CHAPTER - III

RESEARCH DESIGN AND METHODOLOGY

Theoretical Perspectives of Crime and Punishment:

Crime is a complex phenomenon. It is an age-old social problem. The nature of crime has changed from time to time and place to place. It has been a great threat to the social organisation. The reaction to crime also has varied from time to time.

Social scientists belonging to various disciplines have tried to analyse Crime and the prevention of crime by evolving many theories. The prevention and the control of crime is implicitly or explicitly based on the causation of crime.

The most widely discussed theory of crime is ‘Theory of Anomie’. Emile Durkheim, the French sociologist has described Anomie not simply as ‘normlessness’, but as the more or less collapse of social solidarity. He has further described it as the weakening of the fundamental bonds uniting individuals in a collective social order so that each person is forced to go it alone.1

Robert Merton has made an analysis of anomie as a source of crime. He has explained certain types of crimes in terms of the social structure. He
Morton was inspired by the classic work of Durkheim on suicide and anomie. Merton has argued that the relative normlessness in society is related to the nature of modern social structures.

Anomie theory discusses three factors which tend to produce crime. They are cultural goals, institutionalised means for achieving these goals and social-class differentials in access to the means.

According to other crime control theorists like Reiss (1951), Nye (1958), Reckless (1961), Sykes and matza (1957) and Hirachi (1985), crime and delinquency are expected in conditions where controls were not effective.

Edwin H. Sutherland, an American Sociologist proposed differential association theory which is based upon the following propositions. They are as follows:

1. Criminal behaviour is learned.
2. Criminal behaviour is learned in interaction with other persons in process of communication.
3. The principal part of the learning of criminal behaviour occurs within intimate personal groups.

4. When criminal behaviour is learned, the learning includes (a) techniques of committing crimes, (b) the specific direction of motives, drives, retionalisations and attitudes.

5. The specific direction of motives and drives are learned from definitions of the legal codes as favourable or unfavourable.

6. A person becomes delinquent because of excess of definitions favourable to violation of law over definitions unfavourable to violation of law.

7. Differential association may vary in frequency, duration, priority and intensity.

8. The process of learning criminal behaviour by association with criminal and anti-criminal patterns involves all of the mechanisms that are involved in any other learning.

9. While criminal behaviour is an expression of general needs and values, it is not explained by these needs and values. Such non-criminal behaviour is an expression of the same needs and values.\(^5\)

The differential association theory thus explained the process of processes by which individuals acquire criminal behaviour with help of above mentioned propositions. Later E.H. Sutherland substituted the notion of differential social organisation through which he explained why crime rates were differentially distributed in societies.\(^6\)
Theory of Demonology believed in 'possession of evil' as a cause of crime. This theory was dominated by the super-natural explanations regarding crime. To prove the guilt of the individuals, they were subjected to painful horrible situations. In later times, this type of thinking and explanation was treated as unscientific as it could not be empirically verified. The English indictment used as late as the nineteenth century not only accused the defendant of violating the law, but also of "being prompted and instigated by the devil and not having any fear of God before his eyes."7

Another theory by classical school of thought made emphasis on individual deviation. This theory pleaded that human beings had free will and their behaviour was guided by hedonism. This opinion held that man governs his behaviour by considerations of pleasures and pains. Italian Mathematician, Ceasare Bonesana Marchese de Beccaria (1938-1974) applied this doctrine of free will to the penal reformation, pleading for less arbitrary and more server forms of punishment than before. He proposed that punishment should be just severe enough as to exceed the pleasures incurred by the offender in committing the crime.

Jeremy Bentham (1748-1832) an English philosopher also explained the criminal behaviours as a result of free will and hedonistic calculus.8

The theory put forth by the Cartographic school (1830) about crime was based on Geographical and social conditions. Quetelet and A.M Guerry
The pioneers of this theory. The pioneers of this school were basically concerned with the distribution of crimes on the basis of Geographical and social conditions.9

The search for a multi-facetal explanation of crime has been attributed to Cesare Lombroso (positive school) (1835-1909).10 Lombroso's theories of crime were based on Biological explanation. He advocated the study of the criminal rather than crime. Lombroso was against the theory of punishment based on abstract metaphysical and legal thinking.

Enrico Ferri another Italian expanded the theory of positivism explained by Cesare Lombroso. Enrico Ferri laid more emphasis on the interrelation of social, economic and political factors as being contributory to crime.11 He further contended that criminality could be explained by understanding the interactive effects among physical factors such as (race, geography and temperature), individual factors (such as age, sex and psychological variables), and social factors (population, religion and culture). He related the control of crime to social changes. He proposed subsidized housing, birth control, public recreation facilities, freedom of marriage and divorce for the working classes.

This ideology of Enrico Ferri Partly was in accordance with socialistic approach to crime which was based on the writings of Marks and Engles.
The idea of determining crime on the basis of biological and physical factors was continued by Charles Goring, Kretschmer, Hooton, Sheldon, and Glueck.

Sigmund Freud (1859-1939) developed a psychogenic theory which viewed crime as a symbolic expression of the inner tensions and 'Acted out' expression of untrained self control of mind. Applying this view Franz Alexander and William Healy continued the study on criminal behaviour. French psychologist Alfred Binet (1857-1911) used the theory of Intelligent Quotient (IQ) to explain the crime.

Thus diverse theories have been proposed by different sociologists to identify the causes of crime and criminal behaviour. However no theory can be considered complete. There are classical theories which made attempt to explain crime and criminality but were not considered scientifically sound due to various reasons. However, in recent times efforts have been made to lay the foundation of scientific themes.

Harry E. Allen suggests three levels of analysis as follows:
1. The structural level, consisting of theories explaining crime as a product of forces external to the individual and beyond his or her control, such as urbanisation industrialisation, social class and political economy.
2. The systems level compared theories explaining crime as a function of institutions, such as the family, peers and voluntary associations.
3. The individual level consisting of theories focusing on the conditions surrounding the act itself. The British criminologist Ian Taylor, Paul Walton and Jack Yong refer to, the first two levels as the wider and immediate origins of the criminal act. The same is interpreted as the funnel effect of forces contributing to the commission of crimes. The same is shown in the figure below.

Fig. The Funnel Effect of Forces Contributing to Commission of the Crime.
The theories about crime from early times have helped society to give a new shape to criminal justice system. Particularly in the handling of offenders through the various types of punishments.

The handing down of criminal punishment as a reaction to crime has undergone many changes through the ages. It can be clearly understood when we look into the evolution of punishment based on different ideologies and purposes.

**Retribution** is the primitive response to the criminal behaviour. It involved the principle of an "eye for an eye and a tooth for a tooth." It was based on theory of retaliation. "The ancient principle of lex talionis gained first written exposition in the code of Hamurabi which was written in 1750 years before the birth of Christ, and has no Utilitarian goals".¹⁶ Punishment based on this theory was considered in-human and did not serve the purpose of society.

**Restitution** - the theory underlying restitution was to make up the loss suffered by the victims by the offender. Money was used to rectify the wrong done by the criminal. Many years before the birth of Christ, King Ur-Nammu of the ancient Sumerian kingdom of Ur issued a code that eliminated vengeance from criminal procedure code. He instituted fines and restitution in place of mutilation and other ancient penalties.
Expiation - The ideology of this theory is to make the offender to atone his crime through suffering. The objective of this was to do away with punishments involving physical torture. It is the most accepted and used theory of the punishment. Cesare Beccaria held that the “Intention of punishment should not be torture the criminal but to prevent others from committing the similar offense.” From this, one can understand that punishment should not act as an end but as a means to achieve an end in social control.

Protection - This theory involves punishments through imprisonment. This detains the offenders and confines him to prevent anti-social activities by restricting his movements. This type of punishment is said to serve the purpose of social defense through incarceration.

Reformation - This ideology evolves a therapeutic approach. The criminal is treated as a sick person and crime as disease. More emphasis is made on the treatment of the criminal engaging him in the rehabilitative programmes. This theory of punishment is different from other theories which in general believed either in general deterrence or specific deterrence. This reformation approach was used in the late 17th century by Quakers, but did not develop till early 20th century.

Lee H. Bowker stating about the rationale of punishment he quotes that “As human beings, we are not content merely to act. We need to rationalise and justify our actions. As members of societies and smaller social groupings, we are similarly motivated to justify actions officially taken on behalf of the group.” Thus, reaction to crime was rational.
The early criminologist generally seem to have failed to understand that general punishments such as capital, corporal, transportation, exile, slavery, confinement imprisonment and fines are not as effective as selective individual punishments.

One may, at this stage point out that there are two clear ideologies relating to reaction towards criminal behaviour. The classical theory believed that means of preventing crime was to punish the criminal rather than the anticipated pleasure derived in the commission of crime. It believed in the punitive approach designing the punishment fit for the crime. The general and specific deterrence was the basic rationale of the theories of this school. The positive theory contended that criminals are motivated by either individual personality defects or societal imperfections. This theory believed in the correctional approach in the prevention and control of crime. It proposed methods of correction like counselling, behaviour modification, psychotherapy and others fitting to the individual criminal. It proposed programmes like elimination of poverty, racial discrimination, bringing basic structural changes in economic and political system in society if the crime is rooted in the social organisation.

Elmer Johnson has argued that punishment is not an effective social control of reducing crime. The alternative to this punishment could be reintegration of the offender into the socio cultural environment with which he is familiar. The complexity of the socio-cultural environment could be
changed by a process of gradual internationalisation of community standards through community based corrections.

Correction in the behaviour of the criminals, according to Harry E. Allen and Clifford E. Simonsen, have various components. It is poorly connected network of many other sub-systems. Most of these sub-systems are directed to specific kinds of clientele. Probation is one such sub-system of correction which is not in tune with institutional programmes according to Allen and Simonsen. Probation has been accepted as a correctional alternative to incarceration by many correctional workers.

The Probation system, like other correctional devices in the administration of criminal justice, suffers from some internal and external factors. Probation is now said to be only a ‘let off’. The objectives of the probation are now seriously being criticised.

Dennis Sullivan, in the National Council on Crime and Delinquency Training Center publication states “... it is questionable whether bureaucratised probation organisation with their stress on routinisation and their centralised decision making processes are flexible enough to meet the change occurring within the environment of the community. ...”

Examining closely, the role of probation officers and the other work they are assigned, E.H. Sutherland and Donald R. Cresy observe critically that
the effectiveness of supervision and guidance is diluted if the number of probationers are not restricted and also if the officers lack training.22

The National Advisory Commission on Criminal Justice Standards and Goals has expressed that probation presently has failed to develop a system for selecting an offender for probation and a system for supporting and serving the needs of probationers. This failure of probation is due to inadequate administrative structure, poor finance, poorly trained staff and lack of required resources.23

Irving Halpern, while critically analysing the work of a probation officer, observes that the probation officer does more of surveillance functions rather than service functions. His work is a routinised and mechanical form of haphazard surveillance. This is due to inadequate financial assistance, non-qualified staff, failure to use standard methods of treatment and staggering case load size.24

S.P. Sreevastava evaluating the probation system states that the actual practice of probation sharply disagree with stated principles and procedures. He further concludes that in probation there exists enormous disparity between proposed standards and the reality of practice.25

Many authors have criticised the quality and validity of the pre-sentence report by the probation officer. They feel that the administration
of probation has to undergo a change according to the changing concept of probation. Probation which is supposed to be based on medical model, needs to be shifted to community based model, thereby evolving the community resource management to help the probationer. This would enable the probationers to readjust and reintegrate into the community as an independent individual.

The National Advisory Commission on corrections has suggested the following guidelines to implement an effective system for delivering the services to all probationers.26

1. Develop a goal-oriented service delivery system.
2. Identify service needs of probationers systematically and periodically, and specify measurable objectives based upon priorities and needs assessment.
3. Differentiate between those services that probation system can provide and those that should be provided by other resources.
4. Organise the system to deliver services, including purchase of services for probationers and organise the staff around work loads.
5. More probation staff to be moved from court houses to residential area to develop service centers for probationers.
6. Re-define the role of probation officer from case worker to community resource manager.
On the basis of the ongoing discussion on the theories and the accepted models on the implementation of probation system as a correctional measure to rehabilitate and reintegrate the criminal into society.

This research work has been designed by keeping in mind the following objectives and hypothesis:

**Objectives:**

1. To understand the attitude of the probationers towards the practice of probation with reference to their socio-economic profile.
2. To assess the existing service conditions of the probation officer.
3. To study the role of judges in the practice of probation.
4. To study the involvement of Non Governmental organization in the programme of probation.
5. To identify the shortcomings in the organisation and administration of probation.

**Hypothesis:** Keeping in mind the objectives of the study the following hypothesis have been framed for the study as follows.

1) Probationers hail from nuclear families rather than joint families which offer more social security.
2. The political and psychological related crimes are more among respondents with higher education and upper caste while economically and socially related crimes are found among illiterate and lower caste offenders.

3. More the social responsibility and pressure on the upbringing more is the tendency to commit crime, hence married respondents show an inclination towards crimes than unmarried respondents.

4. Lower the level of education, more is the number of years under probation, hence more is the seriousness of the crime.

5. Better the level of education, more is the awareness of the probationer towards the concept of probation and better the chances of reintegration into society.

6. The probationer is not given the professional service.

7. There exists a wide gap between the functioning of the judges and probation personnel.

Selection of the Field/Area:

The study is based on a sample survey. The area of study is the Dharwad district of Karnataka state.

Karnataka state has 20 districts. The total geographical area of Karnataka is 1,91,800 sq.Kms. with a population of 4,48,07,000 according to 1991 census. In Karnataka state, Dharwad district is the third largest and populous district.
Methods of Data Collection

The main respondents of this study are probationers who are both literate and illiterate. They are located over a wide geographical area in Dharwad district. Hence, the following methods have been adopted to collect the requisite data for this research study.

**a. Questionnaire Method** : Since this study includes the literate and illiterate respondents, structured questionnaires/schedules were administered to the respondents to gather information. The structured questionnaires were administered to (a) Probationers (main respondents) (b) The probation officers who supervised the probationers during their period of probation and (c) The magistrates who are the arm of the law and are connected with dispensing probation to offenders.

The above three respondents have provided valuable data on three aspects of probation. For each suitable structured questionnaires were administered.

**b. Interview Method** : Exhaustive information from the respondents was gathered to elicit information on various aspects of the life of probationers. A structured interview method was followed to obtain the required information and used as supplement to the questionnaire method to elicit information that could not be obtained through the questionnaire method, to probe deeper into the life of the respondent in an informal way.
Discussion:

For this study, the researcher had wide ranging discussions with magistrates, both District and High Court level, probation personnel of district, state level and advocates to know their personal views about the system under study.

With the help of the above mentioned methods the required primary and secondary data was collected.

Sample Size:

The present study is designed to examine the concept of probation in the development of rational social criminal policy with reference to the probationers released under the probation of offenders Act 1958 under the supervision of the probation officer.

In view of the limited number of offenders released on probation each year, as per the information furnished by the district probation officer of Dharwad, the researcher has selected the probationers as the main respondents from 1980 to 1994. During this period the researcher could identified 82 probationers. These 82 probationers were personally canvassed a structured questionnaire schedule designed specially for eliciting data pertaining to the objectives of this research study.
Further, there are 20 probation officers working as per the probation of Offenders Act in Karnataka State. For the purpose of this study, all the 20 probation officers were selected. The required professional information was collected through a postal questionnaire after identifying them through the Department of Women and Children Development, Government of Karnataka.

All the 22 magistrates of Dharwad district were selected for collecting the information, relating to the participation of judiciary in probation by canvassing a questionnaire among them. The data collected from this source is not suited for statistical analysis. As the judiciary plays a very important administrative role in the effective implementation of probation system, the opinions and views of the judges could not be ignored. Hence the data collected from this source provides an insight into the functions of the judiciary. Therefore the data is supportive in nature and is not quantifiable. This source is qualitative in nature and is hence used in this manner only in this research study.

Pilot study

Before undertaking the present study a draft questionnaire was canvassed among a few of the main respondents (probationers). A pilot study was conducted to test the suitability of the structured questionnaire. In this study, the researcher could identify some defects or drawbacks, such as the lack of systematic arrangement of questions, inclusion of irrelevant questions
and missing some relevant questions etc. On the basis of the data obtained in the pilot study, the questionnaire was restructured and finished by the researcher by excluding irrelevant questions and by including certain questions which would elicit data to support the objectives of the study.

Limitations of the study

1. Since probation is a judicial function, one expects to have a complete record of the cases released on probation under the probation of Offenders Act. However, when the researcher approached the court for a detailed information regarding the cases released on probation under Probation of Offenders Act, it was found that in some cases there were no up-to-date records maintained. Under these circumstances, the researcher had to approach the probation officer to get the necessary information for the purpose of this study. However, it is possible that such information as was furnished by the probation officer may not include detailed information regarding cases released on probation under Probation of Offenders Act.

2. Though the researcher has taken the maximum care to collect the correct information from the probationer (main respondents of this study), the information so furnished is based more on their memory, than on written records. However, the researcher has tried to overcome these limitations through other accepted research methods.
3. The required information regarding probation was not easily available from the concerned agencies as probation as a method of treating offenders has not gathered much significance among the concerned agencies.

With these limitations, the researcher has made a sincere attempt to study the subject scientifically and to arrive at some important conclusions. The researcher has attempted to make positive suggestions to improve the system of probation in order to make its implementation more fruitful.

**Data Tabulation and Analysis:**

After the collection of the data the filled in questionnaire and schedules were edited by the author for completeness, accuracy and uniformity. The tabulations of data were done manually as well as with help of computers. The chi-square test has been used to test the association wherever needed.
References


4. Ibid.


6. Ibid., p.305.


8. Ibid., p.52.

9. Ibid., p.53.


12. Ibid.

13. Ibid.


15. Ibid., p.88.


23. George G. Killinger, Hazel B. Kerper, Paul F. Cromwell Jr., *Probation and Parole in the Criminal Justice System*

