

**UNDERSTANDING NECROPHILIA : THE NEED FOR AN EXPLICIT LAW
IN INDIA**

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ABSTRACT

The concept of 'Necrophilia' is difficult to comprehend as it embraces within itself not just guilty acts consisting of sex with corpses or a disorderly and highly inappropriate mental or sexual behaviour, but pleasures in various versions-viewing the corpse, smelling, touching, being around, comfort, simulation and an element of fetishism. It is not just a mental condition. It's much more a spectrum of behavior that one can anticipate and ranges from thoughts, fantasies, all the way to murder and actual penetration. Necrophilia is gender neutral. However, the facts and figures in the globe indicate that the majority of the perpetrators are male. The reason for the heinous act is not exhaustive and covers dimensions more than one. Necrophiliacs in India are no less in numbers as is evident from the rise in the number of cases that India is witnessing not only in the funeral grounds but also in morgues and in the places carrying out post mortems. In India, laws are passive towards this criminal tendency except Section 297 of I.P.C that imposes penal liability for the offenders trespassing on burial places. However, this matter has to be viewed from the point of public policy and the existential issue of protection of the legal rights over the dead bodies needs to be addressed by the legislators. The present paper is a humble attempt to bring home the vital point that a stringent law is warranted in India to curb such unwanted tendencies.

Introduction

Necrophilia is one of the most bizarre behaviour that reaches beyond imagination in the world of human civilization. It relates to the abuse of corpses and is often related to pre-occupation or obsession with dead bodies. The medio-legal aspect of the term is often discussed in the forums. It is a part of paraphilia, meaning a condition featured by unusual and abnormal sexual behavior. There is no direct law in India

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prohibiting heinous crimes such as these, even though, criminal law secures a decent burial for all dead persons and its violation amounts to felony.

Many, a times courts have also ruled that right to decent burial is a part and parcel of the fundamental right to life. Moreover, Indian tradition and culture clearly points out implications, be it from religious or jurisprudential view that the same human dignity with which a living human being is expected to be treated should be meted out to a dead person. Article 1 of the Universal Declaration of Human Rights pin points that all persons are born free and equal in dignity and rights and are equal in the eyes of law.

Indian legal system is based on English Common Law. The dharma or duty based Indian jurist philosophy convey that the living has a duty towards the dead and to give them a dignified send-off forms the duty of mankind. From the jurisprudential angle, law ensures a decent burial for dead man and the rights relating to body is a vital occupies pre-dominance. The present study urges the need of an explicit law in India regarding 'Nicrophilia' in order to achieve the mandate of a welfare state as envisaged by the Constitution of India.

Problem Statement

Section 297 of the Indian Penal Code makes trespassing in burial places a cognizable offence and imposes conviction for the same. But, the provision is exhaustive enough covering only burial places whereas no specific provision finds place in Indian law regarding trespassing with dead bodies in morgues and other isolated places. India is witnessing a rising number of necrophilia cases but the law is silent in this respect. Hence, an effort on the legislative front is the need of the hour. Timely actions can help to prevent chaotic situation or else the day is not too far when people would rise up with protests on the road demanding a change thereby painting a worst scenario that one can ever imagine.

Key objectives

The underlying object of this paper is three-fold:

- i) To trace the possible reasons in the Indian society behind the acts of necrophiliacs.
- ii) To discuss the judicial approach to the concept of 'Nicrophilia'.
- iii) To urge for a specific legislation in India to curb such undesired and unwanted tendencies.

Methodology

The researcher has adopted doctrinal method for the purpose of the study. In order to achieve the objectives, a thorough study on the available online reports has been examined by the researcher. A wide range of bibliographical sources from different scholarly articles, academic journals, conference papers and publications were visited. Even newspapers played a significant role to contribute to the researcher's knowledge.

Genesis of Necrophilia

'Necrophilia' is basically sex with corpse. In the year 1950, the term was coined by Belgian Alenist, Joseph Guislain.³ This heinous misdemeanour is also called 'Necrolagnia' or 'Thanatophilia', an ailment defining pathological fascination with dead bodies, taking the form of desire to engage in sexual intercourse. In the year 1989, Jonathan Rosman and Philip Resnick classified necrophilia into three types based on the acts of necrophiles on the corpses as- Homicidal Necrophilia, regular necrophilia and necrophilic fantasy.

When the perpetrator murders and obtains corpses for sexual gratification, it is homicidal necrophilia. When the dead bodies are used for sexual pleasures by the perpetrators, it is regular necrophilia. In Necrophilic fantasy, the necrophiles does not carry out any necrophilic acts. They just fantasize about their sexual activity.⁴ The most detail version of the word needs to be explained.

The letter 'N' comes from 'necro' meaning 'corpse or deceased' and 'philia' meaning 'affection'. Broader view of the term 'Necrophilia' is finding pleasure from viewing the deceased to arousing of touching of the deceased to intercourse with the dead. 'Autonecrophilia' and 'Pseudonecrophilia' are some of the variations in the term 'necrophilia'. The former means becoming sexually aroused by simulated corpses or imagining oneself as a corpse.

The later received various interpretations. Some states that it is arousing from having sex with someone pretending to be dead while others opine that it is masturbation or erotic fantasies of a person having sexual relations with a dead body. There are other bizarre and weird pictures painted like appearance, dressed in shroud, lying in coffin.

³ Necrophilia: Is it an offence? March 25th, 2016, Rostrum's Law Review

⁴ id

Instance may be cited of a lady in one of the cases who would ask her husband to pretend dead so that she can simulate his organs with her mouth. She would take pleasure in the vampire fantasy.⁵

The stages of Necrophilia ranges from Class I to X as categorized by Diagnostic and Statistical Manual Disorders and in a Forensic Legal Medicine Journal by Dr. Agarwal, professor of Forensic Science, New Delhi in new classification of Necrophilia.⁶

I. Role Players: People who get aroused from pretending their live partners as dead during the sexual activity, but they do not actually engage in sex with someone who is dead.

2. Romantic Necrophiles: The penetrators preserve the dead body because they are not ready to accept that their close partners have died.

3. Necrophilic Fantasizers: They do not engage in sex with dead bodies but only masturbate in presence of dead bodies. These are the people who actually become aroused at the sight of a coffin or corpse but never actually touch the corpse.

4. Tactile Necrophiles: They manipulate the dead bodies as an orgasm and like to touch the bodies like erotic parts.

5. Fetishitic necrophiles: The perpetrator cut the parts of the dead body like breast and mummify it to keep it to themselves so that they can fulfill their fetish and necrophilic act.

6. Necromutilomaniacs: The body is touched by the penetrator to feel it but they also vandalize the body.

7. Opportunistic Necrophiles: They have sex with a living being but don't lose the opportunity to have sex with the dead bodies in case they get a chance.

8. Regular Necrophiles: The perpetrator despite being able to have sex with living persons prefers having sex only with dead bodies.

9. Homicidal Necrophiles: Their role is more like a serial killer and fall under the most dangerous category as they can kill anyone to have sex with them.

⁵ Agarwal Anil, A new classification of necrophilia- Anil Agarwal's forensic websites, (visited on 08.05.2020 at 11:09 p.m)

⁶ The DSM-5 (Diagnostic and Statistical Manual of Mental Disorders, Fifth edition has categorized ten different types of necrophiliacs.

10. Exclusive Necrophiles: This category of persons never engage in sex with living beings. They have sex only with the dead.

In ancient times sailors returning corpses to their home country were often accused of necrophilia. Greek author Herodotus narrated in his 'Histories' that in Ancient Egypt, bodies of beautiful ladies were not embalmed immediately after their deaths. The father of History Herodotus explained in his book 'The Histories' that Egyptian did not immediately preserve the elegant women dead body but they left body to decay in order to prevent the sexual intercourse with corpse.⁷

The story of Surendra Koli and Mohinder Singh Pandher in India are noted illustration for necrophilia where several necrophilia activities were committed on the dead bodies of women and children. The famous Noida serial killer case came into limelight in the year 2006 in the form of 'Nithari Kand'.⁸ Popularly known as 'Nithari case', the incident created sensational scenario in the county. Nithari is a village located in Noida where the master and the servant not only brutally murdered several young children and women but committed such heinous acts on them which is beyond human imagination.

The kothi no. D-5 in Noida sector 31, witnessed the cries of seventeen children and several other innocent faces whose bodies were later thrown away in the ditch after tearing into slices. The culprits used to lure those children under the pretext of sharing some things or the others and finally ruined their lives after molestating them to the extremes. The culprits used to cook few slices of their dead bodies and consume greedily and this harrowic incidents continued for about two years. The villagers initially were under a superstitious belief that some demons carried away the children and vanished with their bodies.⁹

However, in December 2006, while tracing the whereabouts of a girl, the fact that she was murdered by Surendra Kohli, the prime accused and his several brutal acts along with the co-accused came into forefront of the nation. During investigation the CBI recovered traits of the pieces of human bodies and the untold horrific stories were in

⁷ Love of Death : Conceptual Study of Necrophilia, International Journal of Social Science and Economic Research

⁸ Nithari Killings: A timeline of the case so far, www.livemint.com (visited on 09.05.2020 at 05:00 a.m)

⁹ Indian serial killings: Could 'house of horrors' accused be innocent? www.bbc.com (accessed on 08.05.2020 at 06:09 p.m)

the newspapers and television channels during that year. The facts stated that a girl named Payal visited the house of Mohinder Singh Pandher and she asked the rickshaw puller to stop in front of the house and pay back after she returns. After waiting for long, when the rickshaw puller went inside the house, the owner said that she already left. Finding something fishy the rickshaw puller reported the matter to the victim's parents.

The father of the girl, Nand Lal immediately lodged an F.I.R and the police raided the house and matters revealed beyond imagination the cycle of human history. The court pronounced the culprits guilty and convicted them.¹⁰ On 24 July 2017, both the master and the servant have been awarded death sentence.¹¹ Since Necrophilia is yet to be looked into from serious angle by the political heads of the nation, such horrific acts finds place in the planet.

Highlighting Some International Legal Perspectives on Necrophilia

In Canada, Necrophilia attracts penal liability under section 182 of The Criminal Procedure Code of Canada.¹² There are certain specific provisions dealing with sexual offenses, public morals and disorderly conduct. Section 182 states- "Everyone who

a) neglects, without lawful excuse, to perform any duty that is imposed on him by law or that he undertakes with reference to the burial of a dead human body or human remains or

b) 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.

French Penal Code under Article 1.225-17 makes Necrophilia, an offense which allows the judge to punish necrophiles for affecting the integrity of a corpse and for which the punishment is 1year of prison and up to 15,000 euros.¹³

Germany has made comprehensive provisions for punishment of necrophilia. The German Criminal Code divided in thirty chapters specifically provides Section 168 entitled 'Disturbing the dead' stating-¹⁴

¹⁰ www.hindustantimes.com (visited on 06.05.2020 at 12:00 p.m)

¹¹ m.economicstimes.com (visited on 07.05.2020 at 05:12 p.m)

¹² Aggarwal Anil, Necrophilia, Forensic and Medico-Legal Aspects, CRC Press, Taylor & Francis Group, Boca Raton London, New York at p.197

¹³ id

1) Whoever, without authorization, takes away the body or parts of the body of a deceased person, a dead fetus or parts thereof or the ashes of a deceased person from the custody of the person entitled thereto, or whoever commits insulting mischief thereon, shall be punished with imprisonment for not more than three years or a fine.

2) Whoever destroys or damages a place for lying-in-state, burial site or public place for remembering the dead, or whoever commits insulting mischief there, shall be similarly punished.

3) An attempt shall be punishable.

In United Kingdom, Section 70 of the Sexual Offences Act, 2003 makes sexual penetration of a corpse an offense. In *R V Clark*, it has been already held that exploring a naked corpse in public is a public nuisance.¹⁵ Section 70 states- Sexual Penetration of a corpse

1) A person commits an offence if

a) he intentionally performs an act of penetration with a part of his body or anything else,

b) what is penetrated is a part of the body of a dead person,

c) he knows that, or is reckless as to whether, that is what is penetrated and

d) the penetration is sexual

2) A person guilty of an offence under this section is liable

a) on summary conviction, to imprisonment for a term not exceeding six months or a fine nor exceeding the statutory maximum or both

b) on conviction on indictment, to imprisonment for a term not exceeding two years.

In United States, there are no federal laws regarding necrophilia. Only those laws relating to some sexual conduct with the human corpse are discussed but directly there is no mention about derogatory and offensive treatment about human remains in general.¹⁶

In Australia, though section 214 of the Criminal Code of Western Australia addresses the issue of 'Misconduct with regard to corpses', there is no mention of the term

¹⁴ Supra note 10 at pp.198-199

¹⁵ Supra note 10 at p.200

¹⁶ Ibid at p.201

specifically.¹⁷ Necrophilia under this section is a misdemeanor and the punishment is two years. According to Section 140, of the criminal code of Northern territory, necrophilia is a crime and attracts imprisonment for two years. The criminal law of New South Wales is governed by the Crimes Act 1900. Even under the Tasmanian Criminal Code Act, 1924, necrophilia is not directly mentioned though it is implicitly included in Section 139 of the Act stating-

Any person who-

- a) neglects to perform any duty, either imposed upon him by law or under taken by him, with reference to the burial of any dead human body or human remains or
- b) improperly or indecently interferes with or offers any dignity to any dead human body or human remains, whether buried or not is guilty of a crime.

According to Section 34-B of the Crimes Act 1958 of Victoria, it is an offense to interfere with the corpses.

Position in India- a vacuum on the part of the legislative's desk

In India despite the acts on necrophilia rising to the optimum level as the facts and the figures speaks for itself, there still remains a wide gap on the part of the political heads of the county. There is no explicit law on the heinous crime in the country. Section 297 of I.P.C entitled 'Trespassing on burial places' addresses the issue to an extent. However, the provision is exhaustive in itself and there remains to be included many darker aspects of this offence. Gravediggers and mortuary attendants are not covered in the provision including those engaged in post mortems where often necrophilia is committed. Even medical students are no exception and have been traced occasionally having sex with the corpses However, it is difficult to prove such allegations in the court.

The judiciary however, cannot give a laid back attitude. Being the guardian of the Constitution, it has been made obligatory to look into the practical matters coming before it meticulously. In October, 2019, a deaf and mute man was arrested for murder and necrophilia who killed a forty five year old widow and then committed rape on the corpses of the body which was re covered from a sugarcane field.¹⁸

¹⁷ <https://www.nzherald.co.nz>, article (visited on 09.05.2020 at 02:08 p.m)

¹⁸ https://m.timesofindia.com/city/bareilly/deaf-and-mute-man-arrested-for-murder-and-necrophilia/amp_articleshow/71569991.cms (visited on 02.05.2020 at 12:30 p.m)

In another case, in December 2019, a thirty eight year old man, a sex maniac and a necrophile was arrested for the murder of a couple and the infant son in the state of Uttar Pradesh's Azamgarh. On interrogation it was revealed that he had committed similar horrific crimes in Haryana, Delhi and West Bengal. Azamgarh SP Trivedi Singh said "He engaged in sex with the body for three hours in the houses and made a video of the act, which he later showed to his sister-in-law who was horrified. He also admitted to taking a stimulating drug and carried condoms for perpetrating the crime. He used a knife and a heavy stone to kill his victims".¹⁹

In yet another case in Delhi's sunlight colony area, a twenty eight year old man was arrested for allegedly violating the corpse of a woman after committing her murder. The police registered a case of murder and the legal provisions that prevented people from having unnatural sex-necrophilia. The magistrate directed that he should be send for a thorough mental check up.²⁰

In 2020, in Gurugram, a necrophiliac committed rape and murder and engaged in sex with many corpses. The special interrogation team of Gurugram police was rattled by monstrous confessions of the accused. He also confessed that he in the year 2013 also he was engaged in such criminal activity. The accused stated that in order to prevent the victims from getting escaped, he killed them.²¹

Concluding remarks

It is said - 'Prevention is better than cure'. However, the timely actions to prevent such deadly activities have expired in India and hence an appeal is made through this paper to develop some strict laws to eradicate such fetish activities, which is a curse in the path of a welfare state. It is high time that the legislature takes a stand to criminalise these acts either by inserting new section in I.P.C or by introducing a new explicit law on the heinous crime. Adhering to the reformative theory, correctional measures for the perpetrators could be introduced like increasing conversational skills, socializing skills, developmental and other therapies as proper remedial strategies could not only

¹⁹ <https://www.indiatoday.in/crime/story/necrophile-triple-murder-uttar-pradesh-1624687-2019-12-03> (visited on 07.05.2020 at 12:09 p.m)

²⁰ <https://m.hindustantimes.com/delhi/4th-mutilated-body-found-in-delhi-in-10-days-man-held-for-necrophila/story-> (visited on 07.05.2020 at 05:09 p.m)

²¹ <https://www.mid-day.com/articles/viral-murder-necrophila-test-to-check-if-killer-had-sex-with-corpse/406409> (visited on 08.05.2020 at 08:00 p.m)

eliminate crime but also reduce the tendencies due to which the accused fall prey to such low bandwidth.