All sexual crimes are not committed by psychological criminals – Challenges in understanding the salient features of Sexual and Psychological Crime

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ABSTRACT

Whenever a sexual crime is committed in a gruesome manner it is generally mystified with psychological crime. Conversely, sexual crime and psychological crime are different in their action and commission. To understand the difference between the two it is necessary to study the detail of these crime and criminals. Sexual crimes mean a crime involving sexual assault like, incest, rape, child assault and sodomy whereas psychological crime involves, insanity, Schizophrenia, split-personality, unsoundness of mind and psychosis. Motive plays the most important role to analyze any crime and in both the cases motive is different. In sexual crime motive is usually lust, obsession, pleasure, fun, revenge and sometimes abnormal behavior, whereas in psychological crime it is always a disease due to which offender commits offence not with any motive. Sexual criminals have remorse and they also try to hide their act while psychological criminals do not have any remorse and they do not hide their act. Moreover, sexual criminals understand the consequence of their act but psychological criminals are not aware of it. Similarly sexual criminals can make out the difference between right and wrong whereas psychological criminals fail to understand this. There must be clear bifurcation between the two in the society for the better understanding. It is pertinent to discuss the judicial response in this regard. It is difficult to make an estimate of criminal behaviour of persons with mental disorders with precision because of the difficulty in obtaining reliable data. Thereby making the understanding of sexual and psychological crime is a challenging task.

Keywords- sexual crimes, psychological crimes, understanding, bifurcation, challenges.

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Introduction

If a crime is committed without a motive and in a grotesque manner, one tends to rush to the conclusion that no sane person could commit such horrendous act. It has become a trend to apply the label “psycho” to those who have any unnatural tendency without knowing the actual meaning of the word “psycho” and its traits. Although some sexual crimes like incest, rape of a minor, child molestation and sodomy are grave, serious and rather abnormal offences, such offences are linked with criminals with sexual motives but may not always and necessarily be committed by persons suffering from psychological diseases.

There is a difference between sexual and psychological offence. Psychological offences are committed due to disease but sexual offences are committed due to various reasons like lust, obsession, revenge, pleasure, fun and occasionally due to psychological problem. Psychological criminals do not understand the nature of the act and even the consequence of it whereas; sexual criminals have knowledge about their act and its consequence. Psychological criminals do not have any remorse of their act but sexual criminals may regret. Psychological criminals do not hide their act but sexual criminals always try to hide it. There are many differences between the two but still they are baffled with each other.

Many criminal acts committed by persons with mental disorders never come to the attention of public authorities. The non-reporting of such incidences, the increasing frequency of commitment of such criminal acts and the need to create awareness about the existence of such tendencies thereby helping the public at large to avail the chance of falling prey to such violent acts makes the study relevant. It is difficult to make an estimate of criminal behaviour of persons with mental disorders with precision because of the difficulty in obtaining reliable data. Thereby making the understanding of sexual and psychological crime is a challenging task. To distinguish the difference between the two it is necessary to understand the key concepts of the causation of crime pertaining to sexual and psychological field and the extent of impact of psychotic behaviour in the commitment of sexual crimes.

Sexual Crimes

Sexual crimes mean a crime involving sexual assault or having a sexual motive. That motive involves lust, fun, pleasure, revenge and sometimes abnormal behaviour. They can be classified into following categories:

a. Incest
Incest is any sexual intercourse between close relatives irrespective of the age of the participants and irrespective of their consent, which is illegal in the jurisdiction where it takes place or against social taboo.

Father-daughter incest was, for many years, the most commonly reported and studied form of incest. Further, compared to those committing incest as adults, the adolescent perpetrators of sibling incest are more common, their victims are younger, their abuse occurs over a lengthier period, and they use violence more frequently and severely, while adults who commit incest tend to use less violence and instead favour gifts and flattery to gain the victim's compliance. Consensual adult incest is equally a crime in most countries, although it is seen by some as a victimless crime, and hence rarely reported.

Most modern societies have legal or social restrictions on closely consanguineous marriages. However, in some societies, such as that of Ancient Egypt, brother–sister, father–daughter, and mother–son relations were practiced among royalty. Most societies have prohibitions against incest. Incest is and has been one of the most common of all cultural taboos, both in the present as well as many past societies, with legal penalties imposed in some jurisdictions.

The Indian law does not particularly define incest as a punishable crime, unless the child is a minor, in which case it is treated as child sexual abuse. Sec.90 of the IPC deals with sexual abuse of children below twelve years of age. Incest is not specifically dealt under the Indian law except in general terms of a minor below twelve years being subject to rape in Indian law.

In our society there are many cases in which a father has tried to have sexual intercourse with his daughter. This undoubtedly is an abnormal behaviour which is required to be understood so as to

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tackle the response to such aberrations. It is pertinent to discuss the judicial response in this regard.

In Shri Satish Mishra v. Delhi Administration and others\(^\text{11}\) a father was accused of incest with his four year old daughter, and there was a long history of differences between the husband and wife. He was sentenced for 10 years.

In State of Arunachal Pradesh v. Babulal Kimsim\(^\text{12}\) the accused alleged to have committed rape on his own daughter aged 10 years was sentenced for 10 years.

In Dheeraj Singh v. State of Uttarakhand\(^\text{13}\) the accused alleged to have committed rape on his own daughter was sentenced for 7 years.

Although all the above cases are horrendous in nature the Courts have awarded punishments up to a maximum of 10 years which is specified in the IPC though there are some landmark judgments where the punishment awarded was more rigorous, like in Ambaram v. State of Madhya Pradesh\(^\text{14}\) the accused father was guilty of committing rape over his own daughter who was helpless and was residing alone with him. It was considered as most heinous crime and he was sentenced to life imprisonment.\(^\text{15}\)

In the cases of incest discussed above, even if the accused have displayed abnormal behaviour it is primarily due to lust, pleasure and fun and may be due to some psychological aberration imbalance. To brand them as psychological criminals would be arbitrary because even though they have committed one of the acts which psychological criminals commit but their mode of commission and motives are different. Therefore to label every criminal involved in incest as psychological criminal would be erroneous.

b. Child Sexual Assault\(^\text{16}\)

Child sexual assault, long considered to be one of the most heinous of sexual offences, poses several complex challenges before the Courts and the Legislature. According to The Convention on the Rights of the Child, Article 1 defines “a child” as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.

In the Indian legal system, the child has been defined differently in the various laws pertaining to children. The Indian Penal Code defines the child as being 12 years of age, whereas the

\(^{11}\) A.C.C. 996, A.C.C. (33) S.C. 704.
\(^{12}\) Crl. Ref. (H) 11 (AP) of 2007, D/-17-3-2009.
\(^{13}\) Cr J Appeal No. 1808 of 2001, D/-24-11-2008.
\(^{14}\) Crl A. No. 1403 of 2000, D/4-11-2008.
\(^{15}\) Ibid.
Indian Traffic Prevention Act, 1956 defines a ‘minor’ as a person who has completed the age of 16 years but not 18 years. Section 376 of the IPC, which punishes the perpetrators of the crime of rape, defines the age of consent to be below 16 years of age, whereas Section 82 & 83 of the IPC states that nothing is an offence done by a child under 7 years, and further under 12 years, till he has attained sufficient maturity of understanding the nature of the act and the consequences of his conduct\(^\text{17}\).

In a landmark judgment\(^\text{18}\), the Delhi High Court struck down the provision of Section 377 of the IPC to the extent to which criminalised consensual sexual acts of adults in private, holding that it violated the fundamental right of life and liberty and the right to equality as guaranteed in the Constitution. However, the Court clarified that “the provisions of Section 377 will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors.” If the abuse is repeated several times it affects children more severely, however as yet there is no law for repeated offences against the same child.

The gravity of the offence under section 509, dealing with obscene gestures, is less. Yet even in such cases, the child’s psyche may be affected as severely as in a rape. Child molestation cannot be measured as a normal gesture which means that there may be some anti social personality behaviour present in an accused but it is not necessarily a psychiatric behaviour. Every unnatural act cannot be established as a psychological behaviour. Some tendency of psychic must be clearly indicated in the act. There are many cases of child molestation and rape but to analyse psychic behaviour in such cases an attempt is made to peruse some of the related cases.

In **Sameer Ahmad Ganai v. State of J and K**\(^\text{19}\), a minor girl aged six years old knew the appellant who tried to commit rape on her. On removal of the clothes, the child raised an alarm which caught the attention of some passersby who went to the place of occurrence. The sole appellant was convicted under Sections 363 and 354 IPC and was sentenced to undergo rigorous imprisonment for two years.

In **Rangesh v. State by Inspector of Police**\(^\text{20}\) a child aged about 9 years was mercilessly subjected to rape by her own Physical Training Teacher in school. It was observed that the teacher had betrayed the trust and faith of the students and parents and hence should be dealt with an iron hand and the accused was sentenced to 10 years imprisonment.

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\(^{17}\) Under Section 372 & 373 of IPC.

\(^{18}\) The verdict came on a PIL plea by Delhi-based non-Government organization Naz Foundation that the Section 377 provision criminalizing sexual acts between consenting adults in private violated Articles 14, 15, 19 and 21 of the Constitution. The Foundation works among sex workers in Delhi.

\(^{19}\) 2008 (1) JKJ 542.

The case of **State of Maharashtra v. Shankar Krisanrao Khade**\(^{21}\), comes under the rarest of rare category where the accused kidnapped a minor girl of 11 years who was moderately mentally retarded and committed rape and sodomy on more than one occasion and brutally killed her by strangulation. The entire conduct of the accused and facts of the case are shocking to the conscience. Death sentence was awarded to the accused.

In the above cases the accused do not necessarily come under the category of psychological criminal because of lack of psychopathic tendencies which is due to disease. There may be psychological criminals who abuse child but mostly they are sexual criminals. The distinction should be made by seeking motive of the offence.

c. **Sodomy**

India incorporated anti-sodomy laws in its Criminal Code from the British Raj, which were not earlier present in its history of codified or the customary legal system. Section 377 called for a maximum punishment of life imprisonment for all *carnal intercourse against the order of nature with any man, woman or animal* (primarily interpreted to be homosexuality, especially sodomy between consenting adults). This law has rarely been invoked in case of consenting adults. Police repression in alleged or real gay relationship is common and is often highlighted by the contemporary media. Same-sex marriages are *de jure* banned. However the landmark ruling of the **Naz Foundation Case**\(^{22}\) has ushered in an era of greater freedom for the so called gays and lesbians in India, by decriminalizing homosexuality. “The inclusiveness that Indian society traditionally displayed, literally in every aspect of life, is manifest in recognizing a role in society for everyone,” observed the judges of the Delhi High Court in a 105-page decision, which is India’s first case to directly, addresses the rights of gay men and lesbians. “Those perceived by the majority as ‘deviants’ or ‘different’ are not on that score excluded or ostracized,” observed the Court in the said decision. As it pertains to consensual sex among people above the age of 18, in violation of the rights conferred by the Constitution of India. Hence the Court held that, “Consensual sex amongst adults is legal, which includes even gay sex and sex among the same sexes”.

But sodomy with minors is inhuman for which the offender should be punished. Moreover, this act causes fear to a child and it has to be seen as abnormal behaviour. Some of the landmark judgments have been given by the Court in this regard as in **Mohammad Sabir And Ors. v. Rex**\(^{23}\) where two accused have been convicted under Sections 377 and 302/34, of the IPC for having committed sodomy on a boy of nine years, and thereafter murdered him. They were sentenced to death under Section 302, Indian Penal Code.

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\(^{21}\) Crl. A. No. 512 of 2007, D/-27-6-2008.

\(^{22}\) Supra, n. 17.

\(^{23}\) AIR 1952 All 796.
In *Kishan Lal v. State Of Rajasthan*\(^{24}\), the accused committed sodomy on a four year old minor boy and thereafter fearing some action for his mis-conduct and apprehending that the victim would expose his misdeed before the villagers, he took the victim to the water reservoir situated in the field and drowned him into the reservoir and covered it with the lid. On the basis of this confessional and disclosure statement, he was convicted under Sections 302, 201 and 377, of the I.P.C. and awarded the sentence of life imprisonment.

These are certain crimes which are odious in nature because of abnormal and inhuman behaviour but they are not necessarily having any traits of psychiatric criminals. Sodomy is considered as sexual crime not a psychological crime because of the motive involves is known and the consequence of act is also known to the offender. Whereas in psychological crime offender commits these crime due to disease.

**d. Rape**

Section 375 of the Indian Penal Code defines rape. Rape derived from the Latin word *rapio*, which means to carry off, to overcome or means an unlawful intercourse done by a man with a woman without her consent. In certain cases, when consent is taken by fraudulent means or by misrepresentation, the act is still quite rightly taken as rape.

In 1983 although the legislature failed to increase the maximum sentence to capital punishment as was vehemently demanded by women's organizations, it prescribed a minimum sentence of seven years' imprisonment. Besides, an important provision Section 376(2) was added to the IPC. This Section introduced the concept of aggravatetd forms of rape and prescribed a minimum of ten years for these offences. Furthermore, in such cases, the imprisonment is of a rigorous nature. These include rape by a police officer within the premises of a police station; rape by a public servant or his subordinate while taking advantage of his official position, rape by an official in a jail or remand home of an inmate, rape by the staff of a hospital of a woman in the hospital, rape of a pregnant woman, rape of a girl below 12 years of age and gang rape. Rape by persons who are in a fiduciary position e.g. police officers, jail wardens, hospital staff etc., is generally termed custodial rape. Gang rape is a situation when a woman is raped by one or more than one person from amongst a group of persons acting in furtherance of their common intention. The important fact is that in such situation each of the persons within the group will be deemed to have raped the woman even if each one of them did not actually have sexual intercourse with her. Thus if five men catch hold of a woman and only one ravishes her all the five men will be imprisoned for a minimum of ten years. However, whether it is for a minimum of seven years or a maximum of ten years in aggravated forms of rape, the Court can award a lesser sentence for adequate and special reasons.

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\(^{24}\) 1998 CriLJ 4508, 1998 (2) WLC 498.
It is very difficult for the victim to prove absence of consent especially in cases of custodial rape, hence a special Section was added to the Indian Evidence Act viz Section 114A wherein in cases of custodial rape, gang rape and rape of a pregnant woman, if the victim states in the Court that she did not consent, then the Court shall presume that she did not consent and the burden of proving consent will shift to the accused. This was a major reform in the law.

In 1997 in Vishaka v. State of Rajasthan and others\textsuperscript{25}, for the first time sexual harassment had been explicitly legally defined as an unwelcome sexual gesture or behaviour whether directly or indirectly.

**Apparel Export Promotion Council v. A.K.Chopra**\textsuperscript{26}, is the first case in which the Supreme Court applied the law laid down in Vishaka’s case and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article 21 of the Constitution.

Coming back to the issue of rape on minors it is something very abnormal and of course a heinous crime. An offender cannot be considered as a normal person. Whether it is rape, child molestation or incest with daughters (especially on a minor) they are dreadful acts and come under abnormal psychology but are still considered as sexual crime. Some of the cases have been already discussed before in connection with rape on minors and father-daughter incest. However, it is pertinent to see when such cases are confused with mental abnormality.

Some of the related cases are as in Narayan Dey v. State of Tripura\textsuperscript{27} a rape was committed by father on his own minor daughter of 11 years. This is certainly more heinous in nature and perhaps shocking case to any discerner of such incest crimes. The father was sentenced to suffer rigorous imprisonment for a period of 10 years.

Many a time girls become a victim in the name of gaining spiritual powers as in the case of Md. Jainal Uddin alias Abedine v. State of Tripura\textsuperscript{28} where the accused was found guilty of committing rape on a minor girl on the pretext of giving treatment by spiritual power. There was evidence of a witness including the victim showing that the accused is likely to be a hyper sex fanatic and committing the offence taking the benefit of his self claimed spiritual power. Hence, it would not be proper to show any leniency in the imposition of a sentence to this type of an offender. The accused was convicted under Section 376(1) of the IPC and sentenced to eight years.

Kidnapping, rape and murder is a very heinous crime where the accused not only desires money but kills the victim only because of lust and money. Such type of offenders should be

\textsuperscript{25} AIR ,1997 S.C 3011.
\textsuperscript{26} AIR, 1999 S.C 625.
\textsuperscript{27} 1997 CriLJ 2613.
\textsuperscript{28} Cr. A. No. 26 of 2007, D/-3-4-2009.
severely punished as in **Rajkumar Singh v. State of Rajasthan**\(^{29}\) the accused kidnapped a minor girl aged 4, raped and then murdered her. Thereafter he demanded a sum of Rs.2000/ from her parents and grand- parents. He was sentenced to life imprisonment.

Rape on a person of any age or by anyone is a most cruel and abominable act. There should not be any type of sympathy given to the accused which was sought for in **Jaggo & Others. v. State of U.P.**\(^{30}\) where a serious offence was committed by the accused by dragging a young married lady forcibly and committing rape on her several times. The accused was sentenced for 10 years.

In all the above cases it is clear that the motive, understanding of consequence is different. To make out the difference between the various types of diseases it is necessary to have a detailed knowledge of all types of psychological diseases. Similarly, in cases of incest, rape on minors and child assaults sometimes they are treated as the case of psychologically ill people. It is necessary to understand the difference between sexual and psychological crimes.

**Psychological crimes**

In commission of any crime the main focus is ‘motive’, which lacks in Psychological crimes, which are committed due to disease. Thereby it is different from a sexual crime, although sexual crimes are always puzzled with psychological crime due to the gravity of the act, but there is a thin line difference between the both. To understand the concept, it is necessary to discuss psychological crimes and their judicial response, some are discussed below:-

**a. Schizophrenia**

Schizophrenia is a chronic, disabling mental illness characterized by psychotic symptoms, disordered thinking and emotional blunting. It generally develops most often in late adolescence or early adulthood. Initial symptoms appear gradually and can include, feeling tense, difficulty in concentrating, difficulty in sleeping and a social withdrawal.

Psychotic symptoms include, Hallucinations, i.e., hearing voices or seeing things, Delusions, i.e., bizarre beliefs with no basis in reality. These symptoms occur during acute or psychotic phases of the illness, but may improve during periods of remission. A patient may experience a single psychotic episode during the course of the illness, multiple psychotic episodes over a lifetime and continuous psychotic episodes.

In **Ram Narain Gupta vs Smt. Rameshwari Gupta**\(^{31}\), a suit for dissolution of the marriage was filed alleging that the wife was suffering from severe mental disorder, psychiatrically recognised as ‘Schizophrenia’. The High Court, on a reasonable assessment of the situation,

\(^{29}\) Cr. A. No. 1749 of 2003, D/-4-I-2008.

\(^{30}\) Cr. A. No. 1054 of 2006, D/-19-4-2011.

\(^{31}\) 1988 AIR 2260, 1988 SCR Supl. (2) 913.
rightly came to the conclusion that the requisite degree of the mental-disorder which alone would justify dissolution of marriage has not been established and that the decree for the dissolution of the marriage granted by the trial court was not justified.

Schizophrenia is not only a ground for divorce but also a remedy in other penal offences. There are many cases where Schizophrenia becomes a cause of acquittal. Like in Shrikant Anandrao Bhosale v. State of Maharashtra\(^{32}\) there was past evidence of the accused suffering from Paranoid Schizophrenia since many years. The accused killed his wife in broad day light and made no attempt to hide or run away from the scene of crime which was held to be indicative of a mind not knowing the consequences of his acts.

Similarly in Ashiruddin Ahmed v. The King\(^{33}\) the conduct of the accused who had told his maternal uncle that in a dream he was commanded by somebody in paradise to sacrifice his son and his taking his son to a mosque and killing him by thrusting a knife in the throat, i.e., an act of sacrifice (kurbani) was held to be indicative of the accused acting under delusion.

Schizophrenia cases are being analysed only to bring home the point that in offender does not understand the consequence of his act and are without any motive. In Schizophrenia the patient suffers from hallucinations out of which he think that someone wants to kill or harm him out of which they commit crime, while in sexual crime the criminals enjoys harming other with certain motive.

b. Insanity

Section 84 comes within the General Exceptions in the Indian Penal Code where in an acquittal proved down the legal test of responsibility in cases of alleged unsoundness of mind. There, is no definition of "unsoundness of mind" in the Indian Penal Code. Courts have, however, mainly treated this expression as equivalent to insanity, though the term "insanity" itself has no precise definition. It is a term used to describe varying degrees of mental disorder. So, every person, who is mentally diseased, is not \textit{ipso facto} exempted from criminal responsibility. A distinction is to be made between legal insanity and medical insanity. The Court is concerned with legal insanity, and not medical insanity. The burden of proof rests on an accused to prove his insanity, which arises by virtue of Section 105 of the Indian Evidence Act, 1872. It is upon the prosecution to prove that the accused committed the act with which he is charged. The burden on the accused is no higher than that resting upon a plaintiff or a defendant in a civil proceeding.\(^{34}\)

Insanity is also a ground of divorce in section 13(1) (iii) of Hindu Marriage Act which is used as a weapon for escape in any offence but should be considered and treated rightly if it is a

\(^{32}\) AIR 2002 SC 3399.

\(^{33}\) AIR 1949 Cal. 182.

\(^{34}\) See Dahyabhai v. State of Gujarat : AIR 1964 SC 1563 mentioned under \textit{infra} n. 35.
genuine insanity as in Shrikant Anandrao Bhosale v. State Of Maharashtra\textsuperscript{35}, where the appellant was a Police Constable. Due to a quarrel between the husband and wife, the appellant hit his wife with a grinding stone on her head out of which she died. The appellant was charged for the offence of murder of his wife. The main plea was insanity in this case.

Pertaining to motive, the mere fact that an act or omission is without apparent motive is not by itself sufficient to establish insanity. But if there is other evidence of insanity, such a fact may be of importance in proving insanity. Thus, absence of motive in the commission of a crime is merely one out of the many factors to be taken note of while returning an opinion. Like in Dahyabhai Chagganbhai Thakker v. State of Gujarat\textsuperscript{36} and Sheralli W. Mohammed v. State of Maharashtra\textsuperscript{37}, merely because of the grotesque and diabolical nature of the crime it could not be inferred that the accused was insane; there being no other evidence of insanity for the reason that there are hundreds and thousands of reasons why people do things which they ought not to do.

In Usha Gupta v. Santosh Kumar Pahadiya\textsuperscript{38}, a marriage was dissolved by a decree of divorce on the ground of an incurably unsounded mind. Even though, out of this wedlock two children were born, the plea has been taken that the appellant was suffering from mental disorders from the very first day of the married life. A decree of divorce has in fact been passed.

Undoubtedly, the state of mind of the accused at the time of commission of the offence is to be proved so as to get the benefit of the exception. Insanity judged by clinical standards is different from insanity determined by legal standards. Insanity is purely a psychological act which cannot be relate to sexual crime.

c. Psychopaths

Jurist, Psychologist and Medical Professionals have attempted to list out the characteristics and distinctive features of psychopaths, Hervery M. Cleckley had identified the following characteristics of a psychopath in the book \textit{Mask of Sanity}\textsuperscript{39}:

\begin{itemize}
  \item Superficial charm and average intelligence.
  \item Absence of delusions and other signs of irrational thinking.
  \item Absence of nervousness or neurotic manifestations.
\end{itemize}

\textsuperscript{35} Appeal (crl.) 180 of 2000.
\textsuperscript{36} AIR 1964 SC 1563.
\textsuperscript{37} 1972 SC 2443.
\textsuperscript{38} I (1996) DMC 90.
- Unreliability.
- Untruthfulness and insincerity.
- Lack of remorse or shame.
- Antisocial behaviour without apparent compunction.
- Poor judgement and failure to learn from experience.
- Pathological egocentricity and incapacity to love.
- General poverty in major affective reactions.
- Specific loss of insight.
- Unresponsiveness in general interpersonal relations.
- Fantastic and uninviting behaviour with drink, and sometimes without.
- Suicide threats rarely carried out.
- Sex life impersonal, trivial, and poorly integrated.
- Failure to follow any life plan.

Psychopaths are not mentioned anywhere in our legal system except in Section 13(1) (iii) of the Hindi Marriage Act as one of the grounds for divorce.

The nexus between psychopaths and serial killers is particularly interesting. All psychopaths do not become serial killers. Rather, serial killers may possess some or many of the traits of psychopaths. Psychopaths who commit serial murders do not value human life and are extremely callous in their interactions with their victims. This is particularly evident in sexually motivated serial killers who repeatedly target, stalk, assault, and kill without a sense of remorse. However, psychopathy alone does not explain the motivations of a serial killer⁴⁰.

It is also extremely difficult to identify a single motive when there is more than one offender involved in the series. Psychopaths are not in a gang but serial killers can be, for instance, **Dandupalya Krishna**⁴¹ was a Leader of the dreaded Dandupalya gang which operated across Karnataka and Andhra Pradesh. The number of victims were 42 and his method of Killing was to attack with crowbar and other weapons. “I liked to hear the last sounds of life draining away. It excited me to hear the gurgling sound that emerges from the throat after I slit it,”

Krishna said, without an element of remorse after he was captured by the police. All members of the gang were convicted and sentenced to death in 1999. This type of behaviour evidently comes under the category of psychopathic behaviour, because the accused was not only enjoying the act committed by him but also did not have any remorse of his conduct.

In Surendra Koli v. State of U.P. &Ors\(^42\) popularly known as Nithari case, convict is the biggest example of psychopath confused with serial killer. Koli is having all traits of psychopath, i.e. having no remorse of his action and still having a strong feeling to kill others still he is confused with sexual criminal.

There are many more cases of psychopaths like, stoneman, Raman raghav, kidney eater, Charles Shobraj etc. all have some traits that are confused with sexual crime.

Psycopathy is not noticed in our legal system, despite the fact that it is a very severe disease of mental illness. Many cases of incest, rape, sodomy and insanity are confused with cases of psychopathy. However, all crimes are different in their temperament, motive and severity and hence should be understood separately and consequently the response should also vary.

**Conclusion**

Throughout the work it is noticed that whenever a defence of unnatural sexual crime or insanity is set up, members of the legal fraternity remain satisfied by attempting to prove that the accused was schizophrenic and label them as ‘psycho’. Considering the cases of sexual and psychological crimes above it is clear that apparently all seem to be the same but there is a thin line difference between psychological and sexual crimes. Offences like incest, rape and child abuse are generally misunderstood as psychopathic disorder. Normally people confuse these crimes with psychological crimes, which are quite similar in their nature but still is different from all other crimes. Hence, not only at the time of arrest but also at the time of investigation, trial and sentencing, this vital and crucial point is mostly misunderstood. Although, scientifically they are poles apart, it is not possible otherwise to recognize them easily.

To understand the basic nature of sexual and psychological criminals with the interpretation of the Society and Judiciary, it is necessary to study their life. On the basis of that an assessment of their traits grounds of distinction can be easily drawn. Having drawn the distinction the reaction to the crime should differ.

Sexual crime always has a motive which is known only to the offender. The motive can be lust, pleasure, fun, revenge, obsession and sometime anti-social behaviour. Anti-social behaviour is sometimes related with abnormal behaviour but still it is different from psychological behaviour. Psychological behaviour is purely due to disease in which the offenders do not understand the act and the consequence of it. They do not hide their act.

\(^{42}\)Crl A. No. 2227 with S.L.P. (Cri) No. 608 of2010, D/-15-2-2011.
Whereas in sexual crime offenders have a specific motive behind the act and they even try to hide their act. Moreover, all sexual crimes are not psychological crimes but psychological crime can be sexual crimes. For instance in Nithari case, the ambiguity is due to the commission of sexual crime by psychological offender. This ambiguity can be resolved by knowing the motive, which is due to disease and not because of any motive of sexual crime. This ambiguity can be resolved by our legal fraternity by devising appropriate mechanisms for judging any crime and by removing the confusion between both the types of crimes. Yet there can be certain borderline cases where it would be difficult to draw a line of distinction between the two. Expert knowledge, interdisciplinary approach appropriate legislation and judicial intervention can then come to our rescue.
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