

Behavioral Profiling and Penology of Crimes in India

A Case Study

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Abstract: The construct of law, in any society, is solely dependent on the rudimentary traits of human behavior. Hobbes identified law as that of public conscience. This definition pinpoints to the idea that law is just, only when it combines coherent social behavior, adhering to a collective consciousness that is contrived upon shared beliefs, ideas and moral attitudes. This correspondence between the law and human behavior is propounded by the Natural school of Jurisprudence, wherein it is identifiable that there are certain innate human qualities that dictate the composition of law. Therefore, diagnosing deviant behavior patterns is crucial for the classification of crime. Nevertheless, it is safe to assume that India lacks a standardized profiling study on crime. Central Forensic Science Laboratory (CFSL) under the Central Investigation Bureau (CBI) is the only authority to such criminal behavior studies, but however a uniform method of classification is absent. According to an article published by the Press Trust of India (PTI), the A total of 9635 cases are pending with CFSL as on October 31, 2016.

This is a case study aiming to gather reports on several infamous criminals and to formulate similar models of behavioral profiling, with respect to the international studies on criminal behavior. Through this quantitative analysis, this research paper aims to ascertain that law and human behavior are co-existent and that it is a domain that associates the disciplines of sociology, psychology and criminology. The theory of social strain typology proposed by Robert K. Merton sheds light on the concepts of deviant behavior and is complemented by the theories of conflict and structural functionalism. The main objective of this study is to analyze certain behavior patterns which can be determinants for criminal profiling, under the guidance of the studies conducted by several behavioral science investigation units. The penology of these crimes and their characteristics is also extensively discussed based on the legal provisions available to the containment of crime, in the light of the Indian Penal Code (IPC) and the Criminal Procedure Code (CrPC).

Keywords: Public Conscience, Behavioral Profiling, Deviant Behavior, Penology of Crime.

I. INTRODUCTION & GENESIS OF MODERN EDUCATION:

Human behavior is complex and varied in nature¹; to pilot it in the right direction laws are required along with its effectual implementation and enforcement. Laws would dictate and regulate people and their behavior, forewarn them about actions which are socially acceptable and which ones are not and also about the consequences their actions might have. However many a times it is the human behavior which creates a hindrance in the functioning of laws in its true spirit. Instead of the expected submissiveness there is delinquency, they try to evade or violate the laws for their own benefit.

Modern Darwinism or evolutionary psychology² establishes that the initial behavioral tendency of a man is to

¹ A. W. & Staats & C. K., *Complex human behavior: A systematic extension of learning principles*. (1963).

² Nigel Nicholson, *How Hardwired Is Human Behavior?*, HARVARD BUSINESS SCHOOL, JULY–AUGUST 1998, <https://hbr.org/1998/07/how-hardwired-is-human-behavior>

interact, socialize, share secrets, and have discussions with other people following which they started living in close proximity of each other. That is when conflicts come into existence; where there is man there would be different opinions which would eventually lead to conflicts. From the very early times a man is well known for his ability to fight when threatened or for the fulfillment of his desires and cravings, the strong overpowers the weak which has been the construct of all societies. Over time man discovered weapons and started using different strategies to fight which would create more devastation and havoc. This created anarchy which leads to the formation of a state which would comprise of a society and its customary ruler; it has been discussed in several theories. The Divine Origin Theory³ is one of the oldest theories regarding the origin of the state. It pronounces how the state was created by the God and that the King is his representative in this world, his command would be the laws of the society. The Social Contract Theory⁴ talks about how people irked by the chaos and difficulties experienced by them decided to form a contract and bestow all their rights onto one person who would then dictate how one should behave, what one must do or what one must abstain from doing. These theories primarily deal with human beliefs and how they behave in accordance to that.

II. OBJECTIVES OF THE STUDY

➤ **To find a coherent nexus between the domains of Law and Human Behavior:**

The primary objective of this study remains committed to interlinking the domains of Law and Human Behavior. Through this objective, the study aims at discerning how the fundamental elements of law, are a construct of evolving human behavior, and also at defining how law is a tool utilized to regulate human behavior, hence having a consequential effect on its structure.

➤ **To study existing methods of behavioural profiling and to suggest a suitable scale for behavioural analysis:**

Another significant aim of this study remains to objectively discuss the internationally recognized methods of behavioural profiling. This is effectively done through the insights and guidance of the American Psychological Association (APA). With respect to the Indian scenario, this study also aims at recommending a relatively suitable scale for profiling criminal behaviour.

➤ **To critically analyse relevant theories in sociology, related to social control and deviant behaviour:**

A theoretical analysis is done, with regard to the discipline of sociology, examining the role of various sociological factors in the commitment of crime. The theories proposed by sociologists such as Emile

³ K.K.GHAI, POLITICAL THEORY AND CONTEMPORARY INTERNATIONAL RELATIONS Pg.49 (2014)

⁴ Ibid, Pg.58 (2014)

Durkheim, Robert Merton, and Karl Marx are discussed within the reaches of this objective.

➤ **To provide insight on penology of crimes in India, and to suggest valid recommendations on how to improve it:**

This study also aims at defining the legal procedures related to the penology of crimes in India. The various codes of penal procedures in India, are referred within the scope of this objective. The prison system of India and its disabilities are also critically evaluated, complemented by valid recommendations, supported by the findings in the research.

III. RESEARCH QUESTIONS

- To find whether an active relationship can be observed between the domains of Law and Human behavior?
- What is crime control and what is the role played by the law enforcement agents?
- What is the importance of the classification of punishments according to the penal codes (IPC) in India?
- What are the methods to prevent recidivism and what recommendations can be useful for the criminal justice system of India?
- What are the significant methods of behavioral classification complemented by extensive research?
- What are scales of behavioral profiling and which internationally recognized scale can be recommended for use by the criminal justice system of India?
- What evaluations can be obtained from certain insights of a sociological perspective?
- What are the limitations of the scope of this study in the Indian scenario?
- Whether the research can arrive at a suitable conclusion, affirming the relationship between common behavioral patterns and containment of crime by law enforcement authorities?

IV. HYPOTHESIS AND METHODOLOGY

Hypothesis:

“Whether a uniform behavioural profiling method can be adopted in India, with the objective of contributing reforms to the execution of penology and the criminal justice system”

Method Used:

QUALITATIVE STUDY:

A method of qualitative study is exploited by the researchers for the effective completion of this study. Qualitative Research is primarily exploratory research. It is used to gain an understanding of underlying reasons, opinions, and motivations. It provides insights into the problem or helps to develop ideas or hypotheses for answering potential research problems. This study has used globally accessible data, verified by appropriate authorities, for its research purposes. The doctrines of penology, texts of classification of criminal behaviour, and the sociological thoughts mentioned in this study, are borrowed from scholars who have contributed significantly to the same cause.

Research Instrument:

CASE STUDY:

The researchers have exploited a method of case study for the successful implementation of this study. Such a method of research proves to be of significant value, when in contact with a domain of study to which there is less empirical records. The researchers have predominantly have relied on Federal documents (U.S, case studies) and on scholarly researches (India case studies) to determine the scope of this research.

V. REVIEW OF LITERATURE

The idea and innovation required for this study was furnished by the literature authored by John. E. Douglas, whose contribution to the world of criminology and behavioural profiling is immensely significant. The Crime Classification Manual (CCM) (1992), written by John E. Douglas and Robert Ressler has helped this study tremendously, for it had equipped the field of criminology and behavioral study with a vision ahead of its time.

“*Crime and the Mind*” written by Walter Bromberg (1948) has shaped the typologies of classification of this study. Dr. Bromberg, out of a background of experience as a court psychiatrist views the criminal and the delinquent from the psychological perspective. Abrogating the tenacious concept of criminality as innate, or correlated with physiognomic stigmata, the author exhibits nature psychological comprehension by explaining anti-social behavior as a reaction of the human organism to external and internal pressures disconcerting to the ego. The insights provided by Edwin I. Megargee have influenced this study greatly, with emphasis given to his work- *A New Classification System for Criminal Offenders, VI*, which extends Minnesota Multiphasic Personality Inventory (MMPI)-based classification system to female offenders. MMPI-2s of 400 women in state and federal prisons were rescored and reconfigured to estimate their original MMPI profiles. The outlook provided by this research inventory was useful in understanding the other methods of classification of criminal behaviour.

Stanley L. Brodsky and H. O’Neal Smitherman’s *Handbook of Scales for Research in Crime and Delinquency* (1983), is another rewarding literature which has been exploited by the researchers in the course of forming the

research framework. The handbook, which is recognized by the UN, provides useful measures and scales through which criminal behaviour can be assessed. A set of scales catering to all forms of domains including general scales, corrections and law enforcement agencies have been meticulously discussed through this handbook.

The sociological perspectives discussed in this study, are primarily based upon the ideas and sociological thought of several thinkers belonging to the Formalistic school of thought. Emile Durkheim's foundational works have aided this research to a commendable level. The views provided by Durkheim, in his classic books: *The Division of Labour in Society* (1893), *The Rules of Sociological Method* (1964), *Suicide: A Study in Sociology* (1897) (Translated by John A. Spaulding & George Simpson), constructed the bedding for the sociological approaches taken in course of this study. Converging with Durkheim's views, Robert K. Merton's *Social structure and anomie* (1938) provided more clarity to the concept of how variance of behavior to attain the same set of goals would result in a complex social structure.

To facilitate a thorough understanding of the concept of reformation, in light of the criminal justice system of India, the book entitled "*Criminology and Prison Reforms*" (2014) written by Girish Kathpalia has determined the scope of this study. The author having worked for prisoners from close quarters, gives the reader an enriching account on how reformation methods are effective, with emphasis to the fundamental rights of an individual.

The authors thank all the academicians and research scholars for their ardent contribution to the shaping of this study, with the help of the respective scholarly literature.

VI. BEHAVIOURAL PROFILING : THEORIES, METHODS AND SCALES

- **Theories of Classification:**

The mission to classify crime had occupied several schools of legal studies for long, throughout the course of history. Initially, the term "dangerous classes" had been associated to the weaker sections of the society. A popular use of this classification started in England at the end of the hundred years war with France, whereby homeless population increased nationwide (Rennie, 1977). Cesare Lombroso, the famed Italian physician, is generally credited with launching the scientific era in criminology. In 1872 he differentiated five types of criminals — the born criminal, the insane criminal, the criminal by passion, the habitual criminal, and the occasional criminal (Lindsmith & Dunham 1941), based on Darwin's theory of evolution.

Contrary to the existing theories on the defectiveness of intelligence, concerning the criminals, popularly championed by Englishman Charles and by Henry Goodard, the classification proposed by Murchison in 1928 concluded that the criminal group are superior in intelligence.

Another major contribution is by the Psychiatric Clinic of the Court of General Sessions in New York⁵, in the year 1932, wherein classification of each offender according to a personality evaluation was initiated, thus combining the insights of psychoanalysis, descriptive psychiatry, and behavioral phenomenology. Each convicted offender presented was analyzed in relation to four categories: (1) presence or absence of psychosis, (2) intellectual level, (3) presence of psychopathic or neurotic features and / or personality diagnosis, and (4) physical condition.

There are two approaches associated with the psychiatric perspective to understanding crime: scrutiny of the inner (mental and moral) world of the criminal offender and examination of the external (social) world in which he lives (Bromberg⁶, 1965).

Over the years, several classification typologies for offenders have been developed, aided by thorough research. The classification made by Julian Roebuck in 1967, provided a new perspective to the cause, as offenders were classified on the basis of how recent the offence was and the frequency of the respective offenses during their criminal career. This classification proposed an explanatory theory rather than one in terms of diagnostic systems. The primary tool used for the same was an investigation into the offender's arrest history, regardless of length (Roebuck⁷, 1967)⁸. The other instruments used, included the total of known arrests, with the offender's behavior, allowed for the observance of a pattern, if exists. But the obvious shortcoming to this method is that, not all criminals have accurate arrest histories.

The studies on psychological motivation, has proved over the course of time that the behavior patterns involved in criminal acts are not far removed from those of normal behavior⁹. Studies indicate that criminal behavior, as is true of all other behavior, is responsive to inner and outer stresses. The external realities of mental life—social pressures, cultural emphases, physical needs, sub cultural patterns of life— precipitate criminal action. The inner realities of behavior— neurotic reactions, impulses, unconscious motivations, preconscious striving, eruption of infantile aggressions— represent a precondition to criminal acts. Criminal behavior is suggested to derive from three behavioral areas: (1) the aggressive tendency, both destructive and acquisitive; (2) passive, or subverted, aggression; and (3) psychological needs (Bromberg, 1965).

Classification of criminal offenders has been and is an important component in correctional facilities throughout the United States. In 1973 the National Advisory Commission called for criminal classification

⁵National Research Council (U.S.), Bulletin of the National Research Council, National Academies. 1932

⁶Granville C. Fisher PhD., CRIME AND THE MIND. By Walter Bromberg. Philadelphia: J. B. Lippincott, 1948., 4 U. Miami L. Rev. 133 (1949)

⁷Roebuck, Julian B. Criminal typology: the legalistic, physical-constitutional-hereditary, psychological-psychiatric, and sociological approaches. (C. C. Thomas, 1967).

⁸Douglas, John. Ann W. Burgess, R.N., D.N Sc., Allen G. Burgess, Robert K. Ressler. "Crime Classification Manual: A Standard System for Investigating and Classifying Violent Crimes, 2nd Edition" San Francisco. Jossey-Bass. 2006

⁹Ibid.

programs to be initiated throughout the criminal justice system (Megargee & Bohn¹⁰, 1979). This has not been an easy task. The correctional system is a complex, expanding, expensive operation that has accountability to society, individual communities, correctional staff, and the inmates themselves. The current trend within the correctional system has been growth of the inmate population with a modest growth in facilities. As the population within the system is faced with economic and now medical issues (such as AIDS), classification is a cost-effective and efficient management and treatment tool. It provides common language for the various professional groups to communicate among themselves.

In the 1980s, a research program to classify sexual offenders (Knight, Rosenberg, & Schneider, 1985), was successfully conducted by a research team at the Massachusetts Treatment Center in Bridgewater. Their systematic approach, paved way for a typology construction by producing taxonomic systems for both child molesters and rapists. The classification for child molesters had demonstrated reasonable reliability and consistent ties to distinctive development antecedents. In addition, preliminary results of a twenty-five-year recidivism study of child molesters indicate that aspects of the model have important prognostic implications (Knight & Prentky¹¹, 1990).

- **Methods of Classification:**

Crime Classification Numbering system (Using CCM):

The CCM classifies crime according to a numbering system, created using three digits, with the first digit representing the major crime category. There are five major crime categories with respect to the manual: homicide, arson/bombing, rape and sexual assault, nonlethal crimes, and computer crimes. The homicide category is identified by the number 1 (codes 100 to 199), arson/bombing by the number 2 (codes 200 to 299), rape and sexual assault by the number 3 (codes 300 to 399), nonlethal crimes by the number 4 (400-499), and computer crimes by the number 5 (codes 500-599).

The second digit of the code represents further grouping of the major crimes. Homicides are divided into four groups: criminal enterprise (100 to 109), personal cause (120 to 129), sexual (130 to 139), and group cause (140 to 149). There are unassigned numbers that allow for future editions within specific categories and additional groups within a major category. The third digit of the code represents specific classifications within these groups.

¹⁰Megargee, E. I. (1984). A new classification system for criminal offenders, VI: Differences among the types on the adjective checklist. *Criminal Justice and Behavior*, 11, 349-376. Bohn, M. J., Jr. (1979). Management classification for young adult inmates. *Federal Probation*, 43, 53-59.

¹¹Knight, R. A., & Prentky, R. A. (1990). Classifying sexual offenders: The development and corroboration of taxonomic models. In W. L. Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of sexual assault: Issues, theories, and treatment of the offender* (pp. 23-52). New York: Plenum.

Additional digits are assigned to these numbering codes, followed by a decimal, hence creating individual classifications within groups and further dividing them into subgroups. For example, domestic homicide (code 122) has two subgroups: spontaneous domestic homicide (122.01) and staged domestic homicide (122.02).

The approach taken in the CCM for multiple motives is to classify the offense according to the predominant motive. Consider a case in which a husband kills his wife for insurance money. He then attempts to cover the murder with a fire. In addition, he was having an affair, and his wife would not give him a divorce. This homicide has criminal enterprise (financial gain) and personal cause (domestic) motives. It also can be classified as crime concealment under the arson section. The financial considerations should be the primary criteria for classifying this crime. The other applicable categories would be sub-classifications. So once classified, this homicide would appear as follows. For example, the number 107 refers to the category “insurance related death”; the subcategory of 107.01 refers to “individual profit motive.” The number 122 refers to “domestic murder” and the 122.02 refers to “staged domestic homicide.” The number 231 refers to the category “crime concealment, murder.”

Massachusetts Treatment Center (MTC) Typologies for Sexual Offences:

Based on the study conducted by Knight and Prentky¹², a typology was developed for classifying sexual offenders into sub-types and individual categories. They have exploited a system of statistical procedures, to explore and to refine these typologies, which encompasses of child sexual abusers and of men who commit acts of rape. The following is the classification model proposed by the MTC for sexual offences:

- **Degree of Fixation.** Offenders are differentiated based on the extent to which they are either fixated or regressed. So, for those whose sexual interests primarily involve children, they are categorized as high fixation, and those who have “normal” or age-appropriate sexual preferences are placed into the low fixation group. Then, individuals are further subdivided based upon their level of social competence—either high or low. These differentiations result in four subtypes:
 - High fixation/high social competence
 - High fixation/low social competence
 - Low fixation/high social competence
 - Low fixation/low social competence

¹²Knight, R. A., & Prentky, R. A. (1990). Classifying sexual offenders: The development and corroboration of taxonomic models. In W. L. Marshall, D. R. Laws, & H. E. Barbaree (Eds.), *Handbook of sexual assault: Issues, theories, and treatment of the offender*. New York: Plenum.

➤ **Amount of Contact.** Another level of consideration involves the amount of contact the offenders have had with children—either high or low. For those with high levels of contact, they are then further divided into subtypes based on what the goals or meaning of that contact primarily seemed to be. For the first subtype, the high amount of contact is perceived to be meeting social, emotional, and sexual needs as if they were attempting to have a “relationship.” In contrast, for the other subtype, this contact is considered to be for purely selfish reasons, in that they are attempting to meet their own needs for sexual gratification without regard for the victim. So, based on this differentiation, two additional typologies are created:

- High contact/interpersonal
- High contact/narcissistic

For those with low amounts of contact with children, they are divided into subtypes based on the extent to which they caused physical injury to their victims—low or high—and then they are subdivided again based on whether or not they are considered to be sadistic or non-sadistic. This results in four more typologies:

- Low contact/low physical injury/non-sadistic
- Low contact/low physical injury/sadistic
- Low contact/high physical injury/non-sadistic
- Low contact/high physical injury/sadistic

Rapists (MTC: R):

According to the classification proposed, there are four primary motivations behind the commitment of acts of rape¹³. They are as follows: opportunity, pervasive anger, sexual gratification, and vindictiveness. Within each category of motivation, rapists were further subcategorized based on several interacting characteristics and developmental, biological, and environmental factors that result in varying degrees of antisocial behavior, sexualized aggression, impulsivity, cognitive distortions, and deviant sexual arousal. Nine different subtypes of rapists were subsequently identified.

- **Opportunistic.** These are individuals who have poor impulse control and whose offenses are typically impulsive, unplanned, and driven by opportunity as a means of seeking immediate gratification.
- **Pervasively Angry.** Rapists in this category represent a group of their own, with men who are characterized by impulsive behaviors, low social competence, and longstanding problems with generalized anger and hostility.

¹³Rachel West, Center for Sex Offender Management (CSOM), A Project of the Office of Justice Programs, U.S. Department of Justice. (Accessed on 01/02/18).

- **Sexual Gratification.** This category is comprised of men who have extensive sexual fantasies or preoccupations, many of which are incorporated into the actual acts of rape. If individuals in this category have sadistic tendencies, they are further categorized into one of two groups based on the extent to which they actually *display* those tendencies—either through patterns of highly antisocial and outright harmful and sadistic behaviors, or through more covert and symbolic ways. For the non-sadistic individuals in this category, they are further differentiated according to their level of social competency—low or high.
- **Vindictive.** For rapists in this category, unlike the pervasively angry rapists, their anger is not generalized to people in general. Rather, the vindictive rapists direct their anger primarily toward women. Their offenses are characterized by humiliating, degrading, and physically harmful behavior toward the victim. Men in this group can be further subdivided based on either high or low levels of social competency.

- **Scale of Classification:**

Criminal Profile Scale¹⁴:

Development and Characteristics:

The Criminal Profile was designed (Gunn & Robertson¹⁵, 1976) to “describe a man’s criminal behavior in some meaningful way” (p.156). It offers a rating of one’s criminal contact with law enforcement along eight dimensions: theft, fraud, violence, motoring, drinking, drug taking, financial gain, relationship to drink. Each of these is rated on a 5-point scale, ranging from 0 (no conviction) to 4 (multiple convictions). The ratings indicate the relative involvement of offenders in these areas.

Response Mode:

The ratings are made only after a man’s criminal record has been read and the details of his offensive behavior have been fully discussed with him.

Scoring:

Scores are obtained by noting the number and severity of violations within each category. This number is the score for each category and contributes to the criminal profile.

Reliability:

¹⁴Stanley L. Brodsky and H. O’Neal Smitherman, Handbook of Scales for Research in Crime and Delinquency. In Vol 5 of Bruce Dennis Sales (Eds.), Perspectives in Law & Psychology. (New York and London, Plenum Press, 1983).

¹⁵Gunn, J., Robertson, G. Drawing a criminal profile. British Journal of Criminology, 1976, 16, 156-160.

Table 56 lists correlations that were obtained for test-retest reliability over a two-to three-week period on 30 men in prison. (This correlation is also affected by the fact that two different raters were used in a switching process for the sample).

Validity:

There is difficulty in validating a descriptive instrument. The question whether it is descriptive “enough” or “accurate” is determined by the needs of the user. Gunn and Robertson (1976) report “high agreement” between the *Criminal Profile* and a general description given by professionals within the system, as support for validity.

Comments:

Evaluation of a descriptive instrument is based on its utility, which is in turn determined by the type of information one is seeking. If one is seeking a quick and reliable numerical rating that differentiates between types of property offenses, this method may be useful. The value of this scale is its ability to quantify the review of one’s criminal record.

VII. PENOLOGY OF CRIME

Penology is a division of criminology that concerns itself with the philosophy and practice of the society in its efforts to repress criminal activities.¹⁶ It studies the nexus between law and delinquency. It is primarily concerned with an in-depth examination of the formal institutions of criminal justice such as police, courts and methods of corrections. It is concerned with the process devised and adopted for punishment, prevention of crime and treatment of prisoners.

- **PUNISHMENTS UNDER THE PENAL CODES**

The Indian Penal Code, 1860

Section 53 of the Indian penal code enumerates the different punishments which the courts may award to a person convicted for a crime, it also allows the Court to use its discretionary power in awarding punishments when the circumstances call for it like when the criminal commits a crime for the first time, not realizing the magnitude of damage his action might cause and feels guilty about it, his punishment would be different from a serial offender who has committed the same crime.

i) Death penalty adopted as the last resort, abstaining from the barbarous killings.

It is awarded only for the most heinous of all crimes; in the case of *Bachan Singh v. State of Punjab*,¹⁷ the Supreme Court of India held that death sentence is to be given only in rarest of rare cases. The only form of

¹⁶ The editors of Encyclopedia Britannica, Penology .Encyclopedia Britannica

¹⁷ AIR 1980 SC 898

executing such penalty in India in the present time is by “hanging”. Earlier several other methods were prevalent like the accused were crushed by elephants in India, pelting stones at a person until he dies was used in Arabia and Iran, dismemberment, slow slicing, decapitation, and also putting a number of persons in a poisonous gas chamber, however such methods are not used in the modern world.

However while awarding capital punishments the natural principles of law must not be ignored; every person has a right to live, even if he commits a murder, a loss of life has already occurred taking another would not bring back the innocent. Such punishments should be kept as the last resort.

ii) Imprisonment for life

It when awarded the accused criminal is to be imprisoned for the rest of his convicted natural life. Many a times death penalty is reduced to this on pleading but it lies on discretion of the court¹⁸ or the President.¹⁹ In the case of *Triveniben v. State of Gujarat*,²⁰ a mercy petition was put in front of the President but he rejected it and hence death sentence was not reduced. Also, in the case of *Union of India vs. V. Sriharan*,²¹ life imprisonment was substituted for death penalty.

Depending upon the magnitude of the crime the Court awards the tenure of imprisonment as according to section 60 I.P.C. In the case of *K.M. Nanavati v. State of Maharashtra*,²² the Supreme Court held that life imprisonment means rigorous imprisonment and not simple Imprisonment

Rigorous- The convicted person is ordered to do jobs which require hard labor. In the case of *State of Gujrat v. Hon'ble High Court of Gujrat*,²³ the Court proclaimed who out of prisoners can be compelled to do labor.

Simple - This punishment is imposed for comparatively lighter offences. In the case of *Iqbal Singh v. State of Punjab*,²⁴ it was alleged the that criminal on parole caused a public misconduct by looking at the eye witness with an evil eye, it was dismissed as the allegation being vague.

Punishments are to be imposed in accordance to the crimes, the criminal and the situation at hand. The penal codes have provided sufficient authority to the Court to use its discretion and impose the intensity of the judgment. All the cases which come under the aforesaid sections have been awarded punishments accordingly, mostly imprisonment, which has created problems like overcrowding and unhealthy conditions in jails. All of them are released sooner or later. They then re-enter the society, some changed for their own betterment but

¹⁸ The Constitution of India, Article 32

¹⁹ The Constitution of India ,Article 72

²⁰ 1990Cr. LJ273(Guj)

²¹ (2016) 7 SCC 1

²² AIR 1962 SC 605

²³ 1998 Cr LJ 4561: AIR 1998 SC 3164.

²⁴ 1990 Cr LJ 1460

most of them because of isolation and mental stress in the prison pick up the wrong ideals there and shaped themselves accordingly. They gain more knowledge from hearing the experience of others and use it the next time they fall prey to such circumstances or to their criminal psyche.

THE CODE OF CRIMINAL PROCEDURE

The law of Criminal procedure in India lays down how the prosecution of a criminal case is to be carried out in front of the Magistrates, Judicial or Executive.²⁵ India has incorporated much of the International laws into its system and thereby international doctrines can also be cited if in a case its requirement arises. According to the rule of law, law supersedes all -reasons, motives, or intentions behind any wrongful action and the same has been established in the case of *Sunil Kumar Pal v. Phota Sheikh and Others*.²⁶

PROCESS OF CORRECTION

Methods of Penology underwent several changes, shifting the paradigm from punitive to therapeutic.

- **REFORMATION:**

The motive behind imprisonment is to bring about a moral reform in the offender. He needs to be given the opportunity of education or learn different skills like painting, or industrial work during the period of his imprisonment so that when he re enters the society he would be able to earn his own living without adopting any illegal methods. This theory considers criminal psyche to be a disease and thus killing the ill is no cure for a disease. The reformatory theory wants to strengthen the character of the man so that he may not become an easy victim to his own temptation which according to it is the appropriate medicine.

In the case of *Phul Singh v. State of Harayana*,²⁷ Jawahar Thakkar, a convict turns savior for cops. He was rightly charged for rape but later on there was a sense of guilt in him for the same, the family as well as the victim had forgiven him, he was in his youth at that time when in an accident instead of escaping he helped the injure police officers. The Jury held that since there was no antecedent case and he having realized that his action was wrong was awarded correction by reducing 2 years of his imprisonment. He has set an example of reformation. Providing him a chance of correction would deliver the society a pragmatic and useful member.

Provision for reformation of punishment is made to prevent recidivism. Provision is made for a system of probation for First Offenders.²⁸ In the case of *Rattan Lal v. State of Punjab*,²⁹ the same was ingrained. This theory is progressively being adopted in the case of Juvenile Offenders.

²⁵ Prof. Mishra S.K. ,The Code of Criminal Procedure ,Allahabad Law Agency(2008)

²⁶ (1985) SCC (Cr.) 18: (1984) 4 SCC 533

²⁷ (1979) 4 SCC 413

²⁸ The Probation of Offenders Act, 1958

²⁹ AIR 1965 SC 444

- REHABILITATION

Rehabilitation programs that have shown to be effective in the American Prison System include • Academic education • Vocational education • MRT (Moral Recognition Therapy) • Cognitive behavioral treatment for sex offenders • Behavioral treatment for sex offenders, hormonal • Surgical treatment for sex offenders • MST for juveniles (Multi-systemic therapy) • Drug treatment in the community.³⁰ In India there are several proposals and provisions for rehabilitation but nothing as concrete as is followed internationally. The process of Rehabilitation is to be conducted by providing corresponding courses or cell- study courses as is followed in America.³¹ These courses must not be fixed or randomly assigned to the inmates they must be tailored to individual needs which would suit their behavioral pattern, likings and capability.

Like in the case of *Tapia v. United States*,³² Tapia was convicted for smuggling illegal immigrants across the U.S.-Mexico border; she was given imprisonment for a period, long enough to enter a drug rehabilitation program with a long waiting list. The judge said that "one of the factors that affect this is the need to provide treatment." Such insights must be incorporated into the Indian Prison System, for a person might have had a change of mind and have a longing to improve. To not give him that opportunity would be ethically wrong. This system needs to be guided by the natural laws of jurisprudence, criminals need to be improved not tortured in the name of punishment. A proper system of rehabilitation which provides educational and skill building opportunities according to individual needs would be significant for correction of criminals and crime reduction.

It must also be contemplated that as the criminals are working using their man power to build something or maintain something they need to be paid a minimum wage for it.³³ The reason is that they would recognize their capability to earn the hard way, pay for their stay and contemplate their responsibilities towards the society.

- RE-INTEGRATION

Criminals are segregated from the rest of the world when they are put into a prison which would have several "collateral effects".³⁴ They might had to bear through several losses like losing their livelihood their personal belongings, acquired a serious disease while in custody or damaged all his social networks; and for that they might be experiencing mental problems or acquired self-destructing habits and attitudes. A few of them might have a history of social isolation and marginalization, physical or emotional abuse or unemployment, and

³⁰ MacKenzie, Doris L. 2006. What Works in Corrections: reducing the criminal activities of offenders and delinquents. Cambridge University Press. p. 331

³¹ Coulter, Charles W. & Korpi, Orvo E. Rehabilitation Programs in American Prisons and Correctional Institutions. Journal of Criminal Law and Criminology. Volume 44 | Issue 5 (1954) Article 6. Pg.613.

³² 2011 SCC OnLine US SC 68

³³ Fair Labor Standards Act (FLSA), 1938

³⁴ Borzycki and Makkai, Prisoner Reintegration Post-release, pg. 10.

involvement in a criminal lifestyle that began at an early age or are addicted to drug addiction. Many of them are challenged by skill deficits that make it difficult for them to compete and succeed in the community: poor interpersonal skills, low levels of formal education, illiteracy or innumeracy, poor cognitive or emotional functioning and/or a lack of planning and financial management skills.³⁵ These tend to hamper their ability to reintegrate into the society upon release. The process of re-integration is considered extremely crucial by the American Criminal Correction System, but no significant attention is given to such methods of correction in India, at most they provide for a few rehabilitation courses and jobs where they are man- handled or are not paid even the minimum wage, like in the case of *State Of Gujarat vs Hon'Ble High Court Of Gujarat, 1998*.

VIII. SOCIOLOGICAL PERSPECTIVES

Law and criminal justice are products of human action and thought, therefore a sociological perspective is paramount in analysing those actions. Sociology aids the domains of law and criminal justice by providing tools which can be effectively utilized for a rigorous, systematic and confident understanding. Roger Cotterrell³⁶ (1998) classifies three key elements indentifying the sociological relation shared with these institutions. (i) A sociological perspective establishes law as an instrument bound by social relations, interactions, beliefs and institutions, rather than a transcending element. (ii) It also establishes the understanding that law is empirical and not theoretical, hence sharing a close relationship with sociology. (iii) It also gives insights that the study of law should be approached systematically. Cotterrell also aims to conceive of law as a “institutionalized doctrine”. This theme was greatly influenced by Thurman W. Arnold’s Realist study³⁷.

- **Emile Durkheim’s views on Deviance:**

Durkheim proposed that deviance clarifies the norms of the society and also aids in increasing conformity by the other contributing members. This is understood as the primary function of the deviant behaviour as the discovery and punishment of the deviant act, violative of conformity, reminds people of the norms existent, and prevents them from violating it by successfully reinforcing the consequences. The social control institutions often decide the decree of punishment for a deviant act, keeping this perspective in mind. The punishment allotted to the same is intended to keep the conforming population at respect to the norms and laws binding the society. He stated that crime implies "not only that the way remains open to necessary changes but that in certain cases it directly prepares these changes"³⁸. Remaining in the boundaries of the functionalist principle, Durkheim also proposed that the authority which the moral conscience enjoys must not be excessive; otherwise,

³⁵ Dandurand and others, Conditional Release Violations, Suspensions and Revocations, pg. 9.

³⁶ Cotterrell, Roger, *The Sociology of Law: An Introduction* (Oxford: Oxford University Press, 1992).

³⁷ Thurman W. Arnold, *THE SYMBOLS OF GOVERNMENT*. (Yale University Press, 1935).

³⁸ Durkheim, Émile (2007). "The rules of sociological method (1895)". In Appelrouth, Scott; Edles, Laura Desfor. *Classical and Contemporary Sociological Theory: Text and Readings*. Thousand Oaks, CA: Pine Forge Press. pg.13

no-one would dare to criticize it, and it would too easily congeal into an immutable form. To make progress, individual originality must be able to express itself. [Even] the originality of the criminal... shall also be possible"³⁹.

A second function that deviant behavior held was to strengthen the social bonds between the people reacting to the act of deviancy.

The final function played by an act of deviancy, is to help lead to a positivist change, hence contributing in making the society dynamic in its approach.

In Durkheim's magnum opus, titled "Suicide", he affirmed that "society is not only something fascinating the sentiments and actions of persons with uneven force but it is also a power operating them"⁴⁰. He observed the existence of social anomie and social relationship in an insightful way with his classification of anomic suicide, which emerged as a comforting hand to the then devastated French society. According to his perspectives, anomic suicide is the product of man's activities "lacking regulation and consequent sufferings"⁴¹.

- **Robert K. Merton's views on Deviance:**

Converging with Durkheim's views, Merton expressed similar perspectives on social anomie. In 1938, Merton introduced his first theoretical approach to the concept of social anomie⁴². He stressed on the fact that the dysfunction of the social structure is inevitably leading to the sense that it may produce distinctive asocial performances by cause of "dissociation of culturally defined goals and socially structured means"⁴³. With respect to the thoughts expressed in his book, Merton classified deviant behavior into four typologies, by closely examining the effect of cultural motivations and social means on the persons⁴⁴. This classification of Merton has played a significant role in understanding criminal behavior. Albert Cohen (1955), for instance, observed that criminal gangs are usually made up of lower-class youths to whom the middle-class means of achieving success, are not available⁴⁵. Merton proposed that when individuals are faced with a gap between their cultural/individual goals and their current status in the society, strain occurs. Hence forcing the individuals to adapt to various methods, which led to the formation of the typology model. These typologies are distinguished as follows:

- Conformity: pursuing cultural goals through socially approved means.

³⁹Ibid

⁴⁰Durkheim, E. (1897 a) *Le Suicide: etude de sociologie*, Paris:Alcan.

⁴¹Durkheim, E. (1951). *Suicide: A study in sociology*. Glencoe: IL. The Free Press,pg. 258.

⁴²Merton, Robert K. (1938). *Social structure and anomie*, *American Sociological Review*, 3(5), pg. 672-682.

⁴³Ibid, pg.674.

⁴⁴Coser, L. A. (1975). *Theidea of social structure papers in honor of Robert K. Merton*. New York: Harcourt Brace Jovanovich.

⁴⁵Perry, John A.; Perry, Erna K.. *Contemporary Society: An Introduction to Social Science*, 12/e, Pearson Education India, (India: Dorling Kindersley, 2010) pg.137.

- Innovation: using socially unapproved or unconventional means to obtain culturally approved goals.
- Ritualism: using the same socially approved means to achieve less elusive goals (more modest and humble).
- Retreatism: to reject both the cultural goals and the means to obtain it, then find a way to escape it by submitting to other elements.
- Rebellion: to reject the cultural goals and means, therefore in an approach to replace them.

IX. DATA COLLECTION

- **CRIMINAL CASE STUDIES, U.S:**

Edmund Emil Kemper III (Infamously known as Ed Kemper):

Various incidents in the childhood of Ed Kemper can be associated as observable elements in the crimes he committed in his adulthood. Kemper was locked up in the basement of his house by his mother, from a very early age. This isolation from his family, influenced him greatly as a child. In many different interviews, he described his fear and anger growing up, along with the things he envisioned doing.

When he was thirteen, Kemper slaughtered his own pet cat with a machete and stuffed the remains in his closet (which his mother found). The incident of Kemper killing his family cat, shows to a great extent of the anger and rage that compiled in the mind of young Kemper. After the completion of the act, he placed the head of the cat on an altar, and later confessed that he felt empowered after persuasively lying about it⁴⁶. He also developed a hobby of cutting the heads off his little sister's dolls, which can be observed as a consistent pattern in all his murders. He had cut off the heads of all his victims and had performed the act of irrumatio with them. Kemper, when questioned in a later interview as to why he removed his victim's head before having sex with the body, he explained: "The head trip fantasies were a bit like a trophy. You know, the head is where everything is at, the brain, eyes, mouth. That's the person. I remember being told as a kid, you cut off the head and the body dies. The body is nothing after the head is cut off ... well, that's not quite true, there's a lot left in the girl's body without the head⁴⁷."

Between May 1972 and April 1973, Kemper embarked on a murder spree that started with two college students and ended with the murders of his mother and her best friend. The victims who fell prey to his horrific acts of violence are: Mary Ann Pesce and Anita Luchessa (May 7, 1972), Aiko Koo (September 14, 1972), Cindy Schall (January 7, 1973), Rosalind Thorpe and Allison Liu (February 5, 1973), Sally Hallett (April 20, 1973)

⁴⁶Ramsland, Katherine. "Creating a Killer". Crime Library. Archived from the original on February 10, 2015.

⁴⁷Vronsky, Peter (2004), Serial Killers: The Method and Madness of Monsters,pg.264

and finally his mother- Clarnell Strandberg (April 20, 1973). Many psychologists have claimed that all his other killings were symbolic rehearsals for eliminating his ultimate target.

Jermone Henry Brudos (Infamously known as “Jerry Brudos”:

Jerome Henry Brudos was born January 31, 1939, in South Dakota. Brudos' childhood had certain similarities with that of Ed Kemper. Like Kemper, Brudos was subjected to a childhood of isolation, negative criticism and disdain. His mother had often told him that she did not want him, hence deeply rooting anger and depression into the mind of Young Brudos.

Brudos when he was five, discovered a pair of women's spike-heeled shoes at a dump, and upon curiosity, brought it home⁴⁸. His mother portrayed strong reactions to seeing him wearing those in his bedroom. She instantly took hold of them, destroyed them, and made an image inside Young Brudos' mind that they were wicked, which only enticed his curiosity further. His mother being overly agitated and upset with his actions, made the boy discover that there was something “deliciously forbidden⁴⁹” about them. This childhood memory, later developed into a sexual awakening in Brudos' teenage life which finally led to a violent commitment of crime in his later life. It is also reported in several interviews that Brudos in his childhood, continued the act of collection of women's shoes and underwear, without his mother's knowledge. "They were mysterious and forbidden totems," says Vronsky, "arousing in him deep erotic feelings that he could not understand or explain⁵⁰."

Between the years 1968 and 1969, Brudos bludgeoned and strangled four young women and attempted to attack two others⁵¹. He is classified as one of America's most infamous serial killers and necrophiliac.

In all the murders committed by Jerry Brudos, acts of sexual fulfilment by collecting the shoes and undergarments of his victims, and also by engaging in acts of necrophilia and dismemberment of body parts, stands as a common element. This, to a great extent proves that, the behavioural patterns reflected in his criminal profile, had relations with his childhood and development of self.

X. DATA ANALYSIS & SCOPE OF CASE STUDIES IN INDIA

In the light of the case studies obtained, regarding the criminal activities of Ed Kemper and Jerry Brudos, a thorough analysis can be attempted on certain co-relating factors which would perhaps give insights on the development of a crime. According to the Diagnostic and Statistical Manual of Mental Disorders⁵² of the

⁴⁸Ramsland, Katherine. "The Fetish Killer". truTV Crime Library. Archived from the original on 9 February 2015. Retrieved 4 April 2012.

⁴⁹Ibid.

⁵⁰Vronsky, Peter (2004), Serial Killers: The Method and Madness of Monsters.

⁵¹Marrison, James (2010) The World's Most Bizarre Murders. John Blake Publishing, 304 pages.

⁵²Diagnostic and Statistical Manual of Mental Disorders, 4th ed. Washington D.C.: American Psychiatric Association. 1994.

American Psychiatric Association (APA), personality traits are defined as the enduring patterns of perceiving, relating to, and thinking about the environment and oneself that are exhibited in a wide range of social and personal contexts. With respect to this definition, an individual's personality can be understood as a unique long term pattern of thinking, emotions and behavior⁵³. In the sum of all these insights, "traits" are seen as "dimensions of individual differences in tendencies to show consistent patterns of thoughts, feelings and actions⁵⁴".

Observing the criminal case studies mentioned throughout this research, it can be effectively analyzed that there are certain common determinants in every criminal, which can be exploited by the law enforcement agencies for appropriate classification and profiling. When complemented with thorough research and behavioral scales, these similar characteristics can be found at a very early age (of criminal activity commencement), when the convict may have committed a juvenile or a first time offence. Considering Kemper and Brudos, both of them had certain similar experiences which would have triggered certain tendencies of violation of law and social order at an early age.

Considering the scope of case studies in India, it is very limited in its approach as no clear documentations are available regarding the commitment of serial crimes. Only a general assumption of determinants is possible in the criminal cases concerning India. The determinants of early childhood abuse and poverty, constitute to the development of a large scale of juvenile crimes in India⁵⁵.

For instance, considering most of the sexual offences and rapes against women in India, it is observable that childhood abuse/isolation and isolation/inability to socialize with the opposite gender, serve as primary determinants for the commitment of the latter actions. Hence, the requirement of a criminal behavioral profiling plan is paramount in India, as certain common grounds can be understood and therefore be treated.

XI. LIMITATIONS OF THE STUDY

- Time can be determined as one of the foremost limitation for our study. The submission date was fixed for which we had to complete the paper within a month's time. A research requires amplitude amount of time, the deadline restrained us from further scrutinizing the current system related to our endeavor.
- The scope of our research was gigantic we as learners gave it our best shot but the paper would be so much less if compared to the scholarly papers we often come across.

⁵³Mischel W. Toward an integrative science of the person. *Annual Review of Psychology* 2004; 55: 1-22.

⁵⁴McCrae RR, Costa PT. (p.23). *Personality in Adulthood*. New York: Guilford; 1990.

⁵⁵Martin (2005). *Juvenile Delinquency. Theories of Causation*. 03-Martin (juvenile).qxd 1/19/2005 2:48 PM p.61

- This research paper was dedicated for a paper presentation for which we were given a word limit, which restricts us from exploring further deep.
- The Indian Prison system still adheres to the orthodox concept of not revealing facts about a criminal case or uploading national reports periodically, while comprehending them as restricted information has disrupted our research severely.

XII. ANALYSIS

The Indian system needs to inculcate policies of correction and methods through which they would first analyze the crimes in accordance to the criminals and the circumstance under which they did so and then assign a suitable punishment. Otherwise the crime rate might keep on increasing because of recidivism, the first time offenders, juveniles would turn into habitual criminals. Prisoners need to be corrected which means that they are to be given opportunities to develop themselves under the light of the policies of “reformation, rehabilitation and re-integration.” For which foremost they need to be categorized and studied by psychiatrists in accordance to their behavioral pattern The Indian Penology needs to put more emphasis on determining and helping the criminals instead of penalizing the crimes. International methods need to be adopted for the same, they have been using such methods for a long time and there is proof that it helped several of the criminals. A change must be initiated in the Indian Prison system; criminals are not to be tortured or made victims to inhuman treatment or compelled to live in unhealthy environment. The I.P.C imposes punishments but they are not to be looked after as a license to torment them or exploit them. International systems are to be looked upon for reference but they are to be tailored according to the circumstances prevalent in India.

XIII. CONCLUSION

A man possesses certain innate behaviors which distinguishes him from the others. A study on behavioral pattern can solve the labyrinth of a person’s mentality to a certain extent. The present Criminal Justice System of India is still consumed by the orthodox concepts and beliefs, several reforms are to be made, to make it efficient all over again. Ancient India had a conventionally competent system as according to Kautilya’s Arthashastra. A scrutinized study of behavior of a criminal by expert psychologists and psychiatrists would help in determining his thought process, hence equipping the law enforcing agents with the ability to control such dominance of behavior.

To conclude, the classification and profiling of criminal patterns plays a significant role in defining the execution of penology and the functioning of criminal justice system in India. Therefore, in the light of the case studies and classification manuals cited, the hypothesis is proved positive.

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