

**Economic Theory of Crime Causation,
A Comparative Study of Sharia'h and Western Legal Thoughts**



A thesis submitted in partial fulfillment of the requirement for
the degree of Master of Laws (Shari'ah & Law)

(Faculty of Shari'ah & Law)

International Islamic University Islamabad

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- Crime - Economic aspects

- Islamic law:

- Western Law

- Law and economics.

Acceptance by the Viva Voice Committee

Title of Thesis

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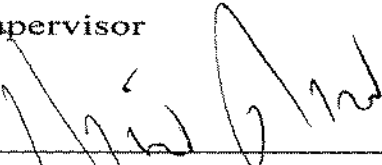
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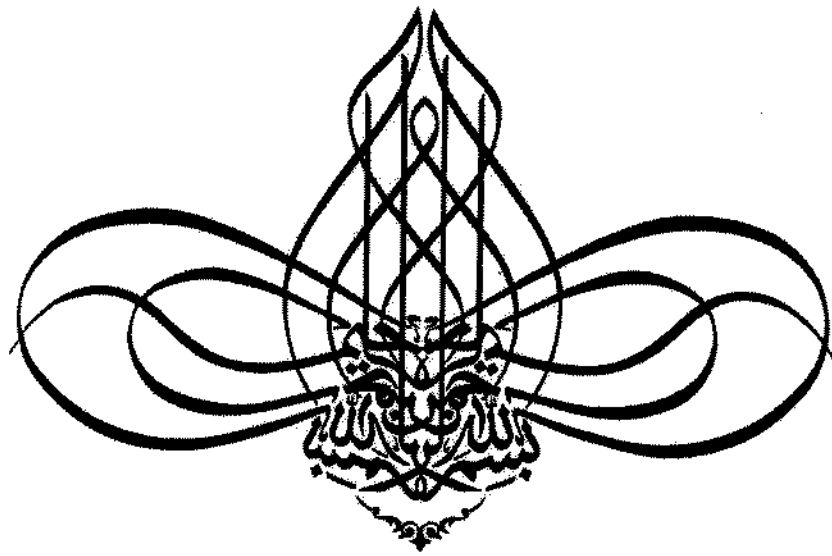
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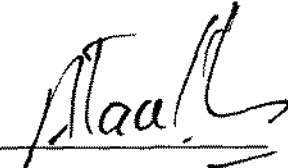
I, **Ghulam Asghar**, hereby declare that this dissertation is original and has never been presented in any other Institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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DEDICATION

To my beloved Parents,

And

My wife and lovely daughters

Acknowledgement

All praise be to Allah, the Creator and The Lord of the universe, and hundreds of thousands blessings be upon His Holy Prophet Muhammad (peace be upon Him), the last Messenger of Allah.

Behind every work there is always support of some personalities without contribution of whom the work is not possible. In my this humble work, I am also blessed with the support of some kind personalities. On the top of the list of those personalities is the name of my kind teacher and supervisor Sir Attaullah Mahmood, who always backed, encouraged and guided me. I also want to thank my friends who have extended their support to me so as to accomplish this task. I am highly grateful to the whole faculty of Shari'ah and Law who have provided me such a blessed environment for learning and to my supervisor in particular. May Allah Almighty keep them all in His safe custody.

I am also thankful to my family who has always been encouraging factor for me. But special thanks goes to my parents who have been a real source of blessing for me in every thin and thick of the life. The prayers of my mother are the real asset for me which I can wish to be everlasting. May Allah Almighty keep her safe and healthy for a long time. I can't forget my wife who has been so much cooperative to me all the time. I can't express my emotions in words for my elder and ideal brother Mr. Ghulam Qamar, for his kindness, love and care, who always guided me in positive way. Special thanks to my sisters and younger brothers for their love and care for me.

Abstract

The crime and criminal behavior has always been a phenomenon in the human society. It has, therefore, attracted the attention of scholars to dig out the reasons and the way to get away with it. Researches have been made and the studies have been conducted for this purpose. But by the evolution of the human society the methods of crimes have also changed and in the contemporary world, the criminals are more vigilant and skillful than those of ancient times. So the room for research on this subject matter is there all the times. In this work I have studied the crime and the various theories presented by the both Islamic as well as Western scholars for exploring the reason for the criminal behavior. The research on this subject is not devoid of use because it can be very handy and practical guide for the law enforcement agencies and the legislators too so as to legislate on these matters.

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CHAPTER. 01

DEFINITION OF CRIME

AND

THE THEORIES OF PUNISHMENT

1.1 Meaning of Crime

1.1.1) Literal/Dictionary meaning of crime:

a)

“Crime is an act or omission that violates the law and is punishable by a sentence of incarceration”.¹

b)

“A type of behavior that is has been defined by the state as deserving of punishment, which usually includes imprisonment in the county jail or state or federal prison.”²

c)

An act (or sometimes a failure to act) that is deemed by statute or by the common law to be a public wrong and is therefore punishable by the state in criminal proceedings. Every crime consists of an **actus reus* accompanied by a specified **mens rea* (unless it is a crime of **strict liability*), and the prosecution must prove these elements of the crime beyond reasonable doubt”.³

d)

“An act that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding”.⁴

“Crime is an act that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding, also termed as criminal wrong”.⁵

¹ Wild Susan Ellis, Webster's New World Law Dictionary, 2006, p. 112

² Editors of Nolo, Gerald N. Hill and Kathleen Thompson Hill, Nolo's Plain-English Law Dictionary, 1st Edi, p.107

³ Oxford Dictionary of Law, Oxford University Press 5th Edi, p. 128

⁴ Black's Law Dictionary, 8th Edi, p. 1120

⁵ Qadri S M Afzal, *Criminology Problems and Perspectives*, Eastern Book Company Lucknow, 5th Edition, P. 3

Having the understanding of the fact that the conception of Crime, as being different from that of Wrong or Tort and from that of Sin, involves the element of injury to the State and the society as a whole, we first find that the commonwealth, in literal consistency with the conception, itself introduced directly, and by isolated acts, to take revenge itself on the author of the evil which it had suffered.⁶

It is a curious fact that all the minor acts included in the penal code of a state like, say, New York are in law called crimes, which term includes both murder and over parking. It is a strong term to use for the latter, and of course the law for a long period of time has acknowledged that the severity of crimes is not same in all the cases. In common law, however, only two classes were recognized, serious crimes or felonies, and minor crimes or misdemeanors.

1.1.2) Meaning of Crime in Modern Criminology:

In the criminology, the term “crime” doesn’t have any simple and universally accepted definition, although certain definitions have been given in the statutes for certain objectives.

Some of the definitions may be quoted to clarify the meaning of crime in the eyes of criminologists as well as sociologists.

The Lawyer-Sociologist Paul W. Tappan has defined crime as follows:

“an intentional act or omission in violation of criminal law, committed without defense or justification and sanctioned by the laws as felony or misdemeanor”.⁷

⁶ Henry S. Maine, *Ancient Law*, 17th ed. 1901, p. 320

⁷ Tappan Paul W: *Crime, Justice and Correction*, p.10

However there is another school of thought which is not convinced with the legal definition and called it as inadequate and unsuitable for the purpose of criminology. To them, the definition must be broader as compared to the legal definition. This is called the social definition of crime.

Crime according to this definition is:

“an act which the group (social) regards as sufficiently menacing to its fundamental interests, to justify formal reaction to restrain the violator”.⁸

A famous criminologist and one of the three exponents of the Italian School of criminology Raffeale Garofalo, rejected the legal definition of crime. He formulated the concept of “Natural Crime”. By the concept of “Natural Crime” he meant the following:

“acts which offend the basic moral sentiments of piety (revulsion against the voluntary infliction of suffering on others) and probity (respect for property rights of others).⁹

After looking into these three definitions, as a student of criminology, I prefer the definition given by Paul W. Taffan because it lays down all the necessary elements for the constitution of a crime. It encompasses these elements.

- a) Intentional act or omission. So unintentional act which lacks the *mens rea* can't be called crime
- b) In violation of criminal law. It excludes all the violations of civil laws
- c) Committed without defense or justification. It excludes all those act which are committed with defense or justification such as an act of self defense.
- d) Sanctioned by law as felony or misdemeanor.

⁸ Elmer Hubert Johnson : *Crime, Correction and Society*, Dorsey press 1974, p.11

⁹ Francis Allen : *Borderland of Criminal Justice*, University of Chicago press 1964, p. 67

1.1.3) Meaning of Crime in Islamic Jurisprudence:

As opposed to other legal systems, in which crimes are generally considered violations of the rights of the state, Islamic law divides crimes into following categories:

- *Hudud*, (crimes "against God", whose punishment is fixed in the Quran and the Hadiths).¹⁰
- *Qisas*, (crimes against an individual or family whose punishment is equal retaliation in the Quran and the Hadiths).
- *Tazir*, (crimes whose punishment is not specified in the Quran and the Hadiths, and is left to the discretion of the ruler or Qadhi, i.e. judge)¹¹.

Some add the fourth category of *Siyasah* (crimes against government), while others consider it as part of either Hadd or Tazir crimes.¹²

Definitions:

Here we mention some of the definitions given by Muslim scholars:

A great Muslim scholar Imam *Mawurdi* defines the term (*Jarimah*) in the context of Islamic Law in the following words:¹³

"محظورات شرعية زجر الله عنها بحد او تعزير"

"Crime is a prohibited act which is sanctioned either by *hadd* (a fixed punishment) or *ta'zir* (discretionary punishment)"¹⁴

¹⁰ Dammer, Harry; Albanese, Jay (2011, 2014). *Comparative Criminal Justice Systems* (5th ed.). Cengage Learning. p. 60

¹¹ Mohamed S. El-Awa (1993). *Punishment In Islamic Law*. American Trust Publications. pp. 1–68

¹² M. Cherif Bassiouni (1997), Crimes and the Criminal Process, Arab Law Quarterly, Vol. 12, No. 3 (1997), pp. 269-286

¹³ Al-mawurdi, *Al ahkam as sultaniah wal wilayat ad diniyyah*, Maktabah daru Ibn e Kutaibah, p. 219

In this definition the word *Hadd* means the fixed punishment. It includes *Qisas* (retaliation) as well as those *Diyaat* (blood money) which have been mentioned with fixed amount in the Holy Quran or The Traditions of The Holy Prophet (PBUH). They are also called *Hadd* because they have also been fixed by the Legislator. But as far as *Tazir* is concerned, it is that kind of punishment the fixation of which has been left for the judge or *Qadhi* to ensure the eradication of the evils and crimes from the society. It has been named *Tazir* because of the fact that the word *Tazir* literally means to “strengthen”. This kind of punishment serves the benefit of the society and strengthens it so that it is called *Tazir*.¹⁵

1.2 PUNISHMENT

1.2.1). The nature and object of Punishment

Punishment itself is harm to the body and/or to the mind of the delinquent. It is inflicted on him to give him a lesson for the future as well as to punish him for the past act. So, from the individual aspect it is harm or loss for the wrong doer apparently, as in the case of retaliation, for example, there is harm to the murderer and destruction of a human life but because he has caused damage to the life of an individual so he has to suffer the loss of his own life consequently.

The same principle is applied in all punishments. In case of every punishment, there will be loss or injury to the body or mind of offender directly and to the society as a whole indirectly but the justification for the punishment is enough to say that the survival of the society depends on the implementation of that punishment, and any relaxation or leverage provided to such offender will be in fact a danger to the whole society in the sense that the other offenders will feel themselves secure while committing crimes. So, if the offender is not punished and is left to enjoy his life, it

¹⁴ Translation by the author

¹⁵ Abu Zuhrah Imam, *Al Jarimah wal Uqubah fil fiqhil Islami*, Darul fikril arabi, p. 20

would cause dissatisfaction and lack of trust in the mind of victim as well as among the whole society.

There are two main reasons for which the punishment of the offender is required namely:

- 1) As the offender encroached upon the right of the society and in case of murder upon the right of life too which was guarded by the legal system prevailing in the society (as in all the legal systems) and everybody was given right to pass his life peacefully. But the criminal has not abided by that order and disturbed the situation.

That is why Allah Almighty while narrating the story of Habil (Abel) and Qabil (Cain) in the

Holy Quran says:¹⁶

من أجل ذلك كتبنا على بن إسرائيل أنه من قتل نفساً بغير نفسٍ أو فساداً
من الأرض فكأنما قتل الناس جميعاً ومن أحياها فكأنما أحيا الناس جميعاً؟
ولقد هبطناهم رسولنا بالبينات ثم إن كثيراً منهم بعد ذلك فإى إلى من
كفرون ۝

“On that basis: We ordained for the Children of Israel that if anyone killed a person- Unless it be for murder or for spreading mischief in the land- It would be as if he killed all mankind (the people): And if anyone saved a life, it would be as if he saved the life of all mankind (the people). Then although there came to them Our messengers with Clear Signs, yet even after that, many of them continued to commit excesses (and do injustices) in the land.”¹⁷

So this Holy Verse declares the life of a single individual as equivalent to the life of all mankind and consequently if anybody will hurt one life will definitely be liable to equal punishment as the lives are equal.

¹⁶ Al Ma'edah, 32

¹⁷ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 61

- 2) If the wrong doer is not punished it would be a gate towards the harm of causing the damage of the whole society. That's why Allah Almighty in above quoted verse has said that "and if anyone saved a life, it would be as if he saved the life of all mankind".

And in another Verse Allah Almighty says:¹⁸

وَلَكُمْ فِي الْقِصَاصِ حَيَوةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ ٥

"And in the Law of Equality there is (saving of) life to you, (and less bloodshed among you), O you men of understanding; That you may restrain yourselves."¹⁹

A good illustration for this case can be that of an act of a surgeon who cuts a part of the body to save the whole.

In this context Dr. *Izz ud din ibn e Abd us Salam* says:

Sometimes the source of collective benefit lies in the harm of some individuals, so it is permitted not because it is harm rather because it leads to the collective interest of the society. The cutting of the destructive hands of the society and endangering the lives of many people in Jihad for a greater interest are two good instances for the point. Just like that the Islamic punishments are intended not merely because they cause harm to the wrong doer rather they have been legislated because of the collective and social benefit or interest that lies therein. Take the example of cutting the hand of thief and robber and retaliation from murderer and stoning of one who commits adultery and all other punishments.²⁰

¹⁸ *Albaqarah*, verse no. 179

¹⁹ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 15

²⁰ Abu Zuhrah, *Al u'qubah*, Dar al fikr al Arabi, Cairo p.8

Hence punishment is a harm or trouble which has been justified to ensure the collective interest of the society. According to Islamic jurisprudence saving from harm is more preferred than the provision of benefit.

In all the legislations, whether divine or man-made, the degree of harm (punishment), therefore, will be different according to the severity of the wrong. So, in Islamic penal law, the punishment corresponds to the wrong act. So the murderer, for instance, will be liable to equal punishment that is the loss of his life, and the offender in the case of causing some injury to another will be liable accordingly and so on. So the amount of punishment will depend on the nature of crime.

Imam *Abu Zuhrah* in the context of equation between the crime and the degree of punishment says:

While measuring the severity of crime the following three points must be observed:

- a) The amount of loss or pain inflicted to the injured person
- b) The degree of general fear and shock that the crime has created
- c) The degree of contempt or disdain of the dignity of Islamic laws and the amount of deterrence in the punishment, because to deter the offender as well as others who witness the punishment is one the most desired goal of Islamic penal system. Hence the punishment of theft, for instance, must not be equivalent to the value of the goods stolen, otherwise there will be no difference between fraud and theft while they are distinct in all the legislations. The punishment of theft is more severe than that of fraud. The reason

behind this distinction is the amount of fear and disturbance that is caused by theft and not by fraud or other means of deception.²¹

1.2.2 Punishment as Blessing:

Punishment, on one hand, is a harm to the personality of offender in all the cases but, on the other hand, it is a blessing for the whole society which extends to every individual. And to ensure this blessing all the divine legislations have been revealed and the man who is the caliph of Allah Almighty on the Earth is assigned to carry out the objects of this blessing. But as the man generally is less enthusiastic and devoted, Almighty did not leave everything to his arbitrariness, rather He revealed certain Holy Books and Texts so as to minimize the influence of the man's personal ego and other contrary factors that could drive him towards the contradiction.

Allah Almighty has attributed his Holy Prophet Muhammad (PBUH) as blessing for all.

He (S.W.T) says: ²²

وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ه

“And We did not send you (O Prophet), except as mercy to all worlds.”²³

The blessing is not compatible with the pain or harm, or in other words this is against the spirit of the blessing to leave an offender unpunished or even to show any sort of leniency towards the criminal as long as he is not retaliated or caused to undergo the consequences of his act. So there is no kindness or mercy for those who have caused distress or misery for the society.

Allah says in one of the verses having stated the punishment of the adultery:

²¹ Abu Zuhrah, *Al u'qubah*, Dar al fikr al Arabi, Cairo, p.9

²² *Al Ambiya'*, verse no. 107

²³ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p.190

“And let a party of believers witness their punishment”.²⁴

1.3 Theories of Punishment:

There are different theories of punishment discussed in Islamic and secular criminology. We'll discuss both distinctly so as to make clear what is the resemblance and distinction. So first we start from Islamic criminological approach towards the punishment.

1.3.1 Theories of Punishment in Islamic Law:

In Islamic criminology the punishment has different justifications. Every justification is a theory of punishment. We discuss them in the following.

1.3.1.1 Deterrence. (زجر الجاني)

One of the main objects of the punishment is to prevent the offender from repeating the same offence. The punishment will serve as deterrence for the offender as well as the others who witness the execution.

Allah Almighty has laid down this purpose of the punishment in the following verse:²⁵

النَّارِيبَةُ وَالرَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا بِاِنَّةٍ حَلْبَةَ رَدَّ لَا تُأْخِذْكُمْ
بِهِمَا سَاءَ اَفْعَةٌ فِي دِيْنِ اللّٰهِ اِنْ كُنْتُمْ تُؤْمِنُوْنَ بِاللّٰهِ وَالْيَوْمِ الْآخِرِ
وَلْيَشْهَدْ عَذَابَهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِيْنَ ٥

“The woman and the man guilty of adultery (unlawful sexual relations) severely whip each of them with a hundred stripes: Do not let kindness move you in their case- In a

²⁴ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 202

²⁵ An Noor, verse no. 2

matter that is already decided by Allah, if you (truly) believe in Allah and the Last Day:
And let a party of the believers witness their punishment.”²⁶

That is why it has two fold consequences i.e. to deter the offender from commission of the same crime next time and to teach a lesson to the other members of the society that if anyone else would commit the same act he would certainly undergo the same result.

And as the wrongs in Islamic Law are of two types i.e. commission of illegal act and omission of an obligation, so the meaning or the application of deterrence will be accordingly applied that is in case of commission of crime to deter him from such commission for next time and in case of omission of an obligation to prevent him from such omission for the next time.

As the object of punishment is to prevent the criminal or wrong doer, so it should be extended to the amount that will ensure the object. So it should not (in some cases) be restricted below that extent and also must not exceed that limit rather it should be according to the requirement. As in case of Ta’zir in Islamic Law, it varies from person to person because of the difference in their nature. One may be corrected by mere words of admonishment but the other may require some torture and the third may not be corrected until imprisoned for a period of time. There are some crimes wherein the only deterrence will be an unlimited (in terms of time) punishment until he repents as in case of serious criminals who can’t be corrected or their harm to the society can’t be restricted until they are kept away from society. So in this punishment two benefits will be there:

- a) Their harm to the society could be prevented
- b) The others could be taught a lesson

And at the same time the criminal himself will be benefitted as his life will be changed

²⁶ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 202

In some other cases there is only one punishment that will serve the purpose and that is the death of criminal. This will be in only those cases where the crime is a serious one and the criminal is not getting deterred by either means.

1.3.1.2 Reformation and Correction of offender (إصلاح الجاني)

Besides the first purpose of punishment, Islam didn't ignore the fact of offender's correction rather it has paid much attention to the personality of the offender. And it will be more pertinent to say that the correction and well wishing of delinquent stands at the first step instead of his deterrence. Islam wants its followers to refrain from crime and prohibited acts as a result of their inner instigation and for the sake of God's pleasure and not because of the fear of punishment, as all the crimes (prohibited acts) lead to the disobedience of Allah Almighty and non compliance with His orders which will astray him from right path. And this is the commitment and devotion that is highly required in any Islamic society to curb the deviance and delinquent behavior from the society. Because if this belief is developed in the mind of offender then before commission of crime he'll definitely think that God is looking at him and He knows even the deceitful eyes and the secrets of hearts.

One of the proofs on this notion is the consensus of Muslim scholars that the purpose of punishment is the correction of offender because if he is corrected then an individual is rescued from destruction and obviously this is in the interest of the whole society.²⁷

1.3.1.3 Pleasure of the victim or his descendents

²⁷ Aamer Abdul Aziz, *Al Ta'zir fi Ashariah Al Islamiyyah*, Darul fikr al Arabi 2007, pp. 293-297

One of the purposes of punishment is the pleasure or satisfaction of the victim or in some cases his descendents or heirs where he has lost his life as a result of that crime. This is also a significant point as if the victim is satisfied or his heirs are satisfied by the execution of an adequate punishment they would not attempt to take revenge from the offender by themselves. If we see the actual phenomenon in most of the societies where either the punishments are not carried out or if carried out but not adequately we'll find a lot of disturbance and retaliation by the public itself and when this matter goes in the hands of general public they never measure what is the exact amount of punishment which should be executed. So Islam has sensed it and has provided the measures for its elimination.²⁸

1.3.1.4 Preservation of the peace of the society

Every crime is a cause or source of disturbance in the society. This harm or disturbance will be according to the severity of that crime. So if the punishment is imposed on the offender it will soon bring the society at its natural pace as it were before the commission of that crime and will cause satisfaction among the society members and resultantly they will feel secure and guarded. And at the same time the others will also get scared by the consequence of that individual. But if that individual is left unpunished then all will feel insecurity and lack of confidence.

1.3.2 Theories of punishment in the western criminology

The philosophers who debated the theories of punishment, have divided the rationale of the punishment into two i.e. forward-looking and backward-looking (Ellis 1995; Goldman 1982; Honderich 2006; McDermott 2001; Thompson 1966). The forward-looking theories try to justify

²⁸ Dr. Abu Hassaan Muhammad, *Ahkam al Jarimah wal Uqubah fi Ashariah al Islamiah*, the University of California 1987, pp. 185-186

the penalty on the basis of benefits expected from the infliction of that punishment on the offender. These benefits are prospected normally for the society. They are, therefore, convinced that the punishment should be inflicted to the extent and in a manner which produces the maximum benefits for the society in the time to come. The traditional forward-looking theories of punishment may summed up as following:

“guarding society from a dangerous person, deterrence for the future crimes, reducing the cases of recidivism, rehabilitation of the criminal, and to help the economy by involving the convict in productive labor. Backward-looking reasons, on the other hand, justify punishment by looking at something in the past”.²⁹

The rationale of retribution, for example, tends to connect the punishment with cruelty of the criminal. But on the other hand rationale of restitution considers the state which existed between the criminal and the victim before the commission of crime and tries to re-establish or restore that state to the extent that may be possible by the implementation of punishment.

Every theory must declare that what rationale does it recognize and how much weight does it give to that rationale because the punishment will vary in every case. These debates are not only theoretical rather they are strongly attached to the practice. Some empirical evidences have shown the approval of public for the retributive punishments while supporting the severe punishments.³⁰

So in the coming pages we shall discuss the prominent theories of punishment.

1.3.2.1 Retributive Theory of Punishment

²⁹ Alex Tuckness, “Retribution and Restitution in Locke’s Theory of Punishment”, *The Journal of Politics* 72, no. 3 (JULY 2010): 720

³⁰ *Ibid*, pp. 720-732

In the penal system, the Retribution has one of very important features. It serves as a source of satisfaction for the victim at the first instance and for the whole society as it creates the balance between the victim and the offender. The offender had disturbed the whole peace of the society so he must receive the same degree of pain as was inflicted by him to the victim. Sir James Stephen was of the opinion that the criminal law has the same level of passion of revenge as the marriage has for the sexual desire.³¹

According to Heinrich Oppenheimer, retribution plays a very vital role of punishing the offender which itself is a religious mission, so the retribution brings back the state of peace which was disturbed by the offence of the offender and the infliction of pain to him washes away the effect of his guilt.³²

The eighteenth century German scholar Immanuel Kant is the person who has presented the case of retribution theory of punishment in the most effective way. He has explained his contention to the utilitarian concept of punishment in the following words:

It is not possible for judicial punishments that they are inflicted to promote some other good for the person of the offender or for the society at large instead the only purpose of inflicting the punishment on the offender is that he has caused the pain for the victim. The reason behind this contemplation is that human being can never be used only for the purpose of someone else.³³

While throwing light on the importance and the supremacy of legal justice, Kant has observed:

The penal law is very clearly an imperative order and the person who tries to defeat it by releasing the criminal or lessening the degree of the adequate punishment with the pretext of the benefit or happiness to a person (the person of criminal) must be discouraged rather cursed. He continues further saying that:

³¹ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 65

³² Oppenheimer Heinrich, *The rationale of Punishment*, 1913, (quoted in Siddique Ahmad, *Criminology Problems & Perspectives*, 5th Ed, p.65)

³³ Kant Immanuel, *The Metaphysical elements of Justice*, Translated by John Ladd, 1999, p.100

“It is better that one man should die, than that the whole people should perish: If legal justice perishes, then it is no longer worthwhile for men to remain alive on this earth”³⁴

To what extent the retribution must be extended, has been expressed in the following words:

Keeping in view an example of a society which decides to dissolve itself and the members thereof are supposed to disperse across the world, so the last murderer who will remain in the prison of that society will first be executed not because of the reason that society has demanded his execution rather because of the fact that he had committed a crime and he deserved that punishment and in case of failure, the society may be regarded as accomplice for they failed to carry out the punishment.³⁵

Another ground for the defense of the retributive theory has been taken by its proponents that the punishment serves as denunciation by the society to the criminal as well as to his act. The idea that denunciation is a manifestation of moral sentiments has been presented effectively by Sir James Stephen. He Says:

The legal punishment for an offence to the moral emotions of the people has the same relation as that of a “seal to hot wax”. It converts a feeling into a definite and perpetual judicial judgment what could have been a temporary emotion had it not been pronounced by the court. So, for instance, mere knowledge that certain person has committed some immoral or dishonest act may well cause a condemnation from the community for the wrongdoer but it is not permanent until and unless it is punished by the court. So when it will be punished by the court it will become a permanent denunciation and hatred of the society towards crime and the criminal.³⁶

This is the summary of the discussion about retributive theory of punishment

³⁴ Kant Immanuel, *The Metaphysical elements of Justice*, Translated by John Ladd, 1999, p.100

³⁵ Ibid., p. 102

³⁶ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 67

1.3.2.2 Deterrent Theory

Deterrent theory is one of the “utilitarian approaches” towards the justification of the punishments. The main theme of this theory lies in this that the punishment serves as “deterrent to the offender” who directly undergoes that punishment and for the whole society in which that offender is found. In our daily life we may experience that the pain and suffering or its fear may cause some feeling in the people against the commission of that particular act. This is exactly the same object which is reached at through our penal system. It has been noticed by some scholars that the deterrence theory is a hidden form of retributive theory. But as far as the question to the extent of deterrence is concerned i.e. to what extent the punishment does create deterrence for the offender for the commission of the same offence for the next time or for the other members of the society, it’s really hard to answer this question. The result of this will be the scarcity of the “statistical evidence” and the “limited applicability” of the same.³⁷

An interesting survey was conducted in 1962 by “Professor Schwartz and Miss Sonya Orleans” for the sake of testing the intensity of the deterrence caused by the punishments. The research was conducted regarding the income tax matters. About 400 taxpayers were the subject and four groups were made namely “Sanction”, “conscience”, “placebo” and the fourth one. The “sanction” group was asked questions reminding them the punishments which will be inflicted on them in case of tax evasion. The “conscience” group was interviewed and asked questions insisting on their sense of duty and obligation towards in terms of payment of tax. The members of “placebo” group were interviewed on the basis of neutral questions which were neither provoking the sense of apprehension nor that of dutifulness. The fourth group was left free of any question. “The Internal Revenue Service” made a comparison of the returns of all the groups for the previous year and that year. It was found that income of the first two groups was increased a bit and the income of the third and fourth groups was decreased by a small amount. The consequential finding from this study was that deterrence was definitely having some impact on the attitude of the persons.

³⁷ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p.68

The fact that punishment creates some deterrence for many people may be admitted and not subjected to much debate or discussion (Ibid, p.69). But the same degree of confidence, while asserting that the punishment has a “deterrent effect”, may not be possible in case some other complex aspects like murder. Rather it will be very hard to prove that the punishment has any kind of “deterrent effect” for keeping the murderer away from this offence. This is not one of the easiest issue to resolve but one thing that can be more effective in changing the attitude of the people is the efficacy and effectiveness of “penal law” and not the threat of the punishment to much extent.

We may say in other words that if the penal system is more efficient then it can be more deterrent than a mere provision of law about punishment written in a statute.³⁸

The Islamic criminal law can be a very good example for the “Efficacy of the deterrent aspect of punishment”. In Saudi Arabia, for instance, very strict application is ensured of the Islamic criminal law and the result is very impressive. For example, if somebody is proved to be guilty of ‘theft’ his limb shall be mutilated. Although this is very harsh punishment but it can have a very good deterrent effect on the people as it does in Saudi Arabia.

1.3.2.3 Incapacitation:

It is asserted by the advocates of the “incapacitation theory” that keeping the offenders away from the society either permanently or temporarily and not to give them any further chance of committing the crime any more is a very good ground for the elimination of crime from the society. “Incarceration” is one of the options to achieve this target. There may be other options like death sentence which is the maximum punishment. The main object behind this theory lies in this that the most severe offences should be avoided by putting the dangerous criminals behind the bar.

³⁸ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p.69

The period of incarceration may be different depending on the intensity of the danger posed by the offender. Now a days, this theory has taken some place for the incarceration of the offenders for the purpose of their “possible reformation”.³⁹

1.3.2.4 Rehabilitation Theory

“Rehabilitation” has been discussed a lot since a long ago in the fields of penology and criminology. “Rehabilitation” the very term means the practice through which a person is helped to regain his previous position in the society or to help him reform himself in the way that he could once again become an active member of the society. The rehabilitation theory of punishment focuses on the point that the offender should be inhibited from committing the crime in the future by providing him the “education, social or vocational training”. The aim behind providing him with the necessary support in terms of above mentioned training is to bring him back in the society wherefrom he was detached by his criminal act. This is a futuristic theory i.e. it looks at the future outcome rather than past of the criminal.

³⁹ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p.70

CHAPTER 02
THEORIES OF CRIME CAUSATION

2.1 Individualistic Approaches

As the criminal law and its process in Europe in 18th century were so barbaric, it resulted the emergence of the “classical school” which was represented by Beccaria and Bentham. Any discussion about the development and progress of the criminological thought must not be disassociated from Cesare Bonesana, Marchese de Beccaria (1734-1794). The writings of Montesquieu, Hume, Bacon and Rousseau influenced his thinking to much extent.

His (Beccaria’s) prominent contribution “*essays on crime and punishment*” was well appreciated in Europe and became a great source for modern criminological thoughts. He insisted on the humanization of criminal laws and was proponent of natural rights of human being. He was against the capital punishment as well as other major punishments. He was strong exponent of the punishments for offences like “adultery, sodomy and the murder of illegitimate children”.⁴⁰

While he was tending to detect the sources of criminal behavior he raised a very basic question that why certain crimes are committed by certain persons. Because of his work and the support provided to him by subsequent thinkers such as Voltaire, the severity of criminal law in many countries of Europe was reduced and in some of them the capital punishment was absolutely abandoned.

Jeremy Bentham(1748-1832), who is considered to be great legal thinker and reformer of the penal system, was under influence of Beccaria in his work and thus continued his work in the same dimension. Like Beccaria, Bentham was an “outright utilitarian” and he believed that every law has only one rational basis and that is “greatest happiness for greatest numbers”. The doctrine known as “utilitarian hedonism” demands that the punishment which itself is an evil

⁴⁰ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 68

must be confined within the most necessary limits which could cause the desired result in the criminal as well as in the society.

Due to the good work done by the great thinker Beccaria, interest among the other legal thinker towards delinquent behavior and the delinquent himself grew which resulted in the appearance of “the neo-classical school” around the mid of the 19th century. This school of thought was convinced that the mental element should not be ignored when dealing with different kind of offenders. The result of these thoughts was the protection of child as well as insane offenders which was awarded by penal laws and also the question of mens rea or premeditation became relevant in many offences.⁴¹

2.1.1 The Italian Positive School

Now, the platform was laid for the emergence of the “Positive School of Italy” which was mainly concerned with the personality of delinquent and was not convinced by the “free-will theory”. This school was obliged in its origin to the work of Cesare Lombroso (1836-1909), Enrico Ferri (1856-1928) and Raffaele Garofalo (1852-1934). These criminologists and some others focused, while dealing with crime, on the internal factors of the criminal in terms of physical, biological and mental factors which are inside the criminal and hence either they ignored the outer factors absolutely or attached a little importance to them.

Whereas, there are legal thinkers who are convinced that delinquent behavior can't be explained without having reference to the factors external to the personality of offender such as social, cultural and economic factors. To them, therefore, the criminal behavior is attributed, to much extent, to the external factors. Ronald R. Taft called the former approach as “Subjective” and the

⁴¹ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 68

latter as “Objective”, but the use of word Subjective may create some ambiguity in the mind so it is better to call the first approach as Individualistic approach and the latter as Environmental approach.⁴²

In the modern criminology most of the individualistic approaches have been discredited the utility of these theories is still intact because of the reason that for the first time the concentration was extended from crime to the personality of the criminal. A brief discussion of the important work will not be unuseful.

Although the first scientific attempt for understanding the personal traits of the offender, particularly in physical terms, was made by Lombroso in 19th century but general speculations and their criticism was made much before. In the classical contribution of Homer and Shakespeare, for example, the evil nature of some character is found in correspondence to its dirty look or appearance and the same thing is there is portrayal of the “demons” in the Greek, Indian and other mythologies and folklores. Another interesting instance of the ancient period is that of Aristotle whom a Greek physiognomist examined and found, allegedly, some indications of a ruthless person and a tendency toward alcoholic.⁴³

Phrenology which was an attempt to dig out the relation between skull, brain and the social disposition was another step in this direction. By the eighteenth century, various fields developed as disciplines such as physiognomy, the study of feature of face, and phrenology, the study of outer or external conformation of the cranium.⁴⁴

⁴² Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p.69

⁴³ Ibid, p. 69

⁴⁴ Stephen Schafer, *Introduction to Criminology*, Reston: Virginia, 1976, p.38

In the United States many studies and surveys were conducted of the prisoners by “phrenologists” but the findings of such surveys were not conclusive or beneficial in a great deal because they were not conducted after exact corresponding measurements of the groups so controlled.

2.1.2 Lombroso and Other Positivists

Cesare Lombroso is considered as the father of present criminology as he was the first one who employed the scientific approach for the explanation of criminal behavior. He was also the first to shift the concentration of the researchers from crime to the personality of criminal.

Being trained to be a doctor and having specialization in psychiatry, Lombroso had a diverse interest. By the matter of chance he got interest in the anthropological study of delinquents. When he was a doctor in the army, he observed that the soldiers who were more offensive were having wider and comparatively more indecent tattoos on their bodies than the soldiers of less offensive or disciplined attitude. While attending the insane patients, he tried to study the insane person rather than the disease itself. He examined three kinds of persons i.e. normal, insane and criminal. He measured the size of skull of these people and also the level of sensitiveness to touch in all these persons and compared them with each other. Once he was doing a post mortem

Examination of a disreputable outlaw, he witnessed a characteristic depression in the internal part of the skull of that person. This caused him to believe that delinquents were having distinct physical traits than normal persons and these characteristics or qualities were to those found in some inferior animals or savages. This atavism in the body of offender represented the barbaric and savage qualities of his remote ancestors. According to Lombroso, this punitive or barbaric inclination of a persons are disclosed by certain physical stigmas such as “low forehead, ears

standing out from head, receding chin, abundance of wrinkles, too many fingers, a typical size or shape of the head etc". Lombroso called all such persons who had such qualities as "born criminals" and he believed that about one third of the offenders belonged to this group. To him, the other major kind of the delinquents was "insane criminals" who adopt the criminal behavior due to their mental conditions such as "general paralysis, dementia, Pellagra, alcoholism, epilepsy, idiocy or hysteria". Later on, he took into account some circumstances which are responsible for making a person criminal who was otherwise normal. This particular kind of criminals was termed by him as "criminaloid", which refers to a person who commits crime not due to "physical stigma" or "mental aberrations" rather due to certain circumstances.⁴⁵

2.1.3 Post Lombrosian Researches: The Modern Crimino-Biological School

Due to the studies conducted by Charles Goring, the theories of Lombroso received a merciless criticism. Goring's studies revealed that there was no noticeable distinction between a criminal and non-criminal in terms of their physical characteristics, as well as among the different kinds of criminals. Goring stated this in his work "The English Convict (1913)", a statistical study, wherein he made a comparison among some 3,000 English recidivist prisoners, the university students, hospitalized patients and the army members in terms of their physical characteristics. He measured their physical characteristics and those measurements were compared.

Subsequently, another progress was made in some of the countries of Europe which had influence on some criminologists of United States. The "Modern Crimino- Biological School" came into existence in the third decade of the twentieth century in Germany, Austria and Italy. It was aimed at the revival of the discredited theories which were based on physical characteristics.

⁴⁵ Lombroso Cesare, *Crime, Its Causes and Remedies*, Translated by Henry P. Horton, M. A., Boston, Little, Brown & Co, 1911 p.368

Their persistent claims that there is strong relation between criminal attitude and the physical traits resulted in the “utilitarian regime” in these countries as this regime is in accordance with their doctrine of “Radical Superiority”.

Another effort was made in England to ascribe the criminality to the human organism after World War II referring to the “abnormal combination of chromosomes”.

Some other researches were also conducted regarding the connection between the criminal behavior and the physical traits in the aftermath of Lombroso but the discussion of all these theories and researches will drag us to unnecessary details.

2.1.4 Mental Deficiency

The other very important theory based on the “individualistic traits” of the criminal is in terms of the “mental deficiency” in the delinquents. It was believed that there is no difference between insanity and mental deficiency until the difference was proved by two psychologists named Jean E. D. Esquirol in France in the eighteenth century and Isaac Ray in the nineteenth century in United States of America.

Many studies were conducted to determine the connection between mental deficiency and the delinquent behavior by the help of “psychometric tests”. Henry H. Goddard concluded that mental deficiency was there in approximately half of the total number of criminals whereas Goring was of the opinion that “mental deficiency” one of the main causes in case of all delinquents excluding the cases where cleverness was required to commit that criminal act e.g. the instances of fraud.⁴⁶

⁴⁶ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 75

These are some of the individualistic theories of crime causation. Though there are many other theories which have been presented by different criminologists as well as sociologists in eighteenth and nineteenth century and almost every theory has been criticized by the contemporary criminologists. We aimed at the narration of some of those theories so as to indicate to the school of thoughts that focused on the factors inside the personality of the criminal as opposed to the other school of thought which focused on the factors outside the personality of the criminal.

2.2 Sociological Approaches

In contrast to the “individualistic approaches” which were aimed at the explanation of the criminal behavior with reference to the factors inside the personality of the criminal such as the biological, mental or other traits, there are sociological approaches which try to ascribe the criminal behavior to the external factors which are outside the personality of the offender. In these approaches the subject-matter of the research is extended from the person of criminal to society or community, the social institutions and the relationships among the different groups which make a person criminal as well as non-criminal. In this approach it is not accepted that the criminals are not normal persons rather generally they are abnormal either from biological or psychological perspective and also do not try to find out the cause of the criminal behavior within the personality of the offender rather they look at the criminal behavior as a product of the social interactions.⁴⁷

2.2.1 Social and Sociological study of criminal behavior

Sociological approaches may be categorized into two forms:

⁴⁷ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 89

- i. The crime and criminal to be subjected to the sociological study with reference to the society i.e. its organization and culture.
- ii. To study and find out the causes of criminal behavior within the institutions of the society such as family, educational institutions, economy, religion and the means of mass communication.

2.2.2 Criminology as a result of Imitation

French jurist and social psychologist, Gabriel de Trade, lays the foundation for the explanation of criminal behavior with reference to the social factors. The reason for the significance of the contribution of Trade is obviously found in the fact that he was the first among the criminologists who presented the social explanation of the criminal behavior in a time when all others had concentrated on the physical characteristics of the criminal. As Lombroso is considered the father of "scientific criminology", Trade is regarded as the father of "social psychology"⁴⁸.

Trade criticized the theories of Lombroso severely. He made a comparison between the finding of criminality by Lombroso on the basis of physical characteristics of the criminal with the finding of divinity by Tibetan priests in a newborn baby because of his appearance at the time of choosing of great Lama for future. He viewed:

A criminal may be monstrous from the social viewpoint but he is not so from the individual or organic point of view, because it is the absolute triumph of egoism and of the organism over the brakes of society. The man who is an inborn criminal, therefore, could be a very good animal, an example which was a tribute to his race.⁴⁹

Trade also did not believe that there was any uniqueness among even psychological criminals when they were compared by him with non-criminals. He believed that the criminal behavior

⁴⁸ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 89

⁴⁹ Ibid, pp. 89-90

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was the result of learning process. According to him a person learns a criminal attitude just like other traits in his childhood. He says:

“The majority of the murderers and notorious thieves began as children... and the true seminary of crime must be sought for upon each public square or each crossroad of our towns... in those flocks of pillaging street urchins who, like bands of sparrows, associated together, at first for marauding and then for theft... without any natural predisposition on their part, their fate is often decided by the influence of their comrade”.⁵⁰

It is evident enough that Trade’s theory laid the foundation for the “modern ecological” and “differential association theories”, which are going to be discussed a bit later in this chapter.

2.2.3 Social Disorganization Theories

Social change is a natural phenomenon that takes place in every progressive society. This change itself is not bad but sometimes it causes a state of “disharmony, conflict and dichotomy” among the members of the society. This is true particularly where the social change takes place at a very fast pace. The rising nations try to achieve their targets in a short span of time which may take much more time in the “industrially advanced nations”. This type of unnatural change obviously causes a change which is not as a result of an order. Targets are in such societies are same as to the targets of progressed societies but the circumstances are not same in regards of number of population, capacity of production and the political participation. In such cases, the social change may result in what is named as “Social Disorganization”.⁵¹

“Social disorganization” is defined as a reduction in the control of existing social rules over individuals of a group or a society. This situation is not like a situation where the social rules are violated by the individual members of a society because this kind of situation (violation of social

⁵⁰ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 90

⁵¹ Ibid, p.90

norms or rules) is quite predictable or can be expected even in a society which is more viable and stable and in which the social sanctions such as criminal law are more effective. The social consequences caused by the Second World War, such as industrialization, modernization and urbanization, have caused the failure of social values in many countries. All these factors, though good and desirable, but have led to the increase of crime rate in the new or socially changed societies. For instance in the urban societies the crime rate is much higher as compared to the village society. The reason is that in the village societies there is no anonymity of the individuals as found in the urban society. Also the individuals in the village society are bound together by caste and kinship and social sanctions which are sometimes more effective than the criminal law. The reasons for social disorganization may be the cultural conflicts between different values of various sections of the society. The conflict may be between old and new values, local and imported values or the traditional and the values imposed by the government or any other agency.

2.2.4 Differential Association Theory

Sutherland is the founder of Differential Association theory. He summarized it as follows:

“A person becomes delinquent because of an excess of definitions favorable to violation of law over definitions unfavorable to violation of law. Criminal behavior is explained as a product of learning in interaction with other persons, principally within intimate personal groups. It is assumed that any person inevitably assimilates the surrounding culture unless other patterns are in conflict”⁵²

Sutherland doesn't support that the criminals are socially disorganized, so that he attaches no credit to the term social disorganization, rather he replace the term “social disorganization” with the term “differential group organization”. He intends to say that there are two kinds of groups or

⁵² Edwin H. Sutherland and Ronald R. Crassey, *Principles of Criminology*, 1960, p. 78

organizations working in the society i.e. groups for criminal purposes and group against criminal purposes.⁵³

Sutherland was convinced that there was no difference as far as learning process was concerned between criminal and non criminal behavior. For the commission of crime, some techniques may be acquired only through the association with criminals but others are learnt through the ordinary process of education. According to him, it is not the techniques to commit a crime that draws distinction line between criminal and non criminal rather it is the use of techniques or some sort of rationalization to use the techniques for criminal purposes that makes the difference between a criminal and a non criminal. The association with the criminals teaches or causes him to learn the rationalizing quality which gives him definitions justifying his criminal behavior.

Sutherland points out that:

“Aside from alcoholism and poverty, the break in the home by death, desertion, separation or divorce has been most emphasized. Such records as we have indicate that a large percentage of the children with conduct difficulties in the schools, and of those who are delinquent, come from broken homes. Lack of evidence regarding the situation among children who are not delinquent makes a definite conclusion impossible, but it appears extremely probable that "approximately twice as many delinquents come from homes thus broken as would be expected in view of the entire number of broken homes in the United States."⁵⁴

He further remarks:

⁵³ Siddique Ahmad, *Criminology Problems & Perspectives*, 4th Ed, 1997, p. 92

⁵⁴ Haynes Fred E. *Criminology*, State University of Iowa, p.178

"His data, in fact, do not justify any of these conclusions, either that the delinquents are different from the non-delinquents in general, or that the difference if it exists indicates inferiority, or that the inferiority if it exists is inherited."⁵⁵

2.2.5 Anomie

Emile Durkheim, a French sociologist, introduced the concept of anomie in his book *The Division of Labor in Society*, published in 1893. He used anomie to explain a condition of deregulation or normlessness that was occurring in society. This theory was aimed to represent a situation where rules of social behavior or the regulations of social conduct of the people get weaker. According to him, human being had unlimited desires and the control of these desires which is provided by the society in terms of norms and rules gets looser and weaker in the situations of economic changes and moral strains and stresses. Anomie, simply defined, is a state or condition wherein norms (expectations on behaviors) are confused, unclear or not present. Durkheim felt that it was normlessness that led to delinquent behavior. In 1897, Durkheim used the term again in his study on *Suicide*, referring to a morally deregulated condition. Durkheim was preoccupied with the effects of social change. His best explanation and illustration of the concept of "anomie" takes place not in his debate on crime rather on suicide. In his work *The Division of Labor in Society*, Durkheim suggested that societies have passed through an evolution from a simple and non specialized form, which is called mechanical, toward a highly complex and specialized form, which is called organic. In the former kind of society people behave and think in the common way and more or less carry out the same work and tasks and have almost the same social or group-oriented goals but when the societies have become more complex, or organic, the work has also become more complex. In this kind of society, people

⁵⁵ Lombroso Cesare, Marvin E. Wolfgang, *Pioneers in Criminology*, p. 389

have no firm relation or attachment among them and hence the social bonds are no longer effective.

Anomie thus refers to a collapse of social norms and it is a condition where norms no longer have control over the activities of members in society. Individuals cannot find their place in society without clear guidance of rules. Changing conditions as well as adjustment of life leads to dissatisfaction, conflict, and deviance. He observed that social periods of disruption (economic depression, for instance) brought about greater anomie and higher rates of crime, suicide, and deviance.

Durkheim thought that sudden change in the society caused a state of anomie. The system's collapse either during the period of great prosperity or during the time of great depression, results the same in shape of "anomie".

2.2.6 Merton's Strain Theory

Robert K. Merton, an American sociologist borrowed the concept of "anomie" from Durkheim to formulate his own theory named "Strain Theory". It differs from Durkheim's anomie in this regard that Merton argued that it is not the social change that causes delinquent behavior in the society rather it is the social structure that sets equal goals for all the members of the society but does not provide them an equal chance and means to achieve them. Because of this lack of accordance between what the culture demands or urges and what the structure and circumstances permit to achieve that, the criminal behavior is caused. Criminality or deviance, therefore, is a symptom of social structure. Merton uses the notion of Durkheim's Anomie to explain the collapse of normative system.

Merton does not focus on the crime per se, (on the crime itself) rather he extends his concentration to various elements or causes for the criminal behavior. He argues that the society

emphasizes on certain goals and at the same time it provides certain legitimate means to achieve these goals (such as education, hard work etc.), but all these legitimate means for the achievement of these goals are not equally accessible for all members of the society. Hence the phenomenon or the state of anomie or strain arises.

Merton has presented five modes for the adaptation or adjustment with the strain which is caused by the inequality in the access to the means provided for the achievement of those socially set goals. He was not convinced that every person who was not provided an accurate access to the legitimate means for achieving such goals would definitely be criminal rather he believed that it depends upon the attitude of the person towards the goals set by the culture and their achievement in the case of non availability of the means for their achievement. In other words it can be said that the person who can't achieve his goals through legitimate means will resort to the criminal activities if he is desperate to achieve them but if he is not a desperate person or if he compromises with that condition he will not become a delinquent.

Those five modes are following:

a) The conformist:

It is the most common mode of adaptation.

Such individuals accept the goals as well as the prescribed and available means for the achievement of those goals. A conformist accepts the goals which are set by the culture or the society and also accepts the means for the achievement of such goals although he may not be in a position to achieve those goals himself.

b) The innovator:

It is that category of persons who accept the social goals but have not accurate or required means for the attainment of those goals and therefore they shape or innovate their own way for

the achievement of the goals set by their culture. These ways could be robbery, fraud or embezzlement or any other criminal or illegitimate means.

c) Ritualist:

It is the third adaptation, keep themselves from the goals they might have believed to be within their reach, thus they contain themselves in their current lifestyle. So they play by the rules and have a safe routine.

d) Retreatist:

The fourth kind of adaptation to the lack of means for the achievement of the goals is of those who deny both the goals as well as the means of achievement. They often turn back from the real life and enter into the world where they just resort to alcohol and drugs. These people get away from the real life and drive themselves into the life devoid of productivity and struggle.

e) Rebels:

Fifth and the final kind of adaptation is that of rebels which occurs when a person rejects both the goals as well as the justified means and he creates his own goal and his own means for their achievement by way of protest or revolutionary actions. All of these adaptations are shown in the table.⁵⁶

Adaptation	Means	Goal
Conformist	Accepts	Accepts
Innovator	Rejects	Accepts
Ritualist	Accepts	Rejects
Retreatist	Rejects	Rejects
Rebel	Revolts/ Creates New	Revolts /Creates New

⁵⁶ Vernon Fox, *Introduction to Criminology*, 2nd Edi, Prentice-hall, Inc., Englewood Cliffs, p. 107

CHAPTER 03

ECONOMIC FACTOR IN CRIME CAUSATION

We'll divide this chapter into two main discussions i.e. Islamic point of view and the western jurists' point of view as to how the both schools look at the phenomenon and how do they interpret it. So first, we'll try to lay down the opinion of Muslim scholars for addressing the issue of connection between crime and economy and then we'll present the viewpoint of the western scholars on the issue, and at the end conclusion will be given depending on the view points of the both schools.

3.1 Islamic view on “crime and economy relation

3.1.1 View of Islam about human

Islamic view about human being is unprecedented and exemplary. It has elevated the value of man and his worth in the universe up to an extent that can never be matched with any other philosophy or even with other divine religions. Quran has declared the significance of the progeny of Hazrat Adam a.s with these words:⁵⁷

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَا صُفْرًا فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا ۝

“And indeed, We have honored the children of Adam; And We have provided them with transport on land and sea; And We have provided them with good and pure things for livelihood; And given them Special favors, over and above a great part of Our Creation.”⁵⁸

⁵⁷ *Al-Isra'*, verse n. 70

⁵⁸ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 164

Also it has declared that he (man) has been made caliph on the earth and all the creatures have been instigated to serve him, so every creature is in his services and ready for his cooperation to help him reach the destination.

The following verse leads to this point:⁵⁹

“Do you not see that Allah has subjected to your (use) whatsoever is in the heavens and whatsoever is on earth, and has in a large part, made His gifts come to you (both as being) seen and unseen? Even then, there are from the men those who dispute (and argue) about Allah, without knowledge and without guidance, and without a Book to show the light to them.”⁶⁰

When this is the value and worth of the man in Islam so it is quite predictable that it should have provided some thing for the fulfillment of his necessities and his wellbeing so that he could lead his life on the earth and fulfill the requirements of his caliphate and slavery of Almighty Allah. Man is the combination of two things i.e. body and soul and every one of these two has its own needs, interests and inclinations, so a man can't be perfect unless by the fulfillment of all his needs.

There are some verses in the Holy Quran which describe that provision of something to a needy person is provision to Allah Almighty. Whosoever helps some needy person has indebted Almighty, who does charity to a poor has dispatched his amount in the hands of Allah and will receive it back from Allah with many times more.

“Who is he who will lend to Allah a goodly and handsome loan? Then, He (Allah) will increase it many times to his credit, and he will (also) receive a generous reward”.⁶¹

⁵⁹ *Luqman*, verse no. 20

⁶⁰ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 242

⁶¹ *Al Hadeed*, verse no. 11, English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 328

3.1.2 Islamic view about Poverty

As far as Islamic view on poverty is concerned, it looks at poverty as a danger for the belief, danger for the morals, danger for the thinking faculty, danger for the structure of family and society. It also considers the poverty as a great problem and trouble which is to be removed. And

God is invoked to escape the man from its evil particularly when it gets severe. Some of the companions of the Holy prophet P.B.U.H. have quoted him (PBUH) praying from Almighty Allah for the escape from the evil of poverty, and if it were not a curse and trouble he would not have asked for the escape from it.

Hazrat Ayesha R.A. has quoted the Holy Prophet P.B.U.H. saying:

اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنْ فِتْنَةِ النَّارِ وَعَذَابِ النَّارِ وَسُرْفَتِنَةِ
الغنى وَسُرْفَتِنَةِ الْفَقْرِ.....

O Allah! I pray for your protection from the fire of hell and its punishment, and from the evil of richness and from the evil of poverty⁶²

Abu Hurairah RA also has quoted him PBUH saying:

اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنَ الْفَقْرِ وَالْقِلَّةِ وَالذِّلَّةِ وَأَعُوذُ بِكَ مِنْ
أَنْ أَظْلِمَ أَوْ أَظْلَمَ ..

O Allah! I ask for your protection from poverty and shortage (of friends) and dishonor and from being cruel or victim of cruelty⁶³

So in this hadith he asks Allah's protection from everything that causes weakness whether physically or spiritually, so whether comes from lack of wealth or lack of friends or lack of honor.

⁶² Sahih al Bukhari, Hadith no. 589

⁶³ Sunan Abi Daud, Hadith No. 1544

And in another hadith he has even attached it with infidelity in terms of asking protection therefrom. *Abu Hurairah* R.A. has reported this hadith:

اللَّهُمَّ إِنِّي أَعُوذُ بِكَ مِنَ الْكُفْرِ وَالْفَقْرِ وَعَذَابِ الْقَبْرِ، لَا إِلَهَ إِلَّا أَنْتَ -

O Allah! I pray for your protection from infidelity and poverty, I ask for your protection from the punishment in the grave, there is no God but you⁶⁴

He P.B.U.H. has mentioned poverty with infidelity because poverty sometimes leads towards faithlessness. And also it urges the poor on the malice to the rich people which causes the deprivation from piety. Also it causes the gratitude and selflessness among the poor before the rich which is loss of dignity and sometimes against the slavery before Allah Almighty. Also it causes the element of lack of satisfaction with the distribution of Allah and with destiny. So all of these things if not faithlessness at least they lead to faithlessness.

There is another Hadith in which the Holy Prophet (PBUH) says.⁶⁵

هَادِ الْفَقْرُ أَنْ يَكُونَ كُفْرًا ..

“It is likely that poverty may cause the poor to become infidel”.⁶⁶

So, keeping in view all these verses and the traditions we can easily say that poverty has been considered as one the main sources of involvement of any person in the sin. In the light of foregoing traditions it can lead to the biggest sin that is faithlessness so it can drag easily towards the smaller sins or crimes such as theft, bribery and even sometimes it can persuade a person to commit the murder when he becomes so blind in the way of getting worldly benefits.

⁶⁴ Sunan at Tirmazi, Hadith no. 3503

⁶⁵ Al Kafi, Vol 2, p. 307

⁶⁶ Translated by the author

3.1.3 Islam's aim towards elimination of poverty

After we have laid down the evils of poverty, it is evident that Islam being a divine religion has aimed at the elimination of poverty from its roots and the freedom of mankind from its evils so that he could avail an equal opportunity to the sources for his life and could guard his dignity against the invasion of the evils of poverty.

Islam wants all the people to lead prosperous life in which they have a chance to be blessed by the blessings of Almighty and they feel the taste of satisfaction and also they have a peaceful society and they have the sense of Allah's bounties on the mankind and hence they thank their Lord by His worship wholeheartedly and none of the worldly matters could keep him from His worship. And by this he could contrite completely on his eternal life and its demand rather than to be completely involved in this short term life.

That is why Islam has obligated *Zakat* and termed it as one the pillars of Islam. It is taken from the rich members of the society and is distributed among the poor ones so that the poor satisfies his material needs like food, clothes and shelter as well as his spiritual needs such as marriage which is a source of his spiritual satisfaction as well as his intellectual needs such as books for a student.

In this way a poor can take part in all activities of the life and can fulfill his obligations and as a result he feels himself to be an active member of the society and that he is never a useless or worthless organ. And also enjoys his dignity in the society as he is not left out from the race of the life rather he is fully involved in all the activities of the life and more importantly without being under the gratitude of any member of the society as he has been given his own right and not any undue favor by any individual.

Even when there is deviation in the Muslim society and the state doesn't fulfill its obligation and the individuals have to distribute the zakat themselves, even in such condition Islam has strictly warned the payers of zakat to take care of dignity and respect of the poor, and not to let him feel any sort of disgrace or gratitude towards that rich.⁶⁷

Allah Almighty says in the Holy Quran:⁶⁸

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُبْطِلُوا صَدَقَاتِكُمْ بِالْمَنِّ وَالْأُذَىٰ كَالَّذِي يُنْفِقُ
مَالَهُ رِيقًا وَالنَّاسَ وَلَا يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ فَمَثَلُهُ
كَمِثْلِ صَفْوَانٍ عَلَيْهِ تُرَابٌ فَأَصْبَحَ وَابِلًا فَفَتْرَكَهُ صَلْدًا ۗ
لَا يُقْدِرُونَ عَلَىٰ شَيْءٍ مِّمَّا كَسَبُوا ۗ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الْكَافِرِينَ ٥

“O you who believe! Cancel not your charity by reminders of your generosity, or by injury- Like those who spend what they own to be seen of men, but believe neither in Allah nor in the Last Day. They are in the parable like a hard, barren rock, on which is a little soil; On it falls heavy rain which leaves it (just) a bare stone. They will be able to do nothing with the little they have earned. And Allah does not guide those who reject faith.”⁶⁹

So the dignity and the respect of the poor have been ensured by Almighty Allah.

This is one of the ways of elimination of the poverty from the Muslim society. There are other forms of charity mentioned in Holy Quran and the Traditions of Holy Prophet PBUH.

From the above discussion we can draw this conclusion that Islam hasn't appreciated poverty rather it has condemned it through many verses and through the sayings of the Prophet of Islam PBUH. Also it has provided different ways for the elimination of poverty. So the stance of Islam

⁶⁷ Markaz al abhath al iqtisad al islami jamia al malik abdul Aziz, *Qira'at fil iqtisad al islami*, Markaz an nashr al ilmi Jamia al malik abdul Aziz Jaddah, pp. 152-154

⁶⁸ *Al- Baqarah*, verse no. 264

⁶⁹ English Translation of the meaning of Holy Quran, by Professor (Dr.) Syed Vickar Ahamed, Book of signs foundation 1st Edi, 2005, p. 24

is very much clear in this regard. In few traditions as we have seen that the Holy Prophet PBUH has mentioned the poverty and infidelity together which reveals the amount of intensity it has in the eyes of Islam. The guided Caliph Hazrat Ali R.A. in one of his sayings says:

لَوْ كَانَ الْفَقْرُ رَجُلًا لَقَتَلْتُهُ

“If the poverty were in the form of human being I would have killed it”.⁷⁰

It is well known principle in Islamic law that Allah hasn't prohibited anything without having evil in it or sometimes without being a source to an evil. So when it has been condemned it clearly means that it is either evil itself or a source to some evil. In both cases it is will have a strong relation with the commission of crime as the crime is also an evil which the Islam has aimed to eliminate.

3.2 Economy and crime in the western criminology

In the western criminology crime has been attributed to many internal as well as external factors. Some of the sociological theories have been discussed in the second chapter. Now in this discussion the emphasis will be given only on the theories which look at the delinquent behavior as a consequence of the economic structure of the society.

3.2.1 Radical Criminology and crime or Marxist approach

The Dutch criminologist William A. Bonger, a Marxist, was an early proponent of theory of economic causation of crime. Bonger was convinced that the criminal behavior and criminal acts

⁷⁰ Nahjul Balaghah, 3/110

particularly crimes against property were committed because of the poverty of the offenders in a competitive capitalistic society. Poverty which is the result of unsuccessful economic competition leads to personal disorganization and is an inbuilt part of a capitalistic system. According to this theory the solution to the crime lies in the reorganization of the means of production and the development of a classless society. Bonger describes this viewpoint in this way:

“The egoistic tendency does not by itself make a man criminal. For this something else is necessary.... For example, a man who is enriched by the exploitation of children may nevertheless remain all his life an honest man from the legal point of view. He does not think of stealing, because he has a surer and more lucrative means of getting wealth, although he lacks the moral sense which would prevent him from committing a crime if the thought of it occurred to him.... As a consequence of the present environment, man has become very egoistic and hence more capable of crime, than if the environment had developed the germs of altruism.

The present economic system is based upon exchange.... Such a mode of production cannot fail to have an egoistic character. A society based upon exchange isolates the individuals by weakening the bond that unites them. When it is a question of exchange the two parties interested think only of their own advantage even to the detriment of the other party....

No commerce without trickery is a proverbial expression (among consumers), and with the ancients Mercury, the god of commerce, was also the god of thieves. This is true, that

the merchant and the thief are alike in taking account exclusively of their own interest to the detriment of those with whom they have to do".⁷¹

Bonger also provided in his writings that poverty alone was not a sufficient cause for the delinquent behavior among the offenders and that the most poor people may also be very honest. However most of the Western societies care much of the unemployed and poor ones as compared to that in bonger's time. Bonger's commentary still remains valid that the conspicuous consumption tends to set goals among the lower class of the society which are impossible to achieve through legitimate means. Bonger's postulate of the discrepancy between the culturally approved goals and the institutionalized means for their achievement has been subjected to research by many recent sociologists.

Economic determinism as part of the contemporary radical criminology has got support from the work of Gordon and others.⁷²

According to this view, capitalist societies mainly rely on competitive forms of social and economic interaction and upon the significant inequality in the allocation of the social resources. Without a competition and competitive environment, workers are not likely to struggle to improve their respective income and status in the society by working harder. Though property rights are protected, the capitalist societies do not provide any guarantee to most of their individual members about their economic security. Driven by fear of economic insecurity and by a competitive desire to gain some of the goods unequally distributed throughout the society, many individuals will ultimately become delinquents.

⁷¹Yablonsky Lewis, Martin R. haskeel, *Juvenile Delinquency*, Harper & Row, 4th Edi P. 377 ,

⁷² Gordon David m, 'capitalism, Class and Crime in America," *Crime and Delinquency* (April 1973): 163-186

The following three types of crimes in the United States of America provide examples for practical rationality for this view:

1. Ghetto crime. The legitimate jobs open to many young ghetto residents typically earn them low wages, offer comparatively degrading assignments and have constant risk of layoff. Many types of crimes available in ghetto provide higher monetary return, higher status, and often minimum risk of being arrested or penalized.
2. Organized crimes. Activities like gambling, prostitution and drug distribution are illegal for many reasons, but these are much demanded activities. Opportunities for monetary gains are high, and the risk of being subject to arrest or punishment is very low.
3. Corporate crimes. Corporations exist to guard and enlarge the capital of their owners. If this target becomes difficult to achieve lawfully, corporate officials will exercise the other ways for the same.

Gordon further indicates that the system of crime and punishment in United States of America supports the capitalist system in three ways:

1. The persistent patterns of selective enforcement reinforce a prevailing ideology that *the individuals and not the institutions are to be blamed for social problems*
2. The patterns of crime and punishment manage to neutralize the potential opposition from the oppressed members of the society. The cycle of crime, punishment, parole and recidivism denies the poor, the black poor in particular, the useful participation in the society and also denies them chances of good employment and keeps them on the run

3. By treating the criminals like animals and misfits, as the rebels of the state, we are kept away from asking some basic questions about the dehumanizing effects of our social institutions

A critical theory which supports the position of Gordon in general has been stated by Quinney in the following terms:

1. The base of the American society is an advanced capitalist economy.
2. The state has to ensure the interest of the dominant economic class i.e. the capitalist ruling class.
3. Criminal law is an instrument with the state and ruling class to preserve and prolong the current social and economic order.
4. The task of crime control is given, in a capitalist society, to a number of state institutions which are established and administered by the governmental elite, representing the interests of ruling class in order to establish the domestic order.
5. The contradictions of advanced capitalism- the distinction between existence and essence- demand the deprivation of oppressed class of the society by whatever means necessary for this purpose, especially through the harshness and compulsion of the legal system.
6. The only solution of the problem of crime is the collapse of capitalist society and the creation of a new society which is based on socialist principles.

As capitalist society is further threatened by its own contradictions, criminal law is increasingly used in the attempt to maintain domestic order. The underclass, the class that must remain

oppressed for the triumph of the dominant economic class, will continue to be the object of criminal law as long as the dominant class seeks to perpetuate itself.⁷³

Radical theorists like Quinney rely much on economic and Marxist theory. They argue that the criminal behavior is the product of constant class struggle in a capitalist society. The ruling class, in fact, creates environment suitable for the delinquency and only revolution can change the things in such societies. Such theories tend to see the delinquency as a result of the *marginalization of youth*. Capitalism is viewed as a “criminogenic” system that keeps on creating inequities based on age, sex, race and occupation. So, only making efforts for the rectification of the system by investing time and money will not serve the purpose of eradication of the delinquency. They assert that when the youth will be freed from the oppression of the economic inequities and will be reintegrated into the mainstream of the society, their instinct of cooperation will become dominant and result will be a society free from crime and delinquency.

The prescription for this revolution has been stated by Quinney as follows:

“ Our task as students is to consider the alternatives to the capitalist legal order. Further study of crime and justice in America must be devoted to the contradictions of the existing system. At this advanced stage of capitalist development, law is little more than a repressive instrument of manipulation and control. We must make others aware of the current meaning of crime and justice in America. The objective is to move beyond the existing order. And this means ultimately that we engage in socialist revolution”.⁷⁴

Most of the theories presented by Gordon and Quinney, focus on male delinquency. A body of Marxist theory and research being developed feminists asserts that “the special oppression of

⁷³ Richard Quinney, *Criminal Justice in America*, Boston: Little, Brown 1974, p.24

⁷⁴ *Ibid*, p.25

women by (the criminal justice) system is not isolated or arbitrary, but rather is rooted in systematic sexist practices and ideologies which can only be fully understood by analyzing the position of women in capitalist society."⁷⁵

The relationship between capitalism, sexism and crime has been interestingly stated by Rafter and Natalizia.⁷⁶

On diverse aspects of this issue, they write:

Capitalism and sexism are closely, and this relationship is to be blamed for the inferior status traditionally given to women in American criminal justice system. Sexism is not only the discrimination of individuals; it is rooted in the very economic, legal and social structure of life in the United States. The criminal justice system, being a part of that institutional structure, echoes the same sexist underpinning that is evidenced throughout a capitalist society.

Capitalism depends upon the conventional structure of monogamy and the nuclear family to fulfill its economic potential. The class of labors necessary for the capitalist system cuts off those who produce from control over the means of production. And it requires that men shall be the chief producers of the goods, whereas women shall primarily be the nurturers of the next generation of the producers.

Legal policy and the structure are the consequence of the moral system prevalent in a given society. This means that, in a capitalist society, law implicates a bourgeois moral code that confines women from playing their role in the economic scheme. Women are the property

⁷⁵ Dorie Klein and June Kress, "Any Woman's Blues: a critical overview of Women, Crime and the Criminal Justice System" *Crime and Social Justice* (Spring/ Summer 1976), p. 45

⁷⁶ Nicole Rafter and Elena Natalizia, "Marxist Feminism: Implications for Criminal Justice," *Crime and Delinquency* (January 1981), pp. 81-87

belonging to men (husbands, fathers etc.) and the women's role has been defined as insignificant or not worthy for any considerable recompense. The moral codes which define the women's role as significant are blamed as deviant and is punished by severe sanctions. Law, in such societies, becomes a tool for social control over women and a means of maintaining the economic status quo.

Historically, the entire justice system has been controlled by men in America. The legal setup has been codified by male legislators, enforced by male police officers, and interpreted by male judges. Male are administering the rehabilitation programs. They are to manage the system of jails.

The second way in which the legal system becomes a tool for the oppression of women is through almost its total failure in responding to the issues of concern pertaining to women. Some of the critically important problems for the women are enumerated as wife abuse, sexual harassment, rape, incest, production of unsafe methods of birth control, forced sterilization for eugenic purposes. Women need the legal system for redress of all these issues but it has either failed to consider their needs or has glossed over with token, ad hoc efforts. These problems are very much important for the poor and working class women who are striving to obtain at least the legal equality in the society.⁷⁷

⁷⁷Yablonsky Lewis, *Juvenile Delinquency* pp. 379-380

CHAPTER 4
CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion

From the research it is concluded that as the human society has progressed at a great pace and this progress has influenced the human behavior in general and that of criminals in particular. New techniques for the commission of crime are being incorporated by the delinquents day by day. There are many sources for the criminal of today for the learning of criminal behavior which were not available for the criminal of some time ago. Today the TV channels which apparently aim at the awareness of general public about the crime in their crime petrol shows, but they are providing unintentionally, if not intentionally, a guideline for person who has *mens rea* but he has no sophisticated knowledge or techniques for realization of his intent. Thus, he is provided, in practical shape, with those techniques and methods for the criminal act and how to get away with the consequential measures. In such a situation it becomes indispensable on the part of government to have all these things into consideration at both levels i.e. legislation and implementation. There seems to be, in Pakistan, a wide gulf between the incorporation of new ideas for the commission of crime by the criminals and the prompt and adequate measure to be taken by the state agencies. In this study, it has been focused on the crime as well as the criminal in the light of the guidelines provided by the great scholars of both orientations i.e. Islamic and Western. In the latter orientation, some of the theories, such as Individualistic, have been rejected by the subsequent studies but the value of those theories remains there keeping in view the fact that they were presented at a time and in an environment which was totally ignoring the personality of the criminal and they were concentrated on the crime. If we look at the Islamic approach towards crime and criminal, it looks to be perfect and intellect appealing. A very strong preference and plus point which must be given by every reasonable person to the Islamic

approach is that Islam provided all these informations and awareness at a time when there was no scientific researches or labs. People of that time were devoid of any technical knowledge but they were blessed with a perfect religion which covered their every sphere of life including the probable criminal behavior in the society. So, Islam taught them the factors which could cause a person to become a criminal. To achieve this end, non muslim scholars have made efforts, conducted researches and carried out experiments.

4.2 Recommendations

The research recommends as following

- 1) Researches should be conducted on regular basis on the subject of causes of criminal behavior at the govt. level
- 2) On the basis of the results reached at in those researches the legislation should be made to cope with the problem of crime
- 3) The implementation of those laws should be ensured without any discrimination
- 4) The crime controlling agencies should be more vibrant to catch the wanted persons
- 5) The general public should be provided a general awareness to pay their contribution in the elimination of the crime
- 6) The govt. should take steps to cause the denunciation of criminal behavior among the general public
- 7) The implementation of the criminal law and the conviction of the criminals by the courts should be ensured
- 8) The last but not the least point is to carry out the punishments of the criminals without taking into account their affiliation or cast or any other thing

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