

**BEYOND THE GRAVE: NECROPHILIA AND PRESERVING HUMAN
DIGNITY**- Devesh Pratap Mall & Oshin Beniwal¹**ABSTRACT**

In this paper the authors have analysed what necrophilia means and the existing legal position of the same in India by delving deeper into the understanding of what rape means in the present law provisions of our country and how it fails to bring forceful sexual acts in respect to a dead body outside of its purview. Further, by comparing it to the positions in various countries we try to ascertain the extent of punishment that can be proportional to the criminal act. This paper is an attempt to bring the attention towards the sexual offenders who escape liability with the help of current legal loopholes in our judicial system and engage in sexual offences with dead bodies in line with their desire of finding a partner on whom they can exert their dominance as the question of taking consent does not come into picture in such cases.

NECROPHILIA : A BRIEF UNDERSTANDING

Necrophilia can be described as an act of involving in sexual intercourse with the body of a deceased person. Such behaviour is known to be highly deviant and illicit and coexists with other paraphilias which include unnatural sexual desires like cannibalism, sadism and necrophilia.

The term "necrophilia" derives from the Greek words "necro," meaning "the dead or death," and "philia," which denotes "love or attraction." Necrophilia, mainly, refers to the act of manifesting love or attraction towards the deceased. Those involved in such acts are known as necrophiliacs who participate willingly and on their own volition. Individuals who engage in such acts, known as necrophiliacs, willingly and knowingly participate in these activities.

The Karnataka High Court in a case observed that that "necrophilia" is a morbid fascination with death and the dead and more particularly, an erotic attraction to corpses². "It could be the result of rage, experimentation, or lust rather than sexual necessity or habit," the court noted.³

¹ Students at NLU Jodhpur

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To our surprise this horrendous act is not considered crime in India according to our Legal System. The Karnataka High Court on Tuesday ruled that the sexual assault of a dead body did not come under the ambit of rape or unnatural offences under the Indian Penal Code. The Indian judicial system currently lacks sufficient legal provisions or a clear framework for defining the act of Necrophilia accurately despite the occurrence of numerous cases related to Necrophilia.

Taking undue benefit of this potential way-out in India if any person is charged with such Necrophiliac activity he can escape easily just because we do not have adequate measures to convict and as a result, in the majority of cases, the accused is exonerated after a few years following the incident.

In the present case as well, the Sessions Court convicted the accused on murder and rape charges. The accused appealed in the Karnataka High Court and the Division bench, comprising Justice B. Veerappa and Justice Venkatesh Naik T. acquitted the man from the charges of rape and only confirmed the conviction for murder. The Honourable divisional bench held that “a careful reading of the provisions of Section 375 and Section 377 makes it clear that a dead body cannot be called a human or person”⁴ and remarked that “unfortunately in India no specific legislation is enacted, including under the provisions of IPC for the purpose of upholding dignity and protecting rights and crime against the dead body of the woman”.⁵

NECROPHILIA: IS IT A CASE OF PSYCHOLOGICAL ORDER

The World Health Organization (WHO) and the American Psychiatric Association (APA) classify necrophilia as paraphilia in their International Classification of Diseases diagnostic manual. “Neither psychosis, mental retardation, nor sadism appears to be inherent in necrophilia. The most common motive for necrophilia is the possession of an unresisting and unrejecting partner,” says a 1989 study.⁶

However, necrophiles might suffer from other disorders. “Necrophilia is not associated with any one mental illness or disorder. However, it is known that some necrophiles had

²Rangaraju @Vajapeyi vs State of Karnataka

³Santanu Chowdhury, *I shudder every time I hear a knock on the door*, India News, The Indian Express (June 16, 2019), <https://indianexpress.com/article/india/west-bengal-ropes-murder-necrophilia-brutal-murshidabad-kamruzzaman-sarkar-5782644/>.

⁴Rangaraju @ Vajapeyi v State of Karnataka, 2023 LiveLaw (Kar) 197

⁵*ibid*

⁶Jonathan P Rosman, *Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia*, 17 Bull Am Acad Psychiatry Law (1989).

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previously been diagnosed with Conduct Disorder and Antisocial Personality Disorder,” according to a report in Psychology Today. There have also been suggestions that those who have committed necrophilia have suffered from depression or schizophrenia.

ANALYSIS ON THE PSYCHOLOGICAL STATE OF THE ACCUSED

Whenever these acts surface in the media and judicial system, psychologists and renowned personalities concur on the opinion that these acts are significantly driven by the possibility of the offender not being in control of his emotions and showcasing characteristics of not being in a sane state. They give great weightage to these factors and acquit or convict on the basis of insanity of mind.

In contrast to this, the new generation advisors or legal and media professionals who have encountered such acts believe that these wrong-doers are in a fully cognizant state of mind where the offender in absolute sanity voluntarily performs the sexual act with the corpse. Therefore, such evil-doers should not be granted the shielding against the necessary punishment.

Necrophilia involves both a sexual attraction to the deceased as well as a romantic aspect where individuals deny the death of their loved ones. In the latter scenario, they preserve the dead bodies of their loved ones and spend time with them.⁷ These people portray extreme levels of hypersensitive behaviour and refuse to accept the death of their loved one. It is recommended in such cases that the false belief is preserved to avoid the mental trauma resulting in risk of depression and suicide.

Necrophiles frequently prefer sex partners who are helpless, unresisting, and completely at their mercy, or who are either unconscious or immobile, in order to avoid critical remarks about their performance, the fulfilment of which gives them a sense of power and control over the women whom they consider as a sex object.⁸

NECROPHILIA : ANALYSIS ON THE EXISTING INDIAN LEGAL PROVISIONS

In India, Necrophilia is considered an offence, but there is no specific law in regards to the offence. So, the cases are analyzed with the help of the presently available provisions of law in our legal system. Two sections of the Indian Penal Code are commonly referred to in

⁷ Necrophilia; Is it an Offence, Rostrum's Law Review, Volume III, Issue 1. Retrieved from <https://journal.rostrumlegal.com/necrophilia-is-it-an-offence/>

⁸ Anand Kumar Vasudevan, *Necrophilia: A Study of the Psychoanalysis in the Characteristics of the Offenders Who Sexually Molest the Dead*, 19 Medico Legal Update (2019).

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necrophilia cases: Section 297 and Section 377 are the two sections that are presently used to deal with the cases of necrophilia in the country. But, both these sections are neither able to define what is necrophilia and nor mention the term explicitly.

According to Section 297 of IPC, “whoever enters the religious place, or sepulchre with the intention and knowledge of hurting religious feelings and sacraments of any person, commits the offense of ‘trespass to burial grounds’ and is liable to be punished with imprisonment for a term which may extend to one year, or with fine, or with both.”⁹ Under this section, accused has to enter of trespass on a burial ground. Now, the dead bodies are not exclusively found on burial grounds and are present at a number of places such as morgues, hospitals, locations where the victim was killed, etc. and the caretakers present on the burial grounds can’t be brought under the ambit of trespassing and furthermore, even if someone is brought under this section, the maximum punishment for such an inhumane act is one year of punishment, fine, or both, making it highly incommensurate for a crime like this, making this section deficient in power to protect the deceased.

In the specific case discussed by the court, it concluded that the elements required under Section 297 were not present. Therefore, the court stated that at most, it could be seen as sadism or necrophilia, but it did not qualify as an offense punishable under Section 376 of the Indian Penal Code. The court further recommended that the government amend the law accordingly.¹⁰

Section 377 of the Indian Penal Code, on the other hand, states that “Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal” may include necrophilia under its ambit¹¹. The Apex court held in a case that carnal intercourse shall be there and the act must be against the natural order for it to be an offence under this section¹². Now the usage of term “voluntarily” makes it difficult to bring necrophilia under this section as the accused can’t obtain consent from the corpse, or perform the sexual act forcefully against the wish of the dead body. For an act to be contrary to the order of Nature it has to be a voluntary sexual act. Therefore, again, this section too falls short in protecting the dignity of the dead.

THE ASPECT ON THE DIGNITY OF A DEAD WOMEN AND NECROPHILIA

⁹Indian penal code § 297 (1860).

¹⁰Khadija Khan, *What is necrophilia and is it an offence in India?*, The Indian Express, (June 5, 2023).

¹¹Indian penal code § 377 (1860).

¹² Childline India Foundation v. Allan John Waters, 2011

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The aspect of the dignity of a dead women holds immense value when a discussion on Necrophilia comes into light. In the recent case of Karnataka High Court which sparked the controversy around Necrophilia , the court said “It is brought to our notice that in most of the government and private hospitals where the dead bodies, especially of young women, are kept in the mortuary, the attendant who is appointed to guard them has sexual intercourse with the dead body.”¹³The Karnataka High Court's chilling observation came as an astonishing and almost unbelievable shock. Furthermore, the court stated that it is high time that the government recognizes the need to protect the dignity of deceased women.

It was highlighted by the Honourable High Court that in the absence of a specific law against necrophilia in India , it a call upon the Centre to introduce a legislation criminalizing necrophilia in the country in light of the absence of an existing law against Necrophilia in the country. Article 21 of the Indian Constitution not only recognises the right to live with dignity and respect but also includes the right to die with dignity.

The Supreme Court in Parmanand Katara v. Union of India, recognised that the rights to life, fair treatment, and dignity, which are enshrined under Article 21 are applicable to the living as well as the deceased¹⁴, whereas in the case of Ramji Singh and Mujeeb Bhai v. State of U.P. &Ors., the Allahabad High Court held that under Article 21 the deceased possess the right for their remains to be treated with utmost respect they deserve¹⁵, preserving their dignity as it was during their lifetime. The word person should have a wide ambit and the rights which was present when alive shall also extend when the body becomes devoid of life. The law has not explicitly defined the term “person” to include a dead person, but a human being has rights which remain with the body even when it has been devoid of life and a narrow understanding oof the term “person” shall not be preached as it results in divesting the dead body of its dignity.

THE EXISTING CONUNDRUM IN INDIA

Necrophilia does not have the required legal safeguards as well as the recognition of the term which leads to loopholes in the criminal justice system. Judiciary is pressurized to convict the accused just because there is no specific safeguard or provision present and therefore, the instances of Necrophilia have been significantly increasing in the past decade, leading to

¹³Supra Note 3

¹⁴ Parmanand Katara v. Union of India, 1989 AIR 2039

¹⁵Ramji Singh and Mujeeb Bhai v. U.P, (2010).

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more and more homicides for the reason of sexually assaulting the dead bodies. This is a very dangerous trend and if not addressed quickly, it may lead to menacing results.

In the said light the Karnataka case is not an isolated one. The infamous Nithari HatyaKaand, in which 19 girls went missing and in this case the accused was Moninder Singh Pandher, a rich businessman along with Surinder Koli, they used to lure the victims to the accused's home and accused were responsible for the death of 16 of them, the case involved sexual assault, murder and attempted Necrophilia.

The other recent instances of attempted necrophilia include a police constable being detained for raping a dead body of a 14-year-old girl in the year of May,2020. Another case which came into light was in June 2020, during Covid lockdown, where a shopkeeper slit the throat of a woman customer as a result of an altercation and then dragged her body in and sexually assaulted the body. The most recent instance of this was in March 2023, when Ravinder Kumar, a daily-wage labourer employed in Delhi, was found guilty and convicted for multiple crimes committed between 2008 and 2015. He confessed to his involvement in at least 38 cases of rape and murder of minor children across Delhi, Haryana, and Uttar Pradesh, including instances of necrophilia.

POSITION OF DIFFERENT COUNTRIES IN THIS CONTEXT

In the United Kingdom, Section 70 of the Sexual Offences Act, 2003, it is an offence if any person sexually penetrates any part of his body, intentionally or recklessly, into any part of a dead person. The punishment for the same ranges from 6 months to a term not exceeding 2 years. Necrophilia was not however prohibited before 2003, although it was considered as public nuisance to leave a naked corpse exposed in public¹⁶. On the other hand in Canada, Section 182 of the Criminal Code of Canada, 1985 makes Necrophilia punishable without mentioning the word necrophilia. In Canada, imprisonment for a term of not more than five years is the prescribed punishment. There appears to be slight similarity between the Indian penal code provision 297 and the law in Canada. Punishment of two years is granted to an offender harming the dignity of a corpse under the section 150 of the Crimes Act, 1961 of New Zealand. On the same line, Necrophilia is also prohibited in the South African legal system under the Section 14 of its Criminal Law. When we come to the United States, since different states have different legal systems in some states in the United States, necrophilia falls under laws related to abuse of a corpse where the offenders can face severe legal

¹⁶R v. Clark [1883] 15 Cox 171

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consequences, including imprisonment and registration as a sex offender. In the United States, there are four states which explicitly recognise and use the word necrophilia including Georgia and Hawaii. Despite all this, owing to the gaps in the legal system, the act is still not considered illegal in several states of US.

In India, corpses do not have the rights of a legal person although there exist several judgments of the apex court as well as guidelines from the National Human Right Commission that uphold the right to human dignity even after death however the pertinent question which remains is that whether the right to dignity be extended to prevent sexual violation of corpses.

The legal status of necrophilia varies across jurisdictions, with some explicitly criminalising necrophilia under their laws.

WAY FORWARD

The court in the case gave various directions to Hospital morgues to the. The high court gave a timeline of six months to the Karnataka morgues for installing CCTVs to prevent and deter the offenders from committing any sexual crime against the body of any deceased and also directed to maintain the hygienic conditions by ensuring that the dead bodies are cleaned on a regular basis as well as maintaining the privacy by ascertaining the security of clinical records and information and the postmortem room should not come under the direct line of sight of the general public/visitors. the basic infrastructure of the mortuaries shall be in accordance with the Indian Public Health Standard guidelines for the district hospitals for management of the dead bodies.

Necrophiliacs are motivated by a desire to obtain an immobile, helpless, and unresisting partner as a laboratory for their sexual experiments, which in turn, precipitates them to choose jobs that would allow them to be close to corpses¹⁷. The frequency of occupational access to corpses among necrophiles suggests that careful screening and supervision of employees should be done in cemeteries, morgues, funeral homes, and pathology departments. The ready availability of corpses in a job environment does not, therefore, preclude the possibility that a necrophile will commit homicide. Several necrophilic murderers had access to corpses through their occupations¹⁸. On account of rising cases of the guards and attendants indulging in “sexual intercourse” with the corpses the Karnataka High

¹⁷Jonathan P Rosman, *Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia*, 17 Bull Am Acad Psychiatry Law (1989).

¹⁸Ibid

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Court directed the centre to bring in an amendment in the present provisions of law or introduce a new provision in IPC which criminalizes necrophilia with adequate recourses for punishing the offender.

This will be a welcome action, however certain aspects need to be looked into carefully before amending provisions or adding new ones so that they cannot be misused and the law should be amended in a way where the certainty of the punishment should be the primary objective and the accused is held liable so that a deterrent effect in the society. If such an accused is even set free on bail and he goes around with such a mentality then the safety of the entire society is endangered.¹⁹ Another aspect which needs to be kept in mind while making new additions to the IPC is that it should be added with provisions so that the cases are dealt expeditiously. In an event where such crime on modesty of women are committed strict punishment should be served and when such an offense is committed on a dead body, it is very crucial for us to understand how does the mind of the accused works in such crimes. In this regard, new sections must be brought to give fast trial. However, while making such laws it shall also be considered that there can be a possibility that the person committing such an act suffers from a traumatic past and rehabilitation and treatment can be recommended in such cases and brainstorming as to what kind of treatment for such an offense needs to be provided has to be taken into consideration²⁰.

CONCLUSION

While we deem it to be a nasty, evil, and unlawful practice, the law barely makes any effort to criminalize the act. There is hardly any effort made into distinguishing the act from the most basic act of intercourse to dismembering a corpse. The legal aspects of necrophilia are however under-developed due to our own fault. It is a topic of unpleasant taste and discussing it is not an easy task. The present approach however can be that till the time an act of parliament is not in place; the courts of the country must take an activist approach and make guidelines to criminalise the said act and hope that soon our legislators get awakened and formulate a law criminalising the said act of necrophilia. While dealing with this, the courts may take inspiration from the Vishaka Guidelines case where the courts instead of waiting for the parliament to come up with law criminalising sexual offences at work place, the courts

¹⁹*Rape Of Dead Bodies Not Considered Offense Under IPC: Should Necrophilia Be Criminalised?*, (June 1, 2023), <https://www.india.com/explainer/rape-dead-bodies-not-considered-offense-under-ipc-should-necrophilia-be-criminalised-6084080/>.

²⁰ <https://www.medigoo.com/articles/necrophilia/>.

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themselves came up with interim guidelines on sexual offences at work place, popularly known as Vishaka Guidelines and later when the pressure developed from media houses and public, then an act of parliament criminalising the said act was brought. In the present debate around Necrophilia and in the light of rising cases it has become extremely important and necessary for there to exist at least some guidelines and mechanisms for such a barbaric act and slowly and gradually as this would get more coverage from media houses and academia, we can hope the public opinion towards having a law in place for necrophilia will get stronger , thus pressing the government to come up with a law. While we can only hope that more studies are undertaken towards it, it is for the time being expected to remain in the dark shunned alleys of society and the grey areas of law.²¹



²¹KnowLaw (July 20, 2021), <https://knowlaw.in/index.php/2021/07/20/socio-legal-insight-practice-necrophilia/>.
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