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NECROPHILIA: A FORENSIC AND CONSTITUTIONAL ANALYSIS OF A TABOO DISORDER

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ABSTRACT

This research paper explores necrophilia, a rare and extreme paraphilic disorder characterized by an individual's sexual attraction to or engagement with corpses. The study primarily focuses on the psychological aspects of necrophilia, including the underlying causes and mental health implications associated with this behavior. In addition to the psychological perspective, the paper also examines the legal dimensions of necrophilia, reviewing relevant international laws, judicial interpretations, and significant case laws from various jurisdictions. Furthermore, it analyzes the constitutional context, particularly in relation to the right to die with dignity, and considers how this right intersects with issues arising from necrophilic acts. Through this multidimensional approach, the paper aims to provide a comprehensive understanding of necrophilia from both legal and psychological standpoints.

Necrophilia: Necro has derive from the Greek word 'nekros' which means dead and philia means love or attraction, there Necrophilia is a mental disorder where a person gets sexual gratification from corpse, it is also associated with other disorder like extreme fetish and psychopaths.⁴⁷⁰

"Necrophilia is classified as a paraphilia by the **World Health Organization (WHO)** in its International Classification of Diseases (ICD) diagnostic manual as well as by the American **Psychiatric Association in its Diagnostic and Statistical Manual (DSM)**."⁴⁷¹

Symptoms of Necrophilia:

- When a person gets **persistent sexual fantasies** from a dead person body or corpses.
- When a person **robs the grave** and try to have sexual intercourse with it, or just try to be near or get access to dead bodies in general.

- Some people associated with this disorder also often found to **preserve the body parts** of that of other.
- They are more often disconnected with that of living beings and are more often associated with dead bodies
- There is a lack of remorse or guilt they are more likely to have their own reasoning.

Anil Aggrawal's "A new classification of necrophilia" was published in 2008. In the paper, he stated that there are at least 10 different types of necrophiliacs. The following is a brief summary of the three types of necrophilia:⁴⁷²

Table 4: Types of Necrophilia

➤ Causes of Necrophilia:

- Mental disorder:** Most of the people who suffers from Necrophilia also has some personality or mental disorder like Anti personality disorder(ASPD) or are psychopaths.

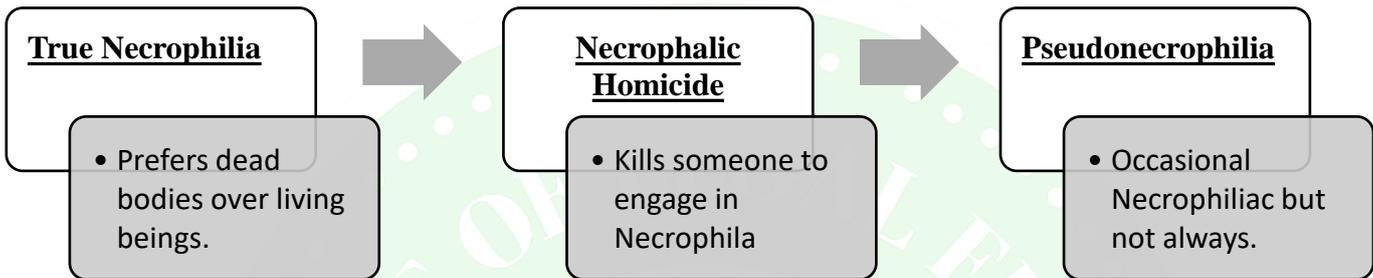
⁴⁷⁰ <https://psychologyfor.com/necrophilia-characteristics-causes-and-treatment/>

⁴⁷¹ <https://ijlsi.com/wp-content/uploads/Necrophilia-Legal-Perspective.pdf>

⁴⁷² <https://backedbylaw.in/post/legal-status-of-necrophilia>

b) Some of them has **fear of rejection** therefore the accused try to make contact with such things where he cannot face that thing therefore they prefer doing such offenses where they cannot face the resistance or rejection.

bestowed upon both citizens and non-citizens. Courts have addressed the right to die with dignity in various landmark cases such as Gian Kaur and Aruna Shanbagh. The judiciary has consistently underscored that the Right to Life and the Right to Die with Dignity are inherently interconnected. Through numerous verdicts, the



c) **Childhood abuse:** people who has face the childhood trauma or abuse, when they grow up occasionally find themselves doing out of law things like this.

courts have emphasized the significance of an individual's final resting place and the dignified treatment that should be accorded posthumously.

d) **Brain abnormality:** people who suffer injuries or not proper development in limbic system which is responsible for emotions and sexual arousal, also they can also develop sexual conditioning where they feel aroused by dead people, because they get pleasure from death.

In **Paramanand Kataria, Advocate v. Union of India & Others (1995)**,⁴⁷⁴ "the Supreme Court of India implied that the protection of the right to life and dignity extended not only to living people but also to the deceased."⁴⁷⁵

In **Ramji Singh Mujeeb Bhai v. State of Uttar Pradesh and Others (2009)**,⁴⁷⁶

Necrophilia and its Legal Perspective in India:

The incidence of necrophilia is on the rise in recent times, highlighting the urgent need for comprehensive legislative measures to address this issue, especially in light of the disturbing incidents that occurred during the COVID-19 pandemic. At present time in India there is no direct provision which deals with Necrophilia but there are some associated provisions which can tackle with this offence.

"Person" in Article 21 assures a person's right to live with dignity also applies to his deceased corpse, which should be treated with the respect he would have earned if he had been alive."

"The dead cannot cry out for justice; it is the duty of the living to do so for them."⁴⁷³

Justice Prafulla Chandra Pant, Acting Chairperson of the National Human Rights Commission (NHRC), recommended "that legislation be enacted to protect the dignity of a dead body, observing that the protection of the rights of dead bodies stems from the recognition that the right to life, fair treatment, and dignity, derived from Article 21 of the Indian Constitution, extends not only to living persons but also to their dead bodies. The state must

Article 21 of Indian Constitution: Right to Die with Dignity:

The Indian constitution, particularly Article 21, serves as a compendium of fundamental rights

⁴⁷⁴ (1995) 3 SCC 248

⁴⁷⁵ <https://backedbylaw.in/post/legal-status-of-necrophilia>

⁴⁷⁶ ibid

(PIL) NO. - 38985 Of 2004

⁴⁷³ Lois McMaster Bujold, author of the quote

defend the rights of the deceased and prohibit criminality over the dead corpse in both natural and unnatural deaths.⁴⁷⁷

The Transplantation of Human Organs Tissues Act, 1994 (THOTA)⁴⁷⁸ is a legislation specifically brought to protect the dignity of the dead person. The act provides for protection of the right to preserve the human organs or tissues or both from being transplanted without consent.⁴⁷⁹

Dr. D.Y.Chandrachud, in **Common cause v. Union of India**:⁴⁸⁰

"Life and death are inseparable. Every moment of our lives, our bodies are involved in a process of continuous change. Millions of our cells perish as nature regenerates new ones. Our minds are rarely, if ever, constant. Our thoughts are fleeting. In a physiological sense, our being is in a state of flux, change being the norm. Life is not disconnected from death. To be, is to die. From a philosophical perspective, there is no antithesis between life and death. Both constitute essential elements in the inexorable cycle of existence."⁴⁸¹

Section 301 of Bhartiya Sanhita, 2023:

"Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass any place set apart for the performance of funeral rites or **as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies,** shall be punished with imprisonment of either description for a term

which may extend to one year, or with fine, or with both."⁴⁸²

This particular provision deals with some drawbacks the very first being that it is directly not associated with the act of Necrophilia it set forth the very meager punishment to only those who tries to trespass the resting place of the dead, but doesn't deals with the horrifying acts the accused indulge with the dead body.⁴⁸³

⁴⁸⁴Section 377 of Indian Penal Code dealt with Unnatural Sex which criminalized those who indulged in an adulterous relationships, bestiality or sodomy etc. Since necrophilia is an act of having sex with dead bodies it could have attracted this provision but with the introduction of new criminal laws in Bhartiya Sanhita this particular provision is omitted.

Similarly, when we delve into the provisions of **Rape outlined in sections 63 to 71 of the Bhartiya Naya Sanhita, 2023**, we find that these stipulations do not encompass the offense of necrophilia. The definition explicitly refers to individuals as "man" and "woman," which, in legal terms, pertains to living beings of any age and not deceased. Consequently, the scope of the law does not extend to acts involving the deceased.

International Perspective on Rights of Dead:

Human Rights Resolution 2005/26, UN Resolution (United Nations) recognizes the Rights of the dead and the guidelines under this convention provides proper handling of dead human remains, in the UN's Inter-Agency Standing Committee's operational guidelines on Human Rights and Natural Disasters¹⁸ recommends the proper return of the dead person's remains to their relatives and measures should be taken for recovery of human remains.⁴⁸⁵

⁴⁷⁷ <https://backedbylaw.in/post/legal-status-of-necrophilia>

⁴⁷⁸ Transplantation of Human Organs Tissues Act, 1994, No. 42, Act of Parliament, 1994 (India)

⁴⁷⁹ <https://ijlr.com/wp-content/uploads/2024/01/THE-LEGAL-PERSPECTIVE-OF-NECROPHILIA-IN-INDIA-AN-ANALYTICAL-STUDY.pdf>

⁴⁸⁰ AIR 2018 SUPREME COURT 1665

⁴⁸¹ <https://backedbylaw.in/post/legal-status-of-necrophilia>

⁴⁸² 301 of Bhartiya Sanhita, 2023.

⁴⁸³ <https://vidhilegalpolicy.in/blog/an-analysis-into-the-laws-governing-necrophilia-in-india/>

⁴⁸⁴ <https://www.drishtiias.com/daily-updates/daily-news-analysis/delhi-hc-questions-missing-provisions-for-unnatural-sex-in-bns-2023>

⁴⁸⁵ <https://ijlr.com/wp-content/uploads/2024/01/THE-LEGAL-PERSPECTIVE-OF-NECROPHILIA-IN-INDIA-AN-ANALYTICAL-STUDY.pdf>

Humanitarian law, article 130(1) of the 4th Geneva Convention “provides for the member states

to ensure “graves are respected, properly maintained, and marked in such a way that they can

always be recognized”.⁴⁸⁶

United Kingdom (UK), section 70 of the Sexual Offences Act, 2003⁴⁸⁷

The above provision makes criminal liability on an accused who does a penetrated sexual offence with a dead body punishing him for an imprisonment for 2 year and fine.

Similarly in Canada, “**Section 182 of the Criminal Code of Canada, 1985** which makes the act of Necrophilia punishable under law and in Canada the maximum punishment being 5 years. This law in Canada appears to be similar to be section 297 of the IPC but they are not identical as this law has broaden the scope of area of committing the act as well as not restricted itself like in the section 297.”⁴⁸⁸ “The **United States** does not have any Federal Laws related to necrophilia but they have left it on individual states to decide in this regard. For example: Florida in U.S.A penalizes necrophilia as a second-degree felony, Arizona penalizes necrophilia as class 4 felony, Hawaii penalizes necrophilia under misdemeanour, Alaska penalizes necrophilia as class A misdemeanour. Likewise, other states in U.S.A also have their own provisions to deal with Necrophilia.”⁴⁸⁹ Law is a dynamic and ever-evolving field that adapts to the changing demands of society. As crime rates increase, the nature of offenses also undergoes transformations. It is imperative to stay abreast of the times and address heinous acts perpetrated against deceased women through appropriate legislation. India must not lag behind in enacting laws to address such

atrocities. It is high time and a pressing need of the hour to address these offenses effectively.

➤ **Neelkanth @ Neelu Nagesh vs State of Chhattisgarh and connected matters**⁴⁹⁰

A 9 year old girl was raped by Nitin Yadav and than murdered the co-accused (Neelkanth) who helped the main accused to dispose off her body before burring her body, raped her dead body. On which the petition was filed by mother on victim. Hearing all the facts and circumstances it was difficult for the High Court to give verdict against Neelkanth who raped her after her death. As the court stated that the POCSO Act does not recognizes crime against dead and it is not the case of rape but Necrophilia, which is not a crime in Indian Penal Code yet.

*“There can be no disagreement on the issue that dignity and fair treatment is not only available to a living man but also to his dead body and every dead body is entitled for a respectful treatment but the law as on date has to be applied to the facts of the case and none of the offences as prayed by the learned counsel for the objector can be imposed upon the appellant-Neelkanth @ Neelu Nagesh.”*⁴⁹¹

➤ **THE STATE OF KARNATAKA vs. RANGARAJU @ VAJAPEYI**⁴⁹²

In this case a 21 Year old women’s dead body was raped by the accused on which the Karnataka High Court acquitted the accused saying that it is not considered as rape as for attracting the provisions of Rape one should be alive. Aggrieved by the decision party file a Special Leave petition in Supreme Court and court reiterated the same saying that it is not rape it is an act of Necrophilia and India doesn’t have a law to address the same therefore dismissing the petition.

The karnataka High Court also observed: “*The High Court held that sexual intercourse on the*

⁴⁸⁶ Geneva Convention IV, UN Convention (United Nations)

⁴⁸⁷<https://ijlr.com/wp-content/uploads/2024/01/THE-LEGAL-PERSPECTIVE-OF-NECROPHILIA-IN-INDIA-AN-ANALYTICAL-STUDY.pdf>

⁴⁸⁸ibid

⁴⁸⁹T. Ochoa T and Jones C, “ Defiling the Dead: Necrophilia and the Law, 18 Whittier L. Rev. 539 ” accessed August 25, 2020

⁴⁹⁰2024 LiveLaw (CH) 57

⁴⁹¹<https://www.livelaw.in/high-court/chhattisgarh-high-court/chhattisgarh-high-court-rape-dead-body-horrendous-doesnt-amount-offence-necrophilia-279019>

⁴⁹²SLP(Cr) No. 005403 - / 2024

dead body is nothing but necrophilia- an erotic attraction to corpses. Court noted Necrophilia is a "psychosexual disorder" which DSM-IV (Diagnostic and Statistical Manual of Mental Disorders) classifies among a group of disorders called 'paraphilias' including paedophilia, exhibitionism and sexual masochism."⁴⁹³

➤ **Surendra Kohli v. State of U.P⁴⁹⁴:**

One of the famous Nithari Case which has been addressed before in this dissertation also is a classic case for Necrophilia as well other associated offenses, where the accused use to kidnap the children, who belong to poor section of society, use to kill them and than try to have sex with dead body finally, chopping them into pieces vandalizing their body organs and eating the remain. The accused was convicted and punished for the same.

➤ **People v. Murray (1994) – United States⁴⁹⁵:**

The Victim was recently brought in a morgue for her autopsy, where a Man (Murray) who was a worker in that Morgue took advantage of the same and did sexual intercourse with the dead body of the victim, where the officer who was in-charged for the autopsy felt something was off and eventually came across the horrifying incident. On being arrested for the same he was presented in-front of the court on which the California court charged him for necrophilia and stated that it was an indecent act which violated the public decency as well as the disrespected the dead.

➤ **R v. Graham (2008) – United Kingdom⁴⁹⁶**

The accused and the deceased were in a relationship before her death, when she died the accused (Graham) went to the morgue stating that she was his girlfriend and he wanted to say last good bye to her, on being convinced by his statement the authorities allowed him and in return he did sexual

intercourse with the corpse, later when staff took her body for enabling process they found that body was sexually assaulted. Arresting the accused for the same he was presented in front of the United Kingdom's court on which court held, it does not matter what relationship accused had before her death but engaging into a sexual intercourse with a dead corpse will always attract the penal provision, sentencing him to the lengthiest punishment and also stressing on protecting and safeguarding the dignity of deceased.

⁴⁹³<https://www.livelaw.in/top-stories/supreme-court-rejects-karnataka-govts-argument-that-sexual-act-on-dead-body-amounts-to-rape-offence-282993>

⁴⁹⁴SLP (Cri) No. 608 of 2010

⁴⁹⁵ (1996) 13 Cal.4th 497 (Romero)

⁴⁹⁶ [1996] EWCA Crim J1025-18