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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**NECROPHILIA: NEED FOR A NEW AMENDMENT IN IPC?**- Meghana G & Aahana Pandey<sup>1</sup>**Abstract**

According to the Marriam-Webster dictionary, 'necrophilia' means an obsession with and usually erotic interest in or stimulation by corpses. In short, necrophilia is having a sexual interest in dead bodies. The offense of necrophilia is not emerging but is an offense that has been prevalent since the Renaissance era. Perhaps, due to the covid pandemic, the cases of necrophilia are rising in India, and the fact that India does not have a separate provision to protect the dignity and bodily autonomy of the deceased is a state of pity. Many countries, like the UK, South Africa, Canada, etc., have criminalized necrophilia as an offense. However, India has still left that loophole open by not criminalizing necrophilia. The provisions under IPC, such as Section 376, Section 377, and Section 297, cannot be considered sufficient to impart justice and to protect society from such heinous and moral offenses. While penalizing necrophilia, it must be noted that it not only upholds deceased rights under Article 21 of the Constitution but also deters people from committing such offenses. Further, considering the variety of necrophilia and the fact that it is regarded as a mental disorder in some cases, the law must also opt for a suitable punishment technique, i.e., retributive, reformatory, or deterrent. Overall, necrophilia should be implemented as a separate provision under the Indian Penal Code 1860 to ensure justice for the deceased and the offender who may be considered mentally ill.

Keywords: Necrophilia, Section 377 of IPC, Section 297 of IPC, Section 376 OF IPC, rights of the dead.

**Introduction**

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A living person is born with a set of rights and duties. However, his legal position becomes questionable after his death. A human body after death is merely regarded as a weight of material, even though it represents the continuation of what was once a living creature. A body is no longer a necessary component of a person. Only those still alive are entitled to legal protections for their human rights.<sup>2</sup> It must be considered that crime can also be committed against a dead person. With an alarming increase in crime against the dead, the judiciary and the legislature cannot look the other way because “*The dead cannot cry for justice. The living must do it for them.*” - Lois McMaster Bujold.

One such crime against the dead that, in the Indian context, has no legal repercussions is the offense of necrophilia. “necrophilia” means a morbid fascination with death, particularly an erotic attraction to corpses.<sup>3</sup> Further, necrophilia originates from its very breakdown of *Necro*, which means ‘the dead or death,’ and *philia* which means ‘love or attraction’ in Greek. Clubbed together, the term Necrophilia in common words, simply refers to an **act of love with the dead.**<sup>4</sup> According to Hucker (1990), Guislain, a Belgian psychiatrist, introduced the term. It is defined as defiling the dead by sexual intercourse with or carnal attraction to corpses.<sup>5</sup> Unlike in the UK and Canada, India’s legal system does not cover the offense of necrophilia. Yet, Section 377<sup>6</sup> and 297<sup>7</sup> of the IPC partially protects the right of the dead, as such rights can be called posthumous legal right. The over’s posthumous rights are recognized not only by criminal law but also by constitutional law under Article 21<sup>8</sup>, which applies to living and deceased persons.<sup>9</sup> However, necrophilia being a sexual offense and sexual offenses being classified as heinous offenses, a separate dedicated section must exist to punish such crimes instead of being partially covered under Sections 377 and 297 of IPC. This is so because the delivery of partial justice is still injustice.

On the other hand, necrophilia is also considered a psychological disorder, i.e., It is a psychosexual disorder, and DSM-IV classifies it among a group of disorders called

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<sup>2</sup>Sodesaki K. [The legal status of a human corpse]. *Nihon HoigakuZasshi*. 2001 Jul;55(2):235-42. Japanese. PMID: 11605417.

<sup>3</sup>Rangaraju v. State of Karnataka CASE NO. CRL.P 7002 of 2015. Para 52

<sup>4</sup>Jaygajbhiye37, “Questioning The Unpredictability; A Legal Insight Into Necrophilia” legal services India, e-journal. Accessed at <https://www.legalserviceindia.com/legal/article-4980-questioning-the-unpredictability-a-legal-insight-into-necrophilia.html>

<sup>5</sup>Anand Kumar Vasudevan, Prashanthi Krishna Dharma, L. Ecclesto, ‘Necrophilia: A Study of the Psychoanalysis in the Characteristics of the Offenders Who Sexually Molest the Dead’ *Medico-legal Update*, July-December 2019, Vol.19, No. 2 pg 12

<sup>6</sup>Indian Penal Code, s 377

<sup>7</sup>Indian Penal Code, s 297

<sup>8</sup>Constitution of India, art 21

<sup>9</sup>Parmanand Kataria vs. Union of India (1989)4 SCC 286

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'paraphilias' including pedophilia, exhibitionism and sexual masochism and names necrophilia as 'not otherwise specified.'<sup>10</sup> Thus, in such cases, the judiciary, while applying the theory of punishment, should resort to reformation rather than retribution and deterrence.

### **Necrophilia – Tracing Backwards**

Necrophilia is not an offense that is contemporary in nature, but it has been spotted in incidents from back to the times when folklore used to be the only source of entertainment. The fairy tale "Sleeping Beauty" is one of Western society's most well-known pieces of infanticidal and necrophilic children's literature.<sup>11</sup> Necrophilia is a concept that dates back ages, with historical instances of people engaging in such acts. In the 1980s, archaeologists discovered paintings in the pyramids of the Moche civilization, also known as the 'Greeks of the Andes,' depicting sexual interactions with the deceased. Some beliefs suggest that certain cultures practiced necrophilia as part of traditions or rituals. In his book 'The Histories,' often referred to as the father of history, the author explained that Egyptians had a practice of allowing a woman's body to decompose for a few days before embalming, possibly to discourage postmortem sexual activities. Notably, modern history also includes several documented cases of severe necrophilia incidents.

In ancient times, sailors who brought back bodies to their home country were sometimes accused of necrophilia. Instances of necrophilia in history are infrequent, but historical records suggest its presence in Ancient Egypt. Herodotus mentioned that the ancient Egyptians would let attractive deceased women decay for several days before embalming to discourage interactions with corpses. There are hints that the Greek ruler Periander may have engaged in necrophilia with his wife's corpse. The Moche culture's ceramics portray acts of necrophilia, often featuring a living woman masturbating a male skeleton. From the 16th to 13th century BC, Hittite laws explicitly allowed sexual activity with the dead. In what's now Northeast China, Emperor Murong Xi of the Later Yan state reportedly had intercourse with the corpse of Empress Fu Xunying after her death.<sup>12</sup>

During Renaissance Italy, after the devastating impact of the Black Death and before the Roman Inquisition of the Counter-Reformation, literature contained explicit sexual themes,

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<sup>10</sup> Supra 2 at para 52

<sup>11</sup> Hucker, S. (1990). Necrophilia and other unusual philias. Principles and Practice of Forensic Psychiatry. 1st ed. London: C Livingstone, 1990; 723-727.

<sup>12</sup> Neelakshi Bhaskar, 'Necrophilia Legal Perspective'[(2020)], 2(2), International law journal of Legal science and innovation 243, <https://www.ijlsi.com/wp-content/uploads/Necrophilia-Legal-Perspective.pdf> accessed on 10th August 2023

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including references to necrophilia, as seen in works like Matteo Maria Boiardo's epic poem *Orlando Innamorato* (first published in 1483). In a more recent and disturbing context, individuals like the American serial killer Jeffrey Dahmer exhibited necrophilic tendencies, engaging in sexual activity with deceased bodies. Dahmer's motivations were rooted in his desire for control and submission. This unsettling behavior was not limited to historical instances, as modern cases involving necrophilia include figures like Scottish serial killer Dennis Nilsen and Englishman David Fuller. Havelock Ellis, in his 1903 study of the *Psychology of Sex*, connected necrophilia with algolagnia, both involving the transformation of negative emotions into sexual desires.<sup>13</sup>

Early in the nineteenth century, the Catholic Church debated "What Kind of Sin it is to have Carnal Connection with a Female Corpse" and concluded that it should not be considered whoring nor bestiality but pollution with attendance to whoring. India's most famous case and the two most notable near During the Noida serial murder investigations in December 2006, their necrophilic behavior came to the public's attention. The Nithari case is a well-known example of this. Necrophilia's history may only be gleaned from a small number of reported cases since there aren't any examples like them to help us understand why the number of cases is increasing. Along with these few landmark cases depicting necrophilia is the point of Jeffrey Dahmer<sup>14</sup>, Ted Bundy<sup>15</sup>, Karen Greenlee<sup>16</sup>, and Dennis Nilsen.<sup>17</sup>

Similar circumstances can be found in India in the case of "Darbara Singh," where the accused lured his victims with chocolates, candy, drinks, and other enticements before taking

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<sup>13</sup> Pradeep Kumar, Sushma Rathee, Rajiv Gupta, 'Necrophilia: an understanding' [(2019)] 7(2), *The International Journal of Indian Psychology* 608, <https://www.coursehero.com/file/143228299/Necrophilia-An-Understandingpdf/> accessed on 10<sup>th</sup> August 2023

<sup>14</sup> Jeffrey Dahmer was known to perform oral sex or masturbate, or both, upon the corpses of his victims before dismembering them. In unguarded, taped interviews with his defense attorney, Wendy Patrickus, Jeffrey Dahmer explicitly stated that he had sex with his victims before and after their deaths. He explained that he wanted to remain with the person as long as possible, preserving some of his victims' selected organs, skeletal tissue, and bones.

<sup>15</sup> Ted Bundy (1946–1989) was an American serial killer who raped and murdered at least 30 young women during the 1970s. He also confessed to participating in necrophilic acts, claiming to have chosen secluded disposal sites for his victims' bodies specifically for post-mortem sexual intercourse.

<sup>16</sup> In 1987, Karen Greenlee gave a detailed interview called "The Unrepentant Necrophile" for Jim Morton's book *Apocalypse Culture*. In this interview, she stated that she had a preference for younger men and was attracted to the smell of blood and death. She considered necrophilia an addiction. The interview was held in her apartment, which was a small studio filled with books, necrophilic drawings, and satanic adornments. She also had written a confession letter in which she claimed to have abused 20–40 male corpses.

<sup>17</sup> Dennis Nilsen (1945–2018) was a Scottish serial killer who had developed a connection between death and intimacy, later finding posing as a corpse a source of sexual arousal. In 1978, Nilsen committed his first murder and had intercourse with the victim's corpse, keeping the body for months before disposal. Nilsen was reported to have sexually abused the corpses of various victims until his arrest.

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them to a peaceful place and slitting their throats. Another disturbing incident<sup>18</sup> occurred in West Bengal in June 2019 when police apprehended a serial murderer for killing seven women and having sex with their bodies. On June 26, 2020, a shopkeeper from Mumbai killed a female customer and had sex with her body. These are a few examples; there are many more whose actions and methods have shaken people's faith in humanity. All of these incidents show that necrophilia cases have consistently occurred over time.<sup>19</sup>

## Necrophilia and Rights of the Dead – Juridical Vantage

For obvious reasons, humans are no longer responsible for anything when they die and are no longer vulnerable to punishment. As a result, after death, people cease to be people and become objects, losing their status as legal persons. Therefore, it is evident that the deceased do not possess the quality of a legal person. However, the dead do have some rights.<sup>20</sup>

Regarding the legal right of the dead, the most followed theory is that of the Interest theory, where the Interest Theorists have argued that trees<sup>21</sup>, animals<sup>22</sup>, unborn generations<sup>23</sup>, and the dead<sup>24</sup> can be legal right-holders. Further, other philosophers have argued that the laws that grant the dead posthumous rights aim to control living persons' behavior.<sup>25</sup> Thus, in both natural and unnatural deaths (accident, suicide, homicide, etc.), the State must protect the rights of the deceased and prevent crime over the dead body.

In the Indian context, the fundamental right to dignity, privacy, and autonomy is granted under Article 21 of the Constitution. In the case of *Parmanand Kataria vs. Union of India*<sup>26</sup>, the Apex Court recognized that Article 21 provides the right to life, fair treatment, and dignity, and these rights extend not only to the person alive but also to their dead bodies.

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<sup>18</sup> Santanu Chowdhury, 'I shudder every time I hear a knock on the door' (Indian Express, June 16 2019), <https://indianexpress.com/article/india/west-bengal-rape-murder-necrophilia-brutal-murshidabad-kamruzzaman-sarkar-5782644/> accessed on 10<sup>th</sup> August 2023

<sup>19</sup> Rohan Mishra, 'The conundrum of 'Necrophilia' in India: Broadening the sphere of punishment is demanded.' (October 3, 2021), <https://criminallawstudiesnluj.wordpress.com/2021/10/03/the-conundrum-of-necrophilia-in-india-broadening-the-sphere-of-punishment-is-demanded/> accessed at 10<sup>th</sup> August 2023

<sup>20</sup> Vashisht T, 'All about legal rights of the dead' (2020), <https://blog.ipleaders.in/all-about-the-legal-rights-of-the-dead/> accessed on 10<sup>th</sup> August 2023

<sup>21</sup> CHRISTOPHER D. STONE, *SHOULD TREES HAVE STANDING?: AND OTHER ESSAYS ON LAW, MORALS AND THE ENVIRONMENT* viii (1996)

<sup>22</sup> Matthew H. Kramer, *Do Animals and Dead People Have Legal Rights?*, 14 CAN. J.L. & JURIS. 29, 30 (2001).

<sup>23</sup> FEINBERG, *Animals and Unborn Generations*, supra note 27, at 159; see also Bruhl, supra note 27, at 411-12, 426 (arguing that future people enjoy some legal rights)

<sup>24</sup> JOEL FEINBERG, *Harm and Self-Interest*, in *RIGHTS, JUSTICE, AND THE BOUNDS OF LIBERTY: ESSAYS IN SOCIAL PHILOSOPHY* 45, 59-68 (1980)

<sup>25</sup> Supra 22

<sup>26</sup> (1989)4 SCC 286

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Apart from this, in the case of *Ashray Adhikar Abhiyan v. Union of India*<sup>27</sup>, it was held that the dignity of the dead must be maintained and respected. Moreover, it extended the right to the homeless deceased person to have a decent cremation according to the religious customs to which one belongs; it also established a corresponding duty on the State to ensure that proper cremation is served to the person. Further strengthening the case toward the rights of the dead, the Supreme Court, in the case of *P. Rathinam v. Union of India*,<sup>28</sup> the ambit of Article 21 was widened and held that the right to dignity was also expanded to a dead person.

In the case of *Ramji Singh and Mujeeb Bhai Vs. State of U.P. & Ors*, Allahabad High Court contended that a person's right to life includes the right of the dead body to be treated with the same respect that he would have deserved if he were alive. It is imperative for the State to treat the corpse with dignity and must only resort to postmortem if necessary.<sup>29</sup>

In criminal law, the IPC has reserved a few sections to protect the rights of the dead in case of cremation, burial, defamation, etc. The rights of deceased persons include the right against trespass of burial sites, places of funeral rites, etc., under Section 297; the right against dishonest misappropriation and conversion of property under Section 404; the right against defamation under Section 499 and the right against criminal intimidation under Section 503. Apart from this, the Transplantation of Human Organs and Tissues Act, 1994 (THOTA) safeguards the right of the deceased to preserve his human organs or tissues, or both, from being harvested without the consent of the person who died or the permission of his heirs/legal representatives.

However, when it comes to sexual offenses against dead bodies, the perpetrator is typically charged with murder, rape, or sexual assault, depending on the circumstances of the case, but not necrophilia because there is no specific law in India that addresses these offenses. These incidents also suggest that necrophilia is a widespread problem in India that must be addressed to provide the victims and their families justice.<sup>30</sup> As far as necrophilia is concerned, in the recent judgment of the High Court of Karnataka<sup>31</sup>, the judiciary took a

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<sup>27</sup> 2002 (W. P. (C) 143 of 2001

<sup>28</sup> 1994 (SCC (3) 394)

<sup>29</sup> National Human Rights Commission, Advisory for upholding the dignity and protecting the rights of the dead (14<sup>th</sup> May 2021) 3

<sup>30</sup> Priyanshi Vashishthaa & Kartikey Pandey, 'Necrophilia and different perspectives of the offence' [(2022)], 2(4) *Jus Corpus Law Journal*, 406 <https://www.juscorpus.com/wp-content/uploads/2022/07/75.-Priyanshi-Vashishtha-Kartikey-Pandey.pdf> (accessed on 10 August, 2023)

<sup>31</sup> *SRI RANGARAJU v. STATE OF KARNATAKA*, CRL.P 7002 of 2015.

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stand that necrophilia should be considered a separate offense as it does not entirely fall under the purview of Section 377 and Section 297 of the IPC.

### **Necrophilia – a separate offense**

In the case of Rangaraju v. State of Karnataka, the High Court of Karnataka has identified the crime of necrophilia and the lack of provision to punish such crimes. The Court had recommended that the Central Government amend the IPC to include

- a) Necrophilia as a separate offense
- b) To include 'dead body' under Section 377 of IPC.

This calls for analyzing three sections under IPC – a) Section 376, b) Section 377, and c) Section 297.

- a) Section 376 of IPC cannot be applied in cases of necrophilia –

In section 376, the phrase 'man' and 'woman' are stressed part of the section. The meaning of 'man' and 'women' is given under Section 10 of IPC, which defines a man and woman as a 'male human being of any age and a woman human being of any age, respectively. The High Court of Karnataka has interpreted 'age' as the age of a 'living person.' Further, the Court interpreted the word 'death' under Section 46 of IPC, which stated that the death of a human being unless the contrary appears from the context. The Court observed that rape must be accomplished with a person, not a dead body. It must be accomplished against a person's will. A dead body cannot consent to or protest a rape, nor can it be in fear of immediate and unlawful bodily injury. Thus, rape of a dead body cannot fall under Section 376 of IPC purely because a woman or man must be a 'living person.'

- b) Section 377 of IPC cannot be applied in case of necrophilia –

Section 377 deals with unnatural sex with any man, woman, or animal. Here applying the same reasoning of Section 10 of IPC, man and woman must be alive to fall under the ambit of Section 377. Further, the word 'unnatural' or 'against nature's order' means all the other methods except peno-vaginal sexual intercourse.<sup>32</sup> Thus, even if Section 377 is amended to include 'dead body,' the interpretation of 'against nature's order' may remain the same.

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<sup>32</sup> Vageshwari Deswal, 'Unnatural offences: Decrypting the phrase, 'Against the order of nature' Times of India (October 18, 2019) <https://timesofindia.indiatimes.com/blogs/legally-speaking/unnatural-offences-decrypting-the-phrase-against-the-order-of-nature/> accessed on 10<sup>th</sup> August 2023

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c) Section 297 cannot be applied for necrophilia –

Section 297, even though it deals with indignity towards the dead body, two aspects are imperative to be looked into – a) the magnitude of the offense and the punishment prescribed under this section is relatively less. Thereby applying this Section to necrophilia would be an injustice. b) the said Section intends to merely protect the religious sentiments as the Section falls under *Chapter XV*<sup>33</sup>, which is ‘offenses related to religion.’ Thus, the intention behind Section 297 is only to protect the religious sentiments of the deceased’s family members and not the dead herself. Hence, punishing necrophilia in power with the punishment provided under Section 297 shall be nothing but a mockery of the seriousness of the offense.

Hence, it is unruly of the judiciary and legislative if necrophilia is amended into one of the above sections as it does not uphold the principle of justice and deterrence about serious offenses such as necrophilia.

#### **Necrophilia – Need for reformation rather than retribution**

One of the weirdest, strangest, and most repulsive manifestations of deviant and perverted sexuality is necrophilia, the practice of enjoying sexual fulfillment through a corpse.<sup>34</sup> A Belgian psychiatrist Joseph Guislain was one of the first to notice necrophilia from a psychological point of view. The term "necrophilia" was not widely used until Richard von Krafft-Ebing's 1894 publication of *Psychopathia Sexualis*, which referred to it as a "horrible manifestation of sadism."<sup>35</sup> When Abraham A. Brill said that necrophiliacs were psychotic, mentally deficient, and incapable of locating a consenting partner in 1941.

A few reasons for necrophilia can be –

- a) Intense fear of interaction
- b) Corpses cannot reject, disagree, or manipulate
- c) Lack of sexual inhibition
- d) Psychological condition

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<sup>33</sup> Indian Penal Code, chapter XV – offenses related to religion

<sup>34</sup> Anil Aggrawal, ‘A New Classification of necrophilia’ *Journal of Forensic and Legal Medicine* 16 (2009) 316–320

<sup>35</sup> *Supra* 12

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Under the criminal justice system, the treatment for the mentally ill or people with psychological conditions is different.<sup>36</sup> Thus, whether a necrophilic person falls under such a category must be answered. For this, one must understand what mental illness is. Mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, mainly characterized by subnormality of intelligence.” in Section 3 of the Mental Health Care Act, 2017<sup>37</sup> which defines “Determination of Mental Health” as:

(1) Mental illness shall be determined by such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may be notified by the Central Government;

(2) No person or authority shall classify a person as a person with mental illness except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force;

(3) Mental illness of a person shall not be determined based on,—

(a) political, economic, or social status or membership of a cultural, racial, or religious group, or for any other reason not directly relevant to the mental health status of the person;

(b) nonconformity with moral, social, cultural, work, or political values or religious beliefs prevailing in a person’s community;

(4) Past treatment or hospitalization in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person’s mental illness;

(5) The determination of a person’s mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

The phrase "matters covered under this Act" in this section's interpretation makes it apparent that psychological and psychiatric problems are not in and of themselves mental illnesses.

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<sup>36</sup> “Psychology” (Merriam-Webster) < <https://www.merriam-webster.com/dictionary/psychology> > accessed August 10, 2023

<sup>37</sup> The Mental Healthcare Act, 2017 ” <http://egazette.nic.in/WriteReadData/2017/175248.pdf>

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However, they may lead to mental illness. There is no mention of penalty in this law for those who have mental illnesses of any kind. The most common people to be seen practicing necrophilia are gravediggers and mortuary workers. This practice may result from their loneliness and easy access to dead bodies. It's also possible they were necrophiles who initially chose this line of work. It is well known that necrophiles frequently select a line of work that gives them unrestricted access to dead bodies.<sup>38</sup>

Further, necrophiles often prefer “not fresh” corpses but “rather dug up from graves in a putrefied or mummified condition, with some preferring only bones.” The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM5) classifies necrophilia as an uncommon paraphilia under the 'Other Specified Paraphilic Disorder' section. Thus, classifying necrophilia as a disorder.<sup>39</sup>

Apart from this, under the nature of the offense of necrophilia and the manner of suitable punishment, the framers have to consider different types of necrophilia. There are, in total, ten types of necrophilia. They are –

1. Role players - Do not want sex with a dead person. Enjoy sex with a living person pretending to be quiet.
2. Romantic necrophiles - Bereaved people who would mummify a part of the body of their recently departed loved ones and keep it with them to get psychosexual stimulation. Would not show a similar interest in any other dead body, i.e., the body of a person with whom they were not romantically involved in a life.
3. Necrophilic fantasizers - Fantasize intercourse with the dead. They may visit cemeteries and funeral parlors and may masturbate in the presence of the deceased.
4. Tactile necrophiles - Interest in dead bodies increases to the level of touching them. Like stroking erotic parts of a dead body, such as breasts. May manipulate the sexual organs of the deceased to get an orgasm.
5. Fetishistic necrophiles - Cut up parts of a dead body – say a breast – mummify it, and keep it in their possession to use it as a fetish for their necrophilic activities. It differs from class II necrophiles in that they (class V) do it with the bodies of strangers with

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<sup>38</sup> Supra 11 at 11

<sup>39</sup> Kshitij Betjewargi, 'Necrophilia and its legal status in India', Deccan Herald, 05/06/23.

<https://www.deccanherald.com/india/explained-necrophilia-and-its-legal-status-in-india-1225055.html> (accessed on 10 August, 2023)

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whom they held no romantic relationship. Thus they do not do it merely to fill a psychosexual vacuum left by the death of their loved ones.

6. Necromutilomaniacs - Interest in dead bodies is more than touching them. Necrophilic pleasure comes from mutilating a dead body.
7. Opportunistic necrophiles - Actual sexual activity with the dead starts from this class. Usually, these necrophiles would be content to have sexual intercourse with the living, but if an opportunity arose, they would not refrain from having sexual intercourse with the dead. Necrophilic mortuary attendants belong to this class.
8. Regular necrophiles: These are the “classical” necrophiliacs, as one understands typically. Wulffen describes this class under type *necro stuprum*, and Rosman and Resnick under their sub-class “regular necrophilia”. They would not enjoy sexual intercourse with the living, even if this choice were available. Instead, they would seek out a dead body to have sexual intercourse with because they get more pleasure in having sex with a dead body. They would steal dead bodies from mortuaries or graveyards for this purpose. As seen above, a mortuary attendant who has intercourse with the dead only because a dead body was readily available to him would not fall under this category. However, if he preferred a dead body for sexual intercourse to a living partner, he would come under this category. Regular necrophiles may have sexual intercourse with the living from time to time, but their preference remains sex with the dead.
9. Homicidal necrophiles This is the most dangerous category of necrophiliacs. They must have sex with a dead body to the extent of resorting to killing. They are also known as violent necrophiles or lagnonectors (persons who kill to have sex with the corpse), and the practice is often known as homicidophilia. The term “warm necrophilia” may be applied to these cases since intercourse is attempted on fresh bodies which are recently dead.
10. Exclusive necrophiles This group, perhaps the rarest of all, is not necessarily the most dangerous. However, this is still listed in the last because these offenders need only dead bodies for intercourse. They are unable to perform intercourse with the living. Since dead bodies are necessary for sex, they may go to any length to acquire them. In as much as this, they may be more dangerous than the rest. If a given necrophile can perform sex with a living person of either sex or of any age, he would not be listed



among this class. In Rosman and Resnick's series of 122 cases, the authors could find only 6 points that could be listed among this class.<sup>40</sup>

Necrophilia is mainly of 10 types, but the last three types, i.e., regular necrophiles, homicidal necrophiles, and exclusive necrophiles, are hazardous and fall under heinous crime and hence should be subjected to punishment along with restoration, considering fairness, equity, and justice with consideration of their mental state. However, the other seven types are mostly done through choice, thus subjecting them to retributory punishment.

### **Necrophilia – International scenario**

Imparting justice to the victims or the family of the victims is an essential feature of any legal system. Necrophilia is a severe offense against the deceased and society; a few countries have criminalized necrophilia, and others haven't. The countries who have identified necrophilia as a separate offense include –

- a) United States - There is no existence of Centralised law and but Federal States in the US have criminalized necrophilia. One such State is New Zealand: New Zealand's Crimes Act, 1961.<sup>41</sup> Section 50 of the Act provides for two years of imprisonment if any person does any act which harms the dignity of the corpse, whether buried or unburied.
- b) South Africa – South African Government has especially identified necrophilia as a separate offense under Section 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007<sup>42</sup>. This Section prohibits any sexual act with a corpse.
- c) Canada - Section 182 of the Criminal Code of Canada, 1985 states that “*whosoever improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not, is guilty of an indictable offense and liable to imprisonment for a term not exceeding five years.*”

Here, it has to be noted that Section 182 of the Criminal Code of Canada is similar to Section 297 of the Indian Penal Code 1860. However, the significant difference lies in the years of imprisonment, which is much more in Canada than in India.

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<sup>40</sup> Anil Aggrawal, 'Anil Aggrawal MBBS, MD (Professor of Forensic Medicine)' (2009), [https://anilaggrawal.com/ij/sundry/news\\_and\\_notes/316\\_A%20new%20classification%20of%20necrophilia.pdf](https://anilaggrawal.com/ij/sundry/news_and_notes/316_A%20new%20classification%20of%20necrophilia.pdf) (accessed on 10th August, 2023)

<sup>41</sup> Crimes Act 1961 (NZ), s 50.

<sup>42</sup> the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (SA), s14.

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- d) United Kingdom - Section 70 of the Sexual Offences Act, 2003<sup>43</sup> of the UK makes it an offense for a person who intentionally sexually penetrates, knowingly or recklessly, any part of his body into any part of a dead person.

Thus, India, like countries across the globe that have penalized necrophilia under a separate offense, can follow the same for establishing moral protection in society and ensuring the prevention of such gruesome crimes from being committed.

#### **Way forward –**

Necrophilia is an offense that is not only heinous in nature but also demeans the morale of society. This reduces man's value to the man living in the stone age, who has little to no knowledge of right and wrong. When the community falls to the standard where such gruesome offenses start to rise, the law must take charge as a tool of social control and reshape the values and morals in society. Necrophilia must be added to the IPC as a separate provision only to ensure deterrence in the community. The provision of necrophilia must be drafted to consider the types of necrophilic by the kind of punishment suitable for such offenders. Whatever theory of punishment may be adopted, the best combination of the ideas is retributive and reformatory. But, until such a provision is inserted into the IPC, the judiciary can rely on Section 511 of the IPC,<sup>44</sup> which deals with attempts to commit an offense. The same was rightly held in the case of *R v. Cheesman*<sup>45</sup>, which held with necrophilia falling under the said section, as the degree of moral guilt of the offender in case of an attempt is the same as if he has succeeded. Thus, making 'mens rea' the primary essential of the Section. Therefore, if rape is committed on a dead body, the person who commits rape would be guilty of his mens rea because if the victim were alive, it would fall under the offense of rape.

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<sup>43</sup> Sexual Offences Act, 2003(UK), s70

<sup>44</sup> Indian Penal Code (1860), s.511

<sup>45</sup> (1862) L & C 140