

## DEFILING THE DEAD: - UNDERSTANDING NECROPHILIA UNDER THE INDIAN LEGAL FRAMEWORK.

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### ABSTRACT

The term “*Necrophilia*” originates from the Greek language, whereby the word *nekros* means “dead” or “dead body” and the word *philiōs* means “attraction to”. Necrophilia in general sense describes the uncanny mental condition in which the perpetrator obtains pleasure in establishing sexual relationships with the corpses. Thus, the obnoxious act of Necrophilia is not only detrimental to the right to dignity of the dead, but also causes a despondency within the societal norms at large.

At the outset, this present research paper endeavours to adapt an interdisciplinary perspective in order to bring out various theories inclusive of psychoanalysis, socio-legal insight and a psychiatric review of the aforementioned act. This paper aims to include Nithari Serial-Murder case study to understand Necrophilia and its interpretation under the Indian Criminal Law. Further, the paper also outlines the view of majority of States namely: Brazil, Canada, U.K. etc. which address the commission of sexual intercourse or sexual attraction towards human corpses. The author(s) endeavour to demonstrate the current position pertaining to Necrophilia in the Indian Legal Framework by interpreting various sections and Articles in the Indian Laws. This paper is also an attempt to propose suggestions and recommendations for strengthening the laws and their penalties’ related to Necrophilia which is a heinous crime jeopardizing the dignity of deceased.

**KEY WORDS:** Necrophilia, Sexual desires, Human Corpses, Consent, and Dignity

### 1. INTRODUCTION AND BACKGROUND

*“The greatness of humanity is not in being human, but in being humane”*

~Mahatma Gandhi

Human beings are supposed to be a culture-bearing primate who is anatomically similar to the great apes. However, gradually evolution took place and the humans drastically evolved by developing a resultant capacity for abstract reasoning, having or showing instinctive empathy and for colossally being recognized for governing their emotions. Through the aforementioned it is clear that what distinguishes human beings is the capability to understand, the ability to think rationally and to be mindful of their thoughts. Being a human, it is likely normal to develop space for desires and temptations which can often lead to disorders and psychosis as a result of unfulfilled whims and fancies. One such contemptuous psychological disorder is

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Necrophilia. Moreso, it has been placed under the categorization of Paraphilia in the International Classification of Disease Manual as both the World Health Organization and American Psychiatric Association (hereinafter referred to as WHO & APA), observed this act as a mental disorder due to the perpetrator's excessive sexual desire towards the dead. There have been diverse instances where the perpetrators have either killed women or dug out graves by trespassing into morgues in order to satisfy their impure and unrequited desires to have sex with the human corpses. Necrophilia is also often inscribed as "*necrocoitus*", "*necrolagnia*", "*necrochlesis*" and "*thenatophilia*" (Aggrawal, 2016). This act can be treated as one of the oldest abnormalities in the human history which is a detestable fixation of engaging in sexual acts with the dead body. It is presumed to be an abnormal and an abhorrent disorder, however no such data for its existence amidst general population can be catered (Milner, Dopke & Crouch, 2008). Therefore, even according to the author's psychological understanding, the act of necrophilia can either be perceived as a sexual perversion or a purposeful macabre impulse to be present around human corpse. One of the British philosophers G.E. Moore in his book expressed his views that pleasure is the source of majority of desires. He further quoted that "*In the first place, plainly, we are not always conscious of expecting pleasure, when we desire a thing. We may only be conscious of the thing which we desire, and may be impelled to make for it at once, without any calculation as to whether it will bring us pleasure or pain. In the second place, even when we do expect pleasure, it can certainly be very rarely pleasure only which we desire.*" (Principia Ethica, 1903)."

According to Hucker (1990) the term Necrophilia was first propounded by a physician named Joseph Guislain, who hailed from Belgium (Aggrawal, 2016). Moreso, if we trace back the history of Necrophilia, it has been observed that this act first started in the Ancient Egypt where beautiful women were not embalmed immediately after they died as there were numerous instances which were witnessed and reported that upon the death of these women, either the embalmers used to violate the bodies of these women or their husbands used to have sex with them. It is believed that King Herod had sexual intercourse with Marianne, his deceased wife, for seven years after he had murdered her. According to the texts, Murong Xi who ruled Xianbei between 385 to 407, also had sexual relations with the corpse of his lover Fu Xunying (Steve, 2014). Moreover, while returning the dead bodies/corpses back to their homeland, the sailors were accused and suspected of having sex with the bodies. Thus, Necrophilia is not a gradually developed disorder but a loathsome act which is in practice since the ancient times and even in the Ancient Egypt, the bodies were left to rot for at least four days so that such uncanny acts could be prevented from happening (Herodotus, 1956).

## 2. NECROPHILIA: A STUDY THROUGH THE INDIAN LENS

### A. Interpreting Section 297 of the Indian Penal Code, 1860

In India, laws related to Necrophilia seem to be quite ambiguous and obscure. However, the legal position of Article 21 is such that fair treatment and dignity attained from Article 21 of the Indian Constitution, extends not only to the human beings but also to the deceased persons (Paramanand Katara (Pt.) v Union of India & Ors (1995) 3 SCC 248). Moreso, National Human Rights Commission (hereinafter referred to as NHRC) by an advisory dated 14 May, 2021 expressly stated that the NHRC is bound by the Protection of Human Rights Act, 1993 in order

to protect and promote the human rights of all human beings present as well as that of deceased persons within the country of India.<sup>5</sup> This advisory was in lieu of excessive number of deaths that occurred during the second wave of COVID-19 Pandemic. To understand the position of law related to protection of the rights of a dead person, Indian Penal Code provides us with number of sections including section 404 which states that any kind of dishonest misappropriation of dead person's property at the time of death shall lead to an imprisonment up to three years or fine. Further, explanation no. I of section 499 extends to protection the reputation of the dead person which would have otherwise jeopardised his imputation and character if he was alive. Supplementary to this any threat to injure the reputation of the dead person is also covered within the ambit of section 503 of IPC. Understanding the regime of Necrophilia in the Indian context specifically, the only statutory provision that can be closely associated to is S. 297 of the Indian Penal Code which states

*“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.”<sup>6</sup>*

While interpreting S. 297, to understand the regime of necrophilia, the key words that are principal and paramount for the readers to understand are (trespass, sepulchre, indignity and human corpses). However, insofar as the definition of the aforesaid section is concerned, it is in itself insufficient to disclose any act which can establish sexual attraction or desire towards human corpse that can lead to penalty. Thus, the only word that can be deciphered from the text is “trespassing” which is likely to be committed by the accused person before sexually exploiting the human corpse. On the contrary, through a keen analysis, it is pertinent to bring on record the alternative argument for the aforesaid which states that the act of trespassing is also not a sufficient ingredient to commit the act of necrophilia as the workers, guards, keepers, assigned with the duty and responsibility of handling, moving and keeping the human corpse, firstly, cannot be held accountable for committing trespass on their work land and secondly there can be no possible record by which these acts which involve the act of necrophilia can be traced or taken note of.

### **B. Interpretation of the term “Consent”**

Across the world as well as in India, sexual abuse, assault and violence are globally recognized acts as a massive social and human rights concern. It is regarded as one of the most brutal crimes in almost every society where there is an existence of human race.

Explanation no. II to Section 375 under the IPC delineates the term consent to be “*an unequivocal voluntary agreement when the woman communicates a willingness to engage in*

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<sup>5</sup>Advisory of NHRC available on <https://nhrc.nic.in/sites/default/files/NHRC%20Advisory%20for%20Upholding%20Dignity%20%26%20Protecting%20the%20Rights%20of%20Dead.pdf> <last viewed on 09.10.2022 at IST 7:44 PM >

<sup>6</sup>Section 297 of the Indian Penal Code- Trespassing on burial places, etc.

*the specific sexual act through words, gestures, or any other means of verbal or nonverbal communication.*"<sup>7</sup>

Thus, consent is one such word that differentiates the act of committing sexual assault/abuse on someone from an act of establishing sexual relationship by willingness. *Per contra*, the scope of unequivocal agreement, consenting to have sex is next to zero in the human corpses which gives birth to the next paramount question on mind that whether in this regard the right to dignity can be extended to dead persons, as well? Necrophilia was although first termed by a Belgian psychiatrist Joseph Guisla in, it still remained under the blanket till Richard von Krafft-Ebing published *Psychopathia Sexualis*, a work of his in the year, 1894 which defined necrophilia as an opprobrious manifestation of sadism. However, in 1941, the aforesaid take of Richard Von was broken by Abraham A. Brill who expressed his views on Necrophilia and stated it to be a *deranged-psychotic, mentally deficient* condition and quoted it as *hear incapability of having a partner who can grant consent to such act* (Aggrawal, A, 2016). Moreso, establishing sexual relationships with a corpse that cannot give consent to the act is considered to be a type of domestic rape (Robert & Karla, 2005). According to Article 21 of the Constitution of India, the State is obligated to guarantee protection of the rights to the dead persons for the decent and dignified cremation or burial as per the religious norms that the dead man kept or believed in, when he was alive. Further, from time immemorial, it is believed that the right to proper and appropriate last rites of the dead person is a matter of high importance and it has been covered under the ambit of Article 21 of the Constitution of India. Lastly, while interpreting, section 377 of the IPC it is observed that the word "voluntarily" has been added to it by the Legislation which once again interdict the act of Necrophilia to fall under its ambit as a dead person giving consent to any act or omission is in negation. It is indubitably true that having sexual intercourse with the corpse is against the order of the nature but Section 377 of IPC has its own limitations. The primary element under the said provision is absent and therefore there is no corrective arrangement in the Indian Legislation which can condemn the act of having sex with the dead in the absence of the term "trespass" used under Section 297 of IPC. There is an underline challenge in understanding Section 297 IPC, Section 377 IPC vis-à-vis Necrophilia as both the aforesaid sections fail to address a barbaric act and its punishment in the Indian legal context. Thus, these sections (supra) need an immediate amendments so that the definition of "unnatural intercourse" against the order of the nature can have a better and wider ambit.

### **C. Indian Judicial Outlook pertaining to the Rights of the Dead.**

Article 21 plays a crucial role in determining life and liberty of any living person but this perspective was extended and given a wider ambit by the Hon'ble Supreme Court by acknowledging the said Article by restricting it to the not only to the living persons but also to the deceased (*Paramanand Katara (Pt.) v Union of India & Ors*(1995)3SCC 248).

In India, it is very crucial to study the **Nithari case** which is supposed to be one of the most appalling, barbaric and grim instances of the year 2006 when human skeletons were discovered behind a house in the satellite city of Delhi, Noida (*Surendra Koli versus State of Uttar Pradesh & Ors* (2011) 2 SCC (cri) 92). A detailed analysis and study of the case disclosed the commission of loathsome acts like sexual violence, murder, savagery and attempted

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<sup>7</sup>Section 375 (2) of the Indian Penal Code- Without her consent.

necrophilia (*Borah U, 2020*). This case snatches the highlights as it is an epitome of wrongdoings of very uncommon nature. An unusual high number of women and children had gone missing during the last two years from sector 31, which was situated in the Nithari Village of Gautam Budh Nagar in Noida. Suspects of this case were: Moninder Singh Pandher (owner of the bungalow) and Surinder Koli (domestic help of Moninder Singh, who was appointed for the maintenance of the house) and it was widely believed that people went missing after the joining of Surinder Koli in the locality. Two months after the case was filed, CBI recorded the nerve wrecking confession of the domestic help, in which he admitted the series of heinous activities he had committed after weaving a dense trap for children and women. In a great detail, he explained how he used to lure girls and strangulate and rape them afterwards. Not only this, he would then chop the dead bodies into several small parts and pieces and eat them after cooking. He pointed out the areas in the house, where he committed such offences. And on his pointing out many more skulls, bones and body parts were recovered along with the weapons and the belongings of the victims. As defined, classified and characterised by Dr. Anil Aggrawal, the accused is a class V, VI, VIII and class IX necrophile (*Aggrawal, 2016*). Following table explains the aforesaid classification.

**Table 1: The Ten Tier Classification based on Nithari Serial Murder Case Study**

SR. NO.	CLASS	CATEGORY	DESCRIPTION
i.	Class-I	Role Players	Pretentious sex on a living body believing it to be dead
ii.	Class-II	Romantic Necrophiles	embalming and mummifying of any one part of their lover’s body after they have died in order to stimulate sexual desires in oneself.
iii.	Class-III	NecrophilicFanasizer	An act involving masturbation in the presence of a human corpse without actual penetration.

iv.	Class-IV	Tactile Necrophiles	Stroking of erotic parts of the human corpse, such as (neck and breasts) just in order to get orgasm without actual penetration.
v.	Class-V	Fetishistic Necrophiles	Embalming and mummifying body parts of the dead for their own fetishes.
vi.	Class-VI	Necromutilomaniacs	Interest in the human corpses is limited to a mere sexual touch. moreover, necrophiliac pleasure derives from mutilating the dead body.
vii.	Class- VII	Opportunistic Necrophilia-	Finding pleasure in having sexual relationships with the living as well as with the human corpse, whenever opportunity strikes.  It is believed that the mortuary keepers belong to this classification.
viii.	Class-VIII	Regular Necrophiles	Preference to have sex with the humancorpses over living persons. However, Class VIII offenders can have sex with both living and the dead
ix.	Class-IX	Homicidal Necrophiles	The most dangerous of all, as they can kill a human being in order to have an intercourse with their dead body.
x.	Class- X	Exclusive Necrophilias	Sexual preference is only with the dead person and there is a complete exclusion of having sexual intercourse with living persons.

Based on the aforementioned, various charge sheets were filed against the owner and both were sentenced to capital punishment on the orders of the trial court in 2009. Further, the former accused was acquitted by the , Allahabad High Court. However, the Hon’ble Supreme Court of India have awarded them death sentences but the verdict of the case is still pending.

Dignity of life and the rights of a deceased person have been given plenty weightage in India by the Judiciary. One such case that corroborates with the aforementioned statement is of (*AshrayAdhikar Abhiyan Vs. Union of India AIR2002SC554*). AshrayAdhikar Abhiyan is a Delhi based NGO that works for the rights of urban homelessness in the Capital City of India. Almost two decades back, petitioner organization wrote a letter addressing the then Hon'ble Chief Justice of India, raising a complaint that when homeless persons die, they are neither acknowledged or cared for and nor are they entitled to a decent burial. Therefore, it is violative of the right of a decent burial of a deceased homeless person.

Briefly, issues that arose before the Hon'ble Jury were: -

- i. The right to a decent burial of a vagrant deceased, as per the religion he followed.
- ii. The obligation of the State.

The letter was treated as a writ petition and on the basis of which, notices were issued and counter affidavits were filed. Deputy Commissioner of Police, Delhi and Municipal Health Officer of Municipal corporation of Delhi in the counter affidavit(s) mentioned their respective roles in handling and cremating the dead bodies of the homeless deceased. *After the death of an unclaimed person, his corpse is taken over by the Municipal Corporation of Delhi from the Police. Subsequently, the corpse is cremated at the Crematorium, by the Department of Health, Municipal Corporation of Delhi, without any charge. In cases, the corpse is that of a Muslim, the same is buried at the Burial Ground and the expenses are borne by the MCD.*

As the letter prayed for the intervention of the Apex Court in issuing necessary directions for the decent cremation of the homeless, Hon'ble bench asked about the guidelines petitioner sought from the court. Some of the guidelines proposed are mentioned hereunder:

- i. First and foremost, A decent burial.
- ii. Immediate Presence of at least two police constables at the spot.
- iii. Without a delay, ambulance should be called to take the body to the nearest hospital.
- iv. National Network of door darshan should telecast the details of the dead, at least twice at an interval of two weeks.

### 3. INTERNATIONAL VIEW

Necrophilia is not an alien concept to the International perspective. In the past, when means of transportation were not developed, dead were transported by ship to different destinations and the sailors while on board, would sexually assault the bodies to satisfy their morbid needs. This heinous crime used to take place even during crusades and hostilities. Moreover, as discussed already, Murong Xi who ruled Xianbei between 385 to 407, also had sexual relations with the corpse of his lover Fu Xunying (Steve, 2014). There are various instances which happened in the past that disclose the act of Necrophilia.

Necrophiliacs, can be seen as people suffering from psychosexual disease of copulating with bodies or carcass of another person. The act is legally recognised at some places but if we talk about India and its alike nations, such an inhumane crime is not specifically addressed however, it is covered under the umbrella sections which cannot be read in isolation. Further, there are Countries who adopt human rights approach as well as uphold the dignity of the dead but unfortunately, they do not criminalise Necrophilia. The sections addressing such acts are either too vague or too narrow in nature. Let's have an insight into the legality of Necrophilia around the globe:

**a. U.S.A.**

The Federal Laws of United States do not specify the act of Necrophilia; instead, it is up to the discretion of the individual states to penalise such an act to whatever extent possible.

For instance: It is a class C felony in Washington, state jail felony in Texas, second degree misdemeanour in Pennsylvania, class 3 felony in New Jersey, but in the states like Massachusetts, Virginia and New Mexico, there is no law till date.

**b. U.K.**

Section 70 under the Act of Sexual Offences, 2003, considers necrophilia a prosecutable offence carrying a punishment of maximum two years of imprisonment. While in Canada, New Zealand and Australia, sexual intercourse with a dead is not only regarded an undignified act but is also considered to be causing a massive disregard to human corpse which is against the judicial viewpoint of these states. Therefore, it is covered under the ambit of, Section 182 (b) of the Canadian Criminal Code, section 150 of New Zealand Crimes Act 1961 and section 48 of Crimes Act 1900. As per section 182(b) of Canadian Criminal Code:

*“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 (Justice Law Website).” As per section 150 (b) of New Zealand Crimes Act, 1961: Misconduct in respect of human remains “Everyone is liable to imprisonment for a term not exceeding 2 years who- improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not”*

Section 48 of Crimes act 1900 is explicit about: Misconduct with regard to corpses

“A person who—

(a) *indecently interferes with any dead human body; or*

(b) *improperly interferes with, or offers any indignity to, any dead human body or human remains (whether buried or not); is guilty of an offence punishable, on conviction, by imprisonment for 2 years.”*

**c. SOUTH.AFRICA**

Section no. 14 under the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 talks about Sexual act with corpse as: *“A person who unlawfully and intentionally commits a sexual act with the human corpse, shall be guilty of the offence Necrophilia.”*

**d. BRAZIL**

Brazil on the other hand, covers sex with a corpse under Article 212 of the, Brazilian Criminal Code, Federal Decree-Law No. 2.848.

- *“Art. 212 - Vilipendiar corpse or its ashes:*
- *Penalty –Detention up to three years, and fine.”*

Thus, concluding some of the International views, it is clear that irrespective of regional disparity, the prominence of basic human rights of the living or that of the dead never fades away.



#### 4. CONCLUSION AND SUGGESTIONS

Human Rights are the basic rights which cannot be alienated from an individual as it is believed that Human Rights are the sine qua non for an individual existence. The major issue emanating out of the very concept of Human Rights is as to whether these rights shall extend to an individual post his death. Necrophilia is an act of committing sexual intercourse or having sexual attraction with/towards the corpse of a deceased. Necrophilia can be traced back to the Aghori Sadhus who have been claimed to practise Necrophilia. The reason behind them practising such a gruesome act is to find purity in the filthiest. Despite, the same being imbibed in the Indian Culture for ages, the Indian legal regime does not explicitly recognise or criminalise Necrophilia, however, there are certain offences such as trespass of a burial site u/s 297 I.P.C. for which a person can be convicted despite committing Necrophilia. The Constitution of India guarantees the Fundamental Right to Life and Personal Liberty. The Right to Life extends to living a Right to a Dignified Existence. The Indian Courts in a plethora of judgments have extended the scope of Article 21 of the Constitution of India. A glance at the legal regime pertaining to Necrophilia across the globe reveals that a majority of States namely- Brazil, Canada, U.K. etc. address the commission of sexual inter course or sexual attraction towards a human corpse. The underlying rationale behind the same is recognition of the Human Rights of the deceased. However, with the international global scenario changing dynamically, there is a need for the State of India to make laws governing the proper disposal of dead bodies of unclaimed as well as buried bodies. Further, there is also a need to formulate a statute criminalising the act of commission of Necrophilia. However, the said criminalization cannot be done in a strait jacket manner. The Legislative also needs to consider the religious aspects involving Necrophilia, it includes two facets- one being the burial and its religious sanctity and the other being the practise of Necrophilia to attain moksha and to please the Gods. The Indian society stands on a precarious situation as regards the concept of Necrophilia. It is the responsibility of the State to ensure that an equilibrium is maintained while considering various factors such as human rights, culture, religious sentiments and the statutory duty of the State. The suggestions of the author after conducting the aforesaid research are:

1. There is a need for a specific law relating to the disposal of the unclaimed bodies of the deceased.
2. The issue pertaining to the criminalization of Necrophilia ought to be taken up by the Parliament, resulting in the enactment of statutory provisions as regards the criminalisation of Necrophilia in the State of India.
3. Spreading of awareness amongst the public at large about the health hazards associated and emanating out of Necrophilia.

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