

NECROPHILIA AN OVERVIEW

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INTRODUCTION

Necrophilia refers to sexual attraction or activity involving with corpses. It's considered morally reprehensive and illegal in many countries. She killed herself because she was a victim of sexual abuse. But even in death, her body was not spared. Her soul must be, somewhere, crying out in pain. We live in a society that turns a deaf ear to women who are abused everyday, can we then, hear the cries of the women who are dead? I have never feared death, but today my biggest fear is dying; my body after my death." The term "necrophilia" is derived from the Greek words "philiōs" (attraction to/love) and "nekros" (dead body). It was coined by Joseph Guislain, a Belgian Alienist. Let us get into deeper knowledge about Necrophilia and its legal status in India.

KEYWORDS: Necrophilia, psychosexual disorder, paraphilia, law, sexually abuse and criminalization

HISTORICAL BACKGROUND:

Necrophilia been found in such a kind of behaviour that existed during ancient times, particularly in Egypt. The term necrophilia was coined by Belgian Alienist, Joseph Guislain, who first used it in a lecture in the year 1950. Also called 'Thanatophilia' or 'Necrolagnia', necrophilia is an ailment of sexual attraction to corpses. Necrophilia can be traced back to centuries ago. As a matter of fact, Greek historian Herodotus, while writing about ancient Egypt in his book *Historians*, stated that there was a culture in which the dead bodies of noble ladies were not immediately given to the embalmers, particularly of those who were extremely attractive and drew a lot of attention for their beauty while they were alive. These measures were taken out of concern that the embalmers would have mistreated the corpse. Thereby to avoid such sexual violation at the hands of embalmers, their dead bodies were given after being rotted three to four days after the death

Not only that, even Hittite law from the 16th century BC through to the 13th century BC explicitly permitted sex with the dead. Surprisingly one such instance was also

prevalent in Indian customs. Earlier, there existed a necrophilic tradition whereby on the demise of a virgin fiancée, before the burial, the man was to have sexual intercourse with his fiancée's dead body and deflower her in front of a priest.

Moreover, soldiers returning from wars were often accused of necrophilia. The conquering soldiers on the battlefield reportedly indulged in the performance of pederasty on their dead or dying victims to feel the anal spasms that happened just before death. Russo-Turkish War and the 1919–1926 Moroccan campaigns are examples of the same.

As far as the term "Necrophilia" is concerned, it was first mentioned by Joseph Guislain, a Belgian psychiatrist in 1850; however, it was Richard von Krafft-Ebing who in 1894 for the first time used the term "necrophilia" called it a "horrible manifestation of sadism

NECROPHILIA IN INDIA:

Indian laws are very much silent, or say, unclear in this regard in spite of barbarism that is associated with necrophilia, as, it must be noted that 'sex with corpses' is not explicitly stated in the Indian Penal Code, however the person convicted with the above offence can be

charged under section 297 and 377 of the Code. The present paper deal with necrophilia and laws related to it in some major developed countries in contrast with the weak, unclear and ambiguous Indian law in this regard.

Are Other Offenses Applicable?

Section 297 of the IPC makes it an offense to trespass on a burial ground or to cause indignity to a corpse. It reads: Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, commits any trespass in any place of the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, shall be punished with imprisonment... for a term which may extend to one year, or with fine, or with both.

A defendant who trespasses into a burial ground or causes indignity to a corpse will thus be liable to a term of imprisonment and/or financial penalties. But still, the elements of this offense would not be made out if the trespass or the act of causing indignity to a corpse was not accompanied by an intention to wound the feelings or insult the religion of any person, which may not be the case in many situations. Trespassing on burial grounds could be a precursor to an accusation of necrophilia, but, for section 297 to apply, it would need to be done with the intention of wounding or insulting religious feelings, and this might not always be the case.

LAW RELATED TO NECROPHILIA IN FOREIGN COUNTRIES

UNITED STATES OF AMERICA :

When laws of other countries are concerned, since we follow the common law system, let us start with the United States of America. USA does not have any federal law relating to necrophilia; it is left on the individual states to formulate the laws in this regard. Approximately forty out of fifty US states have some or the other version of a law that defines illegal actions with human corpses. There are four states viz:

Arizona, Georgia, Hawaii and Rhode Island that explicitly use the word necrophilia in their respective statutes and the remaining thirty-six states have an assortment of laws that point towards necrophilia, for which the punishments range between one year (in many states) to fifteen years (in Georgia) and twenty years (in Massachusetts). Also, the section 250.10 of the Model Penal Code (Official Draft, 1962) provides that it is a misdemeanor to treat corpses in a way that outrages ordinary family sensibilities. Where there is no federal law regarding necrophilia in US.

UNITED KINGDOM:

The Section 70 of the Sexual Offences Act, 2003 of the United Kingdom clearly makes it an offence for a person who intentionally sexually penetrates, knowingly or recklessly, any part of his body into any part of dead person. Punishment for such offence is imprisonment for a term not exceeding six months or fine or both. And, even though there is a provision related to necrophilia, the UK court does not seem to have applied it (at least in one case) in a case where the accused had confessed in the police interview to murdering his wife and then having sex with her dead body, however he was convicted only for her murder.

CANADA:

The Criminal Code of Canada, 1985 makes necrophilia illegal without specifically using the word necrophilia, penetration or any sex oriented word. The section 182 under Part V of the statute states “whoever ...behaves indecently or improperly or offers any indignity to the dead body or its remains is guilty of the offence and is liable to the punishment of imprisonment for a term not exceeding five years”.

CASE LAW RELATED TO NECROPHILIA :

A Bizarre Case on Necrophilia (2023)

In the research done throughout the world, Necrophilia is termed to be exclusively present in males. However, no such thing has been said regarding the victim. This case is the prime

example that a victim, as well as a perpetrator, can be a male. It clearly debunks any presumption that necrophilia only involves “female” as the victim. In this case, a “psycho killer” identified as Pervinder was arrested. The accused strangled the man that is the victim to death, chopped his arms and legs and then raped the dead body.

Karnataka Case on Necrophilia (2023)

This recent case of Rangaraju Vajapeyi v State of Karnataka has fuelled the ongoing debate over Necrophilia and its position in Indian Law. In 2015, a 21-year-old girl on her way home was brutally dragged by the accused (Ragranjan) to a nearby bush where he killed her after slitting her throat and then raped her dead body. The lower court charged the accused with murder and rape under sections 302 and 376 respectively. Consequently, an appeal was filed by the accused against the decision of the lower court. While maintaining the charge under Section 302, the high court acquitted Ragranjan from the charge of rape under Section 376.

It was opined by the court that one has to take into cognizance that a dead body cannot be called a human being or a person. Moreover, the court’s interpretation suggested that the offence of Necrophilia has the full potential to be inculcated under Section 297 which pertains to offering indignity to the human dead body by trespassing. However, this case could not be under the ambit of this section. Subsequently, owing to the absence of any provision in IPC which expressly penalise the rape of a dead body, the accused was not punished for “Necrophilia”

The above judgment is the reflection of the present scenario of the grotesque crime of Necrophilia in Indian Criminal Law. Due to such ignorance of the lawmakers, the wrongdoer’s acts of such bestiality, barbarity and savageness are left unpunished and even giving him a way out after the commission of such activities

CONSTITUTIONAL RIGHTS OF DEAD:

Corpses are not an alien subject. They are humans in their entirety. After being cremated, they cannot be treated as discarded objects and let be violated at the hand of beasts. Though there is no provision for the criminalization of Necrophilia, the Indian Constitution provides for the right to die with dignity. The Supreme Court in its landmark judgment of Parmanand Katara v Union of India, opined that the Constitution of India not only recognises the right to live with dignity but also envisages within the ambit of Article 21, the right to die with dignity.[22] Hence, the right to life, privacy and dignity which is integral to the living person extends to a dead person. This interpretation of Article 21 leads to the inference that the dignity of a dead person is to be respected and that the dead person should be given proper cremation according to their religious customs. Furthermore, the Allahabad high court in Ramji Singh and Mujeeb Bhai v. State of U.P. & Ors., reiterated that the corpse should be treated with respect equivalent to what he or she received throughout life and in order to preserve the dignity of the dead, unnecessary post-mortem of the body should not take place.[23] Similarly, Justice S. Vaidyanathan, said a dead person has the right to privacy and the souls put on rest for further immortal life should not be disturbed in the judgment of Amrutha v. The state of Kerala.

CAUSES OF NECROPHILIA :

1. Fear of rejection and power dynamics
- 2 . Psychological reasons- Individuals suffering from disorders such as sexual sadism, and antisocial personality disorder
- 3 . They find dead bodies satisfying their low self-esteem needs and a partner who will not get tired of them easily
- 4 . The necrophiliacs are often dreaded by the concept of rejection by the other party no matter whether the rejection is attributed to sexual intercourse or romantic relationships

5. They view a dead body as an object devoid of any control since corpses are incapable of rejecting or disagreeing or manipulating, it gives them the sense of being dominant.

PROS AND CONS :

Necrophilia, the sexual attraction or activity involving corpses, is universally condemned and illegal in most jurisdictions due to its numerous ethical, moral, and public health concerns.

Pros:

1. There are no ethical or moral pros to necrophilia. It violates the dignity and autonomy of the deceased, and it can cause psychological harm to the living involved.

Cons:

1. Ethical and moral implications: Engaging in necrophilia violates the fundamental rights and dignity of the deceased, who cannot consent to sexual activity.
2. Public health risks: Necrophilia poses significant health risks, including the potential transmission of diseases and infections to those involved.
3. Psychological harm: Participating in or being a victim of necrophilia can lead to severe psychological trauma and distress.
4. Legal ramifications: Necrophilia is illegal in most countries and can result in criminal charges, including desecration of corpses, sexual assault, and public health violations.
5. Social stigma: Engaging in necrophilia can lead to severe social ostracization and stigma, impacting relationships and personal well-being.

WAY FORWARD AND SUGGESTIONS:

It is imperative for the Government to consider the inclusion of a specific offense of necrophilia in Indian criminal law, as existing provisions may not cover acts amounting to necrophilia. As a solution, two possibilities can be proposed: either amending Section 377 of the IPC to

explicitly include acts involving dead bodies, or introducing a separate penal provision specifically targeting necrophilia. The suggested punishment would be imprisonment for up to 10 years (the minimum sentence for a rape conviction), accompanied by a fine.

Taking inspiration from the UK's Sexual Offences Act of 2003, which already recognizes necrophilia as an offense under Section 70, there is a need for India to learn from other countries' legal frameworks. Several countries such as Canada, New Zealand, and South Africa have already prohibited necrophilia through distinct legislation.

In conclusion, it is imperative for India to take swift action. By doing so, the country can make a resolute stand against this horrifying behaviour, ensuring justice and protection for the deceased and their families.

CONCLUSION:

It appears that one of the reasons for burning bodies after death in some cultures (most notably Hindus) or burying them deeply or in solid granite and marble tombs was to prevent their violation by necrophiles.

India falls under the lowest strata of the latter category of the countries since its laws in this respect are weaker and more unclear than others'. This weakness and unclearness has given rise to a deliberate doubt on sections 297 and 377 of the present Indian Penal Code as to whether it makes necrophilia a criminal offence or not, keeping in view the increasing incidences of necrophilia, it is the high time, the legislature shall clarify the stand by taking an action to criminalise it either by amending the Indian Penal Code or by inserting a new section to it. Unless, of course, the legislature is not waiting for an incidence of the degree of Nirbhaya rape incidence to occur in this regard and brings the public on roads again to mourn, protest and demand for a set of strict laws against necrophilia.

The ambiguity instituted through this significant gap in the legislative system has caught the

attention of the masses, placing pressure on the State to address this major defect in the system.

The recommendations made by the court in Rangarajan case must be implemented across the country as a preventive measure against necrophilia. An amendment must be made to either section 377 or section 375 to incorporate abuse of the dead, or the State must constitute a new provision within the Indian Penal Code that criminalizes necrophilia. The drawbacks in section 297 must also be rectified to include any person who violates a body, along with a significant increase in the sentence of imprisonment.

These legislative changes can be incorporated with reference to the criminalization of necrophilia in other countries such as the United Kingdom, Canada, and New Zealand. With cases of necrophilia coming to light across the country, the State must adapt and accommodate a law against necrophilia on par with the principles of morality held by society.

