Chapter I

INTRODUCTION, METHODOLOGY AND CRIMINOLOGICAL ORIENTATION

1.1. Statement of the Problem

The question of why some people commit crime is a subject which has taxed criminologists, psychologists and sociologists for many years, and there is no simple answer. If a number of lay-people were questioned as to why they thought some people committed crime, each would undoubtedly have his or her own view. The problem which faces both the lay-person and some academician is that they have a mistaken belief that there is one factor which can account for a particular type of criminal behavior. Each individual, with the possible exception of identical twins, possesses a unique collection of attributes. Although a number of individuals might share some similar attributes, it is unique way in which these attributes are combined within each person which makes the person what, or who they are. Similarly situations rarely have only one dimension which can fully explain their influence. Thus it is inappropriate to try to identify single causative factors when explaining any criminal act and criminal behavior is explained by people from a wide range of different backgrounds and academic disciplines. Bio-anthropologists attempted to explain criminal behavior within the physiological and genetic abnormalities, Psychologists are likely to look for relevant psychological factors, while sociologists will tend to focus on societal influences. Similarly environmental school of criminology consider important geographical factors in criminal behavior.

1.2. Objectives of the Research

The main objectives of this research are:

To select some specific kinds or categories of murder cases in India and to analyze those cases to find out the crime causation factors.

To identify criminological theories which will give us an explanation on crime causation in different categories of homicides or murder cases.
To examine the various criminological theories within a broader context of crime analysis and a wider understanding of criminal behavior in the context of decided cases of Supreme Court of India.

To find out criminological theories which are mostly applicable in Indian social conditions.

1.3. Hypothesis of the study

All human behavior is a result of an interaction between a large number of factors, some of which reside within the individual, and some of which are to be found in the external environment.

1.4. Research Methodology

This is an analytical and doctrinal research. In this research the researcher will use facts of the murder cases available from the reported cases and analyze these to make a critical evaluation of the cases to identify crime causation in the background of criminological theories. Therefore this research may be described as descriptive and analytical research. This research often use the term ex post fact research. In this study the researcher in the first stage will attempt to discover crime causation of selective decided cases of Supreme Court of India. This research often use the term ex post fact research. In the second stage the researcher will use the facts or information from those selected cases and analyze those to make a critical evaluation of the selected material. In selecting the criminological theory facts and circumstances of the each case towards causation of crime was given prime consideration. There may be more than one criminological explanations for any type of crime. Moreover the criminological explanation mentioned in this study is applicable only the circumstances of the respective case. The circumstances in any particular type of murder cases are varied and accordingly on an average 20 cases were selected from each category.

1.5. The rationale behind selection of cases

Among various types of 100 (ONE HUNDRED) murder cases decided by the Supreme Court of India, the Researcher has divided the cases into five major categories or types of murder cases, such as, (1) Murder of the Political
Leaders/Prime Minister; (2) Rape and murder; (3) Murder by intimate Family members (Domestic violence); (4) Murder due to property disputes; and (5) Dacoity and murder. The study also analyze the (6) sentencing principles adopted by the Judges in murder cases in the Apex court. This categorization and selection is primarily based on individual crime causation factors or interpersonal crimes within the ambit of Indian Penal Code. The categorization has been made keeping in view almost all the theoretical and criminological explanations of crime causation.

1.6. Concept of Crime

Crime has been defined both in legal terms as well as in social context. Paul W. Tappan has defined crime as “an intentional act or omission in violation of criminal law, committed without defence or justification and sanctioned by the laws as felony or misdemeanor”(See Elmer Hubert Johnson:Crime, Justice and correction, p.10). On the other hand Raffaele Garofalo formulated his theory of ‘natural crime’ which he meant acts which offend the basic moral sentiments of pity (revulsion against the voluntary infliction of suffering on others) and probity( respect for property rights of others) (see Francis Allen: Borderland of Criminal Justice, p.67). However a more broader explanation of crime has been given by Jerom Hall. Jerom Hall’s extensive analysis has resulted description of seven(7) interrelated and overlapping characteristics of crime:

1. Harm: The behavior must have certain external consequences called harm. A crime must have some harmful impact on social interests.

2. Outlawed: The harm must be outlawed. Engaging in immoral or reprehensible behavior is not crime unless the behavior has been specifically outlawed in advance because criminal law does not have a retrospective effect.

3. Conduct: There must be an intentional or reckless act or omission which produces the harmful consequences.

4. Mens rea: There must be criminal intention. The intention might be to give effect an outlawed harm.

5. Mens rea and conduct: There must be a fusion of mens rea and conduct (actus rea).
6. Causal relation: there must be a causal relation between the voluntary misconduct and the outlawed harm.

7. Punishment: There must be legally prescribed punishment.

1.7. Characteristics of criminal law

The characteristics that distinguish the criminal law from other set of laws regarding human conduct are politicality, specificity, uniformity and penal sanction.

1. **Politicality** is regarded almost universally as a necessary element of criminal law. Thus, violation of rules or laws made by the state are regarded as crimes. Violation of rules made by a trade union or church are not crime.

2. **Specificity** is an element which distinguishes criminal law from civil law. The civil law may be quite general. The criminal law, in contrast, gives a strict definition of a specific act or omission as offence and when there is doubt the judge is obliged to decide in favour of the defendant.

3. **Uniformity** is an element of criminal law because it attempts to provide evenhanded justice without respect to person’s social status. An act described as a crime is crime, no matter who commits it.

4. **Penal sanction**, as an element of criminal law, refers to the notion that violators will be punished or at least threatened with punishment by the state. Punishment under criminal law is supposed to be imposed decently and dispassionately by representative of the state which differs from punishment imposed by a mob.

1.8. **Murder as form of Violent crime**

Murder is one of the main forms of violent crime. Murder is also a controversial and highly emotive topic, arousing both fear and fascination, condemnation and condonement. We can be attracted to acts of violent individuals in one context, repelled in another. Our perceptions of the individual offenders – their brutality, their vulnerability, their culpability - also inform our judgements of their behaviour. One the one hand, an unprovoked murder can unleash a wave of public anger and abhorrence. On the other, we may sympathize with an individual who retaliates against long-term abuse with an act of premeditated violence. This study will focus
on violent behaviour of offenders committed murder in general and specifically in India during last three decades approximately. However the criminological explanation of crime causation varies greatly across time and place.

1.9. Durkheim’s concept of homicide.

No theorist has directly attempted to relate Durkheim’s concepts to homicide. However, Henry and Short (See David Lister: “Can There Be A Durkheimian Theory of Homocide? In Indian Journal of Criminology, Vol.20(2)July,1992) argued that suicide and homicide were extreme reactions to social stress and that social factors which increased the incidence of one behaviour in a society would increase the risk of outwardly-directed aggression (since the members in society would have reason to blame others for their misfortunes) and decrease the risk of inwardly-directed aggression. Lester (Lester, D. 1987, “Murder and Suicide: are they polar opposites? Behavioral Science and the Law, 5;49-60.) has reviewed the research on whether social indicators do indeed show opposite associations with regional rates of homicide and suicide. It would be easy to derive predictions about homicide using Durkheim’s concepts. Clearly low levels of social regulation in a society would be expected to lead to increased rates of all kinds of deviant behaviour, including homicide. High levels of social integration might lead to increased rates of homicide between friends and relatives in reaction to the frustrating constraints of close interpersonalities. In contrast, low levels of social integration might lead to increased rates of homicides between strangers.

Wood (Wood J.C. (2004) ‘A Useful Savagery’ The Invention of Violence in nineteenth Century England’ Victorian Culture, 9(1):22-42) observed that in eighteenth century England violence was not acknowledged ‘fact of life’; rather the modern state, community and home were all arenas in which violence was an accepted – indeed an expected- means of expressing legitimate social power. Murder is such a kind of violence which is highly contested and context-dependent concept. The elasticity of its borders, also makes the task of capturing the extent and nature of the phenomenon, let alone its causes, is extremely challenging, if not impossible. Henry (Henry, S (2000) ‘What’s the Scope of Violence in School Violence’, The Critical Criminologists, 10(2) 13-16.) defined violence as ‘the use of power to harm another, whatever form it takes’ noting that it may encompass many aspects beyond
Our knowledge on violence is mainly derived from the definitional discourse in the penal code of the respective country. For this reason a broad understanding of the concept of murder which this researcher is referring is necessary. For the study the researcher has accepted homicides which are defined in various section in the Indian Penal Code (IPC). The ambit of the study is to include all homicides as defined in sections 300, and also under section 304B(Dowry death),and 396(Dacoity with murder). Thus in this study the researcher has selected various murder cases that falls directly under section 300 IPC or convicted under section 300 along with any other section of IPC. In this way the researcher has divided the cases under the heading of Murder, Murder due to property disputes, political murder, rape and murder. Besides the study focuses on cases of Dowry death and Dacoity with murder.

1.10. Criminological Explanations and Approaches of Crime
Caution behind Murder

Explaining crime causation of murder raises some important questions. Accepting the facts of enormous heterogeneity of modus operandi and circumstances of cases is it possible that any one theory or theoretical paradigm can account for all these manifestations or or serve a common thread in all types of murder? Equally important, what sort of explanations are we looking for? Or are we interested in the immediate triggers (proximate factors) or background influences (distant factors)? Different sorts of answers are required for different types of murder and also levels of explanations. Therefore in this study the explanation(s) that come closest to helping us understand why the convicted person committed the murder on that particular occasions are retrospective reviews; however the motivating factors they reveal are much more common.

1.11. Biological and Clinical Approaches

Lombroso(1835-1909), the father of modern criminology, focuses upon the physical attributes as indicators of criminality. This is perhaps the most critiqued theory. The Biological school postulated that some acts of violence are committed by individuals with some form of pathology( e.g. neurological or personality disorder) and some evidence that certain people simply enjoy hurting and killing other people.

**1.12. Evolutionary Psychological Approaches**

Evolutionary psychology offers a rather more sophisticated appraisal of the possible roots of violence and has paved the way for a ‘biosocial’ criminology that acknowledges the complex interplay of biological being within the social environment. Daly and Wilson,( DALY, M. and WILSON, M.(1996) ‘The Evolutionary Psychology of Homicide,’ Demos, 39-45.) well known proponents of Evolutionary psychology in relation to homicide, proposed that homicide should vary inversely with the degree of genetic relatedness between the offender and victim(e.g. most family homicides occur amongst spouses as opposed to blood-relatives). Furthermore, there is research evidence that stepchildren incur an elevated risk of lethal and non-lethal abuse as those compared to biological parents(known as ‘Cinderella effect’). Other theories emphasizing ‘individual pathology’ focus on the psychopharmacological effects of various substances, like drugs and alcohol, on the body and mind (see BENNETT, T.H. and HOLLOWAY, K.(2009) ‘The causal connection between drug use and crime,’ British Journal of Criminology, 49, 513-31.) for more comprehensive knowledge in this aspect).

**1.13. Structural Explanations of Violence**

Structural theorists explain certain striking patterns in the social characteristics of victims and offenders. So they focus broadly upon the social organization (rather than disorganization) of society and how it foster the conditions for violence. Papachristos (2009:75) observed “individuals of minority groups, specially males between the ages...
of 17 and 28, who live in poor, isolated neighbourhoods bereft of social and human capital are the most likely perpetrators and victims of murder."Other criminologists like Polk, Brookman, Treadwell and Garland focused more specifically upon links between marginalization and development of violent forms of masculinity. Structural approaches are also useful in understanding the continued and widespread prevalence of violence against women and girls across the globe. According to Dobash and Dobash (1979) and Gill (2008) control over women is maintained in different societies through established cultural concepts. Indeed, gendered crimes are impossible to understand fully without considering the unequal position of women in society.


Major contribution to the study of violence has been made by cognitive and behaviourist psychologists, especially social learning theorists. Bandura provides important insights into how violent individuals interpret environmental cues and how they may have learned to behave violently. Goldstein (1999) argued that low-level aggression can escalate to violence across incidents as the perpetrators’ use of aggression is rewarded and reinforced over time. Hence person’s involvement in violence depends upon their interaction with the social environment- with some individuals having gained rewards for violence and others suffering adverse consequences. Rational choice theory (Crawford) also focuses upon the relative risks and rewards for committing criminal acts including violence.

In essence, cognitive explanations hypothesize that violent offenders interpret and appraise social information in a way that favours selection of an aggressive behavioural response( Crick and Dodge 1994; Seager 2005). Bandura(1990) propounded a theory of moral disengagement whereby offenders develop a number of cognitive techniques which allow them to avoid feeling guilty for their offences-such as displacement, diffusion of responsibility, distorting the consequences of an action, or dehumanizing the victim. Such individuals may also be likely to lack social and interpersonal skills which assist people to resolve potential conflicts. A number of attempts have been made to synthesize ideas from a variety of psychological theories of aggression. One that has recently been developed is the General Aggression Model (GAM) (Anderson and Bushman 2002) GAM works on the premise that each
individual brings a unique set of characteristics to a situation, such as genetic predispositions, personality traits, attitudes and learning experiences, which shape their arousal and cognitive responses to a given situation. Specially, an inherent predisposition towards aggressions combines with a series of experiences that prepare the individual to behave aggressively in different situations.

1.15. Situational and Interactionist Approaches

There are always remain questions about why particular acts of violence occur at a particular moments in time: why here? Why now? Why this victim? Situational and interactionist approaches address such questions by focusing upon the micro-environment of crime, and acknowledging that violence is dynamic and evolving event where the ‘actors’ mould each other’s vebehaviour within a particular physical and social context. There are many researches on this approach, but the illuminating early analyses of violent interactions was Luckenbill’s paper on homicide. Research had showed how victims precipitated or contributed to the escalation of violence, resulting in their death. Group violence is especially amenable to micro-situational analysis. Smeulers and Hoex (2010) in their exploration of the microdynamics of the Rwandan Genocide, aptly demonstrated how many normal individuals became involved in genocide due to complex interactional dynamics between planners and instigators and those that chose to join the violent situation. Athens (1997) analysed that individuals who had committed violent acts (including homicide) formed one of four possible interpretation of the situation: (a) physically defensive; (b) frustrative; (c) malefic, or (d) frustrative malefic.

1.16. Cultural and community Explanations: The importance of place

Hayward and Young provided that cultural explanation locate violence within its social setting (community or neighbourhood level) whilst often acknowledging the broader structural factors that contribute to establishing the living conditions within such settings. Research in this area has burgeoned recently with various criminologists exploring emergent forms of violent street culture and how these demand violent responses to interpersonal confrontation and vengeance or retaliation for infractions. (Anderson 1999, Brookman et al 2011; Hochstler and Copes 2003;
Jacobs and Wright 1999. More generally scholars have recently re-focused attention upon the criminogenic nature of the culture of particular neighbourhoods. They discovered that neighbourhood street culture has a direct influence on violence above the effect of individual level street code values, and in so doing reignite the Chicago School tradition of the criminogenic nature of particular areas as opposed to the inhabitants per se.

1.17. Integrated approaches

Though we have observed number of explanation of crime causation and different approaches, it is increasingly the case that scholars seek to integrate elements from various disciplines and approaches. For example, Bowling had linked the macro-structural forces of economic recession and poverty to emergence of despair and relative deprivation at the community and individual level in explaining dramatic surge in New York murder in 1980.

In conclusion, explanations of violence are extremely diverse. The questions asked are highly variable as are the initial suppositions held by the researchers. Debates continue whether violence is essentially functional or rewarding or pathological (Eisner 2009, Felson @009, Collins @009). Questions have also been raised recently about whether or not a general theory of violence is possible (see Karstedt and Eisner 2009) and whether a number of existing criminological theories can explain the overlap between offending and victimization (Schreck et al. 2008). However the criminological explanations of crime causation varies greatly across time and place.