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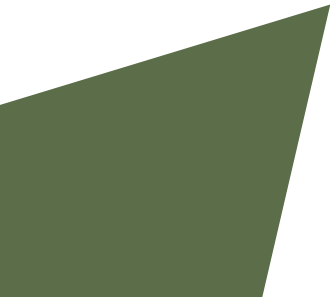
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Psychopaths & Criminal Responsibility

Pritish Oak

ABSTRACT

The researcher, through the present paper, has studied and explained the origin of the term psychopathy, its conceptual background and signs and symptoms of the psychopathy. The researcher has drawn a comparative analysis between judicial response in India and in other countries viz. USA and UK towards psychopathy. The issue of psychopathy is discussed in the backdrop of punishment policy evolved in other parts of the world. The researcher includes a discussion on connection of psychopaths and guilty mind (an essential element for commission of crime). Crime is such notion that can be controlled by knowing the rationale behind it and other factors influencing acts of the offender. To change a man from evil to innocent, it is necessary to understand the principles of criminal responsibility, personality of the offender and notion of punishment and its necessity and effect. Every person has his own psyche and is controlled by it. However, when a person's mental health is damaged to the extent that he feels no emotions, remorse, guilt and constantly seeks to fulfil an over-powering urge to harm others, he starts affecting the peaceful society around him heavily. This paper is concluded with recommendations for appropriately dealing with psychopaths in the society, including introduction of therapeutic approach to the psychopaths. The researcher believes, after analysing some of the cases of dangerous psychopaths this world has seen, that extreme and harsh punishments shall have no effect on them.

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CHAPTER 1

INTRODUCTION

INTRODUCTION:

“Imagine, if you can- not having a conscience, none at all, no feelings of guilt or remorse, no matter what you do, no limiting sense of concern for the well-being of strangers, friends or even family members. Imagine no struggle with shame, not a single one in your whole life, no matter what kind of selfish, lazy, harmful, or immoral action you had taken...Now add to this strange fantasy the ability to conceal from other people that your psychological make-up is radically different from theirs¹.”

Psychopathy tops the list of dangerous mental diseases as it throws a theoretical and practical hurdle towards criminal law and the criminal justice system. The psychopaths in our society are treated as demons and not humans due to want of awareness and clear education regarding the same. Psychopathy still remains unnoticed in Indian judicial system due to doctors’, social workers’ and justice system officers’ lack of education of mental conditions, legal provisions, along with treatments available to the mentally ill persons charged with criminal acts. To control the crime rate, reading the mind of the culprit behind the crime is equally necessary for understanding his personality disorder. For transforming a culprit into a civilised person, one has to understand mentality of such person in the light of criminal responsibility. Such persons lack motive and are the victims of their own mental ill-health. Hence, treating them with sufficient professional and medical approach has to be the primary step and subjecting them to punishment is meaningless. Psychopaths carry charm, manipulativenness, intimidation, fearlessness and violence to fulfil their fantasies and therefore penal sanction has no effect as they are least worried of the consequences.

NEED OF THE STUDY:

Emergence of psychopathic personalities in the nation is the unrevealed hurdle for the Indian justice system. Psychopaths are the victims of unfulfillment of social, emotional, physical and cultural needs, and face uninviting, unprivileged and deprived environment during upbringing. If not treated in time, such psychopathic behaviour may lead to conduct problems and such conduct problems lead to criminal behaviour which the justice system fails to understand. It is necessary to study the nature of the psychopathic tendencies among such persons and in the light of this, the right to live with dignity of psychopaths, response of the judiciary and perception of the society

¹ Elaine Tassy, *How The Sun Lost Its Shine: A Newsroom Memoir*, 116 (Hamilton Books, Maryland, 1st edn. 2010)

towards them, guilt in the mind and more importantly need to punish psychopaths, etc. need to be studied thoroughly.

RESEARCH QUESTIONS:

1. What is the significance of psychopathy in criminal law?
2. Whether psychopaths are covered under Section 84 of the Indian Penal Code, 1860?
3. What has been the perception and response of the judiciary in India, USA and UK to the cases of psychopaths
4. Whether extreme punishments for convicted psychopaths can be justified?

RESEARCH OBJECTIVES:

1. To study the concept of psychopathy through doctrinal research.
2. To record the trend of the judiciary in India, USA and UK while dealing with psychopaths.
3. To provide arguments and reasons necessitating abolishment of extreme punishments to psychopaths.
4. To study the significance of psychology in the field of criminal law.
5. To suggest methods to deal with convicted psychopaths and with those who exhibit signs of psychopathy at the earlier stage.

RESEARCH METHODOLOGY:

The researcher has adopted doctrinal research to solve a legal problem with a new output by closely examining and analysing legal doctrine and legal framework and cases in a logical, systematic and scientific way.

The researcher has adopted interdisciplinary research as the researcher integrates information, concepts perspectives and theories from two or more disciplines.

The researcher has also adopted comparative research where an analogy has been drawn between responses of the judiciary of different countries regarding the concerned issue.

Identificatory Model: The researcher by using the identificatory model seeks to answer questions such as who are the parties expected or intended to be benefitted by a rule or concept of system of law.

Collative Model: The researcher prepares a report / digest of judicial pronouncements relating to the concerned issue. The researcher has collected the relevant material and has arranged and classified in a logical manner.

SIGNIFICANCE OF THE STUDY:

This issue has seldom been addressed by the members of the legal community. There is a scarcity of literature that addresses Indian jurisprudence in this matter. The present paper emphasizes on the study of two separate disciplines- psychopathy and law, and gives recommendations to deal with psychopaths in a humane way. Considering these aspects, the present paper shall be beneficial for professionals, students and other research scholars of either of the disciplines.

CHAPTER 2

PSYCHOPATHIC BEHAVIOUR- A CONCEPTUAL BACKGROUND

“The worst part of having a mental illness is people expect you to behave as if you don’t.”

In the famous movie ‘Joker’, the abovementioned quote from Arthur Fleck’s joke journal received a special attention from the audience. Arthur Fleck, a failed party clown and a struggling stand-up comedian lives hand-to-mouth with his mother, who also has a history of mental health troubles. In the movie, Arthur Fleck constantly endures the mental, emotional and physical pain from those who have never spent much time around people with mental ill-health and who usually don’t have the slightest idea as to how one can communicate with such persons. Arthur Fleck gradually descends into a psychopathic personality and transforms into someone who enjoys killing people for his thrill.

PSYCHOPATHY: ORIGIN AND CONCEPT

The term of ‘psychopathy’ was introduced in the late 19th century by a German psychiatrist J. L. Koch³ (1891) who, unlike current time’s usage, applied to variety of mental conditions and other traits including mental retardation, neuroses, negligence, social ascendency, charm, anger, low affection etc. This caused inclusiveness in the modern times regarding the definition of psychopathy.

This concept of psychopathic personality has had a tortuous history and has varied in the extent to which it denotes a disorder of a personality of a socially repugnant behaviour⁴. Psychopathy basically entails a socially unacceptable behaviour that infringes the welfare or well-being of others. The primary manifestations of a psychopathic characteristics are viz. persistent anti sociality, a craving for primitive satisfaction or excitement, an inability to control aggressive impulsiveness, a lack of guilt, conscience, or sense of remorse, and a defective capacity of loving others⁵. Psychopaths have a deep disturbing inability to care about the pain and suffering experienced by others, in short, a complete lack of empathy- the prerequisite for love⁶.

² As the child of someone with paranoid psychosis, ‘Joker’ resonated with me, *available at: <https://www.washingtonpost.com/outlook/2020/02/06/child-someone-with-paranoid-psychosis-joker-resonated-with-me/>* (Last visited on 16.05.2020).

³ William O’donohue, Katherine Fowler, Lilienfeld, *Personality DisorderL Towards DMS-V*, 111, (Sage Publication, California, 2007)

⁴ Stephen Strack (ed.), *Handbook of Personology and Psychopathology*, 271 (John Wiley and Sons Inc., New Jersey, 2005)

⁵ *Ibid.* at 273.

⁶ Robert D. Hare, *Without Conscience: The Disturbing World of the Psychopaths Among Us*, 6 (The Guilford Press, New York, 1st edn., 1993)

If psychopathy is viewed as a mental disorder then, in such disorder, an individual exhibits amoral and anti-social behaviour, lack of ability to love or establish meaningful personal relationships, extreme egocentricity, failure to learn from experience, and numerous other conditions⁷. Whereas, 'psychopathy', in the light of a physical disorder, may also be defined by a distinctive cluster of behaviours and inferred personality traits, most of which society views as pejorative⁸.

SIGNS AND SYMPTOMS OF PSYCHOPATHY

A person suffering from psychopathy, exhibits certain signs and symptoms in his behaviour, which may include, as mentioned above, want of element of conscience, empathy, fear or even self-consciousness. However, the most significant study on this issue has been by Robert Hare, who has concentrated on assessing and treating the disorder. Hare developed a screening test, known as the Psychopathy Checklist⁹, to identify a potential psychopath. In the test, a potential psychopath is interviewed by a clinician and is scored on approximately 20 criteria viz. poor behavioural controls, irresponsibility, lying, manipulativeness, lack of remorse, etc. On every criterion, the potential psychopath is ranked on a three-point scale (0 – criterion absent, 1 – partially present, 2 – absolutely present) and eventually all the points are added together to create a rank of 0 to 40. Any subject who would score 30 or more is a probable psychopath.

Many researchers believe that most of the psychopaths develop serious behavioural problems at a young age which might include lying, theft, violence, bullying others, arson, cruelty to animals etc. Especially children who are raised among violence or abusive environment exhibit one or more of these signs at one time or another. However, not all psychopaths exhibit the degree of cruelty or other symptoms in their lives and therefore, any close relatives or neighbours are astonished while reacting to senseless crimes committed by such persons: "*I had no hint that he was capable of doing it.*" Reaction like this goes on to prove the ability of psychopaths to manipulate into giving others their good impression.

When it comes to managing such psychopathic tendencies, it is observed that the stubborn characteristic of this personality disorder has made it almost untreatable. Endeavours to treat this disorder with the available resources and tools have been disappointing, and pharmacology has not been able to independently cure the emotional, moral and other short-comings. Since

⁷ Bhawna Panwar, Dr. Suvridha, "Psychopathy: A Review of Literature", 3, *International Journal of Research in Science and Technology*, 125, (2017)

⁸ *Ibid.*

⁹ 'The Hare Psychopathy Checklist': The test that will tell you if someone is a sociopath, *available at* <https://www.businessinsider.com/hare-psychopath-checklist-test-sociopath-2016-11?r=UK&IR=T> (Last visited on 11.05.2020).

psychopaths may be immune to fear of penal sanction and efforts towards punishing them or conducting psychological therapies may prove to be futile. This forms a chain of hurdles because once punishment and psychological therapies become futile, a dejected perception towards them is formed, which is again worsened by lack of research into this disorder compared to other mental illnesses, which leads to lack of understanding of this disorder, which leads to failure to develop effective therapies.

Psychopaths are extremely intelligent and they may hold a strong position in the society. However, their intention is to harm without reason as they carry their passion while portraying a pure sadistic feeling. They derive their thrill out of deceitfulness, fraudulence and painfulness of others. Psychopaths may be competent to stand a trial; however, they may remain completely unaffected with the punishment sentenced to them.

CHAPTER 3

PSYCHOPATHS AND JUDICIARY IN INDIA AND OTHER COUNTRIES

Psychopathy, for the majority of the public, remains a poorly understood concept as one may immediately co-relate the term with childhood fears or evil. A psychopath may not necessarily be someone provides bodily harm, but may also include a person involved in a corporate fraud and con-artists, who by using their captivating charisma and acumen deceive others with ease. For instance, Natwarlal, who reportedly sold the Taj Mahal, the Parliament of India and Rashtrapati Bhawan and who kept escaping the police custody several times, even when he was 84 years old and on a wheelchair.

The researcher is discussing 6 well-known cases of psychopaths in India and 6 famous cases which stunned USA and UK. In these cases, the culprits are seen to carry a strikingly similar *modus operandi*. Countries like USA and UK managed to identify these idiosyncrasies which indicated psychopathy and introduced relevant laws, whereas, India still struggles to identify and diagnose such disorder to a satisfactory level. Following are the significant cases witnessed by the world:

Ted Bundy¹⁰: One of the most infamous criminals the USA has witnessed is Theodore (Ted) Bundy. He stalked victims and terrorized various university communities as he abducted his victims at night or whenever they were not alert. Witnesses stated that he used his smile, soft-spoken behaviour and kindness for luring the victim. Sometimes he even harmed his own arm or leg to gain sympathy from the victim. Bundy used to kill his victims by strangulation and sexually abuse the dead bodies and then used to dispose of the bodies after mutilating them. Bundy was eventually arrested and tried. He initially insisted that the prosecution was laying a trap to convict him. Eventually, while Bundy was on a death row, he confessed to approximately 36 slayings with the hope that due to the sudden epiphany of righteousness, the judiciary can commute his death sentence to life imprisonment. Bundy was sentenced to death and the execution was carried out on 24th January 1989. The Federal and the State authorities still linked him to a dozen or more deaths, even after his death. Ted Bundy, while being tried, has stated “*I don’t feel guilty for anything. I feel sorry for people who feel guilt.*”

¹⁰ Ted Bundy Biography, available at <https://www.biography.com/crime-figure/ted-bundy#last-years>, (last visited on 13.05.2020)

Jeffery Dahmer¹¹: This American serial killer, who took 17 lives between 1978 to 1991 was a college drop-out and an alcoholic. He sought out mostly African men at gay bars, malls, bus and train stops, lured them with money or sex, invited them home, gave them alcohol mixed with drugs and strangled his victims. He would engage into sexual acts with the corpses before dismembering them. Dahmer would collect body parts of his victims as souvenirs. Dahmer clicked photos of the murdered body during the dismembering process so he could recollect and re-live the experience afterwards. Dahmer also practised cannibalism and lobotomy on his victims. Dahmer very carefully selected victims who were either travellers or borderline criminals making their disappearance less noticeable. Dahmer who initially pleaded not-guilty to all charges, pleaded guilty later by taking the insanity defence. The defence produced evidence of Dahmer's behaviour claiming that only an insane can commit such horrifying acts. The jury, however, chose to believe the prosecution's assertion that Dahmer was fully aware during his evil acts and after 10 hours' deliberation, sentenced him 15 consecutive life terms. Dahmer was beaten to death in 1994 by a fellow prisoner on the ground of gruesomeness of his crime and due to his annoying habits of fashioning severed limbs from prison food. Dahmer, at the pronouncement of sentence stated *"This has never been a case of trying to get free. I didn't ever want freedom. Frankly, I wanted death for myself."*

Aileen Wuornos¹²: An abused child who grew up to be a sex worker, was found guilty of killing six men and was sentenced to death. Young Wuornos faced mental turmoil as her father killed himself after serving prison for child molestation. Her mother abandoned her and her siblings leaving them with grandparents. Wuornos was sexually abused by her grandfather, she had sexual relations with her brother and she got pregnant in her teen years. She was thrown out of her house and she got engaged in sex work for survival. It was revealed that from 1989 to the fall of 1990 Wuornos murdered at least six men along the Florida Highways. When captured, she said she carried out attacks on those men in self-defence. She was found guilty of murder and she received death penalty. Later, Wuornos admitted to the murders. She was put to death by lethal injection.

Jack the Ripper¹³: This unknown killer terrorized London in 1888 murdering at least five women and dismembering their bodies in a peculiar manner indicating that he was aware of human

¹¹ Jefferey Dahmer Biography, available at <https://www.biography.com/crime-figure/jeffrey-dahmer> (last visited on 13.05.2020)

¹² Aileen Wuornos Biography, available at, <https://www.biography.com/crime-figure/aileen-wuornos> (last visited on 13.05.2020)

¹³ Jack the Ripper, available at <https://www.history.com/topics/british-history/jack-the-ripper> (last visited on 13.05.2020)

anatomy. These killings took place within one-mile radius around the Whitechapel district of England from 07.08.1888 to 10.09.1888. In fact, Jack the Ripper sent several letters to the police taunting them and warning them about the next murders. The name 'Jack the Ripper' originates from one of such letters which was published in the media around the time of attacks. Jack the Ripper's name or his motive was never identified nor was he ever captured. Since 1888 more than 100 suspects have been named surrounding this gruesome mystery. Jack the Ripper continues to remain England's one of the most infamous criminals.

Harold Shipman¹⁴: This British Doctor maintained extremely good relations with colleagues and patients. However, the local undertaker noticed that the number of Shipman's patients was suspiciously on rise. Suspicion became stronger when one of his victim's daughter found it odd when her old yet active mother died at home following a visit with Shipman and later it was revealed that in her will, she left her estate to Shipman. The body of the mother was exhumed and autopsy revealed that she had died due to a morphine-overdose. Following extensive investigations, which included numerous exhumations and autopsies, the prosecution charged Shipman with 15 individual counts of murder and asserted that Shipman enjoyed exercising control over life and death. A police computer analyst then testified how Shipman had altered his computer records to create symptoms that his dead patients never had within hours of their deaths. The prosecution introduced evidence of his drug hoarding and of his visits to the homes of the recently deceased to collect up unused drug supplies. Shipman falsely prescribed morphine to patients who didn't require it, and over-prescribed to others who did. The survey showed that he targeted elderly patients. Later, it was revealed that he may have been responsible for the deaths of at least 236 patients over a 24-year period. The judge passed fifteen life sentences, as well as a four-year sentence for forgery, effectively removing any possibility of parole. On 13.01.2004, Shipman hung himself in prison cell with bedsheets tied to the window bars.

Kevin Foster¹⁵: The former taxi driver of London, came up with a Ponzi scheme which promised sky-high returns but relied on the new investments to pay previous investors. Kevin Foster boasted that his scheme had 50,000 investors and he was making £28.50 for every £1. In order to convince people that his scheme was making money, he pulled a stunt where he would pull names out of a hat and give the winners cars and cash prize. He would also make considerable

¹⁴ Harold Shipman Biography, available at <https://www.biography.com/crime-figure/harold-shipman>, last visited on 13.05.2020)

¹⁵ I lured 300 police investors, boasts £35 million 'mini madoff', available at <https://www.express.co.uk/news/uk/174020/I-lured-300-police-investors-boasts-35m-mini-Madoff>, (last visited on 13.05.2020)

donations and sponsor sports team only to indicate that he was as successful as he boasted. He lived a lavish luxurious lifestyle in his five-bedroom farmhouse with special pools. He even bought exotic animals to start a private zoo. By the time his Ponzi schemes were stopped, he had duped around 8,500 people. The trail of evidence was so complex that it took three years for the investigating machinery to charge Foster. Judge Madge while sentencing him stated that *“Promotion of this scheme was so effective that many intelligent people were taken in, including financial advisers, mortgage brokers and policemen”*.

Nithari Murders¹⁶: Nithari, a village in Delhi, was terrorised with the rise in the number of missing children. Worried parents reported their children missing but the police failed to find any trace. Many alleged that these missing-person reports were ignored by the authorities. However, on 29.05.2006 two residents of Nithari suspected foul play when they noticed human remains in the drain outside a house. The residents claimed that the house-help of that house Surender Koli was involved in disappearances of children. Koli and his employer Pandher was accused of having 16 children and women into the house, where he allegedly raped, killed, dismembered the bodies of his victims and threw it in the drain. There were accusations of rape, murder, cannibalism, paedophilia and organ trafficking. Some of it had substance, some of it were plain rumours. Both Koli and Pandher were awarded death sentences by the Ghaziabad CBI Court on 24.07.2017. Koli during interview said *“After that, without realising in my mind, bad feelings started coming to kill and hack someone, blood, that kind of bad feelings started coming in my mind. It used to control my mind absolutely¹⁷.”*

Charles Shobhraj¹⁸: Hatchand Bhaonani Gurumukh or The Bikini Killer, was a French thief, fraudster and killer, whose father was a Sindhi and mother was Vietnamese. His primary target was western tourists. Shobhraj has repeatedly exhibited psychopathic tendencies and is alleged to have committed numerous robberies and murders to sponsor his luxurious lifestyle. He developed a small fanfare around himself in the early stage of his criminal career due to his intelligence and sophisticated lifestyle. He was fluent in several languages. He started committing petty crimes during his teen years and served his first sentence for burglary. Later in life, he had a

¹⁶ Nithari: Surinder Koli convicted in another case, available at: <https://timesofindia.indiatimes.com/city/noida/nithari-surinder-koli-convicted-in-another-case-sentence-on-april-6/articleshow/68746894.cms> (Last visited on 13.05.2020)

¹⁷Nine reasons not to hang alleged Nithari serial killer Surendra Koli, available at: <https://scroll.in/article/679297/nine-reasons-not-to-hang-alleged-nithari-serial-killer-surendra-koli> (Last visited on 13.05.2020)

¹⁸ Charles Shobhraj Biography, available at: <https://www.thefamouspeople.com/profiles/charles-sobhraj-11624.php> (Last visited on 13.05.2020)

theft and car smuggling business and was a great gambler. In 1975, Shobhraj and his accomplice murdered an American woman in Thailand, whose body was floating in the pool and who had a flowered bikini on. He left dying victims in Pattaya, Nepal, Varanasi, Bombay and in the places in South-East Asia. He was captured in Delhi after his attempt to poison two of his victims failed. Shobhraj received 12-years imprisonment and in the prison, he bribed jail officers and led lavish lifestyle in jail. He bribed prison officials and other inmates in a party which he himself had organised and walked out of the most secured prison in India. He was caught and was again sentenced ten-years imprisonment. Shobhraj was released by Indian government later. He was captured in Nepal in relation to a murder he had committed and the Court sentenced him life imprisonment. He believed that he did a favour to the society by killing his victims and he claims to have never harmed any good people.

The Cyanide Couple: Mohan Kumar¹⁹ aka Cyanide Mohan, a teacher at a primary school, used to lure unmarried girls into having sex with him and then trick them into taking contraceptives which were actually cyanide pills. Throughout 2005-2009, he killed 20 women. He was also rumoured to have been involved in bank frauds and other financial forgeries. He was sentenced to death in 2013.

Similarly, KD Kempamma²⁰, when her ponzi scheme did not work and after her husband divorced her, turned to robbery and murder for survival. She targeted women are overly religious and regularly visit the temple. She scouted for victims around temples in Bangalore and Mysore. She would pose as a pious woman, befriend her target and suggest a special religious ritual that needs to be performed. On the day of the rituals, she would make her victims drink 'holy water' which was actually mixed with cyanide. She would wait for her victims to die and would steal the jewellery of the victims. Kempamma is said to have killed around 5 women in 48 days in 2007. When tried, she begged for death penalty which was sentenced by the Court. It was later commuted to life imprisonment.

Slaughtering Sisters²¹: Seema Gavit and her sister Renuka Shinde have been found guilty of killing five children, though the police believe they kidnapped 13 and murdered nine. In one instance, the sisters killed a two-year-old boy and chopped his body into pieces. But that isn't the most terrifying part. After the murder, they packed his remains in a gunny bag, grabbed a snack,

¹⁹ Behind The Lives of The Other Indian Serial Killers, *available at:* <https://www.dailyo.in/arts/behind-the-lives-of-indias-non-aristocratic-serial-killers/story/1/16607.html> (Last visited on 13.05.2020)

²⁰ *Ibid.*

²¹ *Ibid.*

and casually watched a movie at a cinema hall with the child's remains placed between their feet. In another instance, they hung a two-year-old boy upside down, and slammed his head against a wall. Once, they sat munching on vada pav and watched their mother as she beat a toddler on the head with an iron rod. The mother, however, was never officially accused, booked or arrested. Petty thieves, the women used children as a shield while pick-pocketing at busy temple compounds, railway stations, fairs and bus stations. If the thieving sister was caught, the other one would fling the child to the floor, distracting attention away from the pickpocket. If the child cried or troubled them too much, he would be killed, casually. These sisters are now sitting on the death row.

Joshi-Abhyankar Case²²: Rajendra Jakkal, Dilip Sutar, Shantaram Jagtap and Munawar Shah were the names everyone was terrified of. This gang was convicted of killing around 10 people in Pune i.e. 2 members of Joshi family at their home, five members of Abhyankar family and two youths in separate incidents. This gang would strip their victims naked and strangle them to death using a peculiar knot. The professor who taught at the college where this quartet studied stated that these four were very polite and well-behaved and never showed criminal tendencies. This caused such a terror wave that the street would be empty after 06:00 PM.

Raman Raghav²³: During late 1960's, one fine day, people started noticing the dead bodies which were piling up in the vicinity. In the dark, Raman would emerge and seek any animals including human and hammer them till death. To Raman, human beings were objects from an opposite faction who he could kill with blunt objects. He had several aliases and no one knew his place of residence. For the longest time, the Mumbai Police was clueless as more and more dead bodies were being found and yet no evidence against Raman was traceable. After several efforts Raman was detained and the investigation revealed more than 40 killings by Raman. During investigation, Raman refused to answer any questions even after tremendous torture and beating, and simply kept requesting for chicken curry. The police, completely tired after weeks of interrogation, finally gave him the curry. Raman eventually confessed to 41 murders and was awarded death sentence. However, after his medical tests by a panel of three psychiatrists, which revealed mind-boggling findings, his death sentence was commuted to life imprisonment. Raman died in 1995.

²² The Other Time When India Hanged Four People, *available at:* <https://timesofindia.indiatimes.com/india/the-only-time-india-hanged-four-people/articleshow/73154343.cms> (Last visited on 13.05.2020)

²³ All You Need To Know About Raman Raghav, *available at:* <https://www.scoopwhoop.com/The-Real-Raman-Raghav-Serial-Killer-Anurag-Kashyap/> (Last visited on 13.05.2020)

There are numerous psychopaths who have made startling statements during their trial, which manifest the lack of fear, remorse, conscience and shame. For instance,²⁴ Albert Fish, a rapist and a cannibal who killed 10 children has said “*I like children, they are very tasty*”. Similarly, Edmond Kemper, a necrophile and a cannibal said “*I wanted to see how it felt to shoot grandma*”. “*I believe the only way to reform people is to kill them*” is stated by Charles Panzram, a homosexual rapist and arsonist who killed more than 20 people. Apart from these several names such as Zodiac Killer, John Gacy, Son of Sam have caused terror in the minds of people and have made the job of police authorities difficult. Similarly, other than those already mentioned above, the Indian criminal law has witnessed psychopaths like Auto Shankar murdered 9 teenage girls and blamed it on the “influence of cinema”. Darbara Singh also infamously known as the Baby Killer, who slit throats of 17 children and celebrated his killings with liquor and good food, and Amardeep Sada (8 years old) also known as India’s youngest serial killer murdered three toddlers in Bihar and he simply kept smiling when confronted by the police. Devendra Sharma, a doctor by profession, stole cars and killed car drivers in and around Uttar Pradesh, Gurgaon and Rajasthan. He has confessed to have killed 30-40 people.

After perusing and analysing the abovementioned cases, it may be seen that most of these individuals have either been sentenced to death penalty or life imprisonment, however, none of the judgments in the abovementioned cases specifies the concept of psychopathy. Secondly, it is pertinent to note that in each of these cases, the researcher emphasizes on the common traits and *modus operandi* which is followed by the psychopaths:

- 1) The harm is usually provided to people in the secluded places and in some cases at night.
- 2) Physically or mentally vulnerable people are mostly the victims of psychopaths.
- 3) Psychopaths are the master of manipulation.
- 4) They have a high ranking and respect in the society.
- 5) They show utter disregard towards social or legal norms. In fact, they justify their acts.
- 6) They have knowledge of the consequences yet no fear of punishment.
- 7) Psychopaths make desperate attempt to hide their acts from the outside world.
- 8) Very importantly, these psychopaths themselves have been the victims of torture, harassment or have been exposed to violence or unpropitious environment around them.

²⁴ Behind The Lives of The Other Indian Serial Killers, available at: <https://www.dailyo.in/arts/behind-the-lives-of-indias-non-aristocratic-serial-killers/story/1/16607.html> (Last visited on 13.05.2020)

- 9) Such psychopaths initiated their conflict with law with minor offences and at the later stage, such acts aggravated abnormally only to cause harm to others.

CRIMINAL PROFILING:

It is crucial that an investigative and behavioural tool like criminal profiling is introduced in India at the earliest as it would give a social and psychological assessment of the criminal to the authorities by psychological evaluation of the possessions of the offender. When there is no sufficient information of an offender or his offences, psychological assessment may provide crucial clues regarding when and where such offence may be repeated. Psychological experts can meticulously study and analyse any behavioural pattern of the offender which may be of tremendous help for capturing the offender. For instance, The List Murder Case²⁵. John List, a strict church-going accountant, killed his entire family including his 3 children, his wife and mother. John left their bodies at his home and fled. After about a month, when no one heard from the List family, the neighbours and relatives informed the police. The police entered and investigated List's house, and found five dead bodies. John had fled, changed his name and social security number and nobody knew his whereabouts. The case became cold for 18 years as List had committed almost a perfect crime. The police only had an old picture of List and needed to know how he looked after 18 years. The police took the help of criminal psychologist and a sculptor to prepare a clay sculpture of John List's face. The psychologist considered the following aspects viz. his strict upbringing by domineering German parents, stern lessons of Christianity, lack of social skills, history of losing jobs, anger due to his own failure, his frustration and entrapment, anxiety of getting caught, genetics and John's parents' photograph. Considering all these factors, the sculptor with the help of criminal psychologist made the sculpture of ageing John List and the police decided to eventually air his case on a very famous TV show wherein John's old photo and the photo of the sculpture were shown together to raw comparison. Only after few days, the police received a call from a lady who recognised List after seeing the sculpture and informed the police that he has been living next to her house as Robert Clark.

The idea of criminal profiling is to construct a body of data containing common patterns so as to enable the investigators to portray a general description of an unknown person. In the USA, the FBI's Behavioural Unit uses profiling as a tool to track criminals. India still lacks the

²⁵ John List: He Committed the (Almost) Perfect Murder, *available at:* <https://medium.com/@delanirbartlette/john-list-he-committed-the-almost-perfect-murder-4a30ad9199b9> (Last visited on 14.05.2020)

system of criminal profiling when it is needed the most in cases of crimes committed by psychopaths as identification of the disease of a mentally ill person is complicated.

LAWS REGARDING PSYCHOPATHY IN THE UK AND THE USA:

3.2.1 United Kingdom: England and Wales, after Second World War developed therapeutic communities like Hendersen Hospital, Grendon Underwood, Ashworth, Rampton, Broadmoor to deal with moderate to severe identity disorders. The U.K. was the first to use the term Dangerous Severe Personality Disorder in a discussion paper, 'Managing Dangerous People with Severe Personality Disorder' in 1999, proposing how to confine and treat a minority of mentally-disabled offenders who are dangerous to the public and themselves.²⁶ In England and Wales, M'Naghten's Rule still remains the predominant checklist while evaluating the degree and extent of insanity and has been refined over the years with case laws over the years.

3.2.2 United States: Different states in the USA have come up with their respective law to deal with psychopathy. For instance, Washington introduced Sentencing Reforms Act, 1981 which characterized psychopathic personality and sexual psychopath.

In 1939, Minnesota enacted Psychopathic Personality Law which mandates the State to adhere to civil treatment to obtain custody psychopaths in highly secure detainment centers and treatment facilities. California, too, sanctioned Psychopathic Offender Law, 1939 due to severe demand from medical and legal practitioners. In fact, in 1995 almost 20 states in the USA sanctioned laws relating to psychopathy. By virtue of these statutes, the State can hold a psychopath in a custody until their mental illness cured.

In the abovementioned cases and many others, the accused persons possess evident idiosyncrasies of psychopathy. It is necessary to note that every individual has his own psyche, liking and he accordingly bends towards his choice. These idiosyncrasies need to be understood, identified and acknowledged during trial and while delivering judgment as psychopathy still remains an un-emphasized issue in our justice delivery system.

²⁶ Q&A Dangerous and Severe Personality Disorder, *available at:* <https://www.theguardian.com/society/2002/apr/17/mentalhealth.crime1> (Last visited on 11.05.2020)

CHAPTER 4

GUILTY MINDS OF PSYCHOPATHS- WHY PSYCHOPATHS ARE INSANE

“Psychopathic killers are not ‘mad’ according to accepted legal and psychiatric standards. Their acts result not from a deranged mind but from a cold calculating rationality combined with chilling inability to treat others as thinking feeling human beings²⁷.”

Generally speaking, the psychopaths in the society may be either sick, mentally ill, insane or victims of harassment (physical, sexual or mental), and those who justify their bad act. The last category in the pursuit of their goal go to the extent of manipulation, aggression, showing lack of concern for others and thrill for danger. On the other hand, there are those who believe psychopaths are the victims of neurological disorder, ill-effects of the surrounding environment or faulty reasoning. The justice delivery system may perceive that lack of remorse for the victims is a disease that can never be cured and may label them as someone capable of repeating murders. Unfortunately, criminal law often treats psychopaths as an aggravating factor that demands increased punishment²⁸. On the other hand, a very strong case can be made that psychopaths are actually mitigating, if not exculpatory, factor²⁹. They are typically destined to lead a life that is emotionally impoverished, lacking in enriching human relationships, and doomed to occupational failure³⁰. Criminal law is set in motion against those who fail to fathom by moral responsibility and fear of penal sanction. Adolf Guggenbuhl-Craig called psychopaths “emptied souls³¹”. One of Aristotle’s students, Theophrastus was probably the first one to write about them, calling them ‘the unscrupulous’ as they lack the ordinary connections that bind us all and lack the inhibitions that those connections impose and to oversimplify, they lack empathy and conscience³².

Psychopathy, considering its nature, may simply be categorized into ‘curable’ and ‘incurable’. Because in certain cases, the psychopathic behaviour can be traced to the motivation and when the motivation is traced, it can be nullified. But in some cases, the psychopathy is so

²⁷ Robert D. Hare, *Without Conscience: The Disturbing World of the Psychopaths Among Us*, 5 (The Guilford Press, New York, 1st edn., 1993)

²⁸ Ken Levy, “Dangerous Psychopaths: Criminally Responsible but Not Morally Responsible, Subject to Criminal Punishment and to Preventive Detention”, 48, *San Diego Law Review*, 1302, (2011)

²⁹ *Ibid.*

³⁰ *Ibid.* at 1304

³¹ The Criminal Psychopath: History, Neuroscience, Treatment, And Economics, *available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4059069/#R17>* (Last visited on 14.05.2020)

³² *Ibid.*

deeply ingrained in their brain that it seems that it had been with them since birth and they almost become untreatable. They believe their acts are justified and lack motive and moral responsibility.

WHY PSYCHOPATHS ARE INSANE:

No act or omission is criminal per se; it becomes criminal when the actor does it with a guilty mind (*mens rea*). Words such as ‘intentionally’, ‘voluntarily’, ‘knowingly’, ‘negligently’ are used in the Indian Penal Code, 1860 to denote the element of ‘guilty mind’ in an offence. However, the maxim ‘*furiosus nulla voluntas est*’ infers that, a person who is suffering from a mental disorder lacks *mens rea*. The criminal law grants immunity to such persons due to want *mens rea* for commission of crime. In India, defence of insanity provided under Section 84 of the IPC protects persons of unsound mind from penal sanction which resembles M’Naghten’s Rule laid down under British Law. The degree of mental disturbance of insane persons is so grave or inability to ascertain the consequences of any act or omission is so evident that law grants them immunity from any criminal responsibilities. A psychopath is usually involved in an act which may render him criminally responsible but he would not carry any moral responsibility. If a person, even though criminally responsible, is not morally responsible for the acts that he commits, it becomes unfair to punish that person and punishing him does not bridle him from recidivation. Psychopaths need to be categorised as insane as:

Firstly, psychopaths have inherent inability to empathize with the victim’s pain and to view victim’s misery from victim’s eyes. When the criminal law labels an act as an offence, the psychopaths, due to lack of conscience fail to understand that they are treating victims badly.

Secondly, psychopaths are not the only individuals who torture and kill others. For instance, like psychopaths, terrorists, too, lose compassion for others. But the only difference is, terrorists still know the nature, consequences, legal status of their actions, but psychopaths cannot. Psychopaths lack rudimentary rationality and hence lack basic moral competence.

Thirdly, psychopathy snatches the basic abilities of a person to care for others and to identify that what he is doing is wrong, which fulfils the ingredient ‘defect of reason due to defect in mind’ under the M’Naghten’s Rule.

Fourthly, inability to control one’s own actions is the ultimate criterion provided under the irresistible impulse test of insanity.

It is believed that an act of psychopaths to harm others and derive pleasure is the epitome of evil. However, if a simple example of a smoker attempting to quit smoking is taken, it may be seen that initially he will refrain from smoking. But as the day progresses, the urge to smoke may over-power him and he may light a cigarette. Similarly, psychopaths are the victims of their urge

to harm others. Therefore, people like Hitler and Stalin may be addressed as the epitome of evil but psychopathy is merely an epitome of sickness.

If the mental condition of a psychopath cannot be determined at the time of arrests, then during trial it needs to be determined whether the accused is competent for trial or not. If any hint of mental disturbance is seen, such accused should be examined by qualified psychiatrists. The general procedure is that when a person is incompetent to stand trial, he is sent to the mental hospital for treatment yet, no guidelines are available for dealing with such cases. In India, certain personal laws (for instance Hindu Marriage Act, 1955 Sections 5 and 13) deal with insanity and Chapter XXV of the Criminal Procedure Code, 1973 deals with procedure to try mentally ill persons. Yet, these laws are inadequate to address the issues faced by psychopaths. The problem is, when such psychopaths are sent for clinical or psychiatric test, they are declared as fit for trial as they happily admit to the crime with no remorse, fear of punishment and nothing to hide. This is how they are labelled as gruesome killers and are awarded extreme punishments without studying the rationale behind their attitude. The time has come to introduce a law that mandates, as a judicial procedure, a safe custody of psychopaths and subjecting them to medical tests involving psychoanalysis. As mentioned above, the UK and the USA have framed laws for psychopaths which not only recognize them but handle them with diligence, support and treatment. Exceptional awareness is created in these countries due to which people are more inclined towards psychopaths' protection. In India, any minor mental illness of a criminal goes unnoticed as these criminals are never examined. Such patients spend their lives in jail or in mental hospital where they are neglected and labelled as demons which needs to change at the earliest.

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

The researcher concludes that psychopaths are victims and of their own mental illness. After analysing important case, it is evident that the acts that they commit are gruesome but lack *mens rea*. Two disciplines of law and psychiatry contribute most in the study of psychopaths as psychiatry has more of a scientific and psychological approach and law takes care of *mens rea* and *actus reus*. The researcher makes the following recommendations:

- 1) When the competence to stand trial of an accused by the reason of insanity is questioned, the Court must, through psychiatrists, evaluate every offender individually as every psychopath has different psyche, and then, the Court must decide if the accused is competent to stand trial.
- 2) While identifying psychopaths Hare Checklist is a good start. However, it needs to be perfected. Researcher emphasizes that instead of taking the yes-and-no diagnosis, each person needs an individualised profile as every person has different mindset, traits and psyche.
- 3) Therapeutic approach should be stressed upon instead of punitive approach towards psychopaths while dealing psychopaths as they simply fail to understand nature of crime. They lack guilt or remorse and the appropriate place for them is hospital and not asylum or jail.
- 4) The Court should consider the disease before deciding the quantum of punishment, while keeping in mind that the psychopaths need therapy and not infliction of punishment as patients always deserve treatment and not punishment.
- 5) Police, lawyers, staff of asylum, doctors must be trained towards identification and counselling so as to get familiarized with psychopathy and criminal behaviour.
- 6) The tool of criminal profiling must be used to the fullest to gather as much information on psychopaths as possible. Because more information leads to greater understanding of the crime and the criminal.
- 7) Subject like ‘psychopathy and criminal responsibility’ must be entailed in the syllabus so that the law students who are the advocates and judges of tomorrow are sensitised towards this issue since the beginning.
- 8) Psychopaths need exclusive asylums for their treatment with high security where they can be admitted for treatment.

- 9) Large scale awareness programs must be carried out on the private, governmental, non-governmental and individual level

Simply speaking, researcher believes that in the past, the authorities failed to identify whether a person is a patient or an evil person. It is difficult for the police to understand the motive of commitment of an offence. When a psychopath is captured, the investigation circles around offender's insanity or evilness. Considering this, the offender is sent to either hospital or jail for further investigation. Such person faces inhuman treatment in our justice system only because of lack of care and knowledge of this disorder. Ironically, a psychopath is convicted and sentenced to either life imprisonment or death penalty, or such person is acquitted on the basis of insanity and therapeutic approach is not even considered, and that results into a huge mistake in a judgment. Psychopathy, being the dangerous and the heinous extreme of a mental disease, needs to be handled with care and precaution. Prison, life imprisonment and death penalty can never be the solution for this problem.

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