JUSTICE FOR THE CRIMINAL PSYCHOPATHS: PUNISHMENT OR TREATMENT?

Authored by: Archita Choudhary*

* 3rd Year BA.LLB Student, School of Law, Christ University, Bangalore

ABSTRACT

According to Professor Gellin, “it is not the humanity within criminals but the criminality within human beings which needs to be curbed through effective administration of criminal justice.”

Psychiatry and law approaches the problem of human behavior from different philosophical perspectives. In many countries, there continues to be conflicting opinions about the treatment or punishment of mentally ill people who commit crimes. Psychopathy is one of the most dangerous mental diseases. It throws a theoretical and practical challenge to criminal law and the criminal justice system. Due to lack of awareness and education among the people, the psychopaths are treated as demons and not humans. The society has to understand that these individuals are not criminals, but are mere victims of their condition as they are generally unaware of their disease and its consequences. There is an urgent need to create awareness and educate the masses about the diseases and also to make separate punishment policies for the psychopaths.

The article aims at establishing how it is important to treat the psychopaths rather than punish them. It further goes on to talk about the efforts that have been made in countries like USA and UK regarding the treatment of the psychopaths. The third segment deals with the difference of opinion and punishment policies of USA, UK and India. The article further provides an insight into the mind of the psychopaths before, during and after the commission of the crime. The article deals with the impact of the psychopaths on the criminal justice system. Lastly, the ending of the article answers the question whether the psychopaths should be given a proper treatment or punished like every other criminal? It throws light on the urgency to educate the people so that the individuals who are not as stable as a rational man are considered to be a part of the society and aliens.

Keywords: Psychopaths, criminal justice system, mental illness, treatment policies, punishments
INTRODUCTION

“Ignorance of law is no excuse”, is the most common principle in jurisprudence, which means that every citizen is bound to and presumed to know the law of the land. Psychiatry and law both deal with the human behavior, but from different perspectives. While psychiatry deals with human behavior, law deals with the control of the human behavior.

One of the difficulties of a crime or wrongdoing is that any endeavor at its understanding requests information over an extensive range of disciplines. The reasons for wrongdoing are one of the critical sections of the wrongdoing issue that require more discussion, investigation, research and call for more social, legislative and judicial activity.

It is essential to understand that sentencing all types of criminals will not serve the purpose of the society. Crime rates cannot be controlled only by knowing the reason behind the crime but also by understanding the personality disorder of the offender. To transform someone from a culprit to an innocent person, it is important to understand the aspect of responsibility and excuses.

The common man definition of a psychopath is a person with an antisocial personality disorder characterized by the tendency to commit crime or any violent act and lacking the ability to feel guilty for such acts or establish personal meaningful relationships. In short, a psychopath is a person afflicted with a personality disorder and is unable to feel certain emotions. They are very impulsive and they do not take the responsibility of their actions. According to them it is always someone else’s fault to trigger the violent side in them. The key characteristics of psychopaths are as follows:

- A disregard for laws and social mores
- A disregard for the rights of others
- A failure to feel remorse or guilt
- A tendency to display violent behaviour

Psychopath is a combination of charm, manipulation, and intimidation and sometimes the use of violence to control others, all done to satisfy their own selfish whims and fancies. They are thrill seekers and are fearless. Giving them punishment does not work, because they are unafraid of the consequences. However, it is important to understand that these psychopaths commit crime due to
their disease and not due to any other motive. They are not criminals, they are victims of their own condition and that is why there is a need for treating these individuals and not punishing them.

**Definition of crime:** To justify that the psychopaths need to be treated rather than punished, it is important to understand the concept of crime, criminal responsibility, and punishment and legal and medical issues pertaining to the psychopaths.

According to Sir William Blackstone, “*a crime is an act that is capable of being followed by criminal proceedings, having one of the types of outcome or punishment known to follow these proceedings.*” A crime is any violation of the law of the land, which has an impact on the society at large. A crime affects the general public and is usually disapproved by the society. In order to constitute a crime, an act must be committed, which is legally forbidden or is antisocial in behavior (actus reus). It is also important for the individual committing the crime to have a criminal intent (mens rea). After the fulfillment of all this, it can be said that a crime has been committed.

**Criminal responsibility:** The psychopaths are asked to stand in trial in the same way as the other offenders. However, a psychiatric treatment is possible only if proper care and protection is adhered to at the time of sentencing of the psychopath’s mental state. A general principle of criminal law is to not only prove a person to be guilty but to also consider his mental state at the time of committing the act.

Before the sentence is announced, it is important to establish:

(i) That there was an intention to carry out the unlawful act (actus reus)

(ii) That the culprit had a guilty mind while committing the act, that is the presence of mens rea

In the case of psychopaths, it is important to note that they do not have mens rea, as they are not capable of it. Their act is not a result of a guilty mind but due to their disease.

Mens rea is the most important element of a crime. A crime cannot exist without a guilty mind. A crime is not committed if the mind of the person doing the act is innocent. There must be some blameworthy condition of the mind before a person is made criminally liable. The underlying principle of the doctrine of mens rea is expressed in the Latin maxim “*actus non facit reum nisi*
mens sit rea”, which means that the act does not make one guilty unless the mind is also guilty. The mere act of commission or deed or omission is not enough to constitute a crime. These generally require, some element of wrongful intent or other fault.¹

Since, mens rea is an essential to constitute a crime, an act committed by an insane person cannot be accounted for a crime. It cannot be proved that an insane person has mens rea, thus, cannot be proved that he committed the crime.

INTO THE MIND OF THE PSYCHOPATH

As fascinating as the reel-life psychopaths are, the real-life psychopaths neither have Hannibal Lecter’s brilliant mind nor do they eat the liver of their victims. However, one of the characteristics that the actual psychopaths inherit from Lecter’s character is that they can be cunning if they want to. They have the capacity to seduce their victim into dark alleys and within seconds turn into cold-blooded rapists or murderers. The psychopaths feel no remorse, unlike most murderers who feel guilty after committing the murder in the heat of the moment.

Psychopathy is correlated to criminal behavior and violence. They are people who are unbiased in their actions against others. It can vary from defrauding someone’s life savings to manipulating law enforcement agencies to blaming the victim for their wrongdoing. Unlike murderers, when a psychopath commits a murder, it is most likely to be planned and organized and not an act committed in the heat of the moment. The psychopaths are born sadists, who when faced with overwhelming guilt will claim that they lost control or were in a fit of rage when committing the act. The psychopaths are brilliant liars, who will pretend to not know the reason of their acts, but on contrary will plan a perfect, stone-cold and calculated crime.

Research shows that individuals who are termed as psychopaths show that they display certain aspects of temper, which includes lack of fear, inhibition and a stimulus seeking behavior. Psychopathy is defined as a disorder characterized by:

- Lack of remorse or empathy

¹ Glanville Williams, Textbook of Criminal Law, 2nd edn, Stevens & Sons, 1983, p 30
It must be noted that psychopaths are very intelligent and their intention is to harm anyone without any reason and that harm is one of a grim kind because their only thought is pure and a simple sadist feeling.

The psychopaths seem to be perfectly fit for trial and confess to everything they did, without hiding any fact. They remain unaffected by the punishment that is given to them. As a result of which, it becomes pointless to even give them a punishment at all. They live with no fear of the consequences of their act.

**REASONS AS TO WHY PSYCHOPATHS NEED TO BE TREATED AND NOT PUNISHED**

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person” (UNICCP, 1966)

Sir Walter Moberly, while accepting the definition of punishment given by Grotius, suggests that punishment presupposes that:

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(i) What is inflicted is an ill, that is something unpleasant
(ii) It is a sequel to some act which is disapproved by authority
(iii) There is some correspondence between the punishment and the act which has evolved it
(iv) Punishment is inflicted, that it is imposed by someone’s voluntary act
(v) Punishment is inflicted upon the criminal, or upon someone who is supposed to be answerable for him and for his wrong doings

The four main justifications for punishment to offenders who are convicted for an offence are:

a) Deterrence
b) Incapacitation
c) Restoration
d) Rehabilitation

Psychopaths, however, do not feel guilty or do not regret after committing an offence and thus, it becomes pointless to given them a punishment. They are fearless and do not worry about the consequences of their act. They are unable to understand the nature of the crime committed by them, as the crime is committed as a result of their disease and not because of any guilty mind.

According to procedure, relatively every guilty party is subjected to clinical test and mental test in these cases. The issue with psychopaths is that they appear to be fit for standing at trial. Besides this, they do not hide anything and at the first instance admit to their crime without any feeling of remorse or guilt. This disposition and acknowledgment of the crime misdirects the case and they are considered as horrifying offenders with no atonement for their act. Henceforth, it ought to be required that such sort of conduct should be immediately considered and as an issue of standard system, such guilty parties should basically be subjected to a restorative test including psychoanalysis for affirming the psychological condition of such offenders.

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3 Prof. N.V. Paranjape, Criminology, Penology Victimology, 17th edn, Central Law Publications, 2017, p 294
THERAPEUTIC APPROACH IN UK AND USA

In UK and USA, laws have already been framed for psychopaths where the laws not only identify them but also provide for measures to deal with them.

In England and Wales, the law has agreed with the medical view that the antisocial behavior of the psychopaths results from an abnormality, which is different from mental illness and that it is beneficial to divert the offenders from this disorder to a rehab center rather than punishing them (Higgins, 1995). According to Cheswick (1992), the medical tests that have identified individuals as psychopathic have a high co-morbidity with other clinical syndromes that plays an important bearing on their treatment.

After the Second World War, Therapeutic Communities were developed to treat the psychopaths. The oldest of them is the Henderson Hospital, which has had some accomplishment in treating patients with identity disorder, some of which would be viewed as serious. HMP Grendon Underwood, established in 1962 manages detainees who might be viewed as having moderate to extreme identity disorders. High-security healing facilities Ashworth, Rampton and Broadmoor all have some arrangement particularly for individuals with serious identity disorders, who represent a high risk. There are a couple of specific detainment facilities or wings, which focus on treating specific issue. Grendon Prison, for example, has a helpful network treatment program for identity disorders and the 'C' wing in Park Hurst Prison runs a program for detainees with serious identity disorders. Dangerous Severe Personality Disorder (DSPD) people are held in both prison and the health service facilities. The greater part of this facility is overseen by the prison service.

The government in U.K. was the first to use the term DSPD in a discussion paper, 'Managing Dangerous People with Severe Personality Disorder' in 1999, which proposed how to confine and treat a small minority of mentally disabled offenders who represent a critical danger of mischief to other people as well as themselves. Expert to deal with these individuals, the majority of whom are believed to be violent and sex offenders, were proposed in the white paper ‘Reforming the Mental Health Act’ in December 2000.

In U.S.A. different states have established laws particular to managing psychopaths. Washington State Legislature characterized a "Psychopathic personality" and "sexual psychopath" and proposed the ‘Sentencing Reform Act’ of 1981.
California established a psychopathic offender law in 1939. In 1995, California and numerous other states in the US have passed special statutes for psychopaths.

To a certain degree, this is because of the severe demand for medical and legal practitioners as well as small groups who believe that the commission of sex crimes usually, if not always, is a result of mental disorder and should be treated and not punished.

According to Frederick and Marchel, 1995, roughly 20 states in US have laws that govern dangerous sex offenders and psychopaths.

These statutes allow the state to hold custody of the sexual psychopath or sexually dangerous individual until the point that he or she is fully cured of their mental illness. This allows the state to pass an indeterminate and lifetime sentence.

In 1939, Minnesota sanctioned a "psychopathic personality" (PP) law that submits indefinite civil commitment of dangerous sex offenders to the Department of Human Services for treatment. The State of Minnesota adheres to civil treatment to hold custody of sex offenders and psychopaths in highly secure detainment centers and treatment facilities.

PSYCHOPATHS AND THE INDIAN JUDICIAL SYSTEM

The Indian judicial system recognizes serial killers, mental illness, incest and other sexual and violent crimes and criminals, but no case has been reported with regard to psychopaths. In India, there is an urgent need to educate the people and recognize all mental diseases and take necessary steps thereafter. Just like USA and UK have made separate statues for psychopaths, there should be proper recognition of psychopaths in India also because of the gravity of the illness and the increase in the number of crimes committed by the psychopaths.

Due to this increase in the number of crimes, it has become an everyday affair to read about some or the other criminal or juvenile act in the newspapers. This has attracted the attention of the government and measures have been taken in the same regard. However, a common mistake is committed when the researchers randomly identify crime with emotional illness and look into clinical therapy. Some cases may arise when many sane criminals may be suffering from some minor type of mental illness, which goes unnoticed because these criminals are never examined
by competent psychiatrists. In some cases, the mental patients are either detained in jail or are sent to mental hospitals, but it is limited to only those people who suffer from a high degree of mental illness. After being sent to the mental hospitals, these individuals are neglected and treated as animals and demons. Very less psychiatrists have actually researched upon this. Comparison is made between the crime rates and nature of the crime committed by persons suffering from different kinds of mental illness rather than crimes committed by psychopaths. There is therefore, an urgent need to recognize and classify them properly and provide justice.

It is important for the advocates, judges, social workers, probation officers, police and doctors to have knowledge about not only the mental illness but also what is the best available care, support and treatment for the mentally ill and the psychopaths. For example, in case involving a crime committed by a person suffering from mental illness, a doctor will be in a better position to diagnose the same as compared to that of the judge. It is however, imperative on the part of the judge to have some knowledge of psychiatric treatment and the willingness to accept this fact while giving a sensible and a humane decision.

In the recent past, the famous case commonly referred to as the “Nithari case”\(^4\) shook the mind of the whole of India. This case dealt with gruesome killing of many children and at times eating their flesh. This behavior seemed to be pretty abnormal but establishing whether the criminal is functioning because of some mental illness or is subject to some psychological disorder involves several factors. In this case, Surendra Koli, who was the main accused had clear traits of a psychopath but due to the gruesomeness of the crime was later given capital punishment.

As of now, in India, there is no separate law to treat psychopaths who in fact are victims of their own mind. It is important to read upon the study of the diseased mind by the police, advocates and the judges. In order to provide equal justice to every human being, irrespective of their mental stability, the criminal justice system should seek help from psychologists and follow special procedures to judge or treat the psychopaths keeping in mind that these offenders are in fact the victims.

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Psychopathy is the most serious of all the mental diseases. Though psychopaths are dangerous and they commit heinous crimes, it is important to treat them properly rather than punishing them as the latter will not have an impact on them. Life imprisonment and death penalty is not a solution to cure the psychopaths from their disease. They are aware of the crime they commit, but they aren’t aware of the reason and motive behind the same. They do not have any signs of remorse or guilt for the crime that they commit. They will accept their crime and desire to commit it again as the desire to commit crime arises because of their disease.

In the case mentioned earlier, Surendra Koli at the time of his arrest said, “I still have an urge to kill”. This is a typical sign of a psychopath. It is because of this reason that a sympathetic view should be taken for them. It however, cannot be taken for granted by the judicial system, as ignorance of fact thought not punishable under the Indian Penal Code (IPC), but ignorance of law due to the ignorance of fact must be punished. This is sheer ignorance on the part of the Indian Judicial System, which needs to be improved.

In India, a few provisions are specified in various laws for a man experiencing mental illness for e.g., in IPC; sec. 84 deals with the law of insanity made from using the Mc. Naughten guidelines of England which uses a more comprehensible term, ‘unsoundness of mind’ rather than insanity. It has been scrutinized of being obsolete since they do not provide protection to the human behavior arising out of abnormality of mind, or partial delusion, irresistible impulse or the impulsive behaviour of the psychopath. But under some personal laws and in the Evidence Act, certain provisions relating to the psychopath are present. The Code of criminal Procedure, 1973, Chapter XXV talks about the procedure to be implemented in the trial of a mentally ill person. However, these laws are still inadequate to deal with the problems related to psychopaths. The courts stress on the need for implementing a more comprehensive and progressive attitude in the application of the laws related to the psychopathic behavior.

In the present judicial system, it is not possible to determine the mental stability of the person committing the crime at the time of the arrest. It is however, necessary during trial to know whether the offender is capable for trial or not. If there is a slight chance that the offender is suffering from some mental disease, then they are sent for medical examination. The entire job of the doctors and the psychiatrists is to determine whether the person is fit for trial or not. All types of mentally ill people are kept in the same ward, but the violent ones are controlled with some form of a sedative.
The general procedure is that if the mentally unstable person is not fit for trial then they are sent to the mental hospital for treatment. It must be noted that psychopath being the most heinous of the mental diseases, there is still no guidelines available for them.

According to the usual procedure, every offender is subject to a clinical test or a psychiatric test depending upon the case. However, the problem with the psychopaths is that they appear to be fit for trial. To add to this, the psychopaths happily admit to the crime with zero percent remorse and do not hide any important fact. This acceptance and confession misleads the case and they are termed as gruesome offenders with no repentance for the crime committed by them. The psychopaths do not understand the word guilt and hence, it becomes useless to give them any heinous punishment. It is very important to understand the rationale behind the attitude of the psychopaths. It is due time to make it mandatory that such type of a behavior should be immediately taken into account and as a matter of standard judicial procedure, such offenders should be subject to a medical test involving psycho-analysis only.

In UK and USA, separate laws have been framed for psychopaths where they not only recognize them but also deal with them with proper care, support and treatment. There is proper and ample awareness, which helps identify these criminals and the people are more conscious with respect to their protection. And here, in India, people will run away from such psychopaths, call them names and will live under the age-old belief that psychopaths are demons. This thinking and mindset of the people of India needs to be improved at the earliest.

CONCLUSION AND SUGGESTIONS

Any person suffering for some mental illness is termed to be a “psycho” without even having proper knowledge and explanation of who a psychopath is. It has to be understood that there is a very thin line of difference between a psychopath and some other types of criminals like serial killers, rapists, sociopaths and etc. This confusion and lack of knowledge needs to be solved and looked into at the earliest. This can only be done when the judiciary and legislature decides to pass special laws for specific kinds of mental illness.
In the present judicial system, the psychopathic behavior is an unidentified area. The laws that have already been passed only talk about insanity, unsoundness of mind and schizophrenia, and all the judgments depend on this view. Any minor inconvenience in the behavior of the culprit after undergoing the clinical test is termed to be a mental illness. Various cases that have been reported in the past are let go off by terming the accused a mentally unstable person. The main irony in our judicial system is that even the “elite” does not have proper knowledge of psychopaths and they only roam around with preconceived notions about the same. It is embedded in the people that a psychopath is a demon, he is evil and will cause harm to anyone around him. No one tries to understand that the psychopaths behave the way they do because of their disease and not out of intention. It is one of the most dangerous diseases of mental illness and it should not be ignored.

A change needs to be brought about. The cases of heinous crimes by psychopaths should be judged keeping psychopathy as the primary base of the judgment. This problem needs to be solved and introducing psychopath behavior as an important part of the investigation and the justice delivery system can do it.

It can be concluded that psychopaths are complex, dangerous and serious mentally ill criminals or patients. Even though the nature of the crime committed by them is heinous, there is no mens rea behind it. The reason behind committing the crime is their serious mental disease. While trying these individuals, it is essential to stress upon their disease and accordingly give the quantum of the punishment. There should be a therapeutic approach rather than a punitive approach while dealing with psychopaths. They should be kept in mental hospitals or asylums for treatment because they are very dangerous. However, the therapeutic approach can only be put to use when people are educated enough about this disease; otherwise, it becomes very difficult to implement it. These individuals have to be served justice and it can be done only through therapy and not by inflicting punishment because firstly, psychopaths are fearless in nature and will not be afraid of the punishment given to them and secondly, a patient is always supposed to be treated and not punished.