

# AN ANALYSIS OF CRIMINALITY OF NECROPHILIA IN INDIA

## Abstract

According to the Diagnostic and Statistical Manual of Mental Disorder, necrophilia, "is a mental disorder wherein the individual is aroused and attracted to fantasies or actual sexual contact with a dead body and falls under the subclassification of paraphilia."

<sup>1</sup>The acts of necrophilia were present in the society since the ancient period. However, the implications of the act has been recently recognised by the judiciary. The concerned necrophilic conduct was so strongly rooted in the society that it was almost considered to be normal. However, in the present era, the fundamental rights are expressly enforced. As a result, the meaning and extent of the right to dignity have been analysed. Several cases of necrophilia were reported, and the detailed analysis of the cases exposed the lacunae in the legal regime in various State jurisdictions in recognising this as a serious offence. India was no exception. It is only in a recent judgment, the Karnataka High Court took discretion and decided that Necrophilia should be explicitly recognised as an separate offence and should not be considered as the act of rape or sodomy as the latter only relates to living persons.<sup>2</sup> Once the person is dead, the ingredients of rape or sodomy do not apply. The Court observed that the attendants of majority of the government and private hospitals are appointed to guard the dead bodies. They intend to have sexual intercourse on the dead bodies, especially of those which belonged to young ladies.<sup>3</sup> This paper aims to discuss various criminological perspective relating to necrophilia and examine to what extent it was rooted in the society.

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<sup>1</sup> American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. Arlington, VA, American Psychiatric Association, 2013.

<sup>2</sup> Rangaraju @ Vajapeyi And State of Karnataka SCC Online Kar 23

<sup>3</sup> Abhay Pachauri, The Void of Necrophilia Laws in Indian Criminal System: What Needs to Be Done, 25 *Supremo Amicus* [1] (2021).

**Keywords:** Necrophilia; dignity; Sexual intercourse; deceased; criminology

## I. INTRODUCTION

Necrophilia means having sexual pleasure with a dead body. Necrophilia is a term used to describe a paraphilic disorder characterised by a sexual attraction to or engagement in sexual activities with deceased bodies. Individuals who exhibit necrophilic behaviour experience sexual arousal and gratification from interacting with corpses, which is considered both socially taboo and legally reprehensible in most societies.

The term "necrophilia" has originated from the Greek words "nekros," which actually stands for the "dead," and "philos," which means "loving" or "fondness." It's important to note that necrophilia is considered a highly deviant and abnormal behaviour, and it's classified as a paraphilic disorder in psychological literature. Necrophilia raises ethical, moral, and legal concerns due to the violation of the dignity of the deceased and the potential psychological distress caused to the families of the deceased victims. It's generally illegal in many jurisdictions due to its offensive and disrespectful nature toward the deceased and the cultural norms surrounding death and proper treatment of bodies. Very often, the necrophilists dug up the graves and use the corpses for in mummified conditions. Some of them even prefer the bones. They use the private parts of the dead bodies in satisfying the sexual desires.

In certain circumstances, they murder the victim themselves. However, in most of the cases they acquire the corpses from the funerals, mortuaries, morgues, or graves. The reason for this kind of peculiar behaviour have been the subject of research of various researchers. It was first explained by German psychiatrist Richard von Krafft-Ebing in his book *Psychopathia Sexualis*. Certain recent empirical study concludes and suggests that necrophilia involves desire for a partner who has been rejected. It is their motive to exert power and control over others especially those who have rejected their love. The act mirrors their acquiring of lost self-esteem, and through the act they tend to overcome the feelings of isolation.

In 1964 Erich Fromm expounded the meaning of necrophilia as an attraction towards death, decay, and illness. He unravelled the nature of this attraction to be a fundamental yet pathological orientation within certain individuals' characters that reveals itself through increasing tendencies toward greed, narcissism, destruction, cruelty, and murder and a growing attachment to mechanical (i.e., non-living) artifacts. According to him, necrophilia is the fruit of person's desire to compensate the feeling of lack of self confidence and self-esteem.<sup>4</sup>

Both the World Health Organization (WHO) and the American Psychiatric Association (APA)<sup>5</sup> classify necrophilia as a kind of paraphilia in their International Classification of Diseases (ICD) diagnostic manuals.<sup>6</sup> Though the incident of necrophilia is not new, however, it took long to analyse it as a serious criminal tendency. Necrophilia is a psychosexual disorder.

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<sup>4</sup> Landis, B., 1975. Fromm's theory of biophilia-necrophilia. *Contemporary psychoanalysis*, 11(4), pp.418-434.

<sup>5</sup> American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders 4th Edn* (1994)

<sup>6</sup> Hasin, D., Hatzenbuehler, M. L., Keyes, K., & Ogburn, E. (2006). Substance use disorders: diagnostic and statistical manual of mental disorders, (DSM-IV) and International Classification of Diseases, (ICD-10). *Addiction*, 101, 59-75.

If we go back, in the ancient period, various historical accounts state that the sailors who used to return corpses to the home countries have been reportedly accused of necrophilia. During the ancient Egyptian period, the ancient Egyptians adopted preventive measures against necrophilia by banning the delivery of the corpses of the wives of men of rank to the embalmers for fear of them being violated. The accounts also state that King Herod had sexual relations with the corpse of his wife Marianne for seven years after she was allegedly murdered. Similar historical evidence was observed in case of King Waldemar and Charlemagne. In the Moche culture, it was observed that acts of necrophilia were a common practice in Northern Peru during the period between 1st century A.D. and 8<sup>th</sup> century A.D. The artifacts depict the images of masturbation of male skeleton by a woman. In fact, the Hittite law expressly permitted necrophilia during the period extending from 16th century B.C. to 13th century B.C. Consequently, the Catholic Church considered necrophilia neither a form of whoring nor a form of bestiality, but rather pollution with a tendency to prostitution.

Renaissance brought a massive change in the culture of Europe. The literature in Italy after the revolution brought about by Renaissance explicitly referred necrophilia and other sexual acts. One of those references can be found in the epic poem 'Orlando Innamorato'. A recent myth of vampirism and cannibalism has helped to make necrophilia more popular today. Dracula's vampire novel has romanticized the idea that he obtains power from his victims like he has taken power from them. Human flesh is consumed in cannibalistic tribal rituals in the belief that consuming it will impart special power or strength. There was even a mention of what is referred as healthy necrophilia held in high esteem in the memories of those who had passed away, which Browne described as "mementos cherished in every household of the deceased." There are a number of famous artists who have captured the theme of necrophilia. Necrophilia is at the heart of the classical tale of Sleeping Beauty, which depicts the reanimation of a corpse. There is a similar fantasy depicted in Shakespeare's "Romeo and Juliet". Necrophilia is explicitly discussed in "Heavy Metal" songs. There are plenty of less severe forms of necrophilia, even though actual necrophilia is relatively rare. Similar situations would involve drugging, sleeping, or asking the other person to act passively during sexual interaction, especially when they are confined within a coffin. Having necrophilia allows one to control destructive urges toward their sexual partners, as well as the fear of retaliation for those desires since the sexual partner has already been destroyed and is unable to retaliate. As the dead body cannot approach or abandon the necrophile, inert partners provide the necrophile with a sense of power, relieving them of feelings of inadequacy and giving them control over themselves.<sup>7</sup>

In the modern age, the incidents of necrophilia are no less. Earle Leonard Nelson was an infamous serial killer, rapist and necrophile. He was known to be the first reported serial sex murderer and was called "Gorilla Man". He used to target middle aged ladies whom he used to murder by strangulation and then commit rape on them.<sup>8</sup> Another reference of Necrophile is found in Yoshio Kodaira who was an infamous Japanese war criminal, serial killer, and rapist.<sup>9</sup>

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<sup>7</sup> Kumar, P., Rathee, S. and Gupta, R., 2019. Necrophilia: An Understanding. *International Journal of Indian Psychology*, 7(2), pp.607-616.

<sup>8</sup> Gibson, D.C., 2014. *Serial Killers Around the World: The Global Dimensions of Serial Murder*. Bentham Science Publishers.

<sup>9</sup> Aggrawal, A., 2010. *Necrophilia: forensic and medico-legal aspects*. CRC Press pp.114-116.

## II. RELEVANCE OF NECROPHILIA AS A CRIME

*'De Mortuis, nisi bonum, nil'*

The above phrase stands for “Talk no ill about the dead”. It is a common norm among various cultures and traditions all over the world to respect the dead. It is believed to be the act of humanity to provide due regard to the person who left the world even though he may not possess good reputation when he was alive. Therefore, the body of the dead is cremated with utmost civility and respect which he deserves. Article 21 of the Constitution of India not only provides the right to liberty, but it also extends to right to dignity and reputation. It provides protection to the reputation of the dead body.

Article 21 extends its arms towards providing protection to the reputation of a dead person. If someone possess any malice to cause injury to the reputation of a deceased, he must be made liable for the act. Article 21 not only provides protection to a person during their lifetime, but also equally applicable even after his death. In *Kharak Singh Vs. State of Uttar Pradesh*<sup>10</sup>, it was held that all person is entitled to the right to dignity which is appended to the right to life. No person lives solely based on "Animal Existence". The judgment in *P. Rathinam v. Union of India*<sup>11</sup> reiterated the observation of *Kharak Singh Case*. It held that a dead body should be treated with respect as the right to life is more than that of mere ‘animal existence’.

In the case of *Parmanand Katara v. Union of India* it was observed that the term "person" should not only be used for a living, breathing human being, but can also be used for a dead person too, where the situation seems to be of exceptional nature. Subsequently, in *Common Cause (registered society) v Union of India*<sup>12</sup> it was established that this right does not cease to exist with the end of one’s life. Thus, a deceased person should be provided with due regards in the same way it existed before his death. In the case of *Ashray Adhikar Abhiyan v. Union of India*<sup>13</sup>, the observations was that every person is entitled to the right to have a proper burial or cremation as per the religious norms and customs applicable to them. Moreover, the dignity of any deceased person shall be protected under the appropriate customary rules and practices. In *Vikash Chandra Guddu Baba v. The UOI & Ors.*, it was held that for a dead person who cannot be identified, he should be buried or cremated with proper dignity and such liability lies on the State.

In fact, it is the duty of the hospital to make proper arrangement of such burial or cremation. If the religion of the unidentified dead person can be recognized, then the burial or cremation must be performed in accordance with the customs and practices of the religion of the dead person. It is of utmost importance for a government to provide dignity to a person declared dead in a manner similar to that of a living person. Moreover, it is the duty of a government to give protection to even a dead person's rights and dignity and provide them with crematory rights in accordance with their religious customs and practices.

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<sup>10</sup> Kharak Singh v. State of U.P. 1963 AIR 1295

<sup>11</sup> P. Rathiram v. Union of India, 1994 SCC (3) 394

<sup>12</sup> Common Cause (registered society) v. Union of India, 2014 AIR SC 1556

<sup>13</sup> Ashray Adhikar Abhiyan v. UOI, AIR 2002 SC 554

The case of *Pradeep Gandhi Vs. the State of Maharashtra*<sup>14</sup>, recognised the right to have a proper burial or cremation as a fundamental right and the judgment asserted that no person should be denied the right to proper burial or cremation. Under any circumstances, such fundamental right, as provided under Article 21 of the Constitution of India cannot be infringed. The Calcutta High Court in *Vineet Ruia Vs the Principal Secretary, MOHFW, Govt. of West Bengal*<sup>15</sup>, held that the human beings, both living, and dead are entitled to be treated equally under Article 21 of the Constitution of India. In fact, in *R. Sameer Ahmed v. State of Telangana & Ors*<sup>16</sup>, the Telangana High Court expressed its disappointment regarding the way the dead bodies were being treated during COVID-19. It issued directions to the Government to arrange for the burial or cremation of the dead bodies with utmost dignity and respect. The Allahabad High Court in *Ramji Singh and Mujeeb Bhai Vs. the State of U.P. & Ors*<sup>17</sup> reaffirmed that Article 21 not only protects the rights of a human being when alive, but it also extends after his death. Thus, a deceased person is empowered with the right to dignity and respect. The last rites of the dead body must be performed in accordance with their religious customs and practices. In addition, in the honour of the deceased, the post-mortem should only be conducted as a last resort and only when necessary.

The first reported instance of Necrophilia was the case of 'Nithari killing'. This case shook the entire nation. It brought into the notice a very peculiar psychological aspect of human beings. In this case, carcasses of 16 persons who were found to be missing were discovered in a village named 'Nithari'. The remains were identified to belong to those missing persons. These persons were the migrant workers. The concerned village is situated about 20 km away from New Delhi. The Delhi police subsequently arrested Moninder Singh Pandher, and his cook Surendra Koli on the grounds of suspicion related to the death of a young girl. The investigation started. The State Police was initially investigating the case. However, the case came under the Central Bureau of Investigation (CBI). The accused Koli confessed his guilt so as to regain his conscience. He confessed that he used to rape, murder, and then commit the act of sexual intercourse with the dead bodies of kids and women. He pleaded to absolve his employer Pandher from the liability of the reported offences. Following this, a series of cases were filed against Koli and Pandher.

The trials for the cases continued over a long time in the various courts which included Special CBI Courts, Allahabad High Court, and Supreme Court of India. Both the accused were confined pending the investigation. However, the primary issue in the investigation was that the Police had a difficult time to charge the accused Koli for having sexual intercourse with the corpses. The courts, which have given their judgments in the cases pending against Koli, have declared him guilty, in most of the cases, for the commission of several other offences like murder, rape along with murder etc. However, in the absence of expressed criminalisation of necrophilia, the accused could not be convicted for the act of sexual intercourse with the dead bodies.

Therefore, it is evident that there is an urgent need to criminalise necrophilia. Not only necrophilia, the increasing cases of pedophilia and cannibalism should also not be ignored. After the case of Nithari was reported, certain similar cases were also reported from

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<sup>14</sup> Pradeep Gandhi v. the State of Maharashtra, 2020 SCC

<sup>15</sup> Vineet Ruia Vs the Principal Secretary, MOHFW, Govt. Of West Bengal, AIR 2020 Cal 308

<sup>16</sup> R. Sameer Ahmed v. State of Telangana & Ors (2009) 5 All 1 376

<sup>17</sup> Ramji Singh and Mujeeb Bhai V. State of U.P. and Ors, (2009) 5 All U1 376

all the parts of India. In Cyderabad, a beggar was raped. As a result of the brutal rape, she finally died. The accused continued to rape her even after the accused possessed the knowledge that the beggar has by then died.<sup>18</sup> In the case of Anil Kumar, he was charged with rape and murder. In the case, a dead woman was found to be maimed on the roadside by the accused.<sup>19</sup> There is no basis for terming the act of the accused the act of rape as the victim was already dead. For bringing an act under the definition of rape, there must be a living person. In this case the person was not alive. In the case of *State of Kerala v. Govindswamy* it was observed that the accused committed sexually assault of a girl who has fallen from the train and eventually was dead.<sup>20</sup> In another case, police, during the investigation of a rape and murder case in Mumbai, unearthed the fact that the accused strangled a girl with her jeans which resulted in her death. The accused then performed unnatural sex on the deceased. The Andhra Pradesh State Police, while investigating a number of cases of murder found out that the said accused is an infatuated necrophile who has intentionally caused the death of the numerous girls within few months.<sup>21</sup> In various cases, the accused unapologetically confesses that he has committed the act of necrophilia, after killing the deceased.<sup>22</sup> In Assam, an elderly man was alleged to have been committed the act of sexual intercourse with the body of a minor girl.<sup>23</sup> Similar incident was reported in Delhi about a 'psycho killer'. He was alleged to have strangled a man to death. Following this he maimed the arms and neck of the deceased with the help of a sharp knife to confirm the death. Finally, he sodomized the corpse of the deceased.<sup>24</sup> Two youths from Barabanki have been alleged for killing and then having sexual intercourse with the dead bodies of two elderly women, whom they killed.

There has also been reports of certain Ravinder Kumar, who was a daily-wage labourer, working in Delhi. He would walk miles through the slums of Delhi like a insane until he spotted a child. He would commit kidnapping the child from lawful guardianship, then rape the child and finally commit brutal murder. He committed the same offences against many children over a span of six years. He confessed to being liable of numerous rape and murder of minor across Delhi, Haryana and Uttar Pradesh. Among 38 cases, some of these were also cases of necrophilia.<sup>25</sup>

In Palghar, a shopkeeper committed murder of a young woman customer. After that he had sexual intercourse with her.<sup>26</sup> Similarly in West Bengal, a middle aged man, was alleged to have murdered minimum seven women and was found to have sexual intercourse with their corpses. He also has caused bodily injury to several others people. He was charged

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<sup>18</sup> Kondaveeti Venkatesh v The State of Telangana and Ors Writ Petition No.6088 of 2019

<sup>19</sup> Chirag Gothi, 'Man caught raping a dead body in Delhi, arrested' India Today (New Delhi 07 December 2016) accessed at 7 August 2023

<sup>20</sup> State of Kerala v Govindswamy [2013] ILR 2014 1 Kerala 141

<sup>21</sup> The Hindu Correspondent, 'Sordid details emerge after arrest of serial killer' The Hindu (Chittoor 25 August 2019) accessed at 7 August 2023

<sup>22</sup> Lorraine King, Man admits killing couple and their baby before having sex with mum's dead body, Mirror (Azamgarh Dec. 3, 2019, 1:18 PM) accessed at 7 August 2023

<sup>23</sup> The New Indian Express Correspondent, 'Assam man arrested for necrophilia' The New Indian Express (Guwahati, 22 May 2020) accessed on 7 August 2023

<sup>24</sup> The New Indian Express Correspondent 'Delhi: Bizarre case of necrophilia comes to light, suspect nabbed' (New Delhi, 25th March 2023) accessed on 7 August 2023

<sup>25</sup> India Today Correspondent 'Porn, child rape, murder, necrophilia: The making of Delhi's psychopathic killer' (New Delhi, 10th May, 2023) accessed on 7 August 2023

<sup>26</sup> The Editor, 'Palghar stunned by Necrophilia, a Man rapes woman's corpse' The Tribune (New Delhi, 04 July 2020) accessed on 7 August 2023

under Sections 302 (murder), 307 (attempt to murder) and Section 376 (rape).<sup>27</sup> Another case was reported in West Bengal which is popularly known as "Horror House" case. In this case, Partha De of the Robinson Street, had spent about a year with the skeletons of his late sister Debjani De and the skeletal remains of their two dogs. The accused was eventually charged with Sections 268 (public nuisance), Section 269 (negligent act likely to spread infectious disease) and Section 176 (omission to give notice or information to public servant by person legally bound to give it). The media reports and a section of experts opined that the accused have allegedly the necrophiliac tendencies which were apparent from the dubious diary entries of the accused.<sup>28</sup>

### III. CRIMINOLOGICAL PERSPECTIVE

Necrophilia should be criminalised in India. Every crime consists of two basic elements- actus rea and mens rea. Actus Rea consists of three following ingredients. For the purpose of Criminal liability, there must be an act or omission on the part of the wrongdoer. In case of necrophile, the act of necrophile is same as the act of rape. In case of rape, the acts like penetration of penis, insertion of any object into the vagina of victim etc. are necessary.<sup>29</sup> It requires a willed movement towards the commission. The circumstance of the conduct is the main point of distinction from rape. Rape is committed on the living person. In case of necrophilia, the person is dead. The consequence of the act definitely is the successful sexual pleasure of the accused. However, the victim has no opportunity to communicate consent. The victim is wronged as her right to dignity has been violated. Once the intended act is

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<sup>27</sup> 26 Santanu Chowdhury, I shudder every time I hear a knock on the door, The Indian Express, June 16, 2019.

<sup>28</sup> Saurabh Gupta 'Partha De, Man Who Lived With Sister's Skeleton For 6 Months Found Dead In Kolkata' (Kolkata, 21st February, 2017) accessed on 7 August 2023

<sup>29</sup> A man is said to commit "rape" if he--

- (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
- (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
- (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or
- (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:

First. Against her will. Secondly. Without her consent.

Thirdly. With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly. With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. With or without her consent, when she is under eighteen years of age. Seventhly. When she is unable to communicate consent.

Explanation 1. For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2. Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act: Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity. Exception 1. A medical procedure or intervention shall not constitute rape.

Exception 2. Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape; Code, I. P. (2015). Bare Act.



complete on the part of the accused, he becomes liable for punishment.

So far as the other element of crime is concerned, mens rea should be discussed in detail. This is an established fact that no act is per se criminal. The act becomes criminal once the person committing the act does it with a guilty mind. It is based on the maxim “Actus Non Facit Ream nisi set mens rea”.<sup>30</sup> However, there is no single state of mind that is prerequisite for the crime. The meaning of mens rea changes with the change of nature of the crime, circumstances for the commission of crime etc. In case of necrophilia, an intention to have forced sexual intercourse is evident. It is supplemented with the presence of knowledge of the state of the victim i.e., the victim is already dead and has no ability to resist or consent to the act of sexual intercourse. Thus, the offence of necrophilia requires a very pervert mind to be committed.

If we analyse the various criminological theories which are applicable to the necrophiles, we find the majority of the theories apply to them. According to the Choice Theory, it is believed that individuals make a choice to commit a crime, checking the scope of the act. They weigh the benefit against the punishment and decide whether to proceed or not. Likewise, the classical theory lays down the idea that people consider the benefits against the loss before they proceed with criminal act. When one infers that it is more advantageous to commit a crime, they indulge in such commission of crime. In the case of necrophiles, they are aware of the absence of law relating to necrophilia in the various legal regimes. They believe that it is better to commit the forced act with the dead rather than living person as there is no opportunity of resistance. In fact, some of them enjoy the act on the dead as compared with that of the living person. Thus, choice theory as well as the classical theory conveniently applies on them. Another theory known as the positivist theory lays down that the positivist rejects the idea that each individual makes a conscious, rational choice to commit a crime. Rather, there are certain individuals who have abnormal intelligence. Thus, they lack social acceptance. As a result of this or another, they tend to commit crime. This theory is the most acceptable in the application to the offence of necrophilia. Some of the necrophile commit the offence out of grudge against the victim. When the victim was alive, he could not grab the positive attention from the victim. Thus, after the death of the victim, the unfulfilled desires control the victim to commit the act of necrophilia. It cannot be denied that necrophile suffers abnormality in intelligence to a great extent which gives room for perversion. If again the strain theory is analysed, we find it has some application in necrophilia. The theory holds that individuals will choose a life of crime when they are excessively subject to strain, or when they do not possess the capacity to achieve the goals set by the society for them. Such goals may involve power, finance, or likewise. This seems to be a reasonable ground for the necrophiles to turn to this peculiar criminal act.

#### **IV. LEGISLATIVE RECOGNITION OF NECROPHILIA IN INDIA**

In the case of necrophilia, we need to refer a section under the New Zealand Crimes Act, 1961 which mandates two-year imprisonment to those who treat the dead bodies with disrespect.<sup>31</sup> In addition to proper burial or cremation, the duties also include handling human remains properly. It also criminalizes the improper and indecent handling of human remains, whether buried or not. In United Kingdom also there exists a similar mandate in the form of

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<sup>30</sup> Gaur, K.D. ed., 2002. Criminal Law and Criminology. Deep and Deep Publications. pp. 50-54

<sup>31</sup> Section 150 of the New Zealand Crimes Act 1961

the Sexual Offences Act 2003. Section 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007 also lays down the criminal liability in case of the commission of the act of necrophilia. In the USA, there is the absence of federal law which prevents the act of necrophilia. However, each state has their legislation. Necrophilia is considered as a Felony in Washington. However, in Texas, it is only a misdemeanour.<sup>32</sup> It is illegal to defile the dead as per the Canadian law. Canadian law makes such acts an offence whether the dead body is buried or not. It implies that it will still be an offence even if there has been no trespass by the offender in the burial ground. In California, necrophilia is currently not specifically prevented by law. There are several provisions in a number of provisions are included in the California Health and Safety Code that address the protection of dead bodies in general, but it is unclear whether such provisions also cover protection from sexual assault.<sup>33</sup>

India is one among the various countries which do not have any specific legislation for dealing with Necrophilia. For Necrophilia, the accused is charged of the offence under Section 297 which deals with Trespassing on burial places and Section 377 dealing with Unnatural sex under the Indian Penal Code 1860. The ingredients of Section 297 are as follows:

- The act must be done with the intention to wound the feelings or insulting the religion of any person.
- That act has to lead to commission of trespass in any area of worship or sculpture, or any region set aside for funeral rites or
- As a repository for the stays of the dead.
- Offering any indignity to the human corpse at the trespassed place.

Mens rea must be present in the form of Intention or knowledge to commit the offence. The primary requisite of Section 297 is the commission of act with the intention to cause injury or likely to cause injury to the feelings, or insult or likely to insult the religious feelings, of any person. The analysis of the basic meaning of necrophilia shows that the only intention of the commission must be to maim or use the corpse or its parts for gratification of lust. There is no mention of the need to involve the hurting of religion or religious sentiments. The act of trespassing is also not required for the necrophilic conduct. The act is intended only for self-gratification and self-pleasure. Thus the only justification available for convicting the necrophile is for trespassing the land before mutilating the dead body, which again is not very strong justification.

Section 377 of The Indian Penal Code 1860 has been decriminalized to a certain extent by the judgment in *Navtej Singh Jauhar & Ors v Union of India*<sup>34</sup>. At present, any consensual unnatural sexual intercourse between the couple, either heterosexual or homosexual are not prohibited by law in India. This Section mentions the phrase 'against the order of nature'. However, the phrase has not been explained in the Code. The ingredients of the provision are as follows

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<sup>32</sup> Ochoa, T.T. and Jones, C.N., 1996. Defiling the dead: Necrophilia and the law. *Whittier L. Rev.*, 18, p.539.

<sup>33</sup> Section 70 of the Health and Safety Code provides: "Any person who wilfully disinters, mutilates, or removes human remains from their place of interment is guilty of a felony".

<sup>34</sup> *Navtej Singh Jauhar & Ors v Union of India* AIR 2018 SC 4321

- There is commission of carnal intercourse.
- The intercourse is identified to have been made against the order of nature, and;
- There was absence of consent on the part of the either or both the parties to such carnal intercourse.

Section 2 (10) of the Indian Penal Code defines man as "a male human being of any age" and woman as "a female human being of any age". The provisions are silent whether Section 377 applies to persons who are dead or not. However, in absence of expressed prohibition of such application, Section 377 can be extended to dead men and women.

Section 499 of The Indian Penal Code 1860 deals with cases concerned with defamation. If a person by any means does anything mischievous in order to cause harm to any other person's, living or dead, reputation, then they would be punished under this section with imprisonment of up to two years or a fine or both. The requisite of this provision are as follows

- An imputation or gesture about a specific person or individual should be included in the remarks. It may be intended against more than one person.
- The words, signs, and imputations made by the person must be made with the intention to injure the reputation of an individual, or the accused must possess reasonable knowledge that his or her conduct is likely to such injury to constitute defamation.
- Whether such remark is defamatory or not is analysed with the help of a fact that to what extent it can be reasonably interpreted. This section does not make it necessary for the accused to cause harm to the reputation while the victim is alive. Hence Section 499 applies to the offence of necrophilia.

Section 503 of The Indian Penal Code 1860 deals with criminal intimidation. The essentials of the provision is

- It must be a positive act of causing threat to a person.
- It must be directed towards his person, property or reputation.
- It must cause him to do something which he is not legally bound to do or refrain him from doing something which he is legally bound to do.

Under this section, the accused may be punished with imprisonment of up to two years or a fine or both. The Indian Succession Act comes into application after the death of a person. This Act provides the right to every person to get their wishes respected and fulfilled even after their demise, through their heritage. The main purpose of this Act is to preserve the respect of the deceased after his or her death as much respect as is given when they were alive.

The Transplantation of Human Organs and Tissues Act 1994 safeguards each individual against getting their organs harvested without consent after the death of that individual. As per this Act, a consent form needs to be signed to acquire an individual's assent for the harvesting of the organ. Initially, it was done to forestall unlawful harvesting of one's organs as well as to check the market related to this unlawful conduct. The essential of this Act is that there must be different approvals for every such situation to put forth the case devoid of any sort of tampering.

## V. CONCLUSION

Necrophilia reflects the perversion of the necrophiles. Whether it would come under legal insanity or not is the issue. Under section 84 of IPC, which deals with a person of unsound mind, it has been stated that- "Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law"<sup>35</sup>. However, the most important ingredient of this defence is that the offender must not be aware of the nature and consequences of the act he is doing. From the above discussion, it is clear that the accused possess a clear idea about the implications of his act. In fact, his act is intentional and with proper knowledge.

In the States such as Louisiana, North Carolina, Oklahoma, and Kansas the ritual of sex with recently deceased people, i.e., corpses are recognised thus making necrophilia legal. Though necrophilia is not very common phenomenon among public, however, at present, most countries have stipulated laws against it. Some States have provided strong punishments for it. The rest of the States are yet to recognise its gravity as an offence. India falls in the latter category. Therefore, India must take immediate action to mandate a legal regime where necrophilia is recognised as a separate offence and severe punishment should be attached to it.

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