
NECROPHILIA AND THE LEGAL FRAMEWORK IN INDIA: A CRITICAL STUDY

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ABSTRACT

The crime of Necrophilia has actually become more prevalent in India over the past fifteen years, not just at mortuaries but also in incidents where individuals are exhuming the dead and even killing for the purpose of raping their bodies. The Karantaka High “Court in the case” of “*Rangaraju v. State of Karnataka*” made recommendations to the Central Government to amend the provision of the Indian Penal Code or bring a new enactment for Criminalising Necrophilia; nevertheless, the practical impact assessment of these recommendations is currently at zero. At present, the “Bhartiya Nyaya Sanhita 2024,” a new penal law, has been passed by the Parliament, but the legislators have neglected to include this “horrible crime”. One may wonder if India is holding out for another high-profile “*Nithari murder case*.”

“The judiciary is also compelled by law to acquit the guilty due to the absence of any legal framework by the lawmakers”. The legal status of Necrophilia in India is unanswered and requires urgent attention. This paper offers a comprehensive legal study of "Necrophilia." A transgression that has been largely overlooked in the criminal jurisprudence. This behaviour deviates from accepted norms and is instead classified as a paraphilic disorder, which is characterised as engaging in sexual relations with deceased.

Using a mixed-method approach, this research presents the historical context, classification of necrophilia, forensic and medico-legal aspects, thorough analysis of numerous components, and comparative study of laws across various nations. Additionally, the research offers quantitative methodologies aimed at enhancing the legal framework pertaining to Necrophilia. Overall, this study argues and urges for the necessity to amend and add provisions in “Bhartiya Nyaya Sanhita” to comprehend and address Necrophilia in India.

Keywords: Paraphilia, Necrophilia, Rape, Bhartiya Nyaya Sanhita

I. INTRODUCTION

Acts like necrophilia, which were previously inconceivable when the Indian penal code was formulated, are now becoming more common in our progressing society. The framers of the Constitution could not have foreseen the extent to which the rights of the deceased would need to be extended. Consequently, the interpretation of the rights of the deceased has been narrow and ambiguous. The act of necrophilia is very taboo and disturbing to society and appealing to its practitioners. Today, the sexual deviant act of necrophilia is often considered to be the most extreme paraphilic behavior, together with other paraphilias that manifest themselves as abnormal or intense sexual urges, like sadism, cannibalism, and the eating of human flesh, which is called necrophagia. Necrophilia can be identified even in wild animals, reptiles, mammals, and insects, but human necrophilia presents an absolute shock and horror. “The motivations behind necrophilia vary for different people; most are brought about by the need for an unresisting and non-rejecting partner.” The mere idea of performing sexual acts on a passive and unresponsive body gets others excited. Most countries in the world do not have strict laws on the act of necrophilia. In India, the position of a dead body is only vaguely mentioned within its criminal justice framework.

RESEARCH PROBLEM

The increasing incidence of necrophilia in India, when there is no dedicated legal framework for this heinous crime signals significant gaps in the Indian legal system. Though multiple cases have come to light namely, the Nithari case, incidents in Gurgaon & Hyderabad etc., the legal framework remains uncriminalized. The judiciary is left to acquit the culprit just due to the lack of specific legal provisions. Even though the judiciary had suggested some amendments to the Indian Penal Code or to include the above act of necrophilia under the newly enacted Bhartiya Nyaya Sanhita, 2024, it still remains unaltered, untouchable. The proposed research paper tries to critically analyse the legal framework concerning necrophilia, while strongly urging for the “protection of human rights” of the dead person.

RATIONALE

This research is an attempt towards focusing the urgent need for legal reforms in India in respect of sexual offence against dead bodies. It aims to fill the gap by exploring the psychological, social, and legal aspects of this phenomenon and examining its treatment

within the Indian legal system. This research is indispensable in raising awareness about necrophilia as a paraphilic disorder, evaluating the legal and ethical implications of prosecuting such acts, and recommending necessary reforms within the Indian legal framework.

CONCEPT OF THE STUDY

“It is a psychosexual disorder as well as a criminal activity, which is also connected with sexual allure or sexual activities by someone toward a corpse.” A thorough research will be done on all the relevant areas, such as classification of necrophilia, legal perspectives in India, other countries, and interplay between the mental disorder aspect of the act of necrophilia versus being a criminal act. The research study will look into Indian constitutional provisions, the existing legal framework that is, IPC and BNS.

REVIEW OF LITERATURE

“UNDERSTANDING NECROPHILIA: A GLOBAL MULTIDISCIPLINARY APPROACH”

This is an interdisciplinary work that covers comprehensive and practical study in necrophilia from the perspective “of abnormal and social psychology, criminology, criminal justice, forensic anthropology, medical pathology, and legal frameworks.” Major areas covered are the historical, legal, and ethical aspects of necrophilia, definition and causes, paraphilic disorders linked with it, and its typologies, including those related to homicide.

“DIGNITY OF THE DEAD, NECROPHILIA AND ITS LEGAL PARLANCE BY ADV. SACHIN NAHRAJ”

This book talks about who are necrophilic, their characteristics from an Indian perspective. Today, the sexual deviant act of necrophilia is often considered to be the most extreme paraphilic behavior, together with other paraphilias that manifest themselves as abnormal or intense sexual urges, like sadism, cannibalism.

RESEARCH OBJECTIVES

- To examine the current legal provision in India regarding Necrophilia and analyze their

adequacy in addressing the crime.

- To explore the social, psychological and cultural dimension of necrophilia to understand the factor that contribute to its occurrence.
- To critically assess the legal framework in India concerning necrophilia in comparison to other countries.
- To identify gaps and ambiguities within existing legal provision and suggest necessary reforms to address the issue more effectively.
- To propose recommendation for legal reforms and policy measures that can provide a comprehensive framework for addressing necrophilia in India.

HYPOTHESIS

For the research, it has been hypothesized that despite the existence of numerous legal provisions concerning sexual assault in India, gaps exist within current Indian laws concerning necrophilia.

RESEARCH QUESTIONS

- Is sexual assault on deceased bodies prevalent within our country?
- Are there any law to deter the same?
- Does Criminalizing Necrophilia under the Bhartiyay Nyaya Sanhita will serve as a crucial deterrent, safeguarding societal morals, respecting the dignity of the deceased, and punishing the Evil?

RESEARCH METHODOLOGY

This research adopts a doctrinal approach, analyzing primary sources such as Indian statutes (IPC and Bhartiya Nyaya Sanhita), judicial precedents. The author, while writing this project has relied essentially on the secondary sources of data. Books and articles are referred to and, online databases like Manupatra, Supreme Court Cases (SCC), law journals, etc., have also been used. A uniform citation style has been used in the project

SCOPE AND LIMITATION OF THE STUDY

This study focuses on analyzing necrophilia from legal and psychological perspectives, considering both criminal and paraphilic elements. It highlights the inadequacies of the current Indian legal system and suggests reforms based on comparison of law of different countries. The study is limited to doctrinal analysis and secondary sources, as there is limited empirical data available on necrophilia in India. Furthermore, it does not delve into other sexual offenses beyond necrophilia.

TIMELINE

The making of this research project took a two week. Research design and planning was done in four days. Thereafter literature review and data analysis was done in the next six days. Finally writing of the project was done in the last two days and the project was finalized on 14 October, 2024.

PROPOSED CHAPTERIZATION

II. MEANING, HISTORICAL CONTEXT AND TYPES

2.1 MEANING

The term 'Necrophilia' originates from 'nekro' (dead body) and 'philia' (attraction/love) and is defined as a paraphilia in which the individual experiences sexual pleasure through engaging in sexual acts with the deceased. A necrophiliac is someone who willingly engages in such activities, often driven by sexual desires. The individual with necrophilic tendencies may find pleasure in participating in various acts with a deceased body, including oral-genital contact, penile-vaginal intercourse, anal intercourse, or self-stimulation while in the presence of a corpse.

Psychologically, Necrophilia is often classified as a paraphilic disorder. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5), published by the American Psychiatric Association¹, defines paraphilic disorders as persistent patterns of atypical sexual interests and

¹ American Psychiatric Association, DSM-5 Task Force. (2013). Diagnostic and statistical manual of mental disorders: DSM-5™ (5th ed.). American Psychiatric Publishing, Inc.

behaviors that cause distress or impairment to the individual or harm to others.

Individuals diagnosed with necrophilia often exhibit multiple motivations for seeking fulfillment of their desires, but the predominant motive typically revolves around the desire to engage with a partner who is unresponsive and unable to reject their advances. A significant portion of individuals with a sexual attraction to corpses may actively seek employment opportunities in hospitals, morgues, or funeral parlors due to the inherent advantages these occupations provide in terms of convenient, regular, and often unsupervised access to deceased bodies.

In the case of *"Rangaraju Vajapeyi vs State of Karnataka"*², the Karnataka High Court noted that "necrophilia" entails a morbid fixation with death and deceased individuals, specifically an erotic allure toward corpses. Classified as a psychosexual disorder under the DSM-IV within the group of disorders known as "paraphilias," which includes conditions like pedophilia, exhibitionism, and sexual masochism, necrophilia was observed by the court to potentially stem from feelings of rage, curiosity, or lust, rather than being solely driven by sexual necessity or habit.

Necrophilia: Is It a Mental Disorder?

Necrophilia is described as an abnormal sexual attraction towards a dead body, as aforementioned. This disorder falls under the psychosexual category of disorders and, specifically, in the DSM-IV-TR, it is under "paraphilias," "not otherwise specified. Some paraphilias are pedophilia, exhibitionism, and sexual masochism". Most of the cases of necrophilia happen with males than females. This classification shows that necrophilia is a style of deviant sexual impulse rather than a mental disorder. People committing necrophilic acts are usually mentally stable and capable of understanding the implications of their actions. Studies have shown that most cases of homicide-related necrophilia do not have a basis in a mental disorder. It is thus appropriately treated as an abhorrent preference rather than as a mental illness.

Crime of Necrophilia

Since necrophilia cannot be considered a mental disorder, the defense under "Section 84 of the

² CA No. 1610/2017

Indian Penal Code (IPC),” 1860 cannot be raised as it excludes the persons with unsound minds from criminal punishment and sends them for medical treatment instead. The courts, in cases like “*State of Kerala v. Ravi and Ramedin v. State of MP*,” underlined the difference between legal and medical insanity by taking the element of legal insanity alone into consideration to decide criminal liability. Under Section 84 of the IPC, it is presumed that a person who offers the excuse must prove that “at the time of the commission of the offense”, he was incapable of knowing what he was doing or what he was doing was wrong. The Indian law system does not have “irresistible impulse” as a valid defense for criminal acts. Thus, the crime of necrophilia as motivated either by impulse or distorted sexual desire cannot fall within exemption granted by Section 84 of the IPC.

NECROPHILIA”: IS IT A MENTAL DISORDER? Necrophilia as mentioned above is a distorted attraction towards a dead body. It is a psychosexual disorder and DSM IV TR 20 groups it among ‘paraphilias’ where it names necrophilia as ‘not otherwise specified’. Some of the other ‘paraphilias’ are paedophilia, exhibitionism and sexual masochism. “Necrophilia is more often committed by males, with few instances of females committing the act of necrophilia”. Hence, from this, it can be seen that necrophilia is a paraphilia which means a state of distorted sexual desires that often can be dangerous and not a mental disorder. “Necrophilia is preference rather than any mental disorder and usually a person committing necrophilia is usually in a state of mind where he can distinguish the consequences of the act”. And by reading a few research articles on the topic of necrophilia, it is found that in most of the cases of necrophilia where there is the involvement of the crime of homicide, there is the absence of any kind of mental disorders.

2.2 HISTORICAL CONTEXT

The issue of necrophilia has been a matter of concern across various human cultures since ancient times, tracing back to prehistoric eras. According to Herodotus, the ancient Egyptians took precautions against necrophilia by delaying the delivery of corpses belonging to the wives of distinguished men to embalmers. This practice aimed to reduce the risk of funeral workers yielding to the temptation of engaging in inappropriate sexual behaviors with the deceased. Tales exist that King Herod engaged in intercourse with his wife Marianne for seven years after her demise. Similar tales exist about King Waldemar and Charlemagne. “Necrophilia was neither classified as whoring nor bestiality by the Catholic Church but considered a form of

pollution with a leaning towards hoirng”. In more contemporary contexts, necrophilia has been linked with cannibalism and the folklore surrounding vampirism.

2.3 TYPES

In 1989, A study conducted by Jonathan P. Rosman and Phillip J. Resnick provides comprehensive coverage of 122 cases involving individuals who exhibited either necrophilic behaviors or fantasies. They categorized these cases into two types: the genuine or "true" necrophiliacs, who demonstrate a “persistent sexual attraction to corpses”, and the "pseudo-necrophiliacs," who experience only transient attraction to corpses rather than a fixed erotic preference for them. Additionally, the authors identified three types of "genuine" necrophilia: necrophilic homicide (involving murder to obtain a corpse), "regular" necrophilia (involving the use of already deceased bodies for sexual purposes), and necrophilia, fantasies (wherein the individual fantasizes about necrophilic acts but does not act upon these fantasies). Necrophilia is categorized into three types: “necrophilic homicide”, “regular' necrophilia”, and necrophilic fantasies.

In 2011, Dr. Anil Aggarwal, a forensic medicine expert, conducted and subsequently published a comprehensive epidemiological investigation on the phenomenon of necrophilia. Drawing from extensive case studies and existing medical and psychological theories, Aggarwal concluded that necrophilia should not be viewed as an isolated activity but rather as a continuum of behavioral inclinations consisting of ten distinct tiers or classes.

CLASSIFICATION OF NECROPHILIA

According to the DSM-5 and other research, ten variants of necrophiliacs have been identified.

Class I (role player) “- Asks a living partner to act dead at the time of intercourse.

Class II (romantic necrophile) – “Preserves the dead body of a spouse, mummifies it, and sleeps with it.” C. Class III (necrophilic fantasizer), Visits cemeteries and masturbates in the presence of the dead.

Class IV (tactile necrophile) - Touches sexual parts of a dead body to get stimulation. “Medical students getting an erection while dissecting cadavers also fall into this class.

Class V (fetishistic necrophile) – “Preserves a part of a dead body” (e.g., a breast) and wears it like a talisman or in a pocket.

Class VI (necromutilomaniac) – “Mutilates the dead body and masturbates over it”.

Class VII (opportunistic necrophile) - Sex with a dead body only opportunistic. Primarily embodied by ,Morgue attendants and funeral workers who easily get access to bodies,.

Class VIII (regular necrophile) – “Digs up dead bodies from graveyards and has intercourse”

Class IX (homicidal necrophile) – “Murders to have intercourse with corpses.”

Class X (exclusive necrophile) - Only have intercourse with the dead but not the living.

Necrophilic Homicide: “Necrophilic homicide is the most appalling of all. The necrophiliacs derive their fantasies upon unwilling victims. Victims are killed so that the murderers can relieve their violent impulses.” These heinous cases include serial killers and depraved madmen who kill the victim, dispose of the body, and “then retrieve the body to either relive the experience of killing or just to have sex with it once again and again” (Stein, Schlesinger & Pinizzotto, 2010).

Regular Necrophilia: For regular necrophiles, the sexual attraction towards or copulation with corpses forms part of their everyday life. “The fact is that the necrophilic fantasies form just a part of normal necrophilia.” For several reasons, “these people generally are not content with the intercourse with live people.” Sometimes, they simply are not sexually attracted to living people.

From the discussion above, it can be stated that necrophilia may become a crime as well as a psychological matter. From the discussion above for the Determination of a Case of Necrophilia to be whether it is a Crime or the Matter of Psychology, All the cases come under a different category than other offenses, therefore for determination one should take help from an expert of the criminology and psychological department. So “both these two different departments should work to treat such cases.” Only “class VII” Opportunistic, class VIII Regular, class IX Homicidal needs to be criminised.

III. RISING CASES OF NECROPHILIA IN INDIA

For the past fifteen years, cases of necrophilia have been observed with an increase in India in mortuaries, but exhumations are common; people are even killing others for the aim of raping their corpses.

- The case of Nithari in 2006 is one of the most recognizable cases of necrophilia in India. “The accused and his servant were arrested after it was found that nineteen girls had disappeared from the noida sector 31.” “The accused and his servant were accused of murder, rape, kidnapping, sexual assault on children, and cannibalism after investigation indicated several pornographic CDs and nude photographs of various women and children in his house.” The servant testified that apart from accepting the offenses, the accused accepted to have killed sixteen people. He said that he killed them in the sitting room; he dragged up the bodies up to the stairs to the bathroom where he attempted to rape. He chopped them into pieces, cooked some of the parts, and threw the rest in the drainage behind his bungalow.
- In 2018, a 20-year-old laborer from Gurugram confessed to committing several rape crimes in which he had sex with dead bodies to satisfy his lust. A similar incident in Uttar Pradesh revealed that a deaf and mute person tried to commit rape against a woman; the woman resisted him. He strangled her to death and, after ensuring her death, committed rape on her dead body.
- An Assamese police force arrested a fifty-year-old man in May 2020 under accusations that he had sexual intercourse with the body of a fourteen-year-old girl. In 2015, Ghanaian graveyard attendant Skarkur Lucas confessed on a live streaming television station that he regularly had sexual intercourse with the dead bodies of girls who had been brought to the mortuary as he did not have a fiancée. In most of these cases, the perpetrators are not prosecuted on counts of necrophilia, as the statutes are too broad, but charged with murder, rape, sexual assault, and cannibalism depending on the circumstances. The vagueness of the statutes hampers the state's formulating of relevant charges, thus letting this elusive crime go unpunished.

IV. LEGAL STATUS OF NECROPHILIA IN INDIA

While Indian law remains unambiguous regarding crimes such as necrophilia, it nonetheless

upholds the human rights of individuals even after their demise. Article 21 of the Indian Constitution recognizes that the individual has the right to die with dignity and respect, too. In the case of “*Parmanand Katara v Union of India*”³, the Supreme Court recognized that Article 21 guarantees the right to life, fair treatment, and dignity, extending these rights not only to the living but also to the dead. In “*Ashray Adhikar Ahiyan v. Union Of India*”⁴, “the High Court laid down the “importance of respect for the dead body, ruling that shelterless persons are entitled to be cremated in proper and religious manners by their respective religious institutions.” On similar lines, “*Ramji Singh and Mujeeb Bhai v. State of U.P. & Ors*”⁵, the Allahabad High Court observed that the right of Article 21 would also include the right to have even for the dead the respect accorded to them during their lifetime, as dignity of the dead is to be protected. The court, on its pleading, urged to restrict post-mortems to the maximum possible.

Old criminal law did not contain any explicit provision to criminalize sexual offence against dead bodies nor the newly passed criminal law criminalise this heinous crime against dead bodies.

V. FINDING & CONCLUSION

From the above discussion, we can categorize necrophilia into two sub-classes, one is a crime and the other is a psychological disorder. Class VII, VIII and IX require punishment. However, other Classes require Medical & psychological treatment as their act is unnatural and it's a weird act. They cannot be cured easily by confining them to behind the bar.

The hypothesis taken by the researcher is right. There exist no law in India to deal with such heinous crime. From in depth research of the subject of necrophilia from a legal point of view, it can be studied that an act “of necrophilia is also a violation of the fundamental right” and also it violates human rights to some extent, and the “absence of legislations covering the area of necrophilia in India illustrates loopholes of the Indian legal system.” Hence, now it is of pressing need for India to bring amendment to the law related to Necrophilia as the act of necrophilia is an egregious violation of the fundamental right conferred by the Constitution of

³ 1989 AIR 2039

⁴ 2002 (2) SCC 227

⁵ (2009) 5 Alj 376

India and it is the imperative of the legislature and legal system to preserve the constitution

RECOMMENDATION

- To bring about parliamentary discourse on criminalizing necrophilia, and discussing the categorization, the present need, and after effects; and to distinguish the classifications which require criminalization from the ones that do not.
- By, Amendment the Bhartiya Nyaya Sanhita 2023 with the formation of proposed new section 146A dealing with sexual assault on dead body, punishing homicidal, opportunistic, and regular forms of necrophilia.
- In light of curbing further cases of necrophilia, “the government should install CCTV cameras in all mortuaries of government and private hospitals it will act as in evidence.”
- Establishment of a council which shall frequent review rules and procedures about persons suffering from “necrophiliac condition” more so those with direct access to corpse, holding educational programs and providing information to society at large.
- Establishment of centers within the already developed hospitals for treatment of such individuals with the tendency towards necrophilia at an early stage. Carrying out rigorous and continued study for the understanding and handling the persons with the necrophiliac tendency.
- Treat paraphilic sexual disorders with an amalgamation of therapeutic and pharmacological interventions, but the early stage must be focused to prevent the phase from becoming chronic. This is more viable from class I to class VII Necrophiliacs.

PROPOSED DRAFT

CHAPTER VI A

OF OFFENCES AGAINST THE DEAD BODIES

“146A. Sexual offences against the dead bodies- (1) whoever, commits murder or culpable homicide, with the intention and knowledge of committing sexual Assault against the such dead person “shall be punished with rigorous imprisonment for a term which shall not be less

than ten years, but which may extend to imprisonment for life,” or with death and shall also be “liable to fine;”

(2) whoever, commits sexual Assault on a dead body “shall be punished with rigorous imprisonment” of either description for a term which “shall not be less than seven years,” but which may extend to “imprisonment for life,” and shall also be liable to fine.

Explanation 1.- the word “ Sexual Assault” herein the section include;

(a) He who “penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a dead woman” or into the mouth or anus of a dead man; or

(b) Any person who, 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 “dead woman” or into the mouth or anus of a dead man; or

(c) Any person who, “manipulates any part of the body of a dead woman” so as to cause penetration into the vagina, urethra, anus or any part of body of such woman; or

(d) Any person who, “applies his mouth to the vagina, anus, urethra of a dead woman or to the penis or anus of a dead man”

Explanation 2. – a “medical procedure” or intervention shall not constitute sexual violence under this section.

Explanation 3. – For the purpose of this section,” “Dead Person” “shall include men, women and other genders”

BIBLIOGRAPHY

STATUTES

- INDIAN PENAL CODE, 1860
- BHARTIYAY NYAYA SANHITA, 2023

BOOKS

- UNDERSTANDING NECROPHILIA: A GLOBAL MULTIDISPLINARY APPROACH
BY ERIC HICKEY
- DIGNITY OF THE DEAD NECROPHILIA AND ITS LEGAL PARLANCE
- NECROPHILIA BY ANIL AGARWAL BY ADV. SACHIN NAJRAJ