

Decision to hang Surender Koli: Yet another error of judgement?

The Nithari case made headlines in 2006 when fifteen skeletons were unearthed from a house in Noida, Uttar Pradesh, following the investigation in the disappearance case in which a number of children and a woman went missing. House owner Moninder Singh Pandher and his domestic servant Surender Koli were arrested in the case and both were accused of serial murders, sexual abuse and cannibalism (eating human body parts). However, in one of the sixteen cases filed in relation to Nithari disappearances, Koli has been sentenced to death for the same case for which Pandher has been acquitted by Allahabad High Court. In five of the sixteen cases filed against Koli, he has been awarded death penalty. In one of these five cases, Koli's mercy petition appealing against the death penalty has been recently rejected by the President and his fate hangs on tenterhooks as the date of execution is to be finalized soon. A punishment that appears to be an act of giving justice to the victims, however, needs to be viewed in totality to understand that there are several loopholes in the process of investigation, trial and justice delivery. Many questions remain unanswered and make us wonder whether the hanging of Koli will be just, fair and reasonable or an irreversible mistake of our criminal justice system.

No independent evidence and contradictory confessions: His conviction and death sentence is based entirely on his confession and no other independent evidence. According to Koli, he was tortured into giving this confession. In a letter to the Supreme Court, Koli mentioned how the magistrate who recorded his confession did not take note of his missing fingernails and toenails which were clear indications of torture in police custody. Nor was Koli medically examined before or after the confession. Additionally, the statement was recorded in English which Koli does not understand. On the many occasions that we met Koli, he confessed to *not* having committed the crime.

Eliminating a witness: There are eleven cases pending against Koli before the Trial Court and four cases pending against him before the High Court. Only one case has been concluded by the Supreme Court - Rimpa Haldar's disappearance case in which Koli has been awarded death penalty. In this case, Trial Court convicted and sentenced to death both the accused but High Court acquitted Pandher and confirmed the death sentence on Koli. The direct benefit of his execution will go to Pandher who has been charged in eight cases in which Koli is the only witness. If Koli dies, this only witness will also be gone. Pandher was recently granted bail in August in one of these cases. Pandher claimed ignorance of what was going on in his own house. Is it not strange that the servant (a Dalit from Uttarakhand) got implicated while the master escaped the blame in a crime that took place in his own house?

Several missing links: In the Nithari case, complaints were registered months after parents of missing children first raised the issue with their nearest police station. Arrests were made much later only after an adult woman went missing. There is a different angle to the case suggesting an organ racket in the nursing home which shares the boundary wall with Pandher's house. It is also a fact not exposed enough that one of the doctors in that clinic has been implicated in a legal case where the charge was that of organ trafficking. But with Koli's hanging all those different possibilities and narratives will get buried. There are news reports suggesting that *disappearance in that area has continued* post the Nithari arrests. If the aim of a punishment is to prevent more such crimes, how will hanging Koli without a complete investigation about others involved serve any purpose? It would appear that justice has been served and people would forget the case while the crimes will continue.

Dismal or poor legal aid: Koli had very poor legal aid throughout the case. Lawyers who initially took up Koli's case were threatened for life if they continued the litigation and had to drop out. Majority of lawyers in Ghaziabad assaulted the accused and refused to defend him as well as prevented other lawyers from defending Koli. Koli has been fighting for himself all along. The right to legal aid (especially when cases involve death penalty) is one of our fundamental rights, yet it has been clearly violated. Koli hails from a very poor background and has been disowned by his family members having been left with an old mother who has no resources to aid him. There are empirical researches highlighting that majority of those on the death row are either Dalits, OBCs or belong to a very poor section of the population. Those on margins have unequal access to legal resources and are systemically rendered vulnerable. The dominant sections and power holders get away with the same crime for which those on the margins are awarded death sentence. This phenomenon is evident in this case as well, with Pandher getting bail and the noose of execution tightening around Koli.

A case of mental abnormality? Even if it is established that Koli has committed the crime, there is a psychological dimension of the case which links cannibalism and fiddling with corpses to a mental state of disorder. Koli was himself a victim of sexual abuse when he was a child. Is it not possible that the acts committed by him were done under the influence of a psychological suffering? The rushed execution is denying any scope for probe in this direction.

In the light of the above facts, will it be fair, just and reasonable to hang Koli?

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