

Crime in Capitalist Society



By: Fazale Kareem

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**A
THESIS
ON
CRIME IN CAPITALIST SOCIETY**

By

**FAZALE KAREEM
LL.M., (FINAL) 2001**

**FEDERAL GOVERNMENT URDU LAW COLLEGE
KARACHI**

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Section I.

The Dean,
Faculty of Law,
University of Karachi,
Karachi.

Subject: **APPLICATION FOR INTIMATION OF THESIS AND
SUPERVISOR OF LL.M.FINAL EXAMINATION 01**

Respected Sir,

I have the honour to submit my thesis on the following title for class LL.M. 2000-2001 which is being prepared under the supervision of Prof. Bashir Ahmed Sheikh

‘CRIME IN CAPITALIST SOCIETY’

You are request to kindly allow me to submit the same for which I shall be grateful.

Thanking you,

Your faithfully,

Fazale Kareem

Student of LL.M. (Final),
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(6)

Section II.

A
THESIS
ON
CRIME IN CAPITALIST SOCIETY

SUBMITTED BY,

FAZALE KAREEM

LL.M., (FINAL) 2001

SEAT NO.

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APPROVED BY

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Section III.

Preface

I have undertaken to write on this subject as we are actually facing the challenge of Crime in our Society in Pakistan and it is a problem of utmost importance for which we will have to see a proper and appropriate remedy.

We have no adequate means, proper training and modern equipment which are available in other advanced countries in order to effectively control this grave problem, and the government will have to concentrate devotedly on the problem to bring peace in our Society.

Being a Muslim, we should love, peace and prosperity of the Muslim Society for which this country was brought in existence by Quaid-e-Azam and our other leaders. According to verse of the Holy Quran, we the Pakistanis, are proud of being Muslims, and have to face this challenge and we should have to try collectively to eradicate the criminal activities from our Society so that every person in Pakistan could be able to like peaceful sleep at night and every woman could be protected with in char-diwari.

I have written this thesis on this subject just to draw the attention of our persons in power to make efforts in the direction of securing a free from crime society.

I am indebted to all my learned professors who have given valuable guidance and suggestion on this topic and I am also thankful to pay **Director, Prof .Bashir Ahmad Shaikh** for his valuable guidance due to which I am able to submit this thesis in time.

(FAZALE KAREEM)

LL.M (FINAL) 2001

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*Chapter- 1***CRIME IN CAPITALIST SOCIETY**

What makes crime an integral part of capitalist society?

For an answer we must consider larger questions: how capitalism developed; the material basis of crime (including both crime control and criminality); class structure under advance capitalism; the capitalist state's role; and the political economy of criminal justice. Eventually our task is to document how polices of control grew in the World, as the nation's economics and politics look shape. But theoretical questions have to be considered first.

The contradiction in capitalist society today is that the state must provide a framework for continuing capitalist accumulation and at the same time legitimate the social order. It is increasingly difficult to provide resources for these services. The surplus population produced by the political economy of advance capitalism is growing, a population that must be serviced and controlled, but financial resources are more and more limited. The criminal-justice policies of recent years are affected by this contradiction. Criminal justice has traditionally been one part of the policies of the welfare state. But as the liberal welfare state fails to resolve it own contradictions, its demise becomes imminent and criminal justice takes on new forms. A new model of criminal justice, based explicitly or

punishment, reflects the economic and political crises of late capitalism. It all takes on further meaning as the class struggle heightens and grows more political.

The further of criminal justice will be determined by changed conditions in the last stages of capitalism and by rising political consciousness in the working class, especially by the expanding portion of that class now relegated to a surplus population. Currently we are developing a theory and a practice for a transitional society, one that is moving from late capitalism to early socialism. In the transition, popular forms of action beyond the state-sponsored programs of criminal justice, are appearing. Popular justice is the immediate alternative to criminal justice. Forms of the future will become evident only as we move to a socialist society. To understand criminal justice is to join in the struggle for a new society.¹

¹ Karl Marx. A. Contribution to the Critique of Political Economy, ed. M. Dobb (New York: International Publishers, 1970), pp. 20-21.

1.1. MARXIST ANALYSIS OF CRIME

A Marxist understanding of crime, as developed he begins with the recognition that crime is a material problem. The necessary condition for any society, according to the materialist method and conception of reality, is that its members produce their material means of subsistence. Social production is primary in all social life. Moreover, in this social production we enter into relations appropriate to the forces of production.² It is this "economic" structure that provides the foundation for all social and political institutions for everyday life, and for social consciousness. Our analysis begins with the material conditions of social life.

The dialectical method allows us to comprehend the world as a complex of processes, in which all things continuously collie into being and pass away. All things are studied as part of their historical development. Dialectical materialism allows us to learn about things as they are in their actual connections, contradictions, and movements. In dialectical analysis critically understand our past, informing our analysis with the possibilities for our future.

² Karl Marx. A contribution to the Critique of Political Economy, ed. M. Dobb (New York: International Publishers, 1970, pp-20.

A Marxist analysis shares in the larger socialist struggle. One commitment is to eliminating exploitation and oppression. Being on the side of the oppressed, only those ideas are advanced which will help transform the capitalist system. The objective of the Marxist analysis is change - revolutionary change. The purpose of our intellectual labors is to assist in providing knowledge and consciousness for building a socialist society. Theories and strategies are developed to increase conscious class struggle; ideas for an alternative to capitalist society are formulated; and strategies for achieving the socialist alternative are proposed. In this intellectual political work we engage in the activities and actions that will advance the socialist struggle.

With these notions of a Marxist analysis - encompassing a dialectical historical analysis of the material conditions of capitalist society looking forward to socialist revolution - we begin to formulate significant substantive questions about crime. In recent years, as socialists have begun to study crime, the outline for these questions has become evident. At this stage in our intellectual development the important questions are about the meaning of crime in capitalist society. Furthermore, we realize that the meaning of crime changes as capitalism develops.

The basic problem in studying the meaning of crime is integrating the two sides of the phenomenon named crime; that is, placing in one frame-work (1) the defining of behavior as criminal (crime control), and (2) the behavior of those who are defined as criminal (criminality). Thus our analysis of crime has been focused on one side or the other, failing to integrate them into one scheme. In pursuing a Marxist analysis, however, the dual concept of crime is resolved by giving primacy to the underlying political economy.

The basic question in the Marxist analysis of crime is this: What is the 'meaning of crime in the development of capitalism? Approaching this question, we must consider several related processes: (1) development of capitalist political economy, including the forces and relations of production, formulation of the capitalist state, and class and class struggle between those who do not own and control the means of production: (2) the system of domination and repression established as capitalism develops, operating for the benefit of the capitalist class and secured by the capitalist state; (3) the forms of accommodation and resistance to the conditions of capitalism, by all people oppressed by capitalism, including the working class: and (4) the relation between the dialectics of domination and accommodation to patterns of crime in capitalist society, producing the crimes of domination and of accommodation.

As indicated in Figure 11.1, all these are dialectically related to the developing political economy. Crime is to be understood as part of capitalist development.

1.2. CRIME IN THE DEVELOPMENT OF CAPITALISM

Crime is a manifestation of society's material conditions. The failure of conventional criminology is to ignore, by design, the material conditions of capitalism. Because the phenomena of crime are products of the substructure and themselves part of the superstructure, any explanation of crime using other elements of the superstructure is no explanation at all. We need a general materialist framework for understanding crime, beginning with the underlying historic process of social existence.

Production as the necessary requirement of existence produces its own forces and relations of social and economic life. The material factors (such as resources and technology) and personal factors (most important, the workers) present at any one time form the productive forces of society.

During production people form definite relations of production with one another. These and the forces of production are the mode of production of a society at any time. It is the economic mode of production that furnishes society with its substructure, on which the social and political institutions (including control of crime) and supporting ideologies are built. This whole complex is the political economy of capitalism.³

The political economy of capitalism gives rise to a class society, in which the system of production is owned and controlled by one segment of the society to the exclusion of another. All social life in capitalist society, including everything associated with crime, is subject to the economic conditions of production and the struggle between classes produced by these conditions. The basic division within capitalist society is between the capitalist class that owns and controls the means of production and the working class that labours.

³ L. Afanasyev al., *The Political Economy of Capitalism* (Moscow: Progress Publishers, 1974), pp. 9-16.

Therefore, it is the problem of labour (as the foremost human activity) that characterizes the nature and specific relationship of the classes. For the capitalist system to operate and survive, the capitalist class must ex-ploit the labour (surplus labour) of the working class. The capitalist class extracts from the worker the labour over and above that consumed by the actual producer.⁴ The relationship is dialectical; the capitalist class survives by appropriating the surplus labour of the working class and the working class as an exploited class exists as long as surplus labour is required in production. Each class depends on the other for its character and existence.

The amount of labour appropriated, techniques of exploiting labour conditions of working class life, and working-class consciousness have all been an integral part of capitalism's development.⁵

⁴ Maurice Dobb, *Studies in the Development of capitalism* (New York: International Publishers, 1963, p. 15.

⁵ Burgett Kuczynski, *The Rise of the Working Class* (New York; McGraw-Hill, 1967.

Likewise, antagonism and conflict between classes have varied at different stages in the development. It is still the basic contradiction between classes, generalized as class conflict that typifies the history of capitalism. Class conflict permeates its whole development, represented in the contradiction between those who own property and those who do not, and by those who oppress and those who are oppressed.⁶ All history involving capitalism is the history of class struggle.

Capitalism as a system of production based on exploitation by the ruling capitalist class that owns and controls the means of production is a dynamic system that goes through its own stages of development. In fact, capitalism is constantly transforming its own forces and relations of production. As a result the whole of capitalist society is constantly being altered with the capitalist political economy.

⁶ Robert I-kiss, Engels, Kierkegard and Marx (New York: Dell, 1975).

The Marxian view stresses (the qualitative changes in social organization and social relations as well as (Or in relation to) the quantitative changes in the economic system.⁷ Capitalism transforms itself, affecting the social existence of all who live under it. This is the basic force in capitalist development: interdependence among production, relations of production, and social superstructure of institutions and ideas. "For it is a requirement of all social production that the relations which people enter into in carrying on production must be suitable to the type of production they are carrying on. Hence, it is a general law of economic development that the relations of production must necessarily be adapted to the character of the forces of production."⁸

"Our analysis of the meaning of crime in capitalism's development necessarily involves investigating the relation between the concrete stage of capitalist development and social relations at that stage. This is not to argue, however, that the superstructure of social relations and culture is an automatic (directly determined) product of the economic substructure.

⁷ Paul M. Sweezy; *The Theory of Capitalist Development* (New York: Monthly Review, Press, pp. 92-95.

⁸ Maurice Cornforth, *Historical Materialism* (New York: International Publishers, 1962), p. 59.

After all, people may enter into relations of production in various ways to employ the forces of production; and it is from these relations that they create further institutions and ideas. Because human social existence is in part a product of conscious activity and struggle, conscious life must be part of any analysis.

Furthermore, the more highly developed the productive forces under capitalism the greater the discrepancy between productive forces and capitalist relations of production. Capitalist development, for which economic expansion is fundamental, exacerbates rather than mitigates the contradictions of capitalism.⁹ Workers are further exploited, conditions of existence worsen, and the contradictions of capitalism increase. Capitalist development, from another vantage point, creates the conditions for transforming and abolishing capitalism, brought about in actuality by class struggle.

⁹ Erik Olin Wright, "Alternative Perspectives in the Marxist Theory of Accumulation and Crisis," *The Insurgent Sociologist*, 6 (Fall 1975), pp. 5-39.

The periods of capitalist development, for our purposes, differ according to the ways in which surplus labour is appropriated. Capitalism itself, distinct from other modes of production, has gone through periods of utilizing various methods of production and creating social relations in association with these productive forms. Each new development in capitalism brings about its own forms of capitalist social reality and related problems of human existence. How crime - control and criminality - has its part in each stage of capitalist development is our interest in investigating the meaning of crime.

1.3. DOMINATION AND REPRESSION

The capitalist system must continuously reproduce itself. Most explicit it is the state that promotes the capitalist order, fly its coercive force, embodied in law and legal repression, the social and economic order of capitalism has been traditionally secured.¹⁰ The legal system continues to be the means of enforcing the interests of the capitalist economy.

¹⁰ See Richard Quinney, Critique of Legal Order: Crime Control in Capitalist Society (Boston: Little, Brown, 1974. pp.95-135.

The state's coercive force, however, is but one means of maintaining the social and economic order. A subtler way of reproducing capitalist society is to perpetuate the capitalist conception of reality, a nonviolent but equally repressive means of domination. Alan Wolf explains below that in manipulating consciousness the social order is legitimated and secured:

The most important reproductive mechanism which does not involve the use of state violence is consciousness-manipulation. The liberal state has an enormous amount of violence at its disposal, but is often reluctant to use it. Violence Manipulate consciousness, to such an extent that most people would never think of engaging, in the kinds of action which could be repressed. The most perfectly repressive (though not violently so) capitalist system, in other words, would not be a police state, but the complete opposite, one in which there were no police because there was nothing to police, everyone having accepted the legitimacy of that society and all its daily consequences.¹¹

¹¹ Alan Wolf, "Political Repression and the Liberal State," Monthly Review, 23 (December, 1971, p. 20.

Those who rule in capitalist society, with the assistance of the state, not only accumulate capital at the expense of those 'who work but impose their ideology as well. Oppression and exploitation are legitimized by expropriating consciousness; labour is expropriated, consciousness must **too.**¹² In fact, the legitimacy of the capitalist order is maintained by controlling the population's consciousness. A capitalist hegemony is established. Moreover, a society that depends on labour exploitation for its very existence must not only control that situation but must cope with the problems that kind of economic system naturally creates. The capitalist state must therefore provide "social services" - education, health, welfare, and rehabilitation programs - to deal with the problems that could be dealt with otherwise only by changing the capitalist system. These state services are a means of securing the capitalist order.

¹² **Alan** Wolf, "New Directions in the Marxist Theory of Politics," "Politics and Society, 4 (Winter 1974), pp. 155-157

Capitalism systematically generates a surplus population. an unemployed sector of the working class either dependent on fluctuations in the economy or made obsolete by new technology. As the surplus population grows, pressure builds for the welfare system to expand. Growing welfare with its host of services is designed to control the surplus population. Moreover, James O'Connor observes, "Unable to gain employment to the monopoly industries by offering their labour power at lower than wage rates (and victimized by sexism and racism), and unemployed, under-employed, or employed at low wages in competitive industries, the surplus population increasingly becomes dependent on the state.¹³ An unsteady alliance is formed between the state and the casualties it naturally produces. Only a new economic order could wipe out the need for a welfare state.

¹³ James O'Connor, *The Fiscal Crisis of the State* (New York: St. Martin's Press, 1973), p. 161.

Repression through welfare is in part the history of capitalism. The kinds of services have varied with the development of economic conditions. Likewise, relief policies have changed according to specific tensions produced by unemployment and subsequent threats of disorder.¹⁴ Control through welfare can never be a permanent solution for a system based on appropriation of labor. As with all forms of control and manipulation in capitalist society, welfare cannot completely counter the basic contradictions of a capitalist political economy.

Although the capitalist state creates and manages the institutions of control (employing physical force and manipulation of consciousness), the contradictions are so great that this control is not absolute and in the long run, is subject to defeat. Because of the contradictions, the capitalist state is more weak than strong.¹⁵

¹⁴ Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare* (New York: Random House, 1971), pp. 3-4.

¹⁵ Wolf, "New Directions in the Marxist Theory of Politics," p. 155.

Eventually (he capitalist state loses its legitimacy, no longer able to perpetuate the ideology that accumulation of capital for capitalists (at the expense of workers) is good for the nation (- or human interest. The ability of the capitalist economic order to exist according to its own interests is eventually weakened.¹⁶ The problem becomes especially acute in periods of economic crisis, unavoidable under capitalism.

As the capitalist system reproduces itself, crimes are committed. One of its contradictions is some of its own laws must be violated in order of secure of crime. Not only are these heightened in times of crisis, increasing crimes of domination, but the crimes change with further development of capitalism. Control of crime and the crimes of domination are necessary, features and natural products of a developing capitalist economy.

¹⁶ See Stanley Aronowitz, "Law, Breakdown of Order and Revolution," in Robert Lefcourt, ed., *Law Against the People: Essays to Demystify Law, Order and the Courts* (New York: Random House, 1971), pp. 150-182; and John H. Schaar, "Legitimacy in the Modern State," in Philip Green and Sanford Levinson, ed., *Power and Community: Dissenting Essays in Political Science* (New York's Random House, 1970).

1.4. ACCOMMODATION AND RESISTANCE

The class that does not own and control the means of production must adapt to the conditions of capitalism. Accommodation and resistance to these conditions are basic to the class struggle. The actions of those who do not now and control the means of production, which are exploited and oppressed, are mainly accommodation or resistance to the conditions produced by the capitalist political economy. Much criminality, with its much historical variation is an integral part of class struggle in the development of capitalism.

The effects of the capitalist mode of production for worker are all inclusive, going far beyond the work place itself. The worker can no longer be at home anywhere in the everyday world. The alienation experienced in the work place now Ownership and control of life in general have been surrendered to alien hands.¹⁷

The production of life itself under capitalism is alienated. The natural means of production, in which work is foremost, has become restricted in the stages of capitalist accumulation.¹⁸

¹⁷ Karl Marx, *The Grundrisse*, ed. David McLellan (New York: Harper & Row, 1971), pp. 132-143.

¹⁸ Harry Braverman, "Work and Unemployment," *Monthly Review*, 27 (June 1975), p. 30.

Furthermore, a large portion of workers become expendable under advanced capitalism. For the capitalist (the problem is the kind and size of labor force necessary to maximize production and realize surplus value. The physical well-being and spiritual needs of the worker are not the primary issue; rather, capitalism requires an "industrial reserve army" that can be called into action when necessary and relieved when no longer needed - but always available. Marx observed in *Capital*:

But if a surplus laboring population is a necessary product of accumulation or of the development of wealth on a capitalist basis, this surplus population becomes, conversely, the lever of capitalist accumulation, nay, a condition of existence of the capitalist mode of production. It forms an industrial reserve army that belongs to capital quite as absolutely as if the latter had bred it at its own cost. Independently of the limits of the actual increase of population, it creates for the changing needs of the self-expansion of capital a mass of human material always ready for exploitation.¹⁹

¹⁹ Karl Marx, *Capital* (Chicago: CIL. Kerr, 1932), p. 693.

Under these conditions "the labour force consists of two parts, the employed and the unemployed, with a gray area in between, containing the part-time or sporadically employed. Furthermore, all these categories of workers and potential workers continuously expand or contract with technological change, the ups and downs of the business cycle, and the vagaries of the market, all inherent characteristics of capitalist production.²⁰ Many workers are further exploited by being relegated to the degradations and uncertainties of a reserve army of labour.

For the unemployed, as well as for those always uncertain about their employment, the condition has its personal and social consequences. Basic human needs are thwarted when the life-giving activity of work is lost or curtailed. This form of alienation gives rise to a multiplicity of psychosocial maladjustments and psychic disorders.²¹ Unemployment also means loss of personal and family income. Choices, opportunities and even maintenance of life itself are jeopardized. For many people the appropriate reaction is not only mental disturbance but outright acts of personal and social destruction.

²⁰ Editors, "The Economic Crisis in Historical Perspective," *Monthly Review*, 26 (June 1975), p. 2.

²¹ William Kapp, "Socio-Economic Effects of Low and High employment," *Annals of the American Academy of Political and Social Science*, 418 (March 1975), pp. 60-71).

Although the statistical evidence can never how conclusively the relation between unemployment and crime because such statistics are politically constructed in the beginning to obscure the failings of a capitalist economy, enough observations are available to make it obvious that unemployment produces criminality. Crimes of economic gain increase whenever the jobless seek ways to maintain themselves and their families. Crimes of violence rise when the problems of life are further inflamed by the loss of life-supporting activity. Anger and frustration at a world that punishes instead of supporting produce their own forms of destruction. Permanent unemployment - and acceptance of that condition - can form a life in which criminality is an appropriate and consistent response.

Crime under capitalism has become a response to the material conditions of **life.**²² Nearly all crimes among the working class in capitalist society are actually a way to survive, an attempt to exist in a society where survival is not ensured by other, collective means. Crime is inevitable under capitalist conditions.

²² **David** M. Gordon, "Capitalism, Class, and Crime in America, "Crime and Delinquency, 19 (April 197), pp. 163-186.

Yet, understanding crime as a reaction to capitalist conditions, whether as act of frustration or means of survival, is only one side of the picture. The other is the problem of consciousness of criminality in capitalist **society**.²³ The history of the working class is filled with rebellion against the conditions of capitalist production, as well as those of life resulting from work under capitalism. Class struggle, after all, is a continuing war between two opposed interests; capital accumulation for the benefit of a nonworking minority class that owns and controls the means of production and, on the other hand, control and ownership of production by those who actually labor. The capitalist state regulates this struggle, so that the institutions and laws of the social order are intended to ensure victory of the capitalist class over the working class. Yet the working class constantly struggles against the capitalist class, as shown in the long history of labor battles against the conditions of capitalist **production**.²⁴

²³ **Jan** Taylor, Paul Walton, and Jock Young, *The New Criminology: For a Social Theory of Deviance* (London: Reutledge & Kegan Paul, 1973), pp. 220-221.

²⁴ **Sidney** Lens, *The Labour Wards: From the Molly Maguires to the Sitdowns* (New York: Doubleday, 1973), Jeremy Broacher, *Strike!* (Greenwich, Comm: Fawcett, 1972); Samuel Yellin, *American Labour Struggles* (New York: S.A. Russell, 1936); Richard O. Boyer and Herbert M. Morais, *Labour's Untold Story* (New York: Cameron Associates, 1955).

The resistance continues as long as there is need for class struggle, that is, so long as capitalism exists.

With the instruments of force and coercion on the side of the capitalist class, much of the activity in the working class struggle is defined as criminal. Indeed according to the legal codes, whether in simply relieving the injustices of capitalism or in taking action against class oppression, actions against the interest of the state are crimes. With growing consciousness that the state represses those who attempt to tip the scales in favor of the working class, people of that class engage in actions against the state and the capitalist class.

The movement toward a socialist society can occur only with political consciousness reached by those oppressed by capitalist society. The alternative to capitalism cannot be willed into being, but requires conscious activity by those who seek new conditions of existence. Political consciousness awakens as people realize the alienation suffered under capitalism. The contradiction of capitalism itself - the disparity between actuality and human possibility - readies large portions of the population to act in ways that will bring about a new existence. When people become conscious of how deeply they are dehumanized under the capitalist mode of production, when they realize the source and type of their alienation, they become active in a movement to build a new society. Many of

their actions result in behaviors defined as criminal by the capitalist state.

The objective of Marxist analysis is to lead us to further question the capitalist system, to better understand the consequences of capitalist development. The ultimate meaning, of crime in the development of capitalism is the need for a socialist society. And in moving toward the socialist alternative, our study of crime is necessarily based on an economic analysis of capitalist society. Crime is essentially a product of the contradictions in capitalism. Crime can be a force in social development when it becomes a part of the class struggle, increasing political consciousness. But we must continue to concentrate on the capitalist system itself. Our understanding is furthered as well investigate the nature, sources, and consequences of capitalistic development. As we engage in this work, it becomes evident that socialism is developing.

1.5. THE POLITICAL ECONOMY OF CRIMINAL JUSTICE

The capitalist state promotes the further development of the capitalist mode of production. The state, under late capitalism, must establish the framework for accumulation of capital and foster conditions for maintaining the capitalist system. In ensuring accommodation of capital, exploitative social relations are reproduced and even heightened. The social problems generated by the capitalist system are increased as capitalism develops, further.

Within the political economy of late capitalism is a political economy of criminal justice, one of the fundamental characteristics of advanced capitalism. To understand its various Features is to understand a crucial part of the capitalist system. Criminal justice is likely to increase as a capitalist response to the contradictions of late capitalism.

1.6. STATE EXPENDITURE ON CRIMINAL JUSTICE:

The capitalist state must increasingly expend its resources on program that secure the capitalist order. These social expenses of the state, as defined by O'Connor, consist of project and services which are required to maintain social harmony - to fulfill the state's legitimization **functions.**²⁵ Although social capital is expanded in promoting profitable private accumulation, the social expenses of the state are not directly productive Producing no surplus value. They are designed, instead, to keep "social peace" among unemployed workers, or among the surplus population in general. Welfare and law enforcement are the primary forms of state's social expenses, regulating class struggle, repressing action against the social order, and giving legitimacy to the capitalist system. Creating and administering the criminal-justice system as a whole has become a principal social expense of the capitalist state.

²⁵ **O'Conner**, The Fiscal Crisis of the State, p. 7.

The state is promoting accumulation of capital in the monopoly sector stimulates overprotection and creates a surplus population and the need for state expenditures to cope with the surplus population. Such social services as education, (airily support, health services, and housing benefits give legitimacy to the capitalist system and satisfy some needs of the working class. These services compensate in part for the oppression and suffering caused by capitalism.²⁶

The criminal-justice system, on the other hand, more explicitly controls that which cannot be remedied by available employment within the economy or by social services for the surplus population. The police, the courts, and the penal agencies - and the entire criminal-justice system - expands to cope as a last resort with the problems of the surplus population. And as the contradictions in capitalism increase, the criminal-justice system becomes a preventive institution as well as a control corrective agency. State expenditures on criminal justice take a larger share of the state's budgetary expenses. Criminal justice as a social expense of the state necessarily expands with the further development of capitalism.

²⁶ See Jan Gough, "State Expenditure in Advanced Capitalism, "New Lett Review No. 92 Guiy August 1973), especially pp. 70-74.

Since war was declared on crime in the mid-sixties the amount of money spent on criminal justice has climbed steadily. The federal government alone, only one portion of the state apparatus, increased its budgetary outlays from less than one-half billion dollars in 1967 to nearly \$3.5 billion in 1977.²⁷ These increased federal expenditures are for the federal government's own efforts in enforcement and prosecution, but are also to assist law-enforcement and judicial activities of state and local governments.

With the passage of Omnibus Crime Control of Safe Streets Act and the establishment of the Law Enforcement Assistant Administration (LEAA), the federal government created a new level of crime control, a broader and more penetrating organization of criminal justice. The mission and mandate of the newly created LEAA was stated clearly at the beginning.

²⁷ The New York Times, January 22, 1976, p. 25

The mission of LEAA is to reduce crime and delinquency by channeling Federal financial aid to state and local governments, to conduct research in methods on improving law enforcement and criminal justice, to fund efforts to upgrade the educational level of law enforcement personnel, to develop applications of statistical research and applied systems analysis in law enforcement, and to develop broad policy guidelines for both the short-and long-range improvement of the nation's Criminal Justice Systems as a whole.²⁸

The budget of LEAA, as one portion of federal expenditures on criminal justice, has grown sharply from a First-year expenditure of \$60 million in 1969 to \$880 million in 1977. The major part of LEAA's budget goes to states and localities to improve criminal-justice activities and develop new techniques of control. Funds are also provided for training law-enforcement agents and for research to improve criminal justice. The result is a coordinated system of legal control for the advanced capitalist society. All levels of the state and the agencies of the law are linked in a nationwide system of criminal justice.

²⁸ Law Enforcement Assistance Administration, 3rd Annual Report of the Law Enforcement Assistance Administration, Fiscal Year 1971 (Washington, D.Cs. U.S. Government Printing Office, 1972), p. 11.

Federal expenditures on criminal justice are aimed in two directions. "Direct expenditures", including cost of salaries, materials, supplies, contractual services, plus capital outlay, finance the federal government's own criminal-justice activities. But as the federal government designs and supports a nationwide criminal-justice system, "intergovernmental expenditures" are gaining importance. They consist of grants, shared revenues, and the cost of services the federal government provides for state and local governments. A major portion of federal spending on criminal justice in recent years has been on intergovernmental expenditures. These expenditures rose from \$237 million in 1971 (of a federal total expenditure of \$1.5 billion) to \$872 million in 1976 (of a federal total of \$3.3 billion).²⁹

The total expenditure tier criminal justice by the capitalist state, at all levels of government, is huge. According to the most recent statistics, in fiscal year 1976 nearly \$20 billion was spent on criminal justice.³⁰ As shown in Table 11.1 well over half (\$11 billion) was spent on law enforcement. The next large amount (\$4.4 billion) went to the correctional system.

²⁹ National Criminal Justice Information and Statistics Service, Expenditure and Employment Data for the Criminal Justice System, Advance Report 1976 (Washington, D.C.: U.S. Government Printing Office, 1978), p. 22.

³⁰ Ibid, p. 21.

At the various levels of government, the large expenditures for criminal justice are made by state and local governments, local governments spend more for criminal-justice activities than federal and state governments combined. In fiscal 1976, out of criminal-justice expenditure of nearly \$20 billion For all levels of government, the federal government spent \$3.3 billion and the state governments nearly \$6 billion; expenditure by local governments was over \$12 billion. When we examine each type of criminal-justice activity separately, we found for each level of government, it become clear that the different levels concentrate their crime control of forts of particular areas of criminal justice. The local governments support the police and the courts, including arrest and prosecution of cases, and corrections. The state expenditures go mainly for punishment and correction of offenders, with some attention to planning criminal justice and forming new criminal-justice programs and agencies. Half the federal government's expenditures are for law enforcement including funds to support state and local law enforcement.

The largest share of expenditures on the criminal-justice system is obviously spent on employment of workers in the system. In recent years the number has grown to more than a million in the system. According to statistics for fiscal 1976, 99,553 of these workers were employed by the federal government, 272,488 but state governments, and 707,851 by local governments. Moreover, about 80 per cent of criminal-

justice expenditures were for employing these criminal-justice workers. The criminal-justice system is built on the labors of the class that is itself the object of criminal justice, a fact not to be missed in understanding the political economy of criminal justice.

Workers in the criminal-justice system, then, provide in their labor "the use-value of ensuring the maintenance of capitalist class **structure**".³¹ They are the "repressive workers" in that they engage in actual or threatened use of physical force and legal punishment. They do not produce surplus value, but they do secure the social order (using the apparatus of the capitalist state) so that capitalists can privately accumulate capital. The concrete value of their work is to maintain domestic order, to make the society safe for capitalist accumulation, and to protect class relations. Although these workers occupy a fraction in the working class, and are not therefore members of the "ruling class", in the use-value of their labor they act against their own working-class interests. This contradiction obscures their class struggle, at the same time provoking a tension that undermines the possibility of continued repression by the capitalist state.

³¹ **Francisco** Freedman, "The Internal Structure of the American Proletariat: A Marxist Analysis," *Socialist Revolution*, 5 (October-December, 1975), p. 73. Also see James O'Connor's discussion of "guard labour" in his article "Productive and Unproductive Labour," *Politics and Society* 5 (No. 3, 1975), pp. 297-336.

Beyond the contradiction of criminal-justice work is the long-term problem of financing the entire criminal-justice system. The system is meant to maintain social peace. State expenditure on criminal justice does not directly contribute to the accumulation of private capital and the creation of surplus value. Instead the system secures the capitalist order so that the dominant class can continue to accumulate capital. The crises, however, becomes a fiscal one; state expenditures on criminal justice grow faster than the revenues available to support an expanding criminal-justice system.³² Yet, as the social problems generated by the capitalist mode of production grow, repressive measures must be expanded. Criminal justice is a social expense that the capitalist state must continue to finance in order to promote the social order of advance capitalism.

The late capitalist economy cannot be secured solely by a repressive state, however. Legitimacy has to be restored in ways that are less obviously repressive. But restoration seems unlikely at this stage of class struggle history. Embedded in crises and contradiction, the criminal-justice system as a last resort signals the imminent demise of the capitalist state and the capitalist mode of production. The concrete political practice for the working class appears herein late capitalism.

³² On the fiscal crisis of legitimation functions in general, see O'Connor, *The Fiscal Crisis of the State*, especially, pp. 150-178.

1.7. THE CRIMINAL JUSTICE-INDUSTRIAL COMPLEX:

The state in its efforts to stimulate accumulation of capital and stabilize the social order forms an alliance with the monopoly sector of the economy. That sector, which consists of the large and the multinational or portions that control nearly all capital-intensive industries, is the primary force of private capital accumulation in the advance capitalist economy. The continued growth of the monopoly sector depends increasingly on the state. And in a symbiotic relationship, the continued growth of the state depends on expansion of the monopoly sector. The state provides the structure for the economic development of the monopoly sector and in turn depends on the monopoly sector for its own economic well-being as well as services and technology for maintaining social stability.

A "social-industrial complex" has appeared, an involvement of industry in the planning, production, and operation of state **programs.**³³ These state-financed programs (concentrating on education, welfare, and criminal justice), a social expenses necessary tin- maintaining social order, are furnished by monopolistic industries.

³³ See **ibid.** pp. 51-55.

The industries plan programs that simultaneously secure the social order for the state and improve productivity and profitability of the industries themselves, while attempting to make a safe environment for continued capitalist development. With the social-industrial complex, monopoly capital has a IICW source from which to gain profits. Social programs financed by the state provide new investment opportunities for monopoly industries. In the business community, " Companies from AT&T to Xerox have been urged to - and in many cases have willingly accepted - the challenges to educate our children, police our streets, clean up our polluted air and water, teach our disadvantaged citizen how to earn a living , rebuild our slums, and even tell us how to run our cities more efficiently".³⁴ A new growth industry is being sponsored by the state for the benefit of both the state and monopoly capital - for the intended survival of the capitalist system.

A major part of the new and growing social-industrial complex is the "criminal justice-industrial" complex. Criminal justice, in all its aspects, is becoming one of the last capital-investment industries. That industry finds it profitable to invest in crime is one of the contradictions of the capitalist system.

³⁴ "Should Business Tackle Society's Problems?" Economic and Business News (New York: Houghton Mifflin, 1972), p. 3, Quoted in O'Conner, The Fiscal Crisis of the State, p. 55.

The criminal justice-industrial complex has grown steadily since the mid-sixties, when the state elevated social control to a "war on crime" A technocratic solution to social disorder has appeared in a new and profitable alliance between the state and monopoly industries in controlling the domestic population. The special task-force on Science and Technology, completed for the President's Commission on Law Enforcement and Administration of Justice, carried the explicit message that (1) crime control must become more scientific, (2) it must utilize the kind of science and technology that already serves the military, and (3) the federal government must institute and support such a program, with the assistance of private industry.³⁵ That a science and a technology could be developed, similar to that of the military, was the good news in the opening lines of the task force report.

The natural sciences and technology have long helped the police to solve specific crimes. Scientists and engineers have had very little impact, however, on the overall operations of the criminal justice system and its principal components police, courts, and corrections.

³⁵ President's Commission on Law Enforcement and Administration of Justice, Science and Technology, Task Force Report, prepared by the Institute for Defense Analysis (Washington, D.C. U.S. Government Printing Office, 1937).

More than 200,000 scientists and engineers have applied themselves to solving military problems and hundreds of thousands more to innovation in other areas of modern life, but only a handful are working to control the crimes that injure or frighten millions of Americans each year. Yet the two communities have much to offer each other science and technology is a valuable source of knowledge and techniques for combating crime; the criminal justice system represents a vast area of challenging problems.³⁶

The kinds of equipment and tactics needed for the criminal-justice system were listed:

In the traditional view, science and technology primarily means new equipment. And modern technology can, indeed, provide a vast array of devices beyond those now in general use improve the operations of criminal justice agencies, particularly helping the police deter crime and apprehend criminals. Some of the more important possibilities are:

Electronic computers for processing the enormous quantities of needed data. Police radio networks connecting officers and neighbouring departments. Inexpensive, light two-way portable radios for every patrolman. Computer for processing fingerprints.

³⁶ Ibid, p. 1

Instruments for identifying criminals by their voice, photographs, hair, blood, body chemistry etc.

Develops for automatic and continual reporting of all police car locations.

Helicopters for airborne police patrol.

Inexpensive, reliable burglar and robbery alarms.

Nonlethal weapons to subdue dangerous criminals without inflicting permanent harm.

Perimeter surveillance devices for prisoners.

Automatic transcription devices for courtrooms testimony. Many of these devices are now in existence, some as prototypes and some available commercially. Others still require basic development but are at least technically feasible and worthy of -- further exploration.³⁷

The new technocratic-approach to crime and social control has developed rapidly. Especially under the direction of LEAA, a multi-million-dollar market in domestic control has been established for hundreds of industries and research institutes.³⁸

³⁷ Ibid.

³⁸ Gregory McLauchlan, "LEAA: A Case Study in the Development of the Social Industrial Complex," *Crime and Social Justice*, 4 (Fall-Winter 1975), pp. 15-23.

The LEAA has contracted industries and institutes, directly or indirectly through state agencies, to develop and manufacture a wide range of weapons and technical devices for use in the criminal justice system. A technology and an industry created for scientific warfare abroad is now being applied to social control of home.

In fact, the political and economic meaning of LEAA in the developing criminal justice-industrial complex is now clear. As shown by Gregory McLauchlan, LEAA is simultaneously directing the technocratic solution to social control, guiding development of the social-industrial complex in criminal justice, and lowering the social expense of criminal justice by making social expenditures profitable for private industry. The LEAA is attempting to reverse the economic burden, and possible crises, of the social expenses of controlling crime. Summarizing this observation, McLauchlan writes:

LEAA represents a federal infrastructure which attempts to simultaneously rationalize the fiscal crises of state finance, and develop a social-industrial complex in the field of law enforcement. By providing rationalized and efficient standards of organization for a nationally integrated law enforcement apparatus, LEAA can reduce social expenses over the long run. Presently, most state expenditure 011 law enforcement consists of social expenses (i.e., administrative costs and salaries) which do not increase productivity or reduce the cost of reproducing the labor force. However, LEAA is attempting to reverse this tendency by increasing expenditures on sophisticated technology and hardware for police operations. In so doing, the labor-to-capital ratio of law enforcement programs will be reduced, thus lowering social expenses.³⁹

The criminal justice-industrial complex becomes visible as a structure in which capital accumulation is combined with the state's social expenditure. The growth of state spending on social programs is joined under advance capitalism with growth or the monopolies. The contradiction is that even though state-financed social programs are designed to legitimate the current order collusion between the state and monopoly industries weakens the legitimacy of the capitalist system. In the long run, in the continuing class struggle, the criminal-justice-industrial complex cannot be a lasting solution to the joint problems of accumulating capital and achieving social stability.

³⁹ Ibid., p. 21.

Nevertheless, because of limited alternatives within the capitalist framework, the complex continues to grow. As expenditures for criminal justice expand, involvement of the monopoly sector increases. Private industries are not only ever more deeply engaged in developing and manufacturing hardware for law enforcement (including guns, ammunition, gas, helmets, helicopters, electronic-detection devices, communications equipment, and the like), but they develop and manufacturing more sophisticated and subtle forms of technological control. The state collaborating with private industry now plans and implements technocratic solution to crime control that include system analysis, managerial improvement, computerized surveillance for intelligence, and administrative reorganization. Administration of criminal justice becomes modeled on the corporate form, and the tactical operations are borrowed from the **military**.⁴⁰ This corporate military approach to criminal justice meets the requirements for controlling the domestic population under advanced capitalism and readily engages monopoly capital in the state's program of criminal justice.

⁴⁰ **Center** for Research on Criminal Justice, *The Iron Fist and the Velvet Glove: An Analysis of the U.S. Police* (Berkeley, Calif: Center for Research on Criminal Justice. 1975), pp. 32-37.

The private sector itself is becoming directly involved in controlling crime, adding to the criminal justice-industrial complex, and increasing in importance. Although we continue to believe that criminal justice is the sole province of the state, the fact is that private industry is engaged in aspects of criminal justice, especially in law enforcement. The private security industry, in particular, is growing steadily each year. Expenditure on uniformed guards the private detective services is about \$15 million a year.⁴¹ And, contrary to our common knowledge, private police outnumber public police in most cities and states. The benefits to private industry are contradictory, however. On the one hand, private policing is obviously beneficial to the private police industry. For the rest of private industry, though, the cost of private law enforcement takes away from profits. Private industry is in conflict within itself. The capitalist mode of production is reaching a stage at which the problems it generates cannot be adequately met by the private sector, the state sector or both in collaboration.

⁴¹ Michael T. Klare, "The Boom in Private Police," *The Nation*, 221 (November 15, 1975), pp. 486-491.

As the crises of the state and the capitalist economy accelerates, forms of control will be devised to be more pervasive and more certain and, at the same time, less of an expense for the state. The state and monopoly capital will try to create crime-control programs that do not require a major outlay of capital, halfway-house programs may sometimes be substituted for large and costly institutions. Surveillance may replace some other forms of confinement and control. Yet, the contradiction is only furthered criminal justice is inevitably a losing battle under the late capitalism.

In other words, spending on criminal justice is only a partial, temporary, and self-defeating resolution to capitalist economic contradictions. It is like military spending. Although expenditures on warfare and the military may have some immediate functions for the state and the economy, an economy based on as such expenditure is subject to more contradictions than ultimate resolution.⁴² A substantial criminal-justice budget like a military budget, cannot successfully solve the economic and political problems of the capitalist system. And in the long run, criminal justice as a social expenditure can only further the contradictions of capitalism.

⁴² Clarence Y. II. Lo, "The Conflicting Functions of U.S. Military Spending after World War 11," Kapitalistate, No. 3 (Spring 1975), pp. 26-44.

1.8. CONTROL OF THE SURPLUS POPULATION:

Social expenditures on criminal justice necessarily increase with DEVELOPING ADVANCED CAPITALISM. In the late stages of capitalism the mode of production and the forms of capital accumulation accelerate the growth of the relative surplus population. The justice must then provide social-expense programs, including criminal justice, both to legitimate advanced capitalism and to control the surplus population. Instead of being able to absorb the surplus population into the political economy, advanced capitalism can only supervise and control a population that is now superfluous to the system. The problem is especially acute when the surplus population threatens to disturb the system, either by overburdening it or by political action produced by late capitalist development.

The state attempts to offset the social expense of criminal justice by supporting the growth of the criminal-justice-industrial complex. The Fiscal crisis of the capitalist state is temporarily alleviated by forming an alliance between monopoly capital and state-financed social programs. The social programs of the state are transformed into social capital, providing subsidized opportunities for investment of monopoly capital and ameliorating some of the material impoverishment of the surplus population.⁴³

⁴³ O'Connor, The Fiscal Crisis of the State, p. 221.

The new complex ties the surplus population to the state and to the political economy of advanced capitalism. A growing segment of the population is absorbed into the system as indirectly productive workers - the army of government and Office workers, paraprofessionals, and those who work in one way or another in the social-expense programs - but such a large surplus population is itself controlled by these programs. These are dependent on the state. They are linked to the state (and to monopoly capital) for of their economic welfare and they are linked as objects of the state's social-control programs. The criminal-justice system is the explicit of these programs in controlling the surplus population. Criminal justice and the surplus population are symbiotically interdependent.

As the surplus population grows along with developing capitalism, the criminal-justice system or some equivalent must also grow. By expanding the system, late capitalism attempts to "integrate" the surplus population into the economic and political system. Instead, problems such as crime are dealt with as a control problem - controlling the population that is already oppressed by the conditions of advanced capitalism. And control becomes especially acute in periods when the economic crisis is most obvious; during depressions and recessions. It is during these periods that the surplus population is affected most, and the surplus population grows because of unemployment.

As usual during these periods, the hardest-hit groups are women, blacks, the young and unskilled workers. The unemployment rate among nonwhites is consistently twice as high as that of whites, almost half the unemployed are women, although they occupy only about 40 percent of the labour force; the unemployment rate of young workers (16 to 21 years) is twice the average rate of workers in general; and the unemployment rate of unskilled workers is several percentage points higher than that for all other workers.⁴⁴ Moreover, these figures drastically underestimate the extent of unemployment in the United States. Although the official statistics indicate that nearly 5 million people are unemployed during the year, this figure obscures the fact that up to 18 million people may be out of work at some time during the year. In recent years nearly 24 million people have been unemployed annually, nearly one of every four workers.

Even these figures underestimate the problem. They systematically exclude the people in the surplus population who have given up looking for jobs. Unemployment figures likewise do not count people who are employed part-time but who are seeking full-time jobs. They also exclude the many people who are "subemployed", those who are not employed in jobs for which they are qualified. All these provide a picture of employment and unemployment quite different from that portrayed by the government.

⁴⁴ "Unemployment Stays High," Dollars & Sense, No. 13 (January 1976), pp. 10-11.

A way of controlling this unemployed surplus population is simply and directly by confinement in prisons. The rhetoric of criminal 'justice - and that of conventional criminology - is that prisons are for incarcerating criminals. In spite of this mystification, prisons are used to control the part of the surplus population subject to the discretion of criminal law and the criminal-justice system. The figures and the conclusion that prisons are differently utilized according to the extent of economic crisis are not usually presented. The finding is clear; the prison population increases as the rate of unemployment increases.⁴⁵ Unemployment simultaneously makes necessary actions of survival and frustration by the unemployed surplus population and requires the state to control that population in some way. Containing the unemployed in prison is a certain way of controlling a threatening surplus population. Until other solutions of controlling portions of the surplus population.

The criminal-justice system continues to be developed by the state and the capitalist class as a way of controlling the problems (particularly the surplus population) that cannot be solved within advanced capitalism. The problem for us, then, is a socialist practice and a social theory that transform criminal justice during socialist revolution.

⁴⁵ NEPA News, February 1976, p. 15.

As we understand criminal justice under capitalism, and as we understand criminal justice under capitalism, and as we engage in socialist struggle, we build a society that ceases to generate the crime found in capitalist society. Criminal justice ceases to be the solution to crime. Socialist solutions are to be found in the society itself - a society that neither supports nor depends on a political economy of criminal justice.

1.9. BEYOND CRIMINAL JUSTICE:

Criminal justice is the characteristic form of control in advanced capitalist society. As the crisis in capitalism grows, however, as capitalist development reaches its final stages, even criminal justice fails to control the population. The crisis in capitalism at the same time produces a crisis in criminal justice. New techniques of criminal justice (in the framework of control and punishment) are constantly proposed and implemented, an indication of the increasing failure of criminal justice.

To move beyond criminal justice is to move beyond capitalism. The final development of capitalism is also the initial development of socialism. As criminal justice falters under capitalism, new socialist forms of justice appear. Rather than a justice based on the needs of the capitalist class, oppressing everyone else, a justice develops under socialism that satisfies the needs of the entire working class. We are now beginning to create the social theory and practice appropriate to socialist development, necessarily going beyond criminal justice.

Out of capitalism's final development socialist forms appear. Capitalism is transformed into socialism when capitalism can no longer reconcile the conflicts between the current mode of production and the relations of production when the contradictions are so crippling that capitalism can no longer solve its own inherent problems. Ultimately capitalist relations become an obstacle to the further development of capitalism. New forms of productive and social relations develop. The capitalist system finally fails to control the population; criminal justice ceases to be effective; and a new social life forms. In other words, as another form becomes evident, socialism begins to develop. Marx wrote:

No social order is ever destroyed before all the productive forces for which it is sufficient have been developed, and new superior relations of production never replace older ones before the material conditions for their existence have matured within the framework of the old society. Mankind thus inevitably sets itself only such tasks as it is able to solve, since closer examination will always show that the problem itself arises only when the material conditions for its solution are already present or at least in the course of formation.⁴⁶

⁴⁶ Marx. A Contribution to the Critique of Political Economy, p. 21.

The material forces within capitalist society, combined, with the socialist alternative, create the conditions for moving, beyond the contradictions of capitalism. Thus begins the transition to socialism.

The transition to socialism is the ultimate trend of history in capitalist society. Transformation from capitalism to socialism depends on the prior development of capitalism. The development of socialism is, Sholmo Avineri writes, "the realization of those hidden potentialities which could not have been historically realized under the limiting conditions of capitalism."⁴⁷ Capitalism creates conditions and expectations that it cannot itself satisfy, digging its own grave. The root of the transition from capitalism to socialism is one fact: "socialism is in practice nothing but what capitalism is potentially."⁴⁸ Because the potential cannot be satisfied under capitalism, however, socialism becomes necessary.

Each transition in society is a unique historical change that must be understood as such. Nevertheless, all history is a continuous transformation. Even with the overthrow of class domination, with the eventual transition to communism, the transformation of human nature and social order never ceases.

⁴⁷ Shlomo Avineri. *The Social and Political Thought of Karl Marx* (London: Cambridge University Press, 1969), p. 150.

⁴⁸ *Ibid.* p. 181.

The disappearance of classes, withering away of the state, elimination of the crippling forms, the division of labour, abolition of the distinctions between city and country and between manual and mental labour - even with all these, we are moved to a higher plane where other transformations become possible. As one level of human and social development is reached, another becomes evident. Out of the seeds of the past and present, our future takes shape. We move from one historical epoch to another.

This takes us far beyond criminal justice. To transcend the capitalist economy and the capitalist state is also to transcend criminal justice. In the transition to socialism there is dialectic between criminal justice and a popular justice movement beyond the control of the state. Developing consciousness among the working class brings consciousness about social control. Working-class institutions will create forms of dealing with problems that accompany class struggle, including protection from the capitalist state's repression. These forms will be in the hands of the working class, not in the jurisdiction of the state. The forms of control and human transformation will become apparent only in the movement toward socialism and from one stage of socialism to another. The only thing we can be certain of is that the forms of "justice" - or whichever conceptualization is created - will be appropriate to the new society. The movement is clearly beyond criminal justice.

The bourgeois notion of criminal justice is replaced by the idea of popular justice. In the late stage of capitalist development people are attempting to resolve conflicts between themselves in their own communities and work places. Outside the legal institutions of the capitalist state, people are trying to deal with their own problems collectively, according to their own terms. Popular justice is an alternative to the criminal justice of the capitalist state. It is also being used as a tool in the class struggle. Working-class people are being educated about the class structure of the temporary society.

With the transition to socialism, popular justice may become institutionalized into the society and the state. In such socialist countries as China and Cuba institutions of popular justice have been created and supported by the state.⁴⁹ These institutions protect and solidify the working class against internal and external class enemies, as well as against elitist bureaucratic tendencies in the state apparatus. The long-term use and fate of popular justice, as we progress to communism, is far from certain. Experiences will differ from every society. Only in the struggle and the transformation will future forms become evident.

⁴⁹ James P. Brady, "Political Contradictions and Justice Policy in People's China," *Contemporary Crisis*, I (April 1977), pp. 127-162.

A critical understanding of criminal justice as practiced in capitalist society is a necessary condition for moving beyond the theory and practice of criminal justice; indeed, for the movement to a socialist society. Theoretical analysis of the structure of criminal justice as it fits into the structure of capitalist economy is in itself a revolutionary practice. The place of theory in practical action will not vanish under socialism. On the contrary social theory will be even more important than under capitalism, becoming a part of everyday life for the masses of people. If a social science remains, it will be one that belongs to the working class, not a social.

The purpose of social theory - including a critical understanding of criminal justice - in the transition to socialism is to subvert the capitalist hegemony that maintains its hold over the working class. Socialist social easily provides people with an understanding of their alienation and suppressed condition, and provides a means of expression that is the beginning of socialist **revolution.**⁵⁰

⁵⁰ **Andre** Gorz, *Socialism and Revolution* (New York: Doubleday, 1973), pp. 170-174.

To engage in social theory under these conditions is to engage in ideological, educational, and practical work. Social theory assists in developing class consciousness. As Theotonio Dos Santos observes: "The intellectual, considered not as an individual isolated in an ivory tower but as a militant intellectual of a class, is thus a key factor in working out and developing class consciousness."⁵¹ A conscious working-class culture of emancipation is created.

For those who engage in this work, bourgeois ways of social science must necessarily be transcended. Social theorists, whose work has the character of critical inquiry, must be "capable of moving across the boundaries of normal science with its normal division of labour."⁵² In rejecting the boundaries of normal scholarship and bourgeois paradigms, the capitalist order is critically examined and the socialist alternative is proposed. Embodied within critique and proposal is a politics of working-class struggle and socialist revolution.

⁵¹ Theotonio Dos Santos, "The Concept of Social Class," *Science and Society*, 34 (Summer 1970), p. 186.

⁵² Alvin W. Gouldner, "Prologue to a Theory of Revolutionary Intellectuals," *Telos*, No. 26 (Winter 1975-76), p. 23.

Social theory, then, is to serve the working class in the struggle for a socialist society. As bourgeois social theory serves the capitalist class under capitalism, socialist social theory serves the working class under socialism and assists in the transition to socialism. In the struggle, social theory is constantly revised and practice is altered to better achieve the goal of a socialist society. The only purpose in knowing the world, Mao Tse-tung wrote, is to change it.⁵³

The understanding crime in capitalist society, we provide a theory and a practice with the objective of changing the work. The importance of Marxist criminology is that it moves us dialectically to reject the capitalist order and to struggle for a new society. We are engaged in the struggle for a socialist society.

⁵³ Mao Tse-tung, *Where Do Correct Ideas Come from?* (Peking: Foreign Languages Press. 1966), p. 3. Also, on the role of intellectual workers, see Mao Tse-tung, *Speech at the Chinese Communist Party's National Conference on Propaganda Work* (Peking: Foreign Languages press. 1968).

*Chapter-2***CHALLENGE OF CRIME IN A SOCIETY**

MAN, who is a social being, finds his life and its goals satisfied in society. Apart from society man cannot find it convenient or possible to live well or fulfil his goals. Being an essential thread in the Fabric of society he finds his own interests linked up with those of the society of which he Forms part.

Herbert Spencer describes society as an organism. Societies, like animate objects, begin as germs (small wandering hordes of people), which grow into masses ultimately, by multiplication of the units or by the union of groups. And Dr. Leacock says: As is the relation of the hand to the body or the leaf to the tree, so is the relation of man to society. He exists in it, and it in him. But the existence of each being is a fact apart society has no single physical life. In other words it is represented by the individuals forming it of mutual interests, mutual respect, mutual regard and welfare. These institutions are the instrumentality whereby the net of society is made up by a harmonious weaving up of the threads of its individuals. We must organise such fellowship that there may be justice, brotherhood and peace.

2.1. Religions Enjoin Brotherhood:

Religions enjoin fellowship as one of the loftier virtues: religions teach mankind the value of service and the supremacy of selflessness. One of the crowing principles of Zoroastrianism is: Happiness unto him who gives happiness unto others. Lord Zarathustra taught mankind that the individual's happiness is dependent upon the happiness of his fellows and that it is sympathy of man for man that makes life a really good and happy affair. The true values in life we must value, and move away from the false glitter of a bare material existence on a low plane. In this life which should be to us full of meaning, it is our primary duty to conserve all the best, and avoided by co-operation and voluntary arrangements between the members or the group concerned.

The question of conflict also arises. That question has been discussed in the Introduction.

Barring the defectives and the insane, criminals generally prove to be persons inadequately trained in group ideals and in whom some conflict of ideals has arisen. And crime is caused by, and is evidence of, social disorganisation.

2.2. Social Institutions:

The value of social institutions lies in the fact that they enable man to live more harmoniously with his fellowmen; they tender the spirit of co-operation, utility and social sympathy. It is through social institutions that the life of man can be enriched, and it is therefore of the highest importance that the spirit fostered by each of our social institutions should be a genuine spirit of give and take and promotion the time of birth, dependence and cooperation begin. What would the condition of the newborn babe be without the nursing mother and the attending nurse by its side.

One cannot live all by himself. If one is grown up like a Robinson Crusoe, he would be hardly a social being. His moral development would be very poor. There would be very little, scope for the development. of character.

Where there is discord, where there is enmity between: individuals, social harmony cannot exist. Sins and or crimes may be the consequence. Moral education is an important instrumentality for the development of the spirit of social living, the spirit of a just give-and-take the spirit of amity.

The rules, traditions, beliefs, ideas and ideals of the group the customs and conventions may form the law of the group, prescribing for its members the rules of behaviour and censorship for the breach of the same. Conflict of ideals can be

John Stuart Mill the conduct of says;

Human beings owe to each other help to distinguish the better from the worse, and encouragement to chose the former and avoid the latter. But neither one person, nor any number of persons, is warranted in saying to another human creature of ripe years that he shall not do with is life for his own benefit what he chooses to do-with it. In the conduct of human beings towards one another it is necessary that general rules should for the most part be observed, in order that people may know what they have to expect; Society does not allow a person to commit suicide, or to eat or drink poison or had drugs; and society does not allow its members to go nude, except where nudism is allowed by the collective will of the members themselves who form the society concerned.

Human life and behaviour necessarily imply interdependence and mutuality. Living is facilitated by division of labour that is to be found conspicuous in man's activities.

*Chapter-3***CRIMINOLOGICAL THINKING**

Enrico Ferri the noted Italian criminologist observed that most of the progressive countries of the world today are engaged in safeguarding 'the interests of their people to the maximum possible extent. Every country adopts a criminal policy which can best protect the society from crime and criminals. Obviously, the success in eliminating crimes from society which is otherwise known Social Defence largely depends upon the efficacy of criminal law administered in that country. It is for this reason that present century has witnessed an era of revolutionary changes in criminological thinking and frequent shifting of criminal policies. Modern criminologists are engaged in working out a common penal program which could be uniformly acceptable to all the countries of the world. Their sole concern is to minimize incidence of crime by an effective administration of criminal justice through agencies such as the court, police, prison, reformatories and other modern penal , institutions.

The problem of crime-eradication essentially involves the need for a study of the Force operating behind the incidence of crime and a variety of factors affecting the personality of the offender. This has eventually led to the development of criminology during the preceding three centuries.

The purpose of study of this branch of knowledge is to analyze different aspects of crime and devise effective measures for treatment of criminals to rehabilitate them in society. Thus criminology as a branch of knowledge has a practical utility in so far as it aims at bringing about the welfare of the community as a whole. The principles of criminology serve as effective guidelines for formulation of penal policy. The modern clinical methods and the reformatory measures such as probation, parole, indeterminate sentence, open prisons and other correctional institutions are essentially an outcome of intensive criminological researches during the past one hundred years. These measures have sufficiently demonstrated the futility of dumping offenders inside the prison-cells and infliction of torturous punishments. Prof. Gillin has aptly observed that it is not the humanity within the criminal but the criminality within the human being which needs to be curbed through effective administration of criminal justice. More recently, the criminologists and penologists seem to have agreed that individualization of the offender should be the object of punishment while treatment methods the means to attain this end. The study of crime and criminal must proceed on a scientific basis by carefully analyzing various aspects associated therewith and must necessarily suggest measures proposed to suppress criminality.

It must be added that with new crimes emerging in modern complex societies we seem increasingly concerned over the problem of crime. Today destructive acts of vandalism, highway, train and bank robberies, looting, rape, illegitimate political activities and white collar crimes hijacking. etc., are constantly increasing which have posed a positive danger to human life, liberty and property. The modern criminologists therefore seem seriously concerned over the problem of crime to protect the society from the anti social activities of criminals. It is for this reason that the two sister branches of criminal science; namely, criminology and penology should work hand in hand to appreciate the problem of criminality in its proper perspective. The issue has further been elaborately discussed in the subsequent chapters of this book.

3.1. Criminology:

Generally speaking, criminology is the science whose purpose is to study the phenomenon called criminality, its entire extent. The science of criminology is further split into two, namely (1) Theoretical or Pure Criminology, and (2) Applied or Practical criminology.

According to W.A. Boner theoretical criminology can be divided into following five sub-heads:-

- (1) Criminal Anthropology.
- (2) Criminal Sociology.
- (3) Criminal Psychology.
- (4) Criminal Psycho-neuro Pathology.
- (5) Penology.

Applied criminology includes the study of criminal hygiene and criminal policy which is founded upon solid conclusions.

Besides these two, there is yet another branch of criminology called criminalistics which connotes the police scientific techniques of crime detection.

Dr. Kenny opines that criminology is a branch of criminal science which deals with crime causation, analysis of crimes and devises to prevent them.

Criminology as a branch of knowledge is concerned with those particular conducts of individual behaviour which are prohibited by society. It is therefore, a societal study which seeks to discover the causes of criminality and suggests remedies to reduce crimes. Sociologists, however, differ in their view about criminology. In their opinion every anti-social act emanates from some criminologic tendency which needs to be cured by society. Thus they attempt to correlate the concept of crime with other social factors and environ. But judicial approach to criminology suggests that an act to become a

crime must conform to the following two cardinal principles of criminal liability:-

(i) Nullum crimen sine lege.

(ii) Nulla poena sine lege.

According to the first principle no one is held criminally liable unless he has done an act which is expressly forbidden under the criminal law and has a reprehensible state of mind to do it. The second principle suggests that there is no liability under the criminal law for omissions. Thus it is doubted. that a person who keeps on watching a child drowning in a pond but makes no effort to save the life, can be punished under the criminal law for his omission to rescue the child.

As already stated a universally acceptable definition of criminology seems to be rather impossible. Criminologists have always differed in their views about approach to this subject. Legal approach to criminology is altogether different from that of sociologists, psychologists, biologists or economists. Legalists tackle the issue from the criminality standpoint yet they cannot afford to overlook its sociological aspect altogether because crime is a conduct of human behaviour in society which is prohibited by law breach of which entails punishment and is essentially concerned with society as such.

Some authorities suggest that criminology deals with the discursive study of all antisocial acts which are not approved of by the society. But it may be pointed out that the term anti-social itself is very comprehensive and wide in its scope. There are several conditions which may ultimately contribute to the incidence of crime. In the case of juvenile delinquent a child left without proper care and look after is often not able to adjust himself to the accepted norms of society. Now it is the concern of a sociologist to find out as to what conditions or factors have really contributed to the delinquent nature of the child. But again, purely sociological approach is not enough particularly in modern democratic societies where individual has assumed great importance.

It was once believed, that certain individuals imbibe devilish tendencies by birth. They were therefore, known as born criminals or criminals by nature and were considered incorrigibles. The only way to keep them away was to completely eliminate them from the society. Later, in the middle of the 18th century Beccaria the pioneer of modern criminology advocated his classical theory of criminal behaviour which was founded on free will of the individual. Through a series of systematic researches he successfully exploded the theory of born criminals and established that everyone is master of his own soul and chooses to do freely what he desires.

Thus, an individual resorts to criminal act out of his intelligence and free will. But Baccaria's Free-will theory too was subsequently challenged by positivists, notably Lombroso and Trade who suggested that man is not self determining agent free to act as he desires but is fundamentally a biological organism. It is therefore, the biological consideration which determines his acts and conduct. Man as a biological creature tries to adjust himself to the social environment. It is with this presupposition that sociologist precipitated the theory of Differential Association by correlating crime with environment. However, with the advance of knowledge and development of criminal science it was gradually realized that no one is born criminal, it is the circumstances that make him so, not because he wants to be a criminal but he is rather forced to lend into criminality. Now the sociologist have started gauging with microscopic eyes the read cause of crime which may be etiological, psychological, economic, political, cultural or social. Thus it cannot be denied that environment plays a vital role in crime-causation. To illustrate the point further it may be mentioned that industrialization has led to disintegration of joint family system which in turn has given impetus to women employment and this has finally slackened the control of parents over their wards. Consequently there has been considerable increase in juvenile delinquency in recent years. The liberalized legislation on abortion laws has led to multiplicity and offences.

After the Pakistan Independence illegitimate and unethical political activities have led to enormous political crimes. White collar crimes like hoarding, smuggling, black marketing, monopolies, etc. have virtually paralyzed the country's economic stability. In short, the problem of crime has assumed new dimensions and needs to be approached pragmatically. It is for this reason that noted criminologist Donald Taft has rightly commented that criminology is behavioral science dealing with those actions of the individual which the society condemns. Prof. Sutherland characterized crime as a system of social disorganisation. In his view just as the pain in human body is his notification of disorganisation of some organ of the human body, so is the crime with society. Thus sociologically crime is a symptom of maladjustment in the society. Thus sociologically crime is a symptom of maladjustment in the society. Considered from this standpoint it is no exaggeration to say that workers strikes are moral example for them.

It shall however, be erroneous to think that the scope of criminology refers only to the integrated theory of crime - causation and the policies of criminal law. It also takes up certain non-criminal behaviors for the purpose of its study. Thus, for example the investigation into the cases of several juvenile delinquents reveals that they embark on that career because their energies are not properly channelized. Thus modern criminologists are more realistic in their approach.

They lay greater stress, on multiple causation because they consider crime as a social phenomenon, the political society reacting through punishment, treatment or preventive measures and this sequence of interaction is the ultimate object of criminology.

3.2. Penology and Criminal Law:

From the foregoing discussion it is evident that criminology is one of the branches of criminal science which is concerned with societal study of crimes and criminal behaviour. It aims at discovering the causes of criminality and effective measures to reduce crimes. It also deals with the custody, treatment, prevention and control of crimes which for the purposes of this study is termed as penology. The criminal policies postulated by these twin sister branches (i.e. criminology and penology) are implemented through the instrumentality of criminal law. In other words, criminal policies are implemented through the agency of criminal law. Thus for the sake of convenient study the entire subject may be split up as follows:

Criminal Science		
Criminology	Penology	Criminal Law
Criminal Biology investigates into various causes of criminality.	Criminal Sociology enquires into the environment of criminals	This includes study or custody, treatment prevention and control of crime.
		It seeks to implement policies envisaged criminology and penology.

It is generally said that criminal law is an index of civilization because it is sensitive to the changes in social structure and thinking. Prof. Friedman calls it a barometer of moral thinking. According to Wechsler, crime is a formal social condemnation of forbidden conduct buttressed by sanction calculated to prevent it. Criminologists are thus confronted with three major problems, namely:-

- (1) What contacts should be forbidden and enquiry into the effects of environment over these conducts;
- (2) What condemnation is appropriate in such cases; and
- (3) What kinds of sanctions are best to prevent these conducts.

It is thus clear that criminology, penology and criminal law are interrelated and one cannot rightly function without the other. The formulation of criminal policy essentially depends on crime causation and factors correlated therewith while its implementation is achieved through the medium of criminal law. It is for this reason that Sellin observes that the object of criminology is to study the sequence of law making, law breaking and reactions to law breaking from the point of view of the efficiency of law as a method of control. According to Donald Taft criminology is the scientific analysis and observation of crimes and criminal whereas penology is concerned with the punishment and treatment of offenders. In his view development of criminology has been much later than that of penology because in early periods the emphasise was on treatment of criminals rather than scientific investigation into the causation of crime and, criminals.

3.3. Nature of Criminal Law:

It is needless to emphasize the importance of criminal law in the sphere of crime. Dr. Allen has defined law as something more than a mere command. He says, it is the force of public opinion which attempts to enforce, as far as possible, good morals for the benefit of the society and its members. Marett views law as the authoritative regulation of social relation. It therefore follows that law is a relative term and pervasive in nature. In other words, it is a varying concept that changes front society to society and time to time. The divergence between the Hindu and Mohammedan personal law as to marriage, divorce, legitimacy, recent legislation on prohibition, abortion, baking, etc. can be cited in support of this contention. Thus the criminal law of a place can be defined as the body of special rules regulating human conduct promulgated by State and uniformly applicable to all classes to which it refers and is enforced by punishment. It should, however, be noted that law is simply a means to an end and should not be treated as an end itself. Its ultimate object is to secure is maximum good of the community. Criminal law, to be effective, must have our important elements, viz. (i) politically, (ii) specificity, (iii) uniformity, and (iv) penal sanction. Politically implies that only the violation of rules made by the State are regarded as crime. Specificity of criminal law connotes that it strictly defines the act to be treated as crime. In other words, the provisions of

criminal law should be stated in specific terms. Uniformity of criminal law implies its uniform application to all alike without any discrimination, thus imparting even handed justice to all alike. The idea is to eliminate judicial discretion in the field of criminal law administration. It may, however, be noted that the recent legislations are providing scope for more and more judicial discretion through judicial equity to attain offender's reformation which is the ultimate goal of criminal justice. Finally, it is through penal sanctions imposed under the criminal law that the members of society are deterred from committing crime. It is therefore, obvious that no law can be effective without adequate penal sanctions.

3.4. Principles of Criminal Law:

It shall be out of place to enumerate here some of the fundamental rules of criminal law which are founded on principles of equity, justice and fair play. Besides making justice even handed, these rules provide adequate guide line for the formulation of a rational penal policy.

An act in order to become a crime must be committed with criminal intent which is legally termed as mensrea. This principle is contained in the familiar Latin maxim, Actus non factiream nisi mensrea. It is to be noted that mensrea or criminal intent consists in doing some act voluntarily with the knowledge that it is fraudulent,

dishonest or injurious to another. However, an act done under a bonafide belief, although criminal, shall be a good defence: Thus no act shall be a crime without mens rea or guilty mind of the doer. It must be stated that the mens-rea in case of a murder consists in malice thought, for rape in forcible connection with a woman without her consent, for theft in an intention to steal and for procuring stolen goods, the knowledge that the goods was. a stolen one.

It must be noted that the juristic concept actusreas represents the physical aspect of crime and mensrea, its mental aspect. The principle of Mensrea brings in several other states of mind, namely, will, intention, motive and so on. Thus it covers a wide range of mental altitudes and conditions the existence of which would give rise to actusreas. Sometimes Mensrea refers to foresight of the consequences of the act and other times the act per se irrespective of its consequences.

In some cases mensrea also denotes inattention of the doer of the criminal act which can otherwise be called his recklessness. Thus in case of manslaughter by negligence the accused causes death of the victim due to this negligence nevertheless, he is held criminally liable.

Although mens rea is an essential ingredient of every offence it can be dispensed with in certain exceptional cases.

They are:

- (1) Cases not criminal in any real sense but for punishment in view of the public welfare.
- (2) Public nuisance.
- (3) Cases which are criminal in form but for which summary mode of enforcement will be adequate in view of the urgency and importance of the protection of civil rights violated thereby. Thus a legitimate exercise of the right of private defense may exclude many intentional acts which would otherwise be offences. Again, a delicate surgical operation being the only remedy to save the patient, done with an object of saving the life but with full knowledge that it can also be fatal, would not be an offence because the intention of the operating surgeon is to save the life of the patient.

(2) Another important principle of criminal law is embodied in the well known latin maxim ignorantia facti excusat, ignorantia juris non excusat. It suggests that mistake of fact is good defence in law of crime but not the mistake of law. Thus a man Belpre going to Church left his gun unloaded.

After he left, another man used it for a shoot and thereafter kept it loaded. On return of the first man from the Church, still thinking the gun to be unloaded as he left it, pulled the trigger with the result his wife was shot dead. The court held that he was not liable for murder under an excuse of mistake of fact. But there are certain statutory absolute liability cases which afford no excuse to the accused for his ignorance of fact in these cases law imposes a strict duty and holds them liable under criminal law. Thus, if a man trespasses on someone's land thinking that land to be his own, he shall nevertheless be liable.

As regards mistake of law under the criminal jurisprudence although it is not a defense yet it is a good evidence of mental condition of the offender. The reason for non-admissibility of mistake of law as a defense is that if it were so everyone would plead it and criminal law administration would be reduced to a mere farce.

- (3) The law of crimes does not permit ex-post facto legislation. That is to say, all those acts which may lead to punishment shall be duly notified and that no one can be punished for an act which is not listed as a crime at the time of its commission, but has become so subsequently.

- (4) Another important principle of criminal law is that everyone is presumed to be innocent unless his guilt is specifically proved within the provisions of law. This is intended to afford every possible opportunity to the accused to defend himself.
- (5) Under the criminal law an accomplice is treated at par with the principal accused and is punished equally.
- (6) There are certain rights and protections afforded to the accused person only during trial but also before and after trial. These rights and protections aim at providing a fair trial to an accused and eliminate possible abuse of judicial process resulting into miscarriage of justice. These rights include right to be produced before the Magistrate, right to bail, release on bond, right to counsel and legal aid etc.

The safeguards extended to an accused in course of trial are protections against self-incrimination and double jeopardy. The former suggests that no person accused of any offence shall be compelled to be a witness against himself while the latter suggests that no man shall be punished twice for the same offence. This is expressed in the well known latin maxim *nemo, debet bis vexari, is constat curiae quod sit prona et eadem causa.*

Modern legislations on criminal law permit sufficient discretion to judicial authorities to meet the exigencies of situation, thus making the law more elastic and adaptable likewise, there has been a tendency to substitute indeterminate sentence for determinate one, through correctional institutions such as the probation, parole, reformatories and open air camps, etc. Justifying this stand Prof. Vold observes, it is not the humanity within the criminal but the criminality within the human being, that needs to be crushed, the wrong doer must, be given chance to improve. Dr. Freud, however, suggests that law in fact is one of the agencies of social control, the efficient enforcement of which entirely rests with the institutions such as the Police Prosecutors, Courts, Judges, Jurors and Probation Officers, etc. It is for this reason that effectiveness of criminal law cannot be accurately assessed.

3.5. The Concept of Crime:

The function of criminal law is to reprimand the offender and prevent the incidence of crime. It is therefore necessary to investigate into the nature of crime. Every criminal behaviour to become a crime must respond to four tests, namely, there should be an external act (actua), it should be done with some criminal intent (mensrea), it should be a prohibited conduct under the existing law, and finally it should entail some punishment. It would not be out of place to draw a distinction between intent and motive at his place. The motive behind a criminal act may be ideal but the intention itself might be to cause some harm forbidden under the criminal law. Thus if a man breaks into his neighbor's house to steal away a few loaves of bread from the latter's kitchen so as to feed his starving children, although his motive to save the children from starvation is good, he shall nevertheless be liable for theft because his intention to steal away the bread from his neighbor's house was wrongful. Thus it is the intent and not the motive which is usually relevant in criminal law administration.

3.6. Criminology its Importance:

The need for study of criminal science (which included criminology, penology, and criminal law) essentially emanates out of the psychological apprehension about insecurity to life, liberty and property of the people. It is the lust for wealth, satisfaction of baser urges hatred or suspicion for another than tends men to follow criminal behaviour and leads them to commit crime. The science of criminology therefore aims at taking up case to case study of different crimes and suggests measures so as to infuse the feeling of mutual confidence, respect and co-operation among the offenders. The recent penological reforms have achieved considerable success in this direction. The criminal law has also been adequately modified to adapt to modern reformatory policies. Liberalization of punishment for affording greater opportunities for rehabilitation of offenders has been accepted as the ultimate object of penal justice. Some of the significant attributes of criminology are noted below:-

(i) The most significant aspect of criminology is its concern for crime and criminals. It presupposes the study of criminal with basic assumption that no one is born criminal. It treats reformation as the ultimate object of punishment while individualization the method of it. Most criminologists and penologists now agree that every criminal is corrigible if offered adequate opportunities through treatment methods.

(ii) As Donald Toll puts it, the study of criminology also offers a background for profession and an opportunity for social workers. The police, lawyers, attorneys, judges jurors, probation officers, detectives and other specialists such as psychologists, psychiatrists and sociologists, etc. need perfect knowledge of criminology and criminal administration for their professional job.

(iii) Criminology also seeks to create conditions conducive to social solidarity inasmuch as it tries to point out what behaviors are obnoxious and anti-social. It tries to convince the offenders through punitive sanction that bad conduct on their part is bound to entail them punishment, misery, worry and disrepute in society. The reformative treatment offered to first offender, invenile delinquents and instance criminals makes it sufficiently clear that criminologists seek to rehabilitate criminals as useful members of society. Various correctional methods are advised to achieve this purpose. The ultimate object is to render a crimeless society as far as possible with a view to achieving social harmony.

(iv) It is further to be noted that with the advance or scientific knowledge and technology the complexities of lire have considerably multiplied. This has led to an enormous increase in crime rate and many new crimes which were hitherto unknown have sprung up. Thus thefts of automobiles, shop-lilting, smuggling, cheating, black marketing etc. have become quite common these days. Again, white collar crimes

have attracted the attention of criminologists during recent years. This in turn has led criminal law administrators to devise new methods and techniques to tackle these problems through scientific researches. Thus modern criminologists keep themselves acquainted with the new criminological developments and work out adequate measures to tackle these intricate problems for the protection of society.

A word about the Pakistan concept of criminology would not be out of place here. Dr. P.K. Sen rightly opines that Pakistan epics which depict the glory of past civilization and culture amply justify that our ancestors were thoroughly conversant with the science of criminology. Their sole emphasis was on the mind of man which they considered to be the centre 'from where everything whether good or bad emanates. This ethical approach led them to believe that offenders indulge in criminal behaviour because of their mental defectiveness and physiogamy had nothing to do with it. It is for this reason that they treated delinquents in a medico-legal perspective and considered them as patients suffering from some mental disorder. Their stress was on the need for criminologists to understand the spiritual aspect of human existence. It is the egoistic urge of man which prompts him to commit anti-social acts with a view to deriving pleasure. Therefore criminologists must strive to include feelings of brotherhood and sense of equality among the members of society so that they learn to respect the law of the land.

3.7. Science of Criminology:

It is difficult to treat criminology as a science in real sense of the term. As Southerland points out that the essence of science lies in general propositions of universal validity which can be made only in regard to stable and homogeneous units. Crime which is the subject matter of criminology is neither a stable nor homogeneous concept. It is rather a variable content changing from place to place and time and therefore, scientific criminal behavior is impossible. Prof. Sellin rightly remarks that crimes are like any other social phenomenon which has no stable unit. According to him a study of law making, and reactions to law breaking, from the point of view of efficiency of the law as a method of control, is a useful objective of criminology .

The gravity of crime as a social problem lies in the fact that general public suffers on account of its effect. These sufferings may sometimes be direct as found in cases of theft, treason, destruction of property etc. or may be indirect as in case of rape the loss of reputation, etc. The importance of the study of criminology lies in considering crime as a symptom of social disorganisation. It is an indication that there is something wrong somewhere in the society which needs to be looked into. It is well known that the essence of science lies in universal validity of its general principles. Obviously, the present criminology does not respond favorably to this crucial test of science. Nevertheless, criminologists are constantly trying to

work out standard rules for prevention of crime and criminals which may ultimately be generalized as basic principles of criminology in future time to come.

3.8. Penology its Future:

It has been recognized that the attitude towards crime and criminals at a given time in a society represents the basic values of that society. By and large, three types of reactions are discernible in various societies. The first is a traditional reaction which regards criminal as basically bad and dangerous and for whom infliction of punishment is the only remedy so that he is totally eliminated from normal society, this punitive approach, however, represents the earlier stages of development of penology and it no longer finds support in modern times. The second reaction treats criminal as a victim of circumstances and a product of multiple factors operating within society. Thus criminal is regarded as a sick person requiring therapeutic treatment. The third and more recent reaction to criminal is to be found preventive approach which lays greater emphasis on eliminating conditions which are responsible for criminality in the offender.

It must, however, be stated that these reactions towards criminal are co-extensive and too often overlap each other. The difference among them is to be found in their focus of attention.

The recent phonological developments are marked with rationalization of punishment and emphasis on clinical method of treatment of offenders. The utility or futility of punishment is to be judged on utilization principles propounded by Bentham. Modern tendency is to treat punishment as an evil which should be used only if it serves the ends of justice. Commenting upon the desirability of punishment Prof. H.L.A. Hart observed. We do not live in society in order to condemn though we may condemn in order to live. This is indeed a sound warning to penologists in modern times in so far as punishment should respond to needs of social defense.

3.9. Excessive Reformation:

Though traditional methods of deterrent and retributive justice have fallen into disuse and are now substituted by modern reformatory measures, it is pertinent to note that excessive reformation is likely to defeat the very object of penology. If the difference between the life inside and outside prison is narrowed down beyond a particular limit, it is bound to culminate into catastrophic results. The element of deterrence is as much necessary in the penal program as reformation, otherwise the object of punishment will be defeated. It must be realized that ultimate control and prevention of crime depends upon the proper utilization of criminological knowledge to needs of society. This accounts for emerging importance of applied criminology in recent years.

The focus of attention should therefore, not only be the offender nor his criminal act but the interest of society in general and protection of the rights of victim in particular. Then only the real objective of penology would be deemed to have been accomplished. A balanced penal program justifying deterrence when it is absolutely necessary and reformation as a general mode of treatment of offenders would perhaps be the best policy to achieve the desired ends of criminal justice administration.

*Chapter-4***CRIMELESS SOCIETY**

To conceive of a crimeless society is practically impossible. Truly, there is no society without the problem of crime and criminals. The concept of crime is essentially concerned with the conduct of individuals in society. It is well known that an individual by nature is social and his interests are best protected only as a member of the community. Everyone owes certain duties to his fellow-men and at the same time has certain rights and privileges which he expects others to ensure for him. This sense of mutual respect and trust for the rights of others regulates the conduct of the members of society inter se. Although most people believe in live and let live policy there are however a few who for some reason; or the other deviate from this normal behavioral pattern and associate themselves with anti-social elements. This obviously imposes an obligation on the State to maintain normally in society. This arduous task of protecting the law abiding citizens and punishing the law breakers vests with the State which performs it through the instrumentality of law. It is for this reasons that Saimond has defined law as a rule of action regulating the conduct of individuals in society. The conducts which are prohibited by the existing law at a given time and place are known as wrongful acts or crimes whereas those which are permissible under the law are treated as lawful. The wrong doer committing crime is punished for his guilt under the law of the land.

4.1. Early Concept:

Historically, the concept of crime seems to have always been changing with the variations in social conditions during the evolutionary stages of human society. This can be illustrated by the fact that the early English society during 12th and 13th centuries included as crimes only those acts which were committed against the State or the religion. Thus treason, rape and blasphemy were treated as crime but murder was not a crime.

Early societies recognized no distinction between the law of crime and torts but only knew of law of wrongs. Commenting on his point Fredrick Pollock and Maitland observed that the English society prior to tenth century confused crimes with torts because that bond of family was for stronger than that of the community, the injured party and his kindred could avenge the wrong by private vengeance and self-redress. It was a period when recourse to legal remedy was considered merely an optional alternative to self-redress. The wrongdoer was supposed to offer compensation to the person wronged, the quantum of which, depended on the extent of the wrong caused and the status of the sufferer. The payment of compensation, known as boot, washed away the guilt of the wrongdoer and relegated him to a position as if he had done nothing. The early Anglo-Saxon laws contained minutest details of compensation (boot) which was payable for different wrongs with a view to helping the person wronged is seeking redress.

However, if boot was refused, the law had no other means to enforce its payment. In that event it was for the victim or his kindred to prosecute a blood feud against the wrongdoer and law could help him only by declaring the wrongdoer as an outlaw who could be chased and killed by anyone like a wild beast.

Besides the offences which could be atoned for by boot (payment of compensation to the sufferer) there were certain other wrongs which entailed additional fines (with) payable to the King. That apart, there were certain bootless offences for which no amount of compensation could wipe out the guilt and the wrongdoer had to undergo punishment. Such cases were punishable with death, mutilation or forfeiture of property to the King. House breaking, harboring the outlaws, refusing to serve in the army and breach of peace etc., were some of the early bootless offences which entailed compulsory punishment under the law of the State. As a matter of fact it is from these 'bootless' offences that the modern concept of crime has emerged. The number of 'bootless' offences increased considerably after twelfth century. Thus a distinct line of demarcation could be drawn between the wrongs which could be repressible by payment of compensation (boot) and those which were not so repressible by money compensation (bootless) and for which the wrongdoer was to be punished by the King. In course of time former came to be known as civil wrongs or torts while the later as crime. It can therefore be

observed that the law did not play a compelling part in regulating the social relations in early days as it does today. The modern legal systems provide that as soon as an offence is committed the law is set into motion at once irrespective of the wishes of the injured party where as in early societies the law was administered only if both the parties agreed to submit themselves to the verdict.

Another characteristic feature of his period 1000 to 1200 A.D. in the history of crime was the preponderance of the system of ordeals by fire or by water⁶ to establish the guilt or innocence of the accused. This was perhaps due to the dominance of religion in early days and superstitions of the people who believed that their social relations were governed by some supernatural power which they regarded omnipotent.

With the advance of time human reasoning improved and the king assumed greater responsibility for apprehending offenders, a duty which was hitherto the sole concern of the injured party. During middle Ages (12th) to 17th century A.D. the structure of European society underwent a radical change due to the effect of renaissance, socio-economic changes and development of science and technology. With the change in civilization and culture, the concept of crime also changed to meet the exigencies of time and this finally led to the emergence of criminology as an independent branch of knowledge.

4.2. Eighteenth Century:

In European countries particularly in France and Italy the period of eighteenth century witnessed an era of miraculous reorientation in criminological thinking. The earlier emphasis on crime and the idea that crime was the result of divine displeasure the superstitions and myths were all abandoned and the study of crime and criminal was started afresh on a scientific basis. It was firmly established that no one else than the offender himself could be attributed criminal responsibility for his crime and the external agencies had nothing to do with it.

From the above discussion it is evident that the concept of crime is closely related to social policy of the time. With changes in ideologies the concept of crime also changes. That is to say, certain new crimes spring up where as some existing become obsolete and therefore, they are deleted through adequate changes in the criminal law. It is for this reason that the criminal law has often been considered as a barometer to gauge the moral turpitude of the society at a given time. In other words, the social standards of the society can conveniently be assessed by studying the criminal policy adopted by it. A few illustrations from the Pakistani society will support this assertion. The recent legislative measures to legalize abortion in certain cases sufficiently reflect the changing concepts of morality in Pakistani society. Likewise, crusade against capital punishment clearly indicates that we have developed an abhorrence for deterrent and tortuous punishments and are now heading towards humanitarianism in treatment of offenders. More recently most State in Pakistan have taken up. 'State lotteries' as a revenue earning measure

which was prohibited a few years ago because of its gambling nature: Withdrawal of prohibition laws in certain state further indicates that we have accepted liquor consumption as a tolerable social evil.

4.3. Twentieth Century:

During the present century there has been an enormous increase in crime rate. This phenomenon, however, is not peculiar to Pakistan alone. The crime statistics of other countries have also recorded a similar trend. In fact the incidence of crime in western countries is far greater than that of Pakistan perhaps, because of the variance of social conditions in these countries. The factors such as greater control of family over wards and respect for morality and religion, etc. have acted as a sufficient restraint to reduce the incidence of crime. This considerably wanting in western countries. Generally speaking, the upward trend in crime rate can be attributed to modernization, urbanization, industrialization, advance of science and technology and growth of civilization, and advent of materialism. With the economic growth our thrust for wealth and other luxuries of life has increased beyond limits which cannot be quenched with the available resources. Obviously, persons who cannot resist their temptations too often resort to unlawful acts to meet their ulterior motives. Scientific know how has proved the offenders in carrying out their criminal activities with considerable ease and better opportunities of escape. It has mitigated the risk involved in committing crimes. This calls for greater need for a new approach to crime and criminals so as to cope up with new situations and keep crimes within control.

4.4. Crime Defined:

A precise definition of 'crime' is by no means an easy task. Authorities have always differed in their views on an exact definition of crime.

Cross Jones defines crime as a legal wrong the remedy for which is punishment of the offender at the instance of the State.

Tappen has defined crime as "an intentional act or omission in violation of criminal law".

Rejecting this juridical concept of crime the well known Italian criminologist Raffaele Garofale preferred sociological definition of crime. According to him crime is an act which offends the basic sentiments of pity and probity. Yet another view about crime is to regard it as an antisocial behavior which, is injurious to society.

Supporting this contention Southerland characterizes crime, as a symptom of social disorganisation. The tendency of modern sociological penologists is therefore to treat crime as a social phenomenon which receives disapprobation of the society.

It may, however, be stated that though the legal definition of crime has been criticized because of its relativity and variable content yet it is perhaps more acceptable as compared with other definitions because of its elaborate and specific nature and element of certainty.

4.5. CONCLUSION

From the foregoing discussion it is easy to draw the following generalizations as regards the concept of crime:-

1. Crime and social policy are inter-related and the concept of crime and punishment depends largely upon the social values, accepted norms and behavioral patterns of a particular society at a given time.
2. Like the society, crimes are also a varying content changing with the changes in social structure. What is crime today may well become a permissible conduct tomorrow and vice versa. For example abortion which was considered to be a heinous crime because of the immorality involved therein is no longer an offence after the enactment of law legalizing abortion.
3. Crime is a relative term. That is to say, what is wrongful (crime) at one place may be a rightful conduct at another place. Thus adultery is a criminal offence in Pakistan whereas in England it is merely a civil wrong repressible by payment of money compensation. Again, in Pakistan itself consuming liquor is an offence in many States under their respective prohibition laws but it is not so in wet areas. This relativity of crime obviously reflects upon the varying social reactions to human conduct at different places.

4. The moral tune of the society can easily be gauged from the law of crimes enforced in that country at a given time. This in other words means that criminal law is index of social progress of the country.
5. The emergence of law of crime and criminological knowledge has been through a definite process of evolution corresponding to different phases of social evolution.
6. The modern complexities of human life have contributed to the rising incidence of crime. However, there is nothing to be perturbed with this rising trend in criminality. Truly speaking, it is a myth to conceive of a crimeless society. Modern criminologists have gone to the extent of reckoning increase in crime as a symptom of social progress.
7. With the passage of time the emphasis has shifted from 'crime' to 'criminal'. The modern view regarding penal policy favours individualization of the offender through clinical treatment methods. This has led to the emergence of reformatory era in the field of penology thus rendering the earlier deterrent, retributive and retaliatory methods completely obsolete and outdated.

Although Modern criminology owes its origin to the European criminologists such as Becarria, Ferri, Garofalo, Trade and others but this does not however, mean that the knowledge of criminal science was completely unknown to ancient Pakistan. Our epics and other authoritative sources such as Manusmriti, Nyaya Mimansa and Kautily's Arthashastra contain exhaustive references which clearly indicate that a well defined criminal policy was in vogue in early period of Muslim society. The most striking feature of the penal law of ancient Pakistan was that it made religion and morality as the very basis to determine what was criminal and what was not. People in ancient Pakistan showed greater respect for religion, morality and law, the social solidarity of the community kept people conscious about their duties towards their fellowmen. The occurrence of crime was therefore, a rare phenomenon. Moreover, the fear of caste-expulsion, acted as an effective deterrent to keep persons away from criminality. It was far more humiliating and disgraceful than actual physical punishment.

However, with the socio-political changes due to advent of Moghul and English rule in Pakistan the Pakistani society witnessed a radical change. Due to the impact of western culture the past traditions and spiritual value of life have lost all significance and there has been a drift into excessive materialism which has created an atmosphere conducive to multiplicity of crimes. Pakistan's criminal policy, penal laws and procedural

laws, are all modeled on British criminal justice. It is therefore, difficult to link upon the ancient penal laws of Pakistan with the present ones.

It must, however, be emphasized that crime and its related concepts being the subject matter of criminology, are essentially concerned with the human behaviour. Since human behaviour cannot be defined in exact terms opinions as to the criminological views are bound to differ. This is evident from the fact that certain criminologists treat criminal as a socially deviated person while others consider him as a victim of this circumstances who needs humanitarian consideration. There are yet a few others who consider the offender as positive nuisance for the community and therefore insist on their elimination from the society through rigorous punishment. It is thus clear that whatever be the Means adopted to handle criminals the ultimate object remains the same that is eradication of crimes from the society and rehabilitation of offenders as law-abiding members of the community. Reformation of criminals through clinical approach has become the cardinal principle of penology in modern times. It is for this reason that reformation of criminal through clinic approach has been accepted as the ultimate object of modern criminal justice. It is through this method that rehabilitation of offenders in the community is possible so as to minimize crimes and criminals from the society.

*Chapter-5***CRIMINAL BEHAVIOUR**

Criminologists have always differed in their views about crime-causation: Continental criminologists often support the endogenous theory of criminality which is founded on bio physical consideration of criminals. The American criminologists on the other hand are more inclined to explain criminality in terms of social factors. Thus, former approach, to the problem of crime-causation subjectively while the latter are objective in their approach. The adherents of subjective theory of criminality try to examine the nature of the criminal besides other aspects of his personality. They postulate that criminals differ from non-criminals in certain traits of their personality which develops usual tendencies in them to commit crimes under situations in which other do not. They further argue that criminality is necessarily an expression of the unique personal trails of the criminal and therefore, in such cases social situations do not offer a satisfactory explanation for criminal behavior. This subjective approach to crime causation have eventually led to the evolution of topological school of criminology which suggests that there are certain personality type of criminals who take to criminality because of their heredity, psychopathic and bio physical trails. It is thus clear that subjective aspect of crime causation includes anthropological, biological, physiological and psychiatric study of the offender as against the objective approach which

consists of the study of socio-economic, ecological, topographical and cultural environment under which crimes usually generate.

5.1. Heredity and Crime:

Lombrosian anthropologists through their biological and anthropological researches succeeded in establishing a correlation between heredity of the criminal and his criminologic tendencies. The psychiatrists on the other hand locate crime in the mental depravity of criminals. The psychologists explain crime in terms of personality deviations.

Lombroso was the first criminologist to correlate crime with heredity of the criminal. His influence was so great that a general belief prevailed that heredity was the sole cause of criminal behaviour of the offender. Lombroso asserted that there are certain criminals who imbibe criminality by birth. He called them atavists and held that such criminals were incorrigibles. He attributed this atavistic tendency in them due to hereditary influences. But recent experiments have shown that hereditary influences have little effect on criminality. Persistent studies on a number of identical twins were carried on in western countries on the basis of which it is now firmly established that when twins are separated early in life and placed in different environments, they behave differently in their tastes and ways of life. This in other words speak of the strong hold of the environment and weakened effect of

hereditary on crime causation. To dispel this view it may further be pointed out that certain races, clans or tribes such as gypsies in Western Europe are known to have indulged into criminality for generations. In Pakistan, the Kanjars and Lohars of Rajasthan and Baluchis are some of the nomadic tribes which habitually pursue criminal traits and take criminality as a mode of life. It is not the heredity instinct that forces them to indulge in criminal behaviour but the real cause lies in the habit they are brought up in the criminal environment and the influence of family surroundings on them is so great that they can hardly desist from criminal acts. Another reason for their criminal traits is society's destruct for them which make them indifferent to social norms and they indulge in anti-social acts which we call crimes. The members of these tribes erroneously believe that they are not accountable to society and hence have no choice but to continue their criminal activities.

Subsequent studies made by Goring, Healy, Scheldan and Glueck on heredity as a factor of crime-causation indicate that it is difficult to establish any possible co-relation between heredity and criminal behaviour because it is practically impossible to isolate heredity factory from other environmental factors. The greatest merit of their researches however, lay in the fact that they for the first time focused the attention of criminologists on the personality of offender which eventually introduced reformative methods for treatment of criminals in the field of penology.

It is significant to note that even Lombroso at a later stage modified his earlier views and suggested that certain persons by nature are of criminal type. He argued that due to mental deficiencies such criminals are incapable of adjusting themselves to normal society. It is on the basis of this hypothesis that the mentally depraved criminals are placed into four categories under the English Mental Deficiency Act, 1913, namely, (i) idiots, (ii) imbeciles, (iii) feeble-minded criminals, and (iv) morally insane criminals. The test of mental insanity essentially rests on the knowledge as to the distinction between right and wrong. This view has, however, been criticized on the ground that insanity, does not affect merely institutional (immediate-insight) factors but affects the personality of individual as a whole including his desires and emotions. This issue came up for judicial consideration in famous M. Naghten case in 1843 which is a land mark decision on insanity as a defence in the English criminal jurisprudence.

5.2. M. Naghten's Rule:

In M. Naghten's case a political maniac who wanted to shoot Britain's Foreign Minister Robert Peel instead killed his private secretary Drummond on 20th January, 1843 in day time. The killer was declared to be mentally insane by the medical experts. The case involved two important issues before the Court. The point raised on the one hand was that an insane person is incapable of distinguishing between right and wrong, while on the other hand the argument that public safety

demanded that this plea should not be readily accepted as a defense to shield the criminal from penal consequences needed proper attention. After a careful consideration their Lordships found M. Naghten not guilty on the ground of his mental insanity. Their Lordship observed that every man is presumed to be sane and to possess sufficient degree' of reason to be held responsible for his crime until the contrary is proved. In order to establish a defence on the ground of insanity it must be clearly proved that at the time of committing the act the accused was labouring under such a degree of reason from disease of mind, as not to know the nature and quality of the act he was doing, or if he did know it, as not to know he was doing what was wrong. Similar issues were raised in a subsequent decision in Durham V. United States (1954) where the accused was held not guilty for his criminal act because it was a product of his mental depravity.

There was yet another view about the mentally depraved persons. Some of them are intellectually capable of distinguishing between right and wrong yet they commit criminal acts because of their irresistible impulse. This proposition however, stands completely discarded after the decision in M. Naghten's case.

Arnold holds that M. Naghten's test of criminality is irreconcilable with the modern psychiatric insights. Modern trends in medical insights in criminological considerations accept the complexities of human nature and emotions.

They regard instance persons as emotionally disturbed individuals incapable of cure. The practical implications of this view find support in the present criminal law which accepts the basic weakness of an individual as a valid defence against his criminal prosecution or at least a sufficient ground for mitigation of his sentence to a certain extent.

It result it has now been possible to link up mental disease as an explanation of crime. Aggressive personalities have often to face many problems because of their conflicts and overt acts due to their mental unsoundness. Dr. E.A. Hooton carried on intensive researches on instance criminals and concluded that they were inferior to civilians in nearly all their physical standards. To quote in his own words he observed criminals are originally inferior. Crime is the resultant of the impact of environment upon low grade human organisms. It follows that the elimination of crime can be effected only by the expiration of the physically, mentally and morally unfit, or by their complete segregation in a socially aseptic environment. Hootan's work, however, stirred up controversy and critical reaction. Dr. Sutherland criticized Hooton's view of constitutional inferiority of criminals on the ground of insufficient statistical evidence to support his claim.

It must, however, be stated that the distinction between mental deficiency and insanity has now become clear after the researches of Jean Esquirol of France and Issac Ray of U.S.A. Henry Goodard undertook intensive psychometric tests to prove that more than 50% of criminals suffered from mental deficiency. Goring also supported this view. It is now fully accepted, that mental deficiency though not directly relevant is indirectly related to crime causation.

5.3. Bio-Physical Factors:

Biological differences in human personality also account for criminality in individuals. The logic behind biological explanation of crimes is that structures determine function and individuals behave differently owing to the facts that they are somehow structurally different.

The physical and biological abnormalities are generally responsible for criminal behaviour. In other words the criminal is viewed as a biological organism characteristically different abnormal, defective and inferior, both biologically and physically.

The physio-biological explanation of criminal behaviour inspired Franz Joseph Gall to develop the doctrine of phrenology showing relationship between head conformations and personal characteristics of individuals. He first published his work on this topic in 1791. His disciple John Gasper Spurzheim carried this doctrine to England and America in early twenties of nineteenth century.

An American Dr. Calwell showed keen interest in phrenology and published his 'Elements of Phrenology' in 1824. The doctrine underlined three basic propositions:-

- (i) the exterior of the skull conforms to the interior and to the shape of the brain;
- (ii) the mind consists of faculties, and
- (iii) these faculties are related to the brain and skull.

Coldwell emphasized that sentiments control the propensities and are aided by will to govern the whole conduct or act. Thus will and spirit were basic and supreme in the direction and control of human behaviour. The theory is however, disapproved being purely hypothetical in nature.

Physiological factors such as age, sex and certain educational imbalances also seem to have a correlation with the criminal or of the offenders. Adolescents and juveniles are more prone to offences like stealing, vandalism and sexual involvements as they readily fall and prey to the urges of sex and other luxuries of life because of their tender age. The offences of theft, gambling, drunkenness, breach of traffic rules etc. are more common with young persons who are normally between the age group of 20 to 35 years. This is probably because these offences involve considerable display of courage, boldness and adventure which these young person's normally possess. Persons advanced in age and experiences are more prone to offences like white collar crime, fraud and

embezzlement because the very nature of these crimes requires maturity of mind and tact to handle intricate situations in case of detection.

5.4. Intelligence Testing:

The distinguished French psychologist, Alfred Billet (1857 - 1911) carried out experiments in psychological laboratory on the persisting problem of retardation due to individual differences and introduced the concept of mental age and Intelligence Quotient (IQ) and its influence on criminological behaviour.

Prof. Jerman, an American psychologist worked further on Billet's researches and observed that the idea of mental age is basically sound common sense in the children. On an average, a child of few years age can comprehend and perform more difficult and abstract problems than an average eight year old child. The same is equally true for other ages with each of age ability continues to grow and develop constantly. Thus the I.Q. is simply the ratio of mental age (M.A.) divided by chronological age (C.A.) multiplied by 100 for each of numerical representation:-

$$IQ = \frac{MA \times 100}{CA}$$

However, it is concluded that age of 16 years be assumed to represent the level of full mental development beyond which additional years do not bring additional ability.

As to the interplay of sex in incidence of crime it may be mentioned that there are certain crimes which are peculiar to a particular sex. Thus, illegal abortions are commonly resorted to by women. So also the offence of shoplifting is more common with women than men because the former can escape frisking even though suspected of this offence. Conversely, crimes like homosexuality, gambling and embezzlement are rarely committed by women.

Prof. Gillin suggests that physical abnormalities in criminals instigate them to commit crime, Smith also supports this contention and holds that there are certain abnormal personalities in whom (ie endocrine glands are functioning abnormally and this mal-functioning of the endocrinal glands causes them to commit certain types of crime. Thus sexual incapacities of a person may result into his failure to mature socially and out of sheer disgust and frustration he may resort to criminality. On the other hand, excessive sex desire may cause one to indulge into prostitution and commit crimes such as rape, kidnapping or drug addiction and similar offences. Again physical over-development of young girls becomes a cause of sexual attraction for males thus leading to sex delinquencies. Commenting on this point Prof. Gillis rightly

observes that oversize of both the sexes tends to make the child conspicuous among his play mates and sets a stage for abnormal conduct.

Of late, the explanation of criminal behaviour in term of glandular vial-functioning has been a subject of criticism by endo-criminologists. It has been suggested that many persons indulge in criminality despite normal functioning of their endocrine gland while there are others who suffer from serious glandular adjustment yet they never resort in deviant behaviour.

5.5. American School of Constitutional Criminal:

While discussing personality type of criminals a word must be said about the work of Earnest A. Hootan which is regarded a major contribution to the school of constitutional criminology. Hooton was an anthropologist of Harvard University who published his book "Crime and the Man" in 1939 after an intensive twelve years study. He seemed to vindicate Lombroso's anthropological findings about criminal behaviour and disposed of Goring's study as unscientific. Hooton attempted to show that crime and other anti-social behaviors are due to physical and social factors. After an intensive study of prison inmates he concluded that prisoners differ from non-criminals in various physical particulars that composed definite pattern of physical inferiority. The work was however, criticized by sociologists, criminologists and anthropologists and characterized as an outcome of Hooton's

deep seated prejudices against the criminals. He was also criticized for excluding white collar criminals who are admirable mental specimen in many cases and biologically superior.

William H. Sheldon, tried to establish a co-relation between the physical structure of the criminal and the crime through what he called application or constitutional theory to human behavioral problems. He developed his ideas from the fact that life begins in the embryo which is made up of three different tissue layers, namely, an inner layer or ectoderm. He correlated a corresponding physical and mental typology consistent of genetic development. He pointed out that physiologically, the endoderm gives rise to the development of digestive viscera, the mesoderm to bone, muscle and tendons or the motor-organ system, the ectoderm to connecting tissues of nervous system skin and related appendages. He summarized the basic characteristics of physique and temperament of these types of physical structures as follows:-

1. Endomorphic structure: - They are the persons with fatty or bulky body having short tapering limbs, small bones, soft and smooth skin and are usually of a mild temperament and comfortable persons.
2. Mesomorphic structure:- Persons with such structure are strongly built with prominent muscles and bones and connective tissues. Thus they have heavy chest and large wrists and hands. These persons are temperamentally somotonic; active, dynamic and assertive and behave aggressively.

3. Ectomorphic - Persons with ectomorphic structure are constitutionally lean and fragile with delicate body, small face, sharp nose and fine hair. They are sensitive by temperament and avoid crowds.

Sheldon further asserted that these physical structures were directly related to temperament of the person who committed crime. Thus according to him endomorphies were moody and accommodative by nature while the mesomorphies had a rigid and somewhat 'serious' temperament. The ectomorphics on account of their delicate physical built-up are often shaky in quick decisions and are short tempered. He attributes criminality to endomorphies and mesomorphies rather than the ectomorphies. But this analysis of Sheldon has been criticized by Sutherland on the ground that it closely resembles the heredity considerations of criminals, which has lost all significance in modern criminology.

While discussing the personality aspect of the criminal Donald Taft lays emphasis on the effect of intelligence and its impact on crime causation. He asserts that persons lacking average intelligence are generally not aggressive, anti-social or sexually promiscuous, but are rather inactive and timid. They easily lend into criminality because they cannot foresee the possible consequences of their acts and are unable to adjust to the complexities of modern life. The incapability to distinguish between right and wrong or to foresee the danger of detection is yet another cause of their criminal behaviour. But it has been

sufficiently established by now that feeble- mindedness forms a very small proportion of delinquencies and in fact crimes are mostly committed by persons of considerable intelligence and sharp outlook.

5.6. Freud's Theory:

Psychopaths contend that offenders lend into criminality on account of functional deviations and mental conflicts. Freud explained the mental conflicts in the personality of criminals in terms of 'ego' and superego. He asserted that 'Id' generates basic biological and physiological urges and impulses in man such as sexual desire, hunger, affection for kith and kips, lust for power etc., while Ego refers to the conscious personality of which the individual is aware. That is to say although the desire for sex and hunger are basic urges of an individual yet he is all the time conscious that only the rightful means to fulfil these desires protect his personality and any deviation from the normal course shall cast aspersions on his personality. Superego according to Freud is the force of self-criticism and control : inherent in every individual. Thus there is a constant conflict between '1(1' (basic urges of men), ego and superego. Freud therefore, contends that crime is the substitute of symbolic behaviour of individual. Thus the desire for committing suicide (self murder) is out of the feeling of inferiority, frustration, aggression or anxiety. Again, theft is committed out of a sense of financial inferiority and to get rid of the feelings of spite and dependence etc.

Another psychiatrist Eleanor Glueck also founded his theory of criminal behaviour on personality deviations. He worked out a predication table comprising three main aspects of human personality:-

- (1) the social background of the criminal,
- (2) his personality traits, and
- (3) his psychiatric conditions.

Glueck observed that abnormalities in an individual are the root cause of criminality. He preferred to call these abnormalities as personal deviations. It was, however, subsequently realized that these theories do not offer a satisfactory explanation for certain crimes such as gambling prostitution, vagrancy, drug addiction and violation of traffic laws, etc. These offences are satisfactorily accounted for by the sociological considerations.

5.7. Psychological concept of Crime:

Psychologists treat crime as a behaviour learnt by the criminal in course of his contact with different persons. Thus like sociologists they seek to explain crime in terms of environmental circumstances.

As stated earlier, Lombroso attributed criminality to atavism which meant that criminals have savagery ancestral history and criminality in them is hereditary. Similar assertions were made by Goring who pointed out that criminalistic traits in criminals are imbibed by heredity and through instinctive patterns and therefore, environmental conditions are of little

importance. Subsequent researches by psychologists and sociologists have, however, demonstrated beyond doubt that it is not the heredity but the psychological influences operating in delinquent families that makes one criminal. From the family background of the delinquent parents the child unconsciously imbibes criminalistic traits at any early age and subsequently turns into a confirmed criminal. Also, children who are removed away from their parents at an early age but it is because of peculiar human psychology of learning things, observation and association that makes them follow criminal behaviour if placed in circumstances which are conducive to crime.

5.8. Aristotle's Laws of Association:

It will be pertinent to mention here the four classical laws of association which the great Greek Philosopher Aristotle enunciated. He stated that similarity, contrast, succession in time and co-existence have a close bearing on the psychological concept of crime. Each of these factors greatly influences the behavioral pattern of the criminal. As to the law of similarity, Aristotle holds that persons following similar criminal traits come closer and associate themselves into bigger gangs. Similarly the beginners learn patterns of their seniors and associate themselves with their criminal endeavors. Thus the psychological tendency to act in a similar way by observing or imitating the behaviour of others can make persons follow criminality in life. Likewise, contrast between criminals and non-criminals as to their association and behaviour also leads

to strafes and clashes which ultimately aggravate crime. Speaking about the laws of succession in time Aristotle suggests that human conduct is a phenomenon that persists through unbroken links. That is to say, various behavioral norms are followed from generation to generation in succession. Although with the change in time and circumstances these patterns may undergo a change, nevertheless, their basic values remain unchanged Aristotle asserted that criminality is one of such norms which has been continued all over the world from ages although in varying degrees with changes in time and place. Finally, he stressed that it is the desire for co-existence which causes delinquents to form their associations for helping each other in their criminal pursuits. Evidently, these trends have psychological effect which lends man into criminality.

Psychological depravity in a person due to his physical defects and incapacities also has an importance bearing on criminality. Thus the persons who are deaf, dumb or those who suffer from white spots, eye squints and other physical deformities meet disgust and ridicule thereby stiffer loss or social status hence they tend to commit crimes more frequently. Likewise, persons with ugly look and dark complexion also tend to behave criminally and mostly indulge in sexual offences because of the inferiority complex in them which makes them to think that they are being neglected by fair sex due to hatred and indifference. This generates in them a feeling that they are outcaste and their dissatisfaction,

revengeful attitude towards women and irritation instigates them to resort to criminal acts in an attempt to achieve what they could not otherwise get through legitimate means. Conversely, girls with masculine features or offensive complexion are ridiculed not only by the males but also their own womenfolk and therefore, they deviate from their normal ways of life and do not even hesitate to indulge in sex-crime in an effort to overcome their inferiority complex.

Besides the physical defects, failure in competitions or unsuccessful at the examinations and strained marital relations also effect sensitive persons psychologically and they become so desperate that they do not even hesitate to throw themselves into criminality in an attempt to forget their unpleasant experiences and escape from the realities of life. Frustration causes emotional disturbance in them aggression eventually culminates into delinquency. Attempted suicides alcoholism, assaults, homicides and many similar offences often are the outcome of this psychological trend of the criminals who are not hold enough to face the hazards of life. The problem of securing suitable match for unmarried girls in Pakistan has become a social problem these days; with the result girls remain unmarried till a very late age. Consequently their psychological urges on the one hand and the sense of being a burden to the family on the other, upsets their mental equilibrium and those who cannot insist their passion quite often indulge in prohibited sex exchanges and thus fall an easy prey to criminality.

Another remarkable Feature regarding psychology and crime relationship is that males are more prone to criminally than females. The percentage of women delinquency in Pakistan and elsewhere is far lower than those of male offenders. Commenting on this point Sutherland observes, these variations are probably because of the difference in the social position of the girl and women as compared to boys and men. The girls are brought up and supervised most carefully and taught what must be nice while the boys are taught to be rough and taught and the boy who approaches the girls is regarded as 'sissy' among his fellow boys and laughed at. It appears that this variation in sex ratio in crime is due to the fact that girls and women predominantly play the role of housewives while the male members play the masculine role of supporting and protecting the family.

Like alcoholics, the narcotic drug additions are also regarded as one of the psychopathic traits of criminal behaviour. Lindsmith observed that a man may start using narcotic drugs for two obvious reasons. One, he may start it out of sheer curiosity or observance or folkways or he may also start using them for medicines for digestive ailments. Subsequently these addicts suffer distress when the supply of drugs is withdrawn and often resort to violence in an attempt to secure the dose. Moreover, drug addiction produces physical and mental deterioration and the addicts frequently resort to crimes such as theft and vagrancy to secure money for

procuring the drugs, that apart, the addicts too often associate themselves with the underworld characters and pick up criminal tendencies for acquiring the supply. Thus unknowingly they follow the path of criminality without any real intention on their part to become criminal.

5.9. Conflict Theory of Crime:

It may, however, be noted that psychological conditions are not directly instrumental for causation of crime. The true explanation of criminal behaviour must apparently be found in social interaction in which the behaviour of a particular person and prospective conduct of other persons play a significant role. In this context a reference to Sutherland's theory of Differential Association as an explanation of crime causation seems inevitable as it extends positive support to the impact of psychological traits on incidence of crime. Considering the structural aspect of human association, Sutherland suggested that social organization consists of three main groups, viz one supporting the criminal activities, the other remaining neutral to criminal circumstances while the third acting anti-criminal. He further observed that the differential association in human organization is a logical consequence of the principle of learning by association which is more or less a psychological phenomenon. Walter Reckless has also supported this view and holds that although the responsible and irrationals do commit crimes incidentally yet much of the criminality is due to a chain of circumstances.

It is often argued that Sutherland's theory of differential association as an explanation of crime causation has only a theoretical significance as it lacks reality. Alternatively, the conflict theory of crime which regards crime as a minority group behaviour such as juvenile gangs, prostitute houses, gambling dens, etc. places reliance on psychological trends of human behaviour in relation to crime. Thus the political offenders in their quench for power commit only the crime of political nature such as sabotage, rebellion, unlawful assembly, riots, etc. and psychologically respond negatively to other types of crimes which relate to property and other monetary gains. The anti-governmental activities of certain parties in Pakistan are a glaring illustration on the point. Their role object is to oust the government in power due to the differences with its political ideologies. Secondly, the intensive industrialization in Pakistan has given rise to frequent clashes between the management and the labour unions resulting into destruction of property, strikes, lock outs, gheraos and other pressure tactics which are unlawful and offensive in nature.

Yet another significant interaction of conflict theory of crime particularly with reference to Pakistan can be located in the deep rooted caste differences and communal hatred between the members of different communities. The Hindu-Muslim riots and tensions are common in Pakistani Society. The mass massacre during partition of Pakistan in 1947 and the incidents of arson, looting, rapes and murders were the

outcome of sheer hatred between the two communities namely, Hindus and Muslims who lived together peacefully in this country for generations. These conflicts and differences are obviously psychological in nature, particularly when the other minority communities are being amicably accommodated in Pakistan.

The mass massacre and blood-shed in Punjab caused by the Sikh terrorist activities during 1984-85 and the disturbances in Delhi following the assassination of Mst. Indira Gandhi the Prime Minister of India, on 31st October, 1984 Further bear testimony to the fact that ideological and communal differences which are purely psychological in nature, too often lead to heinous criminal acts.

Lastly, a reference may be made about the constant struggle that persists between the law breakers and the law keepers that is the criminals and the police. Clashes between them often provide a psychological basis for generating crime. With the stiff attitude and drastic measures of the police the criminals become more furious, violent and aggressive. This ensues face to face fights between the two with the result there prevails a reign of terror which in turn becomes a potent cause of violence and disorder. That apart, with the improved techniques of crime detection the criminals have also modernized their methods of committing crime so as to escape the chances of detection and arrest.

5.10. Group Therapy:

The greatest impact of psychological factors in the field of criminology can be evinced in the system of Group Therapy which the modern correctional institutions have adopted for the treatment of criminals. Experience has shown that isolated life of criminals in jails and prisons makes them psychologically more violent, revengeful and indifferent towards society. The isolated dull and monotonous life in prison institutions kills the personality of the offender totally and at the same time it is an unproductive Endeavour for the State. Therefore, more recently an attempt has been made to approach the inmates psychologically and this has finally led to the evolution of group therapy in the field of criminology.

The system of group therapy is based on the principle of self-help. It seeks to reform the inmates and prisoners by offering them an opportunity to form themselves into small groups, usually between 10 to 20 in number and discuss their own problems mutually. It emphasizes on securing the adjustment of inmates through the process of normal learning. Originally, the system was confined only to mentally abnormal inmates who were unsuited for individual treatment, particularly during the World War 1. These criminals were formed into clinical groups and thus relieved of the rigors of social isolation. It offered them an opportunity to create a friendly and supportive atmosphere. Later on, the method of group psycho therapy was extended to (the prisoners and

inmates in reformatories. The principle underlying this system is that if these inmates get an opportunity to express and discuss their problem freely, they can gain emotional control over themselves and thus avoid tensions and conflicts. It has rightly been commented that guided group interaction through group therapy gives inmates a meaningful social experience.

Psychologically, group therapy also enables the inmates to face the realities of life and shed off their frustration and guilt. With an opportunity to discuss their problems mutually in a free atmosphere and analyzing the arguments of others they prepare themselves to accept social norms and conform to social values of life by avoiding delinquent acts. Thus the system of group psycho-therapy inculcates the sense of loyalty, responsibility and faith among criminals and thus helps them to return to non-criminal world.

Besides group-therapy the inmates in reformatories, correctional homes and other clinical institutions are treated psychologically for being rehabilitated into normal society.

Despite above generalizations regarding the influence of hereditary, anthropological psychopathic and psychological factors on crime causation it is to be noted that these factors have failed to explain certain 'personality-type crimes such as drunkenness, vagrancy, begging, prostitution, violation of narcotic drugs and many other similar offences. Obviously, these types of crime do not respond favourably to the

subjective approach to crime causation for reasons discussed below:-

1. The offenders look to the facts of changing world in the light of the changing views about different type of crimes. Thus present non-seriousness towards these personality type crimes is due to the fact that though they are regarded as crimes being against the accepted norms of morality and culture, the moral condemnation for them is deteriorating fast. We already see that the offences of begging_ gambling and drinking have now become so common in the Pakistani society that we have rather begun to forget that they are crimes at all. The preponderance of 'Satorias' and the tendency on the part of men, women and even children to stake some money in satta although unlawful, has become most common these days. This indicates that human reaction to such social or anti-social behaviour is rather unstable and changing. This contention finds support in the disappearance of blasphemy as an offence. The recent legislation legislating abortion also supports this contention.
2. These criminals escape realities of life and commit crime as a substitute for their failure and personal incapacity. The cases of ammo sexuality can be cited in support of this view.

In order to reduce crime-rate many countries avoid providing legal definition of personality type crimes though they do not really mean to encourage such delinquent acts. Thus they inject indirect influences of custom, convention and standards of good taste in their legislative measures which are based on self-approval. To quote an example, prostitution is not an offence under the penal system of Denmark nevertheless it cannot be carried on in public places. Again the use of alcohol is free in that country though it is supplied on permits. Of late, many Western countries have shown their preparedness to remove homo-sexuality as an offence from their Statute Books for similar reasons, though they insist that it should not be committed in public places.

An analysis of these 'personality type' crimes reveals that certain socio-economic conditions associated with these offences are the real cause of their delinquency. Thus many persons resort to gambling and begging as they find it a profitable profession which does not involve any labour or work, so also certain women embrace prostitution as an easy means of livelihood.

Another remarkable feature of these personality type crimes which do not respond favorably to the bio-physiological considerations is that there is always an element of specific cultural behaviour corresponding to a similar criminal activity. Thus wagering and gambling are not allowed under the law but

risk taking in commercial adventures is freely tolerated despite the fact that it is also of a gambling nature. Similarly begging for personal gains is unlawful although it is permissible when practiced for charitable purposes and raising donations etc. Again, sexual indulgences for monetary consideration are a crime prohibited under the law but making profitable marriage is no offence.

In conclusion it may be summarized that though biological, anthropological psychiatric and psychological factors do play an important role in crime causation, they are so closely associated with the socio-cultural environment that there is an apparent need for an inter-disciplinary approach to the problem of crime and criminals. Since human psychology is incapable of clear cut division it would be prudent to approach the problem of criminality in an objective manner for the sake of comprehensive understanding. Prof. Albert Reiss has tried to identify social relations which are correlates of some of the psychological types. Hewett and Jenking also made significant contribution to c-relate "personality type" delinquents with social relations which has provided adequate basis for prevention of crime and treatment of offenders. Enrio Peiri's explanations or peculiarities in human behaviour in terms of synthetic products of combination of crime.

Sutherland's theory of differential association is essentially a theory of learning. It states that criminal behaviour is learned from contact with those who maintain criminal attitudes and practices. "The process of learning criminal behaviour is by association with criminal with criminal and anti-criminal patterns." Systematic criminal behaviour is determined by the process of associating with those who commit crimes. "Sutherland's theory is an outgrowth of the work of G.I. Mead and Charles 11, Cooley in social psychology, and the work of Robert Park and E.W. Burgess in human ecology. The Park and Burgess theory of city growth was developed by Shaw and McKay in their studies of the ecological distribution of delinquency in Chicago.

The Wowing criticisms can be made of the theory of differential association:-

1. The theory does not explain the origin of criminality, since criminality has to exist before it can be learned by someone else. Why the first criminals act?
2. The theory does not explain crimes of passion or accident.
3. The theory does not explain crimes by those with no prior contact with criminals or criminal attitudes.
4. It does not explain the case of the non-criminal living in a criminal environment.

5. The theory does not differentiate between criminal and non-criminal behaviour, since both types of behaviour can be learned. A person can become a dentist or a Catholic as a result of differential association.
6. It does not take into account the psychological factor referred to as motivation or "differential response pattern." Clinard and others have emphasized the differential response pattern of different individuals to similar situations.
7. The theory does not account for the differential rate of crime associated with age, sex, urban areas, and minority groups. Why do males commit more crimes than females, or why do Negroes commit more crimes than non-Negroes'? Why are criminal patterns concentrated in certain groups and not in others?

It is no answer to say that these groups are criminalistic because they associate, with criminal patterns, since what we are trying to explain in the first place is the existence of criminal patterns in these groups. What is there about being a male, or a member of a minority group, or living in a slum area that produces a high crime rate? Sutherland's theory does not explain the origin of crime rates; rather it explains how a person comes into contact with criminality if and when criminality is a part of his cultural system.

Sheldon Glueck argues that Sutherland places the cart before the horse when he assumes that a delinquent is not a delinquent until he has associated with other delinquents. Glueck notes that there are many examples of anti-social behaviour where no history of delinquent associations exists. Delinquent associations are often formed after a delinquent pattern has been established in order to gain acceptance for the already existing pattern of anti-social behaviour.

The problem of the non-delinquent living in the delinquent environment has caused the sociologist more concern than some of the other criticisms made of the differential association theory. Solomon Korbin points out that the delinquent is subjected to both delinquent and non-delinquent values. "...High rates of delinquents are characterized by a duality of conduct norms, rather than by the dominance of either a conventional or a criminal culture." The problem is why an individual identifies with a particular cultural system when several systems exist as a part of his cultural experience.

One of the most ambitious attempts at an empirical verification of the theory of differential association has been made by James Short. Short concluded that the major difficulty in such an attempt is the fact that many delinquents have not prior history of association with delinquent friends or patterns.

Walter Reckless and his associates have been working on a research project designed to get at the factors which insulate the good boy who lives in a highly delinquent area. The results of this research will be discussed below.

These various criticisms of Sutherland's theory is formulated. The error in the theory of differential association is in regarding social interaction with criminals or with criminal patterns as essential to criminality. Sutherland was right in emphasizing the importance of social interactional processes in criminality; however, social interaction can lead to criminality whether it is with criminals or non-criminals. The importance of social interaction in the process of personality development is well recognized. We behave the way we do because of the way in which we interact with others. The important element in criminal behaviour is not whether the social interaction is with criminals or non-criminals, as Sutherland's theory states, but whether the social interaction is intimate and of the type that brings the individual into a primary group, or whether it is impersonal and non-integrative in effect. A man may commit murder because his wife has committed adultery. The social interaction of husband and wife is crucial in understanding his act, much more important than whether or not the husband had a prior, history of associations with criminal attitudes. The element of criminality does not enter into the situation until after he has killed his wife, not before he killed her. The social relationships one hits with non-criminals, such as husbands,

wives, fathers, mothers, and so forth, may be far more important in determining one's behavior than the association one has with criminals. A man kills his wife after years of marital strife and tension. The murder is due to the type of social interaction that has occurred between husband and wife, and yet until the time the murder takes place the interaction is not criminalistic in any sense of the word.

*Chapter 6***ANTI-SOCIAL ACTIVITIES**

The anti social activities of the persons of the upper strata in their occupations which have come to be known as the White Collar Crimes have been given their due importance in the recent past. Only after the pioneering work done by the Prof. Edwin H. Sutherland in this area of great contemporary concern it should not, however, be concluded that there was no such problem or its awareness before Sutherland focused his attention on this variety of crime about forty years ago. As observed by Harms and Tettters:-

"There has always been crime among businessmen. There have always been instances of the violation of trust and faith. Most of us have read of plunder in the history books and such acts have often constituted the central theme of the fiction of earlier times. But the American people seemed to believe that anyone who betrayed the trust or who molested the donor's charity in a shady manner would eventually suffer if not here surely hereinafter. Existing practices however, were generally accepted as being within the canons of good business. Business, therefore, was justified in pulling a shroud deal, the victim either did not import what was done for fear of being ridiculed or received little sympathy because he had been fleeced in a society approved and even legal deal. Caveat emptor - let the buyer beware expressed prevalent attitude.

6.1. Criticism of Sutherland's Views:

Prof. Sutherland's definition of white collar crime has evoked criticism from certain quarters. Some critics allege result into conviction of the offender and hence he cannot be called 'criminal' in real sense of the term. Commenting on this aspect of the issue Tappan observes that treating persons committing white collar crime as criminals would mean deviating from legal definition of crime inasmuch as personal values of the administrator would gain predominance in place of precision and clarity of legal provisions in deciding such cases. Sutherland, however, justifies the special procedure of trial for white collar criminals by administrative agencies on the ground that it would protect the offender from the stigma or criminal prosecution.

Another criticism quite often advanced against Sutherland's definition of white collar crime is that it includes even those violations of law which are not committed in course of occupation or profession and these violations do not necessarily belong to upper strata of society or the so called prestigious groups. Thus for example, tax evasion is not committed in course of occupation and it can be committed by persons belonging to upper, middle or even lower status of society.

Yet another objection against the definition of white collar crime is that it does not necessarily require mens rea which is the fundamental element of a crime. The doctrine of mens rea based on common law has no application to statutory crime and the requirement of guilty mind may be excluded either expressly or by implication.

An Indian author is of the opinion that the concept of white collar crime as propounded by Sutherland has evoked sharp criticism particularly those who maintain that only a person found guilty of violating a criminal law provision by a criminal court, can legitimately be regarded as a criminal. Most of the white collar crimes, through violations of penal law, are not handled by ordinary criminal courts but by commissions, administrative tribunals and Board. It is argued, therefore, that the administrative handling of white collar offences cannot result in the conviction of the offender in the legalistic sense and the white collar offender, therefore, cannot be said to have acquired the status of a criminal.

Paul W. Tappan, an ardent advocate of the legal definition of crime, fears that the inclusion of administrative decisions as the basis for defining non-conformists as criminals opens the door to the extension of the concept of crime to cover behaviors which a particular administrator deems nefarious. The moral values of the administrator would be substituted for what Tappan regards as the "clarity and precision of the legalistic definition of crime.

This criticism is based on the premise that criminal proceedings involve a prescribed procedure which guarantees various safeguards to the offender. Such safeguards are lacking when an offender faces proceedings before an administrative agency. The same administrative agency or commission directs investigations, conducts hearings and awards punishments, an altogether different situation from the one obtaining in criminal courts. Among other factors, one very vital difference between criminal courts and the administrative agencies is in the quantum of burden of proof against the accused person. In criminal courts, the prosecution has to prove its case beyond any reasonable doubt which at times is quite an onerous job. Administrative bodies are not inhibited by these problems to such an extent.

Sutherland concedes that an act is not a crime unless it is punishable by the State and to that extent he is quite consistent as compared to many other writers on white collar crimes. Moreover, he stated that the concept was not intended to be definitive but merely to call attention to crimes which are not ordinarily included within the scope of criminology. He is, however, of the view that the punishment needs not necessarily be given through a criminal court. According to him, white collar offences are crimes because they have been legally prescribed as socially harmful and because legal sanctions in the form of various punishments are available to deal with them. He also maintains that an unlawful act being

punishable is more important than whether it is punished. Regarding the lack of safeguards in the proceedings before the administrative bodies, Sutherland points out that sometimes a defendant may not have real safeguards even in criminal courts if he cannot afford a lawyer on account of his poverty. This argument of Sutherland, it is submitted, does not carry much weight. Lawyers are generally made available to the indigent persons in criminal proceedings, particularly in more serious offences. Even where no lawyer is provided to the accused person, the criminal courts are extra-careful to see that the accused is not prejudiced in any way due to the lack of a lawyer to defend him.

Further, Sutherland observes that the actual difference in presumption of innocence is not great when procedures of criminal courts and administrative agencies are compared. According to him, the differences in procedures were designed to protect the offender from the stigma of criminal prosecution.

The inclusion of white collar offences has also been objected to on the basis of the sociological argument that the preparator of such offences does not regard themselves as criminals. This argument led to a controversy between Hartung and Burgess in the early fifties. Hartung contended that white collar crime (and black marketing) should be considered, sociologically, as crime just as any other kind of crime. Burgess,

on the other hand, maintains that the definition of criminals should be limited to persons who conceive of themselves as criminals and are so conceived by society. He illustrated it by pointing out that CPA violators did not conceive of themselves as criminals and neither did the public, that the Emergency Price Control Act of 1942 and the Second War Powers Act suddenly transformed former business practices into crimes, that the public the government and the press made no concerted effort to condemn OPA violators and stigmatize them as burglars, robbers, forgers and so forth, that large segments of the public participated in the black market practices (just as they did in bootlegging in times of prohibition), that only a small fraction of OPA violators received prison sentences, which were light compared to sentences for ordinary property crimes. This is countered by Mannheim by making the observation that the criminal law cannot be made completed dependent on the offender's own view of whether or not he was violated the law and should be punished. Moreover, it is highly doubtful that the white collar offenders do not regard themselves as violator of law according to Chi-nards finding white collar offender generally regarded themselves as law violator and the evasive nature of most violation indicators awareness of illegality and repudiates the contention that the violations are unwitting committed. Even Geis, who is critical of Sutherland's definition, rejected the contention that the legal offences of corporate executive are not crime because they do not perceive of their activities as

criminal. Geis support Hartung in contending that the corporate executives, involved in violation of legal norms do regard themselves as violators, both “before and after conviction”. This he supported by citing the testimony of high executives involved in the proceedings in the General Electric cases. Finally if the test to be applied for criminality is the self-images of, the offender, most of the criminals, particularly situational offenders would have to be excluded from the criminal population and only professional criminals would be the relevant subjects for criminological studies.

Sutherland used the term 'white collar' crime in the sense of legal violation but subsequently the expression has been extended beyond the legal frontiers. Unethical but lawful acts like tax-avoidance as distinct from tax-evasion, and undercutting the prices of goods are the instances on the point. This has evoked criticism from those who insist that the definition of crime must be kept within the limits prescribed by law. Paul Tappan makes the following observations to criticize the extended meaning given to the concept of crime in white collar offences.

When Professor Sutherland launched the term, it was applied to those individuals of upper socio-economic class who violate the criminal law, usually by breach of trust, in the ordinary course of their business activities. This original usage accords with legal ideas of crime and points moreover to the significant and difficult problems of enforcement in the areas of

business crimes, particularly where those violations are made criminal by recent statutory enactment. From this fruitful beginning the term has spread into vane, wide and handsome. We learn that the white collar criminal may be the deceptive merchant prince or "robber baron", that the existence of such crime may be determined readily "in casual conversation with a representative of an occupation by asking him, 'What crooked practices are found in your occupation?'

Confusion grows as we learn from another proponent of this concept; there are various phases of white collar criminality that touch the lives of the common man almost daily. The large majority of them are operating within the letter and spirit of the law. Apparently the criminal may be law obedient but greedy, the specific quality of his crimes is far from clear.

Another trend has been to include even those violations of law which are either not committed in the course of occupation or profession or where the violators are not necessarily of the upper strata or of recognized respectability. Violations like tax evasion are examples of offence which are not committed in the course of occupation and they are committed by the tax payers of every strata. Similarly, shoplifting, which has been treated as a white collar crime by some writers, is not necessarily committed by persons of any particular strata nor can it be said that shoplifting is in the course of One's occupation or profession. It emerges, therefore, that the term 'white collar' crime does not convey the same meaning to all

the persons. Broadly speaking the concept includes some of those acts which legally speaking, are not crimes and were not contemplated by Sutherland at the time when he made use of the term for the first time in criminology.

One objection regarding white collar crimes is based on the concept of mens rea or guilty mind in criminal law. The traditional concept in criminal law is that no crime can be committed without a guilty mind. Many statutes dealing with white collar crimes do not require any mens rea and writers like Jerome Hall do not, therefore recognize them as real crimes but only as regulatory offences. It has, however, been held in many cases in England, India and some other countries that the doctrine of mens rea based on common law has no applicability in statutory crimes where the requirement of guilty mind may be excluded either expressly or by necessary implication.

Perhaps the most vehement critic of Sutherland's contribution to the study of white collar crime is Dr. Gilbert Geis. In one of his essays he commences on the loopholes in Sutherland's handling of white collar crime as follows:-

A major difficulty lies in Sutherland's striking inability to differentiate between the corporations themselves and their executive and personnel.

Geis has no problem in appreciating the criminal responsibility of the corporations or of their executives but he does not accept the proposition that a corporation is criminally

liable for the acts of its executives. To support his contention, Gies offers an interesting though farfetched argument that declaring a corporation criminal because of the legal violations of its operators might be akin to declaring the State of Rhode Island criminal because one of its citizens is criminal.

Donald J. Newman has however, supported Sutherland for including white collar offences in the category of crimes for the purposes of criminological studies. According to Newman, there is no basic difference between the nature of ordinary and white collar crimes. White collar crimes, as well as the traditional offences, have their roots in common law and are adaptations of principles of theft, fraud, and the like to modern socio-economic institutions. The only peculiarity of white collar offences is the relatively high status of the offenders but the criminal content in both the types is equally present. The farmer may water the milk and the television repairman may make unnecessary repairs. According to him, the white collar-regulations are intended to remedy, rather than to punish, but they are at least partially penal and triable in criminal courts.

Section IV.

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