
THE LEGAL PERSPECTIVE OF NECROPHILIA IN INDIA: AN ANALYTICAL STUDY

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ABSTRACT

In the case of Rangarju v State of Karnataka the Karnataka High Court defined Necrophilia as “The sexual intercourse on dead body is nothing but necrophilia. It is a morbid fascination with death and the dead and more particularly, an erotic attraction to corpses”¹. The objective of this research paper is to examine Necrophilia from a legal perspective in India and its significance lies in it analyzing one of the most pressing issues in India from a legal perspective. The research reveals that necrophilia is a violation of the fundamental right to life granted by the Constitution of India. Additionally, it is also to some extent a human right violation. Further the paper shows that necrophilia is not mental disorder and does not fall under the ambit of exemption under law and necrophilia is not an offence under any provision of the IPC² in India in most cases. The paper reveals that there is most definitely a gap in legislations addressing necrophilia in India. And further the research examines the laws addressing necrophilia in other countries like the UK and Canada. This research paper is relevant because it tries to suggest few changes in law that can better address necrophilia.

Keywords: necrophilia, paraphilia, rape, unnatural offence, dignity of the dead, rights of the dead

¹ Rangaraju v State of Karnataka 2023, SCC OnLine Kar 23

² Indian Penal Code, 1860, No.45, Acts of Parliament, 1860 (India)

INTRODUCTION:

“The dead cannot cry out for justice; it is the duty of the living to do so for them.”³

Necrophilia is an act where a person has sexual satisfaction with a corpse which remains a very sensitive and repulsive subject worldwide. This dark and degenerate act known necrophilia can be traced back to the ancient times and has always been repulsed ethically, socially and in recent times legally as well.⁴ But the Indian legal system does not have any laws exclusively for necrophilia and it has only been vaguely expressed and addressed which will be discussed in dept in the later part of the paper.

The need for laws regarding necrophilia in India has mainly arisen in India due to the increase in the cases of necrophilia in India. An incident which happened in 2022 where 23-year-old man in Assam’s Udalguri district where he killed a woman taking bath and raped her corpse and an incident during the COVID lockdown where a shopkeeper killed a woman customer and sexually violated her dead body⁵ are some of the few recent necrophilia incidents that have happened in India.

The need for laws against necrophilia is even more highlighted during the recent Karnataka High Court judgment in the case of Rangaraju v State of Karnataka⁶ of where the high court bench consisting of Justice B Veerappa and Justice Venkatesh Naik T spoke of the lack of laws addressing necrophilia in India and urged the central government to bring in legislations in this regard.

RESEARCH OBJECTIVES:

The objective of this research paper is to examine Necrophilia from a legal perspective in India. The primary objective of the paper is concerned with finding out the legality of necrophilia in India. It wants to examine whether the act of necrophilia is a human rights and fundamental rights violation. It also wants to examine whether necrophilia is mental disorder and can be an exemption under the Section 84 of the Indian Penal Code (IPC), 1860⁷ and whether it can be

³ Lois McMaster Bujold, author of the quote.

⁴ Klaf, F.S. and Brown, W., 1958. Necrophilia, brief review and case report. *Psychiatric quarterly*, 32, pp.645-652.

⁵ INDIA TODAY, <https://www.indiatoday.in/law/story/having-sex-with-dead-body-not-an-offence-in-india-why-a-high-court-wants-a-law-against-necrophilia-2388582-2023-06-04> (last accessed Aug 06, 2023)

⁶ Rangaraju v State of Karnataka 2023, SCC OnLine Kar 23

⁷ Indian Penal Code, 1860, § 84, No.45, Acts of Parliament, 1860 (India); It states that:

“Act of a person of unsound mind-Nothing is an offence which is done by a person who, at the

considered offence. It further aims to analyze if there are gaps in the present Indian laws in relation to necrophilia. It also aims to examine the approach taken by other countries to address necrophilia legally.

RESEARCH METHDOLOGY:

This research paper is a doctrinal study. The researcher has chosen doctrinal study because this type of research helps to acquire and develop deeper understanding of the Indian legal system and helps to better apply the various legal principles and doctrines in real life. The primary sources of data are the Constitution of India, legislations (specifically the Indian Penal Code,1860), case laws, books and International Conventions. The secondary sources of data are research papers and research articles.

RESEARCH HYPOTHESIS:

The hypothesis of the research paper is that despite the various provisions of law in India there are gaps between the current Indian laws in relation to necrophilia and there is a need for legal reform in relation to necrophilia.

SCOPE OF STUDY:

The paper focuses on the legality of necrophilia in the context of Indian Laws and UN conventions and declaration, and does not take into consideration other countries laws. Additionally, the study only examines the laws relating to necrophilia in different countries limited to United Kingdom and Canada.

LITERATURE REVIEW:

1. Necrophilia: Forensic and Medico-legal aspects⁸,

This is book where the author deals with the subject of necrophilia concerning with its forensic, medical and legal. This book is divided into eight chapters. It explains the meaning of necrophilia along with brief on its history and various terminologies involved with it. It also gives an overview of different types of necrophilia and comprehensively gives many case studies relating different necrophilia incidents. It also gives a forensic perspective along with

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.”

⁸ Aggrawal, A., 2010. *Necrophilia: forensic and medico-legal aspects*. CRC Press.

a medico-legal perspective. Along with this it also covers various laws relating to necrophilia in different countries. But this book does not comprehensively study the gap of the Indian legal system in addressing necrophilia. It does not do comprehensive study of the legal perspective of necrophilia in India making use of all legislations, case laws and international conventions. Hence, it is essential to explore and examine the topic.

2. Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia⁹,

This is an empirical study where the authors deal with necrophilia from a psychiatric perspective. It gives a brief about necrophilia and its various types along with the method of collecting and analysing data. It provides the answer for the essential question of is necrophilia a mental disorder through concrete data and psychiatric view. But this literature only looks at necrophilia from a psychiatric view and does not study necrophilia through legal perspective as well as the legal implications of necrophilia. Thus, it is essential to explore and examine the topic.

3. Defiling the dead: Necrophilia and the law¹⁰,

This is a study that examines necrophilia and its various criminal liability in the US. It gives a definition to necrophilia along with giving a brief about the reasons the society respects the remains of the dead. Forth which it explores the criminality of necrophilia in US. This study provides an essential perspective into the meaning of necrophilia and the attitude of the society towards the dead remains. But this study only studies the criminal liability of necrophilia in the US and does not study the criminal liability of necrophilia in India. Hence, it is essential to explore and examine the topic.

4. Necrophilia, brief review and case ¹¹,

This is a study that explores various case reports of necrophilia and gives a brief review of some of the literature available on the subject of necrophilia. The study gives many different cases of necrophilia and an insight into the circumstances from which people have committed necrophilia. This study provides valuable insights into the minds of the people who have

⁹ Rosman, J.P. and Resnick, P.J., 1989. Sexual attraction to corpses: A psychiatric review of necrophilia. *Journal of the American Academy of Psychiatry and the Law Online*, 17(2), pp.153-163.

¹⁰ . Ochoa, T.T. and Jones, C.N., 1996. Defiling the dead: Necrophilia and the law. *Whittier L. Rev.*, 18, p.539.

¹¹ Klaf, F.S. and Brown, W., 1958. Necrophilia, brief review and case report. *Psychiatric quarterly*, 32, pp.645-652.

committed necrophilia and origins of this distorted desire arising. But this study does not look into the legal perspective of necrophilia. Thus, it is essential to explore and examine the topic.

1. RIGHTS OF THE DEAD:

Article 21 of the Constitution of India grants to all the citizens of India protection of life and personal liberty. It states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”¹². This protection of life and dignity is not limited to living people but also extends to the dead. This has been brought to focus and defended by the Supreme Court in many instances like in the case of *Paramanad Katara v Union of India*¹³ in 1989 and also in the case of *Ashray Adhikar Abhiyan v Union of India*¹⁴ the apex court again ruled in favor of the rights of the dignity of the dead.

The Transplantation of Human Organs Tissues Act, 1994 (THOTA)¹⁵ 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. The section 297 of the Indian Penal Code, 1860¹⁶ provides for the right against trespass of burial sites, funeral sites, etc.

The dignity of the dead is also recognized internationally in many United Nations (UN) conventions. For instance, in the UN Commission on Human Rights in a resolution adopted in 2005¹⁷ highlighted the importance of 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. Further, in the International Humanitarian law, article 130(1) of the 4th Geneva Convention¹⁹ provides for the member states to ensure “graves are respected, properly maintained, and marked in such a way that they can always be recognized”. Hence, from this, it can be observed that the dead indeed have some human rights although not specifically mentioned in the UN Human Rights Declaration. The

¹² INDIA CONS. art. 21.

¹³ *Paramanad Katara v Union of India* 1989 AIR 2039

¹⁴ *Ashray Adhikar Abhiyan v Union of India*, AIR (2002) SC 554

¹⁵ Transplantation of Human Organs Tissues Act, 1994, No. 42, Act of Parliament, 1994 (India)

¹⁶ Indian Penal Code, 1860, § 297, No.45, Acts of Parliament, 1860 (India)

¹⁷ Human Rights Resolution 2005/26, UN Resolution (United Nations)

¹⁸ IASC OPERATIONAL GUIDELINES ON THE PROTECTION OF PERSONS IN SITUATIONS OF NATURAL DISASTERS, A.6, 2011, The Brookings – Bern Project on Internal Displacement.

¹⁹ Geneva Convention IV, UN Convention (United Nations)

human right of 'right to life' can also extend to the protection of the dignity of the dead in the same way Article 21 extends to protecting the dignity of the dead.

2. NECROPHILIA: IS IT A MENTAL DISORDER?

Necrophilia as mentioned before is a distorted attraction towards a dead body. It is a psychosexual disorder and DSM-IV-TR²⁰ 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.²¹

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 through reviewing a few papers on necrophilia it can be observed that more often in cases of necrophilia where there is a presence of the crime of homicide there is an absence of any kind of mental disorders.²²

3. NECROPHILIA AS AN OFFENCE:

As found before since necrophilia is not a mental disorder it cannot be a defense for committing the act under section 84 of the Indian Penal Code, 1860 which is no punishment for an act of a person of unsound mind and appropriate medical treatment to be given. In the case of *Bapu @ Gajraj Singh v State of Rajasthan*²³ the supreme court held that there is a necessity to make a distinction between legal and medical insanity and the law should only be concerned with the aspect of legal insanity and not medical. It was also held that medical insanity is a case where there exists sufficient medical reasons to hold that the person is suffering from insanity. But for availing defense under the provision of section 84 of the IPC "he must prove that at the time of committing the criminal act he was of unsound mind that is he did not know the nature and consequences of the crime".

²⁰ American Psychiatric Association, A.P. and American Psychiatric Association, 1994. *Diagnostic and statistical manual of mental disorders: DSM-IV* (Vol. 4). Washington, DC: American psychiatric association.

²¹ Ochoa, T.T. and Jones, C.N., 1996. Defiling the dead: Necrophilia and the law. *Whittier L. Rev.*, 18, p.539.

²² Rosman, J.P. and Resnick, P.J., 1989. Sexual attraction to corpses: A psychiatric review of necrophilia. *Journal of the American Academy of Psychiatry and the Law Online*, 17(2), pp.153-163.

²³ *Bapu @ Gajraj Singh v State of Rajasthan*, (2007) 8 SCC 66

Further in India, irresistible impulse would not amount to no liability. As can be seen by many judicial judgments such as in the case of *State of Kerala v Ravi*²⁴ and *Ramedin v State of MP*²⁵ where the judiciary held that the it would not fall under the ambit of exemption under section 84 of the IPC just because the crime was committed on a sudden impulse. Hence, due the various reasons above stated the act of necrophilia cannot be exempted under the section 84 of the IPC.

But unfortunately, there are no laws addressing in particular necrophilia in India. Only the section 297 of the IPC has some law addressing necrophilia. Section 297 of the IPC states that “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 in any place of worship or on any place of sepulture, or 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”²⁶. Although the provision somewhat vaguely addresses necrophilia, it does not have much application for the act of necrophilia in reality as most necrophilia cases does not happen inside burial sites, funeral sites, etc and involves homicide where the necrophile first kills and then rapes the dead corpse. And even if we assume that all necessary conditions are met for application of the provision, it is still impractical as a punishment of just one year is simply insufficient in the case of an act like necrophilia.

Necrophilia also does not fall under the provision of rape in section 375 and call for punishment under section 376 of the IPC²⁷. Nor does necrophilia fall under the ambit of section 377 of the IPC. As both these provisions for rape as well as unnatural offences have clearly limited their scope to ‘man’ and ‘woman’ and a dead body cannot be called a “human” or “person” as can be seen from the definition of Man and Woman under the section 10 of the IPC²⁸ which states that “The word “man” denotes a male human being of any age; the word “woman” denotes a female human being of any age” where age is concerning living persons and not the dead. And

²⁴ *State of Kerala v Ravi* 978 KLT 177

²⁵ *Ramedin v State of MP*, 1996 Cr. L.J. 370 8(MP) (DB)

²⁶ Indian Penal Code, 1860, § 297, No.45, Act of Parliament (India)

²⁷ Indian Penal Code, 1860, § 375,376, No.45, Act of Parliament (India)

²⁸ Indian Penal Code, 1860, § 377, No.45, Act of Parliament (India)

even in the book of 'The Medical Jurisprudence and Toxicology'²⁹ it is having been clearly said that a dead person is no longer a person legally. Hence, necrophilia is not an offence in India as rape nor unnatural offences under the above provisions. This can also be seen in the recent Karnataka High Court judgement in the case of Rangaraju v State of Karnataka. Hence, in India Necrophilia cannot be considered a crime in most of the cases.

4. LAWS ADDRESSING NECROPHILIA IN OTHER COUNTRIES:

Unlike India where there is yet to be any legislations explicitly for necrophilia, some foreign countries have already made laws addressing Necrophilia. This paper will be looking into laws addressing necrophilia in the United Kingdom and Canada.

In the United Kingdom (UK), section 70 of the Sexual Offences Act, 2003 of the UK makes it an offence for any person to sexually penetrate a dead person intentionally and the maximum punishment for the said offence is imprisonment not more than 2 years.

In Canada, necrophilia is addressed by the 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 297.³⁰ From observing and comparing the laws addressing necrophilia in the two countries to India it can be clearly seen that legal system is ineffective in addressing necrophilia and priority must be made for policy change.

SUGGESTIONS:

1. Addressing necrophilia legally is very essential. A new provision for addressing rape with dead body can be added in the IPC and a punishment of life imprisonment can be given for those necrophilia's that have the presence of homicide and murder. But at the same time a sub-provision for those necrophilia's that do not have the presence of homicide and murder have to be made where they can be medically treated and can try to reform their twisted desire and the maximum punishment for this can be up to one year. The above policy change is suggested because there is a huge difference between the nature of the necrophilia committed where there is a presence of homicides and where it is not. And the necrophilia with the presence of

²⁹ Modi, R.B.J.P., 2013. A textbook of medical jurisprudence and toxicology. Elsevier.

³⁰ Aggrawal, A., 2010. *Necrophilia: forensic and medico-legal aspects*. CRC Press.

homicides must be punished strictly given the nature of the crime and dangers the person can bring to the society. Whereas the necrophilia's where there is an absence of homicides can be treated more liberally and give them an opportunity for reformation and rehabilitation.

2. To prevent more cases of necrophilia it is necessary for the state government to install CCTV cameras in all mortuaries of government as well as private hospitals. This reform can be brought so that the hospital staff and people in general will be deterred from committing necrophilia or any act that is disrespectful to the dead and act as evidence.

4. The government can also set up special counselling centers for people who have certain tendencies of necrophilia and these counselling centers must be set up in and run in such a way that there is strict secrecy about the patient's information. Bring this policy can help curb any future cases of necrophilia as this can help people to control this distorted desire of theirs and help them to become normal.

CONCLUSION:

Through the in dept study of the subject of necrophilia from a legal perspective it can be seen that an act of necrophilia is a violation of the fundamental right and also a human right violation to some extent and the lack of legislations addressing necrophilia in India highlights the loopholes of the Indian legal system. Hence, it is of immediate need for India to make legislations regarding Necrophilia as the act of necrophilia is grave violation of the fundamental right bestowed by the Constitution of India and it is the duty of the legislature and legal system to uphold the constitution. And another reason for bring laws regarding necrophilia is that India is part of international conventions that have the aim of upholding the dignity of the dead. Finally, to keep law and order in the country and to ensure justice legislations regarding the repulsive act of necrophilia is necessary.

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