## CHAPTER II
THEORITICAL BACKGROUND

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2.24.0. IDEAS OF INDIAN SCHOLARAS ON CRIMINAL BEHAVIOUR
Crime is not a recent phenomenon so much as talked about the magnitude of the problem. Many scholars have propounded their theories, explaining criminal behaviour. The knowledge contributed by the has helped to enrich our own understanding about the criminal behaviour in modern times, and to further our own ideas in explaining the behaviour. An attempt is made here to have a glance at the various theories of criminal behaviour.

There have been various theories of criminal behaviour. The primitive idea about crime was that man was righteous or unrighteous, that the criminal was a sinner, being prompted and or instigated by the devil (Satan) and not having the fear of God. The punishment was therefore vindictive and regarded as God’s Justice. Crime has been a topic of speculative thought for centuries. Most social scientists have found it necessary to make scientific observations about crime and criminal behaviour. Plato, in Republic, suggested in regard to crime causation that "man’s gold has always been the cause of many crimes". Aristotle noted in "Politics" that
"poverty engenders rebellion and crime". The permissibility of theft 'in the greatest need' was expressed by St. Thomas Aquinas in his *Summa Theologica*. Sir Thomas More in his *Utopia* argued that criminality is a reflection of society. These early writers felt the need for discussion and observation on crime, man and society. These philosophers focussed on the relation of crime to factors in the temporal world, it was common to attribute crime to the influence of powers outside this world. George B. Vold refers to this kind of explanations of criminal behaviour as the "Demonological". The Demonological explanations can be found in various forms. In primitive and preliterate animism it is held that evil spirits were responsible for criminal behaviour. During the Middle Ages, demons and devils were thought to be responsible for deviant acts and crime. Thomasz paid a great deal of attention to this theme, chiefly as it relates to the social attribution of crime and mental aberrations to diabolic possession. A great deal of writings between the Sixteenth and early Nineteenth centuries recorded that the ideas of "sin" and "moral defect" to be the causes crime and criminal behaviour. The criminal during these periods was viewed as having in some way an improper relation to the other world powers.
The writers of the Eighteenth century mark the beginning of a naturalistic approach to crime and criminal behaviour. In their philosophy the explanations of human behaviour were not to be found in supernatural forces but in man himself. While devoting their attention to crime, it was primarily in respect to the relation of the offender to the criminal law.

Among the French were Montesquieu (1749) in 'L’Esprit des Lois' considered criminal justice at length. Voltaire expressed opposition to the arbitrariness of justice and Mart, criticized legislation in 1780 in his 'plan de legislation criminelle'.

2.2.0 CLASSICAL SCHOOL OF CRIMINOLOGY

The most important ideal in criminological thought prior to Nineteenth century was to be found in classical school. The classical school represent the elimination of Eighteenth century humanitarian rationalism that preceded the application of scientific methods to the study of human behaviour. The writers of classical school directed their attention to the relation of people to the legal structure of the state. In reaction to contemporary
legal practices, these writers protested against the inconsistencies and injustices of the criminal law and its administration, proposing reforms that were more in keeping with their conception of human nature. The publication of "Tratto dei Delitti e delle Pene" by Cesare Baccaria in 1764 established the Classical School of criminological thought for the period. Other Classical writers of the period included Jeremy Bentham, William Blackstone, Samuel Romilly, Ludwig Feuerbach and Robert Peel. Among these thinkers the most influential was Baccaria, who saw the Criminal Justice System of his time as a massive obstacle to human liberation, and he was outraged by the arbitrary administration of justice that characterized this criminal Justice system. To correct this contradiction he urged that criminal law be restructured in accordance with what he saw as the natural rights of man. He further argued that justices should not interpret the criminal law in their judgements and to make this arbitrary interpretation less necessary, he pressed for more clear and more concise wording of penal statutes. His place in the history of criminology is secured by the fact that he laid a solid foundation for the far-reaching legislative changes in substantive and procedural criminal law that were to come later.
2.3.0 NEO CLASSICAL SCHOOL

This school of criminology flourished during Nineteenth century. It had a 'belief in the free will of man' like Classical School. Efforts at revisions and refinement in application of the classical theory of free will and complete responsibility - considerations involving age, mental condition, and extenuating circumstances - constitute what is often called the Neo Classical School. One of the changes of Neo Classical period was that children under 7 years of age were exempted from the law on the basis that they could not understand the difference between right and wrong.

2.4.0 POSITIVE SCHOOL

The positivists rejected the harsh legalization of the Classical School and substituted the Doctrine of Determinism for that of free will. They focused on the constitutional not legal aspect of crime. They paved a way for a philosophy of individualized, scientific treatment of criminals, based upon the findings of the physical and social sciences. As Schaefer (1969) said "their emergence symbolized clearly that the era of faith was
over and the scientific age had begun". The approaches of Cesare Lombroso, Enrico Ferri and Garofalo, the major figures in the positive or Italian school differ. But they all agreed that the study of crime should be on scientific treatment of the criminal, not on the penalties to be imposed on him once he was convicted.

Lombroso's first classification of criminals: he paid more attention to 'born criminal type'. He believed that he saw in criminals some of the same characteristics of savages, such as "low criminal capacity retreating forehead; highly developed frontal sinuses; ..... early closing of the cranial suture; ..... bulbed and crispy hair; and large ears ..... relative insensitivity to pain". He called this phenomena "atavism".

Another type of criminal defined by Lombroso was the 'criminaloid', that constitute one type of what he called 'occasional' criminals. In the case of criminals, precipitating factors in the environment, or opportunities to commit crimes constitute the most important elements in their etiology. Another category is known as 'criminals by passion'. These formed a separate species and were in complete contrast with the born
criminal ... in the harmonious lines of the body of the soul, and great nervous and emotional sensitiveness, as well as in the motives of crimes... such as love or politics.

Finally, Lombroso considered the female offender. With minor exceptions he said, her crimes are those of prostitution and abortion, which according to him are usually suggested to her by a husband or a lover. He pleaded for light penalties. Lombroso saw that society has no right to impose on a criminal any penalty that is harsher than the degree of wrong done by that person to the society. Lombroso believed that since different criminals have different needs, it is foolish to impose on all who commit the same offence, the same punishment. Thus, he became an early advocate of the 'indeterminate sentence'. He was not in favour of short term sentence and he favoured the death penalty only as a last resort. Garofalo classified criminality into two types: offences to the sentiment of 'pity' (e.g. attacks upon human life) and offences to the sentiment of 'probity' (e.g. attacks on property involving violence). The true criminal according to him is one who violates the sentiments of the society.
2.4.1 ENRICO FERRI

Ferri's classification of criminals closely parallels to that of Lombroso, but he gives more attention to the environment. According to Ferri "in order to be a criminal it is rather necessary that the individual should find himself permanently or transitorily in such personal, physical and moral conditions, and live in such an environment, which become for him a chain of cause and effect, externally and internally, that disposes him toward crime".

2.5.0 PHYSIOLOGICAL THEORIES

The belief that behaviour can be explained by some physiological characteristics of the body is an old one. The criminologist, Stephen Schafer has traced the belief that personality is determined by the shape of the skull as far back as Aristotle. He has traced the theory that there is a relationship between the type of crime and the body form of the criminal back to J. Baptiste dellaporto. But, the real development of 'Physiognomy', the study of facial features, is traced to Johan Lavater (1741 - 1801).
Physiological theories of behaviour were advanced by many Americans, especially physicians, but received very little attention.

2.6.0 PHRENOLOGY

Phrenology is the study of external confirmation of the cranium. It is mainly associated with the work of Franz Joseph Gall (1758 - 1828), who investigated the bumps and other irregularities of the insance. But the explanations given were rejected with the advent of modern experimental science of brain pathology.

2.7.0 HERIDITY THEORIES

2.7.1 STUDIES OF TWINS

The first person to study twins for the purpose of analyzing criminal behaviour was the German psychiatrist, Johannes Lange. He examined the male twins in several German prisons and wherever possible compared with non institutional twins. He found that ten of the fifteen pairs of identical twins were concordant. Heinrich Kranz (1936) in his study of twins found that 66 per cent concordance among identical twins.
2.8.0 XYY CHROMOSOMAL ABNORMALITY

This is one of the constitutional theory associating a physical characteristic with criminal behaviour. The X Chromosome is female and the Y male. Males are XY and females XX. The XYY Theory is concerned with the male who has an extra Y chromosome, a 'supermale' as some have called him. The abnormality was discovered in 1961, but did not receive much attention until papers were published in the mid 1960s by Patricia A. Jacobs and her colleagues in Scotland. They studied 197 inmates and found that a significant number of them were XYY. The studies do indicate that the XYY male is more introverted and has more asocial attitudes than the rest of the population and that he has a tendency toward homosexuality and aggression. Because of methodological problems no reasonable conclusions can yet be drawn on causal relationship between XYY male and his criminal behaviour.

2.9.0 STUDIES ON FAMILY LINES AS EVIDENCE OF INHERITED CRIMINALITY

2.9.1 Göring's Study

In his study of the English convicts, Göring used techniques developed by Galton and Karl Pearson and
attempted to show that the correlations were due to heredity, not environmental causes.

2.9.2 DUGDALE’S STUDY OF JUKES

Richard Dugdale (1877) published his study of 'Jukes family'. He emphasized the importance of heredity and environment as the causative factors of criminal behaviour.

2.9.3 GADDARD

Gaddard found that 89 per cent of the people in jails and prisons had feeble mindedness and tried to relate this to the criminal behaviour.

2.10.0 BODY TYPE THEORIES

Somoto type theories can probably be traced to the writings of Ernest Kretschmer (1926). His main contribution was his identification of three major constitutional body types. The 'leptosome' is the long, skinny individual; the 'athletic' has a developed skeleton and muscle, and the 'pyknic' is small and round. He also associated a type of temperament with each body type and
related these types to criminal activities. William H. Seldon also gave a body type, wherein, he has identified three types, called the 'ectomorph' is the tall and skinny body, the endomorph the short and fat body and the 'mesomorph' is the athelitic body and defined each in more detailed terms than kretchmers.

Eleanor and Sheldon Gluck (1930) often stressed the need to consider several factors in explaining delinquency.

2.11.0 BIOPSYCHOSOCIAL THEORIES

Juan B. Corte (1972) found a high statistical association between the physique and the need for achievement. He found that delinquents to be more mesomorphic than non-delinquents.

2.12.0 PSYCHIATRIC APPROACH

'Psychiatry' is a specialized field of medicine which also includes 'Psychology' and which specialize in the understanding, diagnosis, treatment and prevention of mental problems. Psychiatry advocates that each person is a unique personality and that only way he can be under-
stood is by means of a thorough case study. William Healy (1915) found that the delinquency could often be traced to early emotional disturbances of the child. In 1936, Healy and Bronner enunciated their theory of delinquency that delinquency is purposive behaviour that results when children meet frustration in their attempts to fulfill some of their basic drives such as the need for secure social relations both inside and outside the family, for new experiences, for recognition and for freedom from adult supervision.

2.12.1 CONTRIBUTIONS OF SIGMUND FREUD

According to Freud, humans suffer mental conflict because of the desires and energies that are repressed into the unconscious. These urges, ideas, desires and instincts, are basic to man but they are repressed because of the morality of society. Freud saw the original nature of man as assertive and aggressive. It is not learned but is deeply rooted in early childhood experiences. We all have criminalistic tendencies, but during the socialization process, most of us learn to control those tendencies. We develop strong and effective inner controls. But the improperly socialized child does
not develop an ability to control his impulses and he acts them out or protects them inward. In the case of the latter, he may become neurotic, in the case of the former, delinquent.

2.12.2 ALFRED ADLER (1877 - 1970) developed the concept of 'inferiority complex'. This might be an explanation of crime because the commission of a criminal act is one of the best ways to get attention, and the attention may help compensate for a person's sense of inferiority.

2.12.3 CARL GUSTAV JUNG (1875 - 1960) developed and popularized the concepts of 'extrovert' and 'introvert', which have been widely utilized in modern research of psychoanalysts, especially with reference to recidivism.

2.12.4 DAVID ABRAMHSON (1952) believed that all past experiences are important because they may show up in future behaviour.

13.0 ECONOMIC CONDITIONS OF CRIME

The impact of the environment upon man's behaviour has been the focal point of historical and recent attempts to explain criminal behaviour. One of the
earliest explanations of criminal behaviour involving the environment was based on the analysis of the economic conditions of the society in which the behaviour occurred. Explanation of criminal behaviour in terms of economic conditions has been traced back to Xenophon, Plato, Aristotle and the Romans Vergil and Horace and to the Utopians in cluding Thomas More.

2.13.1 KARL MARX

The view of 'economic determinism' was set forth by Karl Marx who advocated that private ownership of property results in poverty, which distinguishes those who own the means of production from those whom they exploit for economic benefit. The latter turn to crime as a result of poverty. Marx believed that economic system was the sole determinant of crime. Although he did not specifically develop a theory of criminal causation as such, he saw the mode of production as the causative element in all social, political, religious, ethical, psychical, and material life. Since crime is the result of economic system, the only way therefore to prevent crime is to change that system.
"In an ironic passage in "Theory of Surplus Value" (Vol.1, Appendix 'Digression on Unproductive Labour') Marx deals with the social consequences of crime. Commenting on the position that all remunerative occupations are useful, he noted that by this criterion crime is also useful. It gives rise to police, the court, the hangman, even the professor who lectures on criminal law. Crime, Marx went on, alleviates the monotony of bourgeois existence and provides the plots for great literature. It removes unemployed labourers from the job market and employs others in law enforcement, thereby preventing competition from reducing wages too far. In stimulating preventive efforts, crime advances technology.

2.14.0 CONTRIBUTIONS OF EMILE DURKHEIM

Emile Durkheim (1859 - 1917), an outstanding sociologist, made significant contributions to the study of all human behaviour. His outstanding contribution to the study of crime was his concept that crime is both 'normal' and 'functional'. No society can be completely exempt from it. According to him it is impossible for all people to be alike and to hold the same moral consciousness which would therefore prevent any dissent because
'the immediate physical milieu in which each one of us is placed, the hereditary antecedents and the social influences vary from one individual to the next and the social influences vary from one individual to the next and consequently diversity consciousness'. Since there will always be some individuals who differ from the collective type, it is inevitable that some of these intrinsic quality of their acts which is criminal. But because the collectivity will define their acts as criminal. Crime is therefore bound up with the fundamental conditions of all social life, and by that very fact is useful, because these conditions of which it is a part are themselves indispensable to the normal evolution of morality and law. He also argues that the crime to be functional and is a necessary prerequisite for social change. He also adds that if no deviation is permitted, society becomes stagnant. The criminal, says Durkheim, should no longer be viewed as a completely unacceptable human being. "On the contrary, he plays a definite role in social life. Crime for its part, must no longer be conceived as an evil that cannot be too much suppressed". Crime is one of the prices we pay for freedom.
2.15.0 MERTON'S THEORY OF ANOMIE

Merton's interest rested in the problem to discover why persons of the same environment behave differently. His thesis is that social structure exerts pressure on some persons to behave in non-conforming rather than conforming ways. According to him, all societies establish 'goals' spelling out that which are to be the aspirations of the individual members of the society. The society approves methods, or 'means' for obtaining goals. Some societies exert importance to 'goals', while others for 'means'. As long as all the individuals accept the socially approved 'means' for obtaining these goals, all behaviour is conforming, least deviating.

2.16.0 SUBCULTURE THEORIES

Thrasher (1927 - 1963) found that the gang develops as a result of social disorganization in the zone of transition.

2.17.0 TECHNIQUES OF NEUTRALIZATION

Gresham Sykes and David Matza suggest the
delinquents have accepted the norms and values of the society but have at their disposal a number of rationalizations or justifications that neutralize demands for conformity. These justifications which protect them from feeling of guilt or self-condemnation are called techniques of neutralization. Another technique of neutralization is to shift attention to the behaviour of those who disapprove of violations.

2.19.0 ECOLOGICAL THEORIES

Ecologists attempt to explain crime as a function of social change that occurs along with environmental change.

2.19.0 CULTURE CONFLICT THEORY

Thorsten Sellin (1938) argues that crime must be analyzed in terms of conflicts among norms. For every person, according to Sellin, there is a right and wrong way of acting the specific situations and these 'Conduct norms' are defined by the groups to which the individual belongs. In the normal process of social differentiation, these norms clash with other norms: culture conflict is
thus the inevitable result of conflict between conduct norms which give rise to Criminal behaviour.

2.20.0 RACIAL THEORIES

In some countries crime rates have historically been higher among Blacks than Whites, and this fact led many theorists in the past to conclude that race is the cause of crime. In 1943, William Borger said that with regard to studies on the relationship between race and crime, that little had been published and the material available was superficial.

2.21.0 HOME ENVIRONMENT AND CRIME

It has long been argued that a broken home is the cause of delinquency. Thomas M. Canon found a higher percentage of broken homes among delinquents.

2.22.0 MODERN CONFLICT THEORIES

Roscoe Pound (1942), a major proponent of the Sociological School of Jurisprudence in America, saw law not only as a social force but as a social product, reflecting the consciousness of the society. Conflict
theory on the other hand views law as a consequence of interests rather than merely as an instrument that functions outside of interest to resolve conflicts between interests. Law is the tool of the ruling class. Criminal law in particular, is a device made and used by the ruling class to preserve the existing order. (Richard Quinney: 1974).

2.22.0 CONFLICT OVER POWER AND AUTHORITY

Ralf Dahrendorf formulated a conflict theory of society which views the conflict centering around authority. Austin Turk (1969) emphasizes that criminology must study the differences between the status and role of legal 'authorities' and Subjects'.

"Law breaking is taken to be an indicator of the failure or lack of authority: it is a measure of the extent to which rules are ruled, decision-makers and decision-acceptors, are not bound together in a stable authority relationship". He says that the lack of sophistication is the key factor in explaining the behaviour of those who resist norms.
2.23.0 SOCIOLOGICAL THEORIES

Gabriel Trade (1834 - 1904) argues that man is not born a criminal. He saw criminal behaviour as primarily the result of social factors. He believed that important acts of social life are carried out under the domination of example. Upon this belief he formulated his theory of imitative, through which he explained the process of acquiring criminal behaviour. "Men imitate one another in proportion as they are in close contact". He also adds that "the inferior imitates the superior".

2.23.1 THE THEORY OF DIFFERENTIAL ASSOCIATION

To explain the difference in rates of crime and delinquency in terms of sex, age and race Sutherland suggests that in a complex society there are opposing definitions of what is expected and desirable in reference to the law. Some groups subscribe to criminal norms and thus support patterns of behaviour that are defined as criminal in the society. A person may associate with individuals and groups who uphold the legal code, but may also interact with people who donot. An essential idea in differential association Theory is that the learning of criminal behaviour involves differential exposure to
favourable and unfavourable definition of legal norms. Sutherland proposes that criminal behaviour is learned through interaction with other persons, and this learning occurs principally in primary groups. People have misinterpreted the term differential association to mean that one becomes a criminal through association with criminals.

Sutherland's theory is based on the assumption that 'a criminal act occurs when a situation appropriate for is as defined by the person, is present'. Situations are important because they may or may not offer an opportunity for a criminal act. Sutherland's theory has been very influential. Like any influential theory, it has been modified and elaborated. Sutherland's another major contribution is his development of the concept of 'white-collar crime' the term was coined by him in 1939.

2.23.2 SELF-CONCEPT AND CONTAINMENT THEORY

Walter Reckless and Simon Dintz (1967) outlined their belief that the important question that must be answered is why, given the alternatives of 'law abiding' and 'law-violating' behaviour, some people turn to one or the other. They advocated that the self-concept is the key
factor in explaining among the alternative of behaviour. A favourable self concept directs towards law abiding behaviour and an unfavourable self-concept directs him or her toward delinquent behaviour.

2.23.3 LABELLING THEORY

The question asked is here, why society labels some people as criminals or deviants. Kai Erikson (1962) has expressed the problem of deviancy by saying that it is not a characteristic inherent within the individual that distinguishes them from non-deviant persons but a property conferred upon certain people by others.

Becker (1963) thinks that the only difference between the delinquent and the non-delinquent is that the former has been labelled as deviant.

2.24.0 IDEAS OF INDIAN SCHOLARS ON CRIMINAL BEHAVIOUR

Smith's and Samhitas laid codes of conduct and specified punishment for violation therein. Siksā Smrīthi of Yagnavalka, the Manu's Dharma Samhita and Kautilya's 'Artha Sastra' are among the major works which paid due attention to the subject of criminal behaviour.
All the three authors felt that the antecedents and background, the situational and immediate causes which are responsible for the offense for which a criminal has been accused of are to be taken into consideration before awarding the final verdict.

The afore said theories have explained criminal behaviour in detail. Each theorist have tried to look at the problem in his or her own perspective. Some theories are even discarded and proved to be unsatisfactory in explaining the criminal behaviour. Hence, what is warranted is an eclectic approach of the theories to explain the factious crimes. This study is an attempt to explore and understand the nature of factious crimes in the light of the said theories.