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*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **SENTENCING MENTALLY ILL OFFENDERS: A DUAL CHALLENGE OF CRIME PREVENTION AND CRIMINAL CORRECTION**

AUTHORED BY - PRERNA SINGH<sup>1</sup>

## **Abstract**

It is quite regrettable to observe that mental illnesses are becoming more common among people worldwide, especially in light of the quick advances occurring in practically every aspect of society. An enormous threat to society as a whole is posed by those with mental illnesses. However, one cannot overlook the fact that such a person is a victim of his own mind. The proportion of mentally ill criminals has significantly increased over time. Mental illnesses may arise from a variety of biological, environmental, or psychological factors. The IPC's Section 84 allows mentally ill offenders to use the defence of insanity as a way out of criminal prosecution. The idea that there is a connection between mental illness and criminality is not new. Persons with mental illnesses frequently exhibit aggressive, impulsive, violent, and cognitively challenged behavior. Judiciary faces a major challenge as to what is desirable for such offenders, either treatment or punishment. Thus, the aim of this research paper is to assist the reader to comprehend the link between the brain and crime. One crucial point that has to be addressed is how the court will interpret neuroscientific evidence that is presented in court to support an accused person's mental health issues. What effect and influence such evidence has on a judge's decision is a cause for concern. It's also important to comprehend the options available to judges, such as treatment or punishment for mentally ill offenders. This will make it easier for the reader to comprehend sentencing of mentally ill offenders in the Indian purview. This research paper seeks to examine a number of examples involving mentally ill criminals in detail. This paper also seeks to assist the reader in comprehending the extent to which mental illness can absolve an individual of criminal guilt.

## **Keywords**

Expert Opinion, Insanity, Mental Ill Offenders, Neuroscientific Evidences, Sentencing

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<sup>1</sup> Advocate, District and Sessions Court, Amritsar, Punjab.

### Premise of Criminal Liability in India: An Introduction

For establishing the criminal accountability of offenders in India and around the world, the idea of criminal responsibility embodied in the ancient legal maxim “actus non facit reum nisi men sit rea” has stood the test of time. “An act of a man cannot be punished as crime unless it is coupled with a blameworthy state of mind,” is the literal interpretation of this maxim. The foundation of the criminal justice system in India is this idea. It clearly stated that a person cannot be found guilty of a crime unless the two necessary conditions—the actus reus (physical act) and mens rea (mental element)—are met. Lord Kenyon has observed it as a principle of natural justice.<sup>2</sup> Therefore, for an act to be considered criminal, both the intent and the deed must coincide.<sup>3</sup> Criminal law is mainly concerned with the behavior of men in society; therefore, every act of man must be backed by operation of a man’s mental intent.<sup>4</sup> It can be apprehended from the foregoing discussion that mental element is the ultimate deciding tool which renders a person innocent or guilty. Mens rea is the term used to describe the “guilty mind,” “wrongful intention,” or “blameworthy state of mind” of an offender. It essentially reveals the mental state of the offender at the time of the offence.<sup>5</sup> It can be sufficiently inferred that the absence of mens rea (guilty or wrongful intention) negatives the intention of a crime. No act is criminal in itself unless it is committed with a wrongful intention (guilty mind). In *Brend vs. Wood*<sup>6</sup> due emphasis was laid on the principle of mens rea stating that a court shall not rule out mens rea unless backed by a statutory provision. Mens rea is the general rule applied to all the crimes in all circumstances. It is to be proved by the prosecution that the offence has been committed with an intention to cause such harm or injury. However, strict liability offences are one such exception where mens rea is immaterial in determining the guilt of the wrongdoer. As stated by Lord Atkinson, whenever a crime is committed, the court shall presume that the offender has the requisite knowledge and intent to commit such wrong unless proved otherwise.<sup>7</sup> This principle helps the courts to distinguish between someone who intentionally commits a wrongful act and someone who does not commit it wrongfully.<sup>8</sup> Terms like fraudulently<sup>9</sup>, voluntarily<sup>10</sup> and dishonestly<sup>11</sup> have been

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<sup>2</sup> 6<sup>th</sup> edition, K D Gaur, Indian Penal Code 107, (Universal law publication, Gurgaon, 2018).

<sup>3</sup> Fowler vs. Padget, (1789) 7 TR 509.

<sup>4</sup> 6<sup>th</sup> edition, K D Gaur, Indian Penal Code 108, (Universal law publication, Gurgaon, 2018).

<sup>5</sup> Paul H. Robinson, *Mens Rea*, NELLCO Legal Scholarship Repository, Scholarship at Penn Law (2003), [https://www.researchgate.net/publication/4986600\\_Mens\\_Rea](https://www.researchgate.net/publication/4986600_Mens_Rea).

<sup>6</sup> *Brend vs. Wood*, (1946) 62 TLR 462.

<sup>7</sup> 6<sup>th</sup> edition, K D Gaur, Indian Penal Code 109, (Universal law publication, Gurgaon, 2018).

<sup>8</sup> Sapna Jain, *Mens Rea – An Important Element to Criminal Law*, International Journal of Advanced Legal Research (IJALR), (2020), <https://www.ijalr.in/2020/10/mens-rea-important-element-to-criminal.html>.

<sup>9</sup> Indian Penal Code, 1860, S. 25, No. 45, Act of Parliament, 1860 (India).

<sup>10</sup> Indian Penal Code, 1860, S. 39, No. 45, Act of Parliament, 1860 (India).

<sup>11</sup> Indian Penal Code, 1860, S. 24, No. 45, Act of Parliament, 1860 (India).

used in various penal provisions in the criminal law to indicate the guilty intention of a person while committing an offence. Furthermore a person can be made liable of a crime if he commits that act recklessly, negligently, purposefully or knowingly.<sup>12</sup>

An important question that arises is what happens when a crime is committed without any wrongful or guilty intention? It has been effectively dealt in Research paper IV- General Exceptions ranging from section 76-106 of the Indian penal code. Basically this research paper enunciates all those circumstances in which a prohibited action may be committed without the presence of mens rea. Certain such circumstances can be unsoundness of mind, involuntary intoxication, minor age, act done in good faith, act done in lieu of lawful duty, and etc. In all such circumstances the criminal responsibility of a person cannot be established because of the non-fulfillment of one of the essential requirements of a crime i.e. mens rea. The only issue which the court faces while deciding such matters is the ascertainment of mental element of a person because it cannot be adjudged what goes in the mind of a person. Thereby, if the accused is able to prove his case falling within any one of the general exceptions, he can be exempted from criminal liability. Indian criminal justice system is premised on the belief that there are certain sections of people who cannot possess a guilty mind even if they have committed a prohibited act and thereby, they cannot be punished in the same manner as a conventional offender.<sup>13</sup> Hence, absence of guilty mind can render an excuse for criminal from subsequent liability.

Hereby, it can be deduced that if a person commits a crime under the influence of some of neurological disorder, commonly referred to as mental disorder, then he cannot be said to have relevant mental element for the constitution of a crime. Since, this person lacks mens rea; he cannot be made liable for the acts committed by him under the influence of some disorder. This further implies that such accused cannot be punished in the same manner as the other criminals committing crime with adequate knowledge and intention. Here comes the role of defense counsel who has to prove the existence of such mental disorder to mitigate the circumstances of the case. In the era of ever-growing mental issues, large proportion of criminals are often committing crime due to some neurological problems. However, it is pertinent to mention that such criminals are victims of their own mind. Such criminals cannot be corrected via conventional punishments but they require adequate and efficient medical treatment. However, when the defence of mental illness is raised, the case becomes even more critical and complicated. It presents the court with a twofold dilemma pertaining to both criminal corrections and crime prevention.

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<sup>12</sup> Sapna Jain, *Mens Rea – An Important Element to Criminal Law*, International Journal of Advanced Legal Research (IJALR), (2020), <https://www.ijalr.in/2020/10/mens-rea-important-element-to-criminal.html>.

<sup>13</sup> Sapna Jain, *Mens Rea – An Important Element to Criminal Law*, International Journal of Advanced Legal Research (IJALR), (2020), <https://www.ijalr.in/2020/10/mens-rea-important-element-to-criminal.html>.

Evidence based on neuroscientific research serves as a mitigating factor, releasing mentally ill criminals from prosecution. This is predicated on the idea that someone with a mental illness is incapable of developing the necessary mental purpose to justify a criminal conduct. It is necessary to state that a person committing a crime while suffering from a mental illness will inevitably lose control of both his body and mind. Consequently, he lacks the capacity to comprehend the nature and consequences of his actions, to discriminate between right and wrong, or to recognize that his actions are illegal. Therefore, the same standards that apply to other sane offenders are not applicable to the conviction of such mentally unsound person. Treating this person is more necessary than punishing them.

### **Relationship between Mental Disorders and Crime**

Criminal mind has played an important role in the evolution of crime since time immemorial. As has been already discussed that mens rea is the foremost essential of crime, the absence of which proves to be detrimental to the criminal notions. The capacity of mental element is adversely impacted due to the presence of some mental disorder. Mental disorders not only encourage criminal behavior but also require adequate treatment to be dealt with. The relationship between mental disorders (psychiatric disorders) and crime is often debated and is under scrutiny since past few decades. This has further led to the enlargement of scope of mental health assistance to criminals by conflating crime and mental disorder into one aspect. There are several questions that come to the mind of a researcher such as is there any relation between crime and mental disorder? If yes, what are the specific types of mental illnesses that can be linked to criminal behavior? What are the most common crimes committed by mentally disordered individuals? Are mentally disordered individuals vulnerable to victimization? It is popularly believed that humans suffering some mental disorder are prone to showcase violent and aggressive behavior. As a result of the same, they are often referred to as crazy individuals. Mental illness affects the behavior of a person adversely and it is thereby important to isolate such criminals from the society followed by their subsequent treatment. However, it is pertinent to note that not all criminals are suffering some mental disorder.<sup>14</sup> Eric B. Elbogen, PhD, a psychologist and professor of psychiatry and behavioral science, is of the opinion that mental disorder clubbed with co-occurring substance use, adverse childhood experiences, and environmental factors leads to criminality in mentally

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<sup>14</sup> Noman Ghiasi, et al., *Psychiatric Illness and Criminality*, National Library of Medicine (10 Mar. 2024, 01:00 PM)

<https://www.ncbi.nlm.nih.gov/books/NBK537064/#:~:text=Certain%20psychiatric%20conditions%20do%20increase,or%20have%20long%2Dstanding%20paranoia.>

disordered individuals.<sup>15</sup> Further Jeffrey Swanson, PhD, a medical sociologist at the Duke University School of Medicine and a prominent researcher enunciates that it is important to understand the various psychological disorders combined with external factor having a bearing on the criminal behavior of a person. This will further help the law enforcement agencies to undertake effective treatment of such criminals.

When a person is mentally unfit or has a behavioral disorder, it adversely impacts his cognitive faculties of brain. Mental disorders hamper the thinking process and judgment ability of an individual. It becomes difficult for him to differentiate between good and bad due to their mental incapacity.<sup>16</sup> People suffering from mental disorder commit wrongful acts without any knowledge of the consequences of their actions. It has been largely observed that individuals with mental disorder are prone to committing suicide under the influence of depression and anxiety. Sometimes there may be certain circumstances where a person commits suicide after killing his family members, which again is indicative of the mental disorder prevalent in such criminal.<sup>17</sup> Burari deaths in the national capital Delhi is one such glaring example of psychological disorder associated with criminality. Conclusively, it can be deduced that mental health of a person influences his behavior and judgment ability to a great extent.

### **Treatment or Punishment: What is Desirable for Mentally Ill Offenders?**

Over time, theories of punishment have changed. India is currently going through a reformatory phase of punishment. Justice Krishna Iyer's statement that "Every saint has a past and every sinner has a future" in the renowned judgment of *Mohd. Giassudin v. State of A.P.*<sup>18</sup> effectively articulated the idea of reformatory views of punishment. This approach is based on the idea that a criminal justice system's primary goal should be to reform offenders who are capable of reforming themselves, rather than punishing them at the first instance. Such is the case with mentally sick criminals. It is reasonable to claim that individuals with mental illnesses who commit crimes pose a threat to society as a whole in addition to being victims of their sickness. However, it is important to note that punishing mentally ill offenders will only make their

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<sup>15</sup> Tori DeAngelis, *Mental illness and violence: Debunking myths, addressing realities*, American Psychological Association (10 Mar. 2024, 01:15 PM), <https://www.apa.org/monitor/2021/04/ce-mental-illness>.

<sup>16</sup> Michael J. Rosen & Brent Teasdale, *Mental illness and crime*, Wiley Online Library (10 Mar. 2024, 01:20 PM), <https://onlinelibrary.wiley.com/doi/10.1002/9781118519639.wbecpx092>.

<sup>17</sup> Mohammad Zaheer Moqimy, *Mental disorder and commission of crime: analysis of legal position in India*, 4(6) International journal of law management and humanities 1152-1161, <https://www.ijlmh.com/wp-content/uploads/Mental-Disorder-and-Commission-of-Crime.pdf>.

<sup>18</sup> *Mohd. Giassudin vs. State of A.P.*, (1977) 3 SCC 287.

suffering worse; instead, when these offenders are diagnosed, they need to receive the appropriate care and treatment. To treat mental illnesses, these criminals require psychiatric support and appropriate mental treatment. For therapy, such inmates may also be sent to mental health facilities or even mental asylums. On the other hand, there are situations where a mentally ill criminal receives punishment. His situation gets worse as a result. It has frequently been observed that the Supreme Court has rendered important rulings in cases involving mentally ill criminals. Unquestionably, neuroscience has altered how mens rea is determined in criminal situations. The NHRC also advocates for mentally ill criminals to be treated in mental hospitals and asylums rather than being imprisoned.<sup>19</sup>

The court uses neuroscience to help determine if a crime was committed with mental involvement. A court of law can prove mental illnesses or malfunctioning brain regions with the help of neuroscientific data. Neuroscientific evidence is provided in the form of an expert opinion under section 45 of Indian evidence legislation. These pieces of evidence have a significant impact on a case's sentence. These pieces of evidence typically mitigate the circumstances of a case, which affects the judge's decision. It is undeniable that a judge must consider a number of factors before declaring an accused person innocent or guilty. A Judge has to go through all the circumstantial and corroborating evidences and then form an opinion as to what shall be awarded to an offender i.e. punishment or treatment. General rule lays down that it is legal insanity which can save a person from criminal liability and not medical insanity, thereby it is the discretion of the court to determine whether a person is legally insane or not. To understand how neuroscientific evidence affects the decision making of court, several case laws will be discussed. Punishment is generally inflicted on a person to create a fear in the mind to abstain that person from committing crime. However, a grey area arises when an offender is a fearless one. Most glaring example of fearless offenders is psychopaths. Psychopaths seem to be sane from the outlook but they are severally mentally ill when properly diagnosed. Psychopathy is a severe form of mental disorder. They are unable to comprehend the nature and consequences of acts committed by them because of mental illness and not because of guilty mind. Due to their mental illness and infirmities in functioning of brain, violence and torturous acts become normal for them, which they consider to be morally correct. For instance, in *Dandupalya Krishna vs. State Of Karnataka*<sup>20</sup>, the accused claimed that he like to hear the last sounds of life draining away. It

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<sup>19</sup> nhrc.nic.in, <https://nhrc.nic.in/press-release/nhrc-directs-states-ensure-mentally-ill-persons-are-not-jailed-under-any-circumstances> (last visited 29 Mar. 2024).

<sup>20</sup> Krishna @ Dandupalya Krishna vs. State Of Karnataka on 18 July, 2018.

was exciting for him to hear the gurgling sound emerging from the throat that he slit. This is a clear case of psychopathy or mental illness as no other sane person would like to do that. In yet another instance of *Surenra Koli vs. State of U.P. and Ors*<sup>21</sup> the accused claimed that he still had an urge to kill even after mercilessly killing and eating the flesh of many children. Inducing a psychopath or mentally ill offender to punishment will not solve the problem of psychopathy as psychopaths are devoid of emotions and are fearless. It is only in rarest of rare cases in which death penalty can be awarded to them based on the incapability of their reformation and treatment.

### ***Legal provisions regarding mentally ill offenders in different countries:***

**United Kingdom** – it is believed in English law that psychopathic wrongs are a result of a mentally ill mind. And for this very reason, diverting a mentally ill offender to rehabilitation center is a more logical approach than punishment. After World War II, many new mental treatment centers were established. One of the oldest therapeutic centers is Henderson hospital, which has succeeded in treating such offenders to great extent.<sup>22</sup>

**USA** – USA has developed several laws dealing with mentally ill offenders or psychopaths. For example Sentencing Reform Act was passed in the year 1984 keeping in mind the mental state of personality disorder in sexual offenders. Psychopathic offender law was established in California in 1939. And several other states in US have also made psychopath specific laws. Most of these statutes direct the state to take custody of mentally ill offenders who are indulged in serious and horrendous crimes as they pose great threat to the society at large.<sup>23</sup>

**India** – Indian legislation encompasses several provisions specifically dealing with mentally ill offenders. Section 84 of the Indian penal code declares ‘unsoundness of mind’ a sufficient defense for escaping criminal liability. Whereas section 328 of CrPC states the procedure to be followed when a person against whom an inquiry is being held is found to be of unsound mind and consequently is unable to defend his case. However, these provisions are insufficient in dealing with partial delusion, irresistible impulse or the impulsive behavior of the psychopath. People need to be made aware of mental disorders especially psychopathy through educational means. As these persons are mentally disordered, punishment is not a viable option for them.

### ***Neuroscientific evidences and challenges in sentencing:***

Neuro-evidence has been significantly less useful for determining guilt or innocence, even though

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<sup>21</sup> *Surenra Koli vs. State of U.P. and Ors*, Criminal Appeal No(S). 2227 OF 2010.

<sup>22</sup> Vedant Saxena, *Should psychopaths be subjected to therapy or punishment*, iPleaders Blog (12 Mar. 2024, 03:30PM), <https://blog.iPLEADERS.in/psychopaths-therapy-not-punished/>.

<sup>23</sup> *Ibid.*

it is frequently used to contest the fundamental assumptions of voluntariness and mental state in criminal law. Researchers, defense counsel, defendants, and members of the press are among the people who support the use of neuro evidence by jurors, lawyers, and judges to establish criminal guilt. On the other hand, critics contend that because researchers have never identified a brain region overtly showing mens rea and blame, the reliability, validity, and psychological inferences of neuroscience in decisions are far from reality.

To ensure justice, often known as proportionate justice, it is essential for criminal legislation and the philosophy of punishment to be proportional to the seriousness of the crime itself. Judges assess both mitigating and aggravating factors when deciding on a proportional penalty for a crime or a criminal, at the very least taking mens rea (criminal intent) and actus reus (actual actions) into account. Therefore, the claim that "I didn't do it; my brain made me do it" calls into question the seriousness of mens rea, the criminal responsibility of the offender, as well as the idea of proportional justice, during the sentencing phase. Neuroscientific evidence is typically used in cases where offenders are up for a severe penalty, including the death penalty, a life sentence, or a significant prison term. Its Roper v. Simmons decision<sup>24</sup> which abolished the death penalty for juvenile offenders under the age of eighteen, who committed crimes due to developing or malfunctioning brains, is one of the most well-known deployments of neuroscience in criminal prosecutions. The discussion focuses on how the application of neuro-evidence to capital sentencing judgments based on the notion of proportional justice could and should be done. There are usually some challenges in interpreting neuro-evidence scientifically and applying it to the penalty phase of a capital case. The four corners of sentencing law historically have been retribution, rehabilitation, deterrence, and disablement. A judge must consider a variety of factors while determining the proper sentence in a criminal court. When all of the circumstances are taken into account, the proportionality concept in sentencing is essential to strike a balance between rehabilitation and punishment and to accomplish fairness and justice.<sup>25</sup> Neuro-evidence raises questions about sentencing proportionality and leniency in capital cases because it weakens the idea of criminal responsibility. Judges and juries must consider if "the sum of the mitigating elements is sufficiently substantial to warrant for mercy" before deciding whether to sentence someone to death or life in prison. It is still very likely that evidence of brain damage or malfunction will be utilized to determine suitable penalties, especially in decisions between the death penalty and life sentences, even though it may not be enough to acquit an offender from

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<sup>24</sup> Roper v. Simmons, 543 U.S. 551 (2005).

<sup>25</sup> Yu Du, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-Evidence*, 18(2) Seattle Journal for Social Justice, <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/19>.

criminal accountability (in the guilt phase).<sup>26</sup> According to research, offenders in death penalty cases may be able to utilize brain scans to show that their guilt is reduced as a result of mitigating factors or their own free will. Observationally, the judges performing the test that examined the effect of neuropsychological evidence on sentence recommendations in death penalty hearings discovered that the frequency of death penalty recommendations was decreased by neuropsychological evidence. The incorporation of neuroscientific data during the sentence phase appears to have a much greater impact than in the liability (guilt or innocence) phase.<sup>27</sup>

***Some significant cases concerning mentally ill offenders:***

- ***State of Florida v. Hoskins***<sup>28</sup>: In 1992, Johnny Hoskins was charged with raping and killing Dorothy Berger, a neighbor who was 80 years old. Hoskins was the accused, according to both eyewitness testimonies and DNA testing of the body fluids. The trial judge rejected Hoskins' mental health expert's request for a neurological test to provide mitigating evidence preceding the second penalty phase of his trial. The trial court was required by the Supreme Court of Florida to order a PET scan on Hoskins and examine the results, and because the Florida Supreme Court ruled that there was brain abnormality after the PET scan, and sent the matter back for a fresh penalty trial. In the new punishment procedure, the jury, by a decision of eleven to only one, recommended death. Despite the fact that Hoskins submitted six appeals, his death sentence was upheld in 2007. The trial court came to the conclusion that Hoskins had a hypo-frontal lobe anomaly in the presence of neuro-evidence, which might lead to a diminished capacity to manage impulsivity. It could not, however, be used as a statutory mental mitigator because it was not a "mental or emotional disorder." Hoskins further contended that due to his brain malformation and mental age, he lacked the mental and emotional maturity to govern his conduct. The trial court determined that while there may have been evidence to support this claim in connection to rape, there was unquestionably no such evidence in regard to murder. The death penalty was deemed proportionate by the court. The use of a brain scan in Hoskins' case had no bearing on the sentence that was ultimately imposed.<sup>29</sup>

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<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Hoskins v. State*, 702 So. 2d 202, 203–204 (Fla. 1997).

<sup>29</sup> Yu Du, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-Evidence*, 18(2) *Seattle Journal for Social Justice*, <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/19>.

- ***State of Florida v. Nelson***<sup>30</sup>: Grady Nelson, a former county social worker's assistant, was found guilty of first-degree murder in 2005 in Miami-Dade County, Florida, after brutally murdering his wife 61 times and sexually abusing his stepchildren. Even worse, Nelson left his wife's head with a butcher knife. He was given a life sentence without the possibility of parole by the judge. Quantitative electroencephalography (qEEG), a piece of neuroscientific evidence presented by his defence attorney and cited as expert testimony by a neuroscientist, played a significant element in this sentencing decision. The brain mapping method known as QEEG converts a patient's brain wave frequencies into a digital representation of their brain. This neuro-evidence demonstrated Nelson's possible vulnerability to impulsivity and aggression due to a brain abnormality or damage. Although the neuro-evidence might not make Nelson excused or criminally irresponsible, his attorney contended that it should lessen his punishment. The availability of neuro-evidence in Nelson's case lessened his punishment by suggesting a brain disorder and mental incapacity, which finally convinced the judge against voting for the death penalty.<sup>31</sup>

Some of the famous and relevant cases pertaining to mentally disordered offenders and their sentencing in Indian paradigm are discussed as under:

- ***Nithari Rape case***: it is one of the most gruesome crimes committed by a mentally ill offender in India. In this the accused abducted, raped and killed children and women. Later he mutilated the dead bodies of the victims and ate them. The rest of the mutilated body parts were packed in a gunny bag and thrown in a drain behind the house of his own residence. This case fell under the category of rarest of rare cases and was sentenced to death on the basis of investigation by a CBI court. However, in the year 2015, six years after his conviction, his punishment was commuted to life imprisonment due to the neurological disorder he was suffering from.<sup>32</sup> This was the first case which essentially compelled the Indian legal justice system to incorporate psychopathy within its scope.
- ***State of Maharashtra vs. Sindhi Alias Raman***<sup>33</sup>: also called as Raman Raghav case is one of the most well known cases involving a psychopathic offender. In this case the distinction between medical and legal insanity was reaffirmed by the court. It was observed that if a

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<sup>30</sup> *Ibid.*

<sup>31</sup> Yu Du, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-Evidence*, 18(2) Seattle Journal for Social Justice, <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/19>.

<sup>32</sup> Surenra Koli vs. State of U.P. and Ors, Criminal Appeal No(S). 2227 OF 2010.

<sup>33</sup> State Of Maharashtra vs. Sindhi Alias Raman, (1987) 89 BOMLR 423.

person is suffering from legal insanity i.e. insanity at the time of commission of crime then he only he will be deemed to invoke the defense of section 84 of IPC. In this very case, accuse Raman Raghu was a psychopath who was a killer that roamed the streets of Bombay in 1960's. Upon trial he was diagnosed with acute schizophrenia. Thereby his sentence of death was commuted to life imprisonment because he was incurably mentally ill. He was found suffering from a psychosis called chronic paranoid schizophrenia or paraphrenia meaning chronic paranoid schizophrenia plus auditory hallucinations. He is dangerous to the society and hence certifiably insane. Though he understood the nature of his act but he did not know what he was doing was contrary to the law of the land. Therefore his case fell within the ambit of section 84 IPC. And presence of mental disorder mitigated the circumstances of his case thereby, reducing the punishment awarded to him.

- ***Dayabhai Chagganbhai Thakkar vs. state of Gujarat***<sup>34</sup>: in this case the plea of insanity of the person was rejected on the ground that he was unable to prove unsoundness of mind. The extent of unsoundness of mind has to be such that which the person is not capable of understanding the nature or consequences of his act or does not know what he is doing is a wrongful act or does not know that his act was contrary to law.
- ***Hari Singh Gond vs. State of M.P***<sup>35</sup>: in this case the accused beat the deceased Hari Lal with sticks and then put the house on fire due to which the deceased also died. During the trial accused pleaded defense of insanity which was rejected by the Hon'ble court on the premise that mere unusual behavior of a person arising out of anger and exaggerated opinion does not amount to unsoundness of mind. Thereby the conviction of the accused was upheld by the court.
- ***Ashiruddin vs. the king***<sup>36</sup>: in this very decision the accused killed his own five year old son under a delusion caused by a dream. The accused has dreamt that certain divine spirit has guided him to sacrifice life of his own son of five year. The next morning he took him to the mosque and killed his own son by slitting his throat. The accused then went to his uncle to explain the entire incident to him. In this case the third element of insanity was established that he did not know what he was doing is wrong as he was laboring under delusion of a dream. Thereby he was granted defense of unsoundness of mind on being mentally insane at the time of commission of crime.

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<sup>34</sup> Dayabhai Chagganbhai Thakkar vs. state of Gujarat, AIR 1964 SC 1563.

<sup>35</sup> Hari Singh Gond vs. State of M.P, AIR 2009 SC 31.

<sup>36</sup> Ashiruddin vs. The king, AIR 1949 Cal 182.

- **Dandupalya Krishna case**: it was another important case of the criminal being a psychopath. Dandupalya Krishna was the leader of the dreaded Dandupalya gang which operated across Karnataka and Andhra Pradesh from 1995 to 1999. They killed at least 42 people in an inhumane manner, with crowbars and other weapons. However, due to the severe kind of untreatable mental disorder, all the members were sentenced to death.<sup>37</sup>
- **Darbara Singh case**<sup>38</sup>: Darbara Singh was a pedophilic serial killer who killed many people across Kapurthala to Jalandhar. By the year 2004, he had killed nearly 25 people mostly children. He was a psychopathic offender who expressed no remorse of his crime. However, his psychopathic disorder was not a result of a mental illness rather it was a consequence of his anger and grudge against migrant labors. Thereby, he was sentenced to capital punishment.
- **State of Madhya Pradesh vs. Ahmadulla**<sup>39</sup>: in this case the accused murdered his mother in law by managing to enter her room at night and severing her head with a knife. He then hid the object of weapon in an underground cell and hid the torch in a cash box. Upon trial he pleaded defense of unsoundness of mind. His examination was done by medical practitioners and it was found out the he was epileptic two years before the incident. The apex court observed that to avail the defense of unsoundness of mind, legal insanity at the time of commission of crime must be proved. But in the present cases the circumstances and the medical evidence produced were unable to establish that the accused was suffering from a mental disorder i.e. epileptic seizure at the time of actual commission of offence. Thereby, the court sentenced him while rejecting the defense of insanity.
- **Accused 'X' vs. State of Maharashtra**<sup>40</sup>: recently in this landmark judgment passed by the apex court, it was held that mental illness is a fairground to escape death penalty in India. This decision was passed in April 2019 consisting of a bench of Justice NV Ramana, Justice Mohan M. Shantanagoudar, and Justice Indira Banerjee. This judgment is related to a convict who raped and murdered two minors in the year 1999. His case fell under the category of rarest of rare case and he was sentenced to death. However, after taking his mental health into consideration his sentence was commuted to life imprisonment. The bench also instructed the State to ensure a proper and efficient mental healthcare system for him.<sup>41</sup> He was diagnosed

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<sup>37</sup> Vedant Saxena, *Should psychopaths be subjected to therapy or punishment*, iPleaders Blog (12 Mar. 2024, 03:30PM), <https://blog.iplayers.in/psychopaths-therapy-not-punished/>.

<sup>38</sup> Darbara Singh & Ors vs State Of Punjab & Anr on 24 September, 2018.

<sup>39</sup> State of Madhya Pradesh vs. Ahmadulla, AIR 1961 SC 990.

<sup>40</sup> Accused 'X' vs. State of Maharashtra, RP (CRIMINAL) NO. 301 OF 2008.

<sup>41</sup> Vedant Saxena, *Should psychopaths be subjected to therapy or punishment*, iPleaders Blog (12 Mar. 2024, 03:30PM), <https://blog.iplayers.in/psychopaths-therapy-not-punished/>.

of the mental illness after he was convicted of the offence. And the bench acknowledged that prison is a difficult place for survival of a mentally ill patient. Involuntary solitude, overcrowding, lack of contact with family, no privacy and inadequacy of health facilities, degrade the mental health of the prisoners day by day. This case came under the purview of section 20(1) of MHCA 2017 that provides the right to live with dignity to mentally ill patients. The bench stated that all humans possess a few inherent capacities even those for whom these capacities may not exist any longer due to reasons like disability or senility. In the event of an occurrence of such a disability, the individual may no longer understand the consequences of his actions and execution of such a person would lower the majesty of the law.<sup>42</sup>To avoid the misuses of the judgment the apex court formed several guidelines and safeguards some of which are state as under-

- A mentally ill person has to satisfy test of severity to save him from aggravated punishments.
- It also noted that since India is under an International obligation of not executing a mentally ill person, therefore, it has to resort to other means of lighter punishments.
- The Court identified the scope for misuse, cautioned against, “Utilization of this dicta as a ruse to escape the gallows by pleading such defense even if such ailment is not of grave severity”.
- Assessment of mental illness and disorder shall be done by qualified doctors and medical practitioners. And accordingly accurate neuroscientific techniques shall be used in the process.
- The burden of proof shall lie on the accused.
- There must be ample evidence indicative of symptoms of mental illness.
- The prosecution may submit counter evidence to refute the claim of the accused.
- These guidelines are merely advisory in nature and not binding mandatorily on any court. The court may use its own discretion at the time of sentencing a mentally ill accused.<sup>43</sup>

### **Deplorable State Of Offenders Suffering Neurological Disorders in Prisons**

The Prisons Act 1894 and the statistics of Indian prisons reveal that mental health and mental disorders have been largely ignored by the government authorities especially prisons in India. As per the records of NCRB on number of mentally ill offenders in prisons, it was believed that there

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<sup>42</sup> Vedant Saxena, *Should psychopaths be subjected to therapy or punishment*, iPleaders Blog (12 Mar. 2024, 03:30PM), <https://blog.iplayers.in/psychopaths-therapy-not-punished/>.

<sup>43</sup> *Ibid.*

were negligible mentally ill offenders in prisons. But it is unfortunate to note that it is not true. It is far from reality. Human Right Law Network Report shows that there are a huge number of mentally ill offenders in Indian prisons who are being treated in a very inhumane way.<sup>44</sup> This portion of the research paper will seek to see what the state of mentally ill offenders in India is and how far the judicial pronouncements have been made to their resort.<sup>45</sup>

### ***Legal stance of mentally ill offender in India:***

A mentally ill person is a one for whom an order under section 27 of Mental Health Act, 1978 (MHA) is made to detain him or remove him from a jail and send him to a psychiatric treatment or mental asylum for treatment. Such an order is made against a prisoner when he is out of control and exhibits conditions of severe mental dysfunctions.<sup>46</sup> Mentally ill offenders can be categorized into two i.e. offenders who are accused of an offence and are undergoing trial and offenders under section 27 of MHA. These can situation where a law enforcement officer believes that a person is a potential threat to the society by reason of being mentally ill and thereby detains him. Section 328 of CrPC, 1973 makes provision for trying an accused that is mentally unsound. The procedure states that if a judge has a reason to believe that a person is of unsound mind and is not capable of defending his case then he shall direct a medical practitioner to examine such person. The court then tries the facts of unsoundness of mind and further proceedings are postponed.<sup>47</sup> After satisfaction that a person is of unsound mind, the court can order his release irrespective of the fact whether the offence is bailable or not, provided that the court is assured that he will be taken care of and will pose no harm to others in society.<sup>48</sup> But if there is no one to take care of such mentally ill offender or if his release is not possible, the court will direct him to custody that it deems safe for the accused.<sup>49</sup> When such person is send to the custody of prisons in the name of safe custody, they are technically thrown into a Bermuda triangle where there is negligible hope of reformation and rehabilitation as health is ignored there.<sup>50</sup> However, Prisons Act encompasses provisions for maintenance of mental and physical health of prisoners and regular visits of

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<sup>44</sup> Rashika Bhardwaj & Prasoon, *Mentally Ill Prisoners & their Rights*, The Criminal Law Blog (12 Mar. 2024, 04:35PM), <https://criminallawstudiesnluj.wordpress.com/2020/09/10/mentally-ill-prisoners-their-rights/#:~:text=This%20is%20because%20the%20people,this%20section%20of%20the%20society.>

<sup>45</sup> *Ibid.*

<sup>46</sup> Mental Health Act, 1987, S. 27, No. 14, Act of Parliament, 1987.

<sup>47</sup> The Code of Criminal Procedure, 1973, S.329, No.02, Act of Parliament, 1974.

<sup>48</sup> The Code of Criminal Procedure, 1973, S.330, No.02, Act of Parliament, 1974.

<sup>49</sup> Rashika Bhardwaj & Prasoon, *Mentally Ill Prisoners & their Rights*, The Criminal Law Blog (12 Mar. 2024, 04:35PM), <https://criminallawstudiesnluj.wordpress.com/2020/09/10/mentally-ill-prisoners-their-rights/#:~:text=This%20is%20because%20the%20people,this%20section%20of%20the%20society.>

<sup>50</sup> *Ibid.*

medical practitioners is ensured.<sup>51</sup> Clearly, there is hardly any implementation of these provisions seen in real life.

### ***Judicial interventions***

In the landmark case of *Mrs. Veens Sethi vs. state of Bihar*<sup>52</sup>, it was noted that 16 mentally offenders were languishing in the Hazaribagh central jail for over 25 years. All of them were accused under section 302 of IPC and they were rotting in jail due to overcrowding in mental asylums. They kept rotting in the prisons as the court never received a report of their mental health which the SP of jail was supposed to declare. Some of them were supposed to be brought before court for resumption of trial but they were neglected. So keeping in view the poor administration of mental health in prisons by jail administration, these prisoners were released and the prison administration was strongly condemned. This case is a good example of how the court has endeavored towards reforming mentally ill offenders. In another case of *Rama Murthy vs. State of Karnataka*<sup>53</sup>, Rama Murthy (accused) wrote letter to the CJ of Bangalore High court regarding the grievances of prisoners. The main grievance was mental patients were made to stay in jails even when they were in urgent need of medical assistance. The court decided that in case of mentally ill patients, NIMHANS authorities must be there to treat them as mental patients unless they become normal and they shall not be referred back to prisons.

Further in the year 1989, in the case of [\*Sheela Barse vs. Union of India\*](#) serious question about illegal detention of non-criminal mentally ill patients was questioned. As a result government appointed Gopal Subramaniam was appointed to make a report of mentally ill prisoners in jails. It is unfortunate to mention that the research and studies revealed that many prisoners were kept in prisons on the pretext of being mentally ill.<sup>54</sup> This judgment provided sufficient safeguard for non-criminal mentally ill patients however, it did not provide any significant relief to criminal offenders having mental illness.<sup>55</sup> Thus there was negligible change in the conditions of mentally ill patients in prisons. NHRC Issued its Annual Report for the year 1994-95 which discussed in detail the deplorable conditions of prisoners by visiting over-crowded prisons like Tihar in Delhi as well as underutilized ones like the open prison in Hyderabad. The report described the

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<sup>51</sup> The Prisons Act, 1894, S.37, No.9, Act of Parliament, 1894.

<sup>52</sup> *Mrs. Veens Sethi vs. state of Bihar*, AIR 1983 SC 339.

<sup>53</sup> *Rama Murthy vs. State of Karnataka*, AIR 1996 SC 150.

<sup>54</sup> *Sheela Barse vs. Union of India*, WP (CrL.) No. 237 of 1989.

<sup>55</sup> Rashika Bhardwaj & Prasoon, *Mentally Ill Prisoners & their Rights*, The Criminal Law Blog (12 Mar. 2024, 04:35PM), <https://criminallawstudiesnluj.wordpress.com/2020/09/10/mentally-ill-prisoners-their-rights/#:~:text=This%20is%20because%20the%20people,this%20section%20of%20the%20society.>

condition of mentally ill offenders as heart-rending. Also it was observed that no efforts were made to maintain their well being. To improve the situation, special arrangements for mentally ill prisoners are to be arranged. It was the first time that the concerns of mentally ill offenders were taken into consideration. Recently, NHRC, in its National Seminar on Prison Reforms, 2014 identified certain issues relating to mentally ill offenders and made recommendations for the same. It aimed at recognizing rights of mentally ill offenders. The implementation is still to be carried out.<sup>56</sup>

### ***Guidelines for mentally ill prisoners:***

It was *Charanjit Singh vs. State and Ors*<sup>57</sup> which led to the formation of guidelines for mentally ill prisoners in India. A petition was filed stating the deplorable mental condition of Charanjit. His trial was put on hold when he was found of unsound mind and due to lack of surety he was sent to prison in the name of safe custody. However, being in prison worsened his condition. In this judgment it was observed that when a person is suffering from a chronic mental disorder then the chances of his reformation are very less and thus trial can never be resumed. Moreover if he is left to die in prison then it will be a complete violation of right to life under Article 21 of COI.

As enunciated in *Maneka Gandhi vs. Union of India*<sup>58</sup> right to life includes right to live with human dignity. Thereby, relying on the facts of the case and article 21, court ordered release of Charanjit and directed NHRC to make suitable guidelines. The NHRC recommendations are quite exhaustive and if implemented would bring a revolutionary change in the current manner of handling mentally ill prisoners.

### **Critical Evaluation of Neuroscientific Evidences**

- Despite the promising and rapidly growing relationship between neuroscience and law, there are several important methodological warnings with Neurotechnologies and their potential effects on the law. There are several methods of brain imaging and numerous ways to use them presented and understood. For example, PET scans use radioactive tracers to detect blood concentrations in different brain regions which are associated with brain functions; An electroencephalogram (EEG) analyses event-related potentials (ERP) to estimate the brain processes underlying perceptual, cognitive, and motor activities; a

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<sup>56</sup> *Ibid.*

<sup>57</sup> *Charanjit Singh vs. State and Ors* on 4 March, 2005.

<sup>58</sup> *Maneka Gandhi vs. Union of India*, AIR 1978 SC 597.

functional magnetic resonance imaging (fMRI) scan finds changes in the brain's hemodynamic characteristics that are frequently brought on by performing particular mental tasks. There is a famous instance of neuroscientists "fishing" for findings, though it is uncommon. There may be further cases that have gone undiscovered or unreported.<sup>59</sup>

- Neurotechnologies' dependability can also be endangered by poor experimental design, poor execution, incorrect interpretation, and other issues. The fact that brain images are the result of a process within a process must always be kept in mind. Determining precisely when and what data should be collected, as well as how the data should be evaluated and presented, involves a number of decisions and stages. There is a lot of possibility for technical and statistical errors and misunderstandings. Therefore, it is possible that complicated neurotechnologies are not trustworthy, generally applicable, or repeatable. The psychological inference of neuroimages, specifically whether the brain image may be used to infer one's mens rea and actus reus in legal circumstances, is another key area of concern. First off, brain images cannot communicate for themselves in terms of importance and reasoning.<sup>60</sup>
- Neuro-images do not reveal specific results; rather, they merely reveal brain activations for particular tasks. Many different parts of the brain are involved in a wide range of functions. Violence and brain abnormalities may not necessarily cause one another because there are other possible explanations.<sup>61</sup>
- It might be challenging and very variable to pinpoint brain anatomical abnormalities, dysfunction, and dysfunctional connections. Finally, the significance of brain pictures is neither clear nor obvious. Its psychological importance can be inferred based on both the expert analysis and the particular court situation. The brains of individuals do alter throughout time and respond to events. Furthermore, during the interval between a crime and an arrest, some brain areas may develop abnormalities in their structure or functionality. It is unclear how to ensure that criminal activity involves the same attitude or brain injury, which complicates strong conclusions and psychological relevance.<sup>62</sup>

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<sup>59</sup> Yu Du, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-Evidence*, 18(2) Seattle Journal for Social Justice, <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/19>.

<sup>60</sup> *Ibid.*

<sup>61</sup> Yu Du, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-Evidence*, 18(2) Seattle Journal for Social Justice, <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/19>.

<sup>62</sup> Yu Du, *The Application of Neuroscience Evidence on Court Sentencing Decisions: Suggesting a Guideline for Neuro-Evidence*, 18(2) Seattle Journal for Social Justice, <https://digitalcommons.law.seattleu.edu/sjsj/vol18/iss2/19>.

- The use of neuroscience in the courtroom has, will, and ought to change depending on the situation. 126 Neuro-evidence, including fMRI, EEG, qEEG, PET scans, and other forms, has been recognized as a mitigating element in sentence judgments over the past ten years. More advanced brain imaging techniques are now available, but using them in court presents challenges for prosecutors and judges. The standards for admissibility, suitable interpretations, appropriate visual displays, and potential mitigating effects on verdicts and judges are all difficult, ambiguous issues that call for more careful assessments.<sup>63</sup>
- These evidences can be over persuasive and can be lead to misinterpretation by judges in the absence of due processes and procedures.

### Conclusion

In the foregoing research paper, the researcher has put light on several cases where the decision of the court influence by medical evidence produced to prove neurological disorder in an accused. It is an indisputable fact that neuroscientific evidences fall within the category of medical evidence. And they are produced by defense counsel to prove faulty function of brain of an accused by the defense counsel. In Indian this kind of evidence is produced in relation to defense of insanity and is admitted under section 45 of the Indian evidence law. Indian evidence law does not provide any guidelines for judges to follow in matters of mentally disordered offenders and appreciation of related crime. Indian law does put a restriction of compelled subsection of a person to neuroscientific techniques but it does not provide any mandatory guideline as to the sentencing policy in such cases. Since Indian society is undergoing a reformative stage it is pertinent to note that the main aim of judges is the rehabilitation and reformation of criminal rather than punishment. Yet punishment cannot be done away with in unavoidable circumstances. Therefore, this research paper has discussed several judgments pertaining to mentally ill offenders. This research paper has also sought to give requisite knowledge about the deplorable state of mentally ill offenders in prisons. This research paper as a whole gives an insight into the sentencing policy followed by judges in matters of neurologically ill offenders.

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<sup>63</sup> *Ibid.*