



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS



Megha Middha

Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



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.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ASSESSING THE LEGAL CONSEQUENCE OF NON APPLICATION OF LEGAL INSANITY TO PSYCHOPATHS IN THE INDIAN CRIMINAL JUSTICE SYSTEM

AUTHORED BY - SONISHA SRINIVASAN

ABSTRACT:

The legal system in India must acknowledge interdisciplinary advancements, particularly in psychology, to prevent stagnation and conventional limitations. Currently, the Indian Penal Code (IPC) lacks specific provisions for psychopathy unlike the legal system of US and UK, leaving a gap in the treatment of offenders exhibiting psychopathic tendencies.

The IPC Section 84, influenced by the McNaughten test, addresses legal insanity in a vague manner, overlooking individuals who commit crimes due to a lack of empathy and morals despite understanding the nature and consequence of their Act. Detecting psychopathy at early stages remains a challenge for law enforcement, leading to a lacuna in addressing these cases. Court rulings in cases like, Nithari murders and Raman Raghav have demonstrated limited understanding of psychopathic behaviour, emphasizing the need for comprehensive assessments. This paper claims for the establishment of distinct standards to identify psychopathic behaviour and calls for treating these offenders separately from those who are legally guilty by virtue of being ordinary humans devoid of mental illness vis a vis expanding applicability of legal insanity defence.

This paper analyses the legal consequences of not granting them legal insanity status. It does so by assessing how Indian courts treat and punish offenders with psychopathic tendencies and examining the reasoning behind such decisions. Additionally, it analyses whether this reasoning of courts and punishments achieves the objectives of punishment relying on theories of crime with a special focus on psychoanalytic theory. Criminal responsibility of psychopaths will be analysed by various philosophical theories and insanity defence tests.

Separate treatment is justified constitutionally as well via Article 14 and 21.

Developing standards for identifying and handling psychopathy and exploring the consequences of granting legal insanity status will foster a more informed and fair legal framework in India.

Key words: legal insanity , psychoanalytic theory, insanity defence , psychopathic, criminal responsibility

INTRODUCTION:

Legal insanity in India needs enormous research . Psychopathic tendencies are often unsuccessful in taking insanity defence but by way of expanding the scope of Section 84, it is possible. Moreover the requirement of a separate provisions is of utmost importance since treatment of psychopaths and general offender in the same manner violating fundamental rights of the Constitution. By putting legal defence on a higher pedestal than medical defence, the grassroot level of criminal law jurisprudence is affected. Psychopathy remains an unexplored area in Indian judiciary which needs huge research. There is a need to come up with standardised tools to work on since existing assessment tools like PCL-R has been considered in efficient.

RESEARCH OBJECTIVES:

The objectives of this research paper are :

1. To understand the extent to which legal insanity defence under Section 84 IPC can be expanded in scope.
2. To evaluate the consequences applying insanity defence to people with psychopathic tendencies.
3. To prove the requirement of a separate provision leading with psychopaths in India
4. To establish a standard modus operandi to determine psychopaths in India
5. To evaluate the consequences of punishing psychopaths in India and provide recommendations to their separate treatment.

RESEARCH QUESTIONS:

- 1) What is the extent to which Legal insanity defence under Section 84 of IPC can be expanded in scope to include psychopaths?
- 2) What are the justifications and requirements for separate treatment for psychopaths?
- 3) What are the ways of establishing a modus operandi to determine psychopaths in India and treating them?

HYPOTHESIS:

H1: Legal insanity under Section 84 cannot be expanded to include psychopaths.

H2: Punishing psychopaths the same way as punishing any ordinary criminal who has a guilty

mind is violative of Article 14 and 21 and requires separate treatment

LITERATURE REVIEW:

- 1) Advocate Babila ,*Psychopathy in Indian Judiciary*, 10 JETIR (2023)

The paper talks about educating and creating awareness psychopathy as a disease and assess the chance of treating psychopaths instead of punishing them. The paper clarifies that psychopathy and criminality are not interchangeably used. It emphasises on brain anatomy, genetics and person's psychopathic traits. There is a perspective on the impact of biological research on criminality and psychopathy. The Lombrosian theories which skilfully discriminates categories of people is discarded in modern science. Diagnosis of psychopathy using Psychopathy checklists and their consequences is provided. Limitations on the applicability of the current tools for testing in India is also provided. The study shows the importance of treatment over punishment and suggests further study on relationship between psychopathy and criminality since it's exposure is limited.

- 2) Dibyangana Nag, *Legal lacunae in addressing psychopaths in view of serial killers- an analysis*, 5 IJLLR

The paper puts forth the lacuna in the Indian judiciary that psychopath as a concept is not included. Non inclusivity of mental health awareness and the vagueness of Section 84 is established. Inconsistency between medical developments and legal authorities is putforth as an issue of the system. Study of serial killers is analysed using the analysis of Nithari killings and Raman Raghav case. The difference between general offenders and psychopaths, the lacuna in existing provisions and the use of insanity defence by serial killers is promptly discussed.

- 3) KM Sharma, *Defence of insanity in criminal law*, 7 ILI (1965)

The unsolved problem in legal jurisprudence – criminal liability and mental illness is discussed. The Indian law on insanity is explained in detail including its historic developments. The basis of the law is further explained with inputs from Mc Naughten Rules. Once various insanity defence tests from American jurisprudence are promptly displayed, the substantive law in Indian that is Section 84 of the IPC is broken down. Mental insanity and legal insanity are anatomised and further some mental disorders are judicially assessed. The modus operandi is via a survey of judicial review of insanity defence from 1860 to 1965.

- 4) Charles Fischette, *Psychopathy and responsibility*, 90 VA. L. REV. 1423 (2004)

The paper gives an overview on the nature of psychopaths clarifying that not all psychopaths are violent immoral killers. According to the Hare psychopathy checklist, key psychopathic personalities are put down. However, it is established that despite cognitive and emotional reality of disorder in psychopaths, they do meet the legal and psychiatric standards of sanity. Mc Naughten, Irresistible impulse, Model Penal code and Durham test is analysed along with its applicability to psychopaths and it is found that the closest applicable test is the Durham test. Further various arguments by different philosophers are presented.

- 5) Priya Sepaha, *Psychopaths: An Unrevealed Area in Indian Judicial System*, 4 NIRMA U. L.J. 1 (2014)

This article talks about the urgent need to classify mental diseases. Psychopathy is portrayed as a dangerous mental ailment which is an unrevealed area in Indian judiciary. It mentions that UK and US have separate statutes for psychopaths but India lacks the same. Many cases with respect to rape, incest, sexual and violent crimes have been reported but no case with respect to psychopaths has come in. The paper also concludes that taking a close look at judicial cases, many cases like Nithari killings, the accused had psychopathic tendencies and there are cases that fall under this category.

- 6) Grant T. Harris, Tracey A. Skilling, and Marnie E. Rice, *Construct of psychopathy*, 28 CRIME. & Just. 197 (2001)

This research paper specifies that psychopaths comprise a separate distinct natural class of individual. It mentions that psychopaths can exhibit subtle neurological, physiological and cognitive differences compared to other people, but it is not clear whether these differences constitute defective brain function or execution of a viable life strategy. The history of the psychopathic construct is expressed. Robert Hare studied the construct of psychopathy in adult male offenders institutionalised and a psychopathic checklist came out which is the current assessment tool. Cleckley originally came up with the list and Hare operationalised it.

- 7) Archita Choudhary, *Justice for Criminal Psychopaths- Punishment or treatment*, 4 JCIL

The paper claims to talk about and spread awareness on psychopaths' disease and make

separate laws and policies for psychopaths. The article has established the importance of treating rather than punishing. It shows the statutes of US, UK where modus operandi to identify and treat psychopaths separately. Inspiration from these concepts are taken up on Sunday. Insights into the mind of serial killers after and before the commission is also done.

8) Heywood, *Equality, Social Justice, Welfare*

The paper deals with three forms of equality. Formal equality, equality of outcome and equality of opportunities places an important role.

CHAPTER 1: UNDERSTANDING NATURE OF PSYCHOPATHS AND THE APPLICABILITY OF INSANITY DEFENSE TESTS

Nature of psychopaths:

Many consider psychopathy as an anti personality disorder. However, it is much more than that. Various literature is available that construes the complete anatomy of psychopaths. Not every psychopath criminal, though there is high probability of a psychopath turning into a criminal. In India, the concept of psychopathy remains an unexplored area but there is an urgent need for recognition and research.

Currently, the sole and fitting instrument at hand is the PCL- R – the psychopathy checklist. It is a list of traits and behaviour devised by Hare which contains 22 items. Initially it was brought up by Cleckley and later operationalised by Hare. Psychopathy is characterised by deceitfulness, lack of remorse which means they hardly feel guilt and often portray themselves as victim to reduce their culpability, lack of empathy, shallow affect where they do not merely repress but lack ability to show normal feelings in the world, impulsivity with snap judgements and no regard to future consequences and little behavioural control¹. The PCL- R test suffers from huge inconsistencies, with the major one being it was devised using a sample size of only adult males institutionalised which technically does not represent the entire universe. However, until a more efficient tool of measuring psychopathy and identifying a “psychopath”, the best possible tool remains PCL- R

Insanity defence

Now that we have understood the way a psychopath is identified in today’s society, the next

¹ Charles Fischette, *Psychopathy and responsibility*, 90 VA. L. REV. 1423 (2004)

important step is to assess the insanity defence in India and check the extent to which whether psychopaths can use the defence.

Section 84 of the Indian Penal Code² declares that anything done by a person with unsound mind is not an offence. However what constitutes unsoundness of mind is something that has been widely discussed but still keeping the provision vague. For an act to fall under the defence of Section 84, the act must have a guilty intent.³ The justification for not attaching liability on an insane person is the fact that insane person lacks guilty intention and rational thinking. The test of insanity revolves around 2 factors- one is the unsoundness of mind was such that person is incapable of knowing the nature of the Act and the person cant understand whether the act is wrongful or not. This has been taken from the Mc Naughten Rules which requires that in order to take the defence of insanity, a mental disease should have caused a defect of reason which makes a person incapable of knowing whether the act a person has committed is right or wrong. However applicability of this rule to psychopaths is not quite correct since even if its proved that the psychopath suffers from a mental illness, it doesn't cause a defect of reason which makes him/her commit a crime. Other tests which came up with jurisprudential development include irresistible impulse which means a person cannot be held liable since a mental defect doesn't allow him/her to control behaviour. However, psychopaths can control behaviour for self interest making irresistible impulse inapplicable. The Model Penal Code provides that when a person, at the time of committing a crime, due to mental disease or defect is unable to appreciate the criminality/ wrongfulness of the act or to conform the conduct to the requirements of law should not be held liable. There is limited application of this to psychopaths considering the lack of clarity on what MPC wants to track. Finally, the Durham rule is the one that seems most plausibly applicable to psychopaths since it states that a person should not be criminally liable if the criminal act is a product of mental illness or mental defect. Durham himself was considered to be a psychopath.⁴

Applicability of insanity defence test:

We hence can conclude that out of the above mentioned rules of insanity, Durham seems most applicable. However, Section 84 is highly inspired by Mc Naughten rules where psychopathic tendencies don't essentially have a place. Psychopaths may not understand and accept what they have done is wrong but they have enough cognitive understanding to meet the requirements of criminal law. This essentially implies they meet the requirement of Section 84. They know the nature and consequences of their act, however they don't know why they are doing it, essentially

² Indian Penal Code, Section 84

³ KM Sharma, *Defence of insanity in criminal law*, 7 ILI (1965)

⁴ Supra Note 3

lacking mens rea. To the extent of guilty mind, there is a small scope for insanity defence to include persons with psychopathic tendencies, considering psychopaths lack mens rea. However this loophole can be further operationalised only when unsoundness of mind is given clear meaning to include acts lacking mens rea.

Assessing “insanity”

In the above section, we looked at insanity from the view point of mens rea which is categorised as legal insanity. However, courts look into legal insanity only. To put this into perspective distinguishing it from medical insanity is essential. Medical insanity is characterised by the fact that person is not sound, healthy, normal and requires treatment. Motivation is also an important factor for medical insanity. While legal insanity looks into whether person knows the righteousness and wrongfulness of an offence, motivation is not an essential factor. Additionally, legal insanity is considered by law only during the time of crime commission, whereas medical insanity can pop up anytime and it is not essential that it has to be during crime commission. The current position of law gives legal insanity a priority over medical insanity.⁵

The scope of insanity under Section 84 can be increased by allowing medical insanity merge into legal insanity to the extent of considering insanity as person who is not sound, healthy, normal and requires treatment. Although psychopaths cannot come under unsound, they definitely come under the category of not being normal and requiring treatment. This way they could make use of the defence of insanity under Section 84 itself.

CHAPTER 2: CURRENT POSITION OF PSYCHOPATHS IN THE INDIAN JUDICIARY

In the Indian judiciary system, there have been multiple instances where psychopaths were recognised by courts. However, the treatment has been the same as any other general offender.

Lets look at a couple of cases.

- 1) Nithari killings⁶- This gruesome case which shook the entire nation involved sexual assault, murder, cannibalism and even necrophilia. The victims were women and children who were killed and the accused Surendra Koli tried to have sex with their corpses and even performed cannibalism. The court held that this was recognised as rarest of rare crimes and that the appellant Surendra Koli was a serial killer. Death sentence was justified considering aggravating and mitigating circumstance thereby providing the same punishment as a general offender. Surendra Koli showed clear psychopathic tendencies

⁵ Supra Not 3

⁶ Surendra Koli v. State of U.P. (2011) 4 SCC 80

expressing no guilt, committing murder for constantly long periods of time. He was even declared as a psychopath, but the legal system chose to ignore the concept.

- 2) Raman Raghav⁷- Raman Raghav was considered a psychopathic serial killer killing over 40 residents of Bombay hitting their heads with an iron rod. The modus operandi of his killings were the same. He was diagnosed with chronic paranoid schizophrenia. Psychodynamic theory of committing crimes where childhood experiences and emotional attachments, psychoanalytic theory with unhealthy expression of unconscious desire and strain theory of sociology where people from the lower strata of the society have more tendency to commit crimes converge to bring the causation for Raman Raghav to commit the crime.⁸
- 3) Auto Shankar- The person responsible for the gruesome murders of Chennai was none other than womanizer, notorious serial killer Auto Shankar. Inked with dual personality, the courts refused to consider his appeal of death sentence. The causation was due to his childhood traumas and dysfunctional parents.⁹
- 4) Charles Sobraj- Coming from a troubled childhood, widely known as the bikini killer, Sobraj was responsible for death of more than 20 backpackers. Whenever he committed crimes, he maintained the legal position that he has not committed crimes since he wasn't held guilty for any.¹⁰

CHAPTER 3: NEED FOR SEPARATE TREATMENT FOR PSYCHOPATHS AND ITS CONSTITUTIONAL JUSTIFICATION

Biological justification:

With legal advancements, a similar level of research and development in biology and medicine will definitely lead to better and efficient criminal justice system. A psychopath suffers from a minor neurological disorder- cavum septum pellucidum where there is lack of development of emotional part of the brain. There is structural and functional impairment of the brain with 18% reduction in volume of amygdala- emotional part of the brain. We could argue for mental illness

⁷ Poonam Saxena, *Inside the mind of Raman Raghav, Mumbai's serial killer of 60s*, HINDUSTAN TIMES, (14 June 2016, 7:22 pm), <https://www.hindustantimes.com/bollywood/inside-the-mind-of-raman-raghav-mumbai-serial-killer-of-the-60s/story-LaA01MtT0wrAM0ZprCoLYJ.html>

⁸ Vaishnavi Bhedodkar, *Psychopathic serial killer- case study*, <https://www.slideshare.net/Vaishnavi1409/psychopathic-serial-killer-raman-raghav-case-study>

⁹ Dhruvin Bhusa, *Auto Shankar : The gut wrenching Saga of India's Ted Bundy of the 80's*, The News Minute (8 June 2021, 5:58pm), <https://homegrown.co.in/homegrown-explore/auto-shankar-the-gut-wrenching-saga-of-indias-ted-bundy-of-the-80s>

¹⁰ Vidushi Sagar, *'I tried to make him love me, but became his slave.': The Allure of bikini killer Charles Sobhraj Explained*, News18 (December 22 2022, 16:49 IST), <https://www.news18.com/news/explainers/nepal-court-charles-sobhraj-release-serial-bikini-killer-serpent-who-is-he-explained-6669727.html>

considering these biological impairments. Another deeply contested debate is free will and determinism where on one side it is argued that psychopaths take decision by their own choices solely which is free will. On the other hand, in this paper, it is argued that deterministic approach is taken. A clear evidence of this are the reasoning for causations mentioned in the previous chapter. Many psychopaths do commit crimes due to emotional attachments, childhood trauma, dysfunctional home etc where their environment plays a role in determining their act. Hence its not by free choice but by determinism that psychopaths commit a crime.

Article 14¹¹ justification:

The Indian Constitution operationalises not only formal equality but also substantive equality. It looks at equality among equals, not equal among unequals. The classification is not discriminatory, only class legislation is forbidden under Article 14, whereas reasonable classification is allowed. The twin test of Article 14 laid down in *State of West Bengal v Anwar Ali Sarkar*¹² were

- a) Classification is to be based on intelligible differentia which distinguishes persons or groups that are grouped from others left out
- b) The differentia must be based on rational nexus/ relationship with the object sought to be achieved. ¹³

There must be a yardstick to differentiate the class included and class excluded. In case of psychopaths, the classification as a separate is based on intelligible differentia and the yardstick to differentiate includes both the biological impairments as well as psychological illness including lack of guilty mind. The object sought to be achieved is not only deterrence but also rehabilitative system. It might be true that not punishing psychopaths, many of whom have serial killer tendencies could be dangerous to the society in general. Additionally it could also be argued that public interest should be put on a higher pedestal and a conflict with reasonable restriction of public order could be used. However, not punishing does not mean letting them be free in the society, but providing treatment both in medical/ biologically with specific neurological sense as well as psychological sense.

When a psychopath expresses pervert, sadistic pleasure, in the first instance it might seem impossible to treat psychopaths and hence the best available option would be to discard them from the society. However, further studies and digging into the root

¹¹ INDIA CONST. art 14

¹² *State of West Bengal v Anwar Ali Sarkar*, 1952 SCR 284

¹³ *State of Tamil Nadu v National South Indian River*

cause could eliminate the impairments and let psychopaths lead normal lives.

Article 21¹⁴ justification:

Treating psychopaths the same way as a general offender is an indirect violation of Article 21- right to life and personal liberty except according to procedure established by law. Procedure established by law includes procedural and substantive due process where the modus operandi/ process is ensured to be just , fair and reasonable. Principles of natural justice sought to be protected at every level. Psychopaths don't fall into the procedure established in any manner since technically treating them in the same manner as an ordinary criminal is in itself violation of justice and fairness since they are firstly not equals and treating unequals equal is also a violation of Article

This calls for need to consider psychopath as a separate individual class and not treat them in the same way as ordinary adults.

CHAPTER 5: NEED FOR A SEPARATE PROVISION SPECIFICALLY FOR PSYCHOPATHS

Separate treatment of psychopaths cannot be left hanging. There is an urgent requirement of a provision dealing specifically with psychopaths. Punishing psychopaths like other offenders is futile since psychopaths don't feel remorse or guilt for the crime they have committed US and UK have laws where psychopaths are not only identified but also have measures provided to them. In England and Wales, law agrees psychopathy is due to abnormalities different from mental illness and hence the most beneficial thing is to send them to rehab centres than prisons. Post World War, therapeutic communities were developed to treat psychopaths. Hederson Hospital is the oldest one engaged in treating patients with personality disorder. The intersection with therapeutic jurisprudence and a simultaneous development in this emerging area will aid the law to act as a therapy.

In USA, different States have different laws to manage psychopaths. California established the psychopathic offender law in 1939. Many such statutes allow the state to hold custody of psychopaths till a point he or she is completely cured of the mental illness. State is allowed to pass indeterminate and lifetime sentencing too. ¹⁵

Taking inspiration from model provisions for other countries, it is high time India steps up in bringing about provisions for offenders who are victims in their own head.

¹⁴ INDIA CONST. art 21

¹⁵ Archita Choudhary, *Justice for Criminal Psychopaths- Punishment or treatment*, 4 JCIL

CONCLUSION :

Psychopathy thus remains an under researched area from neurobiological and criminality perspectives which needs great amount of research and developments.

Answering the research questions,

- 1) The extent of applying insanity defence under Section 84 is to the extent of being able to include medical insanity to the extent of its meaning as well as operationalising “unsoundness of mind” to include acts lacking mens rea.
- 2) Constitutionally by way of Article 14 and 21, the need for separate treatment of psychopathic offenders is justified. Neurobiologically impairment in the brain and emotional part of the brain argues the case for separate treatment. Treating general offenders and psychopathic offenders the same way is also a intervention into criminal law jurisprudence where a person is liable only with both actus reus and mens rea. In case of psychopaths, punishing them without mens rea violates the whole criminal law jurisprudence set up.
- 3) It is important to establish modus operandi to identify psychopaths by developing a tool for identification with further study on coming up with tools similar to PCL- R tool, since the PCL- R tool is inadequate and requires huge change. Taking inspiration for treatment from countries like UK, US, Canada, specific statutes for psychopaths are to be achieved.

16

Hypothesis 1 is not entirely proved since there are loopholes and ways available in the law to include psychopaths under legal insanity under Section 84. Hypothesis 2 has been proved successfully.

RECOMMEDATION:

- 1) Bring out separate provisions dealing solely with psychopaths drawing inspiration from UK, US and Canada
- 2) Conduct enormous research in science- neurobiology, criminology, criminality and psychopaths to establish the relationship between criminal liability and psychopathic tendencies.
- 3) Explore areas under Section 84 to include extents of medical insanity as legal insanity.

¹⁶ Supra Note 15

- 4) Strengthening the meaning of the word “unsoundness of mind” to include mental impairments and acts done without guilty mind.
- 5) Focusing the objective of managing psychopaths as treatment rather than punishment with focus on therapeutic jurisprudence.

REFERENCES:

- 1) Charles Fischette, *Psychopathy and responsibility*, 90 VA. L. REV. 1423 (2004)
- 2) Indian Penal Code, Section 84
- 3) KM Sharma, *Defence of insanity in criminal law*, 7 ILI (1965)
- 4) Surendra Koli v. State of U.P. (2011) 4 SCC 80
- 5) Poonam Saxena, *Inside the mind of Raman Raghav, Mumbai's serial killer of 60s*, HINDUSTAN TIMES, (14 June 2016, 7:22 pm), <https://www.hindustantimes.com/bollywood/inside-the-mind-of-raman-raghav-mumbai-s-serial-killer-of-the-60s/story-LaA01MtT0wrAM0ZprCoLYJ.html>
- 6) Vaishnavi Bhedodkar, *Psychopathic serial killer- case study*, <https://www.slideshare.net/Vaishnavi1409/psychopathic-serial-killer-raman-raghav-case-study>
- 7) Dhruvin Bhusa, *Auto Shankar : The gut wrenching Saga of India's Ted Bundy of the 80's*, The News Minute (8 June 2021, 5:58pm), <https://homegrown.co.in/homegrown-explore/auto-shankar-the-gut-wrenching-saga-of-indias-ted-bundy-of-the-80s>
- 8) Vidushi Sagar, *'I tried to make him love me, but became his slave.'*: *The Allure of bikini killer Charles Sobhraj Explained*, News18 (December 22 2022, 16:49 IST), <https://www.news18.com/news/explainers/nepal-court-charles-sobhraj-release-serial-bikini-killer-serpent-who-is-he-explained-6669727.html>
- 9) INDIA CONST. art 14
- 10) State of West Bengal v Anwar Ali Sarkar, 1952 SCR 284
- 11) State of Tamil Nadu v National South Indian River
- 12) INDIA CONST. art 21
- 13) Archita Choudhary, *Justice for Criminal Psychopaths- Punishment or treatment*, 4 JCIL