CHAPTER 1

INTRODUCTION

Crime constitutes the intentional commission of an act usually deemed socially harmful or dangerous and specifically defined, prohibited and punishable under the criminal law. The definitions of particular crimes contained in a code must be interpreted in the light of many principles, some of which are not expressed in the code itself. The most important of these are related to the mental state of the accused person at the time of the act that is alleged to constitute a crime. Social changes often result in the adoption of new criminal laws and the obsolescence of older ones. The purpose of punishing offenders has been debated for centuries. Prison is not the most common penalty for crime. Juveniles are usually dealt with by courts set aside exclusively for the prosecution of young offenders. The prison systems of most countries are subject to many problems, especially overcrowding, but the recognition by some legal systems that prisoners have rights that the courts can enforce has led to some improvements. The death penalty is now rare in Western countries, although it has been reinstated in some parts of the United States.

Law is determined by the political process. It accords with what most people recognise as minimum standards not only the enforcement of laws but the definition of behaviour as criminal is part of the political process, the rejection of the law by offenders is a form of social protest of which they may be only dimly aware. Thus, law prescribes certain standards of conduct to be observed by the people in society. These standards have the approval of the society in general. Any deviation from the standards of behaviour fixed by the society is punished. Therefore, such conduct as does not accord with the prescribed standard is loosely known as crime.

Disobedience of law may be termed as a crime. But disobedience of all
law is not crime for an act done in breach of law of contract, personal law or
civil law may not be a crime unless such breach is by some law declared as
crime. To a common man crime are those, acts which people in society
"consider worthy of serious condemnation".\(^2\) "Crime is said to be an act which
is both forbidden by law and against the moral sentiments of the society".\(^3\)
Murder, robbery, theft, forgery and cheating etc. are the acts which people in
civilised society do not approve and therefore, they are termed crimes. Thus
for an 'act' to be a crime, it must be one done in violation of law and at the
same time it should be opposed to the moral sentiments of the society. But
morals are relative and morality, as we know, is a varying concept for it goes
on changing with the change in the necessities of the society of the times.
Moral values vary from country to country, from time to time, and from place
to place in the same country. This is evident from the fact that the same act is
not declared as crime in different countries. For example, adultery, suttee,
polygamy etc. Adultery is a crime under the Indian Penal Code; whereas it is
not so in some of the continental countries. Suttee which means burning of a
married woman on the funeral pyre after the death of her husband was
considered to be a virtuous act in India a few centuries back, but it is now a
crime under the Indian Penal Code. Polygamy is prohibited among Hindus by
the Hindu Marriage Act, 1955; but there is no such law for the Christians or
the Mohammedans. They are governed by their own personal laws. A Muslim
may even now have as many as four wives at a time. Christians are, of course,
restrained under their personal law to practice polygamy.

Thus, due to the varying nature of the content of crime all efforts to
define crime with perfection have failed. Russell has rightly observed that:
"To define crime is a task which has so far not been satisfactorily
accomplished by any writer. In fact, criminal offences are basically the
creation of the criminal policy adopted from time to time by those Sections of

the community who are powerful enough to safeguard their own security and comfort by causing sovereign power in the state to repress conduct which they feel may endanger their position".4

Therefore, it is very difficult to frame such a definition of crime which may be true in all the countries at all times. Crime is not absolute like sin, that can be defined and have an existence beyond the limits of what men may say and do. It is essentially a relative definition of behaviour that is constantly under going change”.5

1. Definition of Crime

Crime is defined as "an act punishable by law as forbidden by statute or injurious to the public welfare".6 It is a very wide definition. Anything which is injurious to public welfare is a crime. In modern complex society many things may be against the public welfare. Selling contaminated food, molestation of young children or women in railway trains and misleading advertisements may all be said to be injurious to public welfare. According to Bentham, "offences are whatever the legislature has prohibited for good or for bad reasons. If the question relates to a theoretical research for the discovery of the best possible laws according to the principles of utility, we give the name of offence to every act which we think ought to be prohibited by reasons of some evil which it produces or tends to produce".

Blackstone in his "Commentaries on The Laws of England" has defined crime as "an act committed or omitted in violation of a Public law either forbidding or commanding it". Thus according to Blackstone crime is an act in violation of public law. But what is public law? It has several meanings. In Austinian sense 'public law' is identical with 'constitutional law'. That being so, the crime would then mean an act done in violation of constitutional law. The definition would thus cover only political offences leaving aside a vast

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6 The Oxford English Dictionary.
area of other criminal behaviour. Germans interpret 'public law' to include both constitutional law and criminal law. In this case we will be making use of the expression 'criminal law' while defining 'crime' and that would amount to arguing in circle. According to others 'public law' means all 'positive law'. Positive law means any law made by the State. Then crime would means an act done in violation of all positive law which is not always true for many acts though done in breach of law are not crimes. Thus it may be said that, whatever meaning we attach to the expression 'public law', the definition of Blackstone does not prove to be satisfactory. In one sense it carries too narrow a meaning and in the other sense it becomes too wide. Blackstone also defines crime as "violation of the public rights and duties due to the whole community, considered as a community, in its social aggregate capacity". Stephen, the editor of Blackstone has slightly modified this definition and presents it in the following form: "A crime is a violation of a right, considered in reference to the evil tendency of such violation as regards the community at large".

According to Blackstone, crime is an act done in violation of public rights and duties. But according to Stephen, it is an act done in violation of public rights ontf. Stephen introduces an element of error in his definition inasmuch as he excludes the acts done in violation of public duties from the ambit of crime for there are many acts which are done in violation of public duties and termed as crimes. For example, being in possession of house breaking tools or-counterfeit coin.

‘Crime’ is a word that describes deeds of course, but as long as it is used only to express moral condemnation, no one will be able to identify a criminal act with certainty. Attempts to define crime more rigorously look to the law for help. Crimes are wrongs judged to be deserving of public attention through application of state power. It has been felt, therefore, that crimes are best defined as acts which are harmful to social welfare and which carry the possibility of a penalty imposed by the state. This definition helps a little, but not enough. It does not mark a clear boundary between criminal acts and other
wrongs, since the state attends legally to many attacks on public welfare that are not considered criminal. Thus, there is no clear line between those wrongs which are regarded as crimes, those personal injuries which are treated as civil actions (torts), and those numerous violations of regulatory laws to which penalties are attached, even though these violations are not called crimes. As defined by law, a crime is an intentional violation of the criminal law committed without defense or excuse and penalized by the state.

In short, there is no essence of criminality. No quality can be found in acts called criminal that distinguishes them from non-criminal injuries, breaches of contract, violations of regulations, and other disappointments.

Why does a certain society have more or less of those wrongs universally regarded as crime – those more serious wrongs such as treason, murder, forcible rape, assault, and theft? It is the kind of question raised by public concern with crime. The context of the question asked about crime causation is that of public anxiety about the serious offences as these have been widely regarded. In this context, it seems most reasonable to employ a legal definition of crime such as that cited by Tappan. This definition regard a crime as an intentional act that violates the prescriptions or proscriptions of the criminal law under conditions in which no legal excuse applies and where there is a state with the power to codify such laws and to enforce penalties in response to their breach. This definition says several things that require amplification. It hold that (1) there is no crime without law and without a state to punish the breach of law; (2) there is no crime where an act that would otherwise be offensive is justified by law; (3) there is no crime without intentions; and (4) there is no crime where the offender is deemed incompetent, that is, without capacity. Every of these elements have its own history, its peculiar difficulties, and a range of implications.

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7 Tappan 1947.
8 G. Williams, 1955
The legal idea of a crime restricts its meaning to those breaches of

custom that a society has recognized in either its common or its statutory law.

As it is applied in Western countries, this restriction carries with it four

characteristics that define 'good' criminal law: politically, penal sanction,
specificity, and uniformity. 'Politically' refers to the idea that there can be no

crime without a state to define it. 'Penal sanction' refers to the power of a

state to punish violations of its law. This definition says that the legal

meaning of crime requires a state, an organization with a monopoly of power,
to enforce the law and to attach penalties to its breach. Laws that are not

backed by force are less than law and more like agreements or aspirations.

Laws without penalties are hollow.

The conception of crime that places it within the boundaries of law has

strong implications for civil liberties. The maxim that there can be no crime

without a law means that people cannot be charged with offences unless these

have been defined. The protection of citizens against vague charges depends

upon this ideal that there must be a clear statement setting the limits of one’s

conduct in relation to others and defining the limits of the state’s power to

interfere in our lives.

This ideal has promoted other considerations having to do with the

formulation of good law as opposed to poor law, particularly as good and poor

laws are conceived in the Anglo-American tradition. These additional ideals

are that the criminal law must be specific and that it must be applied

uniformly.

1.1 All Wrongs are not Crimes

The legal conception of crime as a breach of the criminal law has an

additional implication. It narrows the definition of wrongs. Not all the injuries

we give each other are recognized by law, nor are all the injuries recognized

by law called 'crimes.' For example, United States, Canadian and European

law recognizes breaches of contract or trust, so that people who feel

themselves, thus, harmed may seek a remedy from the law. Similarly, the law
acknowledges other injuries to person, reputation, and property, called torts, which, while not breaches of contract, may entitle one person to compensation from another. There is an overlap between the ideas of crime and tort. The same act can be both a crime and a tort, as in murder or assault. However, we can distinguish between the wrongs defined by contract and tort law and the wrongs defined by criminal law in terms of the procedures employed in response to these different categories of wrong. The procedural difference lies in who pursues the offence. A crime is deemed an offence against the public, even though it may have a particular victim and a particular complainant. It is the state that prosecutes-crime, but it is individuals who pursue offenders against tort and contractual laws.

1.2 No Crime Where an Act is Justified by Law

A second category of ‘defense or excuse’ against the application of the criminal law consists of legally recognized justifications for committing what otherwise would be called a crime. Both literate and preliterate societies recognize the right of individuals to defend themselves and their loved ones against mortal attack. The injury or, death that may be inflicted against one’s assailant in self-defense is thereby excused. Similarly, all states accord themselves the right of self-defense. With the French philosopher Sorel (1908), states distinguish between force, the legitimate use of physical coercion constrained by law, and violence, an illegitimate use. The damage that occurs through the state’s application of force is excused from the criminal sanction. Thus homicide committed in the police-officer’s line of duty may be deemed justifiable, and the injury defined as non criminal.

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9 People do use these words as Sorel said they did. Legitimate injury is called “force” or some other term less loaded than “violence.” Injury that is deemed illegitimate is “violence.” For example, Blumenthal and her colleagues (1972) studied the opinion of a representative sample of American men between the ages of 16 and 64.
1.3 No Crime Without Intention

As a result of our moral and legal history, the criminal law tries to limit its definition of criminal conduct to intentional action. ‘Accidents’ supposedly do not count as crimes. As the American jurist Oliver Wendell Holmes Jr., put it, the law attempts to distinguish between "stumbling over a dog and kicking it," If ‘a dog can tell the difference between being kicked and being stumbled over’ as Justice Holmes believed, so too can judges and juries. This assumption seems plausible but it gets sorely tried in practice. It gets tested and disputed because in real life, some ‘accidents’ are still defined as the actor's fault. Negligence may amount to crime.

All criminal laws operate with some psychological model of man. According to the model prevalent in Western criminal law, the reasonable person ought to use judgment in controlling his behavior in order that some classes of accidents will not occur. For example, the reckless driver may not have intended to kill a pedestrian, but the accident is judged to have been the probable consequence of his or her erratic driving. Persons licensed to manipulate an automobile are assumed to know the likely results of their actions. They are assumed, further, to be able to control their actions and they are held accountable, therefore, regardless of lack of homicidal intent.

Western criminal law is based upon this changing, and challenged, set of assumptions. It therefore qualifies its desire to restrict crime to intentional breaches of the criminal code. This qualification is accomplished by distinguishing between classes of crime-impulsive rather than premeditated, accidental rather than intentional. Since the law wishes to hold able, but negligent, people to account, it includes the concept of constructive intent, a term that stretches intent to cover the unintended, injurious consequences of some of our behavior. The penalties for doing damage through negligence are usually lighter than those for being deliberately criminal; yet the term crime covers both clashes of conduct. Motivations sometimes used by lawyers to prove intention. The two concepts are not the same, however.
An intention is that which we have in mind when we act. It is our purpose, the result we wish to effect. The criminal law is particularly concerned to penalize illegal intent when it is acted upon. A motive is that which moves a person to act. Intention is narrow and specific: motivation is broad and general. An intention may or may not move a person. It may remain a wish, a plot and a dream. A criminal intention without the action is not a crime.

Motives, on the other hand, may move us haphazardly, purposelessly, without the focus of intent. A motive may be purely physiological and variously gratified. It may even be unconscious, if we believe the psychoanalysts. An intention, however, is only something cognitive. The word 'intention' is reserved for thoughts, for verbal plans. It does not refer to those subterranean urges or those physiological fires that may have kindled the ideas.

Since intent is part of the definition of crime, prosecutors in Western countries must establish such purpose in the actor, and they sometimes try to this by constructing the motive. The strategy of demonstrating intention from motivation calls for showing the good reasons why a person might act as the accused is alleged to have done. The good reasons, the alleged motives, might all have been there, however, without the actor's having formed the criminal intent which the prosecutor is attempting to establish. This is simply because good reasons are not always the real ones.

The distinction between the movers of action and intentions becomes important as criminal law takes heed of another qualification in its definition of crime, the qualification that people shall be held responsible for their actions, and hence, liable to criminal law. Only they are mentally competent. The legal meaning of intention is embedded in the concept of competence.

1.4 No Crime Without Capacity

The notion that behavior is within or beyond one's control rests upon conceptions of 'capacity' or 'competence.' They vary in time and with place,
and they remain disputed today. The dispute concerns the criteria of competence, but it does not challenge the legal and moral principle that people must be somehow able before they can be judged culpable. Among modern states, the tests of competence are cognitive. They look to mens rea, the thing in the mind, as definitive of the ability to form a criminal intent and the regulator of one's actions. Until ‘the mind’ is sufficiently well formed to control the actor's behavior, and unless it operates in normal fashion. Anglo-American criminal law excludes the agent from criminal liability. Actors are considered not responsible or less responsible for their offenses if the offense has been produced by someone who is (1) acting under duress. (2) Under age or (3) insane.

The first exclusion consists of criminal deeds performed against one's will. The law recognizes circumstances in which a person may be forced into a criminal action under threat. Since intent and the capacity to act freely are diminished when this is the case, so too is legal responsibility.

The people must have some minimal mental capacity before they ought to be held legally accountable has to do with limitations of age. Laws of modern nations agree that persons below a certain age must be excluded from criminal liability. The number of years required to attain legal responsibility varies by jurisdiction, but the legal principle persists in declaring individuals who are under age to be incompetent or legal infants. They may be protected by laws, but they are not subject to the criminal law. In most Anglo-American jurisdictions a child under the age of seven years cannot be held responsible for a crime.

Above the age of 7 and below that of 21, young people in literate hands are variously categorized as to their legal responsibility for crime. In the common law of English-speaking states, it was assumed that a legal infant, someone between the ages of 7 and 14, did not have the capacity to form a

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10 Placing the word “mind” in quotation marks indicates its vagueness. Like many other useful terms, “mind” has many meanings. It may be interesting to consider how you use the word.
criminal intent, although in cases of serious crimes this assumption might be refuted by showing that the actor could distinguish right from wrong. Between the ages of 14 and 21 years, the common law assumed capacity adequate for legal responsibility, but this assumption, too, was open to legal rebuttal. Beyond 21 years, age was no longer a defense against liability for one’s criminal acts. As the common law became codified, these assumptions were carried into effect with qualifications in particular jurisdictions. The statutory laws of the developed countries have come to define a special status of offender called a juvenile delinquent. The upper age limit of juvenile delinquency is 18 years in most Western jurisdictions. Beyond this age, a person is treated as an adult in regard to the criminal law. This age limit varies, however, with the jurisdiction and sometimes with the sex of the young person. Until recently in Alberta, for example, the upper age limit for treating girls as juvenile delinquents was 18 years. For boys this limit was 16 years. This reverse sexism not only ignored the fact that girls mature earlier than boys but also produced some fascinating anomalies: “one sixteen-year-old boy was convicted of contributing to juvenile delinquency and sentenced to a short term in the Fort Saskatchewan gaol. His offense was that he was guilty of having sexual intercourse with his steady girl friend, a young woman who was nearly eighteen.” A similar case has finally resulted in a court decision that Alberta’s differential protection of girls and boys is in violation of the Canadian Bill of Rights. This interpretation resulted in a dismissed charge and in instructions to the police to treat both females and males as adults at age 16; however, this decision may be appealed.

The tendency in most industrialized countries has been to raise the age limit so that more young offenders might be treated as delinquents rather than as criminals. There are some jurisdictions in which a legal borderland is defined, commonly between the ages of 16 and 18, within which youths may come under the jurisdiction of both juvenile and adult courts, or either,

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depending upon the gravity of their offenses. The justification of a special status for youthful offenders rests again upon the moral premise that people ought not to feel the full force of the criminal law unless they are responsible for their actions. This moral maxim has been bolstered by a practical concern that seeks to protect children from armful influences, prevent their waywardness, and guide them into acceptable patterns of conduct when they have given indication of deviation that might become chronic.

Among the varied jurisdictions of the United States, for example, an underage person may be treated as a delinquent for such matters. Being habitually truant; Being incorrigible; Growing up in idleness or crime; Immoral or indecent conduct; Habitually using vile, obscene, or vulgar language in public; Attempting to marry without consent in violation of the law; Being given to sexual irregularities; Using tobacco or alcoholic beverages or being addicted to drugs; Habitually wandering about railroad yards or tracks or wandering about the streets at night.13

The Juvenile Delinquents Act of Canada revised in 1972. On the one hand, it restricts delinquency to violations of the criminal law, but, on the other hand, it extends the definition to cover any other act that might get one into trouble with provincial laws. It defines a juvenile delinquent as any child who violates any provision of the Criminal Code on of any federal or provincial statute, or of any by-law or ordinance of any municipality, or who is guilty of sexual immorality or any similar form of vice, or who is liable by reason of any other act to be committed to an industrial school or juvenile reformatory under any federal or provincial statute.

It is apparent that the extension of the word delinquency to cover more than youthful criminal activity increases the risk that the law may be vague and that efforts to protect children may violate their civil liberties. It is notable that the laws of Asian, Middle Eastern, and Latin American countries include only criminal conduct in their attention to youthful offenders. The

legal responsibility of juveniles may be diminished under these statutes, but the status of a delinquent, if this term is defined at all, implies that the person has broken the criminal law. The juvenile delinquency legislation is under attack in Anglo-American countries as being unjust. The injustice lies in making a statute, as well as a particular act, an offense. The attack on such statute in Canada and the United States is being led by law-reform groups whose objective is to separate child welfare services from attention to juvenile crime.

It is estimated that about one-fourth of the boys and almost three-fourths of the girls held in juvenile institutions are guilty of no crime for which an adult could be prosecuted. In the United States such children remain in detention four to five months longer, on the average, than children convicted of criminal offenses. Social workers, psychiatrists, and some judges would use the judicial system as part of a welfare system that tries to meet children's needs. Lawyers, on the other hand, are chary of expanding the power of state agencies to control children under the guise of helping them, unless adequate legal safeguards are built in. The attorneys caution derives from the fact that many of the juvenile delinquency statutes do not satisfy the legal ideal that actions be specified before state control can be applied. Just as we should not want the criminal law to apply to those of us who are in state of criminality, lawyers are generally opposed to the idea of charging children with being in a state of delinquency.

However, many persons associated with the mental health movement regard juvenile criminality as but one signal that a child needs help. The attitude of the child savers rests on six assumptions:

1. That the safeguarding of the civil liberties and social rights of a child or young person may be important and helpful to the court but they are of

\[\text{McNamara, (1975), p. 1.}\]
\[\text{Ibid, at 3.}\]
\[\text{Consineau and Veevers, (1972).}\]
less importance than the provision of legal machinery for meeting their particular needs.\footnote{House of Commons of Canada, (1971). p. 238.}

2. That juvenile crime is a symptom of mental disorder.

3. That social scientists and psychiatrists in particular, are better able than other people to judge and predict behavior.

4. That expert judgment underlies the decision to treat inappropriate behaviour and that such treatment is effective.

5. That the requirements of treatment justify indefinite (indeterminate) sentencing until the patient is cured.

6. That the indeterminate sentence given within a treatment orientation is punitive than ‘plain’ incarceration.

All definitions of crime mark off some ages below which people are deemed not to have the capacity for crime. In addition, the literate countries tend to define a borderland, occupied by youths, within which legal liability is acknowledged, but diminished, and in which the stigmatizing effect of the criminal sanction is avoided or attenuated by special treatment.

1.5 Insanity as a Defense

An excuse by which one may reduce or escape the application of the criminal law is the claim that the offender's capacity to control his or her behavior has been damaged. The locus of the damage, the place in which one; looks for this incapacity is again, the mind. The quarrel is stimulated by the belief that only people who choose their conduct deserve punishment for their crimes, that accidents and irresistible impulses do not count, and that other classes of behavior beyond one's control should not be penalized. The criminal law attempts to evaluate capacity from signs of sanity. ‘Sanity’ refers to soundness to wholeness. Being less than whole, being of unsound mind is, therefore, a legal defense against accountability to the law.
The definition of insanity is difficult, however, and an embarrassment to a profession which, like the law, depends so heavily upon the precision of its terms. The word ‘insane’ has poor credentials among psychologists and psychiatrists. In the Netherlands, Denmark, Norway and Sweden, the test of insanity is simply the testimony of such medical experts. In Belgium, France, Italy and Switzerland the test is psychiatric judgment concerning the ability of the offender to understand what he was doing at the time of his crime and to control his behavior. Anglo-American law has attempted to guide judges, juries, and psychiatrists in assessing the competence of defendants by formulating more specific tests that have been used alone or in qualified combinations. The most popular of these guidelines are the M’Naghten rule, the irresistible impulse rule, and Durham’s rule. As with all regulations that seek to implement moral sentiments, none of these principles is perfectly clear. All three contain ambiguities, and all three have been under attack. However, they remain in various forms. Anglo-American law attempts to distinguish between sane offenders and insane ones.

The M’Naghten rule provides the only definition of insanity in Britain and 31 of the United States. The rule promulgated in English trial in 1843, is that every man is to be presumed to be sane, and . . . that to establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing: or if he did know it, that he did not know he was doing what was wrong.18

Disease of the mind is vague. Wrong may mean morally or legally so. The meaning of the phrase ‘the nature and quality of the act’ has been disputed, and the simple verb ‘to know’ is troublesome. Critics of the M’Naghten rule have argued that ‘knowing’ may refer only to intellectual arenas and have wanted to substitute a psychiatric sense of knowing that

should include emotional appreciation as well as cognitive understanding. As employed in Canada, the ‘knowledge test’ with M’Naghten’s rule has been broadened so that the act must necessarily involve more than mere knowledge at the act is being committed; there must be an appreciation of the factors involved in the act and a mental capacity to measure and foresee the consequences of the violent conduct.\(^{19}\) In the leading case, Willard was formally declared insane by a California Court. . . enraged at the commitment proceedings, and killed a sheriff who tried blocking his escape.\(^{20}\) Under M’Naghten’s rule, then applicable, Willard was judged to have known the nature and quality of his act and to have known that wrong, and he was hanged as a legally sane person despite a diagnosis of ‘alcoholic paranoia.

With the popularizing of psychiatry and, in particular, of the ideas of psychoanalysis, legislators have taken account of the possibility that knowledge of right and wrong is only one test of capacity. It is now recognized that psychotic individuals may be moved by beliefs which we regard as false but which they believe true and over which they seem to have no control. When such a delusion can be shown to have caused a crime, some jurisdictions excuse the agent as incompetent. Canada adds the defense of tire incapacity to the M’Naghten rule in defining insanity, but it qualifies this excuse by saying that a person shall not be acquitted on the ground of insanity unless the delusions caused him to believe on the existence of a state of things that, if it existed, would have justified or excused his act or omission.

The ‘irresistible impulse’ test represents a similar qualification of M’Naghten’s rule that is applied in 18 of the United States and in the American federal courts. A defense against criminal conviction on the grounds of insanity is made first by using the M’Naghten rule and then by copying control test. Such a test acknowledges that there are mental diseases in which cognition is relatively unimpaired but volition is damaged. Some people who

\(^{20}\) The People v. Lard, 1907.
know the difference between right and wrong seem, nevertheless, to be unable to control their actions. The trouble with this principle is, of course that its application requires wisdom beyond the skills of psychiatrists. It requires finer psychological tools than are presently available to be able to distinguish reliably between behavior that is uncontrollable and behavior that is uncontrolled.

Durham's rule represents a further extension of psychiatric influence on the definition of insanity. Durham's rule enunciates a principle which had been recommended in 1953 in a report by the British Royal Commission on Capital Punishment and which has been amplified in a series of American trials. The principle holds that the mind which controls human beings is a functional unit in which emotion and reason are blended, and that the separation of knowing from feeling and willing, apparently required by M'Naghten's rule, is false to our knowledge of human nature. Durham's rule would hold people responsible for their conduct only when their emotions, their will power, and their thoughts appeared to be normal. In a trial held in the District of Columbia in 1954, Judge Bazelon wrote the opinion that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.21

On its face, Durham's rule appears more humane and more modern than the M'Naghten principle. In practice, however, it turns out to be vague. The difficulties in applying its test of sanity account for the fact that only the District of Columbia, Maine, and the Virgin Islands have adopted it. The rule is vague because it does not equate a mental disease with a psychosis, as the latter is understood by psychiatrists. It provides no standard, therefore, by which to judge the capacity of a defendant to control his behavior. Judges and juries are left dependent upon the unreliable estimates of psychiatric experts. The poorly articulated notion of a mental disorder allows such fuzzy categories of character as psychopathy, sociopathy, character defect and

21 Durham v. United States.
emotionally unstable personality to be certified as evidence of a person's lack of responsibility for his crimes. As part of the mental health movement, the Durham principle encourages the tendency to regard disapproved deviations, like homosexuality or addiction to narcotics, as constituting in them signs of mental disease. Finally, the criminal act itself can be, and has been, used as evidence of the mental sickness which is alleged to have caused it and which, it is argued, should excuse the offender. This is particularly so with bizarre crimes. Here, for example, is a verbatim exchange between a defense counsel and the prosecution's, debating the sanity of a 17-year-old boy who had murdered and dismembered a young woman previously unknown to him.

The subjective character of definitions of insanity and the intrusion of moral preconceptions upon legal categories are demonstrated by the fact that, while in England one-third to one-half of homicide offenders are classified as legally insane in the United States.

The various tests of sanity are fallible and can never be made perfect. They reflect our changing conceptions of human nature and of morality. The current gague sponsored by the social sciences, has been to shift the burden of responsibility from individuals to their environments to place the blame for offensive acts not on the criminal but on the social forces by which he or she was presumably shaped. The Durham rule expresses this train of thought, the logical conclusion of which is to regard all undesirable conduct as sick and subject to treatment physicians of the body social. However, until a brave new world is reached in which all deviance is engineered out of us, it may be expected that states will continue to hold citizens responsible for broad ranges of their behavior and that the defense of insanity will not be available to most of us.

The insanity defense is of little consequence. In England, for example there were only two successful insanity pleas in 1974. It is expected that

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Canada and the United States may be subject to the same trend toward disuse of this excuse. The increasing unimportance of the insanity defense has been attributed to the virtual abolition of capital punishment, the decreasing severity of sentences and the introduction of parole and probation.\textsuperscript{25} Increasingly, tests of mental competence are used to determine fitness to stand trial, rather than insanity. The effect of this trend is to channel persons conceived to be mentally disabled away from the criminal justice system and into allegedly therapeutic environments. Whether this is good for offenders and their societies is debatable.

2. The Concept of Crime

2.1 No Crime Where an Act is Justified by Law

Criminal behaviour is defined by the laws of particular jurisdictions, and there are sometimes vast differences between and even within countries regarding what types of behaviour are prohibited. Conduct that is lawful in one country or jurisdiction may be criminal in another, and activity that amounts to a trivial infraction in one jurisdiction may constitute a serious crime elsewhere. Changing times and social attitudes may lead to changes in the criminal law, so that behaviour that was once criminal becomes lawful. Abortion, once prohibited except in the most unusual circumstances, has become lawful in many countries, as has homosexual behaviour in private between consenting adults in most Western countries, though it remains a serious offense in some parts of the world. The Netherland has decriminalized physician-assisted suicide. Nonetheless, the general trend has been toward increasing the scope of the criminal law rather than decreasing it, and it has been more common to find that statutes create new criminal offenses rather than abolish existing ones. New technologies have given rise to new opportunities for their abuse, which has led to the creation of new legal restrictions. Just as the invention of the motor vehicle led to the development of a whole body of criminal laws designed to regulate its use, so the widening

use of computers and especially the Internet has created the need to legislate against a variety of new abuses and frauds or old frauds committed in new ways.

In most countries the criminal law is contained in a single statute, known as the criminal code or penal code. Although the criminal codes of most English-speaking countries are derived from English criminal law, England itself has never had a criminal code. English criminal law still consists of a collection of statutes of varying ages, the oldest still in force. In the early 19th century there have been several attempts to create a code in England. The first effort (1833-53) was by two panels of criminal law commissioners, who systematically surveyed the prevailing state of the criminal law. The existence of different statutes covering the same conduct, often with widely varying penalty provisions, permitted wide judicial discretion and inconsistency in punishments. The commissioners drew up a number of draft codes that were presented to parliament, though none were enacted. Eventually, the judiciary's resistance led to the abandonment of the movement towards codification, and instead there was a consolidation of most of the statutory criminal law in 1861 into a number of statutes—the Larceny Act, the Malicious Damage Act, and the Offences against the Person Act among the most important. Because these statutes were consolidations rather than codifications, they preserved many of the difficulties of the earlier legislation. The Offences against the Person Act is still largely in force, though the others have been replaced by more modern provisions.

Interest in codification was not limited to England. A similar process ensued in India, then under British rule, and a criminal code was written during the 1830 and eventually enacted in 1860. The codes remained substantially in force in India and Pakistan and in certain parts of Africa that were once British territories. The effort to produce a criminal code in England resumed in 1877, and a further Criminal Code Bill was presented to
parliament in 1879-80. This draft code, mainly the work of the celebrated legal author and Judge James Fitzjames Stephen, received widespread publicity throughout England and its colonial possessions. Although it was not adopted in England largely because parliament was preoccupied with other matters, it was subsequently enacted in Canada in 1892 and in several Australian states and other British colonies.

Criminal law reform was one of the interests of the U.S. states in the period following the revolution, and in the late early 1820 a comprehensive draft code was prepared for in Louisiana, though it was never enacted. New York enacted a criminal code in 1881, setting an example that was eventually followed by most of the states. Because criminal law is primarily a matter for the individual states (in contrast to Canada, where the national parliament enacts the criminal code for the whole country), there has been considerable variation in the content of the criminal code from one state to another. In 1950 the American Law Institute began more than a decade of effort that eventually led to the publication of the Model Penal Code in 1962, an attempt to rationalize the criminal law by establishing a logical framework for defining offenses and a consistent body of general principles on such matters as criminal intent and the liability of accomplices. The Model Penal Code had a profound influence on the revision of many individual state codes over the following 20 years; although never enacted completely, the code inspired and influenced a long period of criminal code reform.

Countries with majority Muslim populations have adopted diverse legal systems. Those that were once English colonies (e.g. Pakistan, Bangladesh, Jordan, and some of the Persian Gulf states) largely adopted English criminal law and procedure. Those under French colonial influence generally adopted civil-law systems, including the countries of the Maghrib and North Africa, including Egypt, as well as Syria and Iraq.  

27 A third group comprises those states that retained or returned to Islamic law (called the Shari’ah) with few or no reforms, including Iran since 1979 and Saudi Arabia.
Islamic law is a theocratic legal system that is believed to come from God (Allah) through the teachings of the prophet Muhammad as recorded in the Quran. The Shari’ah serves as a criminal code that lists several crimes, or offenses for which punishments are fixed and unalterable. Apostasy requires a death sentence, extramarital sexual relations require death by stoning, and consuming alcoholic beverages requires 80 lashes. Other lesser crimes allow judges discretion in sentencing offenders.

2.2 General Principles of Criminal Law

Despite differences of form and detail, there are several common general principles of criminal law throughout the English-speaking world. One widely accepted principle is the rule against retroactivity, which prohibits the imposition of ex post facto laws (i.e., laws that would allow an individual to be punished for conduct that was not criminal at the time it was carried out). This rule restricts the authority of judges to declare new offenses (though not necessarily to expand the scope of old ones by interpretation) and has not always been accepted in England. For example, in 1960 the House of Lords, exercising its judicial power and claiming that the courts retained the authority to recognize new offenses as social needs changed, declared that it was criminal to publish a directory of prostitutes, even though no specific offense existed. In Scotland (whose legal system and criminal courts are separate from those of England) the claim is still maintained. Determining what conduct constitutes a crime usually requires an examination of the terms of the relevant provisions of the code or statutory provisions (a few offenses in English law have not been defined in statute), but these have to be interpreted in the context of general principles, the most important of which is that an individual normally cannot be convicted of a crime without an intention to commit the act. In most Western countries, legal codes frequently
recognize mental abnormality as at least a mitigating, if not absolving, factor, though the claim of insanity has been contested.  

Determining which particular conduct constitutes a crime usually requires an examination of the terms of the relevant provisions of the legal code or statutory provisions, but these must be interpreted within the context of several general principles. The most important of these principles is that criminal law as a general rule does not punish accidental or negligent behaviour. This principle, known as mens rea (guilty mind) is subject to many exceptions and qualifications. For some offenses (offenses of strict liability) it is abandoned completely or is allowed only a limited scope; for other offenses, notably murder, the individual must have a specific intent to commit the crime or to achieve the consequences of the act (the death of the victim). The fact that an individual had been drinking before committing a crime is not in itself a defense, but in some cases it is used as evidence that the accused person did not have the intention that the law requires. Provocation is not generally a defense to a criminal charge, except in the case of murder, in which evidence of a high degree of provocation (in English law, sufficient to provoke a reasonable person to act in the same way as the accused) could result in a verdict of manslaughter, even if the killing was intentional. One very rare condition that exempts individuals from criminal liability is a form of involuntary conduct known as automatism, a state (such as sleepwalking or certain effects of concussion) in which the conscious mind does not control bodily movements, thus rendering an individual unaccountable for even serious consequences.

Criminal responsibility is not limited only to those who perform criminal acts. As a general principle, anyone who aids and abets a perpetrator by encouraging or in any way knowingly helping him (e.g., by providing information, implements, or practical help) is an accomplice and may be

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28 E.g. schizophrenia, mental retardation, or paranoia.
considered equally guilty. Those who actually perform the criminal act (e.g., wielding the weapon that strikes the fatal blow) are called principals in the first degree; those who assist at the time of the commission of the offense (e.g., holding the victim down while the principal in the first degree strikes.; the blow) are principals in the second degree; and those who assist before the crime takes place (e.g., by lending the weapon or by providing information) are accessories before the fact. Usually, all are equally responsible in the eyes of the law and liable to the same punishment. In many cases, however, the accessory before the fact is considered more culpable (e.g., if he has instigated the offense and arranged for it to be committed by an associate), and in some cases the person who actually performs the act that causes the crime is completely innocent of all intent (e.g., the nurse who administers to a patient, on the doctor's instructions, what he believes to be medicine but what is in fact poison). In this situation the person who carries out the act is an innocent agent and is not criminally responsible; the person who causes the innocent agent to act is the principal in the first degree. The accessory after the fact is one who helps a felon to evade arrest or conviction, possibly by either hiding him or destroying evidence. Some jurisdictions, including England, no longer use the expression, having enacted specific offenses to prosecute this type of behaviour.

3. Classification of Crimes

Most legal systems divide crimes into categories for various purposes connected with the procedures of the courts, such as determining which kind of court may deal with which kind of offense. The common law originally divided crimes and into two categories-felonies (the graver crimes, generally punishable with death and the forfeiture of the perpetrator's land and goods to the crown) and misdemeanours (for which the common law provided fines or imprisonment). The procedures of the courts differed significantly according to whether the charge was a felony or a misdemeanour; other matters that

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29 Section 107 of Indian Penal Code.
depended on the distinction included the power of the police to arrest an individual on suspicion that he had committed an offense (which was generally permissible in felony cases but not in misdemeanor ones). By the early 19th century it had become clear that the growth of the law had rendered this classification obsolete and in many cases inconsistent with the gravity of the offenses concerned (e.g. theft was a felony, irrespective of the amount stolen; obtaining by fraud was always a misdemeanor). Efforts to abolish the distinction in English law did not succeed until 1967, when it was replaced by the distinction between arrestable offenses and other offenses. An arrestable offense was one punishable with five years' imprisonment or more, though offenders could be arrested for other crimes subject to certain conditions. In later legislation it proved necessary to devise further classifications. In order to provide for expanded powers of investigation, a category of serious arrestable offenses was created, and in order to determine the court in which the case should be tried, a different classification of offenses into indictable, "either way", and summary was adopted. The traditional classification between felony and misdemeanor has been retained in many American jurisdictions, though there has been a rationalization of the allocation of offenses to one category or the other, and it has been used as the basis for determining the court that will hear the case. In some jurisdictions a further class of offense, violations, was added to include minor offenses, which corresponded broadly to the English category of summary offenses.

3.1 Organized Crime

In addition to individual criminals acting independently or in small groups, there are criminal organizations engaged in offenses such as cargo theft, fraud, robbery, kidnapping for ransom, and the demanding of 'protection' payments. The principal source of income for these organizations is the supply of goods and services that are illegal but for which there is
continued public demand, such as drugs, prostitution, gambling and loan-sharking.\(^{30}\)

Criminal organizations in the United States are best viewed as shifting coalitions, normally local or regional in scope. In Australia extensive narcotics, cargo theft, and labour racketeering rings have been discovered; in Japan there are gangs specializing in vice and extortion; in Asia organized groups, such as the Chinese Triads, engage in drug trafficking; and in Britain there are syndicates engaging in cargo theft at airports, vice, protection, and pornography. There also are many relatively short-term groups drawn together for specific projects, such as fraud and armed robbery, from a pool of long-term professional criminals.

Apart from the drug trade, the principal form of organized crime in many developing countries is the black market, which involves such criminal acts as smuggling and corruption in the granting of licenses to import goods and to export foreign exchange. Armed robbery has been particularly popular and easy because of the widespread availability of arms supplied to nationalist movements by those seeking political destabilization of their own or other countries. After the dissolution of the Soviet Union, organized-crime rings flourished in Russia. By the beginning of the 21st century, official Russian crime statistics had identified over 5,000 organized-crime groups responsible for international money laundering, tax evasion, and assassinations of businessmen and politicians. One report even argued that Russia was on the "verge of becoming a criminal syndicalist state, dominated by a lethal mix of gangsters, corrupt officials, and dubious businessmen".

3.2 White-collar Crime

Crimes committed by business people, professionals, and politicians in the course of their occupation are known as white-collar crimes, after the typical attire of their perpetrators. Contrary to popular usage, criminologists

\(^{30}\) Lending money at extremely high rates of interest.
tend to restrict the term to those illegal actions intended by the perpetrators principally to further the aims of their organizations rather than to make money for themselves. Examples include conspiring with other corporations to fix the prices of goods or services in order to make artificially high profits or to drive a particular competitor out of the market; bribing officials or falsifying reports of tests on pharmaceutical products to obtain manufacturing licenses; and constructing buildings or roads with cheap, defective materials while charging for components meeting full specifications. Sometimes such activities can be attributed to individual overenthusiastic employees or to executives acting on their own initiative, but other times they represent a collective and organized effort within a corporation to increase profit at any cost. White-collar crime that is part of a collective and organized effort to serve the economic interests of a corporation is known as corporate crime.

3.3 Corporate Crime

The cost of corporate crime is many times that of organized crime or the more common ‘street’ crime. Corporate crimes have a huge impact on the safety of workers, consumers, and the environment, but they are seldom detected. Compared with crimes committed by juveniles or the poor, corporate crimes are very rarely prosecuted in the criminal courts and executives seldom go to jail, though some companies may pay large fines.

Besides corporate crime, the public and academics oftence use the term white-collar crime to describe fraud and embezzlement. Rather than being crimes ‘by the firm, for the firm,’ these acts constitute crime for profit by an individual against the organization, the public, or the government e.g., tax fraud costs more than 5 percent of the gross national product in many developed countries). Owing to the concealed nature of many frauds and the fact that few are reported even when discovered, their cost is impossible to estimate precisely, but in the United States it is thought to be at least 10 times the combined cost of theft, burglary, and robbery.
3.4 Terrorism

Beginning in the 1960s international terrorist crimes, such as the hijacking of passenger aircraft, political assassinations and kidnappings, and urban bombings, have been a major concern—especially to Western governments, which are the frequent targets of such acts. Most terrorist groups are associated either with millenarian revolutionary movements on an international scale or with nationalist movements of a particular ethnic, religious, or other cultural focus.

Three broad categories of terrorist crime can be distinguished, not in legal terms but by intention. Foremost are the use of violence and the threat of violence to create public fear, which may take the form of random attacks to injure or kill anyone who happens to be in the vicinity when an attack takes place. Because such crimes deny, by virtue of their being directed at innocent bystanders, the unique worth of the individual, terrorism has often been recognized as a crime that runs counter to all morality and undermines the foundations of civilization. Another tactic that generates fear is the abduction and assassination of heads of state and members of governments in order to make others afraid of taking positions of leadership and to spread a sense of insecurity. Persons in responsible positions may be abducted or assassinated on the grounds that they are 'representatives' of some institution or system, to which their assailants are opposed, as in the case of the 1991 assassination of Rajiv Gandhi, India's former prime minister by Tamil separatists from Sri Lanka.

A second category of terrorist crime is the use of terror by a terrorist organization against its own members or against the community it claims to serve in order to enforce obedience and to ensure loyalty and support. A related form of terrorism, known as state or state-sponsored terrorism is the use of terror by a country or an agent of a government against its own citizens or against civilian citizens of another country.
Third, crimes are sometimes committed by terrorist organizations in order to gain the means for their own support.31

4. Measurement of Crime

Estimating the amount of crime actually committed has long troubled criminologists. Figures for recorded crime do not generally provide an accurate picture because they are influenced by variable factors, such as the willingness of victims to report crimes. It is widely believed that only a small fraction of crimes are reported to authorities. Thus, criminals detected are not necessarily representative of all those who commit crime, making attempts to explain the causes of crime difficult.

The public's view of the frequency and seriousness of crime is derived largely from the news and entertainment media, and, because the media usually focus on serious or sensational crimes, the public's view is often seriously distorted. A more detached view is generally provided by detailed statistics of crime compiled and published by government departments. For example, the United States Federal Bureau of Investigation (FBI) annually publishes the Uniform Crime Reports, and in Great Britain the Home Office produces an annual volume entitled Criminal Statistics, England and Wales. Official statistics frequently are used by policy makers as the basis for new crime-control measures (e.g., they may show an increase in the incidence of a particular type of crime over a period of years and suggest that some change in the methods of dealing with that type of crime is necessary). However, official crime statistics are subject to error and may be misleading, particularly if they are used without an understanding of the processes by which they are compiled and the limitations to which they are necessarily subject. The statistics are usually compiled on the basis of reports from police forces and other law enforcement agencies and are generally known as statistics of reported crime, or crimes known to the police. Because only

31 Bank robbery, kidnapping for ransom, extortion, illegal arms dealing, and drug trafficking are among the principal crimes of this nature.
incidents observed by the police or reported to them by victims or witnesses are included in the reports, the picture of the amount of crime actually committed may be distorted. One factor accounting for this distortion is the extent to which police resources are allocated to the investigation of one kind of crime rather than another, particularly with regard to what are known as 'victimless crimes' such as the possession of drugs. These crimes are not discovered unless the police endeavour to look for them, and they do not figure in the statistics of reported crime unless the police take the initiative. Thus, a sudden increase in the reported incidence of a crime from one year to the next may merely show that the police have taken more interest in that crime and have devoted more resources to its investigation. Ironically, efforts to discourage or eliminate a particular kind of crime through more vigorous law enforcement may create the impression that the crime concerned has increased, because more instances are detected and thus enter the statistics.

A second factor that can have a striking effect on the apparent statistical incidence of a particular kind of crime is a change in the willingness of victims of the crime to report it to the police. Victims may not report crimes for a variety of reasons: they may fail to realize that a crime has been committed against them (e.g., children who have been sexually molested); they may believe that the police will not be able to apprehend the offender; they may fear serving as a witness; or they may be embarrassed by the conduct that led them to become the victim of the crime (e.g., a man robbed by a prostitute or a person who becomes the victim of a confidence trick as a result of his own greed or credulity). Some crimes also may not appear sufficiently serious to make it worthwhile to inform the police, or there may be ways in which the matter can be resolved without involving them (e.g., an act of violence by one schoolchild against another may be dealt with by the school authorities). All these factors are difficult to measure with any degree of accuracy, and there is no reason to suppose that they remain constant over time. Thus, a change in any one of these factors may produce the appearance of an increase or a decrease in a particular kind of crime when there has been
no such change or the real change has been on a much smaller scale than the
statistics suggest.

A third factor that may affect the picture of crime presented by official
statistics is the way in which the police treat particular incidents. Many of the
laws defining crimes are imprecise or ambiguous, such as those regarding
reckless driving, obscenity, and gross negligence. Some conduct that is treated
as criminal in one police jurisdiction may not be treated similarly in another
jurisdiction owing to differences in priorities or interpretations of the law.
Another practice that influences crime statistics is the recording process; the
theft of a number of items may be recorded as a single theft or as a series of
thefts of the individual items.

Criminologists have endeavoured to obtain a more accurate picture of
the incidence of crimes and the trends and variations from one period and
jurisdiction to another. One research method that has been particularly useful
is the victim survey, in which the researcher identifies a representative sample
of the population and asks individuals to disclose any crime of which they
have been victims during the period specified in the research. After a large
number of people have been questioned, the information obtained from the
survey is then compared with the statistics for reported crime for the same
period and locality, giving an indication of the relationship between the actual
incidence of the type of crime in question and the number of cases reported to
the police. Although criminologists have developed sophisticated procedures
for interviewing victim populations, such projects are subject to a number of
limitations. Results depend entirely on the recollection of incidents by
victims, their ability to recognize that a crime has been committed, and their
willingness to disclose it. This method is inapplicable to victimless crimes.

The United States Bureau of the Census began conducting an annual
survey of crime victims in 1972. By the late 1990s the survey included a
random sample of about 45,000 households in which approximately 95,000
residents age 12 and over were interviewed twice a year and asked whether
they had been the victims of any of a wide variety of offenses in the past six
months. The results of the survey found that total violent crimes had remained relatively stable until 1992, when rapes, robberies, and aggravated assaults declined and simple assaults increased. In the mid-1990s the number of simple assaults began to decline, and by the end of the 20th century total violent crime had declined by nearly one-third from its 1993 level. Property crime declined continuously from 1975 to the late 1990s, with the decline accelerating in the early 1990s. By 1995 crime was at about half the 1973 level, and the overall property crime rate fell another one-fifth during the next two years. By the late 1990s the rates of violent crime and property crime were at their lowest recorded levels. In contrast, the FBI's Uniform Crime Reports showed crime rising steeply throughout the 1970s and '80s and peaking in 1994. By 1998 the total number of serious violent and property crimes had declined by approximately 15 percent from its 1994 high. Comparing these two data sources, it can be estimated that about half of all violent victimizations and about one-third of all property victimizations were reported to the police. The most common explanation for the differences in the trends reported is that the victim survey data reflect the actual trends in the incidence of criminal behaviour, and the data in the Uniform Crime Reports primarily reflect increases in the reporting of crimes to the police by victims.

Many other countries have adopted victim surveys, including Britain, France, Germany, Sweden, Canada, Israel, and New Zealand. The United Nations (UN) sponsors an international crime victim survey.

An alternative approach favored by some criminologists is the self-report study, in which a representative sample of individuals is asked, under assurances of confidentiality, whether they have committed any offenses of a particular kind. This type of research is subject to some of the same difficulties as the victim survey-the researcher has no means of verifying the information and the subjects can easily conceal the fact that they have committed an offense at some time—but these surveys have often confirmed that large numbers of offenses have been committed without being reported and that crime is much more widespread than official statistics suggest.
5. Analysis of Crime

Knowledge of the types of people who commit crimes is subject to one overriding limitation. It is generally based on studies of those who have been arrested, prosecuted and convicted. These populations are not necessarily typical of the whole range of criminals, representing only unsuccessful criminals. Despite this limitation, some basic facts emerge that give a reasonably accurate picture of those who commit crimes. For example, crime is predominantly a male activity. In all criminal populations, whether of offenders passing through the courts or of those sentenced to institutions, men outnumber women by a high proportion, especially in more serious offenses. For example, at the end of the 1990s in the United States men accounted for approximately 80 percent of all arrests, 85 percent of arrests for violent offenses, and 90 percent of arrests for homicide.

At the beginning of the 21st century in Britain, the daily average population of the prisons consisted of approximately 60,000 men and 3,000 women. Nevertheless, in most Western societies the incidence of recorded crime by women and the number of women in the criminal justice systems has increased. For example, from 1994 to 1998 overall arrests of males in the United States rose slightly and arrests for violent offenses declined by more than one-tenth; conversely, overall arrests of females and arrests of women for violent offenses increased by more than one-tenth. These figures indicated a trend of increasing criminal activity by women and suggested to some observers that the changing social role of women had led to greater opportunity and temptation to commit crime.

However, an alternative explanation is that the change in the apparent rate of female criminality merely reflected a change in the operation of the criminal justice system, which routinely had ignored crimes committed by women. Although arrest data suggested that female criminality had increased faster than male criminality, the national crime victim survey showed that violent offending in the United States by both males and females had fallen in
the same years. In addition, the female murder rate in 1998 was at its lowest level since 1976 and about two-fifths below its peak level in 1980.

A second aspect of criminality about which there is a reasonable measure of agreement is that crime is predominantly an activity of the young. In both Britain and the United States, for example, the peak period for involvement in relatively minor property crime is adolescence from 15 to 21. For involvement in more serious crimes the peak age is likely to be rather higher from the late teenage years through the 20s. Criminality tends to decline steadily after the age of 30. Criminologists have sought explanations of this phenomenon—whether it is a natural effect of aging, the consequence of taking on family responsibilities, or the effect of experiencing penal measures imposed by the law for successive convictions—but the evidence is inconclusive. Not all types of crime are subject to decline with aging. Fraud and certain kinds of theft as well as crimes requiring a high level of business like organization are more likely to be committed by older men and sudden crimes of violence committed for emotional reasons may occur at any age.

The relationship between social class or economic status and crime has been studied extensively by criminologists. Studies carried out in the United States in the 1920s and 30s claimed to show that a higher incidence of criminality was concentrated in deprived and deteriorating neighbourhoods of large cities, and studies of penal populations revealed that the level of educational and occupational attainments was generally lower than in the wider population. Early studies of juvenile delinquents dealt with by courts disclosed a high proportion of lower-class offenders. Later research has called into question the assumption that criminality is closely associated with social origin in particular; self-report studies have suggested that offenses are more widespread across the social spectrum than the figures based on identified criminals would suggest.

The relationship between racial or ethnic origin and criminality is a difficult and controversial question. Penal populations probably contain a disproportionately high number of persons from some minority racial groups,
in the sense that the proportion of minority group members in prison is greater than the group's proportion in the general population. Criminologists have pointed out that this may be the result of the high incidence among minority racial groups of characteristics that are commonly associated with identified criminality, e.g., unemployment and low economic status and the fact that in many cities racial minority groups inhabit areas that have traditionally been high crime areas, perhaps as a result of their shifting populations and general lack of social cohesion. Further explanations are differential enforcement practices on the part of the police and the adherence of members of some minority groups to cultural standards that are in conflict with the general law.

6. Theories of Causation

Few modern criminologists would claim that any single theory constitutes a universal explanation of criminality or a valid predictor of future criminal behaviour in a particular population. A more common view is that many of the different theories offered may help to explain particular aspects of criminality and those different types of explanation may all contribute to the understanding of the problem of crime.

6.1 Biological Theories

Some theories attribute the tendency toward criminality to innate biological factors. The most famous of these is probably that of the Italian Cesare Lombroso (1835-1909), one of the first scientific criminologists, whose theories were related to Darwinian theories of evolution. His investigations of the skulls'and facial features of robbers led him to the hypothesis that serious or persistent criminality was associated with atavism, or the reversion to a primitive stage of human development. Another biological theory related criminality to body types suggesting that it was more common among muscular, athletic persons (mesomorphs) than among tall, thin persons (ectomorphs) or soft, rounded individuals (endomorphs). These theories have little support today, but there is some interest in the idea that criminality may be related to chromosomal abnormalities in particular, the
idea that so-called XYY males (characterized by the presence of a surplus Y chromosome) may be more likely to be involved in criminal behaviour than the general population.

Some criminologists have endeavoured to answer the question of whether biological factors are more important than social factors in criminal behaviour by studying the behaviour of twins. Various studies have shown that twins are more likely to exhibit similar tendencies toward criminality if they are identical (monozygotic) than if they are fraternal (dizygotic). The suggestion of genetic influences in criminal behaviour is supported by studies of adopted children carried out to determine the influence of the biological parent on criminality. One such study showed that the rate of criminality was higher among those adopted children who had one biological parent who was criminal than among those who had one adoptive parent who was criminal but whose biological parents was not. The highest rates of criminality were found among those children who had both biological parents and adoptive parents who were criminal.

6.2 Sociological Theories

Sociologists have proposed a variety of theories that explain criminal behaviour as a normal adaptation to the offender's social environment. One such theory known as differential association proposed that all criminal behaviour is learned behaviour and that the process of learning criminal behaviour depends on the extent of the individual's contact with other persons whose behaviour reflects varying standards of legality and morality. The more the individual is exposed to contact with persons whose own behaviour is unlawful, the more likely he is to learn and adopt their values as the basis for his own behaviour. The theory proposed by the American Robert K. Merton suggested that criminality is a result of the offender's inability to attain by socially acceptable means the goals that society expects of him faced with this inability, the individual is likely to turn to other, not necessarily socially acceptable objectives or to pursue the original objectives by unacceptable means. A development from this theory is the concept of the subculture-an
alternative set of moral values and conventional expectations to which the person can turn if he cannot find acceptable routes to the objectives held out for him by the broader society. This theory developed particularly with reference to delinquent gangs in U.S. cities has been disputed by other sociologists who deny the existence of any subculture of delinquency among the lower classes of society; the behaviour of gangs is for these latter sociologists an expression of widespread lower-class values emphasizing toughness and excitement.

A further group of sociological theories denies the existence of subcultural value systems and portrays the delinquent as an individual who subscribes generally to the morals of society but who is able to justify to himself particular forms of delinquent behaviour by a process of neutralization in which the behaviour is redefined in moral terms to make it acceptable. Control theory emphasizes the links between the offender and his social group- the individual's bond to society. According to this theory, the ability of the individual to resist the inclination to commit crime which may be an easy way to satisfy a particular desire depends on the strength of his attachment to parents, his involvement with conventional activities and avenues of progress, and his commitment to orthodox moral values that prohibit the conduct in question.\(^\text{32}\) It assumes that the criminal is not substantially different from any other individual except that he has become involved in the processes of the criminal justice system and has acquired a criminal identity. Through a process of rejection by law-abiding persons and acceptance by other delinquents which is a consequence of the criminal identity conferred on him by the courts, the offender becomes more and more socialized into criminal behaviour patterns and estranged from law-abiding behaviour. Eventually he comes to see himself cast by society into the role of a criminal and he acts out society's expectations. Each time he passes through the court system, the process is extended to form a process described as amplification of deviance.

\[^{32}\] Labeling theory by contrast portrays criminality as a product of the reaction of society to the individual rather than of his own inclinations and personality.
Radical criminologists change the focus of inquiry, looking for the causes of delinquency not in the individual but in the structure of society, in particular its political and legal systems. The criminal law is seen as an instrument by which the powerful and affluent maintain their position and coerce the poor into patterns of behaviour that preserve the status quo.

6.3 Psychological Theories

Psychologists have approached the task of explaining delinquent behaviour by examining in particular the processes by which behaviour and restraints on behaviour are learned. Psychoanalytical theories emphasize the instinctual drives for gratification and the control exercised through the more rational aspect of personality, the superego. Criminality is seen to result from the failure of the superego as a consequence either of its incomplete development or of unusually strong instinctual drives. The empirical basis for such a theory is necessarily thin. Behaviour theory views all behaviour criminal and otherwise as learned and thus manipulable by the use of reinforcement and punishment. Social learning theory examines the manner in which behaviour is learned from contacts within the family and other intimate groups from social contacts outside the family, particularly from peer groups and from exposure to models of behaviour in the media, particularly television.

Mental illness is the cause of a relatively small proportion of crimes, but its importance as a causative factor may be exaggerated by the seriousness of some of the crimes committed by persons with mental disorders. Severe depression or psychopathy33 may lead to grave offenses of violence. On a less serious level, depression may lead to theft or other uncharacteristic behaviour.

6.4 A Non-Western Perspective

The Chinese have adopted a Marxist interpretation of the causes of crime. Crime is viewed as a product of class society of exploitative systems

33 Sometimes described as sociopathy or personality disorder.
founded upon the institution of private property. Because the socialist system is considered by its proponents as incapable of producing crime, official theory has always looked outside of post-1949 Chinese society to find the causes of contemporary crime. A number of specific sources of criminal activity have been suggested: (1) external enemies and remnants of the overthrown reactionary classes (the latter referring to the government of the Republic of China in Taiwan) who infiltrate the country with spies and conduct sabotage; (2) remains of the old (pre-1949) society, such as gangsters and hooligans, who refuse to reform; (3) lingering aspects of bourgeois ideology that prize profit, cunning, selfishness, and decadence and thus encourage crime; and (4) the poverty and cultural backwardness that is seen as the legacy of the old society.34

While Chinese criminology, thus, adopts a social explanation of crime in capitalist society, it has little sympathy for the view that society is to blame for crime in contemporary China. The two main causes are seen to be backward thinking and ignorance. For this reason, crime is ideally to be fought and ultimately eliminated by thought reform and by education.

Currently, in many countries with a democratic system and the rule of law, criminal procedure puts on, that is, it is up to the prosecution to prove that the defendant is guilty beyond any reasonable doubt, as opposed to having the defense prove that s/he is innocent, and any doubt is resolved in favor of the defendant. This provision, known as the, is required, for example, in the 46 countries that are members of the, under Article 6 of the, and it is included in other human rights documents. However, in practice it operates somewhat differently in different countries. Similarly, all such jurisdictions allow the defendant the right to legal and provide any defendant who cannot afford their own with a lawyer paid for at the public expense (which is in some countries called a "court-appointed lawyer").

34 The Cultural Revolution (1966-76) has also been cited as a cause of crime; it is said to have confused notions of right and wrong and to have destroyed respect for authority.
Every criminal trial is a voyage of discovery in which the truth is the quest. It is the duty of the presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. The adversary system of trial being what it is there is an unfortunate tendency for a Judge presiding over a trial to assume the role of referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inequitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator and mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth. But this he must do, without unduly trespassing upon the functions of the public prosecutor and the defence counsel.

The object of criminal trial is to convict a guilty person when the guilt is established beyond the reasonable doubt, no less than it is court's duty to acquit the accused when such guilt is not so established. The correct approach of a judge conducting criminal trial should be that no innocent should be punished and no guilty person should go unpunished. It is no judicial heroism to blindly follow the oft repeated saying, let hundred guilty men be acquitted but let not one innocent be punished. It is undesirable to acquit a guilty person and/or punish an innocent. Any exaggerated devotion to benefit of doubt is disservice to the society.

Objective of Investigation

The object of investigation is not merely to enable the court to record conviction but to bring out the unvarnished truth. Under the law the

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36 Ibid.
An investigator is enjoined upon to unearth the crime. The duty of the police is to prevent and detect crime and to bring the accused to justice even though he is a police officer. It should not be tainted and aimed at to save the accused and not to bring him to justice. The main object of investigation is to bring home the offence to the offender. The essential part of the duties of an investigating officer in this connection is, apart from arresting the offender, to collect all materials necessary for establishing the accusation against the offender.

As early as in the year 1933, it was observed by the Allahabad High Court that true object of investigation of a crime is to discover the truth and not simply to obtain conviction; to bring out in evidence by the prosecution as a duty everything in favour of an accused and lay before the court all the evidence even though some of that evidence may result in acquittal of the accused. It is the duty of committing and the trial judge to be solicitous in the interests of the accused.

Stressing the importance of fair and impartial investigation, their Lordships of the Supreme Court in Jamuna Chaudhary v. The State of Bihar, observed that the duty of the investigating officer is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction but to bring out the real unvarnished truth.

Though it may be against the police officials, the investigation should not be tainted and aimed at to save the accused and not to bring him to justice. Under the law, the investigator is enjoined upon to unearth the crime and as soon as he receives the information about the crime he is to proceed to spot, ascertain the facts and circumstances of the case and arrest the suspected offender, collect the evidence relating to the commission of the offence, examine various persons including the accused, reduce their statements into

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42 Shakal v. Emperor, 34 CrLJ 689.
writing, to search the places and take into possession the things considered necessary for the investigation and to be produced at the trial and then his opinion as to whether on the material collected from any accused is to be placed before a Magistrate for commitment and to file a charge-sheet under Section 173, Code of Criminal Procedure.45

The duty of the police is to prevent and detect crime and to bring the accused to justice. In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well led, well trained, and well disciplined force of police whom it can trust; and though of them to be able to prevent crime before it happens or if it does happen, to detect it and bring the accused to justice. The police of course must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man’s house without authority. They must not use more force than the occasion warrants.46

In cases of crimes against women, the criminal justice system including the investigating agency and the Court must also display greater sensitivity to criminality and avoid on all counts soft justice.47 Their Lordships of the Supreme Court in *Dagudu v. State of Maharashtra*,48 has observed that the courts should nip in the bud the tendency of the police officers to use third degree methods against the accused persons during investigation in the larger interest of justice. Courts must guard against all excesses.

When investigation carried out is not fair, and then no importance can be attached to records of investigation.49 Stern action should be taken against investigating officers for false investigation.50 In *Aziz Ahmed v. State*,51 it was held by a Division Bench of Allahabad High Court that they attach great

45 *Ibid* at 1411.
46 Lord Denning master of the Rules in his book titled "The Due Process of Law", 1980 in Chapter 1 of part three, has observed about the role of the police.
48 AIR 1977 SC 1579.
49 1974 WLN (U.G.) 396 (Raj.).
50 *Sher Singh v. State*, 1980 CrLJ (NOC) 64.
51 1976 CrLJ 10.
importance to the impartial investigation. Investigating Officer should rule out the possibility of fabrication and his conduct should dispel suspicion.

Once investigation is held as being unfair, unjust and reckless, it is bound to cast its shadows upon the veracity of the prosecution case with all its evil consequences.\textsuperscript{52} When role of investigation officer was found to be wholly dubious and speaks of his connivance with the accused persons, non-impleadment of such accused persons creates a dent in the prosecution case.\textsuperscript{53} The investigation officer should not adopt indifferent attitude in investigating dowry death cases\textsuperscript{54}

To sum up where the entire evidence is of a partisan character, impartial investigation can lend assurance to the court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the court to sift evidence becomes very difficult.\textsuperscript{55} Investigation tainted with suspicion is always fatal to the prosecution case. His conduct should be above board.\textsuperscript{56}In case of murder in which where fair and undisputed investigation from local police is doubtful, court can direct C.B.I, to investigate & report, Court can also grant compensation.\textsuperscript{57}

The quality of nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law and going by the manner in which the investigating agency acted in this case causes concern to us. In every civilised society the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analyses

\textsuperscript{52} Rajendra v. State, 1988 AllCrR 323.
\textsuperscript{57} Shri Bihar Timungg v. Union of India, 1991 (3) Crimes 354 (Gauhati).
in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means the courts must remain ever alive to this truism. Proper results must be obtained by recourse to proper means; otherwise it would be an invitation to anarchy.58

Meaning of Investigation:

According to Section 2(h), Cr. P.C. investigation includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorised by a Magistrate in this behalf. Investigation starts after the police officer receives information in regard to an offence and it consists of the following steps:

1. Proceeding to the spot;
2. Ascertaining the facts and the circumstances of the case;
3. Discovery and arrest of the suspected offender;
4. Collection of evidence relating to the commission of the offence which may consist of:
   (i) The examination of various people including the accused and recording their statements, if the investigating officer thinks it necessary;
   (ii) The search of places, seizure of things considered necessary for the investigation and to be produced at the time of the trial; and
5. Formulation of opinion as to whether it is a fit case for the accused to be sent up for trial and, if so, taking steps to file charge-sheet.59

The word investigate used in Section 157 of the Evidence Act is not to be understood in the narrow sense in which the word is used in the Criminal Procedure Code. It must carry its ordinary dictionary meaning in the sense of ascertaining of facts, shifting of materials and search for relevant

In cases under The Prevention of Corruption Act laying a trap is a part of investigation. It is well settled that discovery and arrest of the suspected offender is one of the essential steps in the course of an investigation.

The final step in investigation-formation of opinion as to whether accused should be charge-sheeted or not, taking of search warrant, shifting of materials and search for relevant data come within the purview of the term investigation. But mere submission of charge-sheet or examination of books by custom officer is not investigation.

When information regarding a cognizable offence is furnished to the police that Information will be regarded as the FIR and the steps taken by the police pursuant to such information would amount to investigation as defined in Section 2(h) of the Code of Criminal Procedure, 1973, If it is deemed that such steps amount to investigation, statements made by any person to a police officer during such investigation may come within the scope of Section 162 of the Code of Criminal Procedure.

Once a police officer forms a definite opinion that there are grounds for investigating a crime, an investigation under the Code of Criminal Procedure has started. Anything said or done subsequently must be held to have been done or said during investigation. It is well established that the discovery and arrest of the suspected offender is one of the essential steps in the course of an investigation. Further, taking out warrant of arrest, arresting the accused, search and seizure etc. form some part of an investigation.

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67 Hosshide v. Emperor, 41 CrLJ 1940 329 (Cal.).
69 P. Sirajuddin v. Government of Madras, AIR 1968 Mad. 117.
arrest and detention of a person for the purpose of investigation of the crime form an integral part of the process therefore.\textsuperscript{72} But a proceeding for the collection of evidence would be an ‘Investigation’ only if it were a proceeding under the Code of Criminal Procedure, 1973.\textsuperscript{73}

An ‘Investigation’ is a proceeding under the Code of Criminal Procedure within the meaning of the third clause of Section 93(1). From this point of view a general search warrant issued by a Magistrate in aid of investigation under the Code is valid.\textsuperscript{74} Section (n) of the Code and Section 40 of the Indian Penal Code defined the term ‘Offence’. Offence means any act or omission which includes a thing made punishable under the Indian Penal Code, or any special or local laws with imprisonment for a term of six months or upwards whether with or without fine. Therefore, an act or omission or a thing made punishable by the Penal Code or under only special or local law is an offence punishable under the relevant law.

Section 154 In Chapter XII of the Code, contemplates laying of information of cognizable offences either orally or in writing to an officer of a police station who is enjoined to reduce it into writing, if made orally or under his direction and the substance thereof entered in the book kept in the police station in the manner prescribed by the state government. The officer in charge of the Police Station is prohibited to investigate only into non-cognizable cases without an order of the Magistrate concerned under Section 155(2). But if the facts disclose both cognizable and non-cognizable offence, by operation of sub-Section 4 of Section 155, the case shall be deemed to be a cognizable case and the police officer shall be entitled to investigate without any order of the Magistrate into non-cognizable offence as well. Section 156 gives statutory power to a competent police officer or a subordinate under his direction to investigate into cognizable offences. In cases of cognizable

\textsuperscript{72} 1975 CrLJ 1662 at 1665.
\textsuperscript{73} Kaverappa v. Sankanayya, AIR 1965 Mys. 214.
\textsuperscript{74} Husimara Industries v. Company Law Board, 1976 CrLJ 50.
offences receipt or recording of a First Information Report is not a condition precedent to set in motion of criminal investigation.

Section 157 provides the procedure for investigation. If the police officer in-charge of the police station on receipt of information or otherwise, has reason to suspect the commission of a cognizable offence and is empowered to investigate, he shall proceed in person or shall depute one of his subordinate officers not below the rank of the prescribed officer to the spot to investigate the facts and circumstances and if necessary to take measures for the discovery and arrest of the offender. The provisos (a) and (b) thereof give power in cases of minor offences to depute some other subordinate officer or if the investigating officer is of the opinion that there is no sufficient ground for entering on investigation, he shall not investigate the case.

Investigation consists of diverse steps - (1) to proceed to the spot; (2) to ascertain the facts and circumstances of the case; (3) discovery and arrest of the suspected offender; (4) collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons including the accused and the reduction of their statements into writing if the officer thinks fit (Section 161 Cr. P. C); (b) the search of places and seizure of things necessary for the investigation to be proceeded or at the trial (Section 165 Cr. P.C. etc.) and (c) recovery of the material objects or such of the information from the accused to discover, in consequence, thereof, so much of information relating to discovery of facts to be proved (Section 27 of the Indian Evidence Act).

On completion of the investigation, if it appears to the investigator that there is sufficient evidence or reasonable ground to place the accused for trial, the investigating officer shall forward to the court a report in that regard alongwith the evidence and the accused, if he is in the custody to the Magistrate. If on the other hand he opines that there is no sufficient evidence or reasonable grounds connecting the accused with the commission of the offence he may forward the report to the Magistrate accordingly.
There are some relevant provisions as to investigation in the Code of Criminal Procedure found in 4(1) and (2) (Procedure to be adopted for investigation of offences under the Indian Penal Code and other law), 36 (Power of superior officers of police to Investigate an offence), 41 to 60 (Provisions of arrest during investigation), 82 to 90 (Provisions as to proclamation and attachment), 91 to 105 (Provision of search and seizure during investigation), 154 (Investigation of a cognizable offence), 155 (Investigation of non-cognizable offences), 156 (Police Officer's power to investigate a cognizable case. This Section also deals with the power of the Magistrate to order for investigation); 157 (Procedure for investigation), 158 (Submission of report of investigation through superior officer of police and transmission of such report to the Magistrate), 159 (Power of the Magistrate to hold investigation and or preliminary Inquiry), 160 (Police officers powers to require attendance of witnesses for the purpose of investigation), 161 (Examination of witnesses by police during investigation), 162 (Use of statements recorded by the Investigating officer during investigation in evidence during trial), 163 (Police officer should not offer or make or cause to be offered or made to the witnesses to be examined by him during investigation), 164 (Recording of confession of accused and statements of witnesses), 165 (Issue of search warrant for the purposes of investigation, procedure when investigation cannot be completed in twenty four hours), 168 (Report of investigation by subordinate Police Officer), 169 (Release of accused when evidence is deficient), 170 (Provision of sending the case to Magistrate when evidence Is sufficient), 171 and 172 (Diary of proceedings in investigation), 173 (Submission of charge-sheet of final report on completion of investigation), 173(8) (Provision for further investigation), 436 to 450 (Provision as to bail and bail bonds), 457 (Disposal of case property during investigation), 461(b) (About the Irregularity as to order of investigation passed by a Magistrate who Is not authorised to pass such order), 465 (Effect of error, omission or irregularity in investigation, and 482 (Quashing of investigation) of the Code of Criminal Procedure, 1973.
For purposes of investigation offences are divided into two categories cognizable and non-cognizable. When Information of the commission of a cognizable offence is received or such commission is suspected, the appropriate Police Officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate.\(^7\)

Any officer-in-charge of police station may, without the order of a Magistrate investigate any cognizable offence which a court having jurisdiction over the local area within the limits of such station would have the power to investigate Into or try under the provisions of Chapter XIII (Section 156, Code of Criminal Procedure). But no Police Officer shall investigate a non-cognizable case without the order of the Magistrate having power to try such case or commit the case for trial (Section 155(2), Code of Criminal Procedure).

When a case relates to two or more offences of which at least one is cognizable the whole shall be deemed to be a cognizable."\(^9\)If some of the offences in a complaint are non-cognizable and some cognizable, then Magistrate ordering investigation by police under Section 156(3), Code of Criminal Procedure, commits no illegality.\(^7\)

The police have statutory right to investigate a cognizable offence. Section 154, Code of Criminal Procedure, 1973, deals with the information in a cognizable offence and Section 156, Code of Criminal Procedure with investigation into such offences and under these Sections the Police has the statutory right to investigate into the circumstances of any alleged cognizable offence without authority from a Magistrate and this statutory power of the Police to Investigate cannot be interfered with by the exercise of power under

\(^{75}\) *Avinash Madhukar v. State*, 1983 CrLJ 1833.

\(^{76}\) Section 2(0) and 155(4) Code of Criminal Procedure : *Ram Krishan Dalmia v. State*, AIR 1958 Punjab 172 .

Section 401 (old Section 439) or under the inherent power of the court under Section 482, Code of Criminal Procedure, 1973.78

The power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. Further, the use of the expression "as he thinks fit" in Section 159 makes it clear that Section 159 is primarily meant to give to the Magistrate the power of directing the police to decide not to investigate the case under the proviso to Section 157(1), and it is in those cases that, if he thinks fit, he can choose the second alternative of proceeding himself or deputing any Magistrate subordinate to him to proceed to hold a preliminary enquiry as the circumstances of the case may require. The Code does not give any power to Magistrate to stop investigation.79

When an information is received disclosing a cognizable case and the case is investigated and charge-sheet submitted for a non-cognizable offence, the Investigation would-be valid. In such investigation, there is no evasion of Section 155(2), Code of Criminal Procedure, 1973.80 Once, an investigation by the police is ordered by a Magistrate, the Magistrate cannot place any limitations on it or direct the officer conducting it as to how to conduct it.81 Prior obtaining of sanction under Section 197, Code of Criminal Procedure, is necessary only for taking cognizance of an offence by the Magistrate. But it is not necessary for investigating a cognizable offence.82 Section 156(3), Code of Criminal Procedure, refers to Judicial Magistrate and not to the Executive

80 Kanti Lal Takat Mal Jain v. State, 1970 CrLJ 799 (Bom.).
82 Emperor v. Nazir Ahmad, 46 CrLJ 1945 at 413.
Magistrate; therefore Executive Magistrate cannot direct investigation of a
cognizable offence.\textsuperscript{83}

The provisions of Section 155(2), Code of Criminal Procedure cannot
be rendered nugatory by regarding police report as a valid report under
Section 190(l)(b) of the Code of Criminal Procedure.\textsuperscript{84} The provisions of
Section 155(2) of the Code of Criminal Procedure, 1973 are mandatory.
Where objection to non-conformance with those provisions, is taken before
termination of the case, the illegality is material one not curable under Section
465 (old Section 537), Code of Criminal Procedure and vitiates the ultimate
order passed in the case.\textsuperscript{85}

Section 155(2) of the Code of Criminal Procedure, 1973 prohibits
investigation by a Police Officer Into a non-cognizable offence without the
order of a Magistrate. A violation of this provision would stamp the
Investigation with illegality. This defect in the investigation can be obviated
and prejudice to the accused avoided by the Magistrate ordering investigation
under Section 202 of the Code. The report of a Police Officer following an
investigation contrary to Section 155(2) could be treated as a complaint under
Section 2(d) and Section 190(l) (a) of the Code if at the commencement of the
investigation the Police Officer Is led to believe that the case involved
commission of a cognizable offence or If there Is doubt about It and
Investigation establishes only commission of a non-cognizable offence. If at
the commencement of the investigation It Is apparent that the case involved
only commission of a non-cognizable offence, the report followed by the
investigation cannot be treated as a complaint under Section 2(h) and Section
190(l)(a) of the Code. Whenever a report of a Police Officer relating to a non-
cognizable offence is brought to the notice of a Magistrate, he has to look Into
the matter and apply his judicial mind and find out whether (a) It Is a case
where re-investigation has to be ordered under Section 202 of the Code, or (b)

\textsuperscript{85} Lal Chand v. The State, 1964 (2) CrLJ 115.
whether it could be treated as a complaint under Section 2(h) and Section 190(l)(a) of the Code and if so cognizance could be taken, (c) whether it is a case where the report cannot be treated as a complaint under Section 2(h) and Section 190(l)(a) of the Code or (d) it is a fit case for taking cognizance taking into consideration all the attendant circumstances. If these aspects are not brought to the notice of or adverted to by the Magistrate at that stage and trial is concluded, the trial cannot be said to be vitiated on account of the defect as the defect in the investigation precedent to trial could be cured by Section 465 of the Code of Criminal Procedure unless failure of justice has been occasioned thereby.86

It is always an officer-in-charge of a Police Station who is to register a cognizable case and to start investigation of an offence which occurs within the limits of his jurisdiction. If he cannot himself proceed to the spot of investigation then he is to depute one of his subordinates for this purpose. If the officer deputed is below the rank of A.S.I, then officer in charge is invariably to take up the investigation in hand and get completed by himself or by one of his A.S.I's. An investigation conducted by Head Constable is always to be verified and completed by the officer-in-charge of P.S. See P.P. R. 25.1, 157 Cr. P.C. Similarly all officers superior in rank to an officer in charge of a Police Station can conduct investigation u/s 36 Cr. P.C. S. 168 Cr. P.C. further lays down "When any subordinate Police Officer has made any investigation under this Chapter (XII), he shall report the result of such investigation to the officer Incharge of Police Station." The officer so deputed enjoys all the powers given to him as Police Officer under various provisions of law. It may be material to point out in this connection that "No proceeding of a Police Officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section (156 Cr. P.C.) to investigate" (156 (2) Cr. P.C.

The statutory right of police to investigate into the circumstances of any alleged cognizable offence cannot be interfered with by the court in exercise of powers u/s 439 or 561 of Cr. P.C. The Court has no power to stop the investigation but only High Court can issue a writ of mandamus to restrain the police from misusing its powers where High Court under Article 226 Constitution of India is convinced that power of investigation has been exercised by a Police Officer malafide.  

As discussed earlier it is accepted law that court cannot interfere in investigation. The power of police of investigate is uncontrolled. Thus it is only in appropriate cases when investigation is malafide, the court can interfere to avoid miscarriage of justice only in exceptional cases. The High Court can also not interfere in investigation under Article 227 Constitutions of India which empowers High Court superintendence only on judicial or quasi judicial tribunals; the 

A police officer is empowered to investigate into any cognizable offence without the order of a magistrate. In respect of non-cognizable offence, the police officer has no power without an order from a Magistrate to commence the investigation. Where a Police Officer has received information about or has reason to suspect the commission of a cognizable offence, he must forthwith send a report of the same to a magistrate empowered to take cognizance of such offence upon a police report and to proceed in person or depute one of his subordinate officers to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offenders (S. 157). A magistrate receiving report from Police Officer relating to the commission of a cognizable offence may direct an investigation or if he thinks fit, at once, proceed or depute any magistrate subordinate to him to proceed, to hold a preliminary enquiry into or otherwise to dispose off, the case in manner provided by Code. (S.159). Power is also conferred upon certain magistrates to record statements or confessions in the 

1970 Cr. L.J. 764).
course of investigation (S. 164). When a search is made by the investigating officer, the record of the search must be sent to the nearest magistrate empowered to take cognizance of the offence. (S.165).

If an investigation cannot be completed within 24 hours the I.O. must send the accused for remand to the nearest magistrate together with a copy of entries in the diary relating to the case and the power is conferred upon the magistrate whether or not he has jurisdiction to try the case to authorise the detention of the accused in such custody as the Magistrate thinks fit. (S.167). If I.O. upon investigation comes to the conclusion that there is no sufficient evidence or reasonable ground of suspicion to justify forwarding of the accused to magistrate, if such person is in custody, to release him on his executing a bond with or without sureties, as such officer may direct, to appear, if and when so required before a magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. (S.169). If it appears to the I.O. that there is sufficient evidence or reasonable ground, the officer is bound to forward the accused in custody to a magistrate empowered to take cognizance of offence upon a police report and to try the accused or commit him for trial, (S. 170).

An I.O. must maintain a diary of his proceedings setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him and a statement of the circumstances ascertained through his investigation and a criminal court in course of a case under enquiry or trial in such court, has the power to call for the police diaries for the purpose of aiding it during such enquiry or trial. (S. 172). It is also prescribed that every investigation shall be completed without delay and as soon as it is completed, the I.O. shall forward to magistrate empowered to take cognizance of the offence on a police report, a report setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case. (S 173)."
There is no provision in the Code of Criminal Procedure, by which Sessions Judge can direct police to get accused identified during investigation.\textsuperscript{88} An accused cannot be compelled to give his specimen handwriting during investigation for being examined by the expert. A step further, an accused cannot be directed to give his specimen signature and handwriting in open court pending investigation. Even Section 73 of the Evidence Act does not permit a Magistrate to direct an accused at investigation stage to give his specimen handwriting and signature because if the case is under investigation there is no present proceeding before the court nor Section 5. The Identification of Prisoners Act does so permit.\textsuperscript{89}

For removing doubts it may be submitted here that during trial court can direct a person facing trial to give his signature and handwriting. It is not hit by Article 20(3), the Constitution of India.\textsuperscript{90} Similarly when the matter is at investigation stage, court is not entitled to pass any order by issuing summons or warrant against the accused for the production of a document or thing in his custody which is incriminatory against him.\textsuperscript{91} Though general search warrant can be issued for conducting search in premises even in possession of accused under Section 93(l)(c) of the Code of Criminal Procedure, 1973, and it would not hit Article 20(3) of the Constitution but accused cannot be compelled to be a party to such search.\textsuperscript{92}

An accused cannot be asked to take oath when he volunteers to get his statement recorded under Section 164, Code of Criminal Procedure. Such a confession is bad in law and is inadmissible in evidence. The fact of administering other at the recording of confession virtually means that the maker is compelled to give evidence against him, placing him in the status of a witness at the stage of investigation in violation of Article 20(3) of the

\textsuperscript{88} Hira v. State, 1980 All Cr.R. 327.
\textsuperscript{89} State v. Puli Ram, AIR 1979 SC 14: 1979 CrLJ 17.
\textsuperscript{90} M.P. Sharma v. Satish Chandra, AIR 1954 SC 300.
\textsuperscript{92} V.S. Kuttan Pillai v. Raka Krishnan, AIR 1980 SC 185.
Constitution of India. If there is any mode of pressure subtle or crude, mental or physical, direct or indirect but sufficiently substantial, applied by the police men for obtaining information from an accused strongly suggestive of guilt, it becomes compelled testimony violative of Article 20(3) of the Constitution.

While it is open to the High Court, in appropriate cases, to give directions for prompt investigation etc., the High Court cannot direct the investigating agency to submit a report that is in accord with its views as, that would amount to unwarranted interference with the investigation of the case by inhibiting the exercise of statutory power by the investigating agency.

A clear distinction is made by the Code between an inquiry and an investigation. An inquiry relates to a proceeding held by a Court or a Magistrate, while an investigation relates to the steps taken by a police officer or a person, other than a Magistrate, who is authorised by a Magistrate for the purpose. An inquiry starts by asking questions, i.e., interrogation, rather than by inspection or, figuratively, by a study of available evidence. But an investigation is a thorough attempt to learn the facts about something complex or hidden.

The provisions of Section 167, Criminal Procedure Code are supplementary to Section 57. The object of the Section is to see that the person arrested by the police is brought before a Magistrate with the least possible delay in order to enable the latter to judge such person has to be kept further in the police custody and also to enable such person to take any representation in the matter.

96 Hoshide v. Emperor, AIR 1940 Cal 97.
A callous and inordinately prolonged delay of ten years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason) in the investigation and original trials of pending cases for capital offences punishable with death would plainly violate the constitutional guarantee of a speedy public trial under Article 21. 99

Though an officer-in-charge of a police station is armed with a statutory right and power to investigate a cognizable offence without the permission of Magistrate, but he on account of number of reasons, often does not choose to investigate the report of each and every cognizable offence. Hence, the framers of the Code of Criminal Procedure in their wisdom empowered a Magistrate, who is authorised to take cognizance of an offence to make order to investigate a cognizable offence.

Research Hypothesis

In spite of multifarious efforts and multidimensional strategies, policies and plans of government, poverty, backwardness, illiteracy, unemployment, socio economic exploitation and increase in crimes against vulnerable Sections of our society etc. are writ large on the faces of Indian masses. The increasing crimes and the deficiencies in the investigation conducted by the police tempted the researcher to study thoroughly the working of the criminal justice system. In view of the deficiencies – institutional, functional as well as administrative in the existing criminal justice system, the present study focuses attention specially on the following basic issues:

- Assessment of various provisions regarding investigation and trial in India and extent of contribution of legislative, executive, administrative, judicial and other variables of our system in conducting the criminal investigation and trial.

• To study analytically the criminal justice system and the study of case laws and to find out lacunae in our investigation and trial system which have hampered the desired level of attainment of justice.

• To evaluate the legislative provisions regarding criminal investigation and trial and the institutional deficiencies in their framework and policies.

• To analyze the perceptible gap between the theoretical framework and its functioning and to identify and gauge factors which have frustrated our criminal justice system.

• To assess and evaluate the judicial approach toward the criminal justice system and the role of judiciary in molding the present legal system to suit the needs of the society.

• To analyze the prevailing legal flaws and to chalk out the requirements for molding milieu based on justice, equality and freedom.

• To analyze the co-ordination between investigating agencies of the different states and the central investigating agencies and more effective, viable and result oriented functioning of these agencies.

• Last, but not the least is to suggest in the light of the findings of the study, ways and means of upgrading the policy postulates and legislative framework to remove institutional deficiencies to strengthen the criminal investigating agencies.

**Research Methodology**

The present study is primarily theoretical in order to evaluate the efficacy of criminal procedure which includes investigation and trial in India. Keeping in view the socio-legal nature of the hypothesis, the research methodology has been chosen in such a manner as to effectively co-ordinate the case laws derived from various sources and to establish a linkage between them in order to highlight the issues of academic and practical interest. The
pure legal approach has been diluted to some extent by frequent references to socio-legal aspects. Accordingly the legal material has taken from official reports etc. The present study has critically analysed the case laws taken from journals, books, commentaries etc. Thus, both legal material and case study have been used to analyze the phenomenon under study.

Greater emphasis in this study has been on the secondary data. The existing legal and extra-legal literature available in form of books, articles, monographs, research papers, decided cases etc. was collected, assembled and analyzed to trace the development of the idea of justice. The relevant policy postulates, legislative, administrative, judicial and informal measures were analyzed.

Plan and Structure of The Study

The study has been conducted under the following rubrics:-

**Chapter 1** is on introduction viz. the present Chapter examines the definition of crime, concept of crime, general principles of crime, measurement of crime and theories of causation. It discusses the scope and concept of investigation and trial and also the various progressive developments, and legislative changes made during all these years since independence. It also discusses the institutional or other functional factors relevant to criminal investigation and trial.

**Chapter 2** deals with the historical background of the criminal justice system which includes evolution of the police in India, elements of criminal responsibility and its dimensions, and its historical development. A remarkable feature of the administration of criminal justice in ancient India was that, although the concepts of crime and punishment were highly developed, no serious attempts were made to forge an organized and effective instrument of law-enforcement in the form of an investigative and preventive agency. Attempts have been made to study the changing patterns of criminal law in different countries like U.K, U.S.A and other countries and its implementation in different periods of Indian history.
Chapter 3 deals with the objectives of the criminal trial and investigation which includes the basic principles of interpretation as to penal statutes, concept of fair and speedy trial and objects of investigation. Every criminal trial is a voyage of discovery in which the truth is the quest. The public interest demands that the guilty person should be punished while events are still fresh in the public mind and that the innocent should be absolved as early as, is consistent with a fair and impartial trial. The sole aim of the law is approximation of justice and assurance of fair trial is the first imperative of the dispensation of justice. Interrogation is an important part of investigation and helps a lot in detecting crime and criminal. It is the hardest part of investigation. The object of investigation is not merely to enable the court to record conviction but to bring out the unvarnished truth. The main object of investigation is to bring home the offence to the offender.

Chapter 4 deals with basic rights and privileges of an accused in a criminal trial likes right of presumption of innocence, right of the accused to know the specific grounds of his arrest with reference to constitutional rights of a citizen, right to know the power of arrest, right of examination by medical practitioner, right of the person arrested to be brought before the magistrate without delay, right of the accused to be defended by counsel of his choice and right of cross-examination etc.

Chapter 5 deals with practice and procedure of summons and summary trial. It includes provisions regarding insufficient grounds for dismissing the complaint and acquitting the accused for absence of the complainant, maintainability of second complaint and remedies available to the complainant against the order dismissing complaint in default of his presence.

Chapter 6 deals with trial of police challan-warrant cases by magistrate. It includes procedure where accused is not discharged and provisions regarding acquittal or conviction. This chapter also studies the different dimensions of complaint viz. dismissal of complaint, Maintainability of Second Complaint on same facts in exceptional circumstances or issue of process on final report under Section 156(3) and order of dismissal etc. To
make the present study more meaningful a brief study of case laws has been undertaken. Thus, the scheme and purpose of Chapter-6 is to highlight the existing situations and conditions of different provisions relating to warrant trial. This chapter also analysis the theoretical assumptions with practical problems of human life, so that more workable proposition could be evolved.

**Chapter 7** deals with trial of session court- practice and procedure. The Criminal Procedure Code, 1973 has classified trial into two groups namely Sessions Trial and Magisterial Trial depending on the gravity of the offences and the punishment prescribed therefore. This chapter analyses the relevant provisions as to session trial. It includes provisions regarding alteration of charge, framing of charge and discharge of accused.

The concluding **Chapter 8** attempts to draw conclusion from the study of the concept of criminal investigation and trial in earlier chapters including case study and suggestions for a viable frame work for the achievement of a social order based on equality and justice devoid of any inequality, discrimination and injustice. Various suggestions have been given for the modernization of criminal investigating agencies and to prevent the delay of trial. The object of the investigation and, in fact, the entire Criminal Justice System is to search for truth. To achieve this objective, the investigating officers must be properly trained and supervised and necessary scientific and logistical support should be made available to them. However, at the same time it is also necessary that responsible behaviour is shown by the police and the investigating agencies. It is important that the plan of action, strategy, operational programmes, actionable information are not disclosed to the accused and sources of secret information must not be shared with the media.