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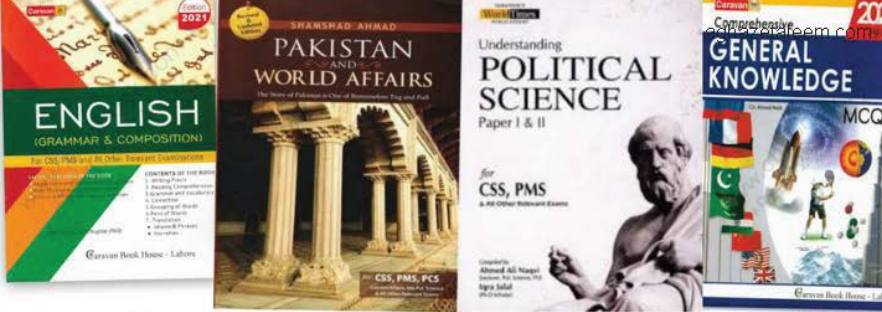
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2nd Edition

by Syed Zafar Hassan Naqvi



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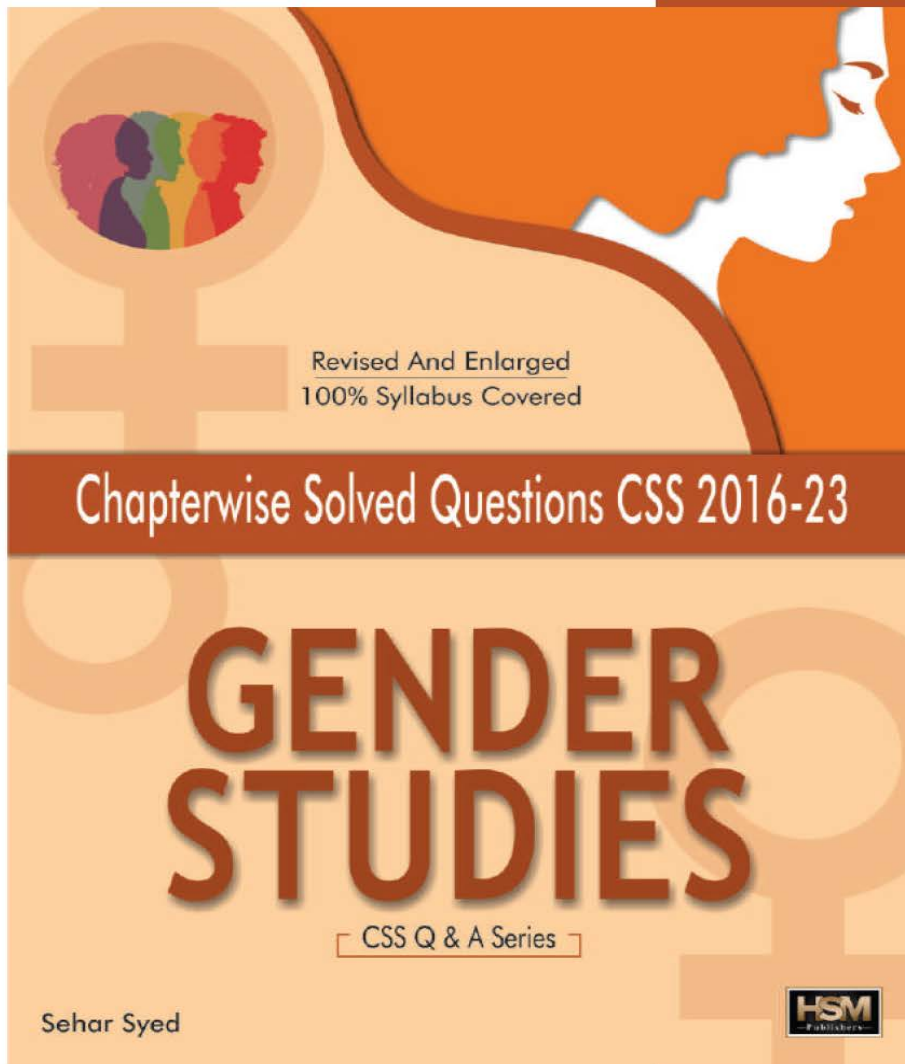
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Theory Chart ~ Summarized View of Criminology Theories

Pre-classical School of Thought (Spiritual Explanation)					
Name of Theory	Theorist	Period	Major Postulates	Example	Modern day Implications
Spiritual Explanation of criminal behavior (Demonological School)	1- Religious Beliefs 2- St Thomas Aquinas	Till 18 th century	1- Crime is committed by the human beings under influence of Satan/devil. 2- The offender was subjected to torture or pain in order to remove the devil from the soul. 3- Trial by ordeal was a method whereby offender was subjected to painful test on the presumption that in case of being innocent such person would not be harmed. 4- Trial by ordeal after having been opposed by pope in 1215 was replaced by compurgation.	In medieval age, a woman in order to establish her innocence was thrown in to water and was considered innocent if she floated and guilty in case of being sank.	1- Spiritual explanation is considered relevant even in the modern world. 2- Charles Colson's prison fellowship. 3- Exorcism

Classical School of Thought

Classical Theory	Ceasre Bonesana Marchese de Beccaria(Ceasre Beccaria)	1738-1794	1- People commit crime out of free will. 2- Rationality in decision making 3- Deterrence through punishments is the only way to curb crimes. 4- Punishment should be certain	French Code 1791	Modern punishment system for deterrence
	Jeremy Bentham	1748-1833	1-Every individual is inclined to pursue pleasure called Psychological Hedonism. 2. However pain inflicted by the state serves as deterrence against crimes. 3. So at one side is the pleasure attained through committing crime and on the other side is the pain inflicted through punishment by the law. An individual would thus weigh the both (Pleasure and Pain) and if pleasure or gain outweighs the pain then such an individual would be inclined to commit crime. This process of weighing pleasure against pain was termed as "Hedonistic Calculus".		

Neo-Classical School					
Neo Classical theory	No principal proponent as such.	Continues to date	1- Extension of classical school. 2- Emphasizes upon mitigating circumstances	French Code 1819	Most of the western criminal justice follows its principles.
Right Realism	James Quin Wilson	1980's	Crimes are committed by individuals under the influence of forces with in instead of external/ social factors Searching for external forces is of no use Govt needs to put an effective mechanism for curbing crimes.		
Routine Activity Theory	Cohen and Felson	1979	Three pre-requisites for committing crime: i. Individual motivation ii. Opportunity iii. Lack of effective control of guardian		
Positivist School of Thought					
Physical Appearance Theories					
Physiognomy	John Capsar lavatar)	(1741-1801	Explain relationship between facial features and human conduct	Beardless men and bearded women were	Little importance in modern times

				considered unfavorable traits.	
Phrenology	Franz Joseph Gall	1758-1828	<p>1- Brain is an organ of the mind.</p> <p>2- There are 26 special faculties of brain grouped into three compartments namely active propensities, moral propensities and intellectual propensities.</p> <p>3- These three compartments are closer to the surface of brain and can be measured through skull.</p> <p>4- The skull reflects surface of the brain.</p> <p>5- The size of the each region reflects the strength of human trait. For instance left side of the head contain destructive propensities so bumps on that part of human skull</p>	<p>Crime was instigated by lower propensities</p> <p>Little importance in modern times and known as pseudoscience</p>	

			reflective strong destructive tendencies. 6- The size of different regions can be enhanced or reduced through practice.				Characteristics linked to crimes include deviation in size of head, asymmetric face, large cheekbones and jaw, large or small ears, flashy lips, abnormal teeth, wrinkles, etc.	Criminals in modern movies often bear similar characteristics	
Atavism	Cesare Lombroso	1835-1909	1- The physical features have a serious bearing upon criminal behavior 2- The criminals bear resemblance to primitive human being whom he called atavistic beings.						
Somatotype Theory	William Sheldon	1898-1977	Three body shapes: Endomorphic: Fat and Soft Ectomorphic: Thin and Fragile Mesomorphic: Muscular and Hard						
Intelligence Theory									
Intelligence and crime	Robert H. Goddard		1- Crimes are committed by the individual of low intelligence					Subsequent studies found no substantial	

	William halley Augusta Bronner	1882-1945	2. Potential criminals may be checked through measuring their intelligence. 3- Feeble minded should not be allowed to reproduce		difference between intelligence of criminals and normal people. However the theory is now being applied to juvenile delinquents.
Biological School					
Inheritance Theory	Charles Goring	1972	Crimes are inherited in the similar fashion as other genetic qualities are inherited.		Later studies have negated this premise
Bio Social School	No principal proponent		Biological characteristics acquired through interaction with environment have a bearing upon criminal behavior e.g injury , use of alchohal etc.	Many reaserch studies have found relations hip between head injury and criminal behaviors	

Psychological School				
Psychodynamics / Psychoanalytics	Sigmund Freud	1856-1939	1- Human personality is interplay of id, ego and superego. 2- Id is basic human instinct that seek pleasure, ego is developed during the childhood and is meant to keep human behaviors within bounds of rationality while superego relates to highest model standards. 3- The criminal behaviors are resulted in response to early childhood experiences.	
Sociological School of Thought				
Ecology of crime/Chicago school/Social Disorganization theory	Clifford R Shaw and Henry D Mackay	1942	1- Structure of neighborhood and culture had greater role on human behaviors 2- Areas adjacent to industries were inhabited	This propositions of the theory are observed even in contemporary times.

<p>with more delinquents.</p> <p>3- Areas with more concentration of foreigners were more delinquents.</p>	<p>Many of human desires are not natural but are outcome of cultural strains. Social culture defines goals which serve as ideals for the individuals. For example in American society accumulation of wealth is considered to be a goal worth pursuing. Social pressure on individuals for achieving these goals may make them resort to crimes</p>	<p>1938</p> <p>Robert King Merton</p>	<p>Strain Theory</p>	<p>The research found that delinquent behavior was more visible in gangs who pursued crimes not for needs but for pressure of peers.</p> <p>Many crimes are committed under this proposition.</p>	
<p>All humans are prone to commit crimes.</p> <p>Social groups such as family, society, school and other peer groups serve as deterrents</p>		<p>1951 1969</p> <p>Albert J Resis Travis Hirschi</p>	<p>Social Control Theory</p>		

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			against crimes. Attachment with these groups determined criminal behaviour.			
Labeling theory	George Hobert Mead Thomas J Scheff Frank Tannenbaum		When an individual is labeled as "deviant or criminal", such a person is likely to make his self-image of being so thereby internalizing the social image			
Learning Theories						
Trades Law of Imitation	Gabriel Trade	1843-1904	Criminals are ordinary souls They learn crimes from the atmosphere. People imitate each other.	Children imitate what their parents do.	Relevant today especially with regard to behavior of children.	
Differential Association Theory	Edwin Sutherland	1883-1950	i. An individual being a social being interacts with rest of the world. ii. The individual interactions may vary depending upon the social status of the individual. iii. Interaction with the criminals make a person learns the criminal behaviors. iv. More frequent interaction may increase the inclination for crime. v. More learning takes	People often are attracted towards smoking due to their company.	Relevant today especially with regard to behavior of children	

				place with in close and small circle. vi. If violation of the legal code is appreciated, an individual becomes more prone to violate the Law.		
Critical Criminology						
Marxist Criminology	Karl Marx	1818-1883	Conflict between material sources of production and social relations of production. Concept of demoralization			
Critical Feminist Theory	No principal proponent		The patriarchal system is product of capitalism. Inequality amongst women and men leads to gender gap. Women exploitation stems from this inequality.	Gender based violence	Relevant in studying offences against women.	
Left Realism	J. Young Elliot Currie	1942-2013	i. Crime was a real problems and therefore needed to be dealt as such. ii. crime was to be viewed in relation to four factors, offender, victim, state agencies and society.(Square of Crime) iii. The proponents of this school find relative deprivation as one of the most important reasons of the crime.			

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Crime, Criminality and Criminal Behavior

"Crime" is an everyday phenomenon of human life. It's as old as the human race itself. However the term "crime", according to Merriam Webster Dictionary¹, owes its origin to the Latin word *CRĪMIN* which meant "accusation". Subsequently the term *CRIMEN* was used in French, during 12th century connoting "fault" or "sin". The earliest use of the word "crime" in English Language is traced back to 13th century with almost similar meanings as the term "crime" is meant today.

Crimes pose serious threat to social order and no society on the earth is absolutely immune from crimes, variations in the rate of occurrence of crimes in different jurisdictions notwithstanding. It is therefore challenge for the states and societies across the globe to overcome the crimes in order to maintain social order. Crimes are often perpetrated against life and property of the people and it's the primary obligation of the state to protect life and property of its citizens. Thus it can be said that prevention of crimes is amongst the fundamental obligations of a state.

➤ Definition of Crime

But to precisely define as to what is actually a crime is not as simple as it appears to be. This is because that one act may be a crime at one place but not at another place. Likewise an act may be a crime at the same place at one point of time but not at another point of time. For example drinking alcohol is a crime in Pakistan but not so in many of other countries. Likewise drinking alcohol was criminalized in Pakistan in 1979 under "Prohibition (Enforcement of Had) Order of 1979" but it was not crime before promulgation of this law. Same holds for lot of other acts.

This anomaly can be manifested from two different definitions of Crime in "Oxford English Dictionary" and "Oxford Dictionary of Sociology". The former, the Oxford English Dictionary defines the term "crime" as under:

'An action or omission which constitutes an offence and is punishable by law'.

On the other hand, the "Oxford Dictionary of Sociology" defines crime in following words.

An offence which goes beyond the personal and into the public sphere, breaking prohibitory rules or laws, to which legitimate punishments or sanctions are attached, and which requires the intervention of a public authority.'

¹ Merriam Webster Dictionary (<https://www.merriam-webster.com>)

This implies that legal definition of a crime can be different from its social definition, that is to say, that an act may constitute a social wrong but not necessarily designated as crime under the law. For example indecent behavior is social wrongs but not a criminal act under the law. Excessive profit making by businesses may be permissible under the law but at a great social cost. Smoking is injurious to health but manufacturing and selling of cigarettes are not designated as crimes. A public official making wrong decisions may have a huge cost for the state and society but it not regarded as a crime.

The question here arises as to whether a criminologist should restrict himself to the legal definition of crime and ignore the other behaviors which though harmful to the society are not legally criminalized? In this context, the views of criminologists are divided in to three major perspectives.

➤ **Consensus View/Legalistic Definition of Crime**

Consensus view supports legal definition of crime. During nineteenth and early twentieth century, the criminologists had been studying convicts and prisoners to understand different aspects of crime. The consensus view maintains that the law reflects collective will of the society hence what is legally defined as a crime represents the will of the society. Paul Tappan, a renowned criminologist is one of the major proponents of this view. He observed that²

"Crime is an intentional act in violation of the criminal law (statutory and case law), committed without defense or excuse, and penalized by the state as a felony or misdemeanor. In studying the offender there can be no presumption that . . . persons are criminals unless they also are held guilty beyond a reasonable doubt of a particular offense."

However this view was negated by subsequent criminologist. For example, Sellin³ criticized legalistic definition of crime in following words.

"The unqualified acceptance of the legal definitions of the basic units or elements of criminological inquiry violates a fundamental criterion of science. The scientist must have freedom to define his own terms, based on the intrinsic character of his material and designating properties in those materials which are assumed to be universal."

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² Tappan, P.W. (1947). "Who Is the Criminal?" American Sociological Review, 12:96-102.

³ Sellin, T. (1938). Culture Conflict and Crime. New York, NY: Social Science Research Council, p21

Sellin was, therefore, of the view that from criminological perspective, the crime had not to be seen in legal terms only.

➤ Conflict View/Critical View

Criticism on legalistic definition of crime gave impetus to another view which maintained that society comprised of diverse groups such as politicians, businessman, professionals, workers and farmers. All these groups strive to protect their own interests. Those who are powerful dominate the law making process during which they criminalize (legally declared as crime) only those acts which are committed by the other groups. Street crimes are criminalized because they are committed by the poor. On the other hand, the acts of powerful groups which contain even greater social harm such as violation of labor laws, trade of things injurious to individual and society such as cigarette and unfair business practices are not criminalized at all.

➤ Type of Crimes in Legal Terms

The crimes defined under the law of a state can be divided in to two categories.

- **“Mala In se”** means “wrong in itself”. It is any act or omission which is universally recognized as a criminal offence such as murder, theft, robbery etc.
- **“Mala Prohibita”** means prohibited by statute. This is an acts or omissions which is not universally considered a crime but they are criminalized in view of the peculiar circumstances of the given society such as kite flying in not inherently a crime but it was banned and criminalized under “Punjab Prohibition of Kite Flying Ordinance 2001” because kite flying because it was claiming human lives.

➤ Types of Crimes in terms of Severity & Intensity

With regard to severity, crimes can be divided in three categories, though these terms are commonly used in USA instead of Pakistan.

- **Infraction:** Infractions are small violations of laws which don't attract imprisonment in jail and therefore contain punishment of fines only.
- **Misdemeanor:** Misdemeanors refer to less serious offences under which the imprisonment don't extend beyond a year such as affray (U/S 160 PPC), offences related to weight and measures etc.
- **Felony:** Felony denotes more serious crimes such as murder, robbery and rape etc.

➤ Legal Elements of "Crime"

Every action of a person leading to particular outcome is not a crime. For example "taking one's life" is a crime. So if a person named "A" kills another person "B", the "A" has committed a crime. Now if B is awarded death penalty for murdering "A" on order of a court, the court and those executing the orders of the court by executing "B" have committed no crime. Likewise if a person kills another in self-defense, it doesn't constitute any crime. Why because it's not the action and outcome which make a crime rather there are certain other factors which are essential to establish a "crime" or criminal liability. Such elements of a crime are discussed below.

There are following four essential elements of crimes narrated below.

1. Action (Actus Reus)
2. Criminal Intent (Mens Rea)
3. Causation
4. Concurrence

▪ **Action (Actus Reus)**

Actus Reus means criminal action. The concept of Crime has evolved over the time. In ancient and medieval ages, normally this was the sole criterion to establish criminal liability with little regard to the facts and circumstances leading to such cases. In the above example, where B was killed by A, the action of killing is called "actus reus"

▪ **Criminal Intent (Mens Rea) (R Vs Faulkner 1877).**

Mens Rea means guilty mind or criminal intent. This implies that crime must be outcome of such intent. A has committed no crime if he had no intent of killing B rather shot from his gun accidentally. In such case B would not be charged/penalized for the offence of murder. A famous case where concept of *Mens Rea* was applied is reported as "*R Vs Faulkner 1877*". Faulkner was a sailor who one day entered in to a ship in order to steal the "Rum". When he lit the match, it caught fire and subsequently burnt the complete ship. He was charged for Arson in addition to theft. However the court of Appeal quashed the charge of Arson (setting the ship on fire) because the accused had never intended at burning the ship.

▪ **Causation (R Vs White 1910)**

Sometime criminal liability doesn't arise in spite of both *actus Reus* and *mens rea* being present. This is because the outcome should be the result of the criminal act in order to fix the criminal Liability. The principle emerged in the Case reported as *R Vs White (1910)*. A person named "White" hatched a plan to kill his mother by poisoning her milk which she used to take before sleeping. But on that day the mother took only a few sips of milk which were insufficient to cause death. However her mother died of heart attack on the same night. White was charged for attempt to murder instead of murder

because the death was not “caused” by his act, although both *actus reas* and *mens rea* were present in the case.

▪ **Concurrence (R VS SHERREE)**

In yet another situation, criminal liability may not arise even in presence of *actus Reus* and *mens rea* and causation. Because in addition to presence of these three factors, the *actus Reus* and *mens rea* must be present at the same time. This situation was witnessed in a case titled as “R Vs Sherree”. Sherree, a female decided to kill her husband through a handgun and discussed the plan with her friends. Few days later, she was driving her car when her husband suddenly stepped before and died on the spot. In this case, both *actus reus* and *mens rea* were present. The causation was also present because the death was caused due to itting of car. But, it was held, that she did not intend to murder her husband that way at that time, though she desired so in the past. *Actus reus* (action) took place at that time but *mens rea* existed in the past. Since both *actus reus* and *mens rea* were not present at the same time, no criminal liability arose.

Understanding Criminology

Criminology is study of the various aspects of crimes. It literally means “study of crime and criminals”. The subject of Criminology has evolved during 18th century. However before discussing the evolution of the subject of criminology, let’s have a look over the definition of the subject given by different scholars.

➤ **Definition of Criminology in the Views of Different Scholars**

▪ **Edwin Sutherland**

Criminology is the body of knowledge regarding crime as a social phenomenon. It includes within its scope the processes of making laws, breaking laws and reacting towards the breaking of law. (From the above definition it is apparent that criminology is a combination of how the society defines and deals with crime within a social and legal context).

▪ **Donald Taft**

Criminology may be divided into two branches:

- General
- Specific

Criminology in a general sense is the study of crime and criminals. In a specific sense it seeks to study criminal behavior its goal being to reform the criminal behavior or conduct of the individual which society condemns.



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- **Professor Dejorde**⁴

Criminology is an independent science which by making use of the knowledge and research procedures of other sciences (sociology, psychology and alike sciences dealing with human behavior and community) empirically studies the criminal phenomenon, i.e., the crime, the perpetrator and the victim of the crime, criminality, as well as the way in which a society reacts to criminal behavior.

- **Donald Cressey**

"The scientific approach to studying criminal behavior."

- **Webster**

Criminology is the scientific study of crime as a social phenomenon or of criminals and their behaviors and family conditions.

From the above definitions, it can be concluded that Criminology is a discipline which intends at looking in to the factors and reasons behind the crimes in society from multiple perspectives, the impact of the crime on the society and ways and measures to address the underlying reasons behind the crimes.

➤ **Origin of the Term Criminology**

The term "Criminology" was coined by an Italian jurist and criminologist, Raffaele Garofalo (1852-1934), in 1885 ("*criminologia*" in Italian Language). Raffaele was student of Cesare Lombroso, who is considered to be "Founder of Modern Criminology"⁵. A French physician Paul Topinard used similar French term "*criminologie*" during the same period. .

However Criminology as a distinct field of study owes its origin to scholars of different disciplines who studied various aspects of Crimes. Todd Clear and Natasha Frost has thrown light on evolution of criminology in following words⁶:

Criminology began as a theoretically oriented field of study. Notably, the early criminologists were drawn from various disciplines (sociology, psychology, medicine) and would likely not have self-identified as "criminologists." Nonetheless, early

⁴ Textbook of Criminology, 12th Edition

⁵ Criminology and public policy todd r. Clear john jay college of criminal justice
natasha a. Frost northeastern university

⁶ *ibid*

writers about the social science of crime, such as Émile Durkheim (in the field of sociology), sought to explain the existence of crime in society. Durkheim and others also set out to explain patterns of crime through the examination of crime across time and place. Shortly afterward, writers sought to explain why some people engaged in crime when others did not. In the late 1800s, Cesare Lombroso, who is often referred to as the “founder of modern criminology,” launched the science of criminology through his explorations into differences between criminal and noncriminal populations

➤ Scope of Criminology

It must be understandable by now that criminology primarily studies the crime and matters incidental to the crime. The details of subjects coming under the scope of criminology are given below.

- **Crime, its Response, Causes and Prevention:** Crime is the primary object of criminology. The discipline actually came in to being to study various aspects of crimes. Since crimes pose serious threat to the life of people in numerous ways, the criminologists attempt to find the cause which instigate the individuals to commit crimes. The criminology also studies the response of state and society towards crimes for control and curtailment of crimes in the society. Likewise the criminologists also provide intellectual input in framing strategies for prevention of crimes in the society.
- **Scientific Study of Criminal Behaviors:** The subject of criminology aims to find out the various dimensions of criminal behavior. The factors which have a bearing upon criminal behavior of individuals also form the subject matter of criminology. The criminal behavior signifies a tendency in human behavior that may lead to actual criminal conduct. For example if a person frequently commits small breaches of Law, such as violation of traffic signals, this is a behavioral problem which if not mended may increase the likelihood for the person to commit heinous crimes. The criminology advocates study of such behaviors in order to prevent its transformation in to hard core crimes.
- **Deviance and Socially Disapproved Behavior:** Deviance and socially disapproved behavior may involve violation of socially set ethical and moral standard that are not criminalized. For example telling lies in daily life may not constitute a crime but it is a social evil and needs to be controlled for good social order. It gives birth to many other evils and may become cause of certain criminal offences. For example false evidences in the court are

reflective of a general behavior of prevailing falsehood in the society.

- **Child Delinquency:** Child delinquency engenders child offenders in addition to negative impact on growth and development of children. This is a subject of criminology to find out the causes of child delinquency so as to prevent the children from being entangled in to criminal activities.
- **Criminal Justice:** Criminal Justice System of a country is aimed at controlling the crimes in a society. It includes state institutions such law enforcement, judiciary, prosecution, prison, probation and parole. These institutions function in accordance with the laid down legal framework. However criminology can guide the ways and measures which can make these institutions achieve their objectives effectively.
- **Biosocial Criminology:** Bio-social criminology attempts to explain relation between biological factors and propensity to commit crime. For example relation of genetics with criminal behavior is subject of biosocial criminology.
- **Criminalistics:** Criminalistics is a sub branch of criminology which deals with collection, collation and analysis of evidence by employing forensic techniques.
- **Penology:** Penology intends to study various methods of punishment in different societies and their impact in deterrence. It may also involve strategies other than punishment to reform and rehabilitate the offenders.
- **Abolitionism:** Abolitionism advocates end of punishments and replace it with reformation and rehabilitation of the offenders. The proponents of this view maintain that punishments serve no purpose and those who are awarded punishments do commit crimes again.
- **Sociology of Law:** This is study of Law in the context of a society. It is an interdisciplinary subject. In domain of crime, it is aimed at studying the impact of law on crimes and social response to legislation. For instance, smoking has been banned by Law and criminology will study as to how this law has been responded by the public. To what extent the Law is being complied?
- **Victimology:** Victimology is study of victims of a crime. The criminal justice system generally treat victims as a "witness" of the case without making any effort to rehabilitate them. In developed world, however, different schemes have been put into place to extend emotional support the victims of crimes having psychological fallouts. For example Rape Crises Centers have been established in different countries. Likewise a non-governmental organization in the name of "Victim Support Scheme" is working in United Kingdoms for extending different

types of assistance and support to victims and witnesses of crimes.

➤ **Importance of Criminology**

- **Aids in understanding causes of Crimes:** As discussed earlier, crimes pose a great threat to social order and human life. It is imperative therefore for the state and society to find out the factors which lead to committing of crimes by the individuals. The subject of criminology attempts to find out such causes. Once the causes have been identified, strategies can be formulated thereafter to address these causes.
- **Policy formulation vis control of Crime:** Criminology can guide the policy makers to formulate effective policies for control of crimes in the society.
- **Provide theoretical base for enactment of Criminal Law:** It is criminology which can provide theoretical base for enactment of laws. For example if kite flying leads to casualties in large numbers, its causes can be studied and eventually law can be framed to ban it.
- **Rehabilitation and Treatment of Offenders:** One of the primary objects of criminal justice system is to rehabilitate the criminals so that they can re-integrate in the society as healthy individuals. Criminology can provide intellectual and empirical input in devising such strategies which can be effective in reforming the criminals.
- **Planning, Operation, Evaluation and Revamping of Criminal Justice System:** Criminal Justice system of a state is meant to prevent and control crimes in the society. A criminologist aids the authority in policy formulation with regard to operations, evaluation and reformation of criminal justice system.
- **Study of Social-economic factors instilling criminal behavior:** Criminologists study the socio-economic factors which promote crimes. For example unemployment may be one the reasons for which the youth resort to crimes for earning livelihood. A criminologist identifies such factors so that the policy makers can address these issues.
- **Aids in study of juvenile delinquency and measures to address them:** Juvenile delinquency is another challenge to the society. If a child goes astray, the future of the society is in perils. It's a job of criminologists to identify the causes of juvenile delinquency and then suggest measures for addressing these causes so that the children may discard deviant behavior and become law abiding citizens of the society.

➤ Criminology in Pakistan: As Academic Discipline

Following facts signify the state of Criminology as an academic discipline in Pakistan

- No university is currently offering Criminology at Doctoral Level
- Not more than 10 universities are offering Criminology Programs at master's level.
- There is only one HEC Recognized Research Journal in Pakistan⁷

▪ **Practical Application of Criminology in Pakistan**

Criminologists are rarely hired in the organizations working in connection with Criminal Justice System in Pakistan. Shanila Ayaz Mazhar (2012), in this connection observed that⁸:

"It was assumed that a degree in criminology has some charm and adventure having links with a prestigious organization and forces of the state. But, unfortunately, the government has no role in it despite its importance round the globe.

The University of Sindh produced a number of criminologists, but they are still jobless. It is very surprising that no vacancy is announced by organizations such as the army, the police and the Anti-Narcotics Force."

Dr Nabi Bakhsh Naerjo, Chairman, Dept of Criminology, SU Jamshoro, in has tendered following recommendations to promote discipline of criminology in Pakistan⁹.

The federal and provincial governments, their respective interior/home departments, their subordinate organisations /departments, and other public and private sector organisations are requested to create and advertise jobs in BPS-17 for criminologists in the following titles/positions relevant to their individual needs, description and requirements.

The criminal justice (police, court, and corrections) must appoint/induct criminologists into areas like criminal justice coordinator, police psychologist, police trainer, police reformist, private detective and community police officer.

⁷<http://hec.gov.pk/english/services/faculty/Documents/Thematic%20Research/Social%20Sciences%20J.pdf>

⁸ <https://www.dawn.com/news/687213>

⁹ <https://www.dawn.com/news/693541>

The prison systems and institutions need services of criminologists in positions like prison governor, correctional officer, prison reform officer, prison security manager, legal aid officer and probation/parole officer.

The criminal investigation wing in public and private organisations can engage postgraduates in criminology as crime scene investigator, chief interrogator, crime pattern analyst, character verification officer, forensic expert, etc. The policing, investigation and countering of organised crime, violence and terrorism could be the other relevant fields where criminal intelligence officer, counter-terrorist personnel, anti-human trafficking officer, human rights expert, cyber crime specialist, anti-corruption officer and security consultant could be recruited.

University campuses could be secured through the expertise of qualified campus security officers. The university, prison institution and human development department require criminologists as teachers, trainers and counselors. The incidents/events of hostage situations compel us to apply professional skills of the criminologist as hostage negotiator.

The home department should create the post of child protection officer to safeguard vulnerable children in our society. Community and institutional setups should professionally launch offender-victim mediation programmes. Crime reporting is the other vital domain where knowledge and skills of criminologists could be best capitalised.

➤ **Criminal Law and Criminology**

Criminology lays down the theoretical framework for framing and operation of criminal law. Criminal Law is meant to regulate the conduct of society by punishing undesirable behavior. Criminology helps identify such behaviors in order to ensure the effectiveness of the Law.

It is job of a criminologist to identify the behaviors and actions which need to be criminalized. For example kite flying in Pakistan was claiming lives of innocent people. In order to stop kite flying a law titled as "Prohibition of Kite Flying Ordinance 2001 was promulgated. Likewise Benami Transaction is known to be a source of corruption so in order to curb corruption Benami Transactions (Prohibition) Act 2017 was promulgated in Pakistan.

➤ **Other Concepts Related to Crime**

▪ **Deviance**

Deviance signifies socially disapproved behavior i.e. violation of social norms. Deviance can be criminal when the conduct is violative of criminal law such

as murder, robbery or theft. It is non-criminal when it doesn't violate the criminal law such as "telling lies" or "being extravagant".

Deviance is a matter of interest for criminologist on two counts. First this behavior contravenes the socially accepted conduct of individuals and thus may harmful to social order. Secondly the criminologists also need to enquire in to the reasons of not criminalizing such attitude by the law? Therefore a criminologist also need to explore the link between deviance and crime. Martin O'Brien and Majid yar in their Book "Criminology the Key Concept" observe that¹⁰:

The terms crime and deviance are often used in tandem, or even interchangeably, in criminological discussion. However, they ought to be viewed as distinct, albeit interrelated, categories. Crime, in its most straightforward sense, denotes those behaviors that are formally prohibited and punishable under criminal law. Such offences provide the subject matter of mainstream criminological investigation. However, criminologists may study activities that are not criminal as such (i.e. do not breach criminal law), but are instead subject to administrative law (regulations drawn up by government's administrative agencies). Criminologists deem such activities as relevant because they may cause serious harms to society and its members. Moreover, the fact that they are not criminalized is considered noteworthy in itself, as it invites us to examine why it is that some harmful behaviors are deemed crimes and not others. It is important to bear in mind that crime is a social construct, insofar as what counts as crime will depend upon the legal standing of an act at a particular time and place. As such, new crimes are constantly being created, and conversely behaviors that were at one time criminal may be decriminalized.

The term deviance in contrast denotes behaviors that breach informal social norms and rules, and hence are considered undesirable or objectionable. An act may be seen as deviant while being entirely legal (an example would be consensual sadomasochistic sex). Conversely, an act may be a crime, but not considered as deviant by the social majority (a good example would be speeding). Crime and deviance intersect in that societal perceptions about deviance may drive a process of criminalization, as various actors call for the objectionable behavior in question to be formally outlawed. On the other hand, behaviors may be eventually decriminalized as a result of

¹⁰ O'Brien, M., & Yar, M. (2008). *Criminology: The key concepts*. Routledge.p32

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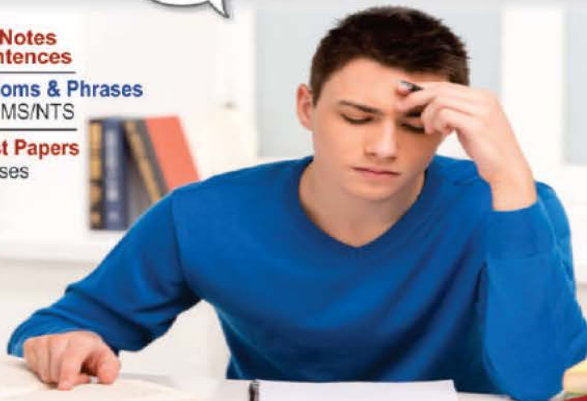
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a change in wider cultural understandings and sensibilities. In this way formal (legal) and informal (cultural) understandings of what is appropriate or inappropriate, normal or abnormal, desirable or undesirable, are clearly interconnected.

▪ Sin

Sin is violation of divine law or religious injunctions. A sin may or may not attract criminal liability. For instance, disrespecting elders may be a sin under religious code but not a crime. On the other hand murder is a sin as well as a crime.

▪ Evil

Anything that is considered harmful to the society and social order. An evil may or may not symbolize a crime. For instance, extravagance is an evil but not a crime. Contrarily, corruption is an evil as well as a crime.

▪ Vice

Practices which manifest evil or immorality such as drinking and smoking. The former may attract criminal liability in Pakistan while the latter is not designated as a crime.

Crime & Criminals

➤ Occasional Criminal

One who commit crime in response to some external stimulus or in order to avail an opportunity is called occasional criminal. Such Criminals are more receptive to rehabilitative treatment.

➤ Habitual Criminal

One who has committed numerous crimes and is deemed to has become a hard core criminal. Such a criminal pose threat to society at large and required to be incapacitated.

➤ Professional Criminal

One who earns bread and butter through criminal means - when a habitual criminal acquires skills and expertise in specific field, he becomes a professional criminal. Traits: (Consistency, Expertise, Status, Organization, Association)

➤ White Collar Crime (WCC)

WCC are Non-violent crimes for financial gains normally committed by people who enjoy high status in the society. The term was coined by Edwin Sutherland. Examples of white collar crimes include copy rights infringements, money laundering, Insider Trading, Bribery and Kickbacks. Edwin Sutherland defined white collar crimes in following manner.

"a crime committed by a person of respectability and high social status in the course of his occupation"

Sutherland was of the view that crime committed by those who enjoy high status in the society don't catch the attention of the lawmakers while the harm inflicted by these crimes is no less than that of street crimes. Martin O'Brien and Majid Yar maintain that¹¹:

By drawing attention to such activities, Sutherland wished to challenge the overwhelming criminological and law-enforcement focus upon 'street crimes' and other offences committed by those from lower socio-economic groups. Sutherland claimed that dominant understandings of 'the crime problem' significantly misrepresented the reality of offending, and that in fact criminal activity was widespread amongst the more privileged and supposedly respectable members of society. A second motivation for broadening the scope of criminology to include such offences was a realization that white-collar crimes often produced more harm to society than low-level offences such as petty theft and robbery. For example, offences such as tax evasion will deprive the state of valuable revenues that are needed for providing citizens with services such as education, healthcare and welfare; the production of sub-standard and adulterated food and drugs will place public health in jeopardy; unsafe working conditions will place employees in jeopardy; fraudulent accounting practices can ultimately lead to the collapse of businesses and the loss of work for an organization's employees (as happened in the recent case of the Enron Corporation in the USA). For these reasons, Sutherland felt that sociologists and criminologists needed to broaden their agenda and examine those crimes committed by society's elites.

➤ Organized Crimes

Organized crimes are committed by collaboration and coordination of multiple individuals. It denotes a situation when criminals join hand to form a group in order to commit a crime.

An "organized criminal group" is defined using four criteria:

1. A structured group of three or more persons;
2. The group exists for a period of time;

¹¹ O'Brien, M., & Yar, M. (2008). *Criminology: The key concepts*. Routledge. p180

3. It acts in concert with the aim of committing at least one serious crime;
4. To obtain, directly or indirectly, a financial or other material benefit.

According to "Martin O'Brien and Majid Yar¹²", following are the examples of organized crimes.

- Trafficking: in arms, drugs, humans (especially women and children for the sex trade), hazardous wastes (e.g. plutonium and nuclear materials); human organs; wildlife.
- Smuggling – stolen vehicles, and other contraband (alcohol, tobacco)/ humans Counterfeiting and piracy
- Extortion and protection rackets
- Fraud
- Gambling
- Racketeering
- Loan sharking
- Theft, robbery, hijacking, kidnapping
- Prostitution
- Pornography

➤ Corporate Crimes

Corporate crimes are committed by corporations/corporate entities such as window dressing, unfair business practices, insider trading and money laundering. The Australian criminologist John Braithwaite defined corporate crime as¹³:

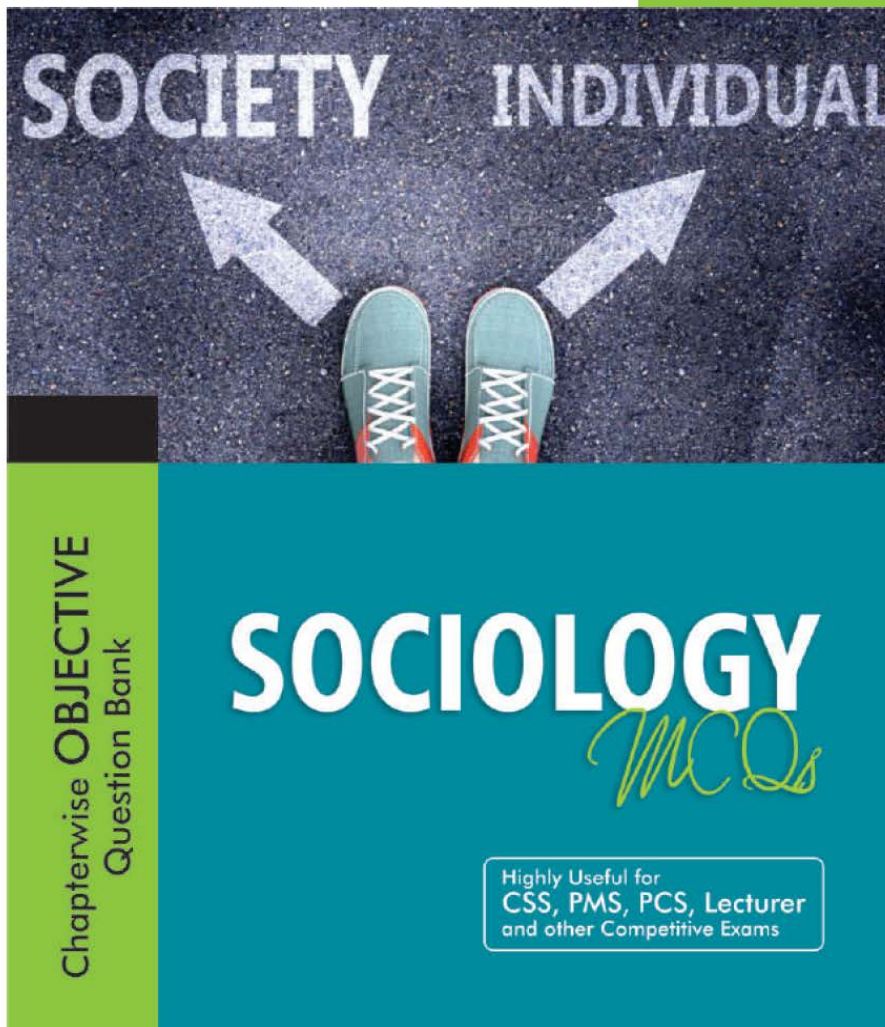
"The conduct of a corporation or employees acting on behalf of a corporation, which is proscribed and punishable by law."

More Types of Crimes

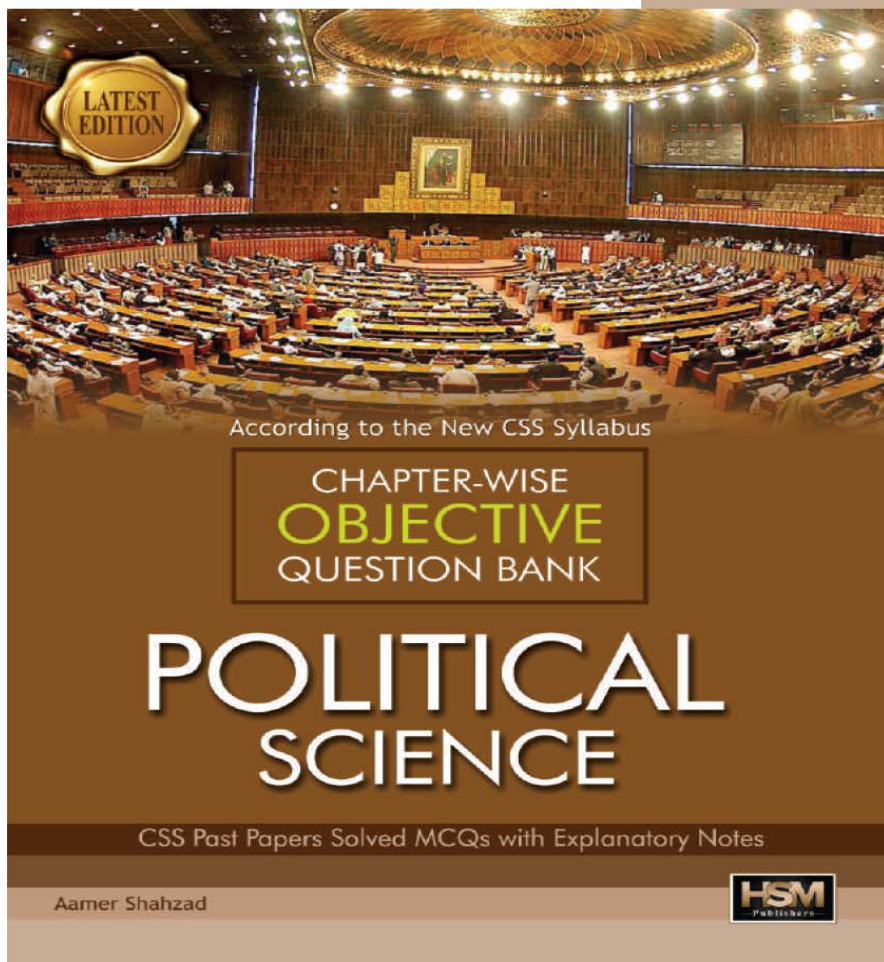
Type of Crime	Definition	Example	Example from Pakistan Penal Code (PPC) 1860 and other laws in Pakistan
Violent	This is a crime in	Homicide	i. Qatle e Amd as

¹² O'Brien, M., & Yar, M. (2008). *Criminology: The key concepts*. Routledge. p116

¹³ John Braithwaite, *Regulatory Capitalism: How it Works, Idea for Making It Work Better*, Edward Elgar Publishing (2008).



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Basic Concepts

Type of Crime	Definition	Example	Example from Pakistan Penal Code (PPC) 1860 and other laws in Pakistan
Crime	which physical force is employed by the offender.	Rape Injury Robbery	defined under section 300 of PPC 1860. ii. Rape is defined under section 375 of PPC 1860 iii. Injury is defined in section 44 of PPC 1860. iv. Robbery is defined under section 390 PPC.
Economic Crimes/ Acquisitive crime	A crime which brings economic/ financial gain for the offender.	Theft Bribery	i. Theft is defined under section 378 PPC. ii. Bribery is defined under section 171-B of PPC.
Crimes without victim	The crime in which only offender is involved or which is result of the consent amongst the individuals involved in crime.	Prostitution Blasphemy	i. Prostitution is offence under section 371-A and B of PPC. ii. Blasphemy is dealt under section 295, 295-A, B&C of Pakistan
Victim without crimes	Sometime people may suffer harm without a crime being committed. Following may be the causes: i. Some acts may be deviant but not criminalized under the law such as smoking. A US Surgeon General ¹⁴	Smoking "Unfair Business practices" Suicide	--

¹⁴ A.S. (1982). *The Heroin Solution*. New Haven, CT: Yale University Press.

Type of Crime	Definition	Example	Example from Pakistan Penal Code (PPC) 1860 and other laws in Pakistan
	observed that tobacco caused 400000 annual deaths in US in comparison 586 deaths caused by use of heroin. However use of heroin is a criminal offence while use of tobacco is not.		
Youth Violence	Youth crimes are the crimes which are perpetrated by the youth or directed against the youth.	<p>"Child seduction"</p> <p>"Violence against children"</p> <p>"Kite Flying "</p>	<p>i. Exposing a child to seduction is an offence under section 292-A of PPC 1860.</p> <p>ii. Violence against children is a criminal offence U/S 328 A of PPC.</p> <p>iii. Kite Flying is an offence in Punjab under "Punjab Prohibition of Kite Flying Ordinance 2001"</p>
Corporate Crimes	These are the crimes committed by corporate entries.	<p>"Insider Trading"</p> <p>Tax Evasion</p>	<p>1. Insider trading is prohibited under "Listed Companies (Prohibition of Insiders Trading) Guidelines.</p> <p>2. Tax Evasion is an offence under section 200 of Income tax Ordinance 2001.</p>
White Collar	White Collar Crimes are non-violent crimes	Money Laundering	1- Money Laundering is

Type of Crime	Definition	Example	Example from Pakistan Penal Code (PPC) 1860 and other laws in Pakistan
Crimes	committed by those enjoying higher status in the society. This term was coined by Edwin Sutherland. "Edwin Sutherland studied the violations committed by corporations and observed that such violations if done by ordinary individuals would have constituted criminal offence. But these corporations were not prosecuted rather the violations were treated as civil matters.	Benami Transactions Corruption	dealt under Anti Money Laundering Act 2010. 2- Benami Transactions are prohibited under Benami Transactions (Prohibition) Act 2017. 3- Corruption is dealt, inter alia, under "Prevention of Corruption Act 1947".
Organized Crimes	Organized Crimes are those which are committed by a group of criminals.	"Drug Trafficking" "Terrorism" "Unlawful Assembly"	1- "Associates defined in section 2(c) of Control of Narcotics Substance Act 1997. 2- Section 11 A of Anti- Terrorism Act 1997. 3- Unlawful Assembly is defined under section 141 of Pakistan Penal Code 1860.

Crime & Criminality: Theoretical Perspective

The theories of criminology tend to explain the reasons for crimes from different perspectives. The crime is an aspect of human behavior, hence a complex phenomenon to understand. Crimes are triggered by a variety of reasons so the different schools have given different reasons for criminal

behavior, many of which are acknowledged to be based on valid reasoning while some of them have been met with wider disapproval from contemporary scholars. These theories, clubbed into different schools of thoughts, are discussed below.

▪ **Two major perspective on crimes**

There are following two broader explanations of the causes of crimes.

- Spiritual Explanation /Pre-Classical School
- Natural Explanation

➤ **Spiritual Explanation ~ Pre-Classical School**

During much of human history, especially before age of enlightenment (starting from 18th century), crimes were believed to have been caused by devil or Satan. Accordingly, natural disasters were attributed to the displeasures of divine forces on account of wrongs committed by the people. It was believed that crimes tended to increase during such calamities. Therefore sacred rites were performed to please the divine forces. Since it was believed that crimes were committed under the influence of demon, different practices and procedures, called exorcism, were applied to evict the demon out of man. In some cases even the skull of offenders were opened to oust the devil. So all the explanations related to crimes remained grounded in supernatural beliefs during this period.

▪ **Method of Trial under Spiritual Explanations**

i. ***“Trial by Battle”***

According to Vold¹⁵, state interference in crimes was minimal during early human history and victim of crime or his family would take revenge from the offenders. However this practice of revenge would lead to unending feud lasting for years. This practice was therefore changed by interference of local feudal lords by introducing a new method called “trial by battles” where offenders and victim and their respective families would fight with each other on the presumption that innocent would be victorious in the end by the blessing of God.

ii. ***Trial by Ordeal***

“Trial by battle” however emboldened the powerful individuals and tribes to persecute the weaker ones on the assurance of remaining victorious during trial by battle. This led to change of the “trial by battle” with “trial by ordeal”

¹⁵Theoretical criminology. New York: Oxford University Press.

whereby the accused was subjected to painful situations on the presumption that the innocent would survive by the will of Allah. The ordeals included making the accused walk on red charcoal or walk by holding red hot iron in hand. Likewise women were thrown and in case of being drowned she would be considered guilty and would be held innocent if she floated.

iii. Trial by Compurgation

Pope Innocent III(1161-1216) however opposed trial by ordeal in year 1215 for being inhuman and replaced it with compurgation , a method where accused took oath of his/her innocence which had to be endorsed by certain other people. The "trial by jury" actually was evolved from compurgation.

Punishment by State

Inhuman and barbarous punishments were inflicted during this period. St Thomas Aquinas (1225-1274) argued that criminals were actually violating the command of God therefore state was empowered to inflict severe punishments. Under this philosophy, many European states on the impression of functioning under authority of God inflicted horrible punishments upon the accused such as stoning to death, beheading, torturing and quartering.

▪ Modern Day Implication of Pre Classical School

Faith base explanation needs no scientific explanation so the spiritual explanation of criminal behavior hold ground even today that is to say that the people try to find the causes of crimes in devil forces even today. For instance Charles colson¹⁶ , the top aid of President Nixon, who was imprisoned on his involvement in water gate scandal, attributed the criminal conduct to influence of devil. Likewise the practice of exorcism, evicting Satan out of man, remains in vogue today. In 2005¹⁷ , a 23 years old female was put to death in monastery by a monk and four nuns while performing exorcism on her. The deceased was kept chained for three days and her mouth was stuffed with a towel. The monks and nuns contended that they were evicting devil out of her.

➤ Natural Explanation

In contrast to spiritual explanations, the natural explanation of crime gives worldly account of the crimes based upon objects, observations and experiences. This is basically negation of spiritual explanation of crime. The natural explanations can further be divided in to three categories.

¹⁶ "An understanding of the causes of crime" by Charles colson

¹⁷ <https://www.nytimes.com/2005/07/03/world/europe/a-casualty-on-romanias-road-back-from-atheism.html>

- Classical School/Rational Choice Theory
- Positive School
- Behavior of Criminal Law(How is the crime defined)

Classical School of Thought/Rational Choice Theory

➤ **Background**

The classical theory owes its origin to the start of "age of enlightenment" which brought radical changes in philosophical, political, scientific and sociological thoughts. Thomas Hobbes (1588-1679) for instance argued that the human beings naturally pursue their desires without taking care of others. For instance in order to accumulate wealth, one may feel no qualm or hesitation in killing someone else. This may lead to war of every one against every one, a situation which is not in favor of any one. So the people surrender their desires for collective good in order to bring peace and prosperity in the society and let themselves to be governed by the rules laid down by the state. So a person's desire to kill another one will be contained by the Law of the state. This was termed as "Social Contract" Locke (1632-1704), Montesquieu (1689-1755), Voltaire (1694-1778) and Rousseau (1712-1778) advanced the similar view.

The social contract view also gave impetus to debate on criminal Law and reforms leading to the emergence of classical school of thought. The early theorists who contributed towards Classical Theory included Cesare Beccaria, Jeremy Bentham, and John Howard. According to this school of thought, human being commits crime for material pursuits and desires instead of coming under influence of any devil. Crime is therefore a rationale choice of individuals. Accordingly, such individuals who commit crimes should be punished so as to create deterrence. The two major proponents of classical view: Beccaria and Bentham. Both are discussed hereunder.

➤ **Cesare Beccaria (1738-1794): The Founder of Classical School**

Cesare Bonesana Marchese De Beccaria (commonly known as Cesare Beccaria) was actually a critic of the cruel punishments inflicted upon the offenders in capricious manner. He wrote an essay titled "On crimes and punishments" in which he criticized the method of barbaric punishments and personalized criminal justice system where punishments were inflicted on the basis of personal whims. Judicial system predominantly rested with Catholic

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Church network of diocesan courts (the ecclesiastical courts)¹⁸ at that time. His thoughts were so radical that he didn't disclose his name and got his book published anonymously. His thoughts were severely criticized and he was labeled as a disbeliever. However his views laid down the foundation of what was subsequently known as "Classical School of criminology".

- **Major Contentions of Cesare Beccaria**

Contrary to supernatural explanations of crime of pre-classical period, Beccaria's thoughts centered on the concept of "utilitarianism" i.e people commit crime out of their desire to seek pleasure so the crimes can be prevented by inflicting punishments. So if punishment exceeds the pleasure drawn from the crime, the people will be prevented to commit crime. For instance, if a person believes that he can

- **Social Contract Theory: Empowers State to Promulgate Penal Laws.**

The social contract, as referred to in earlier discussions, is a contract whereby all the citizens of the society give their consent to abide by the laws of the state. Those who break the law in fact violate social contract so the state should make penal laws for such violators.

- **Legislature to frame penal laws**

The laws empowering punishment to criminals must be framed by the legislature as representative of the society. The laws therefore reflect collective will of the society. Punishment in excess to the one provided under law should not be allowed.

- **Judges to inflict punishments in accordance with Law**

The judges should not be vested with discretion to decide the quantum of punishments rather they should strictly follow the law while awarding punishments to criminals. It will ensure strict application of law and prevent any injustice being committed in the hands of judges.

- **Severity of the crime to be measured in terms of harm caused to the society.**

The severity of the crime to be measured in terms of harm caused to the society and not for the intentions of the offender. Even if victim of a crime is a single individual or group of individuals, the society as a whole bear its brunt

¹⁸ Behrend-Martínez, E. (2017). *Episcopal Courts in Iberia, Italy, and Latin America*. In C. Parker & G. Starr-LeBeau (Eds.), *Judging Faith, Punishing Sin: Inquisitions and Consistories in the Early Modern World* (pp. 77-88). Cambridge: Cambridge University Press. doi:10.1017/9781316492659.007

because it violates the social order. It instills fear in the society and makes the people feel unsafe. It may also induce others to commit the same crime. Therefore the society as a whole cannot remain unaffected to any crime.

▪ **Severity of Punishment**

Punishment inflicted for a crime should exceed the harm caused by the crime to the society and not more than that. Beccaria was of the view that excessive and horrible punishments don't serve as deterrence against the crimes.

▪ **Certainty and Promptness of Punishments**

The punishments should be certain to serve as deterrence against the crimes. This implies that people should be sure that they would not be able to escape punishment in case of committing crimes. Likewise, Beccaria said that punishment should be immediately inflicted after crime. The words of Beccaria are reproduced below¹⁹:

I have said that the promptness of the punishment is more useful because the length of the time that passes between the punishment and misdeed is less, so much the stronger and more lasting in the human mind is the association between these two ideas, crimes and punishment.

▪ **Prevention of Crimes**

Crimes can be prevented through effective system of punishments.

➤ **Jeremy Bentham's Hedonistic Calculus**

Jeremy Bentham (1748-1832) was an English philosopher whose view were almost similar to that of Beccaria, though in different words. He was of the view human beings are inherently inclined to pursue pleasure through every means. For example if wealth gives pleasure, one would acquire it even by resorting to illegal means such as committing theft or robbery. This pursuit or thrust for pleasure is called hedonism. Bentham contended that a hurdle before this pursuit of pleasure (hedonism) through illegal means is the "punishment" inflicted by the law. So at one side is the pleasure attained through committing crime and on the other side is the pain inflicted through punishment by the law. An individual would thus weigh the both (Pleasure and Pain) and if pleasure or gain outweighs the pain then such an individual would be inclined to commit crime. This process of weighing pleasure against pain was termed as "Hedonistic Calculus".

Closely linked with "Hedonistic Calculus" is the concept of "Utilitarianism" which envisages that an action may be judged or evaluated in terms of happiness or gain brought by it for maximum number of people. So at

¹⁹ Cesare Beccaria on crimes and punishments

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individual level, a person is inclined to do an act if it brings maximum pleasure. Thus choice of crime is in act of pursuit of pleasure which can be prevented by strengthening the system of inflicting punishments upon those committing crimes.

➤ **Criticism on Classical School of Thought**

Classical school of thought was criticized for following reasons.

- All the human being on the earth are not equally equipped with the capacity of reasoning. The classical school however believes that all human beings are endowed with equal capacity to think, judge and make decisions.
- Classical school believes that deterrence can be created through effective system of punishments but people still commit crimes in presence of harsh punishments.
- Classical schools has no explanation for the crimes which are committed instantly at the spur of moment without prior intention.

Positivist School of Thought

This school of thought believes that its not solely internal desires that drive the human being to commit crimes rather there are certain factors-internal and external – that defines the criminal behavior amongst human beings. Or in other words, human beings commit crimes due to the reasons which are beyond their control. So it is imperative the causes behind this behavior may be identified and addressed instead of punishing the individuals. The different theories under this school are given hereunder.

▪ **Theories of Physical Appearance and Biological Explanations**

Body type theories provide that that there is a link between physical appearance and state of mind. Following theories in this connection merit consideration.

➤ **Physiognomy**

Physiognomy refers to assessing character of a person from outer appearance especially from ones face. The practice is in vogue since ancient times. Johan Caspar Lavatar was a Swiss scholar who in his book Physiognomical Fragments, published in 1775, tried to establish a link between facial features and criminality. He contended that the bones of the face being soft are prone to change shape in response to internal emotions. He also made some claims about the relationship of certain facial features with human conduct for instance beardless men and bearded women were considered unfavorable traits. Some critics however termed the work of Lavatar as being superstitious and ignorant.

➤ **Phrenology**

Phrenology establishes a relationship between shape of the skull and human conduct arguing that skull reflects the shape of brain and therefore serves as a manifestation of human traits. Franz Joseph Gall (1758-1828) is considered to be founder of phrenology with assistance of his student John Gaspar Spurzheim. He contended that brain contained twenty six special faculties such as amateness, philoprogenitiveness, adhesiveness, combativeness, destructiveness, secretiveness, acquisitiveness, self-esteem, love of approbation and cautiousness etc. These faculties are grouped into three categories: Lower propensities, moral sentiments and intellectual faculties. Lower propensities such as amateness, philoprogenitiveness, combativeness, destructiveness and secretiveness instigate crimes whereas moral sentiments (self-esteem, truthfulness and cautiousness) and intellectual faculties served as deterrence against lower propensities.

Gall was of the view that these 26 characteristics are housed in different regions of the brain and can be measured through the outer surface of skull. Their size can be reduced or enhanced with practice. Gall further contended that children and adults must be trained to strengthen their moral sentiments to keep them away from crimes. However this theory was criticized on the grounds that it was beyond human capacity to observe organs of mind.

The major postulates of phrenology can be summarized as under.

- Brain is an organ of the mind.
- There are 26 special faculties of brain grouped into three compartments namely active propensities, moral propensities and intellectual propensities.
- These three compartments are closer to the surface of brain and can be measured through skull.
- The skull reflects surface of the brain.
- The size of the each region reflects the strength of human trait. For instance, left side of the head contain destructive propensities so bumps on that part of human skull reflective strong destructive tendencies.
- The size of different regions can be enhanced or reduced through practice.

➤ **Atavism by Cesare Lombroso**

A doctor in Italian army, Cesare Lombroso, gave a new dimension to the concepts of physiognomy and phrenology. Once he was performing postmortem of a dead body of a thief when he found some features which were present in animals instead of human being which prompted him to contend that criminals were in fact not fully developed as human being. They therefore contained qualities of primitive man whom he called "atavists", what he observed in narrated in his own words:

"On laying open the skull I found on the occipital part, exactly on the spot where a spine is found in the normal skull, a distinct depression which I named median occipital fossa, because of its situation precisely in the middle of the occiput as in inferior animals, especially rodents.....At the sight of that skull, I seemed to see all of a [xiv] sudden, lighted up as a vast plain under a flaming sky, the problem of the nature of the criminal - an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals. Thus were explained anatomically the enormous jaws, high cheekbones, prominent superciliary arches, solitary lines in the palms, extreme size of the orbits, handle-shaped or sessile ears found in criminals, savages, and apes, insensibility to pain, extremely acute sight, tattooing, excessive idleness, love of orgies, and the irresistible craving for evil for its own sake, the desire not only to extinguish life in the victim, but to mutilate the corpse, tear its flesh, and drink its blood".

Lombroso was indeed influenced by the thoughts of Darwin regarding evolution of human beings. He contended that the evolution process of the criminal was not complete as yet. He subsequently examined 832 male and female criminals, 390 non criminals and 90 lunatics. He incorporated findings of his study in a book titled "The criminal Man" published in 1876. He linked following characteristics to criminality.

- Facial asymmetry
- Monkey Like ears
- Large Lips
- Twisted Nose
- Excessive Cheek Bones
- Wrinkles on the Skin
- Large Jaw
- Large Chin

Males with five while female with three of the above characteristics were held as borne criminals by Lombroso.

Lombroso views were however criticized by another criminologist Charles Buck man Goring (1870-1919). Goring compared convicts with non-convicts but found no fundamental difference with regard to physical features of the both. Goring narrated that:

We have exhaustively compared, with regard to many physical characters. different kinds of Criminals, with each other, and criminals, as a class, with the law-abiding public . . . Our results Nowhere confirm the evidence [of a physical criminal type], nor justify the allegation of criminal Anthropologists. They challenge their evidence at almost every point. In fact, both with

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regard to measurements and the presence of physical anomalies in criminals, our statistics present a startling conformity with similar statistics of the law-abiding class. Our inevitable conclusion must be that there is no such thing as a physical criminal type" (Goring, 1913: 173, quoted in Sutherland, 1939

Although supporters of Lombroso criticized Goring for being ambitious to disapprove Lombroso, Goring's views got wider acceptance amongst the expert of criminology William Sheldon:

➤ **Body Type Theory (Smatotype)**

William Sheldon (1898-1977) in series of his books linked criminality to body types. According to William Sheldon, all the human beings can be divided into three body shapes.

- **Endomorphs:** Fat and Soft
- **Ectomorphs:** Thin and Fragile
- **Mesomorphs:** Muscular and Hard

William Sheldon made the "human embryo" his reference to discuss criminal behavior. He was of the view that human embryo had three layers "mesoderm (middle-layer), endoderm (inner-layer) and ectoderm (outer-layer). These three layers further develops human organs to shape a complete human body. The endoderm develops human digestive viscera; mesoderm develops human bones and muscles while ectoderm develops nervous system and skin.

William Sheldon studies 200 college students who were known to be delinquents and found that they had overwhelmingly mesomorphs. Similar conclusions were drawn by two later criminologists Sheldon Gluecks (1896-1980) and Joan B Corts. Gluecks made comparison of 500 delinquents with 500 non delinquents and found that delinquents were predominantly mesomorphs. On the other hand, Cortes based his finding on 73 boys and concluded the following.

"Delinquents and possibly criminals differ from non-delinquents and non-criminals in being physically more monomorphic, more energetic and potentially aggressive temperamentally, and in showing higher need for achievement and power motivationally"

However the later scholars criticized the findings of somatotype theory on many counts thus it could not get wider approval of contemporary scholars.

➤ **Inheritance Theory**

Proponents of this theory maintain that human behavior including criminality is inherited from parents in the same way as are the other human traits. Charles Buckman Goring, a criminologist from United Kingdoms, is major proponent of this theory who used statistical tool to

distinguish between criminals and non-criminals. He found that parents of most of the criminals whom he studies were also criminals. This made him to contend that criminality was inherited from parents. His views were however criticized for not taking in to consideration the environmental factors (social impact, schooling and brought up) effecting human behavior.

Multiple studies conducted on identical twins found that they shared common traits with regard to criminality. Likewise studies conducted on adoptees (Both known as "Twin and Adoption Studies") found that biological parents of the adoptees with criminal records were more likely to be criminals. However findings of twin and adoption studies have been criticized mainly because of no one taking in to account of other factors.

➤ **XYY Syndrome**

Human cell contains 23 pairs of chromosomes (46 in total). Twenty two pairs are same in both male and female. However the twenty third pair determines the gender of human beings. A female has an XX pair while a male has an XY pair. However a situation may arise when a male has an extra Y chromosome which is called XYY Syndrome. It has been claimed that XYY syndrome may lead to criminal inclination. However this view has found little scientific endorsement.

Colmen and Norris state that²⁰:

The suggestion has been made that the possession of an extra male (Y) chromosome in the genetic make-up of some individuals (what is called the XYY syndrome) may predispose them to violence, or even to serial murder. Clear evidence for a causal link between the XYY pattern and criminal behavior has always been lacking (Mednick and Volavka 1980) and the suggested link with serial murder seems to have been based on one or two examples of serial killers who have had, or are thought to have had, this genetic abnormality. Arthur Shawcross, who was arrested in New York State in 1990 and confessed to the murder of eleven women, having already served a prison sentence for one of two earlier killings, is reported to have had this extra chromosome (Hickey 1997: 48). Just as one swallow does not make a summer, one case does not make a generalization.

➤ **Biosocial Explanation of Crime**

Bio-social school explained the biological features acquired through one's interaction with environment and their impact on criminal behavior. For

²⁰ Coleman, C., & Norris, C. (2011). *Introducing criminology*.(p.100)

example, if a person is drug addict, it affects the human body and such a person may resort to crimes such as theft for buying drugs. Likewise use of alcohol instills aggression amongst the human beings which may lead to crimes.

➤ Intelligence Theory

Criminal behavior was linked to low intelligence by proponents of this theory. Alfred Binet (1857-1911) a French psychologist with help of his assistance "Theodore Simon" developed an index for measuring intelligence of the children which was given the name of "Binet Simon Scale of Intelligence". According to this scale different activities which should be performed by the children according to their ages were enlisted. For example a child of 5 years should be able to do simple mathematical calculation (addition and subtraction) while a child of 7 years must be able to perform more complex calculation (multiplication and division). The mental age of children was defined according to these activities. In order to calculate intelligence quotient (I.Q) mental age was divided by the biological age and then multiplied by 100. IQ of 100 signified normal intelligence, more than 100 was proof of higher intelligence while less than 100 showed below than normal intelligence (termed feeble-minded children). For example (it's for illustration only), if a child of 7 years of age cannot perform complex calculation, this implied that his mental age was 5. So his mental age will be divided by the actual age and then multiplied by 100 $[(5/7) \times 100]$. His IQ is less than 100 which thus such a child is of low intelligence or feeble-minded. Criminality was ascribed to the individual of low intelligence under this theory.

➤ Psychological School / Personality of the Offender

Psychological School links criminal behavior to personality of the offender which is combination of emotional and behavioral traits of individuals. Sigmund Freud, a renowned neurologist/psychologist, observed that traumatic experiences of childhood left indelible imprints on human behavior. He invented a technique termed as "Psychoanalysis" in which the patients visiting were asked to freely narrate whatever came to their minds. By doing so the patients would recall their childhood experiences "which were previously present in their unconscious". Once narrated, these experiences came out of unconscious and thus could be controlled by conscious.

He went on further to say that "Conscious" was ego while unconscious was further divided into "id" and "superego". Thus human personality is combination of these three factors id, ego and superego. Id works on pleasure principle which means that it wants to pursue pleasure. The superego on the other hand works on moral principles. "Ego" is conscious human personality which works on reality principle and it serves as a mediator between "id" and "superego". For example, id evokes desire for pleasure but superego stops a person from resorting to unethical means in materializing the desires. For

example urge for aggression (stimulated by id) can be transformed in to "physical sports" such as athletics by superego.

Freud didn't say anything on criminal behavior, however the later scholars used the framework given by him to study the criminal behavior. August Aichhorn, a psychologist worked in an institution of delinquent children. He found that most of the delinquents had underdeveloped superego due to want of affection and love of their parents.

➤ **Cognitive Theory**

The term "cognitive" literally means "thinking or conscious mental processes". Proponents of this school ascribe criminality to flaws in thinking process. The human beings give meaning to the things in terms of what they perceive and then act accordingly. For example if a male child sees his father abusing his mother, he may is likely to exhibit the same behavior when he himself gets married.

Siegel throws light on cognitive theory in following words:

According to this cognitive approach, people who use information properly, who are better conditioned to make reasoned judgments, and who can make quick and reasoned decisions when facing emotion-laden events are best able to avoid antisocial behavior choices. In contrast, crime-prone people may have cognitive deficits and use information incorrectly when they make decisions. They view crime as an appropriate means to satisfy their immediate personal needs, which take precedence over more distant social needs such as obedience to the law. They are not deterred by the threat of legal punishments because when they try to calculate the costs and consequences of an action—that is, when they are deciding whether to commit a crime—they make mistakes because they are imperfect processors of information. As a result of their faulty calculations, they pursue behaviors that they perceive as beneficial and satisfying but that turn out to be harmful and detrimental.

One reason for this faulty reasoning is that they may be relying on mental scripts learned in childhood that tell them how to interpret events, what to expect, how they should react, and what the outcome of the interaction should be.¹⁰⁸ Hostile children may have learned improper scripts by observing how others react to events; their own parents' aggressive, inappropriate behavior would have considerable impact. Some may have had early, prolonged exposure to violence (such as child abuse), which increases their sensitivity to slights and maltreatment. Oversensitivity to rejection by their peers is an outgrowth of sensitivity to rejection by their parents.¹⁰⁹

Violence becomes a stable behavior because the scripts that emphasize aggressive responses are repeatedly rehearsed as the child matures. In adulthood, these errors in cognition and information processing help explain the urge to sexually exploit children. Errors in cognition and information processing have been used to explain the behavior of child abusers

Sociological Theory

Social construction or societal factors have a bearing upon criminal behavior of individuals.

➤ **Social Disorganization Theory**

This theory was proposed by two scholars named Clifford R. Shaw and Henry D. McKay (also referred to as Shaw and McKay) of Chicago School. They examined the residential background of the juvenile offenders brought to the courts of Chicago. They concluded that some of the areas were associated to particular set of crimes. In their view, the structure of Neighborhood and culture (which they termed as "Ecological Characteristics" of localities) had a role in criminal behavior more than the individual characteristics. Some regions are associated to particular set of crimes.

They further argue that economically underdeveloped areas or socio economically deprived areas were more prone to crimes. In such areas there is generally higher rate of population turnover as the people tend to leave such areas as they attain higher social status. Therefore social institutions (schools, community organizations, religious places etc) were not effective enough to exercise adequate degree of social control over these areas.

Micky and Shaw contended that:²¹

In poor communities, institutions lack adequate money and knowledge. From the family to the community at large, money and skills for the effective performance of allotted functions are deficient or absent. Also, the intermediate structures created in communities with populations that are more affluent and knowledgeable fail to emerge in the less resourceful slum....

Without intermediate structures, community wide relations are weak or cannot become established.

²¹ Shaw, C. R. and H.D. McKay. (1942). *Juvenile delinquency and urban areas; A study of rates of delinquents in relation to differential characteristics of local communities in American cities*. Chicago: University of Chicago Press.

They further observed that:

The ecological conditions existing in areas with high delinquency were contributing to a breakdown in the social order of the area, resulting in conditions conducive to delinquency. Shaw and McKay found that conventional norms existed in high-delinquency areas but that delinquency was a highly competitive way of life, such that there was advantage for some people to engage in delinquency and there were fewer consequences. This became the core of social disorganization theory. Shaw and McKay replicated their Chicago findings in at least eight other cities. Their research also spawned a wealth of other research, becoming one of the key theoretical seeds for most of the current criminological theories.

➤ **Strain Theory**

Strain theory was put forth by an American Sociologist named Robert King Merton in year 1938. This theory was actually influenced by Theory of Anomie proposed by Emile Durkheim. Anomie is a condition where there is no social standard of ethics and morality in the society; hence the people are inclined to resort to crimes.

When individuals are subjected to pressure to attain socioeconomic goals, it may put them under strain and result in deviant behavior. The society, in view of Merton lays great emphasis on the ultimate success with no regard to the means employed for achieving this success.

Merton while referring to American society maintained that accumulation of wealth was an overriding "object" of every American because social respect was associated with it. No one would care through which means one has acquired wealth but one would be respected if one is wealthy.

American society, according to Merton, espouses one overriding goal: the acquisition of wealth. The "almighty dollar" is something for which most Americans are taught to strive. While there are culturally approved means for obtaining wealth, they are given less emphasis, and of course, not everyone succeeds through legitimate endeavors. This may result in shortcuts or in nonconforming behavior to obtain money²².

A professional who has accumulated wealth by using skill and knowledge may earn respect in the society but at the same time another person who

²² Brown, S. E., Esbensen, F. A., & Geis, G. (2018). *Criminology: Explaining crime and its context*. Routledge.

resort to illegal means such as bribery and corruption gets same approval from the society. In such a situation a person is attracted to resort to any mean irrespective of its legality for achieving a desired status in the society which in return encourages crimes and illegalities.

➤ **Social Control Theory**

Social bonding such as relationships and affiliations serve as deterrent for individual to commit crime. In simple words, people don't commit crimes for the fear of being viewed negatively by their social relations. Therefore socially isolated individuals are more prone to crimes. This theory was put forth by Travis Hirsch in 1959 in his book "Causes of Delinquency". He was of the view that those who were in a close bonding with social groups such as family, friends, peers etc were less likely to commit crime because of the fear of being viewed negatively by the group to which they are associated.

➤ **Four forms of Social Bond by Travis Hirschi**

He gave four forms of social bond one may have with the social relations and groups.

- **Attachment:** This is psychological affection of a person with other relations. For example a child has normally a great deal of psychological affection with his parents which serves as control against delinquent behavior.
- **Commitment** is the value one gives to the social relation or group. One may not violate the terms of employment for fear of losing job because of commitment with the job.
- **Involvement.** How much one is involved with the group or in other words the amount of time one is giving of a group? He while referring to a common proverb that "idle hands are the devil's workshop" observed that a child engaged in social activities such as extracurricular activities is less likely to be delinquent.
- **Belief.** Is the degree of adherence to the value of the group to which one is associated? One of the most common examples in this regard is religious beliefs. Those who have firm belief in religious injunctions are less likely to commit crimes.

➤ **Labeling Theory**

Numerous scholars contributed to Labeling theory. Emile Durkheim's book "suicide" made reference to the social view of deviant behavior proving that though the law of the state penalize the violator but even more significant impact for an individual lies in the fact that how such a deviant person is viewed in the society.

George Hobert Mead, Thomas J Scheff and Frank Tannenbaum are amongst the principle scholars who made contribution to the theory. However Howard Backer is considered to be the principle proponent who put forth this theory.

According to Howard Backer:

"Deviancy is not a quality of the act a person commits, but rather a consequence of the application by others of rules and sanctions to an 'offender'. Deviant behaviour is behaviour that people so label."

According to the theory no act itself constitutes deviation but it is the view of the society that makes it deviant. This view may be incorporated in either social code or legal code. For instance if an ordinary individual kills a person, he is labeled as a killer and therefore attracts the penal provisions of Law while a soldier killing the enemies during war is labeled as Hero.

According to:

Many children, for example, break windows, steal fruit from other people's trees, climb into neighbors' yards, or skip school. In affluent neighborhoods, parents, teachers, and police regard these behaviors as typical juvenile behavior. But in poor areas, similar conduct might be viewed as signs of juvenile delinquency. This suggests that class plays an important role in labeling. Race is also a factor.

When an individual is labeled as "deviant or criminal", such a person is likely to make his self-image of being so thereby internalizing the social image.

For example, convicts may struggle to find employment after they're released from prison because of their criminal background. This makes them more likely to internalize the deviant label and again engage in misconduct. Even if labeled individuals do not commit any more crimes, they must forever live with the consequences of being formally deemed a wrongdoer.

➤ **Learning Theory**

Proponents of this view maintain that criminal behavior is learnt through individual associations, interactions, observations and affiliations. Two major views under this school of thought are

- Trade Law of Imitation
- Differential Association Theory

▪ **Trade Laws of Imitation**

Gabriel Trade (1843-1904) contended that criminal behavior was learnt from environment that is say that people did what they saw others doing. He gave this the name of "Law of Imitation". There were three laws on which the theory was premised.

- **The first Law:** People imitate those whom they are in close association with. For example, it's very likely that children will imitate the parents.
- **The second law** . Inferiors imitated the superiors. Trade said that many of the crimes committed by ordinary individuals were in fact influenced by nobility.
- **The Third Law:** New fashions replaced old fashions. Trade for example said that murder by knife was replaced with murder by fire arms.

➤ Differential Association Theory

One of the most famous theories in criminology is Edwin Sutherland's Differential Association Theory. He basically contended that level of association or interactions with criminals which leads to criminal behavior. This theory is premised upon the very well-known proverb "A man is known by the company he keeps". The theory revolves around the following contentions.

- An individual being a social being interacts with rest of the world.
- The individual interactions may vary depending upon the social status of the individual.
- Interaction with the criminals make a person learns the criminal behaviors.
- More frequent interaction may increase the inclination for crime.
- More learning takes place with in close and small circle.
- If violation of the legal code is appreciated, an individual becomes more prone to violate the Law.

The nine points encompassing the Differential association, as put forth by the Sutherland, are produced below.

1. *Criminal behavior is learned. Negatively, this means that criminal behavior is not inherited, as such; also, the person who is not already trained in crime does not invent criminal behavior, just as a person does not make mechanical inventions unless he has had training in mechanics.*

2. *Criminal behavior is learned in interaction with other persons in a process of communication. This communication is verbal in many respects but includes also the communication of gestures."*

3. *The principal part of the learning of criminal behavior occurs within intimate personal groups. Negatively, this means*

that the impersonal agencies of communication, such as movies and newspapers, play a relatively unimportant part in the genesis of criminal behavior.

4. When criminal behavior is learned, the learning includes (a) techniques of committing the crime, which are sometimes very complicated, sometimes very simple ; the specific direction of motives, drives, rationalizations, and attitudes.
5. The specific direction of motives' and drives is learned from definitions of the legal codes as favorable or unfavorable. In some societies an individual is surrounded by persons who invariably define the legal codes as rules to be observed, while in others he is surrounded by persons whose definitions are favorable to the violation of the legal codes. In our American society these definitions are almost always mixed, with the consequence that we have culture conflict in relation to the legal codes.
6. A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law. This is the principle of differential association. It refers to both criminal and anti-criminal associations and has to do with counteracting forces. When persons become criminal, they do so because of contacts with criminal patterns and also because of isolation from anticriminal patterns. Any person inevitably assimilates the surrounding culture unless other patterns are in conflict; a Southerner does not pronounce "r" because other Southerners do not pronounce "r". Negatively, this proposition of differential association means that associations which are neutral so far as crime is concerned have little or no effect on the genesis of criminal behavior. Much of the experience of a person is neutral in this sense, e.g., learning to brush one's teeth. This behavior has no negative or positive effect on criminal behavior except as it may be related to associations which are concerned with the legal codes. This neutral behavior is important especially as an occupier of the time of a child so that he is not in contact with criminal behavior during the time he is so engaged in the neutral behavior.
7. Differential associations may vary in frequency, duration,

priority, and intensity. This means that associations with criminal behavior and also associations with anti-criminal behavior vary in those respects. 'Frequency*' and "duration" as modalities of associations are obvious and need no explanation. 'Priority*' is assumed to be important in the sense that lawful behavior developed in early childhood may persist throughout life, and also that delinquent behavior developed in early childhood may persist throughout life. This tendency, however, has not been adequately demonstrated, and priority seems to be important principally through its selective influence. 'Intensity' is not precisely defined but it has to do with such things as the prestige of the source of a criminal or anti-criminal pattern and with emotional reactions related to the associations. In a precise description of the criminal behavior of a person these modalities would be stated in quantitative form and a mathematical ratio be reached. A formula in this sense has not been developed, and the development of such a formula would be extremely difficult. ,

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

9. While criminal behavior is an expression of general needs and values it is not explained by those general needs and values since non-criminal behavior is an expression of the same needs and values. Thieves generally steal in order to secure money, but likewise honest laborers work in order to secure money. The attempts by many scholars to explain criminal behavior by general drives and values, such as the happiness principle, striving for social status, the money motive, or frustration, have been and must continue to be futile since they explain lawful behavior as completely as they explain criminal behavior. They are similar to respiration, which is necessary for any behavior but which does not differentiate criminal from non-criminal behavior

We may see application of this theory in our daily life. Interests and habits of a persons of close interactions bear similarity. For example if a person spend time with "smokers" he is likely to develop the habit of smoking. A book titled as 21st Century Criminology (p.126), observes as under

Sutherland's (1947) differential association theory is based on the premise that delinquency is learned through intimate social

relations with individuals whereby attitudes or "definitions" favorable to law violation are acquired.

Not only are adolescents' attachments to peers important for delinquency involvement, but also, and more important, the context or norms of the friendship group determine whether attachment to friends results in conventional or delinquent behavior. According to Sutherland, the social transmission of delinquency occurs within the friendship network through the transference of attitudes about the appropriateness of delinquent behavior.

Whereas Sutherland's (1947) theory emphasizes the attitudes of peers in the transmission of delinquency, Akers's (1985) extension to differential reinforcement theory suggests that the adoption of delinquent behavior occurs through imitation of peers' behavior or through the observation of its consequences, either positive or negative.

The important point made by these socialization theories, including differential association and social learning theories, is that delinquent behavior is learned through intimate personal relations, with friends serving as an important mechanism in adolescence by which delinquent behavior is observed and passed on.²³

New Classical School

Its extension of classical school. Initially when French Code 1791(criminal Law) was framed in view of the contentions of Beccaria (Classical School), it was later learnt that rates of crime witnessed no reduction. This implied that something was wrong with the views of Beccaria. It was then observed that there was a major flaw in the theory of Beccaria. He did not make any difference in circumstances under which the crimes were committed. For example, child and adult committing crime were treated alike. Accordingly French Code was revised in 1891 in which judges were authorized to change the quantum of punishment in view of the circumstances under which crimes were committed.

▪ Resurrection of New Classical Views

The 19th and 20th century witnessed positivist views growing. Different explanations of crimes were put forth by different scholars. However the

²³ ¹⁴ Miller, J. Mitchell. *21st Century Criminology: A Reference Handbook*. Thousand Oaks, Calif: Sage, 2009.

positivist view was criticized as offering justification of crime. The theories which emerged in 1980 are discussed below. .

➤ **Right Realism**

James Q. Wilson and Ron Clarke reiterated the rational choice theory by contending that it was not for the state to find out why people commit crime. The primary deterrence against crimes could be created through effective system of punishments.

Dr Jullian Harmida²⁴ summarizes Right Realism in following words

- *"Crime is not determined by social forces but by forces within the individuals.*
- *Searching for the causes of crime is a distraction and waste of time.*
- *Individuals choose to commit crime. So fewer criminal choices will be made if the government creates more effective and appropriate punishments.*
- *Improving social conditions will not reduce crime rates.*
- *Rehabilitation is an ineffective way of dealing with offenders.*
- *Crime is a problem. Public fear has a rational basis.*
- *It is realistic about what can be done about crime and the limitations of present day knowledge. It does not disdain marginal gains. It discounts utopian solutions.*
- *Crime is a violation of the law because the law embodies the society's morals (which in turn reflect absolute religious notions of right and wrong. Crime is an offense against morality.*
- *Crime may be prevented by the repeated assertion of strong social authority founded on traditional morality".*

➤ **Routine Activity Theory**

Routine Activity Theory was put forth by Lawrence Cohen and Marcus Felson in an article titled as 'Social Change and CrimeRate Trends: A Routine Activity Approach' (1979). This theory drew on the principle of rational choice (that every human is inclined to commit crime in order to seek pleasure). They stated that crime was a routine activity very likely to take place in presence of these three elements.

- **A motivated offender:** A large number of people in the society are always inclined to commit crimes to fulfill their desires.

²⁴ <http://www.julianhermida.com/>

- Opportunity /suitable target. These motivated offenders would commit crime if they find a suitable target. The suitability of target depends upon following four factors.
 - i. Value (a thing of greater value will be more attractive for a criminal)
 - ii. Inertia (movability of the things for example smaller things are easy to be removed.
 - iii. Visibility (visible things are easy to be removed)
 - iv. Accessibility(An accessible things is more likely to be stolen)
- Absence of Guardian. As there are a large number of motivated offenders looking to take benefit of opportunity to commit crime, an effective control of guardian who may prevent them from committing crimes. A guardian may be any one entrusted to protect the property. It may be a security guard or police.

Behavior of Criminal Law

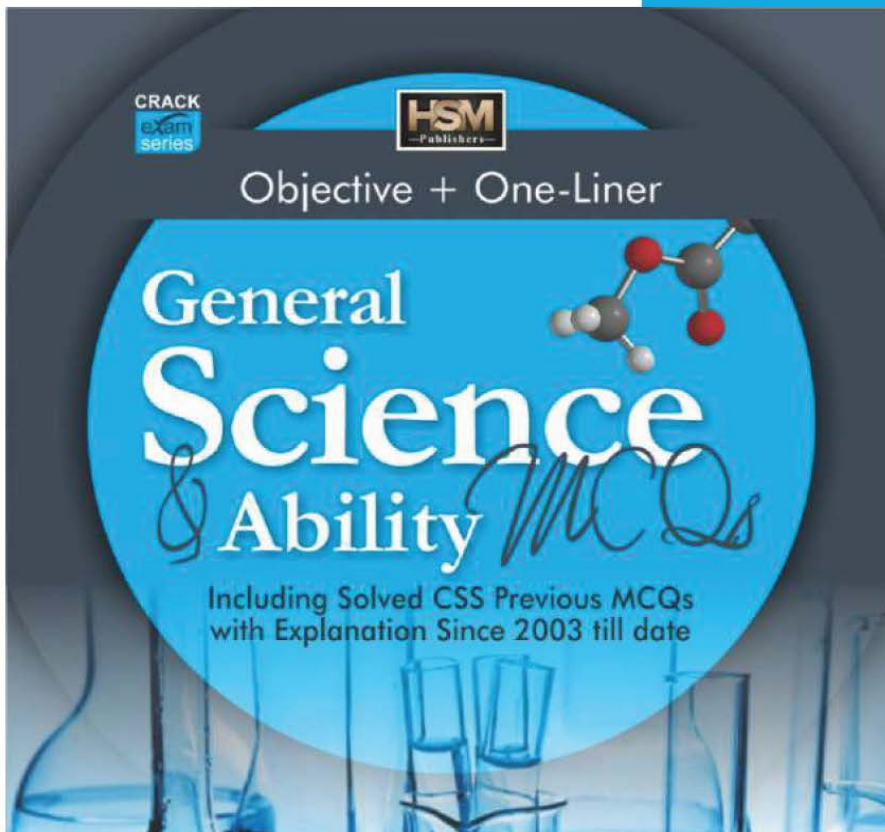
As stated earlier, a view has emerged which challenges the very definition of crime by classical and positive school of thought. Under this view, the criminal justice system is dominated by the powerful. So they criminalize those activities which are done by the poor while harmful act of the rich or influential are not criminalized. For example Edwin Sutherland studied the violations committed by corporations and observed that such violations if done by ordinary individuals would have constituted criminal offence. But these corporations were not prosecuted.

A US Surgeon General²⁵ observed that tobacco caused 400000 annual deaths in US in comparison 586 deaths caused by use of heroin. However use of heroin is a criminal offence while use of tobacco is not. Therefore the very definition of crime is in dispute and a criminologist should be concerned with this anomaly. The different school of thoughts centering on this view are discussed below.

➤ **Conflict Criminology**

This school maintains that societies consist of sub groups which have conflicting views, values and interests. Those groups which wield more power use the state and legislation to establish their hegemony by framing criminal law in such manner which protect their interest at the cost of weak groups. Thorsten Sellin referred to "conduct norms" also known as cultural norms associated with certain groups. In heterogeneous societies there may be a

²⁵ A.S. (1982). *The Heroin Solution*. New Haven, CT: Yale University Press.



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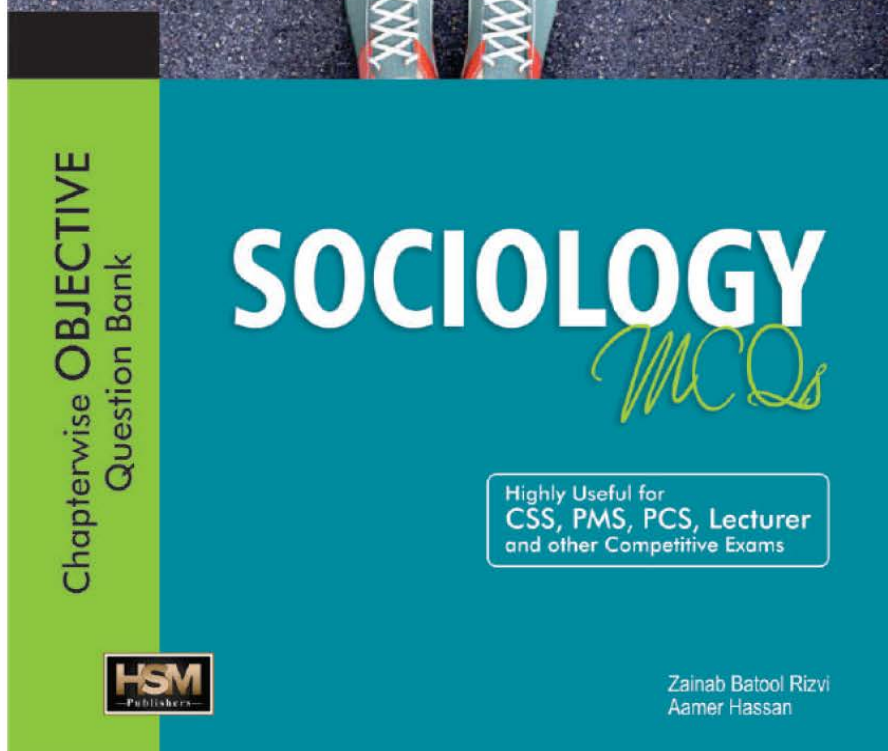
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conflict amongst the conduct norms of different groups. For example in India, cow slaughter is banned in certain states because it's prohibited by the conduct norms of the dominant social group (the Hindus).

The conflict theory suggests that the weaker groups of the society have higher crime rates in comparison to the powerful groups. Its proponents therefore suggest that the power must be redistributed in the society in equitable manner preventing any single group to manipulate the weaker ones.

➤ **Critical Criminology**

Critical criminology shares the thoughts of "conflict theory" but in a quite different perspective. The two major views under this school are "Marxism" locates power in capitalism and feminism finds power in "Patriarchy".

➤ **Marxist Criminology**

Karl Marx though didn't explicitly discussed the problem of crime but his subject was inequalities in the society due to capitalism. He highlighted conflict or inconsistency between material forces of production and social relations of production. Forces of production indicate the things which contribute to production of wealth. This includes organisations, technology and equipment. The social relations on the other hand are relations among the people. Forces of production are constantly changing (business are making profits, improvement in equipment, building and machinery etc) while social relations of production are constant (a laborer remains a laborer).

He further contended that inequalities in the society and concentration of wealth in hands of a few leave many in the society unemployed and thus demoralized. He termed them "lumpenproletariat" who in the view of Marx were inclined to commit crimes of every nature.

In another context, he observed that those without wealth committed crimes against the rich as form of "primitive rebellion" against the injustice.

"Willem Bonger" a Marxist criminologist "in his book criminality and economic conditions contended that in capitalist economy, the whole society tends to be greedy. However greed of rich is not criminalized (excessive profits, exploitation of labor) while greed of poor (theft etc) is penalized by the criminal law.

Some of the Marxist criminologist gave "instrumentalist" view of criminal justice which signified that "criminal law and criminal justice system" is an instrument (tool) in the hands of the rich to subdue the poor. A similar related concept is "structuralist" view which meant that the structure of the state was built in such a way that promoted "capitalism".

➤ **Critical Feminism**

Feminism in criminology took impetus from “male dominance” of early criminal theories. It was not before 1975 that two books, “Sisters in Crimes” by Freda Adler and “Women and Crimes” by Rita James Simon discussed the role of woman in crimes in the wake of increased participation of women in practical life. Both the authors were of the view that women were assuming proactive roles in the society which were previously considered to be the domains of men. This proactive role also extended to the world of crime. The authors argued that women were committing serious crimes and using dangerous weapons such as knife and guns.

After these books, much more was written on different aspects of the roles of women in crimes. This was collectively termed as “.liberal feminism”. However the later studies started critically viewing the subservient role of women in the society giving rise to what was later known as “radical feminism” whose major theme was premised upon patriarchy. A new strand “Marxist-Feminism” focused on “Capitalist- Patriarchal” system which contended that the males kept capital resources in their hands in order to subjugate the women.

Collectively all the feminist criminologists find link between “gender based crimes against women and their subservient role in the social structure. Feminist Criminologists advocate reformation of criminal justice system by empowerment of e women. Women’s representation in the criminal justice such as judges, probation officer police officers and lawyers will let their voice be heard.

➤ **Left Realism**

Some criminologists found thoughts of Marxists criminologist quite radical and unrealistic. Elliott Currie, John Lea and Jock Young are two major proponents of this school. They were of the view that crime was a real problems and therefore needed to be dealt as such. Focus on crimes committed by the elites by the Marxist should not come at the cost of street crimes. They do bring pain and trauma for the victim.

They gave another concept called square of crime which meant that crime was to be viewed in relation to four factors, offender, victim, state agencies and society. Conduct and behavior of any of the four has direct bearing on the crimes in the society. The proponents of this school find relative deprivation as one of the most important reasons of the crime. It’s a feeling of deprivation in comparison with others. This instills a feeling of alienation which may lead people to commit crimes. The left realists advocate addressing the circumstances under which the crimes are committed along with de-marginalization of the marginalized group by promoting equity and fairness in the society.

Islamic Perspective on Crime

Islam being a complete code of life lays down the principles and injunctions which are meant to bring peace and prosperity to the society. Crimes (*Maasiat in Arabic*) since pose serious threat to the society, Islamic system sets out a number of provisions and procedures to curb crimes in the society. Islamic penal system, being a divine law, is however different from western system. Abdurrahman Raden Aji Haqqi, an Islamic scholar from Brunei maintains that:²⁶

"Islamic approach to punishment differs from its counterparts in other thoughts as mentioned above. Even though, the similarities and the dissimilarities might be found among such thoughts. The obvious dissimilarity is that source of punishment in Islam is divinely texts and in contrast the sources of counterparts thought are rational and society's agreement. As Muslims, they are bound by clear injunction of the Holy Quran and the Prophetic Hadith in every matter of their life individually and collectively even their relationship with other creatures of God. Allah Almighty said to the effect: "It is not for believer, man and woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed into a plain error." 14 Punishment in Islam is an obligatory deed when it is about the determined offenses. Allah said to the effect: "The thieves, male and female, cut off their hands as a recompense for what they have earned, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise." 15 This ayah (verse) clearly stated that a punishment is recompense and it has an example for the other. The ultimate objective of every Islamic legal injunction is to secure the welfare of humanity in this world and the next by establishing a righteous society. This is a society that worships God and flourishes on the Earth, one that wields the forces of nature to build a civilization wherein every human being can live in a climate of peace, justice and security. This is a civilization that allows a person to fulfill his every spiritual, intellectual, and material need and cultivate every aspect of his being. This supreme objective is articulated by the Quran in

²⁶ Haqqi, A. R. A. (2015). Criminal punishment and pursuit justice in Islamic law. *International Journal of Technical Research and Applications*, 15(15), 1-10.

many places. Allah says to the effect: "We have sent our Messengers with clear signs and have sent down with them the book and the criterion so that man can establish justice. And we sent down iron of great strength and many benefits for man."

➤ Major Objectives of Islamic Criminal Justice System

The Islamic principles of criminal justice are meant to promote human welfare and preserve and protect the following²⁷:

- **Religion/Belief:** Though there is no compulsion for a non-Muslim to enter into Islam, A Muslim cannot leave Islam.
- **Life:** Islam protects life of every human. The Holy Prophet said that murder of one innocent person amounts to murder of the entire humanity.
- **Reason/Sanity** (for which drinking or shrub is prohibited): Islam prohibits alcohol or pother intoxicating substance to protect the people from getting inebriated.
- **Property and Wealth:** Protection of life and property of the citizenry is one of the fundamental responsibilities of a state and an Islamic state should also be cognizant of this responsibility.
- **Progeny or Lineage** (offspring): Islam protects correct lineage. A child should come in this world through lawful parentage. This is the reason that illicit sex is prohibited in Islam.

Anyone who commits breach or attacks these five values is guilty of committing a crime in Islam.

Crimes under Islamic Law are divided into three categories.

- Hudood
- Qisas
- Tazir

➤ Hudood

Hadood are the crimes whose punishments are prescribed by the Islam. "Hadud is plural of Hadd" which means limit" prohibition". There are following seven crimes which have been placed in the category of Hadud.

- Zina (Rape)
- Qadf (False Allegation of Zina)
- Shurb (Drinking of Alcohol)
- Shiraqah(Theft)

²⁷ Al-Bar M.A., Chamsi-Pasha H. (2015) the Origins of Islamic Morality and Ethics. In: Contemporary Bioethics. Springer, Cham

- Haraabah (robbery)
- Apostasy (Renouncement of Islam by a Muslim)
- Rebellion (Revolt against Islamic State)

▪ **Conditions of Trial and Testimony Under Hadood**

Following are the conditions of trial and testimony for trial of cases under Hadud.

- Testimony of female witness is not admissible.
- Testimony of a non-Muslim witness is not admissible against a Muslim accused, however, a Muslim can testify against a non-muslim accused.
- Before admitting a witness, the court is required to establish the credibility of the witness and the mode of conducting of enquiry by the court for establishing the credibility of witness is called "Tazkiatul Shuhood (Purgation).

▪ **Promulgation of Hadood Laws in Pakistan**

Following Hudood Ordinance Ordinances were promulgated in Pakistan in year 1979 by General Zia ul Haq.

- The Offence of 'Zina' (Enforcement of Hudood) Ordinance, 1979 (Order VII of 1979).
- The Prohibition (Enforcement of Hadd Order, 1979, (Order IV of 1979).
- Offence against Property (Enforcement of Hudood) Ordinance, (Order VI of 1979).
- Offence of Qazf' (Enforcement of Hadd) Order 1979, (Order VIII of 1979)

▪ **Details of trial and punishments under Hudood Ordinances are provided below.**

Sr. No.	Crime	Requirements of Eye Witnesses	Punishment	Law in Pakistan
1	Zina(Rape)	4	Rijm (Lapidation or stoning to death in case of a married person or 100 stripes or lashes in case of non-married person.)	The Offence of 'Zina' (Enforcement of Hudood) Ordinance, 1979 (Order VII of 1979).
2	Qazf (False Allegation of Zina)	2	80 stripes for free man and 40 for slaves	Offence of Qazf (Enforcement of Hadd) Order 1979, (Order VIII of

Sr. No.	Crime	Requirements of Eye Witnesses	Punishment	Law in Pakistan
				1979)
3	Shurb (Drinking of Alcohol)	2	80 Stripes	The Prohibition (Enforcement of Hadd Order, 1979, (Order IV of 1979)
4	Shiraqah	2	²⁸ Whoever commits theft liable to 'hadd' for the first time shall be punished with amputation of his right hand from the joint of the wrist. (2) Whoever commits theft liable to 'hadd' for the second time shall be punished with amputation of his left foot up to the ankle. (3) Whoever commits theft liable to 'hadd' for the third time, or any time subsequent thereto, shall be punished with imprisonment for life.	Offence Against Property (Enforcement of Hudood) Ordinance, (Order VI of 1979).
5	Haraabaah ²⁹ (Robbery)	2	*Depending on the circumstances	Same as above i.e Offence Against

²⁸ Section 9 of Offence against Property (Enforcement of Hudood) Ordinance, (Order VI of 1979).

²⁹ "Haraabah has been defined under the law as "When any one or more persons, whether equipped with arms or not, make show of force for the purpose of taking away the property of another and attack him or cause

Sr. No.	Crime	Requirements of Eye Witnesses	Punishment	Law in Pakistan
			and outcome. (Punishment of Haraabah is provided below this table.)	Property (Enforcement of Hudood) Ordinance, (Order VI of 1979).
6	Apostasy (Irtadad)	2	Death	No statutory Law/Provision in Pakistan.
7	Rebellion (Baghy): Revolt against the state	2	Death	No statutory Law/Provision in Pakistan.

Under section 17 of the Offence against Property (Enforcement of Hudood) Ordinance, (Order VI of 1979), the punishment of Haraabah is prescribed as under

17. Punishment of 'Haraabah': (1) Whoever, being an adult, is guilty of harraabah in the course of which neither any murder has been committed nor any property has been taken away shall be punished with whipping not exceeding thirty stripes and with rigorous imprisonment until the Court is satisfied of his being sincerely penitent:

Provided that the sentence of imprisonment shall in no, case be less than three years.

(2) Whoever, being an adult, is guilty of haraabah in the course of which no property has been taken away but hurt has been caused to any person shall, in addition to the punishment provided in sub-section (1), be punished for causing such hurt in accordance with such other law as may for the time being are applicable.

(3) Whoever, being an adult, is guilty of haraabah in the course of which no murder has been committed but property the value of which amounts to or exceeds, the nisab has been taken away shall be punished with amputation of his right hand from the wrist and of his left foot from the ankle:

wrongful restraint or put him in fear of death or hurt such person or persons, are said to commit 'haraabah'.

Provided that, when the Offence of haraabah has been committed conjointly by more than one person, the punishment of amputation shall be imposed only if the value of share of each one of them is not less than the nisab:

Provided further that, if the left hand or the right foot of the offender is missing or is entirely unserviceable, the punishment of amputation of the other hand or foot, as the case may be, shall no be imposed, and the offender shall be punished with rigorous imprisonment for a term which may extend to fourteen years and with whipping not exceeding thirty stripes.

(4) Whoever, being an adult, is guilty of haraabah in the course of which he commits murder shall be punished with death imposed as hadd.

(5) Punishment under sub-section (3) except that under the second proviso thereto, or under sub-section (4), shall not be executed unless it is confirmed by the Court to which an appeal from the order of conviction lies, and if the punishment be of amputation, until it is confirmed and executed, the convict shall be dealt with in the same manner as if sentenced to simple imprisonment."

➤ **Qisas (Retaliation)**

The word Qisas is derived "Qss" which means "to follow". The concept of "Qisas" is based upon retributive justice in which the offender is made to suffer the same way as did the victim. The crimes for which the punishment of Qisas is prescribed are directed against human body such as murder and hurt. They mainly pertains to human body such as murder or hurt. The term Qisas is defined in section 299(k) of Pakistan Penal Code in following words.

"Qisas" means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-iamd in exercise Of the right of the victim or a Wali;

Niaz A Shah, a lecturer in university of Hull, in an article published in daily dawn expressed following views on Qisas³⁰.

"The grand norm of the Quran is that life is sacred and it cannot be taken away. Life, however, can be taken for dispensing justice: "...Take not life which Allah has made sacred except by way of justice and law. ..." (6:151).

³⁰ <https://www.dawn.com/news/1053308>

Within the justice system of Islam, equality is the cardinal rule in cases of murder and hurt. The Quran (2:178) allows qisas in cases of intentional murder: "O you who believe, qisas has been prescribed for you in cases of murder ... But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty."

The essence of the principle of qisas is human equality (affirmed in the Quran, 5:45) and security of life in society. The context of revelation (shan-i-nazool) sheds ample light on the objectives of qisas: the aim was to curb the pre-Islamic practice whereby the blood of some influential tribes and individuals was considered more precious than the blood of poor and weaker segments of society.

The blood of women and slaves was also considered less precious compared to the blood of men and freemen. The Quran prohibited this practice, by making the blood of everyone equally precious: life for life, but allowed an exception, ie forgiveness for merciful objectives. The Quran warns of painful punishment for those who transgress these rules.

The Quran provides two options to deal with someone who is found guilty of intentional murder: qisas (ie that he/she be killed in the manner in which the victim was murdered) and forgiveness by the heir/s of the victim. The conditions for the second option are that the victim's heir/s are required to ask for 'fair' diyat (blood money) and the guilty person is obligated to pay diyat in a 'good' way. To make sure that diyat is fair and that it is paid 'in a good way', jurists have agreed on judicial oversight over the matter of demanding and paying diyat as leaving it as a private matter was risky.

The heir/s of the victim may forgive diyat as well, which is sometimes considered the third option, ie forgiving the guilty in the name of Allah.

The option of diyat is an exception to the rule of qisas (ie life for life) and a reduction in the punishment. The Quranic (2:178) basis for this reduction is 'mercy and relief' from Allah. Human equality and the protection of life are overriding aims of qisas; forgiveness is an exception, and aims at achieving merciful objectives. Therefore, diyat should be paid in deserving cases in order to achieve merciful objectives. Diyat must not be used to buy the blood of the poor and weak in society, negating the essence of qisas".

➤ Tazir

“Tazir” means discretionary punishments. These are the considered to be directed against the society or community. They are the crimes other than Hadood and Qisas and their punishment is left to the discretion of law or the court. There are two types of offences which falls in the category of Tazir

- Offences other than those on which Had or Qisas is applied.
- Offences under Hudood and Qisas on which the conditions laid down for hudood or qisas can not be applied.

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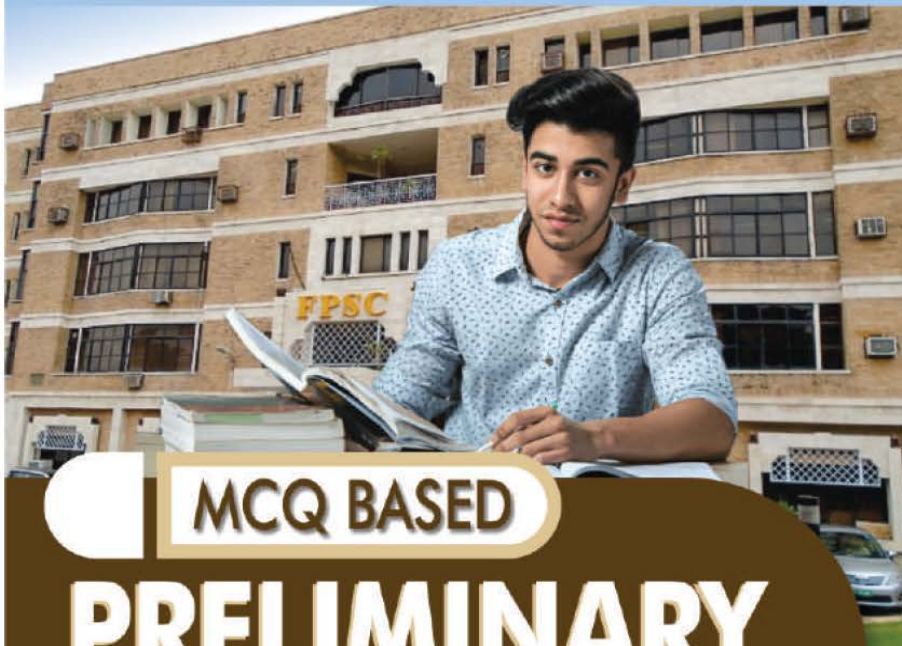
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Juvenile Delinquency

The term Juvenile means a child, the one who has not attained the age of adulthood while "Delinquency" has been derived from the Latin term "dilinquere" meaning negligence. So the conduct or action of a juvenile which violates the social code (norms of the society) is called juvenile delinquency. The delinquent conduct of a child has two dimensions: one which violates moral code without violating the law, for example, disobedience of parents may contravene the social norms but doesn't constitute violation of any law. This is called behavioral aspect of delinquency. The second dimension of delinquency is violation of law which constitutes criminal offence such as theft and stealing.

The two dimensions of juvenile delinquency are explained below.

➤ Behavioral Definition

Juvenile Delinquency can behaviorally be defined as Frequent disapproved behavior of children and youth. The disapproved behaviors means a behavior which is not liked by the society at large. Examples include Elopement, absenteeism, Lethargy and ill-mannerism. These behaviors though disliked by the society are not criminal offences.

➤ Legal Definition

Legally the child delinquency signifies a behavior that violates the criminal code. It is a violation of the law committed by a juvenile. Examples include sexual activities, theft and damaging properties of others. These behaviors, in contrast to the ones cited in behavioral dimension, are criminal offences under the Law of the land.

➤ Causes of Child Delinquency

Juvenile delinquency is a complex phenomenon caused by variety of reasons. The subject has been extensively researched and myriad of reasons have been ascribed by the scholars and researchers to child delinquency. However the theories of social sciences especially those related to human behavior cannot be verified authoritatively. So none of these theories can either be rejected or authenticated. However most of the theories may be relevant in specific individual circumstances. Some of the major reasons for child delinquency put forth by the scholars are given below.

▪ Individualistic Reasons

- **Physical Defects or Disorder (Child often confronts embarrassment and then reacts):** The empirical evidence testifies that those having physical defects are more prone to delinquency in comparison to the normal children.

- **Low Intelligence (Encourage anti-social Behaviors).** The children with low intelligence are likely to be more prone to criminality in comparison to the normal children.
- **Malnutrition:** A child who is not fed with sufficient nutrients is at higher risk of developing delinquent behavior. Bridge contends that

"Malnutrition may cause inertia and mental sluggishness or hyper-excitability and nervousness in a child. Any of these conditions may lead to delinquency. The child may become the sport of bad suggestion or the tool of his own feelings and impulses. Or he may compensate for his disabilities in delinquent conduct".

▪ **Family Reasons**

- **Presence of step-father or mother:** Presence of step parents deprive the child from love and care which real parents can extend to their children. According to Bridge:

A child may resent the fact that he has to have foster parents, step-parents, or guardians and so be marked out from the other children, which will make it difficult for these people to help in his social development. Because of this resentment their influence, by work or example, becomes less potent. The child cannot be guided painlessly and unwittingly along the path to good conduct through the aid of his natural suggestibility. Instead, the child may become stubborn and resist every influence on the part of the guardians which should make for his social and personal development and well-being.

- **Lack of parental love and affection:** Parental love plays a very important role in development of balanced personality. Absence of this love is likely to push the child to look outside and during this course may become part of an undesired social group.
- **Quarrels among parents:** Quarrels amongst parents will instill negative feelings in child. The children feel alienated and frustrated which takes them vulnerable to delinquency.
- **Use of alcohol and other drugs by the parents:** Parents addicted to alcohol cannot extend due care and love to their children as a consequence of which the children are ignored which may push the children to seek refuge in delinquent activities.
- **High ambitions of parents which they want to realize through the achievements of their children:** This pressure may become unsustainable for the children who may rebel against their parents.

- **Loose or very strict discipline at home:** Loose discipline or indifferent attitude of the parents towards their children alienate the children and make them do whatever they want without any fear of being censured. Such children are prone to join criminal gangs. On the other hand strict discipline creates frustration amongst the children promoting them to rebel or leave their homes.
- **Broken home- -divorce, separation or death of any one of the parents:** Parental love and care is a condition precedent for smooth and balanced upbringing of a child. This love and care cannot be available in broken families which creates psychological problem for the young minds and often push them towards delinquency.
- **Mental abnormality in the mother or father etc:** A situation where one or both the parents are mentally abnormal bears serious psychological repercussions for the children. They may not be getting the love they expect from the parents. Such children may face derision in their social circles such as schools. This all is likely to bring a great deal of frustration amongst the children which provide a very fertile ground for development of delinquent tendencies.

➤ Social reasons

According to Sigel, following are the social reasons pushing the children towards delinquency.

- ***“Interpersonal interactions.*** *Social relationships with families, peers, schools, jobs, criminal justice agencies, and the like, may play an important role in shaping behavioral choices. Inappropriate and disrupted social relations have been linked to crime and delinquency.*
- ***Community conditions.*** *Crime and delinquency rates are highest in deteriorated inner-city areas. These communities, wracked by poverty, decay, fear, and despair, also maintain high rates of criminal victimization.*
- ***Exposure to violence.*** *Kids living in poor neighborhoods are exposed to a constant stream of antisocial behaviors.⁸ Even when neighborhood disadvantage and poverty are taken into account, the more often children are exposed to violence within their residential community the more likely they are to become violent themselves.*
- ***Social change.*** *Political unrest and mistrust, economic stress, and family disintegration are social*

changes that have been found to precede sharp increases in delinquency rate

- **Low socioeconomic status.** Millions of people have scant, if any, resources and suffer socially and economically as a result.¹¹ People who live in poverty may have the greatest incentive to commit delinquency.

- **Racial disparity.** The consequences of racial disparity take a toll on youth. Poverty rates among minority groups are still significantly higher than that of whites”.

➤ Other General Reasons

- **Poverty:** Poverty is said to be mother of many social ills. Children borne to poor parents are likely to remain deprived from schooling and adequate opportunities of upbringing. Such children are generally made to do labor in order to share economic burden of their families. They don't learn the social values and are made to consider them as inferior beings. They are therefore very much susceptible to become delinquents and get involved in criminal activities.
- **Illiteracy:** Illiteracy is another curse. Illiterate parents remain aloof towards the education and brought up of their children. They cannot inculcate moral values amongst the children thereby making their children get involved in immoral activities.
- **Out of School Children:** Out of school children are also prone to become delinquents because they remain deprived of a healthy environment for balanced mental growth found in schools.
- **Child Labor:** Children doing labor in childhood face humiliation and abuse. They also remain deprived of a healthy environment for balanced mental growth found in schools.
- **Child Abuse:** The children who face abuse in the young age may be unable to forget creating anguish and frustration amongst them which can lead them towards delinquency.
- **Moral Depravity in the Society:** Children learn from the society. If society is experiencing moral deterioration manifest through wider prevalence of immoral activities, the children are also likely to do the same.
- **Schooling:** Schooling plays a very significant role in personality development of a child. If the environment of a school is such where moral development is not taken seriously, the students are likely to develop delinquent tendencies.
- **Role of State Institutions:** The role of state is very important in development of children. Where its responsibility of the state to look after the destitute and poor children in accordance with the doctrine *parens patrie*, the policies and institutional

framework devised by the state has serious bearing for all children in the society. For example, the children of rich families may be studying in private schools, charging high fee and providing better opportunities of growth and development. However, the government may direct these schools to incorporate moral values and skills to train students for moral development of the children. In addition to imparting modern knowledge.

➤ **Status Offender**

A child who has done some thing which is ordinarily not considered a crime - except when done by a minor, is called a status offender. For example "driving", smooking, "running away from school are not criminal offences for adults but children are not legally allowed to do these acts.

According to Sigel

A child also becomes subject to state authority for committing status offenses—actions that would not be considered illegal if perpetrated by an adult; such conducts illegal only because the child is under age.

In modern times, the distinction between "juvenile delinquent" and status "offender" is withering away.

➤ **Juvenile Justice System**

Juvenile justice system encompasses laws and institutions which deals with the children /juveniles accused of committing crimes. There is a growing tendency across the globe to recognize that the children committing crimes should not be treated as ordinary criminals rather they should be treated as victims due to lack of maturity(moral, cognitive, physical and emotional).

➤ **Why a Separate Justice System for Juveniles?**

Distinction between children and adult offenders is quite a new phenomenon staring from 17th century. No distinction was earlier made between child and adult offender for the children were subjected to very harsh punishments even death penalty. Following developments can be attributed to development of a separate juvenile justice system in England.

▪ **Shift from Joint family to Nucleated Family Structure:**

Industrial revolution brought a shift in family structure from joint to nucleated families which had a bearing on recognition of the rights of children

According to seigel

"It became more common for marriage to be based on love and mutual attraction between menand women rather than on

parental consent and paternal dominance. The changing concept of marriage—from an economic arrangement to an emotional commitment—also began to influence the way children were treated within the family structure. Though parents still rigidly disciplined their children, they formed closer parentalties and developed greater concern for their offspring's well-being”.

▪ **Laws for Poor Children**

During 16th century Govt of England started to place poor children under employment of wealthy families who were also required to train such children with certain set of skills. This proved a significant step towards protection of the rights of children Sigel gives account of these laws in following manner.

“Government action to care for needy children can be traced to the Poor Laws of Britain. As early as 1535, England passed statutes allowing for the appointment of overseers to place destitute or neglected children as servants in the homes of the affluent. The Poor Laws forced children to serve during their minority in the care of families who trained them in agricultural, trade, or domestic services. The Elizabethan Poor Laws of 1601 were a model for dealing with poor children for more than 200 years. These laws created a system of church wardens and overseers who, with the consent of justices of the peace, identified vagrant, delinquent, and neglected children and took measures to put them to work. Often this meant placing them in poorhouses or workhouses, or apprenticing them to masters.”

▪ **Doctrine of Parens Patrie**

The roots development of a separate justice system for children are embedded in the doctrine of Parens Patriae, a philosophy which places the state in position of parents for those subjects who are unable to take care of themselves such as insane and children. Accordingly, its duty of the state to look after such children. Even if they commit crime, they should be treated as victims instead of being treated as ordinary criminals.

▪ **Concept of Restoration/Rehabilitation**

A child is considered to be more amenable to the reform in comparison to an adult offender because of the facts that his personality is not fully developed. He is in the age of learning where adequate counseling can effectively change his thoughts and behavior.

➤ **History of Development of Juvenile Justice System**

US Department of Justice traces the history of Juvenile Justice System in following word:

"Throughout the late 18th century, "infants" below the age of reason (traditionally age 7) were presumed to be incapable of criminal intent and were, therefore, exempt from prosecution and punishment. Children as young as 7, however, could stand trial in criminal court for offenses committed and, if found guilty, could be sentenced to prison or even to death.

The 19th-century movement that led to the establishment of the juvenile court in the U.S. had its roots in 16th-century European educational reform movements. These earlier reform movements changed the perception of children from one of miniature adults to one of persons with less than fully developed moral and cognitive capacities.

As early as 1825, the Society for the Prevention of Juvenile Delinquency was advocating the separation of juvenile and adult offenders. Soon, facilities exclusively for juveniles were established in most major cities. By mid-century, these privately operated youth "prisons" were under criticism for various abuses. Many States then took on the responsibility of operating juvenile facilities.

*Illinois passed the Juvenile Court Act of 1899, which established the Nation's first juvenile court. The British doctrine of *parens patriae* (the State as parent) was the rationale for the right of the State to intervene in the lives of children in a manner different from the way it intervenes in the lives of adults. The doctrine was interpreted to mean that, because children were not of full legal capacity, the State had the inherent power and responsibility to provide protection for children whose natural parents were not providing appropriate care or supervision. A key element was the focus on the welfare of the child. Thus, the delinquent child was also seen as in need of the court's benevolent intervention.*

By 1910, 32 States had established juvenile courts and/or probation services. By 1925, all but two States had followed suit. Rather than merely punishing delinquents for their crimes, juvenile courts sought to turn delinquents into productive citizens—through treatment. The mission to help children in trouble was stated clearly in the laws that established juvenile courts. This benevolent mission led to procedural and substantive differences between the juvenile and criminal justice systems. During the next 50 years, most juvenile courts had exclusive original jurisdiction over all youth under age 18 who were charged with violating criminal laws. Only if the juvenile court waived its jurisdiction in a case could a child be transferred to criminal court and tried as an adult. Transfer

decisions were made on a case-by-case basis using a "best interests of the child and public" standard, and were thus within the realm of individualized justice".

➤ **Obligations Recognized by the State of Pakistan towards Children**

Following legal and constitutional provisions in the constitutional and legal framework of Pakistan, relates to the obligations of the state towards protection of child.

Article 35 of the Constitution of Pakistan emphasizes upon the state to protect family and child. The Article 25(3) of the Constitution of Pakistan empathizes upon the state to make special provisions for protection of children and women in following manner:

3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

Pakistan is also a signatory to UN Convention on the Rights of Child signed in 1989. The Article 37 of the Convention provides that:

"(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action"

▪ **Age of Criminal Liability in Pakistan**

Section 82 PPC: "Nothing is an offence, which is done by a child under 10 years of age".

Section 83: "Nothing is an offence done by a child between ten and fourteen years old" who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion."

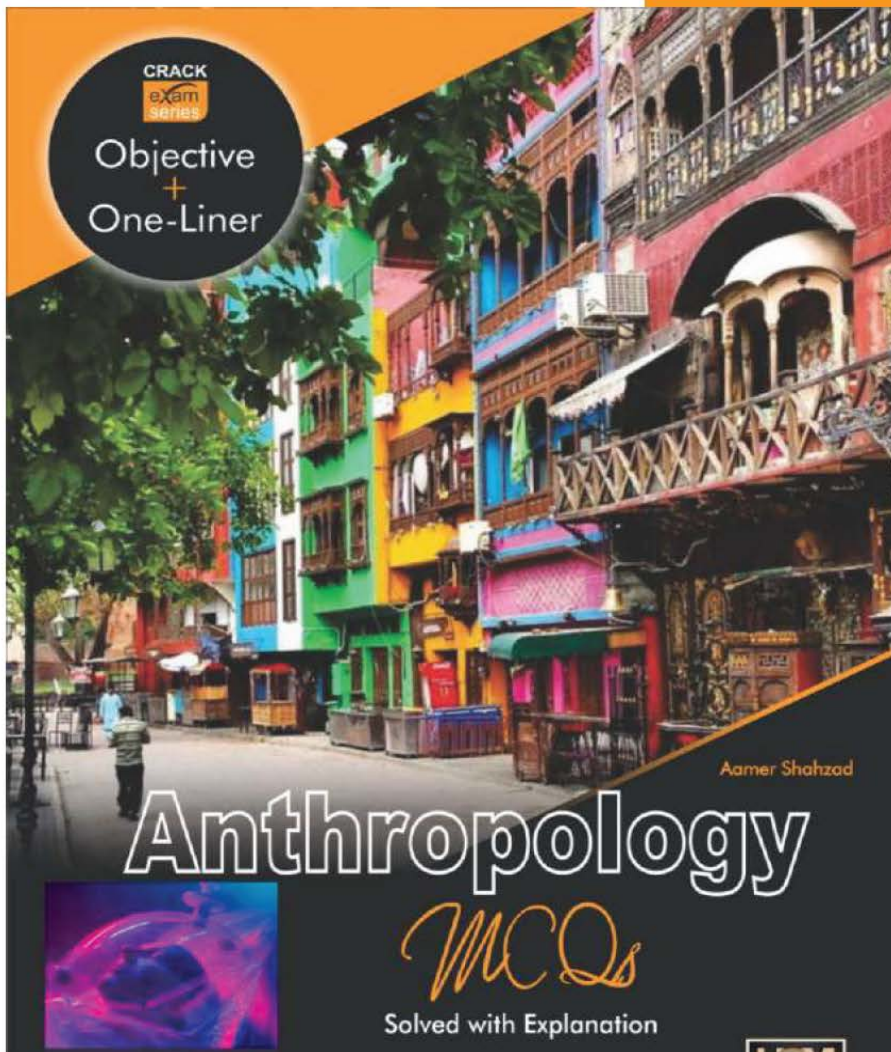
➤ **Juvenile Justice System in Pakistan**

The first comprehensive law on Juveniles promulgated in Pakistan was Juvenile Justice System Ordinance 2000 which was repealed on promulgation of a new Law titled The Juvenile Justice System Act 2018.

▪ **Major Provisions of Juvenile Justice System Act 2018:**

Following are the major provisions of Juvenile Justice System of Pakistan.

- **Juvenile offender defined as one who is below the age of 18 years:** The law defines a juvenile offender as a child who has not attained the age of 18 years. Under section 8 of the Juvenile Justice System Act 2018, the age of a juvenile will be determined through birth certificate, education certificate or any other official document of similar nature. In the event of such documents being not available, the age of a person apparently looking a juvenile will be determined through medical examination.
- **Separate Courts called juvenile Court to be established for trial of juvenile offenders:** Under section 4 of the Juvenile Justice System Act 2018, the juvenile offenders will be tried by separate courts called juvenile courts.
- **Juvenile Offenders to be kept in observation homes and Rehabilitation Centers instead of Police Station and Prison.** They Juvenile offenders be kept in observation homes instead of police station. On conviction a juvenile offender will be placed in Rehabilitation Centers instead Prisons. Observation homes and Rehabilitation Centers may be established by NGOs
- **Investigation of Cases involving Juvenile offenders.** Under section 7 of the Act, the cases involving juvenile offenders are to be investigated by an officer not below the rank of a Sub Inspector under supervision of a Sub Divisional Police Officer (SDPO) or a superintendent of a police. The investigating officer is also required to be assisted by a probation officer or social welfare officer.
- **Juvenile Justice Committee at every Session division:** For effective implementation of Juvenile Justice Act, in every Session Division a juvenile Justice Committee will be



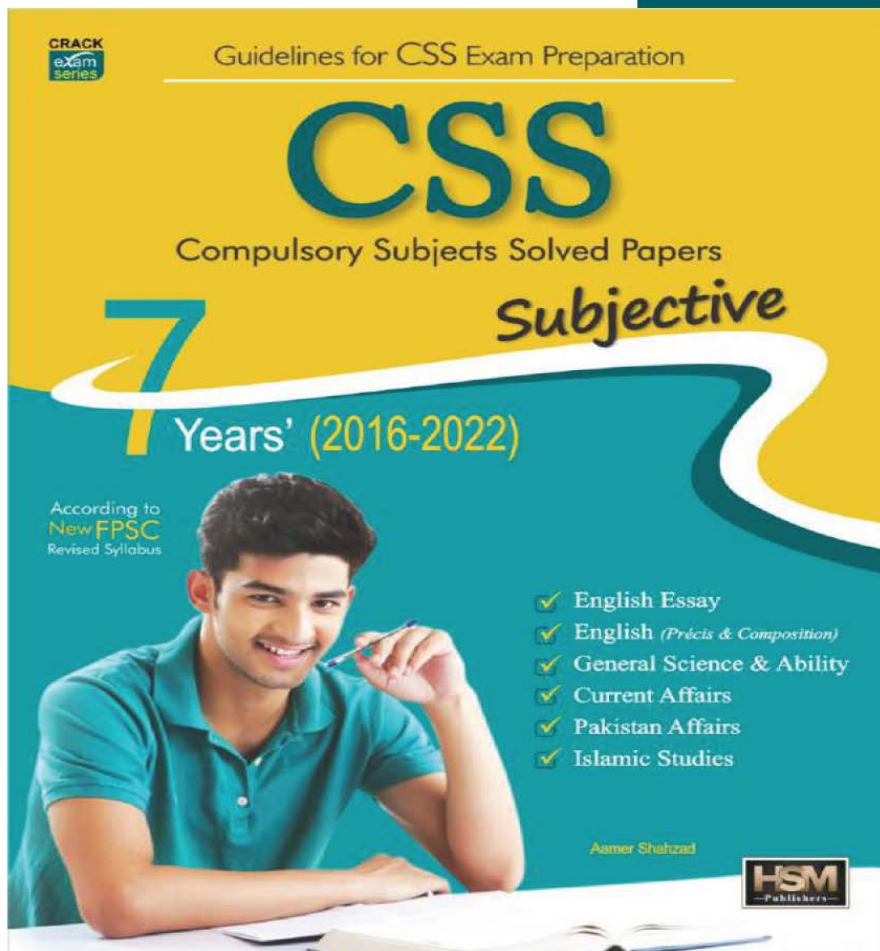
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constituted under section 10 of the Juvenile Justice System Act 2018. The committee will have following composition :

- i. Serving Judicial Magistrate with powers of section 30
- ii. Public Prosecutor
- iii. A lawyer
- iv. Probation officer

Functions of Juvenile Justice Committees as provided under section 10 of the Act are given hereunder.

“(4) The Juvenile Justice Committee shall perform following functions, namely:-

(a) Dispose of the cases through diversion upon referral from the police prosecution or the Juvenile Court, as the case may be, within a period of one month from the date of the referral;

(b) inspect the observation homes and Juvenile Rehabilitation Centres and may give directions to the officer-in-charge of such places for the measures to be taken for welfare and social re-integration of the juvenile kept under their supervision; and

(c) Such other functions as may be prescribed.

(5) For the administration and functioning of the Juvenile Justice Committee, provision of staff shall be within the powers of the Sessions Judge of respective district.”

- **Resolution of criminal disputes involving Juvenile Offenders.** The law provides for resolution of criminal disputes involving juveniles in an informal manner termed as “Diversion” (An informal mechanism of Dispute Resolution). The Law encourages resolution of disputes involving juvenile offenders through an informal process called “Diversion”. The term Diversion has been defined as under.

“Diversion” means an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, (economic. psychological and educational background without resorting to formal judicial proceedings:

- **Separate trial /No Joint Trial of Juvenile with Adult Offender.** The law provides that no juvenile may be charged with and tried for an offence together with an adult.
- **Right of Legal Assistance for the Child/Juvenile Offender.** The state will provide legal assistance to juvenile offenders as provided under section 3 of the Act which stipulates that:

“(1) Every juvenile or a child who is victim of an offence shall have the right of legal assistance at expense of the State.

(2) A juvenile shall be informed about his rights available under the law by a legal practitioner within twenty four hours of taking him into custody.

(3) A legal practitioner appointed by the Government or by the Juvenile court for providing legal assistance to a child victim of an offence or a juvenile shall have at least seven years standing at the Bar."

- **Completion of trial in six months:** The juvenile court is required to complete the trial within six months. In case of inability of the court to complete the trial within the given period of time, extension will be sought from the respective High Court.
- **Penalties which can not be awarded to a juvenile offender.** Under section 16 of the Act, a juvenile offender cannot be awarded death penalty. Likewise children cannot be placed in normal prisons, fettered, handcuffed, ordered to labor or awarded any corporal punishment.
- **No publication of proceedings of the court:** Proceedings of normal courts are public proceedings which can be published without any restriction. However the Law prohibits publication of the proceedings of juvenile courts, violation of which has been declared as a criminal offence. In case of Publication of Proceedings of Juvenile Court and disclosing the identity of juvenile, the individual responsible may be liable to sentence up to three years. Likewise no irrelevant person is allowed to attend court proceedings.
- **Provisions for Female juvenile:** Under section 17 of Juvenile Justice System Act 2018, a female juvenile is to be arrested/investigated only by a female police officer and can be placed under a female probation. Likewise in case of conviction the female juvenile is to be kept in rehabilitation center meant exclusively for female prisoners.
- **Role of Police in Juvenile Justice System**
 - **To not treat the child offender as an ordinary criminal:** The law requires that police should not treat juveniles as ordinary offenders. They should instead be treated with care.
 - **To inform the guardian in case of arrest:** Under section 5 of the Act, the officer in charge of police is required to intimate the guardian of the juvenile as soon as a juvenile offender is arrested.
 - **To bring the arrest in the notice of Probation Officers:** Likewise the police officer is required to intimate the concerned probation officer as soon as a juvenile offender is arrested.
 - **Bad on handcuffs:** The law places a bar on handcuffing the child in ordinary course. However a juvenile over 16 years

involved in a heinous crimes may be handcuffed if police has apprehension of his escape the police custody

- **To keep Juvenile Offender in Observation home instead of Jail:** Under section 5 of the Act the police in charge is required to place the juvenile offender in observation home instead of police station.

▪ **Role of Probation Officer**

- **Custodian of Welfare of the child:** The law makes it incumbent upon the probation officer to look after the welfare of the juvenile offender. The role of probation officer starts as soon as a juvenile is arrested.
- **Counseling and mentoring:** In case of a juvenile being placed under probation, the probation officer is required to counsel and mentor the juvenile in order to make the later mend his way by renouncing the criminal tendencies.
- **Coordination with the guardian:** The probation officer is required to coordinate with the guardian of the juvenile in order to get such information about the juvenile which may enable him to render necessary assistance to the court.
- **Rendering Assistance to the court:** Probation officer is also required to render necessary assistance to the court and prepare a report, if desired by the court under section 14 of the Act, on background and character of the juvenile. The report may also contain recommendation for the court whether to send the juvenile to rehabilitation center or to release him on probation.

➤ **Implementation Status of Juvenile Justice System in Pakistan**

Regrettably juvenile Justice System envisaged under Juvenile Justice System Act 2018 in Pakistan exists only in book and the provisions of the Law remain unimplemented to a greater extent. The details regarding implementation of the major provisions of the act are given below.

- The juvenile courts envisaged under the Law have yet to be established in major parts of Pakistan. The first juvenile court in Pakistan was inaugurated on December 19 2017, after 17 years of promulgation of Juvenile Justice System Ordinance 2000, the first Juvenile Law in Pakistan. The juvenile courts envisaged under section 4 of the current Juvenile Justice System Act 2018 have yet to be established across the country in line with the spirit of Law.
- No observation home has been established as yet. Not even a single Observation home has been established. The law makes it incumbent upon the police to place the juveniles in Observation homes instead of police stations but the law is bound to be

violated on non availability of observation homes. So the juveniles are practically placed in police stations.

- No mechanism has been framed for establishment of Observation homes and rehabilitation centers by NGOs. Keeping in view the paucity of finances in the state exchequer, the Law allows the NGOS to establish observation homes for which the rules have to be devised by the Government. However no mechanism or set of rules has been framed to involve NGOs in establishment of observation homes.
- Juvenile Justice Committees have not been constituted. The Juvenile Justice Committees which are entrusted with a very crucial role for implementation of juvenile law have not been notified anywhere.
- Identity of the juvenile offenders is not being protected. The cases involving juveniles are being reported in the media in stark violation of the Law.

➤ **Reason for Non-Implementation of Juvenile Justice System**

- **Oblivion towards state of children.** It is unfortunate that that the state of children in Pakistan is not far from satisfactory. Around 25 Million of school going age are still out of school. A large number of children are doing child labor. Child abuse is quite rampant in Pakistan. This all signifies that state is not taking effective measures to protect the children. Since children doesn't figure amongst the top priorities of the state so the juvenile law remains neglected amongst other areas of child welfare.
- **Overall attitude towards non implementation of Laws:** Pakistan is an over-codified society i.e laws are in abundance on every subject but these laws remain restricted to books only instead of being implemented. The juvenile justice system is not therefore the only law which remains unimplemented, host of other laws meet the same fate. This indicates overall attitude towards non implementation of law.
- **Civil Society not aggressively pursuing the children's rights:** Though some of civil society organizations, both domestic and international, are working on the right of children. However their presence is not felt to such an extent so as to sensitize the government about sensitivity and gravity of the issue.
- **Inadequate coverage by media.** Media is also not extending the coverage commensurate to sensitivity and gravity of the problem. The indifference of media keep the general public aloof from the plight of children.

Criminal Justice System

Criminal Justice system comprises of all the state institutions established for detecting, investigating, prosecuting and controlling crimes in the society. It can be defined as being a framework comprising of individuals, institutions, rules and procedures combined together in order to prevent and control crimes in the society.

➤ **Components of CJS**

- I. Police
- II. Prosecution
- III. Judiciary
- IV. Jail
- V. Probation
- VI. Parole

➤ **Objectives of Criminal Justice System**

- **Retribution:** (To make criminal suffer in the same way). One of the purposes behind inflicting punishment upon the offender is to make him suffer the same way as did the victim.
- **Deterrence:** One of the objectives of the criminal justice system is to create deterrence against crimes. The punishments inflicted upon the offenders are also, meant to create deterrence in that people may be prevented to commit crimes out of fear of punishment.
- **Incapacitation:** (To keep criminals away from society): One of the objectives of putting the criminals behind bars is to keep them away from society so that they are incapacitated from committing crimes.
- **Rehabilitation :**((Transformation of an offender in to a healthy individual). The criminal justice system should always aim at rehabilitating the criminals so as to make them mend their ways and become law abiding citizens of the society.
- **Restitution:** Compensation to the victims. Some times the law provides that the victims or their heirs may be compensated by the offenders. The Punishment of Arsh, Daman and Diyat are meant for this purpose.

Procedure & Problems of each component of CJS

➤ **Police**

Police is one of the most important components of criminal justice system serving as first line of defense against crimes. . All other components of

criminal justice system, in fact, supplement the work of police. The major functions of police are described below.

▪ **Functions of Police**

- **Law Enforcement:** Law enforcement is one of the primary functions of police. This includes apprehending those who violate the law. Basically the entire criminal justice system is aimed at enforcement of Laws, but the first and foremost duty lies upon police.
- **Protection of Life and Property:** Police plays a very significant role in protecting lives and properties of the people by keeping an eye on criminals and punishing those who try to deprive the people from their lives and properties.
- **Detection and Investigation of crimes:** Crimes are detected and investigated by police in order to identify the offenders and then get them punished by the courts.
- **Maintenance of Civil Order (Law and Order):** The law and order is maintained by the police and those who try to violate law by creating disturbance in the society are apprehended by the police.

* The detailed duties of Police are provided in Article 4 of Police Order 2002 which is reproduced herein below.

"4. Duties of police. – (1) Subject to law, it shall be the duty of every police officer to–

- a. Protect life, property and liberty of citizens;
- b. Preserve and promote public peace;
- c. Ensure that the rights and privileges, under the law, of a person taken in custody, are protected;
- d. Prevent the commission of offences and public nuisance;
- e. Collect and communicate intelligence affecting public peace and crime in general;
- f. Keep order and prevent obstruction on public roads and in the public streets and thoroughfares at fairs and all other places of public resort and in the neighbourhood of and at the places of public worship;
- g. Regulate and control traffic on public roads and streets;
- h. Take charge of all unclaimed property and to prepare its inventory;
- i. Detect and bring offenders to justice;
- j. Apprehend all persons whom he is legally authorised to apprehend and for whose apprehension, sufficient grounds exist;
- k. Ensure that the information about the arrest of a person is promptly communicated to a person of his choice;

- l. enter and inspect without a warrant on reliable information any public place, shop or gaming-house where alcoholic drinks or narcotics are sold or weapons are illegally stored and other public places of resort of loose and disorderly characters;
- m. obey and promptly execute all lawful orders;
- n. perform other duties and exercise powers as are conferred by this Order, the Code or any other law for the time being in force;
- o. aid and co-operate with other agencies for the prevention of destruction of public property by violence, fire, or natural calamities;
- p. assist in preventing members of public from exploitation by any person or organized groups;
- q. take charge of lunatics at large to prevent them from causing harm to themselves or other members of the public and their property; and
- r. prevent harassment of women and children in public places.

(2) Police officer shall make every effort to—

- a. afford relief to people in distress situations, particularly in respect of women and children;
- b. provide assistance to victims of road accidents;
- c. assist accident victims or their heirs or their dependents, where applicable, with such information and documents as would facilitate their compensation claims; and
- d. cause awareness among the victims of road accidents of their rights and privileges.

(3) It shall be the duty of a police officer to lay information before a competent court and to apply for a summons, warrant, search warrant or such other legal process as may, by law, be issued against any person suspected of committing an offence”.

▪ History of Policing in Pakistan

i. Policing during Mughal Period

The area now constituting Pakistan remained part of India before creation of Pakistan on 14 August 1947. During ancient and medieval India, the policing was entrusted a functionary called “KOTWAL”. This office was kept intact by Mughals. Dwivedi explains the role of office of Kotwal during Mughal rule in following terms:

“During Mughal period Kotwal was one of the most important officers in a sarkar. He was the chief police officer of the city, the head of municipal administration the city and censor or public morals (social welfare officer According to Dr. saran "the kotwal was solely in charge of the town administration and his functions in connection with the town in his charge were at least

in theory, the most comprehensive conceivable being in certain respect even wider than those of the municipal bodies of the present day"

ii. Policing During British Raj

Mughal Rule was followed by Company Rule (East India Company) who formally ascended to power in East Bengal in 1773. The company's Government entrusted the function of policing to its military. There was a special wing in the military of the company responsible for policing function. However, in the wake of war of independence (labeled as "rebellion" by the Britishers) a commission was constituted under a member of Indian Civil Service, "M.H Court" in order to establish a separate police force in India. The commission while making recommendations for establishment of separate police force observed as under regarding role of military in policing. The commission in its report observed that³¹

That the Military arm should confine itself absolutely to the occupation of the Country, for its proper function of preventing invasion and supporting the civil power only in event of rebellion or extended insurrection. The Military arm should be relieved from all non-Military duties; and the peace and order of the country should be preserved, on every occasion of tumult and apprehended disturbance by the civil power and not by a Military Force.

3. That bodies of men properly termed "Military,"- having Military formation and organization, employed for Military purposes, and liable to Military requisitions, cannot be usefully employed as Civil Police, or be associated in the operations of a Civil Constabulary in any of its duties. That such bodies should be transferred to the Military Department; or be dispensed with; or be absorbed into a Civil Constabulary formed on sound general principles; thus enabling consolidation and reduction of force in both departments. That the Military Authorities should withdraw and cease to maintain in future any Post, Detachment of or Guard not required for military occupation or other

Military purpose alone; so enabling concentration of force, maintenance of discipline and efficiency in the Army, and thorough revision and accurate estimate of the requirements of the country in a Military point of view.

³¹ Police Commission report 1860

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4. That a Civil protective force can be constituted in any part of India, starting from a Civil basis, after the model of the British and Irish Constabulary forces, and under the control of carefully selected European Officers, which may be adapted, by special attention to its departmental constitution, and physical composition, to the performance of every duty which can be required of such a body in regard to the prevention of crime, the suppression of local outrage, the maintenance of order, and prevention of aggression frontiers where armed invasion is not to be anticipated ; for the guarding and watching of

In light of the above recommendations of Police Commission, a regular police was established under Police Act 1861. It was quite natural for the colonial rulers to make this law in accordance with their own requirements of tightening the colonial rule. Police Rules were framed in 1934 under the Act *ibid* for further regulating the matters of policing.

iii. Structure of Police after Independence and initiatives for Reforms (1947-1998)

On independence of Pakistan, the colonial era were adopted and continued in force. However various commissions were constituted during this period. The details of all the reform commissions and committees constituted from 1947 to year 1998 have been provided by "Commonwealth Human Rights Initiatives" (CHRI) in its report ³² which is reproduced below.

- 1948 Passage of Bill to introduce a Metropolitan System of Policing in Karachi
- 1951 Recommendations of Sir Oliver Gilbert Grace, IG Police, NWFP
- 1961 Police Commission headed by Mr Justice J.B. Constantine
- 1962 Pay & Services Reorganisation Committee (Justice Cornelius)
- 1970 Police Commission headed by Major General A.O. Mitha
- 1976 Police Station Enquiry Committee headed by M.A.K. Chaudhry, IG Police
- 1976 Law and Order Sub-Committee headed by Ch. Fazal Haque

³² Police Organizations in Pakistan by Commonwealth Human Rights Initiatives"(CHRI) retrieved from https://www.humanrightsinitiative.org/publications/police/police_organisations_in_pakistan.pdf

- 1976 Police Reforms Committee headed by Rafi Raza
- 1981 Orakzai Committee on Police Welfare, Promotion and Seniority Rules
- 1982 Cabinet Committee on the Emoluments of SHOs
- 1983 Cabinet Committee on Determining the Status of SHOs
- 1983 Sahibzada Rauf Ali Committee
- 1985 The Police Committee headed by Mr Aslam Hayat
- 1987 Report of the two-member delegation's visit to Bangladesh and India
- 1989 Report of the seven-member delegation's visit to Bangladesh and India
- 1990 Police Reforms Implementation Committee – M.A.K. Chaudhary
- 1995 Report of the UN Mission on Organised Crime in Pakistan
- 1996 Report of the Japanese Police Delegation on the Police System in Pakistan
- 1997 Committee on Police Reforms under the Chairmanship of Interior Minister
- 1998 Report of the Good Governance Group on Police Reforms: Committee Vision

However no major changes could be brought in the structure and organization of policing across Pakistan mostly due to non-implementation of the recommendations of above commissions and reports.

▪ Reforms Introduced by Police Order 2002

General Pervaiz Mushraf after taking over the power on 12th October 1999, established an Institution named “National Reconstruction Bureau” (NRB) for reforming and revamping the governance apparatus. A focal Group on Police reforms was established under the NRB in year 2000 on whose recommendations a new Law titled as “Police Order 2002” was promulgated.

▪ Functional Organization of Police

Under Article 8 of the Police Order 2002, Police was organized into following functional units.

- Investigation;
- Intelligence;
- Watch and Ward;
- Reserve Police;
- Police Accountability;
- Personnel Management;
- Education and Training;
- Finance and Internal Audit;
- Crime Prevention;

- Crime against Women;
- Traffic Planning and Management;
- Criminal Identification;
- Information Technology;
- Transport;
- Research and Development;
- Legal Affairs;
- Welfare;
- Estate Management.

Separation of Investigation from Watch and Ward (Operational Policing)

Investigation is a specialized function requiring a specified set of skills different from operational policing. Previously investigation and Watch and ward were under single command. This jeopardized the quality and independence of Investigation. Therefore Police Order 2002 separated Watch and Ward from operational policing. The article 18 of Police Order 2002 provided that:

18. Separation of investigation function. –

(1) There shall be separation of investigation from other functions of the Police.

(2) Subject to clause (3), the District Investigation Branch shall investigate, under the supervision of the Head of District Investigation Branch, all cases registered in the District.

(3) The Provincial Police Officer may notify the offences which shall be investigated by the investigation officer in the police station under the supervision of the officer-in-charge of the police station and if an offence in a case is required to be investigated by the District Investigation Branch then the entire case shall be investigated by the District Investigation Branch.

(4) The District Investigation Branch, other than in the Capital City District or a City District, shall be headed by a police officer not below the rank of a Superintendent of Police and shall consist of such other police officers as the Provincial Police Officer may determine.

(5) In the Capital City District and a City District, the District Investigation Branch shall be headed by a police officer not below the rank of Deputy Inspector General of Police and Senior Superintendent of Police respectively and shall consist of such other police officers as the Provincial Police Officer may determine.

(6) *In order to institute functional specialization in each District, the Provincial Police Officer shall determine the investigation organization and jurisdictions, as and when required, at the level of the District, City District, Capital City District or a division within a City District or the Capital City District.*

(7) *The members of District Investigation Branch shall not form part of any police station and, as far as possible, the District Investigation Branch shall comprise several specialized wings, each wing being responsible for investigation of one or more types of cases.*

(8) *The Head of District Investigation Branch shall be directly responsible to the Head of District Police.*

(9) *The supervisory officers—*

(a) shall ensure timely completion and verification of investigation; and

(b) may summon the investigation officer or team of officers, review the case file, evaluate the evidence and, in that case, shall issue instructions to the investigation officer or team of officers in the form of case diary.

(10) *A supervisory officer not below the rank of a Deputy Superintendent of Police may verify the correctness of the investigation and accuracy of conclusions of investigation by writing a case diary before submission of report in the court.*

(11) *An officer-in-charge of the police station shall, immediately after receiving information of an offence, inform the District Investigation Branch of the offence which is required to be investigated by the District Investigation Branch.*

(12) *If the Head of District Investigation Branch is of the opinion that a case under investigation with the District Investigation Branch is not in its jurisdiction, he shall, under intimation to the Head of District Police, send the case for further investigation to the officer-in-charge of the police station.*

(13) *If the officer-in-charge of the police station is, for reasons to be recorded, of the opinion that a case under investigation by the police station staff is required to be investigated by the District Investigation Branch, he shall, under intimation to the Head of District Police, send the case for further investigation to the District Investigation Branch.*

(14) *Except in case of an emergency notified by the Provincial Police Officer for a specified period, the members of District*

Investigation Branch shall not be employed for duties other than investigation.]

Abolition of the Office of District Magistrate/Deputy Commissioner.

Under Colonial Rule, the primary responsibility of maintaining Law and Order lied upon the District Magistrate/Deputy Commissioner and the Police was made answerable to him. The same system remained in vogue after independence. However under in 2002, the office of district magistrate was abolished and Police was brought out of the control of District Magistrate.

Establishment of Public safety Commission

Police complaint and Public Safety Commission were established at tehsil, district, province and national Level. The commissions were to manned by the members of local governments and private members. The functions of District Public Safety Commissions are provided in article 44 of Police Order 2002 in following manner.

Functions of the District Public Safety Commission.— *The District Public Safety Commission shall perform the following functions including those related to complaints against the police:-*

(a) approve an annual Local Policing Plan prepared by the District Police Officer in consultation with the Zila Nazim setting out the arrangements for the policing during the year:

Provided that such Policing Plan shall include—

(i) a statement of the financial resources expected to be made available by the Provincial Government; and

(ii) performance targets for the year and their delivery mechanism;

(b) evaluate the delivery of performance targets contained in the Local Policing Plan on quarterly basis and send half-yearly reports to Zila Nazim, Tehsil Nazim, Provincial Government, Provincial Public Safety Commission and Provincial Police Officer;

(c) encourage police-public cooperation;

(d) provide recourse to District Police Officer or City Police Officer for reporting against any unlawful or mala fide order or request for police support from any authority received by him or any officer subordinate to him and give a decision thereon which shall prevail;

(e) refer the matter in writing to the Provincial Government for appropriate action where the District Public Safety Commission is satisfied that a collusive relationship detrimental to the interest of the people exists between the Zila Nazim and District Police Officer or City Police Officer:

Provided that before making such report the District Police Officer or City Police Officer and the Zila Nazim shall be given an opportunity to be heard in person to explain their respective positions;

(f) direct the District Police Officer or City Police Officer as to disposal of unclaimed property under clause (4) of Article 135.

(g) direct the District Police Officer or City Police Officer in writing, where the District Public Safety Commission has reasons to believe that the head of the police station has unjustifiably refused or avoided to register any First Information Report, to conduct an inquiry into the matter and cause the registration of the First Information Report under section 154 of the Code, if any cognizable case is made out from the allegations of the complainant and report to the District Public Safety Commission within forty-eight hours the action taken by him;

(h) on receipt of a complaint of excess by a police officer—

(i) direct the District Police Officer or City Police Officer in writing to take appropriate action and submit a report within a specified period; or

(ii) conduct a fact finding enquiry through two or more of its members, and in case the complaint is found correct, send its report and direct District Police Officer to suspend the defaulting police officer and take departmental action against him in accordance with the rules;

(iii) report the matter to the Provincial Police Officer, Provincial Government or the Police Complaints Authority for appropriate action if the District Police Officer does not submit a report or take action on the direction given by the District Public Safety Commission;

(i) direct the District Police Officer in writing to enquire into a complaint of neglect in general or by a functionary of a district police and take appropriate action and report within the specified period.

(j) on a complaint of excess committed by any member of Federal Law Enforcement Agency and civil armed forces acting in support of the district police, require the appropriate authority of the concerned department in writing to take remedial action and report within a specified period. If no action is taken by the concerned authority, a reference may be made by the District Public Safety Commissions to the head of concerned organization or the Federal Complaints Authority for appropriate action.

Citizen Police Liaison Committee

Article 168 of Police Order 2002 provides for establishment of Citizen Police Liaison Committees in following manner.

168. Citizen Police Liaison Committees.— The Government may establish Citizen Police Liaison Committees as voluntary, self financing and autonomous bodies, in consultation with National Public Safety Commission or Provincial Public Safety Commission, as the case may be, for— training and capacity building of Public Safety Commission; developing mechanism for liaison between aggrieved citizens and police for providing relief; and assistance to Public Safety Commissions, Police Complaints Authority and the police for the expeditious and judicious discharge of their duties.

▪ **Current Status of Police Order 2002**

The province of Punjab has been following Police Order 2002 since its promulgation. The Khyber Pakhtunkhwa however promulgated "Police Act 2017" which bears close resemblance to Police Order 2002. The province of Balochistan also made a new law, "The Balochistan Police Act 2011". The province of Sindh once repealed Police Order 2002 and reverted back to Police Act 1861 however the province again switched to the "Police Order 2002" under "Sindh (Repeal of the Police Act, 1861 and Revival of Police Order, 2002). (Amendment) Act, 2019".

▪ **Committee on Police Reforms Constituted by the Chief Justice of Pakistan**

A committee on Police Reforms was constituted by the Chief Justice of Pakistan under the aegis of Law and Justice Commission of Pakistan on 15th may 2018. The Committee headed by a former Inspector General of Police was mandated to make recommendations for reforming and revamping the system of Police in Pakistan.

▪ **Problems of Policing in Pakistan.**

- **Colonial Legacy:** As narrated above the institution of Police was established by colonial rulers in the Subcontinent under

Police Act 1861. They established the institution of police to strengthen their grip on locals instead of serving them. The colonial era Police Act 1861 law was kept intact even after independence of Pakistan. It was not until 2002 that this was replaced. However the Police Rules 1934 made under Police Act 1861 are still regulating the functioning of Police in Pakistan. The current police organisations therefore still bears colonial imprints.

- **Acute Paucity of Financial Resources:** According to a report of PILDAT, budgets for Investigation in Punjab per district hovers around 300 Rupees. (Rs. 295: Lahore, 328: Isb 166: Sialkot³³). This depicts the depressing state of affair with regard to availability of financial resources to the police which is not provided with adequate budget and other resources necessary to perform its official duties. The budget of investigation defies logic and common sense. It's an open secret that most of the expenses at police station level are to be arranged by the lower police officials themselves. Under these circumstances, expectation of good performance from police staff is quite unreasonable.
- **Acute Shortage of Manpower:** According to international standards Police to population ratio should be at 1:222³⁴ (Which implies that there should be one police official for every 222 citizens), however in Pakistan it is 1:500. However 30 % of Pakistani Police force is engaged in protocol duties. If the force deputed on protocol duties is excluded the police to population ratio in Pakistan comes to 1:720³⁵). In wake of growing population, the existing police force is insufficient to cater the need.
- **Massive Corruption:** Transparency International, in its Corruption Perceived Index (CPI), consistently rates police as one of the most corrupt institutions in Pakistan. Corruption thus serves as a serious hindrance in maintaining an effective police institution.
- **Bureaucratic Structure:** Police is a professional force. But in Pakistan it is organized on bureaucratic lines. The hierarchy

³³ PILDAT Police Budget in Punjab 2016(<https://pildat.org/rule-of-law1/police-budget-in-punjab-issues-analysis-and-recommendations?currency=PKR>)

³⁴ *ibid*

³⁵ *Ibid*

and functioning of police is regulated under the laws and rules applicable to bureaucracy. Police being a professional force must be reorganized on professional lines.

- **No effective accountability:** Accountability of bureaucracy in Pakistan remains weak. The career progression in bureaucratic structure is based upon seniority instead of performance which offer little incentive for effective working.
- **Political Interference:** Politics in Pakistan, especially in rural areas, revolves around Thana/Katchehry. Therefore there is a great deal of interference in the matters of policing. The postings in police are politicized due to which it cannot function as an independent and professional force.
- **Lack of adequate remuneration:** The salary and other perks paid to the police officers are not in line with the work being taken from them. It is a fact that police staff in Pakistan is overburdened. There are long duty hours and many a times they have to perform under dangerous condition which put their lives to peril. But they don't get proper reward of their work which makes them resort to unfair means to meet daily life expenditures.
- **Outdated Legal Framework.** The laws under which the criminal justice system of Pakistan is being governed are centuries old. The code of Criminal Procedure was made in 1898. The Pakistan penal Code was promulgated as far back as in 1860. The police rules were framed in 1934. The circumstances under which these laws were framed have changed altogether. Therefore these laws are not compatible to modern needs. Unfortunately no serious effort has been made so far to reform these laws.

Judiciary

Judiciary is one of the most important pillars of criminal justice system. It ensures dispensation of justice. The authority to establish guilt of an accused is vested in the judiciary. The power of inflicting punishment upon the one who has been proven guilty of an offence rests with judiciary. The role and powers of judiciary in criminal justice system can be summarized as follows.

- **Remand of the accused.** Police cannot keep an accused beyond twenty four hours after which the sanction of the concerned "Magistrate" is required which is called "Remand".
- **Bail.** Bail is release of an accused pending final outcome of the case on his undertaking to appear before the court of law as and when required. The power to grant bail is vested in the courts.

- **Trial:** The power to conduct criminal trial is one of the most important processes in criminal justice which is conducted by courts.
- **Award of Probation:** Probation which is discussed later in this section is also a prerogative of the courts.

▪ **System of Criminal Courts in Pakistan**

Following are the courts entrusted with dispensation of criminal justice.

i. Supreme Court of Pakistan

Supreme Court is the highest court in Pakistan. The court comprises of a Chief Justice and sixteen other judges as prescribed under "The Supreme Court (Number of Judges Act) 1997". Criminal Appeals for the cases decided by high courts lies before the Supreme Court of Pakistan under Article 185 of the Constitution. Besides the court has inherent powers to pass any order under article 184 and Order XXXIII Rule 6 of Supreme Court Rules 1980.

ii. High Courts

There are five high courts in Pakistan: Four for each of the provinces and one for Federal Capital territory of Islamabad. The decisions of lower courts /special courts can be challenged in the High Courts. Moreover under section 31 of Cr.PC 1898, death sentence handed down by a session court is subject to confirmation of the high court. The High Courts are also invested with inherent powers under section 561 A of CRPC 1898 under which any orders can be passed in the interest of justice. In addition to High Courts exercise original jurisdiction in enforcement of fundamental rights under article 199 of the Constitution (Also called the Writ Jurisdiction).

Administratively the subordinate courts are under superintendence and control of the respective High Courts.

iii. Federal Shariat Court (Article 203-A-J)

Federal Shariat Court was established in May 1980 by the then Military Ruler General Zia Ul haq through President's Order No.1 of 1980 (Constitution (Amendment.) Order, 1980" issued on 26th may 1980. The court is vested with the powers to strike down any law in Pakistan if found violative of Sharia. The court comprises of maximum Eight Judges of which not more than three can be *Ulemas*.

In addition to reviewing Laws, the Federal Shariat Court also serves as "Appellate Court" against the Orders/Judgments passed under Haddood laws.

iv. Court of Session

Court of Session is empowered to pass any sentence, however in case of death sentence passed by a session court, confirmation is required from the



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high court. Appeals against the orders of Magistrate also lie before the Court of Session.

v. **Court of Magistrate**

It's the lowest criminal court in Pakistan. A Magistrate of first class may award punishment upto three years and fine of Rs 45000.

▪ **Procedure of Trial**

- **Submission of Police Report/Challan/Private complaint:** At first stage, the police submit "Police Report" containing details of the case, evidence collected during investigation, details of the accused persons and findings of the investigation officer.
- **Cognizance of the Case.** This is expression of the intention of the court to take up the matter for trial.
- **Supply of Documents to the Accused.** At this stage, the court directs the "prosecution" to provide copy of the FIR, statements of witnesses and other relevant documents to the accused person.
- **Framing of Charge:** Charge is a specific allegation/accusation leveled against the accused. The court is required to explain the allegation leveled against him. The accused can either admit/confess or deny the charge/allegation.
- **Conviction on admission/confession.** The accused is convicted on admission/confession of the allegations contained in the charge.
- **Trial in case of non -admission:** The court proceeds with the trial in case of denial of charge by the accused.
- **Statement and Examination of Prosecution Witnesses:** The prosecution produces its witnesses in the court to substantiate the allegations. The defense can cross examine the witnesses so produced by the prosecution.
- **An opportunity to accused to tender statement:** The accused is given opportunity to tender his statement and produce defense witnesses if he desires so.
- **Arguments:** After completion of evidence, both the sides finally argue their cases by summing up their cases.
- **Order/Judgment/Verdict.** Finally the court decided the case by concluding the trial and giving a judgment.

▪ **Problems**

- **Huge Back log of Cases (3 Million Cases Pending³⁶):** According to a report of Law and Justice Commission of

³⁶ Law and Justice Commission Report 2016

Pakistan, 3 million cases are pending adjudication in Pakistan courts. Some of these cases are pending from decades. This is causing a great hurdle in timely disposal of cases making the people wait for long to get justice. As the saying goes that justice delayed is justice denied, sometimes cases in Pakistan are delayed for such a long period of time that they become irrelevant to the litigants.

- **Acute Shortage of Judges:** Shortage of judges is another impediment in speedy justice.³⁷ The existing judges are therefore over-burdened. This causes a delay in adjudication of cases on the one and reduces the quality of judgment on the other hand.
- **Corruption mostly in lower ranks:** According to the most recent "Corruption Perception Survey 2021"³⁸ of Transparency International, Judiciary has been found as the second most corrupt institution in Pakistan. Corruption has a crippling effect on efficiency and productivity of any institution.
- **Adjournments:** Adjournment is a situation in which no proceeding is taken place on the case and a new date is fixed for hearing. This cause undue inconvenience to the litigants and is one of the major causes of delayed adjudication of cases.
- **Lack of coordination between Bar and Bench:** Frequent calls for strike by the lawyers is another hurdle in timely adjudication of cases. It has become a routine phenomenon in the courts of Pakistan. During the strike call, lawyers don't appear in courts due to which no proceedings are held causing undue loss of time for the state and litigants.
- **Lack of effective Accountability:** There is a widely prevailing view that mechanism of accountability of judicial officers in Pakistan is not effective. Rashid Wali Janjua in his article throws light in the affairs pertaining to judiciary in following words.

"The state of lower judiciary does not inspire any confidence where the litigants are fleeced by a coterie of corrupt officials and lawyers. The system is heavily tilted in favour of rich and influential segment of society. A small crime by a poor person attracts quick retribution whereas the powerful exploits legal loopholes with connivance of lawyers. It is a system that offers

³⁷ Hassan, A., & Malik, D. M. (2020). Status of ADR in Existing Laws of Pakistan: A Brief Study. *Global Regional Review*, 3, 263-269.

³⁸ <http://www.transparency.org.pk/ncps/ncps2021/NCPS2021.pdf>

rents to lawyers at the cost of clients. In such a system justice would always be delayed as the interests of the lawyers and clients clash. Expecting that the judiciary and legal community would reform itself is a fallacy. Strong Chief Justices like Iftikhar Chaudry and Saqib Nisar did not attempt to reform judiciary or to discipline lawyers due to institutional incapacity to cure own malady.”³⁹

- **Outdated Legal Framework:** The entire legal and judicial system of Pakistan is working under the laws which are centuries old and were framed by the colonial masters. These laws don't cater to the needs of an independent and sovereign state. It is therefore imperative that in order to ensure effective dispensation of justice, the existing legal framework of Pakistan may be overhauled in accordance with the needs of modern time.

Probation

Probation is method whereby a court while taking the circumstances in account doesn't sentence or imprison an accused on his conviction (which means that the guilt of the accused has been established in the court) but gives him an opportunity to mend his ways, reform himself and become a law abiding citizen of the society. According to Ahuja Ram⁴⁰

Probation is the postponement of final judgment or sentence in a criminal case, giving the offender an opportunity to improve his or her conduct, often on conditions imposed by the court and under the guidance and supervision of an officer of the court. Probation can be considered as a formative and flexible program for the first-time offender because it overcomes rigidity of imprisonment.

- **Origin and History**

The original concept of “Probation” came from England in middle ages when offenders were conditionally set free in anticipation of good behavior that is to say that they were not sentenced/imprisoned on the condition that they would not commit crimes again.

³⁹ <https://dailytimes.com.pk/369146/our-penta-silver-bullet/>

⁴⁰ Ahuja Ram (1979) “Probation Act; A Sociological Appraisal” *The India Journal of Social Work* XL, 2, July, p. 201-208

John Augustus is said to be the father of Probation. He offered voluntary probation service to rehabilitate and reform the offenders. In 1841 he was sitting in a court when the court sentenced a drunkard for three weeks. However Augustus requested the court to place the convict in his supervision for counseling. The court agreed to his request. The convict remained with Augustus for three weeks. When he appeared in the court after three weeks, his look was completely a changed person as appeared from his demeanor. This gave impetus to the idea of formally incorporating probation into the legal system of the state.

He served as a voluntary probation officer for 18 long years thereafter. The first Law on probation was passed in 1859, the year when Augustus breathed his last.

In subcontinent, the probation was introduced by inserting section 562-564 in Criminal Procedure Code through Code of Criminal Procedure (Amendment Act 192. These sections were however were repealed in 1960 with promulgation of a new Law titled as "Probation of Offenders Ordinance 1960". "

▪ **Current Law dealing with Probation in Pakistan**

"Probation of Offenders Ordinance 1960" is the current law dealing with probation in Pakistan.

➤ Features of Probation System in Pakistan

▪ **Which Courts Can Award Probation?**

Under section 3 of the Probation of Offenders Ordinance 1960, following courts are empowered to award probation.

- A High Court
- A Court of Sessions
- A Magistrate of Ist Class

▪ **Conditions For Award Of Probation**

Following are conditions for award of probation

- **Discretion of the Court:** Probation is awarded solely on the discretion of the court and cannot be claimed as a matter of right.
- **First time offender.** The probation can be awarded to first time offenders. The one who is previously convicted is not eligible for this concession.
- **Offence on which Probation can be awarded.** Under section 5 of the Probation of Offenders Ordinance 1960, probation can be awarded to a female convict for all offences except those punishable with death penalty while for males probation is

admissible for all offences except those punishable with death penalty, life imprisonment or offences Chapter VI or Chapter VII of the Pakistan Penal Code, or under sections 216A, 328, 382, 386, 387, 388, 389, 392, 393, 397, 398, 399, 401, 402, 455, or 458 of that Code.

- **Duration of the Probation.** The duration of the probation is left to the discretion of the court however it can not be less than one year or more than three years.
- **Submission of Bond to the effect of not repeating the offence:** The offender is required to execute a bond to the effect that that he won't repeat and maintain good behavior.
- **Place of residence or occupation in local jurisdiction:** The offender being awarded probation must have a fixed place of residence or occupation at the place which is under local jurisdiction of the court.
- **Placement under the supervision of a probation officer:** The offender is placed under supervision of a probation officer who monitors his conduct.
- **Revocation of the Order on repetition of offence:** The probation is cancelled revoked if the offender is convicted for an offence of same nature
- **The offender is discharged from conviction:** After award of probation, the offender no more remains a convict. This implies that no adverse action can be taken against him. The section 11 of the Probation of offenders Ordinance 1960 provides that:

"11. Effects of discharge and probation.— 1) A conviction of an offence, for which an order is made under section 4 or section 5 for discharging the offender after the due admonition or conditionally or placing him on probation, shall be deemed not to be a conviction for any purpose other than the purposes of the proceedings in which the order is made and of any subsequent proceedings which may be taken against the offender under the provisions of this Ordinance:

Provided that where an offender, being not less than eighteen years of age at the time of his conviction of an offence for which an order discharging him conditionally or placing him on probation is made, is subsequently sentenced under this Ordinance for that offence, the provisions of this sub-section shall cease to apply to the conviction.

(2) Without prejudice to the foregoing provisions of this section, the conviction of an offender who is discharged after due admonition or conditionally, or who is placed on probation, shall in any event be disregarded for the purposes of any law which

imposes any disqualification or disability upon convicted persons, or authorizes or requires the imposition of any such disqualification or disability"

▪ Objectives and Utility

- **Reformation and rehabilitation:** The accused/offender is provided an opportunity to reform himself.
- **Beneficial instead of being burden to the society:** The offender if placed in prison he become the liability of state. He is fed and taken care of by the state. He can not therefore contribute economically towards the society. However in case of being provided with an opportunity of probation, an offender not only relieves the state of its responsibility to feed him but also can serve as an economically productive individual of the society.
- **Ultimate Good:** The ultimate object of criminal justice system is collective good and not to punish the offender. So if the offender can be made to mend his ways with out being punished, it will result into ultimate benefit of the society.
- **Provide a chance to mend ways:** The offender is provided a chance by the state to leave the criminality.
- **Moral obligation:** It is assumed that the offender will be under moral obligation to reciprocate the state in return of the favour made with him with regard to his release after even committing a crime.

The honorable Sindh High Court in a case titled as "**Zulfqar Abbass Vs State**" (2007 PcrLJ 306) observed as under about the utility of the probation.

"One of the concepts of punishment is reformation. The present conditions of our jails are such where once a person is sent there then he may come out after serving out the sentence as a hardened criminal, therefore, instead of becoming a helping hand to the society he would become a cause of concern to it. It is possible that the appellant while mixing with the criminals might develop bad habits, which ultimately would not be beneficial to the society when he comes out after serving the sentence. The basic idea of putting the accused in jail is to reform him so that he may not commit offence when he comes out from the jail, therefore, a balanced approach is to be made while punishing a person keeping in view the reformation concept of punishment, as such, the option between reformation and punishment is an onerous one and it requires a judicious application of mind by the person or authority dealing with such offender. This election must be made keeping in view the ultimate good of providing justice to the victim, society and the offender within the framework of law. The greatest virtue of the

law is its flexibility and it's adaptability. It must change from time to time so that it answers the demand of the people, the need of the hour and order of the day. One school of thought argues that the function of the law Court is that of a social reformer. It is important to note that the process of rehabilitation and reformation has to take care of both the offender and the victim.

One of the systems, which plays a very important role in the rehabilitation and reformation of the offender, is probation system. On first November, 1960 "The Probation Offenders Ordinance, 1960" was promulgated under which the benefit of probation has been made available to the offenders. The Ordinance was enacted to provide for the release of offenders on probation or admonition and for matters connected therewith. The Ordinance shifts emphasis from deterrence to reformation and from crime to the criminal in accordance with modern outlook on the punishment. Reformation and rehabilitation are the keynote of the Ordinance. The object of the Ordinance is to prevent turning of offenders into criminals by the association with hardened criminals within the walls of the prisons. The method adopted is, to attempt their possible reformation instead of inflicting on them the normal punishment for their crimes.

The scope of applicability of the provisions of the Ordinance are that it has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant member of the society without subjecting them to the deleterious effects of the jail life. The Ordinance is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of the law is more to reform the individual offender than to punish him. The Ordinance empowers the Court to release on probation an offender found guilty of having committing an offence not punishable with death or imprisonment for life or for the description mentioned in sections 4 and 5 of the Ordinance. It is true that nobody can claim the benefit of sections 4 and 5 of the Ordinance as a matter of right and the Court has to pass appropriate orders in the facts and circumstances of each case having regard to the nature of the offence, its general effect on the society and the character of the offender, etc. It, generally, does not exercise its discretion in favour of the accused when he has committed heinous crime, which shakes the conscience of the Court. There may be cases under other laws, which may not justify the exercise of power under the Ordinance. The Court should be

wary of extending benefit of the Ordinance to offences relating to corruption, narcotic drugs, etc. The Court is also slow to come to the rescue of the offender when he has committed economic offences for the reasons that the kindly application of the probation principle is negative by the imperatives of social defense. No chance can be taken by the society with a man whose anti-social operations imperil numerous innocents. He is the security risk. Secondly, these economic offences committed by the white-collar criminals are unlikely dissuaded by the gentle probationary process.

▪ **Duties of Probation Officer**

- **Periodic visit of the lac offender:** The probation officer should periodically visit the place of probationer to confirm that the bond are being complied.
- **To ascertain conformance to the condition of bond by the offender:** The Probation officer is also required to ensure that the terms of bond are being complied by the offender.
- **Counseling the offender:** The probation officer is also required to council th
- **Reporting the conduct of offender to head of his department (Officer in charge):** In case of any delinquency or breach of bond observed on the part of the offender, the probation officer is required to report the same to his superiors.

Detailed duties of the Probation Officer are spelled out under section 13 of Probation of Offenders Ordinance 1960.

"13. Duties of a probation officer.- A probation officer shall, subject to the rules made under this Ordinance,-

- a. visit or receive visits from the offender at such reasonable intervals as may be specified in the probation order or, subject thereto, as the Officer-in-charge may think fit;*
- b. see that the offender observes the conditions of the bond executed under section 5;*
- c. report to the Officer-in-charge as to the behaviour of the offender;*
- d. advise, assist and befriend the offender, and when necessary endeavour to find him suitable employment ; and*
- e. perform any other duty which may be prescribed by the rules made under this Ordinance."*

Further duties of Probation Officer are given in Rule No 10 of Probation Rules 1961.

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For CSS, PMS, and Other Competitive Exams

NOA
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GENERAL Science & Ability

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by: Dr. Muhammad Atif Ali

03325339708

For CSS

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"10. Duties of Probation Officers-A Probation Officer shall-

- a. Explain to every probationer placed under his charge, the terms and conditions of the probation order made in respect of such probationer, and if so deemed necessary, by warnings, endeavor to ensure their observance by the probationer;
- b. in the first two months of probation of every probationer under his charge, meet the probationer at least once in a fortnight, and thereafter, subject to the provisions the probation order and any general or special orders of the Officer-in-Charge, keep in close touch with the probationer, meet him frequently, make enquiries into his conduct, mode of life and environments, and wherever practicable, visit his home from time to time;
- c. If any probationer under his charge be out of employment, endeavor to find suitable employment for him and assist, befriend, advise and strive to improve his conduct and general conditions of living;
- d. Encourage every probationer placed under his supervision to make use of any recognize agency, statutory or voluntary, which might contribute towards his welfare and general well-being, and to take advantage of the social, recreational and educational facilities which such agencies might provide;
- e. Where a probationer under his supervision, who has executed a bond with sureties under Section 5, is found to have committed any breach of the terms of his bond, or to have otherwise misconducted himself, to being such breach or misconduct to the notice of his sureties;
- f. Maintain the books and registers and submit reports prescribed under these rules; and
- g. Subject to the provisions of these rules, carry out the instructions of the Court in regard to any probationers placed by the Court under his supervision.

▪ **Probation and Community Service**

A judge is empowered to order the offender to do community service while releasing him on probation as an alternative to imprisonment. Though no specific provision has been made in Law about community service, this

power of the court has been endorsed by superior courts. A document published by Punjab Judicial Academy sheds light upon the role of probation in following manner⁴¹:

"Community service or social service is a mode of punishment provided by law which the offender can escape imprisonment or fine. Community service acts as an alternative to criminal punishment. Generally, community service can be handed down by a Judge or Magistrate to the first time offender or teenage offender etc. Court may require minor offenders to perform work for city or county agencies often on weekends, as an alternative to confinement in jail. The offender is required to perform unpaid work or other activity in the community under the supervision of a Probation Officer. Meaning to say, community service is designed to ensure that the guilty party is punished in some way other than simply paying a fine which can be nothing in the way of a deterrent. Many individuals convicted of a crime and have to pay a fine simply done the same offence again and this leads only to their continual committing of crime. The community service is imposed for a specific period which measured by hours of service. The hours imposed is vary, depending on the nature of the offence".

Following types of duties may assigned to the offered under community service⁴²:

- Cleaning up roadside or parks.
- Attending educational programs and presenting speeches and seminars concerning the negative effect of crime.
- To appear before school groups to explain why drunk driving is a crime.
- Light manufacturing.
- Repair work.
- Office work on labor camps or farms or on land conservation projects.
- Cleaning up graffiti.
- Working with a charity.
- Teaching a law school course.
- Tutoring children.
- Building homes in low income areas.
- Assisting the elders.

⁴¹ <http://pja.gov.pk/system/files/Probation.pdf>

⁴² Ibid

- Socializing animals at animal shelters.
- Contributing to the operations of volunteer fire departments and emergency services.
- Helping with civic beautification.
- Raking leaves.
- Mowing the grass.
- Washing the windows.
- Cleaning the house.
- Putting up and taking down Christmas decorations.
- Theatre and work as backstage running the lights and sound.
- Working at a breast cancer awareness organization.
- Working with a group that promote water conservation.

PAROLE

Parole is a method whereby a prisoner conditionally is released from the prison before completion of sentence on account of his good conduct. The word parole has been derived from French phrase "*je donne ma parole*" which means "I give my word". The prisoner has to undertake that he would maintain good behavior. Though scope of the parole is different from that of probation, purpose of the both is rehabilitation of offenders by providing them an opportunity to reintegrate in the society.

▪ **Law Dealing with Parole in Pakistan:** **Following laws deal with parole in Pakistan**

- i. Good Conduct Prisoners Probationer Release Act 1926
- ii. Good Conduct Prisoners Probationer Release Rule 1927

▪ **Conditions**

- **Good Conduct:** The first condition for award of parole is good conduct of the prisoner. A prisoner can be relapsed on parole only if jail authorities testify his good conduct.
- **Completion of a minimum period of sentence.** Parole can be awarded on completion of a minimum period of sentence.
- **The Authority for Award of Parole is vested in the Government:** While probation is given by the court, the parole is awarded by the Government. The procedure for award of parole is provided under Rule No 4 of Good Conduct Prisoners Probationer Release Rule 1927 which provides that:

"The Assistant Director, Reclamation and Probation, may, at any time, after consultation with the Superintendent release of well or otherwise prepare a list of the prisoners, who are well behaved person. Their antecedents or conduct in prison appears to be likely, if released from prison, to abstain from crime and to lead a useful and industrious life, and may forward a list of

such prisoners to the Government through the "Director Reclamation and Probation", with his recommendation for their release under the Act.

The Government may thereupon permit all or any of such prisoners to be released by license under section 2 of the Act.

(b) A license under section-2 of the Act shall in Form "A" (Form 2.1) herewith annexed, and shall contain the conditions stated therein.

(c) No prisoner shall be released from a prison unless the conditions of the license are personally explained to him by The Superintendent and are accepted by him. The fact that the conditions were so explained to the prisoner and were accepted by him shall be certified on the license by the Superintendent."

- **The Order containing award of Parole is called License:** The order of the Government on which parole is awarded to a prisoner is called "license". The form of license is given below.
- **The period of Parole is equal to the remaining period of sentence:** The period of Parole is equal to the remaining period of sentence. For example a prisoner is sentenced for 10 years but released on parole after completion of 7 years on imprisonment, he would remain on parole for three years.
- **Revocation of Parole on violation of terms of license.** Parole is revoked in the event of violation of terms of license by the offender.
- **Employment:** Under supervision of the parole officer, the offender is placed in employment of an approved employer.
- **Payment of Wages:** The offender on parole is entitled to payment of wages which are temporarily parked in an account maintained by the parole officer and released to the offender on completion of parole. However with permission of the parole officer, the offender can receive a part of the wages during the term of parole.
- **Place of Employment:** The place of employment should be outside of a radius of 80 kilometers from the place of residence of the offender.
- **"No discharge from conviction".** Unlike Probation, the offender is not discharged from conviction on award of parole.

Form A

Licence of conditional release under section 2 of the Good Conduct Prisoners' Probational Release Act, 1926.

In exercise of the powers conferred by section 2 of the Good Conduct Prisoners' Probational Release Act, 1926, the Governor of Punjab is pleased, subject to the observance of the conditions hereinafter set forth, to grant to and direct the release of _____ son of _____, caste _____, aged _____, resident of _____, Prisoner No. _____ at present confined in the _____ Jail, in pursuance of warrant of which a certified copy/copies is/are attached thereto. The period during which this license shall remain in force shall be calculated in accordance with the provisions of sections 3 and 5 of the aforesaid Act. On the expiry of the period of this license (except when it is revoked), the prisoner shall be released from the observance of all the conditions set forth hereafter.

Conditions to be observed by the licensee.

1. The licensee shall proceed forthwith to _____ and report himself to _____ Probation Officer.
2. He shall remain under the supervision of the said Probation Officer or of any other Probation Officer to whose supervision he may be transferred by the Reclamation Officer during the period of the license. He shall obey all the instructions of the Probation Officer issued to him either verbally or in writing regarding his residence, employment or conduct.
3. He shall not proceed beyond the limits of the places within which he may be restricted from time to time by the Probation Officer, without the permission in writing of the said Officer. He shall proceed to any place indicated by the Probation Officer and by the route prescribed by him.
4. He shall report himself at such times and places and to such persons as Probation Officer may from time to time direct.
5. He shall apply himself with due industry, to the satisfaction of the Probation Officer to the work upon which the said Officer may permit him to be employed.
6. He shall not commit any criminal offence punishable by the law of India.
7. He shall receive such remuneration for his work as the said Probation Officer may direct.
8. If in the opinion of the State Government he is found to have committed a breach of the conditions numbered (1) to (6) of this licence, the State Government may revoke the license and direct his re-admission to prison to serve the rest of his sentence subject to the provisions of section 4 of the Good Conduct Prisoners' Probational Release Act, 1926.
9. On the revocation of this license, the licensee shall return to the prison named in the order of revocation on or before the date specified for him to report himself in the order of revocation.

Home Secretary to Government of Punjab.

I, _____ hereby acknowledge that I have understood the conditions specified in the above order of conditional release as the conditions subject to which I am to be conditionally released and I accept them.

Sd/-

Signature or mark of the convict.

Certified that the conditions specified in the above order of conditional release have been read over and explained to the prisoner named in the said order, and that he has acknowledged that he understands and accepts the same as the conditions under which he is to be released before the expiry of the term of his sentence. I believe that he understands and accepts them.

Sd/-

Superintendent of Jail

Dated _____

▪ Duties of a Parole Officer

- To work under the control of Assistant Director Parole
- Supervision of licensee/prisoners
- Agreement with the employer
- Ensuring reasonable lodging/sanitary conditions for licensee/prisoners
- Ensuring payment of wages to licensee/prisoner

- Report breach of conditions by the prisoners

▪ Difference Between Probation and Parole

Probation	Parole
Governed under "Probation of Offenders Ordinance 1960"	Governed under "Good Conduct Prisoners Probational Release Act 1926"
Not applicable for male offender sentenced to life imprisonment	Applicable in all case except death penalty
Awarded by a Judge	Awarded by the Government
Awarded through a "Probation Order"	Awarded through a "License "
The Offender is not sent to jail.	A specific portion of sentence must be undergone
No employment is involved	The offender is placed under an employment
No restriction on free movement	The offender cannot move freely
Sentance or Guilt of the offender is quashed.	Charge is not quashed, and the offender remains guilty
The probation can run for any period of time(from one to three years) at sole discretion of Judge irrespective of the quantum of punishment	The period of sentence has to be completed

Prosecution

Prosecution pleads the case of state before the court of Law in order to get the offenders convicted and sentences. . The term prosecutor has been defined as under.

- A lawyer who conducts criminal proceedings on behalf of the state.(Oxford)
Or
- A lawyer who acts for the government against someone accused of a crime in court.(Cambridge)

Since the case of police is presented before court of law by the prosecutor, his role starts as soon as an FIR is registered. The investigating officer should seek legal advice from the prosecutor in case of any legal complication. Once the case is submitted in the court of Law, the prosecutor take charge of that case to ensure that the justice is uphold and the one who has committed crime is penalized by the court.

Rule 27.15(2) of Police Rules 1934 lays down the duty of prosecutor in following manner:

To prosecute, watch or direct the prosecution of cases in the courts of the district. In this connection, it must be realized that his duty embraces not only the presentation of the prosecution case but contesting the claims of the defence and ensuring the observance of conditions and restrictions imposed by the law on the discretion of courts to pass orders in certain circumstances, and the observance of all High Court orders issued with the object of expediting decisions and preventing abuses.

Zafar Ahmad Farooqi, a police officer, in his paper submitted in a training program of UNAFEI highlights the importance of prosecution in following words.

Prosecution plays an important role in the administration of criminal justice. Without successful prosecution, the desired objects cannot be yielded. The role of prosecutors not only commences soon after registration of a case, but it also lasts up to the final verdicts delivered by the criminal court. The First Information Report (F.I.R.), is the important document that sets the whole machinery of law into motion. If it is founded on feeble footing, it goes on to disturb the administration of criminal justice, as it becomes a Herculean task for the prosecutors to inject into a dead horse. So while drafting an F.I.R, its prerequisites ought to have been incorporated strictly in accordance with Code of Criminal Procedure. The prosecution is required to be equipped with the latest decisions of the superior courts for proper legal guidance to the investigating officer, who mostly banks upon the stereotype mechanism and blinks towards the latest guidelines given by the higher judicial forums. While the prosecutor renders valuable advice to the investigating officer during the course of investigation, he also removes the serious legal lacunas, whereafter the case becomes the best one possible to be presented in the court of competent jurisdiction. After submission of the challan, the role of the prosecutor is very pivotal because he has to finalize the trial after the prosecution witnesses are examined and cross-examined by the defence counsel and after he has cross examined the defense witnesses adduced by the accused.

▪ **Duties of Prosecutor**

- **Institution of Criminal Proceedings on behalf of the state in the court (Police Report/Challan is submitted through prosecutor):** The police report (U/S 173 of CRPC 1898) is submitted through prosecutor. The prosecutor may ask the police to remove any defect if found in the report.
- **Examination of Investigation:** Prosecutor may call a report from the police regarding investigation of any case so as to

ascertain whether the investigation is being conducted without any defect.

- **Withdrawal from Prosecution:** If at any stage, the prosecutor is of the opinion that it is just and fair to withdraw from the prosecution, he may do so with the permission of court as provided under section 494 of CRPC 1898.
- **Represent the State during trial.** The prosecutor represents the state during the course of criminal trial.

▪ Problems of Prosecution

- **Miserably low Conviction rate in the World (8.6%, India 37, US: 85%)⁴³:** The fundamental objective of prosecution is to get the offenders punished through courts for their wrongs so as to create deterrence against crimes. This goal is measured by "conviction rate" which is miserably low in Pakistan. This implies that criminal justice system of Pakistan doesn't create effective deterrence against crimes.
- **Shortage of Manpower:** Sufficient prosecutors are not available to cater for the cases in the court. In lower courts, one persecutor is assigned multiple courts. In such a situation, the persecutor is generally unable to do justice with all the cases.
- **Low Budget:** Prosecution remains generally a neglected area in Pakistan. The budget assigned to prosecution is not sufficient for its effective functioning. A study conducted to ascertain problem of prosecution points towards this aspect in following words:⁴⁴

While discussing the administrative issues, the participants highlighted inadequate basic infrastructure such as non-availability of offices and other working facilities as the major problems. There is dearth of computers, printers, stationery and photocopy machines etc. in prosecution offices. The study revealed that in courts, many prosecutors are not being given any sitting area or an office. Mostly prosecution department is

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PILDAT

http://www.pildat.org/Publications/publication/ROLR/ProsecutionServicesandMediainPakistan_MediaBrief.pdf

⁴⁴ KHALIL, I., USMAN, A., & AMJAD, A. (2021). CHALLENGES FACED BY PROSECUTORS IN THE ADMINISTRATION OF JUSTICE IN PAKISTAN. *PalArch's Journal of Archaeology of Egypt/Egyptology*, 18(10), 2641-2651.

hosted in a rented house, which is unlike government organizations.

- **Lack of adequate remuneration and suitable working environment.** Prosecutors are not paid adequate remuneration and other ancillary benefits related to their jobs. The above referred study highlights this in following words:

"The majority of participants highlighted insufficient salary as the major problem faced by the prosecutor, which affects not only their family but their job as well. It was highlighted by one of the participants that "while both judges and prosecutors are selected on the basis of competitive exams with similar educational backgrounds, the difference in their salaries is approximately double that generates a feeling of professional inequality among prosecutors." Another most pointed out personal problems faced by the prosecutors was the lack of domestic facilities such as residence and transportation. Male prosecutors raised objections that the policy of home district posting is not available to them. It therefore becomes difficult for them to manage their domestic issues within limited income. In addition to this, the process of their promotion is very slow. While most of the them were not satisfied with their job, they mentioned that they would rather try to find some better job such as judiciary.

Among the other personal issues, some participants highlighted security issues. While they deal with heinous criminal cases such as murder, rape and theft, they are not provided with sufficient security facilities".

- **Lack of effective accountability:** The whole government sector in Pakistan suffers from absence of effective accountability. The government employees are generally believed to be not working efficiently mainly because of the job security. Same holds for the prosecutors. They are not held responsible for low conviction rates.
- **Lack of Coordination among police and prosecution:** The case of police is presented by prosecution in the court. Coordination among both institutions is necessary for effective dispensation of justice which is however found lacking mostly. The above referred study highlights that:

"A significant number of prosecutors stressed that the attitude of police is not cooperative with them. They do not bother to come to prosecution office to scrutinize their challan. When a challan is returned to investigation officers for the removal of defects in investigation, they do not remove them properly. They

neither conduct investigation seriously nor bother to collect valuable evidence at the place of occurrence. As a result, accused persons take benefit of defective investigation of police. One of the prosecutors said that "there should be parameter that if investigation officers do not cooperate with the prosecutor, action should be taken against them"

- **Lack of adequate opportunities of training and development.** Training and continuous professional development are indispensable for maintaining a competent human capital. This is even more critical for prosecution whose work demands up to date knowledge of laws, amendments and rulings of courts. However, as stated earlier, prosecution remains a neglected area. The governments are generally found disinclined to invest in training and development of the prosecutors. This facts has been highlighted by the above referred study in following manner:

"While discussing the induction trainings and other workshops related issues, the participants mentioned that their department did not conduct sufficient training for the prosecutors. Incomprehensive policy about the induction training of the prosecutors was also highlighted as one of the major causes of professional incompetence of the prosecutors in criminal justice system. One of the participants said that "at initial level, when we are inducted and placed in field, we are like a soldier in a battlefield without a weapon. More training should be imparted to prosecutors before sending them in field".

- **Lack of Autonomy and independence:** The prosecution, like police, is not immune to political interference. The heads of prosecution in provinces are appointed by the political governments who are therefore bound to safeguard the interest of their appointers . It is therefore imperative that the prosecution department may be reorganized by according it sufficient independence. The prosecution heads of the provinces should be appointed on professional basis instead of political affiliations.

Prison

A place in which people are legally held as a punishment for a crime they have committed or while awaiting trial.

- **Functions of Jails**
 - **Execution of Sentence:** The sentence awarded to prisoners by the courts is executed by the prisons.

- **Maintenance and Care:** The prisons are required to look after the prisoners and treat them with care. Involvement in crimes doesn't deprive the prisoners of their legal rights.
- **Discipline:** The prisons management enforce jail discipline upon the prisoners by making them follow the jail laws and rules.
- **Rehabilitation:** One of the major functions of prisons is to rehabilitate and reform the offenders so that once they go out of prisons, they spend their lives as law abiding citizens of the society.

▪ **6 C Model of Prison Management**⁴⁵

The functions performed by prisons can be elaborated with six words starting from alphabet "C"

- **Custody:** Safe placement: (The prisoners are placed in the custody of jails)
- **Care:** Proper lodging and sanitary
- **Control:** Discipline
- **Correction:** Rehabilitation
- **Cure:** Medical and psychological Treatment
- **Community :** Socialization

▪ **Problems of Jails**

Prison system in Pakistan is plagued with plethora of wide ranging problems whose brunt is borne by the prisoners. It is believed that prisoners are living under inhuman conditions. The international crises group points towards the state of Pakistani prison system in following words⁴⁶.

"A corrupt and dysfunctional prison system has contributed to – and is a manifestation of – the breakdown of the rule of law in Pakistan. Heavily overpopulated, understaffed and poorly managed, the prisons have become a fertile breeding ground for criminality and militancy, with prisoners more likely to return to crime than to abandon it. The system must be examined in the context of a deteriorating criminal justice sector that fails to prevent or prosecute crime, and protects the powerful while victimising the underprivileged. Yet, while domestic and international actors alike are devoting more resources to improve policing and prosecution, prisons continue to be largely neglected. The Pakistan Peoples Party (PPP)-led government at

⁴⁵ South Asian Studies

⁴⁶ <https://www.crisisgroup.org/asia/south-asia/pakistan/reforming-pakistan-s-prison-system>

the centre and the four provincial governments, as well as the country's international partners, should make penal reform a central component of a criminal justice reform agenda.

Pakistan lacks a systematic program for the capacity building of prison staff, while existing regulations on postings, transfers and promotions are frequently breached because of nepotism and political interference. Given weak accountability mechanisms for warders and prison superintendents, torture and other brutal treatment are rampant and rarely checked. Moreover, with out-dated laws and procedures, bad practices and poor oversight, the criminal justice system is characterised by long detentions without trial. As a result, prisons remain massively overcrowded, with nearly 33,000 more prisoners than the authorised capacity. The large majority of the total prison population – around 50,000 out of 78,000 – are remand prisoners awaiting or on trial. With more than two dozen capital offences, including many discriminatory provisions that carry a mandatory death penalty, the death-row population is the largest in the world, though the current government has placed an informal moratorium on executions.”

A recent editorial of Dawn News laments state of prison system in Pakistan in following manner⁴⁷:

THE Islamabad High Court's comments that the country's prisons have turned into "epicentres of crime, corruption and corrupt practices" are hardly surprising. While hearing a case about the maltreatment of prisoners in jails on Monday, the IHC chief justice remarked that "elite capture" also seemed to prevail in prisons as those with power exploited the system, aided by the prison authorities, while the basic rights of vulnerable prisoners were continuously being infringed upon. This description of Pakistan's prisons could serve as an indictment of the country's overall criminal justice system. The dismal conditions in prisons, where criminality persists, stems from structural problems of the criminal justice system itself. The overcrowding of prisons, not investing in the salaries and training of prison staff and a lack of resources have all contributed to prisons' inability to fulfil their role as venues of reformatory justice. Though a number of reforms have been carried out in the area of prosecution and policing, successive

⁴⁷ <https://www.dawn.com/news/1666438/missing-prison-reform>

governments have failed to accord priority to prisons and their staff. Lack of capacity of the prison staff combined with a situation where their transfers and promotions are often compromised on account of political interference, creates conditions ripe for exploitation by criminal elements. For instance, as demonstrated by the petition before the IHC, a prisoner, Irfan Iqbal revealed the nexus between a land-grabbing gang and the prison authorities. There are other examples too, like Omar Saeed Sheikh, who, from his cell in Hyderabad, allegedly made hoax calls to key leaders in India and Pakistan in an attempt to ratchet up tensions between the two countries.

The authorities should ensure full accountability of prison officials who allow reformatory premises to be turned into dens of crime. As a starting point, they can note their domestic and international commitments and work towards reforming a faulty criminal justice system that has neither curbed lawbreaking behaviour nor emphasised the rehabilitation of prisoners. If matters are left as they are, once released, prisoners will return to a life of crime.

The major problems which the prison system of Pakistan is grappling with are discussed below.

- **Overcrowding:** The jails in Pakistan are over populated which gives rise to number of problems. According a report of Federal Ombudsperson, there are 77275 prisoners incarcerated in the 114 jails across the Pakistan against capacity of 57742. This overcrowding makes the conditions unlivable for prisoners in view of already strained resources.
- **Corruption:** Jail is an institution where corruption is rampant. There are many avenues of corruption. Bribe is taken from prisoners. Even prisoners are said to be involved in criminal activities in connivance the jail staff. Likewise the resources meant for the welfare of prisoners go to the pocket of jail authorities.
- **Lack of sanitation and health facilities:** Sanitation and health facilities provided to the prisoners are not up the required minimum standard. A large population of jails in Pakistan contract diseases of serious nature due to unhygienic conditions in jails.
- **Violence against prisoners particularly women and children:** Prisoners in jails are subjected to violence by the jail authorities. Torture and exploitation is a routine phenomenon in the jails. Most vulnerable are the women and children kept in jails.

- **Lack of proper external oversight mechanism:** External oversight mechanism and accountability of jails authorities is devoid of effectiveness. Though visits are made by different executive and judicial authorities,
- **Lack of educational and skill training facilities etc.** One of the fundamental objectives of prisons is to reform and rehabilitate the prisoners so as to make them re-integrate in the society as law abiding citizens upon their release from the prisons. For this purpose, adequate opportunities for education, training and skill building of the prisoners are of crucial importance. However such facilities, though available in prisons, are not effectively utilized in Pakistan.
- **High Degree of Recidivism:** Recidivism refers to tendency of criminals to recommit crimes after discharge from jails. Though no official data is available on this subject, but it's a commonly known observation that there is high degree of recidivism in Pakistan. The environment of jails in Pakistan encourages the prisoners to recommit crimes instead of reforming them and making them become law abiding citizens after getting released from the prisons.

Punitive & Reformative Treatment of Criminal

- **Corporal Punishment**

It is inflicting physical pain on a person or punishment that involves hitting someone.

- **Arguments Against Corporal Punishment**

- Against Human Dignity
- Flouts the principle of Reformation
- Indicate barbarous face of the state
- Not approved by modern standards of civilization
- Open to abuse
- Against UN Convention (The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1985)

Informal Agencies for Disposal of Criminal Complaints

Informal agencies provide a mechanism for settlements of disputes outside the regular criminal justice system or regular courts. It is also termed as "Informal Justice System". The "Jirga" and "Punchaya" system in Pakistan is example of informal justice. However both of them are not recognized

under any Law therefore both the models, “Jirga” and “punchayat” are subject to abuse and thus may lead to miscarriage of justice

Informal Justice system may be also be established by formal law. This ensures that injustice is not done through informal justice system. This informal mechanism of resolution of criminal disputes in informal manner is in vogue across the globe.

▪ **Informal Justice System for Resolution of Criminal Disputes in Pakistan**

There are following three instruments which provides informal resolution of criminal disputes in Pakistan

- Alternate dispute resolution Act 2017 was the first nation wide law passed in Pakistan in year 2017 for informal resolution of criminal cases.
- KPK Police Act also introduced this mechanism(Section 73 of the Act which provides dispute resolution councils)
- Diversion in Juvenile Justice System Act 2018

Let's have a detailed look on these models:

➤ **Alternate Dispute Resolution Act 2017**

Promulgated in year 2017, the Act is meant to provide a mechanism for settlement of disputes as a complementary to the formal justice system. The Act provides that every court or quasi judicial forum of original jurisdiction will refer the cases given in schedule of the Act to the Alternate Dispute Resolution with consent of all the contesting parties. The ADR includes ADR Centers notified by the government and panel of Neutrals appointed by the government from different professional back grounds such as lawyers, retired civil servants, technocrats and other reputable individuals. The ADR proceedings are required to be concluded in the period of 30 days which is, though, extendable for another 15 days on the request of the “Neutral”. In event of the case being referred to arbitration, the period for proceedings is 60 days extendable by other 30 days on the request of the arbitrator.

Under section 14 of Alternate Dispute Resolution Act 2017, the scope of ADR has also been extended to criminal offences of compoundable nature as defined under section 345 of Criminal Procedures code 1898 or any other provision of the statute applicable to the case. The courts taking cognizance of such offences may refer the parties to the “Neutral” for facilitation in, making the parties to reach the settlement. In case of the offence have been compounded voluntarily by the parties, the “Neutral” is required to submit a report to the “Court”, following which the court may discharge the accused.

➤ **KPK Police Act 2017**

Dispute Resolution Counsels comprising of 21 members were established by the Inspector General of Police KPK at Police station level in year 2014 with

the mandate to facilitate amicable resolution of the criminal offences of petty nature in addition to rendering assistance to police for investigation and fact finding. The members were chosen from amongst reputable individuals of the society having no political affiliation. However, this arrangement was not sanctioned by any statutory instrument. Subsequently, section 168 A was added to Police Order 2002 through KPK Police Order (Amendment) Act 2015 to extend legal cover to the Dispute Resolution Counsels. The arrangement was kept intact under Section 73 of KPK Police Act 2017 which provides that the head of provincial police has been empowered to constitute Dispute Resolution Counsels at District, Tehsil and Police station level for settlement of the disputes of petty nature through conciliation. The section 73 provides that:

"Dispute Resolution Council.---The Provincial Police Officer for out of Court amicable settlement of petty nature cases, may constitute, Dispute Resolution Councils at District, Sub-Division or Police Station level, which shall consist of such number of members and shall conduct its business in such a manner as may be prescribed: Provided that the Dispute Resolution Councils already constituted by the Provincial Police Officer shall be deemed to have been validly constituted and all the actions taken, decisions made or order passed by such Dispute Resolution Councils shall be deemed to have been validly taken, made or passed under this Act.

Explanation: For the purpose of this section, petty nature case means and includes a small, minor, of less or inconsiderable importance and affected amity in the society or any cause leading towards provocation which may lead to a criminal offence.]"

➤ **Diversion under Juvenile Justice System Act 2018**

A method of informal resolution of criminal disputes has been provided under Juvenile Justice System Act 2018. The term Diversion has been defined as under.

"Diversion" means an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, (economic. psychological and educational background without resorting to formal judicial proceedings:

➤ **Benefits of Informal Justice System**

Following benefits can be ascribed to informal resolution of disputes.

- It reduces burden on formal justice system. The offences of petty nature are resolved informally therefore the formal justice system can deal more effectively with the offences of serious nature.

Juvenile Delinquency & Criminal Justice System

- There is easy access to justice. No hard formalities are involved in adjudication of cases therefore everyone can approach the informal agencies and forums to get justice.
- Informal justice generally resolves the disputes speedily, because no stringent formalities are involved.
- The major focus of informal justice is resolution of disputes in amicable manner which promotes social harmony.

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Section-III

Criminal Investigation

- Criminal Investigation
- Use of Torture to Extract Evidence during Investigation
- Intelligence Operations
- Forensic Investigation
- Gathering Information from Persons
- Techniques of Interrogation
- International Policing & Criminal Justice Monitoring organization

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Criminal Investigation

▪ General Definition

It is process of collection and analysis of information and evidence to identify and prove the guilt of an offender.

▪ Definition by Scholars

- "A lawful search for people and things to reconstruct the circumstances of an illegal act, apprehend or determine the guilty party, and aid in the states prosecution of the offender"⁴⁸
- "The collection of information and evidence for identifying, apprehending, and convicting suspected offenders"⁴⁹.

➤ Objectives of Criminal Investigation

The criminal investigation is aimed at achieving the following purposes.

- **To identify the offender:** The principle purpose of the investigator is to identify the person who committed the crime.
- **Collection of Facts incidental to the Case:** The investigation is required to collect all relevant facts incidental to the case.
- **To sift the wheat from the chaff:** This is sort the valuable things and discard the irrelevant ones.
- **To Preserve the Evidence:** Evidence is preserved in order to prove the case
- **To Draw Conclusions:** ~~Investigators draw conclusions from available facts.~~ Sale on Books 03325339708
- **To establish the Guilt in Court of Law:** ~~The entire exercise is rendered useless if the offender's guilt is not proved before the court of law.~~

➤ Principles of Criminal Investigation

- **Objectivity:** A condition of being free from bias which implies that the investigation process should not be influenced by personal interests or inclinations of the investigator.
- **Independence:** The investigator should be officially independent in conducting investigation.

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⁴⁸ Bruce L. Berg and John J. Horgan: *Criminal Investigation*, 3rd ed. (Westerville: Glencoe/Mc GrawHill) 1998.

⁴⁹ Elinor Ostrum, Roger B. Park and Gordon P. Whitaker: *Patterns of Metropolitan Policing* (Cambridge: MA: Ballinger, 1978) p.131.12

- **Neutrality:** The investigator should be neutral by avoiding leanings towards any of the parties to the case.
- **Relevance:** Remain focused on the relevant facts only.
- **Professionalism:** Reasonable degree of professionalism should be observed by the investigating officers.
- **Competence:** The investigating Officer should be well equipped the requisite skills and techniques of investigation.
- **Compliance with Law and Procedures:** Non Compliance with Law and set Procedures may cost the Investigation/Prosecution losing its case in the Court of Law.
- **Timeliness:** Non following of timeliness may render the case entirely irrelevant.
- **Record and Preservation of Evidence:** Evidence should be properly preserved to establish the case in the court.
- **Investigation Report:** The investigation report should be understandable, clear, concise and relevant.

➤ History of Criminal Investigation in Pakistan

Pakistan inherited its criminal justice system from its former colonial master, the United Kingdoms, where, initially Detective Department was established in 1842 in Metropolitan Police of London which was renamed as Criminal Investigation branch 1878⁵⁰. In subcontinent, the investigation department was established in Punjab in 1905 under Sir Edward Lee as its first DIG⁵¹ which was followed by other provinces. The techniques used at that time included the following:

- **Finger Prints:** Evidentiary value of finger prints was established in china in relation to ancient pottery. In sub continent finger prints were used back in 1858 in Bengal for authentication of contractual deeds⁵². Finger prints are now considered as an important evidence of an individuals' identity.
- **Dog Branch.** Dog branch was established in subcontinent in the province of NWFP (now KPK). Two officials were sent to south Africa for training. However for religious reasons and cultures, both Hindus and Muslim were averse to this idea⁵³.

⁵⁰ <https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=4896&context=etd>

⁵¹ Nazir Ahmed : *Our Police Heritage*, (Lahore: WAPDA, Printing Press 1961) p.113.

⁵² *Ibid*, p114

⁵³ *Ibid* , p115

- **Forensic Science Laboratories:** The first ever forensic laboratory was founded in Lahore in a photographic section of the criminal investigation branch during 1930. In 1947 the lab was serving as a training center in addition to the examination of fire arms, cloth, fibers, dust, counterfeit, coins, forged currency, secret inks, hand written and typed material⁵⁴.
- **Foot Tracking:** People of sub-continent are deemed as being experts in foot tracking (*Khoji*). However no substantial support was extended to utilize the expertise. However Foot trackers were hired to trace the criminal especially in rural areas and in certain cases were promoted to the rank of DSP

➤ **Facilities of Investigation in Pakistan**

- Punjab Forensic Science Laboratory(October 30, 2009)
- National Forensic Science Agency, Islamabad
- (DNA)
- Kadir Khan Research Laboratory, Islamabad
- (DNA)
- Forensic Science Laboratory, Islamabad
- Center for Applied Molecular Biology (CAMB), Lahore (DNA)
- Chief Chemical Examiner, (Punjab), Lahore
- Chemical Examiner, Multan
- Chemical Examiner, Rawalpindi
- Forensic Science Laboratory, Karachi
- Chief Chemical Examiner, (Sindh), Karachi
- Chief Chemical Examiner,(Sindh), Rohri
- Forensic Science Laboratory, Quetta
- Forensic Science Laboratory, Peshawar
- (SOURCE: National Police Bureau)

➤ **Statutory Framework Dealing Criminal Investigation in Pakistan**

- Criminal Procedures Code(CRPC) 1898
- Police Order 2002
- Police Rules 1934
- Special Laws

➤ **Problems of Criminal Investigation in Pakistan**

- Overall Problems of Police Organization
- Disappointingly Low Budget

⁵⁴ *ibid*

- Non separation of watch and ward from investigation
- Non availability of specialists
- Shortage of Staff
- Lack of Independence
- Corruption
- Lack of Competence
- Reliance on old methods of Investigation
- Lack of Infrastructure
- Non-Optimal use of technology
- Lack of equipment
- Shortage of Laboratories
- Delayed adjudication of Cases
- Use of Torture

Use of Torture to Extract Evidence during Investigation

Employing torture is prohibited by the Constitution and Law. The Article 14(2) of the Constitution provides that:

Article 14 (2): "No person shall be subjected to torture for the purpose of extracting evidence".

Likewise article 156 of Police Order 2002 makes the torture an offence punishable with 5 years rigorous imprisonment.

"PENALTY FOR VEXATIOUS ENTRY, SEARCH, ARREST, SEIZURE OF PROPERTY, TORTURE, ETC. - WHOEVER, BEING A POLICE OFFICER-

1. Without lawful authority, or reasonable cause, enters or searches or causes to be entered or searched any building, vessel, tent or place;
2. Vexatiously and unnecessarily seizes the property of any person;
3. Vexatiously and unnecessarily detains, searches or arrests any person; or
4. Inflicts torture or violence to any person in his custody; shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine."

However the fact remains that the legal provisions to the contrary notwithstanding, the police excessively employs torture in certain cases in very inhumane and disgracing manner.

According to an Article titled "The Investigation in Pakistan: Reality and Trends", Pakistan Vision, Volume 10 No 2 p. 175-179⁵⁵, the author observed that:

"There are various physical tortures used by police during criminal investigation including slapping on the face, beating by stick on any place of body, torture by fan belt on the ground by laying upside down or hanged by ropes in the tree or roof of the building, keeping person long time to wake up by using various tactics, pulling out the nails or crossing/pricking of needle below nails, apply of electric current on the genitals, pushing of the legs in opposite directions by force that joint between two legs is cracked, passing the iron ring through the nose to rope with roof or tree for long time, use of chilly and petrol in anus, pour of lime stone and tobacco water mixed in the nose, compel to take human urine and stool by mouth etc".

Preliminary Investigation

Preliminary investigation implies initial scrutiny of the allegation before of registration of case. In order to ascertain availability of sufficient grounds indicating commission of an offence. The law in Pakistan generally contains no provisions with regard to "Preliminary Investigation" as the process of investigation starts after "Registration of FIR". However there are certain exception where preliminary enquiry/investigation is permissible.

- Under Section 159 of CRPC 1898, a Magistrate may order holding of preliminary enquiry where a crime is suspected to have been taken place.
- Under Section 196-B, Preliminary investigation can be conducted in connection with crimes against the state.
- Preliminary Enquiry is also permissible under the laws/rules of special law enforcement agencies such as NAB, FIA and Anti-Corruption.
- There are certain rulings of the court in which police has been allowed to hold preliminary investigation prior to registration of FIR. (2006 P Cr. L J 1191, 1991 P Cr. L J 2167, 1977 P Cr. L J 2)

- **Objectives**

- To prevent false and fallacious complaints

⁵⁵ The Investigation in Pakistan: Reality and Trends", Pakistan Vision , Volume 10 No 2 p. 175-179⁵⁵



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- To prevent the accused from agony
- To substantiate the allegation
- To confirm occurrence of an offence
- To avoid unnecessary litigation

▪ Manual of Preliminary Investigation

Manual of Preliminary Investigation is a publication of the Department of Justice, USA which contains guidelines for police officers in conducting preliminary investigation. But remember that this manual is not applicable to Pakistan. The objective of conducting preliminary investigation is given as under⁵⁶.

The Preliminary' Investigation Manual is a police officer's guide for conducting effective initial or preliminary criminal investigations. It attempts to place in their proper perspectives the options available to the investigating officer so that the total time spent in investigative activities will be minimum and results maximum. The suggestions included do not deal with every conceivable type of initial investigation, but they will insure that investigations will have an increased chance of reaching their objectives: crime identification, crime solution with apprehension, and successful prosecution of the criminal. the procedures recommended are based on Rochester Police Department research into the preliminary investigation process. This research was aimed at identifying investigative strategies which were most effective in solving crimes.

The US Department of Justice highlights the purpose, utility and object of the Preliminary investigation and Manual in following words.

The preliminary investigation is the police agency's first response to a report that a crime has occurred. As in every investigative effort, the primary objective of the preliminary investigation is to determine who committed the crime and to apprehend the offender. The preliminary investigation collects evidence which supports that a crime has occurred, the identification of the offender, and the arrest and subsequent conviction of the offender. The framework of the preliminary investigation is based on the following major tasks: (1) verification that an offense has occurred; (2) identification of the victim, the place of the crime, and the time of the crime; (3) identification of solvability factors; (4) communication of the circumstances of the crime; and (5) the identification of those

⁵⁶ <https://www.ojp.gov/pdffiles1/Digitization/84585NCJRS.pdf>

investigative tasks completed and those yet to be done. Twelve solvability factors are witnesses to the crime, a suspect's name, knowledge of where a suspect can be located, description of a suspect, identification of a suspect, property with identifiable characteristics, existence of a significant method of operation, a description of the car used by the suspect, positive results from a crime scene evidence search, belief that the crime may be solved with publicity and reasonable additional investigative effort, and an opportunity for but one person to have committed the crime.

Intelligence Operations

▪ Definition

Intelligence operations indicate covert operations followed by compilation and analysis of information to predict, monitor or prevent a crime are called intelligence operations.

▪ Levels of Intelligence Operations:

Intelligence operations are conducted at two levels.

▪ Tactical Levels/Micro Level (Special Branch, IBetc)

Tactical level are generally directed at individual criminals. The special branch of police, Intelligence Bureau and Federal Investigation Agency are generally involved in these operations. For example the culprit of motorway rape incident was apprehended through intelligence operations.

▪ Strategic Level /National Security (JID)

These are state level operations in which state security agencies are involved. For example apprehension of Kalbhoshan Yadev, a spy of India, was apprehended by the security apparatus of Pakistan through intelligence operations.

▪ Nature of Crimes for which intelligence operations are required

- Organized Crimes
- High Risk Offences
- National Security Matters
- Drug Trafficking
- Terrorism

▪ Requirements for Successful Intelligence Operations

Following are the major requirements for conducting successful intelligence operations.

- Effective coordination amongst police organisations
- Availability of requisite resources

- Use of modern technology and devices
- Trained Staff involved in the operations
- Timely Decision Making
- Effective communication
- Team Work
- Commitment and Dedication of the Team

Forensic Investigation

“Forensic Investigation” means use of modern technology during the course of investigation. The development in modern technology has on the one hand facilitated the process of investigation and on the other hand there are number of crimes which are either performed through technology or their object is a technological device. It is therefore imperative that an investigating officers must be well versed with scientific techniques and tools of investigation.

➤ **Evidentiary Value of Digital Evidence**

There are number provisions in the legal framework of Pakistan which make the evidence gathered through scientific methods as an admissible piece of evidence. Article 164 Qanoon e Shahdat Order (QSO) 1984 extend legal cover to Evidence collected through Modern Devices. It states that:

164. Production of evidence that has become available because of modern devices, etc.: *In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.*

Article 164 of Qanoon e Shahdat Order (QSO) 1984 empowers the courts to seek expert opinion on the matters, inter-alia, related to scheince in following manner:

59. Opinions of experts: *When the Court has to form an opinion upon a point of foreign law, or of science/or art, or as to identity Of hand-writing or finger impressions; the opinions upon that point of persons specially skilled in such foreign law science or art, or in questions as to identity of hand-writing or finger impressions-are relevant facts. Such persons are called experts.*

- **Other Provisions in Qanoon e Shadat Order related to scientific and electronic evidence.**

Provision	Article
1"(e) the expression, “automated”, “electronic”, “information”, information system”]. Electronic document”, “electronic signature”, “advanced electronic signature” and “security procedure”, shall bear the meanings given in the	2(1)(e)

Provision	Article
Electronic Transactions Ordinance, 2002;	
(f) the expression "certificate", where the context so admits, includes the meaning given to it in the Electronic Transactions Ordinance, 2002	2(1)(f)
[Explanation.— Statements generated by automated information system may be attributed to the person exercising power or control over the said information system.]	30
Relevance of information generated, received or recorded by automated information system: -- Statements in the form of electronic documents generated, received or recorded by an automated information system while it is in working order, are relevant facts.	46-A.
Explanation 3:-- A printout or other form of output of an automated information system shall not be denied the status of primary evidence solely for the reason that it was generated, sent, received or stored in electronic form if the automated information system was in working order at all material times and, for the purposes hereof, in the absence of evidence to the contrary, it shall be presumed that the automated information system was in working order at all material times.	73
"Explanation 4:-- A printout or other form of reproduction of a Electronic Document, other than a Document mentioned in Explanation 3 above, first generated, sent, received or stored in electronic form, shall be treated as primary evidence where a security procedure was applied thereto at the time it was generated, sent, received or stored."	73
Proof of electronic signature and electronic document:-- If an electronic document is alleged to be signed or to have been generated wholly or in part by any person through the use of an information system, and where such allegation is denied, the application of a security procedure to the signature or the electronic document must be proved."	78-A.

Under section 27-B of Anti-Terrorism Act 1997, an accused can be convicted on the basis of scientific evidence in following manner:

27B. Conviction on the basis of electronic or forensic evidence etc.— notwithstanding anything contained in this Act or Qanun-e-Shahadat, 1984 (P.O. No. X of 1984) or any other law for the time being in force, a person accused of an offence under this Act may be convicted on the basis of electronic or

forensic evidence or such other evidence that may have become available because of modern devices or techniques referred to in Article 164 of the Qanun-e-Shahadat, 1984 (P.O. No. X of 1984):

Under section 164 B of CRPC 1898, DNA analysis of offences related to rape (under section 376, section 377 or section 377B) is mandatory.

164B. DNA test. (1) *Where an offence under section 376, section 377 or section 377B of the Pakistan Penal Code, 1860 (XLV of 1860) is committed or attempted to have been committed or is alleged to have been committed, Deoxy ribo Nucleic Acid (DNA) samples, where practicable, shall be collected from the victim with his or her consent or with the consent of his or her natural or legal guardian and the accused during the medical examination conducted under section 164A within optimal time period of receiving information relating to commission of such offence.*

(2) *The DNA sample collected under subsection (1) shall at the earliest be sent for investigation to a forensic laboratory where these shall be properly examined and preserved:*

➤ **Forensic Investigation Techniques**

Following are the major forensic techniques.

- **Audio Visual Analysis:** Audio visual analysis can determine whether an audio or video is edited or not.
- **Digital Forensic:** Digital forensic deals with investigation, recovery and analysis of information and data stored on computer devices.
- **DNA Testing:** DNA test is done to confirm an individual's identity because DNA of every human on the earth is unique.
- **Forensic Photography.** "Forensic Photography" means taking picture of the crime scene on first visit by the investigating officer in such a manner that it can be kept as a permanent record.
- **Toxicology:** Toxicology analysis toxic material or substance administered to a person and its impact.
- **Trace Chemistry/Evidence:** It determines the identity of a person from even a very small things left at the crime scene such as hair or blood stain.
- **Polygraph:** Polygraph is also known as lie detector and can tell whether a person is speaking truth or telling a lie.
- **Fire Arms & Tool Marks:** This is analysis of fire arms and tools used in crimes. According to National Forensic Science Agency

"It is a fact that most of crimes involve weapons (firearm or tool). The concept of individuality (as applied to the fingerprints and

DNA of humans) is also applicable in case of firearms. Certain striations and markings are left on cartridges and bullets when fired by a weapon. These markings are unique and belong to that particular weapon thus making it "fingerprint" of the weapon. Likewise, the striations and indentations left on a surface or object by a tool are unique identification marks of that particular tool. The firearm and tool marks analysis is thus based on this fundamental principle of individuality.⁵⁷

- **Analysis of Fingerprints:** Like DNA, fingerprints of every individual are unique. Evidentiary value of finger prints was established in china in relation to ancient pottery. In sub content finger prints were used back in 1858 in Bengal for authentication of contractual deeds⁵⁸. Finger prints are now considered as an important evidence of an individuals' identity.
- **Questioned Documents:** "Questioned Documents" are the documents in dispute/court of law which can be examined for their veracity or otherwise. According to National Forensic Science Agency⁵⁹:

Any piece of written, printed or electronically produced material that provides information or evidence or may serve as an official record is called document. Questioned Documents is a term associated to all those documents that are entirely or partially subjected to question for its authenticity or its origin. Thus such documents are disputed in the court of law. Questioned document analysts evaluate / compare the characters of any signature, handwriting, typewriting, or other marks whose source/authenticity are in dispute with the known standards. The Questioned Document lab is providing following services:

- **Handwriting Analysis:** Handwriting results from a very complicated series of acts, being used as a whole, combination of certain forms of visible mental and muscular habits acquired by long effort. Any disputed handwritten document is analysed by comparing it with routine handwritten scripts written earlier to the questioned and specimens in slow medium and fast pace.
- **Signatures Analysis:** Signature is the name of the person written by him/her in a document as a sign of

⁵⁷ <https://www.nfsa.gov.pk/firearmstoolmarks-lab/>

⁵⁸ Ibid, p114

⁵⁹ <https://www.nfsa.gov.pk/questioned-documents-lab/>



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acknowledgement. Any disputed document bearing signature of alleged is analyzed by comparing it with routine signatures of the same preferably signed prior to the date of questioned and specimens in slow medium and fast pace.

- **Alteration:** A document that contains some change, either as addition or a deletion. Different types of techniques are employed to verify if any attempt of alteration was made.
- **Erasures:** Removal of writing, typewriting or printing from a document, accomplished by either chemical eradication or by an abrasive erasure in which writing is effaced by scratching out with any object.
- **Obliteration:** The blotting out or smearing over of writing to make the original invisible or undecipherable.
- **Indented writing:** Small indentations / impressions made on the sheet of paper that is immediately below the one on which writing was made. Such writing can be deciphered by electrostatic detection apparatus.

Gathering Information from Persons

▪ Interview

Interview is method of collects of facts which is non-accusatory and directed to any person who possess information related to a case.

Any person who possess knowledge about particular offence in any manner can be interviewed.

▪ Interrogation

Interrogation on the other hand is directed at the Suspect with the objective of establishing his guilt.

Interview	Interrogation
Non Accusatory: The person being interview need not be accused.	Accusatory: The person being interviewed is subject to accusation.
Generally Less Formal	Generally Formal
Generally interviewee has no incentive to withhold the information	Requisite information has to be gleaned tactfully.
Subject: Any related possessing information which may be relevant to the case	Only suspect is interrogated
Purpose: To collect information related to case.	To establish Guilt

Techniques of Interrogation

➤ Good Cop Bad Cop

Good Cop Bad Cop: This is a psychologically manipulative technique wherein one official /cop earn antipathy of the suspect through hostile behavior while the other one extend sympathy through friendly conduct. The suspect is made to divulge information through this tactic. The pros and cons of this technique are given hereunder.

Pros	Cons
This technique is quite simple. No extensive planning or use of resources is involved in this technique.	It's a deceitful method so doesn't conform to the requirements of morality.
Its wide use testifies its efficacy	Suspect may be aware of such tools in which case this technique may bear no fruit.

➤ REID Technique

REID technique is named after its author, John E REID, who has got it registered as a trademark "REID Technique of Interviewing and Interrogation"⁶⁰. Kozinski, W. (2017) has observed that⁶¹

"The Reid Interrogation technique has been the dominant method used by police in the United States and Canada to interview suspects of crime. This method is commercially marketed to police departments and other law enforcement agencies with the promise that 80 percent of those interrogated will confess. However, there is growing evidence that the Reid technique results in a significant number of false confessions, especially among the young, the mentally impaired and those of low intelligence. Other countries, especially England have rejected the Reid technique in favor of other methods that work equally well in obtaining confessions but without the risk of false confessions. In the United States, too, there is growing suspicion of the Reid technique and other hard interrogation tactics such as those employed in interrogating suspected terrorists at Guantanamo and Abu Ghraib"

⁶⁰ <https://www.reid.com/>

⁶¹ Kozinski, W. (2017). *The Reid interrogation technique and false confessions: a time for change.*

▪ Stages Of Reid

Factual Analysis: A provisional profile of the offender is drawn from the facts of the case. st According to **Joseph P. Buckley**⁶²

"This represents the collection and analysis of information relative to a crime scene, the victim and possible subjects. Factual analysis helps determine the direction an investigation should take and offers insight to the possible offender."

According to James Orlando⁶³

This factual analysis is also intended to "identify characteristics about the suspect and the crime which will be helpful during an interrogation of the suspect believed to be guilty[.]" such as motive or the suspect's personality type.

i. Behavioral Interview

Following factual analysis, the suspects are shortlisted on the basis of characteristics identified during the process. According to **Joseph P. Buckley**⁶⁴

The second stage of the process is the interview of possible subjects. This highly structured interview, referred to as a Behavior Analysis Interview, is a non-accusatory question and answer session intended to elicit information from the subject in a controlled environment. The clinical nature of the interview, including the asking of specific behavior provoking questions, is designed to provide the investigator with verbal, paralinguistic and nonverbal behavior symptoms which either support probable truthfulness or deception. A significant portion of training in The Reid Technique is devoted to the interpretation of a subject's behavioral responses during the structured interview.

ii. Interrogation

The accused persons who are shortlisted from the second stage, are subjected to Interrogation which is accusatory in nature and intended at

⁶² https://www.reid.com/educational_info/canada.html

⁶³ <https://www.cga.ct.gov/2014/rpt/pdf/2014-R-0071.pdf>

⁶⁴ https://www.reid.com/educational_info/canada.html

procuring confession. According to James Orlando⁶⁵, there are nine steps of interrogation.

- **The positive confrontation.** The investigator tells the suspect that the evidence demonstrates the person's guilt. If the person's guilt seems clear to the investigator, the statement should be unequivocal.
- **Theme development.** The investigator then presents a moral justification (theme) for the offense, such as placing the moral blame on someone else or outside circumstances. The investigator presents the theme in a monologue and in sympathetic manner.
- **Handling denials.** When the suspect asks for permission to speak at this stage (likely to deny the accusations), the investigator should discourage allowing the suspect to do so. The Reid website asserts that innocent suspects are less likely to ask for permission and more likely to "promptly and unequivocally" deny the accusation. The website states that "[i]t is very rare for an innocent suspect to move past this denial state."
- **Overcoming objections.** When attempts at denial do not succeed, a guilty suspect often makes objections to support a claim of innocence (e.g., I would never do that because I love my job.) The investigator should generally accept these objections as if they were truthful, rather than arguing with the suspect, and use the objections to further develop the theme.
- **Procurement and retention of suspect's attention.** The investigator must procure the suspect's attention so that the suspect focuses on the investigator's theme rather than on punishment. One way the investigator can do this is to close the physical distance between himself or herself and the suspect. The investigator should also "channel the theme down to the probable alternative components."
- **Handling the suspect's passive mood.** The investigator "should intensify the theme presentation and concentrate on the central reasons he [or she] is offering as psychological justification . . . [and] continue to display an understanding and sympathetic demeanor in urging the suspect to tell the truth."

⁶⁵ <https://www.cga.ct.gov/2014/rpt/pdf/2014-R-0071.pdf>

- **Presenting an alternative question.** The investigator should present two choices, assuming the suspect's guilt and developed as a "logical extension from the theme," with one alternative offering a better justification for the crime (e.g., "Did you plan this thing out or did it just happen on the spur of the moment?"). The investigator may follow the question with a supporting statement "which encourages the suspect to choose the more understandable side of the alternative."
- **Having the suspect orally relate various details of the offense.** After the suspect accepts one side of the alternative (thus admitting guilt), the investigator should immediately respond with a statement of reinforcement acknowledging that admission. The investigator then seeks to obtain a brief oral review of the basic events, before asking more detailed questions.
- **Converting an oral confession to a written confession.** The investigator must convert the oral confession into a written or recorded confession. The website provides some guidelines, such as repeating Miranda warnings, avoiding leading questions, and using the suspect's own language.

▪ Merits and Demerits of REID TECHNIQUE

Pros	Cons
This technique is in wider use which testifies its effectiveness.	This technique also involve deceitful tactics and emotional manipulation thus doesn't conform to to morality.
It's a methodically developed technique based on scientific study.	It also becomes ineffective if the suspect is aware of the tricks used in this technique.
REID Corporation claims its success rate to be hovering around 80% ⁶⁶	This technique is also criticized because false Confessions have been procured by using this method. The innocents may sometime come under pressure and make confession.

➤ Peace Technique

Peace technique has been developed by in England and Wales during 1990s. This technique is said to have been developed in response to allegation of false confessions through Reid Technique. This technique is meant to

⁶⁶ <https://www.reid.com/>

conduct interrogation in transparent and ethical manner. According to Durham College⁶⁷, it is: *A non-accusatory, information-gathering approach to investigative interviewing, the PEACE model is considered to be best practice and is suitable for any type of interviewee, victim, witness or suspect.*

PEACE is Acronym of the following terms.

- P: Preparation and Planning
- E: Engage and Explain
- A: Account, Clarify and Challenge
- C: Closure
- E: Evaluation

i. Step-I P: Preparation and Planning

The interrogator at the first step should be well cognizant of the facts pertaining to the case and the role of the person being interrogated upon. The questions to be asked during the course of interrogation should be well planned ahead of the interrogation.

ii. Step-II E: Engage And Explain

The suspect should be called upon and explained the purpose and methodology of the interrogation process.

iii. Step-III A: Account, Clarify and Challenge

The response so solicited should be properly accounted for. Any ambiguity should be clarified and any clarification should be sought promptly.

iv. Step-IV C: Closure

The process should be properly closed which implies that any missing link should be reconstructed, and ambiguities left should be clarified.

v. Step-V E: Evaluate

The entire process should be reviewed, analyzed in order to draw conclusions.

▪ Merits and Demerits of PEACE Model

Pros	Cons
Morally Sanctioned: PEACE model is highly conformant to the ethics and	Not useful in case of shrewd offenders: The habitual and shrewd

⁶⁷ <https://durhamcollege.ca/academic-schools/school-of-justice-emergency-services/centre-for-integrated-justice-studies/courses/peace-model-interviewinginterrogating>

morality. No deceitful tactic is employed in this technique.	offenders may however be well versed with these methods and may not be inclined to respond positively if dealt in lenient manner.
Let the suspect explain his view: This technique allows the offender to state his view without any interruption which minimizes the chance of violation of his rights.	Presumes that the person being interrogated will not hide anything. However in reality the criminals are mostly inclined to conceal the truth.
Methodical. Its also a methodically developed technique	Suspect may be aware of the model and manipulate it. In such case this technique may prove completely ineffective.

➤ Kinesec Interrogation

Kinesic interrogation aims to study the human behavior through non-verbal communication commonly known as body language. Tough importance of non-verbal communication in assessing human behavior is known from centuries, the term "kinesic" was coined by an American anthropologist named "Ray L. Birdwhistel" This technique requires deep understanding of human behavior.

Criminal Investigation Analysis

The process of studying criminal data in order to identify trends and relationships so as to draw conclusions for aiding the law enforcement is called criminal investigation analysis. Interpol defines Criminal Investigation analysis in following manner

"The identification of and provision of insight into the relationship between crime data and other potentially relevant data with a view to police and judicial practice."

Criminal investigation analysis is done at two levels:

- **Tactical Level/Operational Level:** It is meant to facilitate the law enforcement in apprehending the criminals and seizing the property. It brings immediate result and normally aids the individual investigator. For example law enforcement make analysis of investment made by the corrupt public officials in particular investment scheme and from the trends dig out such investment by another corrupt official.
- **Strategic Level.** It is meant to aid policy makers at higher level for decision making with benefits being realized over comparatively a longer period of time. For instance slowdown in economy may be linked to higher rates of crimes by youth.



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▪ **Benefits of Criminal Investigation Analysis**

- Aids in scientific study of crimes
- Aids in understanding the criminal trends
- Assist the instigators to reach at conclusions
- Aids in informed decision making by policy makers

Database Investigation

A database is collection of information in organized manner which can be accessed and analyzed in variety of manners. Data base investigation refers to analysis information available on database during the course of investigation. The data related to criminal investigation may include names, fingerprints, DNA and other details of criminals, information about stolen properties and passports. Punjab Police for example is maintaining Criminal Record management System (CRMS)⁶⁸ which keeps track of record of criminals. Recently the notorious criminals in the motorway rape case were identified when their DNAs were matched in the record available in the databases.

▪ **Essentials of database investigation**

- Accurate Record
- Protection against unauthorized access
- Continuous updating

▪ **Benefits of Database Investigation**

- Prompt access to huge record of information
- Accuracy of the information
- Permanent record
- Information available with negligible cost
- Reduces time of investigation

Electronic Investigation

Electronic investigation involves conducting criminal investigation through use of computer device. Electronic investigation has a very vast scope encompassing variety of methods in use of computer technology while carrying out investigation. Some of the methods are discussed below.

▪ **Collection of Evidence through Computer Devices and Networks**

Computer may store wealth of information which can be retrieved by the investigators. The investigator needs to be well versed with the computer

⁶⁸ <https://punjabpolice.gov.pk/crms>

technology. Preservation of record acquired through computer record must conform to the local rules and regulations.

▪ **Online Investigation**

It involves use of online resources during the course of investigation. The investigator needs to be acquainted with the common applications. The preservation and use of evidence gained through online investigation is a difficult task especially in Pakistan.

▪ **Email Investigation/Email Forensic**

Access to Emails exchanged between criminals provides another source of information for the investigators. "Chirath De Alwis" an expert of information security, in an article published on an online forum has given following techniques of email forensics⁶⁹

i **"Email Forensic Investigation Techniques**

Email forensics refers to analyzing the source and content of emails as evidence. Investigation of email related crimes and incidents involves various approaches.

ii. **Header Analysis**

Email header analysis is the primary analytical technique. This involves analyzing metadata in the email header. It is evident that analyzing headers helps to identify the majority of email-related crimes. Email spoofing, phishing, spam, scams and even internal data leakages can be identified by analyzing the header.

iii. **Server Investigation**

This involves investigating copies of delivered emails and server logs. In some organizations they do provide separate email boxes for their employees by having internal mail servers. In this case, investigation involves the extraction of the entire email box related to the case and the server logs.

iv. **Network Device Investigation**

In some investigations, the investigator requires the logs maintained by the network devices such as routers, firewalls and switches to investigate the source of an email message. This is often a complex situation where the primary

⁶⁹ <https://www.forensicfocus.com/articles/email-forensics-investigation-techniques/>

evidence is not present (when the ISP or proxy does not maintain logs or lacks operation by ISP [2]).

v. **Software Embedded Analysis**

Some information about the sender of the email, attached files or documents may be included with the message by the email software used by the sender for composing the email [2]. This information may be included in the form of custom headers or in the form of MIME content as a Transport Neutral Encapsulation Format (TNEF)[2].

vi. **Sender Mail Fingerprints**

The "Received" field includes tracking information generated by mail servers that have previously handled a message, in reverse order. The "X-Mailer" or "User-Agent" field helps to identify email software. Analyzing these fields helps to understand the software, and the version used by the sender.

vii. **Use of Email Trackers**

In some situations, attackers use different techniques and locations to generate emails. In such situations it is important to find out the geographical location of the attacker. To get the exact location of the attacker, investigators often use email tracking software embedded into the body of an email. When a recipient opens a message that has an email tracker attached, the investigator will be notified with the IP address and geographical location of the recipient. This technique is often used to identify suspects in murder or kidnapping cases, where the criminal communicates via email.

viii. **Volatile Memory Analysis**

Recent research has been conducted in analyzing spoofed mails from volatile memory [3]. Since everything passes through volatile memory, it is possible to extract email related evidence (header information) from volatile memory.

ix. **Attachment Analysis**

Most viruses and malware are sent through email attachments. Investigating attachments is crucial in any email-related investigation. Confidential information leakage is another important field of investigation. There are software tools available to recover email-related data, such as attachments from computer hard discs.

For the analysis of suspicious attachments, investigators can upload documents into an online sandbox such as VirusTotal [4]

to check whether the file is malware or not. However, it is important to bear in mind that even if a file passes a test such as VirusTotal's, this is not a guarantee that it is fully safe. If this happens, it is a good idea to investigate the file further in a sandbox environment such as Cuckoo.

➤ **Stop and Frisk Operation (Terry Stop)/Snap Checking**

The term "Stop and Frisk operation" signifies a practice whereby a police officer being suspicious of a person stops him and searches his body. The oxford dictionary defines Stop and Frisk in following manner.

"The policing practice of stopping a person briefly in order to search them for weapons or prohibited items."

The Miriam Webster Dictionary defines stop and Frisk operations in following manner.

"A state law that allows a police officer to stop any person without making an arrest based on a reasonable suspicion that the person has committed or is about to commit a crime"

It is also called Terry Operations because the term evolved after the American named Terry was stopped and then booked on account of possessing illegal weapon. The act of police was challenged for flouting the guarantees as to personal liberties and protection against undue search as enshrined in US Constitution vide Fourth Amendment to US' Constitution.

However the US Supreme Court found it Lawful on the part of Police to stop and check someone randomly towards discharge of the duties entrusted upon the Police. The case was reported as Terry Vs Ohio State (1968)

▪ **Stop and Frisk Operations know as Snap Checking in Pakistan:**

Stop and Frisk operations is known as "Snap Checking" in Pakistan. It is permissible in Pakistan under article 125 of Police order 2002 in following manner.

Article 125 of Police Order 2002

*Power to search suspected persons or vehicles in street, etc.—
When in a street or a place of public resort a police officer on reasonable grounds suspects a person or a vehicle to be carrying any article unlawfully obtained or possessed or likely to be used in the commission of an offence, he may search such person or vehicle; and if the account given by such person or possessor of the vehicle appears to be false or suspicious, he may detain such article after recording in writing the grounds of such action and issue a receipt in the prescribed form and report the facts to the officer in-charge of the police station for*

informing the court for proceeding according to law against the person.

However these powers are not meant go be used recklessly rather section 156 of the same Act duly protects against unreasonable search in following manner.

▪ **“Protection against Unnecessary Search**

156. Penalty for vexatious entry, search, arrest, seizure of property, torture, etc. – Whoever, being a police officer–

- (a) without lawful authority, or reasonable cause, enters or searches or causes to be entered or searched any building, vessel, tent or place;*
- (b) vexatiously and unnecessarily seizes the property of any person;*
- (c) vexatiously and unnecessarily detains, searches or arrests any person; or*
- (d) inflicts torture or violence to any person in his custody; shall, for every such offence, on conviction, be punished with imprisonment for a term, which may extend to five years and with fine.”*

▪ **Features of Stop and Frisk Operations (Snap Checking)**

- **A necessity for Law and Order:** That the police must have the power to make snap checking on basis of suspension in order to maintain law and order and prevent crimes is beyond dispute.
- **Lawful procedure as sanctioned under Police Order 2002:** As narrated earlier, the process is permissible under the Law under Article 125 of Police Order 2002.
- **Open to Abuse:** However this random snap checking is open to abuse by the police authorities. Most of the people who are stopped for checking feel aggrieved by the behavior of police officials.
- **Arbitrary:** The snap checking is generally done in arbitrary manner that is to say that it is sole discretion of the police official on duty to stop any person or let him go. There is a greater likelihood that a citizen riding of bike or small vehicle would be stopped but the one who is having a big vehicle would be allowed to pass without being stopped.
- **A major cause of Public Grievances against Police.** One of the major reasons of public grievances against police emanates from this stop and frisk /snap checking practice. As stated earlier generally the behavior of the police officials is offensive and derogatory during these checking which causes resentment amongst the people and thus contribute to negative image of police.

▪ How to Reform the Process

It is evident from above discussion that though stop and frisk operation is not only a legal process but is necessary to maintain law and order, however, it is being abused and thus promoting negative image of policing. The procedure can be made public friendly and useful through following measures.

- Framing of SOPs
- Ensuring self-respect of the citizens stopped for checking
- Installation of Online Cameras
- Toll Free complaint Number at Police pickets
- Periodic visits of the Higher Officials
- Behavioral Training of the Staff
- Educating the Public at Large
- Applying innovative techniques such as Mystery Shopping

Arrest

According to Oxford Dictionary "Arrest" is defined as the "action of seizing someone and taking them into custody". According to Black's law dictionary arrest is the taking or keeping of a person in custody by legal authority, especially in response to a criminal charge specifically the apprehension of someone for the purpose of securing the administration of law.

▪ Who Can Arrest:

Official authority as to arrest and detention rests with following three officials

- Magistrate
- Police
- Justice of Peace

However, under section 59 CPC, arrest can be made by a private person in following manner:

59. Arrest by private persons and procedure on such arrest.

(1) Any private person may arrest any person who in his view commits a non-bailable and cognizable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer or, in the absence of a police-officer, take such person or causes him to be taken in custody to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or

residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no sufficient reason to believe that he has committed any offence, he shall be at once released

▪ Manner and Condition of Arrest

The manner of arrest is provided under section 46 CRPC

"Arrest How to be Made(46 CRPC)

In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) Resisting endeavor to arrest. If such person forcibly resists the endeavor to arrest him or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with [imprisonment for life.]"

Search and Seizure

The term Search is defined as:

"hunt by law enforcement officials for property or communications believed to be evidence of crime, and the act of taking possession of this property" by "Black Law Dictionary" while seizure has been defined as "the act or an instance of taking possession of a person or property by legal right or process".

Police is generally empowered to search a person, vehicle or premises to recover any thing required in connection with a crime such as evidence or a tool used in crime. Search can also be made for recovery of stolen property or arrest of an accused. Generally police officer is required to seek Warrant from the competent Magistrate before making a search however under certain circumstances search can be made without warrant as provided under section 165 of CRPC 1898. The things seized during the course of search are produced before the Magistrate. The things so seized if required as an evidence are kept in the custody of police during the course of trial. In addition to above under section 550 of CrPC 1898, a police official is empowered to seize a property which is suspected to be stolen. Such property is then disposed on the Orders of Magistrate.

International Policing & Criminal Justice

Monitoring organization

➤ UNAFEI

The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) is an institution established with the mutual collaboration of the United Nations and Government of Japan in year 1962. The institution is primarily a research and advisory body which aims to strengthen criminal justice systems of the states across Asia and the Pacific Region.

The role of UNAFEI is spelled out in following words in its brochure⁷⁰

"UNAFEI's main activities are to hold international training courses/seminars for criminal justice practitioners from around the world and to undertake research in the field of prevention of crime and the treatment of offenders, paying particular attention to the UN Conventions and the Sustainable Development Goals for 2030(SDGs).

In line with the United Nation's strategies and efforts on crime prevention and criminal justice, UNAFEI conducts its activities in order to promote sound development of criminal justice systems and mutual cooperation amongst the UN member states. Its activities are fully funded by the Government of Japan, and are highly valued as Japan's important contributions to the international community.

The Government of Japan, more specifically, the Research and Training Institute of the Ministry of Justice of Japan is responsible for operating UNAFEI's activities. The Director of UNAFEI is appointed upon consultation with the United Nations. Professors and staff, selected from among Japanese police officers, public prosecutors, judges, correction officers, probation officers, etc., undertake UNAFEI's activities in cooperation with related organizations, such as the the UNODC, the Japan International Cooperation Agency (JICA) and the Asia Crime Prevention Foundation (ACPF). As the oldest PNI Insistute, UNAFEI takes part in the creation and implementation of United Nations strategies on crime prevention, criminal justice and the

⁷⁰ https://www.unafei.or.jp/about/pdf/brochure_e_2020.pdf

treatment of offenders, in close cooperation with other Institutes."

▪ **Operational Mechanism**

The operational activities of UNAFEI revolve around following areas.

- Training Courses
- Seminars
- Research Studies and publications
- Technical Assistance
- Coordination with other international organizations.

▪ **Areas of Operation**

The major areas in which UNAFEI's activities are focused include:

- Criminal Justice
- Crime Prevention
- Treatment of Offenders
-

➤ **INTERPOL**

▪ **Introduction**

International Criminal Police Organization, commonly known by its telegraphic address, "Interpol", is an international organization established to promote Cooperation vis a vis matters pertaining to policing amongst its member. Currently it has 194 Member. Interpol mere facilitate exchange of information and coordination with no power to make arrest or detain on its own, a role which is often misunderstood, as observed in the following report⁷¹

"Interpol is mostly misunderstood because of Hollywood, which spreads the incorrect belief that Interpol is an international police force," said Theodore Bromund, a senior research fellow at the Heritage Foundation, a U.S.-based think tank. "Most international organizations are not well understood, and Interpol is no different."

Essentially, Interpol acts as a police message board for its member countries. One member country can request that some or all other member countries detain, arrest, and/or extradite wanted persons through a variety of notice types. The agency doesn't issue warrants or detain individuals:

⁷¹ <https://www.thedailybeast.com/interpol-helps-dictators-hunt-down-dissidentsand-me>

- **Headquarter**
 - Lyon, France
- **Official Languages**
 - English, Arabic, French and Spanish

- **History**

The major developments towards establishment of Interpol are discussed below.

- **1914- International Criminal Police Congress:** First International Police Congress was held in Monaco in 1914 in a bid to establish an organization for cross border police cooperation but the attempt could not elicit wider response.
- **1923-Creation of the International Criminal Police Commission (ICPC):** With headquarters in Vienna, Austria, this was precursor of the current Interpol. However the ICPC went in to control of Germany when Austria was annexed by Germany in 1938, an incidence referred to as "Anschluss".
- **1956- Reframing of Constitution of ICPC and Establishment of International Criminal Police Organization.** Following the adoption of a modernized constitution, the ICPC becomes the International Criminal Police Organization-INTERPOL, with abbreviated name of ICPO-INTERPOL or just INTERPOL. The Organization becomes autonomous by collecting dues from member countries and relying on investments as the main means of support.

- **Major Functions**

- Secure Global Police Communications Services
- Operational Data Services and Databases for Police
- Operational Police Support Services
- Training and Development

- **Structure**

- **General Assembly** – INTERPOL's supreme governing body, the General Assembly is composed of delegates appointed by each member country. It meets annually to take all important decisions related to policy, resources, working methods, finances, activities and programs.
- **Executive Committee** – Elected by the General Assembly, the Executive Committee is headed by the President of the Organization. It provides guidance and direction to the Organization and oversees the implementation of decisions made at the annual General Assembly. It has 13 Members, including One President and 3 Vice Presidents.

- **Commission for Control of Interpol Files: (CCF).** A nine member's independent commission appointed by the General Assembly is entrusted to ensure integrity of the Data in accordance with the Constitution of Interpol.
- **National Central Bureaus (NCBs)** – Each INTERPOL member country maintains a National Central Bureau linking national police with its global network. Staffed by highly trained national law enforcement officers, NCBs are the lifeblood of INTERPOL, contributing to its criminal databases and cooperating together on cross-border investigations, operations and arrests.
- **General Secretariat:** Headed by the Secretary General, the General Secretariat is entrusted day to day functions of the Organization as envisaged by the General assembly. Its stationed in Lyon, France with following seven Regional Offices.
 - Argentina (Buenos Aires)
 - Cameroon (Yaoundé)
 - Côte d'Ivoire (Abidjan)
 - El Salvador (San Salvador)
 - Kenya (Nairobi)
 - Thailand (Bangkok)
 - Zimbabwe (Harare)

In addition to regional offices, the Organization has established liaison offices at the United Nations (UNO) in New York, at the European Union in Brussels and at the African Union (Addis Ababa). Moreover The INTERPOL Global Complex for Innovation (IGCI) is established in Singapore.

▪ Notices Issued by Interpol

Type of Notice	Purpose
Red Notice	To seek the location and arrest of wanted persons with a view to extradition or similar lawful action.
Yellow Notice	To help locate missing persons, often minors, or to help identify persons who are unable to identify themselves.
Blue Notice	To collect additional information about a person's identity, location or activities in relation to a crime.
Black Notice	To seek information on unidentified bodies.
Green Notice	To provide warnings and intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries.
Orange Notice	To warn of an event, a person, an object or a process representing a serious and imminent threat to public safety.
UNSC Special Notice	Issued for groups and individuals who are the targets of UN Security Council Sanctions Committees?

Purple Notice	To seek or provide information on <i>modus operandi</i> , objects, devices and concealment methods used by criminals.
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▪ Rules Relating to Red Notice (Mistakenly called “Red Warrant”)

Article 82 and 83 of INTERPOL’S RULES ON THE PROCESSING OF DATA contains provisions on red notice

“Article 82: Purpose of red notices

Red notices are published at the request of a National Central Bureau or an international entity with powers of investigation and prosecution in criminal matters in order to seek the location of a wanted person and his/her detention, arrest or restriction of movement for the purpose of extradition, surrender, or similar lawful action.”

Article 83: Specific conditions for publication of red notices:

(1) Minimum criteria

(a) Red notices may be published only if the following cumulative criteria are met:

(i) The offence concerned is a serious ordinary-law crime.

Red notices may not be published for the following categories of offences:

- Offences that in various countries raise controversial issues relating to behavioral or cultural norms;*
- Offences relating to family/private matters;*
- Offences originating from a*

Violation of laws or regulations of an administrative nature or deriving from private disputes, unless the criminal activity is aimed at facilitating a serious crime or is suspected of being connected to organized crime

▪ Diffusion

In addition to the notices mentioned hereinbefore, the Interpol circulate certain requests internally without making them public. The corresponding NCBs extend cooperation but the request is not made public.

The Diffusion has been defined under Article 1 of the INTERPOL’S RULES ON THE PROCESSING OF DATA, in following manner.

“Diffusion” means any request for international cooperation or any international alert from a National Central Bureau or an international entity, sent directly to one or several National

Central Bureaus or to one or several international entities, and simultaneously recorded in a police database of the Organization.

The purpose of Diffusion is given in Article 97 in following manner:

The diffusions system consists of standardized requests for cooperation and alerts each corresponding to a specific purpose:

- (a) to arrest, detain or restrict the movements of a convicted or accused person;*
- (b) to locate and trace;*
- (c) to obtain additional information;*
- (d) for identification purposes;*
- (e) to warn about a person's criminal activities;*
- (f) for information purposes.*

The diffusion system has been criticized from various quarters for having been used by dictatorial regimes against the dissidents residing abroad.

▪ **Criticism**

Interpol has been criticized from different quarters on following counts.

i. Targeting Political Opponents and Dissidents by Dictatorial Regimes

There are number of instances where Interpol issued Red Notices on the request of countries with checkered record of human rights. For instance, Shahram hamyoon, a critic of Iranian Govt who left his home country to settle in USA where he is running a Satellite TV, remains on red notice on the request of Iranian Government. There are number of other examples where red notices have been issued on the instance of authoritarian regimes against their dissidents. A recently published article in Financial Times observes that⁷²t:

Fair Trials, a UK-based rights campaign group, says it has seen troubling cases from all over the world, ranging from Turkey and central Asia to Djibouti and Venezuela. One person it previously worked with was an airline cabin crew member whose US visa was revoked because of an Interpol red notice issued after a cheque she had written as security for a loan for a car in the United Arab Emirates bounced — a criminal offence

⁷² <https://www.ft.com/content/6f6f7074-e8e1-11e8-a34c-663b3f553b35>

under the national law. Other cases highlighted by Fair Trials and others include Dogan Akhanli, a dissident Turkish-born German writer and critic of President Recep Tayyip Erdoğan, who was temporarily arrested in Spain last year after Ankara issued an Interpol request. Another is Nikita Kulachenkov, an aide to Alexei Navalny, the Russian opposition leader. Mr Kulachenkov was detained for almost three weeks in Cyprus in 2016, because of a Russian Interpol diffusion.

ii. Questions on Financial Propriety vis a vis Private Partnerships :

Interpol entered in multimillion deals with international organizations and multinational companies which have been criticized from certain quarters. Interpol had to cancel its deal with FIFA on account of such concerns. According to politico⁷³

“Interpol’s deal with FIFA is just the tip of a fiscal iceberg. Since 2011, Interpol has signed deals with a large number of private “partners,” including tobacco giants, pharmaceutical firms and tech companies — such as Philip Morris International, Sanofi, and Kaspersky Lab — the proceeds of which have swollen its operational budget by almost a third.

This pecuniary relationship between international policing and big business has passed largely below the radar in recent years. Interpol enjoys an unparalleled global reputation, and as a truly international organization has largely escaped sustained journalistic scrutiny, which tends to put stories of national interest first.

In October 2013, its relationship with tobacco firms was criticized by Mediapart, a French investigative and opinion publication, and its links with the pharmaceutical industry were blasted by Die Zeit, the German weekly. But its deal with FIFA has gone mostly unexamined, particularly in the English-language media, and the issue as a whole has failed to command widespread public attention.

Now, however, given that FIFA’s dark corners are being opened to daylight by the US Department of Justice and the Swiss attorney general’s office, serious doubts are arising about Interpol’s private sector strategy, which has made the organization financially dependent upon corporate interests”.

⁷³ <https://www.politico.eu/article/fifa-funded-interpol-policing/>

iii. Political Cases

The Article 3 of the Constitution of the Interpol prohibit from taking up political cases, but the organization has on many times issued red notices in such cases.

iv. No defined process of Appeal

The appeal against issuance of Red Notice, though can be filed to Commission for Control of Files yet there are no clear cut principles and procedures spelled out on this count. This brings an enormous agony for those whom the red notices have been unfairly issued against.

v. Abuse of Diffusion System

The Diffusion system has been subjected to wide criticism for being non-transparent. The person whom the Diffusion has been initiated against is caught unaware and has no remedy to challenge the same.

▪ Pakistan and Interpol

Pakistan became member of ICPC (International Criminal Police Commission) in 1952. National Central Bureau (NCB) of Pakistan was created under the new constitution of ICPO in 1957. It is attached with Federal Investigation Agency since its inception. The Director General FIA is an ex- officio, the Head of NCB-Pakistan.

➤ EUROPOL

European Union Agency for Law enforcement Cooperation, established in year 1998 is headquartered in Hague, the Netherlands. The organization is meant to assist the member countries in matters related to crimes prevention and policing. The Article 3 of the EUROPOL Regulations sets out the objectives of the organization in following manner.

▪ Objectives

- Europol shall support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime which affect a common interest covered by a Union policy, as listed in Annex I.
- In addition to paragraph 1, Europol's objectives shall also cover related criminal offences. The following shall be considered to be related criminal offences:
 - criminal offences committed in order to procure the means of perpetrating acts in respect of which Europol is competent;

- criminal offences committed in order to facilitate or perpetrate acts in respect of which Europol is competent;
- criminal offences committed in order to ensure the impunity of those committing acts in respect of which Europol is competent.

▪ **Organizational Structure of Europol**

i. Management Board

The Management Board comprising of one representative from each of the member states is responsible to sets out the organizational policies and exercise monitoring and control over the Interpol.

ii. Europol Directorate

The Directorate is headed by an Executive Director who is responsible to the Management Board. The day to day activities of Europol are discharged by the directorate.

▪ **Areas of Operations**

The major focus of operations of Europol centers on following areas.

- Illicit Drugs
- Trafficking In Human Beings
- Facilitated Illegal Immigration
- Cybercrime
- Euro Counterfeiting
- Money Laundering And Asset Tracing
- Mobile Organized-Crime Groups
- Intellectual Property Crime
- Cigarette Smuggling
- Outlawing Motorcycle Gangs
- Terrorism

▪ **The Secure Information Exchange Network Application (SIENA)**

SIENA is a secured network for exchange of information and data between law enforcement organizations of European Union.

▪ **European Information System**

It's a criminal database maintained by Europol which is accessible to its members. It was initiated in year 2005 and since then it has proved a very useful tool for its members for sharing of intelligence. Its access has been granted to the partners of Europol who are not its members.



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▪ **Europol Platform for Experts**

It's a web platform for experts on matters related to policing and crime control for sharing of experiences and knowledge.

▪ **Operational Support**

Europol also provides operational support to the law enforcement agencies of member countries on different areas. It has also established specialized centers on different subjects for extending support to its members. These centers include.

- European Cybercrimes Center
- European Migrant Smuggling Center
- European Counter Terrorism Center
- European Financial and Economic Crimes Center
- Intellectual Property Crime Coordinated Coalition
- EU Internet Referral Unit

▪ **Europol and Interpol**

Though both are two different organizations working in their respective spheres, there exists coordination and cooperation amongst the both on various counts. An agreement was signed amongst the both organization on 5th November 2001 in which both the organizations committed to cooperate with each other. The press release of Interpol on this agreement reads as under⁷⁴

"Today marks an important and historic step in strengthening the international combating of organised crime and terrorism", INTERPOL's chief executive Ronald K. Noble said on Monday as he and his Europol counterpart Jürgen Storbeck signed a cooperation agreement between the two international police agencies.

The signing concludes the successful negotiations between the International Criminal Police Organisation and the European Union's Police Bureau on how to effectively join forces in fighting crime. Present at the ceremony, which took place in Brussels under the aegis of the EU Presidency currently held by Belgium, were also Antoine Duquesne, Belgium's Minister of the Interior and Antonio Vitorino, the EU's Justice and Home Affairs Commissioner.

⁷⁴ <https://www.interpol.int/en/News-and-Events/News/2001/INTERPOL-and-Europol-sign-cooperation-agreement>

'In the fight against international terrorists and other criminals there is no excuse for duplicating law enforcement efforts but all the reason for efficient collaboration. Europol's and INTERPOL's move to share critical criminal intelligence will strengthen the work of both organisations', said Secretary General Noble.

'The world is today faced with severe threats from terrorism, the drugs trade, the trafficking in human beings, cyber crime, the trade in stolen vehicles and other organised crime. These are areas where our adversaries build alliances and join forces. To protect our citizens all of us engaged in law enforcement must do the same', Mr Noble continued.

'One immediate challenge to both Europol and INTERPOL is the obvious crime risks that will inevitably follow the introduction on 1 January 2002 of the Euro, the new European currency. To fight back these threats INTERPOL will add the support of its 179 member countries which include the 15 Europol members', Secretary General Noble continued.

The text of the cooperation agreement between INTERPOL and Europol was approved by the Council of the European Union on 27 June 2001, and by the INTERPOL General Assembly at its 70th session, held in Budapest, on 26 September 2001."

➤ **United Nations Children Fund (UNICEF)**

UNICEF was established as "United Nations International Children's Emergency Fund" on 11 December 1946 by the General Assembly of the United National for extending humanitarian assistance to the children in the countries ravaged by World War –II. In 1953 it was renamed as "United Nations Children Fund", though without changing its acronym the "UNICEF". It is headquartered in New York City and the main thrust of the organization is protection of children from every form of exploitation. UNICEF defines the term child protection in following manner.

"The term 'child protection' refer to preventing and responding to violence, exploitation and abuse against children – including commercial sexual exploitation, trafficking, child labour and harmful traditional practices, such as female genital mutilation/cutting and child marriage".

▪ **UNICEF and Violence against Children (Crimes against Children)**

Children across the globe are prone to every form of violence. Following facts and figures have been compiled by UNICEF on violence against children.

- Some 15 million adolescent girls aged 15–19 have experienced forced sex in their lifetime.

- About 10% of the world's children are not legally protected from corporal punishment.
- Over 1 in 3 students aged 13–15 experience bullying worldwide.
- Approximately 1 in 4 children under the age of 5 – some 176 million – live with a mother who is a victim of intimate partner violence.
- Roughly 3 in 4 children between the ages of 2 and 4 – around 300 million – are regularly subjected to violent discipline by their caregivers.⁷⁵

UNICEF takes various measures to stop violence against children.

- Partnership with national governments, civil society organizations and local communities to end violence against children.
- Conducting Research Studies
- Publication of Research Reports
- Implementation of UN Convention on the Rights of Child
- Advocacy for protection of children rights

➤ **United Nations Office on Drugs and Crime (UNODC)**

United Nations Office on Drugs and Crime (UNODC), an organizational unit of the Secretariat of the United Nations, is entrusted to serve as a focal body to coordinate all the efforts on of UN on prevention of crimes and control of drugs. It's housed in United Nations Office in Vienna. Initially established in the name of "United Nations Office On Drug Control And Crime Prevention" vide Secretary General's Bulletin No ST/SGB/1997/5 dated 12 September 1997⁷⁶, It was renamed to its current name, United Nations Office On Drugs And Crime, in year 2002(the words "control" and "prevention" were omitted).

This UNODC was created to implement following two programs of the United Nations.

- The United Nations International Drug Control Program established pursuant to the UNGA's Resolution No 45/179 passed on December 21, 1990.
- The Crime Prevention and Criminal Justice Program established through UNGA's Resolution No 46/152 of 18 December 1991.

In addition to the above programs, the UNODC has been declared as a custodian of the following treaties.

⁷⁵ <https://www.unicef.org/protection/violence-against-children>

⁷⁶ United Nations. <https://undocs.org/ST/SGB/1997/5>

- UN Convention against Transnational Organized Crime
- UN Convention against Corruption
- Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol
- Convention on Psychotropic Substances of 1971
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988

▪ **Organization Structure of the UNODC**

The Director General of the United Nations Office in Vienna also serves as Executive Director of UNODC. According to section 2.5 of Section 2 of Secretary General Bulletin No ST/SGB/2004/6 dated 15th March 2004, the role of ED is provided as under⁷⁷.

The Office is headed by an Executive Director, at the Under-Secretary-General level, who also serves as the Director-General of the United Nations Office at Vienna. The Executive Director and the officials in charge of each organizational unit, in addition to the specific functions set out in the present bulletin, perform the general functions applicable to their positions, as set out in Secretary-General's bulletin ST/SGB/1997/5

▪ **Detailed Purpose and Mandate of the UNODC**

As narrated in the above paras, UNODC was primarily established as a focal body to coordinate all activities and efforts of the UN on crime prevention and drug Control. Its detailed mandate is given in Section 2 of Secretary General Bulletin No ST/SGB/2004/6 dated 15th March 2004 which provides as under⁷⁸.

▪ **Functions and organization**

2.1 The United Nations Office on Drugs and Crime is established to implement the Organization's drug programme² and crime programme³ in an integrated manner, addressing the interrelated issues of drug control, crime prevention and international terrorism in the context of sustainable development and human security.

2.2 Through its drug program, the United Nations Office on Drugs and Crime:

⁷⁷ UN https://www.un.org/ga/search/view_doc.asp?symbol=ST/SGB/2004/6

⁷⁸ United Nations.

https://www.un.org/ga/search/view_doc.asp?symbol=ST/SGB/2004/6

(a) Serves as the central drug control entity with exclusive responsibility for coordinating and providing effective leadership for all United Nations drug control activities and serves as the repository of technical expertise in international drug control for the Secretariat of the United Nations, including the regional commissions, and other United Nations organs, as well as Member States, and in this capacity advises them on questions of international and national drug control;

(b) Acts on behalf of the Secretary-General in fulfilling his or her responsibilities under the terms of international treaties and resolutions of United Nations organs relating to international drug control;

(c) Provides substantive services to the General Assembly, the Economic and Social Council and committees and conferences dealing with drug control matters.

2.3 Through its crime program, the United Nations Office on Drugs and Crime:

(a) Is responsible for carrying out activities in the field of international crime prevention and control; strengthening regional and international cooperation in preventing and combating transnational crime, in particular organized and economic crime, money-laundering, illicit trafficking in women and children, financial crimes and terrorism in all its forms; and promoting effective and fair administration of justice, with due respect for the rights of all those affected by crime or involved in the criminal justice system;

(b) Serves as the repository of technical expertise in the field of crime and terrorism prevention and criminal justice for the Secretariat of the United Nations, including the regional commissions, and other United Nations organs and acts on behalf of the Secretary-General in fulfilling his or her responsibilities under the terms of international instruments, standards, norms and resolutions in this field;

(c) Provides substantive services to the General Assembly, the Economic and Social Council and committees and conferences dealing with crime and terrorism prevention matters.

▪ Working Methodology of UNODC

The functioning of UNODC hovers around these five major areas.

- Strengthening Member States' capacities to confront threats from TRANSNATIONAL ORGANIZED CRIME
- Tackling CORRUPTION and its catastrophic impact on societies

- Supporting Member States in implementing a balanced, comprehensive and evidence-based approach to the WORLD DRUG PROBLEM that addresses both supply and demand
- Strengthening crime prevention and building effective CRIMINAL JUSTICE SYSTEMS
- Counter Terrorism ⁷⁹

▪ **How Does UNODC Support Its Member States**

The UNODC supports its member states through different methods such as advocacy, media campaigns, and mobilization of civil society, research studies, and capacity building activities, seminars and contacts and collaborations with government agencies across the globe.

▪ **Publication of World Drug Report**

UNODC One of the important activities of UNODC is publication of world drug report annually which contains the global trade of drugs, its impact and efforts of the governments and international organizations in controlling the drug trafficking.

▪ **Appointment of Good Will Ambassadors**

UNODC also appoints prominent personalities as its good will ambassadors. Currently Shahzad Roy, the renowned Pakistani Singer and social worker, is working as goodwill ambassador for Pakistan.

▪ **UNODC and Pakistan**

UNODC has been working in Pakistan soon after its establishment. In 2016 UNODC started a country program titled "developing solutions for drugs and related challenges in Pakistan" worth 70 Million USD⁸⁰. Through this program UNODC agreed to impart skills and build capacity of the law enforcement apparatus and agencies dealing with criminal justice system of Pakistan. UNODC is also participating in United Nations Sustainable Development Framework for Pakistan (UNSDF) for year 2018-2022 which is a comprehensive framework for sustainable development of Pakistan on multiple counts.

⁷⁹ UNODC : Annual Report, p.6 retrieved from https://www.unodc.org/documents/AnnualReport/Annual-Report_2018.pdf

⁸⁰ UNODC. <https://www.unodc.org/pakistan/en/unodc-country-office-pakistan-launches-a-usd-70-million-country-programme-to-address-pakistans-development-challenges-within-its-mandated-areas-of-illicit-trafficking--drug-control-and-crime-prevention.html>

➤ **International Police Association (IPA)**

IPA is a non-governmental and informal association of police officials and professionals across the globe. Its motto is 'Servo per Amikeco' - Service Through Friendship'. Currently there are 372000 members of the organization spread over 100 countries. The head quarter of the organization is situated in Nottingham, UK.

▪ **History of IPA**

The organization was established by Arthur Troop a British Police Officer on 1st January 1950. He wrote an article in British Police Review, a weekly magazine of police officers in UK, under a pseudonym wherein he proposed establishment of a friendship network for police officials. Following an overwhelming response, he proceeded with the idea and thus established IPA.

▪ **Aims and Objective of IPA**

Aims and Objectives of IPA are provided in Article 7 of its statute reproduced hereunder.

- *Create and strengthen bonds of friendship between members of the police service,*
- *Promote international cooperation in social, cultural and professional fields,*
- *Encourage peaceful co-existence between peoples and preservation of world peace,*
- *Improve the public image of the police service and*
- *Enhance recognition of the IPA by international bodies.*

To this end the IPA, with a view to promoting greater tolerance, peace, respect for law and order, understanding between people and for the work of the police, shall develop and undertake nationally and internationally:

- Exchange programs, visits and trips for IPA members,
- Scholarships for young members,
- Professional seminars,
- Emergency aid,
- Social gatherings and events,
- Social funds for its members,
- Sport events,
- Cultural exhibitions and competitions,
- Youth exchanges and meetings with a view to promoting the work of the police,
- Contacts with the authorities,
- Publications, statements and campaigns,
- Participation in events set up by other organisations,
- Any other activity following the goals described above, within the IPA or in
- Cooperation with other organisations.

▪ **Membership**

According to Article 11 of its statute, the membership is awarded to sovereign countries recognized by United Nations. The countries are called "National Sections" who are empowered to give membership to the serving and retired police officers in their own countries.

▪ **IPA World Congress**

IPA World congress is held every year and hosted by different National Sections. The last IPA World Congress was held in Spain.

▪ **Major Official Bodies**

Following are the major two official bodies of IPA as provided under Article 19.

- International Executive Council,
- International Executive Board

i. International Executive Council (IEC)

It's the supreme body of IPA comprising of one delegate from each of the national sections. It has over all responsibility of governance of IPA. Its functions are provided in Article 20.

- Affiliate, suspend or expel National Sections,
- Elect the members of the IEB and the internal auditors every four years,
- Vote on the annual reports and the accounts,
- Vote on the annual budget,
- Decide upon the international levy,
- Decide upon modifications of the IPA documents: International Statutes,
- International Rules or Procedures,
- Decide upon the dissolution of the Associations

ii. International Executive Board (IEB)

Responsible for day to day management of the organization, IEB is elected by IEC for a period of four years. Its office bears include:

- President,
- Secretary General,
- Chairperson of the External Relations Commission,
- Chairperson of the Professional Commission,
- Chairperson of the Socio-Cultural Commission,
- Head of Administration,
- Treasurer Finances,
- Treasurer Social Affairs

Article 23 of the Statute further delineates the functions of IEB in following words. *"The IEB is responsible for the regular management of the Association and for the implementation of decisions taken by the IEC. It shall have the power to act on behalf of the IEC in any matter requiring immediate action and is especially in charge of:*

- Taking appropriate measures in order to fulfill the aims of the Association,
- Calling for ordinary and extraordinary IPA World Congresses,
- Taking care of the IPA documents (International Statutes, International Rules and Procedures) and administering the assets of the Association.

▪ **The Arthur Troop Scholarship**

IPA Offers a 2500 Euros Scholarship every year to its members for attending seminars and trainings.

▪ **IPA And Pakistan**

Pakistan is affiliated with IPA since 8th September 2001. The Pakistan's "National Section" of IPA is housed in Police Lines Islamabad with 680 members from Pakistan as on 31st December 2020. The current President of IPA Pakistan Section is Shoaib Suddle, a retired police officer.

For CSS, PMS and Other Competitive Exams

Section-IV

Decoding Different Aspects of Crime

- Terrorism
- Media Representation of Crime & Criminals
- Intelligence Led Policing (ILP)
- Community Policing
- Public Private Partnership
- Crimes and Urbanization
- Gender and Crime in Rural & Urban Pakistan
- Money Laundering
- Cybercrimes
- National Accountability Bureau (NAB)
- Federal Investigation Agency (FIA)
- Anti-Narcotics Force

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Terrorism

Terrorism is not a new phenomenon because it is in vogue since inception of human civilization. However it emerged as a global threat to humanity at large after tragic incidence of 9/11. Pakistan is the state who has borne the worst damage due to this monster of terror. Terrorist attacks had once become an everyday norm in Pakistan. According to Gulf News⁸¹, as many as 83000 innocent lives have been lost in Pakistan during the war on terror. Pakistan also had to pay a huge economic cost which runs in to billions of dollars.

Before discussing different aspects of terrorism, it may be imperative to define in precise term as to what is the terrorism.

Terrorism can be defined as “use of violent means against civilians, state institutions and non-combatants for achieving religious and political objectives”.

The Federal Bureau of Intelligence of USA defines terrorism in following words.

Terrorism is the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives.

United Nations' General Assembly in its **Resolution No 49/60** defines terrorism in following manner.

Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.

The US Military Manual gives following definition of terrorism.

“The calculated use of violence or the threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.

⁸¹ <https://gulfnews.com/world/asia/pakistan/83000-lives-lost-in-pakistans-war-on-terrorism-1.76428064>

➤ Radicalism

Radicalism is a philosophy which promotes terrorism. It's a view which advocates extremist measures to achieve socio-political and religious goals. Terrorism can therefore be termed as an outcome of radicalism.

The European Union defines radicalism in following words.

'The phenomenon of people embracing opinions, views and ideas which could lead to acts of terrorism'

➤ Causes of Terrorism and Radicalism in Pakistan

Terrorism and extremism are very complex phenomenon and there are number of causes behind promotion of these evils. With specific reference to Pakistan, some of the causes are internal and some are external.

▪ **Internal Causes**

Following can be the major causes, internal to Pakistan, which have contributed towards spread of extremism and terrorism.

i. **Socio Economic Reasons**

- **Social Injustice:** There is a wider consensus upon the notion that social injustice promotes alienation and disgruntlement amongst the citizenry and such people become easy prey to extremist ideologies.
- **Economic Underdevelopment:** An underdeveloped state cannot look after its citizens thereby lending them to be exploited and recruited by the terrorist outfits.
- **Illiteracy:** Illiteracy provides a breeding ground to bigotry and fanaticism. Most of individuals involved in terrorist activities, exceptions notwithstanding, are illiterate and semi-literate. They can conveniently be indoctrinated and used by the terrorist organisations.
- **Unemployment:** Unemployed youth is another target to promote radicalism. Such a youth can be lured by offering monetary incentives. Moreover their frustration with the system can also be exploited by the extremists.

ii. **Political Reasons**

- **Political Instability:** Political Instability is said to be the mother of the most of the socio-economic evils in the society. The most damaging effect of instability is weakening of state institutions which lead to strengthening of non-state actors. The weak institutions of the state cannot create effective deterrence against the advancement of extremist ideologies.
- **Frequent Military interventions:** Military rule has its role in promoting extremism in Pakistan, as maintained by many

observers. Pakistan has so far seen four military rules. During these rules, the curbs are put on individual freedoms which eventually lead to restlessness across the state. Such a state of affair can also prompt the people, especially youth, to support extremist ideologies.

- **Weak law Enforcement Apparatus:** It is responsibility of the state agencies of the state to prevent radicalism and extremism. However the law enforcement apparatus is grappling with numerous problems such as shortage of resources, lack of competence and over-burden. In such a situation, these agencies cannot put an effective check on permeation of extremism across the society.

- **Religious Reasons**

- **Promotion of Religious Intolerance:** Some of the religious seminaries and religious leaders openly promote extremist ideologies. Those influenced by their thoughts are likely to subscribe to such ideology and become extremists and terrorist.
- **Distortion of Islamic Teachings:** Islam is a religion of peace. However those who don't apprehend the spirit of Islamic ideology link it to the radicalism. Many terrorists kill people on the name of religion presuming that they are serving the cause of religion. But in fact they are oblivious to the soul of religion which is grounded in peace and love.
- **Sectarianism:** Inter sectarian hatred is another reason of bigotry and intolerance in Pakistan. Many sects of Islam don't consider those following the other sects as Muslims. Many terrorist activities in Pakistan were based upon sectarian conflict. Therefore it can be held that sectarianism has played a pivotal role in spread of hate and extremism in Pakistan.

- **External Causes**

- i. **Global War on Terror**

Pakistan was the front line state on global war on terror. This had a crippling effect on Pakistan as a reign of terror was unleashed on the people of Pakistan causing loss of thousands of innocent lives. The terrorist organisations propagated to portray the state of Pakistan being allied with "the infidel forces" against Islam. This notion brought a huge lot of young people to the fold of terrorist.

- ii. **Afghan Soviet War**

Pakistan supported afghan Jihad against soviet aggression. During this period, militant organisations were promoted under the state's patronage. These organisations later turned their arms against Pakistan. Many observers ascribe rise of radicalism in Pakistan to the Afghan Jihad.

iii. Rise of International terrorist Outfits

Many terrorist outfits have emerged during this period such as Al-Qaeda and Daesh. This has strengthened terrorist apparatus across the globe. The terrorist organisations operating within Pakistan allied themselves with the international organisations. Many terrorist attacks in Pakistan have been claimed by the local allies of Daesh in Pakistan. This global networking has therefore lent a great deal of strength to the local outfits.

➤ **State Measures Taken to Counter Terrorism in Pakistan**

Pakistan has taken various measures to counter terrorism in Pakistan. The two most significant steps taken on this count include:

- Establishment of National Counter Terrorism Authority (NACTA)
- National Action Plan (NAP)

➤ **National Counter Terrorism Authority (NACTA)**

NACTA is a premier agency for coordinating and spearheading all the counter terrorism measures being taken by the state. It was initially established as an administrative wing of Ministry of Interior in year 2009. However it was made an independent organisation enjoying great deal of financial and administrative independence under National Counter Terrorism Authority Act 2013.

▪ **Board of Governor of the NACTA**

The Board of Governor of NACTA is headed by Prime Minister of Pakistan. The composition of the Board is provided under section 5 of the act which is reproduced below.

(1) The Authority shall have a Board of Governors comprising:-

1. Prime Minister Chairman

- a. Minister for Interior Member
- b. Chief Ministers of Provinces Members
- c. Chief Minister of Gilgit Baltistan Member
- d. Minister for Law and Justice Member
- e. Minister for Finance Member
- f. Minister for Defence Member
- g. Prime Minister of Azad Jammu and Kashmir Member
- h. One Senator (to be recommended by Member Chairman Senate)
- j. One MNA (to be recommended by Member Speaker National Assembly)
- l. Secretary, Ministry of Interior Member
- m. DG Inter Services Intelligence Member
- n. DG Intelligence Bureau Member
- o. DG Military Intelligence Member

- p. National Coordinator Member
 - q. Chief Secretaries of the Provinces, Members
 - r. Gilgit Baltistan and Azad Jammu and Kashmir
 - s. DG Federal Investigation Agency Member, and
 - t. Inspector General of Police of Provinces, Members
 - u. Azad Jammu and Kashmir and Gilgit Baltistan
2. The National Coordinator shall act as the Secretary to the Board.
 3. The Board may invite any person to the meeting on special invitation

▪ **Functions of NACTA**

Following functions of NACTA are given under the section 4 of the National Counter Terrorism Authority Act 2013.

“Functions of the Authority: - The Authority shall have the following functions, namely:-

(a) to receive and collate data or information or intelligence, and disseminate and coordinate between all relevant stakeholders to formulate threat assessments with periodical reviews to be presented to the Federal Government for making adequate and timely efforts to counter terrorism and extremism;

(b) to coordinate and prepare comprehensive National counter terrorism and counter extremism strategies, and reviews them on periodical basis;

(c) to develop action plans against terrorism and extremism and report to the Federal Government about implementation of these plans, on periodical basis;

(d) to carry out research on topics relevant to terrorism and extremism and to prepare and circulate documents;

(e) to carry out liaison with international entities for facilitating cooperation in areas relating to terrorism and extremism;

(f) to review relevant laws and suggest amendments to the Federal Government; and

(g) to appoint committee of experts from Government and non--Government organisations for deliberations in areas related to the mandate and functions of the Authority.”

➤ **National Action Plan**

National Action Plan (NAP) is a comprehensive strategy formulated by the Government of Pakistan in coordination with all the stake holders for countering terrorism and extremism in the wake of the terrorist attack on Army Public School Peshawar on 16th of December 2014. The Plan consists of twenty points which are reproduced below.

1. Implementation of death sentence of those convicted in cases of terrorism.
2. Special trial courts under the supervision of Army. The duration of these courts would be two years.
3. Militant outfits and armed gangs will not be allowed to operate in the country.
4. NACTA, the anti-terrorism institution will be strengthened.
5. Strict action against the literature, newspapers and magazines promoting hatred, extremism, sectarianism and intolerance.
6. Choking financing for terrorist and terrorist organizations.
7. Ensuring against re-emergence of proscribed organizations.
8. Establishing and deploying a dedicated counter-terrorism force.
9. Taking effective steps against religious persecution.
10. Registration and regulation of religious seminaries.
11. Ban on glorification of terrorists and terrorist organizations through print and electronic media.
12. Administrative and development reforms in FATA with immediate focus on repatriation of IDPs.
13. Communication network of terrorists will be dismantled completely.
14. Measures against abuse of internet and social media for terrorism.
15. Zero tolerance for militancy in Punjab.
16. Ongoing operation in Karachi will be taken to its logical end.
17. Balochistan government to be fully empowered for political reconciliation with complete ownership by all stakeholders.
18. Dealing firmly with sectarian terrorists.
19. Formulation of a comprehensive policy to deal with the issue of Afghan refugees, beginning with registration of all refugees.
20. Revamping and reforming the criminal justice system”.

➤ **Global War on Terror (GWOT)**

The GWOT is the name ascribed to the US - led military operations to eradicate international terrorism, which means “terrorism entailing citizens or the region involving more than one country. The war was started in the wake of 9/11 attacks in USA. The war has brought a radical shift in internal politics and diplomacy across the globe. Pakistan became front line ally of

USA during this war which a crippling effect on Pakistan as a reign of terror was unleashed on the people of Pakistan causing loss of thousands of innocent lives. The terrorist organisations propagated to portray the state of Pakistan being allied with "the infidel forces" against Islam. This notion brought a huge lot of young people to the fold of terrorist. However the state of Pakistan has overpowered the terrorists to a greater extent as evident from a considerable reduction in terrorists' activities in Pakistan.

Media Representation of Crime & Criminals

Media is an important tool of opinion building. People learn and build their perceptions and opinions from what is portrayed on the media. With regard to public perception about the crimes and criminals, media play both positive and negative roles which are discussed below.

▪ Negative Role

Following are the negative impacts of media on the society.

- In movies, dramas and documentaries, criminals are glorified at times. This has a very negative impact on the people especially the youth who may be influenced from this glorification and resort to crimes.
- The young people may also learn the techniques and tool employed by criminals shown in media programs.
- Media may also highlight weaknesses of police and other law enforcement agencies which may embolden the people to commit crimes.

▪ Positive Role

- Media may educate the society about pitfalls of crimes in order to teach and counsel the public.
- Media may also negatively portray the criminals to make the people detest the crimes.
- Media may also advocate and promote compliance with laws and benefits of being law abiding citizens of the society.

Intelligence Led Policing (ILP)

Intelligence Led Policing is a form of proactive and risk based policing in which different tools are used to assess the risk of crime and take action on the basis of objective analysis.

Organization for Security and Cooperation in Europe (OSCE) defines intelligence led policing in following manner.

"Intelligence-led policing emphasizes analysis and intelligence as pivotal to an objective, decision-making framework that

prioritizes crime hotspots, repeat victims, prolific offenders and criminal groups. It facilitates crime and harm reduction, disruption and prevention through strategic and tactical management, deployment and enforcement.

Professor Jerry H. Ratcliffe's in his book "Intelligence-Led Policing" defines intelligence led policing in following manner:

"Intelligence-led policing emphasizes analysis and intelligence as pivotal to an objective, decision-making framework that prioritizes crime hotspots, repeat victims, prolific offenders and criminal groups. It facilitates crime and harm reduction, disruption and prevention through strategic and tactical management, deployment and enforcement."

➤ **Steps involved in Intelligence Led Policing**

Intelligence led Policing involves following steps which are explained with in example.

- **Planning and Assignment of Tasks:** It is the first step in which planning is made and tasks are assigned. For example there is a sudden rise in crimes in an area. In order to take corrective measures, a strategy is devised to identify the causes for which a team is constituted. The members of team are then assigned tasks.
- **Collection of Information:** The team members collect the information from various sources. In above example, if is found, for example that, most of the crimes relates to theft of vehicles.
- **Analysis of Information:** Information generated from various sources is analysed to draw more conclusions. It comes to the fore that most of the theft incidence took place outside the shopping malls at a given time.
- **Decision making:** It is decided that all shopping malls of the city would be placed under enhanced surveillance. The officials are deputed in disguise around all the shopping malls of city.
- **Coordination:** The decision so taken is disseminated to police formations across the city for taking the required action.
- **Feedback:** Feedback is taken to ascertain whether the intended results have been achieved. For example if in the scenario under discussion, if the criminals are caught while stealing the car, the operation would be deemed to be successful.

Community Policing

▪ **Definition**

Community policing is a philosophy of policing which requires to involve the local community in planning and management of Police function. U.S.

Department of Justice, Office of Community Oriented Policing Services defines community policing as under

"Community policing is a philosophy that promotes organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime."

➤ **Sir Robert Peel's Principles of Policing**

Sir Robert Peel, a British Statesman known as Father of Modern Policing in UK put forth 9 principles of Policing of which Rule 7 provided that:

PRINCIPLE 7 *"Police, at all times, should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence."*

➤ **Different Models of Community Policing in Pakistan**

▪ **Community Policing Model under Police Order 2002**

Police Order 2002 provides two institutions for involvement of community in the affairs of policing regard to Community Policing in Pakistan.

- Citizen Police Liaison Committee:
- Public Safety and Police Complaints Commission

The models discussed above are explained hereunder.

➤ **Citizen Police Liaison Committee**

Article 168 of Police Order 2002 provides for establishment of Citizen Police Liaison Committees in following manner.

168. Citizen Police Liaison Committees.– The Government may establish Citizen Police Liaison Committees as voluntary, self financing and autonomous bodies, in consultation with National Public Safety Commission or Provincial Public Safety Commission, as the case may be, for–

- (a) training and capacity building of Public Safety Commission;*
- (b) developing mechanism for liaison between aggrieved citizens and police for providing relief; and*

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(c) assistance to Public Safety Commissions, Police Complaints Authority and the police for the expeditious and judicious discharge of their duties.

▪ Details of CPLCs functioning in Pakistan

The detail of CPLCs is given hereunder. SOURCE CPDI⁸²

CPLC	Details
Karachi	CPLC was initially established at four Police Stations vide the Commissioner's Administrative order No. HMS/JUB-1/10(982)89 dated 31.08.89. Sindh Government amended the Police Rules vide notification # VIII (3)/SOJ/90 dated 15/04/90, to institutionalize the CPLC concept In 1996 CPLC was given a charter by Governor Kamal Azfar that provided a stronger legal status and a permanent board of governors to oversee its affairs. The charter was approved on 24th October 2003.
Faisalabad	CPLC Faisalabad was established on 16 December 2001 and gained legal ground via article 168 of Police Order 2002 promulgated on August 2002. Official notifications by the Punjab government in 2006 and 2007, i.e. HP.111.3-8/2006 and HP.III.3-6/2007 respectively further strengthened its legal basis.
Lahore	The Citizen Police Liaison Committee of Lahore was established by the Government of the Punjab under article 168 of the Police Order of 2002 (XXII of 2002) on 28th of August 2004.
Peshawar	Established on February 12, 2004 through Home and Tribal Affairs Department, NFWP vide notification SO (P) HD/7-17/03, under section 168 of Police Order 2002
Sargodha	Established on 15th November, 2012 under article 168, Police Order 2002 and Inspector General of Police, Punjab's Memo No. 1905/PSO, dated 29th March, 2012.
Sahiwal	Established on 1st October, 2004 under article 168, police order 2002 and registered as an NGO.
Islamabad	CPCCs were formed at all police stations of Islamabad under the directive No.7-25/9190/IGP/C of IGP Islamabad, Sikandar Hayat, dated 31/10/2013.

⁸² <http://www.cpd-pakistan.org/wp-content/uploads/2014/12/Community-Policing-in-Pakistan-An-Assessment.pdf>

➤ **Public Safety and Police Complaints Commission**

Police Order 2002 introduced Public Safety and Complaint Commission at District, Provincial and National Level with wide ranging powers to redress public grievances against the Police. However, in spite of being the legally incumbent upon the Government, the Commissions were established only once during Mushraf's Government and now they only exists on book of statute with no practical existence.

▪ **Community Policing Model in KPK**

Dispute Resolution Councils have ben constituted under **section 73** of KPK Police Act 2013 which is reproduced below.

Dispute Resolution Council. --*The Provincial Police Officer for out of Court amicable settlement of petty nature cases, may constitute, Dispute Resolution Councils at District, Sub-Division or Police Station level, which shall consist of such number of members and shall conduct its business in such a manner as may be prescribed:*

Provided that the Dispute Resolution Councils already constituted by the Provincial Police Officer shall be deemed to have been validly constituted and all the actions taken, decisions made or order passed by such Dispute Resolution Councils shall be deemed to have been validly taken, made or passed under this Act.

Explanation: For the purpose of this section, petty nature case means and includes a small, minor, of less or inconsiderable importance and affected amity in the society or any cause leading towards provocation which may lead to a criminal offence.]

▪ **Benefits of Community Policing**

According to CPDI⁸³, following are the benefits of Community Policing

- *Enhanced public confidence in police department;*
- *Reduction in societal violence*
- *Police-public partnership;*
- *Peaceful co-existence in neighborhoods*
- *Savings in police time from unnecessary arrests and trials*
- *Speedy dispute resolution*
- *Diminishing the need for use of physical force by the police*

⁸³ *Ibid*

In addition to the above, Community Policing also contains following benefits

- Less Burden upon Criminal Justice System
- Cost Reduction
- Sense of Empowerment amongst masses
- Social Cohesion
- Informal Resolution of Disputes
- Less focus on petty issues

➤ **Measures Recommended for Effective Community Policing**

CPDI has recommended following measures on making community policing an effective tool in Pakistan.

▪ **Government of Pakistan**

- *Make community policing a statutory obligation;*
- *Budgetary provisions must be made and staff for community policing must be specified.*
- *Develop guidelines and rules to govern functioning of structures such as CPLCs or Community Policing Centers;*
- *Security of tenures of police officers to be ensured so that community policing efforts initiated by police leadership do not go in vain due to untimely and abrupt transfers.*
- *As per the spirit of devolution, police powers must be delegated so that local units have the freedom to act, with the provincial police playing a supervisory role. Asghar Mehmood, Former AIG police expressed the importance of locally maintained police service, saying that:*
"In Pakistan we have political policing system. It is controlled by politicians, managed by bureaucrats and manned by confused professionals. Community policing has become a buzz word in Pakistan. Community policing can be expected from a locally maintained police service as in Britain and USA. But the bait is that in these societies local government system is very strong. In Pakistan, Chief Ministers would not allow local governments to develop, which is sine qua non for success of community policing."
- *Recruitment of better educated and people-friendly police officers must be made an essential part of the police department's selection criterion. If police department aims to inculcate community policing philosophy in the long run then it becomes necessary to select people who are more likely to adopt the approach;*
- *External oversight and accountability mechanisms over police must be strengthened to build public confidence on the department;*
- *Politics to be kept out of community policing initiatives, such as during selection of initiative members or program execution;*

- *Support by Federal, Provincial, District Governments and NGOs (CSOs) should be provided to supplement the community policing efforts.*
- **Recommendations for NGO/Civil Society**
 - *Training programs for police on theory and practice of community policing should be organized while keeping the local culture and context into perspective.*
 - *Importance of community policing must be raised in print and electronic media as a focal area of Reform.*
 - *Focused lobbying with parliamentarians and senior police leadership to incorporate community policing and make it a statutory requirement.*
 - *Research in different components and aspects of community policing such as public trust in police, citizen-police cooperation, effectiveness of police accountability and police perception etc must be undertaken;*
 - *Responsibility for sensitization of public and civil society on community policing practices must be undertaken.*
 - *Civil society can play a strong role in bridging contacts between citizens and the police.*

Public Private Partnership

Public Private Partnership signifies collaboration between Public and Private Institution for financing, building or operating public projects: According to IPDF, PPP is defined as under⁸⁴:

Public Private Partnerships (PPP) involve the financing, development, operation and maintenance of infrastructure by the private-sector which would otherwise have been provided by the public sector. Instead of the public sector procuring a capital asset and 3 providing a public service, the private sector creates the asset through a dedicated standalone business (usually designed, financed, built, maintained and operated by the private sector) and then delivers a service to the public sector entity/consumer in return for payment that is linked to performance. Therefore the public sector is able to redirect its efforts to serving other urgent social and economic needs. A PPP may include an equity joint venture between GOP and the private sector.

⁸⁴ http://www.ipdf.gov.pk/prod_img/PPP%20Policy%20FINAL%2014-May-2010.pdf

▪ **Benefits of Public Private Partnership**

Following are the benefits of Public Private Partnership in Pakistan, as per IPFD⁸⁵.

- Development of more infrastructure on time and within budget
- Encouraging the private sector in innovative design, technology and financing structures and including increased international and domestic investment
- Risk sharing by GOP with private sector partners
- Ensuring good quality public services and their wider availability
- Real financial benefits, and a better utilization and allocation of public funds
- Economic growth and increased and wider employment opportunities

In addition to above, following benefits also accrue from Public Private Partnership

- Synergies are created by combination of Public and Private Sector
- Meets the paucity of resources by the Government
- Enhances confidence of the Private Sector
- Brings more transparency

▪ **Different Ventures of PPP in connection with CJS**

- Observation Homes and Rehabilitation Centers under JJSA 2018
- Juvenile Justice Committees
- Dispute Resolution Councils in KPK
- Community Policing
- CPLCS
- Parole Licensing

▪ **Legal Framework for Public Private Partnership in Pakistan**

Public Partnership Authority established vide Public Private Partnership Act 2017 is the key agency of the Government mandated by the statute to explore avenues of cooperation with Private Sector in Public Projects.

▪ **Challenges in connection with Public Private Partnership in Pakistan**

- Governance Deficit

⁸⁵ *ibid*

- Corruption
- Bureaucratic Hurdles
- Trust Deficit
- Legal and Judicial System
- Political Uncertainty

Crimes and Urbanization

Pakistan has the highest rates of urbanization in South Asia, with a projected population of 335 million by 2050, and an annual urbanization rate of 3.06%⁸⁶. (IBA Karachi)

▪ Causes of Positive Correlation between Urbanization & Crime Rate

Following are the major reasons for increase in crime rate due to urbanization.

- Overpopulation
- Unemployment
- Family system
- Inflation
- Social Services under strain,
- Working Mothers
- Access to technology

Organized Crimes

➤ Organized Crimes

Organized crimes are committed by collaboration and coordination of multiple individuals. It denotes a situation when criminals join hand to form a group in order to commit a crime.

An "organized criminal group" is defined using four criteria:

5. A structured group of three or more persons;
6. The group exists for a period of time;
7. It acts in concert with the aim of committing at least one serious crime;
8. To obtain, directly or indirectly, a financial or other material benefit.

⁸⁶ https://www.idrc.ca/sites/default/files/sp/Documents%20EN/anwar_et_al_2016_gender_and_violence_in_urban_pakistan.pdf

According to "Martin O'Brien and Majid Yar⁸⁷", following are the examples of organized crimes.

- Trafficking: in arms, drugs, humans (especially women and children for the sex trade), hazardous wastes (e.g. plutonium and nuclear materials); human organs; wildlife.
- Smuggling – stolen vehicles, and other contraband (alcohol, tobacco)/ humans Counterfeiting and piracy
- Extortion and protection rackets
- Fraud
- Gambling
- Racketeering
- Loan sharking
- Theft, robbery, hijacking, kidnapping
- Prostitution
- Pornography
- , being politically conservative, not radical.

Gender and Crime in Rural & Urban Pakistan

Traditional criminology found no gender based difference in criminal behavior and most of theories were rather gender neutral. It was not before 1975 that two books, "Sisters in Crimes" by Freda Adler and "Women and Crimes" by Rita James Simon discussed the role of woman in crimes in the wake of increased participation of women in practical life. Both the authors were of the view that women were assuming proactive roles in the society which were previously considered to be the domains of men. This proactive role also extended to the world of crime. The authors argued that women were committing serious crimes and using dangerous weapons such as knife and guns. These two studies provided impetus for further research on the issue of gender and crime. This was also influenced by developments related to feminism.

The issues related to gender and crime have two aspects.

- Women as victim of crime
- Women as offenders

➤ Women as Victims of Crimes

There are certain crimes which are generally directed at women such as rape, honor killing, domestic violence, harassment, acid throwing and forced marriages. In Pakistan, the ratio of crimes against women is quite alarming.

⁸⁷ O'Brien, M., & Yar, M. (2008). *Criminology: The key concepts*. Routledge.p116

Pakistan has been ranked at 164th place out of 167 seven countries, in women peace and security index 2019. Only Afghanistan, Yemen and Syria rank below Pakistan. On global gender gap index, Pakistan is ranked as sixth most dangerous country of the world. According to a report of Aurat Foundation⁸⁸

Violence inflicted on a woman is not restricted in its effects to a single individual or even family; it ripples through society, with enormous social and economic costs. Gender-based violence is a living reality in present-day Pakistan. Though these crimes are prevalent around the world, in Pakistan they are uniquely legitimized in the name of culture, tradition, religion, and morality.

The reasons for this dismal state of affair can be attributed to patriarchal culture and feudal culture of Pakistan, tribal norms, parallel justice system, weak criminal justice institutions, illiteracy, poverty and governance deficit. Some crimes against women are more frequent in rural areas such as honour killing, underage marriages etc while some of the crimes are more common in urban societies such as work place harassment. In Pakistan Penal Code a separate XX-A dealing with the crimes against women is reproduced below:

CHAPTER XX-A OF OFFENCES AGAINST WOMEN

- **498A. Prohibition of depriving woman from inheriting property:**
Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both.
- **498B. Prohibition of forced marriage:**
Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of either description for a term, which may extend to seven years or for a term which shall not be less than three years and shall also be liable to fine of five hundred thousand rupees.
- **498C. Prohibition of marriage with the Holy Quran:**
Whoever compels or arranges or facilitates with the

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<https://www.humanitarianlibrary.org/sites/default/files/2014/02/GENDER%20BASED%20VIOLENCE%20-%20R%20PARVEEN%20%282%29.pdf>

marriage of a woman with the Holy Quran shall be punished with imprisonment of either description which may extend to seven years which shall not be less than three years and shall be liable to fine of five hundred thousand rupees.

Explanation: - Oath by a woman on Holy Quran to remain unmarried for the rest of her life or, not to claim her share of inheritance shall be deemed to be marriage with the Holy Quran.

Likewise Offence against Zina (Enforcement of Haddood) Ordinance 1979 deals with the offence of rape. The Acid Control and Acid Crime Prevention Act, 2011 (Criminal Law Second Amendment Act, 2011) has amended Pakistan Penal Code and the Code of Criminal to specifically criminalize acid thronging punishable by life imprisonment. The four provinces have also made legislation for protection of women in the respective provinces

➤ **Women as offenders**

Majority of the crimes are committed by men in comparison to women, the difference in crime rate being termed as "gender gap". However certain crimes are attributed to women such as prostitution, infanticide and illicit relations. According to a recent report of federal ombudsperson, the female prisoners numbered at 1208 across the prisons in Pakistan.

▪ **Relationship between women offences and victimization**

The research conducted on this subject indicates that women who are victims of crimes may resort to committing crimes at later stage. For instance the girls who are subjected to violence at home leave their home and subsequently get involved in sex crimes.

▪ **Treatment of women offenders under criminal justice system of Pakistan**

Under section 52 of CRPC 1898, a woman accused can only be searched by another women with strict regard to decency. Under section 154 CRPC, certain complaints by women can only be recorded in presence of women offenders. Likewise a women victim can be examined by a woman medical practitioner under section 164-A of CRPC.

Money Laundering

The Process of concealing origin of illegally earned money by integrating it in the legitimate financial System is called Money Laundering. Money laundering enables the criminals to portray their ill-gotten wealth as legitimate money. According to Crimes and Conduct Commission, Australia, the Money Laundering is defined as under

The term 'money laundering' refers to the activities and financial transactions that are undertaken with the specific aim of hiding the true source of income. Usually the money involved has been derived from an illegal enterprise and the goal is to give that money the appearance of coming from a legitimate source. Sometimes, however, money legitimately obtained can also become the subject of money laundering; it may, for example, be disposed of in such a way that it evades lawful taxation.

Money laundering provides breeding ground to corruption and related activities. It is also closely linked to terrorist financing because the terrorist organizations hide their identity while transferring funds for terrorist activities.

➤ **Example of Money Laundering**

▪ **Example-I**

A public servant accumulates huge wealth through corrupt practices but purchase property in the name of near relatives and then get that property gifted to him or his children. Now he can use this property and show the government authorities that this property is a gift.

▪ **Example-II**

A public servant takes kickback or commission in a project but at the same time approaches the person who has won "prize" in a Prize Bond Draw. For example if the prize is Rs 50 Million, the public servant gives that money to the one who has the prize bond and then get that prize en-cashed in his own name. Now that public servant can show this amount as having been won in prize bond draw.

➤ **Case Studies**

The following two case studies (actual cases of Money Laundering) are reported by Financial Monitoring Unit (FMU).

▪ **Case-I**

During a bank's ongoing review of an account holder, who declared himself as a landlord, was noticed to have received funds aggregating to PKR 8.6 Million in his account through online transfers in a month. Subsequently a sum of PKR 3.2 Million was withdrawn from the account without disclosing the purpose. Moreover, structured cash withdrawals were also observed in the account. On a query by the bank, the customer was reluctant to disclose the sources of funds credited in the account or to provide any documentary evidence to substantiate the credits/debits in the account.



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During analysis, it was observed that the suspect had also previously served as a provincial legislator. The suspect's account was credited with high value funds through online transfers. The funds were then withdrawn through cash and clearing. Average monthly turnover in the account was PKR 2.08 Million. During the period of 2.5 years PKR 56.22 Million was deposited in the account while PKR 54.88 Million was withdrawn. Most of the funds were transferred from the account of an individual maintaining account in a branch situated in an area adjacent to the suspect's constituency.

Due to the high volume of funds credited in the personal account, it was suspected that he might be involved in abusing his authority as a legislator. Therefore, the financial intelligence was shared with LEA for investigation in the matter.

▪ Case-II

ML by a Government Official laundered through an integrated scheme involving winning prize bonds, Term Deposit Receipts, Running Finance Facility, and Asset Acquisition. Person A, a Government Official, opened a savings account in XYZ Bank in 2015. Two high value transfers were made by the suspect from his own account maintained in PQR Bank, out of which, half of the amount was placed Term Deposit Receipts (TDRs). Later on, the suspect received prize money which was cleared via cheques and also placed in TDR. The prize money remained invested in TDRs for five months.

The suspect also got a Running Finance facility (loan) from XYZ Bank against security of term deposits. The suspect was issued a high value demand draft in favour of person D from his running financing facility. After 10 months of utilizing running financing facility, the entire bank's loan liability was paid off in one go through liquidation of TDRs.

This appeared a typical ML arrangement for routing of apparently illegitimate funds through acquisition of winning prize bonds, investing in TDRs, seeking running finance facility, and asset acquisition. The illegitimate funds were suspected to be kickbacks or embezzled public funds, since the suspect was holding a government office entrusted with district management powers. The suspicious transaction was shared with LEA for further proceedings.

➤ Stages of Money Laundering

Money laundering is generally done in three stages.

- Placement

- Layering
- Integration

▪ **Placement**

In this stage the money earned through illegal means is entered in to the Banking System through various tools and tactics. It may include making small deposits in to the banking system.

▪ **Layering**

The money entered in to the Banking System is subjected to multiple transactions to hide its origin. These transactions are made to appear as legitimate Commercial Transaction.

▪ **Integration**

It is the last stage wherein the layered money goes back to the money launderer who now declares it as a legally money.

➤ **Methods of Money Laundering**

Money laundering can be done through innumerable methods, some of which are discussed below.

▪ **Structuring/smurfing**

A larger sum of money is broken in to small amount for making financial transaction so as to evade the risk of being apprehended by the state authorities.

▪ **Casinos**

The money accumulated through corrupt means is shown to have been earned in gambling. It's for the jurisdictions where gambling is permissible.

▪ **Crypto-currencies**

Since crypto-currencies are not subject to any governmental regulations, they offer an avenue of being used for money laundering.

▪ **Benami Transactions**

In Benami transaction, a property is purchased in the name of a person who is not real owner of the property. Benami Transactions are prohibited in Pakistan under prohibition of Benami Transaction Act 2017.

▪ **Alternate Remittance System**

Transfer of money other than the formal banking system (Hundi and Hawala) is called alternative remittances system. Since transactions done through this system don't come under any official record, it can be used for money laundering.

▪ **Cash Courier**

Also known as Bulk Cash Smuggling (BCS), it is a method of transfer of funds in hard cash. Criminals instead of using formal financial system may transfer the money in hard cash/currency.

▪ **Trade Based Money Laundering**

It is one of the most sophisticated methods of money laundering. In this method, the ill-gotten money is transferred by disguising it as an import or export transaction.

➤ **Law relating to Money Laundering in Pakistan**

The money laundering in Pakistan is dealt under "Anti-Money Laundering Act 2010"

▪ **Definition of Money laundering under Section 3 of the Act**

Offence of money laundering.—A person shall be guilty of offence of money laundering, if the person:—

(a) acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime;

(b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;

(c) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or

(d) participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c).

▪ **Punishment for money laundering U/S 4 of Money Laundering Act**

Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than one year but may extend to ten years and shall also be liable to fine which may extend to one million rupees and shall also be liable to forfeiture of property involved in money laundering or property of corresponding value.

➤ **Institutional Framework for Money Laundering in Pakistan**

The Institutional Framework of money laundering in Pakistan is regulated by Anti Money Laundering Act 2010. Given below is the Detail of the Institutions.

▪ **National Executive Committee (NEC)**

NEC is the top most body entrusted to implement the Money laundering Framework in Pakistan. Its Composition is given hereunder.

- Minister for Finance or Advisor to the Prime Minister on Finance (Chairperson)
- Minister on Foreign Affairs
- Minister for Law and Justice
- Minister for Interior
- Governor SBP
- Chairman SECP
- Director General FMU (Secretary)

Roles and Functions of NEC are given under Section 5 of the Act.

- *Develop, review and oversee the implementation of national strategy to fight money laundering and financing of terrorism.*
- *Determine offences existing in Pakistan that may be considered to be predicate offences for the purposes of this Act.*
- *Provide guidance and sanction in framing of rules and regulations under this Act.*
- *Make recommendations to the Federal Government for effective implementation of this Act and framing of national policy to combat money laundering and financing of terrorism.*
- *Issue necessary directions to the agencies involved in the implementation and administration of this Act;*
- *Discuss any other issue of national importance relating to money laundering and financing of terrorism*
- *Undertake and perform such other functions as assigned to it by the Federal Government, relating to money laundering and financing of terrorism.*

▪ **General Committee**

Headed by the Secretary Finance, the General Committee is required to assist the NEC in discharge of the statutory functions. The Composition of General Committee is given hereunder.

- Secretary Finance: Chairman
- Secretary Interior: Member
- Secretary Foreign Affairs :Member
- Secretary Law :Member
 - Chairman National Accountability Bureau :Member
 - Chairman Federal Board of Revenue: Member
 - Director General, Federal Investigation Agency :Member
 - Director General, Anti Narcotics Force: Member
- Deputy Governor SBP :Member
- Commissioner SECP : Member

- Director General: Member(Secretary)

• Financial Monitoring Unit

THE FATF recommendations require every state to establish a Financial Intelligence Unit for coordinating all efforts related to money laundering. The Financial Monitoring Unit (FMU) is designated "Financial Intelligence Unit" of Pakistan as required under FATF Regulations. FMU receives Suspicious Transactions Reports (STR) and Currency Transaction Reports (CTR) from Financial Institutions and Designated Non-Financial Business Professions(DNFBPs)

Currency Transaction Report (CTR)

Currency Transaction Report (CTR) is a report which every bank is required to submit to FMU for each cash/currency transaction made by a client over the minimum prescribed threshold/limit. Currently the limit is Rs 2.00 million. FMU elaborates CTR in following words⁸⁹

"A Currency Transaction Report is a threshold based report of cash transaction undertaken by the customers of Reporting Entities. A CTR has been defined under Section 2(c) of AML Act 2010, according to which, a CTR is a report on currency transaction of such an amount as may be specified by the National Executive Committee by notification in the official Gazette.

Section 5 of AML Regulations 2015 further explains that the CTR is filed when a cash-based transaction involving payment, receipt, or transfer of an amount, as specified by the National Executive Committee, on a prescribed format.

As per Gazette notification SRO 73 (I)/2015 dated 21-01-2015, the minimum amount for reporting a CTR to FMU is two million rupees.

Accordingly, all cash-based transactions of two million rupees or above involving payment, receipt, or transfer are to be reported to FMU as CTR. Likewise, cash-based foreign currency transaction equivalent to two million rupees or above are to be reported as CTR."

⁸⁹ <https://www.fmu.gov.pk/docs/FrequentlyAskedQuestions-CTR.pdf>

Suspicious Transaction Report (STR)

Banks and other designated businesses (called reporting entities) are required to submit an STR to FMU in respect of any transaction which appears to be suspicious of being related to money laundering. For example if large sums of money are being deposited in account of a public office holder without apparently a justifiable reason, the bank should report the matter on STR to FMU.

What does FMU do with CTR and STR?

FMU analyses the CTRs/STRs received from the reporting agencies. During the course of analysis, the FMU may require seek information from any other institution or person in Pakistan. If reasonable evidence is found about money laundering after analysis of these reports, the FMU is required to refer the case to one of the four designated investigating agencies (NAB, FIA, ANF and FBR) for further investigation and prosecution.

iv. Other Functions of FMU

Other Functions and powers of Financial Monitoring Unit are given in the Act in following manner.

- *"To receive Suspicious Transaction Reports and CTRs from financial institutions and such non financial businesses and professions as may be necessary to accomplish the objects of this Act;*
- *To analyse the Suspicious Transaction Reports and CTRs and in that respect the FMU may call for record and information from any agency or person in Pakistan related to the transaction in question. All such agencies or persons shall be required to promptly provide the requested information;*
- *To disseminate on a confidential basis, after analyzing the Suspicious Transaction Reports, and CTRs and other record, necessary information or materials to the concerned investigating or prosecuting agencies for enquiry or other action under this Act or any other applicable law;*
- *To create and maintain a data base of all Suspicious Transaction Reports and CTRs, related information and such other materials as the Director General determines are relevant to the work of the FMU and in that respect, the FMU is authorised to establish necessary analytic software and computer equipment to effectively search the database, sort and retrieve information and perform real time linkages with databases of other agencies both*

in and outside Pakistan as may be required from time to time;

- To co-operate with financial intelligence units in other countries and to make reciprocal arrangements after due administrative process to share, request and receive information relating to money laundering and financing of terrorism;
- To represent Pakistan at all international and regional organisations and groupings of financial intelligence units and other international groups and forums which address the offence of money laundering and other related matters;
- to submit to the General Committee and the National Executive Committee the reports including an annual report containing overall analysis of the Suspicious Transaction Reports and CTRs, statistics concerning the investigations and prosecutions conducted in relation to the offences of money laundering and financing of terrorism in Pakistan and recommendations on countermeasures to combat money laundering and financing of terrorism. In this behalf, FMU may call periodic reports from the investigating and prosecuting agencies in such manner as may be specified by FMU;
- to frame regulations in consultation with SBP and SECP for ensuring receipt of Suspicious Transaction Reports and CTRs from the financial institutions and non-financial businesses and professions with the approval of the National Executive Committee;
- To recommend to the regulatory authorities of reporting entities to issue regulations as considered necessary in the context of combating money laundering and financing of terrorism, including customer due diligence and ancillary record-keeping.
- To enter into arrangements with domestic agencies and authorities or engage a financial institution or an intermediary or such other non-financial businesses and professions or any of its officers as may be necessary for facilitating implementation of the provisions of this Act, the rules or regulations made hereunder."

▪ **National Counter Terrorism Authority (NACTA)**

National Counter Terrorism Authority (NACTA) established under National Counter Terrorism Authority Act 2013. It's a high powered institution entrusted with coordinating national efforts against terrorism. The NACTA's is also entrusted to coordinate and spearhead state's measures against financing of terrorism. Rakhshanda Iqbal, in an article published in NACTA's

Journal, throws light on the role of NACTA in countering terrorism financing in Pakistan in following words.

"The National Counter Terrorism Authority (NACTA) was established under NACTA Act 2013. Since its inception, NACTA has been making efforts to combat terrorism and extremism in Pakistan. It has come up with the draft of a model law for the registration, monitoring and audit of NPOs and charities. The draft has been shared with the provinces for their feedback whereupon it will be submitted to the Government. The purpose of this law is to stop the misuse of NPOs and charities by terrorist organizations. Apart from collaborating with the Federal Board of Revenue, State Bank of Pakistan, Anti-Narcotics Force, Federal Investigation Agency and Intelligence Agencies to monitor the movement of cash across land and other routes, it is also enforcing State Bank of Pakistan's (SBP) rules regarding threshold of currency limits of up \$10,000/visit which can be taken out of the country. The contribution of NACTA in monitoring the mobile money transfer system or Branchless Banking, a particularly vulnerable area to be exploited by the terrorists, is significant. It is also collaborating with intelligence agencies to control illegal Hawala operators in Pakistan along with formulating rules for donation collection by NPOs and charities in Pakistan. The purpose is to stop fraudulent fund raising for terrorism financing."

▪ **Financial Action Task Force(FATF)**

FATF is an intergovernmental body established originally by G-7 Countries in 1989 initially to prevent the financial system from abuse by money laundered that at the time of establishment mainly included drug cartels and Illegal Arms Dealers. FATF issued 40 recommendations in 1990 for combating Money Laundering. Eight special recommendations were issued for Terrorist Financing in year 2001 in the wake of terrorist attacks in the New York. A special recommendation on terrorist financing was issued in year 2004 thus making total 09 recommendations on terrorist financing.

Members of FATF

Currently there are 37 countries and two Regional Organizations (GCC&EU) who are full members of the FATF. Indonesia has been given status of observer in the organization.

FATF Review of the Countries

FATF conducts periodic reviews to identify the countries with weak institutional Framework. Such countries are placed in to two categories



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i. High Risk Countries/ Countries subject to Call for Action

Such jurisdiction are exposed to misuse of their financial system and FATF calls upon its members to apply counter measures to deal with such countries. Currently DPRK and Iran are placed under this list.

ii. Other Monitored Jurisdictions with strategic Deficiencies

The financial system of these countries contains multiple weaknesses and FATF urges upon such jurisdictions to improve their systems failing which such countries are liable to be moved to the first category i.e High Risk Countries .

Currently following countries are placed in this category.

- Ethiopia
- Pakistan
- Serbia
- Sri Lanka
- Syria
- Trinidad and Tobago
- Tunisia
- Yemen

v. FATF's Statement about Pakistan

FATF has highlighted following deficiencies vis a vis Institutional Framework in Pakistan.

Since June 2018, when Pakistan made a high-level political commitment to work with the FATF and APG to strengthen its AML/CFT regime and to address its strategic counter-terrorist financing-related deficiencies, Pakistan's continued political commitment has led to significant progress across a comprehensive CFT action plan. Pakistan has completed 26 of the 27 action items in its 2018 action plan. While Pakistan has reported some steps, the FATF encourages Pakistan to continue to make progress to address as soon as possible, the one remaining CFT-related item by continuing to demonstrate that TF investigations and prosecutions target senior leaders and commanders of UN designated terrorist groups.

In response to additional deficiencies later identified in Pakistan's 2019 APG Mutual Evaluation Report (MER), in June 2021, Pakistan provided further high-level commitment to address these strategic deficiencies pursuant to a new action plan that primarily focuses on combating money laundering. Since June 2021, Pakistan has taken swift steps towards improving its AML/CFT regime, including by enacting legislative amendments to enhance its international cooperation

framework; demonstrating DNFBP monitoring for PF TFS and DNFBP supervision commensurate with the risks; and applying sanctions for non-compliance with beneficial ownership requirements. Pakistan should continue to work to address its other strategically important AML/CFT deficiencies, namely by: (1) providing evidence that it actively seeks to enhance the impact of sanctions beyond its jurisdiction by nominating additional individuals and entities for designation at the UN; and (2) demonstrating an increase in ML investigations and prosecutions and that proceeds of crime continue to be restrained and confiscated in line with Pakistan's risk profile, including working with foreign counterparts to trace, freeze, and confiscate assets.

vi. FATF-Style Regional Bodies

Following FATF-style regional bodies are also working in coordination with FATF for controlling money laundering with in their respective jurisdictions.

- Asia/Pacific Group on Money Laundering (APG) Sydney, Australia;
- Caribbean Financial Action Task Force (CFATF) Port of Spain, Trinidad and Tobago;
- Eurasian Group (EAG) Moscow, Russia;
- Eastern & Southern Africa Anti-Money Laundering Group (ESAAMLG) Dar es Salaam, Tanzania;
- Central Africa Anti-Money Laundering Group (GABAC), Libreville, Gabon;
- Latin America Anti-Money Laundering Group (GAFILAT) ,Buenos Aires, Argentina;
- West Africa Money Laundering Group (GIABA) ,Dakar, Senegal;
- Middle East and North Africa Financial Action Task Force (MENAFATF), Manama, Bahrain;
- Council of Europe Anti-Money Laundering Group (MONEYVAL), Strasbourg, France (Council of Europe).

Asia/Pacific Group on Money Laundering (APG)

Pakistan is member of Asia Pacific Group (APG) on money laundering. Initially established as a regional secretariat of FATF in Sydney, the APG was established as a distinct and independent organization in year 1997. Currently there are 41 members with a number along with of observers.

Major Functions of APG

The major functions discharged by the APG include following:

- Periodic evaluations of the countries with in the region, called "mutual evaluation" to assess the level of compliance of the

respective countries to FATF Recommendations. APG defines "Mutual Evaluation" as under"

In accordance with APG membership rules, on joining the APG, members commit to a mutual peer review system to determine the levels of compliance with the international AML/CFT standards. These peer reviews are referred to as "mutual evaluations".

A mutual evaluation involves a team of experts drawn together from APG member jurisdictions (specially trained and qualified in the FATF's assessment methodology). The team consists of, legal experts, financial and regulatory experts and law enforcement experts (including FIU experts).

- Provision of technical assistance and training to the members in order to strengthen their system of "anti-money laundering"
- Conduct of research in the trends and methods being used for money laundering and disseminating the information to the member countries.
- Collaboration with other inter-governmental and private organisations who share their objectives with APG.

vii. Flaws in Institutional Framework concerning Money Laundering in Pakistan

- **Shortage of resources provided to FMU:** FMU is the principal organisations responsible for coordinating all the efforts related to money laundering in Pakistan. However the organization lacks resources to effectively discharge its assigned functions. The head office of FMU is situated in Karachi (housed in State Bank of Pakistan) building with a liaison office in Islamabad. Such an important organization should, however, have presence across the country. The Asia Pacific Group (APG) in its mutual evaluation report of year 2019 has highlighted shortage of adequate resources with FMU.
- **Lack of Oversight upon Designated Non-Financial Businesses and Professions "DNFBPs":** The Anti-Money Laundering Act 2010 requires that Designated Non-Financial Businesses and Professions should also submit CTR and STR to FMU. Following businesses and professions have been included in this category under section 2(xii) of Anti-Money Laundering Act.

"Designated non-financial businesses and professions or DNFBPs" mean the following persons, namely:-

(a) Real estate agents, including builders and real estate developers, when performing the prescribed activities in the prescribed circumstances and manner;

(b) Dealers in precious metals and precious stones, including jewelers and gem dealers, when performing the prescribed activities in the prescribed circumstances and manner;

(c) Lawyers, notaries, accountants and other legal professionals who carryout monetary transactions for their clients concerning the following activities:-

(I) managing, operating, buying and selling of real estate, legal persons and legal arrangements and preparing documents therefor;

(II) Managing of client money, securities or other assets;

(III) Managing bank, savings or securities accounts; or

(IV) Organizing contributions for the creation, operation or management of companies;

The DNFBs contain a great risk of money laundering. However FMU is not effectively monitoring these DNFBs. This fact also finds mention in Mutual Evaluation Report of APG.

- **Non exercise of effective oversight by NEC and GC:** National Executive Committee and General Committee are responsible for exercising oversight over institutional framework of money laundering in Pakistan. However both the bodies are not functioning effectively. The Law requires that meeting of NEC be held twice a year but meetings are not held regularly. NEC has not provided the vision and leadership to anti money laundering regime in Pakistan in accordance with its mandate.
- **Undocumented Economy:** Undocumented economy provides breeding ground for money laundering to thrive. According a news report, the size of informal economy in Pakistan has been estimated at 56% of the national GDP⁹⁰. The transactions and activities taking place under informal economy don't come under any official record so if criminals keep and route their wealth in undocumented sector, it will remain outside the reach of state authorities.
- **Lack of expertise in Investigating:** The investigation of offences related to money laundering needs a high degree of

⁹⁰ <https://www.dawn.com/news/1610606>

expertise which is lacking among the investigating agencies of Pakistan. The Mutual Evaluation Report of APG observes as under:

"In general, Pakistan does not make use of any special investigative techniques to support its terrorism or TF investigations, such as the use of controlled deliveries (see R.31).⁴² Furthermore, there is a general lack of financial investigative expertise or forensic capabilities at the FIA as well as CTDs"

- **Weak Criminal Justice System.** The criminal justice system in Pakistan has remained unable to effectively prosecute the criminals, as evident from very low conviction rate even in conventional and routine offences. The offence of money laundering needs a very high quality of investigation and evidence to secure conviction which is unfortunately not witnessed in Pakistan. The absence of effective system of punishment encourages the criminals to commit crimes without impunity.
- **Lack of Coordination amongst Investigating Agencies and other bodies responsible for different aspects of Anti Money Laundering :** The APG in its "mutual evaluation report" has observed as under with regard to coordination mechanism of anti-money laundering measures in Pakistan⁹¹:

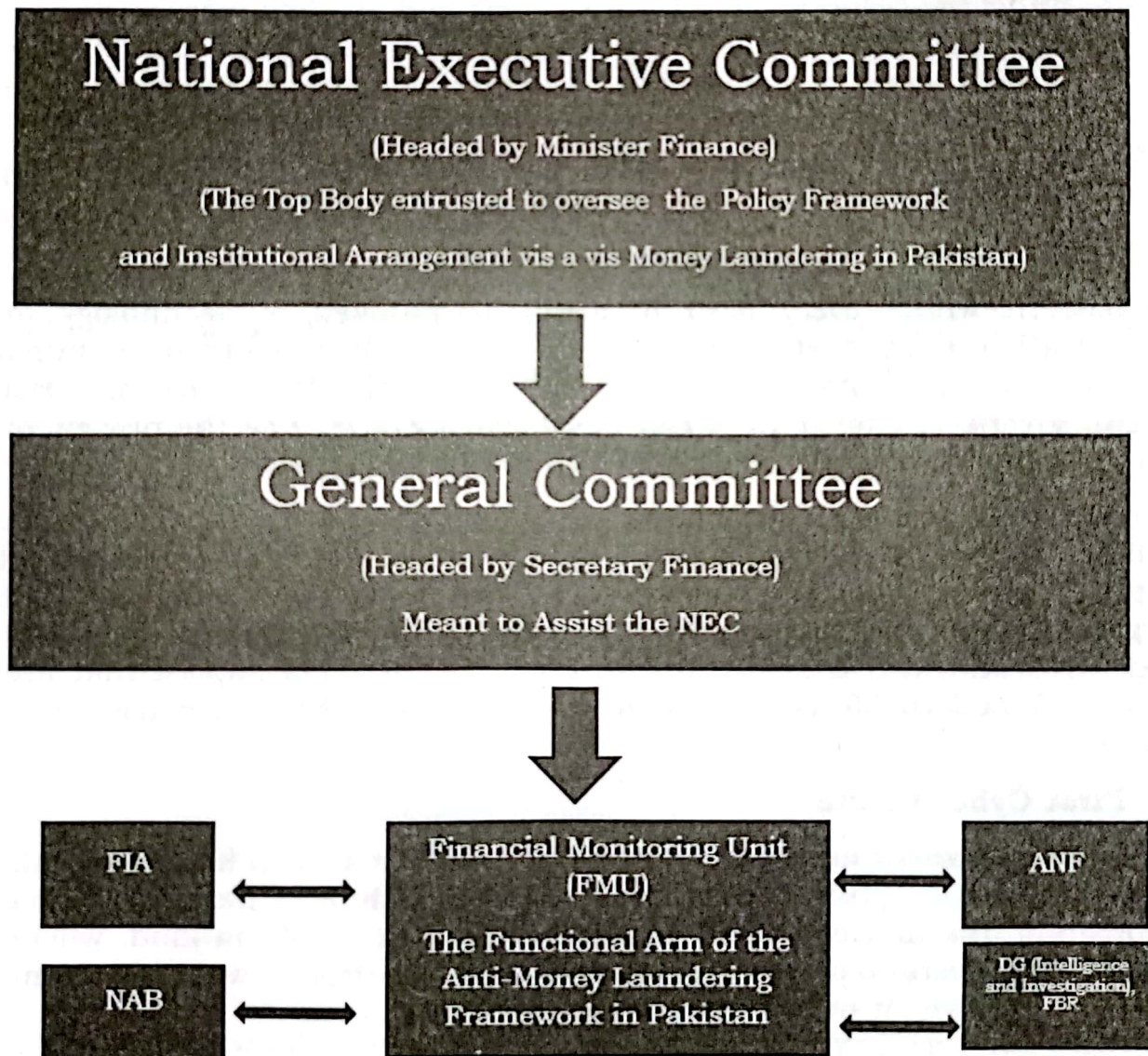
"Pakistan has established a multi-agency approach in implementing its AML/CFT regime under the AMLA, as described in detail below:

- *AML/CFT policy is coordinated by the NEC, chaired by the Minister for Finance. Members are; Minister on Foreign Affairs, Minister for Law and Justice, Minister for Interior, Governor SBP, Chairman SECP, and Director General FMU (who also acts as secretary). The mandate of the NEC is to develop, review and oversee the implementation of national strategy to fight money laundering and financing of terrorism.*
- *AML operational activities are coordinated by the General Committee (GC) which comprises the secretaries of Ministries of Finance, Interior, Foreign Affairs, Law and Justice, Chairman NAB, Chairman-FBR, Director General-FIA, Director General-ANF, Deputy Governor-SBP, Commissioner-SECP and Director General FMU. The main objectives of the GC are to take*

⁹¹ APG, Mutual Evaluation report Pakistan (2018)

measures as necessary for the development and review of the performance of investigating agencies, FMU and the financial institutions and DNFBPs relating to anti-money laundering. The Director FMU acts as Secretary to the NEC and GC.

Pakistan provided no examples of how the above mechanisms were used to facilitate AML/CFT policy development or ML/TF operational coordination or cooperation. In particular, Pakistan did not demonstrate the above mechanisms were used for LEA (Law Enforcement Agencies) coordination or cooperation in ML (Money Laundering) investigations of higher risk predicate crimes including with provincial authorities”.



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Cybercrimes

Cybercrime is a criminal activity in which a computer is used either as object or tool for committing the crime. It's a very broader term and encompasses a large number of activities such as internet frauds, stealing of sensitive digital information, bank frauds, web attacks, malwares and pornography, only to name but a few.

The term cyber crime has been defined by the United Nations during its 10th Congress on the Prevention of Crime and the Treatment of Offenders, in following manner⁹²

Cybercrime in a narrow sense (computer crime) covers any illegal behavior directed by means of electronic operations that target the security of computer systems and the data processed by them. Cybercrime in a broader sense (computer-related crimes) covers any illegal behaviour committed by means of, or in relation to, a computer system or network, including such crimes as illegal possession and offering or distributing information by means of a computer system or network.

▪ Cyber Crime in the Contemporary World

In modern world, every facet of life is surrounded by technology and digitalization, a fact that on the one side has brought comfort to the human life but on the other hand, man is exposed to multiple threats bearing serious repercussions. Digital sources can be exploited to over ride the privacy of a person, organization and even states.

The scope of cybercrimes is multi-dimensional and pervasive. An individual can be blackmailed by accessing his private data or one can be defrauded by getting access to ones information pertaining to bank accounts. Organizations in similar manner have been defrauded. Nuclear facilities of Iran were attacked in 2010 through cyber means. This implies that every aspect of modern life is exposed to cyber threat which can cause serious harm.

▪ First Cyber Crime

The first ever cyber crime in the modern history is said to have been taken place in 1820. Joseph M jacquard was a French cloth manufacturer. He made a program, the first computer program in the history of ma kind, whereby some tasks were repeated automatically by the looms with out human

⁹² <http://www.itu.int/ITU-D/cyb/cybersecurity/docs/Cybercrime%20legislation%20EV6.pdf>

intervention. The employees of Jacquard feared losing jobs and therefore they sabotaged the program. This is known to be the first cyber-crime in the history.

➤ **Major Features of Cyber Crimes**

One of the most prominent features of cybercrimes is that they are multidimensional and Pervasive: Cyber Crimes may fall under following categories:

- Social(Example: hate speech, sectarianism)
- Economic(Example: bank fraud)
- Moral(Example: pornography and indecency)
- Individual(Example: cyber stalking)
- Organizational(Example: theft of corporate data, hacking etc)
- National(Example: scandalizing the national institutions)
- Transnational(Cross border cyber-attacks)

▪ **Law Dealing with Cyber Crimes in Pakistan**

The principal Law which deals with cyber crimes in Pakistan is “Prevention of Electronic Crimes Act 2016”.

▪ **Agency dealing with Cyber Crimes in Pakistan.**

A unit in FIA, named National Response center for Cyber Crimes is working for prosecution of cyber crimes in Pakistan. (<http://www.nr3c.gov.pk/>)

i. **Definitions and punishments of Cyber Crimes under “Prevention of Electronic Crimes Act 2016.**

Chapter –II of the Act ibid provides the natures of crimes and punishments prescribed by the law there-against in following manner.

3. Unauthorized access to information system or data. — *Whoever with dishonest intention gains unauthorized access to any information system or data shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to fifty thousand rupees or with both.*

4. Unauthorized copying or transmission of data.— *Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any data shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one hundred thousand rupees or with both.*

5. Interference with information system or data. — *Whoever with dishonest intention interferes with or damages or causes to be interfered with or damages any*

part or whole of an information system or data shall be punished with imprisonment which may extend to two years or with fine which may extend to five hundred thousand rupees or with both.

6. Unauthorized access to critical infrastructure information system or data. — Whoever with dishonest intention gains unauthorized access to any critical infrastructure information system or data shall be punished with imprisonment which may extend to three years or with fine which may extend to one million rupees or with both.

7. Unauthorized copying or transmission of critical infrastructure data.— Whoever with dishonest intention and without authorization copies or otherwise transmits or causes to be transmitted any critical infrastructure data shall be punished with imprisonment for a term which may extend to five years, or with fine which may extend to five million rupees or with both.

8. Interference with critical infrastructure information system or data.— Whoever with dishonest intention interferes with or damages, or causes to be interfered with or damaged, any part or whole of a critical information system, or data, shall be punished with imprisonment which may extend to seven years or with fine which may extend to ten million rupees or with both.

9. Glorification of an offence.— (1) Whoever prepares or disseminates information, through any information system or device, with the intent to glorify an offence relating to terrorism, or any person convicted of a crime relating to terrorism, or activities of proscribed organizations or individuals or groups shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to ten million rupees or with both.

Explanation.— For the purposes of this section “glorification” includes depiction of any form of praise or celebration in a desirable manner.

10. Cyber terrorism. — Whoever commits or threatens to commit any of the offences under sections 6, 7, 8 or 9, where the commission or threat is with the intent to,---

- (a) coerce, intimidate, create a sense of fear, panic or insecurity in the Government or the public or a section of the public or community or sect or create a sense of fear or insecurity in society; or
 - (b) advance inter-faith, sectarian or ethnic hatred;
- or

(c) advance the objectives of organizations or individuals or groups proscribed under the law, shall be punished with imprisonment of either description for a term which may extend to fourteen years or with fine which may extend to fifty million rupees or with both.

- **11. Hate speech.**—Whoever prepares or disseminates information, through any information system or device, that advances or is likely to advance interfaith, sectarian or racial hatred, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.
- **12. Recruitment, funding and planning of terrorism.**—Whoever prepares or disseminates information, through any information system or device, that invites or motivates to fund, or recruits people for terrorism or plans for terrorism shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.
- **13. Electronic forgery.**— (1) Whoever interferes with or uses any information system, device or data, with the intent to cause damage or injury to the public or to any person, or to make any illegal claim or title or to cause any person to part with property or to enter into any express or implied contract, or with intent to commit fraud by any input, alteration, deletion, or suppression of data, resulting in unauthentic data with the intent that it be considered or acted upon for legal purposes as if it were authentic, regardless of the fact that the data is directly readable and intelligible or not, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to two hundred and fifty thousand rupees or with both.
(2) Whoever commits offence under sub-section (1) in relation to a critical infrastructure information system or data shall be punished with imprisonment for a term which may extend to seven years or with fine which may extend to five million rupees or with both.
- **14. Electronic fraud.**—Whoever with the intent for wrongful gain interferes with or uses any information system, device or data or induces any person to enter into a relationship or deceives any person, which act or omission is likely to cause damage or harm to that person or any other person shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to ten million rupees or with both.

- **15. Making, obtaining, or supplying device for use in offence.** — Whoever produces, makes, generates, adapts, exports, supplies, offers to supply or imports for use any information system, data or device, with the intent to be used or believing that it is primarily to be used to commit or to assist in the commission of an offence under this Act shall, without prejudice to any other liability that he may incur in this behalf, be punished with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.
- **16. Unauthorized use of identity information.** — (1) Whoever obtains, sells, possesses, transmits or uses another person's identity information without authorization shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to five million rupees, or with both.

(2) Any person whose identity information is obtained, sold, possessed, used or transmitted may apply to the Authority for securing, destroying, blocking access or preventing transmission of identity information referred to in sub-section (1) and the Authority on receipt of such application may take such measures as deemed appropriate for securing, destroying or preventing transmission of such identity information.
- **17. Unauthorized issuance of SIM cards etc.**— Whoever sells or otherwise provides subscriber identity module (SIM) card, re-usable identification module (R-IUM) or universal integrated circuit card (UICC) or other module designed for authenticating users to establish connection with the network and to be used in cellular mobile, wireless phone or other digital devices such as tablets, without obtaining and verification of the subscriber's antecedents in the mode and manner for the time being approved by the Authority shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to five hundred thousand rupees or with both.
- **18. Tampering, etc. of communication equipment.**— Whoever unlawfully or without authorization changes, alters, tampers with or re-programs unique device identifier of any communication equipment including a cellular or wireless handset and starts using or marketing such device for transmitting and receiving information shall be punished with imprisonment which may extend

to three years or with fine which may extend to one million rupees or with both.

Explanation.—A “unique device identifier” is an electronic equipment identifier which is unique to a communication device.

- **19. Unauthorized interception.**—Whoever with dishonest intention commits unauthorized interception by technical means of,--
 - (a) any transmission that is not intended to be and is not open to the public, from or within an information system; or
 - (b) electromagnetic emissions from an information system that are carrying data, shall be punished with imprisonment of either description for a term which may extend to two years or with fine which may extend to five hundred thousand rupees or with both.
- **20. Offences against dignity of a natural person.**—
 - (1) Whoever intentionally and publicly exhibits or displays or transmits any information through any information system, which he knows to be false, and intimidates or harms the reputation or privacy of a natural person, shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:
Provided that nothing under this sub-section shall apply to anything aired by a broadcast media or distribution service licensed under the Pakistan Electronic Media Regulatory Authority Ordinance, 2002 (XIII of 2002).
 - (2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.
- **21. Offences against modesty of a natural person and minor.**—(1) Whoever intentionally and publicly exhibits or displays or transmits any information which, --
 - (a) superimposes a photograph of the face of a natural person over any sexually explicit image or video; or
 - (b) includes a photograph or a video of a natural person in sexually explicit conduct; or

(c) intimidates a natural person with any sexual act, or any sexually explicit image or video of a natural person; or

(d) cultivates, entices or induces a natural person to engage in a sexually explicit act, through an information system to harm a natural person or his reputation, or to take revenge, or to create hatred or to blackmail, shall be punished with imprisonment for a term which may extend to five years or with fine which may extend to five million rupees or with both.

- (2) Whoever commits an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term which may extend to seven years and with fine which may extend to five million rupees:---

Provided that in case of a person who has been previously convicted of an offence under sub-section (1) with respect to a minor shall be punished with imprisonment for a term of ten years and with fine.

- (3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

- **22. Child pornography.**—(1) Whoever intentionally produces, offers or makes available, distributes or transmits through an information system or procures for himself or for another person or without lawful justification possesses material in an information system, that visually depicts,---

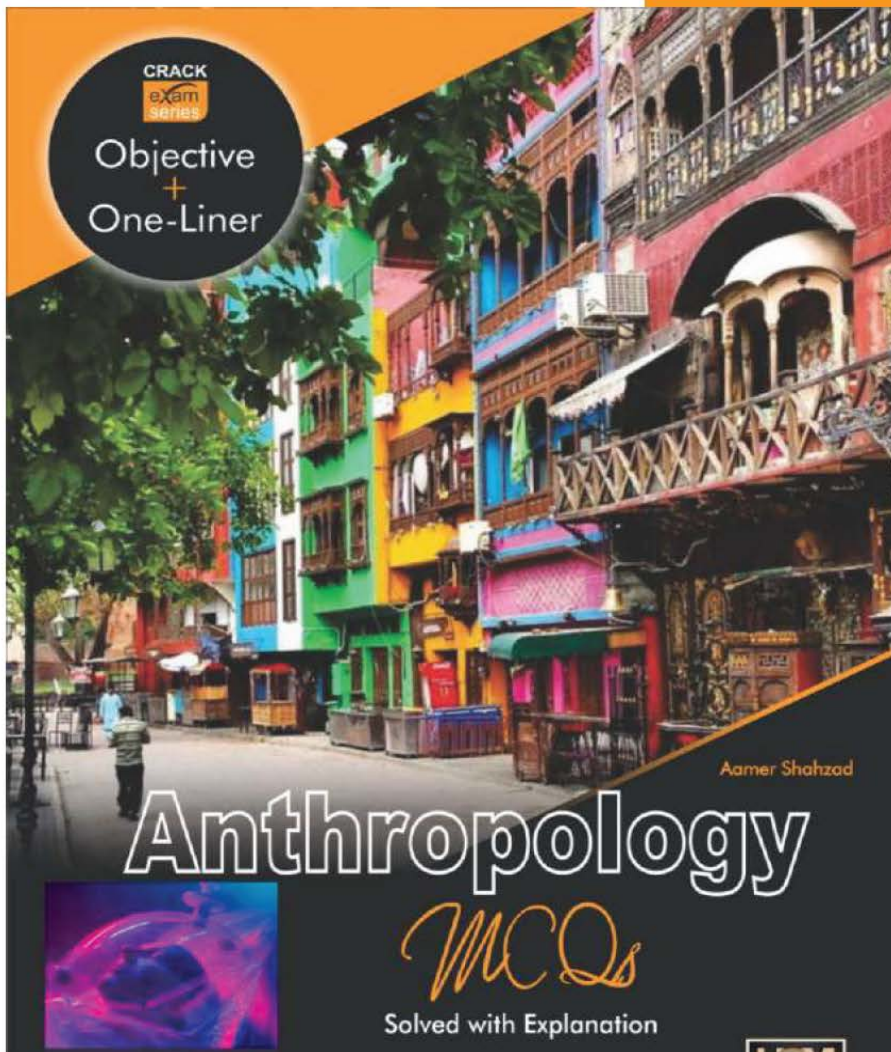
(a) a minor engaged in sexually explicit conduct;

(b) a person appearing to be a minor engaged in sexually explicit conduct; or

(c) realistic images representing a minor engaged in sexually explicit conduct; or

(d) discloses the identity of the minor, shall be punished with imprisonment for a term which may extend to seven years, or with fine which may extend to five million rupees or with both.

(2) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information



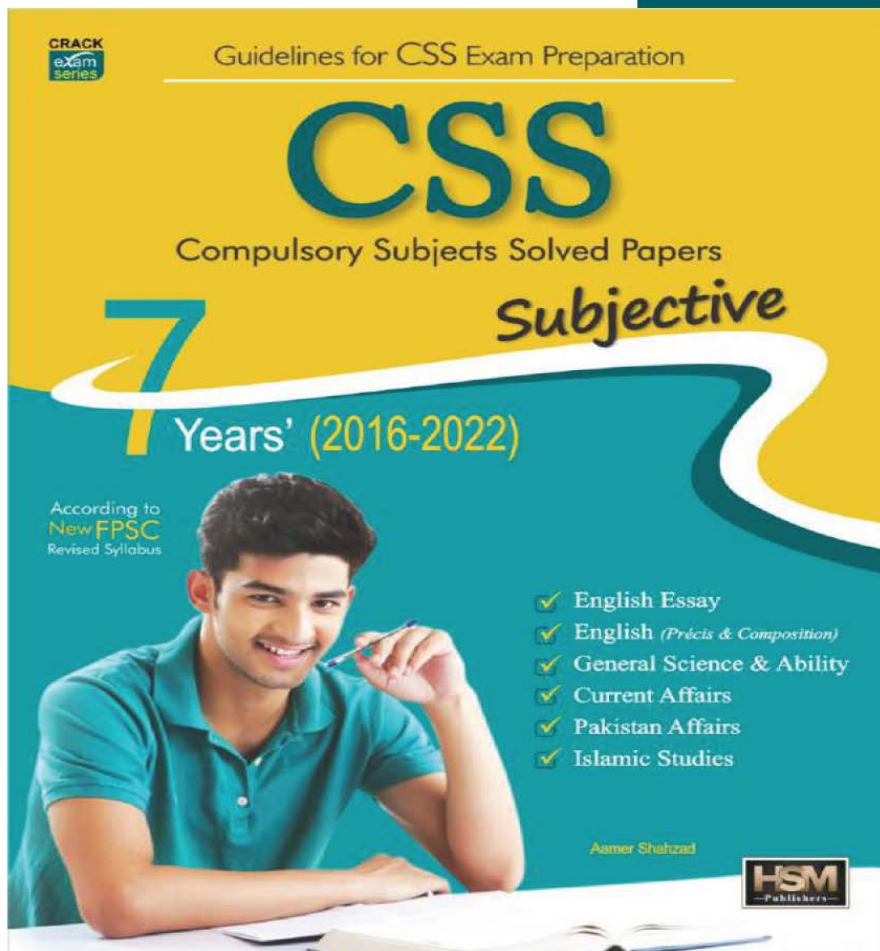
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referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances, including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

- **23. Malicious code.**—Whoever willfully and without authorization writes, offers, makes available, distributes or transmits malicious code through an information system or device, with intent to cause harm to any information system or data resulting in the corruption, destruction, alteration, suppression, theft or loss of the information system or data shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to one million rupees or with both.

Explanation.—For the purpose of this section, the expression “malicious code” includes, a computer program or a hidden function in a program that damages an information system or data or compromises the performance of such system or availability of data or uses it without proper authorization.

- **24. Cyber stalking.**— (1) A person commits the offence of cyber stalking who, with the intent to coerce or intimidate or harass any person, uses information system, information system network, the Internet, website, electronic mail or any other similar means of communication to,---
 - (a) follow a person or contacts or attempts to contact such person to foster personal interaction repeatedly despite a clear indication of disinterest by such person;
 - (b) monitor the use by a person of the internet, electronic mail, text message or any other form of electronic communication;
 - (c) watch or spy upon a person in a manner that results in fear of violence or serious alarm or distress, in the mind of such person; or
 - (d) take a photograph or make a video of any person and displays or distributes it without his consent in a manner that harms a person.
- (2) Whoever commits the offence specified in sub-section (1) shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one million rupees or with both:---

Provided that if victim of the cyber stalking under sub-section (1) is a minor the punishment may extend to five years or with fine which may extend to ten million rupees or with both.

(3) Any aggrieved person or his guardian, where such person is a minor, may apply to the Authority for removal, destruction of or blocking access to such information referred to in sub-section (1) and the Authority, on receipt of such application, shall forthwith pass such orders as deemed reasonable in the circumstances including an order for removal, destruction, preventing transmission of or blocking access to such information and the Authority may also direct any of its licensees to secure such information including traffic data.

- **25. Spamming.**— (1) A person commits the offence of spamming, who with intent transmits harmful, fraudulent, misleading, illegal or unsolicited information to any person without permission of the recipient or who causes any information system to show any such information for wrongful gain.

(2) A person including an institution or an organization engaged in direct marketing shall provide the option to the recipient of direct marketing to unsubscribe from such marketing.

(3) Whoever commits the offence of spamming as described in sub-section (1) by transmitting harmful, fraudulent, misleading or illegal information, shall be punished with imprisonment for a term which may extend to three months or with fine of rupees fifty thousand which may extend upto rupees five million or with both.

(4) Whoever commits the offence of spamming as described in sub-section (1) by transmitting unsolicited information, or engages in direct marketing in violation of sub-section (2), for the first time, shall be punished with fine not exceeding fifty thousand rupees, and for every subsequent violation shall be punished with fine not less than fifty thousand rupees that may extend up to one million rupees.

- **26. Spoofing.** — (1) Whoever with dishonest intention establishes a website or sends any information with a counterfeit source intended to be believed by the recipient or visitor of the website, to be an authentic source commits spoofing.

(2) Whoever commits spoofing shall be punished with imprisonment for a term which may extend to three years

or with fine which may extend to five hundred thousand rupees or with both.

National Accountability Bureau (NAB)

National Accountability Bureau, commonly known by its acronym, NAB, is the prime agency of Pakistan entrusted to curb corruption. It was established under National Accountability Ordinance 1999, issued in the aftermath of military takeover by General Pervez Musharraf.

▪ Objectives

Following objectives have been set out for the NAB in the Law.

- Investigation and prosecution of corruption cases.
- Recovery of the public money plundered through corruption.
- Recovery of the bank loans from willful defaulters.
- Educating the society about pitfalls of corruption.

▪ Head of Bureau

NAB is headed by a Chairman appointed by President in consultation with Prime Minister and Opposition leader for a term of 4 years.

▪ Eligibility for Appointment as Chairman NAB

Under Section 6 of National Accountability Ordinance 1999, a person is eligible to be

- A retired judge of supreme court or a retired chief justice of a High Court
- A retired Armed Forces Officer to the Rank of Lieutenant General
- A retired Civil Servant BS-22

▪ Removal of Chairman

The chairman NAB can be removed on the similar grounds as provided for a Judge of Supreme Court of Pakistan.

▪ Criticism

The NAB is criticized for following reasons.

- **Allegations of Partisan Role.** NAB is accused of supporting some political parties, especially those in power, against others. These allegations are being leveled since establishment of NAB. It is also alleged of being used for political engineering, witch hunting and victimization of political opponents. These allegations come from different quarters such as politicians, media, political observers and even courts.

- **Restricted Eligibility Criteria for Appointment of Chairman NAB.** There is a restricted eligibility criterion for appointment of Chairman NAB. Only a retired Judge, a retired military officer or a retired bureaucrat is eligible to be appointed as Chairman NAB. This criteria needs to be broaden in order to hire best of the best individual for this slot.
- **Appointing authority vested in those who themselves are subject to the prosecution of NAB.** Chairman NAB is appointed by the President in consultation with Leader of the House and Leader of the Opposition, both being the politicians. However the NAB's prosecution is also generally directed at politicians.

This constitutes a conflict of interest. Those who may subject to the NAB's prosecution would never desire to make it an effective organisation. Therefore the appointment authority of chairman NAB needs to vest in a broader forum with representation of different segments of the society such as judges, lawyers, academicians etc.

- **Lack of internal Accountability:** Chairman NAB can be held accountable by the Supreme Judicial Council. Other functionaries of NAB are accountable to its Chairman. However certain quarters are of the view that there is no effective system of internal accountability on the basis of performance. There are no external checks and balances. This is the reason that superior courts often express reservations over performance of NAB.

Central Authority of NAB vested in an individual instead of a Commission: The central authority of NAB is concentrated in its Chairman. Generally important institutions such as NAB are headed by a governing body with different names for instance, governing board, board of directors or commission. For example institutions including Election Commission of Pakistan, Federal Public Service Commission and Security and Exchange Commission of Pakistan are governed by the respective commissions instead of individuals. This lends "collective wisdom" to such institutions. Moreover external influence can be withstood by a group of persons. In past, agreement was reached between political leadership for constituting "National Accountability Commission" in place of NAB. This agreement could not be translated in to reality. However in order to make the NAB an effective and independent body, it is imperative that its organizational structure may be revamped so as to place it under a governing body instead of an individual.

Plea Bargain and Voluntary Return: Section 25 of National Accountability Ordinance 1999 contains a provision of Plea Bargain and Voluntary return through which one can escape

prosecution of NAB by returning the amount/public money plundered through corruption. This mode has been criticized from various quarters for being violative of the established standards of justice. This also encourages the public servants to engage in corruption and then evade the penalty by entering into plea bargain.

- **Inordinate Delay in conclusion of Investigations.** NAB is also criticized for unduly prolonging the cases for years. Certain quarters allege that it's done for political considerations. As the saying go that justice delayed is justice denied. The delay brings an uncalled for agony to the parties to the case. It is therefore imperative that cases may be concluded within a reasonable period of time.

▪ **Recommendations of Transparency International for improvement of NAB's Performance**

Transparency International has made following Recommendations for improvement of NAB's performance.

- *Eligibility criteria for Appointment of Chairman NAB be Broad Based (Not restricted to Judges, General and Bureaucrats)*
- *The provision of Voluntary Return should be eliminated.*
- *The option of Plea Bargain should only be exercised for approver/s in a transparent manner, only when the main accused in a corruption case can be prosecuted on the approver's confession.⁹³*
- *1% of Gross Domestic Product (GDP) should be allocated to NAB*
- *An Oversight Committee should be formulated for NAB's Accountability.*
- *Anti-Corruption should be included in the curriculum of the elementary, secondary and degree programs of educational institutions.*
- *NAB should increase collaboration with the media.*
- *NAB should make a thorough analysis of the entire chain of system to improve its conviction rate.*
- *Prosecutors and investigating officers of NAB should receive training in specialized -elds.*
- *NAB should make full use of social media as a catalyst for public engagement.*

⁹³ http://www.transparency.org.pk/documents/aca_nab16.pdf



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- NAB should ensure that its investigation procedures should be completely compliant with the basic rights of the citizens enshrined in Qanoon-e-Shahdat and the country's constitution.
- The timeline for inquiries should be in accordance with the provision in Ehtesab Act 1996.
- NAB should deal with the accused and the witnesses in a dignified and respectful manner.
- Precautionary measures need to ensure the agency does not itself become a source for extortion and corruption.
- NAB should ensure that the reference prepared and successfully tried in the Accountability Courts should be upheld in all subsequent review petitions in High Courts and Supreme Court.

Federal Investigation Agency (FIA)

Federal Investigation Agency commonly known by its acronym "FIA" is a specialized agency dealing with immigration, border control, criminal investigation, security matters and counter-intelligence. It was established under FIA Act, 1974 (Act-VIII of 1975) promulgated on 13-01-1975.

▪ History of FIA

FIA is successor of The Pakistan Special Police Establishment which was established under The Pakistan Special Police Establishment Ordinance 1948 to investigate the cases pertaining to corruption of the government servants. However later it was felt that a specialized agency is required to investigate offences of technical and special nature such as smuggling, counterfeiting of currency and passport and immigration pursuant to which the FIA was established under FIA Act 1974.

▪ Mandate of FIA

The FIA deals with following matters.

- Cybercrimes
- Crimes of specialized nature
- Immigration and Passports
- Smuggling
- Human Trafficking
- Counter Terrorism(Special Investigation Group)
- Money Laundering(FIA IS one of the prosecuting agencies under AML Act 2010)
- Automated Finger Print Identification System(AFIS)
- Intellectual Property Rights(IPR)
- Interpol (National Central Bureau)
- National Criminal Database(NCDB)

- Forensic and Technical Support

Anti-Narcotics Force

Drugs and Narcotics pose an existential threat to the humanity at large. Use of drugs destroys human body and the drug addicts become burden on the society. According to department of justice USA⁹⁴:

The consequences of illicit drug use are widespread, causing permanent physical and emotional damage to users and negatively impacting their families, coworkers, and many others with whom they have contact. Drug use negatively impacts a user's health, often leading to sickness and disease. In many cases, users die prematurely from drug overdoses or other drug-associated illnesses. Some users are parents, whose deaths leave their children in the care of relatives or in foster

The youth is specifically prone to use of drugs. Drugs can also be used as a tool to destroy the future of a nation. The criminals involved in drug trafficking are operating across the globe. Historically opium was the first drug to be realized as having a threat to human health mostly used in China. The Chinese authorities prohibited its use through various orders issued in 18th and 19th century⁹⁵. Realizing the threat posed by the opium to the people across the world, an international convention titled as "International Opium Convention" was held in Hague on 23th January 1912.

Drug trafficking continued to flourish during 20th century. The national Governments across the globe were confronted with the challenge combat this evil. The United Nations through various conventions and declarations has emphasized upon the members states to take substantial measures to control the trade of illicit drugs.

▪ History of Anti-Narcotics Force

The Government of Pakistan in order to control the sale of illicit drugs established an institution named Pakistan Narcotics Board in year 1957. The board was reorganized as Pakistan Narcotics Control Board in response to UN convention on Narcotics Control. The Anti Narcotics Task Force was established in year 1991. Subsequently Pakistan Narcotics Control Board and Anti-Narcotics Task Force were merged in year 1995 to constitute Anti-narcotics Force. (ANF)

⁹⁴ <https://www.justice.gov/archive/ndic/pubs38/38661/drugImpact.htm>

⁹⁵ <http://www.druglibrary.org/schaffer/history/om/om15.htm>

- **Governing Law:** The Force is established and regulated under "Anti-Narcotics Force Act 1997"
- **Organizational Structure.** The force is headed by its Director General who is normally a military officer of the rank of Major General.

▪ **Functions of Anti Narcotics Force**

The Functions of Anti Narcotics force are provided in section 5 of the "Anti-Narcotics Force Act 1997 which reads as under.

5. Functions of the Force.—The Force shall

(a) inquire into, investigate and prosecute all offences relating to, or connected with, preparation, production, manufacture, transportation, illicit trafficking or smuggling of intoxicants, narcotics and chemical precursors or reagents used in the manufacture of narcotics, or any offence committed in the course of the same transaction under any law for the time being in force, including an attempt or conspiracy to commit, or any offence committed in the course of the same transaction under any law for the time being in force, including an attempt or conspiracy to commit, or any abetment of, any such offence, or any offence committed under the Control of Narcotics Substances Ordinance, 1996 (XCIV of 1996), or the Prohibition (Enforcement of Hadd) Order, 1979 (P.O. 4 of 1979),

(b) Trace and freeze the assets;

(c) Provide assistance and advice to other enforcement agencies on all matters in the field of narcotics and to collect information from all national and international enforcement agencies about illicit narcotic traffic and traffickers;

(d) Maintain liaison with all national or international narcotics authorities, organizations, bodies, associations and societies and represent Pakistan in such conferences, seminars and workshops arranged by any such organization or narcotics related matters

(e) Arrange and co-ordinate training of own staff and members of other enforcement agencies in various aspects of narcotics enforcement;

(f) Co-ordinate the project and schemes for elimination and destruction of poppy cultivation; and

(g) Perform any other related functions which may be assigned to it by

Glossary

- **Abolitionism:** Abolitionism advocates end of punishments and replace it with reformation and rehabilitation of the offenders. The proponents of this view maintain that punishments serve no purpose and those who are awarded punishments do commit crimes again.
- **Accountability:** The process of holding someone answerable or accountable for his actions is called accountability.
- **Acquisitive Crime:** A crime which brings economic/ financial gain for the offender such as theft, burglary and corruption etc.
- **Alternate Remittance System:** Transfer of money other than the formal banking system (Hundi and Hawala) is called alternative remittances system.
- **Atavism:** The view of Cesare Lombroso that criminal were not fully developed as human being and that they contained characteristics of primitive human beings.
- **Benami Transactions:** In Benami transaction, a property is purchased in the name of a person who is not real owner of the property. Benami Transactions are prohibited in Pakistan under prohibition of Benami Transaction Act 2017
- **Administrative Criminology:** A form of practical policy-relevant criminology that focuses almost exclusively on the nature of the criminal event and the particular setting in which it occurs. Under this perspective, the offender is considered only as a rational actor who makes calculated decisions about the costs and benefits of criminal action. Administrative criminologists seek to reduce the opportunities for crime, thus making the costs/risks of crime outweigh the potential benefits.
- **Behavioral Definition of Juvenile Delinquency:** Juvenile Delinquency can behaviorally be defined as Frequent disapproved behavior of children and youth. The disapproved behaviors means a behavior which is not liked by the society at large. Examples include Elopement, absenteeism, Lethargy and ill-mannerism. These behaviors though disliked by the society are not criminal offences.
- **Cash Courier:** Also known as Bulk Cash Smuggling (BCS) is a method of transfer of funds in hard cash. Criminals instead of using formal financial system may transfer the money in hard cash/currency.
- **Consensus View/Legalistic Definition of crime:** Consensus view supports legal definition of crime on the presumption that process of criminalizing of acts has support of a wider segment of the society. During nineteenth and early twentieth century, the criminologists had been studying convicts and prisoners to understand different aspects of crime. The consensus view maintains that the law reflects collective will of the society hence what is legally defined as a crime represents the will of the society.
- **Conflict View/Critical View:** Criticism on legalistic definition of crime gave impetus to another view which maintained that society comprised of

diverse groups such as politicians, businessman, professionals, workers and farmers. All these groups strive to protect their own interests. Those who are powerful dominate the law making process during which they criminalize (legally declared as crime) only those acts which are committed by the other groups. Street crimes are criminalized because they are committed by the poor. On the other hand, the acts of powerful groups which contain even greater social harm such as violation of labor laws, trade of things injurious to individual and society such as cigarette and unfair business practices are not criminalized at all.

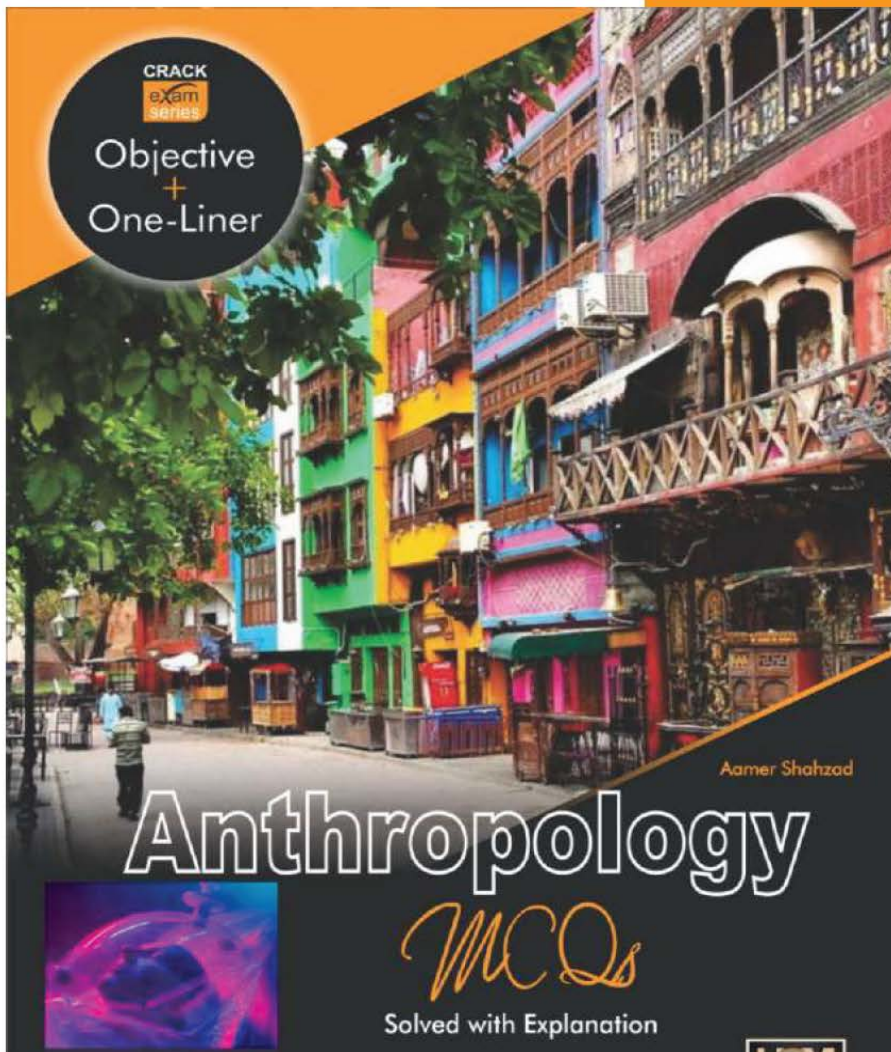
- **Corporate Crimes:** Corporate crimes are committed by corporations/corporate entities such as window dressing, unfair business practices, insider trading and money laundering.
- **Criminalistics:** Criminalistics is a sub branch of criminology which deals with collection, collation and analysis of evidence by employing forensic techniques.
- **Criminal Investigation:** It is process of collection and analysis of information and evidence to identify and prove the guilt of an offender.
- **Criminal Investigation Analysis:** The process of studying criminal data in order to identify trends and relationships so as to draw conclusions for aiding the law enforcement is called criminal investigation analysis.
- **Criminal Justice System:** Criminal Justice system comprises of all the state institutions established for detecting, investigating, prosecuting and controlling crimes in the society. It can be defined as being a framework comprising of individuals, institutions, rules and procedures combined together in order to prevent and control crimes in the society.
- **Community policing.** Community policing is a philosophy of policing which requires to involve the local community in planning and management of Police function.
- **Currency Transaction Report (CTR).** Currency Transaction Report (CTR) is a report which every bank is required to submit to FMU for each cash/currency transaction made by a client over the minimum prescribed threshold/limit. Currently the limit is Rs 2.00 million.
- **Cybercrimes.** Cybercrime is a criminal activity in which a computer is used either as object or tool for committing the crime. It's a very broader term and encompasses a large number of activities such as internet frauds, stealing of sensitive digital information, bank frauds, web attacks, malwares and pornography, only to name but a few.
- **Database Investigation.** A database is collection of information in organized manner which can be accessed and analyzed in variety of manners. Data base investigation refers to analysis information available on database during the course of investigation. The data related to criminal investigation may include names, fingerprints, DNA and other details of criminals, information about stolen properties and passports.
- **Deviance.** Socially disapproved behavior i.e violation of social norms. Deviance can be criminal when the conduct is violative of criminal law

such as murder, robbery or theft. It is non-criminal when it doesn't violate the criminal law such as "telling lies" or "being extravagant".

- **Diversion.** Diversion is a method of informal resolution of criminal disputes provided under Juvenile Justice System Act 2018. The term Diversion has been defined as "Diversion" means an alternative process of determining the responsibility and treatment of a juvenile on the basis of his social, cultural, (economic. psychological and educational background without resorting to formal judicial proceedings
- **Evil.** Anything that is considered harmful to the society and social order. An evil may or may not symbolize a crime. For instance, extravagance is an evil but not a crime. Contrarily, corruption is an evil as well as a crime.
- **Felony.** Felony denotes more serious crimes such as murder, robbery and rape etc.
- **Forensic Investigation.** "Forensic Investigation" means use of modern technology during the course of investigation. The development in modern technology has on the one hand facilitated the process of investigation and on the other hand there are number of crimes which are either performed through technology or their object is a technological device.
- **Habitual Criminal.** One who has committed numerous crimes and is deemed to have become a hard core criminal. Such a criminal poses threat to society at large and required to be incapacitated.
- **Hudood.** Hudood are the crimes whose punishments are prescribed by the Islam. "*Hadud* is plural of *Hadd*" which means limit" prohibition".
- **Informal Agencies.** Informal agencies provide a mechanism for settlements of disputes outside the regular criminal justice system or regular courts. It is also termed as "Informal Justice System". "The "*Jirga*" and "*Punchaya*" system in Pakistan is example of informal justice. However both of them are not recognized under any Law therefore both the models , "*Jirga*" and "*punchayat*" are subject to abuse and miscarriage of justice
- **Infraction.** Infractions are small violations of laws which don't attract imprisonment in jail and therefore contain punishment of fines only.
- **Intelligence Operations.** Covert operations followed by compilation and analysis of information to predict, monitor or prevent a crime are called intelligence operations.
- **Juvenile Delinquency.** The term Juvenile means a child, the one who has not attained the age of adulthood while "Delinquency" has been derived from the latin term "*dilinquere*" meaning negligence. So the conduct or action of a juvenile which violates the social code (norms of the society) is called juvenile delinquency.
- **Kinesic Interrogation.** Kinesic interrogation aims to study the human behavior through non-verbal communication commonly known as body language. Though importance of non-verbal communication in assessing human behavior is known from centuries, the term "kinesic" was coined

by an American anthropologist named "Ray L. Birdwhistel" This technique requires deep understanding of human behavior.

- **Legal Definition.** Legally the child delinquency signifies a behavior that violates the criminal code. It is a violation of the law committed by a juvenile. Examples include sexual activities, theft and damaging properties of others. These behaviors, in contrast to the ones cited in behavioral dimension, are criminal offences under the Law of the land.
- **"Mala In se"** means "wrong in itself". It is any act or omission which is universally recognized as a criminal offence such as murder, theft, robbery etc.
- **"Mala Prohibita"** means prohibited by statute. This is an acts or omissions which is not universally considered a crime but they are criminalized in view of the peculiar circumstances of the given society such as kite flying is not inherently a crime but it was banned and criminalized under "Punjab Prohibition of Kite Flying Ordinance 2001" because kite flying because it was claiming human lives.
- **Misdemeanor.** Misdemeanors refer to less serious offences under which the imprisonment don't extend beyond a year such as affray (U/S 160 PPC), offences related to weight and measures etc.
- **Money Laundering.** The Process of concealing origin of illegally earned money by integrating it in the legitimate financial System is called Money Laundering. Money laundering enables the criminals to portray their ill-gotten wealth as legitimate money.
- **Occasional Criminal.** One who commit crime in response to some external stimulus or in order to avail an opportunity is called occasional criminal. Such Criminals are more respective to rehabilitative treatment.
- **Organized Crimes.** Organized crimes are committed by collaboration and coordination of multiple individuals. It denotes a situation when criminals join hand to form a group in order to commit a crime.
- **Parole.** Parole is a method whereby a prisoner conditionally is released from the prison before completion of sentence on account of his good conduct. The word parole has been derived from French phrase "*je donne ma parole*" which means "I give my word". The prisoner has to undertake that he would maintain good behavior. Though scope of the parole is different from that of probation, purpose of the both is rehabilitation of offenders by providing them an opportunity to reintegrate in the society.
- **Penology.** Penology intends to study various methods of punishment in different societies and their impact in deterrence. It may also involve strategies other than punishment to reform and rehabilitate the offenders.
- **Physiognomy.** Physiognomy refers to assessing character of a person from outer appearance especially from ones face.
- **Phrenology.** Phrenology establishes a relationship between shape of the skull and human conduct arguing that skull reflects the shape of brain and therefore serves as a manifestation of human traits
- **Positivist School of Thought.** This school of thought believes that its not solely internal desires that drive the human being to commit crimes



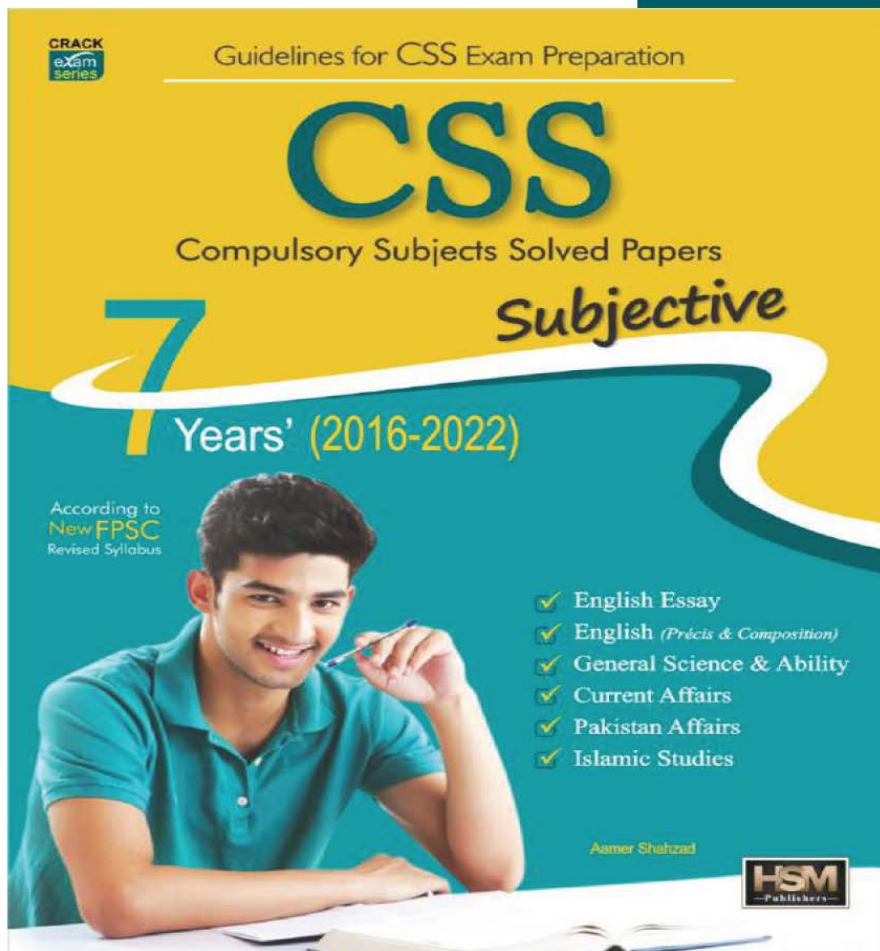
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rather there are certain factors-internal and external – that defines the criminal behavior amongst human beings. Or in other words, human beings commit crimes due to the reasons which are beyond their control.

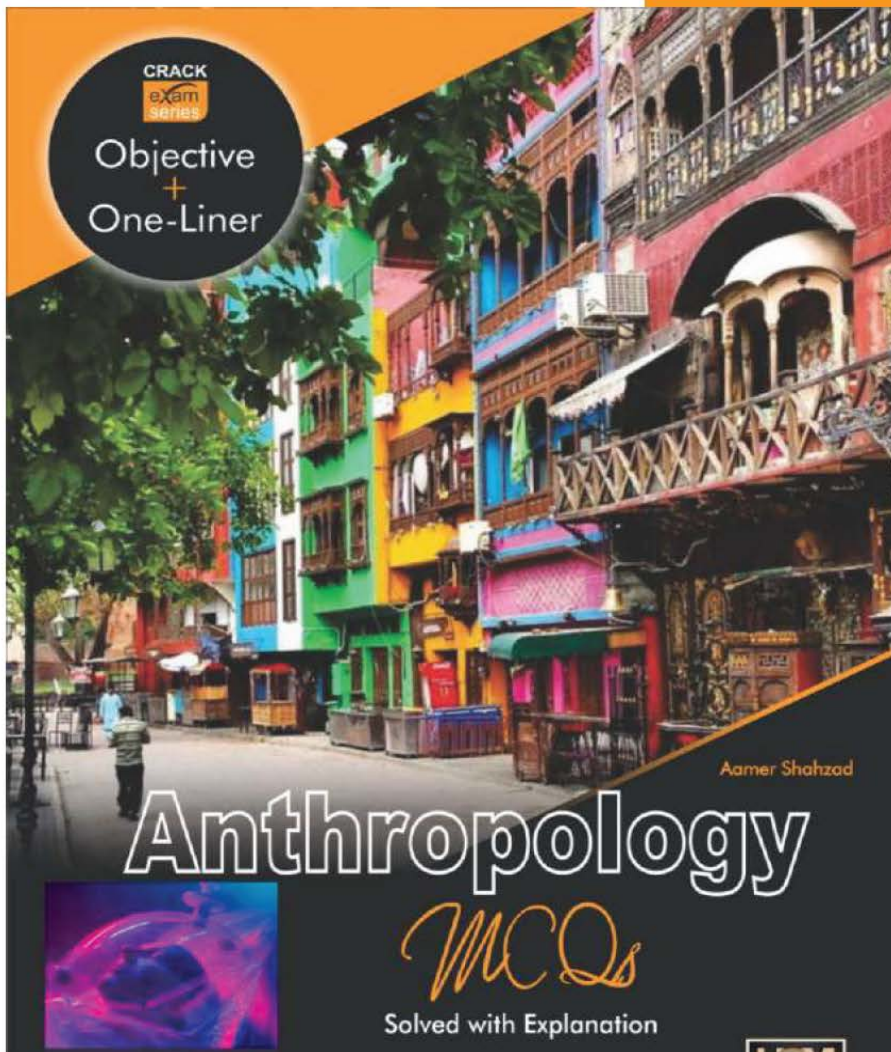
- **Probation.** Probation is method whereby a court while taking the circumstances in account doesn't sentence or imprison an accused on his conviction (which means that the guilt of the accused has been established in the court) but gives him an opportunity to mend his ways, reform himself and become a law abiding citizen of the society.
- **Professional Criminal.** One who earns bread and butter through criminal means. When a habitual criminal acquires skills and expertise in specific field, he becomes a professional criminal.
- **Prosecution.** Prosecution pleads the case of state before the court of Law in order to get the offenders convicted and sentences. . The term prosecutor has been defined as under. A lawyer who conducts criminal proceedings on behalf of the state.(Oxford)
- **Qisas (Retaliation).** The word Qisas is derived "Qss" which means "to follow". The concept of "Qisas" is based upon retributive justice in which the offender is made to suffer the same way as did the victim. The crimes for which the punishment of Qisas is prescribed are directed against human body such as murder and hurt.
- **Radicalism.** The European Union defines radicalism as "the phenomenon of people embracing opinions, views and ideas which could lead to acts of terrorism'
- **Recidivism.** Recidivism refers to tendency of criminals to recommit crimes after discharge from jails.
- **Rational Choice Theory.** Also called classical view of crime contends that people commit crime out of free will. It is also called utilitarianism
- **Sin.** Sin is violation of divine law or religious injunctions. A sin may or may not attract criminal liability. For instance, disrespecting elders may be a sin under religious code but not a crime. On the other hand murder is a sin as well as a crime.
- **Status Offender.** One who has done some thing which is ordinarily not considered a crime - except when done by a minor, is called a status offender. For example "driving", smoking, "running away from school etc.
- **Suspicious Transaction Report (STR)**
- Banks and other designated businesses (called reporting entities) are required to submit an STR to FMU in respect of any transaction which appears to be suspicious of being related to money laundering. For example if large sums of money are being deposited in account of a public office holder without apparently a justifiable reason, the bank should report the matter on STR to FMU
- **Tazir.** "Tazir" means discretionary punishments. These are the considered to be directed against the society or community
- **Trade Based Money Laundering.** It is one of the most sophisticated methods of money laundering. In this method, the ill-gotten money is transferred by disguising it as an import or export transaction.

- **Terrorism.** The Federal Bureau of Intelligence of USA defines as “the unlawful use of force or violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives”.
- **Trial by Compurgation.** A method of trial where accused took oath of his/her innocence which had to be endorsed by certain other people. The “trial by jury” actually was evolved from compurgation.
- **Trial by Ordeal.** Under this method of trial the accused was subjected to painful situations on the presumption that the innocent will survive by the will of Allah. The ordeals included making the accused walk on red charcoal or walk by holding red hot iron in hand. Likewise women were thrown and in case of being drowned she would be considered guilty and would be held innocent if she floated.
- **Trial by Battle.** A practice in which offenders and victim and their respective families would fight with each other on the presumption that innocent would be victorious in the end by the blessing of God.
- **Victimology.** Victimology is study of victims of a crime. The criminal justice system generally treat victims as a “witness” of the case without making any effort to rehabilitate them. In developed world, however, different schemes have been put into place to extend emotional support the victims of crimes having psychological fallouts. For example Rape Crises Centers have been established in different countries. Likewise a non-governmental organization in the name of “Victim Support Scheme” is working in United Kingdoms for extending different types of assistance and support to victims and witnesses of crimes.
- **Vice.** Practices which manifest evil or immorality such as drinking and smoking. The former may attract criminal liability in Pakistan while the latter is not designated as a crime.
- **Victimless Crimes.** The crime in which only offender is involved or which is result of the consent amongst the individuals involved in crime.
- **Violent Crimes.** This is a crime in which physical force is employed by the offender.
- **White Collar Crime (WCC).** WCC are Non-violent crimes for financial gains normally committed by people who enjoy high status in the society. The term was coined by Edwin Sutherland. Example. Copy Rights infringements, Money Laundering, Insider Trading, Bribery and Kickbacks. Edwin Sutherland defined white collar crimes in following manner.

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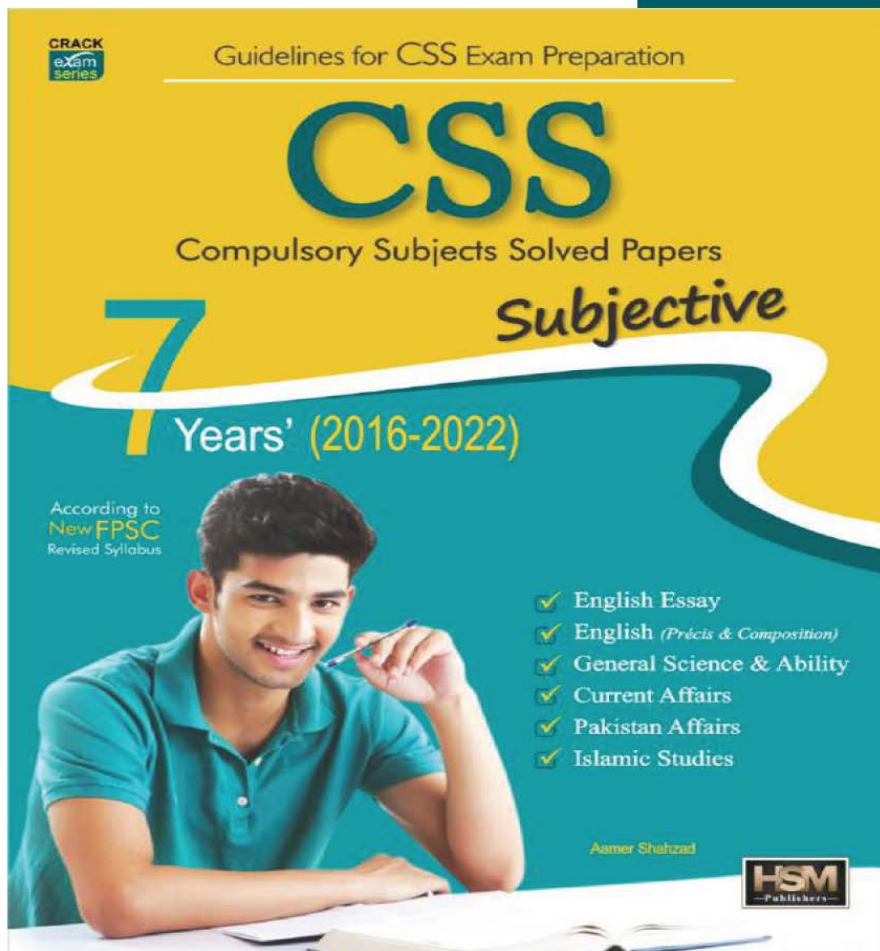
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