Chapter II

The concept of crime and punishment

The concept of ‘crime and punishment’ is as old as man is, and crime cannot be separated from punishment as crime in itself demands punishment. Since the beginning of social life humanity is concerned with the aspects crime and punishment. The question confronted by the modern man is the repetition of what occurred thousands of years ago. Probably it has its root in our mythology and legends; and some religious communities regard crime as sin. The sources of criminal laws are very ancient, which may go back to the Ten Commandments and earlier. During the Biblical age, the offence of Adam and Eve, the first man and woman, according to the Christian concept, is considered as the first sin. Consequently, they were punished to suffer for their sin.

If we go back to the ages of Hindu mythology and legends, as per the hypothetical theory, whoever sinned in heavenly abode was sent to the Earth as punishment to suffer for his/her sin. The Trinity, Bramha, Vishnu and Maheswara, in their judicial court pronounced deportation for the offending Angel. He/she was sent to Earth, to spend some time or to take birth on Earth, to get rid of his/her sin. Here, the concept may be that the offender; God or man, should be punished, and thereby purify himself for his sin, in other words, has to suffer for his sin. May be this is the beginning of the concept of crime and punishment.

The idea of crime has a long history. If we analyze the history, it is evident that, not just the modern concepts of industrialization, urbanization or technological changes explain the increase in criminality, but it lies in the very psyche of man.
Many states during the prehistoric time functioned as theocracies, with codes of conduct largely religious in origin or reference. During the prominent periods of history, along with the new religious movements, new states were formed. New philosophical systems, new art forms and, new legal and moral codes were established. Consequently new developments began to emancipate themselves from the masses. The earliest known civilizations had their own codes of law, containing both civil and penal rules.

The early man in his desire to expand his control over others, to establish his supremacy, started invading into other man’s life. The earliest written codes date back to the Sumerians, who were deeply conscious of their personal rights. They resented any encroachment on them, whether by the King, or by the superiors, or by his equal. Later we have references of successive legal codes existing in Babylonian civilization and the code of Hammurabi. The Mesopotamian society believed that the law was derived from the Will of the God. The Hellenic laws treated all forms of theft, assault, rape and murder as private wrongs.

The Romans systematized law and applied their system across the Roman Empire. The initial rules of Roman law regarded assault as a matter of private compensation. The consolidated Teutonic laws of Germanic tribes included a complex system of monetary compensations. In the middle ages the concept was defined very differently, but the deed remained the same. Compared to the present, earlier in the primitive world, the rules and regulations were quite simple. A sire presided over a group of people and set rules that dared not to be broken.

After the emergence of the concept of sovereignty, the idea the State; dispensing justice in a court developed. This system gradually evolved into a system
with royal judge nominating a number of esteemed men of the parish as his board, fulfilling the function of The People. As man became more civilized something went horribly wrong at the very core of the society. The rapid transition from tribal system to an industrialized urban society changed the method and intensity of crime and punishment.

Crime is as diverse as man is, and no two criminals have the same intention. As man became more and more civilized, his ‘sin’ became his ‘crime’ but the deed remained the same. As he became more and more educated he became more and more cunning. In the modern context ‘crime’ became just a ‘mistake”; an ‘error’. Whether it is individual or collective; intentional or unintentional crime is a crime and man has to pay for that mistake, that is, he has to be punished for his wrongs.

Today, more than anything else, crime has become the greatest problem of the modern society. The line that distinguishes the Right from the Wrong is very thin. Everyone is concerned with the increasing tendency in crime which is faster than population. As a result several conflicting theories and opinions were envisaged about the rules and customs that regulate everyday life and about how to deal with those who violate the accepted norms.

The word ‘CRIME’ is derived from Latin ‘CERMO’. In Latin ‘cermo’ means ‘I decide; ‘I give judgment’ and ‘crimen’ means ‘charge or cry of distresses. The word crime came to English through French in twelfth century. In mid thirteenth century the English word ‘crime’ meant ‘sinfulness’. As per Webster’s New Dictionary and Thesaurus crime means “An act punishable by law.” In general ‘crime’ can be defined as a behavior that violates legal laws, rules and regulations
established by a society. Crime is generally defined as a wrong doing committed knowingly or unknowingly.

The word ‘PUNISHMENT’ is also derived from Latin ‘PUNIRE’. “Punire most probably might have inspired by the Phoenician method of execution by means of crucifixion. Just like crime the word punishment also came to English through French.”28 In “French the word punir, or punissment meant to cause a person to suffer for an offence”.29 Hence punishment is something that is imposed by the legal law of that society to control the offender. It is also a legal procedure to cause the offender to suffer for the crime.

Many scholars have sought to explain crime and punishment in their own way, for many years. They tried to identify the causes of crime, the forces which they thought is beyond man’s control, external as well as internal. Socrates believed, “A good man harmed no one, and that wrong doers should find the cure to their evil ways, and become good. He argued that justice is good, and therefore it is true in saying injustice is evil. So for a man to be a just man, he must be a good man.”30 Aristotle contends that poverty is the parent of all revolution and crime.

The development of sociological thought from the nineteenth century onwards prompted some fresh views on crime and criminality. For Dostoevsky crime and punishment has its root in the Christian teachings of sin and redemption, for him crime is not just the violation of the accepted values, but it is a sense of guilt feeling: and punishment is suffering leading to salvation. He feels that conscience of mankind carries a heavy responsibility for his moral crime. Nietzsche noted a link between crime and creativity in The Birth of Tragedy, he asserts that the best and brightest that man can acquire, must obtain by crime.
Various scholars noted that crime is not an objective phenomenon rather it is the way in which certain behavior is understood and responded to. The recent conception of the theory characterizes crime as the violation of individual rights. It is a reflection of how society is structured rather than an indication of any inherent problems with those individuals regarded as criminals. There are many sociological, political, and psychological factors that contribute for the increased growth of crime. The study in the fields like biology, medicine, psychology, psychiatry, dentistry and literature, also contribute to the understanding of criminal behavior. Crime is also defined as a breach of rules or laws imposed by the governing authorities. Individual human societies define crime differently, depending on the localities, and time.

The well known sociologist Richard Quinney states that crime is a social phenomenon. He envisages both how individuals conceive crime and how society perceives it. Walter C. Reckless writes, “Crime is largely a legal problem and the law faculty of all nations will continue to be concerned with the problem from that point of view. There is no accrediting body which is looked upon generally as competent to certify that such and such a person is a criminal and such and such a punishment should be imposed on him.”

According to Walter C. Reckless, “Most sociologists agree that modern society has thrown man more and more on his own, to stumble through life’s adjustments without much support or reinforcement from social groups. … The modern concept of crime emerges not only as an offence against the ‘individual’ but also as a ‘wrong’ against the ‘state.’” Crime can also be defined as a reflection of a situation in social circumstances.
“The recent theories on the concept of crime defines crime as the violation of individual right. Since society considers so many rights as natural rather than manmade, what constitutes a crime also counts as natural, in contrast to manmade laws. Therefore natural law theory distinguishes between ‘criminality’ – which derives from human nature and ‘illegality’ – which originates with the interests of those in power. This view leads to a seeming paradox; that one can commit an illegal act without committing a crime, whereas a criminal act could be perfectly legal.”

Today every advanced as well as every developing country in the world have their own legal system. In the modern age, it is the concept of ‘survival of the fittest’ which resulted in man’s atrocities. “It should be remembered that Darwin’s theory of biological evolution was just becoming influential in the late nineteenth century and that anthropologists were beginning to study primitive peoples in the attempt to work out a scheme of social evolution. Lombroso, reflecting these frames of references, proposed that the serious criminal, especially the murderers, was ‘a born criminal’. He contended that the physical and mental characteristics were atavistic, that is, indicative of a throwback to primitive man.”

Crime is also viewed as a deviant behavior that violates prevailing laws and the cultural standards prescribing how humans ought to behave normally. This approach considers the complex realities surrounding the concept of crime. It seeks to understand how changing social, political, psychological and economic conditions may affect changing definitions of crime. It also emphasizes corresponding changes in the legal/law enforcement and penal responses made by society. As social, political and cultural environment change, the society may criminalize or decriminalize certain behaviors. As Dostoevsky writes in The Brothers Karamazov, “After all what is
goodness? Goodness is one thing in me, another in Chinaman, so it is a relative thing.”

There is a host of socio-psychological forces and events that both shape and influence our decisions on how we respond to a situation. Generally in a modern society crime is regarded as an offence against the public or the state. The inadequacy in handling of the problem; its relation to law and social norms also attribute to increase in crime rate. At the same time aggressive behavior cannot be considered as crime. For example sometimes we may come across a man, who has led a perfectly decent life even under most trying circumstances, but he might lose his patience and plunge a knife into his enemy at certain point.

The participation of women and children, the role of the victim, social norms, and the evolvement of a system of punishment are other aspects of the crime problem that concern humanity. The mass media like TV and newspapers also contribute in their own way for the increase in crime. The celluloid world attracts the youth very much and it becomes a role setter for them. In the name of entertainment they sell innovative criminal ideas to mass.

As Walter C. Reckless says crime is definitely a social problem, originated from the crisis within the society. On the other hand crime occurs with such regularity in modern society that they often fail to generate grave concern. The increase in crime may be, due to the clash between socio-legal systems, of two vastly different cultures. Walter B. Miller contends that, “The lower class has a culture of its own, many centuries old. The impact of this tradition and its ‘focal concerns’, among other things, generates street—corner groups and gangs, which by implication do not have a distinct subculture of their own, but are a part of the culture of the lower class.”
Social disparities like the gap between the rich and the poor, causes a grave concern in the society which in turn leads to social action. Most of the time, this increase in crime, is a symptom of deep social and economic problems rather than a breakdown of law enforcement. Problems such as teenage restlessness, unemployment, racial tension, broken homes, the population growth, and laxity of moral standards also contribute to crime.

The population growth leads to unemployment, which in turn results in unemployed youth indulging in criminal activities. The desire for a luxurious life, forces the youth to be a thief by necessary; rather than by inclination. But Oscar Lewis described the way of life which he calls the culture of poverty – really a subculture. He says, “That poverty in modern nations is not only a state of economic deprivation, of disorganization, or the absence of something. It is also positive in the sense that it has a structure, a rationale, and defense mechanisms without which the poor could hardly carry on.”\(^{37}\) Hence, we cannot support the idea that poverty and unemployment as the primary cause for crime. Because poverty is not vice, one has to accept it.

Migration and urbanization also contributes much for the growth in crime rate in modern society. The contemporary society draws a large number of youth from all social background. The migration of youth from rural areas to urban societies in search of better life and an independent identity makes life miserable in cities. Lunden identifies, “Among them the migration of young adult males from detribalized villages of the back country to the newly developing cities. As a result, we are witnessing today, on a large scale, rapid transition in given areas from a rural agricultural tribal system to an industrialized urban society.”\(^{38}\)
This social mobility shatters the social world from which they come from; as a result, the native migrant is no longer surrounded by the traditional controls of the tribe, or family loyalties. Consequently they are unable to adjust to the heterogeneity of the formless mass of people. They become rootless people without any associates, and are stripped of their sense of security. Durkheim says, “This sense of insecurity creates a social vacuum which is a fertile ground for criminality. Gradually they become a small particle in the world of disorganized dust. They not only become men without a country, they become a people without a culture. They become a small particle in that world of ‘disorganized dust’. He is the ‘Mr. nobody’ the man without a name and a face lost in the confusion of urban life.”39

The heterogeneity of the urban life destroys the well established social relationships of the rural life. When men and women are cut off from the main stream of life they may end up taking criminal careers. “When people from the hinterland migrate to the urban industrial centre, the established and customary loyalties to places and groups are destroyed in the effort to assimilate the new systems. In this transition people lose their traditional ways and patterns of conduct in the rootless urban life.”40 So we can say that social deprivation and isolation breed crime.

Above all the nuclear family system has contributed in their own way for more number of criminalities. The age gap what is known as the generation gap has led to a conflict between the old conventional society and the new mechanical society. According to a survey report by HelpAge, India, elders suffer abuse silently. The report says, “India has over 90 million elderly persons above the age of 60 years and many of them silently suffer abuse in the hands of either daughters-in-law or sons. The survey said more than half in India’s senior citizens feel that they are soft targets
for crime. As a result of the current aging scenario, there is a growing need for care of the older persons in terms of social, economic, health and shelter. Security of older persons in India is also emerging as an issue. With more old people living longer, the households are getting smaller and congested, causing stress in families and marginalization, isolation and insecurity among older persons.”\textsuperscript{41}

Crime is also related to deviant behavior like drunkenness, and alcoholism, drug- addiction, economic prosperity and abnormal sex deviation. In this fast growing society money, that buys and sells everything honor and virtue, good name and beauty, plays a very important role. “Sometimes wealthy and prosperous parents back up the illegal activities of their wards, thereby, rearing the worst criminals. The worst criminals are the result of too much prosperity at home where influential parents illegally support their criminal children. The lure of easy money is constantly dangled before youth offenders by criminal associates and others with whom they come to contact. The average young criminal today wants easy money without work, and he obtains that money by direct action.”\textsuperscript{42} Ideas of individuality and equality began to surface as civilization developed. Material progression reduced human psyche to the basic animal instincts of ‘self’ and ‘survival’. When the focus changes rapidly from community to self, man’s framework dislodges from society to self respect and obligation.

On the other hand globalization might have also contributed for the increased crime rate. The easy accessibility to new advanced technological gadgets is also responsible for crime. The advanced technology like the internet and other net working systems of the contemporary society draws large number of youth from all social strata to indulge in illegal activities like cyber crime, hacking etc. Crime has
increased due to the new trend of nuclear family, in which there is no one to care for either the children or the aged. Spending long hours in front of the TV and computer games, chatting on mobile networking make the modern urbanized man to live on his own resulting in increase of crime.

According to Thomas Holt, a criminologist and assistant professor at the Michigan University “It’s important to know what your kids are doing when they are online and when they are associating with both online and off-line. Holt and his colleagues found that the biggest factor in cyber crime was peer pressure- basically kids whose friends engage in cyber crime were more likely to engage in those behaviors. Cyber crime includes digital piracy (stealing music files), viewing online porn, online bullying, and harassment. Lack of self control was also a major predictor.”

For some youth violating traffic rules is a thrill, it is awesome for them. It is also a way of exhibiting their ‘superman’ image. They are thrilled to jump a traffic signal, thereby creating chaos in the smooth flow of life. Added to this man has become so indifferent and inhuman to everything that he turns a deaf ear and flees from the sight of crime. Crime occurs with such regularity in modern society that it often fail to generate grave concern. On the other hand, the public has become somewhat immune to the traffic accidents. It takes a very dramatic, serious accident to jolt the immunized public or even to receive press notice.

Rising aspirations, unreasonable expectations, diminishing tolerance levels and greater permissiveness attribute to changing dynamics that our forefathers sought for a healthy and cohesive society. Unable to grasp this nature and speed of change, the elders’ stand back from providing the kind of support and independence that
children seek, hence the guidance is lost. In spite of all comforts the contemporary society fails to satisfy man and his greed. His desire for more results in his criminality. One wonders “how can crime exist in such a favorable conditions as everyone is well fed and housed. All children go to school; workers drive to their factories and enjoy all the luxuries of life.”

Crime has a psychological pitch as well. Many psychologists have proved that psychic trauma, rejection, hostilities and guilt feelings lodged in the subconscious results in illegal activities. Most of the murders are an outburst of emotional disturbances. These desperate characters revel in the horror they cause, and they take part in the most outrageous acts from sheer despair. There are some who even take pride in their ungovernable passion. “His emotions are like a man who is looking down from a high tower and wants to jump into the yawning abyss. He enjoys the turmoil of his own soul and the terror he inspires knowing very well, all the while knowing the fearful punishment that awaits him.”

The emotional disturbance is translated into a bizarre as well as strange behavior. He behaves like a drunken man, in state of delirium. Having once crossed the border he holds nothing sacred. He violates every law, defies everything and indulges in his lust for blood without restraint. **Lunden** comments in explaining the increase in crime in under developed countries as, “It should be restated that industrialization, urbanization and technological changes cannot explain the increase in criminality. These elements are present in the maelstrom but they are not the prime factors. The cause, if the term can be used broadly, lies in the psychological world of the peoples involved.”
Many psychiatrists argue that the reason for the infrequent connection between psychoses and crime is not clear as emotional disturbances are sometimes translated into bizarre as well as dangerous behavior. According to Sigmund Freud, “Two traits are essential in a criminal: boundless egoism and a strong destructive urge common both of these, and a necessary condition for their expression is absence of love, lack of an emotional appreciation of human objects.” Sometimes this unnatural behavior becomes an occupational pattern, leading to habitual and professional criminal careers. For example, an accidental murder committed when one is provoked beyond endurance is understandable. When the society does not allow him to enter into the main stream of life he becomes a thorough criminal, and later kills for pleasure and at sight. Among them we find people of sound judgment and good temperament, who have shown every promise of becoming good citizens.

The psychologists have also analyzed the factors like Victimogenesis as one of the causes of crime. The psychiatrist, Ellenberger, contends that just as there is a criminogenesis – the factors which lead to criminal behavior – there is a victimogenesis the factors which propel individual toward being victims. They opine that doer of the crime generates criminal behavior in the victim as the victim might get an urge to retaliate. “There is still much more to be said and still more to be discovered on the problem of the relations between the criminal and the victim. … Criminologists should give to ‘victimogenesis’ as much attention as to criminogenesis. Every person should know exactly to what dangers he is exposed because of his occupation, his social class and his constitution. For the prophylaxis of crime, it must be known that the warnings given by criminologists or by the police in no way suffice to ‘educate the public’; the evil is much deeper, because it is hidden in
the personal history, in the complexes and the psychological and biological constitution of each one of us.\textsuperscript{48}

The psychologists however argue that the reason for the infrequent connection between psychosis and crime is not clear. Criminal behavior is also a way of life, for example pick pockets and petty thieves. Some people steal or rob valuables because of weakness and these people cannot be categorized as criminals. For example “Some tribal gypsies in India have traditionally been identified as being devoted to illegal activities. The most dramatic example for psychotic behavior is the political assassins. For some criminal behavior like begging is a way of life. We cannot, as well, describe aggressive behavior as a criminal act.”\textsuperscript{49}

Religious sentiments often become contributory factors of crime. During the age of Enlightenment religion was tied closely with the criminal law. Different religious traditions have distinct norms of behavior and these in turn clashed or harmonized with the perceived interests of society. Socially accepted or imposed religious morality influenced secular jurisdictions on issues that may otherwise concern only an individual’s conscience. For example in India many a time a girl is burnt alive or killed in the name of ‘honour killing’, which is a most hideous crime that could be committed in the name of religion. The class and caste distinction, cultural differences and socially accepted or imposed morality also result in crime scenes. Activities such as alcoholic consumption, abortion and stem-cell research are considered crime in certain society. Natural calamities like famines, floods, pestilences, earthquakes, fires and wars often result in crimes.

In spite of all these arguments it is wrong to say that poverty, unemployment, migration and urbanization are the causes of crime. The modern fluid, mobile society
which emphasizes freedom of action has made man to be more self centered losing all social relationships. In turn he no longer acts according to the expected roles. As a result the frustrated man develops a very low tolerance for the ordinary upsets, failures and disappointments of life. Consequently he becomes restless, and lack of self discipline, egoism and containment, results in his abnormal behavior. He fails to go back to his past life and is unable to accept the new. He is caught between two ideals; the old and the new, and becomes a man without control and directions.

In order to control such unruly behavior certain rules were set by the controlling authority to curb man. Any man who violated the set rules was punished. In other words, if an act against an established norm became crime, to control or to curb such action punishment was introduced. Just like crime, punishment is also conceptual. Punishment in a society is related to the successful enforcement of rules and regulations of that society. It is authoritative imposition of something negative or unpleasant, in response to a wrong behavior. Usually punishment is imposed by inflicting some sort of pain which may be physical or mental or both.

A corporate group, i.e. a tribe, or a common wealth, or a state applied penalty in its own way for violation of set rules, in a legal sense. In common usage punishment may be described as an authorized imposition of deprivation of his freedom, or privacy or right to asset or such other penalty, if the person is found guilty. But punishment is not condemnation, in a strict sense, but a form of penalty or disapproval. To induce conformity society conceives of punishment as a device to hold the person in line or to maintain a status quo. The society through these procedures sends massage to the wrong doer that he is being watched, and will be penalized for his wrongs.
There are many types of punishments that include four fundamental justifications namely; 1) **Retribution** 2) **Deterrence** 3) **Rehabilitation** and 4) **Incapacitations.** There are punishments like death penalty, physical torture, mutilation, public humiliation, banishment, transportation, life imprisonment, stoning to death, burning alive on a stake, crucifixion, execution, and hanging, incarceration in dungeons, penitentiaries, deportation and exile and so on. Most common form of punishment in a primitive society was death penalty to curb the increase of crime. In older days, in **Babylonian** civilization, the code of **Hammurabi** ‘Eye for eye; tooth for tooth’ was the general characteristic type of punishment. Some tribal communities used ordeals like Physical torture, mutilation, branding, public humiliation, flogging etc. Sometimes it was accomplished by such devices as stocks, pillory, ducking stools and branding to establish guilt is most hideous than any of the modern punitive action.

Punishment was also imposed in the form of banishment and exile, which are more characteristic of advanced than of ill advanced societies. But it has its own limitations because the countries that employed these punitive measures, often felt it difficult to separate voluntary from forced exile and banishment. It reached its peak of severity during modern times in the czarist **Russia**.

Another form of punishment is deportation and incarceration. Deportation is the forced return of criminal and undesirable aliens to the country of their origin. It is a typically modern, international punitive measure, which is not a characteristic of primitive, ancient, and early modern societies. The incarceration in a dungeon, in a society, is a far different thing than sending him to a juvenile reformatory. Though both are forms of imprisonment, still they have their own effect on one particular society.
Deterrence is probably the most accepted of all justifications of punishments as the main intention of punishment is to prevent other people indulging in criminal acts. It is also better than retribution or expiation as it stops man from violating the law. It teaches the offender a lesson to show what will happen to them if they violate the code. But Beccaria, whose writings at the end of the eighteenth century had much to do with renovating the system of punitive justice in Europe, contended that, “The intent of deterrence is not to torture the criminal or to undo the crime but to prevent others from committing similar offences. He insisted that a punishment should have only that degree of severity which is sufficient to deter others.” However there is no proof that such punitive measures reduce the volume of crime. Rather it may develop a grudge or a strong resent against the authority, and he may retaliate.

Common man usually justifies punishment in terms of retribution, the oldest and most ancient form of justification of punishments. In the retributive method offenders are punished because they deserve to be punished. According to this theory an offender should be punished because a wrong is righted only by an offender receiving his ‘just deserts’. It involves a get even spirit like an eye for an ‘eye and a tooth for a tooth.’ But the trend in modern society to do away with physical torture and to withdraw the application of punishment from the public eye has lessened to some extent the force of retribution.

Expiation is another ancient and most effective form of punishment. In this form the offender is made to atone for his crime through suffering. The demand for expiation is probably as frequent as a demand for retribution. The offender should be punished in such a manner that he need not be punished by administering bodily pain or injury; rather it should generate some sort of suffering in him. As James Stephan
puts, “The practice was very important in England from early Christian times until the nineteenth century. Originally, benefit of clergy was a privilege, the freedom from jurisdiction of lay courts and subjection only to ecclesiastical courts. The privilege was extended to clerics who did not wear ecclesiastical robes, that is, to secular clerics. Later, benefit of clergy came to include anyone who could read and write, whether in clerical dress or not, although it did not apply to women, who could not be ordained. By the eighteenth century benefit of clergy came to mean a kind of literary test that excused the offender from the death penalty; certain felonies were excusable under benefits of clergy and others were not. During the eighteenth century, all persons guilty of a first felony that would be excusable under benefit of clergy were exempted from capital punishment and were subjected instead to imprisonment or transportation.”

**Mead** contends that, “The criminal in the process of punitive action becomes a ‘scapegoat’, that is, the object of chastisement, scourging, and degradation; his punishment provides an outlet for the outraged feelings created by his offense. Society also preserves an attitude of hostility toward the law breaker as a common foe, and the emotions of the battle are projected toward the violator. The moral values become even more sacred because society must fight to maintain them in the face of the undermining threats of the criminal.”

In due time the forms of punishment changed depending on the intensity of crime. With progress of civilization the method of punishment also changed. The changing economic, social, and political forces resulted in changes in punishment. Instead of flogging, burning, disfiguration etc. the modern man introduced punishment like electrocution, which is an instantaneous death. Transportation of
offenders to penal servitude is another form of modern penal practice. **George Rusche** contends, “Transportation of offenders to penal colonies was likewise a modern penal practice. It arose principally among the important European nations that had acquired distant colonies. That transportation originated because of the need to import labor into colonies; when this ceased to be profitable and the colonists reacted to convicts, the practice had to be abandoned.”

The state introduced, under the control of social community, a machinery of justice for the maintenance of public order. Today we have more refined forms of punishment compared to those barbaric times. Most primitive societies possessed rather mild punitive measures as compared with those in advanced countries of the historic period. On the other hand **Sutherland** forms four fundamental forms of punishments, namely, “Financial loss, Physical torture, Social degradation, and Removal from group. Financial loss would include fines, forfeitures, compensation, and the like. Physical torture would include flogging, mutilation, burning, and all methods of including physical pain. Social degradation would include such methods as branding, the use of pillories, and stocks, ducking – all devices and measures calculated to subject the offender to shame, jeers, ridicule, and humiliation. Removal from group would include execution, imprisonment, banishment, and transportation. … The most objective way to study punishment is by studying the pattern of punitive actions. To study how a penalty is applied. In this respect the conception and purpose of punishment and rationalization or justification of punishment also becomes utmost important. So it is very essential to know the specific patterns of punishment used in particular age and society rather than of the generalized types of punishment.”
However the spirit in which the penalty is administered is quite important. There are many forms of punishment which do not involve the administration of bodily pain and injury. “To kill for murder,” Dostoevsky writes in *The Idiot*, “is a punishment incomparably worse than the crime itself. Murder by legal sentence is immeasurable more terrible than murder by brigands. Anyone murdered by brigands, whose throat is cut by night in a wood, or something of that sort, must surely hope to escape till the very last minute. There have been instances when a man when a man has still hoped to escape, running or begging for mercy after his throat was cut. But in other case all the last hope, which makes dying ten times easy, is taken away for certain. There is the sentence, and the whole awful torture lies in the fact that there is certainly no escape, and there is no torture in the world more terrible. You may lead a soldier out and set him facing the cannon in the battle and fire at him and he will still hope; but read a sentence of certain death over that same soldier, and he will go out of his mind or burst into tears. Who can tell whether human nature is able to tell this without madness? Why this hideous, useless, unnecessary outrage? Perhaps there is some man who has sentenced to death, been exposed to this torture and has then been told ‘you can go, you are pardoned’ perhaps such a man could tell us. It was of this torture and agony that Christ spoke, too. No, you can’t treat a man like that!”55

Calvert also refutes the idea that capital punishment alone deters the burglar from carrying lethal weapons. “In reviewing,” writes Walter C. Reckless, “The evidence presented before a special committee of the House of Commons (1930), Calvert boldly contended that capital punishment alone deters the burglar from carrying lethal weapons is a supposition which is refuted.”56 Hence, the offender should be punished in such a manner that it should generate some sort of justified
suffering in him. Consequently several countries today, have developed rules or legal
devices to exempt certain classes of persons from responsibility for criminal acts and
to reduce or change the force of the application of punishment.

Walter C. Reckless writes, “The trend in modern society to do away with
physical torture and to withdraw the application of punishment from the public eye
has lessened to some extent the force of expiation. However, the community is still
able to drive satisfaction from the fact that justice is being done, even though it is
hidden from view. The dissatisfaction with modern methods of punishment comes
from quarters that still believe that the malefactor should suffer abundant agony in
order to make the proper amends or in order for punishment to be punishment.”

But in most cases punishment does not produce suffering; rather the offender was hurt
emotionally. Certain forms of punishment seem to produce other than the expected
suffering reactions.

Although the intention behind the punishment is to make the offender suffer,
it is not proved whether he actually does suffer. It depends on the particularities of the
punitive situation and the toughness of the individual offender. So the concept of
punishment should be to make the offender suffer and thereby teach a lesson. The
rationalization of punishment is very important as it affects not only the offender but
the society as a whole. So it is very important to be aware of the specific patterns of
punishment used in any age or society than of the generalized types of punishments.
According to Westermarck, “Punishment is restricted to such suffering as is
inflicted upon the offender in a definite way by, or in the name of, the society of
which he is a permanent or temporary member. However, the spirit in which the
penalty is administered is quite important to the understanding of punishment. It must
be intended and not accidental. But it must be intended to produce some sort of justified suffering in the offender. 

Other important aspects that are to be considered in this respect are association, consequences, and inequality in punishment, as criminal behavior sometimes is the result of the tragic facts of the situation. “The criminal, sometimes, in the process of punitive actions might become a scapegoat, that is, the object of chastisement, scourging and degradation. His punishment, on the other hand, may provide an outlet for the outraged feelings created by his offence. Society also develops an attitude of hostility toward the law breaker. The moral values become even more sacred because society must fight to maintain them in the face of the unanswering threats of the criminal.”

An analysis of all these factors reveals the fact that it is better to take measures that will prevent crime rather than punishing the criminal. It also true, “That most of the migrated youth steal because they want to eke out an existence. At the same time, the child presented with an inconsistent ethical value believes that one way of behaving is officially right. They try to behave according to the standards of family, school and government. But he also learns that there is another way of behaving that gets the individual what he wants.”

As Robert C. Hendrickson puts the matter “The morality of a community cannot be divided into two parts. We know that there is a relationship between a child’s concept of law and order and the adult’s attitude as evidenced in the evasion of income taxes, the fixing of traffic tickets, and the simple instruction to the child to tell the bill collector that mama is out when she is at home.”
There are however invisible aspects of punishment that affect not only those who break the law but also those who are directly affected by them. The decision that who is criminal, is made in the interpretation and enforcement of law. Punishment refers to something that causes a behavior to lessen in intensity. According to Grunhut, “Three components must be present ‘if punishment is to act as a reasonable means of checking crime’. First, speedy and inescapable detection and prosecution’ must convince the offender that crime does not pay. Second, after punishment, the offender must have ‘a fair chance for a fresh start.’ And third, ‘the state which claims the right of punishment must uphold superior values which the offender can reasonably be expected to acknowledge.’”

At the same time there are as many crimes as charges are. So it is impossible to get rid of the inequality in punishment. It is necessary to analyze the effect of criminal behavior both on the perpetrator and on the people around him. There is the possibility of innocent being influenced by the hard core murderer.

Finally it leads to the question is punishment necessary? Does punishment control crime? There are several current issues and trends that underscore the importance and timelessness of examining what constitutes a crime. Exploring the question what is crime has become more relevant during an era in which response to various behavior have become increasingly polarized. The ultimate aim is to re-socialize the offender, to readjust the criminal, to rehabilitate him, to change him deep inside. On the whole the main motive of punishment is to curb crime and keep it at minimum. Sometimes it also becomes very important “to illustrate the tenuousness of the exact regularized and fully accepted punishment. Thefts, failure to pay debts, wounding and accidental killing, rape, and other acts are breaches of accepted norms;
but they do not confer on the injured party an unequivocal right to apply physical force in punishment.”\(^{63}\) It is the fear of punishment and not the punishment itself that should affect man. It is not the punishment but the consequences that should prevent man from committing crime. Punishment should also be a lesson to others to know what will happen if they violate law. Such a punishment should be imposed that makes an offender to think twice before he commits a crime.

“The main intention of punishment is not to torture the offender but to prevent others from committing an offence. Punishment whether legal or ethical, is certainly not condemnation, reward or approval; rather it is the exact opposite, a form of social disapproval. This disapproval of his action is a measure of social coercion to force redress from the offender. So punishment should be a disapproval followed by extracting penalty.” Sometimes the punishment may be misused by the men in power. At the same time most of the time, “it is the members of the lower class in society who are more prone to be punished. They are defenseless and have fewer resources and less influence than the affluent. The police are more likely to support rich/influential person rather than a common man. They would arrest a poor man on suspicion more often than a rich man.”\(^{64}\) In the present context, the more favorable woman’s bill is more often misused than being helpful to those who are really oppressed by the cruel men. It is also true that sometimes this law is used to punish the innocent.

As the English proverb says ‘One swallow does not make a summer’ a hundred suppositions do not constitute one single proof. After analyzing all these, there raises the question who is a criminal and who should be punished? It is true that a person who makes a conscious choice to upset the balance of society should be
punished. But what about an offender who is insane or otherwise incompetent, can he be punished? So, “most societies have developed customary rules or legal devices to exempt certain classes of persons from responsibility for criminal acts and to reduce or change the force of the application of punishment. Many modern countries also make exemptions for ignorance, where specific knowledge is necessary to commit a crime; for drunkenness, if it provokes a crime, produces temporary insanity, or negates intent; for coercion of married woman by their husbands; and for duress and compulsion.”

As crime, of late, has become very common, people turn a deaf ear to crimes like petty theft, or a pickpocket. It takes a very serious crime to arouse reaction among the public. Moreover there is a myth that, if the criminal is not punished he would be encouraged. Then the question arises whether punishment is the ultimate remedy to solve the crime, if so what sort of punishment should be given to the culprits as there are different moral bases for punishment. The punishment a convicted criminal receives should be in proportion to the harm caused by the crime. For example, if a murderer is given life imprisonment or death penalty, a petty thief is be punished with a short jail sentence or probation or a fine. There is also the possibility of an accidental murderer losing faith in legal system if he is punished along with the hard core criminal. Many a time crime goes unnoticed because of stringent rules and elaborate legal procedure making one to lose patience, such a man takes law into his hand.

**Taft** points out that, “Punishment is ineffective when the potential criminal feels that the punishers are themselves also criminal; when infected by those who are not the peers of the punished- in this instance, it is the victors punishing the
vanquished; if many committing similar acts escape punishment; when acts similar to
the crimes punished, or acts which cause crime, go unpunished; when it is not
accepted by former enemies and by supports of the punished as just; when the
punished are supported by a gang or party or clique rather than the nation as a
whole.”

So it is better to have such punishment that is utilitarian that seeks to punish
offenders to discourage or to deter future wrongs. It recognizes the consequences of
crime both on the offender and the society. Rehabilitation of criminals is the best
example for utilitarian method. The goal of this is to prevent future crime by giving
the offenders the ability to succeed within the confines of law. This also includes
educational programs, personality development and the knowledge and skills needed
to compete in the job market. The latest trend among the civilians is to create an
awareness of the existing human rights act. In this context it is necessary that one
should think over the reasons for the presence and development of barbarous and
severe forms of punishment, especially in historic civilizations up to the present day.

Neither crime nor the punishment imposed can be justified as they change
according to the innate humanity and cruelty. But we cannot for certain say that only
punishment alters the wrong doer. Then, what other means can be adopted to check
crime, if at all it is possible, only time can tell. Punishment is justified only when it
protects society removing temporarily or permanently one who has injured it. If
criminal behavior upsets the peaceful balance of society; punishment should help to
restore the balance. Criminal behavior is affecting the modern life so much so that one
wonders as what is happening to the behavior of the modern man. “Legal punishment
inflicted for a crime intimidates a criminal infinitely less than the law makers think,
partly because he himself morally demands it. There must be something right about our conservative social system that hinges on family, culture, achievement and obligation.”

Even today crime and punishment remains as a fascinating topic to be discussed, without any final conclusion. Hence, the debate on the nature of crime cannot be separated from the nature of punishment. It also tells us that we all have to pay for the crime we commit. So punishment should be an expression of social condemnation. “Nevertheless, in an age that is better able to test the operational effectiveness of social agencies, institutions, and devices of social control than any before, one would expect that some pragmatic basis for the continuance or discontinuance of certain forms of punitive action might be found in the future.”

At the same time most sociologists agree that, “Modern society has thrown the person more and more on his own, to stumble through life’s adjustments without much support or reinforcement from social groups. It is almost as if modern industrialized, urban society is unable or unwilling to order the lives of individuals. Hence, adolescent and adult persons must pretty much order their own lives. It was only be hoped that individuals in the future, perhaps aided by some new integrating force, will be able to develop the inner strengths to steer themselves in an unanchored world. A modern self certainly needs to be developed which has competence for modern living. Then, perhaps crime and delinquency will begin to decrease.”

Whatever the argument in favor of punishment; it is doubtful whether punishment can be used as a successful instrument in social control as men in authority believe. Neither crime nor the punishment imposed can be justified as they change according to the innate humanity and cruelty. Hence modification in
punishment, the patterns of punishment, indigenous or innovative or borrowed ideas from other people, is the need of the time. On the other hand “punishment is ineffective in a highly mobile and individualized society, where there is a tradition of lawlessness. If the society fails to improve the culprits, by making them to understand their misdeeds then crime could be encouraged.”\textsuperscript{70}

Hence, crime and punishment is an ever green topic to be debated without any final conclusion. There is a myth that the guilty should be punished to check the growth of crime. The application of penalties should be able to distinguish punishment from the mere execution of orders. The best punishment is confessing crime and having a guilty conscience. Whatever the argument the ultimate philosophy behind punishment is that even though we escape law, we are all subject to the Law of God; no one is above the Last Judgment. The judgment a criminal pronounces on his crime is more pitiless than the most severe punishment. This leads to the analysis of concept of crime and punishment in the fictional world of Dostoevsky.