

UML 3rd Sem

Nepal Law Campus, KTM

Sub - Criminology

Roll no 24, Day shift

Qn03 What are the scope of Criminology?

Ans:

Criminology is the entire body of knowledge regarding crimes, criminals and efforts of the society to prevent and suppress them. It is also the study of crime as a social phenomenon. It includes within its scope the making of the law, the breaking of the law and the reactions towards the breaking of the laws.

Criminology is an applied science. It involves other sciences such as psychology, sociology, psychiatry, anthropology, medicine, chemistry, mathematics, etc in a process known as Instrumentalism.

Scope of study of criminology can be highlighted as;

1, Criminal Ecology: Study of criminality in relation to special distribution in a community.

2, Criminal Epidemiology: Study of the relationship between environment and the criminality.

3, Criminal physical Anthropology: Study of criminality in relation between mind and behavior of a criminal.

4, Criminological research: study of crime correlated with antecedent variables, state of crime trend.

5, victimology: study of the role of the victim of crime

6, Criminological Theories: study of different theories as the genesis of criminal behavior.

Well, these are the scope of study of criminology. Where the science of criminology may be split into two namely;

1, Theoretical or pure criminology:

prof W.A Bonger preferred to study theoretical criminology under the following sub-headings.

i) Criminal Anthropology: It seeks to understand the personality of the offenders in physical terms. Cesare Lombroso was first to propound this view.

ii, Criminal Sociology: It is based on Sutherland's differential association which explains criminal behaviour as a process of learning through association with other criminals.

iii, Criminal psychology: It seeks to co-relate criminality to emotional aspect of human nature.

- iv) Criminal psychology: It seeks to correlate criminality to emotional aspect of human nature. French psychologist Alfred Binet and professor German of USA are the main propounders of this view.
- v) Criminal psycho-neuro pathology: This branch of criminology attributes criminality to functional deviations and mental conflicts in the personality of the offender.
- vi) Penology: It concerns with various aspects of punishment and penal policies. The various mechanisms of punishing the offenders are also studied under penology.
2. Applied Criminology: On the other hand Applied Criminology includes the study of criminal hygiene and criminal policy which is founded on the solid derivative conclusions.

Beside these there are yet another branch of Criminology called Criminalistics which denotes the police - techniques of crime investigation and detection.

QNo 2. what is classical theory?

Ans:

Classical school propounded by Beccaria came into existence as a result of the influence of writings of Montesquieu, Hobbe, Bacon and Rousseau. His famous work *Essay on crimes and punishment* received wide acclaimation all over Europe and gave a filip to a new criminological thinking in the contemporary west.

Beccaria expounded his naturalistic theory of criminality by rejecting the omnipotence of evil spirit. He laid great emphasis on mental phenomenon of the individual and attributed crime to 'free' will of the individual.

The main tenants of classical school of criminology are noted below;

- i) The theory is based on the assumption that an individual can control his conduct by exercising his power of will and the mind. Thus, human behaviour is self-generated and self-controlled. The fear of punishment can bring a change in human 'will' and persuade him to desist from committing crime.
- ii) It is an act of an individual and not his intent which forms the basis for determining criminality within him. In other words, Criminologists are concerned with the 'act' of criminal rather than his 'intent'. Still, they could never think that there could be something like Crime causation.

- iii, The classical writers accepted punishment as a principle method of infliction of pain, humiliation, and disgrace to create 'fear' in man to control his behaviour.
- iv, The proponents of this school, however, considered prevention of crime more important than the punishment for it. They therefore, stressed on the need for a criminal code in France, Germany and Italy to systematise punishment for forbidden acts. Thus, the real contribution of classical school of criminology lies in the fact that it underlined the need for a well defined criminal justice system.
- v, The advocates of classical school of thought supported the right of the state to punish the offenders in the interest of public security. Relying on the hedonistic principle of pain and pleasure, they pointed out that individualisation was to be the basis of punishment.
- vi, The exponent of classical school further believed that the criminal law primarily rest on positive sanctions. They were against the use of arbitrary powers of judges. In their opinion that judges should limit their verdicts strictly within the confines of law. They also abhorred torturous punishments. Thus, judicial discretion is of semingl value while awarding the maximum punishment, reasons must be detailed and specific.

Well, these were some tenants of classical theory. Beccaria raised his voice against severe punishment, torture and death penalty. Beccaria's views on crime and punishment were also supported by Voltaire as a result

of which a number of European countries redrafted their penal codes mitigating the rigorous barbaric punishments and some of them even went to the extent / intent of abolishing capital punishment from their penal codes.

The contribution of classical school to the development of rationalised criminological thinking was by no means less important, but it had its own pitfalls.

The major shortcoming of classical school was that it proceeded on an abstract presumption of free will and relied solely on the act (i.e. the crime) without devoting any attention to the state of mind of the criminal. It erred in prescribing equal punishment for same offence thus making no distinction between first offenders and habitual criminals and varying degree of gravity of the offence.

However, the greatest achievement of this school lies in the fact that it suggested a substantial criminal policy which was to carry to administer without resort to the imposition of arbitrary punishment. It goes to the credit of Beccaria who denounced the earlier concept of crime and criminals which were based on religious fallacies and myths and shifted emphasis on the need for concentrating on the personality of an offender in order to determine his guilt and punishment.

QNO 4. Explain about Different Association Theory?

Ans:

The theory of Differential Association was propounded by Edwin H. Sutherland in 1939 which was later modified in 1947. This theory asserts that crime is learnt by association with others. According to him behavioral learning take place through personal contacts with other people. This learning in the context of crime involves both the technical for committing the crimes and the attitudes and rationality or justification for their committal.

for example - parents of a person may approve or atleast not disapprove certain type of theft for feeding the hungry or meeting the needs of the poor for certain types of victims such as large stores or wealthy businessman. Thus,

the parents might learn sympathy for the poor or needy at the same time realising that theft is generally wrong. Such differing and conflicting experiences may lead him to criminality if he is more exposed to the views which are supposed supportive to crime than the views which are against it. Briefly stated the theory of differential association centers round the theme that a person becomes criminal if there is an excess of influence on him favourable to the violation of the law is compared with the influences which are unfavourable to violation of law.

However, Sutherland's theory of differential association and individual autonomy criminality has been criticized on three main grounds, namely;

- 1, It is incorrect to say that persons become criminals because of their association with criminal behaviour or attempts, patterns. If that were so, everyone in contact with criminals would adopt to follow criminality, which is not true.
- 2, The theory fails to answer as to why people have the associations they associate with, whether criminal or non-criminal. In fact, it is differential opportunities for associations which are characterised as criminal patterns, that account for making a person criminal.
- 3, There may be cases when a person learns criminal behaviour patterns from non-criminals and non-criminal behaviour patterns from criminals. The theory of differential association takes no notice of this factual situation. This may be illustrated by an illustration.
If a mother teaches her son that he should always be honest as 'honesty is the best policy' but at the same time also teaches him (perhaps inadvertently), that "it is all right to steal a loaf of bread when you are starving to death". She is presenting him with an anti-criminal behaviour pattern and a criminal behaviour pattern, simultaneously even if she is herself honest and non-criminal and even anti-criminal.

QNO 5. Describe about the Human Trafficking ? what are the elements of human trafficking ? Explain it with reference of Human trafficking and Transport Act, 2064.

Ans:

Human Trafficking is a multi-faceted humanitarian crisis affecting millions worldwide and is considered as the third most lucrative sector within organized crime following drugs and the arms trade.

According to Louise Shelley (2010) human trafficking is thought to be one of the fastest-growing activities of trans-national criminal organizations. Human trafficking is condemned as a violation of human rights by the International Conventions.

United Nation's Palermo protocol defines Trafficking in person as "the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of the power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation should include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor, slavery or practices similar to slavery, servitude or the removal of organs."

Whereas, The Human Trafficking and Transportation Control Act 2007 of Nepal defines Trafficking in person in two forms;

i) Human Trafficking

1, If any one commits any of the following acts that shall be deemed to have committed human trafficking.

- a, To sell or purchase a person for any purpose.
- b, To use someone into prostitution with or without benefit.
- c, To extract human organ except otherwise determined by law.
- d, To go for in prostitution.

ii) Human Transportation.

2, If any one commits any of the following acts that shall be deemed to have committed human Transportation.

- a, To take a person out of the country for the purpose of buying and selling.
- b, To take anyone from his/her home, place of residence or from a person by means such as enticement, Inducement, MisInformation, forgery, tricks, Coercion, abduction, hostage, allurement, Influence, threat, abuse of power, and by means of Inducement, fear, threat or Coercion to the guardian or custodian and keep him/her into One's custody or to take to any place within Nepal or abroad or handle over him/her to somebody else for the purpose of prostitution and exploitation.

Emerging forms and practices of trafficking

- people being trafficked in the name of sending a person either legally or illegally to foreign employment.
- In the name of sending women for housemaid in countries in visa like Syria, Iraq, Kurdistan, Kuwait and other countries.
- In the name of entertainment sectors such as dance, disco to countries of Malaysia, United Arab Emirates, Tanzania, Kenya, Bahrain.

factors contributing to Human Trafficking may be;

- poverty, lack of education, demand for cheap labor, lack of human rights for vulnerable groups, conflict and natural disaster and so on.

International treaties to combat crime of Trafficking of person are;

- a, SAARC Convention of preventing and combating Trafficking in Women and children for prostitution.
- b, Convention on the elimination of All forms of violence against women.
- c, The optional protocol to the CEDAW, 2006
- d, ILO Convention 1930 (No. 29) forced labor.

National legal framework.

- At the domestic legal framework the Constitution of Nepal (2015) is the overreaching law of the land for the protection of rights of victims, right against exploitation, also Constitution grants special rights for women.
- The Human Trafficking and Transportation (Control) Act 2064 (2007) and its accompanying Rule 2008.
- Well, these are some national frameworks to combat with the crime of Human Trafficking.

Nepalese Case on Human Trafficking.

yog Bahadur lama et.al vs GON Human Trafficking

This case is landmark as it propounds precedent that onus to establish Innocence lies on defendant in human trafficking allegation offence

Lok Bahadur Karki et.al vs GON

In this case the Court highlighted that the victim of the crime should be provided due compensation and if accused cannot provide immediately, it should be provided through state fund also, the cases of trafficking can be filed by the victim herself or on her behalf anyone can file the case.

Q No 10 What is Money Laundering?

Ans:

Money laundering is an act or attempted act to disguise the source of money or asset derived from the criminal activity. To launder money is to hide its illegal origin. Simply, put money laundering means dirty money 'washing' so it appears clean. Corrupt officials use money laundering techniques to hide the true source of their income.

Acc. to UNODC, in the world Money laundering has ranged from \$ 50 billion to \$ 1.5 trillion per year. Nepal introduced Government reform program which had a strong provision for anti-Money laundering which started the initiation to criminalize the offence and In 2008 under the International Support and supervision Government initiated;

Money laundering act 2008 which highlighted the offence or assets that were considered to be on laundering under sec 4 of the Money laundering prevention Act. This act criminalized by listing out the source of income through different offences;

- a, offence under the prevailing Arms and Ammunitions laws.
- b, offences under the prevailing foreign exchange regulations laws.
- c, offence of Murder, theft, cheating, forgery, document, Counterfeiting, kidnap or abduction under the concerned prevailing law.
- d, offence under the prevailing drug addition Control laws and so on.

Supreme Court on Money laundering.

a) Madhav Kumar Bhagat vs AON.

In this case the Supreme Court said that accused should be able to show legitimate source of the seized property, showing that third party as the owner of the seized property is not what the Asset (Money laundering) prevention Act 2004 Sec 28 Intention. The accused has to prove that earned property has legitimate source. The source of income should be any trade, business or any other legal means in order to provide conclusive evidence on Money laundering.

Qn 09 who are exponents of Biological theory?

Ans:

Biological theory strongly presents deterministic explanation of delinquency and criminality and holds that some people are naturally born criminals, with physical qualities that govern their development deviant tendencies.

This theory is also referred as Italian school, and the major proponents of this theory are -

a, Cesare Lombroso (1835 - 1908) : His explanation of criminality was based on explanation of evolutionary theory and suggested that criminals were less evolved than other people! He suggested that criminals had stigma and markers that could be easily observed.

He classified criminals.

as; Born criminals, Insane criminals, Occasional criminals and forth or Occasional criminals Into pseudo, Criminaloid, habitual criminal.

b, Rafaello Garofalo (1852-1934) : He insisted that there should be scientific study of criminals. He supported Lombrosian Idea that crime is associated with certain physical characters but he argued that sometimes the physical anomalies were not present.

c, Enrico Ferri (1856 - 1928) : He rejected the theory of classical school i.e. doctrine of free will rather believed that it is not the criminal who act, but the situation. He argued that criminality could be explained by studying the interactive effects among the; Individual factors, Environmental factors and Social factors.

And classified Criminal Into 5 categories:

- Born Criminals
- Insane Criminals
- Occasional Criminals
- Passionate Criminals
- Habitual Criminals.

There is relevancy of Theory of Enrico Ferri that society can be the prime reason to motivate the Criminal Instinct (Marda Bahador Rai et.al vs UMA, NRP 2043. P. 691)

In todays Content the Classification of criminals born criminals is not relevant. however the Insane Criminals and occasional Criminals as differentiated by Lombroso has an Impact (HMG vs Dev Giri, NRP 2043. P 110).

Qn 011. Explain about the situation of organized crime in Nepal.

Ans:

Various forms of organized crime is Increasing in Nepal due to;

- Open Border and weak regulation.
- limitation of security and regulatory bodies
- Development of Transportation and Connectivity
- Broadening scope of ICT and Internet facilities.
- Instable policy and political scenario.
- Poverty, unemployment Organized crimes etc.

Numerical status of organized crime in Nepal

(as per yearly report office of Attorney General)

Organized crime f.y 2074/75 f.y 2075/76 f.y 2076/77
(Total cases in appellate + trial court)

	2074/75	2075/76	2076/77
Arm Smuggling	442	687	425

Human Trafficking	791	727	707
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Drug Trafficking	5402	6465	6021
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Custom Smuggling	818	847	875
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Money Laundering	51	45	31
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Other Organized Crimes

Organized Crimes	2074/75	2075/76	2076/77
Black Market/Monopoly	168	58	103
Kidnapping/Abduction	322	462	393
Banking offence	896	2946	5513
Corruption	704	891	1114

from this data we can observe, the majority of organized crimes are increasing on yearly basis.

Status of Decided Cases on Organized Crime in Judiciary of Nepal

Types of organized crime f.y 2076/77	Decided cases	percentage
(Total cases decided in S.CBA-I)		
Arms Smuggling	124	67
Human Trafficking	537	217
Drug Smuggling	2727	1582
Smuggling (Customs)	754	90
Money Laundering	14	1
Banking offence	892	274
Corruption	287	80

Qn07, Sigmund Freud's psychoanalysis: The "Id", "Ego" and "Super Ego".
Ans:

Perhaps Freud's single most enduring and important idea was that human psyche (personality) has more than one aspect. Freud's personality theory (1923) saw the psyche structured into three parts (i.e. Id, ego and super ego), all developing at different stages in our lives. These are systems, not parts of the brain or in any way physical.

Acc. to Freud's perfectly allocated psychoanalytic theory, the id is the primitive and instinctual part of the mind that contains sexual and aggressive drives and hidden memories, the Super ego operates as a moral consequences / conscience and the ego is the realistic part that mediates between the desires of the Id and the Super-ego.

Although each part of the personality comprises unique features, they interact from a whole, each part makes a relative contribution to an individual's behavior. Freud made the analogy of the Id being a horse while the ego is the rider. The ego is like a man on horse, who has to hold in check the superior strength of the horse. In regard to Super-ego it consists of two systems: The Conscience and Ideal self. The Conscience is our inner voice that tells us when we have done something wrong. Whereas Id ideal self (or ego - ideal) is a imaginary picture of how you ought to be and represents career aspirations, how to treat other people, and how to behave as a member of society.