

CHAPTER - II

CRIME : CONCEPT, DEFINITION AND ANALYSIS

In any study on any subject, it is necessary at the beginning to have a conception of the subject with some sort of a definition so as to be able to do proper justice to the study. Further, an analysis of the subject in an objective manner is also a necessity and hence, it has been tried, in this chapter to look at crime to form a conception of it along with analysis of various definitions put forth by various jurists, criminologists and sociologists to adopt a definition found suitable for the study.

The very first question that would arise in proceeding with the study is - What is crime? This question has to be answered at the very outset. It is indeed a Herculean task to define crime. It has been always regarded as a matter of great difficulty¹. R.C.Nigam says that to answer the question, as to what is crime, it is to be known at first, what is Law, because these two questions are closely interrelated. Traditionally, it is known that law is a command enjoining a course of conduct. A crime may, therefore, be an act of disobedience to such a law forbidding or commanding it. But then, sometimes, disobedience of all laws may not

¹ Kenny's Outline of Criminal Law, J.W. Cecil Turner, Universal Law Publishing W. Pvt. Ltd.

be a crime, for instance, disobedience of civil laws. Therefore, crime would mean something more than mere disobedience of a law².

Of all branches of law, the branch that closely touches and concerns man in his day-to-day affairs is criminal law, yet the law is not in a satisfactory state³. Many attempts have been made to define crime, but they all fail to help us in precisely identifying what kind of act or omission amounts to a crime. The very definition and concept of crime is a changing notion from time to time and from place to place. For instance, suicide was a crime in England until the Suicide Act, 1961 was passed (Smith and Hogan, Criminal Law, Butterworths, London, 1983), and abortion was a crime in India until 1971, but now legal excepting in some excepted circumstances⁴.

Writers of English Legal history have often mentioned that in early law there was no clear distinction between criminal and civil offences. The two have been called a 'viscous mixture'. Sir Henry Maine said that this phenomenon was not peculiar to English Law alone, the difference between Tort and Crime is said to be of degrees only. Since society is made up of individuals; and therefore although it is true to say of crime that it is an offence against society, this does not distinguish Tort from Crime. Thus the word 'Felony' originally indicated something cruel, fierce, wicked or base. As Maitland says: "In

² R.C.Nigam, Law Of Crimes In India.

³ Peter Brett, An Enquiry into Criminal Guilt, The law Book Co.Australia.

⁴ P.Rathinam Nagabhusan Patnaik V.Union of India, AIR 1994 SC, 1844.

general it is as bad a word as you can give to man or thing, and it will stand equally well for many kinds of badness, for ferocity, cowardice, craft. The earliest reference to the word crime puts the date in the fourteenth century, and there is not to be seen any more precision in its meaning than there was originally in that of 'Felony'; it conveyed to the mind something disreputable, wicked or base.

The word crime is difficult to define, but an attempt at definition essentially must precede study of crime. To understand the meaning and concept of crime in its correct perspective, it would be appropriate to examine some of the definitions propounded by jurists: Crime may be viewed from various perspectives with the definitions put forth by various jurists or criminologists or sociologists from time to time.

(I) AS A PUBLIC WRONG

Sir William Blackstone defines crimes in two ways, in his work, first as,

“An Act committed or omitted in violation of a ‘Public Law’ forbidding or commanding it”.

Since the definition limits the scope to violation of a ‘public law’, it would only cover political offences and such offences are only a segment of the great bulk of criminal law. Again if ‘public law’ is to denote ‘positive’ or ‘municipal laws’ it would be too wide to cover all legal wrongs, while every legal wrong is not a crime. If ‘public law’ is

to include both constitutional and criminal law, it ceases to define crime in the German sense, as crime is not to be defined with the help of constitutional law in Germany. At a second stage Blackstone modified his definition as :

“A crime is violation of the public ‘rights and duties’ due to the whole community, considered as a community”⁵.

Serjeant Stephen, while editing Blackstone’s commentaries modified the definition to some extent and his definition is:

“A crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large”.

It narrows down the scope of crime to violation of rights only, whereas criminal law fastens criminal liability even on those persons who omit to perform duty required by law. For instance, a police officer who silently watches another police officer torturing a person for the purpose of extorting confession is liable for abetting the said offence, as he is under legal duty to prevent torture⁶. The definition stresses that crimes are breaches of those laws, which injure the community. However, all acts that are injurious to the community are not necessarily crimes. For instance, a person’s conduct may amount to a crime even though, instead of being injurious, it is, on the whole, an

⁵ Sir William Blackstone, Commentaries on The Laws of England.

⁶ H.S.Gaur, The Penal Laws Of India, Vol. I, . 2000.

advantageous act. So, the definition fails to give an adequate and comprehensive definition.

(II) AS A MORAL WRONG

The word crime owes its genesis to the Greek expression 'Krimos', which is synonymous with the sanskrit word 'Krama', meaning social order. Thus the word crime is applied to those acts that go against social order and are worthy of serious condemnation⁷.

The word crime has also its origin in a Latin word, meaning 'to accuse' and a sanskrit word 'kri'(to do). Combining the modern meaning of both the roots, crime is a 'most validly accusable act'.

Raffaele Garofalo defines crime in some sociological perspective in the following words:

“Crime is an immoral and harmful act that is regarded as criminal by public opinion, because it is an injury to so much of the moral sense as is possessed by a community- a measure which is indispensable for the adaptation of the individual society”⁸.

In this definition Garofalo says that crimes are those acts, which no civilized society can refuse to recognise as criminal and are

⁷ S.S.Huda, The Principles of The Law of Crimes in British India.

⁸ Raffaele Garofalo, Criminology, Boston, Little Brown.

redressible by punishment. He considers crime to have been some act 'labelled' as criminal by public opinion. His emphasis is also on the moral wrong, but there is quite an array of conduct which, though derogate from the cherished value of the community, are not considered crimes, for instance, immoral acts like ingratitude, hard heartedness, callous disregard for sufferings of others, though immoral, do not constitute crime. There are, likewise, some harmless crimes like vagrancy and loitering, some prophylactic crimes like consorting and possession of prohibited goods, for example, weapons, drugs, illegal imports, and goods unlawfully obtained, but because social expediency requires that.⁹

(III) AS A CONVENTIONAL WRONG

Edwin Sutherland, noted criminologist defines crime in terms of criminal behaviour as:

“Criminal behaviour is behaviour in violation of criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a crime unless it is prohibited by criminal law. The criminal law in turn, is defined conventionally as a body of specific rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the class to which the rules refer, and which

⁹ Trevore Nyman, The Dilution Of Crimes.

are enforced by punishment administered by the state, characteristics which distinguish the body of rules regarding human conduct from other rules, are therefore, politicality, specificity, uniformity and penal sanction”¹⁰.

This definition is also consistent with the concept ‘nulla poena sine lege’, which means there is no crime without law¹¹. Sutherland does not define crime as such. He merely enumerates the characteristics of a crime and says that crime is a violation of a criminal law, the essentials of crime being a behaviour which is prohibited by the state as an injury to the state and against which the state may react, at least as a last resort, by punishment.

(IV) AS A SOCIAL WRONG

Crime is said to be as old as society itself. The definition, form and concept of crime, however, change with passage of time and regimes and attitudinal dimensions of society. Some crimes, in course of time, become obsolete and some assume new and broader dimensions. Accordingly, definitions pour out from various jurists and criminologists depending on the times they live in. John Gillin, a renowned sociologist gives a sociological definition of crime, as he says:

¹⁰ Edwin H. Sutherland, Principles of Criminology.

¹¹ Jerome Hall, General Principles of Criminal Law, 1960 2nd Edn.

“Crime is an act that has been shown to be actually harmful to society, or that is believed to be socially harmful by a group of people that has the power to enforce its beliefs, and that places such act under the ban of positive penalties.”

Another sociological concept of crime is seen in The ‘Organic Analogy Theory’, which understands human society as made up of inter-related organs, and any act, which disrupts or threatens to disrupt the functioning of the system is criminal. By adhering to this analogy it forms a consensus of society and any action perpetrated by any person constitutes an act of crime and the person is also criminal.

In Soviet Russia crime has been defined in terms of socially dangerous acts.

“A socially dangerous act (commission or omission) provided for by the criminal law, which infringes the Soviet social or state system, the social economics system, socialist property, and the other rights of citizens, or any other socially dangerous acts provided for by the criminal law, which infringes the socialist legal order, shall be deemed to be a crime.”¹²

¹² Bassiouni and Savitsky, The Criminal Justice System of USSR, Charles C. Thomas, USA, 1979.

Roscoe Pound, eminent American Jurist propounded his theory of 'Social Interest', closely related to crime - repression. His theory was founded on the assumption of legal phenomenon being nothing but social phenomenon. His jurisprudence was of 'social engineering'. His emphasis was on interest in life, liberty, security, religion, social institutions and general progress with predominance and any infringement on these are considered to be crimes.

Thomas defines crime" as an action which is antagonistic to the solidarity of that group which an individual regards as his own. These social interests are to be protected and preserved and realisation of these calls for repressive measures and these may be called punishments". Doal defines crime as "an act which the law prohibits and punishes, which is almost always immoral according to the prevailing ethical standards which is usually harmful to society and whose repression is in the long run necessary or supposed to be necessary for preservation of existing social order" To Elliot and Merrill, crime constituted" anti social behaviour which the group rejects and to which it attaches penalties".

Crime has also been defined as "violation of prevalent group norms, including conduct", an act by a member of a given social group, which by the rest of the members of that group is regarded as so injurious as showing such a degree of anti- social attitude in the actor

that the group publicity, overtly and collectively reacts by trying to abrogate some of the rights.¹³

Whether crime is a product of nature or of society is difficult to decide on. However, it cannot be denied that what is or is not called a crime will depend upon the society. John Stuart Mill, the utilitarian thinker said,

“Human beings owe to each other help to distinguish the better from the worse and encouragement to choose the former and avoid the latter. They should be forever stimulating each other to increase the exercise of their higher faculties and increased direction of their feelings and aims In the conduct of human beings towards one another it is necessary that general rule should, for the most part, be observed in order that people may know what they have to expect”.

As concept of crime changes continually with regard to the changing attitude towards life and society, the socialist definitions put forth by so many jurists have also failed to explain a number of criminal behaviours. When law is enacted to make an act crime and another non-crime, the nature of the act and the social behaviour to the act will not change for the ‘social interest’ damaged by certain acts would remain the same.

¹³ E.M. Wolfgang and Other, Ed.1962.

With the passage of civilization, the concept of crime has also undergone transformation. Emile Durkheim describes the phenomenon of crime in the following words:

“There is no society that is not confronted with the problem of criminality, its form changes; the acts thus characterised are not the same everywhere and always, there have been men who have behaved in such a way as to draw upon themselves penal repression... No doubt, it is possible that crime itself will have abnormal forms, as for example, when its rate is unusually high. This excess is indeed undoubtedly morbid in nature. What is normal, simply, is the existence of criminality, provided that it attains and does not exceed, for such social type, a certain level... To classify crime among the phenomenon of normal sociology is not to say merely that it is inevitable, although regrettable phenomenon due to incorrigible wickedness of man, it is to affirm that it is a factor in public health, an integral part of all healthy societies¹⁴.

There is difficulty of arriving at an omnibus definition of crime as crime and concept of crime depends upon various factors operating at various places and times in various societies.

¹⁴ Emile Durkheim, Crime As a Normal Phenomenon.

(V) AS A PROCEDURAL WRONG

Crime has also been viewed from an angle that calls it a procedural wrong. John Austin defines crime in terms of the nature of proceeding, thus:

“A wrong which is pursued by the Sovereign or his subordinate is a crime (public wrong). A wrong which is pursued at the discretion of the injured party and his representatives is a civil wrong (private wrong)”.¹⁵

This definition does not hold good in respect of a number of offences like offences of Adultery and of Criminal Elopement¹⁶ except upon complaint made by the husband or the wife in matters of cruelty by Husband, or upon the complaint of the wife's parents only cognizance may be taken.

Prof. Kenny took the task of modifying the definition of Austin to some extent to proffer his own definition thus:

“Crimes are 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.”

¹⁵ John Austin, Lectures on Jurisprudence Status, Edn, 1920.

¹⁶ Indian Penal Code, 1860, Sec. 497, 498

This definition is also not free from lacunae. The definition lays stress on remission by the crown, but there are number of compoundable offences that are remissible by some gratification from the accused. [Ss. 320(1), 302(2), Criminal Procedure Code, 1973]. Crime has so far not been satisfactorily defined by any definition, and in this respect Russel says:

“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.”¹⁷.

In the same way, Roscoe Pound has also put forth his opinion in this respect and says:

“A final answer to the question ‘what is Crime?’, is impossible, because law is a living, changing thing, which may at one time be uniform, and at another time give much room for judicial discretion, which may at one time be more specific in its prescription and at another time much more general”¹⁸.

¹⁷ Russel On Crime, Vol. I, 12th Edn

¹⁸ Roscoe Pound, Interpretation Of Legal History, Harvard University Press, 1946.

As regards the concept and definition of crime in relation with time and space, Justice Krishna Iyer holds the view in the following:

“What is a sex crime in India may be a sweetheart virtue in Scandinavia, what is an offence against property in a capitalist society may be a lawful way of life in a socialist society, what is permissible in an affluent economy may be a pernicious vice in an indigent community. Thus the criminologists must have their feet all the time on the terra-firma”¹⁹. Even within the same country, definition of crime may vary amongst various ethnic and cultural groups having their cultures, customs and rule, and hence, definition of crime is relative to time and place.

(VI) AS A LEGAL WRONG

Any conduct which a sufficiently powerful section of any given community feels to be destructive of its own interests, as endangering its safety, stability or comforts, it usually regards as especially heinous and seeks to repress with corresponding severity: if possible it secures that the forces which the Sovereign power in the state can command shall be utilised to prevent the mischief or to punish any one who is guilty of it. Offences of this kind are termed crimes and the procedure taken in courts in respect of them is a ‘criminal proceeding’. An offence

¹⁹ Justice Krishna Iyer, *Perspectives in Criminology - Law and Social Change*, 1980

may become crime as a result of combined effect of a number of different social forces.

In the early Roman Republic the Sovereign power was conceived as being in the Senate and the people of Rome²⁰. Conduct regarded as endangering the safety and good order of the state so constituted was 'perduellio' (making war upon citizens) and 'maistas' (a later term - somewhat vague, meaning an infringement of the greatness of the state). In the first stage, there were little or no police organisations and sanctions of crime were freely left to the hands of the ordinary citizens. The maintenance of walls constructed for protection of cities, was so important that at Rome religious superstition was invoked for their protection and they were classed as 'res sanctae'; it was a capital offence to harm them or even to climb over them to enter the city instead of coming through the gates²¹. A slaying by a person unknown was termed 'murdum' and hence the word murder.

The advent of new political regimes gave rise to new crimes like forming a new political party might be a crime to wear emblem or uniform which could be mistaken for government insignia might be considered a crime.

Social forces and impulses that can affect development in law are of many different kinds varying from the power of a dictator to the

²⁰ Greenidge, Roman Public Life

²¹ Pollock and Maitland; Stephen, History of Criminal Law.

undefined power of what is called public opinion. An illustration may be cited here - Emperor Claudius, for his own private purpose to marry his niece, legalised marriage between paternal uncle and niece, leaving other marriages of nephews and nieces as incestuous.

Crime originates in the government policy of the moment²²; the governing power in society at any given period has made, or accepted, rules of law which forbid a man to bring about certain specified results by his conduct (such a result, within the field of criminal law, constitutes what is called an 'actus reus'). Many harms are both crime and civil wrongs, as for example, libel. Crime inevitably continues in the present day context, created by government policy, it becomes more difficult to define crime. Nevertheless, it is a broadly accurate description to say that nearly every instance of crime presents all of the three following characteristics:

- (i) that it is a harm, brought about by human conduct, which the Sovereign power in the State desires to prevent,
- (ii) that among the measures of prevention selected is the threat of punishment; and
- (iii) that legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is, according to law, to be held legally punishable for doing so.

²² Radzinowicz, History of English Criminal Law

Jurists define crime as “wrong which the government deems injurious to public at large and punishes through a judicial proceeding in its own name” This definition of crime depends on the laws promulgated by the government from time to time. Any act becomes a crime at any time, if it is declared to be so by the state, and going by the same notion, the same act ceases to be a crime as soon as the state deems so.

In discussing crime as a legal wrong, the definition put forth by Paul Tappan needs to be dealt with in some measure of detail. Tappan defined crime as:

“Crime is an intentional act or omission in violation of criminal law (statutory and case law), committed without defense or justification, and sanctioned by the state as a felony or misdemeanour”.

According to the legal approach, crime is an act defined by law. Unless the elements specified by statutory or case law are present and proved beyond a reasonable doubt a person may not be convicted of a crime. Tappan also maintained that non-legal definitions were too loose, too ambiguous, and left too much room to the definer to determine what is crime.

As the present study is adopting the historical, non reactive, unobtrusive methodology by gathering data from the record of the police, courts, prisons etc., the definition of Paul Tappan will be dwelt

upon as the concern, pre eminently, is on legal control of crime. This definition is being analysed here to find out the various ramifications involved in it, along with facets that have to be considered in finding out as to what constitute crime and how these are to be controlled effectively.

Crime is an intentional act or omission according to a part of the definition of Tappan. Mere thinking about committing an act will not constitute crime. Sometimes words may also be construed as acts, as in treason or abetting another to commit a crime. Likewise failure to do an act may also constitute crime but there must be a legal duty to act in a particular case, the act of omission must be voluntary. An act or omission must also be intentional, that is, criminal intent or mens rea must be present, because ancient maxim says, “evil intent is the essence of crime”. There are, however, exceptions granted to the existence of criminal intent. There must be an act or omission in violation of a criminal law, both statutory or case law.

The legal meaning of intent is complicated and legal scholars are not in complete agreement on this issue. It is however important that the requirement of mens rea does not mean that the actor must always intend specifically what actually happens. In certain cases of crimes proof of specific intent is essential, in others it is not, for in criminal law, the worst intent has “generally not been limited to the narrow, dictionary definition of purpose, aim or design, but ... has often been

viewed as encompassing much of what would ordinarily be described as knowledge²³. Thus one might be criminally held liable for the unintended consequence of an intended act in circumstances in which a reasonable person should have known those consequences were substantially certain to result from the forbidden act. One might be criminally held liable for injury or death to a victim other than the intended victim or for harm different from the harm intended or for a more serious degree of harm than that intended.

An act when done with intent must also be an act in violation of criminal law. One distinction, however, that is to be made in a discussion of crime is between criminal law and non criminal law: Criminal wrongs and civil wrongs ... are often one and the same act as viewed from different standpoints, the difference being not one of nature but one of relation²⁴.

When a criminal wrong has been committed, the state (or federal) government brings the action against the person who is accused of committing the crime, that is the state is the prosecutor and the accused the defendant. In a non-criminal wrong the act is against an individual and the person brings the action against the doer, the defendant, and is called plaintiff.

²³ Wayne R. Lafave and Austin W. Scott Tr., Criminal Law

²⁴ Kenny, Courtney, quoted in Tappan, Crime Justice and Correction.

In a criminal case, the state may seek any of the following - probation, imprisonment, fine payable to the state or capital punishment. In a non-criminal suit the party against whom the action is brought, may have to pay monetary damages to the plaintiff.

Again, in a criminal case, the defendant must be acquitted unless the jury/court (or a judge if it is a non-jury trial) can find guilt "beyond a reasonable doubt". But in a civil case the plaintiff may recover damages from the defendant if the case is proved by a preponderance of evidence, which is an easier burden of proof.

Laws may again be derived from two sources, the legislature and the courts. Legislative codification of rules being statutory laws and court's interpretation of those rules and the court decisions where rules have not been codified is called case law.

The next part of the legal definition of crime is that the act or omission of an act is not a crime if the individual has a legally recognised defence or justification for the act. Defence that may be raised are insanity, intoxication in some cases, mistake of fact, ignorance of law (when the law has not been published or otherwise not made reasonably available or if the accused was acting in good faith on the inaccurate interpretation of law by a recognised official), duress and consent, consent of the victim, entrapment, and justification. A person faced with the possibility of death from another individual might use the defence of justifiable homicide for killing that individual. It is,

however, not required that the person actually be facing danger of death. It is sufficient that it would be reasonable for the person to think death is imminent.

Another part of the definition speaks of sanction by the state. 'Nullum crimen sine poena', that is, no crime without punishment - this concept says that persons cannot be punished for acts that may be considered to be socially harmful but for which society has not provided for punishment. 'Nulla Poena sine lege', no punishment without law, no punishment without crime. No crime can be committed unless there is a law that defines it as such. Today the distinction between felony and misdemeanour is made mainly in terms of sentence that may be imposed.

A person is not a criminal 'officially' until he or she has been defined as such by law. The process of defining what constitutes a crime and who will be defined as a criminal is an important part of criminology. Before the law can properly call a person a criminal, it must go through a series of actions governed at all junctures by well defined legal rules collectively called criminal procedure and in this study are included the Criminal Procedure Code (Code of Criminal Procedure, 1973, Act 2 of 1974), the India Penal Code, 1860 and the Indian Evidence Act, 1872. These procedural rules, however, vary greatly from culture to culture, but almost all modern cultures have a set of rational rules guiding the serious business of officially labelling a

person a criminal. It is not extended to make a comparative study of various procedures prevalent in various countries. What is best for a given society is gauged with reference to its own unique history, culture, philosophy, and the needs and these are issues that have been limited within the ambit of the Criminal Procedure Code, the Indian Penal Code and the Indian Evidence Act. However, some understanding of some of the other systems helps in understanding the issues in Indian perspective.

When crimes are defined as acts or omissions of acts that violate criminal statutory or case law and for which the state has provided penalty, there may not still be a resultant conviction. In case of a jury trial, the jury may refuse to return a verdict of guilty even when the prosecution has presented irrefutable evidence. In cases tried without a jury, the judge may do the same. In some cases, the defendant may be convicted for a crime by the jury but the judge may grant the defendant's motion for acquittal because he does not think the evidence was sufficient to show guilt beyond reasonable doubt.

There are various non-legal definitions of crime which have been rejected by Tappan. One of the best known proponents of non-legal definition of crime is the criminologist Thorsten Sellin, who says - :

“For every person ... there is from the point of view of a given group of which he is a member, a normal (right) and

an abnormal (wrong) way of reacting, the norm depending upon the social values of the group which formulated it”

An even broader definition of crime has been proposed by Hermann and Julia Schwendinger to include acts which violate basic human rights and advocate the study of such issues as ‘sexism’, ‘racism’, ‘imperialism’ etc. According to Austin T. Turk²⁵ criminality is indeed a status, not behaviour. Since most people engage in behaviour which is legally defined as crime, criminal data based on arrests or convictions are not useful in telling who commits crimes, but rather who is labelled criminal.

Howard S. Becker points out that it is not the quality of the act committed but rather the result of the label applied as deviant behaviour. ‘A deviant’ is one to whom the label has been successfully applied. Deviant behaviour is behaviour that people so label²⁶.

The reason for which the definition of Paul Tappan has been accepted and adopted for this study is that there being established procedure and criminal and penal laws including laws of evidence, in the form of the Criminal Procedure Code, the Indian Penal Code, the Indian Evidence Act, the task of enforcing law and administering the criminal justice through various organs of the mechanism established

²⁵ Austin T. Turk, *Criminality and Legal Order*

²⁶ Howard S. Becker, *Outsiders: Studies in The Sociology of Deviance*

for the purpose, is followed in the strict legal terms. In a society where 'Rule of Law' reigns supreme, there has to be a well-built legal system and to run the affairs in the most effective manner enforcement of law is of utmost necessity. Hence, the legal definition has been found to be suitable for this present study.

Nevertheless, it is not meant to suggest that other definitions from various standpoints can be totally dispensed with. For sociological purposes these definitions hold much sway.

In this study it is also to be seen who is a criminal, but defining a criminal is as difficult as defining crime. It is even difficult when the term is limited to those who have been convicted in a criminal trial, for law does not specify when the status of criminal begins and when it ends. Technically, the term criminal should not be applied to any one who has not been convicted of a crime.

The Indian Penal Code (Code of 1860), in the Preamble in Para (2) describes what is crime. Paul Tappan's definition of crime - "crime is an intentional" and then Glanville william's definition - " A crime (or offence) is a legal wrong that can be followed by criminal proceedings which may result in punishments " and Black's " crime is a positive or negative act in violation of criminal law" has been incorporated. Further the case law propoundings in T.K. Gopal²⁷ has

²⁷ T.K.Gopal V.State(2000)6 SCC, 168

also been incorporated therein - "crime can be defined as an act specifically forbidden by law : it may be an offence against morality of social order."²⁸

It is observed that none of these definitions can delineate the representative picture of crime for all time (in the socio - temporal approach) whereas each one gives its own contribution towards defining crime to a certain extent²⁹.

Crime reflects the immediate concerns, threats and circumstances the society in particular is experiencing. Predatory crimes do not merely victimise individuals, it also impedes, and in the extreme cases, produces the formation and maintenance of communal norms by disrupting the delicate bonds of ties, formal and informal. Crime atomises society and makes its members the more individual calculators each estimating their own advantages, specially, their chances of survival amidst fellows.

Crime is a social and economic phenomenon. Crime has been existing in varying degrees since time immemorial. Crime is a legal concept as seen in the definition of Paul Tappan and has a sanction of law. It is also termed a 'living' and 'changing' concept. Weakness, greed, anger, jealousy, some form of human aberrations - have come to the surface everywhere and human sanctions have vainly beaten against

²⁸ J.S.Sarkar, I.P.C.1860, Kamal Law House .

²⁹ P.Kamala kara Rao, Professional Crime in India, Cosmo Publication

the irrational, impulsive, misguided and ill conditioned. The conduct between the members in a society inter-se regulates the trust for the rights and responsibilities for the duties. The most popular aim of social life is 'to live and let live'. But there are some people who deviate from such thoughts and indulge in acts which are not beneficial for the society and they, thus, become anti social elements.

In the furtherance of the study of crime it will not be unworthwhile to have a look at the natural and positive theories of crime that have been reigning high in some or the other point of time at some or the other place.

NATURAL LAW THEORY

Considering crime philosophically, the fundamental issue is whether to define crime naturally by the laws of God, or positively by the laws of man. In essence, is crime 'God made' or 'man made'? In the course of development of western civilisation, God's law evolved into natural law. Crime became a breach of nature's order, nature being the ideal state of affairs ordained by God.³⁰

God's connection with natural law became progressively attenuated, and nature came to receive primary emphasis. Crime as sin, receded to a theological concept, and crime as an affront to the natural order became the dominant view. Under this theory, the love and

³⁰ Macklin Fleming, Of Crimes and Rights, Norton & Co. New York.

respect, owed to the neighbours makes his killing or mutilation or seduction a violation of natural law, and hence a crime. Under the natural law theory, certain conduct is inherently and immutably criminal, whether or not any enactment of man has so declared. Conversely, acts that do not violate the natural order are not to be considered criminal, no matter what classification the legal order may give them.

Natural law relies heavily on feelings, on moral sense, and on individual instinct for the fitness of things. Under the natural law theory, an act that violates the basic moral code is a crime, and by implication, an act that does not violate the moral code is not a true crime. The great difficulty here lies in determining what is basic moral code. To translate moral feelings into a specific code of conduct is almost an impossibility for the judges and legislators. In such a situation, and state of affairs, crime and with it criminal law, becomes plagued with vagueness, uncertainty, mutability and lack of definition.³¹ On the other hand, next to the natural law theory, positive theory of crime is completely based on different footing which is described below.

POSITIVE LAW THEORY

³¹ K.D.Gaur, Crime Aims and Objects in Criminal Law and Criminology, Deep & Deep Publications, New Delhi

According to the positive theory of crime, crime is a man made concept, which is a violation of a man made command of the Sovereign, a violation identified as a public wrong. The virtue of positive law lies in its precision and its predictability - qualities that enable positive law to escape the theoretic tyranny of natural law's vagueness, uncertainty and reliance on subjective moral sense and feeling. Positive law possesses the added virtue of practicable application to communities of diverse races, religions, classes and cultures for it appears to dispense with the need for commonly held beliefs about rights or wrongs. Crime under positive law consists only of those acts specifically prohibited by criminal law under threat of punishment. Both crime and punishments are explicitly defined and specified in advance. Under this theory, a regularly adopted law even if advised or immoral, remains law until repealed, bad laws may be repealed, but in the mean time remain as enforceable law.

The positive theory is particularly troubled by the problem of some unjust laws like the Nuremberg Laws of Hitler's Germany, that withdrew certain rights and legal protections from the Jews. But positive law is for obedience of such laws. England, the birthplace of due process, continues to recognise common law crimes, that is, acts not proscribed by any enactment, but nevertheless, considered crimes because of their flagrant immorality³². As for instance, The House of

³² K.D.Gaur, Criminal Law: Cases and Materials, Butterworths, 1999

Lords found distribution of a commercial directory listing and advertising the services of prostitutes contrary to good morals and hence criminal³³.

In India, though natural law theories strongly influenced the penal legislation, it does not recognise natural law or common law crimes as in England. However, natural law serves as the conscience of positive law. And courts, at times, import the concept of common law and natural law principles in order to interpret the provisions of law and give relief to the victims of crime and the accused³⁴.

Between natural law and positive law theories, the positivists appear to have the better and more practical side of the argument, and in criminal law, they have generally carried the day. Natural law tends to assume the role of a brake on the excesses of positive law, to function as a tribute of the people.³⁵

True crime is inherently evil. It comprises those violations or the natural order, if unchecked, will make it impossible for men to live together. Such violations can be identified as invasions of primary personal rights, invasions include both act and intent. True crime can be explained as invasions of primary personal rights and of operations of

³³ Shaw V. DPP(1961) 2 ALL Er, 446(H.L).

³⁴ Mr. X V. Hospital Z, AIR, 1999SC 495.

³⁵ K.D.Gaur, Crime Aims and Objects in Criminal Law & Criminology, Déep & Deep, New Delhi.

public agencies created to protect personal rights, invasions abhorrent to the moral sense and prescribed by positive law. Regulatory offences, invasions of a secondary personal right and most victimless crimes are criminal only in a conventional or secondary sense outside the sphere of true crime.

After having had a glance at the various definitions of crimes along with the natural law and positive law theories of crime, and having analysed these definitions to adopt the definition propounded by Tappan for this study, it will also be helpful to have some knowledge of the causative factors of crime for formulation of strategies for effective crime control and law enforcement.

CAUSATIVE THEORIES OF CRIME

Delinquent behaviour or crime is a result of the combination of a number of factors which create conducive situations to criminality, specially with the widening of social interactions due to the impact of industrialisation, urbanisation, modernisation and democratisation. No single theory, however, can offer adequate explanation for crime causation. It is a complex subject to be dealt with and all the various theories of crime causation overlap to some extent on the others.

Crime is an index of social pathology. Crime and violence recur when society is disorganised, floundering and beset with social and economic problems. Social disorganisation is reflected by the conflicts

in social values which interrupt harmony of society. Therefore, crime must be understood on the basis of human behaviour and social and individual perspectives.

It is accepted that any discussion on development of modern criminological thinking, it must commence with reference to Cesare Bonesana Marchese de Beccaria(1738 - 1794). He belonged to the 'free will' theory but he sought to humanise criminal law by reducing severe punishment. Punishment should be sufficient to deter but never excessive³⁶. Jeremy Bentham, in line with Beccaria, propounded the 'utilitarian hedonism' concept. His term of 'hedonistic calculus' has been taken from Stephen Schafer's 'Theory of Criminology', published by Random House, New York. He formulated the theory of social control utilitarianism- 'to avoid crime pain of punishment must overweigh the pleasure of crime'. From this followed the neo-classical school by the middle of the 19th century and emphasized that mental element need not to be ignored and within this framework protection was accorded to child and insane offenders. The social policy and classical theory is for deterrence and punishment and for greater prison capacity.

In the next phase came the Italian positive school contributed by Cesare Lombroso (1836 - 1909), Enrico Ferri (1856 - 1928) and Raffaele Garofalo (1852 - 1934). They tried to explain crime, primarily

³⁶ Cesare Bonesana Marchese de Beccaria, Essays on Crime And Punishment

in terms of factors within the criminal i.e. physical, biological and mental traits and ignored the external factors or gave them secondary importance. Lombroso, a trained doctor believed that criminals were different physically from the normal persons. According to him atavistic tendencies were revealed by physical shape of the skull, forehead, chin, etc. and those in whom atavistic qualities were disclosed were called born criminals by him. The other major types of criminals were, to him, insane criminals. He also took into account considerations by which normal persons were turned to criminals and they were called criminaloids despite absence of physical stigma or mental aberrations.

Some criminologists hold the view that criminal behaviour has relationship with social, sociological, cultural and economic factors and they are called objective approaches in contrast to subjective approach. The subjective approach, the European subjective theory of crime causation, dwelt upon criminality based on the bio-physical considerations of the criminal and led to the evolution of the typological school which suggests that there are certain personality type of criminals who take to criminality because of their heredity, psychopathic and bio-physical traits. It is clear, therefore, that the subjective theory of crime causation includes anthropological, biological, physiological, psychiatric study of the offender. Subjectivists try to examine the nature of criminal, besides other traits of his personality. They hold that the criminals differ from the non-criminals in certain traits of personality which develop under usual

tendencies in them to commit crimes under situations in which others do not. They opine that criminality is necessarily an expression of unique personality traits of the criminal and therefore, in such cases social situations do not offer a satisfactory explanation for criminal behaviour. The objective theorists of America, however, explained criminality in terms of social factors. The objectivists see the matter for an analysis of socio-economic, ecological, topographical, cultural, demographical and environmental conditions under which crimes usually generate. The approach towards crime now has been called, instead of subjective and objective, individualistic and environmental.

INDIVIDUALISTIC APPROACH

After having some idea of the various approaches as to how these are called from time to time and reverting to the theory of Lombroso, it is seen that Gabriele Tarde held that crime being of social origin is of changing nature and cannot be explained with reference to atavism. According to him, Lombroso did not explain low rate of criminality among women. Lombroso's theory of anthropological measurements were also much criticised. In spite of all these, Lombroso has been designated as the putative father of modern criminology³⁷.

Enrico Ferri also took into account geographical, psychological and economic factors. He classified criminals into five categories:

³⁷ Ahmad Siddique, *Criminology-Problems and Perspectives*, Easter Book Company.

insane, born, habitual, criminal by passion and occasional criminals. He attributed congenital, social, physical environment, impulse, anger, jealousy etc for criminal behaviour. He emphasised, in respect of punishment, for individualisation of offenders, and indefiniteness of sentences.

Garofalo classified crimes into four categories- endemic criminals, criminals deficient in probity, lascivious criminals and violent criminals. He attributed passion, deficiency of probity, lascivious mental attitude and environmental influences as prejudice, politics and religion as cause of crime. He held the view that criminals could not be reformed, so favoured death penalty, and in the least imprisonment and transportation in cases other than murder.

Studies made by Ernest A. Hootan and William H. Sheldon sought to give a new lease to the theory of physical deformity as causative factor of crime but failed. Marshall B. Clinard also undertook studies in this regard and they both differed in their opinion. Sheldon and Eleanor Glueck made studies and they held the general view that there is no unit cause of delinquency and denied physical peculiarity as a form of determination of criminal behaviour³⁸.

The explanation based on individual trait is in terms of mental deficiency and they have been described to be different from insanity by a number of psychologists. Insanity and mental deficiency have been

³⁸ Elmer Hubert Johnson, *Crime, Correction And Society*).

distinguished by two noted psychologists, namely, Jean E.D. Esquirol in France and Isaac Ray in U.S.A. Henry G. Goddard found mental deficiency in almost half the criminals he studied and Goring was also convinced in the same way.

In terms of mental quality an offender may be either (i) normal or (ii) pathological or abnormal. The pathological offenders may again be (a) Psychotics, the most serious abnormal group, (b) Neurotics, the next group in order of seriousness and (c) mental defectives, the residual abnormals. Psychosis may again be organic psychosis and functional psychosis. Organic psychosis includes general paralysis of the insane, traumatic psychosis, encephalitis lethargica, senile dementia, puerpal insanity, epilepsy and alcohol or other intoxicant induced psychosis. Functional psychosis may be paranoia, manic-depressive psychosis, schizophrenia³⁹.

The relationship between mental disorder and criminal behaviour is not totally conclusive and such disorders are not sufficient to explain criminal behaviour⁴⁰.

When Mens rea came to be considered an essential element of crime, the matter of insane criminals came to be regarded in India based

³⁹ (Mannheim) Ahmad Siddique, *Criminology-Problems and Perspectives*, Eastern Book Co.

⁴⁰ (Karl F. Schuessler and Donald R. Crassey, *Personality Characteristics of Criminals*, American Journal of Sociology).

on M'Naghten rule, established in England in 1843, in which is also included the concept of irresistible impulse.

In the psychoanalytical approach on the concepts formulated by Sigmund Freud says that basic biological drive in a human being, present at the time of birth also, operates in the sub - conscious state. There is a merit in the psychoanalytical approach in that social factors also are accommodated in the analysis of the ultimate personality. However, it is extremely difficult to examine the actual mental state of a person.

There is yet another approach, called the psychological approach, which has sought to explain criminal behaviour in terms of glandular malfunctioning⁴¹. Some efforts have been made by criminologists to establish relationship between heredity features and criminal behaviours. But it is almost impossible to make any scientific study based on heredity factors independent of environmental factors of various dimensions. The Greek philosopher Aristotle enunciated four laws of association. He stated that similarity, contrast, succession in time and coexistence have close bearing on the psychological concept of crime. He holds that persons of similar criminal traits come closer. Contrast between criminal and non-criminals give rise to conflict which aggravates crime. Various behavioural traits are succeeded from generation to generation through unbroken links. Although, with the

⁴¹ Taft and England, Criminology, 4th Edition).

passage and change of time and circumstances, there may be transformation in the pattern, the basic values remain unchanged. Criminality, one such norm, has been continuing all over the world from ages in varying degrees with change of time and place.

Studies made by Charles Goring, Healy, Bronner, Sheldon and Eleanor Glueck and Cyril Burt, however, do not indicate any positive evidence that there is necessarily any similarity between the conduct of the members of the same family.

The individualistic theories fail to see that crime represents a socio-cultural phenomenon which is not associated with the physical or mental equipment of an individual as such. But the attention focussed on the personality of criminals have made the basis of modern criminology. In the words of Taft and England, individual conformity or non- conformity to criminal codes are as much socio-cultural phenomenon as speaking or failing to speak grammatical English and are not necessarily indicative of the possession of abnormal biological or psychological traits⁴².

In the individualistic approaches, the focus of attention is on the biological, mental and other characteristics of the individual offender, on the other hand the sociological approach seeks to explain criminal behaviour with reference to the community, social institutions and

⁴² Ahmad Siddique, *Criminology, Problems and Perspectives*, Eastern Book Co..

group relationship. Criminal behaviour is looked upon as resulting from social interactions. This has led to the approach of studying crime as an environmental phenomenon.

ENVIRONMENTAL APPROACH

Environmental approach has two ways of looking at criminal behaviour. One is to make a study of criminals with reference to society and the other is to find causative factors of crime in institutions of society like family, educational institutions, economic relationships, organised religion and means of mass communication. Gabriele de Tarde, the French Jurist believed that criminal behaviour is the result of a learning process and is learnt like any other trade which is picked up in the childhood.

The fast pace of social change gives rise to a disorderly state resulting in social disorganisation. With industrialisation and urbanisation, the hold of social kinship has reduced with the increased mingling of a varied people and there has arisen an individualistic attitude⁴³. The social disorganisation resulting from cross-cultural conflict thus consequences upon deviant behaviour. These theories of social disorganisation has been criticised on the ground of lack of objectivity.

⁴³ William J. Thomas and Florian Znaniecki, *The Polish Peasant in Europe and America*

The theory of criminality based on differential association has been presented by Sutherland. According to him, there are two types of organisations operating within the community, namely, organisation for criminal purposes and organisations against criminal activities. He also believed that what actually needed for criminal behaviour was some sort of rationalisation to use the crime committing techniques for criminal purposes. This capacity is learnt through association with criminals. Sutherland suggests that family background, mobility, cultural conflict, political ideology, religious faith, economic condition, unemployment, ecological environment etc. contribute and compel a man to commit crime⁴⁴. Daniel Glaser, reconceptualising Sutherland, believed that most individuals are believed to identify themselves with both criminal and non- criminal persons, they may have first hand experience with delinquent groups or they may also identify themselves with criminal roles presented in fiction, movies etc. and they may react against criminal groups⁴⁵. There is inconsistency of the theory in that all persons coming in contact with criminal do not turn to criminals. It is also said that criminal behaviour does not increase indefinitely to make everyone a criminal.⁴⁶ In it Cressey defends Sutherland that those who commit crime under emotional stress are not really criminal to warrant a study in criminology. It is also criticised that differential association

⁴⁴ Edwin H. Sutherland and Donald R. Cressey, *Principles of Criminology*, 1960

⁴⁵ Elmer Hubert Johnson, *Crime, Correction and Society*

⁴⁶ Donald R. Cressey, in the article *The Development of a Theory in Differential Association*.

theory does not take into account 'personality traits', 'personality factor' and 'psychological variables' in criminal behaviour. This theory also cannot be extended to all crimes.

E. Durkheim formulated a concept called 'anomie', a socially pervasive condition of normlessness, which is a term vaguely defined and applied, and used particularly to explain the behaviour which he referred to as anomie suicide. A high rate of suicide and homicide is to be found in an anomie ridden society where control of public opinion loses efficacy in times of economic change and moral stress and strain. Anomie is a disjuncture between approved goals and means⁴⁷. The same goals are held out by society as desirable, however, opportunities are not equally distributed in society. Conformists accept both the goals and means while some others do not accept the means and innovate these, these are termed as innovators and branded criminals by R.K. Merton⁴⁸.

Robert K. Merton used the basis of anomie formulated by Durkheim, which has an amount of abstraction, and explained criminal behaviour as a product of anomie. According to him, "an explanation of crime will be found in society's social and cultural structure rather than

⁴⁷ Robert K.Merton, Social Structure and Anomie, American Sociological Review, Vol.3, 1938.

⁴⁸ Emile Durkheim, Suicide, Newyork Free Press, 1951.

in the individual” and this is responsible for a condition in a social system when cultural regulation of behaviour is weakened.⁴⁹ .

The theory of juvenile gang delinquency says that though poverty and lower class status do not necessarily lead to delinquency, their influence can directly lead to formation of delinquent gangs. A gang is obviously more dangerous as number of persons engaged with common goal have higher capacity to do mischief. According to Frederick M. Thrasher⁵⁰, a delinquent gang must be dealt with as a member of all the various groups to which it belongs - the family, neighbourhood, school, religious institutions, occupational groups and so on and also as individuals. According to him delinquency develops in slums out of acts committed by gang members to derive excitement from the adventure involved. Albert K. Cohen coined the phrase ‘delinquent sub culture’ and he is of the view that it is characterised by non-utilitarian malicious and negative attitudes and crimes are committed for the ‘heck of it’ sometimes. They derive pride in the reputation of having acquired ‘meanness’⁵¹.

Criticisms are put forth that boys of lower class care much about middle class or delinquent acts are always non-utilitarian or malicious towards respectable persons (Albert K.Cohen). It is also argued that

⁴⁹ Robert K.Merton, Continuities in The Theory of Social Structure and Anomie in Social Theory and Social Structure.

⁵⁰ Frederick M.Thrasher, The Gang, University of Chicago Press, 1960

⁵¹ Richard A.Cloward and Floyd E. Ohlin, Delinquency and Opportunities in Delinquent Behaviour.

economic injustice and not middle class expectation problem leads young people to gang culture. The child in the “hardcore” lower class grows up to mature into adult in an atmosphere of being amidst adolescent street gangs. Learning about the lower class structure emphasises the “focal concerns” of trouble, toughness, smartness, excitement, fate and autonomy. In following these cultural patterns within the adolescent gang, lower class boys engage in activities that may well become defined as delinquent or criminal. Cloward and Ohlin’s theory of “Differential opportunity Structure” - a refinement on Sutherland’s and Merton’s theory is a nice one. Walter C. Reckless and Travis Hirschi also provided different theories. Hirschi’s “Bond Theory” is of prime importance in present day world.

The conflict theories of crime hold that social order, rather than being the result of any consensus or process of dispute resolution, rests upon exercise of power through law. The conflict perspective can be described in four elements:

- (a) society is composed of diverse social groups and diversity is based upon distinction,
- (b) conflict between groups is unavoidable because of differing interests and values, conflict is inherent in society,
- (c) conflict centres on exercise of political power for wealth and other forms of power,
- (d) law is a tool of power, it allows those in control to gain what they desire.

A conflict perspective that sees crime as engendered by the unequal distribution of wealth, power and other resources - which it believes is specially characteristic of capitalist societies, also called critical and Marxist criminology⁵². Although Karl Marx did not systematically examine crime, he argued, "Crime takes off the labour market a portion of the excess population, diminishes competition among workers, and to a certain extent stops wages from falling below the minimum, while the war against crime absorbs another part of the same population. The criminal is therefore counter weight.

New criminology, evolving in Scandinavia, focussed on the needs of the poor⁵³ and for social change and elimination of injustice. Crime is said to be resting ultimately on a materialistic, objective base (Richard Quinney). According to the economic explanation of criminality, the individual calculates (1) all the practical opportunities of earning legitimate income, (2) the amounts of income offered by these opportunities, (3) the amount of income offered by various illegal methods, (4) the probability of being arrested if he acts illegally, and (5) the probable punishment should he be caught. After making these calculations, he chooses the act or occupation with the highest discounted return. The criminal calculates the cost and benefit, even though his calculations are not assumed to be accurate. A criminal is a normal human being and his calculations may be altered by changing

⁵² George B. Vold, *Theoretical Criminology*, Newyork, Oxfrord university press, 1986

⁵³ Ivan Taylor, Paul Walton and Jock Young, *The New Criminology*, Harper & Row, 1973

the opportunities available to him. Gary S. Becker also has defined a criminal as a normal human being and calculating people maximizing their preferences subject to given constraints⁵⁴. According to him “ a useful theory of criminal behaviour can dispense with special theories of anomie, psychological inadequacies, or inheritance of special traits and simply extend to the economist’s usual analysis of choice”.

Peacemaking criminology is a perspective which holds that crime control agencies and the citizens they serve should work together to alleviate social problems and human sufferings and reduce crimes. Peacemaking criminology is only a very new beginning with its germs in ancient christian and eastern philosophy of non-violence and compassion. Harold (Hal) Pepinsky and Richard Quinney they both restate the problem of crime control from one of how to stop crime to how to make peace with the concept of crime control as human rights enforcement and conflict resolution in community setting⁵⁵.

The phenomenological school holds that crime might mean one thing to the person committing it, and quite another to the victim, and something far different still to professional participants in the justice system. It is a perspective which holds that the significance of criminal

⁵⁴ Gary S.Becker - Crime and Punishment: An Economic Approach, -Journal of Political Economy.

⁵⁵ Harold E.Pepinsky and Richard Quinney, Ed.Criminology As Peacemaking, Bloomington, 1991.

behaviour varies depending upon one's interests and points of view and is ultimately knowable only to those who participate in it.⁵⁶

The Emergent theory is a feminist criminology, a developing intellectual approach which emphasizes gender issues in the subject matter of criminology- traditional view is that criminological theory assumes women like men⁵⁷. Much feminist thought within contemporary criminology emphasizes the need for gender awareness. As gender inequality has increased, it is expected that male and female criminality would take on similar characteristics, but such has not been the case as difference substantially remains⁵⁸.

The concept of crime calls for extension beyond its strict legal ambit for the purpose of criminal studies. The legal approach to causation of crime prescribes a code of conduct under which violations of law are met with penal consequences. The sociologists go a further step to declare that crime causation depends considerably on social interactions and at times there are glaring examples of violation of laws deliberately in the likes of Mahatma Gandhi, Lokamanya Tilak Etc.

Crime is a part of society. Delinquent or criminal behaviour is shaped within the various institutions of society. Therefore, it is

⁵⁶ George Herbert Mead, Charles W.Morris, Ed. In Mind, Self, And Society, Chicago University Press.

⁵⁷ Sally S.Simpson, Feminist Theory, Crime And Justice, Criminology, Vo.27.No.4, 1989

⁵⁸ Kathleen Daley and Meda Chesney Lind, Feminism And Criminology, Justice Qrly, Vol.5.No.5.

imperative that some study is made to see the impact of such social institutions.

The first and most important social institution that determines the individual's behaviour towards society is the family. Sutherland holds that out of all social processes, the family has perhaps had the greatest influence on the criminal behaviour of the offender. The children imbibe the criminal tendencies of the parents if they are so inclined. Psychologists hold the view that the formation of the basic personality of a child is complete in the first 10 or 12 years. The child should feel that he is liked and loved and he has some privileges and status in the family. Lack of affection due to disharmonious relationship between parents or broken homes is regarded as an important contributory factor towards criminal or antisocial behaviour. Due to divided loyalty the child's personality is overshadowed by frustration, indifference and dejection and in fit of bewilderment throws into association with delinquents⁵⁹. Size of the family also seems to have impacted the behaviour of the child according to Cyril Burt. Working mother and delinquent behaviour is also said to have great amount of relationship⁶⁰, particularly in the low income groups as they are not conscious about arranging for supervision of the children. To add to these, immorality of parents, misery, poverty, unwholesome family atmosphere, unemployment, low income etc. are factors fuelling causation of crime.

⁵⁹ Don C. Gibbons, *Delinquent Behaviour*, 1970

⁶⁰ Sheldon and Eleanor Glueck, *Unravelling Juvenile Delinquency*

Sociologists have also been attracted by the relationship between delinquent behaviour and religious control. The interrelation between religion and delinquency may be viewed from two angles, in its positive sense as a source of constructive morality or in the negative sense in terms of undesirable leadership, abuse due to corruption and commercialisation. In the positive aspect, religion prevents criminal behaviour by moulding the individual personality. In the negative aspect, it may promote delinquent behaviour as a result of disillusionment with the system based on hypocrisy and dishonesty and intolerance towards other religions. In the formative years it may have an indirect and subtle influence on the child⁶¹. Religion may be useful, but not a necessary instrument in preventing crime⁶².

The other institution in which the child remains for a substantial period of time during the day is the school. So, behaviours like truancy, which might be a first step towards criminality, are known to the school authorities or the teachers. Teachers are also often unconsciously seen to react to children from different social strata differently and this might also be a factor towards development of criminal behaviour.

Mannheim says that there cannot be any doubt that poverty contributes a great deal both directly and indirectly, to the commission

⁶¹ Thomas N.Gannon, Religious Control and Delinquent Behaviour, Sociology and Social Research, 1967

⁶² Martin Fitzpatrick, Delinquent Behaviour, Random House, Newyork, 1964

of delinquent and criminal act.⁶³ (Hermannn Mannheim, Criminal Justice and Social Reconstruction, 1958). However, poverty alone cannot be made accountable for all the economic crimes. The Marxist theory holds that all human behaviour is primarily determined by economic factors and not by conscience, which itself is influenced by one's economic experiences and surroundings⁶⁴. Frederick Engels attributed crime to exploitation of the proletariat.

The most notable contribution to criminology in respect of crime and economic structure has been made by Bonger. He said that the criminal was the product of capitalistic system which instead of promoting altruistic tendencies created selfish tendencies among the members of the society⁶⁵. In India criminal statistics clearly reveal that there is a close nexus between poverty and criminal behaviour⁶⁶. Indirect effect of poverty has been noted by Clifford Shaw with his focussing attention to the 'delinquent area'. These areas are characterised by physical deterioration, high proportion of population or welfare rolls, high proportion of ethnic and minority population and inadequate housing which create tension between members of the area living in a cramped atmosphere⁶⁷.

⁶³ Hermannn Mannheim, Criminal Justice and Social Reconstruction, 1958

⁶⁴ Karl Marx, Das Capital

⁶⁵ William Adrian Bonger, An Introduction to Criminology.

⁶⁶ Ahmad Siddique, Criminology, Problems and Perspectives, Eastern Book Co.

⁶⁷ Clifford R. Shaw and Henry D. McKay, Juvenile Delinquency and Urban Areas, 1942.

In the present day set up, political ideologies gain strength through legislative process thereby directly influencing criminal pattern in a given society. Involvement of criminals in and during elections have become the order of the day and there is a close nexus between politicians and criminals and the criminals are given protection by the political lords by dropping cases of criminals apprehended and prosecuted by the law enforcing agencies, even by exceeding jurisdiction, to trespass the judicial fields.

In today's world means of mass communication like cinema, press, radio, television, internet connectivity etc. have assumed great significance. The audio-visual means have much impact on the psyche of the child; children watch television during hours when programmes featuring crime and violence are presented⁶⁸. The excitements generated by fight scenes in cinema or television programmes are to be seen to be appreciated. The criminological impact of mass communication has been felt in three stages of sequences namely, imitation, vicarious enjoyment and safety valve. Mass media has nothing intrinsically dangerous but depends upon the use made of it and, however, media can play a positive role by raising pertinent issues and supplying relevant information about crime. Frequent reporting of crime news makes people lose faith in the law enforcing agencies. Burnes and Teeters observed that it encouraged crime and delinquency in two ways

⁶⁸ William Adrian, Tele-Violence, The Crime in Your Home, The Readers Digest Vol.78, 1961.

- first, those with unstable mind and abnormal are easily attracted towards such crimes. Donald Taft observed that changes in the habit of dress and undress, sex themes in literature, drama, obscenity in advertisement, movies etc. may stimulate sexual impulse in varying degrees, increasing deviant behaviour.

Social control theories, which have come up to be in vogue since the early fifties focus on restricting and controlling forces which keep a person in check and delinquency results when these forces get weakened. These theories, however, do not support a clear cut categorisation of delinquent and non-delinquent youths.

Albert J. Reiss emphasized on the aspect of personal and individual control of a person of the self. He did not take into account family, community etc. controls.

Jackson Toby based his theory on the premise that the temptation to violate norms is among all persons but control will depend upon the stakes the individual may have in conforming to the norms like school performance.

Ivan Nye, another social control theorist concluded that family was the single most important control group in determining juvenile behaviour.

Subsequently, Walter C. Reckless came up with the containment theory. According to this, delinquent behaviour was the result of social pressures and pulls of all kinds countered by containment, external and internal, with reference to an individual.

According to David Matza, delinquent behaviour is the drift caused due to loosening of social control. He also pointed out that most of the time and in most situations the delinquent behaves normally. Moreover, delinquents do not regard their behaviour as morally justified but rationalise it by reference to 'pervasive sense of injustice'⁶⁹.

Travis Hirschi believes that "we are all animals and thus capable of committing criminal acts"⁷⁰. He elaborated his theory in terms of four factors, namely, (i) emotional attachment to significant others (to school and teacher), (ii) involvement or immersion in conventional values (in conversation), (iii) commitment to appropriate lifestyle (to society) and (iv) beliefs in the correctness of social obligations. These factors play as a deterrent against criminal behaviour.

After having studied the various theories as regards causation of crime, it has been seen that no single theory can address criminal behaviour in totality, and therefore, the sociologists made use of the

⁶⁹ Gresham Stykes and David Matza, *Techniques of Neutralisation, A theory of Delinquency*, *Americal Sociological Review*, Vol.22, 1957.

⁷⁰ Travis Hirschi, *Causes of Delinquency*, 1969

multiple factor approach to explain causation of crime. William Healy, eminent criminologist held on to this approach steadfastly.” It is not one or two factors which turn a man delinquent, but it is a combination of many more factors which cumulatively influence him to follow criminal conduct.”⁷¹. The extent of influence of various factors may be varying in degrees, some exerting greater influence on crimes, the others the least.

These theories guide to trace the crime scenario of a particular place or of a particular social group. These theories remain the same whether study is made of a crime situation of a developed and most modern country or an underdeveloped one or even a city like Guwahati.

Having had a glimpse at the various definitions of crime and theories in regard to criminal behaviour and concepts as regards causation of crime, in the next chapter the crime control mechanism, existing laws and enforcement of laws are being dealt with, including the various facets and ramifications of the subject under study.

⁷¹ William Healy, *The Individual Delinquent*.