the affairs of a village or residing in a village is under a duty to report certain offences or matters relating to maintenance of peace and order and safety of person or property.

The normal citizens, avoid to give information to the police and prefer to keep away from law courts even at the cost of their sufferings. Therefore, sensitisation of public by radio talks, lectures and offering incentives is very essential.

Self Assessment Question

3) a) Borstal School is not a correctional institution. ( )
   b) While an accused is in the police custody, his lawyers should be permitted to visit him. ( )
   c) The criminal cases mostly fail because of lack of public support. ( )

6.12 SUMMARY

Criminal justice systems include different subsystems, consisting of public institutions and their staff: police and other law enforcement agencies; trial and appellate courts; prosecution and public defender offices; probation and parole agencies; custodial institutions like jails, prisons, reformatories, halfway houses, etc.; and departments of corrections who are responsible for probation, parole, and custodial functions. Each of the institutions and players listed has their own set of goals and priorities in dealing with the criminals. These institutions have substantial discretion in making decisions particularly in the matters like the victim’s decision to report a crime; police and prosecutorial discretion whether and how to apply the criminal law; judicial discretion in the setting of bail and the imposition of sentence; and correctional discretion as to parole release, parole or probation revocation, prison discipline. But this discretion exercised should be just, fair and reasonable.

6.13 TERMINAL QUESTIONS

1) What do you understand by Criminal Accountability?
2) Define probation.
3) Who is an Executive Magistrate?
4) What is the role of Borstal School?

6.14 ANSWERS AND HINTS

Self Assessment Questions

1) A) law B) police
2) An approver is a person who is involved in a crime, but who confesses and offers to serve as a witness for the prosecution. Technically, an approver is an accomplice. His involvement in the crime is planning, execution and concealment of material facts. Approver generally, pleads for mercy of the court
3) A) False, B) True, C) True.

**Terminal Questions**

1) Refer to Section 6.3
2) Refer to Section 6.4
3) Refer to Section 6.7
4) Refer to Section 6.10

### 6.15 REFERENCES AND SUGGESTED READINGS


