# UNIT 4 CRIMINAL RESPONSIBILITY

**Structure**

## 4.0 INTRODUCTION

In this unit we will be dealing with criminal responsibility which means that whether a person who has committed the act or perpetrated the crime is responsible enough to know that whatever he or she has done is legally incorrect, unlawful and will entail punishment. Whether the person is aware of the crime committed and was the crime committed with complete awareness and insight and also full knowledge of the consequences. In what way criminal responsibility is considered in terms of age, mental health and mental illness etc. Whether a mentally ill person can be asked to appear in the court and defend self and whether a person suffering from certain typical problems such as epilepsy can defend self in the court etc.

## 4.1 OBJECTIVES

After completing this unit, you will be able to:

- Define criminal responsibility;
- Explain criminal responsibility in terms of age factor;
- Describe criminal responsibility and its characteristic features;
- Analyse criminal responsibility in terms of mental disorders; and
- Elucidate the various factors that have to be considered in regard to criminal responsibility.

## 4.2 DEFINITION OF CRIMINAL RESPONSIBILTIY

Criminal responsibility is the fact of being responsible for a crime that the person has committed. Criminal responsibility applies not only to those who perform criminal acts but also to those who aid and abet a perpetrator by encouraging or in any way knowingly helping in the commission of such an act.

The precise definition of criminal responsibility varies from place to place but, in general, to be responsible for a criminal act implies that the perpetrator must understand what they are doing and that it is wrong. An individual may not be considered responsible for having committed a crime if the person is a child who does not understand what he or she is doing. Let us say two children of age 3 years or so are playing near a bath tub with water and one child pushes the other child into the water playfully and the other child dies in the process. In such a case the child cannot be held responsible for the killing of the other child because both of them were playing and in play without any understanding of the implications the first child pushed the second and the second child died. Here there was no intention to kill but just play activity. The age factor thus plays an important role in criminal responsibility.

Another aspect in which one cannot consider a person responsible for committing a crime is mental disorder. Let us say a person suffering from paranoid disorder (highly suspicious when suspicion is not at all warranted) feels threatened by persecutors and runs for life from those persons. He is so scared of the persecutors and imagines a person in his office being at the root of it. He is convinced that by

killing that person he could be saved from being persecuted. Such a person who kills is doing so because of a delusion (false belief) that he is getting persecuted by villains under the orders of a person in his office. This is a mental illness and under this condition a person can go and kill another but is not aware of the various consequences. Hence such a person cannot be held responsible for killing.

In yet another case a person may be hearing voices (auditory hallucinations) to go and kill Ms.X and he will go and kill that person and come back, least realising the consequences of his actions. In such cases too the person cannot be held responsible for committing the crime. Thus on grounds of mental disorder the person may not be held responsible for the criminal action.

A landmark case occurred in 1843, when Daniel M'Naghten shot and killed the secretary to Britain's Prime Minister Robert Peel. The medical evidence found M'Naghten to be insane. This led to the famous M'Naghten Rule where someone could evade criminal responsibility if it could be proved that they did not understand the "nature and quality" of the act they were committing. Equally, they were not held responsible if they did understand what they were doing, but did not know or realise that it was wrong.

Persons suffering from a psychosis may be so out of touch with reality that at the time of the crime, the person may not realise what he is doing and what consequences such a criminal action will have. Disorders of impulse control may mean someone is unable to stop himself or herself from attacking someone. People whose actions and judgment are affected by prescription drugs may also not be fully responsible. Crimes with no apparent or rational motive may also be committed by those who are not fully responsible for their actions.

### 4.2.1 Assessment of Criminal Responsibility

There are a number of issues related to this factor namely the (i) Insanity standards and the construal of criminal responsibility, (ii) A review of issues related to the assessment of criminal responsibility, including the structure of these evaluations (iii) instruments developed to guide these evaluations (iv) the role of delusions in the evaluation of criminal responsibility (v) An overview of the empirical developments regarding criminal responsibility, including research on judicial instruction, and jury/juror decision-making etc.

### 4.2.2 Mens Rea

Criminal intent or reckless state of mind is one that the prosecution must prove that an accused had at the time of committing the offense to secure a conviction. Ordinarily, a crime is not committed, if, the mind of the person doing the act is innocent. There must be some blame worthy condition of mind (mens rea) before a person is made criminally liable. For instance, causing injury to an assailant in private defense is no crime, however, the moment injury is caused with intent to take revenge, the act becomes criminal. It must be kept in mind that the requisite guilty state of mind varies from crime to crime. What is an evil intent for one kind of offence may not be so for another kind.

The underlying principle of the doctrine of mens rea is expressed in the Latin *maxim actus non facit reum nisi mens sit rea* – the act does not make one guilty

unless the mind is also guilty. Those who actually perform the criminal act (e.g., wielding the weapon that strikes the fatal blow) are often called principals in the first degree. Those who assist at the time of the commission of the offense (e.g., holding the victim down while the principal in the first degree strikes the blow) are principals in the second degree. And those who assist before the crime takes place (e.g., by lending the weapon or by providing information) are accessories before the fact.

Usually, the law considers all equally responsible and liable to the same punishment. In many cases, though, the accessory before the fact is considered more culpable (e.g., if he has instigated the offense and arranged for it to be committed by an associate), and in some cases the person who actually performs the criminal act is completely innocent of all intent (e.g., a nurse who unknowingly administers to a patient, on a doctor's instructions, medicine that turns out to be poison). In the latter situation, the person who carries out the act is an innocent agent and not criminally responsible, and the person who caused the innocent agent to act is considered the principal in the first degree.

The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require, in addition, some element of wrongful intent or other fault.

### 4.2.3 Mens Rea in the Indian Penal Code 1860

The Indian Penal Code 1860 sets out the definition of offences, the general conditions of liability, the conditions of exemptions from liability and punishments for the respective offences. Lord Macaulay and his colleagues have not used the common law doctrine of mens rea in defining these crimes. However, they preferred to import it by using different terms indicating the required evil intent or mens rea as an essence of a particular offence.

Guilt in respect of almost all the offences created under the IPC is fastened either on the ground of intention, or knowledge or reason to believe. Almost all the offences under the IPC are qualified by one or other words such as 'wrongful gainer or wrongful loss', 'dishonestly', 'fraudulently', 'reason to believe', 'criminal knowledge or intention', 'intentional cooperation', 'voluntarily', 'malignantly', 'wantonly', 'maliciously'. All these words indicate the blameworthy mental condition required at the time of commission of the offence, in order to constitute an offence. Thus, though the word mens rea as such is nowhere found in the IPC, its essence is reflected in almost all the provisions of the Indian Penal Code 1860. Every offence created under the IPC virtually imports the idea of criminal intent or mens rea in some form or other.

### 4.2.4 Appropriate Age Limits and Criminal Responsibility

On 2nd February 2007, the Committee on the Rights of the Child issued General Comment No. 10, that is, Children's Rights in Juvenile Justice (GC 10), providing their interpretation of the Convention on the Rights of the Child (CRC) provisions for children in conflict with the law. This is one of a series of seven explanatory Fact Sheets highlighting key themes in the GC 10 with the aim of ensuring that it becomes widely known, understood and used by State Parties.

The minimum age of criminal responsibility (minimum age) refers to the minimum age below which children shall be presumed not to have the capacity to infringe the penal law. The establishment of such a minimum age means that if a child below that age breaks the law, it cannot be held criminally responsible. While article 40 of the Convention on the Rights of the Child (CRC) requires that State Parties establish a minimum age, it leaves the specific age to be decided by the individual state.

At present, there is a wide spectrum of minimum ages of criminal responsibility existing in national legislations across the world, that is the range is somewhere between as young as 7 years up to age 16. Some examples are as follows:

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|---|---|---|
| India | – | 7 |
| Canada and Netherlands | – | 12 |
| Germany and Uganda | – | 14 |
| United Kingdom and Switzerland | – | 10 |
| Niger | – | 13 |
| Spain | – | 16 |

*The need for fixing the minimum age*

The CRC and the Committee on the Rights of the Child recommend that the minimum age be raised as high as possible, taking into account the developmental differences and decision-making capabilities of children and young people.

International and domestic inconsistencies, individual discretion on child maturity and the contradiction of international conventions make it essential for States to determine an appropriate minimum age of criminal responsibility. Hence certain recommendations in this regard are as given below:

- State Parties should set their minimum age to no lower than 12 years of age;
- State Parties who currently have a minimum age which is higher than 12 should not decrease it; rather, they should work to raise it;
- States with two minimum ages should increase their lower age to 12 and increase their higher age to 14 or 16;
- States should submit detailed information with their periodic reports on the treatment of children who come in conflict with the law when they are below the minimum age along with what arrangements have been made to ensure that their treatment is fair and just;
- Children whose age cannot be proven to be above the minimum age should not be formally charged in a penal law procedure (the benefit of doubt principle);
- Even children below the minimum age have a right to a response or reaction to their alleged actions;
- States should also respect an upper-age limit (the age of 18, according to CRC), meaning that all children aged 18 and below at the time an offence has been committed should be considered under youth criminal justice system. States are also encouraged to raise this limit (up to age 21 for example) whenever possible and appropriate;

- States should set a minimum age that does not, by way of exception, allow the user of a lower age. In addition, there must be no special rules where children may be tried as adults by way of exception.

**Self Assessment Questions**

1) Define criminal responsibility and bring out its characteristic features.

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2) What is Mens Rea? How is it defined in Indian Penal Code.

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3) Why is it necessary to fix age limits for criminal responsibility?

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4) What is an appropriate age limit for criminal responsibility?

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## 4.3 CRIMINAL RESPONSIBILITY AND MENTAL DISORDER

### 4.3.1 Definition of Mental Disorder

Mental disorder is defined as a "disease of the mind" can include any mental abnormality which causes impairment with the exception of voluntary intoxication or transient mental states such as hysteria concussion consequently, personality

disorders are eligible for this defence. At the present time this is uncommon, largely because appellate court decisions have rendered it unlikely that an individual with a personality disorder would be unable to appreciate the nature and quality of the act in the manner that the courts have ruled. It implies knowledge of both legal and moral wrongfulness.

"Moral" means according to societal rather than individual moral code of the accused. It is insufficient that the individual simply chooses to follow their own moral dictates when they have the capacity to understand that it is wrong in the eyes of the law and wrong according to society's usual standards. The accused must have the ability to apply that knowledge rationally.

### 4.3.2 Patterns of Criminality and Mental Disorder

Crime was a response to psychotic symptoms, such as delusions and hallucinations – many will be NCR

Crime motivated by compulsive urges, such as paraphilia's or disorders of impulse control – most not NCR

Crime as the result of a personality disorder

Coincidental mental disorder not related to crime

Mental disorder results from the crime – dissociation, depression

Malingered mental disorder to avoid responsibility.

### 4.3.3 Different Types of Personality and Mental Disorders

DSM IV describes three clusters of personality disorders:

Cluster A – paranoid, schizoid, schizotypal

Cluster B – antisocial, borderline, histrionic, and narcissistic

Cluster C – avoidant, dependent, obsessive-compulsive

**Mental disorders -Paranoia**

Paranoia is a thought process thought to be heavily influenced by anxiety or fear, often to the point of irrationality and delusion. Paranoid thinking typically includes persecutory beliefs concerning a perceived threat towards oneself. Historically, this characterisation was used to describe any delusional state. In the DSM-IV-TR, paranoia is diagnosed in the form of the following:

- Paranoid personality disorder
- Paranoid schizophrenia (a subtype of schizophrenia)
- The persecutory type of delusional disorder, which is also called "querulous paranoia" when the focus is to remedy some injustice by legal action.

**Paranoid Personality Disorder**

Paranoid personality disorder is a psychiatric diagnosis characterised by paranoia and a pervasive, long-standing suspiciousness and generalised mistrust of others. Those with this condition are hypersensitive, are easily slighted, and habitually relate to the world by vigilant scanning of the environment for clues or suggestions to validate their prejudicial ideas or biases. Paranoid individuals are eager observers. They think they are in danger and look for signs and threats of that danger, disregarding any facts. (Waldinger, 1997). They tend to be guarded and

suspicious and have quite constricted emotional lives. Their incapacity for meaningful emotional involvement and the general pattern of isolated withdrawal often lend a quality of withdrawnness and isolation to their life experience.

The subjects of most forms of paranoia are liable to commit crime, usually violent, which may lead to their being tried for assault or murder. The question of their responsibility before the law is therefore one of the first importance (see also Insanity: *Law).* The famous case of McNaghten, tried in 1843 for the murder of Mr. Drummond, private secretary to Sir Robert Peel, is, in this connexion, highly important, for McNaghten was a typical paranoiac labouring under delusions of persecution, and his case formed the basis of the famous deliverance of the judges in the House of Lords, in the same year, on the general question of criminal responsibility in insanity. The judges' deliverance contains the following statement of law:

If "he labours under such *partial* delusion only and is not *in other respects insane* we think he must be considered in the same situation as to responsibility as if the facts to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defense, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

In considering the above deliverance it must be remembered that it was given under the influence of the enormous public interest created by the McNaghten trial. It has also to be remembered that in a criminal court the term responsibility means liability to legal punishment.

The dictum laid down is open to several objections.

1) It is based upon the erroneous assumption that a person may be insane on one point and sane on every other. This is a loose popular fallacy for which there is no foundation in clinical medicine. The systematisation of a delusion involves, as has been pointed out, the whole personality and affects emotion, intellect and conduct. The human mind is not divided into mutually exclusive compartments, but is one indivisible whole liable to be profoundly modified in its relation to its environment according to the emotional strength of the predominant morbid concepts.

2) It does not take into account the pathological diminution of the power of self control. The influence of continued delusions of persecution, especially if accompanied by painful hallucinations, undermines the power of self control and tends ultimately to reduce the subject towards the condition of an automaton which reacts reflexly and blindly to the impulse of the moment.

3) The opinion is further at fault in so far as it assumes that the test of responsibility rests upon the knowledge of right and wrong, which implies the power to do right and to avoid wrong, an assumption which is very far from the truth when applied to the insane. The number of insane criminals who possess no theoretical knowledge of right and wrong is very few indeed, so few that for practical purposes they may be disregarded.

4) The true paranoiac is a person of an anomalous mental constitution apart from his insanity; although he may to outward appearances be able, on occasion, to converse or to act rationally, the moment he is dominated by his delusions he becomes not partially but wholly insane; when in addition his mind is distracted by ideas of persecution or hallucinations, or both, he becomes potentially capable of committing a crime, not because of any inherent vicious propensity but in virtue of his insanity. There is therefore no middle course, from the medical point of view, in respect to the criminal responsibility of the subjects of paranoia; they are all insane wholly, not partially, and should only be dealt with as persons of unsound mind.

**Schizophrenia**

Schizophrenia is a mental disorder characterised by a disintegration of the process of thinking and of emotional responsiveness. It most commonly manifests as auditory hallucinations, paranoid or bizarre delusions, or disorganised speech and thinking, and it is accompanied by significant social or occupational dysfunction. The onset of symptoms typically occurs in young adulthood.

### 4.3.4 Criminal Responsibility and Schizophrenia

Investigating the mental state just before the crime helps when deliberating over criminal responsibility. Generally, schizophrenia is characterised by an alternation between the micro psychotic and basic normal states, and classified clinically into severe, moderate, and mild according to the level of susceptibility to the occurrence of the activation recurrence phenomenon.

Differentiating between the form and contents of the micro psychotic state is of marked importance in schizophrenia. In addition, identifying the form facilitates the distinction between behaviours while sane and those during schizophrenic episodes. Practically, the activating stimuli, which are likely to trigger the micro psychotic state, are applied in the interview to establish the psychiatric testimony based upon the activation-recurrence phenomenon. After the diagnosis of schizophrenia has been confirmed, the examinee is exposed to the stimuli possibly activating the micro psychotic state during the criminal act.

Observing the recurrence of the micro psychotic state and its frequency enables estimation of the susceptibility to the occurrence of the activation-recurrence phenomenon and the mental state during the criminal act. Therefore, if a micro psychotic state during the criminal act can be confirmed, the inability to be held legally responsible is postulated.

In contrast, if a micro psychotic state during the criminal act cannot be confirmed, the specialist giving the psychiatric testimony should conclude that the crime was most likely undertaken while sane, taking into account the objective circumstantial evidence and the suspect's coherent actions during the crime.

**Self Assessment Questions**

1) How are criminal responsibility and mental disorders related?

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2) Discuss McNaughten trial and indicate why was it necessary to lay down certain laws in this regard? What are the criticisms against the same?

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3) Define mental disorder and bring out the differences between personality disorders and mental disorders.

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4) What are the various types of mental disorders? How is schizophrenia affect criminal responsibility?

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## 4.4 DELINQUENT ACT

A criminal act committed by an adult would lead to the prosecution of the adult in a criminal court, but when the same crime is committed by a juvenile, then this will be within the jurisdiction of the juvenile court. Delinquent acts include crimes against persons, crimes against property, drug offenses, and crimes against public order, when juveniles commit such acts.

### 4.4.1 Criminal Responsibility and Delinquent Act

According to IC 31-37-2-1, a Delinquent child is defined as a delinquent child if, before becoming eighteen (18) years of age, the child:

1) commits a delinquent act described above
2) needs care, treatment, or rehabilitation that the
   a) the child is not receiving;
   b) the child is unlikely to accept voluntarily; and
   c) is unlikely to be provided or accepted without the coercive intervention of the court.

According to IC31-37-2-2 a Delinquent act has been described in many ways. For instance delinquent act would include (a) leaving home without permission of parent, guardian, or custodian (2) A child commits a delinquent act if, before becoming eighteen (18) years of age, the child leaves home:

- without reasonable cause; and
- without permission of the parent, guardian, or custodian, who requests the child's return.

According to IC 31-37-2-3 Delinquent act refers to the violation of compulsory school attendance law. Under this A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates IC 20-33-2 concerning compulsory school attendance.

As per IC 31-37-2-4 Delinquent act includes habitual disobedience of parent, guardian, or custodian Sec. 4 specifies it further by swtating that the a child commits a delinquent act if, before becoming eighteen (18) years of age, the child habitually disobeys the reasonable and lawful commands of the child's parent, guardian, or custodian.

As per the IC 31-37-2-5 a Delinquent act refers to curfew violation. In Sec. 5. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child commits a curfew violation under IC 31-37-3.

IC 31-37-2-6 defines a Delinquent act as a violation concerning minors and alcoholic beverages Sec. 6. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates and drinks such prohibited beverages.

IC 7.1-5-7 concerning minors and alcoholic beverages.

IC 31-37-2-7 Delinquent act; fireworks violation Sec. 7. A child commits a delinquent act if, before becoming eighteen (18) years of age, the child violates IC 22-11-14-6(c) concerning minors and fireworks.

### 4.4.2 Psychopath and Criminal Responsibility

"Likeable," "Charming," "Intelligent," "Alert," "Impressive," "Confidence-inspiring," and "A great success with the ladies": These are the sorts of descriptions repeatedly used by Cleckley in his famous case-studies of psychopaths. They are also, of course, "irresponsible," "self-destructive," and the like. These descriptions highlight the great frustrations and puzzles that surround the study of psychopathy.

Psychopaths seem to have in abundance the very traits most desired by normal persons. The untroubled self-confidence of the psychopath seems almost like an impossible dream and is generally what "normal" people seek to acquire when they attend assertiveness training classes. In many instances, the magnetic attraction of the psychopath for members of the opposite sex seems almost supernatural.

Cleckley's seminal hypothesis concerning the psychopath is that he suffers from a very real mental illness indeed: a profound and incurable affective deficit. If he really feels anything at all, they are emotions of only the shallowest kind. He does bizarre and self-destructive things because consequences that would fill the ordinary man with shame, self-loathing, and embarrassment simply do not

affect the psychopath at all. What to others would be a disaster is to him merely a fleeting inconvenience.

Psychopaths can be brilliant, write scholarly works, imitate the *words* of emotion, but over time, it becomes clear that their words do not match their actions. They are the type of person who can claim that they are devastated by grief who then attend a party "to forget." The problem is: they really DO forget.

Being very efficient machines, like a computer, they are able to execute very complex routines designed to elicit from others support for what they want. In this way, many psychopaths are able to reach very high positions in life. It is only over time that their associates become aware of the fact that their climbing up the ladder of success is predicated on violating the rights of others.

The psychopath recognises no flaw in his psyche, no need for change.

Psychopathy is a disorder characterised by emotional abnormalities, such as lack of empathy, conscience and concern for others, and by conduct abnormalities, such as repetitive antisocial behaviour. It is estimated that 25% of convicts serving prison terms suffer from psychopathy, which is a substantial risk factor for crime. Our criminal justice system assumes that no one should be blamed and punished unless the agent deserves blame and punishment. The law also has consequential justifications for criminal punishment, such as prevention, but desert is at least a necessary justification.

By definition, an agent who is not morally responsible for behaviour does not deserve moral blame and punishment for it. Indeed, the degree to which moral and legal responsibility should be identical is of course controversial. Our criminal law contains numerous instances of strict liability in which punishment, often potentially severe, is imposed without any proof of moral fault. For the most part, however, as we have seen, the doctrines that excuse or mitigate criminal responsibility closely track the variables commonly thought to create moral excuse or mitigation.

The justification for the law's view that psychopaths are responsible may be briefly stated.

First, psychopathy does not prevent agents from acting as the law defines action, nor does it prevent psychopaths from forming prohibited mental states.

A psychopath who kills another human being intentionally is fully prima facie criminally responsible.

Further, psychopaths are not excused because they do possess many rational capacities. They usually know the facts and are generally in touch with reality.

They understand that there are rules and consequences for violating them, which they treat as a "pricing" system, and they feel pleasure and pain, the anticipation of which can potentially guide their conduct. This is a relatively thin conception of rational capacity, but the law deems it sufficient to justify punishment on desert and deterrence grounds.

Finally, psychopaths do not suffer from lack of self-control as it is traditionally understood. They do not act in response to desires or impulses that are subjectively experienced as overwhelming, uncontrollable or irresistible.

Once again, there is no need to excuse according to either a desert or deterrence justification for punishment.

In short, the law views the psychopath as bad, and not as mad. Psychopaths are not morally responsible and do not deserve blame and punishment.

There are two potential theories for why this should be so: a specific and a general theory concerning the psychopath's rational capacities.

The specific theory concedes the law's thin view of the psychopath's rational capacities, but suggests that the psychopath has particularised deficits of rationality when moral concern and respect for others is in question.

As a normative matter, the best reasons people have for not violating the rights of others are that the potential wrongdoer fully understands that it is wrong to do so and has the capacity to empathize with the potential pain of their possible victims and to use that as a reason for refraining.

If a person does not understand the point of morality and has no conscience or capacity for empathy, only fear of punishment will give the person good reason not to violate the rights of others.

As has been recognised at least since Hobbes, however, social cooperation and safety cannot be secured solely by the fear of state punishment.

Internalised conscience and fellow feeling are the best guarantors of right action.

The psychopath is not responsive to moral reasons, even if they are responsive to other reasons. Consequently, they do not have the capacity for moral rationality, at least when their behaviour implicates moral concerns, and thus they are not responsible.

They have no access to the most rational reasons to behave well.

The broader theory, most ably advanced by Paul Litton, denies that psychopaths are rational at all because they lack any evaluative standards to assess and guide their conduct.

They do not even possess evaluative standards related to the pursuit of excitement and pleasure.

Psychopaths are like Frankfurt's concept of the "wanton." They do not feel regret, remorse, shame, and guilt, feelings that are typically experienced in reaction to our failure to meet the standards we have set for ourselves.

They may feel frustration and anger if they fail to get what they want, but these are not reactive emotions. Such frustration or anger does not entail negative self-evaluation.

Moreover, severe psychopaths are out of touch with ordinary social reality. They say that they have goals, but act in ways inconsistent with understanding of what entails having and achieving a goal.

They do not consistently follow life plans and are impulsive.

Much of their conduct appears unintelligible because we cannot imagine what good reason would motivate it. In brief, psychopaths have a generally diminished capacity for rational self-governance that is not limited to the sphere of morality.

The psychopath is not a person with whom moral management is possible.

Again, psychopaths know the facts and the rules and are capable of manipulation of others to achieve their own ends, but they do not get the point of morality.

It is as if they are color blind to moral concerns. The rights and interests of others have no place on their practical reasoning.

Blaming and punishing such people is morally pointless, although it may be instrumentally warranted.

Whether psychopaths should be blamed and punished is a question of how we want to live together. Because psychopaths are not members of the moral community, I believe that they should not be held responsible.

Psychopathy is a continuum concept so all psychopaths would not have to be excused. Severe psychopathy would be excused, however, and individual jurisdictions would have discretion to decide whether less severe psychopathy should also excuse.

An interesting issue is whether psychopaths would also meet the criteria for "control" tests for legal insanity, such as the inability to conform one's conduct to the requirements of law.

In short, for psychopaths (and others) failures of self-control collapse into rationality deficits. At present, psychopathy is not a treatable condition, so all psychopaths who commit non-trivial crimes would be subject to potentially life-long involuntary civil commitment if they are excused by reason of legal insanity. Psychopathy is a risk factor for crime, but many might not re-offend despite their mental abnormality.

**Self Assessment Questions**

1) Define delinquency in legal terms. What are its important features?

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2) What is a delinquent act? Which are the activities indulges in by a person come under this category?

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3) Discuss delinquent act and criminal responsibility.

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4) Discuss the various characteristic features of psychopath and indicate when a crime committed by a psychopath will be considered criminally responsible?

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## 4.5 INSANITY

Insanity, craziness or madness is a spectrum of behaviours characterised by certain abnormal mental or behavioural patterns. Insanity may manifest as violations of societal norms, including becoming a danger to themselves and others, though not all such acts are considered insanity. In modern usage *insanity* is most commonly encountered as an informal unscientific term denoting mental instability, or in the narrow legal context of the insanity defense. In the medical profession the term is now avoided in favour of diagnoses of specific mental illness such as schizophrenia and other psychotic disorders. When discussing mental illness in general terms, "psychopathology" is considered a preferred descriptor.

### 4.5.1 Legal Use of the Term Insanity

All jurisdictions require a sanity evaluation to address the question first of whether or not the defendant has a mental illness. Most courts accept a major mental illness such as psychosis but will not accept the diagnosis of a personality disorder for the purposes of an insanity defense. The second question is whether the mental illness interfered with the defendant's ability to distinguish right from wrong. That is, did the defendant know that the alleged behaviour was against the law at the time the offense was committed. Additionally, some jurisdictions add the question of whether or not the defendant was in control of their behaviour at the time of the offense. For example, if the defendant was compelled by some aspect of their mental illness to commit the illegal act, the defendant could be evaluated as not in control of their behaviour at the time of the offense. The forensic mental health specialists submit their evaluations to the court. Since the question of sanity or insanity is a legal question and not a medical one, the judge and or jury will make the final decision regarding the defendant's status regarding an insanity defense. In most jurisdictions within the United States, if the insanity plea is accepted, the defendant is committed to a psychiatric institution for at least 60

days for further evaluation, and then reevaluated at least yearly after that. Insanity is generally no defense in a civil lawsuit.

In India, Insanity or unsoundness of mind is not defined in the act. It means a disorder of the mind, which impairs the cognitive faculty; that is, the reasoning capacity of man to such an extent as to render him incapable of understanding consequences of his actions. It means that the person is incapable of knowing the nature of the act or of realising that the act is wrong or contrary to law. A person, although of unsound mind, who knows that he is committing an unlawful act, may not get the benefit of IPC, s. 84. The nature and extent of the unsoundness must be so high so as to impair his reasoning capacity and that he may not understand the nature of the act or that it is contrary to law. It excludes from its preview insanity, which might be caused by engendered by emotional or volitional factors.

There are four kinds of persons who may be said to be *non compos mentis* (not of sound mind) and these are:

1) an idiot – an idiot is one who from birth had defective mental capacity. This infirmity in him is perpetual without lucid intervals.

2) one made so by illness – by illness, a person is made non compos mentis. He is therefore excused in case of criminal liability, which he acts under the influence of this disorder.

3) a lunatic or a madman – lunatics are those who become insane and whose incapacity might be or was temporary or intermittent. A lunatic is afflicted by mental disorder only at certain period and vicissitudes, having intervals of reason; and

4) one who is drunk – this is covered under IPC.

### 4.5.2 Legal Insanity

The tests for legal insanity may be placed in two broad categories—cognitive and control (also called "volitional"). There is some doctrinal variation among the jurisdictions, but the essential questions are similar.

Cognitive tests ask whether, at the time of the crime, the defendant was disabled by mental disorder from knowing, appreciating, or understanding the nature of his conduct or that it was morally or legally wrong. Control tests ask whether, as a result of mental disorder, the defendant was unable at the time of the crime to control his conduct or to conform his conduct to the requirements of the law.

None of the cognitive or control tests for legal insanity is self-defining. All require substantial interpretation. To begin, how should the threshold requirement of a mental disease or disorder or defect be defined? The Supreme Court has made clear that the definition of mental disorder as a legal criterion for insanity is a legal question and within the discretion of the states. Thus, states are free to limit legal insanity to cases involving severe mental disorder or to define mental disorder in a non-traditional way, as long as the definition is minimally rational. They need not be bound by the definitions used by the mental health science disciplines, such as psychiatry and psychology.

Moreover, there is substantial leeway in whether the tests should be read narrowly or broadly. Control tests are often characterised as volitional, as if mental disorder has somehow disabled the agent's volitional capacities, but this locution is confusing and should be abandoned.

There is no consensual definition of volition or will in any of the relevant disciplines, such as psychology or philosophy, and this formulation quickly dissolves into the intractable issues of how the brain enables the mind and how intentions are related to actions. Perhaps one helpful way of thinking about volition is as the executory mental state that produces an action in response to an intention. Viewed in this way, however, virtually no one with a mental disorder has a volitional problem because people with disorders are fully able to execute the intentions that their disordered thoughts, perceptions, and desires may motivate.

Despite the definitional and empirical difficulties, however, some criminologists and legal philosophers nevertheless believe control tests are necessary for crimes committed by defendants with impulse disorders, such as Intermittent Explosive Disorder, or "disorders of desire," such as Pedophilia.

The problem in cases of alleged lack of self-control is distinguishing the disordered person from any other agent who also wants to do something very badly that the agent should not do, such as the very greedy person tempted terribly to steal. Simply characterising the desire as disordered in one case but not the other cannot resolve the question of control; it simply begs that question.

Why should we ever excuse someone who acts wrongly in response to a very strong desire, whether that desire is normal or abnormal? Moreover, what theory or account allows us to characterise desires, as opposed to perceptions and beliefs, as irrational? How do we distinguish between an irresistible desire and a desire simply not resisted? Concerns like these led both the American Bar Association and the American Psychiatric Association to recommend abolition of an independent control test during the insanity reform movement that occurred in response to the Hinckley verdict.

The relevance of mental disorder to legal insanity tests is conceptually straightforward, although evidentiary problems can arise. Insanity tests address normative issues concerning responsibility that are broader than claims involving action or mens rea, which are more factual.

The finder of fact needs the thickest possible description of the defendant's perceptions, thoughts, and feelings at the time of the crime in order to determine whether the legal standard for insanity is met. The fact-finder employing a cognitive or control test must thus evaluate how mental disorder affects perceptions, thoughts, beliefs, desires, and feelings. While anatomical, physiological, and other kinds of non-behavioural evidence may help the finder of fact make inferences about the defendant's psychological phenomenology, the ultimate test is behavioural, making mental disorder evidence crucially relevant.

People are found legally insane because they lack rational capacity or, more controversially, because they cannot conform their behaviour to the requirements of law.

Further, the "causal role" that mental disorder may play in criminal behaviour must be properly understood. Causation in this instance means that mental

disorder produced distorted perceptions, thoughts, or desires that influenced the defendant's reasons for action. It does not refer to "mechanical" causation. It has nothing to do with determinism or free will. The actions of people motivated in part by abnormal perceptions, beliefs. and desires are actions, but they may be excused if the abnormality renders the agent sufficiently irrational. Causation of behaviour by abnormal beliefs, for example, is no different from, no more "causal" than, causation of behaviour by normal beliefs. The only difference is that in the former case, the agent may be irrational and should therefore be excused.

Lack of rational capacity—not determinism, lack of free will, or abnormal causation—justifies the insanity defense and explains its criteria.

### 4.5.3 Incompetency and Mental Illness

An important distinction to be made is the difference between competency and criminal responsibility.

The issue of competency is whether a defendant is able to adequately assist his attorney in preparing a defense, make informed decisions about trial strategy and whether or not to plead guilty or accept a plea agreement. This issue is dealt with in UK law as "fitness to plead".

Criminal responsibility, however, deals with whether a defendant can be held legally responsible for his criminal behaviour.

Competency largely deals with the defendant's present condition, while criminal responsibility addresses the condition at the time the crime was committed.

In the United States, a trial in which the insanity defense is invoked typically involves the testimony of psychiatrists or psychologists who will present opinions on the defendant's state of mind at the time of the offense. Mental health practitioners are restrained from making a judgment on the issue of whether the defendant is or is not insane or what is known as the "ultimate issue".

Insanity is a legal concept, not a psychiatric concept of mental illness. Whether a person has a diagnosed mental disorder is not sufficient reason, from the court's point of view, to relieve them from all responsibility for illegal acts they may commit. A person may have a mental disorder and be a competent person in many other ways, able to write checks, handle his personal affairs, hold a job and carry on a variety of behaviours despite the mental disorder. Likewise, a person may commit a criminal act, independent of the fact that he has a mental disorder.

Depending on the jurisdiction, other elements need to be proven, for the court to accept that the mental disorder was responsible for the criminal act, that is, it must be shown that the defendant committed the crime because of the mental disorder. For example, the mental disorder interfered with his ability to determine right from wrong at the time the offense was committed.

It would unduly stigmatize a person with a diagnosed mental illness to say that because of the mental illness he is not responsible for his behaviour. Therefore, persons whose mental disorder is not in dispute will be determined sane as the court will decide that despite a "mental illness" the defendant was responsible for the acts he committed and he will be treated in court as a normal defendant.

If the person has a mental illness and it is determined that the mental illness interfered with the person's ability to determine right from wrong, and other associated criteria a jurisdiction may have, and if the person is willing to plead guilty or is proven guilty in a court of law, some jurisdiction have an alternative option known as either a Guilty but Mentally Ill (GBMI) or a Guilty but Insane verdict. The GBMI verdict is available as an alternative to, rather than in lieu of, a "not guilty by reason of insanity" verdict. Michigan (1975) was the first state to create a GBMI verdict.

Sometimes a person without mental illness can be found to be insane; for example, a person who was in a medical state of delirium at the time of the crime, or a person who is acting under the influence of a drug that was involuntarily administered (though voluntary intoxication has been rejected by most jurisdictions as a defense to crime).

### 4.5.4 Rules of Appreciation

In this section, various rules applied in United States jurisdiction with respect to insanity defenses are discussed.

The M'Naghten Rules

The guidelines for the *M'Naghten Rules* (1843) 10 C & F 200, state, *inter alia*, and evaluating the criminal responsibility for defendants claiming to be insane were settled in the British courts in the case of Daniel M'Naughten in 1843. M'Naughten was a Scottish woodcutter who murdered the secretary to the prime minister, Sir Robert Peel, in a botched attempt to assassinate the prime minister himself. M'Naughten apparently believed that the prime minister was the architect of the myriad of personal and financial misfortunes that had befallen him. During his trial, nine witnesses testified to the fact that he was insane, and the jury acquitted him, finding him "not guilty by reason of insanity."

The House of Lords asked the judges of the common law courts to answer five questions on insanity as a criminal defence, and the formulation that emerged from their review—that a defendant should not be held responsible for his actions only if, due to his mental disease or defect, he (i) did not know that his act would be wrong; or (ii) did not understand the nature and quality of his actions—became the basis of the law governing legal responsibility in cases of insanity in England. Under the rules, loss of control because of mental illness was no defense. The M'Naughten rule was embraced with almost no modification by American courts and legislatures for more than 100 years, until the mid-20th century. In 1998, 25 states plus the District of Columbia still used versions of the M'Naughten rule to test for legal insanity.

### 4.5.5 Mens Rea and Legal Insanity

As should be clear from the foregoing Parts, the mens rea issue is entirely distinct from the legal insanity issue, even if precisely the same evidence would be relevant to adjudicating both claims. People with mental disorder are not automatons; rather, they are agents who act for masons. Their reasons may be motivated by distorted perceptions and beliefs, but they do form intentions and have knowledge of what they are doing in the narrow, most literal sense. Thus, it is very uncommon for mental disorder to negate all mens rea, even if the defendant is profoundly delusional, as Daniel M'Naghten and Andrea Yates presumably were.

In some rare cases, as we have already discussed, evidence of mental disorder might negate mens rea because the mental state it produces will be flatly inconsistent with the mens rea required by the definition of the crime or because it indirectly helps to explain why mens rea was not formed on that occasion. In these cases, the same evidence that a defendant was delusional may both negate mens rea and support a finding of legal insanity, but the questions being answered by the evidence are different.

**Self Assessment Questions**

1) Define insanity.

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2) Give the legal definition of insanity.

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3) Discuss the incompetency to stand trial and mental ilness.

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4) What is meant by Rules of appreciation?

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5) Discuss Men's Rea in terms of legal insanity.

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## 4.6 CIVIL CASES VS. CRIMINAL CASES - KEY DIFFERENCES

Civil cases usually involve private disputes between persons or organisations. Criminal cases involve an action that is considered to be harmful to society as a whole. Below is a comparison of the key differences between civil and criminal cases.

### 4.6.1 Civil Cases

A civil case begins when a person or entity (such as a corporation or the government), called the plaintiff, claims that another person or entity (the defendant) has failed to carry out a legal duty owed to the plaintiff. Both the plaintiff and the defendant are also referred to as "parties" or "litigants." The plaintiff may ask the court to tell the defendant to fulfill the duty, or make compensation for the harm done, or both. Legal duties include respecting rights established under the Constitution or under federal or state law.

Civil suits are brought in both state and federal courts. An example of a civil case in a state court would be if a citizen (including a corporation) sued another citizen for not living up to a contract.

For example, if a lumberyard enters a contract to sell a specific amount of wood to a carpenter for an agreed-upon price and then fails to deliver the wood, forcing the carpenter to buy it elsewhere at a higher price, the carpenter might sue the lumberyard to pay the extra costs incurred because of the lumberyard's failure to deliver; these costs are called damages. If these parties were from different states, however, then that suit could be brought in federal court under diversity jurisdiction if the amount in question exceeded the minimum required by statute ($75,000).

In India, The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognisance is either expressly or impliedly barred. A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. It is immaterial whether or not any fees are attached to the office or whether or not such office is attached to a particular place.

Individuals, corporations, and the federal government can also bring civil suits in federal court claiming violations of federal statutes or constitutional rights. For example, the federal government can sue a hospital for overbilling Medicare and Medicaid, a violation of a federal statute. An individual could sue a local police department for violation of his or her constitutional rights—for example, the right to assemble peacefully.

### 4.6.2 Criminal Cases

A person accused of a crime is generally charged in a formal accusation called an indictment (for felonies or serious crimes) or information (for misdemeanors). The government, on behalf of the people of the United States, prosecutes the case through the United States Attorney's Office if the person is charged with a federal crime. A state's attorney's office prosecutes state crimes.

It is not the victim's responsibility to bring a criminal case. In a kidnapping case, for instance, the government would prosecute the kidnapper; the victim would not be a party to the action.

In some criminal cases, there may not be a specific victim. For example, state governments arrest and prosecute people accused of violating laws against driving while intoxicated because society regards that as a serious offense that can result in harm to others.

When a court determines that an individual committed a crime, that person will receive a sentence. The sentence may be an order to pay a monetary penalty (a fine and/or restitution to the victim), imprisonment, or supervision in the community (by a court employee called a U.S. probation officer if a federal crime), or some combination of these three things.

## 4.7 TYPES OF CRIME

### 4.7.1 White-Collar Crime

Within the field of criminology, white-collar crime has been defined by Edwin Sutherland as "a crime committed by a person of respectability and high social status in the course of his occupation" (1949). Sutherland was a proponent of Symbolic Interactionism, and believed that criminal behaviour was learned from interpersonal interaction with others. White-collar crime, therefore, overlaps with corporate crime because the opportunity for fraud, bribery, insider trading, embezzlement, computer crime, copyright infringement, money laundering, identity theft, and forgery are more available to white-collar employees.

### 4.7.2 Blue-Collar Crime

The types of crime committed are a function of what is available to the potential offender. Blue-collar crime tends to be more obvious and thus attracts more active police attention (e.g. for crimes such as vandalism or shoplifting, where physical property is involved). In contrast, white collar employees can incorporate legitimate and criminal behaviour, thus making themselves less obvious when committing the crime. Therefore, blue collar crime will more often use physical force, whereas in the corporate world, the identification of a victim is less obvious and the issue of reporting is complicated by a culture of commercial confidentiality to protect shareholder value.

### 4.7.3 State-Corporate Crime

The negotiation of agreements between a state and a corporation will be at a relatively senior level on both sides, this is almost exclusively a white-collar "situation" which offers the opportunity for crime. White-collar crime has become a priority of law enforcement.

When senior levels of a corporation engage in criminal activity using the company this is sometimes called control fraud.

### 4.7.4 Organised Crime

Organised crime or criminal organisations are transnational, national, or local groupings of highly centralised enterprises run by criminals for the purpose of

engaging in illegal activity, most commonly for monetary profit. The *Organised Crime Control Act* (U.S., 1970) defines organised crime as "The unlawful activities of a highly organised, disciplined association. Such crime is commonly referred to as the work of the *Mob* in the U.S.

Mafia is a term used to describe a number of criminal organisations around the world. In the United States, "the Mafia" generally refers to the Italian American Mafia. Other powerful organisations described as mafias include the Russian Mafia, the Irish Mob, the Chinese Triads, the Albanian Mafia, Bosnian mafia, the Japanese Yakuza, the Neapolitan Camorra, the Calabrian 'Ndrangheta, the Apulian Sacra Corona Unita, the Indian Mafia, the Unione Corse, Serbian Mafia, the Mexican Mafia and the Bulgarian mafia. There are also a number of localised mafia organisations around the world bearing no link to any specific ethnic background.

Some criminal organisations, such as terrorist organisations, are politically motivated. Gangs may become "disciplined" enough to be considered "organised". An organised gang or criminal set can also be referred to as a mob. The act of engaging in criminal activity as a structured group is referred to in the United States as racketeering.

### 4.7.5 Juvenile Sex Crimes

This refers to the minor who commits sexual crimes. They indulge in sexual crimes which are defined as sexually abusive behaviour committed by a person under the age of 18 that is perpetrated "against the victim's will, without consent, and in an aggressive, exploitative, manipulative, or threatening manner.

Examining prevalence data and the characteristics of juvenile sex offenders is a fundamental component to obtain a precise understanding of this heterogeneous group. With mandatory reporting laws in place, it became a necessity for providers to report any incidents of disclosed sexual abuse.

### 4.7.6 Political Crime

In criminology, a political crime is an offence involving overt acts or omissions (where there is a duty to act), which prejudice the interests of the state, its government or the political system. It is to be distinguished from state crime when it is the states that break both their own criminal laws or public international law.

States will define as political crimes any behaviour perceived as a threat, real or imagined, to the state's survival including both violent and non-violent oppositional crimes. A consequence of such criminalisation may be that a range of human rights, civil rights, and freedoms are curtailed, and conduct which would not normally be considered criminal *per se* is criminalised at the convenience of the group holding power.

Thus, while the majority of those who support the current regime may consider criminalisation of politically motivated behaviour as an acceptable response when the offender is driven by more extreme political, ideological, religious or other beliefs, there may be a question of the morality of a law which simply criminalises ordinary political dissent.

### 4.7.7 Public Order Crime

In criminology public order crime is defined a crime which involves acts that interfere with the operations of society and the ability of people to function efficiently, that is, public order crime is a behaviour that has been labelled criminal because it is contrary to shared norms, social values, and customs. Generally speaking, deviancy is criminalised when it is too disruptive and has proved uncontrollable through informal sanctions.

Public order crime should be distinguished from political crime. In the former, although the identity of the "victim" may be indirect and sometimes diffuse, it is cumulatively the community that suffers, whereas in a political crime, the state perceives itself to be the victim and criminalises the behaviour it considers threatening. Thus, public order crime includes consensual crime, victimless vice, and victimless crime. It asserts the need to use the law to maintain order both in the legal and moral sense.

For example, in cases where a criminal act subverts or undermines the commercial effectiveness of normative business practices, the negative consequences extend beyond those at whom the specific immediate harm was intended. Similarly, in environmental law, there are offences that do not have a direct, immediate and tangible victim, so crimes go largely unreported and unprosecuted because of the problem of lack of victim awareness. In short, there are no clear, unequivocal definitions of 'consensus', 'harm', 'injury', 'offender', and 'victim'.

### 4.7.8 State Crime

In criminology, state crime is activity or failures to act that break the state's own criminal law or public international law. For these purposes, Ross (2000b) defines a "state" as the elected and appointed officials, the bureaucracy, and the institutions, bodies and organisations comprising the apparatus of the government. Initially, the state was the agency of deterrence, using the threat of punishment as a utilitarian tool to shape the behaviour of its citizens. Then, it became the mediator, interpreting society's wishes for conflict resolution. Theorists then identified the state as the "victim" in victimless crimes.

Green & Ward (2004) adopt Weber's Thesis of a sovereign "state" as possessing a monopoly on the right to use force. Thus, the criteria for determining whether a state is "deviant" will draw on international norms and standards of behaviour for achieving the state's usual operating goals. One of those standards will be whether the state respects human rights in the exercise of its powers. But, one of the definitional difficulties is that the states themselves define what is criminal within their own territories, and as sovereign powers, they are not accountable to the international community unless they submit to international jurisdiction generally, or criminal jurisdiction in particular.

### 4.7.9 Victimless Crime

A victimless crime is an infraction of criminal law without any identifiable evidence of an individual that has suffered damage in the infraction. Typical examples include violations of laws concerning public decency or public order, and include the sale, possession, and use of illicit drugs, prostitution, trafficking in pornography, and gambling. These laws are based on the *offence principle*, as opposed to laws based on the *harm principle*.

In a constitutional state, the legislature, a body in turn elected by the sovereign, defines criminal law. A crime (as opposed to a civil wrong or *tort*) is an infraction of a law, and will not always have an identifiable individual or group of individuals as its victims, but may also, for example, consist of the preparations that did not result in any damage (*mens rea* in the absence of *actus reus*), such as attempted murder, offenses against legal persons as opposed to individuals or natural persons, or directed against communal goods such as social order or a social contract or the state itself, as in tax avoidance and tax evasion, treason, or, in non-secular systems, the supernatural (infractions of religious law).

**Self Assessment Questions**

1) What are the key differences in civil and criminal cases? Elucidate

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2) Discuss white collar crime and blue collar crime bringing out the differences between them.

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3) What is an organised crime? Would you say that the state corporate crime is an organised crime?

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4) Distinguish between political crime and state crime?

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## 4.8 FACTORS THAT HAVE TO BE CONSIDERED IN REGARD TO CRIMINAL RESPONSIBILITY

Let us first take up the biological factors. Neurochemicals are responsible for the activation of behavioural patterns and tendencies in specific areas of the brain. There have been attempts to determine the role of neurochemicals in influencing criminal or antisocial behaviour. Included in the list of neurochemicals already cited by researchers are monoamine oxidase (MOA), epinephrine, norepinephrine, serotonin, and dopamine. Monoamine oxidase (MAO) is an enzyme that has been shown to be related to antisocial behaviour. Specifically, low MAO activity results in disinhibition which can lead to impulsivity and aggression.

Serotonin is a neurochemical that plays an important role in the personality traits of depression, anxiety, and bipolar disorder. It is also involved with brain development and a disorder in this system could lead to an increase in aggressiveness and impulsivity. Low levels of serotonin have been found to be associated with impulsive behaviour and emotional aggression. Dopamine is a neurotransmitter in the brain that is associated with pleasure and is also one of the neurotransmitters that is chiefly associated with aggression. Activation of both affective (emotionally driven) and predatory aggression is accomplished by dopamine .

Attention Deficit Hyperactivity Disorder (ADHD), Conduct Disorder (CD), and Oppositional Defiance Disorder (ODD) are three of the more prominent disorders that have been shown to have a relationship with later adult behaviour. ODD is characterised by argumentativeness, noncompliance, and irritability, which can be found in early childhood. When a child with ODD grows older, the characteristics of their behaviour also change and more often for the worse. They start to lie and steal, engage in vandalism, substance abuse, and show aggression towards peers. Frequently ODD is the first disorder that is identified in children and if sustained can lead to the diagnosis of CD. It is important to note however that not all children who are diagnosed with ODD will develop CD.

ADHD is associated with hyperactivity-impulsivity and the inability to keep attention focused on one thing . Impulse control dysfunction and the presence of hyperactivity and inattention are the most highly related predisposing factors for presentation of antisocial behaviour. Children diagnosed with ADHD have the inability to analyse and anticipate consequences or learn from their past behaviour. Children with this disorder are at risk of developing ODD and CD, unless the child is only diagnosed with Attention Deficit Disorder (ADD), in which case their chances of developing ODD or CD are limited. The future for some children is made worse when ADHD and CD are co-occurring because they will be more likely to continue their antisocial tendencies into adulthood.

Conduct Disorder is characterised with an individual's violation of societal rules and norms (Morley & Hall, 2003). As the tendencies or behaviours of those children who are diagnosed with ODD or ADHD worsen and become more prevalent, the next logical diagnosis is CD. What is even more significant is the fact that ODD, ADHD, and CD are risk factors for developing Antisocial Personality Disorder (ASPD). This disorder can only be diagnosed when an individual is over the age of eighteen and at which point an individual shows

persistent disregard for the rights of others. ASPD has been shown to be associated with an increased risk of criminal activity. Therefore, it is of great importance that these early childhood disorders are correctly diagnosed and effectively treated to prevent future problems.

Another critical aspect that must be examined regarding antisocial or criminal behaviour is the personality characteristics of individuals. Two of the most cited personality traits that can be shown to have an association with antisocial or criminal behaviour are impulsivity and aggression.

The family environment is critical to the upbringing of a child and if problems exist then the child is most likely to suffer the consequences. We have seen the problems associated with a child who is diagnosed with ADHD and how that can influence antisocial or criminal behaviour. In relation to that, some researchers have claimed that it is the family environment that influences the hyperactivity of children.

Another significant factor in the development of antisocial or delinquent behaviour in adolescence is peer groups. There is a correlation between the involvement in an antisocial or delinquent peer group and problem behaviour. One of the primary causes as to why this occurs can be traced back to aggressive behaviour in young children. When children are in preschool and show aggressive tendencies towards their peers, they will likely be deemed as an outcast. This creates poor peer relationships and relegates those children to be with others who share similar behaviours.

Social learning theory has been cited as way to explain how the environment can influence a child's behaviour. Using this theory to explain the aggressive or antisocial behaviour of a child means that a child observes aggressive behaviour between parents, siblings, or both. As a result, the children believe that this aggressive behaviour is normal and can therefore use it themselves because they do not see the harm in acting similar to their parents.

The exposure to such high levels of aggression and other environmental factors greatly influences and reinforces a child's behaviour. A significant point that should be known however is the fact that other research has supported the notion that genetics do influence levels of aggression, which stands in opposition to the social learning theory (Miles & Carey, 1997).

## 4.9 LET US SUM UP

There cannot be enough possible evidence to conclude the point that genetics play the most important role in the outcome or behaviour of an individual. The opposing viewpoint of environmental factors is not without its doubts either as to being the prominent factor influencing antisocial or criminal behaviour of an individual. In this paper, there is more evidence supporting the genetics viewpoint, but that does not mean it is more important. With the research and studies having numerous flaws and the inability to adequately separate nature and nurture, there is still a great debate between genetic and environmental factors.

Researchers, however, have certainly come far in their progression, to the point where there is a large consensus of the fact that genes do influence behaviour to

a certain extent. Although not as widely publicized, it is the belief of the author that these same researchers also believe that environmental factors account for what cannot be explained by genes. Therefore it seems obvious to reach the conclusion that an individual's antisocial or criminal behaviour can be the result of both their genetic background and the environment in which they were raised.

One researcher has proposed a theory relating to sociopaths and their antisocial behaviour. According to the theory, a primary sociopath is lacking in moral development and does not feel socially responsible for their actions. This type of sociopath is a product of the individual's personality, physiotype, and genotype. A secondary sociopath develops in response to his or her environment because of the disadvantages of social competition. Living in an urban residence, having a low socio-economic status, or poor social skills can lead an individual to being unsuccessful in reaching their needs in a socially desirable way, which can turn into antisocial or criminal behaviour. The first type of sociopath is dependent on their genetic makeup and personality, while certain factors of the second type can also be heritable. Notwithstanding, the second type has a greater dependence on environmental factors (Miles & Carey, 1997). Perhaps from this review of both genetic and environmental factors, it seems clear to support the idea of the secondary sociopath type. An individual can inherit certain genes and when combined with the right environmental factors can lead them to engage in antisocial or criminal behaviour.

Although not mentioned extensively in the text of the paper, there is a great need to try and identify those individuals, especially children, who may become susceptible to certain disorders or personality traits that can lead into antisocial, delinquent, or criminal behaviour. Society should not try to imitate the era of controlled breeding, but rather focus on the treatment and rehabilitation of those individuals in need. Certain educational, environment enrichment programs have been shown to have a lasting effect on children if given by a certain age (Raine, Mellingen, Liu, Venables, & Mednick, 2003). If more of these programs could be developed, society could help prevent the future antisocial or criminal behaviour of children.

## 4.10 UNIT END QUESTIONS

1) Define criminal responsibility and indicate when does a crime become criminal responsibility?

2) Discuss Men's Rea and its provisions in great detail.

3) Define mental disorders of all typ[es and indicate the relagtionship between criminal responsibility and mental disorders.

4) Discuss critically the criminal responsibility in terms of the delinquent act?

5) Defining the term insandity indicate how criminal responsibility is related to insanity?

6) What are the differences between criminal and civil cases?

7) Elucidate the various types of crimes and indicate the criminal responsibility in regard to each of them.

## 4.11 GLOSSARY

**Automaton** : Moving mechanical device made in imitation of a human being.

**Executor** : A person appointed by a testator to carry out the terms of their will.

**Fallacy** : Mistaken belief or a failure in reasoning which renders an argument invalid.

**Fraudulent** : Done by or involving fraud.

**Hysteria** : Exaggerated or uncontrollable emotion or excitement or convergence of psychological stress into physical symptoms or a change in self-awareness.

**Perpetrate** : Carry out or commit (a harmful, illegal or immoral action).

**Persecute** : Subject to prolonged hospitality or ill-treatment.

**Personality Disorder** : Deeply ingrained and mal-adaptive pattern of behaviour typically causing long term difficulties in social relationships.

**Psychosis** : A mental disorder in which thought and emotions are so impaired that perception of external reality is severely affected.

**Transient** : Lasting for a short while.

**Vandalise** : Deliberately destroy or damage property.

## 4.12 SUGGESTED READINGS

Sharma, Rajender Kumar (1999). *Criminology and Penology*. HB Books, New Delhi

Ahuja , Ram (2000). *Criminology*. Rawat Publications, New Delhi

*Indian Penal Code 1860*