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NECROPHILIA: A LEGAL VACUUM AND A NEED FOR A LEGISLATION

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ABSTRACT

Necrophilia, derived from the Greek words "nekros" (dead body) and "philia" (attraction or love), signifying an obsession with and erotic interest in corpses. It traces necrophilia from ancient civilizations like the Moche of Peru and historical maritime practices to contemporary cases such as Jeffrey Dahmer and the Nithari killings in India. The study classifies necrophiliacs into ten categories based on the severity of their behavior, from role players to exclusive necrophiles.

The legal landscape is scrutinized, revealing significant gaps in Indian law, where sections of the IPC and BNS indirectly address indignity towards corpses but fail to explicitly criminalize necrophilia. Comparisons with laws in the UK, New Zealand, and South Africa show a more direct approach to prosecuting such acts. Ethical considerations emphasize the profound violation of the deceased's dignity, calling for urgent legal reforms, increased public awareness, and interdisciplinary research. Psychological insights suggest that necrophilia often stems from mental disorders and traumatic experiences, necessitating comprehensive preventive and rehabilitative measures.

By examining historical, psychological, legal, and ethical dimensions, this paper provides a holistic understanding of necrophilia. It advocates for specific legal provisions, public education, and support for victims' families to uphold human dignity and justice, addressing a

deeply disturbing aspect of human behavior that continues to challenge societal norms and legal systems.

Introduction

Necrophilia is a term derived from the Greek words *philios* which means attraction to or love and *nekros* means dead body. According to the dictionary of Merriam Webster, Necrophilia is an “obsession with and usually erotic interest in or stimulation by corpses”.¹ The term “**Necrophile**” means a person who is sexually attracted to corpses and whereas “**Necrophilia**” means having sexual intercourse with corpses. This phenomenon has been evolving throughout history, appearing in ancient mythologies, literature and modern media. It is reflecting humanity’s complicated relationship with death and unacceptable customs.

History

Necrophilia is an ancient practice. The Moche who were also known as “Greek of Andes” ruled over some parts of Peru from 1st century to 8th century. In the 1980s archeologists found their paintings in pyramids which depicted the people having sex with dead creatures and it was so habitual and frequent in their paintings that the investigator believed that it was the ritual of their civilization to have sex with dead.

In ancient times, when dead bodies were transported by sea for final funeral rites or when someone died on a ship, sailors were often accused of necrophilia. The long trips, loneliness and lack of witnesses led sailors to commit acts of necrophilia with the dead bodies.

Forensic Psychologist Anil Aggrawal introduced a ten-tier classification of necrophiliacs based on the increasing severity of the disorder.

Class	Tentative Name	Characteristics
I	Role players	Do not want to have sex with a dead person. Enjoy sex with a living person pretending to be dead
II	Romantic necrophiles	Bereaved people, who would mummify a part of the body of their recently departed loved ones, and keep it with them in order to get a psychosexual stimulation. Would

¹ MERRIAMWEBSTER, <https://www.merriam-webster.com/dictionary/necrophilia>, (last visited Aug. 1, 2024).

		not show a similar interest in any other dead body, i.e., body of a person with whom they were not romantically involved in life
III	Necrophilic fantasizers	Fantasize intercourse with the dead. May visit cemeteries and funeral parlors and may masturbate in the presence of the dead
IV	Tactile necrophiles	Interest in dead bodies increases to the level of touching them. Like to stroke erotic parts of a dead body, such as breasts. May manipulate sexual organs of the dead in order to get an orgasm
V	Fetishistic necrophiles	Cut up parts of a dead body – say a breast – mummify it, and keep it in their possession to use it as a fetish for their necrophilic activities. Differ from class II necrophiles in the sense that they (class V) do it with the bodies of strangers with whom they held no romantic relationship in life. Thus, they do not do it merely to fill a psychosexual vacuum left by the death of their loved ones
VI	Necromutilomaniacs	Interest in dead bodies is more than merely touching them. Necrophilic pleasure comes from mutilating a dead body
VII	Opportunistic necrophiles	Actual sexual activity with the dead starts from this class. Normally these necrophiles would be content to have sexual intercourse with the living, but if an opportunity arose, would not refrain from having sexual intercourse with the dead. Necrophilic mortuary attendants belong to this class
VIII	Regular necrophiles	The so-called “classic” necrophiles. They do not enjoy sexual intercourse with the living and prefer dead bodies for intercourse. They can however have sex with both living and dead persons. In this sense they differ from class X necrophiles, who can have sex only with dead persons
IX	Homicidal necrophiles	This penultimate category is the most dangerous of all, in the sense that they would kill a person in order to have

		intercourse with him or her. They are however capable of having sexual intercourse with the living, but the need for sexual intercourse with the dead is so great that they must kill human beings in order to have sexual intercourse with their dead bodies
X	Exclusive necrophiles	Sexual intercourse is possible only with the dead, with the complete exclusion of living partners

The father of history, Herodotus in his book named *'The Histories'* explained that Egyptians had a culture of leaving a woman's body to rot for 3-4 days before preservation in order to prevent sex with the corpse.²

Many serious cases of necrophilia came from the modern period. The following are some of the scary cases from modern history.

1. In 1827, a Frenchman named Leger mutilated the genitals of a young girl and drank her blood after necrophilia. One of the most famous necrophiles was Sergeant Francois Bertrand, a sergeant in the French army, who during the years 1847-1849 dug up corpses to have sex with them. It was Bertrand's case that prompted the Belgian Psychiatrist Joseph Guislain to come up with the term necrophilia.³
2. In the early 19th century, the Catholic Church discussed "What kind of sin it is to have carnal connection with a female corpse" and came to the conclusion that it should neither be considered whoring nor bestiality but pollution with attendance to whoring.
3. India's most famous case and the two most notable necrophiles of present time have been Surendra koli and Moninder Singh Pandher, who had committed several acts of necrophilia on dead bodies of young children and women living in their neighbourhood. Their necrophiliac acts came to public attention in Dec 2006 during Noida Serial murder investigations. This case is famous as the Nithari case.

"People have different attractions, mine just happens to be corpses" a statement given by Hayden.⁴

LAWS IN INDIA

² WORLDHISTROY, <https://www.worldhistory.org/article/89/herodotus-on-burial-in-egypt/>, (last visited Aug. 2, 2024).

³ SPRINGER, https://link.springer.com/chapter/10.1057/9781137030306_10, (last visited Aug. 2, 2024).

⁴ WIKIGENEDU, <https://wiki.gen.edu.vn/en/Necrophilia>, (last visited Aug. 2, 2024).

There is no specific provision in IPC or BNS or in other special legislation that specifically deals with the offence of Necrophilia. But however, few provisions of IPC or BNS are often connected when any act of such nature is committed.

1. Section 301 of BNS (sec. 297 of IPC):

Section 297 of the IPC⁵, now Section 301 of the BNS⁶, stipulates that any individual who, with the intent to wound or insult the religion of a person, trespasses into a place of worship, a location set up for funeral rites, or a repository for remains, and treats a corpse with indignity or causes a nuisance to those assembled for funeral rites, shall be punished with imprisonment up to one year, a fine, or both. This section is the closest in criminal law to addressing the indignity towards dead bodies, but its interpretation is vague, as it does not clearly define "indignity." This term encompasses various actions such as throwing the body outside a graveyard, undressing, mutilating, or having intercourse with the dead, all of which are treated with the same punishment, which may not be adequate for every case. Moreover, the section's geographical limitations restrict its applicability to places of worship and sepulture, making it inapplicable to desecrations performed outside these areas. This ambiguity and limitation raise questions about whether the section effectively covers cases of necrophilia and if its penalties are sufficient for such acts.

2. Section 63 of BNS (sec. 375 of IPC):

Section 375 of the IPC⁷, now Section 63 of the BNS⁸, defines rape as sexual intercourse with a woman against her will or in any manner deemed unlawful under this section. The term "woman" is defined under Section 10 of the IPC, now Section 2(35) of the BNS, as a female human being of any age, clearly indicating that rape under this section applies only to living women, not their dead bodies. Consequently, Sections 375 and 376 of the IPC, now Section 64 of the BNS, do not apply to cases of necrophilia. In the case of Rangaraju Vajapeyi vs. The State of Karnataka⁹, the High Court upheld the murder conviction but overturned the lower court's rape conviction, noting a significant loophole in Indian law. The court found that necrophilia is not covered under Sections 375 and 377 of the IPC, and there are no criminal law provisions to punish sexual

⁵ Sec 297 of IPC, 1860.

⁶ MBA, https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf, (last visited Aug. 2, 2024).

⁷ Sec 375 of IPC 1860.

⁸ MBA, https://www.mha.gov.in/sites/default/files/250883_english_01042024.pdf, (last visited Aug. 10, 2024).

⁹ Rangaraju @ Vajapeyi vs State Of Karnataka, Cr.A.no. 1610 of 2017.

intercourse with a dead body. While Section 297 of the IPC protects the dignity of the dead, it does not specifically address necrophilia. The High Court emphasized the urgent need to reform criminal law to specifically address the crime of necrophilia.

3. Section 377 of IPC:

Section 377 of the IPC¹⁰, which criminalized carnal intercourse against the order of nature with any man, woman, or animal, was repealed following the landmark Supreme Court judgement in *Navtej Singh Johar vs. Union of India*¹¹. The Court held that Section 377 was unconstitutional as it violated fundamental rights, including equality before the law, non-discrimination, freedom of expression, and the right to privacy. This decision marked a significant victory for LGBTQ+ rights in India, enhancing their acceptance and inclusion in society. Subsequently, the Transgender Persons (Protection of Rights) Act, 2019, was passed, which included the repeal of Section 377, aligning India with other nations recognizing LGBTQ+ rights. The proposed new criminal code, *Bharatiya Nyaya Sanhita (BNS)*, does not criminalize consensual same-sex relationships, reflecting the Supreme Court's judgement. However, the repeal of Section 377 has faced criticism for leaving a gap in addressing certain crimes, such as necrophilia and sexual offences against animals. The Supreme Court had noted the complexities in applying Section 377 to necrophilia due to the term "voluntarily," and the new criminal code lacks provisions addressing such deviant behaviours, leading to public backlash for potentially weakening the criminal justice system.

LEGAL RIGHTS OF DECEASED PERSON

Article 21 of the Indian Constitution guarantees the fundamental right to life and personal liberty. This right doesn't just apply to people who are alive; it also extends to them even after they have died.

In the case of *Ramji Singh and Mujeeb Bhai vs. State of U.P. and Ors*¹² The Allahabad High Court reaffirmed that Article 21 includes the right to treat deceased individuals with the same dignity and respect they had during their lives. The court criticized unnecessary post-mortem examinations, stating that such practices could violate the dignity of the deceased.

¹⁰ Sec 377 of IPC 1860.

¹¹ *Navtej Singh Johar vs Union Of India Ministry Of Law And*, AIR 2018 SUPREME COURT 4321

¹² *Ramji Singh @ Mujeeb Bhai vs State Of U.P. Thru' Principal Secy.*, PIL NO. 38985 OF 2004.

1. Section 315 of BNS states that dishonest misappropriation of property possessed by a deceased person at the time of his death is an offence.
2. Section 356 of BNS deals with defamation, stipulating that any false and derogatory statement published against a dead person constitutes criminal defamation and is punishable.
3. Section 351 of BNS states that intimidating an individual with threats of wounding the image or reputation of a dead person who is dear to him is a criminal offence.

The above-mentioned laws protect a deceased person's dignity but don't cover necrophilia. This shows that while the Indian legislature acknowledges and tries to protect the rights of the dead, it fails to address new crimes like necrophilia, highlighting the need for legal reforms.

LAWS IN OTHER COUNTRIES

1. UK¹³

Section 70 of the Sexual Offences Act, 2003 criminalizes the act of sexual penetration with a corpse, prescribing a punishment of up to two years imprisonment. However, there have been no recorded prosecutions for this offense so far.

2. New Zealand¹⁴

Under Section 150 of the Crimes Act 1961, improperly or indecently interfering with or offering any indignity to any dead human body or human remains is an offense punishable by imprisonment for a term not exceeding two years.

3. South Africa¹⁵

Section 14 of the Criminal Law (Sexual Offences and Related Matters) in South Africa states that a person who unlawfully and intentionally commits a sexual act with a human corpse is guilty of the offense of committing a sexual act with a corpse. The Act, however, does not specify the exact punishment for this offense within this section. The specific penalties for this offense would typically be determined by the courts based on the general sentencing guidelines for similar offenses.

¹³ LEGISLATION, <https://www.legislation.gov.uk/ukpga/2003/42/section/70#commentary-c20916631>, (last visited Aug. 15, 2024).

¹⁴ LEGISLATION, <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM329287.html>, (last visited Aug. 15, 2024).

¹⁵ SAPS, https://www.saps.gov.za/resource_centre/acts/downloads/sexual_offences/sexual_offences_act32_2007_eng., (last visited Aug. 15, 2024).

INCIDENTS

1. The Nithari Case¹⁶

Facts:

1. The case relates to the infamous Nithari killings where multiple children and women were reported missing from Nithari village, NOIDA. The investigation led to the discovery of body parts in the drain near the house of Moninder Singh Pandher (D-5, Sector-31, Noida) and in the enclosed gallery behind the house.
2. The primary incident involves the disappearance of a young girl named A on 5.10.2006. Accused Surendra Koli confessed to killing A and disposing of her body parts in the drain and enclosed gallery. Additional recoveries of skulls and bones were made based on Koli's confession.
3. Surendra Koli was arrested on 29.12.2006. He made a confession on 13.1.2007 to the CBI, leading to the recovery of the victim's body parts. Koli's confession was recorded under Section 164 Cr.P.C. on 1.3.2007.

Issues:

1. Was the confession of Surendra Koli sufficient to implicate Moninder Singh Pandher in the killings?
2. Was the case classified as the rarest of rare cases meriting the death penalty?

Judgment:

1. Surendra Koli was convicted under Sections 302, 364, 376 r/w 511, and 201 IPC. Moninder Singh Pandher was also convicted in two cases under similar sections.
2. Both accused were sentenced to death. Koli was sentenced to additional imprisonment for other charges (life imprisonment under Section 364 IPC, 10 years rigorous imprisonment under Section 376 r/w 511 IPC, and seven years rigorous imprisonment under Section 201 IPC).
3. The trial court's judgment was forwarded to the High Court for confirmation of the death sentence. The High Court heard the reference proceedings and appeals together, delivering a common judgment.

¹⁶ Surendra Koli vs State Thru C.B.I., 2023:AHC:199091-DB.

4. The court analysed the validity of the confession, the scientific tests conducted, and the recovery of incriminating materials. It upheld the findings of the trial court, confirming the death sentences for both Koli and Pandher.

The High Court confirmed the death sentences of Surendra Koli and Moninder Singh Pandher, concluding that the prosecution established their guilt beyond reasonable doubt in the gruesome Nithari killings. The court found the case to fall within the category of rarest of rare cases, meriting the extreme punishment of death.

2. The Palghar Case¹⁷

During the COVID-19 lockdown in 2020, a horrifying incident occurred in Palghar, Maharashtra. A shopkeeper named Shiva Choudhary got into a heated argument with a 32-year-old female customer over the price of goods in his shop. In the midst of the argument, Choudhary killed the woman by slitting her throat. After murdering her, he went on to rape her lifeless body and then disposed of it about half a kilometre away from his shop.

When questioned by the authorities, Choudhary confessed to the crime, admitting both the murder and the subsequent rape. He explained that his actions were driven by a sense of compulsion, as he had been separated from his wife for more than a year. Following his confession, Choudhary was immediately arrested. To determine if there were any underlying mental health issues that contributed to his actions, he was examined by a medical professional.

3. The Jalandhar Case¹⁸

In December 2023, a disturbing case of necrophilia was reported in Jalandhar. An e-rickshaw driver in his early thirties was arrested for the murder of a 22-year-old nurse. The accused admitted to killing the nurse by pressing her neck against the seat of his e-rickshaw. After murdering her, he raped her lifeless body and returned to the crime scene three hours later to repeat the act. He also confessed to preying on two other women before this incident, claiming he committed the crimes while drunk.

4. The KarimGanj Hospital Case¹⁹

¹⁷ TRIBUNEINDIA, <https://www.tribuneindia.com/news/nation/palghar-stunned-by-necrophilia-a-man-raped-womans-corpse-108480>, (last visited Aug. 21, 2024).

¹⁸ TIMESOFINDIA, <https://timesofindia.indiatimes.com/city/chandigarh/erickshaw-driver-arrested-for-murder-and-necrophilia-in-jalandhar/articleshow/107040593.cms>, (last visited Aug. 20, 2024).

¹⁹ FINANCIALEXPRESS, https://www.financialexpress.com/india-news/assam-shocker-hospital-staff-rapes-minor-girls-corpse-in-karimganj-arrested/3451176/lite/#amp_tf=From%20%251%24s&aoh=17210544319265&referrer=https%3A%2F%2Fwww.google.com, (last visited Aug. 25, 2024).

A horrifying incident of necrophilia occurred in Assam in April 2024. A young girl tragically died by suicide, and her body was taken to a hospital morgue for a post-mortem. Shockingly, it was later discovered that the girl's corpse had been raped by a hospital worker, a sweeper named Manju Rabi Das. The police are currently investigating this disturbing crime.

CONCLUSION

Necrophilia is a deeply disturbing and complex phenomenon that has existed throughout history. The psychological aspects of necrophilia suggest that it stems from a combination of mental disorders, traumatic experiences, and extreme power dynamics. Modern cases, such as those of Jeffrey Dahmer and the Nithari killings, highlight the need for a better understanding of this phenomenon and more robust legal frameworks to address it.

In India, the current legal provisions are inadequate to deal with necrophilia effectively. Specific laws need to be enacted to criminalize necrophilia, ensuring that the dignity of the deceased is upheld and justice is served. Ethical considerations further emphasize the need to respect the deceased and prevent such heinous acts. As societies evolve, it is crucial to address such dark aspects of human behavior through comprehensive legal and psychological approaches. By doing so, we can ensure that justice is served and the dignity of the deceased is protected.

In conclusion, necrophilia is not only a criminal act but also a severe violation of ethical and moral principles. Addressing this issue requires a multifaceted approach, including legal reforms, psychological support, and public awareness. By taking these steps, we can work towards a society that respects the dignity of all individuals, both living and deceased, and ensures justice for the victims of such heinous acts. The journey towards eradicating necrophilia is challenging but necessary. It involves acknowledging the existence of this dark aspect of human behavior, understanding its roots, and taking concrete steps to prevent it. By doing so, we honor the memory of those who have been victimized and reaffirm our commitment to upholding human dignity and justice.