UNIT 3 FORMAL AND INFORMAL RESPONSES TO CRIME

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3.1 INTRODUCTION
Criminal Justice means the criminal law, the criminal procedure, the institutions of enforcement of the criminal law and the personnel involved in administering the system. Its objects are prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with the law, punishment and rehabilitation of those adjudged guilty of committing crimes and generally protecting life and property against crime and criminality. It is considered the primary obligation of the state. Rule of law, democracy, development and human rights are dependent on the degree of success that the governments are able to achieve on the criminal justice response. Even national security is now-a-days increasingly getting linked to the maintenance of internal security. In view of social defence and national integrity, the need for a coherent, co-ordinated, long-term policy on criminal justice is obvious and urgent. Crime control and criminal justice management are the products of a fair, efficient and effective criminal justice system which is itself the product of multiple sub-systems such as the police, the prosecution, the judiciary, the prisons and a number of co-existing social control mechanisms outside the formal state system (education, family, media etc.) It is important that each of these sub-systems also requires a desirable degree of efficiency and effectiveness in supporting the mission of freeing the society from crime.

The object of the criminal justice system is to reform the offender, and to ensure the security of society and its people by taking steps against the offender. It is thus a correctional measure. The earlier penological approach held imprisonment, that is, custodial measures to be the only way to curb crime. But the modern penological approach has brought in new forms of sentencing whereby the needs of the community are balanced with the best interests of the accused. Compensation, parole, release on admonition, probation, imposition of fines, community service are few such techniques used. In this unit we will discuss role of some formal and informal methods in the control and prevention of crime.
3.2 OBJECTIVES

After reading this unit, you should be able to:

- assess the objects of criminal justice systems;
- examine the punitive mechanism of crime control;
- analyse the role of therapeutic methods in prevention of crime;
- assess the preventive steps for the control of crime;
- describe lacunas of legal system dealing with crime;
- identify role of civil society in crime prevention;
- analyse response of judiciary in humanising criminal justice; and
- devise methods of crime control.

3.3 RESPONSES TO CRIME

Responses to crime have been different at different stages of human civilisation and even at a given time they have been different in various societies. The attitude towards crime and criminals at a given time reflects the basic values of that society. Due to changing attitudes, three types of responses can be found in various societies. The first is the traditional reaction, of a universal nature which can be termed as the *punitive approach*. It regards the criminal as a basically bad and dangerous person and the object under this approach is to inflict punishment on the offender in order to protect society from his misdeeds.

The second response to crime is of relatively recent origin. It considers the criminal as a victim of circumstances and a product of various factors within the criminal and society. It regards the criminal as a sick person requiring treatment that is why termed as *therapeutic approach*. Finally, there is *preventive approach*, which instead of focusing attention on particular offender, seeks to eliminate those conditions which are responsible for crime causation.

It should, however be understood that these approaches/responses to crime are not mutually exclusive. Not only do they overlap with each other, but sometimes they may consist as parts of the overall system in a society. *These responses to crime may also be categorised as formal and informal responses to crime.*

3.4 PUNITIVE RESPONSE TO CRIME

Punishment

In modern society punishment is the penalty inflicted by the State upon a person adjudged guilty of crime. Its administration always involves the intention to produce some kind of pain, which is justified in terms of its assumed values. The pain intended may be partly physical, as in a whipping, but today most methods of punishment are designed primarily to cause; mental suffering, as in imprisonment, where there is loss of freedom, reputation, and perhaps of the property.

Punishment is defined as authoritative infliction of pain for an offence.\(^1\) The pain should be coercive and is inflicted in the name of the state. It presupposes

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\(^1\) Fitzgerald, P.J., Criminal Law and Punishment (1962)
rules, their violation and the final determination of that is expressed in a judgment.\(^2\)

### 1) Methods of Punishment

Down the ages man has devised a great variety of methods for the punishment of criminals. The most common ones have been death, physical torture, mutilation, branding, public humiliation; fines, forfeiture of property, banishment, transportation, and imprisonment, but each of these had many forms. Thus death has been accomplished by flaying, crucifixion, beheading, hanging, impaling, drowning and burning; physical torture by flogging, dismemberment, and starvation; public humiliation by stocks, pillory, ducking, stools, banks and branding and imprisonment by confinement in dungeons, galleys, ‘hulks’, jails, houses of correction, work houses and penitentiaries. A few of these, however, have survived in modern society, and during the past few decades in western civilisation the principal methods of punishment have been death, whipping, transportation, fines, restitution, imprisonment, probation, and parole.

Professor Sutherland has classified the methods of punishment into the four major categories of financial loss, physical torture, social degradation (by which he referred to such penalties as confinement in the stocks and the pillory and branding), and removal from the group (in which he placed death, as well as exile and imprisonment)\(^3\).

### 2) Purposes of Punishment

The principal purposes of punishment are retribution, deterrence and reformation (or rehabilitation).

### 3) Retribution

**An eye for an eye would turn the whole world blind** - Mahatma Gandhi

The most stringent and harsh of all theories retributive theory believes to end the crime in itself. This theory underlines the idea of vengeance and revenge rather than that of social welfare and security. Punishment of the offender provides some kind solace to the victim or to the family members of the victim of the crime, who has suffered out of the action of the offender and prevents reprisals from them to the offender or his family. Retribution is the pain which, it is said, a criminal deserves to suffer because he had broken the law and hurt someone else. Having failed in his duties, which every member of the community is expected to perform, the criminal must pay in pain the debt he owes to society. If this is not done, say those who argue in favour of retribution, the angry victim of crime and his relatives and friends who seek revenge may take the law into their own hands or refuse to cooperate with society in bringing the offender to justice.

Various theories have sought to justify the retributive aspect of punishment in theological, aesthetic and expiatory grounds. It fulfils a religious mission of punishing the offender, it re-establishes the social harmony affected by the offence and the offender’s guilt is washed away through suffering.\(^4\)

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\(^2\) Hall, Jerome, The Aims of Criminal Law (1958)

\(^3\) Goswami, B.K., A Critical Study of Criminology and Penology (n.d.)

\(^4\) Heinrich oppenheimer, The Rationale of Punishment (1913)
It is also urged that retribution which the criminal is made to suffer helps to unify society against crime and criminals. Retribution, therefore, provides not only a vindication of the criminal law, which is necessary to make criminal law more than a mere request, but also an opportunity for the public to stand together against the enemy of accepted values.

Furthermore, retribution has other limitations in modern society. In the first place, since almost all prisoners return to society, they must not be so stigmatized that they cannot take up lawful pursuits upon their release. As a matter of fact, the trend in modern society to abolish physical torture and to eliminate public punishments undoubtedly has reduced the force of retribution.

There is, too, an increasing impersonality in modern society. The humanitarian movement in Western civilization has made many conscious of the suffering of their fellow human beings and filled some with a desire to reduce pain and misery everywhere.

However, even after full consideration is given to the limitations of retribution in modern society, we must still conclude that it remains one of the principal purposes of punishment. In practice deterrence and reformation receive more attended, while retribution, often shunned and condemned, is left to shift for itself. Nevertheless there are cases where neither deterrence nor reformation is possible; yet something must be done. It is here that retribution stands out distinctly as a purpose of punishment.

**b) Deterrence**

Deterrence is considered by many to be the most important purpose of punishment. By deterrence is meant the use of punishment to prevent others from committing the crimes. In order to accomplish this purpose, the offender is punished so that he will be held up as an example of what happens to those who violate the law, the assumption being that this will curb the criminal activities of others. It is argued that this is worthwhile even if some are not deterred by what is done to the offender. It is also said that the existence of crime does not mean that punishment is not efficacious as a deterrent since it is impossible to determine how such crime there would be if criminals were not punished.

Many of those who believe that deterrence is important consciously or unconsciously base their belief on the doctrine of the freedom of the will. According to this doctrine a person is free, at least to some extent, to do as he pleases, and society must in some way prevail upon him to bring his behaviour into conformity with generally accepted standards. When one violets the law, it is assumed that he might have acted otherwise if he had so desired. Therefore, he is held not to have disciplined himself sufficiently, and he deserves to be punished. He must be taught a lesson, and others, impressed by his experience, will choose to obey the law. An 18th century judge, while awarding death sentence to a person guilty of stealing a sheep observed that “You are to be hanged not because you have stolen a sheep but in order that others may not steal sheep”.

However, those who reject this doctrine contend that it is vitiated by a fundamental inconsistency (Harry Elmer Barnel and Negley K. Teeters, Edwin H. Sutherland, Chapman Cohen) as criminal behaviour is not an expression of free-will, but rather a product of the forces of heredity and environmental as they interact in the life of the individual.
c) **Reformation**

The object of punishment is the reform of the criminal, if a person commits a crime he does not cease to be a human being, so the object of punishment should be the moral reform of the offender. According to reformatory theory a crime is committed as a result of the conflict between the character of a man and the motive of the criminal. One may commit a crime either because the temptation of the motive is stronger or because the restraint imposed by character is weaker. The reformatory theory wants to strengthen the character of the man so that he may not become an easy victim to his own temptation. This theory considers punishment as medicine. According to this theory crime is like a disease so you cannot cure by killing. For this reason a punishment like imprisonment should be given to criminals and all prisons should be transformed into residences where physical moral and intellectual training should be given in order to improve the character of the offender. The ultimate aim of reformists is to try to bring about a change in the personality and character of the offender, so as to make him a useful member of society.

In modern times increasing emphasis is being placed upon the reformation, or rehabilitation, of the criminal. With reference to this, no one will deny that it is possible to influence human behaviour through pain and fear and that punishment has reformatory value in many cases. However, one must also understand the limitations of punishment when used for the purpose of reformation.

A programme of reformation or rehabilitation must contain both negative and positive elements, both pleasure and pain, and both persuasion and authority; and to be most effective it must be based upon an intensive study of the individual. The reformatory procedure must not be so pleasant as to encourage further criminal activities, but it must at the same time be so designed as to produce desirable changes in the personalities of offenders.

Punishment is an art which involves the balancing of retribution, reformation, and deterrence in terms not ‘only of the court and the offender, but also of “the values in which it takes place, and in the balancing of these purposes of punishment, first one and then another receives emphasis as the accompanying conditions change”. It is clear, therefore, that a method of punishment which is suitable today may, have been unsuitable in the past and may again become unsuitable in the future.

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**Self Assessment Question**

1) “Balancing of Retribution, reformation, and deterrence best serves the purpose of punishment”. Explain.

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3.5 THERAPEUTIC RESPONSE TO CRIME

3.5.1 Prison System

With growing humanitarianism, increasing impersonality in social relationships and growing, belief in the powers of science, capital and corporal penalties have become unacceptable and ineffective and have been largely replaced with imprisonment, probation and parole. And since in the programme of handling offenders the emphasis shifted from the infliction of suffering to the understanding of the causes of crime, the redirection of the individual in the light of such understanding of the causes of crime, the redirection of the individual in the light of such understanding and the modification of the conditions which produce criminality, some criminologists have recommended that this programme be called treatment/therapeutic instead of punishment.

In India over one million criminal cases are reported every year. Such annual incidence of crime in the country necessitates the existence of a huge network of prisons and other institutions of correctional administration, even when in our country the number of prison inmates per million of population is one of the lowest in the world. We have in our country a total of 1,119 prisons of different categories and sizes, with an authorised inmate capacity of 2,29,713. Under the Seventh Schedule to Constitution of India, prisons are managed and governed by State Governments and Governments of Union Territories.

a) Underlying Idea of Custody of Prisoners

The prisons in India are not considered a house for incarceration to deter criminal behaviour. Mahatma Gandhi, the father of our nation, had once said “Crime is outcome of a diseased mind and jail must have an environment of a hospital for treatment”. During the last 63 years, our prisons have been converted into the correctional institutions. The main goal of prison administration in India, today is to develop a sense of discipline and security among prisoners, and to reform and rehabilitate them in the given social milieu through appropriate correctional interventions. The aim of correctional institution is to equip the prisoners with such skills and abilities as will help them to lead a normal life as a citizen, once they are let out of prisons.

It is a universally held view that sentence of imprisonment would be justifiable only if it ultimately leads to protection of society against crime. Such a goal could be achieved only if incarceration motivates and prepares the offender for a law-abiding and self-supporting life after his release. It further accepts that, as imprisonment deprives the offender of his liberty and self-determination, the prison system should not be allowed to aggravate the suffering already inherited in the process of incarceration. Thus, while certain category of offenders, who endanger public safety, have to be segregated from the social mainstream by way of imprisonment; all possible efforts have to be made to ensure that they come out of prisons as better individuals than what they were at the time of their admission thereto.

b) Health Services in Prisons

Prisons in India provide requisite medical equipment for the treatment and diagnostic facilities in prisons. The Government of India also has given priority
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to health care and sanitation and is providing financial assistance to the States for the modernisation of health and hygiene of the prisoners. All the Central and District Prisons have whole time or part time physicians in Prison Hospitals which has both outdoor and indoor facilities. The medical staff thoroughly undertakes medical examination of all prisoners periodically. They also carry out inspection of food, sanitation and hygiene and other amenities being provided to the prisoners.

c) Vocational Training in Prisons

Training of prisoners in different vocations is given a lot of attention in every State. Such vocational training provides opportunities to the prisoners to engage themselves in fruitful pursuits during their prison term. Such training not only inculcates in them a sense of value for one’s work, but also helps the prisoners learn such work as will enable them to follow an honest vocation and earn a decent livelihood, when they are released from prison. Apart from regular vocational training in various trades and occupations, and the educational training schedules, correctional institutions in India have also started a large number of programmes to improve the personality and mindset of the prisoners. These are programmes on anger management, social skills training, counseling against drug and substance abuse, Yoga, Transcendental Meditation and Vipasana.

In many jails, inmates including hardcore criminals and women have joined various courses offered by IGNOU and other State Universities. In many jails full fledged computer training centers have been established. The inmates are also provided training in carpentry and fabric painting. Many jails have also initiated programmes for women empowerment by training them in weaving, making toys, stitching and making embroidery items. Wage earning and gratuity schemes and incentives are also used to reduce the psychological burden on the convicts. Various seminars are organised by jail authorities to enlighten the prisoners on their legal rights, health and sanitation problems, HIV/AIDS and issues of mental health, juveniles, minorities and steps to reduce the violence in prisons.

The open prison system has come as a very modern and effective alternative to the system of closed imprisonment. The establishment of open prisons on a large scale as a substitute for the closed prisons, the latter being reserved for hardcore criminals shall be one of the greatest prison reforms in the penal system.

d) Policy on Prison and Correctional Administration

Criminal justice system often gets a bad name because of the bitter experiences people have with custodial institutions including the so-called correctional and rehabilitation centres. Prisons are mostly overcrowded and are notorious for corruption and mal-administration. Unlike prisons in many other countries, majority of inmates in the Indian jails are under trial prisoners who could not secure their freedom due to denial of bail or non-fulfilment of conditions of bail. Another large section of prisoners are those sentenced to short terms of imprisonment in whose cases correction or rehabilitation has little application. The system of classification as it exists is more on paper than in practice in many institutions.

Of course, at the instance of the Supreme Court and several expert committees appointed from time to time, a series of organisational and administrative reforms have been introduced in many prisons making life somewhat more tolerable and human rights friendly. The policy of appointing ‘Visiting Committees’ headed by the District Judge for Jails, and institutionalising a fair and transparent grievance redressal system for prisons and correctional centres has to be pursued to make them conform to minimum standards prescribed.

The living and working conditions of prison staff have to be upgraded substantially for professionalisation of prison and correctional services.

For women in custodial centres, certain special privileges have to be provided, based on their special needs. The recommendations of Justice Krishna Iyer Committee, appointed by the Central Government in 1979, relating to custodial justice to women, require immediate implementation. Children living with their mothers in prisons have to get their basic rights protected for which the Supreme Court in 2006 has given some directions which also have to become an integral part of the Jail Manuals.

Probation and parole, intelligently and imaginatively administered, can considerably ease the ills of the prison system and promote prospects for rehabilitation and re-integration of convicts. However, the norms in this regard have to be standardised and strictly followed, lest it should provide yet another opportunity for corruption and abuse of power.

Finally, there is a lot of scope for institutionalising open jails and its variants. If properly administered, in conjunction with large public works projects, many existing problems in prisons can be resolved to a large extent. If corrective labour becomes part of sentencing options, open jails can possibly help in its administration and supervision.

The National Policy should aim at reducing prison population and enhancing standards of prison discipline and administration with a view to making it serve a social purpose and helping to reduce opportunities for corruption and abuse of power. The same approach should be extended to other custodial and correctional institutions so that as far as possible, correction and rehabilitation are accomplished through non-institutionalised methods.\(^6\)

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\(^6\) Draft of a National Policy Paper on Criminal Justice, Ministry of Home Affairs, 2006, pp30-31
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Self Assessment Questions

2) What is the rationale of custodianship of prisoners? Whether it is justified to call prisons as correctional houses? Explain.

3) Discuss present condition of prisons in India. What measures can be adopted to meet the problem of overcrowding in prisons?

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e) Release on Probation

The probation is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals, who may lead them further along the path of crime, and to help even men of mature years who for the first time may have committed crimes through ignorance or inadvertence or the bad influence of others and who, but for such lapses, might be expected to make good citizens. In such cases, a term of imprisonment may have the very opposite effect to that for which it was intended. Such persons would be sufficiently punished by the shame of having committed a crime and by the mental agony and disgrace that a trial in a criminal court would involve.

The term Probation is derived from the Latin word ‘probare’, which means to test or to prove. It is a treatment device, developed as a non-custodial alternative which is used by the magistracy where guilt is established but it is considered that imposing a prison sentence would do no good. Imprisonment decreases his capacity to readjust to the normal society after the release and association with professional delinquents often has undesired effects.

According to the United Nations, Department of Social Affairs, the release of the offenders on probation is a treatment device prescribed by the court for the persons convicted of offences against the law, during which the probationer lives in the community and regulates his own life under conditions imposed by the court or other constituted authority, and is subject to the supervision by a probation officer. The suspension of sentence under probation serves the dual purpose of deterrence and reformation. It provides necessary help and guidance to the probationer in his rehabilitation and at the same time the threat of being subjected to an exhausted sentence acts as a sufficient deterrent to keep him away from criminality. The United Nations recommends the adoption and extension of the probation system by all the countries as a major instrument of policy in the field of prevention of crime and the treatment of the offenders.
3.5.2 Law of Probation In India

Section 3.562 of the Code of Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in (2 of 1974) it stands as Section 360 of The Code of Criminal Procedure, 1973. It reads as follows:

When any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty-one years of age or any woman is convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour.

Section 361 makes it mandatory for the judge to declare the reasons for not awarding the benefit of probation.

a) Probation of Offenders Act, 1958

In 1958 the Legislature enacted the Probation of Offenders Act, which lays down for probation officers to be appointed who would be responsible to give a pre-sentence report to the Magistrate and also supervise the accused during the period of his probation. Both the Act and Section 360 of the Code exclude the application of the Code where the Act is applied. The Code also gives way to state legislation wherever they have been enacted.

While discussing the importance of Probation of Offenders Act, the court said that where the provisions of Probation of Offenders Act are applicable the employment of Section 360 of CrPC is not to be made. In cases of such application, it would be an illegality resulting in highly undesirable consequences, which the legislature, who gave birth to the Probation of Offenders Act and the Code cannot obviate.7

b) Section 4 of the Act provides for probation

Section 4 Power of Court to release certain offenders on probation of good conduct
(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the Court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour.

Section 6 of the same Act lays special onus on the judge to give reasons as to why probation is not awarded for a person below 21 years of age. The Court is also to call for a report from the probation officer before deciding to not grant probation.

The provision under the Code and the Act are similar, as they share a common intent, that, punishment ought not to be merely the prevention of offences but also the reformation of the offender. Punishment would indeed be a greater evil if its effect in a given case is likely to result in hardening the offender into repetition of the crime with the possibility of irreparable injury to the complainant instead of improving the offender.

c) Juvenile Justice (Care and Protection of Children) Act, 2000

Besides these two enactments, the Juvenile Justice (Care and Protection of Children) Act, 2000 also provides for the release of children who have committed offences to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, or any fit institution as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years.

d) Procedure For Probation Service

Section 4(2) and Section 6(2) of the Probation of Offenders Act provide that the judge would consider the report of the probation officer before deciding on whether to grant probation. Section 14 of the said Act lays down the duties of the Probation Officers.

The pre-sentence report of the Probation Officer is the fundamental document for the guidance of the Court whether to grant the benefit of probation to the accused or not. The object of the pre-sentence report is to appraise the court about the character of the offender, exhibit his surroundings and antecedents and throw light on the background which prompted him to commit the offence and give information about the offenders conduct in general and chances of his rehabilitation on being released on probation.

The judge may also pass a supervision order under Section 4(3) of the Act, whereby the offender is placed under the supervision of a probation officer and certain conditions are imposed upon him. This is mostly in the form of regular visits to the supervising officer. Some of the conditions which must be followed have been laid down in Section 4(4). On the application of the probation officer such conditions may be varied- Section 8(2) and also the offender may be discharged- Section 8(3). If the offender fails to follow the conditions laid down by the Court, the original sentence against him may be revived Section 9.

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the report of a probation officer or a recognised voluntary organisation to be considered before passing a sentence. The Magistrate appointed as a member of the Board constituted under this Act must know something of child psychology. The Board would pass orders against a juvenile. The Act provides for the setting up of Observation and Special Homes by the State Government where the juvenile could be placed. Here the rehabilitation and social integration of the child would take place. It also provides for an After Care programme which would take care of the delinquent child after he has been discharged from these homes, based on
the report of the Probation Officer. The Probation officers appointed under the
probation of Offenders Act would also function under the Juvenile Justice (Care
and Protection of Children) Act. Probation in India is mostly dependent on the
policies of the State rather than a uniform Central Policy.

The Supreme Court, speaking through Krishna Iyer, J., has made it absolutely
clear that the philosophy of Probation of Offenders Act, 1958 is not suitable for
persons indulging in activities such as adulteration of food.8 Forty-seventh Report
of the Law Commission of India (1972) also recommended the exclusion of
social and economic offences from the Act by suitable amendments of the law.9

The question of releasing an offender on probation has been discussed by the
Indian courts in detail. The court has laid down that release on probation has to
be exercised having regard to the circumstances of case, age, character and
antecedents of the offender. The Supreme Court further said that the court
magistrate shall exercise the discretion carefully.9 It has also been held that the
provisions of Probation of offenders Act, 1958 and Section 360 CrPC will not
apply in cases which are registered under Prevention of Corruption Act.10

Another area in which the probationary philosophy should have no relevance is
the one relating to sexual offences; particularly where commercial exploitation
or immoral trafficking is also involved. An illustration is provided by the situation
in Devki v. State of Haryana.11

e) Advantages of Probation Service

Probation keeps the offender away from the criminal world. Further, the fear of
punishment in case of violation of probation law has a psychological effect on
the offender. It deters him from law breaking during the period of probation.
Thus probation indirectly prevents an offender from adopting a revengeful attitude
towards the society. Moreover, sentencing an offender to a term of imprisonment
carries with it a stigma, which makes his rehabilitation in society difficult. The
release of the offender on probation saves him from stigmatisation and thus
prepares him for an upright living.

Probation seeks to socialise the criminal, by training him to take up an earning
activity and thus enables him to pick up those life-habits, which are necessary
for a law-abiding member of the community. This inculcates a sense of self-
sufficiency, self-control and self-confidence in him, which are undoubtedly the
essential attributes of a free-life. The Probation Officer would guide the offender
to rehabilitate himself and also try and wean him away from such criminal
tendencies.

An analysis of crime statistics would show that a large segment of offenders
consists of the poor, the illiterate and the unskilled. Such offenders are seen to be
victimized. They are not only denied of their basic human needs in open society
and forced to live in a sub-culture of social marginality, but are also grinded in
the mill of criminal justice for having infringed the law. Probation would thus be

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an effective means to deliver justice to them, they would not be incarcerated and also they would be trained which would improve their life later. During the probation period, the offender is sent to various educational, vocational and industrial institutions where he is trained for a profession which may help him in securing a livelihood for himself after he is finally released and thus lead an absolutely upright life.

Self Assessment Question

4) Discuss object of law of probation in India.

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f) Release on Parole

Parole is the release of an offender from the prison before the expiration of the term of imprisonment. The object of parole is to prepare the prisoner for adjustment to normal social life outside the prison and it, therefore, signifies the transitory please from imprisonment to normal freedom. While on parole the prisoner lives at liberty subject to the conditions which may be imposed by the parole order. Violation of any condition in the parole order may result in the cancellation of the order and the convict is to be sent back to prison.

The term parole is also often used to express the idea of “furlough” granted to the prisoners to visit their families for short periods while completing their terms of imprisonment. Parole is different from a “furlough”. While parole is granted to a prisoner detained for any offence irrespective of the duration of imprisonment, a furlough is only granted to prisoners facing long sentences, five years or more. The object evidently is to keep the prisoner in contact with society in general and his family in particular which would not otherwise be possible in case of long imprisonment. In particular, it is conducive to a normal sex life of the prisoner, not possible otherwise, and an opportunity is also provided to the prisoner to make financial contribution to the family by his earnings outside the jail. 12

g) Valid Grounds of Parole in India

Under Indian jail laws, a prisoner may be released on parole in certain emergency situations, which includes the following health-related concerns:

- Complete and incurable blindness
- Advanced pulmonary tuberculosis, which incapacitates the prisoner from committing further crimes of the nature for which s/he was sentenced
- Is dangerously ill, and is likely to have a better recovery outside prison
- Has become mentally unstable, and requires treatment in a asylum

12 Ahmad Siddique’s Criminology & Penology, p.245
Additionally, a prisoner in India may be granted parole in the following exceptional cases:

- To perform funeral rites
- To visit a sick or dying member of the family
- To attend important functions, such as marriage of son, daughter, brother or sister
- To construct a house or repair a badly damaged house

h) Decision of Release

The decision to release a prisoner on parole is generally taken by a Parole Board. In India, under the rules in force in some of the States, the opinion of the police department is also given due consideration in taking the decision. The crucial question faced in making the decision, one way or the other, is to be able to make the prediction regarding the outcome of release. This involves the examination of issues such as whether the convict had profited by his stay in the institution, whether he was so reformed that he was unlikely to commit another offence, what his behaviour was in the prison, whether any suitable employment awaited him on release, whether he had a home or other place to go, whether he told the truth when he was questioned by the Parole Board, how serious his crime was and in what circumstances it was committed, his appearance when interviewed by the Board and what behaviour he had demonstrated if he was already on parole in connection with another imprisonment.

The courts in India have shown increasing interest in the use of parole by issuing directives to the prison administrators in appropriate cases. In *Hiralal Mallick v. State of Bihar,* the Supreme Court observed that “...one method of reducing tension is by providing for vital links between the prisoner and his family. A prisoner insulated from the world becomes bestial and, if his family ties are snapped for long, becomes dehumanised. Therefore, it is desirable that parole be granted for reasonable spells, subject to sufficient safeguards ensuring proper behaviour outside and prompt return inside.”

In *Hari Singh v. State of Haryana,* it was held that the denial of parole on the flimsy ground that the prisoner’s release would endanger the public order was not justified whereas in *Baldev Singh v. State of Punjab* High Court held that the district judge should give his approval for parole only after furnishing the reasons for the same.

i) Evaluation of probation and parole

Probation and parole have the same objectives — rehabilitation of offenders and protection of society from his actions at the same time. In both the techniques, skilful supervision of selected offenders is involved outside the prisons. But there is an important distinction between the two. In probation, the offender is not sent to jail after being found guilty and the decision to grant probation is to be made by the court. In parole, the convict is released after serving his sentence for some time and the release is not the result of any judicial decision.

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14 (1993) 2 Chandigarh Cri Cases 373.
Basic Issues

The advantages of probation and parole have been mentioned in terms of protection of the offenders' personality from the contaminating influence of prison life. The released offender has the advantage of continuing to have normal social relationships and his employment. The offender is also spared of the stigma of a prison sentence making the task of rehabilitation easier. A study undertaken in the Michigan State of the USA proved that in the ultimate analysis, it is more economical to conduct probation services than to construct new prisons and maintain them. It is also pointed out that unlike the dependants of an offender sent to prison, the dependants of a probationer do not have to be supported by welfare agencies.

Probation and parole is of great benefit for a country like India, where the jails are often overcrowded, with frequent human rights violations which would harden the human inside a person. Release of offenders on Probation or parole is an affirmation of the human inside every being and it must be given due importance.

Self Assessment Question

5) What are the grounds of release on parole for offenders?

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3.6 PREVENTIVE RESPONSE TO CRIME

Besides formal various informal/general programmes of crime prevention have been outlined. Bentham in the last part of the 18th century made a comprehensive outline of the 'indirect method'? (that is, methods other than punishment) which might be used to prevent crime. He included such things as taking away the physical power of injury, diverting the course of dangerous desires, decreasing susceptibility to temptations, general education, a code of morals similar to a code of laws, and other things.

Ferris, a member of the Italian school, in the last part of the 19th century paid considerable attention to the prevention of crime. He had a doctrine of criminal saturation, namely, that a group has the crimes it deserves in view of the type of people and the conditions of the group, and that as long as the type of people and the condition remain constant, crime will remain constant regardless of methods, of punishment. Consequently he insisted that penal substitutes, or methods of modifying the conditions and traits of people, should be used. He outlined a long list of these, including free trade, reduction in consumption of alcohol, metal (instead of paper) money, street lights, reduction in hours of labour, lower interest on public securities, local political autonomy, and many other things.

15 Ahmad Siddique's Criminology & Penology, p.247-48
16 Goswami, B.K., A Critical Study of Criminology and Penology, p.192
a) **Role of Civil Society in Crime Prevention**

Civil society has an important role to play in crime prevention and law enforcement. Criminal laws increasingly adopt provisions accommodating the people’s participation in the administration of justice. Apart from prevention of crimes and assistance in investigation and trial, the amended criminal procedure code encourages settlement of criminal cases through compounding and plea bargaining. In the matter of juvenile delinquency, the participation of civil society organisations is critical for justice to children and protection of society. Similarly, in cases of what are called social welfare offences, enforcement agencies can do very little without the involvement of the neighbourhood community, school, family etc.

Taking note of the importance of civil society in criminal justice administration, future legislation should find ways and means to accommodate and facilitate public participation. The concepts of honorary policemen, honorary probation officers, justices of peace and assessors to assist courts, need to be invoked more and more if criminal justice is to succeed in future.

Today, the people are increasingly alienated from the system because of bureaucratic apathy, corruption, delays and humiliation. Law enforcement agencies, by themselves, are unlikely to succeed in enlisting public support in law enforcement work in the prevailing circumstances. As such, legislative provisions may be needed to make it possible and functional. Of course, vigilantism is to be prevented which can be done by incorporating appropriate provisions in the legislation itself. A Law Enforcement Assistance Squad involving senior citizens and trained youth in different wards can help, if properly coordinated and streamlined with clear guidelines. Even in criminal justice reform, these bodies can be of help to the state apparatus.

In due course, decentralised system of criminal justice has to be put in place as part of Panchayat Raj administration. Some routine aspects of criminal justice would naturally be vested in local bodies. Grameen Nyayalayas or equivalent bodies will be involved in resolving criminal disputes locally and in managing law enforcement of the locality. The policies of criminal justice administration should, therefore, aim towards a decentralised, localised system except for dealing with serious and complex crimes.17

b) **Local Community Organisations**

Though punishment is one method of building up anti-criminal attitudes in the general public, it is not the most efficient method for preventing crime. The development of habits and attitudes by education, by the spreading of traditions, by the contacts and interactions between those who appreciate the values and those who do not is probably a more efficient method. As we find out more about crime causation, we shall have a better basis for the determination of specific policies for this purpose. These policies, if carried out consistently may be expected to protect society from crime.

The closest approximation for a formula for the control of delinquency that can be made at present is that delinquency must be defined as undesirable by the

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Basic Issues

personal groups in which a person participates. Policies for prevention of delinquency and crime, therefore, should be directed primarily at these personal groups. In this sense, control of delinquency and crime lies within the local community.

c) Case work with near-delinquents

Two principal agencies have developed in the attempt to turn these near-delinquents away from their trend towards delinquency, namely, child guidance clinics and visiting teachers.

d) Group work with near-delinquents

One of the significant developments in social work during the last two decades is group work; (1) An individual is induced to become a member of a group, as a means of satisfying his needs as a person. (2) A second type of group work consists in re-directing the activities of a group of persons, all or nearly all of whom are delinquent or near-delinquent.

e) Co-coordinating Councils

Traditionally, case-work agencies, group work agencies, child guidance clinics, and character building organisations have worked separately and independently toward achievement of the common goal, delinquency prevention. During the last generation this tradition has broken down in many communities and the work of the various agencies and organisations, both public and private, has been integrated by means of local ‘co-coordinating councils’. These councils are based on the theory that local community resources must be mobilised if the community needs are to be met.

While general institutional reorganisation may be desirable, its relation to the control of delinquency is highly speculative at present. Those who are interested in the control of delinquency can find more justification for approaching their problem in the “local community” than in the general institutional structure. Within a given institutional structure, wide variations are found from one community to another, and these variations in delinquency rates seem to be related to the local rather than national conditions.

Self Assessment Question

6) What informal measures can be adopted to prevent the crime and delinquency in the society?

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Conclusion

Thus protection against crime would be secured by modifying those who could be modified by available techniques, segregating those who could not be so
modified, and correcting or segregating in advance of crime those who were proved to be most likely to commit crime, and attacking and eliminating the social situations which were most conducive to crime. Such policies would be as much evidence that the civil society disapproved of crime as would punishment, and it is this disapprobation, rather than punishment of individual criminals, which tends to deter the large majority of the population from crime.

Furthermore, it must be recognised that it is highly dubious, even from a purely theoretical viewpoint, whether any interference with normal living can ever be completely non-punitive. Punishment and treatment are so integrated as to be inseparable. Even the most kindly treatment imaginable, confinement in the Ritz, with very solicitous attentions on the part of the jailor-has its punitive element; any normal person would oppose it. In fact, the notion that it is possible to administer medical and psychological treatment without at the same time applying punishment would disappear on any acquaintance with even the best asylums for mentally diseased offenders—confinement and close supervision are punitive regardless of the attitude of the attendants. Just as treatment is to some extent punitive, so punishment, if wisely administered, also rehabilitates. Moreover, both the sensations of pain and pleasure can be utilised profitably during the process of rehabilitation. It is not then, a question of whether there should be one or the other of these sensations, or whether there should be treatment or punishment, but rather how both treatment and punishment can be most judiciously balanced to produce the best results in the modification of behaviour.

One must admit, however, that in our complex culture the deterrent “and retributive effects of punishment are indirect and uncertain in many cases, while the return of almost all criminals to society is a real and indisputable fact”. It is evident that the emphasis in our system of punishment should be placed upon the reformation of the prisoner; our society should do everything within its power to understand criminals and to create and foster in them such tendencies as make for constructive and useful lives. This is not only the most sensible and profitable way of dealing with our criminals, but also the most effective method of expanding the knowledge we already have regarding crime causation and crime prevention.

From the above discussion it should not be interpreted to mean that the criminal should be cuddled or pampered or kept in a “prison palace”. We are not in anyway confronted with the problem of having to choose between granting leniency or inflicting pain. As has been explained, the process of reformation inevitably involves suffering, and since liberty is highly prized in modern society, imprisonment may be an exceedingly painful experience. But the essential point here is that the process of reformation should be based upon a detailed study of what the prisoner is physically, mentally, and emotionally, as measured by the best available knowledge.

Moreover, a system of punishment in which reformation is the principal purpose does not have to interfere in any way with aggressive law enforcement and effective criminal prosecution. Nor does it entail the elimination of any to the discomforts, inconvenience, and disgrace involved in the arrest, trial and conviction of a criminal. Consequently, with such a system it is still possible to satisfy society’s desire for retribution and to have whatever deterrence can be secured by exciting fear in others.
Basic Issues

But far more important than an understanding of this shift in the emphasis in punishment is the recognition that punishment itself is only one element in the much larger system of social control that exists in society. In this larger system it is not the fear of legal penalties that keeps the great majority of persons from violating the law, but rather the desire to find love, respect, and security among relatives, friends, and business associates. This is the principal form of social control, and it will always function regardless of what methods are used in dealing with criminals.

No government can guarantee total elimination of crime as criminality is part of human nature. However, every government is expected to convey the message that crime does not pay and criminals howsoever highly placed in society will be apprehended and punished according to law and the procedures. Criminal Justice is a measure of civility in a society and the way it is managed by the state determines the character and performance of the state and its governance system.

(Refer to MLE-011: Criminal Justice System Block 4: Correctional Processes MLE-014: Criminal Justice Administration Block 2: Prison Also)

3.7 SUMMARY

- The Criminal Justice is concerned with prevention and control of crime, maintenance of public order and peace, protection of the rights of victims as well as persons in conflict with the law.
- The object of the criminal justice system is to reform the offender, and to ensure the security of society and its people by taking steps against the offender and rehabilitation of those adjudged guilty of committing crimes.
- Crime control and criminal justice management are the products of a fair, efficient and effective criminal justice system which is itself the product of multiple sub-systems such as the police, the prosecution, the judiciary, the prisons and a number of co-existing social control mechanisms outside the formal state system (education, family, media etc.)
- Earlier penological approach held imprisonment to be the only way to curb crime.
- The modern penological approach has brought in new forms of sentencing whereby the needs of the community are balanced with the best interests of the accused.
- Compensation, parole, release on admonition, probation, imposition of fines, community service etc. are few such techniques used for reforming the criminal.
- Punitive response to crime devised a great variety of methods for the punishment of criminals. The most common ones have been death, physical torture, mutilation, branding, public humiliation; fines, forfeiture of property, banishment, transportation, and imprisonment, but each of these had many forms.
- The principal purposes of punitive response are retribution, reformation (or rehabilitation), and deterrence.
• With growing humanitarianism, increasing impersonality in social relationships and growing belief in the powers of science, capital and corporal penalties became unacceptable and ineffective and have been largely replaced with imprisonment, probation and parole as therapeutic response to crime.

• In modern times our prisons have been converted into the correctional institutions to develop a sense of discipline and security among prisoners, and to reform and rehabilitate them.

• Prisons in India provide requisite medical equipment for the treatment and diagnostic facilities in prisons. Besides, vocational training provides opportunities to the prisoners to engage themselves in fruitful pursuits during their prison term and even after their release from the prison.

• In many jails, inmates including hardcore criminals and women have joined various courses offered by IGNOU and other State Universities.

• The open prison system has come as a very modern and effective alternative to the system of closed imprisonment.

• Probation and parole, intelligently and imaginatively administered considerably eases the ills of the prison system and promote prospects for rehabilitation and re-integration of convicts.

• The probation is intended to be used to prevent young persons from being committed to jail, where they may associate with hardened criminals. Section 562 of the Code of Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in (2 of 1974) it stands as Section 360 of The Code of Criminal Procedure, 1973.

• In 1958 the Legislature enacted the Probation of Offenders Act, which lays down for probation officers to be appointed who would be responsible to give a pre-sentence report to the Magistrate and also supervise the accused during the period of his probation.

• Parole is the release of an offender from the prison before the expiration of the term of imprisonment.

• Civil society has an important role to play in crime prevention and law enforcement. Criminal law should increasingly adopt provisions accommodating the people’s participation in the administration of justice.

• A Law Enforcement Assistance Squad involving senior citizens and trained youth in different wards can help in preventing the crime, if properly coordinated and streamlined with clear guidelines.

• Grameen Nyayalayas, Local Community Organisations, Co-coordinating Councils or equivalent bodies to be involved in resolving criminal disputes locally and in managing law enforcement of the locality.

• It is not the fear of legal penalties that keeps the great majority of persons from violating the law.

• Desire to find love, respect, and security among relatives, friends, and business associates are the principal form of social control, and it will always function regardless of what methods are used in dealing with criminals.
3.8 TERMINAL QUESTIONS

1) Discuss in detail meaning, object and theories of punishment.
2) What is the role of civil society in preventing crime and criminal tendencies in the society?

3.9 ANSWERS AND HINTS

Self Assessment Questions

1) The object of punishment is not only retribution and deterrence, but reformation and rehabilitation also. Only a combination of it with right emphasis can serve the purpose of crime. Refer to Sub-section 3.4.2(c)

2) Prisons in India are not considered a house for incarceration to deter criminal behaviour, but correctional houses, where vocational training etc. is provided for the rehabilitation of the criminals in society after their release from the prison. Refer to Sub-section 3.5.1(a), 3.5.1(a) and 3.5.1(d).

3) Refer to Sub-section 3.5.1(d)

4) The object of probation is to prevent young persons from being committed to jail, where they may associate with hardened criminals. Section 562 of the Code of Criminal Procedure, 1898, was the earliest provision to have dealt with probation. After amendment in (2 of 1974) it stands as S.360 of The Code of Criminal Procedure, 1973. Refer to Sub-section 3.5.2 of the material.

5) Under Indian jail laws, a prisoner may be released on parole in certain emergency situations only. Refer to Sub-section 3.5.2(g).

6) Taking away the physical power of injury, diverting the course of dangerous desires, decreasing susceptibility to temptations, general education, a code of morals similar to a code of laws, and other things can be adopted as informal methods for preventing crime and delinquency in the society. Refer Section 3.6 of the unit.

Terminal Questions

1) Refer to Section 3.4 of reading material
2) Refer to Section 3.6(a) of the reading material

3.10 REFERENCES AND SUGGESTED READINGS

6) Sutherland,E.H., Principles of Criminology, New York, 1961
7) Taft and England, Criminology, New York, 1964