

PSYCHOPATHS: AN UNREVEALED AREA IN INDIAN JUDICIAL SYSTEM

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The offenders who are accused of horrendous crimes when under the influence of mental disorders should be first identified for mental disease by a competent psychologist. There are a lot of variants of mental diseases. However, unfortunately, they are all generally categorized as same. There is a serious need to recognize and classify them properly.

All stakeholders: advocates, judges, social workers, the police and doctors not only need to know about different mental diseases and legal provisions, but also need to be aware of treatment options available to the mentally ill persons charged with criminal acts.

Many cases in India have been reported about serial killers, mental illness, incest & other sexual and violent crimes, but no case has been reported as committed by psychopaths. Psychopathy is a dangerous mental ailment which is unrevealed in Indian judicial system. There is an urgent need to identify and classify each mental disease and then take necessary steps. In U.K. and U.S. separate statutes have been made for the psychopaths. There should be proper recognition of psychopaths in India due to the severity of the disease and increasing incidences of psychopathic crime.

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1. INTRODUCTION

Crime is one of the greatest evils of our society. Crime and delinquency not only continue to plague our society but they are on the increase in spite of our efforts to control them. It is an everyday affair to read about some or the other criminal or delinquent act in the news papers.

The criminal law and criminology endeavor to attempt and understand the demands of knowledge across a wide range of disciplines. The causes of crime are one of the important segments of the problem that require more discussion, investigation, research and call for more social, governmental and judicial action. Writers and researchers from anthropology, economics, jurisprudence, medicine, philosophy, psychology and sociology have all contributed to the study of crime. As the study of crime became more refined it evolved into the specializations of criminology which encompassed an integrated approach to the study of crime wherein the elements of other disciplines were used to develop theories and explanations for the phenomenon of crime.

Due to the alarming increase in the number of crimes in the recent years the problem has attracted the attention of the government and some measures have been taken to prevent crime in general but no genuine attempts seem to have been made in this direction. Researchers commonly identify criminality with emotional illness and look up clinical therapy as a solution to crime. It is no wonder that many sane criminals may be suffering from minor types of mental illnesses which go undetected because these people never get examined by a competent psychiatrist. Mental patients are sometimes detained in jails or sent to mental hospitals for treatment after commission of crime but it includes only those persons who suffer from a very high degree of mental abnormality. Such criminal mental patients have been neglected in India as well as worldwide and very few psychiatrists have worked and researched on various problems relating to such mentally ill

criminals. Study and comparison of the crime rate and the nature of crime committed by persons suffering from different kinds of mental disease was made with that of persons suffering from psychopaths.

The offenders who are accused of horrendous crimes when under the influence of such mental disorders should be identified by psychologists. There is a lot of indistinctness of mental diseases; all are generally identified as same. There is a serious need to recognize and classify them properly and accordingly judgment should be given.

Advocates, judges, social workers, probation officers, the police and doctors need to know not only about mental illness and law, but also what is available to the mentally ill in the form of support, care and treatment. For instance, a judge may have to deal with the case of mental illness; in this regard medical experts will be in a better position to diagnose the same as mental illness thereby strongly recommending for the accused to be subjected to treatment. However, unless the judge is sensitive to this fact he will find it difficult to arrive at a sensible and humane decision. At this stage, some knowledge of psychiatric treatment and the willingness to accept such fact is imperative on the part of the judge.

There are some cases which reflect the contentious decision of the judiciary. In the recent past there had been an infamous incident commonly referred to as the '*Nithari Case*'¹ (gruesome killings of many children and at times eating their flesh), which shook the mind of every sane person. This behavior seems to be pretty abnormal but judging whether a person's functioning is abnormal and whether the person has a psychological disorder can be a complex process that involves weighing several factors.² Very few behaviors are inherently abnormal. Abnormality must be judged in the context of a

¹ Surendra Koli v. State of U.P. & Ors, Cr. A. No. 2227 with S.L.P. (Cri) No. 608 of 2010, 15-2-2011 (India).

² CRIME LIBRARY, <http://www.crimelibrary.com> (last visited on Jun. 21, 2013).

particular social situation. Surendra Koli, the main accused had clear traits of psychopathy, initially he was identified as psychopath but later on this important factor became a vague impression and he was awarded capital punishment.

Abnormality must be judged in the context of a particular social situation. In such cases a question will arise as to the validity of the decision made by the judge. Besides, an individual has his own likings and bends toward his choice. It ultimately can put a person at the mercy and prejudices of the judge.

As such, there is no separate law to treat psychopath offenders who in fact are victims of their own minds. Therefore, the study of such diseased minds should be given due importance by the police, advocates and judges. The criminal justice system should seek help from psychologists and follow special codes of procedures in the light of the fact that these offenders are in fact the victims.

In order to integrate law and psychiatry and to affect an inter-disciplinary approach it would be necessary for each discipline to understand the historical development of the other and the link between the two so as to come to logical conclusions. It may further require comparing the background, the generative forces, and the influences from where law and psychiatry evolved.³

Dissocial personality disorder is one of several psychopathic personality disorders, each of which has different operational definitions and terminologies depending on the system of classification of mental disorders used. Psychopathy is a general construct that differs from the specific diagnoses of antisocial, psychopathic, dissocial, and sociopathic personality

³ JOHN BIGGS JR., *THE GUILTY MIND PSYCHIATRY AND THE LAW OF HOMICIDE* 1 (John Hopkins Paperbacks ed. 1967).

disorders, the various diagnostic classifications for psychopathy.

It is a widespread argument that behaviour classified as psychopathological is caused by mental illness. Pathological behaviour is scientifically proved abnormal criminal behavior, it is a type of disease in which a patient is not only suffering from the disease but due to the disease he is more inclined to commit a crime of a particular nature. In these diseases, patients are not at all aware of the act which they are committing but it is due to a typical mental state of mind of which they are totally unaware of.

2. PSYCHOPATH BEHAVIOUR

First of all it is necessary to understand what psychopath behaviour is. Psychopathy, also known as Antisocial Personality Disorder (APD or ASPD), is a psychological personality disorder. Not only do psychopaths lack emotions of conscience and empathy, but research has shown that these individuals consistently display certain aspects of temperament which include lack of fear, lack of inhibition and a stimulus seeking behavior. Psychopathic adults have also demonstrated physiological idiosyncrasies such as a reduced physical response to negative stimuli, and indifference to the threat of pain and punishment.⁴

Psychopathy has been defined by different thinkers but the greatest contribution was made by Hare and his associates who laid emphasis on assessment and treatment. They were influenced by Cleckley's observations, and evolved a set of diagnostic criteria that offers a practical approach. Hare devised a list of traits and behaviours for his 'Psychopathy Checklist' (PCL). He listed twenty-two items, each of which was to be weighted from 0 to 2 by clinicians working with potential psychopaths. The instrument, with items grouped around two factors narcissistic personality and antisocial behaviour

⁴ R. D. HARE, *WITHOUT CONSCIENCE: THE DISTURBING WORLD OF PSYCHOPATHS AMONG US* 25 (Guiford Press 1999).

was tested extensively. In support of Kernberg, but refocusing APD toward personality traits, psychopathy was defined as a disorder characterized by⁵

- lack of remorse or empathy,
- shallow emotions,
- manipulativeness,
- lying,
- egocentricity,
- glibness,
- low frustration tolerance,
- episodic relationships, parasitic lifestyle,
- the persistent violation of social norms,
- need for stimulation and criminal versatility.

According to Hare, “Psychopathy is one of the best validated constructs in the realm of psychopathology.” Another group of researchers used the instrument on 653 serious offenders.⁶ They noted evidence to suggest that psychopathy emerges early in life and persists into middle age. The “prototypical psychopaths” were responsible for particularly heinous offenses. They concluded that psychopathy appears to be a distinct personality disorder, with childhood behaviour problems serving as good indicators especially when they manifest at an early age. These indicators include drug abuse, theft, aggression, truancy, general problem behaviour, lying, and poor educational achievement. Yet not all children who exhibit these behaviours go on to commit adult crimes, suggesting that:

⁵ R.D. Hare & D.N. Cox, *Clinical and empirical conceptions of psychopathy, and the selection of subjects for research*, in R. D. HARE & D. SCHALLING, *PSYCHOPATHIC BEHAVIOR: APPROACHES TO RESEARCH* 107-144 (1978); Wiley. R. D. Hare, *Comparison procedures for the assessment of psychopathy*, 53 *Journal of Consulting and Clinical Psychology* 7-16 (1985).

⁶ D.R. Offord, M.C. Boyle & Y. A. Racine, *The epidemiology of antisocial behavior in childhood and adolescence*, in *THE DEVELOPMENT AND TREATMENT OF CHILDHOOD AGGRESSION* 31-54 (D. J. Pepler & K. H. Rubin eds., Lawrence Erlbaum Associates 1991).

- 1) not all psychopaths are criminals,
- 2) some behaviour changes with age, and
- 3) some intervention may help to redirect behaviour.

Psychopathy provides a theoretical and practical challenge to criminal law and the criminal justice system in general because psychopaths are at a disproportionate risk for persistent criminal behaviour. Their criminal conduct appears to be primarily the product of a mental disorder, and there seems to be little efficacious treatment. They may not understand that what they have done is wrong. Nevertheless, psychopathy *per se* does not undermine cognitive understanding to a degree that would meet the requirements of criminal law for incompetence to stand trial because psychopaths can understand the nature of the charges and are capable of assisting the counsel.

Psychopaths may be at a risk of malingering incompetence if they believe that it would be in their interest to be found incompetent, but the risk of malingering is distinguishable from genuine incompetence to stand trial or from any other criminal law criterion related to mental abnormality.⁷

Psychopaths are very intelligent and hold very elite positions in society. Their intention is to harm anyone without any reason and that harm must be of a grim kind because they have only one thought and that is a pure and simple sadistic feeling. They enjoy watching others in pain. Deceitfulness and fraudulence is their identity. They imitate the finest thing and harm others by making that best part as a weapon. They are very attractive at the same time equally dangerous. To understand and recognize them is a very complicating task because of their significant position in society. If they are not holding the position then, wherever they are, they are considered as nice persons.

⁷ H. CLECKLEY, THE MASK OF SANITY ST LOUIS (5th ed. 1976).

Surender Koli⁸ (Noida Serial Murders, Nithari case)⁹

Noida: D-5, Sector 31, Noida is the second last house on the street. The white building is abandoned. The drain-turned-road at the back of the house leads to Nithari, an urban village in Noida. There was nothing noticeable about that house unless two Nithari residents, in December 2006, claimed that they have seen the remains of the children in the drain behind the house who had been missing since many days.

Reports of some children missing from Nithari turned into the most gruesome serial killings in India. While a number of reports were filed by anxious parents whose children had been missing from the village, many residents claimed that they had been repeatedly ignored by local authorities. So what if child after child went missing?

On December 29, 2006, two Nithari residents claimed that they suspected Surender Koli- the domestic help at D5- had something to do with the disappearances of the children that went missing in two years. They sought help of former RWA President S.C. Mishra. Mishra and the two residents searched the tank drain, and one of the residents claimed to have found a decomposed hand after which they called the police.

Demands were made for an independent probe into the matter. One of the residents asserted that the police were claiming credit for discovering the bodies when it was the residents who dug them up. The police denied having found fifteen bodies. The victims' identities and number could only be established with DNA tests. The central government tried to ascertain the facts behind the discovery of the skeletal remains and whether it had 'inter-state ramifications'.

⁸ Surendra Koli v. State of U.P. & Ors, Cr. A. No. 2227 with S.L.P. (Cri) No. 608 of 2010, 15-2-2011 (India).

⁹ DAILY BHASKAR, <http://daily.bhaskar.com/article/> (last visited on Jun. 20, 2014).

December 30, 2006 - Moninder Singh Pandher and Surender Koli were detained for questioning in connection with the missing case of 20-year-old Payal. Payal went missing on May 7 and she was not the only one but many such cases had rocked the village in two years. After Koli's confession of having killed Payal after sexually assaulting her, police claimed to have started digging up the nearby land area and discovered the children's bodies.

Notably, an FIR had been filed on October 7, 2006 about the missing 20-year-old Payal. Investigations revealed that Payal's cellphone was being used although the SIM card she owned remained inactive. A rickshaw cart puller affirmed that the phone belonged to someone from the Pandher residence. After the affirmation of the facts by the witness, Moninder Singh was called for interrogation, which subsequently revealed nothing. His aide and servant, Surender Koli was also picked up when he confessed killing the woman and dumping her body behind the house. The police started digging and henceforth recovered the skeletal remains of the missing children instead of Payal.

December 31, 2006 - Two policemen were suspended in connection with the serial murders as angry residents charged the house of the alleged mastermind Pandher. The constables were suspended for dereliction of duty in the wake of the allegations by the locals that the police had refused to take any action when they were informed about huge number of children missing from Nithari.

The situation at Nithari became worse after an agitated mob fought pitched battles with the police, both pelting stones at each other, just outside the residence of the accused. The police had also detained a maid named Maya whom they suspected had a hand in procuring women for the businessman.

3. DURING PRIMARY INVESTIGATIONS

January 1, 2007 - The remand magistrate granted the police custody of the two until January 10, 2007 as the investigators said that further interrogation was required to complete recovery of victims' remains. Police also conducted a raid on Pandher's Chandigarh residence. His wife and son were interrogated and questions were asked about Pandher's habits. However, there were reports that their relationship with him was 'strained', which were later found to be untrue.

January 2, 2007 - Fifteen out of the 17 skeletons discovered in the village were identified. Ten of them were identified by Koli when he was confronted with the photographs of the missing children. Five others were identified by family members after being shown belongings recovered from the scene. Police had said that there were at least 31 child victims. There were also speculations doing rounds in media that motivation of the killings can also be organ trade.

During the preliminary investigations, neither the courts nor the Central Bureau of Investigation (CBI) were involved.

The central government, however, had constituted a high-level inquiry committee to go into the police lapses. The inquiry committee that investigated the serial killings discovered serious lapses on the part of the police in handling the cases of missing persons. The reports were incriminating and claimed that the local police failed in their duty to respond to complaints over the past two years.

After four days of discourse and mounting pressure from the centre, the Uttar Pradesh government decided to hand over the inquiry to the CBI.

January 12, 2007 - The two accused were taken to the CBI headquarters in New Delhi, a day before the investigation was to be transferred to the CBI.

The CBI continued its investigation and discovered three more skulls and human remains at the site of the serial killings.

Meanwhile, the investigators searched the drains outside the house and found three skulls, believed to be of the children and several body parts, including parts of legs, bones, and the torso.

January 20, 2007 – The Uttar Pradesh government submitted a report to the National Human Rights Commission.

February 8, 2007 – A special CBI court sent both the accused to 14 days custody of CBI.

February 12, 2007 – Human Rights Commission formed a committee to inquire the matter.

May 22, 2007 – CBI filed its first chargesheet in a Ghaziabad court in which main charges of kidnap, rape and murder were on Surender Koli.

May 1, 2008 – Family of three victims approached the court against CBI's clean chit to Moninder Pandher.

May 11, 2008 – The court directed the CBI to probe Pandher's role in the killings.

November 1, 2008 – The Supreme Court issued a notice to CBI after the complaint of relatives of one of the victims that CBI was trying to shield Pandher.

December 13, 2008 – A special CBI court in Ghaziabad framed charges of rape of two minors against Pandher.

February 12, 2009 - Both the accused- Moninder Singh Pandher and his domestic servant Surender Koli- were found guilty of the February 8, 2005 murder of Rimpa Haldar, 14, by a special sessions court in Ghaziabad.

February 13, 2009 - Pandher and Surender Koli were given the death sentence as the case was classified as 'rarest of rare'.

September 10, 2009 - The Allahabad high court acquitted Moninder Singh Pandher and overturned his death sentence. He was not named a main suspect by investigators initially, but was summoned as co-accused during the trial. Pandher faced trial in five cases out of the remaining 12, and could be re-sentenced to death if found guilty in any of those killings.

May 4, 2010 - Koli was found guilty of the October 25, 2006 murder of Arti Prasad, 7, and given a second death sentence eight days later.

September 27, 2010 - Koli was found guilty of the April 10, 2006 murder of Rachna Lal, 9, and given a third death sentence the following day.

December 22, 2010 - Koli was found guilty of the June 2006 murder of Deepali Sarkar, 12, and given a fourth death sentence.

February 15, 2011 – The Supreme Court upheld the death sentence of Surender Koli.

December 24, 2012 - Koli was found guilty of the June 4, 2005 murder of Chhoti Kavita, 5, and given a fifth death sentence.

4. LEGAL LACUNA

Taking into consideration the case reported above, and the subsequent arrest, investigation, trial and sentencing in the case, it can be clearly assumed that the vital problem in the case is to recognize the authentic reason for the commission of an offence and the disease of the offender. By and large in India, whenever any offence is committed by the mentally ill offender, first of all it is very difficult to identify whether he is actually a patient or a malicious person. There is no specific *modus operandi* defined (for psychopaths) for the police and even in law to identify the correct

disease in the early stage. Moreover, it is very complicated for the police to understand the concrete motive of commitment of the offence. The police generally center its investigation on only three options in such cases,

- a) Offender is insane or of unsound mind,
- b) Offender is a monster, or
- c) Offender is schizophrenic.

Taking this view in mind, offender is either sent to a mental hospital or kept in custody for further investigation. The investigation is also very inhuman in nature because of the lack of knowledge of exact reason of the gruesome offence committed by patient.

It is the biggest irony of our judicial system that on the basis of investigation and trial an offender is either convicted for life imprisonment or awarded death sentence or he is acquitted as a person with insane or unsound mind. In fact both these are sometimes erroneous ways of judgment. This is due to the lack of awareness of all categories of mental diseases and the seriousness of crime.

Psychopathy is one of the most severe of all mental diseases. Though psychopaths are very dangerous and always commit heinous crime, they should be treated and handled properly. Life imprisonment and death sentence is not the only solution for this problem. Although they know what they are doing, but they do not know the reason behind that which means *means rea* is completely absent in their act. Whatever crime or act they commit is due to their disease and not because of any guilty mind. This is a reason they never conceal their crime. They never show remorse of their action. There is not any sign of guilt or regret on their face whenever they are caught and they openly accept their criminal act without any repentant and sentiment. They always candidly accept their crime and desire to commit it again because of a strong urge to commit them which arises due to disease.

Surendra Koli after arrest said, “I still have an urge to kill”. This is a typical sign of psychopathy, which is a stern disease. That’s why a sympathetic view should be taken for them. It cannot be taken for granted by the judicial system because ignorance of fact is although not punishable under IPC but ignorance of law due to ignorance of fact must be punished, and this ignorance is in our judicial system which has to be improved.

In the Nithari case the offender was considered as a monster and an animal; some considered him as a ‘psycho- killer’. It has become a trend to attach the word ‘Psycho’ to any abnormal person without having a correct knowledge of the disease. Every anti-social personality disorder is treated in the same manner.

Psychopathic behaviour is an unidentified area in our present judicial system. Only insanity, unsoundness of mind and schizophrenia are known to the system and judgments also depend upon this view. Psychopathy is one of the most dangerous diseases of mental illness which should not be ignored.

It is an irony that even elite people do not have the knowledge of the term ‘psychopath’ correctly and have pre-conceived notions about them. After going through the interviews with the Doctors of Badganga Mental hospital, Indore and visiting doctors of the Central jail Indore (Psychiatry Cell) and visiting the mental hospital, it is evident that there is no case registered of psychopathy in the past five years. The lower staff of the hospital also cannot identify psychopaths because they have not classified any patient as belonging to this category. Although they know about serial killers, schizophrenic and insane persons who are considered as mental patients they are all kept in the same ward. Now the issues are: whether it is possible that in the past five years psychopaths did not commit any crime; or, whether our legal system does not have proper awareness of the disease; or, they are misinterpreted as ogres and hard core criminals and punished harshly with life imprisonment or death penalty.

In India, some provisions are mentioned in different laws for a person suffering from mental disease for e.g., in IPC, sec. 84 deals with the law of insanity made from the Mc. Naughten rules of England which uses a more comprehensible term 'unsoundness of mind' instead of insanity. It has been criticized of being outdated since they do not provide protection to behaviour out of abnormality of mind, or partial delusion, irresistible impulse or compulsive behaviour of a psychopath. Although under personal laws (sec 5, sec.13 under HMA, 1955) and in Evidence Act, some provisions related to psychopaths are present. The Code of criminal Procedure, 1973, Chapter XXV also mentions the procedure for the trial of insane persons. Still all these laws are inadequate to deal with this problem related to psychopaths. The view of Indian courts also stress on the need for adopting a more progressive attitude in the application of law related to psychopathic behaviour.

In our present system it is not possible to identify any mentally ill offender at the time of arrest. But during the trial it is necessary to know whether the offender is fit for trial or not. If there is any possibility of a mental disorder then they are sent for medical examination. The role of doctors and psychiatrists is to identify whether that offender is fit for trial or not. All types of mentally ill criminals are kept in the same ward. Violent criminals are controlled by sedatives. If they are not fit for trial, they are sent to the mental hospitals for treatment, but still there is no guideline available specifically for psychopaths.

As per procedure almost every offender is subjected to a clinical test and a psychiatric test in selected cases. The problem with psychopaths is that they seem to be fit for trial. Moreover, they do not hide anything and admit their crime with no remorse. This attitude and acceptance of crime commission misleads the case and they are deemed as gruesome offender with no repentance for their act. One should try to know the reason behind this

attitude. They do not understand the word “guilt” and that is why there is no use of giving them such a heinous punishment like death penalty or life imprisonment. Hence, it should be mandatory that such type of behaviour should be immediately taken into account and as a matter of standard procedure such offenders should be subject to a medical test involving a psycho-analysis.

In U.K. and U.S.A. laws have been already framed for psychopaths wherein they not only recognise them but also deal with them suitably. Proper awareness is also there by which they identify those categories of criminals and are more conscious with respect to their protection.

5. PSYCHOPATHS AND JUDICIAL RESPONSE

In India many cases have been reported about serial killings, mental illness, incest and other sexual and violent crimes, but none regarding psychopaths. However, if we take a look at these cases, many of them indicate psychopathic tendencies. For instance, Thug Behram, of the Thuggee clan, reportedly killed more than 900 people with his ceremonial cloth. He was one of the world’s most prolific killers. Behram was executed in 1840 by hanging.¹⁰

The Stoneman¹¹ was a name given by the popular English language print media of Kolkata to an alleged serial killer who menaced the streets of the city in 1989. The Stoneman was charged with thirteen murders over six months (the first in June 1989), but it was never established whether the crimes were the handiwork of one person or a group of individuals. The Calcutta police also failed to resolve whether any of the crimes were committed as a copycat murder. Till date, no one has been sentenced for these crimes, making this one of the greatest unsolved mysteries. Beer Man

¹⁰ HELLHORROR, http://www.hellhorror.com/killers/serial_killer/67/Thug-Behram.html (last visited Jun. 17, 2014).

¹¹ WIKIPEDIA, en.wikipedia.org/wiki/The_Stoneman_Murders (last visited Jun. 17, 2014).

is the name given to a suspected serial killer who murdered seven people in south Mumbai, India, between October 2006 and January 2007. The nickname was gained due to beer bottles left beside each body, which was the only link between the deaths.

Auto Shankar is the nickname of an Indian serial killer. Shankar and his gang were found guilty of six murders, committed over a period of two years in 1988–1989. The bodies of the victims were either burnt or buried inside residential houses.¹²

Joshi - Abhyanker murder case - Rajendra Jakkal, Dilip Dhyanoba Sutar, Shantaram Kanhoji Jagtap and Munawar Harun Shah were commercial art students of the Abhinav Kala Mahavidyalaya, Pune, India who committed 10 murders between January 1976 and March 1977. The quartet had acquired a reputation for bad conduct in their college campus. They frequently robbed and indulged in drinking¹³ and were hanged to death on 27 November 1983.

Raman Raghav was a psychopathic serial killer who operated in the city of Mumbai in the mid-1960s. He was diagnosed with schizophrenia after his arrest.¹⁴ Raman Raghav's sentence was reduced to life imprisonment because he was found to be incurably mentally ill.

Charles Shobraj is perhaps the most high profile criminal from India¹⁵, because of his constant quest for adventure and high-society lifestyle. He served a rather comfortable if not luxurious jail term in the notoriously corrupt Tihar jail. Also known as 'Bikini killer' as few of his victims were found killed wearing a bikini. He killed 12 by strangulation and poisoning.

¹² RI for jail warders in 'Auto' Shankar case, THE HINDU, <http://www.hinduonnet.com> (last visited Jun. 28, 2014).

¹³ INDIAN EXPRESS, <http://cities.expressindia.com/fullstory.php?newsid> (last visited July 2, 2014).

¹⁴ *Recalling Raman Raghav*, SIFY, <http://www.sify.com> (last visited July 9, 2014).

¹⁵ <http://www.biography.com/people/charles-sobhraj-236026> (last visited Jun. 20, 2014).

He had the audacity to go to Nepal seeking attention where he is serving a life imprisonment term.

Dandupalya Krishna was the leader of the dreaded Dandupalya gang¹⁶ which operated across Karnataka and Andhra Pradesh from August 1995 to October 1999. They killed 42 (unofficial figures are cited as more than 100) by attacking their victims with crowbar and other weapons. *“I liked to hear the last sounds of life draining away. It is exciting to hear the gurgling sound that emerges from the throat after I slit it,”* Krishna said, without a hint of remorse after he was captured by the police. All members of the gang were convicted and sentenced to death in 1999 along with a fine of Rs. 30,000 each.

In 2004, a total of 23 children, mostly below the age of 10, had gone missing from various parts of Punjab. Of them, six were recovered by the police. **Darbara** was arrested by the police in the last week of October 2004 and he confessed to have killed 17 children, 15 girls and two boys. In the fit of rage he had even tried to rape or sodomise the victims after murdering them¹⁷. A fast track court pronounced the death sentence for Darbara Singh in these cases.

Apart from these, many cases which have been reported abroad that clearly reflect psychopathic traits, for instance, Jack the Ripper, Carl Panzarm, John Wayn Gacy, Zodiac Killer, Son of Sam etc. Out of these some were punished with life imprisonment and others with capital punishment.

In the above mentioned cases and many more such cases there shall always arise a question as to the validity of the judgment. There is not a single case which specifies the disease psychopathy; although in every one of the above

¹⁶ *Dandupalyaa name that stuck*, INDIAN EXPRESS, <http://www.indianexpress.com/news/dandupalyaa-name-that-stuck/925070/3> (last visited Jun. 20, 2014).

¹⁷ *Serial baby killer held*, TRIBUNE NEWS SERVICE, <http://www.tribuneindia.com/2004/20041030/main3.htm> (last visited Jun. 22, 2014).

discussed cases the accused persons have clear traits of psychopathy. We should not forget that every human is born with a different psyche. Where some may be reared in a family with rich and nice morals and sound environment they might turn out to be fair people and those who have been reared in strained environments may turn out to be hostile and incompetent in various ways. Moreover, every individual has his own liking and bends toward his choice. At the time of judgment one should understand and identify the disease clearly. A clear understanding should be inculcated in our system especially for psychopathy which is still an un-emphasized area in our legal system.

6. PSYCHOPATHS CONFUSED WITH OTHER SEXUAL CRIMES

It is noted that psychopathy is mostly confused with sociopathy, serial killing, incest, rape and other sexually violent crime. A lot of dissimilarities are also present in them. They cannot be similarly measured for trial and judgments. The *mens rea* behind every crime mentioned is different and distinct. The motive for the crime is totally absent for the offence committed by psychopaths because of their disease.

Psychopaths may be serial killers but every serial killer is not a psychopath. Technically they are different from each other. Some of the patterns of killing are so similar that even experts get confused about the disease. It is confused with other mentally ill patients/criminals and serial killers and with incest offenders. Cases like incest, rape, child molestation, sodomy and serial killing are often confused with psychopathy whereas in reality the former could have occurred due to several reasons like obsession, revenge, pleasure, fun, lust and also psychopathy (occasionally). The cause of crime in the case of the former is not due to disease but in the latter case it is due to disease and hence it is essential that investigation should be made in order to address the existing ambiguity psychopathic behaviour and this will help in

drawing the distinction between psychopathy and other forms of crime, viz. sexual and violent crimes.

There is no confusion in the terminology of sexual criminals, violent criminals, rapists, incest cases, serial killers, sociopaths and psychopaths in U.K. and U.S.A.; a clear demarcation has been drawn between all these categories. So the punishments and treatment are also on the basis of the disease. This is a very essential and urgent requirement in the Indian Criminal Justice system. There is a need to change the whole concept and to deal with and judge psychopaths and all other mentally ill offenders according to their disease and not by the crime committed by them.

7. CONCLUSION

The term 'Psycho' is commonly used by many people today for mentally ill persons but there is no term like this in psychology and neurology, and hence it needs a proper explanation. This confusion and lack of knowledge has to be sorted out. There is a thin line of difference between psychopathy and some other types of crimes, for instance, serial killer, incest, rape and child abuse. This ambiguity has to be solved by the judiciary and legislature by making and passing special laws for this kind of mental illness in order clear the ambiguity on the issue in the minds of the public at large.

One often comes across with different types of crimes being reported in the press which invariably indicate that there has been a steady growth in the number of crimes committed by psychopaths in India. Many cases in India have been reported regarding serial killers- incest & other sexual and violent crimes, but no case has been reported as committed by psychopaths.

Although if we take a close look at some cases, one might argue that many of them indicate psychopathic tendencies, for instance, Charles Shobraj, Raman Raghav, Auto Shanker etc. are some of the infamous cases which might fall in this category.

In the above mentioned cases and many more such cases a question arises as to the validity of the judgment, like in Nithari Case, Koli, the main accused, was sentenced to death as the case was classified as “rarest of rare”. After interrogating Surender Koli, it was *prima facie* concluded that “he is a psychopath who used to carry out the killings”. The circumstances under which Nithari Case took place: the whole investigative process, the role of the media and the curiosities of the public at large were shambled when the judgment in this case was published in the newspapers. No mention about Koli’s disease i.e. psychopathy in the report which should have been primarily the basis of the judgment astonished many. That was a major lacuna in the report and the verdict which should be resolved by our legal system by introducing psychopath behavior as an integral part of the investigation and justice delivery system.

Psychopaths should be properly recognized by the society. U.K., California and many other states in US have passed a special statute for psychopaths¹⁸. Psychopathic behavior is an unidentified and unrevealed area in our judicial system. The step should be taken by our legal system to educate the public and government about this dangerous disease.

¹⁸ Fredrick J. Hecker and Marcel Frym, *The Sexual Psychopath Act in Practice: A Critical Discussion*, 43, 766.