

## PHYSICAL DISABILITY AND CRIMINALITY: LOMBROSEAN ANALYSIS

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### *Abstract*

The late nineteenth century witnessed a new theory famously known as the positivist theory which was given by a psychologist - Cesare Lombroso. According to this theory, a person is a born criminal and has certain features that distinguish him from the non - criminal population. It garnered a lot of criticism as it is incorrect to generalise every person with a disability as a criminal and is also one of the reasons why it is not practiced in the present scenario.

### INTRODUCTION

In the late 19th century, a wave hit the study of criminology when Cesare Lombroso, an Italian criminologist came up with the positivist theory. He was one of the first criminologists who attempted to study crime and criminality using a scientific approach. According to Lombroso's theory, criminality was inherited and that criminals could be identified by physical attributes such as hawk-like noses and bloodshot eyes. Lombroso tried to find a possible relationship between criminal psychopathology and physical and constitutional defects.

### BACKGROUND

Many psychologists during this time were highly inspired by Darwin's theory of evolution and came up with different theories of biological crime. The psychologists came up with different views on how criminals can be identified by their physical attributes. Some of them are William Sheldon, Montagle and Walker etc.

William Sheldon, during the mid - twenties, came up with the theory classifying human body into 3 categories based upon their structure and body type defining their characteristics. This process of classification is also known as somatotyping.<sup>2</sup> The classification is done into 3 categories i.e. ectomorphs - the slim, linear type ; endomorphs - the round, fat type and mesomorph - the athletic and muscular type. Now that the classification is done, according to the research conducted by Sheldon, the mesomorphs are more prone to commit violent acts of crime as compared to the ectomorphs or endomorphs.<sup>3</sup>

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<sup>2</sup> Sheldon's constitutional theory : Somatotyping.

<sup>3</sup> Major concepts of biological theories

Another high soaring theory came into lime - light which again focused on the biological factors. This theory was proposed by Montagle and Walker and according to them, it was the genetics of a person that decided his criminality.<sup>4</sup> Mostly, men are a result of XY chromosomes however in rare circumstances, there are men found with XYY genotype which basically gives them an extra Y chromosome. So, Montagle and Walker proposed that any man with XYY genotype is more likely to be a criminal as according to a study they conducted, the prisoners were found to have the XYY chromosomes 20 times more than any ordinary man. It was believed that the men with XYY genotype are more likely to be violent and aggressive and are more prone to commit crimes given their genotype.

Finally, it was Lombroso who's theory garnered the most popularity. His criminal anthropology focuses on the biological factors stating that some men are born with the criminal tendencies and are more likely to commit crimes and that they were atavistic and their brains are not fully developed or mal - developed<sup>5</sup>. According to Lombroso, some people are just born that way and can be identified from their receding chins or sloping foreheads. His theory is known as the positivist theory and was widely criticised.

## POSITIVIST THEORY

It all began when Lombroso met a criminal named Giuseppe Villella, a thief and arsonist whom he found interesting given his extraordinary agility and cynicism as well as his tendency to boast of his escapades and abilities . When Villella died, Lombroso conducted his post mortem and discovered an indentation on the back of his skull which resembled those found on apes skulls. After this discovery, he came to the conclusion that some men were born with the propensity to offend and were also savage throwbacks to early men. According to Lombroso, it was the nature of the person, not the nurture that led to criminal propensities. This theory was very different from what was being followed earlier. Before Cesare Lombroso came up with this theory, criminology was based upon the rationale and human dignity and criminologists like Cesare Beccaria and Jeremy Bentham tried to quantify pleasure and pain<sup>6</sup>. According to Bentham, anything that causes pain should be avoided in order to avoid punishment and anything that gives pleasure should be adopted and Beccaria was of the view that free will enables people to make choices that help them achieve personal gratification and in the process of achieving personal gratification, some people end up defying the societal norms and commit acts contrary to law . Also, both Beccaria and Bentham tried to study the reason as to why a crime is committed in a given society and they came to the conclusion that it is the law and economic state that forces an individual to become a

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<sup>4</sup> GOSAVI S R , GAJBE U L, MESHAM S W , CHIMURKAR V K . CYTOGENETIC STUDY IN CRIMINALS (MURDERERS): ROLE OF XYY CHROMOSOME IN CRIMINALITY. *Journal of Clinical and Diagnostic Research* [serial online] 2009 December [cited: 2009 December 7]; 3:1911-1914.

<sup>5</sup> Theories and causes of crime : University of Glasgow.

<sup>6</sup> Jeremy Bentham : Happiness is the greatest good

criminal. However, Cesare Lombroso defied this theory and focused on the biological aspect stressing upon the fact that a criminal is actually a criminal by birth and they bear such distinguishable characteristics which make it easier for one to distinguish a normal person from a criminal. Lombroso believed that these people were more at a primitive age and that is why it made them more prone to criminal behaviour because of their inability to fit into the society. According to a study conducted by Lombroso on 383 dead italians and 3839 living ones, he found 40% of them to have atavistic characteristics.<sup>7</sup>

Lombroso further described anatomically the features of a person that would describe him as a criminal. For instance, enormous jaws, high cheek bones, prominent superciliary arches, solitary lines, extreme size of orbits, handle shaped or sessile ears found in criminals, insensibility to pain, love of orgies and irresistible craving for evil etc<sup>8</sup>. He even went to the extent of describing the features of criminals such as a thief could be identified as someone who has an expressive face, manual dexterity and small wandering eyes; habitual murderers would have cold, glassy stares, bloodshot eyes and hawk like noses etc . Lombroso's study was not limited to male criminals and while describing female criminals, he said that they tend to be more lustful and immodest, shorter and wrinkled and had smaller skulls and prominent lower jaws as compared to normal women. In fact, Lombroso was of the opinion that women are much more ruthless than men. Also, he conducted a lot of experiments to prove his theories and as a result he even developed a rudimentary prototype of a lie detector. The lie detector that he developed was used to study their change in blood pressure once they were exposed to unpleasant, extremely unpleasant and pleasant situations. He used various equipments and methods to study a criminal, mentally unstable and a normal person to reach this end.<sup>9</sup>

## CRITICISM

Although Lombroso is widely known as the father of modern criminology, his positivist theory was widely criticised. He failed to appreciate the social factors that play a major role in a person's life. The social conditions, financial situation and poor economy all can lead to a person becoming a criminal, not just the physical attributes. And sometimes, it can be their physical attributes that end up becoming their worst enemy forcing them to behave contrary to the law as due to their disabilities and not getting accepted by the society, they end up having no re course but to resort to criminal activities. As we are aware that no one prefers being around a person with disabilities, it becomes hard for them to fit into the society, sustain themselves or get a decent job which really hinders their personal growth and in order to survive, they end up mugging people or getting involved in serious crimes. And this is not only the case for people with disabilities but with normal

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<sup>7</sup> Cesare Lombroso : Theory of crime, criminal man and atavism.

<sup>8</sup> Biological positivist theories

<sup>9</sup> The 'born criminal'? Lombroso and the origins of modern criminology

people as well. Sometimes, even the normal people are not able to conform to the societal standards due to their social incapacities and they end up being involved in criminal activities and this was not taken into account by Lombroso.<sup>10</sup> So, the habits developed by a person over the span of his lifetime are a result of the environmental factors and not the organic biological factors. Another leading criticism garnered by Lombroso's theory was his generalisation of people with physical deformities as criminals. It was wrong of him to classify them into a separate class labelling them all as criminals as not every person with a deformity is a criminal and not every normal looking person is innocent. To assign specific physical attributes and features defining their criminality was not the best approach to follow as it is impossible for every person with cold glassy eyes to be a murderer. Each person has a different set of physical attributes that make them different from others and just because one person has slightly more different features, does not make them a criminal. Another reason why Lombroso's theory does not hold much substance in today's scenario is because his studies were biased and the data so collected by him did not substantiate his theory of atavism.

#### DISABLED AS VICTIMS IN OUR SOCIETY

Lombroso's theory of linking criminality to disability cannot be considered entirely correct. To understand it better, one needs to know what crime, disability and a person with disability means. Crime according to Indian Penal Code means commission of an offence prohibited by the law of the land. Secondly, American with Disability Act ( ADA ) defines disability in 3 ways :

1. A physical or mental impairment that substantially limits one of more of the major life activities ally of such an individual;
2. A record of such an impairment.
3. Being regarded as having such an impairment.

Also, a person with disability means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others.<sup>11</sup>

Now, according to Lombroso, anyone with a disability is a criminal. This is not true in every case as not every person who is disabled either physically or mentally, can be said to be a criminal. In fact, it is the other way round if one actually looks at it. It is the disabled who are the victims. Some surveys and experiments have actually shown that people who have a disfigured face are usually isolated or kept a distance from. Any person, having an unusual face, or a tattoo or anything that makes him look a little different instantly triggers one's mind to the precautionary mode and we tend to keep our distance from such people. We consciously or unconsciously try to avoid these people just because they look slightly different. Not only this, some studies also suggest that when

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<sup>10</sup> Journal of criminal law and criminology ; Vol 2, Issue 5 by Charles A. Ellwood

<sup>11</sup> Section 2(s) of The rights of persons with disabilities act, 2016

one tries to picture a criminal, a thief for instance, they would not imagine a man with clean looks or a handsome face. Instead, a picture of a man with a disheveled look and lanky appearance will come to one's mind. This is more of a human instinct than a deliberate thought. Moreover, the disabled are more exposed to crime than any person who is not disabled. In fact, a 2019 England and Wales survey shows that 23.1% adults above the age of 16 years experienced crime and disabled women were almost twice as likely to have experienced any sexual assault in the last year (5.7%).<sup>12</sup> Just because they are disabled, they are more at risk and suffer at the hands of even their caretakers. They are more exposed to abuse given their vulnerability when they should be the ones who should be dealt with more compassion. And the saddest part is that most of these crimes do not even get reported because the police, jurists or any normal prudent man does not believe a narrative of a disabled person, especially if the person so disabled is a mental patient<sup>13</sup>. It is pertinent to mention that it is not just limited to the people who were born with a disability but also includes people who got disabled due to an accident.

Now, for instance, the acid attack victims or burn victims may not be considered as criminals but they are still isolated or kept a distance from. No one in general prefers to be around them or be kind to them, especially when they are the ones who actually need to feel that it is okay to have a deformity. The deformities that have been discussed so far are physical deformities. To talk about mental issues or deformities which aren't really deformities but a baby of our own misconceptions and fears, one can talk about mentally challenged people who are often the victims of this society. Not only them, but the trans community or lesbians or gays have a stigma attached to them too. Our society is still not very accepting of these people<sup>14</sup>.

They face the heat to the extent that they are being murdered and arrested just because they are slightly different from straight people. Despite us entering the 21st Century, where we call ourselves the modern generation and face of the future, we are still struggling to accept these people and they have to fight so much to just get some basic rights that we are privileged to. These people are dehumanized, tortured, stigmatized, frowned upon because their sexual orientation is not similar to ours or they were born slightly different or maybe they just look a little different. Sadly enough, they have to fight every single day just to be accepted by society as human beings. It is because of this reason that one can say that disabled are actually the victims.

## CURRENT SCENARIO

Although Lombroso's theory was criticized and negated by many criminologists in the past and his theory was rendered ineffective, incomplete and incompetent but it's presence can still be felt

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<sup>12</sup>Disability and crime, UK: 2019 - Office for National Statistics

<sup>13</sup> Working with victims of crime with disabilities by Cheryl Guidry Tyiska

<sup>14</sup> Understanding the transgender community

even today. Even though, if one hears the word thief or a murderer, there is a certain image that comes to our mind of a person with cold eyes. No matter how much we try to not think or draw a judgement on a disabled person, we still tend to do so and try to keep our distance from such a person or avoid them. As a matter of fact, there have been some recent studies on Lombroso's theory in the neuroscience and according to these studies, the gene of crime may lie in the prefrontal cortex that is the area of the body where you can check if a person is destined to be a criminal<sup>15</sup>. Also, according to his theory, anyone who we see as a born criminal should be removed from the society all together, however according to the recent studies, we are now trying to find ways to treat such people medically and help them heal. So, it cannot be said that Lombroso's theory is completely outdated and wrong. It still persists and we continue to draw a perception in our minds of a disabled person as a threat, whether consciously or unconsciously.

## CONCLUSION

Cesare Lombroso's theory of a born criminal may not be absolute but can still be seen in practice. By bringing the biological aspect in the study of criminology and giving it a scientific approach, he definitely has posed some serious questions and made us wonder about the atavistic savages. The psychic of a normal man will always draw a judgement of a disabled person and will force him to keep a distance as again, it is not a conscious decision but more of a reflex. But to say entirely that all disabled are criminals or all normal looking people are innocent would-be devastating statement as then Charles Sobhraj or Vera Renczi or Ted Bundy would never be convicted given their good looks. So, Lombroso is not entirely right when he tries to link criminality to disability and this theory needs some more research before, we conclude that disability and criminality are actually connected.

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<sup>15</sup> Neuroscience as a revival of Lombroso's theory