Paper Code: LL.B. 505 (e)	**L**	**T**	**Credit**
Paper: Criminology	**3**	**1**	**4**

1. The object of this paper is to discuss the cousative factors of crime and treatment of criminals and victims.
2. **Pattern of Question Paper:** The question paper shall have Parts 'A' and 'B'. In part 'A' there shall be one compulsory question based on objective or short answer type questions carrying 25 marks and covering the entire course. In part 'B', two questions of 12.5 marks each shall be asked from every unit asking the candidates to attempt one question from each unit.

I. Understanding Crime

a. Conceptions/ Definitions of Crime

b. Causal approaches to explanations and difficulties of applications of casual analysis to human behavior

c. Specific Theories: Biophysical explanations, Psychodynamic approaches, Social learning theories of Crime causation, Social learning through sub-cultures of deviance, Social disorganization theories, and Economist approaches

(Number of hours – 08)

II. Deviations

a. Legislation

b. Treatment

c. Judicial Approach

Socio-Economic Crimes

a. White collar crimes

b. Drug Abuse **(Number of hours – 09)**

III. Punishment

a. Theories of Punishment: Deterrent, Retributive, Preventive and Reformative

b. Alternatives to imprisonment: Probation, Open jail, Parole etc.

c. Prison reform and the Judicial Response

d. Capital Punishment **(Number of hours – 08)**

IV. Victimology

a. Need for compensation

b. Compensation and Rehabilitation

c. Compensation as a mode of punishment

d. Constitutional perspective of compensation **(Number of hours – 06)**

Text books / Compulsory Readings (Latest editions only):

1. Sutherland and Crssey – Criminology
2. Ahmed Siddique – Criminology
3. Mrs. Vedkumari – Juvenile Justice

UNIT 1: UNDERSTANDING CRIME

1. An act committed in violation of law where the consequence of conviction by a court is punish ment, especially where the punishment is a serious one such as imprisonment.

2. Unlawful activity: *statistics relating to violent crime.*

3. A serious offense, especially one in violation of morality.

4. An unjust, senseless, or disgraceful act or condition: *It's a crime to waste all that paper.*

1. an action that is deemed injurious to the public welfare and is legally prohibited.

2. criminal activity and those engaged in it: *to fight crime.*

3. any serious wrongdoing.

4. a foolish act or practice: *It's a crime to let that beautiful garden go to ruin.*

The Elements and Stages of a Crime

An Overview

Criminal law is a body of rules and statutes that defines conduct prohibited by the state because it threatens and harms public safety and welfare and that establishes punishment to be imposed for the commission of such acts. Criminal law differs from civil law, whose emphasis is more on dispute resolution than in punishment. The term criminal law generally refers to substantive criminal laws. Substantive criminal laws define crimes and prescribe punishments. In contrast, Criminal Procedure describes the process through which the criminal laws are enforced. For example, the law prohibiting murder is a substantive criminal law. The manner in which state enforces this substantive law—through the gathering of evidence and prosecution—is generally considered a procedural matter.

II. **History:** The first civilizations generally did not distinguish between civil law and criminal law. The first written codes of law were designed by the Sumerians around 2100-2050 BC. Another important early code was the Code Hammurabi, which formed the core of Babylonian law. These early legal codes did not separate penal and civil laws. Of the early criminal laws of Ancient Greece only fragments survive, e.g. those of Solon and Draco.

After the revival of Roman law in the 12th century, sixth-century Roman classifications and jurisprudence provided the foundations of the distinction between criminal and civil law in European law from then until the present time. The first signs of the modern distinction between crimes and civil matters emerged during the Norman invasion of England. The special notion of criminal penalty, at least concerning Europe, arose in Spanish Late Scolasticism, when the theological notion of God's penalty (poena aeterna) that was inflicted solely for a guilty mind, became transfused into canon law first and, finally, to secular criminal law. The development of the state dispensing justice in a court clearly emerged in the eighteenth century when European countries began maintaining police services. From this point, criminal law had formalized the mechanisms for enforcement, which allowed for its development as a discernible entity.

III. **Definition Of Crime:** Many jurists have defined crime in their own ways some of which are as under: **Blackstone** defined crime as an act committed or omitted in violation of a public law either forbidding or commanding it. **Stephen** observed a crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large. · **Oxford Dictionary** defines crime as an act punishable by law as forbidden by statute or injurious to the public welfare.

IV. **Fundamental Elements Of Crime:** There are four elements which go to constitute a crime, these are:-

· Human being
· Mens rea or guilty intention
· Actus reus or illegal act or omission
· Injury to another human being

Human Being- The first element requires that the wrongful act must be committed by a human being. In ancient times, when criminal law was largely dominated by the idea of retribution, punishments were inflicted on animals also for the injury caused by them, for example, a pig was burnt in Paris for having devoured a child, a horse was killed for having kicked a man. But now,

if an animal causes an injury we hold not the animal liable but its owner liable for such injury.

So the first element of crime is a human being who- must be under the legal obligation to act in a particular manner and should be a fit subject for awarding appropriate punishment.

Section 11 of the Indian Penal Code provides that word 'person' includes a company or association or body of persons whether incorporated or not. The word 'person' includes artificial or juridical persons.

Mens Rea- The second important essential element of a crime is mens rea or evil intent or guilty mind. There can be no crime of any nature without mens rea or an evil mind. Every crime requires a mental element and that is considered as the fundamental principle of criminal liability. The basic requirement of the principle mens rea is that the accused must have been aware of those elements in his act which make the crime with which he is charged.

There is a well known maxim in this regard, i.e. "actus non facit reum nisi mens sit rea" which means that, the guilty intention and guilty act together constitute a crime. It comes from the maxim that no person can be punished in a proceeding of criminal nature unless it can be showed that he had a guilty mind.

Actus Reus [Guilty Act Or Omission] - The third essential element of a crime is actus reus. In other words, some overt act or illegal omission must take place in pursuance of the guilty intention. Actus reus is the manifestation of mens rea in the external world. Prof. Kenny was the first writer to use the term 'actus reus'. He has defined the term thus- "such result of human conduct as the law seeks to prevent".

Injury- The fourth requirement of a crime is injury to another person or to the society at large. The injury should be illegally caused to any person in body, mind, reputation or property as according to Section 44 of IPC, 1860 the injury denotes any harm whatever illegally caused to any person in body, mind, reputation or property.

V. **Stages Of A Crime** If a person commits a crime voluntarily or after preparation the doing of it involves four different stages. In every crime, there is first intention to commit it, secondly, preparation to commit it, thirdly, attempt to commit it and fourthly the accomplishment. The stages can be explained as under-

1. **Intention-** Intention is the first stage in the commission of an offence and known as mental stage. Intention is the direction of conduct towards the object chosen upon considering the motives which suggest the choice. But the law does not take notice of an intention, mere intention to commit an offence not followed by any act, cannot constitute an offence. The obvious reason for not prosecuting the accused at this stage is that it is very difficult for the prosecution to prove the guilty mind of a person.

2. **Preparation-** Preparation is the second stage in the commission of a crime. It means to arrange the necessary measures for the commission of the intended criminal act. Intention alone or the intention followed by a preparation is not enough to constitute the crime. Preparation has not been made punishable because in most of the cases the prosecution has failed to prove that the preparations in the question were made for the commission of the particular crime.

If A purchases a pistol and keeps the same in his pocket duly loaded in order to kill his bitter enemy B, but does nothing more. A has not committed any offence as still he is at the stage of preparation and it will be impossible for the prosecution to prove that A was carrying the loaded pistol only for the purpose of killing B.

Preparation When Punishable- Generally, preparation to commit any offence is not punishable but in some exceptional cases preparation is punishable, following are some examples of such exceptional circumstances-

· Preparation to wage war against the Government - Section 122, IPC 1860;

· Preparation to commit depredation on territories of a power at peace with Government of India- Section 126, IPC 1860;

· Preparation to commit dacoity- Section 399, IPC 1860;

· Preparation for counterfeiting of coins or Government stamps- Sections 233-235, S. 255 and S. 257;

· Possessing counterfeit coins, false weight or measurement and forged documents. Mere possession of these is a crime and no possessor can plead that he is still at the stage of preparation- Sections 242, 243, 259, 266 and 474.

3. **Attempt-** Attempt is the direct movement towards the commission of a crime after the preparation is made. According to English law, a person may be guilty of an attempt to commit an offence if he does an act which is more than merely preparatory to the commission of the offence; and a person will be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible. There are three essentials of an attempt:-

· Guilty intention to commit an offence;

· Some act done towards the commission of the offence;

· The act must fall short of the completed offence.

Attempt Under The Indian Penal Code, 1860- The Indian Penal Code has dealt with attempt in the following four different ways-

· Completed offences and attempts have been dealt with in the same section and same punishment is prescribed for both. Such provisions are contained in Sections 121, 124, 124-A, 125, 130, 131, 152, 153-A, 161, 162, 163, 165, 196, 198, 200, 213, 240, 241, 251, 385, 387, 389,

391, 394, 395, 397, 459 and 460.

· Secondly, attempts to commit offences and commission of specific offences have been dealt with separately and separate punishments have been provided for attempt to commit such offences from those of the offences committed. Examples are- murder is punished under section 302 and attempt to murder to murder under section 307; culpable homicide is punished under section 304 and attempt to commit culpable homicide under section 308; Robbery is punished under section 392 and attempt to commit robbery under section 393.

· Thirdly, attempt to commit suicide is punished under section 309;

· Fourthly, all other cases [where no specific provisions regarding attempt are made] are covered under section 511 which provides that the accused shall be punished with one-half of the longest term of imprisonment provided for the offence or with prescribed fine or with both.

4. **Accomplishment Or Completion-** The last stage in the commission of an offence is its accomplishment or completion. If the accused succeeds in his attempt to commit the crime, he will be guilty of the complete offence and if his attempt is unsuccessful he will be guilty of an attempt only. For example, A fires at B with the intention to kill him, if B dies, A will be guilty for committing the offence of murder and if B is only injured, it will be a case of attempt to murder.

Unit 1 b. causal approaches to human behavior.

Causal thinking is the result of the causal principle (or causality) which according to the German philosopher Kant is defined as follows:

"Everything that happens (begins to be) presupposes something from which it follows in accordance with a rule".

Basic consideration

Although the belief in causality determines essentially the development of humanity, it suffers a number of drawbacks:

> "It will now be obvious that the concept of cause, as used in our practical Weltanschauung suffers from lack of clearness – perhaps, also, from inherent contradictions. Partly in consequence of such obscurities and partly because of the metaphysical implications of the concept, it has undergone modifications at the hands of natural science; and 'cause' is now being eliminated from scientific terminology altogether."
>
> Instead of using the term causality physics uses the following paraphrase:
>
> "From appreciation of these difficulties and metaphysical mysteries, science, and empiricist philosophy steeped in science, came to speak of an event as the cause of another only in the sense that it is a real condition, on the occurrence of which something else happens which would not happen without it. A cause, in fact, becomes a sine qua non antecedent, but does not itself necessarily 'produce' the event which is called effect."
>
> This change in the way of speaking in science does not affect causal thinking particularly because the scientific approach and the scientific rules and laws remained unchanged. The scientific approach is built on the assumption that any development may be represented by an alternating sequence of causes and effects, where the last effect is the cause of the next effect.

Problem solving by causal thinking

Causal thinking for solving problems proceeds in three steps:

- Causal thinking as a basis for making decisions starts with observing an effect or problem which needs a decision. The effect is observed as an isolated event since monitoring refers generally to isolated components or subsystems of the whole.

- Once a problem is observed, a search for the causes is started. Again each component or subsystem of the whole is examined and finally "the causes" are detected.
- The third step consists of eliminating the causes and as soon as it is eliminated, the normal operations are resumed.

Causal thinking follows the line given by a sequence of cause-effects relations and therefore causal thinking is described by Binder as thinking in points. Similarly, von Collani[4]compares the prevailing causal thinking in science with logical thinking since it is based on a sequence, the logical relations *if a then b*.

Effects of causal thinking

Causal thinking is closely related to reductionism that tries to explain the whole by its parts through causal laws. In other words, causal thinking focus on the parts, or *points* as Binder calls them. Searching for the cause means to search for that part of a system whose maloperation had finally produced the observed event.

Causal thinking may have two results:

- The trigger of a problem is identified and eliminated and the earlier state of the given system is restored.
- The performance of a part of the system is improved by applying general principles obtained by breaking the system down to smaller parts.

Biological Theory of Crime can be traced back to the nineteen-century work of Cesare Lombroso. Shortly before his death, Lombroso help his daughter Gina translate the text of *Criminal Man* for an English speaking audience. Prior to Lombroso's Biological theory of crime, Cesare Beccaria and Jermey Bentham had introduced the Classical School of Crime. The Classical School of Crime was a theory based on the notion that, an individual who possesses "free will" chooses a life of crime. Cesare Lombroso would dispute the concept behind the

Classical School, on the basis that the individual and the crime itself are two different components.

In the text *Criminal Man* (Mary Gibson and Nicole Hahn Rafter, 2006), Lombroso retells a moment in his life were he filled his leisure time working as a doctor for the Italian army. While working as a doctor, Lombroso was captivated by the extent of the bodies of many soldiers covered in tattoos while other comrades bare none. This would lead to Cesare Lombroso being fascinated of a possible correlation in distinguishing, "the honest comrades from the vicious comrade" (David G. Horn, 2003, p.29). Cesare was quickly met with defeat, as he realized that there was in fact no relation distinguishing the honest comrades from the vicious ones.

This minor setback did not discourage Cesare Lombroso's ambition in supporting his causation of crime theory which was based on biological factors. Lombroso's major break came when he was instructed to perform a post-mortem examination on Guiseppe Villela, who had been imprisoned for theft. Upon examining Villela's skull, Lombroso noticed what he classified as a "depression in the middle of the occipital part of the skull" (Horn, 2003, p.30). Furthermore Horn states how, "historians have tended to discount the significance of this story due in part by the several exaggerations and inconsistencies pertaining to the incident" (Horn, 2003, p.31). As a result of the unusual structure of the skull, Cesare Lombroso would refer to the skull as "atavism." Charles A. Ellwood defines atavistic as, "reproducing the physical psychical characteristics of remote ancestors, he is a savage born into the modern world" (Ellwood, 2003, p.720-721). For example Lombroso describe an atavistic criminal as one who possesses primitive traits that can be linked to evolutionary times. For example some primitive traits that were of importance in evolutionary times consisted of gall bladders, pubic hair and appendix. At one point in the evolutionary cycle, these primitive features serve a primary function in the survival of human beings, but as humans adapted these atavistic features outlived their function. As a result, this enabled Lombroso to argue the reason for crimes being outlawed because as Lombroso interpreted it, human beings were just reproducing similar acts that were customary in evolutionary pasts. For example Lombroso would describe a time in which, "vendetta killings

among uncivilized Italians were labeled as customary duties rather than crimes" (Horn, 2003, p.34).

In support of his theory, Cesare Lombroso conducted studies in which he measured the length in space from the first and second toes of criminals. Lombroso would then compare the measurements of the criminals to that of non-criminals toes. Surprisingly the results concluded that when relaxed, the length in space between criminals' toes had an interdigital space of 3mm greater than of that of non-criminals. This analysis supported Lombroso concept of an atavistic criminal, in which they tend to have distinct physical characteristics. In addition to measuring the length in space of first and second toes, Lombroso would further compare physical measurements such as length of arms, abnormal teeth as take into consideration the amount of body hair in individuals bodies.

Besides noting the abnormality in physical characteristics within criminals, Lombroso was also intrigue by the difference in writing styles. For example Lombroso argued that criminals were capable of writing in words but choose the alternative expressing themselves through images. Lombroso states that the difference in writing and language can be attributed to, "the tendency for criminals to express their thoughts in images even though they were capable of writing words they resorted to pictography" (Horn, 2003, p. 47).

Furthermore Cesare Lombroso conducts a study in which he presents images of criminals to young girls in which he classifies as "inexpert in the world of good and evil" (Horn, 2003, p.74). The study consisted of young girls viewing images of criminals and non-criminals the objective being to differentiate them based solely on facial features. To the surprise of many experts, the young girls who were referred as unknowledgeable in the world of good and evil had more often than not correctly identified the criminals from the non-criminals solely on facial characteristics. As a result of the various studies conducted in support of his theory, Lombroso claimed to have found numerous biological features that help classify criminals from non-criminals.

Cesare Lombroso's theory did not go unchallenged, for instance many criminologist in France rejected the overall concept behind Biological Theory of Crime. One of the biggest critics of Cesare Lombroso was a prison medical doctor named Charles Goring. Charles Goring

conducted a statistical study in which he set out to measure the accuracy of Lombeoso's theory of crime, which was based under the notion of distinct physical differences between criminals and non-criminals. Results from tehe study ultimately concluded that there were in fact no distinct physical abnormalities differentiating criminals from non-criminals.

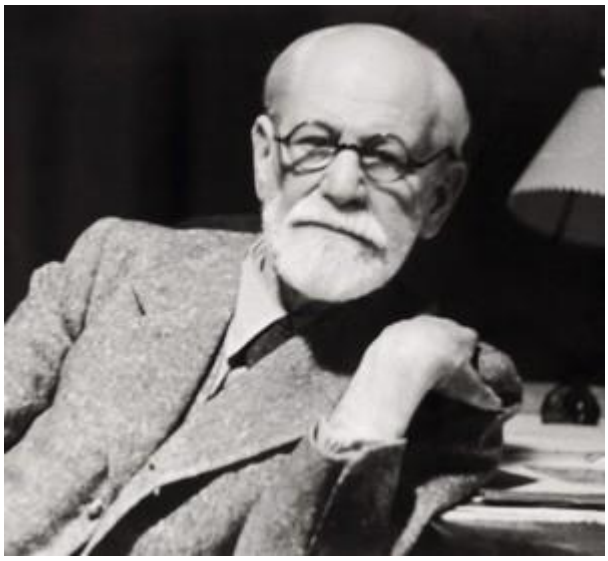
Additional criticism can also be noted in the way, "legislators refused to replace a system of penalties with measures of social defense" (Horn 2003, p. 133). To the surprise of many, juries also criticized the concept of distinct physical features noted in criminals. For example when the inception of Biological theory came about, may jurors lack the knowledge to grasp the meaning of many scientific terms, resulting in many jurors feeling overwhelmed. Furthermore David G. Horn would detailed how, "jurors would become fed up by an excess of subtle scientific analyses and not be able to follow the witness" (Horn 2003, p.136).

Cesare Lombroso comes from a relatively small group of social scientists that lived long enough to fully complete his research. Overall can make the case that Cesare Lombroso accomplished his task by strictly arguing that crime was an effect of biological traits of a born criminal. Lombroso's contributions can be noted by the numerous studies he conducted to support his theory of a born criminal. Ellwood states that, "the criminal man must be studied and not simply crime in the abstract, the criminal must be treated as an individual and not his act alone considered" (Ellwood, 2003, p.723). Even though critics criticized the concept of Biological Theory of crime, overall it brought out a new thinking among social scientists that considers the biological inheritances of an individual when measuring the cause of committing a crime. Ellwood states, "the problem still remains, however, whether these biological roots are the true causes of crime or whether crime can still exist without them" (Ellwood, 2003, p.718).

Psychodynamic Theory

Proponents of psychodynamic theory suggest that an individual's personality is controlled by unconscious mental processes that are grounded in early childhood. This theory was originated by Sigmund Freud (1856–1939), the founder of psychoanalysis. Imperative to this theory are the three elements or structures that make up the human personality: (1) the id, (2), the ego, and (3)

the superego. One can think of the id is as the primitive part of a person's mental makeup that is present at birth. Freud (1933) believed the id represents the



unconscious biological drives for food, sex, and other necessities over the life span. Most important is the idea that the id is concerned with instant pleasure or gratification while disregarding concern for others. This is known as the pleasure principle, and it is often paramount when discussing criminal behavior. All too often, one sees news stories and studies about criminal offenders who have no concern for anyone but themselves. Is it possiblethat these male and female offenders are driven by instant gratification? The second element of the human personality is the ego, which is thought to develop early in a person's life. For example, when children learn that their wishes cannot be gratified instantaneously, they often throw a tantrum. Freud (1933) suggested that the ego compensates for the demands of the id by guiding an individual's actions or behaviors to keep him or her within the boundaries of society. The ego is guided by the reality principle. The third element of personality, the superego, develops as a person incorporates the moral standards and values of the community; parents; and significant others, such as friends and clergy members. The focus of the superego is morality. The superego serves to pass judgment on the behavior and actions of individuals (Freud, 1933). The ego mediates between the id's desire for instant gratification and the strict morality of the superego. One can assume that young adults as well as adults understand right from wrong. However,

when a crime is committed, advocates of psychodynamic theory would suggest that an individual committed a crime because he or she has an underdeveloped superego.

In sum, psychodynamic theory suggests that criminal offenders are frustrated and aggravated. They are constantly drawn to past events that occurred in their early childhood. Because of a negligent, unhappy, or miserable childhood, which is most often characterized by a lack of love and/or nurturing, a criminal offender has a weak (or absent) ego. Most important, research suggests that having a weak ego is linked with poor or absence of social etiquette, immaturity, and dependence on others. Research further suggests that individuals with weak egos may be more likely to engage in drug abuse.

Social disorganization theory

The leading sociological theories focus on the immediate social environment, like the family, peer group, and school. And they are most concerned with explaining why some individuals are more likely to engage in crime than others. Much recent theoretical work, however, has also focused on the larger social environment, especially the community and the total society. This work usually attempts to explain why some groups—like communities and societies—have higher crime rates than other groups. In doing so, however, this work draws heavily on the central ideas of control, social learning, and strain theories.

Social disorganization theory seeks to explain community differences in crime rates (see Robert Sampson and W. Bryon Groves; Robert Bursik and Harold Grasmick). The theory identifies the characteristics of communities with high crime rates and draws on social control theory to explain why these characteristics contribute to crime.

Crime is said to be more likely in communities that are economically deprived, large in size, high in multiunit housing like apartments, high in residential mobility (people frequently move into and out of the community), and high in family disruption (high rates of divorce, single-parent families). These factors are said to reduce the ability or willingness of community residents to exercise effective social control, that is, to exercise direct control, provide young people with a

stake in conformity, and socialize young people so that they condemn delinquency and develop self-control.

The residents of high crime communities often lack the skills and resources to effectively assist others. They are poor and many are single parents struggling with family responsibilities. As such, they often face problems in socializing their children against crime and providing them with a stake in conformity, like the skills to do well in school or the connections to secure a good job. These residents are also less likely to have close ties to their neighbors and to care about their community. They typically do not own their own homes, which lowers their investment in the community. They may hope to move to a more desirable community as soon as they are able, which also lowers their investment in the community. And they often do not know their neighbors well, since people frequently move into and out of the community. As a consequence, they are less likely to intervene in neighborhood affairs—like monitoring the behavior of neighborhood residents and sanctioning crime. Finally, these residents are less likely to form or support community organizations, including educational, religious, and recreational organizations. This is partly a consequence of their limited resources and lower attachment to the community. This further reduces control, since these organizations help exercise direct control, provide people with a stake in conformity, and socialize people. Also, these organizations help secure resources from the larger society, like better schools and police protection. Recent data provide some support for these arguments.

Social disorganization theorists and other criminologists, such as John Hagan, point out that the number of communities with characteristics conducive to crime—particularly high concentrations of poor people—has increased since the 1960s. These communities exist primarily in inner city areas and they are populated largely by members of minority groups (due to the effects of discrimination). Such communities have increased for several reasons. First, there has been a dramatic decline in manufacturing jobs in central city areas, partly due to the relocation of factories to suburban areas and overseas. Also, the wages in manufacturing jobs have become less competitive, due to factors like foreign competition, the increase in the size of the work force, and the decline in unions. Second, the increase in very poor communities is due

to the migration of many working- and middle-class African Americans to more affluent communities, leaving the poor behind. This migration was stimulated by a reduction in discriminatory housing and employment practices. Third, certain government policies—like the placement of public housing projects in inner-city communities and the reduction of certain social services—have contributed to the increased concentration of poverty.

Social learning theory

Why do people engage in crime according to social learning theory? They learn to engage in crime, primarily through their association with others. They are reinforced for crime, they learn beliefs that are favorable to crime, and they are exposed to criminal models. As a consequence, they come to view crime as something that is desirable or at least justifiable in certain situations. The primary version of social learning theory in criminology is that of Ronald Akers and the description that follows draws heavily on his work. Akers's theory, in turn, represents an elaboration of Edwin Sutherland's differential association theory (also see the related work of Albert Bandura in psychology).

According to social learning theory, juveniles learn to engage in crime in the same way they learn to engage in conforming behavior: through association with or exposure to others. Primary or intimate groups like the family and peer group have an especially large impact on what we learn. In fact, association with delinquent friends is the best predictor of delinquency other than prior delinquency. However, one does not have to be in direct contact with others to learn from them; for example, one may learn to engage in violence from observation of others in the media.

Most of social learning theory involves a description of the three mechanisms by which individuals learn to engage in crime from these others: differential reinforcement, beliefs, and modeling.

Differential reinforcement of crime. Individuals may teach others to engage in crime through the reinforcements and punishments they provide for behavior. Crime is more likely to occur when it (a) is frequently reinforced and infrequently punished; (b) results in large amounts of

reinforcement (e.g., a lot of money, social approval, or pleasure) and little punishment; and (c) is more likely to be reinforced than alternative behaviors.

Reinforcements may be positive or negative. In positive reinforcement, the behavior results in something good—some positive consequence. This consequence may involve such things as money, the pleasurable feelings associated with drug use, attention from parents, approval from friends, or an increase in social status. In negative reinforcement, the behavior results in the removal of something bad—a punisher is removed or avoided. For example, suppose one's friends have been calling her a coward because she refuses to use drugs with them. The individual eventually takes drugs with them, after which time they stop calling her a coward. The individual's drug use has been negatively reinforced.

According to social learning theory, some individuals are in environments where crime is more likely to be reinforced (and less likely to be punished). Sometimes this reinforcement is deliberate. For example, the parents of aggressive children often deliberately encourage and reinforce aggressive behavior outside the home. Or the adolescent's friends may reinforce drug use. At other times, the reinforcement for crime is less deliberate. For example, an embarrassed parent may give her screaming child a candy bar in the checkout line of a supermarket. Without intending to do so, the parent has just reinforced the child's aggressive behavior.

Data indicate that individuals who are reinforced for crime are more likely to engage in subsequent crime, especially when they are in situations similar to those where they were previously reinforced.

Beliefs favorable to crime. Other individuals may not only reinforce our crime, they may also teach us beliefs favorable to crime. Most individuals, of course, are taught that crime is bad or wrong. They eventually accept or "internalize" this belief, and they are less likely to engage in crime as a result. Some individuals, however, learn beliefs that are favorable to crime and they are more likely to engage in crime as a result.

Few people—including criminals—generally approve of serious crimes like burglary and robbery. Surveys and interviews with criminals suggest that beliefs favoring crime fall into three categories. And data suggest that each type of belief increases the likelihood of crime.

First, some people generally approve of certain minor forms of crime, like certain forms of consensual sexual behavior, gambling, "soft" drug use, and—for adolescents—alcohol use, truancy, and curfew violation.

Second, some people conditionally approve of or justify certain forms of crime, including some serious crimes. These people believe that crime is generally wrong, but that some criminal acts are justifiable or even desirable in certain conditions. Many people, for example, will state that fighting is generally wrong, but that it is justified if you have been insulted or provoked in some way. Gresham Sykes and David Matza have listed some of the more common justifications used for crime. Several theorists have argued that certain groups in our society—especially lower-class, young, minority males—are more likely to define violence as an acceptable response to a wide range of provocations and insults. And they claim that this "subculture of violence" is at least partly responsible for the higher rate of violence in these groups. Data in this area are somewhat mixed, but recent studies suggest that males, young people, and possibly lower-class people are more likely to hold beliefs favorable to violence. There is less evidence for a relationship between race and beliefs favorable to violence.

Third, some people hold certain general values that are conducive to crime. These values do not explicitly approve of or justify crime, but they make crime appear a more attractive alternative than would otherwise be the case. Theorists such as Matza and Sykes have listed three general sets of values in this area: an emphasis on "excitement," "thrills," or "kicks"; a disdain for hard work and a desire for quick, easy success; and an emphasis on toughness or being "macho." Such values can be realized through legitimate as well as illegitimate channels, but individuals with such values will likely view crime in a more favorable light than others.

The imitation of criminal models. Behavior is not only a function of beliefs and the reinforcements and punishments individuals receive, but also of the behavior of those around

them. In particular, individuals often imitate or model the behavior of others—especially when they like or respect these others and have reason to believe that imitating their behavior will result in reinforcement. For example, individuals are more likely to imitate others' behavior if they observe them receive reinforcement for their acts.

Social learning theory has much support and is perhaps the dominant theory of crime today. Data indicate that the people one associates with have a large impact on whether or not one engages in crime, and that this impact is partly explained by the effect these people have on one's beliefs regarding crime, the reinforcements and punishments one receives, and the models one is exposed to.

Sociological theory of deviance

The study of social deviance is the study of the violation of cultural norms in either formal or informal contexts. Social deviance is a phenomenon that has existed in all societies with norms. Sociological theories of deviance are those that use social context and social pressures to explain deviance .

Economistic approaches

Since his pioneering application of economic analysis to racial discrimination, Gary S. Becker has shown that an economic approach can provide a unified framework for understanding all human behavior. In a highly readable selection of essays Becker applies this approach to various aspects of human activity, including social interactions; crime and punishment; marriage, fertility, and the family; and "irrational" behavior.

"Becker's highly regarded work in economics is most notable in the imaginative application of 'the economic approach' to a surprising breadth of human activity.

UNIT:2 DEVIATION

legislation- *'Legis'* means law and *'latum'* means making. Let us understand how various jurists have defined legislation.

1. **Salmond**- Legislation is that source of law which consists in the declaration of legal rules by a competent authority.

2. **Horace Gray**- Legislation means the forma utterance of the legislative organs of the society.

3. **John Austin**- There can be no law without a legislative act.

Analytical Positivist School of Thought- This school believes that typical law is a**statute** and legislation is the normal source of law making. The majority of exponents of this school **do not approve that the courts also can formulate law**. They do not admit the claim of customs and traditions as a source of law. Thus, they regard **only legislation as the source of law**.

Historical School of Thought- This group of gentlemen believe that **Legislation is the least creative of the sources of law**. Legislative purpose of any legislation is to give better form and effectuate the customs and traditions that are spontaneously developed by the people. Thus, **they do not regard legislation as source of law.**

Types of Legislation

1. **Supreme Legislation**- A Supreme or a Superior Legislation is that which proceeds from the sovereign power of the state. It cannot be repealed, annulled or controlled by any other legislative authority.

2. **Subordinate Legislation**- It is that which proceeds from any authority **other than the sovereign power** and is dependant for its continual existence and validity on some superior authority.

Delegated Legislation- This is a type of subordinate legislation. It is well-known that the main function of the executive is to **enforce the law**. In case of Delegated Legislation, executive frames the provisions of law. This is also known as executive legislation. The executive makes laws in the form of orders, by laws etc.

Difference between Legislation and Customary Law

1. Legislation has its source in theory whereas customary law grows out of practice.

2. The existence of Legislation is essentially *de Jure* whereas existence of customary law is essentially *de Facto*.

3. Legislation is the latest development in the Law-making tendency whereas customary law is the oldest form of law.

4. Legislation is a mark of an advanced society and a mature legal system whereas absolute reliance on customary law is a mark of primitive society and under-developed legal system.

5. Legislation expresses relationship between man and state whereas customary law expresses relationship between man and man.

6. Legislation is precise, complete and easily accessible but the same cannot be said about customary law. Legislation is *jus scriptum*.

7. Legislation is the result of a deliberate positive process. But customary law is the outcome of necessity, utility and imitation.

Treatment

The act, manner, or method of handling or dealing with someone or something: *"the right to equ al treatmentin the criminal and juvenile justice system"*

Probation and **parole** are both alternatives to incarceration. However, **probation** occurs prior to and often instead of jail or prison time, while **parole** is an early release from prison. In both **probation** and **parole**, the party is supervised and expected to follow certain rules and guidelines.

Unit 2 c. judicial approaches

Judicial interpretation is a theory or mode of thought that describes a general **approach** which the **judiciary** uses to interpret.

Judicial approach in context to interpretation of statutes.

Statutes are a written communication between Parliament and the legislative audience. Statutory interpretation is the process whereby the legislative audience seeks to understand and thereby govern its actions by the dictates of Parliament. Judicial interpretation occurs only when there has been some breakdown in this process - either Parliament failed to express its ideas clearly or those ideas are incapable of precise expression. A broad aim of this thesis is to examine the functioning of language and the communication process with a view to understanding more clearly the nature of meaning and its ascertainment. An analysis will be made of those features of language giving rise to uncertainty and so to the problem case of interpretation. An analysis will also be made of the nature of linguistic certainty; it is hoped that a better understanding of the ingredients of successful communication will eventually lead to the reduction of statutory doubt. Next the theory of judicial interpretation will be considered and its correspondence to accepted linguistic theory assessed.

Particular emphasis will be placed on a discussion of the adequacy of the traditional canons. Finally judicial practice will be considered by means of a survey conducted from two years of the New Zealand Law Reports. The results from this survey will then be compared with earlier findings from the thesis. Conclusions of a general nature will be drawn; in particular it will be submitted that a shift in the dominant paradigm applicable to the construction of statutes is presently under way in New Zealand. The traditional canons are being replaced by a more unified and consistent paradigm whose features include liberalisation of the literal rule to encompass consideration of context, including the statutory purpose, and explicit provision for assessment of consequences. This new paradigm is more adequate than the traditional canons and Section 5(j) both as a source of reasons for meaning and reasons for decision.o interpret the law, particularly constitutional documents and legislation.

socio economic crime- drug abuse

Drug abuse is a heinous crime.June 26 is celebrated as International Day against Drug Abuse and Illicit Trafficking every year. It is an exercise undertaken by the world community to sensitize the people in general and the youth in particular, to the menace of drugs. The picture is grim if the world statistics on the drugs scenario is taken into account. With a turnover of around $500 billions, it is the third largest business in the world, next to petroleum and arms trade. About 190 million people all over the world consume one drug or the other. Drug addiction causes immense human distress and the illegal production and distribution of drugs have spawned crime and violence worldwide. Today, there is no part of the world that is free from the curse of drug trafficking and drug addiction. Millions of drug addicts, all over the world, are leading miserable lives, between life and death.

India too is caught in this vicious circle of drug abuse, and the numbers of drug addicts are increasing day by day. According to a UN report, One million heroin addicts are registered in India, and unofficially there are as many as five million. What started off as casual use among a minuscule population of high-income group youth in the metro has permeated to all sections of

society. Inhalation of heroin alone has given way to intravenous drug use, that too in combination with other sedatives and painkillers. This has increased the intensity of the effect, hastened the process of addiction and complicated the process of recovery. Cannabis, heroin, and Indian-produced pharmaceutical drugs are the most frequently abused drugs in India. Cannabis products, often called charas, bhang, or ganja, are abused throughout the country because it has attained some amount of religious sanctity because of its association with some Hindu deities. The International Narcotics Control Board in its 2002 report released in Vienna pointed out that in India persons addicted to opiates are shifting their drug of choice from opium to heroin. The pharmaceutical products containing narcotic drugs are also increasingly being abused. The intravenous injections of analgesics like dextropropoxphene etc are also reported from many states, as it is easily available at 1/10th the cost of heroin. The codeine-based cough syrups continue to be diverted from the domestic market for abuse Drug abuse is a complex phenomenon, which has various social, cultural, biological, geographical, historical and economic aspects. The disintegration of the old joint family system, absence of parental love and care in modern families where both parents are working, decline of old religious and moral values etc lead to a rise in the number of drug addicts who take drugs to escape hard realities of life. Drug use, misuse or abuse is also primarily due to the nature of the drug abused, the personality of the individual and the addict's immediate environment. The processes of industrialization, urbanization and migration have led to loosening of the traditional methods of social control rendering an individual vulnerable to the stresses and strains of modern life.

The fast changing social milieu, among other factors, is mainly contributing to the proliferation of drug abuse, both of traditional and of new psychoactive substances. The introduction of synthetic drugs and intravenous drug use leading to HIV/AIDS has added a new dimension to the problem, especially in the Northeast states of the country. Drug abuse has led to a detrimental impact on the society. It has led to increase in the crime rate. Addicts resort to crime to pay for their drugs.

Drugs remove inhibition and impair judgment egging one on to commit offences. Incidence of eve- teasing, group clashes, assault and impulsive murders increase with drug abuse. Apart from affecting the financial stability, addiction increases conflicts and causes untold emotional pain for every member of the family.

With most drug users being in the productive age group of 18-35 years, the loss in terms of human potential is incalculable. The damage to the physical, psychological, moral and intellectual growth of the youth is very high. Adolescent drug abuse is one of the major areas of concern in adolescent and young people's behavior. It is estimated that, in India, by the time most boys reach the ninth grade, about 50 percent of them have tried at least one of the gateway drugs. However, there is a wide regional variation across states in term of the incidence of the substance abuse. For example, a larger proportion of teens in West Bengal and Andhra Pradesh use gateway drugs (about 60 percent in both the states) than Uttar Pradesh or Haryana (around 35 percent). Increase in incidences of HIV, hepatitis B and C and tuberculosis due to addiction adds the reservoir of infection in the community burdening the health care system further. Women in India face greater problems from drug abuse. The consequences include domestic violence and infection with HIV, as well as the financial burden. Eighty seven per cent of addicts being treated in a de-addiction center run by the Delhi police acknowledged being violent with family members. Most of the domestic violence is directed against women and occurs in the context of demands for money to buy drugs.

At the national level, drug abuse is intrinsically linked with racketeering, conspiracy, corruption, illegal money transfers, terrorism and violence threatening the very stability of governments. India has braced itself to face the menace of drug trafficking both at the national and international levels. Several measures involving innovative changes in enforcement, legal and judicial systems have been brought into effect. The introduction of death penalty for drug-related offences has been a major deterrent. The Narcotic Drugs and Psychotropic Substances Act, 1985, were enacted with stringent provisions to curb this menace. The Act envisages a minimum term of 10 years imprisonment extendable to 20 years and fine of Rs. 1 lakh extendable up to Rs. 2 lakhs for the offenders. The Act has been further amended by making provisions for the

forfeiture of properties derived from illicit drugs trafficking. Comprehensive strategy involving specific programmes to bring about an overall reduction in use of drugs has been evolved by the various government agencies and NGOs and is further supplemented by measures like education, counseling, treatment and rehabilitation programmes.

India has bilateral agreements on drug trafficking with 13 countries, including Pakistan and Burma. Prior to 1999, extradition between India and the United States occurred under the auspices of a 1931 treaty signed by the United States and the United Kingdom, which was made applicable to India in 1942. However, a new extradition treaty between India and the United States entered into force in July 1999. A Mutual Legal Assistance Treaty was signed by India and the United States in October 2001.

India also is signatory to the following treaties and conventions:
1961 U.N. Convention on Narcotic Drugs
1971 U.N. Convention on Psychotropic Substances
1988 U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances
2000 Transnational Crime Convention

The spread and entrenchment of drug abuse needs to be prevented, as the cost to the people, environment and economy will be colossal. The unseemly spectacle of unkempt drug abusers dotting lanes and by lanes, cinema halls and other public places should be enough to goad the authorities to act fast to remove the scourge of this social evil. Moreover, the spread of such reprehensible habits among the relatively young segment of society ought to be arrested at all cost. There is a need for the government enforcement agencies, the non-governmental philanthropic agencies, and others to collaborate and supplement each other's efforts for a solution to the problem of drug addiction through education and legal actions.

SOCIO ECONOMIC CRIMES

White-collar crime refers to financially motivated nonviolent crime committed by business and government professionals. Within criminology, it was first defined by sociologist Edwin Sutherland in 1939 as "a crime committed by a person of respectability and high social status in the course of his occupation". Typical white-collar crimes include fraud, bribery, Ponzi schemes, insider trading, labor racketeering, embezzlement, cybercrime, copyright infringement, money laundering, identity

What is a 'White-Collar Crime '

White-collar crime is a nonviolent crime committed for financial gain. Securities fraud, embezzlement, corporate fraud and money laundering are examples of white-collar crime, and these acts are usually investigated by the FBI, the Securities and Exchange Commission (SEC) and the National Association of Securities Dealers (NASD). Some high-profile individuals convicted of white-collar crimes include Kenneth Lay, Bernard Madoff and Bernard Ebbers.

BREAKING DOWN 'White-Collar Crime '

White-collar crime gets its name from the types of individuals who typically commit financial fraud, including business managers, fund managers and executives. Individuals can face prison time and steep fines if they are convicted of white-collar crimes. The federal government can also pursue financial damages from corporations and banks that commit white-collar crime on an institution-wide level.

Example of White-Collar Crime Committed by an Individual

One of the most well-known white-collar criminals is Bernard Madoff, who was convicted in 2009 of a massive fraud that cost investors $65 billion. Madoff, sentenced to 150 years in prison, ran an elaborate Ponzi scheme, which promised large returns on investments. For many years,

Madoff used money from new investors to pay previous investors without actually investing the funds. Madoff's scheme fell apart when a significant number of investors demanded their money back, and Madoff was unable to pay them.

Examples of Corporate White-Collar Crime

Corporate white-collar crime usually involves a large-scale fraud perpetrated throughout the institution. For instance, Credit Suisse pleaded guilty in 2014 to helping U.S. citizens avoid paying taxes by hiding income from the Internal Revenue Service. The bank agreed to pay penalties of $2.6 billion.

Also in 2014, Bank of America acknowledged it sold billions in mortgage-backed securities (MBS) tied to properties with inflated values. These loans, which did not have proper collateral, were among the types of financial misdeeds that led to the financial crash of 2008. Bank of America agreed to pay $16.65 billion in damages and admit to its wrongdoing.

How the Government Fights White-Collar Crime

Most states have agencies that investigate white-collar crimes that are limited to a single state, and several federal agencies investigate financial frauds that span multiple states. In a unique attempt to protect its citizens, the state of Utah established the nation's first online registry for white-collar criminals in 2016. Photos of individuals who are convicted of a fraud-related felony rated as second-degree or higher are featured on the registry. The state initiated the registry because Ponzi-scheme perpetrators tend to target tight-knit cultural or religious communities, such as the Church of Jesus Christ of Latter-day Saints based in Salt Lake City, Utah.

UNIT 3: PUNISHMENT

Theories of Punishment (kinds of Punishment under Criminal Law)

1) INTRODUCTION –

A Punishment is a consequence of an offense. Punishments are imposed on the wrong doers with the object to deter them to repeat the same wrong doing and reform them into law- abiding citizens. The kind of punishment to be imposed on the criminal depends or is influenced by the kind of society one lives in. The aim of the different theories of punishments is to transform the law-breakers into law-abiders.

2) THEORIES OF PUNISHMENT –

The different theories of Punishment are as follows –

- Deterrent Theory
- Retributive Theory
- Preventive Theory
- Reformative Theory
- Expiatory Theory

A) DETERRENT THEORY-

The term "Deter" means to abstain from doing an act. The main purpose of this theory is to deter (prevent) the criminals from doing the crime or repeating the same crime in future. Under this theory, severe punishments are inflicted upon the offender so that he abstains from committing a crime in future and it would also be a lesson to the other members of the society, as to what can be the consequences of committing a crime. This theory has proved effective, even though it has certain defects.

B) RETRIBUTIVE THEORY-

This theory of punishment is based on the principle- "An eye for an eye, a tooth for a tooth". Retribute means to give in turn. The object of this theory is to make the criminal realize the suffering of the pain by subjecting him to the same kind of pain as he had inflicted on the victim. This theory aims at taking a revenge rather than social welfare and transformation. This theory has not been supported by the Criminologists, Penologists and Sociologists as they feel that this theory is brutal and babric.

C) PREVENTIVE THEORY –

This theory too aims to prevent the crime rather than avenging it. As per this theory, the idea is to keep the offender away from the society. This criminal under this theory is punished with death, life imprisonment etc. This theory has been criticized by some jurists.

D) REFORMATIVE THEORY –

This theory is the most humane of all the theories which aims to reform the legal offenders by individual treatment. The idea behind this theory is that no one is a born Criminal and criminals are also humans. Under this theory, it is believed that if the criminals are trained and educated, they can be transformed into law abiding citizens. This theory has been proved to be successful and accepted by many jurists.

E) EXPIATORY THEORY –

Under this theory, it is believed that if the offender expiates or repents and realizes his mistake, he must be forgiven.

An alternative to incarceration is any kind of punishment or treatment other than time in prison or jail that can be given to a person who is convicted of committing a crime. Alternatives can take the form of restorative justice, transformative justice, or the abolition of incarceration entirely. Criminal sentences may involve one or more different elements, including incarceration (prison, jail), probation, restitution (victim compensation), and community service

Parole is the provisional release of a prisoner who agrees to certain conditions prior to the completion of the maximum sentence period, originating from the French *parole* ("voice", "spoken words"). The term became associated during the Middle Ages with the release of prisoners who gave their word.

This differs greatly from amnesty or commutation of sentence in that parolees are still considered to be serving their sentences, and may be returned to prison if they violate the conditions of their parole. A specific type of parole is medical parole or compassionate release which is the release of prisoners on medical or humanitarian grounds. Conditions of parole often include things such as obeying the law, refraining from drug and alcohol use, avoiding contact with the parolee's victims, obtaining employment, and maintaining required contacts with a parole officer. Some justice systems, such as the United States federal system, place defendants on supervised release after serving their entire prison sentence; this is not the same as parole.

Probation in criminal law is a period of supervision over an offender, ordered by a court instead of serving time in prison.

In some jurisdictions, the term *probation* only applies to community sentences (alternatives to incarceration), such as suspended sentences. In others, probation also includes supervision of those conditionally released from prison on parole.

An offender on probation is ordered to follow certain conditions set forth by the court, often under the supervision of a probation officer. During this testing period, an offender faces the threat of being sent to prison, if found breaking the rules.

Offenders are ordinarily required to refrain from possession of firearms, and may be ordered to remain employed or participate in an educational program, abide to a curfew, live at a directed place, obey the orders of the probation officer, or not leave the jurisdiction. The probationer might be ordered as well to refrain from contact with the victims (such as a former partner in adomestic violence case), with potential victims of similar crimes (such as minors, if the instant offense involves child sexual abuse), or with known criminals, particularly co-defendants. Additionally, the restrictions can include a ban on possession or use of alcoholic beverages, even if alcohol was not involved in the original criminal charges. Offenders on probation might be fitted with anelectronic tag (or monitor), which signals their whereabouts to officials. Also, offenders have been ordered to submit to repeat alcohol/drug testing or to participate in alcohol/drug or psychological treatment, or to perform community service work.

Prison reform is the attempt to improve conditions inside prisons, establish a more effective penal system, or implementalternatives to incarceration, Prisons have only been used as the primary punishment for criminal acts in the last few centuries. Far more common earlier were various types of corporal punishment, public humiliation, penal bondage, and banishment for more severe offences, as well as capital punishment.

Prisons contained both felons and debtors - the latter were allowed to bring in wives and children. The jailer made his money by charging the inmates for food and drink and legal services and the whole system was rife with corruption. One reform of the sixteenth century had

been the establishment of the *London Bridewell* as a house of correction for women and children. This was the only place any medical services were provided.

Role of Judiciary in Protecting the Rights of Prisoners

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The independent judicial system stems from the notion of the separation of powers where the executive, legislature and judiciary form three branches of the government. This separation and consequent independence is key to the judiciary's effective in upholding the rule of law and human rights.

Since every society has a judicial system for the protection of its law-abiding members, it has to make provisions of prisons for the law breakers. But it doesn't mean that the prisoners have no rights. The prisoners also have their rights. The Supreme Court of India, by interpreting Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoner's rights to maintain human dignity. Any violation of this right attracts the provisions of Article 14 of theConstitution, which enshrines right to equality and equal protection of law. In addition to this, the question of cruelty to prisoners is also dealt with, specifically by the Prison Act, 1894 and the Criminal Procedure Code (CRPC). Any excess committed on a prisoner by the police authorities not only attracts the attention of the legislature but also of the judiciary. The Indian judiciary, particularly the Supreme Court, in the recent past, has been very vigilant against violations of the human rights of the prisoners. The Supreme Court and the High Courts have commented upon the deplorable conditions prevailing inside the prisons, resulting in violation of prisoner's rights. Prisoners' rights have become an important

item in the agenda for prison reforms. The need for prison reforms has come into focus during the last three to four decades.

Prisoners and the Human Rights

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. Article 21 of theConstitution of India provides that "No person shall be deprived of his life and Personal Liberty except according to procedure established by law". The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. By giving a liberal and comprehensive meaning to "life and personal liberty," the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In A.K.Gopalan's case, the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in Maneka Gandhi case and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that "the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation" and also opined that the procedures prescribed by law must be fair, just and reasonable.

In the following cases namely Maneka Gandhi, Sunil Batra (I), M.H.Hoskot and Hussainara Khatoon, the Supreme Court has taken the view that the provisions of part III should be given widest possible interpretation. It has been held that right to legal aid, speedy trail, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right live with human dignity, right to

livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. Thus, the Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner's Right to Human Dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decisions of the Supreme Court in Sunil Batra was a watershed in the development of prison jurisprudence in India.

Rights against Solitary Confinement and Bar Fetters

The courts have strong view against solitary confinement and held that imposition of solitary confinement is highly degrading and dehumanizing effect on the prisoners. The courts have taken the view that it could be imposed only in exceptional cases where the convict was of such a dangerous character that he must be segregated from the other prisoners. The Supreme Court in Sunil Batra (1) considered the validity of solitary confinement. The Supreme Court has also reacted strongly against putting bar fetters to the prisoners. The court observed that continuously keeping a prisoner in fetters day and night reduced the prisoner from human being to an animal and such treatment was so cruel and unusual that the use of bar fetters was against the spirit of theConstitution of India.

Rights against Inhuman Treatment of Prisoners

Human Rights are part and parcel of Human Dignity. The Supreme Court of India in various cases has taken a serious note of the inhuman treatment on prisoners and has issued appropriate directions to prison and police authorities for safeguarding the rights of the prisoners and persons in police lock–up. The Supreme Court read the right against torture into Articles 14 and 19 of the Constitution. The court observed that "the treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Article 14". In the Raghubir Singh v. State of Bihar, the Supreme Court expressed its anguish over police torture by upholding the life sentence awarded

to a police officer responsible for the death of a suspect due to torture in a police lock – up. In Kishore Singh VS. State of Rajasthan the Supreme Court held that the use of third degree method by police is violative of Article 21.
The decision of the Supreme Court in the case of D.K. Basu is noteworthy. While dealing the case, the court specifically concentrated on the problem of custodial torture and issued a number of directions to eradicate this evil, for better protection and promotion of Human Rights. In the instant case the Supreme Court defined torture and analyzed its implications.

Right to have Interview with Friends, Relatives and Lawyers

The horizon of Human Rights is expanding. Prisoner's rights have been recognized not only to protect them from physical discomfort or torture in person, but also to save them from mental torture. The Right to Life and Personal Liberty enshrined inArticle 21 cannot be restricted to mere animal existence. It means something much more than just physical survival. The right to have interview with the members of one's family and friends is clearly part of the Personal Liberty embodied in Article 21. Article22 (I) of the Constitution directs that no person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. This legal right is also available in the code of criminal procedure under section 30441. The court has held that from the time of arrest, this right accrues to the arrested person and he has the right of choice of a lawyer. In a series of cases the Supreme Court of India considered the scope of the right of the prisoners or detainees to have interviews with family members, friends and counsel. In Dharmbir vs. State of U.P the court directed the state Government to allow family members to visit the prisoners and for the prisoners, at least once a year, to visit their families, under guarded conditions.

In Hussainara Khatoon vs. Home Secretary, Bihar, the Supreme Court has held that it is the Constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the state and the state is under Constitutional duty to provide a lawyer to such person if the needs of justice so require. If free legal services are not

provided the trial itself may be vitiated as contravening the Article 21.

In Sheela Barse vs. State of Maharashtra, the court held that interviews of the prisoners become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated. In Jogindar Kumar vs. State of U.P, the court opined that the horizon of Human Rights is expanding and at the same time, the crime rate is also increasing and the court has been receiving complaints about violation of Human Rights because of indiscriminate arrests. The court observed that there is the right to have someone informed.

Right to Speedy Trial

The speedy trial of offences is one of the basic objectives of the criminal justice delivery system. Once the cognizance of the accusation is taken by the court then the trial has to be conducted expeditiously so as to punish the guilty and to absolve the innocent. Everyone is presumed to be innocent until the guilty is proved. So, the quality or innocence of the accused has to be determined as quickly as possible. It is therefore, incumbent on the court to see that no guilty person escapes, it is still more its duty to see that justice is not delayed and the accused persons are not indefinitely harassed. It is pertinent to mention that "delay in trail by itself constitute denial of justice" which is said to be "justice delayed is justice denied". It is absolutely necessary that the persons accused of offences should be speedily tried so that in cases where the bail is refused, the accused persons have not to remain in jail longer than is absolutely necessary. The right to speedy trial has become a universally recognized human right.
The main procedure for investigation and trial of an offence with regard to speedy trial is contained in the code of criminal procedure. The right to speedy trial is contained under section 309 of Cr.PC. If the provisions of Cr.PC are followed in their letter and spirit, then there would be no question of any grievance. But, these provisions are not properly implemented in their spirit. It is necessary that the Constitutional guarantee of speedy trial emanating from Article 21 should be properly reflected in the provisions of the code. For this purpose in A.R.Antulay vs.

R.S.Nayak, the Supreme Court has laid down following propositions which will go a long way to protect the Human Rights of the prisoners. In the instant case the Apex Court held that the right to speedy trial flowing from Article 21 of the Constitution is available to accused at all stages like investigation, inquiry, trial, appeal, revision and retrial.

Right to Legal Aid

Though, the Constitution of India does not expressly provide the Right to Legal Aid, but the judiciary has shown its favour towards poor prisoners because of their poverty and are not in a position to engage the lawyer of their own choice. The 42nd Amendment Act, 1976 has included Free Legal Aid as one of the Directive Principles of State Policy under Article 39A in theConstitution. This is the most important and direct Article of the Constitution which speaks of Free Legal Aid. Though, this Articlefinds place in part-IV of the Constitution as one of the Directive Principle of State Policy and though this Article is not enforceable by courts, the principle laid down there in are fundamental in the governance of the country. Article 37 of the Constitution casts a duty on the state to apply these principles in making laws. While Article 38 imposes a duty on the state to promote the welfare of the people by securing and protecting as effectively as it many a social order in which justice, social, economic and political, shall inform all the institutions of the national life. The parliament has enacted Legal Services Authorities Act, 1987 under which legal Aid is guaranteed and various state governments had established legal Aid and Advice Board and framed schemes for Free Legal Aid and incidental matter to give effect to the Constitutional mandate of Article 39-A. Under the Indian Human Rights jurisprudence, Legal Aid is of wider amplitude and it is not only available in criminal cases but also in civil, revenue and administrative cases.

In Madhav Hayawadan Rao Hosket vs. State of Maharashtra, a three judges bench (V.R.Krishna Iyer, D.A.Desai and O.Chinnappa Reddy, JJ) of the Supreme Court reading Articles 21 and 39-A, along with Article 142 and section 304 of Cr.PC together declared that the Government was under duty to provide legal services to the accused persons.

Rights against Hand Cuffing

In Prem Shanker vs. Delhi Administration the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoner's rights. In the instant case the question raised was whether hand–cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the court to pronounce upon the Constitution validity of the "hand cuffing culture" in the light ofArticle 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that "hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict "irons" is to resort to Zoological strategies repugnant to Article 21 of the Constitution".

Narco Analysis/Polygraph/Brain Mapping

In Selvi Vs State of Karnataka, (2010), the Supreme Court has declared Narcoanalysis, Polygraph test and Brain Mapping unconstitutional and violative of human rights. This decision is quite unfavourable to various investigation authorities as it will be a hindrance to furtherance of investigation and many alleged criminals will escape conviction with this new position. But the apex court further said that a person can only be subjected to such tests when he/she assents to them. The result of tests will not be admissible as evidence in the court but can only be used for furtherance of investigation. With advancement in technology coupled with neurology, Narcoanalysis, Polygraph test and Brain mapping emerged as favourite tools of investigation agencies around the world for eliciting truth from the accused. But eventually voices of dissent

were heard from human rights organizations and people subjected to such tests. They were labelled as atrocity to human mind and breach of right to privacy of an individual. The Supreme Court accepted that the tests in question are violative of Article 20 (3), which lays down that a

person cannot be forced to give evidence against himself. Court also directed the investigation agencies that the directives by National Human Rights Commission should be adhered to strictly while conducting the tests. These tests were put to use in many cases previously, Arushi Talwar murder Case, Nithari killings Case, Abdul Telagi Case, Abu Salem Case, Pragya Thakur (Bomb blast Case) etc. being ones which generated lot of public interest.

Capital punishment, also known as the **death penalty**, is a government sanctioned practice whereby a person is put to death by the state as a punishment for a crime. The sentence that someone be punished in such a manner is referred to as a **death sentence**, whereas the act of carrying out the sentence is known as an **execution**. Crimes that can result in a death penalty are known as **capital crimes** or **capital offences**. The term *capital* is derived from the Latin *capitalis* ("of the head", referring to execution by beheading).

Fifty-eight countries retain capital punishment, 102 countries have completely abolished it *de jure* for all crimes, six have abolished it for ordinary crimes (while maintaining it for special circumstances such as war crimes), and 32 are abolitionist in practice.

Capital punishment is a matter of active controversy in various countries and states, and positions can vary within a single political ideology or cultural region. In the European Union, Article 2 of the Charter of Fundamental Rights of the European Union prohibits the use of capital punishment. Also, the Council of Europe, which has 47 member states, prohibits the use of the death penalty by its members.

Capital punishment is a legal penalty in **India**. It has been carried out in 5 instances since 1995, while a total of 26 executions have taken place in India since 1991.

The Supreme Court in *Mithu vs. State of Punjab* struck down Section 303 of the Indian Penal Code, which provided for a mandatory death sentence for offenders serving a life sentence. The number of people executed in India since independence in 1947 is a matter of dispute; official government statistics claim that only 52 people had been executed since independence. However, research by the People's Union for Civil Liberties indicates that the actual number of executions

is in fact much higher, as they located records of 1,422 executions in the decade from 1953 to 1963 alone. A research by National Law University, Delhi on death row convicts since 2000 has found that of the 1,617 prisoners sentenced to death by trial courts in India, the capital punishment was confirmed in only 71 cases. NLU Delhi confirmed 755 executions in India since 1947. National Law University, Delhi examined 1,414 prisoners who were executed, in the available list of convicts hanged in post-Independence since 1947. According to a report of the Law Commission of India (1967), the total number of cases in which the sentence of death in India was executed from 1953 to 1963 was 1,410.

In December 2007, India voted against a United Nations General Assembly resolution calling for a moratorium on the death penalty. In November 2012, India again upheld its stance on capital punishment by voting against the UN General Assembly draft resolution seeking to ban death penalty.

On 31 August 2015, the Law Commission of India submitted a report to the government which recommended the abolition of capital punishment for all crimes in India, excepting the crime of waging war against the nation or for terrorism-related offences. The report cited several factors to justify abolishing the death penalty, including its abolition by 140 other nations, its arbitrary and flawed application and its lack of any proven deterring effect on criminals.

UNIT-4: VICTIMOLOGY

Compensation, restitution, assistance rehabilitation

Compensation and Punishment

A fifth theory of **punishment**, restitution, gained significant ground in the twentieth century, and is becoming more and more important in **criminal procedure** as technology advances and the **criminal law** becomes more moderate. The theory of restitution, compensation, recompense - however one refers to it - interprets the debt to society the criminal incurs through his offense in a more mercantile sense (perhaps in a more humane sense). In addition to suffering society's retribution, couldn't the criminal's debt to society also be paid through valuable service to the community and the individuals he harmed? The answer is often yes and, as better and more accurate ways of tracking convicted criminals are integrated into the criminal justice system, courts are increasingly turning to this method.

While criminals who serve active prison sentences do not really have opportunity to recompense the communities and individuals they harmed, the methods of modern criminal justice are rendering active incarceration less necessary, which allows convicted criminals more opportunity to perform compensatory services. More intensive probation, jail time served on weekends, and house arrest (which can be enforced by using an electronic ankle bracelet that alerts police when the arrestee tampers with the bracelet or goes somewhere other than home or work) are some of the methods that allow convicted criminals to perform services or render payments while serving their sentences. Examples of compensatory punishment might be a thief who serves jail time on the weekends but who is allowed to work and live at home during the week on the condition that he pay back the business he stole from, plus damages; or a sexual offender who is placed under house arrest for a year and allowed to go to work on the condition that he pay for psychiatric treatment for his victim.

Compensation has the potential to fit in quite well with the traditional purposes of punishment in the criminal law. Uncompensated labor can be a very unpleasant experience for people who are accustomed to thinking only of themselves, which is often the case in criminal offenders. The

burdensome inconvenience of house arrest, weekends in jail, community service and handing away hard-earned paychecks can serve as adequate deterrence in **individuals** and in **general**, and has the potential to satisfy the requirements of **retribution**. Furthermore, while hardened criminals usually require more secure forms of **restraint**, electronic homing devices and strict probation are usually enough to restrain a majority of criminal offenders from committing further crimes. And, finally, it would seem that the potential for**rehabilitation** is considerably stronger for criminals who are given the opportunity to experience what it is to work and give back to the people they've injured, and to society as a whole.

"The history of crime and punishment in the whole civilized world reveals a steadily increasing concern with the treatment of criminal and a virtual blackout of attention to the situations of the victim" [i]

HISTORIC EVOLTUION IN VICTIMOLOGY

In ancient period, criminal law was victim oriented and they enjoyed the dominant position in entire criminal legal system with certain short comings. Even certain trees and animals were considered sacred and cutting and killing them were considered heinous sin and criminal had to pay heavy compensation and undergo rigorous punishment. That's why Stephen Schafer calls it 'Golden Age' of victims.

Subsequently in 16th and 17th century, with the advent of the industrial revolution, renaissance and French revolution, a sea change was noticed in every walk of life's. This gave birth to 'Adversarial System'. This was the period, in Stephen Scafer's terminology, of decline in victim's role in 'criminal justice system'. Now the criminal law became offender oriented and the suffering of victim, often immeasurable, were entirely overlooked in misplaced sympathy for the criminal. The victim became the forgotten men of our criminal justice system.

It was in 20th century, after the close of the Second World War some criminologist took upon themselves, the task of understanding the importance of studying the criminal-victim

relationship, in order to obtain a better understanding of crime, its origin and implication. Because of their efforts, U.N passed a charter for victim's right and on similar line the European convention on the compensation of victims of violent crime'. Therefore many states of Europe and America enacted their legislations for victims compensation in criminal justice system. Therefore, victim's movement has been regaining momentum in whole world but with different shapes and been regaining momentum in whole world but with different shapes and nature.

VICTIMOLOGY AS CONCEPT:

Definitions-

- 'Victim' means natural person who, individually or collectively, have suffered harm including physical or mental injury, emotional suffering or economic loss or violations of fundamental rights in relation to victimizations identified under scope.
- A person is a victim regardless of whether the crime is reported to the police, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted, and regardless of the familial relationship between perpetrator and the victim. The term 'victim' also includes, where appropriate the immediate family or dependants of the direst victims and persons who have suffered in intervening to assist victims in distress or to prevent victimization.

Definition of victim under *Victims Rights Act* means

- A person against whom an offence is committed by another person;
- A person who, through, or by means of an offence committed by another person, suffers physical injury, or loss of, or damage to, property;
- A parent or legal guardian of a child, or of a young person; and
- A member of the immediate family of a person who, as a result of an offence committed by another person, dies or is capable, unless that member is charged with the commission of, or convicted or found guilty of, or pleads guilty to, the offence concerned.

Victimology is a relatively young branch of academic research. Its objective is to gain knowledge about victims of crime and abuse of power. Victimology has from its inception adopted an interdisciplinary approach to its subject matter. Contributions are being made by experts from fields as diverse as academic lawyers, criminologists, clinical and social psychologists, psychiatrists and political scientists. There are specialized international journals for victimology; there is a world society of victimology and there are a number of regional and national societies of victimology. The purpose of the study of victimology is to enhance our understanding regarding victims and impact of crime on them. The aims of victimology relate to the meaning and issues of victimology. Therefore, the study of victimization is the study of crime giving importance to the role and responsibility of the victim and his offender.

1. To analyse the magnitude of the victims problems;
2. To explain causes of victimization; and
3. To develop a system of measures to reduce victimization.

Today, the concept of victim includes any person who experiences the injury, loss, or hardship due to any cause. Also the word victim is used rather indiscriminately; e.g. cancer victims, accident victims, victims of injustice, crime victims and others. The thing that all these kinds of usages have in common is an image of someone who suffered injury and harm by forces beyond his or her control. The rapidly developing study of criminal- victim relationship has been called "victimology" and it is treated as an integral part of the general crime problem. The word victimology was coined in 1947 by a French lawyer, Benjamin Mendelsohan. Victimology is basically a study of crime from the point of view of the victim, of the persons suffering injury or destruction by the action of another person or a group of persons.

According to Viano, there is a rather well-developed vocabulary in English connected with the idea of victim:

Victimhood: the state of being victim.

Victimizable: capable of being victimized

Victimization: the action of victimizing, or fact of being victimized, in various senses.

Victimizer: one who victimizes another or others.

Victimology focuses on the victims' relationship to the criminal. Hence, there can be two major sub-areas of victimology.

1. The one relating to the scientific study of criminal behaviour and the nature of the relationships which may be found to exist between the offender and the victim; and
2. The other relating directly to the administration of justice and the role of system of compensation and restitution to the victim.

SCOPE OF VICTIMOLOGY

Shinder, 1982- "…it investigates the relationship between offender and the victim in crme causation. It deals with the process of victiminzation, of becoming a victim, and in this context directs much of its attention to the problem victim-offender, sequence, i.e. the question of whether or not victimization can have crimogenic effects or can encourage crime".

Hence, the definition above given makes it clear that victims are the predominant concern of the victimology. They are central figures in victimology. The study of victims I relation to the legal system of particular country is main subject matter of study of the victims. Victimology has come of age. Victims, their needs and their rights, are being constantly acknowledged in words if not in deed. The victim has become a political tool or weapon depending upon ones point of view, but the concept and issue have, in a few short years moved from the domain of a hand full of pioneers to the Council chambers of the United Nations. And the people we know have made the difference.

1. Victimology is study of crime from victim's point of views
2. Victimology analysis the victim-offender relations and the interactions between victims and the criminal justice system.

3. Victim of abuse of power.
4. Victimology is also study of restitution and compensation or reparation of the damages caused to him by perpetrator of crime.

The victimology is study of victimological clinic.

Introduction

Every crime produces a victim(s). The victims are generally considered as mere informants or witnesses in criminal trials, assisting the state in its endeavor to punish offenders, are now becoming the focal points of our criminal justice system. The criminal justice system is basically meant to redress the victimization of these victims and to address the issues surrounding him. However getting justice in Indian criminal justice system was never a bed of roses for the victims of offence. The last few decades however witnessed groundbreaking reforms in the approach of legal systems nationally as well as internationally with reforms not only in statutory laws but also even in judicial approach towards the victims of crime.

Victim compensation is one of the major aspects in reparation of the harm or injury caused to the victim due to the commission of the crime. Monetary assistance in one-way or the other always benefits the victims in the mitigation of their sufferings. The renaissance of the prominence of victims in legal system is however a recent phenomenon.

A. Ancient History of Victim Compensation

The ancient Indian History is a witness to the fact that the victims of crimes have sufficient provisions of restitution by way of compensation to injuries. Author of the book, "*General Principle of Hindu Jurisprudence*" Dr. Priyanath Sen has observed-

"*It is, however, remarkable that in as much as it was concerned to be the duty of the King to protect the property of his people, if the King could not restore the stolen articles or recover their price for the owner by apprehending the thief, it was deemed to be his duty to pay the price*

to the owner out of his own treasury, and in his turn he could recover the same from the village officers who by reason of their negligence, were accountable for the thief's escape."

Reparation or compensation as a form of punishment is found to be recognized from ancient time in India. In ancient Hindu law, during Sutra period, awarding of compensation was treated as a royal right. The law of Manu, requires the offender to pay compensation and pay the expenses of cure in case of injuries to the sufferer and satisfaction to the owner where goods were damaged. In all cases of cutting of a limb, wounding or fetching blood, the assailant shall pay the expenses of a perfect cure or in his failure, both full damages and a fine. It shows that the victim compensation was never an alien concept in the justice delivery systems of the country. The edifice of the law in our present day legal system relating to the victim compensation are provisions contained in the Criminal Procedure Code, 1973 and various judgments of the Hon'ble Supreme Court. The question that arises for consideration is that despite having laws for victim compensation are these laws being satisfactorily used by those on who lies the duty of the execution of these laws and to give beneficial effects to it. Answer is very infrequently. The reasons are many.

Some more prominent are like the 12th century distinction of English law of wrongs into civil wrongs and criminal wrongs which leads to misconception that the area of compensation is something exclusively belonging to the domain of civil law and others less obvious like the ignorance of those who can give effect to these benefactions. The present criminal justice system is based on the assumption that the claims of a victim of crime are sufficiently satisfied by the conviction of the perpetrator. It is a truth that in our present day adversarial legal system between the state and the accused, the victim is not only neglected but is lost in silence. The role of the victim is limited to report the offence and depose in the court on behalf of prosecuting party, which is the State. That's all. The Malimath Committee reflected on the present criminal justice system that not only the victim's right to compensation was ignored except as token provision under the Criminal Procedure Code but also the right to participate as the dominant stakeholder in criminal proceedings was taken away from him. He has no right to lead evidence, he cannot challenge the evidence through cross-examination of witnesses nor can he advance arguments to influence decision-making.

B. Compensation to the Victim: Criminal Justice System

Now accepting that there is no uniformity in the legal system in the country to address the issue of compensation to the victims of crime, it is expedient to discuss the legal position in respect of compensation to the victims of the offence. Post independence, the criminal trials were governed by criminal Procedure Codes 1898 and then by 1973 Code (**"Cr.PC"**). Till the year 2008, there was a provision more or less similar in both the codes for compensation to the victims of the offence that is section 545 in the old Code and section 357 in the new Code.

(i) Ingredients

Section 357 Cr.PC: Order to pay compensation

(1) **In case of Conviction and Fine is part of Sentence to Accused**

When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) Expenses in Prosecution: In covering the expenses properly incurred in the prosecution;

(b) Compensation to Victim: In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) Compensation in case of Death: When any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, the fine imposed may be used in paying compensation to the persons who are covered for relief under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) Compensation of Victim in other Offense: When any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen

property knowing or having reason to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) Payment of Compensation subject to Appeal

If the fine is imposed in a case, which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) Sentences without Fine

When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

COMPENSATION UNDER INDIAN CONSTITUTION

Recently the Supreme Court of India has given a new dimension to the Article 21 by interpreting it dynamically so as to include compensation to the victims under its scope. Indian constitution has several provisions which endorse the principle of victim compensation. In one case the Supreme Court, considering the plight of many rape victims in the country, wanted the National Commission for Women to draw up a scheme for compulsory payment to victims of sexual violence. Despite the sympathy expressed in several circles, victim compensation law continues to be in an unsatisfactory acknowledge in criminal justice with the result there is very little interest shown by them in successful prosecution of criminal cases.

Besides the many judgements of various High Courts and the Supreme Court of India, the Law Commission of India has also submitted the crucial Reports in which it has recommended to

provide the compensation to the victims of crime. Among many reports, 142nd, 144th, 146th, 152nd, 154th and 156th are very important reports which have made very important contributions towards compensation of victims. Following the various reports and judicial decisions, the Government of India has made amendments in the Code of Criminal Procedure and s.157A has been inserted in 2009.

Fifth Law Commission, in 42nd report[ix] dealt with compensation to victim of crime in India. While dealing, it referred to and highlighted the "three patterns" of compensating victims of crime as reflected in Code of Criminal Procedure of France, Germany, and (Former) Russia. The three patterns are:

- Compensation by the state;
- Compensation by the offender either by asking him to pay it from the fine imposed or a specified amount; and
- 3) Duty to repair the damage done by the offender.