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ISLAM

&

CRIMINALITY

By

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مَوْلَایَ صَلِّ وَسَلِّمْ دَائِمًا أَبَدًا

عَلٰی حَبِیْبِكَ خَیْرِ الْخَلْقِ كُلِّهِمِ

مُحَمَّدٌ سَیِّدُ الْكَوْنَیْنِ وَالثَّقَلَیْنِ

وَالْفَرِیْقَیْنِ مِنْ عُرْبٍ وَّمِنْ عَجَمِ

صَلَّی اللّٰہُ تَعَالٰی عَلَیْہِ وَعَلٰی آلِہٖ وَاَصْحَابِہٖ وَبَارَكَ وَسَلَّمَ

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CHAPTER I

WESTERN SCIENCE OF CRIMINALITY

The branch of law, that studies the social phenomenon of crime, its causes and the measures which society directs against it, is known as Criminology.[1]

This branch of social study comprises four main subjects:—

(a) *Science of criminality.*
(n) *Criminal Psychology.*
(c) *Criminal Policy.*
(d) *Criminal Law.*

The first one, appreciates the investigation of the causes of crime in the mental and physical constitution of the delinquent himself or in the social and environmental condition of a given society.

The second invites the study of the nature as well as mental and social phenomenon of the commission of crime.

The third deals with the appropriate measures of social organisation whereby harmful activites may be prevented and the proper treatment to be accorded to those who have caused harm to any individual or society, through their transgressive behaviour.

Whereas, *the fourth one* is the detailed and technical instrument of criminal policy.[2]

As far as this part is concerned, we have to focus our attention exclusively upon the first two subjects, that is science of Criminality and Criminal psychology.

Development of Science of Criminality

In the history of western law no systematic study of criminology had been conducted until the 19th century.

About the time of the *French Revolution,* this attempt became more frequent and the methodical study of social and anthropological facts, which is the core of criminology, was conducted.

In the beginning of the nineteenth century, in France, certain scholars instituted criminal statistics and amplified and developed their methods. They are called the founders of criminology. Among these, first of all, was *Adolphe Quetelet* (1796-1874). In 1835 *Quetelet published his work "Sur l'homme et le de'velopment de ses faculte's on Essay de phsysique sociale"* which is considered the landmark of criminology.[3]

One of the great students of systematic criminology, was an Italian Scholar, *Cesar Lombroso* (1836-1909), who conducted an extensive study on the causes of criminality, and, for the first time, introduced the *'Theory of born criminal'* in the history of Western Criminal Law. His most important book upon this topic is *"L'uomo delinquente".* By that time, *'Criminality'* had become an independent subject of research in the field of criminology. Therefore, various western criminologists, after their analytical observations formulated different theories regarding the *Causes of Criminality.*

Western Theories, after a thorough survey, can be primarily classified into five:–

(a) Positivistic/Biological Theory.
(b) Posychiatric/Pathological Theory.
(c) Psychological/Psycho-Analytical Theory.
(d) Sociological Theory.
(e) Ecological Theory.

Positivistic Theory

It is also termed as *Italian, Anthropological, Scientific* or *Physical Theory.* It is based upon the concept of *Endogenous hereditary factors,* which act as the effective causes of a criminal conduct.

In the words of *Jones, H.* "The apostle of this pessimistic creed that is the *'Theory of Inborn Criminality'* is the famous Italian criminologist *Cesare Lambroso,* as already mentioned. He conducted a statistical research and concluded that the structure of the skulls of the criminals was biologically different from that of the normal persons. According to *Lombroso,* criminality is in-born, being the result of an *atavistic reversion* to an earlier evolutionary stage. It is a constitutional matter, that is to say, it is an essential part of the inherited nature of the criminal and cannot be changed. *Lombroso* later added the idea of *degeneration;* basic flaw in heredity, giving rise, in later generations, to the deterioration of physique and behaviour which we see in the criminal. In later editions of his book, he modified his views, and admitted that in perhaps two criminals out of three, environmental factors may be effective.[4]

Lombroso's Ist book was published in *1872,* which embraced the anthropological study of 400 *venetian criminals.* By *1892,* he had examined *25,000 criminals.* So he gradually developed and modified his views.*5* The quintessence of his theory, as he has gradually developed and modified it, is that a certain percentage of crimincls, *35 to 40%,* are born with dispositions which, irrespective of external conditions, will make them criminalistic and that anatomic and physiological characteristics may be ascertained in these criminals.[6]

Other Principal figures of this *Anthropological or Positivistic School, Enrico Ferri* (1856-1929) and *Garafalo* (1852-1934) also attached great importance to environmental factors.

The *positivistic Theory* of criminality has further undergone two major stages of development.

(1) Development of Lombrosian View.
(2) Development of Post Lombrosian Views.

1. *Development of Lombrosian View*

The *Development of Lombrosian View* has already been discussed. Moreover *Sheldon, Sutherland, E.Glueck* and many other criminologists have supported this view with slight variances.

The influence of *Lombrosian theory* according to *Mannheim*[7] was very different in various countries, strongest in *Italy* and *South America,* weaker in *France* and *Spain,* almost completely absent in *Russia.* In *Germany* and *Austria,* after a great deal of initial opposition, there was a revival, whereas a different historical process took place some-what later in the *United States.* In *England* the two opposing trends are best represented by *Havclock Ellis* as leader of the pro-Lombrosian party, *Charless Goring* as his opponent, with *Henry Mandsley* standing in the middle. *Ellis* opposed Lombroso's use of the *concept of atavism;* he stressed that there was no uniform 'School' of criminal anthropology and no real type of born criminal, thereby preferring the phrase *'moral insensibility'* of the instinctive and habitual criminal.

Ellis, explaining *Lombroso's view,* even stresses that *Lombroso* himself did not regard the *'born criminal'* as a real type, but emphatically asserted that all that can be asserted is a greater frequency of anomalies. [7-A]

Like *Ellis, Henry Mandsley* (183[illegible]-1918), the great psychiatrist, was also strongly influenced by the idea of *moral insanity* as developed earlier in the 19th century by *James C. Prichard* and others. Without completely subscribing to Lombroso's theories, he believed in the existence of individuals who, because of congenital or acquired characteristics, are entirely lacking in the capacity for moral feeling and for comprehending moral ideas.

According to *Mandsley, crime* and *madness* were both *antisocial products of degeneracy,* but crime, he wrote later, was not necessarily a symptom of degeneracy. Like *Lombroso,* however, he linked *epilepsy* with *physical stigmata of degeneration* and with crime.

It is interesting to observe that in spite of many differences in criminological outlook, the practical reform programmes of *Ellis, Mandsley* and *Goring* bear a striking resemblance. All three pin their faith in the triad of better education, in the moral sense, segregation of the dangerous criminals, and sterilization of the unfit, the last ingredient being particularly stressed by *Ellis* and *Goring.*

2) *Post Lombrosian Developments*

As far as the *Post Lombrosian developments* are concerned, various criminologists have expressed their views in modified forms regarding the same theory. These developments, as already mentioned, actually originate from the research works of *Ellis* and *Mandsley.* Because, *Charles Goring* had appeared as a well-known opponent of their views, therefore, we have associated the description of *Post Lombrosian* development with his name. These are some of the criminological views which possess historical significance, regarding the Post Lombrosian development.

i)	*Goring's view*	Theory of Physical and Mental Inferiority.
ii)	*Fink & Dugdale's view*	Theory of Heredity and Criminal Families.
iii)	*Lange's views.*	Theory of Twin Research.
v)	*Kretshmer's view*	Theory of Modern Crimino-Biology.
vi)	*Hooton's view.*	Neo-Lombrosian Doctrine.

GORI

GORING'S VIEW

Charles B Goring (1870-1919) elaborating the Positivistic Theory, appreciated the idea of *'Physical and Mental Inferiority.'* His study showed statistically significant differe-

nces in regard to stature and weight of criminals, as he mentioned in his book *"The English Convict* (Lond. 1919 P. 121).

He further found remarkable defect in general intelligence in his group of criminals alongwith their general physical inferiority.[8]

His ultimate conclusion is that a criminal is both physically and intellectually inferior to the normal person and that both this inferiority and criminal tendencies are inherited.

Moreover, the inherent physical condition and mental constitution are independent of each other.[9]

He gave the idea that there existed in every person what he called a *'criminal dia-thesis'* a hypothetical character of some kind, a constitutional proclivity, an inward potentiality to commit crime, which if *Lombroso's Theories* were correct, should differ according to physical type.

By arranging his material, he calculated as follows:

When a sample of criminals and a sample of non-criminals are similarly constructed with regard to the proportional numbers of professional men, shopkeepers, labourers, artisans, etc. *criminals,* on the average, are seen to be *1.7 inches* less in stature than the *non-criminals* of the same professions.

In the controversy of *'heredity and environment',* he was on *Lombroso's side,* and perhaps even more than the later, he was inclined to under-rate the environmental influences. He says, *"Crime is only to a trifling extent the product of social inequalities, of adverse environment or of other manifestations of the forces of circumstances."*

Apart from the concept of the *criminal type,* there were indeed many significant similarities between *Goring* and the *anthropological School* against which he fought.

Whereas, *W. Norwood East* investigated *4,000* young English delinquents upto *1942* and differed with Charles Goring upon this issue.[10]

FINK AND DUGDALE'S VIEW

Fink and Dugdale's, explaining the Biological Theory, have introduced the idea of *Heredity and Criminal Families.*[11] It was the period around the turn of the 19th century when this question was most heatedly discussed. *Lombroso* himself devoted to it a chapter of his *'Crime'* – its *Causes and Remedies* in which he presented a collection of vague and questionable statistical data of various undesirable features among the ancestors of criminals.

19th century American literature on the subject betrays, according to *Fink,* a strong belief in the inheritance of crime, but he disagrees as to what exactly it is that is inherited and how the transmission takes place: is it crime itself or merely a propensity and a predisposition to it?

Dugdale was anxious to do justice to both *hereditary* and *environmental influences* and in this regard he conducted research with the reference of *certain families,* having striking number of criminals or otherwise socially deviant members. His first work *"The Jukes"* was published in *New York-1877,* and then *two similar* studies of criminal families were published in the U.S.A. The *Nam Family* by *Estabrook* and *Davenport,* and *H.H. Goddard's 'The Kallikaks'.* This idea had also received strong support through the work of *William Healy.*

The studies of the *Family Histories* of this type ultimately could not provide convincing evidence.

In the latest large scale English study, *W. Norwood East's 'Adolescent Criminal'* no attempt could be made to determine the relative share of *endogenous* and *external factors,* but some figures are given to show the connection between *inherited* and *familial defects and offences* committed but there is no material on the question of *hereditary transmission.* In another work, *East* states explicitly that neither this research nor his other experiences have given

him any reason to regard criminality 'as such' transmissible.[11-A]

LANGE'S VIEW

The German Psychiatrist *Johannes Lange* was one of the most important apostles of *Twin Research.* It was probably *Sir Francis Galton* who first recognized that there were two kinds of twins :–

i) Monozygotic twins (Having concordant behaviour)
ii) Dizygotic twins (Having discordant behaviour)

A lot of criminological research was conducted over these kinds of twins. The figures and data obtained through these studies concluded that, as far as crime is concerned, *monozygotic twins* on the whole reacted in a similar manner, whereas *dizygotic twins* often behaved differently, although the upbringing and environment of the two had been identical.

Lange's Theory of *Twin Research* was criticised by various criminologists on *seven different bases,* but later investigations, especially the American ones, by *Rosanoff* have considerably added to the size of *Lange's* case material and made certain improvements in his methods.

He stresses that concordant behaviour in *identical twins* is largely limited to *serious criminals* with *hereditary pshchopathic tendencies.* For them he thinks, the *hereditary factor* is decisive, whereas environmental influences matter only for less serious criminals.[12]

An important contribution to *criminological twin research* has been made in Japan, where *Shufu Yoshimasu, Professor of criminal Psychology and Forensic Psychiatry in Tokyo,* has published the results of his follow-up studies between 1941 and 1961, indicating the conclusions different from those of *Lange.* From the extensive literature upon

Twin *Research,* the following may be quoted as more significant, *Lange J. Crime and Destiny* Lond. 1931, *H.H. Newman, Twins and Super-Twins,* Lond. 1942, and *Evolution Genetics and Eugenics,* chicage 1930, *W.C. Reckless, Criminal behaviour, R.S. Woodworth, Heredity and Environment,* New York 1941, *James Shields, Monozygotic Twin,* Lond. 1962, *Beveridge, Changes in Family Life,* 1932.

KINBERG'S VIEW

O. Kinberg, through his *Basic Problems of criminology,* 1935, extended his research to a new thought, that is *'Endocrinology'.* He connected the criminal conduct of the delinquents with inherited disorders of pituitary or other ductless glands present in human body.[13]

Endocrinology or the *Theory of Ductless glands* has proved, according to this view, that the function and functional disturbances of these glands are extremely important to the course of physical as well as mental processes. The functioning of the instinctive and emotional life is due not only to the nature of brain, but also largely to the *blood-chemical* processes dependent on *Glandular Secretions.* The *New criminology* by *'Schlapp* and *Smith'* has also vehemently asserted the connection between *criminality and glandular function.* It is claimed that the vast majority of all criminals, misdemeanants, mental deficients and defectives are the products of bodily disorders, that most crimes come about through disturbances of the ductless glands in the criminal or through mental defects caused by endocrine troubles in the criminal's mother (viz. during pregnancy). This trend seems to have culminated in the 1920. More recent *American criminology* has repudiated the over-simplification of the causality of criminal acts for which the *radical endocrinology* is responsible.

Wood and Waite, in *Crime and its Treatment,* New York, 1941, *Sheldon* and *E.T. Glueck* in *100 juvenile Delin-*

quents, USA 1939, and *D.R.Taft,* in *Criminology* New York 1945, have criticised the theory on various bases.

KRETSCHMER'S VIEW

The famous German psychiatrist *Ernst Kretschmer* conducting a constitutional study of the criminals, introduced *The Modern Crimino-Biological Theory.* This School originated in 1919-20, in *Germany, Austria* and *Italy. Eduard Mezger* was also one of the most prominent legal exponents of this theory. *Kretschmer's original object was to examine* the complex relationships between various types of physique, character and mental abnormality. He distinguished three major constitutional types of human physical structures which as he stressed were not 'Ideal types' but empiricial ones:[14]

a) *Asthenic type*
b) *Athletic type*
c) *Pyknic type*

This classification is based on external physical structures and skeletal systems relating to particular morphological similarities. Thus the persons were characterised in this manner and various criminal and non-criminal conducts were connected to these types. Particular crimes, classified in different constitutional types, were mentioned, as in case of physchoses.

Gluecks, Sheldon, Seltzer, Sutherland and many other anthropologists have criticized the *Kretschmerian view* and it has been, finally, concluded that there is no specific combination of physique, character and temperament to be found which would determine why an individual becomes a delinquent.

HOOTON'S VIEW

The recent anthropological criminal investigation is conducted by a Harvard Professor *E.A. Hooton,* introduced as *'Hooton's Neo-Lombrosian Doctrine'.*[15] *Hooton* considers it as an *a-priori* assumption that the behaviouristic tendencies of man are associated in some fashion with his physical characteristics, as they are among the higher species of animals. Groups of human beings with markedly different modes of behaviour (criminal and non-criminal) must, in order to demonstrate this interrelation, be subjected to a long series of *morphological and metric* observations.

In tracing the causation of crime, *Hooton* pays attention to *moles, tattooing, freckles, quantity, texture, form and colour of hair, skin colour, eye colour, shape of forehead, form of nose, lips, prognathism* projection of upper and lower jaw), *chin, teeth, palate, ears, neck, slope of shoulders* etc. *(a total of 33 items* with numerous subgroups) under *morphological investigation.* Whereas, under *metric conditions,* he mentions age, weight, height, shoulder breadth, chest depth, chest breadth, sitting height, head length, head breadth, head height, head circumference, facial height, nose height, nose breadth, ear lengths, ear breadth *etc.*

On the basis of *Morphological* and *Metric* investigations, *Hooton* assumes a correlation between specific physical types and modes of behaviour. Thus the criminals, considered en bloc, are a group of sociological and biological inferiors and this inferiority possesses hereditary origin.

As far as the *classification of body build types* is concerned, *Hooton* seems to be influenced by *Kretschmer. David Abrahamson,* in *Crime and the Human Mind* Lond. 1945, and *W.B. Tucker,* in, *Journal of Criminal Law and Criminology,* XXXI, 1940 pp. 437 have criticised *Hooton's* contention that a biological inferiority is a basic feature in criminals and that this inferiority is hereditary. The latest

investigations conducted in this connection in *U.S.A* have reached negative results, also as regards the *correlation* asserted by *Hooten.*

Conclusion :

The whole discussion of *Lombrosian and* Post *Lombrosian views,* drives us to the conclusion that criminality is mostly an *inheritedly determined factor* and somewhat an *atavistic reversion.* By this, the advocates of Positivistic/ Biological School mean, *that the minds of the criminals were not fully developed to the perfect human level and still retained the animalistic tendencies. According to them the criminal commits a crime because of being to so low in his envolutionary scale that he still continues to possess some furious and brutal characteristics, not present in non-criminals.*[16]

Thus, the criminal himself cannot be accountable to any law, because this fate for criminality is predetermined on account of the inherited biological characteristics.

Psychiatric Theory :

According to this theory, all criminality is the result of *psychiatric abnormality* and *mental disease.*[17] There are many offences which are clearly the product of a disordered mind. All these forms of mental illness are readily diagnosable as such. *Murder, rape, arson, theft* etc. are committed due to *Schizophrenia,* a specific form of *psychosis* or *obvious neurosis.* Similarly, in the course of *hysterical fugue* (a state of altered consciousness) an individual may commit many offences of which he has no recollection afterwards.

The *obsessional neurotic* also may be forced by an irresistible inner compulsion to go on committing offences, such as *stealing, sexual exhibitionism* or *wandering.*

A comprehensive *pathological survey* of the various forms of mental illness giving rise to specific crimes has been

conducted by the psychiatrists.

The psychiatrists basically divide *Psychosis into two* groups :—

1. Organic Psychosis.
2. Functional Psychosis.

Organic Psychosis

Various forms of Organic Psychosis are :

a)	Dementia Paralytica	(General Paralysis of the insane)
b)	Traumatic Psychosis	(Injuries of brain caused by accidents)
c)	Encephalitis lethargica	(Sleepy sickness)
d)	Senile dementia	(A kind of mental illness)
e)	Puerperal Insanity	(Illness of the pregnant and post-pregnant mother).
f)	Epilepsy	(The most widely known type of mental disorder)
g)	Intoxication Psychosis	(Especially Alcoholic disorders)[18]

Brief Description Of Organic Psychosis

a) Dementia Paralytica

It is characterised by a progressive deterioration of the whole personality. In its initial stages criminal acts such as *theft, fraud, forgeries,* may be committed with astonishing openness and silliness. In this case the offences are nearby always committed without accomplices as the psychotic is too deeply withdrawn into his own world, and too abnormal in his behaviour to attract associates.

b) Traumatic Psychosis

This may also produce profound personality changes

leading to criminality and may make the psychotic particularly susceptible to the effect of alcohol. These patients may easily become excited and prone to *crimes of violence.*

c) Encephalitis Lethargica

It has been particularly frequent among children in England after the First World War. It is an acute infectious fever, producing an inflammation of the brain, usually followed by serious changes in physique, intelligence and character. In young age, the patient develops more disagreeable anomalies of personality. Many children and adolescents after an acute attack of these become social problems and commit highly *antisocial acts, often of an explosive or sexual nature.* This may easily happen in their *post-encephalitic period.*

d) Senile dementia

In this case the impairment of the physical and mental faculties, emotional disturbances and loss of control over sexual urges, coupled with growing suspicion of other people, may provoke acts of *violence* or *sexual assaults* on children. The nature of crimes committed by these patients may vary according to the various forms of *Dementia.*

e) Puerperal Insanity

It is a form of exhaustion psychosis occurring in women in a condition of extreme anxiety due, for example, to the birth of an *Illegitimate child, economic stress plus physical fatigue.* Especially *child-killing* and other offences, such as *theft* may also be committed by such patients.

f) Epilepsy

*The attention of crim*inologists was drawn to it mainly by *Lombroso* who exaggerated its criminological significance by maintaining that all born criminals were *epileptics* and that among *occasional criminals* there was at least one class, the epileptoids, *in* whom a trace of *epilepsy* was the origin of their criminal tendencies.

It is commonly believed, however, that *epileptics* are prone to sudden out-breaks of apparently motiveless violence and to develop strongly anti-social attitudes. In the state of so-called epileptic Fugue patients may become disorientated, wander about aimlessly for long periods and commit minor offences.

g) Intoxication Psychosis

The part played by alcoholic intoxication as a potential cause of crime has for many years been a favourite subject in criminology. *Drink* has important social as well as psychological and psychiatric causes and consequences. The criminaltiy of the children of alcoholic parents, too has often been discussed. *Burt* found *parental alcoholism to be three times as frequent among his delinquents as among his control groups. Norwood East* regards alcoholism *as an indication of a psychopathic inheritance. Case histories of notorious criminals often contain references to alcoholism of the father.*

The above mentioned facts regarding alcoholism have been statistically elaborated by *Gluecks* in *'Unravelling'* p. 95, 98, 110, *East* in *'The Adolescent criminal' p. 55 and E.G. George Godwin in 'Peter Kurten'* Lond. 1938, p. 26.

Functional Psychosis

Some of the Functional Psychosis are :

a) Paranoia.
b) Paraphrenia.
c) Schizophrenia.
d) Manic. (depressive psychosis) as discussed in detail by *H. Mannheim* in his *Comparative Criminology.*[19]

Some of the chief characteristics of the *neurotic psychopath* as described by *Hermann Manheim,* are :

i) *Affectionlessness or lack or relations of others.*

ii) *Disregard of community group standards with anti-social behaviour.*

iii) *Apparent absence of guilt feeling, and failure to learn by punishment.*

iv) *Emotional liability and Immaturity,* leading to short circuit reactions with immediate pleasure, satisfaction or unpremeditated violence.

v) *A lack of forsight.*

vi) *Continued sexual experimentation, immaturity* or *aberration.*

vii) *Undue dependence on others.*[20]

Kurt Schneider, David Henderson and *Glover* are some of the eminent criminologists, who have contributed a lot to this theory.

Psychiatric/Pathological Theory can be better understood by going through the selected literature mentioned below :

1.	D.K. Henderson,	*Psychopathic States,* New York, 1939;
2.	H. Cleckley,	*The Mask of Sanity,* St. Louis, 1941;
3.	Edward Glover,	*The Roots of Crime,* Section 4;
4.	N. East,	*Society and the Criminal,* Chs. 8, 14;
5.	Barbara Wootton,	*Social Science and Social Pathology,* Ch. 8;
6.	William & Joan McCord,	*Psychopathy & De linquency,* New York,Lond, 1951;
7.	Winfred Overholser,	*Poineers in Criminology;*
8.	Max Grunhut,	*Probation and Mental Treatment,* Lond. 1963;

9 John Bowlby, *Personality and Mental Illness.*

Conclusion :

The supporters of *Psychiatric theory of criminality have reached the conclusion that commission of every crime is indicative of an organic or functional disease or suffering in the delinquent. According to this view, criminal propensity is not inherited but it is an internal pathological development in the personality of the criminal.* Therefore, in view of the above discussion, the exclusively determinant and operative factor in the criminal behaviour of a person is the *psychiatric abnormality, mental disorder* and *hypochondriac disease.* Since criminal liability cannot be imposed on the delinquent therefore, there is no place for punishment.

Psychological Theory.

This theory is represented mainly by *Sigmund Freud* (1856-1939). According to this theory, an infant is considered as a young animal, with many inherent and instinctual bad characteristics, such as *selfishness, violence* and other *anti-social ambitions.* During the process of development he has to learn that these ambitions cannot be realised in a civilized human society. His *instincts* (the id) are disciplined in accordance with his developing sense of reality (the ego). The *ego* operates on the basis of simple *Expediency,* not in the strict sense of *Right and Wrong.*

The limitations in the form of *Right* and *Wrong* or *permitted* and *prohbited* are imposed on the instinctual ambitions (the id), later on by the society through its system of socialy values. The sense of these standards or traditional ideas, introjected by parents during childhood, or by society, forms an organ within the mind called *supper-ego,* it roughly corresponds to what we say *conscience.*[21]

At this stage, most of the wishes are rejected because they are wrong or prohibited, not merely because they are in-

expedient. This leads to considerable inner conflicts and strains between *id* and *super ego,* tries to create consistency and compatibility by reconciling between the desires of the *id* and the checks of the *super-ego.* The strength of *ego* varies from individual to individual.

The moment the conflicting frustrated force of the *id* outweighs the grips of *super-ego* (traditional conscience), the function of *ego* is disturbed, the man violates social values and the crime is committed. The difference between a criminal and law-abiding person is that the former's *ego* is comparatively weaker and is unable to maintain the balance between instinctive desires and traditional conscience.

Sigmud Freud[22] and his followers formulated in this connection *Psycho-analytical Theories* which form a vast *literature.*

Following books are of much significance for study of this theory :

a) *Psycho-analytical Theory of Neurosis,* by Fenichel, O. (1945).

b) *Theories and Structure of Psycho-analysis,* by Healy, W.

c) *Psycho-analysis Today,* by Lorand, S. (1948)

d) *Psycho-analysis,* by Glover, E. (1949)

e) *Freud and the Post Freudians,* by Brown, J.A.C. (1961)

Burt[23] and *Bowlly*[24] in their books, have put another interpretation to this theory in the terms of Excess or Deficiency in General Emotionality.

According to *Henry Goddard* also, *feeblemindedness,* that is low-grade mentality, is the greatest single cause of delinquency and crime. A feebleminded person is known to be sure to commit crime.

Healy[25] *& Bronner* have also explained the psycho-analytical theory and considered *(Major Emotional Dis-*

analytical theory and considered *(Major Emotional Disturbances* as the actual cause of most of the offences.

Adler's theory of *Inferiority complex*[26], *Alexander's* theory of *Neurotic character*[27] and *Stott's* theory of *Psychological Breakdown*'[28] are also various interpretations of the same view.

Aitchhorn, in this connection, conducted a study of delinquent children. *William Healy* and some other criminologists opine that when a child comes to attain the age of puberty, he wants self assertion and liberation from the checks and limitations imposed on him by the family and the society. If these instinctual urges and desires are suppressed, and they find no way for their fulfilment, he feels dejected and frustrated. Consequently, he reacts against the commands of *traditional conscience* super ego) and tries to comply with his urges up to his satisfaction, which amounts to criminal behaviour.

All schools of psychological theory consider a criminal as a *passive creature,* who is the victim of general and personal circumstances in which he was brought up. They have justified or explained away the crime by introducing the concept of *Psychological determinism,* that is to say, a man is free neither in his will nor in his action, due to the psychological factors which act on a predetermined pattern.

They conclude that *Temperamental defect* and *Feeblemindedness* are the main causes of a criminal conduct.

Socialogical Theory :

Many of the western thinkers have treated *crime* as a product of the forces at work in the society. They include *criminality* among the other *socio-economic phenomena.* According to this school, as *Jones, H.* Says, *poverty, unemployment, mass communication media, drunkenness, gambling, decline in religious observance,* etc. are the crime producing factors in all human societies.[29]

Crime is committed neither due to bioligical factor nor due to psychological factors, but it is prompted simply as a social behaviour, under the influence of socio-economic conditions prevailing at the time. Many theories have been formulated by different scholars to interpret this idea.

Social Learning Theory[30] of *Sutherland* states that a person is neither good nor bad on the basis of his biological potentials. He learns criminals behaviour through his contacts and differential associations with other people, during the process of *socialization.* The society provides all the changes, good and bad and the criminal adopts either of them on account of suitability and favourability.

Anomic Theories of *Durkheim,*[31] *Merton*[32] and *Cohen*[33] involve *normlessness* or *lack of social standards and controls.* They state that individuals are taught by their society that certain kinds of ambitions (such as acquisition of wealth, high level of comfort and luxury or specific standard of conspicuous expenditure) are the needs and inevitable necessities of social life. Then all the legitimate channels towards the realization of these objectives are blocked; hence, they are tempted to adopt illegal modes and criminal behaviours.

*Durkheim says, no living bei*ng can be happy or even exist unless his needs are sufficiently proportioned to his means.

When the concept of need and necessities is extended over all the luxurious ambitions, taught by the society, the man commits crime, considering it as *his means* to which his so-called needs are to be proportioned.[34]

According to *Marxist Theory,* most of the criminals are found in the lower socio-economic classes, because crime is the result of poverty in itself.

Bonger,[35] following the *Marxists,*[36] states that crime like all other social phenomena, is a by-product of the economic system.

Fiedrich Engels, too, considers crime as a futile and primitive form of individual protest against the inequities of society.[37]

The capitalistic economy, to them, is the most relevant factor for the causation of crime, and the social conflict arising from a basic incompatibility of economic interests between different classes is the actual basis of criminality.

Jones, H. in his book, *Crime and the Penal System* Lond. 1968, has given the details of the sociological theory of criminality.

This school is also termed as *French School, Lyon School* or *Environmental School* and the head of it is *A. Lacassagne,* the forensic medicine specialist (1843-1924) as stated by *Hurwitz. S.* in his book *Criminology* Lond. 1952 (P-40).

Ecological Theory :

This theory of criminality was introduced by *Chicago School,* led by *Prof. R.E. Park* and *E.W. Burgess* who applied to human social affairs the key biological concept of 'Ecology'. It is based upon the observation of the *wide disparity in the crime rates in different localities.* It was introduced in the *middle of the 19th century and reached the peak of its popularity in the period between the two* world wars.[38]

F.M. Thrasher[39] and *C.R. Shaw*[40] the two well known criminologists of this school, after their extensive researches, have concluded that most of the delinquents and criminals are found in the *central districts, factory areas* and in *bad housing conditions.* In these areas, there are many pathological environmental factors at work, but they lay great emphasis on *poverty, dissatisfaction* and *appetite for a higher standard of life,* present in their other inhabitants.

Some *British criminologists* have also made ecological studies of some particular cities, such as *London, Liverpool, Bradford, Cambridge, Coventry, Birmingham, Glasgow* and *Croydon,* and they have found them having high delinquency rates.

According to this theory, living in certain areas and in some particular communities becomes cause of adopting criminal behaviour due to the environmental conditions prevailing there.

Belonging to certain families and being brought up in certain *'Broken homes'* are also very decisive factors in the formulation of criminal behaviour.

In case of some families in which familial inheritance, whether specific abnormalities of physique, intellect, temperament or of actual criminal tendencies, is prevalent, criminality becomes an innate and inherent feature of human character. Whereas in case of *'Broken homes'* in which one or both of the parents are absent through death, desertion or divorce, delinquency often has a higher rate as compared to other homes.

Therefore, the rate of crimes differs on the basis of this ecological factor.

Following ecological factors are pointed out by *Hermann Mannheim,* which influence the commisssion of crime according to this theory :

1. *Density of Population* Greater density of population means greater criminality.
2. *Mobility of Inhabitants* People who move and in particular those who move frequently, are more likely to commit offences.
3. *Migration and Immigration* This factor has affected not only the rate of crimes, but the types of crimes also. Surveys conducted in UK and USA have proved this fact.

4. *Urbanziation and Urbanism* The trend of migration from rural areas to towns, and the specific way of life resulting from this trend has also caused a great influence on the rate of criminality.

5. *Bad Housing Conditions* Modern study of delinquency areas has established the fact that more crimes are committed by the persons inhabiting bad conditioned houses.[41]

Lunden[42] and *Gillen*[43] have also supported these views after constituting an extensive and comprehnsive research from ecological view point. Moreover, *Jones, H.,* discussing the ecological theory of criminality, also appreciates the idea that the rate of crimes differs from locality to locality on the basis of the above mentioned determinant factors.[44]

REFERENCES

1. Jones, H. *Crime and the Penal System,* p.l.
2. Turner, J.W.C. *Kenny's Outlines of Criminal Law,* pp. 5–6.
3. Hurwitz, S. *Criminology,* p. 37
4. Ibid, pp. 38–39.
5. Ibid, p. 112.
6. Ibid, p. 39.
7. Mannheim, H. *Comparative Criminology,* Vol. I, p. 214.

7-A Ellis, H. *The Criminal,* p. 58.

8. Charles Goring, *The English Convict,* p. 162.
9. Jones, H. *Crime and the Penal System,* p. 26.
10. Hurwitz, S. *Criminology,* pp. 116–117. . . . . .
11. Mannheim, H. *Comparative Criminology,* Vol. 1, p. 229.

11-A Norwood East, *Society and the Criminal,* p.85

12. Ibid, pp. 231–233.
13. Hurwitz, S. *Criminology,* p. 139.
14. Ibid, pp. 121–122.
15. Ibid, pp. 118–120.
16. Ruth Shoule Cavan, *Criminology,* p. 319.
17. Jones, H. *Crime and Penal System,* p. 57.
18. *Comparative Criminology,* Vol. I, pp. 243–246.
19. Ibid., pp. 250–253.
20. Ibid., p. 264.

21. Mannheim, H. *Comparative Criminology,* Vol. I, p. 313.
22. Jones, H. *Crime and the Penal System,* pp. 46–47.
23. See – *Young Delinquent ;*
24. See – *Forty Four Juvenile Thieves; & Maternal Care & Mental Health;*
25. See – *New light on Delinquency and its Treatment,*
26. Jones, H. *Crime and the Penal System,* p. 53
27. Ibid., p. 53
28. Ibid.
29. Ibid., p. 61
30. See – *Principles of Criminology,* chap. IV
31. See – *Suicide.*
32. See – *Social Theory & Social Structure.*
33. See – *Readings in Jurisprudence & Legal Philosophy,*
34. Mannheim, H. *Comparative Criminology,* Vol.. II, p. 501.
35. See – *Criminality and Economic Conditions.*
36. Mannheim, H. *Comparative Criminology,* Vol. II, p. 500.
37. Ibid.
38. Ibid., p. 532
39. Thrasher, F.M. *The Gang,* 1937.
40. i) Whaw, *Car.* Delinquency Area, 1929.
    ii) Shaw, C.R. & Mckay, H.D., *Juvenile Delinquency and Urban Area,* 1942.
41. *Comparative Criminology,* Vol. II, p. 532.
42. Cohen, M.R. &Cohen, F.S. *Readings in Jurisprudence & Legal Philosophy,* p. 303.
43. Jillen, J.L. *Criminology and Penology,* p. 57.
44. Crime & The Penal System, *pp. 79–90.*

CHAPTER – II

ISLAMIC PHILOSOPHY OF HUMAN NATURE

All the theories of criminality, propounded by the Western Criminologists, originate from the distorted vision of *human nature,* based on *'Trial and Error Method'.* None of them, on the basis of human orientated knowledge, that is still undergoing the critical, experimental and evolutionary process to achieve competence, perfection and liberation from errors, can trace the causes of defiance in human nature with certainty.

To solve the problem, we are obliged to conduct an extensive study of following issues :–

1. What is *Human Nature,* and can it be regarded inherently as criminal?
2. Whether the behaviour of the Criminal is pre-determined or is he free in his acts of *Commission* and *omission?*
3. Whether an act of offence, committed by a person suffering from any mental abnormality or psychic disordeer, creates any criminal liability or not?
4. Upto what extent the criminal behaviour of a delinquent is affected by socio-economic order of a society?

The answers to these questions would automatically lead us to understand the basic postulates of *"Islamic Theory of Criminality".*

These questions have been separately discussed in various chapters.

The Islamic terminology, 'Al-Fitrah' (الفطرة) means *creation* (الخلقة)[1] and signifies the concept of human nature. An eminent muslim scholar, *Imam Raghib Asfahani* says :

الفـطرة او فطر وهو ايجاده الشئى وابداعه على هيئة مترشحة لفعل من الافعال

(Nature – it is to create and originate a thing alongwith an apparent capacity of performing any act.)[2]

Thus, human nature is nothing but the capability and competency of adopting any particular conduct, positive or negative, vested in a person at the time of his creation.

The term 'Fitrah' is literally derived from 'Fatara' (فَطَرَ) that means to open and as under :

It is appreciated by Qur'an in the words :–

اَلسَّمَاءُ مُنْفَطِرٌ بِه كَانَ وَعْدُه مَفْعُوْلاً ●

(The heaven shall rend as under thereby; His promise is ever brought to fulfilment)[3]

Fitr (فطر) *and Iftar* (افطار) are also deduced from the same origin which signify eating or drinking at the end of the fast. The action of *Iftar denotes two aspects :*

First is the commencement of new situation by the end of the previous. Previous order before sunset, during fast was the prohibition of eating and drinking, while through *Iftar* the permission was accorded.

This is to bring a new condition into existence as compared to the previous one.

Second is fulfilment of Allah's will because He has ordered the muslims to conclude the fast before the beginning of night.

Therefore, the term 'fatara' (فَطَرَ) or 'fitrah' (فطرة) implies the action which gives existence to a

thing that did not exist previously and thus fulfils God's will.

That's why the creation of human beings is knwon as 'Fitrah'.

Qur'an has elaborated the concept of creation of mankind at many places :

فَاَقِمْ وَجْهَكَ لِلدِّيْنَ حَنِيْفًا فِطْرَتَ اللهِ الَّتِيْ فَطَرَ النَّاسَ عَلَيْهَا لَا تَبْدِيْلَ لِخَلْقِ اللهِ ذٰلِكَ الدِّيْنُ الْقَيِّمُ وَلٰكِنَّ اَكْثَرَ النَّاسِ لَا يَعْلَمُوْنَ ●

(Then set your face upright for religion in the right state, the nature made by Allah in which He has made man; there is no altering of Allah's creation: that is the right path, but most people do not know)[4]

A saying of *Holy Prophet* (peace be upon him) to the same effect is reported by *Answad bin Saree'.*

كل نسمةٍ تولد على الفطرة

(Every child is born on the right nature)[5]

The same is reported by *Jabir bin Abdullah Ansari* in these words :

كل مولود يولد على الفطرة

(Every child that is born conforms to the true path)[6]

Fitrat-e-Saleemah (فطرة سليمه) or the *right path* is vested in the creation of every child. It means that every child is born with the potential of fair thinking and fair doing. The right conduct and expediency is the dominant character of every human nature, and that is the *Rightpath* (الدين القيّم), as mentioned in the Qur'anic verse, whether the child takes birth in the house of a Muslim or that of a Non-Muslim.

A very comprehensive declaration of the *Holy Prophet* (peace be upon him) to the same effect has been narrated by *Abu Hurayrah :*

كل مولودٍ يولد على الفطرة فابواه يهودانه او ينصرانه او يمجسانه كمثل لبهيمة تنتج البهيمة (جدعاء) هل ترىٰ فيها جدعاء

(No child is born, but conforms to the right nature, then his parents make him a jew, or a christian or a magian, as a beast is born entire in all its limbs (or without a defect); do you see one born maimed and mutilated?)[7]

Then the Holy Prophet repeated (i.e. in support of what he said): the nature is made by Allah in which he has made men; there is no altering of Allah's creation: That is the right path (true religion).

Islam has introduced the Doctrine of Unity and Equality of mankind, which also supports the same idea of creation, in the words :

يٰاَيُّهَاالنَّاسُ اتَّقُوْا رَبَّكُمُ الَّذِىْ خَلَقَكُمْ مِنْ نَفْسٍ وَّاحِدَةٍ ●

(O people! be careful of (your duty to) your lord, who created you from a single being).[8]

Another declaration to the same effect is :

كَانَ النَّاسُ اُمَّةً وَّاحِدَةً فَبَعَثَ اللهُ النَّبِيّٖنَ مُبَشِّرِيْنَ وَمُنْذِرِيْنَ

(All people are (basically) a single nation, so Allah raised prophets as bearers of good news and as warners.)[9]

Holy Prophet (p.b.u.h.) addressing the assembled multitude of *Hijjat-ul-Wida,* said :

ايها الناس ان الله يقول يٰاَيُّهَا النَّاسُ اِنَّا خَلَقْنٰكُمْ مِنْ ذَكَرٍ وَّاُنْثٰى وَجَعَلْنٰكُمْ شُعُوْبًا وَّقَبَائِلَ لِتَعَارَفُوْا اِنَّ اَكْرَمَكُمْ عِنْدَاللهِ اَتْقٰكُمْ ـــ

فليس لعربى على عجمى ولا لعجمى على عربى ولا لاسود على ابيض ولا لابيض على اسود فضل الّا بالتقوى الناس من آدم وآدم من تراب الا كل ماثرة او دم او مال يدعٰى به فهو تحت قدمىّ هاتين

O people! God Almighty says: 'O mankind! We created you from a male and female couple and made you tribes and nations so as to be known one from the other. Verily in the eyes of God only the most righteous among you is the most honoured of you.)[10-A]

In the light of this Qur'anic verse,the Prophet continued, no Arab has any superiority over a non-Arab, nor was a white in any way better than a black. The only criterion of superiority and respectability was the element of piety.

All created beings, (He) said, were the off-spring of Hazrat Adam and the very existence of Adam was from dust. Hence all claims to superiority, discrimination and greatness, all demands for blood or ransom, and false traits or trends of rule have been trodden under my feet.[10-B]

After studying this comprehensive quotation, no doubt should remain in any mind regarding the equal, unexceotional and indiscriminatory attitude of Islam towards human beings and their creation. Thus, it is absolutely false and baseless to say that some of the human beings were created with bad natures, or were given birth with inherent criminal tendencies. This conclusion would undetermine the universally accepted idea of unity and equality of mankind and its just and honoured creation. With different inherent natures of human beings, no just, compatible and honourable system of social life can be evolved.

The above mentioned verses and ahadith have clarified the situation by expressing the Islamic concept of human nature. *In view of Qur'an and Hadith, human nature is absolutely free of all bad potentials and wrong tendencies, and no criminal characteristic is inherent in it.*

Qur'an has also very clearly appreciated this fact in *Sura-e-Tin :*

لَقَدْ خَلَقْنَا الْاِنْسَانَ فِيْ اَحْسَنِ تَقْوِيْمٍ ● ثُمَّ رَدَدْنٰهُ اَسْفَلَ سَافِلِيْنَ اِلَّا الَّذِيْنَ اٰمَنُوْا وَعَمِلُوْا الصّٰلِحٰتِ فَلَهُمْ اَجْرٌ غَيْرُ مَمْنُوْنٍ

(Assurdly, we have created man in the best make. Then we render him the lowest of the low, except those who believe and do good so they shall have reward never to be cut off).[11]

It is concluded that man has been created in the best of moulds, i.e. with enormous capability of furnishing the good and achieving the highest degree of excellence and perfection, internally and externally. The fact affirmed by this declaration is that every man is conferred with the best nature. In this principle neither any exemption nor discrimination is possible on any basis. Man is destined to realise the *Moral Ideal,* which consists in the triumph of moral good and defeat of moral evil. Now man, being free in his struggle, if he adopts the path of evil and immorality, he goes to the lowest of the low, and if he adopts the path of righteousness and morality, he gets an endless reward, by attaining the stage of highest human perfection.

All that a man gets is neither under the influence of any inborn characteristic nor due to predetermination, but it is an exclusive result of his own choice and action, whether positive or negative.

This Qur'anic verdict establishes the essential goodness of human nature in contradistinction to the 'ideal Culture, where Man has been conceived to have been born with the stigama of sin, in contradistinction to the positivistic view where Man is supposed to have atavistic reversion towards animalistic behaviour and in contradistinction to the psychological view, where man is presumed to inherit some bad instincts and urges.

Lombrosians and Freudians throw the responsibility of crime on nature, whereas Islam declares that nature is perfectly good and the seeds of criminality are not inborn but self-sown during the life of an individual. The theory of

Inborn criminality advanced by the *Biological school* of criminologists, is absolutely wrong and does not find any place in *Islamic philosophy* of criminality.

It has been very strongly asserted by the *Holy Prophet* in the words :

لا تقولوا خيبة الدهر فان الدهر هو الله

(Don't blame time (nature or fate), Indeed nature itself is God (viz it has been rightly created by Allah).[12]

Through this Hadith, a fundamental Islamic belief is being laid down, that if a person does some mischief or damage, or suffers any form of deprivation, he should not place the burden and responsibility on Nature. Nature (Time or fate) has been perfectly created by Allah, the Magnificent and Merciful. All that a man faces in his life is merely the consequence of his own conduct. No external or internal undesired predetermined compulsion has been imposed upon him to do what he does not like to do or what he likes to do.

Thus the criminal behaviour of a delinquent is neither inherited nor ingrained in his nature. Human nature is good for all purposes and one cannot be immune from criminal liability on the basis of these lame excuses.

The concept of bad human nature or inborn criminality is extremely inconsistent with the basic philosophy and purpose of creation of Man and universe, as expounded by *Qur'an.* From Islam view point, the creation of man and universe is neither accidental nor purposeless. The idea of existence by chance is an express negation of the fundamentals of Islam; because the Existence of Allah, His being the creator of Universe, raising of Holy Prophets, Divine revelations for human guidance, distinction between good and evil, the day of judgement, and the concept of Rewards and Awards: all these basic postulates and beliefs regarding Islamic view of life are altogether shattered by accepting

this concocted explication, self-engineered perversion, and a wilful misinterpretation of the concept.

Man is purposive being and is supposed to realise the highest ideal of moral perfection through a continuous struggle against the vicious and evil forces of life.

Purposiveness of the creation of man has been affirmed by the *Qur'an :*

اَفَحَسِبْتُمْ اَنَّمَا خَلَقْنٰكُمْ عَبَثًا وَّاَنَّكُمْ اِلَيْنَا لَا تُرْجَعُوْنَ

(What did you then think that we (had) created you in vain, and that you shall not be returned to Us?)[13]

Two facts have been clearly established by this verse :

1. Man is not created in vain. The creation of all human beings, without any exception, is for a certain purpose which is to be accomplished during his life.
2. Every man shall be returned to his Lord to meet the consequences of his deeds. Therefore, every person is responsible and accountable for his wordly actions.

As already mentioned, Man has been created with the purpose of pursuing moral ends to achieve the highest stage of perfection. Thus, *Qur'an* explains this view :

وَمَا خَلَقْتُ الْجِنَّ وَالْاِنْسَ اِلَّا لِيَعْبُدُوْنِ

*(And I have not created t*he jinn and the men except that they should serve Me).[14]

اَلَّذِىْ خَلَقَ الْمَوْتَ وَالْحَيٰوةَ لِيَبْلُوَكُمْ اَيُّكُمْ اَحْسَنُ عَمَلًا وَهُوَ الْعَزِيْزُ الْغَفُوْرُ

(Who created death and life that He may try you which of you is best in deeds; and He is the Mighty, the Forgiving).[15]

The same fact has been asserted again, in the context of creation of the Universe.

وَهُوَ الَّذِیْ خَلَقَ السَّمٰوٰتِ والارضَ فِیْ سِتَّةِ اَیَّامٍ وَّکَانَ عَرْشُه عَلَیْ الْمَاءِ لِیَبْلُوَکُمْ اَحْسَنُ عَمَلاً

He it is who created the heavens and the earth in six periods (days) and his dominion (Arsh) extends on the water that He might try you, which of you is best in action).[16]

The object of the creation of man and all that has been brought into existence for him is that he should do good, because it is goodness that Allah loves.

If, as some of the Western criminologists say, some people inherit bad nature and criminal propensities, that's why they are delinquents, then the specific purpose of human creation, manifestation of noble and mean qualities and human evaluation on the basis of their deeds and actions would altogether become a vain and futile exercise on the part of Allah.

The very purpose of creation of the world itself has been stated to be the pursuit of moral good by man.

The whole Universe has also been created for the same object as stated by *Qur'an :*

اَوَلَمْ یَتَفَکَّرُوْا فِیْ اَنْفُسِکُمْ مَاخَلَقَ الله السَّمٰوٰاتِ وَالارضَ وَمَا بَیْنَهُمَا اِلاَّ بِالْحَقِّ وَاَجَلٍ مُسَمًّی

(Do they not reflect within themselves : Allah did not create the heavens, the earth and what is between the two but with truth, and a specific reason).[17]

The term (اَجلٍ مسمی) is usually translated as "an appointed term or stipulated period" but, I have selected the meanings: A specific reason and a certain purpose.

The word 'AJI' also signifies the same meanings in the terminology of *Qur'an.*

مِنْ اَجْلِ ذٰلِكَ كَتَبْنَا عَلٰى بَنِىْ اِسْرَاءِيْلَ اَنَّه مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ اَوْ فَسَادٍ فِىْ الْاَرْضِ فَكَاَنَّمَا قَتَلَ النَّاسَ جَمِيْعًا

(For this reason (purpose) did we prescribe to the children of Israel that who ever slays a soul, unless it be for man-slaughter or for mischief in the land, it is as though he slew all men).[18]

(The words (اَجَلَ) (Ajal) and '(اَجْل)' (Ajl) having one and the same origin, possess identical significance)

After having discussed the unity of the purpose of creation of man and universe, it is of ample significance to describe the relationship between mankind and all other objects of the Universe.

Qur'an holds in this respect, that everything on the earth and all the objects of the Universe have not only been created for Man, but have been made subservient to him, so that every existing body of the universe should be completely harmonious and compatible with the struggle conducted by man to attain the highest moral ideal, which he was created for.

هُوَ الَّذِىْ خَلَقَ لَكُمْ مَّا فِىْ الْاَرْضِ جَمِيْعًا

(He it is who created for you 'for you ur service' O Mankind all that is in the earth).[19]

وَسَخَّرَلَكُمْ مَافِىْ السَّمٰوٰتِ وَمَا فِىْ الْاَرْضِ جَمِيْعًا مِنْهُ اِنَّ فِىْ ذٰلِكَ لَاٰيٰتٍ لِّقَوْمٍ يَتَفَكَّرُوْنَ ●

('O mankind' and He has subjected to you what-soever is in the heavens and watsoever is in the earth, all, from Himself, most surely there are signs in this for those who reflect).[20]

That's why Man has been honoured, dignified and granted superiority over all the creatures of Universe, and is known as اکرم الخلق. *Qur'an* states :

وَلَقَدْ كَرَّمْنَا بَنِيْ آدَمَ وَحَمَلْنٰهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنٰهُمْ مِنَ الطَّيِّبٰتِ وَفَضَّلْنٰهُمْ عَلٰى كَثِيْرٍ مِّمَّنْ خَلَقْنَا تَفْضِيْلًا ●

(And surely we have dignified the children of Adam, and we carry them in the land and the sea, and we have given them of the good things, and we have excelled them by a (high) degree of excellence of most of those whom we have created).[21]

Hence man has been made the vicegerent of God on earth and, as such supreme among all the creatures. Qur'an states : وَاِذْ قَالَ رَبُّكَ لِلْمَلٰئِكَةِ اِنِّيْ جَاعِلٌ فِي الْاَرْضِ خَلِيْفَةً

(And when your lord said to the angels, very I am going to place a vicegerent on the earth).[22]

This was the highest place that man was destined to hold in the whole of creation. Having full regard for the exegetical significances suggested by the commentators in views of this verse, one thing that can be clearly derived and understood from this verse is that it was an allegorical description of the preference and supermacy of man over the whole of the creation of this earth.

Some of the Muslim Scholars have also expounded that the word *'Khalifah'* here refers to the children of Adam i.e. the whole of Mankind :

هُوَالَّذِيْ جَعَلَكُمْ خَلٰٓئِفَ الْاَرْضِ وَرَفَعَ بَعْضَكُمْ فَوْقَ بَعْضٍ دَرَجٰتٍ لِّيَبْلُوَكُمْ فِيْ مَا اٰتٰكُمْ

(And He it is who has made you successors (vicegerents) in the land and raised some of you above others by (various) grades, that He might try to you by what He has given you).[23]

ثُمَّ جَعَلْنٰكُمْ خَلٰئِفَ فِي الْاَرْضِ مِنْ بَعْدِهِمْ لِنَنْظُرَ كَيْفَ تَعْمَلُوْنَ

(Then we made you (their) successors in the land after the so that we may see how you act).[24]

The same concept of *Khilafat--i-Arzi* (Vicegerency in the earth) regarding the humanity as a whole, has been narrated in many other verses. (Se—Surah Younous, V. 73, Fatir, V. 39, AL-A 'raf, V. 69, and 73 An-Namal, V. 62 etc).

The demonstration of the angels making obeisance to Adam, thus has essentially eplicated Man's superiority in the nature and creation. *Qur'n* has reported the fact :

وَاِذْ قَالَ رَبُّكَ لِلْمَلٰئِكَةِ اِنِّيْ خَالِقٌ بَشَرًا مِنْ صَلْصَالٍ مِنْ حَمَإٍ مَسْنُوْنٍ ● فَاِذَا سَوَّيْتُهُ وَنَفَخْتُ فِيْهِ مِنْ رُوْحِيْ فَقَعُوْا لَه سٰجِدِيْنَ فَسَجَدَ الْمَلٰئِكَةُ كُلُّهُمْ أَجْمَعُوْنَ

(And when your Lord said to the angels, Surely I am going to create a mortal of the essence of black and fashioned in shapq. So when I have made him complete and breathed into him of my inspiration, fall down making obeisance to him. So the angels made obeisance, all of them together).[25]

The whole discussion in the light of *Qur'an* and Hadith brings us to several conclusions :

1. The whole mankind has been equally created with an identical nature.
2. The nature of Human Kind is perfectly good. It has been made upon the right path and is basically free of evil and malicious tendencies.
3. There is no variation, exception or discrimination at all to this principle of creation. This signifies the eternal uniformity and equality of human creates.

4. Man, bestowed with the essential goodness of his nature has not been created vainly, but for a certain purpose to be realised in this world.
5. The object for man to accomplish is to attain the stage of highest moral perfection by struggling against the forces of immorolity.
6. The purpose of creating life and death is to manifest and evaluate human beings in view of their deeds and conduct.
7. The purpose of creation of Universe and of all its objects is to provide harmony and compatibility in the human struggle for realization of the moral goal.
8. Mankind has been granted honour, glory, dignity and superiority over all othe1 creatures of the Universe, due to the comprehensive and positive character of its nature.
9. Owing to this supremacy, competence and excellence of human nature and its creation, Man has been made the successor and vicegerent of God on the earth.
10. Thus, None of the human beings possesses bad nature or inherent criminalistic tendencies.

The positivistic (Biological theory of criminality that vehemently negates the honour and dignity of mankind, certainly originates from the large, stretched and exaggerated theory of Human Evolution. An unending remoteness, disparity and inconsistency exists between the view of the apostles of this theory that cannot be harmonized or removed. Right from *Lamarck* and *Charles Darwin and* other commentators like *Deveries,* upto the latest evolutionist, the Dutch, Zoologist, *Adriaan Kor klandt* of the university of *Amsterdam,* the founder of *Thorny Theory,* none has been able to prove the alleged concept with certainty.

Therefore, the whole development of knowledge in this field has been in the direction of *Trial and Error,* whereas, the revealed Divine Guidance, that is undoubtedly certain and definite fore ever has provided the concept of Essential goodness of human nature and nullified the idea of inborn criminaltiy or atavistic reversion of man towards animalistic characteristics.

The question, as to what type of instinctual urges and demands are vested in human nature and under what circumstances a man is supposed to comply with them, is very much concerned with the analysis of human personality. Since man has been created to wage moral struggle, he is capable of scaling the highest perfection of his conduct as well as to sink to the lowest of the low in creation, as it is stated :

(Certainly) We created man in the best make. Then "in consequence of wrong use of his opportunities and free will" We render him the lowest of the low "he himself having destroyed his original purity and goodness". Except those who believe and practice good, so they shall have a reward never to be cut off).[26] This dual capacity for moral success and for moral failure is grounded in human nature, which is absolutely capable to choose either.

Therefore, in order to become acquainted with the existence of various urges and demands, ingrained in the nature of man, it is essential to observe the two aspects of human personality. These aspects are based on two phases of human nature.

i) Potential Nature (فطرت بالقوة)
ii) Actual Nature (فطرت بالفعل)

Potential Nature

It signifies the conscience and urges, ingrained in human soul, regarding the pursuit of highest ideals, on the basis

of which man is known to be *Ahsan-i-Taqweem* احسن تقویم. *These are basic*ally four in number.

1. *Distinction between Vice and Virtue*

Every man possesses an urge and demand in his nature to distinguish between virtue and vice, between good and bad, between moral and immoral and between noble and ignoble. That's why man has been recognising indiscriminately some of the noble ideals, throughout the societies having different standards and traditions. Moreover, the distinction between right and wrong has also been universally acknowledged as the foundational stone for the pursuit of moral perfection. This is because of the potential instinct ingrained in the nature of every human being.

A lot of *Qur'anic* references can be provided in this connection. One of them is mentioned here to appreciate the concept. *Qur'an* states :

وَنَفْسٍ وَّمَاسَوّٰهَا فَاَلْهَمَهَا فُجُوْرَهَا وَتَقْوٰهَا

(And (Human) mind and its perfection. So He intimated to it by inspiration its vice and its virtue).[27]

Vice is the way of evil, that is deviation from good, whereas *Virtue* is the way of good, that is the guarding against evil. It is by avoiding the former and adopting the latter that moral perferction can be attained.

2. Acknowledgement *of existence of God.*

The highest among the noble ideals, ingrained in the potential nature of man, is the attainment of nearness to God and His pleasure and Blessings. Qur'an says :

وَرِضْوَانٌ مِنَ اللهِ اَكْبَرُ ذٰلِكَ هُوَالْفَوْزُ الْعَظِيْمُ

(And best of all is Allah's pleasure and that is the grand achievement).[28]

تَرَاهُمْ رُكَّعًا سُجَّدًا يَبْتَغُوْنَ فَضْلاً مِنَ اللهِ وَرِضْوانًا

(You will see them bowing down, prostrating themselves, seeking grace from Allah and pleasure).[29]

This goal cannot be realised unless the sense of existence of God is grounded in human mind.

Therefore, every child having birth in this Universe, possesses anyhow, the sense and acknowledgement of the existence of the creator in his nature.

This potential awareness of the existence of God is so much common in human mind that in various Un-Islamic, secular and even in Godless societies, people are inclined to acknowledge some powers and forces as *super-natural,* which they are unable to explain by perceptual standards. Although some of the people may not agree with this contention, yet many of the instance happenings, events and adventures of their own life are of such a nature as cannot be interpreted logically and scientifically.

Therefore, they are bound to accept them in terms of *chance* or *supernatural happening.* This acknowledgement sometimes leads them to the conclusion that there exists a super power above the scope and perception of senses and intellect.

This admission is also inherent in human nature, as stated in this Qur'anic Verse :

وَاِذْ اَخَذَ رَبُّكَ مِنْ بَنِىْ آدَمَ مِنْ ظُهُوْرِهِمْ ذُرِّيَتَهُمْ وَاَشْهَدَهُمْ عَلٰى اَنْفُسِهِمْ
اَلَسْتُ بِرَبِّكُمْ قَالُوْا بَلٰى شَهِدْنَا

(And when your lord brought forth from the children of Adam, from their backs, their descendants, and made them bear witness against their own souls: Am I not your Lord? They said: Yes; We bear) 30

The people who do not have much realization of the existence of God, sometimes, when they are confronted with some extraordinary problematic situation, which does not seem to be resolved in ordinary course, are automatically

inclined to commemorate God, the Merciful.

This calling upon God becomes, at that time, an instinctual demand of man.

Qur'an also mentions this fact :

وَاِذَا مَسَّ الْاِنْسَانَ الضُّرُّ دَعَانَا لِجَنْبِه اَوْقَاعِدًا اَوْقَائِمًا

(And when affliction touches a man, he calls on us, whether lying on his side or sitting or standing).[31]

(

وَاِذا مَسَّ الْاِنْسَانَ ضُرٌّ دَعَا رَبَّه مُنِيْبًا اِلَيْهِ

(And when distress affects a man he calls upon his Lord, turning to Him frquently)[32]

This happens only because the sense of realising His existence lies potentially in the nature of man.

In the light of these declarations it becomes very obvious that the confession of the existence of God Almighty is ingrained in the nature of every man. It remains in the potential form, unless it is actualized through proper coaching and education.

3. *Insight of the processes of Mind*

Man is perfectly aware of the processes of his mind. This is the logical result of the first quality: *distinction between vice and virtue.*

This insight is, in fact, the self consciousness, which is the basis of discrimination between man and animal.

Qur'an appreciates this fact in the words :

بَلِ الْاِنْسَانُ عَلٰى نَفْسِه بَصِيْرَةٌ ●

(Nay! man is witness against himself).[33]

It means that man is quite aware of what he desires, thinks and does, and he will remember it till the day of judgement.

Qur'an says : عَلِمَتْ نَفْسٌ مَّاقَدَّمَتْ وَاَخَّرَتْ

(Every soul shall know what it has sent before and held back).[34]

يَوْمَ يَتَذَكَّرُ الْاِنْسَانُ مَاسَعٰى ●

(The day on which man shall recollect what he strove after).[35]

These verses establish the fact that man possesses insight into all the actions of his mind and he will remember them also in the life hereafter. Therefore, the capability of being witness and critic over one's conduct, good or bad, lies itself in one's mind. Thus man himself is competent to alter, amend and reform his behaviour. Nothing can restrain him from doing so. This quality of self-consciousness makes him superior to all other creatures.

4. *Sense of responsibility of Trust*

The moral responsibility, conferred upon man, during the struggle of his life, is very well realized by him. That's why no one can deny the fact of being liable and accountable for the acts, performed voluntarily. Everyone is bound to own the consequence of one's deeds. The persons, emphasizing the philosophy of *determinism* apparently seem to be reluctant to accept the responsibility of their undersireable behaviour, but in fact, they only deceive themselves, because their minds are never satisfied with this *self-created concept of immunity.* The conscience of every person unexceptionally recognises man as a *Moral Agent,* considering this responsibility as a sacred Trust. On the basis of this well established sense, man is naturally inclined to accept himself to be answerable for his acts, whether in the earthly world or in the world thereafter.

This sense is ingrained in the potential Nature of Man as quoted in *Qur'an :*

اِنَّا عَرَضْنَا الْاَمَانَةَ عَلَى السَّمٰوٰتِ وَالْاَرْضِ وَالْجِبَالِ فَاَبَيْنَ اَنْ يَّحْمِلْنَهَا
وَ اَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْاِنْسَانُ ط اِنَّه كَانَ ظَلُوْمًا جَهُوْلًا ●

(Surely we offered the trust (Responsibility) to the heavens and the earth and the mountains; but they refused to undertake it, being afraid thereof; but Man undertook it, he is certainly unjust (to himself, if he does not fulfil his responsibility in respect thereof) and ignorant (in respect of the evil consequences of not fulfilling it).[36]

Here 'Trust' (الامانة) stands for moral responsibility, which is human sense of accountability for all acts of thought and conduct.

This aspect of human personality, as a natural urge, functions to balance his struggle during his life.

The combination of these four urges constitutes the *potential Human Nature.* This is known as (فطرت خلقی) (the created Nature of man) for which *Qur'an* says :

فِطْرَتَ اللهِ الَّتِیْ فَطَرَالنَّاسَ عَلَیْهَا ط لاتَبْدِیْلَ لِخَلْقِ اللهِ ط ذٰلِكَ الدِّیْنُ الْقَیِّمُ

(The nature, created by Allah, in which He has made men; there is no altering of Allah's creation; that is the right path (ie. religion of Islam).[37]

The same is *Fitrat-i-Saleemah* (فطرت سلیمه) on which every child is born, as Holy Prophet (p.b.u.h.) said :

(Every child that is born, 'conforms to the true path which is his nature').[38]

The conclusion of the whole discussion is that the *four urges,* explained above, are always ingrained in the *potential nature of human personality,* man is naturally supposed to comply with positive and noble demands, and to adopt morally an appreciable behaviour in his life. These urges collectively, can be termed as 'The sense of Reality' existing as a potential Force in the mind of every person. It is this which creates distinction between good and evil, or right and wrong.

The sub-conscious mind of man is directly influenced by this force. That's why, at the level of the sub-sonscious,

the noble urges, normally possess dominating and controlling effect, and the moral good is usually recommended by this organ of human mind. Whereas the negative desires can not play much effective role at this stage.

Actual Nature

The *second aspect* of human nature, which is apparently perceived through various desires, is the *Actual Nature.* It corresponds to some materialistic instincts and ambitions which have been prescribed by some of the Western Scholars, representing the *Psycho-Analytical* theory of criminality. They have considered only this aspect and could not appreciate the former. Consequently, their view became biased and unbalanced, which amounted to the distortion of the vision of human nature.

Qur'an while describing the instinctual characteristics of the actual human nature, states :

زُيِّنَ لِلنَّاسِ حُبُّ الشَّهَوٰتِ مِنَ النِّسَآءِ وَالْبَنِيْنَ وَالْقَنَاطِيْرِ الْمُقَنْطَرَةِ مِنَ الذَّهَبِ وَالْفِضَّةِ وَالْخَيْلِ الْمُسَوَّمَةِ وَالْأَنْعَامِ وَالْحَرْثِ ط ذٰلِكَ مَتَاعُ الْحَيٰوةِ الدُّنْيَا ج وَاللّٰهُ عِنْدَهُ حُسْنُ الْمَاٰبِ ●

(The love of desires of women and sons and hoarded treasures of gold and silver and well-bred horses and cattle and tilth, is made to seem air to men; thus is the provision of the life of this world and Allah is He with whom is the good goal (of life).[59]

This verse has affirmed that human beings are bestowed with some propensities, which prompt man in his actions as instinctive urges. These are :

1. Propensity of sexual satisfaction.
2. Propensity of racial preservation.
3. Propensity of monetary gains and hoarding.
4. Propensity of self-regarding (it is directed to collect the power and maintain the status)

Human conduct, determined through these desires and ambitions, that is the *Actual Nature, is known as Self-Regarding conduct,* whereas the instincts and urges ingrained in the *Potential Nature* of man produce the *Social conduct.* The former represents the temptation of the desire, and the latter, sense of the duty. This conflict between desire and duty exists in human mind due to the two fold capacity of human nature.

Man is free to act in compliance of either of these promptings. A regular human conduct means to choose any specific direction of act, which is not possible except by overcoming the existing conflict. The conflict can be overcome in *five ways :*

1. To follow the urges of potential Nature by neglecting the other nature completely.
2. To follow the urges of Actual Nature by neglecting the former completely.
3. To develop the Potential Nature and enable it to control the other nature.
4. To develop the Actual Nature and enable it to control the former.
5. To create such balance between the two as allows none of them to dominate the other.

The *first* is not appreciated by Islam. Because it leads to an extreme, that is *Rahbaniyyah* (رهبانية).

The *second* leads to complete destruction of human personality. Therefore, it is also *disapproved.*

The *fourth* is directed and inclined towards the negative perspective of the personality which can amount to moral decay, hence it is also *unacceptable* to Islam.

The *fifth* does not provide a profound and protected base for the development of noble values, because the balance means equal chances for the two. It may be appreci-

able in some aspects, but comprehensively, it can not help in achieving the stage of moral perfection. Therefore, in its overall analysis, it is concluded, that it cannot be regarded as perfect and ideal.

The *third* is the only ideal form of overcoming the conflict. That is to develop the *potential nature* into a living force and enable it to dominate and control the *actual nature.* In this way, the noble urges and moral propensities of *Potential Nature* become stronger and more effective in human mind than self-regarding instincts and ambitions of *Actual Nature.* The former, after being developed and strengthened, manages to fulfil the needs and requirements of the latter in a valid form under its control and supervision. Thus the *conflict* between the *sense of duty* and the *temptation of desire* is resolved in a positive form.

Therefore, man is neither disabled to attain the goal of moral perfection, nor is he deprived of the fulfilment of his valid desires and ambitions.

This process of purification of human mind is known as *Tazkiyyah* (تزكية). Qur'an states in this regard.

وَنَفْسٍ وَّمَاسَوّٰهَا ● فَاَلْهَمَهَا فُجُوْرَهَا وتَقْوٰهَا ● قَدْ اَفْلَحَ مَنْ زَكّٰهَا ● وَقَدْ خَابَ مَنْ دَسّٰهَا ●

(And (human) mind and its perfection. So He intimated to it by inspiration its deviating from right and its guarding against evil. Surely he succeeds that who keeps it pure and befails that who corrupts it).[40]

On the one hand, there is excessive love of self Regarding instinctive ambitions in human nature, whereas, on the other hand, there is the urge and propensity of the pursuit of noble ideals. This conflict between the two aspects of human nature is necessary because no moral situation can arise without such set of circumstances. It is only through such conflict that when man overcomes it in the required positive manner, he becomes the attainer of moral perfec-

tion, which is the basis of his superiority over all the creatures of the world.

At the time of the first instance of the creation of mankind, God Almighty made a declaration regarding the vicegerency, being conferred upon *Hazrat Adam,* the first man upon the surface of the earth. *Qur'an* narrates the declaration ;

وَاِذْ قَالَ رَبُّكَ لِلْمَلٰئِكَةِ اِنِّىْ جَاعِلٌ فِى الْاَرْضِ خَلِيْفَةً ط

(And when your Lord said to the angels, I am going to place in the earth one who shall rule (in it being My vicegerent)[41]. At the occasion of this allegorical statement of the preference of man above the creation on this earth, the angels raised a question syaing :

قَالُوْا اَتَجْعَلُ فِيْهَا مَنْ يُّفْسِدُ فِيْهَا وَيَسْفِكُ الدِّمَآءَ ج وَنَحْنُ نُسَبِّحُ بِحَمْدِكَ وَنُقَدِّسُ لَكَ ط

(They said: What! will thou place in it such as shall make mischief in it and shed blood, and we celebrate Thy praise and extol thy holiness? He said: surely you do not know what I know).[42]

The angels had seen only the dark side of the picture. Their observation was confined only to the consequence of the urges and ambitions of the actual nature of man. Therefore, considering man as an *Earner of evil* and a *Shedder of blood,* they could not appreciate his capability of being the *Vicegerent of God* on earth. Infact, man possessed also vast capacity of earning good, due to the inspired knowledge and noble urges, ingrained in his potential nature, but the angels were not perfectly aware of this reality. Propensity of evil there might be in him, but the good was certainly to become preponderant.

Therefore, knowing this situation of conflict in which ultimately the good had to dominate the evil, Allah said, *"Surely I know what you do not know."* It was appreciated that the man had to attain the stage or moral perfection and superiority over entire creation, only through undergoing this conflict of the urges of potential and actual nature. If there was not struggle between temptation of desire and sense of duty, as it was in the case of the angels, because they possessed only the noble instincts, prompting them to perform their religious duties and having no sense of worldly ambitions, then no moral situation would have ever arisen. Without such moral situation, no struggle was to be regarded as an ideal and appreciable endeavour, and, consequantly, man would never have deserved this great honour.

Therefore, man, being moral agent, is free to accept and develop the influence of either of these instincts. What else he adopts, he is supposed to be responsible for that, and if he is deprived of such free conduct, due to some physical or mental disability, his criminal and sinual liability is, consequenlty, suspended. Hence, criminality can not be accepted as an ingrained character of human nature.

NOTES

1. Zamakhshari, *Al-Kashshaf,* Vol. III, p. 377.
2. Asfahani, *Al-Mufradat,* p. 382.
3. Qur'an 73 : 18.
4. Qur'an 30 : 30.
5. *Tafseer Ibn-i-Kaseer,* Vol. III, p. 432 (quoted from Musnad Imam Ahmad)
6. Ibid.
7. *Sahih Bukhari,* Vol. 1, p. 185.
8. Qur'an 4 : 1
9. Qur'an 2 : 213.
10-A. Qur'an 49 : 13.
10-B. Shibli Numani, *Sirat-un-Nabi,* Vol. 1, p. 145.
11. Qur'an 95 : 4, 5, 6.
12. *Sahih Bukhari,* Vol. III, p. 913.
13. Qur'an 23 : 115.
14. Qur'an 51 : 56.
15. Qur'an 67 : 2.
16. Qur'an 11 : 7.
17. Qur'an 30 : 8.
18. Qur'an 5 : 32.
19. Qur'an 2 : 29.
20. Qur'an 45 : 13.
21. Qur'an 17 : 70.
22. Qur'an 2 : 30.
23. Qur'an 6 : 166.
24. Qur'an 10 : 14.
25. Qur'an 15 : 28, 29, 30.
26. Qur'an 95 : 4, 5, 6.
27. Qur'an 91, 7, 8.
28. Qur'an 9 : 72.
29. Qur'an 48 : 29.
30. Qur'an 7 : 172.
31. Qur'an 10 : 12.

32. Qur'an 39 : 8.
33. Qur'an 75 : 14.
34. Qur'an 82 : 5.
35. Qur'an 79 : 35.
36. Qur'an 33 : 72.
37. Qur'an 30 : 30.
38. *Sahih Bukhari,* Vol. II, p. 704.
39. Qur'an 3 : 14.
40. Qur'an 91 : 7, 8, 9, 10.
41. Qur'an 2 : 30.
42. Qur'an 2 : 30.

CHAPTER III

PRE-DETERMINED CRIMINALITY AND HUMAN FREEDOM

In order to decide whether the idea of *"Pre-determined Criminality"* either in *biological, psychiatric, psychological* or in *any other form,* is acceptable to Islam or not, we are positively obliged to study the concept of *Human Freedom.*

Status of Human Acts :

As far as the concept of *Freedom* or *Determinism* of Man in his acts is concerned, it requires keen and serious attention. There is a delicate but very vital distinction according to Islam between *Creation of an act* (خلق عمل) and *performance of an act* (كسب عمل).

The balanced and the popular view of Muslim jurists is that man is neither the *Creator* (خالق) of his deeds nor his actions are divinely *predetermined.* The reality exists between these two positions, as it has been said by the *Theologians* that man's authority is between *Qadr* and *Jabr* (بين القدر والجبر).

Although the acts and deeds in general, like mankind itself, have been indiscriminately created by Allah, yet human beings have not been deprived of their free will and choice regarding commission or omission of their acts. Thus God is the *Creator* (خالق اعمال) of the acts, whereas man is their *performer* and *operator* (كاسب اعمال).

The real status of human action is neither *creation* (قدر) nor *predetermination* (جبر) but it is *free performance* and *attainment.*

Qur'an holds the fact. وَاللهُ خَلَقَكُمْ وَمَاتَعْمَلُوْن

"And Allah has created you and what you make."[1]

This verse categorically declares that God Almighty is the creator of everything, whether it exists in the form of an accountable creature or in that of an act or deed. None of the creatures is out of His dominion and jurisdiction. But one should be very clear on this issue that nothing of this type of creation binds a man to become a criminal or to perform any specific act under a pre-determined fate which is an exclusive coercion, because the legal and normal liability is created on the basis of *Kasab* (performance), not on that of *creation.* That's why a driver, causing the death of a person on the road is held to be liable for his action, although the creator of life and death is Allah, and none else.

THREE BASIC POSTULATES

There are three basic and relevant postulates of Islamic philosophy in this connection :

1. Man has been granted the capability and authority to perform any act, good or bad, which is an essential condition of being adequately rewarded or punished by God Almighty.
2. Man has been bestowed with the sense of discrimination between Vice and Virtue, which is the foremost pre-requisite of his accountability in the life hereafter.
3. Man has been held liable for his acts and deeds, on the basis of Freedom of will and choice, without which the normal struggle would be absolutely inconceivable.

CAPABILITY OF FREE PERFORMANCE

In case of the first postulate, the *Holy Qur'an* proclaims in unambiguous terms : وَمَا تُجْزَوْنَ اِلَّا مَا كُنْتُمْ تَعْمَلُوْن

"And you shall not be rewarded except (for) what you did."[2]

فَالْيَوْمَ لَاتُظْلَمُ نَفْسٌ شَيْأً وَلَاتُجْزَوْنَ اِلَّا مَا كُنْتُمْ تَعْمَلُوْن

"So this day no soul shall be dealt with unjustly in the least and you shall not be rewarded for aught but that which you did."[3]

The same fact has been emphasised vehemently in the following verses : اِعْمَلُوْا مَاشِئْتُمْ اِنَّهٗ بِمَا تَعْمَلُوْنَ بَصِيْر

"Do what you like surely, He sees what you do."[4]

اِنَّمَا تُجْزَوْنَ مَاكُنْتُمْ تَعْمَلُوْنَ

"You shall be requited only (for) what you did."[5]

لَهَا مَاكَسَبَتْ وَلَكُمْ مَّاكَسَبْتُمْ وَلَا تُسْئَلُوْنَ عَمَّا كَانُوْا يَعْمَلُوْنَ

"They shall have what they earned and you shall have what you earn, and you shall not be called upon to answer for what they did."[6]

The fact explained in the verse is, that God's decision of reward and punishment is not, and can never be, capricious, arbitrary and unjust.

It follows the principle that every act, good or bad, is earned and performed by the people themselves and nobody stands answerable for the conduct of others. Here, the concept of Kasab or performance, the exact status of human action, has been mentioned, which can be further understood through the following verses :

مَااَصَابَكُمْ مِّنْ مُّصِيْبَةٍ فَبِمَا كَسَبَتْ اَيْدِيْكُمْ

"And whatever affliction befalls you, it is on account of what your hands have wrought."[7]

اَوَلَمَّا اَصَابَتْكُمْ مُّصِيْبَةٌ قَدْ اَصَبْتُمْ مِّثْلَيْهَا قُلْتُمْ اَنّٰى هٰذَا قُلْ هُوَ مِنْ عِنْدِ اَنْفُسِكُمْ اِنَّ اللّٰهَ عَلٰى كُلِّ شَيْءٍ قَدِيْرٌ

"What, when a misfortune befell you, and had certainly afflicted (the unbelievers) twice as much, you began to say: whence is this? Say: it is (only) from yourselves: surely Allah has power over all thing."[8]

The words *"Say: it is (only) from yourselves"* require a particular attention. Here a prominent Muslim Scholar *Imam Fakhruddin Razi* says in his *'Tafseer-i-Kabeer'*

انكم وقعتم فى هذه المصيبة بشؤم مصيبتكم

"Certainly you have faced this misfortune, as a consequence of your own misdeed (misconduct)."[9]

If the people had not been in the possession of capability, authority and free choice of performance (اختيار كسب) in their acts, God Almighty would not have charged them for their misconduct. تَرَى الظّٰلِمِيْنَ مُشْفِقِيْنَ مِمَّا كَسَبُوْا وَهُوَ وَاقِعٌ بِهِمْ

"You will see the unjust fearing on account of what they have earned, and it must befall them".[10]

وَالَّذِيْنَ اٰمَنُوْا وَعَمِلُوْا الصّٰلِحٰتِ فِى رَوْضٰتِ الْجَنّٰتِ

"and those who believe and do good shall be in the meadows of the gardens".[11]

ظَهَرَ الْفَسَادُ فِى الْبَرِّ وَالْبَحْرِ بِمَا كَسَبَتْ اَيْدِى النَّاسِ لِيُذِيْقَهُمْ بَعْضَ الَّذِىْ عَمِلُوْا لَعَلَّهُمْ يَرْجِعُوْنَ ●

"Corruption has appeared in the land and the sea on account of what the hands of the people have earned, that He may make them taste a part of that which they have done, so that they may return."[12]

وَوُفِّيَتْ كُلُّ نَفْسٍ مَّاكَسَبَتْ وَهُمْ لَايُظْلَمُوْنَ

"And every soul shall be fully paid what it has earned, and they shall not be dealt with unjustly."[13]

وَلِتُجْزٰى كُلُّ نَفْسٍ بِمَاكَسَبَتْ وَهُمْ لَايُظْلَمُوْنَ

"That every soul may be rewarded for what it has earned and they shall not be wronged."[14] لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَااكْتَسَبَتْ

"Every soul gets (the benefit of) what it has earned and gets (the evil of) what it has wrought."[15]

أُوْلٰئِكَ لَهُمْ نَصِيْبٌ مِمَّا كَسَبُوْا وَاللّٰهُ سَرِيْعُ الْحِسَاب

"They shall have (their) portion of what they have earned, and Allah is swift in reckoning."[16]

It has been fully established that all the *Rewards* and *Punishments* to be given to human beings on the day of *Final Judgement,* would be decided appropriately and justly, holding mankind absolutely responsible for its actions, good or evil. Whithout being capable of free performance, and immune from predestined arbitrarily imposed coercive decisions, one cannot be held responsible. Thus no question of adequate and just reckoning can arise.

As it is stated in numerous Qur'anic verses, that every body would be dealt with only on the basis of his own *earning* and *performance* (كسب) and no divine judgement would be passed against any soul it any act not earned by it. Then, how can a person, believing in correctness and undoubtedness of Qur'anic statement, imagine that God Almighty has not conferred the authority (اختيار) and capability (قدرت) of committing or omitting the acts, upon him, knowing that he is going to be made accountable. Moreover, how can a man, on this basis, become entitled to various rewards and punishments, for his worldly conduct.

The same idea has been very beautifully explained in these verses :

اَمْ حَسِبَ الَّذِيْنَ اجْتَرَحُوْا السَّيِّئَاتِ اَنْ نَّجْعَلَهُمْ كَالَّذِيْنَ اٰمَنُوْا وَعَمِلُوْالصّٰلِحٰتِ سَوَاءً مَّحْيَاهُمْ وَمَمَاتُهُمْ سَآءَ مَا يَحْكُمُوْن ●

"Nay: do those who have wrought evil deeds think that we will make them like those who believe and do good, that their life and their death shall be equal? Evil it is that they judge."[17]

مَنْ جَآءَ بِالْحَسَنَةِ فَلَه خَيْرٌمِّنْهَا وَمَنْ جَاءَ بِالسَّيِّئَةِ فَلَا يُجْزَى الَّذِيْنَ عَمِلُوالسَّيِّئٰتِ اِلَّا مَاكَانُوْا يَعْمَلُوْن ●

"Who ever brings good, he shall have better than it, and who ever brings evil, those who do evil shall be rewarded (for) aught except what they did."[18]

Although, divine justice and balance is maintained equally in rewarding for good and punishing for evil, yet in case of righteousness better can be paid. But for a criminal act, penalty will not, and can never exceed the proportionate retribution. That is why, mentioning the reckoning of criminals and wrongdoers, in all the verses, an unusual and extraordinary precaution has been emphasised. This is the law of *Absolute Justice* in God's dealing with mankind, that negates every form of (Zulm) injustice, arbitrariness and capriciousness on the part of Allah.

Qur'an states :

ذٰلِكَ بِمَاقَدَّمَتْ اَيْدِيْكُمْ وَاَنَ الله لَيْسَ بِظَلَّامٍ لِّلْعَبِيْد ●

"This is for what your own hands have sent before and because (it is certain that) Allah is not in the least unjust to the servants (people)."[19]

Declaration to the same effect has also been made in Surah *Al-Anfal* V. No. 51 and *Al-Hajj* V.No. 10. *Qur'an* asserts the distinction between the acts, good and bad regarding their consequences to be met by the persons who perform them :

مَنْ عَمِلَ صَالِحًا فَلِنَفْسِه وَمَنْ اَسَآء فَعَلَيْهَاوَمَا رَبُّكَ بِظَلَّامٍ لِّلعَبِيْد ●

"Who ever does good, it is for his own soul, and who ever does evil, it is against it, and Your Lord is not in the least unjust to the servants (people)."[20]

The basic facts which have been clearly emphasized in all the verses are :

1. Man is to be rewarded only for what he does, not for anything which he has not earned.

2. No one should be dealt with unjustly in the least, in case of rewards and punishments, and no act of God can ever be arbitrary, unjust and capricious.
3. Whatever good or evil a man earns and performs, he becomes accountable for it, because God has conferred full authority and right of choice upon him in order to make him answerable (to Him).
4. All corruptions, wrongs and crimes existing in the world are simply due to the behaviour of men who are capable to perform them with their own free choice.
5. Persons struggling for moral goals and those struggling for immoral and malicious goals cannot be regarded at par.
6. No injustice of any kind can be ever possible on the part of Allah in His dealings with His creatures.

PRINCIPLE OF NECESSITY AND EXEMPTION

Because of the law of *Absolute Justice* in Allah's dealing, He has exempted man from criminal as well as sinful liability any unlawful act is committed by him under the state of *extreme compulsion.* This concept is denoted by the *Principle of Rukhsat* (رخصت), which applies to all discomforting specific circumstances arising in human life. The flesh of some animals and other foods and drinks, normally prohibited by the Shari'ah, can be used by a Muslim in order to save his life, in certain grevious situations. *Qur'an,* after mentioning the list of the prohibited animals, creates a very significant exception which enjoys the status of a fundamental legal principle of Islam :

اِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيْرِ وَمَا اُهِلَّ بِهٖ لِغَيْرِاللّٰهِ فَمَنِ
اضْطُرَّ غَيْرَبَاغٍ وَّلَاعَادٍ فَلَا اِثْمَ عَلَيْهِ اِنَّ اللّٰهَ غَفُوْرٌرَّحِيْمٌ ۞

"He has only forbidden you what dies of itself, blood and flesh of swine, and that (animal) over which any other (name) than (that of) Allah has been invoked at the time of its slaughter, but who ever is driven to necessity not desiring, nor exceeding the limit, no sin shall be upon him, surely Allah is Forgiving, Merciful."[21]

The same fact has been narrated in *Surah Al-Anam* V. No. 145, and *An-Nahal* V. No. 115.

Acute Stress :

Three conditions have been imposed upon this principle.

a) (اضطرار) It signifies an extreme state of necessity, which lays an exemption to the normal conditions.

Good Intention

b) (غير باغ) It signifies not desiring to eat for the sake of enjoyment to violate the law of Shariat.

Brief Duration

c) (لا عادٍ) It signifies not exceeding the leave limit of necessary requirement (ضرورت).

The same principle has been expounded in *Surah Al-Mai'dah also :—*

فَمَنِ اضْطُرَّ فِيْ مَخْمَصَةٍ غَيْرَ مُتَجَانِفٍ لِّأِثْمٍ فَاِنَّ اللهَ غَفُوْرٌ رَّحِيْمٌ ●

"But who ever is compelled by hunger, not inclining wilfully to sin, then surely Allah is Forgiving, Merciful."[21]

وَقَدْ فَصَّلَ لَكُمْ مَّاحَرَّمَ عَلَيْكُمْ اِلَّا مَا اضْطُرِرْتُمْ اِلَيْهِ

"He has already made plain to you what He has forbidden you, excepting what you are compelled to."[22]

The above mentioned conditions like *not desiring, not exceeding, state of hunger,* and *not inclining wilfully to sin,*

have been emphasised so that the real situation of necessity and compulsion may undoubtedly be signified. Thus God has removed the burden of sin and criminal liability in such a state of undesirable compulsion, where man cannot act on the basis of his free will and choice, and he is deprived of free discretion while performing a particular act or earning a specific deed..

This is the well-known and profound principle of Sharia'at, which applies to the hundreds of the instances of this nature in human life, that under the state of extreme compulsion, a criminal lninal act, committed by a man, does not create any legal liability and that committing such an act is immune from all kinds of punishments. In the terms of Islamic Penal Law, this exemption is known as *Irtifa-ul-Masuliyyat* (ارتفاع المسئوليت). After having belief in this principle, how is it possible to accept that God has predestined all human actions and made mankind absolutely bound to his predetermined, arbitrary decision? In this condition neither any wilful choice has been left for man, nor is he freely authorised to perform the acts, whether good or bad. This certainly is a more grevious state of compulsion and necessity, in which a man has been placed by his Lord. Therefore, if this hypothesis is accepted as such, it will amount to a big conflict and inconsistency between the tenets of Islam.

Surely, Allah, who is never unjust and unfair in His behaviour, as already stated, cannot punish His creatures for the acts committed by them unwillingly under external compulsion of Divine Decision, against which one can not behave.

CONCEPT OF 'ITMAM-I-HUJJAT' AND DIVINE JUSTICE

The concept of God's justice regarding human responsibility and divine reward has been expressed under another Qur'anic principle. It is stated :

مَنِ اهْتَدٰى فَاِنَّمَا يَهْتَدِىْ لِنَفْسِه وَمَنْ ضَلَّ فَاِنَّمَا يَضِلُّ عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِّزْرَ اُخْرٰى وَمَا كُنَّا مُعَذِّبِيْنَ حَتّٰى نَبْعَثَ رَسُوْلًا ●

"Who ever goes aright for his own soul does he go aright, and who ever goes astray, to its detriment only does he go astray, nor can be bearer of a burden bear the burden of another, nor do we chastise until we raise an apostle."[24]

Three Basic Postulates :

Three basic facts have been narrated in this verse :

i) The advantage of adopting right path as well as dis-advantage of wrong path is one's own responsibility.

ii) There is no concept of vicarious liability in divine reckoning, thus no one will share the burden of the wrong ful acts performed by others.

iii) No one will be punished unless the truth has first been revealed to him through the Prophets. This is, what we say, *Itmam-i-Hujjat* (اتمام حجت). The prerequisite for the imposition of legal liability upon mankind as first fulfilled by God, only then it is held accountable for its conduct.

If God had to reward humanity arbitrarily under a pre-designed scheme leaving the people helpless, then no need would have arisen of raising the Holy Prophets and of divine revelation.

The very idea has been emphasised in another verse :

لَاتَكْسِبُ كُلُّ نَفْسٍ اِلَّا عَلَيْهَا وَلَا تَزِرُ وَازِرَةٌ وِّزْرَ اُخْرٰى

"And no soul earns (evil) but against itself, and no bearer of burden shall bear the burden of another."[25]

This statement again denotes divine justice to be made while dealing with the men, who had performed various acts bearing legal consequences. These unambiguous declarations

of *Qur'an* make the idea of *Determinism* unacceptable to the Muslims.

The principle of اتمامِ حجت can be better understood through another verse :

وَاِذَا اَرَدْنَـا اَنْ نُّهْلِكَ قَرْيَةً اَمَرْنَا مُتْرَفِيْهَا فَفَسَقُوْا فِيْهَا فَحَقَّ عَلَيْهَا الْقَوْلُ فَدَمَّرْنٰهَا تَدْمِيْرًا

"And when we wish to destroy a town, we send our commandment to the people of it who lead lives, but they transgress therein, thus the word proves true against it, so we destroy it with utter destruction."[26]

The fact being narrated is that the destruction of various communities and localities also takes place under a certain consequential process. Allah does not wish people to transgress, for it is plainly stated in 7 : 28, "Allah does not enjoin indecency." and again in 16 : 90, "He forbids indecency and evil and rebellion."

It is not understanable, that on the one hand Allah forbids the people through His Prophets, from committing indecent acts, sins and crimes, and on the other, He, Himself has bound them, through His predestined decision, to earn the evil, and moreover, He also wants to punish them for the acts, in which they were not left with any freedom and authority of commission or omission. This concept is definitely not harmonious with the principle of divine justice. The simple procedure of the destruction of the nations as stated in the verse, is that Allah sends them His commandments to do good, pointing out the right way and discriminating it from the wrong, but as the people are accustomed to lead easy lives, they transgress those commands, and are, therefore, punished.

If all these Qur'anic declarations are based upon truth and reality, then one is bound to believe that man has been granted the capability and authority to perform any act, good or bad, and that the same is an essential condition of being adequately rewarded or punished by God Almighty.

This, we have stated before as the first basic postulate.

This is the only meaning of the words :

وَالْقَدْرِ خَيْرِهِ وَشَرِّهِ مِنَ اللهِ تَعَالٰى

"That the power and authority of earning of good and evil has been conferred upon man by his Lord."[27]

The *third postulate,* that man has been held liable for his acts and deeds on the basis of *Freedom of will and choice,* without which the moral struggle would be absolutely inconceivable, is strictly co-related with the first postulate, discussed above.

SENSE OF DISCRIMINATION BETWEEN VICE AND VIRTUE

In order to have the full glimpse of the subject, *the second postulate,* that man has been bestowed with the sense of discrimination between vice and virtue, which is the foremost pre-requisite of his accountability in the life hereafter, should be clear in one's mind.

It is an obvious fact that unless a person possesses clear sense of right and wrong, and could differentiate between good and evil, he cannot be held liable for his acts. That's why insanity, lunacy, intoxication, coercion and minority are accepted lawful excuses in case of legal responsibility, because insane, minor, lunatic and intoxicated persons cannot fully apprehend the benefits of the good and dangers of the evil whereas a person under coercion cannot fully exercise his free will. Therefore, owing to the insensibility, incompetency and the defective capacities in which the people are unable to distinguish between do's or don'ts, they are exempted from legal punishments.

Therefore, this pre-requisite of human accountability has been already fulfilled, as *Qur'an* states :

وَنَفْسٍ وَّمَا سَوّٰهَا فَاَلْهَمَهَا فُجُوْرَهَا وَتَقْوٰهَا

"And the (human) mind and its perfection, So He intimated to it by inspiration its deviating from good and its guarding (against) evil."[28]

It is through this inspiration that human mind (soul) has become perfect, because the inspiration has made the two ways clear, 'fujur', *(the way of deviation from good)* i.e. the way of evil, and 'taqwa' *(the way of guarding against evil)* i.e. the way of good.

It is by avoiding the former and adopting the latter that moral perfection can be attained. This verse has emphatically expressed the fact that man has completely been made capable to understand and know the good and the evil and to choose either of them on the basis of freedom of his will. The next two verses advance the discussion further by saying : قَدْ اَفْلَحَ مَنْ زَكّٰهَا وَقَدْ خَابَ مَنْ دَسّٰهَا

"He will indeed the successful who purifies it. And he will indeed fail who corrupts it."[29]

These verses clearly indicate that the faculties necessary for human perfection, the sense of discrimination between good and evil, and the authority and capability of choosing either of them, have been provided and that man has been left to strive and struggle freely without any internal restraint or external constraint, so that his personality may be rewarded accordingly in the life hereafter. This sense of the discrimination and faculties of perfection are ingrained in the nature of every man equally, but there are some who make them thrive by their development and other who corrupt them by allowing them to remain concealed, not displaying them to their advantage.

Qur'an has made another declaration to the same

اَلَمْ نَجْعَلْ لَّه عَيْنَيْنِ وَلِسَانًا وَّشَفَتَيْنِ وَهَدَيْنٰهُ النَّجْدَيْنِ ●

effect ;

"Have we not given him two eyes, and a tongue and two lips, and pointed out to him the two conspicuous ways."[30]

The two conspicuous ways (النجدين) are, by general consent of the commentators and according to a saying of the *Holy Prophet,* 'نجد الشر' and 'نجدالخير' i.e. the the *way of good* and *the way of evil.*

Holy Prophet (peace be upon him) said.

يا اَيُّهَاالنَّاسُ اِنَّمَا النجدان نجد الخير ونجد الشر فما جعل نجد الشر احب اليكم من نجد الخير

"O'people: These are the two conspicuous ways, the way of good and the way of evil. The way of evil has certainly not been made more attractive to you than that of the good."[31]

Here, the concept of inherited evil or ingrained evil in human nature has also been clearly negated. Moreover, it is expressly declared that there is no such divine decision and predetermined conclusion that any one should be bound to earn the evil and discard the good. The choice is free and equal. Right and wrong have been unambiguously distinguished from each other and man, possessing all the necessary faculties and capacities has been set at liberty to adopt either of the two. Both ways are pointed out to man and he is at liberty to choose either. The two eyes (V. 8) will enable him to distinguish good from evil, which with the tongue and the lips (V. 9) he can ask, if he cannot differentiate, for himself.

This concept is further supported by another divine commandment :

● اِنَّا خَلَقْنَا الْاِنْسَانَ مِنْ نُّطْفَةٍ اَمْشَاجٍ نَّبْتَلِيْهِ فَجَعَلْنٰه سَمِيْعًا بَصِيْرًا

اِنَّا هَدَيْنٰهُ السَّبِيْلَ اِمَّا شَاكِرًا وَّاِمَّا كَفُوْرًا

"Surely we have created man from a small life germ uniting (itself). We mean to try him, so we have made him hearing, seeing. Surely we have shown him the way he may be thankful or unthankful."[32]

Holy Qur'an, again asserts the fact, stating :

لَا اِكْرَاهَ فِى الدِّيْنِ قَدْ تَّبَيَّنَ الرُّشْدُ مِنَ الْغَىِّ

"There is no compulsion in religion, truly the right way has become clearly distinct from error."[33]

This has become very well established that man has been bestowed with a sense of clear discrimination between good and evil and is free to adopt what he wills. No compulsion, whatsoever, is placed upon him, in order to behave in a criminal manner.

FREEDOM OF WILL AND CHOICE

Now we can easily step towards the *third postulate* directly connected with the first one. The net result, concluded from the whole discussion, regarding the first and second postulate is that man is granted *Freedom of Will* and *choice* in order to perform his acts and deeds and this is the only principle upon which the validity of the entire moral struggle and its reward is based. Otherwise, it would become absolutely inconceivable.

In connection of the *third postulate,* we are confronted with three questions :

i) What is Freedom of Will?

ii) How can it be determined, viewing the concept of Qaza'-e-Qadr (قضاوقدر)?

iii) Does the Holy Qur'an affirm it?

The issue has remained in dispute for a long time between *Mo'tazilah* and *Asha'irah.* The former school was of the view that the man himself was the creator of his acts and God's will had nothing to do with it. They pleaded the *Theory of Absolute Freedom,* whereas the latter viewed that God was the creator of human actions and that man was completely bound to His Divine will and intention. Therefore, they supported the idea of *Absolute Determinism.* This dispute was pacified and reconciled by *Morureedi*

School of Thought, the view of which was ultimately adopted by most of the Muslim scholars and it became the popular and generally accepted view of the Mulsims. This signifies that Man is neither the creator of his acts, nor is he bound by the predestined divine fact, regarding the performance of his acts, good or bad. Man, being *Kasib* (The earner and actor) of his deeds, is absolutely free in his will, choice and intention. He is not bound by any external or internal restraint to adopt a particular conduct of behaviour because this would lead to immunity from every kind of responsibility, resulting in the extinction of the difference between morality and immorality, perfection and imperfection, right and wrong and good and evil.

This is the balanced view, as appreciated also by *Imam Jafor-as-Sadiq* stating :

لا جبر ولا قدر ولكن امرٌ بين امرين فالله خلق الاسباب والمسبّبات ورتب المسببات على الاسباب وجعل لها مدخلا فى وجودها وخلق لها شرائط وجعلها متوفقة بحيث لو لم يتحقق الشرائط لم يوجد المشروطات

There is neither determinism nor absolutism, the fact is in between the two. Allah has created the causes and effects and has composed the effects on the basis of certain causes, which have been made effective. Then, He has created the conditions for the functioning of the causes, which have been made dependent in such a manner, that, if conditions are not fulfilled, the conditioned causes cannot come into existence. (And, therefore, they cannot result into the effect, without undergoing this principled process)."[34]

The whole phenomena of the universe and human behaviour has been based upon the system of cause and effect which are mutually co-related, but are free and independent of any external predestination.

WHAT IS QAZA-O-QADR?

Concerning the first question, it is to be comprehended that "the Freedom of Will" means independence of a man in the choice of motive, will and intention while acting and behaving in various situations of moral conflict, from all kinds of compulsions and restraints externally imposed.

In the light of this explanation, we have to determine the status of Freedom of human will, viewing the concept of *Qaza-o-Qadr.* As it has already been stated, the exact status of human action is neither creation or absolutism, nor predeterminism, but it is free earning and independent performance, that is known as *Kasab* (كسب). Before determining it, the concepts of *Qaza* and *Qadr* should be understood, because of which a lot of confusion has often arisen in human mind.

Qaza (قضاء) means *creation* whereas *Qadr* (قدر) signifies *measure, assessment* and *estimation.*[35]

In *Quran,* the word *Qaza* has been used in the sense of creation.

فَقَضٰهُنَّ سَبْعَ سَمٰوٰتٍ فِی یَوْمَیْنِ

"So He created then seven heavens in two periods."[36]

The word *Qadr* has been used in the sense of measure.

اِنَّا کُلَّ شَیْءٍ خَلَقْنٰهُ بِقَدَر

"Surely we have created everything according to a measure (estimation)."[37]

Although the term *Qaza* is mostly used in the meanings of *Command* and *Decision,* yet by getting related to the term *'Qadr'* it possesses a specific significance, as stated before.

Allama Ferozabadi states in *Al-Qamus :*

القدر محرکة القضاء والحکم

[38]

"Qadr is the incentive of Divine creation and decision".

The same idea has been appreciated in *An-Nihayah:*

القدر محرکة ما قضاه الله تعالی وحکم به من الامور

"That the Qadr is the main incentive of what is created and ordained by God Almighty in respect of various issues."[39]

Qadr, as appreciated in As Sirah is :—

اندازه کرده خدای بر بنده از حکم

Qadr is the estimation and assessment of man, conducted by Allah through His declaration."[40]

On the one hand, *Qaza* and *Qadr* both possess the same and identical expositions, but they are quite distinct from each other in their meanings, scopes and implications.

Qaza signifies the principles of divine creation and will, whereas *Qadr* indicates Human Freedom and Authority. Allah being the creator of every thing and possessor of the keys of 'Ilm-ul-ghayb' (علم الغیب) knows about each and every creature and its conduct, before its coming into existence. *This divine knowldege is in the form of Allah's assessment and estimation regarding the conduct and behaviour of human beings, before they get physical existence and externality in the universe. Thus, on the basis of this premeditation, that is Qadr (قدر) which does not bind man to perform any particular act, God gives his declaration in the form of Qaza.*

Man has been granted with complete freedom of motive, will and intention, and alongwith this full competency and authority he has been sent in the world to earn what he wills, without any external force, coercing him in a certain direction. Since every act and its consequence has to follow a particular process of cause and effect, because this universe has been systematised upon the same principle, thus, even if man is acting freely, his whole conduct can be easily pre-estimated by Allah, through His divine meditations, known as *Qadr* (Taqdeer). This does not place any binding upon human behaviour, and was not meditated for this purpose. It is only a pre-valuation and pre-assessment of human conduct.

which was going to be exposed in the future, on the basis of the perfection and excellence of all embracing and comprehensive divine knowledge of the Creator. We, in our normal behaviour, having the erroneous and dependent sources of knowledge, can perceive any fact, only after it gets external existence and not before it, but if anybody becomes aware of what is going to happen, before the occasion, due to any extra-ordinary and un-usual source of perception, then how can this meditation be regarded as determinant and binding in case of that event. In these days of scientific and technological advancement, hundreds of astronomical, environmental and seasonal events are being predicted, sometimes, decades before, but this pre-estimation and predeclaration by the concerning agencies is never considered to be effective in the normal conduct of the events. If the events happen positively in accordance with the premeditated knowledge then it does not mean that the prior declaration had any binding effect upon their usual course, but only the correctness of the knowledge is verified as established through such manifestations. This can further be understood through a simple example of a teacher, who, through his long and jurified experience, says to a student that he will fail and not be able to qualify the examination, and at the end of the year it does happen. What would be the status of teacher's declaration? Would it be regarded as a determinant factor in the student's failure? No. It only signifies the perfection and unerroneousness of the teacher's estimation. The student failed due to the causes and reasons of his own and nothing of the pre-meditation by the teacher had affected him in his course of educational conduct.

The same is the case of *Qaza-o-Qadr.* Allah, on the basis of His irrefutable divine knowledge, knows what else is going to happen till the day of Judgement and even after it. This divine knowledge existed in the form of *Qadr* and it became the incentive of every divine command and declaration as stated before.

MEANINGS OF GOD'S COMMAND AND HIS WRITING DOWN IN LOH-I-MAHFOOZ

All the human actions going to be performed by them in future with complete free motive, will and intention, in their independent courses, were pre-estimated by the Lord of the universe, and this act of premeditation was altogether independent of any compulsion over man kind. This was the *Qadr* (قدر) in the light of which God Almighty made various decisions and declarations, known as *Qaza* (قضاء). It was never an irrational, unjust, arbitrary and capricious decision. When it is said that every thing happening in the world is according to *Qaza-i-Ilahi* or is already in the knowledge of the Lord and He has written it down on *Louh-i-Mahfooz* (لوح محفوظ) known as *Imam-i-Mubeen* (امام مبین) or *Kitab-i-Mubeen* (کتاب مبین) as stated in numerous verses of the *Holy Quran,* it should never be thought that God has bound mankind, and compelled it to adopt the predestined conducts, through His knowledge or declaration. Thus the faith, that nothing can move without His command, also does not mean such determinism.

The fact being narrated through all of these Qur'anic verses and prophetic sayings is that Allah's knowledge is so perfect, unerring, and comprehensive that even the motion of the most minor article of the universe is already very well known to Him, and whatever act is performed by man is also within the knowing of God before its performance. The words izn (اذن) and command (قضاء) denote only the declaration and exposition of the fact meditated and estimated in the form of Qadr (قدر) and nothing else. That is why, a man possessing free will and complete authority (اختیار), can change his desire and intention and can adopt any other conduct by discarding the former at any stage of his course of behaviour, and no divine authority compels him to undo it. This proves the freedom of human

will. Such change and alteration, if it takes place, is also premeditated by God Almighty. *Qur'an* makes a very clear declaration to this effect.

يَمْحُواللهُ مَايَشَآءُ وَيُثْبِتُ وَعِندَه أُمُّ الْكِتٰب

"Allah abolishes and establishes what He pleases, and with Him is the basis of the Book."[41]

If every thing is predestined and predetermined, and man does not possess any freedom and authority in his conduct, then no question of abolition and subsequent establishment does arise, because this would amount to unprofoundness of God's intention. Since every declaration by Allah is made on the basis of *Qadr* (estimation of human conduct), if a man according to His knowledge has to adopt a specific behaviour, and subsequently, exercising his free will and authority divorces himself from the former conduct and follows the second, the first is known to be abolished and the second established, through his declaration.

Sheikh Abul Haque Dehlvi, says in this context :

فالمحو والاثبات اشارةٌ الى القدر وعنده ام الكتب اشارةٌ الى القضاء

"That the abolition and establishment indicate the Qadr whereas the basis of the Book (ام الكتب) signifies the Qaza."[42]

So *Qaza* is mainly related to Allah, and Qadr, to human beings, and as it is mentioned above, Qadr is the basis and incentive of *Qaza;* therefore, the principle of *Qaza* and *Qadr* itself recognises the idea of human freedom.

Imam Raghib Asfahani has narrated an incident in this connection. He states :

قال ابوعبيدة لعمر لما اراد الفرار من الطاعون بالشام : أتفر من القضاء

؟ قال افر من قضاء الله الى قدر الله

"Abu Ubaidah asked Umar, when he intended to leave Syria due to plaque, "Are you running away from Qaza"? Hazrat Umar replied, "I am moving from Allah's Qaza to-

wards His Qadr."[43]

Hazrat Umar's *statement clearly indicates the freedom* of will and authority to escape from any curse inflicted upon man by God Almighty.

Moreover, it can obviously be inferred that the free course of human action, completed in all respects is premeditated, from its beginning to its end, by the knowledge of Allah which constitutes the *Qadr.* Therefore, the *Qadr* can absolutely be regarded as the outcome of human freedom and *Qaza* (The divine declaration) is always based upon it. It is quite clear that unless *Qadr* is constituted completely, *Qaza* never comes into existence.

Any change and alteration can be entertained by *Qadr,* due to variances occurring in human conduct at different times.

Some of the Muslim scholars have appreciated that *Qadr* is the foundation and *Qaza* is the construction based upon it. This statement is also supported by *Allamah Kirmani* as quoted in Nihayah (النهاية) and Majma'-ul-Bihar (مجمع البحار). *Shaykh*[41] in the chapter (الايمان بالقدر) states, that it is an established and certified fact, that in every person there is a quality which inclines him towards committing or omitting any act or to detract from an act after having intended and desired to perform it. The existence of this characteristic in man is as certain and definite as the existence of other physical qualities, i.e. hearing and seeing etc. This human quality is known as *Freedom* and *Authority.* Thus, the acts, originally created by Allah, come into actual existence only due to the performance (كسب) of a man, which is exclusively motivated by his free will and choice, an not by any other arbitrarily predestined decision.

An eminent Muslim Jurist, *Mullah AliAl-Qari* states that the *Qadr* (Divine Estimation) is the real base of divine declaration (قضاء), whereas the *Kasab* (كسب)

or man's performance with his free discretion, is the actual cause, with reference to which every thing is to be determined.

He further appreciates :

ان القدر فی حق العباد واقعٌ علی تدبیر الربوبیة وذلك لا یبطل تکلیفهم العمل بحق العبودیة

"The Qadr in connection with people has taken place simply on the basis of Divine Estimation, and therefore, it does not remove the liability of the commission of acts from human beings."[44]

In case of human actions, both *creation* (خلق) and *preformance* (کسب) are combiend in such a manner that the *creation* has become the Real Cause of an act, whereas the *performance,* its actual cause. *Real cause* (سبب حقیقی) means the basic reason of coming into existence of an act, not with any particular reference to a person, and *actual cause* (سبب واقعی) means the decisive reason of giving effect to an act. Thus *creation* is an act of God, and *performance* the act of man. Therefore, human performance, originated from free will and intention is the only means to actualize and externalize the divinely created acts. The relation between these facts, is, that Divine Creation is known as *Qaza,* which is exclusively based upon Divine Estimation termed as *Qadr,* and it is only to meditate and know the free performance of human acts with reference to their own causes and effects, before the time of their actual existence. Nothing in this process binds anybody to earn criminal or non-criminal behaviour.

The concept of combination of two capacities of preferences in an act i.e. *the creation by God* and *performance by man,* does not make it complicated. It is very well understandable that in many cases the same fact is referred to various directions due to the variance of its aspects, as in the case of land. According to Muslim faith, it is owned by Allah in respect of its *creation,* whereas it is owned by man

in respect of its *use and possession.* Similarly the two capacities of human act are combined in such a way that no confrontation does arise between them. Therefore, it is clearly stated in a very reliable and authentic book on the subject of Islamic Theology, *Sharh Aqaid Nasfi,* written by *Allamah Sa' d-ud-Din Taftazani :*

فالفعل مقدور الله تعالى بجهة الايجاد ومقدور العبد بجهة الكسب

"The human act is within the jurisdiction of Allah, as regards its creation, and within the jurisdiction of man, as regards its performance."[45]

Thus the unification of creation (خلق) and performance (كسب) does not create any confusion or misunderstanding, if they are visualized in their independent perspectives.

INTERPRETATION OF HOLY PROPHET

The same question arose in the minds of the companions of Holy Prophet (peace be upon him), when He said that the dwelling of every person, either in hell or heaven, had been already written. It is reported by *Hazrat 'Ali* that the companions asked spontaneously :

يارسول الله افلا نتوكل على كتابنا وندع العمل

"O Holy Prophet (peace be upon him) should not we trust on whatelse has been written and leave the efforts".[46]

At another occasion they asked, as narrated by *Abd-ullahbin-Amr :*

فيم العمل يارسول الله ان كان امرٌ قد فرغ منه

"What is the status and necessity of legal act, if every thing has already been decided?"[47]

The object of the question was to understand the real philosphy embodied in the idea of *Qaza'-o-Qadr,* because it was very obvious that if every decision had already been

made arbitrarily, then what would be the use of performing legal duties. Holy Prophet (peace be upon him) explained the idea at various occasions in a very express and unambiguous manner.

He said, according to *Abu Hurayrah :*

جف القلم بما انت لاقٍ

"O Abu Hurayrah. The pen (Al-Qalam) noted down (on the Louh-i-Mahfuz) only what you were going to earn (in your own free capacity).[48]

It means that what else was going to be performed by the people, with their free will and choice, that was foreseen by Allah and He declared only those acts and their consequences, whether earthly or etherial, without affecting the freedom of human behaviour. Our view point is further supported very strongly by another prophetic saying, that *the writing of Qalam or Qadr is nothing but a simple narration and description of the facts and events, which had already happened and which had to take place in the future,* therefore, the declaration simply to this effect is called *Qaza-i-Ilahi.*

QAZA'-O-QADIR – A DESCRIPTION OF THE EVENTS OF PAST AND FUTURE.

It is reported by 'Ubaadah-bin-Samit, that Holy Prophet (peace be upon him) said :

ان اوّل ما خلق الله القلم فقال له اكتب قال ما اكتب قال اكتب القدر

فكتب ما كان وما هو كائن الى الابد

"Surely, first of all Allah created the Qalam and asked it ot write. It said, "what should I write", Allah said, "write down the Qadr". Then the Qalam noted down what had happened before and what was to happen in future till the end of the world."[49]

The hadith clearly shows that nothing was predetermined and arbitrarily decided. All that came down through the writing of *Qadr,* was only a pre-meditation and prevaluation of the universal events and human behaviour, which had to take place independently in their normal courses of action. God had, in fact, created the capability of foreseeing the events of the past and the future, in the *Qalam,* and therefore, it noted each and every thing down on the basis of premeditation.

It can also be a figurative illustration of Divine Knowledge, but we are not supposed to discuss this issue at this place.

The same comprehensive description of the events of past and future has also taken place in the life time of *Holy Prophet* peace be upon him) during his addresses at various times :

Hazrat 'Umar reports :

قام فينا رسول الله مقاماً فاخبرنا عن بدالخلق حتى دخل اهل الجنة منازلهم واهل النار منازلهم

"Holy Prophet (peace be upon him) once narrated to us, standing at a place, the facts, events and happenings from the beginning of the universe till the moment of entering of the people to the heaven and the hell (after the day of judgement.).[50]

'Amr bin Akhtab Ansari narrates :

فاخبرنا بما هو كائن الى يوم القيامة

"Holy Prophet (peace be upon him) stated each and everything, which was going to happen till the Day of judgement.[51]

Huzayfah says :

قام فينا رسول الله مقاماً ما ترك شيأً يكون فى مقامه ذٰلك الٰى قيام الساعة الاّ حدّث به

"Holy Prophet (peace be upon him) once stood between us, and (informed about each and everything). There was no single event, which was to take place till the happening of Qiyamah, which He did not narrate".[52]

Imam Ibn-i-Hajar 'Asqalani says in its explanation :

دلّ ذٰلك على انه اخبر فى المجلس الواحد بجميع احوال المخلوقات من المبدأ والمعاد والمعاش

"It implies that He (peace be upon him) reported all the events, happenings and conditions of all the creatures from their origin to their end, including the wordly life".[53]

This was only because Allah had conferred the knowledge of past and future upon His Holy Prophet (peace be upon him), and, thus, he was able to declare the details of what had to happen in the future in the form of events as well as the human behaviour.

The same knowledge was bestowed upon the *Qalam* which wrote down the *Qadr,* that is the detailed pre-estimated description of worldly affairs. It was merely a specific demonstration of Allah's knowledge which stood in the name of *Qaza,* and it was never meant to pre-determine the criminal or non-criminal conduct of human beings. This has been appreciated by *Hadis-i-Rasool,* narrated by *Abdullah bin 'Amr,* whereby Holy Prophet (peace be upon him) declared :

فلذلك أقول جف القلم على علم الله

"That's why I say that the Qalam wrote down in accordance with the knowledge of Allah".[54]

This kind of priority of *Divine knowledge* or *Qaza* over human conduct does not affect it in any way, as stated by the Shaykh also :

لا يكـون سبق القضاء باعثاً على ترك العمل

"The same point of view has been adopted by the orthodox Muslim scholars in their *'Aqaid.*[55]

Allama Taftazani, an authentic theologian, says, discussing the concept of creation of human acts :

فان قيل فيكون الكافر مجبورًا فى كفره والفاسق فى فسقه فلا يصح تكليفهما بالايمان والطاعة قلنا انـه تعالى اراد منهما الكفر والفسق باختيارهما فلا جبر كما انه علم منهما الكفر والفسق بالاختيار

"If it is said that the disbeliever is bound to disbelieve, and other wrongdoers to commit wrong, then how can they be legally supposed to adopt faith and submission (to Allah). We will reply that Allah has perceived Kufr and Fisq from them, only on the basis of their own free choice. There is no determinism, because God simply knew that who would adopt the wrong path (الكفر والفسق) with his own free will, without being compelled or motivated by any prior decision".[56]

It is further stated :

لانـه لو لم يكن للعبـد فعـل اصـلاً لما صحّ تكليفه ولا يترتب استحقاق الثواب والعتاب على افعاله

"If man had not to perform his act with free choice and authority, he would neither have been held responsible, nor entitled to any reward and punishment."[57]

Qaza is not, in fact, an interference with the freedom of mankind in its course of action, but it is simply the Divine meditation of things and affairs, as they had to be in their own routine.

In *Sharh-u-Mawaqif* (شرح المواقف) it is stated with reference to *Ashairah :*

انّ القضاء عند الاشاعرة هو الارادة الازلية المتعلقة بالاشياء على ما هى عليه

"Surely the Qaza, according to Asha'irah, is the divine intention (knowledge), related to things and affairs, as they (had to) exist in their own course".[58]

In the light of above given explanation of the concepts of *Qaza* and *Qadr,* one can easily determine the nature, scope and capacity of human of freedom.

The idea of absolute necessity, that negates the faith in human liberty is also not recognised by Qur'an, as it has

already been substantiated by a large number of Qur'anic verses.

QUR'ANIC AFFIRMATION

Anwering the third question, as to whether Qur'an positively affirms the idea of human freedom or not, I would like to provide further evidence from Qur'an. The Holy Qur'an has affirmed the idea in clear terms through its statement :

اِنَّا عَرَضْنَاالْاَمَانَةَ عَلَى السَّمٰوٰتِ وَالْاَرْضِ وَالْجِبَالِ فَاَبَيْنَ اَنْ يَّحْمِلْنَهَا وَاَشْفَقْنَ مِنْهَا وَحَمَلَهَا الْاِنْسَان اِنَّه كَانَ ظَلُوْمًا جَهُوْلًا

"Surely we offered the trust (responsibility) to the heavens and the earth and the mountains, but they refused to undertake it, being afraid thereof, but Man undertook it, he is certainly unjust (to himself, if he does not fulfil his responsibility in respect thereof) and ignorant (in respect of the evil consequences of not fulfilling it).[59]

It has been unanimously agreed upon by the commentators that 'Trust' (الامانة) stands here for moral responsibility, which is human sense of accountability for all acts of thought and conduct. The acceptance and undertaking of this liability by man, as it is clearly evident from the verse, was absolutely a free action, signifying his unpredetermined capacity. For accepting this offer, the first and foremost pre-requisite is *freedom of choice,* which is the real base of action of a human being, functioning as a moral agent, because without it the purpose and motive behind the offer made by Allah to man is completely nullified and the whole process of offerand acceptance, mentioned in the verse, becomes a fiction. There are some other verses which directly affirm and proclaim the possession of *freedom of will* by Man : وَقُلِ الْحَقُّ مِنْ رَّبِّكُمْ فَمَنْ شَآءَ فَلْيُؤْمِنْ وَمَنْ شَآءَ فَلْيَكْفُرْ

"And say: the truth is from your Lord, so let him who please believe and let him who please disbelieve".[60]

وَاَنْ لَّيْسَ لِلْاِنْسَانَ اِلَّا مَاسَعٰى ● وَاَنَّ سَعْيَه سَوْفَ يُرٰى ● ثُمَّ يُجْزٰئُهُ الْجَزَاءَ الْاَوْفٰى ●

"And that man shall have nothing but what he strives for, and his striving shall soon be seen, then shall be he rewarded for it with the fullest reward."[61]

The same idea has been emphatically stressed in *Surah-i-Hamim :* [40] and *Surah Ad-Dahr :* [3], saying :

"Do what you will. Verily He (God) sees all that you do"
"Surely we have shown him (man) the way (of right and wrong), (now it rests on his will) whether to be grateful or ungrateful."

Here another verse is to be noticed wherein Divine will has been mentioned with reference to the existence of evil. One can say that the existence of pre-destined divine plan about man regarding his earning of criminal behaviour is the determinant factor in human conduct and therefore, man has no choice to act in another manner. This is a misunderstanding that occurred due to not comprehending the complete essence of the verse. The verse is :

وَلَوْ شَآءَ اللّٰهُ مَا اَشْرَكُوْا

"And if Allah had willed (i.e. if it had been God's plan) they would not have taken the false gods"[62]

If one studies the verse deeply, it will become very clear that it has, in fact, negated the philosophy of necessity and determinism, in a rational and critical manner. The verse appreciates that Allah has the power to eliminate evil and to make its earning absolutely impossible for human beings, but He does not interfere when the wrongdoers adopt evil through their free will. This verse does not say that God has assisted the evil. The only thing expressed in it is, that in spite of the fact that Allah dislikes man to adopt evil, He does not impose His will upon him by restraining him actually from the wrong way through the enforcement of the divine

plan, deciding the fate of mankind. If Allah had so compelled human beings according to His will and intention, nobody would ever have been able to commit crime and follow the wrong path. It is the divine decision to leave people to their own choice, without being interfered by predetermined plans and compulsion, so that they may be capable of adopting what they will. This is the only basis of moral and legal responsibility of man as discussed above.

This point has been further clarified in anoter verse which reads :

وَقَالُوْا لَوْشَآءَ الرَّحْمٰنُ مَا عَبَدْنَاهُمْ مَالَهُمْ بِذَالِكَ مِنْ عِلْم

"And they say if it had been the will of (God) the most Gracious, we would not have worshipped these (idols). They have no knowledge thereof, they are only guessing."[63]

This has been established beyond doubt that Islam does not recognize the concept of determined criminality, whether it is inborn and inherent due to some biological factors, or necessarily present in a man due to some psychiatric or psychological factors, as appreciated by Western criminologists.

All theories of criminality, propounded by various Western Schools, can find no place in Islamic Theory, because Islam neither believes in the concept of atavistic reversion of human beings, nor in inherited criminality.

If it is accepted that the sin or crime originates from some biological causes due to which the criminal is compulsorily supposed to possess some furious and brutal characteristics, then no question of free will in adopting a particular conduct does arise. Man can not be considered a moral agent, because he is a born criminal and no choice has been left for him to earn either of the behaviours, on the basis of which the moral struggle and its perfection or imperfection is to be evaluated.

Therefore, any cause of criminality, that makes it determined in any form, is alien to the teachings of Islam. Accord-

ing to Islamic Theory, human conduct is not predetermined in any sense: it is exclusively self earned during his moral struggle since he is free in his acts of commission and omission.

This is the only factor that makes man morally and legally responsible for his acts and deeds.

hence Islamic concept of human freedom completely nullifies the philosophy of pre-determined criminality.

NOTES

1. Qur'an 37 : 96.
2. Qur'an 37 : 39.
3. Qur'an 36 : 54.
4. Qur'an 41 : 40.
5. Qur'an 52 : 16, 66 : 7.
6. Qur'an 2 : 134.
7. Qur'an 42 : 30.
8. Qur'an 3 : 165.
9. Fakhrud-Din Razi, *Tafseer-Al-Kabeer,* Vol. IX, p.82.
10. Qur'an 42 : 22.
11. Qur'an 30 : 41.
12. Qur'an 3 : 25.
13. Qur'an 45 : 22.
14. Qur'an 2 : 286.
15. Qur'an 2 : 202.
16. Qur'an 45 : 21.
17. Qur'an 28 : 84.
18. Qur'an 3 : 182.
19. Qur'an 41 : 46.
20. Qur'an 2 : 173.
21. Qur'an 5 : 3.
22. Qur'an 6 : 120.
23. Qur'an 17 : 15.
24. Qur'an 6 : 165.
25. Qur'an 17 : 16.
26. Iman-i-Mujmal.
27. Qur'an 91 : 7, 8.
28. Qur'an 91 : 9, 10.
29. Qur'an 90 : 8, 9, 10.
30. *Tafseer Al-Kabeer,* Vol. XXXI, p. 183.
31. Qur'an 76 : 2, 3.

32. Qur'an 2 : 256.
33. Sheikh Abdul Haq Muhaddis Dehlvi, *Lam'at-ul-Vol.* 1, p. 145.
34. Ibid., 154.
35. Qur'an 41 : 12.
36. Qur'an 54 : 49.
37. Qur'an 13 : 39.
38. *Lam'at,* Vol. 1, p. 144.
39. (a) Raghib Asfahani, *Al-Mufradat,* p. 407.
    (b) Mullah 'Ali Qari, *Mirqat-ul-Mafateeh,* Vol. 1, p.132.
40. *Lam'at,* Vol. 1, p. 154.
41. *Lam'at,* Vol. 1, p. 144.
42. *Mirqat-ul-Mafateeh,* Vol. 1, p. 125.
43. *Mirqat-ul-Mafateeh,* Vol. 1, p. 130.
44. Taftazani, *Shar'h 'Aqaid Nasfi,* p. 66.
45. *Mishkat-ul-Masabeeh,* Vol. 1, p. 12.
46. *Mishkat-ul-Masabeeh,* Vol. 1, p. 21 (quoted from Tirmazi).
47. *Sahih Bukhari,* Vol. 11, pp. 759-760.
48. *Mishkat-ul-Masabeeh,* Vol. 1, p. 21 (quoted from Tirmazi, Abu-Daud, Musnad Ahmad, Tabrani).
49. *Mishkat-ul-Masabeeh,* Vol. 1, p. 506 (quoted from Sahih Bukhari).
50. *Mishkat-ul-Masabeeh,* Vol. 1, p. 543 (quoted from Sahih Muslim).
51. *Mishkat-ul-Masabeeh,* Vol. 1, p. 453.
52. *Mirqat-ul-Mafateeh,* Vol. V, p. 327.
53. *Mishkat-ul-Masabeeh,* Vol. 1, p.22 (quoted from Musnad Ahmad, Tirmazi, Tabrani, Bayhiqi).
54. *Lam'at,* Vol. 1, p. 152.
55. Taftazani, *Sharh 'Aqaid Nasfi,* p. 63.
56. *Sharh 'Aqaid Nasfi,* p. 64.
57. Syed 'Abdul 'Aleem, *Hashiyyah Sharh 'Aqaid Nasfi,* p. 62.
58. Qur'an 33 : 72.

59. Qur'an 18 : 29.
60. Qur'an 53 : 39, 41.
61. Qur'an 6 : 108.
62. Qur'an 43 : 20.

CHAPTER IV

ISLAMIC INJUNCTIONS AND WESTERN CRIMINOLOGY

PSYCHIATRIC THEORY AND ISLAMIC INJUNCTIONS

This discussion pertains to whether according to Islamic injunctions, a criminal act performed by a person, suffering from mental abnormality or psychiatric disorder, creates any criminal liability?

According to Psychiatric/Pathological Theory, the cause of every criminal act and delinquency is traced in the form of mental disorder, because it supposes that all crimes originate from various kinds of psychiatric diseases. This theory leads us to the inane an contemptuous concept of "determined criminality", which is absolutely unacceptable to Islam. It is to be appreciated that the system of Islamic legislation is based upon following three fundamental principles :

i) avoidance of hardship (عدم حرج)
ii) lessening of difficulty (قلت تکلیف)
iii) exceptional permissibility (رخصت)

Aviodence of Hardship :

The *first principle* has been laid down by Qur'an in the words : مَا يُرِيْدُ اللهُ لِيَجْعَلَ عَلَيْكُمْ مِّنْ حَرَجْ

"Allah does not desire to put on you any hardhip".[1]

The same principle has been further explained in the words :

هُوَاجْتَبٰكُمْ وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّيْنِ مِنْ حَرَجٍ

"He has chosen you and has not laid upon you any hardship".[2]

Lessening of difficulty :

The *second principle* is enunciated in the Holy Qur'an, as : لَانُكَلِّفُ نَفْسًا اِلَّا وُسْعَهَا

"We do not impose on any soul a duty except to the extent of its ability."[3]

The same concept has been given in *Surah Al-Baqarah: 233* and *286,* saying : لَا تُكَلَّفُ نَفْسٌ اِلَّا وُسْعَهَا

"No soul shall have imposed upon it a liability but to the extent of its capacity." [4]

لَايُكَلِّفُ اللّٰهُ نَفْسًا اِلَّا وُسْعَهَا لَهَا مَا كَسَبَتْ وَعَلَيْهَا مَااكْتَسَبَتْ

"Allah does not impose upon any soul a responsibility but to the extent of its capability; for it is (the benefit of) what it has earned, and upon it (the evil of) what it has wrought."[5]

This principle of liability has been appreciated again in these words :

لَايُكَلِّفُ الله نَفْسًا اِلَّا مَا اٰتٰهَا سَيَجْعَلُ اللّٰهُ بَعْدَ عُسْرٍ يُّسْرًا

"Allah does not lay on any soul a burden except to the extent to which He has granted it (the capacity); Allah brings about ease after difficulty."[6]

Exceptional permissibility :

The *third principle* is stated in the words :

إِنَّمَا حَرَّمَ عَلَيْكُمُ الْمَيْتَةَ وَالدَّمَ وَلَحْمَ الْخِنْزِيرِ وَمَا أُهِلَّ بِهِ لِغَيْرِاللهِ فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَّلَا عَادٍ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللهَ غَفُوْرٌ رَّحِيْمٌ ●

"He has only forbidden you what dies of itself, and blood, and flesh of swine, and that animal over which anyother (name) than that of Allah has been invoked at the time of its slaughter, but who-over is driven to necessity, not desiring, nor exceeding the limit, no sin shall be upon him; surely Allah is forgiving, merciful."[7]

That's why, if man consumes a prohibited thing in an extreme state of necessity, no sin lies upon him, and even sometimes it becomes legally incumbent upon him to do it for safety of life.

The only philosophy, explained through the above-mentioned three principles is, that *Shariah* does not want any person to be placed in a state of necessity, and if it happens, then no such legal liability is imposed upon him as it is under ordinary circumstances. The spirit of Islamic law is, that whenever a man is involved in an exceptional discomforting situation, most of the usual liabilities are suspended, because the *Shari'ah* is determined to provide ease to mankind, not difficulty.

The Holy Qur'an states the objective of the raising of the latest Prophet Mohammad (peace be upon him) in the words : وَيَضَعُ عَنْهُمْ إِصْرَهُمْ وَالْأَغْلٰلَ الَّتِيْ كَانَتْ عَلَيْهِمْ

"And He removes from them their burdens and shackles which were upon them".[8]

All the commentators of Qur'an are unanimous that mankind individually and collectively was suffering from many impetuous hardships, violent burdens and unavoidable privations in its religious, legal, social, economic and political spheres, when the Holy Prophet (peace be upon him) was raised to its rescue. He declared : بعثت بالحنيفية السمحة

"I have been raised with an easy and right path."[9]

Another declaration was made to the same effect by *Qur'an :* يُرِيْدُ اللهُ بِكُمُ الْيُسْرَ وَلَا يُرِيْدُ بِكُمُ الْعُسْرَ

"Allah desires ease for you, and He does not desire for you difficulty".[10]

It was stated again :

يُرِيْدُ اللهُ اَن يُّخَفِّفَ عَنْكُمْ وَخُلِقَ الْاِنْسَانُ ضَعِيْفًا ●

"Allah desires that He should make light your burdens, and man is created weak."[11]

Holy Prophet, through these declarations, gave to mankind an easily practicable, reasonable, and extremely pragmaticreligion. He liberated humanity from all kinds of violence, tyranny, injustice and oppression. All cruel and arbitrary burdens and shackles, which were inculcated on the people, due to the monopolistic dominion of man over man, were absolutely eliminated.

He provided the mankind with such an easy system of life as every body could frequently adopt it in all geographical and social environments. He captioned it with the name of *Din-i-Fitrat* (دین فطرت), which meant, that nothing in this system was inconsistent with the demands and requirements of human nature.

In the light of these principles, it becomes very clear that to impose liabilities upon a person, in an unusual state of discomfort, is neither required nor permitted by Islam. The spirit of Islam is to remove all sorts of unbearable burdens from human beings, to enable them to practise Islam easily in their ordinary course of life. That's why, whenever a man is incapacitated, mentally or physically, to act upon his own free will and choice, or is deprived of acting in accordance with his free desire and intention, he remains no more answerable for his deeds. This principle is known as "Exceptional Permissibility." The principle of *Reduction in*

prayer (Qasr Fis-Salat) during the journey denotes the same spirit of Islam. *Qur'an* states :

وَاِذَا ضَرَبْتُمْ فِيْ الْاَرْضِ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ اَنْ تَقْصُرُوْا مِنَ الصَّلٰوةِ

"And when you journey in the earth, there is no blame on you if you shorten the prayer." [12]

Morover, the duty of offering the prayer is even suspended during the condition of insensibility.

The fasts are *postponed* for a man on the journey or suffering from any disease. *Qur'an* declares :

فَمَنْ كَانَ مِنْكُمْ مَّرِيْضًا اَوْ عَلٰى سَفَرٍ فَعِدَّةٌ مِّنْ اَيَّامٍ اُخَر

"But whoever among you is sick or on a journey, then (he shall fast) a like number of other days". [13]

As regards those who are suffering from any perpetual incapacity, due to some constant illness, or who are too old or too weak, the order is not to fast. In its place, if possible, the measure of one man's food is to be given away to a poor man every day, at both times, during the whole month.

It is known as *Fidyah* ( ). *Qur'an* Says :

وَعَلَى الَّذِيْنَ يُطِيْقُوْنَه فِدْيَةٌ طَعَامُ مِسْكِيْنْ

"And those who are able to do it (in place of fasting) may effect a redemption by feeding a poor man". [14]

The same was practiced in the time of *Holy Prophet* and his *companions.*

This kind of *exemption* (رخصت), under specific circumstances, is also granted to a person under an obligation to perform *bath* or *ablution.* That is replaced by *Tayammum* (تیمم) as ordained by *Qur'an :*

وَلَا جُنُباً اِلَّا عَابِرِىْ سَبِيْلٍ حَتّٰى تَغْتَسِلُوْا وَاِن كُنْتُمْ مَّرْضٰى اَوْ عَلٰى سَفَرٍ اَوْجَآءَ اَحَدٌ مِّنْكُمْ مِّنَ الْغَائِطِ اَوْ لٰمَسْتُمُ النِّسَآءَ فَلَمْ تَجِدُوْا مَآءً فَتَيَمَّمُوْا صَعِيْداً طَيِّبًا فَامْسَحُوْا بِوُجُوْهِكُمْ وَاَيْدِيْكُمْ اِنَّ اللهَ كَانَ عَفُوًّا غَفُوْراً ●

(Do not go near prayer or mosque)

"When you are under an obligation to perform a total ablution but (when you are) passing by it until you have

washed yourselves; and if you are sick, or on a journey, or one of you came from the privy, or you have touched the women, and you cannot find water, betake yourselves to pure earth, and then wipe your faces and your hands; surely Allah is pardoning, forgiving."[15]

In this verse a number of instances have been mentioned that throw light on the same principle.

In a state of impurity one is prohibited to enter the mosque, but if there is no way to pass by, except through it, then the order is suspended provisionally. In some specific situations it is incumbent upon the man to have necessary bath but *Sharia'ah* has provided certain exceptions to remove the hardship and create ease.

Therefore, the man, undergoing an ailment, or on journey or having no water available, can replace the *Wuzu* or *Ghusl* by *Tayammum.* If such order had not been accordingly suspended, and theliability imposed had not been removed or substituted by an easier alternative, the people would have automatically become sinful. But Allah, the merciful wnated to forgive and pardon the people.

God has restrained the people to become criminals unwillingly and unintentionally, so that some acts of commission and omission, performed in such states of necessity, may not amount to sin or crime. This was possible only through immunising man from liabilities in these unusual situations of mental and physical incapacities.

Exemption of the Sick :

Qur'an, at various occasions, indicates the same philosophy :

لَيْسَ عَلَى الْاَعْمٰى حَرَجٌ وَّلَا عَلَى الْاَعْرَجِ حَرَجٌ وَلَا عَلَى الْمَرِيْضِ حَرَجٌ

"There is no blame on the blind man, nor is there blame on the lame, nor is there blame on the sick." [16]

It is again mentioned :

لَيْسَ عَلَى الضُّعَفَآءِ وَلَا عَلَى الْمَرضىٰ وَعَلَى الَّذِيْنَ لَايَجِدُوْنَ مَايُنْفِقُوْنَ

اِذَا نَصَحُوْ الله وَرَسُوْلِه

"It shall be no crime in the weak, nor in the sick, nor in those who do not find what they should spend, so long as they are sincere to Allah and His Apostle." [17]

These verses have emphasised that fact very obviously that all the incapable persons, whether their sufferings are temporary or permanent, are immune from criminal and penal liability, so long as they do not intend to violate the orders of *Shari'ah.*

Therefore, if a person lacks mental and rational capability due to some disease, disorder or intoxication, (not through wilful drinking) he is absolutely free from being answerable for his acts. Even with an intoxicated mind one is porhibited to offer the prayers. *Our'an* says :

يَا اَيُّهَاالَّذِيْنَ اَمَنُوْا لَاتَقْرَبُوْالصَّلٰوةَ وَاَنْتُمْ سُكَارٰى حَتّٰى تَعْلَمُوْا مَاتَقُوْلُوْنَ

"O you who believe! do not go near prayer when you are intoxicated until you know (well) what you say."[18]

The intoxicated man has been immunised from this religious duty because of a temporary mental aberration. Then, how can it be considered correct, that a man, suffering from a permanent psychiatric disease and mental disorder, should be held liable for his criminal acts? According to Islamic teachings, offences committed by psychiatric patients do not create active criminal liability. If any mental disease is accepted to be the cause of the commission of crime, then no liability can be placed anywhere, and hence, there remains no justification for any punishment.

By accepting the view of Psychiatric Theory the existence of the whole criminal law, substantive or procedural, becomes irrational and unjustified.

Therefore, the *Psychiatric Theory of criminality,* that is determined to explain away the responsibility of the criminal, is not acceptable to *Islamic Law of Criminology.*

SOCIOLOGICAL THEORY AND ISLAMIC INJUNCTIONS

The next question in this regard is the extent to which the criminal behaviour of a delinquent is affected by or originated from the socio-economic system and environmental conditions.

The idea of socio-economic effect upon human conduct has been strongly advocated by the supporters of sociological theory of criminality, whereas the effect of other environmental conditions, as mentioned in the *Theory of Ecology,* also possesses the same significance.

According to the Islamic view point, basic stress, regarding the liability of the commission of crime, has been laid on the individual himself because of his own inner urge and free choice of action, but the social and economic conditions are also emphatically recognised to have a decisive effect upon human behaviour . There are certain conditions and environmental situations that induce and compel the man to perform an act or adopt a conduct, which is a sin or a crime in ordinary set of circumstances.

That is why Islam creates an indiscriminate exemption in sinful or criminal liability in such a state of necessity.

Qur'an puts the principle in the words :

فَمَنِ اضْطُرَّ غَيْرَ بَاغٍ وَّلَا عَادٍ فَلَا اِثْمَ عَلَيْهِ

"But who ever is driven to necessity, not desiring, nor exceeding the limit, no sin shall be upon him." [19]

Since the socio-economic system of a society is the origin and fountain of every good and evil, its effects prevail over all the moral, ethical and spiritual effects made by the individuals in their respective fields. The basic Philosophy of Islamic system appreciates the fact, that all the noble desires and endeavours at various levels do not have any bearing and determining effect upon life, unless the socio-economic conditions are reformed and improved. Islam has divided its laws into two categories :

Philosophy of Enforcement of Laws

1) Primary or Defining Laws (احکام تکلیفی)
2) Declaratory Laws (احکام وضعی)

Primary laws are the laws which demand submission, compliance and application in their own right; their requirements do not originate in the commission of other acts. Their enforcement is incumbent upon every adult, sane and capable person, known as "Mukallaf". Whereas *declaratory laws* are the laws which originate only as the consequences of an existing cause, condition or violation of certain primary laws. Unless a particular legal right of an individual or the society is injured or certain provision of the penal law of *Shari'ah* is transgressed it does not require its application or enforcement.

The *primary laws* are laid down by Islam to guarantee the reformation and improvement of socio-economic order of the society, such as : commands of *Salat and Soum, Zakat and Charity, observance of the sanctity of life, honour and property, prohibition of illegal means of wealth and its concentration,* and *observance of all other do's and don'ts with regard to various public duties.* But the *Penal (Declaratory) laws,* such as hudood qisas and ta'zirat, are formulated only to punish the people who violate and transgress the primary laws. The essential structure of Islamic Social order is based upon the enforcement of Primary laws, whereas the second kind of law is meant only for restraining the people to disturb it.

Suspension of Punishments :

Therefore, such kind of declaratory laws can be effectively implemented in the society only after enforcement of the primary laws. If the people are not getting the necessities of their life and are living in a miserable condition of economic dead-lock, the punishment of theft, that is amputation of hands, cannot be enforced arbitrarily. This principle is derived from the practice of *Hazrat 'Imar, the second ortho-*

dox caliph, when he suspended the enforcement of the hadd of theft during the period of famine, under the impression that people might be compelled to theft by hunger. There is the consensus of the Muslim Jurists upon this provision of Islamic Penal Law.

This principle becomes more evident and better illustrated by a particular incident, regarding some youngmen, who had stolen the *she-camel* of a man from the tribe of *Muzaynah.* It is reported that *Hazrat 'Umar* suspended their punishment in spite of their confession. He said, addressing the employer of those young men, *"By God! I would have cut their hands if I had not known that you employ these people and starve them so that they are* compelled to eat that which is prohibited to them. By God! since I have not cut their hands I am going to punish you with a fine that shall pain you,"[21] and he ordered them to pay double the price of the camel.

The instance has evidently explained the legal position of a criminal act, performed by a person in a state of necessity, because the liability in the offence of theft committed by an employee, under the pressure of starvation, has been snifted to the employer and thus he is awarded with a sort of *examplary punishment.* These precedents provide three general principles of Islamic Penal System.

1. Socio-economic conditions prevailing in a society lead the people to commit crimes.
2. Crimes committed in such infeasible conditions do not create active penal liability upon the wrong-doer.
3. The Islamic punishment is liable to be suspended until such economic deadlock is resolved.

That's why Islam primarily emphasises the elimination of economic disparity from the society and improvement of the socio-economic order so that the creative efforts of the people be restored by providing each of them equal chances of survival and progress. Lacking the socio-economic stabi-

lity of individuals, they are even unable to preserve their religious and moral values, as *Holy Prophet (p.b.u.h.)* declared.

كاد الفقر ان يكون كفراً

"Poverty and starvation may lead to disbelief."[22]

The collective achievement of moral and spiritual ideal, according to *Qur'an,* depends upon social integrity and economic prosperity of the society. *Qur'an* affirms the fact, while addressing the muslims after they migrated to *Madinah* and reminding them of the problems and hardships of their previous days at *Meccah* in the words :

وَاذْكُرُوْا اِذْ اَنْتُمْ قَلِيْلٌ مُّسْتَضْعَفُوْنَ فِى الْاَرْضِ تَخَافُوْنَ اَنْ يَّتَخَطَّفَكُمُ النَّاسُ فَاٰوٰكُمْ وَاَيَّدَكُمْ بِنَصْرِهٖ وَرَزَقَكُمْ مِّنَ الطَّيِّبٰتِ لَعَلَّكُمْ تَشْكُرُوْنَ ●

"And remember when you were few, deemed weak in the land, fearing lest people might carry you off by force, but He sheltered you, and strengthened you with His aid and provided you of the good things and food, that you may be thankful." [23]

In this verse a very significant and material comparison has been conducted between the three conditions of the Muslim community, pertaining to their historical periods of *Mecca* and *Madina.* Three terms have been used, signifying the characteristics of the collective life of the companions of Holy Prophet (p.b.u.h.) in regard of *Maccan Era* before migration.

1. *'Few in number'* signifies their being in *minority* as compared to the non muslims of Mecca. Therefore, the muslims were enjoying the status of *Political subordination.*
2. *'Weak in the land'* signifies their *economic instability,* because all the major sources of production had been monopolized by the *Quraysh,* who were mostly against Islam. The muslims were living in a state of *economic deprivation and deadlock* and non-muslim Capitalists of Mecca used to cri-

ticise Islam and the Prophet (p.b.u.h.) in satirical and ridiculing manner, saying that only the lower classes of Mecca had embraced Islam.

3. *'Fearing lest people might carry you off by force'* Signifies the sense of *social insecurity* which was because of their political and economic instability. Therefore, the economic and social conditions of the muslims were extremely unfavourable and they could not even attain their religious goal and spiritual destination in such a discomforting situation. Thus the Holy Prophet (p.b.u.h.) was directed to migrate to Madina, which subsequently provided the muslims a very sound and stable socio-economic life. *Qur'an,* then, again uses three terms, explicating the changed situation.
   1. *'He sheltered you'* signifies the *social integrity and security,* enjoyed by the *Migrants* which started in the form of *'Muakhat-i-Madina'*
   2. *'And strengthened you with His aid'* signifies their *political stability,* which was initially achieved by the muslims in the form of *'Pact of Madina!*
   3. *'And provided you of the good things and food'* signifies their *economic prosperity,* which was achieved primarily through *Muakhat* and subsequently through their *military victories* and *independent chances of earning.*

After mentioning this remarkable change, *Qur'an* has stated the *ultimate objective* of introducing the socio-economic stability in the life of Muslim community, and that is لعلكم تشكرون *so that you may be thankful to your Lord.*

To be thankful to Allah, certainly, is the ideal stage of moral and spiritual perfection and completion of the belief, (تکمیلِ ایمان), which, accord-

ing to Qur'an, was not possible to achieve without stabilizing the socio-economic life of the muslim society. That's why Qur'an declares that the socio-economic aspect of the life of the muslim community was stabilized in order to enable them to become good and ideal muslims, lacking which, they could not attain even the religious aims perfectly. Therefore, it can easily be understood from the philosophy contained in above-mentioned verse, that socio-economic system of a society has direct bearing on the conduct of individuals. Their behaviour, moral or immoral and criminal or non-criminal is directly or indirectly, determined by the influence of economic circumstances and social conditions prevalent in the society. *The moral life of an individual can not be detached from the socio-economic set up of the society in which he breathes.* That's why Islam has attached the foremost significance to the improvement of the economy of the individuals by emancipating them from every kind of dependence and deprivation.

1. It is ordained for this very purpose, that *the people having better resources in a society, are absolutely unable to achieve the state of moral perfection unless they spend their wealth on the deserving people to liberate them from poverty and upgrade their standards of living upto the necessary level. Qur'an* states as under:

● لَنْ تَنَالُوا الْبِرَّ حَتّٰى تُنْفِقُوْا مِمَّا تُحِبُّوْنَ وَمَا تُنْفِقُوْا مِنْ شَيْءٍ فَاِنَّ اللهَ بِهٖ عَلِيْم

"By no means shall you attain the righteousness until you spend (benevolently) out of what you love (i.e. wealth and money) and what ever you spend, Allah surely knows it".[24]

Concentration of wealth is the only cause of *disparity* in the socio-economic life of a society. *Qur'an* stresses the system which guarantees the *circulation of wealth* and eli-

minates the chances of its concentration. It is stated :

كَيْ لَايَكُوْنَ دُوْلَةً بَيْنَ الْاَغْنِيَاءِ مِنْكُمْ

"So that the wealth may not be a thing circulated only among the rich of you".[25]

At another place *Qur'an* emphatically declares :

وَالَّذِيْنَ يَكْنِزُوْنَ الذَّهَبَ وَالْفِضَّةَ وَلَا يُنْفِقُوْنَهَا فِيْ سَبِيْلِ اللّٰهِ فَبَشِّرْهُمْ بِعَذَابٍ اَلِيْمٍ

"And those who hoard up gold and silver and do not spend it in Allah's way (to resolve the deadlock of others), announce to them a most grevious and painful penalty."[26]

After mentioning the painful punishment in life hereafter for those who concentrate wealth and do not spend it to remove undesirable and extreme disparity of the socio-economic order which can harm even the faith of the muslims, *Qur'an* gives a brief description of the same in the next verse, so that the people may estimate its severity :

يَوْمَ يُحْمٰى عَلَيْهَا نَارِ جَهَنَّمَ فَتُكْوٰى بِهَاجِبَاهُهُمْ وَجُنُوْبُهُمْ وَظُهُوْرُهُمْ هٰذَا مَا كَنَزْتُمْ لِاَنْفُسِكُمْ فَذُوْقُوْا مَاكُنْتُمْ تَكْنِزُوْنَ ●

"On the day when the hoarded wealth will be heated in the fire of Hell, and their foreheads, their sides and their backs shall be branded with it. "This is the treasure, you hoarded up for yourselves, therefore, taste what you had hoarded."[27]

Qur'an says at another place :

وَيْلٌ لِّكُلِّ هُمَزَةٍ لُّمَزَةِ الَّذِيْ جَمَعَ مَالًا وَّعَدَّدَه ● يَحْسَبُ اَنَّ مَالَه اَخْلَدَهٗ ● كَلَّا لَيُنْبَذَنَّ فِي الْحُطَمَةِ وَمَا اَدْرٰكَ مَاالْحُطَمَةِ ● نَارُاللّٰهِ الْمُوْقَدَةُ ● الَّتِيْ تَطَّلِعُ عَلَى الْاَفْئِدَةِ ●

"Woe to every slanderer, defamer, who amasses wealth and considers it a provision (against mishap). He thinks that his wealth makes him abide. No' he shall most certainly be hurled into the crushing disaster. And what will make you realize what the crushing disaster is? It is the fire Kindled by Allah, which rises to the hearts".[28]

It is to be noted that Islam neither considers the *wealth,* nor its *acquisition* through fair means as an evil, then, why its collection and hoarding has been prohibited and declared a

very grevious sin? The effective cause (علّت مؤثرة) of its prohibition is the consequential economic disparity and deadlock which ultimately leads to social deprivation, injustice, opression and exploitation. Most of the people are deprived of their basic necessities and are finally compelled to lead immoral and criminal life. Whereas the people having unlimited hoarded wealth are also sometimes induced to adopt luxurious life which may again lead to sin and immorality.

If the economic conditions and social environment had no effect upon the moral life of individuals, Islam would not have prescribed such mandatory and awe-inspiring injunctions. Qur'an says : وَسَيُجَنَّبُهَاالْاَتْقَى الَّذِى يُؤْتِىْ مَالَه يَتَزَكّٰى ●

"And away from the hell shall be kept the one who guards himself. (He is) who spends his wealth in purifying himself".[29]

The fact derived from the verse is that the only way to purify one self and escape from the chastisement of the life hereafter is to spend the wealth for the economic betterment of the people and liberate them from worldly fears and sorrows, so that they may freely think for their spiritual perfection, which is the ultimate religious goal to be attained. When, due to an unjust socio-economic order, such an emergent situation continues to prevail in the society, that many people, not having fulfilled their necessities of life, die of starvation or sell their honour, chastity, conscience and moral life in order to survive, then a lot of *Islamic injunctions,* basically *recommendatory,* become *obligatory.* Such orders are necessarily liable to be enforced, so that such emergency may come to an end.

One of the *Qur'anic* injunctions in this connection is stated in the words :

وَيَسْئَلُوْنَكَ مَاذَا يُنْفِقُوْن قُلِ الْعَفْوَ كَذٰلِكَ يُبَيِّنُ اللهُ لَكُمُ الْاٰيٰتِ لَعَلَّكُمْ تَتَفَكَّرُوْن ●

"And they ask you as to what they should spend. Say: What is surplus (from your needs). Thus does Allah make clear to you the communications that you may think over."[30]

Whatever is spare from basic needs and requirements of life is known as *Al-afw* (العفو), and to spend it for the economic betterment of others is no doubt a directive and recommendatory provision, but according to the practice of *Holy Prophet* (peace be upon him) and *Orthodox Caliphs,* this was many times applied in the society, as mandatory for practical purposes. Moreover, it is a fundamental principle of Islamic jurisprudence, that under such extreme state of necessity, many provisions and directives are suspended and prohibited, many prohibitions are permitted, many recommendations become legal obligation and according to the nature of circumstances, the grades of many Islamic provisions are changed. This situation may extend to years sometimes.

It is narrated by *Hazrat Abu Saeed Khudri* that during a journey, when such a situation had arisen, *Holy Prophet* (peace be upon him) ordered his companions :

من كان عنده فضل ظهر فليعد به على من لا ظهر له ومن كان عنده فضل زادٍ فليعد به على من لا زاد له (وذكر من اصناف المال ما ذكر) حتى ظننا انه لا حق لاحدٍ مِنّا فى الفضل

"The one who has conveyance, spare from the need, should return to those who have not, and the one who has food and clothes, spare from the need, should return to those who have not. (Abu Saeed Khudri says that Holy Prophet (p.b.u.h.) went on mentioning various articles) consequently we thought as if we had no right to hold what is surplus."[31]

This fact is further supported by a *hadith,* reported by *Hazrat 'Usman,* whereby Holy Prophet (p.b.u.h.) said:

ليسَ لابن اٰدم حق فی سوی هذه الخصال بیت یسکنه وثوب یوّاری عورته وخلف الخبز والماء

"No right vests (basically) in the son of Adam except these (three); a house to live, clothes to wear and food to eat (without hoarding it)."[32]

Qur'an goes in this respect one step further mentioning the characteristics of a man, who defies the religion, it states:

اَرَاَیْتَ الَّذِیْ یُکَذِّبُ بِالدِّیْنِ ● فَذٰلِكَ الَّذِیْ یَدُعُّ الْیَتِیْمَ ● وَلَا یَحُضُّ عَلٰی طَعَامِ الْمِسْکِیْنِ ●

"Have you considered him who calls the religion a lie? That is the one who treats the orphan with harshness. And does not urge (others) to feed the poor."[33]

At the end of *Surah* the last but most significant peculiarity of such a person has been described :

(ویمنعون الماعون)

"And (he is who) refuses even household necessaries to supply."[34]

Here lies the climax of the philosophy of socio-economic welfare of human beings. None of the social and economic philosophies including *Maxist* and *Leninist* theories of *socialism,* can reach its height. Although Islam has given to man, at the minimum, an exclusive right of possessing a house, clothes and food etc.that are the basic requirements and necessaries of life, yet sometimes even these necessaires and goods of utility are legally required to be shared with others. If anybody, at the time, withholds these necessaries and restrains others from their benefits and usufructs, he is deemed to be the defier of the faith, and becomes entitled to the most horrible place in the hell, known as *Wayl'* (ویل).

This concept of *common welfare* is still alien to other un-Islamic theories of socio-economic betterment. Other philosophies have, at the maximum, thought of nationalizing only the sources of production in order to associate all the other people in their benefits, whereas Islam goes to the extent of socializing the usufructs of each and every article

present in the society, but various means have been adopted to accomplish the same job.

The same idea is better illustrated by a precedent quoted by *Imam Bukhari:* it is reported by *Abdullah bin 'Umar* that during the period of famine which occurred in the time of *Hazrat 'Umar,* he put his best efforts in solving the economic problem of the people. Subsequently, he prayed to God Almighty and the situation was changed. At that time he stated :

فوالله لو ان الله لم يفرجها ما تركت اهل بيتٍ من المسلمين لهم سعة الا ادخلت معهم اعدادهم من الفقراء فلم يكن اثنان يهلكان من الطعام على ما يقيم واحداً

"By God! If Allah had not removed the hardship I would have allowed the deserving people to reside in the house of other muslims, who had sufficient food with them, equal to the number of the members of each family, because two persons could survive on the quantity of food which was ordinarily sufficient for one".[35]

Another illustration of the *Prophetic era* is also remarkable *in this connection, which is reported by Salmah bin Akwa. Imam Bukhari* again narrates that *Holy Prophet* (peace be upon him) once, on the occasion of *'Eid-ul-Azha,* ordered the people not to retain the flesh of slaughters for more than three days. The people acted upon this directive and consequently the same practice was repeated by them next year on their own. Some of the companions informed the prophet about the practice.

قالوا يارسول الله نفعل كما فعلنا العام الماضى ، قال كلوا وادخروا فان ذٰلك العام كانوا فى جهدٍ فاردتُ ان تعينوا

"The people said to the prophet "we are adopting the same practice as we adopted last year." Holy Prophet (p.b.u.h.) said, "Now you may eat and retain for your needs. Last year the people were facing hardship and I wanted you to help one another". [36]

Two main points have been established through these precedents.

(i) The first is that in an unusual situation such extraordinary orders are required to be enforced, that might change the normal status, original character and usual grade of legal provisions, keeping in mind the severity of circumstances and their consequences.

(ii) The second is that the foremost requisite and urgent step towards preserving and promoting the moral and religious values of a society is to resolve the economic deadlock and to create suitable social environment for the individuals to restore and perpetuate their creative efforts. Because with infeasible socio-economic conditions, there is every chance of developing criminal tendencies in the society. That is why the struggle for the attainment of the social goal, has been considered as an ideal endeavour by the *Holy Qur'an.*

It is stated :

وَمَآاَدْرٰكَ مَاالْعَقَبَة ● فَكُّ رَقَبَةٍ ● اَوْاِطْعٰمٌ فِى يَوْمٍ ذِىْ مَسْغَبَةٍ ●
يَّتِيْمًا ذَامَقْرَبَةٍ اَوْمِسْكِيْنًا ذَا مَتْرَبَة ●

"And what will make you comprehened what the *uphill road* is? (It is) liberating the slave, or providing the food in a day of hunger, to an orphan, having relationship, or to the poorman lying in the dust."[37]

Thus it has been explicitly proved that unfavourable socio-economic conditions have a tendency to cause the individuals to lead immoral lives and adopt criminal behaviour. Therefore, if any crime is committed under such state of compulsion, the criminal or penal liability in order to maintain the natural justice, can not be imposed upon the transgressor. Hence, under these circumstances, such criminal acts are not liable to (HADD) or other punishments. This

principle has already been substantiated by various precedents based on *Qur'an* and *Prophetic Sunnah.*

Imam Malik and *Imam Tirmazi* have reported this principle through a *hadith,* saying :

ليس على المستكره حدٌ

"There is no hadd on the person, compelled."[38]

Shari'ah has prescribed following three principles regarding the suspension of the infliction of hadd :

(i) *Ibn-i-Majah* has narrated through *Abu Hurayrah :* "Try to avoid the ifliction

ادفعوا الحدود ما وجدتم لها مدفعاً

"Try to avoid the ifliction of hudood, if you can get any wayout."[39]

(ii) *Tirmazi* and *Hakim* have reported from *Hazrat 'Aayshah :*

ادرؤا الحدود عن المسلمين ما استطعتم

"Avoid to inflict the hadd on muslims as far as possible."[40]

(iii) *Bayhaqi* has reported a prophetic instruction through *Hazrat 'Ali :*

إدرؤا الحدود بالشبهات

"Suspend the infliction of hadd on the basis of doubts."[41]

Basic theme of all of these provisions is concentrated on the point that if there is any suspicion of compulsion, necessity and coercion, may be of any kind, the criminal liability should be removed or decreased. This fact cannot be disputed in the light of *Qur'an* and *Sunnah,* that socio-economic factor is the most important and decisive factor of causing inducements and impulsions for the commission of crime. *But should be very clear that this factor cannot be regarded as the only cause of criminality. Many people inspite of unfavourable socio-economic circumstances keep themselves guarded from criminal behaviour.* This is certanly a cause which may lead man to the path of criminality,

but the effective and final cuase of the commission of crime is *human will and intention,* which originates at the level of human mind. If socio-economic system is accepted as the only cause of criminality, then it would be again a form of *'determinism'* as discussed in other theories, which would altogether explain away the criminal liability at every level. If poverty had been the only decisive factor of criminal conduct, then the rich people would have never committed the crimes.

Rich and poor both can be in the wrong and *Qur'an* has directed to support the right one, without any reference to one's financial position. It is stated :

اِنْ يَّكُنْ غَنِيًّا اَوْفَقِيْراً فَاللهُ اَوْلىٰ بِهِمَا فَلَاتَتَّبِعُوْاالْهَوٰى اَنْ تَعْدِلُوْا

"If he be rich or poor, Allah is more competent (i.e. deserving faith) than them both, therefore, do not follow low desires, lest you deviate".[42]

Of all the theories of criminality, only the sociological theory has considerable recognition and a remarkable relevance in Islamic Science of criminology, but not upto the extent of explaining away the responsibility of the individual by considering the socio-economic system as the only cause of crime as held by the socialist philosophers.

CONCLUSION

After conducting a critical and comparative study of Western science of criminality and Islamic injunctions, we have concluded that :

1. *Islam does not accede to the theory of Positivistic or Biological School of criminology.* The idea of inborn criminality or atavistic reversion of man towards animalistic characteristics is against the Islamic concept of essential goodness of human nature.
2. *Islam does not accede to the theory of psychiatric or Pathological school of criminology.* The concept that

criminality is the result of psychiatric abnormality or mental disorder is absolutely alien to Islamic views, because it completely explains away the criminal liability as in case of Biological Theory.

3. *Islam does not accede to the theory of Psychological or Psycho-Analytical school of criminology.* The concept of inherent criminalistic instincts and characteristics is the result of distorted vision of human psyche. It is also designed to justify the criminal behaviour of the delinquent as in case of Psychiatric Theory.
4. *The theory of Ecological school of criminology does not possess much weight and importance independently because it is practically an offshoot of sociological theory. Ecological view, can not be regarded, in itself, as a sufficient interpretation of the causation of crime.* Therefore, it does not find an important place in Islamic philosophy in its independent capacity.
5. *The theory of sociological school is mostly in consonance with the external aspect of Islamic concept of criminality. The Socio-economic phenomena, according to Islam, has a considerable bearing on the behaviour of individuals in a society. Unfavourable socio-economic circumstances,* no doubt, are regarded as *crime-prompting factors* in human societies, but Islam does not consider crime as entirely the product of social environment. These conditions have a very strong tendency of inducing immoral and criminal conduct. That's why Islam has paid the first and utmost attention towards reforming and improving the situation in order to minimize the gravity of socio-economic centrifugal forces functioning against the spiritual and moral values of Islam.

Islamic view point, in this respect, is that any psychiatric, psychological or sociological abnormality and infeasibility is not the final and determinant cause of criminality in human behaviour, but it amounts to suspension of criminal

liability, if present in any case.

If any person commits criminal acts due to any of the abovementioned reasons, his legal responsibility which demands infliction of punishment, will be totally or partly suspended, in accordance with the greviousness of cause or effect.

Problem of western research :

The problem of Western schools of criminology is, that they have conducted the research on the pattern of causal explanation.

There are, for the method of causal explanation, some postulates and categories, under which the data collected through various observations is organised. Then in order to explain the organised data, there should be a specific hypothesis, which can be of three kinds :

1. hypothesis of evolution
2. hypothesis of mechanical causation
3. hypothesis of purposive causation

The Western criminologists, while determining and explaining the behaviour of a criminal, have erroneously adopted either the *hypothesis of evolution* or the *hypothesis of mechanical causation,* which has led them to wrong and distorted conclusions.

If they had adopted the *hypothesis of purposive causality,* that was necessary to explain the movement at conscious level, they would have certainly arrived at different results which would have brought them nearer to the *Islamic theory.* Since they are promoting their research on the method of *"Trial and Error',* they are still unable to achieve uniformity in their conclusions.

The *Islamic view,* in this regard, is that there are two kinds of factors which prompt a person to adopt a specific conduct, *external* and *Internal.*

The *External factors* are the socio-economic circumstances in which he is placed. These, being unfavourable,

depressing and prompting on adoption of immoral life, may lead a man to criminal behaviour. Whereas the circumstances and environment being favourable, encouraging and prompting on adoption of noble life may lead a man to behave morally and to avoid criminal behaviour.

The Second, that is the *internal factors,* are human urges and inner incitement of following the right or the wrong path. The fact is that the propensity ad capability of inclining towards either of the two, has been vested in every man, because of the dual character of human nature. The *potential nature* of man urges him only to earn the good by prompting him to the performance of duty, whereas the *actual nature* induces him to the fulfilment of instinctual desires and passions. Potential nature acts much frequently at the level of subconscious mind which always functions as a guard against evil motives. The decision to adopt a possible course of action is always taken at the conscious level. *Human will* is completely free of the compulsion of external factors, but *intention* can be affected in both ways.

If the *intention* originates freely from the *will,* the performer of an act is completely responsible for his behaviour, and if the *intention* is formulated under the pressure and imposition of an external factor, against the *will,* then the liability is deemed to be suspended. Therefore, it is man, who has to decide at his own, as to what he is going to earn. That's why he is morally responsible for what he does.

Therefore, the cause of criminality is the internal urge and incitement of man and not other external or a predetermined factors. External factors, by affecting human intention and according a situation of necessity, can change the legal status and liability of the performer, but cannot be technically regarded as the cause of criminality.

According to Islamic view, an inducement can be caused externally but man is considered to be capable of overcomin it on the basis of noble urges ingrained in his potential nature.

Qur'an ordians :

وَلَا يَجْرِمَنَّكُمْ شَنَاٰنُ قَوْمٍ اَنْ صَدُّوْكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ اَنْ تَعْتَدُوْا وَتَعَاوَنُوْا عَلَى الْبِرِّ وَالتَّقْوٰى وَلَا تَعَاوَنُوْا عَلَى الْاِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللّٰهَ اِنَّ اللّٰهَ شَدِيْدُ الْعِقَابِ ●

"And let not hatred of a people-because they hindered you from the sacred mosque-incite you to exceed the limits, and help one another in goodness and piety, and do not help one another in sind and aggression, and be careful of your duty to Allah: surely Allah is severe in requiting (evil)."[43]

Here, inspite of the inducement of enmity due to the aggression of others and as a result of it the severe hatred against them, the Muslims are expected to behave normally. If they commit an aggression in their reaction that would amount to sin, which is liable to severe requiting. It means that the final factor of determining one's behaviour is not the *external element,* but it is the *internal urge* of man acting at his conscious level, whether original or responding.

Man is required to guard himself against the evil in all circumstances, although he is incited by some factor. It is stated : اِنْ تَجْتَنِبُوْا كَبٰٓئِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّاٰتِكُمْ

"If you avoid the great things which you are forbidden, we will do away with your evil inclinations and incitements."[44]

Inclination towards an evil act is always induced by some factor, but inspite of its prompting and inducement, man is supposed to avoid the commission of crime. It proves that the causation, which establishes the penal liability exists in the man himself, and is deemed to be in his competence as well, otherwise he would not have been held answerable to the law.

Qur'an states explicitly in connection of the criminal liability : وَمَا اَصَابَكَ مِنْ سَيِّئَةٍ فَمِنْ نَّفْسِكَ

"And what ever misfortune befalls you, it is from your self."[45]

The enforcement of divine justice in human rewards and awards is also very obvious. It is stated :

اِنَّ اللهَ لَايَظْلِمُ مِثْقَالَ ذَرَّةٍ

"Surely Allah does not do injustice to the weight of an atom."[46]

For this reason every adult and sane person is responsible for his own criminal behaviour.

Qur'an says :

فَعَلَيَّ اِجْرَامِيْ وَاَنَا بَرِيٌ مِمَّا تُجْرِمُوْن ●

"On me is the guilt of my crime and I am clear of that of which you are guilty".[47]

It is further collaborated in the words :

قُلْ لَّاتُسْئَلُوْنَ عَمَّا اَجْرَمْنَا وَلَا نُسْئَلُ عَمَّا تَعْمَلُوْن ●

"Say: you will not be questioned as to what we are guilty of, nor shall we be questioned as to what you do."[48]

All of these verses clearly emphasise the fact that the criminal liability can neither be transferred nor explained away. The Western criminologists have indiscriminately explained the criminality in such a way that the crime, in spite of being an intentional and voluntary act, has become absolutely involuntary and unitentional. They have expressed the phenomenon of crime in terms of *"determinism"; hence, no liability can* be placed upon the individual. Therefore, there can be no justification of punishments, and the whole penal system becomes a futile and aimless exercise.

Islam has provided the balanced view becuse the liabilities of the individual and the society are separately determined. The cause of criminality is appreciated in such a manner that instead of justifying the crime, effective means and devices are suggested to eliminate it from the society.

NOTES

1. Qur'an 5 : 6.
2. Qur'an 22 : 78.
3. Qur'an 6 : 152, 7 : 42, 23 : 62.
4. Qur'an 65 : 7.
5. Qur'an 2 : 163.
6. Qur'an 7 : 157.
7. Sheikh Muhammad Khudri, *Tarikh-ut-Tashri-il-Islami,* (Translated) p. 34.
8. Qur'an 2 : 185.
9. Qur'an 4 : 28.
10. Qur'an 4 : 101.
11. Qur'an 2 : 184.
12. Qur'an 2 : 184.
13. Qur'an 4 : 43.
14. Qur'an 24 : 61.
15. Qur'an 9 : 91.
16. Qur'an 4 : 43.
17. Qur'an 2 : 173.
18. Ibn-ul-Qayyim, *Alam-ul-Muwaqqein* Vol. III, p. 22.
19. Ibid.
20. Khatib Tabraizi, *Mishkat-ul-Masabeeh,* p. 421.
21. Qur'an 8 : 26.
22. Qur'an 3 : 92.
23. Qur'an 59 : 7.
24. Qur'an 9 : 34.
25. Qur'an 9 : 35.
26. Qur'an 104: 1-7.
27. Qur'an 92 : 17, 18.
28. Qur'an 2 : 219.
29. *Sunan Abi Daud,* Vol. II, p. 169.
30. Jame Tirmazi, Vol. II, p. 57.

31. Qur'an 107: 1-3.
32. Qur'an 107: 7.
33. Bukhari, *Al-Adab-ul-Mufrad,* pp. 147-148.
34. Ibid.
35. Qur'an 90 : 12-16.
36. (a) *Jame Tirmazi,* Vol. 1, p. 175.
    (b) *Muatta Imam Malik,* Vol. III, p. 44.
37. Ibn-i-Hajar 'Asqalani, *Bulugh-ul-Maram,* p. 155.
38. Ibid.
39. Ibid., p. 156.
40. Qur'an 4 : 135.
41. Qur'an 5 : 2.
42. Qur'an 4 : 31.
43. Qur'an 4 : 79.
44. Qur'an 4 : 40.
45. Qur'an 11 : 35.
46. Qur'an 34 : 25.

CHAPTER V

PSYCHOLOGY OF THE CRIMINAL

In order to understand and take full account of the psychology of the criminal, we must be well aware of the fact that the criminal is one of the persons living in human society. His mind also is constituted of the same elements, which act in the same way, as those that constitute the minds of others. The only difference is that in no two persons are all these factors always of equal strength and combined in equal proportion. The differences are of degree and proportion and not of kind. In many cases the difference between the criminal and the non-criminal is *quantitative* rather than *qualitative.*

Grygier, a Western psychologist, says, "If we go to the depths of the unconscious we are all alike."[1]

John Barron, discussing the same issue, states :

"Delinquents are people who, like everyone, else, have experienced frustration, particularly in their human relationships, but their reactions to it are abnormal."[2]

The question is, what are the factors acting in the psychological make-up of the criminals, which distinguish them from others?

The answer is that there are two kinds of factors, *internal* and *external.*

Internal factors are :

1. Human instincts
2. Mental faculties and their function.

External factors are :

1. Circumstancial influence
2. Opportunity and temptation.

Internal factors :

To appreciate the psychology of the criminal, we shall now start with the description of instinctive urges which are vested in human beings indiscriminately.

A. Human Instincts

Western psychologists have named three sets of instincts which the human beings are bestowed with. These are as under :

1. Self-regarding instinct.
2. Racial instinct.
3. Social instinct.

The first two, as *Dr. Mercier* has stated,[3] are primordial and often preponderate over the third one. These three sets of instincts are not always in harmony, but they are destined to secure the same ends :

> *The continuation of human race, the preservation of its benefits and values, and the attainment of its perfection.*

These sets of instincts function in various ways and with different directions to realize the same objective.

Self-Regarding instinct

The *first* functions in the direction of safeguarding the life and benefits of the individual who is a constituent part and parcel of the society. According to *Hollander,* this instinct is further accompanied by some special propensities, such as :

i) Propensity of struggle & contest.
ii) Propensity of resentment.
iii) Propensity of hoarding.
iv) Propensity of sexual satisfaction.

v) Propensity of suspicion, etc.[4]

Racial and social instincts :

The *second* functions directly by prompting the acts of reproducing and the care and rearing of off-springs. *The third* fulfills the main end by performing the acts for the welfare and prosperity of human society which provides the required protection to its compoent individuals and their aims and benefits.

Welfare of the society is in the long run so immensely vital that the incidental and occasional harms accrued to the Individual and Racial aspects of human instincts, while fulfilling the social instincts, are overridden and swamped. Thus before the benefit of society every other contrary consideration must give way and every other inconsonant conduct must be renonunced. This is the unformulated perception of the basic reason that induces the society to place checks and limitations upon the individuals, which is known as *law.* If the same originates from divine revelation and gets its sanction and validity from *Qur'an* and *Sunnah,* it is known as *Islamic Law.* Therefore, every act which is injurious to the benefits and general welfare of the society becomes prohibited. In the light of this description, it can be easily concluded that dominance and preponderance of self-regarding instinct or racial instinct over the social instinct or that of the self-regarding and racial conduct over the social one, in an injurious or even disregarding manner, is the basis of crime. It does happen, because these instincts of human nature are not completely harmonised and this lack of consistency is the cause of inclination towards crime. Therefore, this instinctual inconsonance and incompatibility, when increased, prompts the man to be 'criminal'.

According to *Dr. Mercier,* this situation can only be avoided through a complete and perfect process of socialization of the individuals, securing the preponderance of social instincts over all other conducts, as it is attained in case of

many insects and animals, but not yet in mankind.[5]

Mankind, as stated by *Mercier,* is undergoing the process of evolution; if a particular stage is reached when human beings are perfectly socialised, the conflict between desire for self-regarding action and desire for social action totally disappears and later becomes victorious and dominating, there will be no cime. As long as the conflict exists, there will be a tendency in the mind of man to commit crime.[6]

Islamic viewpoint :

This is the psychological analysis of the criminal, as stated by *Dr. Mercier,* conducted by the Western Criminologists, which is partly acceptable by Islamic viewpoint and partly, (especially the consequent remark) is liable to be rejected. This causal explanation has explained away the criminal liability of every delinquent and thus has rendered the whole criminal law an aimless and fruitless exercise. If it is accepted that the mankind, contrary to the insects and animals, has not yet achieved the stage of socialization, and therefore, it cannot escape the commission of crime till the completion of its process of evolution, the punishment, however slight it may be, loses every utility and justification.

Such thought is inclined to provoke the criminal tendency and, as it is evident from the statistices of the crimes published in various reports, it has consequently increased the rate of commission of crime in the West. This fact can be ascertained by,

Mark Benney's Research – 1936
Danish Criminal Statistics – 1944
American Criminal Statistics – 1951
British Criminal Survey – 1960

and many other reports and observations conducted by different investigating agencies of the West.

Six instictual sets

In complete analysis, according to *Islamic view,* the human instincts are classified into *six fundamental sets,* instead of three. These are as under :--

1. Self Preservative instinct.
2. Sexual and Racial instinct.
3. Social instinct.
4. Intellectual instinct.
5. Moral instinct.
6. Spiritual instinct.

These six sets co-exist because human personality itself is composed of six fundamental aspects, such as :--

1. Biological aspect.
2. Socio-Biological aspect.
3. Socio-cultural aspect.
4. Psychological aspect.
5. Psychiacal aspect.
6. Transcendental aspect.

The completion and perfection of human personality depends on the balanced and proportionate development of each and every aspect of its being. If any of these aspects remains undeveloped, it creates a harmful vacuum in human personality. Each aspect possesses its own needs and requirements which are liable to be fulfilled in the right direction.

Self-Preservative instinct is the requirement of the *biological aspect* of human being. In order to fulfil it, the necessities of eating, clothing and lodging should be essentially provided.

Sexual and Racial instinct is the requirement of *Socio-biological aspect* of human being. In order to fulfil it, conjugal relations and familial structure of life should be established and protected. *Social Instinct* is the requirement of *Socio-cultural aspect* of human being. In order to ful fil it, social, economic, political, cultural and educational units of collective life should be framed and developed. Intellectual *instinct* is the requirement of *Psychological aspect* of human

being. Its fulfilment requires balanced and proportionate development of all the *three phases of Conscious mind,* these are *Emotion,* Intention *and* Perception. Moral instinct *is the requirement of* psychical aspect of human being. Its fulfilment requires complete harmony, consistency and compatibility between conscious and unconscious minds, by developing the potentialities of unconscious mind and organising under it purified desires and propensities of Conscious mind. *Spiritual Instinct* is the requirement of *Transcendental aspect* of human being. Its fulfilment requires spiritual and intellectual development and establishment of faith and knowledge, through proper reasoning and sound insight.

B. Mental Faculties and Their Function

The *second internal factor* acting in the psychology of the criminal relates to mental faculties and their function.

It is worth understanding that 'mental element' is an indispensable constituent element in the commission of crime. No dispute exists between Muslim and Non-Muslim scholars on this issue. *Hibbert,* discussing the composition of crime, states that the general principle which prevails in constituting a crime is summed up in the maxim :

"Et Actus non facit reum nisi mens rea sit", i.e., any conduct does not make a party criminally liable unless his mind is criminal.[7]

Mens rea may be defined as "the mental element necessary to constitute criminal liability."[8]

Kenny, discussing the maxim, explains that there are two necessary elements in crime, a *physical element* and a *mental element.*[9]

The role of human mental faculties and effects of specific mental characteristics in any criminal or non-criminal conduct can be judged by *Darlington's quotation,* when he says, "One may ask: is there anything else that will stop further offences". The *German enquiry* shows that there is

one other circumstance that will stop the criminal career. It is if a *weak-minded criminal man* marries a *strong-minded non-criminal wife.*"[10]

After having comprehended the role and effect of mental element in the commission of crime, we now proceed to the description of various metal faculties and their respective functions.

The mind of every person is one whole, like many other totalities, consisting of some component faculties, which are five in number :

These are :–

1. Desire
2. Intellect
3. Will
4. Feeling
5. Memory

1. *Desire.*

According to *Dr. Mercier,* "desire is a motive, a prompting and an internal urging to a peculiar action before the conduct of any kind comes into existence. Unless there is some reason why any voluntary action should be undertaken, the actual purpose for which an action is conducted is always the satisfaction of some *desire* or *aversion.* When a starving man steals a loaf of bread, the action is prompted to satisfy his hunger, because food is one of the instinctive requirements, common to all animals to preserve one's life.

The loaf may be stolen, not to satisfy the thief's hunger, but to satisfy his children's hunger; and in this case the act is prompted again by the parental instinct, the *desire* for the preservation and welfare of his children.

If a person extends his business so that he may afford to educate his children upto high level, he is actually prompted by the same *desire.*

Whatever the *desire* for any act – and it is often impossible for the observer to assign and visualize the actual *desire* or motive behind the act, the fact remains, that every act is

conducted under the pressure of a specific *desire, aversion* or *motive.*

This *primary desire* may also be followed by some *secondary desires.* Whatever the *desire* primarily was and must have been in the mind of the actor at the moment of commission of the act is distinguished from all other subsequent *desires* that lead up to the act; the previous or primitive *desire* is known as *Motive.* But the whole of this faculty of human mind alone does not design the crimes. It is further assisted by another faculty known as *Intellect.*

2

2. *Intellect*

The *faculty of intellect* devises the means to compass those ends that *desire* dictates. The means are crude or elaborate according as the *intellect* is of low or high development.*Intellect,* therefore, takes a large share in determining the kind of crime. The *desire* has to express itself in one way or the other. If it is deprived of its natural means of satisfaction, it will find some other way. The only function performed by the *intellect* is to suggest *alternative ways and means* of satisfaction and to appreciate the difference lying between them.

There is nothing *criminal,* or necessarily *tending to criminality,* in the *desire* to obtain food or drink, to avoid personal injuries, to seek shelter and protection, to gratify sexual and parental longing, to enjoy recreation, or to satisfy the curiosity.

The laudability or criminality of the acts induced by these primitive *desires* lies, not in the *nature* of the end pursued, but in the *means* by which the *end* is secured. Therefore, the criminality usually originates in *the intellect and not in desire;* though of course, without any desire there would be no crime. This is why the insanity and stupidity renders the actor immune from criminal liability inspite of having desires, but not perfect intellect.

3. Will

Strictly speaking, *intellect* only suggests alternative means, compares them with others and appreciates their differences, but to make *final choice* between these alternative modes, a new mental faculty, different from both *desire* and *intellect, is employed, and this is called Will.* It is, in fact, a movement of the whole mental personality in a certain direction. It functions first in the form of *choice;* but mere choice does not issue in action. For its actual execution a further exertion of will is necessary in the form of *Volition* or *Initiation of action. So that an endeavour* is made to begin an act to satisfy the primitive desire. The *desire* at this stage, when it accompanies *the will,* is known as *Intention.* The intention of the act is, therefore, *the desire to accomplish the act, and* to bring about those consequences that in the natural course of things must result from the act. It is the *intention,* for which the actor becomes responsible.

4. *Feeling*

Feelings are in one sense *desires,* but they are also different. The *desires* well up spontaneously from the depths of our nature and are originally independent of circumstances, while *feelings* in the restricted and exact sense, are elicited by circumstances, and in the absence of their adequate provocations, would never be felt at all. The desie for food, the desire for rest, the desire for companionship, the desire for the satisfaction of sexual and parental instincts, are all spontaneous desires. They need no external stimulus for their actualization, though no doubt they are susceptible for direction, focussing and intensification by appropriate circumstances. *Hunger,* for instance, makes itself felt without any provocation from the sight or smell of food, though the sight or smell of food may make the desire more prominent, attentive and concentrated. Still *hunger* is felt quite independent of circumstances, but *anger* is not felt

spontaneously without any external provocation in the circumstances. No doubt the capacity to feel anger must be inherent and innate, but however great the capacity, the feeling will not arise in the absence of any external stimulus or circumstancial and perceptible reason.

Feelings are of two main kinds : the *crude* and *simple feelings* that are called *sensations,* and *complicated* and *elaborate feelings* that are called *emotions.*

The chief crime-producing feelings are anger, jealousy, hatred, love, fear, etc. These feelings often become the causes of the commission of crimes and determine the degree of severity and intensity of crimes as well.[11]

5. *Memory*

It is the preservative mental faculty which has no direct relation with the commission of crime. Thus, the *four mental faculties* of human beings are the main factors which act in the psychological make-up of the criminal.

Compective Process of Voluntary acts :

The direction and scope of the functions of these mental faculties have been explicitly specified. In the light of this specification, the steps which every voluntary, act, criminal or non-criminal, goes through in completion of its process, can easily be comprehended. These are six in number :–

1. Conflict between desire and duty. (کشمکش)
2. Deliberation (weighing & balancing). (غوروخوض)
3. Free Choice of Motive (Will). (انتخاب نیت)
4. Resolution (Intention). (ارادہ)
5. Execution. (تعمیل)
6. Consequence. (نتیجۂ عمل)

Conflict :

1. All of these stages exist at the conscious level. First of all a particular urge and prompting arises in human mind

which induces the man to adopt a specific conduct. This is the desire which sometimes conflicts with the sense of duty, that imposes some restrictions on its fulfilment or suggests another conduct of behaviour in that respect. The moral situation starts right from this conflict, which is subsequently resolved at the stage of intellect.

Deliberation :

2. At this *second stage,* thinking is directed to harmonize the two senses after differentiating them in the light of their natures and consequences.

Man thinks over the two in order to decide as to what pressure or inducement is to be accepted. While thinking over both the alternatives, no external compulsion affects his thought. He visualizes independently the merits and demerits of the desire as well as of the duty and appreciates the difference lying between them. This function is known as deliberation "(غوروخوض)".

The origination of desire and realization of the sense of duty, both are a natural phenomenon. Nothing is wrong at the first stage. God has vested the instinctive desires as well as the sense of obligations in human nature, as it has been expressly mentioned before. Moreover, the capacity of discriminating between good and evil in the light of their advantages and disadvantages, has also been bestowed upon mankind.

Qur'an states : فَأَلْهَمَهَا فُجُوْرَهَا وَتَقْوٰهَا

"And He has given to the soul its enlightenment as to its wrong and its right."[12]

It further enunciates :—

لَا اِكْرَاهَ فِى الدِّيْنِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَىِّ

There is no compulsion in religion: Truth stánds óut Clear from Error."[13]

After completion of the process of deliberation (weighing and balancing) comes the *third step,* that is the *Free Selection of motive.*

Selection of Motive :

3. Since full consideration has been given to both the incitements, man is in a position to choose either of the two. At this stage man selects the *motive* or the *will* which is likely to be fulfilled by him. He decides finally, whether he has to fulfil the *duty* or the *desire.* This act of mental faculty is known as *choice of motive* (انتخاب نیت). This choice forms the basis of responsibility in every voluntary act. That is why the *Holy Prophet* (peace be upon him) declared :

انّما الاعمال بالنّیات

"The acts depend upon their motives."[14]

The nature and status of the act, whether it is right or wrong, is decided on the basis of selection of motive without any reference to its consequences.

Another declaration to the same effect was made by *Holy Prophet* (peace be upon him) in the words :

ان الله لا ینظر الی صورکم واموالکم ولکن ینظر الی قلوبکم واعمالکم

"Certainly! God does not look at your shapes and properties, He looks at your hearts and deeds".[15]

It is an established principle of Islamic Law that if a legal act is motivated by good will, the man becomes entitled to reward, even though the act may not result in the fulfilment of the expressed intentions. This fact is better elaborated through this verse :

وَمَنْ يَخْرُجْ مِنْ بَيْتِه مُهَاجِراً اِلَى اللّٰهِ وَرَسُوْلِه ثُمَّ يُدْرِكْهُ الْمَوْتُ فَقَدْ وَقَعَ اَجْرُه عَلَى الله وَكَانَ اللّٰهُ غَفُوْرًا رَحِيْمًا

"He who for-sakes his home as a refugee for God and his Apostle, and dies, his reward becomes due and sure with God: and God is Oft-forgiving, Most merciful."[16]

The same delicate distinction exists between *truth* and *lie.* If the utterance is positively in accordance with the apparent fact, it can only be regarded as *truth,* if it is ini-

tiated by a *good motive.* Whereas, if the *motive* behind the utterance is *wrong,* inspite of its being right factually, it would be considered a *lie.* This fact is very well expounded through the first verse of *Surah-i-Munafiqoon :*

اِذَا جَاءَكَ الْمُنٰفِقُوْنَ قَالُوْا نَشْهَدُ اِنَّكَ لَرَسُوْلُ اللّٰهِ وَاللّٰهُ يَعْلَمُ اِنَّكَ لَرَسُوْلُه
وَاللّٰهُ يَشْهَدُ اِنَّ الْمُنٰفِقِيْنَ لَكٰذِبُوْنَ

"When the hypocrites come to you, they say, we bear witness that you are indeed the Apostle of God. And, God knows that you are indeed His Apostle, and God bears witness that the hypocrites are indeed liars."[17]

Only the same fact, that is the verification of the *prophethood of Hazrat Muhammad* (peace be upon him), has been spoken by *hypocrites* and by *God Almighty,* but the speech of Allah signifies the *truth* (صدق) whereas the utterance of hypocrites has been termed a lie (كذب).

The apparent and factual position of both statements is the same but the difference lies in their motives. The statement, that is, the act of speech, of the hypocrites is declared a lie, because it was not motivated by good will. They do not believe in what they have expressed. Therefore, the conflict between their *motive* and their *act of speech* has rendered the statement *a'lie'* but on the other hand God Almighty really means what He says. That's why His statement is an *absolute truth.*

The entire discussion emphasises the fact that the decisive step in the process of any voluntary act is the *selection of motive or will.* Because the man is completely free in exercising his discretion at this level, he is answerable and liable for his acts. This's why he is deemed to be entitled to awards and rewards.

Intention :

4. At this stage the whole mental personality is mobilized towards a certain direction. After the *choice* has been

made, as it is stated above, a further exertion of will is conducted for the purpose of its actual execution.

This is the stage of *Intention* (عزم واراده), that is the mental endeavour to initiate the action, chosen by the *Will.* The *intention* functions merely under the guidance and direction of the *Will* because it is in fact the desire to accomplish the act that has already been decided at the third step of the process. Therefore, we can say, that the intention follows the decision, as it is clear from this verse :

اِنَّمَا اَمْرُه اِذَا اَرَادَ شَيْأً اَنْ يَقُوْلَ لَه كُنْ فَيَكُوْنُ

"Verily, when He intends a thing, His command is, "be", and it is."[18]

The noun ' « شيأً » ' (Shay'an) is derived from the word ' (شأ) ' (Sha'a), which means *to wish* or *desire.* Therefore, ' (شيأً) ' (Shay'an) signifies 'a thing which was desired or willed'. In the light of this analysis, it is quite evident, that the *final desire, will* or *decision* should be prior to the *intention* to accomplish it because the *intention* could only follow the act of *will. Selection of Will* is the mental decision whereas the *intention* is the initiation of mind to bring that decision into physical existence. Thus the Holy Qur'an states, when God wills anything to be present in the physical world, He *intends* its existence and the desired object comes into being. This is the philosophy of the original creation of the world, that has been mentioned in the *Holy Qur'an,* which expressly negates the concept of *chance creation.*

Therefore, during the process of conscious movement of the mind, the *decision* is made first, in the form of *selection of motive* and then it is followed by the *Intention* to be accomplished.

Compliance :

5. Now this specific *intention* is followed by *compliance* (تعميل). *Compliance* is the practical effort to accom-

plish what was intended. If the man leaves the act, which was prohibited or criminal, even at the stage of *compliance,* he will be no more liable to punishment. The criminal liability is imposed upon the performer of the act only if he accomplishes the act of *compliance* and attains the stage of *consequence,* as it is obvious from the *Qur'anic injunction :*

اِنْ تَجْتَنِبُوْا كَبٰئِرَ مَا تُنْهَوْنَ عَنْهُ نُكَفِّرْ عَنْكُمْ سَيِّاٰتِكُمْ

"If you eschew the most heinous sins which you are forbidden to do, we shall expell out of you your other evils."[19]

Whereas in case of the acts of righteousness the initial reward becomes liable even from the stage of *selection of motive.* It is for providing an incentive to perform the good, but one should be very clear that the duty or obligation remains unperformed till the completion of compliance. After the completion of compliance comes the stage of *consequence* (نتیجۂ عمل). At this step, the act, criminal or non-criminal, becomes complete and then the full award or reward, prescribed for it, is deemed to be liable.

In the light of this discussion, it has been established that the criminal selects the unchecked and unrestricted way of fulfilment of his instinctive urges, under the pressure of his desire and aversion, or sensation and emotion, neglecting the valid process prescribed by the law.

The psychological make-up of the criminals is never different in its composition or function from that of the non-criminals. The criminal act goes through the same mental and psychological process as does the other.

Therefore, it is correctly assumed that the difference between criminals and non-criminals is *quantitative* rather than *qualitative.*

External factors

Now we take account of the *external factors* which also have an important role in the commission of crime. *The first* significant factor in formulating the psychology of a criminal is, the *Circumstancial Influence.* There are two

types of circumstances that play considerably decisive role:

1. *Circumstances that have acted in the past*

These circumstances act in profoundly modifying the internal factors of the Criminal's psychology. These are family circumstances, social environment in which one was brought up, economic conditions in which one had lived, religious education and moral training given in effective or ineffective manner, human relationships, and other local, political geographical and cultural environments, which had affected the man in his past.

These circumstances of the past play an effective role in developing the *temperament, mental character* and *disposition* of a person.

He who has received proper education and moral training, especially in early life, when the character is plastic and normally retains what is impressed upon it, will act every day on every occasion differently from him, who has not. Again the one who is brought up in better socio-economic circumstances, will behave differently from him who is not.

These are external circumstancial influences that effect the internal character of a person.

2. *Circumstances that act at the time of commission*

These circumstances, if they are discomforting and unfavourable, sometimes create a state of necessity, in which man is impelled to commit crime. That's why the Islamic Penal Law prescribes that before imposing the criminal liability on the offender and awarding him the punishment, the circumstances should be fully examined in which the crime was committed, because the punishment is suspended if the circumstancial influence is proved to be necessitating as it is evident from the practice of *Hazrat 'Umar,* the second Orthodox Caliph, during the period of famine. Both sets of circumstances, that act in the past or at the time of commission, can be largely classified into two kinds, such as :

(i) Economic circumstances
(ii) Social circumstances..

The influence of economic circumstances and their effects have been elaborately discussed earlier while studying the *causes of criminality,* under the caption, the 'Sociological Theory and Islamic injunctions.'

As far as the social aspect of circumstances is concerned. *Qur'an* has divided all the social evils into four basic categoreis :

1. Anti-Islamic legislation (حكم الجاهلية)
2. Anti-Islamic thinkings (ظن الجاهلية)
3. Anti-Islamic loyalties (حمية الجاهلية)
4. Anti-Islamic fashions (تبرج الجاهلية)

Opportunity and Temptation

This is the *second external factor* which plays an important role in formulating the psychology of the criminal. This factor possesses both its existence and effect independent of circumstancial influences.

Dr. Mercier, [24] expressing this idea, says that however ardently a man may desire to catch fish, he cannot do so where there is no water. If fishing were a crime, it would be a crime of which an *Arab of the Sahra* could not be guilty, however strongly his instinct and training urged and impelled him to fish. The reason is, that the presence of the following three factors is necessary in the commission of a crime under the pressure of opportunity and temptation :

1. Existence of opportunity.
2. Knowledge of opportunity
3. Temptation and Prompting,

Certain crimes may die out automatically, if the opportunities that makes them possible, easy or profitable cease to exist. Mere *existence* of an opportunity remains useless unless it is known to the person concerned, and mere *knowledge* of certain opportunity does not render it a

temptation, unless it prompts a particular person.

Therefore, this *temptation* equally depends on *internal* as well as *external* factors. In some cases even the existence of opportunity and its knowledge cannot prompt a person to commit a crime, because of his moral and spiritual training. *Hence a system affording proper moral and spiritual training for developing a perfect moral character of individuals, and mitigating the crime-producing social stimuli and environmental opportunities, can only be in a position to formulate a pious society. Such system which functions at every level, internal and external, has been provided only by Islam.*

Classification of criminals

On the basis of their psychology, the criminals are classified into two primary sets :

1. Habitual Criminals.
2. Occasional Criminals.

1. *Habitual Criminals*

Dr. Mercier,[25] discussing the division in detail, says that *Habitual Criminals* are further dividable into two classes:

(i) Criminals possessing active or full criminal propensity.

(ii) Criminals possessing *quasi criminal propensity.*

(i) The first type of tendency impels him, usually from the earliest age, to commit crimes, and no circumstances can mitigate this aptitude, because they have an irresistible propensity to commit crime. The second type of tendency can be reformed by adequate measures if they are adopted early enough.

First kind is known as *'Moral Imbeciles or Instinctive Criminals* as prescribed by *Lombroso and his school.*

The are further classified into :

(a) *General Moral Imbeciles*

(Who are generally immoral and Criminal in most

of their acts and relations in their lives. These are cruel, dishonest, treacherous and false in every walk of life).

(b) *Particular Moral Imbeciles*

(Who are Criminal of a very restricted and peculiar kind. They have neither the general selfishness, callousness and indifference to the welfare of their fellows nor have they any conspicious defect of wisdom).

This concept of full criminal propensity that creates *Moral Imbeciles* or *Instinctive Criminals* is unacceptable to Islam, because it blames human nature and makes criminality a *pre-determined factor,* which is against the basic philosophy of moral and legal responsibility.

(ii) The second class of *habitual criminals* possessing quasi-criminal propensity *is composed of those who often commit* crime, but because, their social instincts have never been cultivated or intensified by a course of appropriate training, such as operates in all children who are not properly brought up. These unfortunates have had either no homes or bad homes. They are reformable if only they can be caught early enough, before their habits are fixed and characters are totally destroyed. Islam recognises the existence of *quasi-criminal propensity* in case of the habitual criminals.

Sub-classification

1. *Habitual Criminals* again fall into two sub-classes :

(i) *General Practitioners :*

These are mostly young, who have not yet chosen their fields of speciality. They are ready to commit any kind of crime, from petty felony to murder, that benefits them.

(ii) *Specialists :*

These commit only that kind of crime for which their taste, their aptitude, their ability, and their habits render them most adapted.

2. *Occasional Criminals*

The second primary class consists of *Occasional Criminals.* Their criminality, unlike the habituals, according to Western Criminology, is not instinctive and irresistible, but it mainly depends on the *external factors.* These are *Ordinary Citizens,* who are prompted to some crimes by temptation of any *exceptional severity.*

The crime of occasional nature is due to stress of circumstances or opportunities and if those circumstances are never likely to be repeated, the crime is committed no more.

The conclusion is that, if the external factors, such as circumstancial influences, opportunities and temptations go on affecting the internal character and psychology of the person constantly, and no measures are adopted to reform them, he becomes *habitual criminal,* and if those factors influence the man incidently, he becomes the *occasional* one. If proper moral and spiritual training and adequate socio-economic circumstances are provided to the individuals, their instinctive urges and mental faculties are organised to function towards the right direction. Human instincts and desires, being properly fulfilled in a balanced manner, do not create any tendency of criminality.

Therefore, lack of spiritual and moral training and unsuitability of socio-economic conditions are the basic factors which may render the psychological make-up of a person criminal.

NOTES

1. Grygier, T. *Oppression, A Study of Social and Criminal Psychology*, p. 240.
2. Mays, J.B. *Crime and the Social Structure*, p. 105.
3. Mercier, C. *Crime and Criminals*, p. 41.
4. Hollander, B. *The Psychology of Misconduct, Vice and Crime*, pp. 13-15.
5. Mercier, C. *Crime and Criminals*, p. 93.
6. Ibid.
7. Hibbert, W.N. *Jurisprudence*, p. 261.
8. Ibid.
9. Turner, J.W.C. *Kenney's Outlines of Criminal Law.*, pp. 13-14.
10. Mays, J.B. *Crime and the Social Structure, p. 100.*
11. Mercier, C. *Crime and Criminals* (based on) pp.47-49.
12. Qur'an 91 :8.
13. Qur'an 2 : 256.
14. Bukhari, *Al-Jame-us-Sahih*, Vol. 1, p. 2.
15. Muslim, *Al-Jame-us-Sahih*, Vol. II, p. 317.
16. Qur'an 4 : 100.
17. Qur'ar 63 : 1.
18. Qur'an 36 82.
19. Qur'an 4 : 31.
20. Qur'ar 5 :50.
21. Qur'an 3 : 154.
22. Qur'an, 48 : 26
23. Qur'an Ph. 33 : 33.
24. Mercier,C. *Crime Criminals* (based on) pp 234-250.
25. Ibid., (based on) pp. 234-250.