

SOCIO-LEGAL ASPECTS OF NECROPHILIA IN INDIA AND UNITED STATES OF AMERICA: A COMPARATIVE STUDY

AUTHOR – VARSHA BHAUSAHEB AROTE, STUDENT AT N. B. THAKUR LAW COLLEGE, NASHIK, SAVITRIBAI PHULE PUNE UNIVERSITY, PUNE, MAHARASHTRA.

BEST CITATION – VARSHA BHAUSAHEB AROTE, SOCIO-LEGAL ASPECTS OF NECROPHILIA IN INDIA AND UNITED STATES OF AMERICA: A COMPARATIVE STUDY, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 4 (3) OF 2024, PG. 445-450, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

This research is a comparative analysis of necrophilia between India and the U.S.A. These two countries' legal, artistic, and social confines differ greatly. In the U.S.A, where necrophilia is a felonious offense distributed under the laws related to the irreverence of the corpses, having concentrated on the postmortem concurrence issues. In India, no separate law has explicitly defined necrophilia but it comes under section 301 of Bhartiya Nyaya Sanhita, earlier section 297 of Indian Penal Code. Necrophilia is no new conception, as both countries have seen cases of necrophilia and have dealt with the cases with or without any unequivocal laws. The research paper not only claws into the legal perspective of both countries but also includes the social and ethical aspects of necrophilia.

KEYWORDS : necrophilia, crime, corpses, disorder, dignity, sexual offences.

INTRODUCTION

'Necrophilia' originates from two Greek words, 'Nekros' which means dead body, and 'Philips' which means love or desire. Therefore, necrophilia is a kind of paraphilia where a human is sexually attracted towards a dead body to have sexual intercourse with it. A necrophiliac person has a strong desire to have sexual intercourse with a corpse rather than committing murder and might just dig up the grave and perform sexual acts with the dead body. According to several psychologists, the main reasons behind such Necrophiliac acts may be the following:

1. Fear of rejection from living ladies when asked for sexual favors or indeed the fear of approaching ladies.
2. Having a history of romantic/social/ domestic traumatic gestures.
3. Some may be devoted lovers who want to reunite with their dead mate or some may deny that their mate is no more.

4. Some may like having sexual intercourse with unresisting mates wherein similar dead bodies are perfect as they no way resist.

NECROPHILIA: A TYPE OF PARAPHILIA

Paraphilia refers to a disorder when a person gets a sexual thrill from any unusual object or has unusual sexual fantasies. Necrophilia is a type of paraphilic disorder' as mentioned by the World Health Organization, the Diagnostic and Statistical Manual of Mental Health Disorder as well as the International Classification of Diseases. As noted by Aggarwal, Necrophilia can be viewed as a stage-alone term or as a marquee term incorporating a variety of typologies, or it may be seen ' in association with several other paraphilias, namely Vampirism (the practice of drinking blood from a person or beast), Necrophagia (eating the meat of the dead), Cannibalism, Necropedophilia (sexual magnet to the corpses of children), Truculence and Necrozoophilia (sexual magnet to the bodies of

or killings of creatures – also known as Necrobestiality).

Necrophilia has been classified into about 10 sorts depending on the gest and choice of necrophile :

(1) Class I(part player) – In this type, the necrophile asks a living mate to act dead at the time of intercourse;

(2) Class II(romantic necrophile) – In this type, the necrophile preserves the dead body of a partner, mummifies it, and sleeps with it;

(3) Class III(necrophilic fantasizer) – In this type, the necrophile visits cemeteries and masturbates in the presence of the dead(4)

Class IV(tactile necrophile) –In this, the necrophile touches sexual parts of a dead body to get stimulation;

(5) Class V(fetishistic necrophile) – In this type, the necrophile preserves parts of the dead body, for illustration, a bone, and wears it like an amulet ;

(6) Class VI(necromutilomaniac) – In this type, necrophile mutilates the dead body and masturbates over it;

(7) Class VII(opportunistic necrophile) – In this type, necrophile performs intercourse with a dead body opportunistically, for illustration, mortuary attendants at night;

(8) Class VIII(regular necrophile) – In this type, necrophile digs up dead bodies from graveyards and perform intercourse;

(9) Class IX(sanguine necrophile) – In this, the necrophile murders to perform necrophilia;

(10) Class X(exclusive necrophile) – In this type, necrophile cannot perform intercourse with the living; intercourse possible ' only with the dead.'

One of the common provocations behind why a necrophilic is sexually attracted to a corpse is the notion that they enjoy an object or sexual mate that doesn't repel or reject them. Ellis(1903) in her book named " Studies of Psychology of Book " claimed that necrophilia and algolagnia(sexual pleasure deduced from pain,

especially around amorous areas) were interrelated.⁷⁹³

ETHICAL DISCREPANCY

INDIA:

In India, a country where ethnic and religious beliefs play an important part, death is approached with reverence, and conduct against dead bodies is viewed with strong social disapprobation.

As performing sexual acts with dead bodies is considered taboo, a lack of understanding and mindfulness is seen in India, leading to the ignorance of similar types of offenses. The Supreme

Court further emphasized the significance of upholding and securing the quality of the dead in the case of Ashray Adhikar Abhiyan vs. Union of India⁷⁹⁴. The court honored the importance of esteeming

homeless individuals' religious beliefs and practices during their burial solemnities. The court also emphasized that the quality of the dead must be accorded the same significance as the quality of the living.

U.S.A:

This thing is relatively different in the US where necrophilia is stigmatized and also seen as a counterculturist

act associated with internal illness or also stated as moral corruption. But since the media there portrays sensationalizes similar cases it brings mindfulness among people impacting public perception.

LEGAL ASPECTS IN BOTH COUNTRIES

INDIA:

The Constitution of India while it's silent about necrophilia, still has included the right to equality indeed for dead bodies under Article 21. In the case of Paramananda Katara v. Union of India⁷⁹⁵, it was held that " Article 21 of the Constitution casts the obligation on the State to

⁷⁹³ Anil Aggarwal , A New Classification of Necrophilia (2008)

⁷⁹⁴ Ashray Adhikar Abhiyan vs. UOI [2002] AIR 2002 SC 554 .

⁷⁹⁵ Paramananda Katara vs. UOI 1989 AIR 2039 , 1989 SCR (3) 997 , 1989 SCC (4) 286 , JT 1989 (3) 496 1989, SCALE (2) 380

save life and it extends not only to living but also to his dead body". It was also latterly repeated in the case of Ramji Singh and Mujeeb Bhai v. State of U.P and Ors.⁷⁹⁶, that under the dimension of Article 21 the word " person " ensures the right to live with equality extends to his dead body.

India has viewed numerous cases of necrophilia in the once decade, but there are no specific correctional laws against similar crimes. This makes it difficult to correct the malefactors and find a proper way to deal with necrophilia.

According to many of the reports, most of the cases of Necrophilia in India are being appertained under the provisions of Section 297 of IPC. Before the introduction of BNS, IPC involved section 297 which talked about the trespassing on burial places which further talked about indignity to the human corpses . The exploration in this type of case is 'finite'. In India, in cases of necrophilia, the liability of a person can only be caught by Section 297 of the Indian Penal Code, 1860 ,which was later replaced in BNS by section 301. India has different kinds of laws to cover different communities from sexual abuse and offenses similar as the Protection of Children against Sexual Offences Act, 2012, Human Rights Act, 1993, Section 67 of the Information Technology Act, 2000, The Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) Act, 2013, Juvenile Justice(Care and Protection of Children) Act, 2015, also the Sections furnishing for punishment of rape and other offenses related to sexual abuse in the Indian Penal Code, 1860. But none of the laws give for the protection of the dead or their dignity.

According to some research works in India, the following measures can be taken to help the abuse of corpses as well as other paraphiliac cases:

1) Preface of law that

will ensure the recuperation of persons committing sexual abuse, sexual penetration, or any other kind of abuse of the dead and also to give proper psychiatric treatment for the necrophiliacs.

- 2) Training of police authorities to deal with persons with any similar paraphilic diseases and also about their detention and ways to communicate with similar malefactors.
- 3) Establishment of different hospitals to treat necrophile malefactors.
- 4) The rights of the dead, i.e. the Right to decent burial and the Right not to get disturbed in any manner shall be saved.
- 5) Expansive and nonstop exploration shall be conducted to understand and deal with necrophiliacs.

U.S.A:

Unlike India, there are no civil laws against necrophilia. Still, legislation on Necrophilia can be seen as the action of the civil countries of the U.S.A. Roughly, forty out of fifty countries in the United States have laws governing felonious exertion in volving dead bodies. Four countries, namely Arizona, Georgia, Hawaii, and Rhode Island, specifically use the term necrophilia in their bills, and the other thirty-six countries have multiple necrophilia bills with penalties ranging from one time(in several countries) to fifteen(in Georgia) and twenty(in Massachusetts).

Model Penal Code criminalizes the running of a corpse in a manner inconsistent with the normal sensibilities of the family; Section 70 of the Sexual Offenses Act of 2003 specifically states that it's a felonious offense when a person deliberately or recklessly sexually penetrates any part of their body into any part of a dead body. The penalty for this crime is imprisonment for not further than six months, or a fine, or both.

Rhode Island General Laws(R.I.Gen. Laws) section 11- 20 state that any person who performs the act of first-

⁷⁹⁶ (2010) ; PIL.NO. 38985 of 2004

degree sexual assault upon a dead mortal body shall be shamefaced of the crime of necrophilia. Any person condemned of the crime of necrophilia shall be penalized by imprisonment for not lower than one nor further than ten (10) times and may be fined in a quantum not to exceed ten thousand dollars (\$ 10,000).

Three general kinds of statutes become identifiable through examining the laws (or absence of laws) in all 50 states. These three kinds of laws are best described as (1) abuse of a corpse laws, (2) necrophilia laws that explicitly prohibit sexual activity with a dead body, and (3) unnatural acts or crimes against nature laws.

CASES RELATED TO NECROPHILIA IN INDIA AND U.S.A

INDIA:

The lack of adequate constitutional safeguards against necrophilia has been highlighted by a recent Karnataka High Court judgment, causing a furor among citizens. In the case of Rangaraju v. State of Karnataka⁷⁹⁷, a 21-year-old woman was returning home after her class when she was dragged to a bush where the accused slit her throat. It was further proved that the accused then proceeded to rape her corpse. On the evidence presented, the Sessions Judge convicted the accused for the murder and rape of the victim.

The case which went on appeal, was heard by a Division Bench which upheld the conviction of the accused on the charge of murder but discerned flaws in the single Judge's conviction for rape, which led to the acquittal of the accused. The bench discussed whether the raping of a corpse would attract the provisions of section 376 and, ultimately, answered in the negative.

The bench discussed provisions that brushed upon necrophilia but observed that none of these provisions had explicitly addressed the

offense of necrophilia and thus, could not be applied. The court also drew parallels to various other countries that have already provided for this offense in their legislation. The court, inter alia, considered provisions of the Sexual Offences Act of the UK which per se includes necrophilia and makes the penetration of a corpse an offense, whether done knowingly or recklessly. Further, provisions of the Criminal Code of Canada were also discussed. Albeit similar to the provisions of Section 297 of the IPC, the provision holds a maximum imprisonment of five years, thus enforcing better deterrence of the crime.

Another terrible case related to necrophilia is the 2006 Noida serial murders (also known as Nithari serial killings)⁷⁹⁸ (2006). This case was the rarest of rare cases in the history of India. The 'Nithari' case came to light in 2006 when eight dead bodies were found in a drain of one house in Noida. Two persons were suspects in this case (i) Moninder Singh Pandher (proprietor of the house) and (ii) Surinder Koli (domestic help of accused (i)). Further corpses were set up after the investigation, Narco-analysis of the two accused was done and the two accused were transferred to CBI inquiry for 14 days in 2007. After this, CBI gave a clean virgin to accused (i) but accused (ii) was criminated as a cannibal and was charged with rape of 20 years old girl. Accused (ii) was charged with Hijacking, force, and Murder. Further various charge sheets were filed against the accused (i). In 2009, the trial court sentenced both the accused to death, further the Allahabad High Court confirmed the death judgment of the accused (ii) and acquitted the accused (i). But in 2010, the Supreme Court of India upheld the death judgment of both the accused. After this, accused (ii) entered several death rulings from the Supreme Court, and in 2017, again both

⁷⁹⁷ Rangaraju vs. State Of Karnataka (2015), CRL.P 7002 of 2015

⁷⁹⁸ CR NO. 838 of 2006

the accused were set up shamefaced for the serial rape and murder cases and were sentenced to death. Later, in 2023, the Allahabad High Court acquitted them citing a lack of satisfying substantiation other than the admissions of the Accused.

U.S.A:

The principal evidentiary issue involving necrophilia is whether it is an error to identify the defendant in a criminal case as a necrophile or to introduce evidence that whether the defendant has committed such acts of necrophilia when sexual contact with a dead body does not constitute an essential element of the crimes charged. To be admissible, evidence of necrophilia must be relevant to a material fact. Evidence that is not related to a material fact is not admissible. In West v. State⁷⁹⁹, it was held by the Mississippi Supreme Court that it was an error to permit the prosecution's expert witness to introduce a lecture on a psychosexual disorder he named 'necrophilia'. In this case, Dr. Galvez was called to swear concerning his necropsy of the victim and to establish that the victim had been sexually assaulted. The prosecution then asked Dr. Galvez "whether or not there is a term for people who seek out or enjoy sex with people that are dead." After a defense objection was overruled, Dr. Galvez was permitted to describe mild and severe forms of necrophilia and to explain that "the desire to control" was characteristic of both necrophilia and other forms of sexual assault. In the appeal made thereafter, the Court held that the testimony was inadmissible on two rounds. The court held that the prosecution had "violated its duty to provide West pre-trial discovery of Dr. Galvez' necrophilia theory and that this violation was not cured by ranting the defense, a half-day recess before cross-examining. Further, the Court also held that the testimony was inadmissible in the absence of testimony that West was suffering from

necrophilia and that the disorder reasonably explained or produced his behaviour. The court interpreted that "evidence which only describes the characteristics of the typical offender was immaterial as to whether the defendant committed the crime in question.

The bench also called for new measures to prevent the vile act of necrophilia. Such as the installation of CCTV cameras across morgues and private hospitals in the state and increasing the efficiency and security in producing clinical logs and storing information. The recommendation also included the institution of a periodical cleaning system. The Court also emphasized on the sensitization of staff so that the dignity of the dead is preserved.

Another case of David Fuller, a necrophiliac serial killer can also be mentioned here. David Fuller, who's formerly serving a whole life judgment for beating and strangling two young ladies, Wendy Knell and Caroline Pierce, to death before sexually assaulting them in two separate attacks in Tunbridge Wells, Kent, in 1987. The killer had also mugged himself abusing corpses in the now-closed Kent and Sussex Hospital and the Tunbridge Wells Hospital, in Pembury, where he'd worked since 1989. He contended shamefaced to the two murders and about 44 charges relating to 78 victims in mortuaries at Maidstone and Tunbridge Wells NHS Trust between 2008 and November 2020. Latterly, he also admitted the abuse of the corpses of 23 dead women between 2007 and 2020. Extensive examinations by Kent Police have led to 13 of these 23 further victims being formally linked. Still, it has not been possible to establish the individualities of the other 10.

CONCLUSION AND SUGGESTIONS :

The paper aims to differentiate between India and the U.S.A. in terms of necrophilia cases in ethnic, social as well as legal aspects. Necrophilia being an understudied disorder needs deep research for knowing its criminal

⁷⁹⁹ 361 U.S. 118 (1959)

and psychological position. As necrophilia is a medical issue as well as an issue related to crime and criminology, it is hoped that curative measures such as specific legislation and proper psychiatric treatment methods shall be brought with preventive measures. It is suggested that more study has to be done in this field. Necrophilia should be studied as a psychosexual disorder as well as a crime. Specified legislation with punishments and rehabilitation procedures relating to necrophilia must be introduced. Awareness among the public is required so that it can be diagnosed at an earlier stage and also for the avoidance of the crime arising thereafter.

REFERENCES :

1. Neelakshi Bhaskar (2020).Necrophilia Legal Perspective.International journal of legal science and innovation [ISSN 2581-9453]Vol.2 Iss.2.
2. Anil Aggrawal (2008).A new classification of necrophilia. Journal of Forensic and Legal Medicine 16(2009)316-320.
3. Shubhankar Paul (2023). CRIMINALIZING NECROPHILIA: THE NEED OF THE HOUR. International Journal of Creative Research Thoughts [ISSN:2320-2882]Vol. 11, Iss.9.
4. Tyler T. Ochoa and Christine Jones, Defiling the Dead: Necrophilia and the Law, 18 Whittier L. Rev. 539 (1997),
5. Necrophilia, Brief Review and Case Report, by Franklin S. Klaf and William Brown.
6. 'An analysis into the laws governing Necrophilia in India given the decision in Rangaraju v. State of Karnataka'. Available from: <https://vidhilegalpolicy.in/blog/an-analysis-into-the-laws-governing-necrophilia-in-india/>
7. 'Beyond the Grave: India's Legal Landscape'. Available from: <https://ohrh.law.ox.ac.uk/beyond-the-grave-addressing-necrophilia-in-indias-legal-landscape/>
8. Right of the Dead: Analyzing the Legal Framework for Necrophilia in India. Available from: <https://criminallawstudiesnluj.wordpress.com/2023/08/23/right-of-the-dead-analysing-the-legal-framework-for-necrophilia-in-india/>
9. Necrophilia: An Analysis From Legal Perspective. Available from: <https://theamikusqraie.com/necrophilia-an-analysis-from-legal-perspective/>
10. Necrophilia and its legal status in India. Available from: <https://www.deccanherald.com/india/explained-necrophilia-and-its-legal-status-in-india-1225055.html>
11. Abuse of a corpse: A brief history and re-theorization of necrophilia laws in the USA. Available from: <https://www.tandfonline.com/doi/full/10.1080/13576270801954518?needAccess=true>
12. Necrophilia: A Complex Intersection of Crime and Psychological Disorder. Available from: <https://jiafm.in/index.php/jiafm/article/view/429>
13. The psychology behind Necrophilia. Available from: <https://www.psychologs.com/the-psychology-behind-necrophilia/>
14. Understanding the Psychological and Societal Implications of Necrophilia – A Comprehensive Analysis. Available From: <https://theamikusqraie.com/understanding-the-psychological-and-societal-implications-of-necrophilia-a-comprehensive-analysis/>