



Research Paper

An Analysis of the Factors Responsible for Habitual Criminal Behaviour in India: An Overview

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ABSTRACT

Crime is a social phenomenon which has always been a matter of concern for Criminologist. Despite of devising different methods to curb the activities detrimental to the society, there is no decline in crime rate. Generally, there is a tendency in criminals to fall back again and again into the life of criminality. Habitual criminality is the recurrence of such undesirable and anti – social practices on the part of a concerned person that may tend to lead him the career of crime. Criminal behavior is an integral part of social behavior that can be understood only in relation to the person's social situation. The personality of the offender, the social world in which he lives, and the previous experience growing out of interaction between the individual and the environmental situation play a vital role in the social process leading to criminal behavior. Man and his environmental conditions in which he lives influence each other so intricately that any attempt to prevent crime inevitably may require manipulation on both the sides. The purpose of imprisonment is to protect society against criminals and to transform them a law abiding and self-supporting person after his release. However, the prevention of crime through the use of punishment is hardly to be considered satisfactory. The basic thrust of this work is to examine the factors which contribute to generate a habitual criminal behavior among criminals and in consequence it becomes their way of life.

KEYWORDS: Crime, Habitual Criminality, Traits, Recurrence

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I. INTRODUCTION

Crime has been a perplexing problem ever since the inception human civilization and man's efforts to solve this problem have not succeeded so far. There is no any society which is not afflicted by the problem of crime and criminality. Emile Durkheim has rightly pointed out that crime is a natural phenomenon which is constantly changing with the socio-economic growth of the society. Criminal behavior is an integral part of social behavior. It can be understood only in relation to the personal social situation and the social circumstances.

Crime is a repetitive phenomenon. Those who commit offences tend to do so again. The term recidivism has been applied when a person previously convicted and subjected to correction commits another crime. The word 'recidivism' has been taken from Latin word 'recidivus' which means 'recurring'.¹ It is a tendency in criminals to fall back again and again into the life of criminality. Recidivism is a very wide phenomenon and includes recidivists, habitual offenders and professional offenders.

The concept of habitual criminality proceeds on the theory that a person may render himself responsible to a statutory prohibition by repeatedly committing offences, whereby he is prevented from giving further expression to his criminal behavior. The Statutory Laws would be applicable on the finding by a court of record that the accused is a habitual criminal. Habitual criminality, therefore, regarded as an offence per se known to the law. The requirements are fixed by law by which criminality is to be determined.²

It is the element of continual repetition which has in it the potential for menacing society while dealing with the problem of habitual criminality. On the other hand what is to be curbed is the habit of crime so as to

¹<http://en.Wikipedia.Org/wiki/recidivism> accessed on 13th September 2021 at 5:00 p.m.

²J.A. Royce McCuaig, "Modern Tendencies in Habitual Criminal Legislation" 15 Cornell L. Rev. 64 (1929).

make society free from criminals who are beyond all chances of positive reformation and need some restraint on their liberty.³ Habitual criminality is the recurrence of such undesirable and anti – social practices on the part of a concerned person that may tend to lead him the career of crime.⁴

In perspective of India, the concept of habitual criminality is characterized in the same way as in other countries i.e. the criminal behavior of a person that reached up to certain state where it can be considered as habit. Generally, that state is considered on the basis of previous convictions. But the quantum of previous convictions as are necessary to prove a habit of a person depends on the laws prevalent in the different countries.

Habitual Criminality: Definitional Aspect

One of the accepted methods of investigation of crime in India is based on knowledge of the old offender and on the principle that a criminal is likely to repeat the crime as well as the manner of it. It is very important to know that why prisoners after release again return to the custody of the institution. The typical person taken into custody has been arrested several times before and a clear majority of serious known crimes are performed by those having police and prison records. Instead, the police, courts and correctional agencies encounter the same offenders time and again.⁵

Officially statistics on arrests and prison sentences for subsequent crimes capture only a portion of the persistent criminals. Recidivism rates developed on this basis are more likely to reflect patterns of actions taken by justice agencies than the full range of behavior of former offenders. Those former prisoners who further arrests are not represented sufficiently in follow – up studies because they attract less police attention and because their reintegration into the community gives them reason to remain invisible.⁶

Unlike other countries, India has also devised different methods with regard to the problem of habitual criminality and recidivism. So far as the efforts to control habitual criminality in India are concerned, legal measures in the form of punishment and prevention are used. The punitive measures are provided under Section 75 of Indian Penal Code it provides for enhanced punishment for a person having previous convictions. Section 110 of Criminal Procedure Code as a preventive measure, permits the binding over of any person who is habitually addicted to crime or other types of anti – social behavior. Some tools and techniques such as surveillance and externment are also used to deal with the problem. For dealing with habitual criminals effectively, Habitual Offender’s Acts are also enacted by different states.

Norval Morris points out that the various legal systems have designated the habitual offender differently as persistent offender, professional criminal, incorrigible offender, dangerous recidivist, hardened offender, habitual criminal and the like. These offenders lead to an intellectual conviction in society that special measures should be devised to deal with them.⁷ Therefore, habitual criminality needs special attention especially for the protection of the society.

Habitual criminality is that criminal behavior in which a person is addicted to a specified habit. In this sense the ‘habit’ is a settled tendency, mental constitution. It implies a tendency which is the result of frequent repetition of the same acts.⁸ When a person repeatedly commits crimes and earlier punishments given to them do not make any deterrent or reformative effect on them that criminal behavior is regarded as habitual criminality.

Meaning of Habitual Criminal

Habitual offender has been convicted frequently and is presumed to be danger to society in an attempt to protect society from such criminals.⁹ A person who is convicted and sentenced for crimes over a period of time and even after serving sentences of incarceration, signify a propensity towards future criminal conduct.¹⁰

Habitual offenders relapse into criminal behaviour by committing same crimes or related crimes and are generally deemed beyond rehabilitation because they show no interest in ceasing their activities. Once

³S. Venugopal Rao, *Facets of Crime in India* 189 (, Allied Publishers, Bombay, 2nd ed. 1967).

⁴Vijay Narain v. State of Bihar, AIR 1984 SC 1334 at 1338; see also, Debu v. State, 1995 Cr.L.J 3547 Orisa.

⁵ Frank R. Prassel, *Introduction to American Criminal Justice* 229 (Harper & Row, New York, 1975).

⁶ Elmer H. Johnson, *Crime, Correction, and Society* 571 (Dorsey Press, Illinois, 4th ed. 1978).

⁷ D.C Pandey, *Habitual Offenders and the Law* 2 (Tripathi Publications, Bombay, 1983ed.).

⁸ P. Ramanatha Aiyar, *the Law Lexicon* (2nd ed.).

⁹ <https://www.britannica.com/topic/habitual-offender> accessed on 30th Sep.2021 at 2:00 p.m.

¹⁰ www.duhaime.org/LegalDictionary/Term/HabitualOffender last accessed on 1st October 2020 at 8:00 p.m.

someone is considered a habitual offender, special action may be taken by the government in the interest of protecting society.¹¹

A habitual criminal has a criminal record indicating a tendency to crime and may be subject to harsher penalties under some state statutes, which vary by state. If the person has two or three previous convictions within a specified time, the punishment for future crimes may be increased.¹² The new encyclopedia Britannica defines habitual offenders as.¹³

A criminal who has frequently been apprehended and convicted, who has manifested a settled practice in crime and who is resumed to be a danger to the society in which he lives.

The criminologist, Walter reckless has categorized the habitual criminal as 'career criminals'. He was the first who developed the concept of career criminal. Some of the essential characteristics of the habitual criminal are given below.¹⁴

1. Crime is his way of earning a living. He considers crime his main occupation. Since crime is his way of earning a living, he commits mostly property offences.
2. He starts as a delinquent child. Not all delinquent children become criminals, but most habitual criminals have had records of juvenile delinquency.
3. He makes the best use of his time in prison by learning new methods of criminality.
4. He develops attitude favourable to crime and unfavourable to the police and the larger society.
5. He is usually psychologically 'normal'. There are no special psychological characteristics that distinguish him from the non – criminal. The habitual criminal has chosen crime as his career and develops attitudes supporting his behavior.

According to Lombroso, the habitual criminal does not suffer from abnormal heredity. He is normal from birth. Several environmental factors, e.g. faulty childhood habits, defective training at school or at home, misery at home, destitution, desertion by parents, bad company or emotional disorder caused in childhood by some unhappy or unfavorable circumstance, may be the causes of his criminality.¹⁵

According to Dr. D.J. west, habitual offenders may be either mentally normal human beings or mental deviants. There are two kinds of mental deviants i.e. those who are active aggressive deviants possessing psychopathic characteristics and the other type are called passive inadequate deviants. In case of mentally abnormal offenders, enhanced punishments may not be appropriate measure.¹⁶

In India, there are numerous statutory provisions seeking to confront the problem of habitual criminality. Laws which deal directly with the problem of habitual offenders are those enacted by the states under the title of 'habitual offenders', 'restriction' Acts and the like. Therefore, in context of India, it is worthy to understand that what type of criminals is characterized as habitual offender by the legislature.

The definition of the habitual offender under the different state acts reveals that the criteria to register a person habitual offender are almost same in State Acts. The schedules in State Acts have mostly included offences contained in chapters XII, XVI and XVII of the Indian Penal Code.¹⁷ Some state statutes have included in the schedule other offences such as living on the earning of prostitution and offences under some local laws relating to prohibition and gambling.¹⁸ Therefore, on the bases of these offences, the habitual offenders can be reduced to following categories:¹⁹

- (i) Persons who are potential sources of danger to the lives or properties of the members of the community and are likely to breach the peace of the community.
- (ii) Persons who damage the exercise of sovereignty by engaging in the counterfeiting of currency and forging of stamps and relating activities.
- (iii) Persons who persistently violates economic or social legislation and as a result of that damaging the efforts of the society to eliminate deep rooted economic or social evil.

¹¹ www.wisegreek.com/what-is-a-habitual-offender.htm. Last accessed on 2nd October at 12:00 p.m.

¹² definitions.uslegal.com/h/habitual-offender last accessed on 10th October 2020 at 1:00 a.m.

¹³ The New Encyclopedia Britannica 603 (15th ed.2002).

¹⁴ Barnes & Teetors, *New Horizons in Criminology* (Pritice Hall of India, New Delhi, 3rd ed.1955).

¹⁵ Parvesh k. Atri, *Sociology of Crime and Criminology* 234 (Anmol Publications, New Delhi, 1st ed.1998).

¹⁶ J.P.S. Sirohi, *Criminology and Criminal Administration* 157 (Allahbad Law Agency Faridabad, 4th ed.1992).

¹⁷ The Himachal Pradesh habitual offenders Act, 1969, The Madras Restriction of Habitual Offenders Act, 1948 etc.

¹⁸ See, The Himachal Pradesh Habitual Offenders Act, 1969.

¹⁹ Supra note 7 at 2.

After analyzing the meaning of habitual offenders under the State Acts, the essential characteristics of habitual offenders may be enumerated as under:

- 1) The offender should be a person who has been sentenced in the past to a substantive- term of imprisonment on a minimum number of occasions, usually not less than three occasions.
- 2) The sentence should be in respect of the offences specified in the scheduled of the statute.
- 3) The offences in respect of which such person was sentenced should be distinct and separate committed at different occasions.
- 4) The offenders must not be less than 18 years.

Not only state legislatures, but the courts have also elaborated the meaning of habitual offenders in many cases.

In *Dulal Nishad v. State of Jharkhand*,²⁰ the court has observed that the word 'habitually' means any sign of deprivation as evidenced by the frequent repetition and commission of offences.

In connection of habitual criminal, A.P. Sen, J observed:²¹

A person is a habitual criminal who by habit or inward disposition, inherent or latent in him, has grown accustomed to lead a life of crime. It is the force of habit inherent or latent in an individual with a criminal instinct, with a criminal disposition of mind that makes him dangerous to the society in general.

Factors Responsible to Habitual Criminality

Criminal behavior is an integral part of social behavior that can be understood only in relation to the person's social situation. The personality of the offender, the social world in which he lives, and the previous experience growing out of interaction between the individual and the environmental situation play a vital part in the social process leading to criminal behavior. Man and his environmental situation play a vital role and influence each other so intricately that any attempt to prevent crime inevitably may require manipulation on both the sides.²² There are many interrelated background factors which are responsible for the growth of criminal behavior. Social conditions like economic, political, recreational, family, neighbourhood, religious and school environments are of great influence in moulding a person's behavior. In certain aspect it could be said that criminal is the product of the different socio-economic institutions of which he happens to be a member.

Once the specific causes of criminal behavior within the individual is discovered, the reduction of offending is possible through treatment programmes by eliminating the causal agents. Generally, it is observed that the thoughts of a person is reflected in his action and continue for some time which becomes a habit After sometime this habit will become part of this personality.²³ The personality of a person surely determines his destiny.²⁴

The habitual criminal behavior is not the outcome of single cause, but many causes are responsible for such criminal behavior. The causes responsible for the habitual criminal are following:

Biological Cause

Criminologists have different views in regard to habitual criminal behavior and recidivism. In their view, habitual criminal is a 'real' criminal. Real criminals possess a physical and mental make-up which lowers their ability to live like a good person. According to the biologists habitual criminals have in general an inferior biological, physical and mental make-up which lowers their ability to live like a good person. According to a finding 90% were biologically abnormal with strong psychological emotional and moral defects.²⁵

However, it has been disputed that there are hereditary predispositions to crime. It is said that to speak of crime as 'hereditary crime' is a loose usage of terms. Crime is a social manifestation in conduct, while heredity is a biological matter. Crime cannot be inherited in any scientific sense. However, those who discuss heredity in connection with criminality are that certain inheritable physical and mental characteristics may result in crime if the environmental conditions suggest or encourage such conduct. However, some criminologists, point out that hereditary weaknesses in the family line is one of the factors which separate occasional offenders

²⁰2002 Cr. L.J 2845 (Jhar).

²¹*Vijay Narain v. State of Bihar*, AIR 1984 SC 1334 at 1338.

²²N.K Chakrabarti, *A Social Defence in the Administration of Criminal Justice* 16 (Deep and Deep Publications, New Delhi, 1999).

²³Rob Whita and Fiona Hains, *Crime and Criminology: An Introduction* 54 (Oxford University Press, 1997).

²⁴The expression has been given by Prof. Gillin, 'sow a thought and reap an act; sow an act and reap a habit; sow a habit and reap a character (personality); sow a character (personality) and reap a destiny. Quoted from John Gillin, *Criminology and Penology* 159 (Appleton Century Crafts, 1945).

²⁵W.C Reckless, *The Crime Problem* 380 (Vakils Feffer and Simons, Bombay, 1971).

from the habitual offenders. But modern researches have shown that heredity influences have little effects on persistence of criminality.²⁶

But, this contention could not be discarded altogether. In context of India, earlier there were many tribes in India which were considered as criminal tribes. In India, Criminal Tribes Act, 1871 was enacted to bring these notified criminal tribes under the purview of the Act. Children among these criminal tribes often committed the same type of crime as their parents did. According to colonial perception, they were born criminals.

These tribes habitually pursued criminal traits and take criminality as a mode of life. It may be pointed out that it is not hereditary instinct that motivates them to indulge in criminal behavior but the real cause lies in the fact that they are brought up in criminal environment and the influence of family surroundings on them is so great that they can hardly desist from criminal acts. So when it is talking about heredity as a cause of crime, it is not merely the biological factors that are inherited, but the environment which is a separate and distinct factor that accrues to a criminal due to the accident of birth.²⁷

The British used some of the popular criminological theories prevalent at the time to claim that there was a certain class of people who were by their very nature criminal. Theories of born criminals claimed that a person's inherited make – up could lead to poor outcomes. These theories proved very useful in India, where there were attempts to label groups as a whole as criminal.²⁸

Socio-Economic Factors

The socio-economic factors mainly depends on the density of population, public opinion, religion, family circumstances, system of education, employment, alcoholism, economic and political conditions, public administration, justice and police, and in general legislative, civil and penal institutions. Criminal behavior, whether it is that mental deviate or that of mentally normal individual is socially conditioned. Social factors are greatly responsible for the repetition of crime.²⁹ These constituent aspects develop defective traits of personality as they are responsible for the modification, forming and reshaping of traits. Some of the factors of socio-economic nature are as following:

a. Family Background

The most important, social institution which determines the individuals behavior towards society in the family of the individual. The perception of environment by the child and his attitude towards it are greatly influenced by the family. Sutherland has stated that the homes from which delinquent children come most frequently are characterized by one or more of the following conditions, (a) the members of the family are criminalistics, immoral or alcoholic, (b) parents separated (c) crowded housing conditions (d) big family (e) lack of parental control through ignorance or other defect or absence of one or both parents (f) parental neglect (g) irritation at home (h) severity and harshness of parents (i) poverty.³⁰

Lack of affection can result from broken families and many studies also have established the relationship between this factor and delinquent behavior.³¹ According to a study in Mumbai city, it is revealed that the family background also influences the entry into crime world. Domestic quarrels, alcohol consumption by father or brother, gambling dens, pleasure seeking peer groups and sexual abuses are experiences that impel youth to adopt crime as career. In India, the factors responsible for habitual criminal behavior are emotional disturbance or maladjustment in childhood, a child deserted, neglected or abandoned, or forced to abandon home, suffers from emotional maladjustment and lack of organic development which often take to crime and becomes a habitual criminal.³² Social apathy and lack of work or lack of aftercare are also responsible.³³ The effect of social and environmental influences which make for crime are started mostly in early age. Habit patterns are in the process of formation and established.

²⁶ Id. at 382.

²⁷ M.J Sethna, *Society and the Criminal* 95 (Tripathi Publications, Bombay, 5th ed.1989,).

²⁸ Progya Ghatak, *Stigmatized Identity and Social Exclusion: A Case Study on Lodhas of West Bengal*, 63 *Social Action*, 147.2 (2013)

²⁹ Peter B. Ainsworth, *Offender Profiling and Crime Analysis* 33 (Lawman (India) Pvt. Ltd., 2001).

³⁰ E.H. Sutherland, *Principles of Criminology* 159 (The Times of India Press, Bombay, 4th ed. 1947).

³¹ Ahmad Siddique, *Criminology Problems and Perspectives* 98 (Eastern Book, Lucknow, 1977).

³² www.satp.org/satporgtp/publication/saulttines/volume12/article5htm last accessed at 2nd October 2014 at 1:00 p.m.

³³ Smriti A. Bhosle, *Female Crime in India and Theoretical Perspectives of Crime* 80 (Kalpaz Publications, 2009).

b. Influence of Community

Environment in which one resides will influence the behavior of a person to a greater extent. So the locality in which the home is situated is an important factor. In case of delinquent area, the probability of becoming delinquent is higher. A family environment with all varying but abnormal conditions present therein, becomes a cradle for delinquency. It could be said that bad family environment, bad company and improper social situation may adversely affect the personality of a growing child turning him into a psychopathic abnormal and complex personality. There exists a perfect correlation between the social background and behaviour.³⁴

In a study by Sumita and Arwind, the study shows that the youth drawn into the gangs are from the dense slum locations where the residents always look for better opportunities. The presence of slum areas in India is also responsible for the repeated crimes. Slum dwellers indulge in offences such as burglaries, chain-snatching etc. In metropolitan cities many youth are trained for hard core crimes by the underworld. These youth come in contact with the slumlords and are attracted to the money, power and the glamour enjoyed by their leaders. They come to know about 'easy money' making through unlawful activities and fall prey to the world of crime.³⁵

Isolation from law abiding society for a considerable time during the term of their imprisonment renders them psychologically and sociologically misfit for leading a normal life after release from prison. They carry a sort of stigma with them which makes them shun and avoid the normal society. As an alternative, the offender will prefer to go to thickly populated areas like slums where crime is prolife rent. Here they will soon relapse into crime either falling to temptation. The released inmate finds it difficult to adjust with the law-abiding members of the community as he always think that others are looking at him with suspicion and distrust.³⁶

It should be remembered that conduct is the outcome of a double set of conditions, the inherent characteristics of the individual himself and stimulated to expression or repression by the circumstances in which he lives. It is generally agreed today that adult behavior is probably determined more basically by early conditioning than by the nature of later environmental experience.³⁷

c. Lack of Education

Lack of education is a dominant cause of moral depravity. Ideal education involves such harmonious and integrated development of the mind and its natural tendencies as would make it capable of facing any crisis, and as would enable its recipients to think, say and act rightly and harmoniously. Parents at home and teachers at school can lay the foundation of a good and strong character, and habituate the child to a good mode of living and thought. A misdirected propensity may cause the culmination of conduct in the commission of a crime. The school and the home are meant to train the child for being a worthy citizen. Education should have a socializing influence on its recipient who must be made aware that the end of life is to be good and useful.³⁸

The education which a child receives at home is even more important than that at school, because it is at home that careful and wise parents can notice the defect in their children and get the same removed at an early stage. In India at present, because of the serious ignorance and illiteracy among the majority of the population, it would be difficult to expect the parents to be able to look to the education of their children in a satisfactory manner. An uncultured temperament, the result of lack of good education or an innately good temperament capable of being developed to much good, marred by bad environmental of training, can be regarded as the cause of the crime of violence. Therefore, education is a very important factor to build up a personality of a person.

d. Economic Factor

Economic factor also contributes to causation of crime to and have powerful influence in commission of crime. There are several causes of poverty and unemployment. In Indian context, some weight has to be given to the economic factor in producing criminals. The income is not only for the day to day existence of the persons, it also determines the social position and prestige. Poverty is not the main cause of a particular crime but it does produce the condition, most conducive to crime, both personally and socially. Economic insecurity, slums, inadequate food and clothing, lack of facilities are bound to create attitudes dangerously close

³⁴Shipra Lavania, *Juvenile Delinquency* 16 (Rawat Publications, 1993). See also, S. Sanyal, *Rehabilitation of Prisoners: a debatable issue*, 29 IJCC, 199, 3 (2008).

³⁵Sumita Sarkar, *Youth in Organized Crime in Mumbai Metropolis*, 69 IJSW, 439, 3(2008).

³⁶Sutherland and Cressy, *Principles of Criminology* 592 (The Times of India Press, Bombay, 6th ed.1968)

³⁷Gillin Dittmer, Colbert and Kastler, *Social Problems* 421 (The Times of India Press, Bombay, 4th ed.1965).

³⁸Supra note 15 at 153.

disobedience and incorrigibility. Thus poverty indirectly can easily develop any bitterness and that may result in crime and repeated crime.

In a study, in Philadelphia, it was examined that the offence patterns among those youths who had been apprehended by the police as of what type of the delinquents, 54% were repeaters, while 46% had been in the hands of the police only once. The recidivists were more frequently from lower socio-economic background than were one-time offenders.³⁹

In context of crime the importance of economic factors lies not in their being directly causative of criminal behaviour but in the development of an individual's personality and in the creation of inhibitions and desires which lead him to delinquency. Economic depression and poverty also influence the repetition of crime. It is also a fact that most of the criminals belong to the poor class. Present day industrial progress, economic growth and urbanization have paralysed the Indian domestic life. Unemployment is also one of the factors responsible for persistent criminal behaviour. Whether the economic factors be direct or indirect in their operations, they provide the stimuli under which certain natures give way and break over the normal standards set by society.⁴⁰

Prof. Hermann Mannheim observes that poverty contributes both directly and indirectly to the commission of crime. Poverty alone may not be direct cause of crime but other factors such as frustration, emotional insecurity and non-fulfillment of wants often play dominant role in giving rise to the criminal tendency. To fulfill their wants they adopt criminality as their career and repeat crimes.⁴¹

Due to the opening up of economy, criminal gangs found a new way of extorting money from the rich. This became a well-organized and most profitable business for the underworld and their large operations attracted thousands of youth who were unemployed, disillusioned, daring and cured by the easy money. The youth joining gangs and engaging in hard core crime is a gradual process in which psychological, socio-economic and cultural forces appear to play a crucial role. Over two-thirds of them were below 30 years of age according to crime branch report Mumbai.⁴²

According to a study made by Bilmoria Rani in the state of Andhra Pradesh, 3 out of the 52 offenders against the person, 12 out of 23 property offenders against the person, 30 out of the 33 immoral traffic offenders, 7 out of 8 excise offenders and one smuggler were recidivists. An analysis of these, 53 recidivists made their living by doing petty business like selling beads and mirrors, knitting lace and vegetable business, 8 by doing domestic labour. The remaining 22 recidivists were non-earning dependents. It was found that 54 out of 120 respondents were non-earning dependents.⁴³ Another side effect of poverty is that poor are picked up unnecessarily. Their freedom is snatched by habitual witnesses and Court commits them to prison. Justice Krishna Iyer observed that the law is more comfortable sentencing a telephones coin-box thief to five years than sentencing a billion-dollar price-fixing executive to six weeks in jail.⁴⁴

Therefore, penal provision is only used against the weak and the poor merely because they belong to the 'have-not' class and can be easily apprehended as habitual offender. George Bernard Shaw commented on poverty that "the greatest of evils and the worst of crimes is poverty."⁴⁵ In India poverty is one of the causes of habitual criminality and recidivism. Due to huge population in the country people suffer from unemployment and to fulfill their wants and to look after their families they fall easily into the criminal behaviour.

Psychological Cause

Sutherland pointed out criminals become persistent due to pathological traits of personality such as mental defectiveness, emotional instability, mental conflicts and abnormal mental conditions etc. It is said that psychopathic tendencies are often found among recidivist offender.⁴⁶ These people are anti-social incapable of forming loyalties to others in spite of punishment they do not change their antisocial behavior.

It has been shown that punishment and behavior modification techniques do not improve the behavior of a psychopath. Psychopaths also have a markedly distorted sense of the potential consequences of their actions

³⁹Don C Gibbons, *Delinquent Behaviour* 31 (Printice Hall Inc., 3rd ed.1981)

⁴⁰Supra note 15 at 170.

⁴¹Supra note 27 at 118.

⁴²Sumita Sarkar, **Youth in Organized Crime in Mumbai Metropolis**, 69 IJSW, 425, 3 (2008).

⁴³Marisetty Bilmoria Rani, **Female Criminality** 66 (Eastern Book, Delhi, 1987).

⁴⁴**Gopalachari v. State of Kerela**, AIR 1981 SC 674 at 678.

⁴⁵Ibid. See also S. Murlidhar, **Law, Poverty and Legal aid** 256 (Lexis Nexis Butterworth, 2004).

⁴⁶Supra note 27 at 86.

for others as well as for themselves. As criminality is the expression of the offender's 'symptom' of certain disorder, they can be easily reformed if they are rightly diagnosed and correct is meted out of them.⁴⁷

Therefore, it can be said that psychological propensities in a person entice him to commit a crime. It can also be said that whatever causes of persistent criminal behaviour will be responsible for that behavior, but there is always a presence of psychological factor as an internal elements which deviates a behaviour of a person from normal behaviour to habitual criminal behaviour. Therefore, this factor is associated with other causes of crime and which results in the life of crime.

Factors of Age and Maturation in Habitual Criminality

The behaviour of a person and its consequences always affect by the qualities of his body, the psychological traits he has acquired and his settlements to the expectation applied to persons in the series of age statuses through which he moves. The age group of youth has been protected by increasing the years of compulsory schooling, restricting early marriage and extending parental support even into early marriage.⁴⁸

The aging process is also one of the factors related to repetition of crimes. Several European studies indicate that the younger a person is when first convicted, the greater is the likelihood that he will be convicted again and that he will continue to commit crimes over a longer period. American data show that individuals from 15 to 25 years of age have the highest arrest rates. British statistics consistently show 13 or 14 to be the peak age for crimes against property, since these are the ages when compulsory schooling ends in Britain.⁴⁹

Four major studies conducted in the 1970s were the first to result in descriptions of the chronic juvenile offender. Chronic juvenile offenders are those who commit four or more offences of any type. These studies indicated that a very small proportion of juvenile offenders were responsible for the majority of serious acts of delinquency. These studies further indicated that the youths in this small group of chronic delinquents begin their officially recorded careers very early age and their careers continued well into the adult years.⁵⁰

In regard to the age factor, the study by Moffitt is worthy of mentioning. She studied about life-course persistent offenders in comparison of adolescence-limited offenders. According to her, life-course persistent offenders are those who begin offending in childhood. She argues that the main course of life course persistent offending is the interaction of 'neuropsychological' deficits with adverse environmental conditions in early childhood. Such children typically suffer from inadequate parenting, disturbed family bonds and poverty. Such offenders show changing anti-social behaviour across the life course as age and circumstances alter their opportunities for anti-social involvement. Therefore, four characteristics of these offenders are following.⁵¹

1. Early onset of offending.
2. Active offending during adolescence.
3. A rapid increase of offense seriousness.
4. Persistence in crime in adulthood.

But some researches do not accept age an important factor in recidivism. In this regard, the Gluecks' follow up studies of juvenile and adult criminals through a series of checkups at regular intervals give more important information on the question of maturity in relation to behaviour. He conducted a ten years follow up study after analyzing the results of a ten years follow up surveys. His most significant conclusion was that there was a decline in criminality among the group and a decrease in the seriousness of crimes of those who continued to behave in a criminal fashion. From these findings the Gluecks developed the theory that the maturation of the offender is a basic factor in his adjustment. Age he found less important than the number of years which elapsed after the beginning of the delinquent behaviour. Therefore, with the increase in maturity, the tendency to commit delinquent acts decreases.⁵²

However, this suggestion has been criticized, especially as it contradicts another generally held belief that those whose offences begin early in life are more likely to become dangerous and persistent adult criminals than those who begin to offend very late in life.

In a study by Maheshwari in 1983 on recidivist in UP prison, two groups were compared, the male juvenile recidivists and male adult recidivists. It was found that age exerts physiological, psychological and social influences on the person. Growing in years is related to the repetition of criminal behaviour. The study has revealed that the experience that an offender drew during the juvenile age in the prison and his affiliation

⁴⁷Anil Trehan, *Recidivism: Its Causes and Reformatory Methods: An Overview*, 12 *Nyaya Deep*, 51, 4 (2011).

⁴⁸Supra note 6 at 113.

⁴⁹James C. Howell, *Preventing & Reducing Juvenile Delinquency* 158 (Sage Publications, 2003 ed.).

⁵⁰Id. at 57.

⁵¹Id. at 47.

⁵²Mabel Elliott, *Crime in Modern Society* 342-344 (Harper & Brothers, 1952).

with the anti-social elements made it easier for him to become a recidivist in the adult age. Similarly in a study by Datir in state of Maharashtra, he expressed that the general attitude of the society towards released prisoners is hostility, resentment and distrust. According to him the main issue involved in aid to released prisoners is to create a social order wherein right to work, assurance of work and other essentials are created it will then help to reintegrate a released prisoner and reduce recidivism.⁵³

The relations between age and crime have close connection to the place where they are living. The younger the age they commit the crime, the earlier for them to become recidivists as before realizing the extent of what they have committed, they will be branded as prisoners. After that it will be easier for them to commit crime again than lead an honest normal life, so they will automatically drift into becoming recidivists.⁵⁴

Therefore, it is true that age factor is also contributed to the criminal behaviour to some extent. It is also true in Indian context as the young generation is mostly involved in the commission of crime in the formation of gangs.

Effect of Imprisonment

The purpose of imprisonment is to protect society against criminals and to transform them a law abiding and self-supporting person after his release. But according to criminologists, the prevention of crime through the use of punishment is hardly to be considered satisfactory. Instead of having deterrent effects on the offenders, it creates several difficulties to the person concerned in such a way that they become a subject of suspicion and remain isolated from the free community. The prisoner is confronted with the fact that he is not a member of the society and is an outlaw, a deviant, so dangerous that he must be kept behind closely protected walls and watched both day and night. The stigma of his being a criminal makes it difficult to be trusted by the society and his every act is viewed with suspicion by the guards.

Individualization of treatment might be possible as would stimulate all the desirable responses without at the same time counteracting them with destructive influences.⁵⁵ Punitive process lacks to discover and remedy the physical or mental abnormalities which force the individual into crime. It cannot seek to improve his capability for self – support without recourse to crime. It presupposes that all is necessary to prevent repetition of crime is to strengthen the desire to abstain. It may be quite true that we cannot generalize about the causes of crime. But it does not follow, that the cause in particular case cannot be determined and corrected.⁵⁶

If punishment itself is thus insufficient for the effective prevention of repeated wrong doing, neither can the punitive system keep him out of society merely because it is evident that he will commit another crime as soon as released. The records are filled with instances where known offenders, sentenced to years of imprisonment for heinous crime have been returned to society because the term of reasonable punishment had expired.

A number of states have enacted legislation providing unusually long terms of imprisonment of persons who have been three or four successive times convicted of major crime. The text of such statutes indicates that the primary purpose is the prevention of repeated crime through threat of increased punishment, rather than a serious effort to distinguish incorrigible persons from those not so likely to offend repeatedly and to keep the former segregated from society because of their known incorrigibility.

Young people sentenced to custody represent some of the most vulnerable category and excluded in society. The success of imprisonment whether for adults or children is generally measured by the recidivism rate. Most of the parents will not allow their children to mingle with the ex-convicts for fear of contaminating their own children. The few comparative studies suggest that transferred juveniles are more likely to reoffend, to reoffend more quickly and at a higher rate, and to commit more serious offences after they are released from prison than juvenile offenders in the juvenile justice system. Therefore, prisons always have negative impact on the youth. It is more adequate to send youth to corrective institutions rather than sending them to jail. The youth sending to prison is more likely to become recidivist or habitual criminal.

According to Prof. Sutherland social psychology of the offender and inadequacy of reformatory technique are the major causes, responsible for persistent criminal behaviour. According to him if the offenders are reformed by the first agency with which he comes in contact, the crime rate would go down.⁵⁷ It is true that if the growth of the crime can be stopped at early stage then there would be reduction in crime rate. But because of lengthy procedure of the criminal justice system, that stage does not reach and the offender remains forever in the web of criminality. Inadequacy of correction measures in the treatment of offenders is one of the important

⁵³S. Sanyal, Rehabilitation of Prisoners: a Debatable Issue, 29 IJCC, 191, 3 (2008).

⁵⁴M. Ponnaian, *Criminology and Penology*, 46. (Pioneer Books, 3rd ed. 1992).

⁵⁵John Barker Waite, *The Prevention of Repeated Crime*, 27. (1943).

⁵⁶Id. at 28.

⁵⁷Supra note 30 at 595.

factors of recidivism a large number of failures in parole, probation and reformation show the ineffectiveness of correctional methods in cases of hardened and habitual criminals.

Rehabilitation and reformation of the offenders is the main objective of modern correctional penology. It is now believed that the criminal or a habitual criminal is not born as such, but his criminality is mainly the products of social, economic and political inequality. Social forces contribute in participating criminal tendency to a great extent. Thus in order to achieve main objective of the punishment, prevention and control of crime, its causes are also to be taken into consideration.⁵⁸ Moreover, the offender is not to be eliminated but is to be cured and corrected, rehabilitated and reformed in society. There is a need to reform these criminals, rather than sending them to prison again and again.

There are certain penal reformists who firmly believe that correctional programmes can be equally effective in case of recidivists as in case of other offenders. In their opinion the reformation of offender must be sought within the society itself. Significantly, the working of open jails for the rehabilitation on dacoits from Chambal ravines and Bundel khand regions of Madhya Pradesh has shown beyond doubt that even the most hardened and dangerous criminals can be corrected and redeemed to society as law-abiding citizens if they are properly treated through correctional institutions.

II. CONCLUSION

It is very important to know that why prisoners after release again return to the custody of the institution. The typical person taken into custody has been arrested several times before and a clear majority of serious known crimes are performed by those having police and prison records. Instead, the police, courts and correctional agencies encounter the same offenders time and again. Rehabilitation and reformation of the offenders is the main objective of modern correctional penology. It is now believed that the criminal or a habitual criminal is not born as such, but his criminality is mainly the products of social, economic and political inequality. Social forces contribute in participating criminal tendency to a great extent. Thus in order to achieve the main objective of the punishment, prevention and control of crime, its causes should be taken into consideration. Moreover, the offender is not to be eliminated but is to be cured and corrected, rehabilitated and reformed in society. There is a need to reform these criminals, rather than sending them to prison again and again. Though it is true that habitual Offenders have less chances of reformation, but the endeavour should be made to reform them at initial stages.

⁵⁸<http://www.gov.uk/government/policies/reducing-reoffending-and-improving-rehabilitation> last accessed on 30th Nov. 2014 at 3:00 p.m.