
NECROPHILIA: THE INADEQUATE LAWS

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ABSTRACT

Necrophilia denotes a psychological disorder which characterizes sexual desire or attraction towards a corpse. It is an offence which has swept the globe and has forced the nations to legislate laws to create deterrence. The dignity of the dead should be protected by all means. It is a crime against society which not only demeans the basic right of dignified burial but also it is a crime against the sentiments of the deceased. The reputation of the dead is given due regard in the law and thus necrophilia should be recognized strictly in terms of law. The article mentions some laws that are legislated in foreign countries. It is only South Africa and United Kingdom that have explicitly recognized Necrophilia as a crime. Various other countries have also categorized it under some offence. In India, it has no specific law which adequately punish the act. It is somehow made to fit in provisions of Indian Penal Code under Section 297 (Trespass to Burial places), Section 375 (Rape) and Section 377 (Unnatural Offences). These provisions of law do not cover Necrophilia due to various technicalities of the offences which they seek to punish. However, there have been array of cases that have happened in India that expose the heinous and inhuman nature of the crime. The most stunning case of Nithari(2006) continues to be in the memory of people and it constantly pushes the law makers to frame an adequate law. Since 2006, the need for the law was recognized but till date there exists only vacuum. The recent cases and the growing tally continues to reiterate that there is a need for a better law and the existing laws are just not enough. Section 297 of the Indian Penal Code which is rampantly used provides imprisonment for a year which is clearly inadequate. Also, it is important to realize that corpses can be found at places other than the burial places also. Thus there exists a dire need to create adequate laws so that adequate deterrence is created and the respect and the dignity of the dead is kept intact.

Keywords:-Necrophilia, trespass, corpse, sexual desire, deceased

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1. MEANING OF NECROPHILIA

Belgium physician Joseph Guislain³ gave the term Necrophilia. Necro means 'dead' and philia means 'love' in Greek. It is often referred to as a psychological disorder which denotes the sexual desire, attraction, stimulation or sexual act towards a corpse. It includes a kind of disorder where there is abnormal fantasy of lovemaking with a cadaver. Necrophilia can be of many kinds and not necessarily relate to sexual desire towards the corpse. It can also include the urge to not believe that the dead is gone and mummifying the body and believe it to be alive. The World Health Organisation puts Necrophilia under Paraphilia. Paraphilia refers to sexual arousal to atypical objects, situations, fantasies, behaviours or individuals⁴.

Necrophilia is a prevalent crime all across the globe and has forced a lot of countries to pass strict legislations. It has compelled few countries to pass legislations in order to induce a sense of fright in the offender. Necrophilia finds very little mention in the law books of most country though it is more than a rare practice in most of the countries.

1.1 The barbarous nature of the crime

The nature of the crime is really barbarous. It is a crime against society which not only demeans the basic right of dignified burial but also it is a crime against the sentiments of the deceased. To cover such a heinous crime, the laws of India are clearly inadequate and there is a strong need for better laws. The offence is suddenly grave and it cannot be fitted in the existing laws of the nation. To give recognition to this offence it is important to create it as a specific offence. The Indian laws in this regard seem ambiguous and require amendments in addition to an increase in punishment.

³Joseph Guislain (Ghent, 2 February 1797 – Ghent, 1 April 1860) was a Belgian physician and a pioneer in psychiatry.

⁴ WEBMD.com, <https://www.webmd.com/sexual-conditions/guide/paraphilias-overview> (last visited February 15, 2022).

2. THE ARRAY OF CASES IN INDIA

The last decade in India has seen a rise in the offence of Necrophilia⁵. Below mentioned are a few cases of Necrophilia that has rocked the country and posed a serious need for a law to deal with such offences against the dead bodies. The incidents highlight the details of the barbaric crime and explain why there should be a specific offence in relation to such acts and create deterrence against such acts.

2.1 The Nithari Hatyakand⁶

The Nithari case of 2006 rocked the country. Nithari is the name of a village situated in Noida (Delhi). The case involved the heinous crimes like sexual abuse, murder, cannibalism and attempted necrophilia. The case made headlines in media and stirred the country due to its brutal and rare nature of crimes. The case came in the light of due to continued series of disappearances of the children (both boys and girls) and teenagers from the Nithari village in the year 2005 and 2006. The Uttar Pradesh Government handed over the case to CBI on 11 January 2007.

Serial killers Surinder Koli and Mohinder Singh Pandher were booked after 19 girls were found missing. Further investigation of the case led to the discovery that both the accused used to first murder the girls and then have sexual intercourse with the dead bodies. To substantiate their acts, several pornographic CDs and pictures of naked children were found by the police during investigation.

Surinder Koli and Mohinder Singh Pandher were charged with murder, rape, kidnapping and criminal conspiracy under the Indian Penal Code. The Central Bureau of Investigation had to battle hard to charge them under Necrophilia because of inadequate laws. It has been 16 years since this incident and we have no better laws to take into its clutches such barbaric offence.

In a [book titled](#) 'Forensic and Medico-legal Aspects of Sexual Crimes and Unusual Sexual Practices'⁷, Dr Anil Aggrawal cites the murders and writes:

During December 2006, skulls and bones of a number of missing children belonging to migrant workers were discovered in the village of Nithari. On December 26, Delhi police arrested a rich and politically connected businessman, Moninder Singh Pandher, and on the following day his cook and aide Surendra Kohli, on the suspicion of the murder of a 19-year-old girl.

A massive investigation followed, which the media called the 'Noida serial murder investigation.' On March 2, 2007, Kohli reportedly to unburden his conscience, at a Delhi court admitted to raping, killing and having sex with dead bodies of children and women. He gave a clean chit to his employer Pandher, perhaps under pressure. Subsequently, a

⁵ Asiaville.in, WHAT IS NECROPHILIA AND SOME WELL-KNOWN CASES OF NECROPHILIA FROM INDIA, <https://www.asiaville.in/article/what-is-necrophilia-and-some-well-known-cases-necrophilia-in-india-67368> (last visited February 15, 2022)

⁶ Hindustantimes.com, <https://www.hindustantimes.com/cities/delhi-news/koli-held-guilty-in-12th-nithari-murder-case-employer-pandher-acquitted-101610756213667.html> (last visited February 15, 2022)

⁷ Thewsnminute.com, VIOLATING THE DEAD: IS IT TIME INDIA HAD A LAW DEALING WITH NECROPHILIA?, <https://www.thewsnminute.com/article/violating-dead-it-time-india-had-law-dealing-necrophilia-35631> (last visited February 15, 2022).

case was registered against Kohli under various sections of the IPC, including rape, murder, kidnapping and criminal conspiracy.

2.2 Other prominent Incidents

May 2020⁸

The incident was reported in Dhemaji district bordering Arunachal Pradesh. The accused was a 50 year old daily wage earner and had two wives. The man was arrested in Assam by the police for his alleged sexual intercourse with the corpse of a 14 year old girl. He was charged under The Indian Penal Code Sections 306 (abetment of suicide) and 377 (unnatural offences) and POCSO Act's Section 8 (punishment for sexual assault).

July 2020⁹

In Maharashtra's Palghar, a 30-year-old shopkeeper murdered a 32-year-old woman customer and later had sexual intercourse with her. According to investigations, the victim had gone to make some household purchases at the accused's shop on June 26 and had an altercation with him on the price of some goods.

After the brawl, the accused slapped the victim, dragged her by the hair to the back of his shop, tried to strangulate her and then slit her throat with a knife.

The case happened during the peak of the lockdown imposed due to covid.

June 2019¹⁰

In West Bengal, Kamruzzaman Sarkar, a 42-year old man, was arrested by the Police for murdering at least seven women and having sex with their corpses, besides injuring several others over the past five months in and around East Burdwan and the neighbouring Hooghly district. He was charged under IPC Sections 302 (murder), 307 (attempt to murder) and 376 (rape).

October 2018¹¹

A 20-year old labourer in Gurugram confessed his ill deed and mentioned that he had raped the corpses of many of his victims just to satisfy his hunger for sex and make the most of his kill.

⁸ Newindianexpress.com, <https://www.newindianexpress.com/nation/2020/may/22/assam-man-arrested-for-necrophilia-2146703.html> (last visited February 15, 2022)

⁹ Tribuneindia.com, <https://www.tribuneindia.com/news/nation/palghar-stunned-by-necrophilia-a-man-raped-womans-corpse-108480> (last visited February 15, 2022)

¹⁰ Indianexpress.com, <https://indianexpress.com/article/india/west-bengal-rapes-murder-necrophilia-brutal-murshidabad-kamruzzaman-sarkar-5782644/> (last visited February 16, 2022).

¹¹ Tribuneindia.com, <https://www.tribuneindia.com/news/archive/haryana/gurugram-rape-accused-admits-to-necrophilia-687352> (last visited February 16, 2022).

January 2016¹²

In FatehpurSikri, the body of a 45-year old woman was dug out of the grave after she had died and then raped.

December 2016¹³

A 38-year-old man was arrested for necrophilia after he was found sexually abusing a dead woman near Yamuna River bank. The woman was killed as someone smothered her in sleep and her face was smashed with a stone.

These are just some scattered incidents to mention but the tally to such incidents has increased manifolds in the last decade. With the surge in such heinous crime, we still are unequipped with a specialized law that categorically deals with this offence.

¹²Timesof india.com, <https://timesofindia.indiatimes.com/city/agra/womans-body-dug-out-of-grave-at-fatehpur-sikri-raped/articleshow/50421063.cms> (last visited February 17, 2022).

¹³Timesofindia.com,<https://timesofindia.indiatimes.com/city/delhi/man-held-for-necrophilia/articleshow/55843172.cms>(last visited February 16, 2022).

3. LAWS IN INDIA

There is no specific provision in Indian Penal Code or in other special legislation that specifically deals with the offence of Necrophilia. However, few provisions in the Indian Penal Code are often attracted when any act of such nature is committed. Below mentioned is a list of the sections that are attracted. Further, it will be explained how these sections are not adequate to correspond to the crime of such intensity.

3.1 Section 297¹⁴ : Trespassing on burial places, etc.

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 sepulchre, or any place set apart from 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.

3.1.1 Limitations

This provision under Indian Penal Code somehow attempts to incorporate the defiling of a dead body within its statutory confinements, however, there are numerous problems which make this provision unsuitable to cover the offence of Necrophilia.

Firstly, only the persons who have trespassed into the burial grounds can be treated as liable for acts prohibited under this section. This necessarily refers that a morguekeeper, an employee in the morgue, guards of the morgue or guards of the burial grounds and keeper of the burial grounds or any other person who is present at either place under their official capacity cannot be held liable even if they are caught indulged in any of the acts prohibited under Sub-section (1) since they have not trespassed into either of the places. The provision falls flat at the very first requirement.

Secondly, corpses and cadavers can be found at a host of other places, besides burial grounds, such as morgues, crimes scenes etc. In such cases, the act of necrophilia would not fall in the check list of Section 297.

Another very significant limitation of this provision is that if someone guilty of such a heinous crime is convicted under Section 297, then he would be punished only with imprisonment for a year or fine or both. This inadequate punishment is vehemently not justified for such an offence.

3.2 Section 375¹⁵: Rape

A man is said to commit "rape" if he—

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

¹⁴ Indian Penal Code, 1860, No. 45, 1860 (India).

¹⁵ Ibid.

(b) 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 woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina,

urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him

or any other person, under the circumstances falling under any of the following seven descriptions:—

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her or any person

in whom she is interested, in fear of death or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.—With or without her consent, when she is under eighteen years of age.

Seventhly.—When she is unable to communicate consent.

Explanation 1.—For the purposes of this section, “vagina” shall also include labia majora.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words,

gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception 1.—A medical procedure or intervention shall not constitute rape.
Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

3.2.1 Limitation

The offence of rape is committed against a woman. According to Section 10 of the Indian Penal Code a woman is said to be a female of 'any age'. In the case of a corpse, it cannot be classified as a woman because it has no 'age'. Further another important ingredient is that such an act is to be committed without consent of the woman. This means that the woman has to be capable of giving the 'consent' A corpse in any case is not a woman and is incapable of consenting.

Thus, any offence against a corpse cannot come under the category of this offence.

3.3 Section 377¹⁶ : Unnatural offences

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

3.3.1 Limitation

Unnatural offences are offences where the person has carnal inter course with a man, woman or animal. Offences like necrophilia do not fall in this definition because a corpse is not a man, not a woman and not an animal. Hence the offence of Necrophilia does not fit in Section 377.

4. LAWS IN OTHER COUNTRIES

In order to facilitate the making of an immaculate law, it is important to inculcate a lot of ideas from the international community. To address the same barbaric crime in India, we need to delve into the international laws so that we pave the path of necrophilia in India.

Some countries do not recognize necrophilia as an offence. South Africa and United Kingdom are the only two countries to specifically recognize it as a punishable offence.

Brazil and Sweden has identical laws which makes it illegal to abuse a corpse.

New Zealand specifically mentions that it is illegal to "misconduct with human remains." As far as the law of New Zealand in this regard is concerned, Section 50¹⁷ of the Crimes Act, 1961, prescribes punishment of a term of 2 years of imprisonment if any person does any act which harms the dignity of the corpse, whether buried or unburied.

The South African Government has also successfully formulated a law, making necrophilia a criminal offence. Section 14¹⁸ of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 prohibits the commission of a sexual act with a corpse

In USA there is no federal law that categorizes necrophilia as an offence but there are state legislations in the same regard. In Washington necrophilia is a felony, Nevada also

¹⁶ Ibid.

¹⁷ Crimes Act 1961, No. 43, Acts of Parliament, 1961 (New Zealand).

¹⁸ Criminal Law (Sexual Offences and Related Matters Amendment) act, 2007, No. 32, 2007 (South Africa).

penalizes it as a felony. In Texas, it is a misdemeanor only. In New Mexico, Nebraska, Kansas, Kentucky, Louisiana and North Carolina, however, there are no laws which concern the facet of having sex with a dead human body.

As per the Canadian law, the act of defiling the dead is illegal. Section 182¹⁹ of the Criminal Code of Canada, 1985 states that “*whosoever improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.*”

The Canadian Laws seem to have a resemblance with the Indian laws, but the ambit of the Canadian Law is wider and prescribes a greater punishment.

¹⁹ Criminal Code of Canada, 1985 (Canada).

5. CONCLUSION:NEED FOR NEW LAWS

The crime of Necrophilia is not a crime against that particular corpse or the relatives of that corpse, it is largely a crime against society. A human body as soon as it is dead becomes a religious symbol and emotional as well as religious sentiments are attached to the same. In many Islamic Countries the offence of Necrophilia is so grave that the relatives of the deceased are forced to guard the grave of their women.

In India also, the last decade has seen rise in cases of Necrophilia and hence, it is important to frame a law that creates a necessary deterrent effect. We have seen a major incident in the year 2006 named the Nithari case, and uptill now we do not have a sufficient law. Now, as the crime rate is increasing it is incumbent on us to form a law with a harsh punishment so that we are successful in preventing such a barbarous crime.