CHAPTER - I

CRIME AND CRIME CAUSATION

Crime and Punishment have become nowadays very absorbing interests for jurists who are busy developing very radical theories on the nature of Crime and on the nature of punishment. Modern Science has revealed several possibilities of criminal investigation and medical experts have made it possible to arrive at new solutions in respect of the mental conditions of the criminals. In a short treatise, which is expected to cover the Effect of punishments on the criminals in this Country, a very brief survey of the new concepts of crime and punishment is not only worthwhile but quite indispensable. The following review of the main concepts in this context will be no doubt very helpful to examine as to what extent the punishments in the Indian Criminal Law have served their expected purpose.

For centuries Criminologists have been defining and explaining Crime, each one treating it with a different emphasis and suggesting a different problem. L.L.Higgins in his Criminology and Crime Prevention gives a definition of Crime which is quite satisfactory. It is an act or omission by a human being forbidden by law and punishable upon conviction by fine or imprisonment or both, or by death or by removal from office, or disqualification for an office of trust, honour, or profit under Government, or by some other penalties. The acts and omissions, prohibited by law, are injurious to the health, welfare, or safety of the community. The acts are considered to be anti-social and are classified in many ways, such as
violation of rights to property, business laws, food and drug acts, robbery, murder, assault, fraud, abduction, rape, bigamy, perjury etc.

Michael Adler in his *Crime, Law and Social Justice* regards Crime as merely "an instance of behaviour prohibited by Criminal Law". Sellin, T. regards Crime in his "Culture, Conflict and Crime" as a deviation from, or breach of, a conduct norm. The deviation or breach is punished by society by means of its sanctions. "But punishment is not the only criterion of value. Religion, art and education and other Sociological agencies also reveal value." In Halsbury's Laws of England, Crime is defined as an unlawful act or default which is an offence against the public and which renders the perpetrator of the act or default liable to legal punishment. Broadly speaking two Schools of thinkers have attempted to elucidate the concept of Crime in two different ways, and their distinct views have created a dilemma for the Criminologist. The classical School has considered crime in legal terms within the strict limits of criminal law. The Positive School, on the other hand, has focussed attention on the criminal as a psychological entity. The former lays stress on determination, the latter on free will. Consequently, these Schools look upon the nature of punishment from different standpoints. Even the reforms suggested by these Schools take different directions. The classical writers attempt to reform the legal system and mitigate the harshness and arbitrariness of punishment.
The Positive School is at pains to suggest the application of scientific methods to the study and reform of the criminal. To the classical School the basic doctrine of Crime was "nullum crimen sine lege" (no crime without a law). The Positive School substituted for this legal definition the concept of natural crime, rejecting the legal concept in favour of the psychological. The Italian writer Garofalo tells us that crime as a mere legal category is unacceptable because it is capricious and uncertain. A natural crime is an act, he says, that offends the moral sentiments of pity and probity in the community. These two concepts, which are poles apart, have created in the criminologists a sort of confusion and there is no agreement among them as to what is crime. Another School, therefore, has attempted a new approach defining crime as an anti-social behaviour. This School is known as the Sociological School, which has taken up the study of crime on the basis of conduct norms rather than legal norms. The eminent British Criminologist, Professor Hermann Mannheim, supports this approach and asks the question: "Is Criminology concerned exclusively with criminal behaviour in the legal sense or with the much wider conception of anti-social behaviour?". He answers the question by saying that Criminology tends to become the Science of undesirable human behaviour. There is opposition to this very wide definition of crime as undesirable behaviour from Robert Caldwell and Jerome Hall.
They affirm that a complete elimination of the legal content of the concept crime may not be quite advisable, because no science of criminology can afford to neglect the significance of the rules of criminal law, their origin and history, side by side with their Social Context. It, may, however, be said that in the field of juvenile delinquency this wider definition of crime may be very useful and effective, because the chief problem there is the problematic behaviour of the delinquent vis a vis the Society.

Apart from precise definitions of crime, criminologist are interested in explaining, as far as possible, the causes that lead to crime. Several theories are formulated, and each, in its own way, serve to show the complexity of the environment from which crime results.

1. The Pre-Scientific Theory of crime is advanced to explain criminal conduct on the basis of "Diabolical possession and Instigation". Crime is the result of evil spirits that possessed a person, according to primitive, oriental and medieval social belief. The punishment is also equally primitive - to exorcise the evil spirit or to get rid of the person possessed by death or exile. In modern times there is no place for such superstition about crime and its punishment.

2. The Christian Theory relates to the "Freedom of Will" given to man by God and his abuse of this freedom in the service of the devil. His moral fall ultimately involves
him in criminal acts and he suffers the bitter fruit by way of punishment. The ethical content of the theory has some bearing on criminal behaviour, but the theory appears to be closely related to the concept of criminal responsibility and its connection with \textit{mens\ rea}.

3. The \textbf{classical Theory} draws upon the old christian concept and treats crime as an act of the human will, and it gives more attention to the proper infliction of punishment from criminal to criminal. The theory also examines the effect of crime on society and the injury done to it in order to determine the correct measure of punishment. Bentham in England and Feurbach in Germany are the known exponents of this position, mainly from the point of view of punishment. The act of the will may be conditioned by circumstances, and the law has to take them into account. Bentham believes that all men pursue their interests rationally and deliberately, inspired by motives which are the main-springs of their actions. The motive in itself is not good or bad; it is the external situation that makes it so. He suggests a moral calculus of pleasures and pains to measure the incidence of crime and its proportionate punishment.

4. The \textbf{Positive Theory} negatizes entirely the assumption of the classical thinkers and creates its own theory of formidability - laying stress on the formidable element in the criminal, who is a type by himself, and does
anti-social acts against which the society must defend itself. Lombroso, Garofalo and Ferri, the Italian writers, are the prominent founders of this doctrine, which appears to emerge from the biological study of the Homo sapiens. Lombroso has made critical studies of soldiers, their decent and coarse habits, and reached a conclusion that psychological attitudes have a high relation with physical stigmata. Stimulated by this tentative conclusion he has proceeded to a more thorough study of criminals in Italian prisons. One such is a notorious brigand, Vilella, a man of great strength and agility, possessing the traditional boastfulness of the habitual criminal. Upon his death, a postmortem of the criminal's brain reveals to Lombroso a certain evidence of atavism - "an enormous occipital fossa and an hypertrophied vermis like that in the lower vertebrates". Here, then, is the answer: the criminal is a throwback or a biological reversion. Man is biologically cast into a criminal type. A criminal is born and not made.

Garofalo looks upon crime as a violation of certain basic moral sentiments of the society and develops a concept of natural crime. The true criminal is he who lacks these sentiments and is deficient in his development. In his instincts there is some specific element which is congenital or inherited or acquired in early infancy and has become inseparable from his physical organism. In short 'natural crime' of Garofalo is that conduct which offends the basic
moral sentiments of pity (revulsion against the voluntary infliction of suffering on others) and probity (respect for property rights of others). In a criminal these are absent and so he will kill or steal as the occasion arises. The degree of his violence varies directly with the deficiency of these sentiments. A brief look at Ferri's Principles of Criminal Law (1928) shows his concept of crime, unrelated to the human will but related to some inborn tendency in the criminal himself. The factors of crime are anthropological or individual, physical or social. The former are the offender's age, sex, status, occupation, residence, education, organic and mental constitution. The latter are race, climate, fertility and even the cycle of seasons. Even factors like the increase or decrease of population, migration, family relations and political, financial environment go a long way in constituting the criminal whose free will is suppressed by these.

The Positive School thus appears to have cultivated a science of criminality and of social defence against it. It studies the criminal as an individual fact and it studies the crime as a social fact. It is obvious that the evidence for a criminal 'physical type', based on anthropometric data relating to the skull and the facial and other features is nothing. No such physical characteristics are acceptable as proof of criminality. Dr. Charles Goring, the physician of His Majesty's Prisons, has, after exhaustive study of
several types of convicts, comes to the right conclusion that there is no such thing as a physical criminal type and that all the evidence in that respect will always be challengeable.

5. The Constitutional Theory  Following the Positivists came the Constitutionalists whose doctrine of heredity of the individual has been widely accepted in Europe and Latin America. It is the heredity that motivates the criminal rather than the disturbing factors in the social situation. Side by side with these, we have Endocrinologists who find a clue to criminal personality through the science of the endocrine or ductless glands. According to these enthusiasts some persons become criminals because of the malfunctioning of one or more of the endocrine or ductless glands. M.G.Schlapp and E.H.Smith support this glandular analysis while Professor M.F.Ashley-Montague, a noted anatomist asserts that the glandular tests are not carried out in a strictly scientific manner and that the reports based on them are glaring examples of the fallacy of false cause. As far as the endocrine system and its relation to personality behaviour are concerned, he says that we are still completely in a world of the unknown, and to resort to that system for an explanation of criminality is merely to attempt to explain the known by the unknown. H.H.Newman launches upon another clue and traces a criminality in twins especially in "Identical or one-egg twins". Heredity, in these cases, explains their anti-social behaviour. This view has found favour with some thinkers, but it is generally regarded as an
explanation which cannot completely rule out the influences of the social environment. Undoubtedly the study of crime by means of the twin method is now important than it seemed at the outset.

Hootan finds physical and racial factors to be the dominant causes of crime and for him criminality is closely linked up with a definite pattern of physical inferiority. He even considers it proper that the criminal stock, identified on the patterns of physical inferiority, should be eliminated by sterilization. Hootan's study is based on very elaborate measurements of thousands of male and female prisoners, but many of his assumptions are not borne out, if we view the problem of crime as a whole. He overlooks the white-collar criminal - the biologically superior - and his thesis generally maintains that a special proclivity to particular types of crime exists in persons belonging to some races and sub-races.

But it is in Sheldon's latest work Varieties of Delinquent Behaviour that we find the true thesis of the constitutionalists: that behaviour is a function of body structure and with careful measurements and interpretation, fairly accurate predictions concerning the individual's behaviour can be made. This hypothesis is the direct antithesis of the psychiatric approach. This body-build thesis is regarded as a sophisticated form of shadow-boxing, evading the subtle and difficult problem of human behaviour.
which is dangerously anti-social. There is no strong evidence at all of a physical type having any consistent relation to crime, legally or sociologically defined, as Professor George Vold rightly says.

Barnes and Tegters have come to a very reasonable conclusion in respect of the work of the Constitutionals. Human behaviour requires to be studied thoroughly from all available disciplines, such as psychology, biology, sociology and medicine in order to tackle the eternal riddle of crime causation. An individual action is determined by the structure as well as the conditions of the individual. His freedom of will, therefore, exercisable within these limits. The constitutional theory puts its emphasis on the physical condition, while the sociological theory puts in on the environment.

6. The Geographical Theory of Montesquieu and Quetelet contends that climate and topography exercise considerable influence on human behaviour. In warm climates crimes against person are on the increase, while in the cold climates crimes against property recur often and often. This is known as the "thermic law" of crimes. Peter Kropotkin, the great Russian anarchist, extends this climatic approach further and sets up a formula to predict certain crimes in certain areas. The American writer, Edwin Grant Dexter, has undertaken more outstanding studies of the effects of climate and meteorological
He correlates some criminal cases in New York and Denver with the records of the weather. There is a danger in this theory of causation of crime, as it oversimplifies the main problem. Persons have acted ill and well in different climates, and geography is but one of the infinite environmental influences. This is the substance of the view of Barnes and Tetters, and it is a very sound view on the climatic and geographical approach.

7. **The Economic Theory** - The first approach to crime on the economic basis was made by the Italian scholar Eltore Farnasari di Verce who points out that crime is rampant in the poorer classes, and the Dutch criminologist William Bonger says that the capitalistic structure of the society is responsible for innumerable criminal acts among the poor classes, who use alcohol excessively. Many American scholars like Brace and Jacob Riis and others blame the economic system and expound their thesis in graphic terms. There are, however, others who say that though poverty leads to many petty offences in the juveniles of the poor classes, it is also envy and ambition that stimulate many crimes. Many young hoodlums steal money and cars to make an impression on their girl friends. Poverty, no doubt, is the hot bed of crime, and George Bernard Shaw very characteristically said that poverty itself was the greatest crime.

8. **The Sociological Theory** - This theory nowadays is propounded very elaborately by scholars, the best
known being Gabriel Tarde, Émile Durkheim, E.H. Sutherland, D.R. Taft, Walter Reckless and Edwin M. Lemert. A criminal is no more or less disorganized emotionally than the non-criminal. Criminal behaviour is learnt through group association just as politeness, tennis or banking are learnt through other types of association. The Ecologists assume that man is an organic creature and behaves according to the organic world—his social area. It is often seen that delinquency tends to be clustered or concentrated in certain well-defined areas. The congested and disorganized urban sections in the vicinity of central business areas show an increasing incidence of crime. Most of the slums are centres of crime. Shaw finds that much of our modern crime is deeply imbedded in the roots of modern community life, and the metropolitan centres seem to sanction delinquency through the conduct, speech and gestures of the people of the cities. The competition, the excitement, the haste of modern life confuse the growing boy and encourage a criminal conduct. Life in cities like New York, Chicago, Bombay, makes it quite obvious how crime may thrive in crowded cities. The delinquency area concept has served a useful purpose in the fight against crime, but the danger is that it may become an overall simplification of the problem of crime. Tarde's conception of the criminal as a professional type is of particular interest. In a criminal career both the element of individual choice and the factor of chance operate. Criminals go through a long
period of apprenticeship like doctors, lawyers, farmers and skilled workmen. Their actions are influenced by their comrades. Tarde's laws of imitation are well-known, and he applies them in his studies of criminal behaviour. His three laws of imitation relate to the phenomenon of fashion, the phenomenon of custom and the phenomenon of insertion. Criminal conduct is influenced by imitation, and Tarde shows how crimes in different centuries have a correlation. Crimes, like vagabondage, drunkenness, death by poisoning were common in the royalty, but gradually they occurred in all social levels. The weapons of crime have come to be substituted. An example of this would be murder by knifing and murder by the gun. Tarde thus implies that different patterns of social living are accompanied by different patterns of criminal behaviour. Tarde concludes by saying that criminal responsibility can be determined by the criminal's individual identity and his social similarity. Personal identity is the principal factor while the social similarity is an accessory factor. He does not exclude other factors, biological and physical, which might influence individuals, but he contends that these are only partially important.

Emile Durkheim finds the explanation of crime in the very nature of society. Crime is imminent in society and results from social interaction. Criminality is a normal factor rather than a psychological one.
A society exempt from crime is utterly impossible. The logically fundamental conditions of social organization imply crime. Crime is not due to any imperfection of human nature—or society. It is all a part of the totality of society. He maintains that crime is not only normal for society but also necessary. Without crime there can be no evaluation in law. The criminal, like any other person, must be able to express himself and thus he plays a useful role. According to the Athenian law, Socrates was a criminal and his condemnation was just. However, his crime the independence of his thought—rendered a service not only to humanity but also to his country. Durkheim advances the theory of 'Anomie' to explain crime, and it is regarded as his outstanding contribution to criminology. When society is well-integrated and held together by compulsive force of a common conscience of its people, there is a stable social order, a collective-mindedness, and a certain moral discipline unifying the population. In this condition of the society of full concordance, crime is at a minimum. But in the process of social change this integral unity suffers a drastic change, and is shaken by divergent forces and the structure of the society weakens. When this occurs restraints on human passion no longer hold and a condition of deregulation or Anomie results. A social chaos comes as the norms of the society collapse, and there is social fragmentation and atomisation. This creates a terrific
social isolation and social participation becomes impossible.
In such condition of the society, crime is at a maximum
and the sense of separateness leads to suicide which, in
this environment, is the most popular crime - self
annihilation. Edwin H. Sutherland's thesis, known as the
"differential association", states that criminal behaviour
is learnt through contact with criminal patterns. A person
becomes delinquent because of an excess of definitions
favourable to violation of law over definitions unfavourable
to violation of law. Contacts with criminal patterns are
a result of isolation from anti-criminal contacts. Inevitably
the criminal assimilates the culture from the criminal
patterns. Sutherland does not advance his theory to explain
all criminal behaviour, but it fails to give any importance
to the biological make-up of the individual or to his social
environment.

The next distinguished author Donald R. Taft advances
the opinion that in any culture that is highly competitive
and materialistic, leading to struggle for prestige and
status, much crime must inevitably take place. Such culture
is dynamic, complex, contains inconsistencies between precept
and practice and differential treatment between privileged
and minority groups, and it is bound to result in discontent
leading to crime. Taft's thesis does explain crime of a
limited description, but it cannot be accepted in respect
of a very large majority of the people who rise above the
dynamic and complex culture of modern societies. Walter Reckless does not advance any specific theory and treats crime as a 'social vulnerability' of the individual. Edwin M. Lemert's 'closure theory' indicates that crime results on account of the pressures of the situation and the pressures within the criminal, explaining how he takes a certain route in his behaviour among available alternatives. This theory may very well explain unorganized offences like auto-theft, shop-lifting, criminal abortion and poisoning.

9. Home and Community Influences Theory - Scholars of juvenile delinquency often point out that poor housing conditions and disorganized homes are responsible for the growth of criminal mentality in children. The housing conditions are extremely poor and even common sanitary needs of the dwellers are not met. In the slums there can be no privacy and the inhabitants thus live a very wretched life which leads to vice and crime. These scholars bring before us an overwhelming statistics of slum areas, the rents that are charged by unscrupulous landlords, and the frightful hygiene. Such wretched residential areas are co-related with crime, and sub-standard homes, instead of rearing children well as useful citizens, only throw them out to feed on the society.

More wretched than the poor home is the disorganized home, which is psychologically broken and is full of discord. The members of the family are at cross purposes, the parents
are missing, dead, divorced or deserted. Sheldon and Eleanor Glueck in their evaluation of one thousand cases of juvenile delinquency, find that the broken home, or poorly supervised home, plays a very large role in child psychology.

Life in the modern community appears to float on waves of excitement which is generally provided nowadays by the newspapers, magazines, comics, motion-pictures, radio and television. These cater to the public taste for sensation and often utilise crime and detective fiction for this purpose. It is needless to say that the movies have a considerable hold on the young minds and the popular movies are invariably those that deal with lurid stories of crime, bloodshed and gunfights. Constitutionally, weak children suffer from the adverse effects of over-stimulation and there is no easy way to protect them in the modern community which is almost mad after news of any kind. The influence of television as a medium of mass entertainment and culture has become a matter of concern to thinking citizens of civilized nations. The programmes, shown during children's viewing hours, leave the impression that life is cheap, that death, suffering and sadism are subjects of callous indifference, and that judges, lawyers and law enforcement officers are too often dishonest, incompetent and stupid.
10. **Emotional Disturbances Theory** - The latest direction of thought on the causes of criminality is diverted towards the emotional disturbances in a human being. Psychology and Psychiatry are the fields over which this topic traverses. A criminal is taken to be an abnormal person, and abnormality results from physical and psychological causes. This is so because the lower levels of stimulation and response are primarily physical in their nature. The abnormal types of behaviour due to physical causes may be brought about by disease, toxin in the system, changes due to age, and so on. The physical abnormality is also pathological, leading to serious mental disorder, making it impossible for the individual to control his reflexes in the normal fashion.

From the psychological point of view, mental abnormality is a marked inability to face reality, with resulting mental conflicts. Frustration in childhood, disappointments in love, professional failures, economic insecurity, total disillusionment and a large number of other unfortunate experiences may make an individual extremely weak to face the realities of life. Such a person creates a world of mental fantasy and goes to the other extreme of aggressive intolerance or cruelty towards the world of reality that is around him.

The psychologists speak seriously about this
emotional mal-adjustment of children and point out towards it as a danger signal to the parents who are really interested in educating them and help them to emerge into life with better understanding of reality. Love and affection can help children to gain emotional stability and face their future competently.

Albert Morel Henry Maudsley and Garofalo ascribe crime to emotional disorder, and hold that it is a product of mental and moral degeneracy. Several clinical tests of groups of criminals have revealed that emotional disorder can be traced in a few individual cases only, and there are many criminals who are intelligent and mentally and emotionally stable.

11. The Multiple Causation Theory - Dr. Burt propounds what we may say to be the most sensible and reasonable theory of crime, described by Barnes and Teters as the 'multiple-causation' theory. After examining much of the research and conclusions of the behavioral scientists of the last two hundred years, the only honest conclusion is that no unitary cause for crime has been found. Each discipline, through careful research, throws considerable light on the perplexing subject, but each reaches a conclusion that can be regarded only as segmental. A crime is committed only when a peculiar combination of personal and social factors comes into
juxtaposition with an utterly unique physical structure of a human being, to create a specified crime situation. And viewed in a merely external fashion, the same apparent combination of factors might not produce a crime next time they emerge, simply because that precise sameness can never absolutely recur. This conclusion of Barnes and Teppers on the causation of crime is indeed very apt.

The eclectic (multiple) approach is still the only promising and sensible credo for the modern criminologist. Professor George B. Vold states his conclusion on the subject of crime causation in a very satisfactory manner:

"Crime must be recognized clearly as not being a unitary phenomenon but as consisting of many kinds of behaviour occurring under many different situations. No single theory, therefore, should be expected to provide the explanation for the many varieties of behaviour involved".

The foregoing discussion is expected to indicate the nature of the impact the systems of criminal law will have to bear in order to implement legally and extra-legally the most vital aspects of the suggested changes. Many countries - and ours is not an exception - have criminal codes of the old established order containing offences and their punishment suited to the conditions of the old long past. The Indian Penal Code and the criminal Procedure Code are cast in the old framework, and a good deal will have to be done by way of amendments
to make our substantive and procedural criminal law meet effectively the new challenge. The problem of crime is a gross, engrossing fact, which needs new effective solution that the drastic deterrent principle has almost failed to reach. It will be, therefore, necessary in the discussion that follows to examine how far the punishments prescribed under the Indian Penal Code effectively serve their intended purpose. If the purpose intended is not now properly brought about, it will be also necessary to indicate on broad lines a reform that should seriously engage the attention of those closely concerned with the country’s administration.

The scheme of the Indian Penal Code is quite well-known, and in substance it relates to offences, punishments, and exceptions that provide certain defences to the accused. Before taking up the examination of the different types of punishments, it would be desirable to go into the large question of punishment and its objective ascertained on a juristic basis.