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Exploration of Necrophilia as an Offence: Myth or Reality

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ABSTRACT

Necrophilia is a psychological disorder that is not addressed by Indian criminal law. It denotes sexual desire, attraction, stimulation or sexual act of a person towards a corpse. Few cases like Nithari case, Robinson Street case, Palghar murder case have witnessed this psychopathic disorder but the Indian law does not recognize this till yet. In other jurisdictions like South Africa and United Kingdom, it is a punishable offence whereas in USA, there is no federal law that penalizes necrophilia. This paper would like to analyse the psychopathic characteristics of this disorder and find out the solution that can sort out the legal challenges related with this disease in Indian Jurisdiction and will make a comparative analysis with other jurisdictions.

Keywords: *Necrophilia, Psychopath, Offence, Sexual, Law.*

I. INTRODUCTION

To prove criminal offence *mens rea*³ is the element without which crime can't be committed. Establishing the *mens rea* of an offender is usually necessary to prove guilt in a criminal trial. The prosecution typically must prove beyond reasonable doubt that the defendant committed the offense with a culpable state of mind. Justice Holmes famously illustrated the concept of intent when he said "even a dog knows the difference between being stumbled over and being kicked."⁴

Mens Rea or the mental element of crime is a very important part of criminal law in India as well as other countries. Most laws in India contain the element of guilty mind so as to make an act by a person criminally liable for punishment. Mens Rea is the whole essence of crime. Without having an intention to act in a manner that it causes harm to person or property then in front of law it is not a crime. The presence of Mens Rea implies that the wrongdoer had the

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³ Mens Rea refers to criminal intent. The literal translation from Latin is "guilty mind." The plural of mens rea is mentes reae. A mens rea refers to the state of mind statutorily required in order to convict a particular defendant of a particular crime. Cornell law School, Legal Information Institute, https://www.law.cornell.edu/wex/mens_rea.

⁴ Ibid.

ability to choose between what is good and what is not.⁵ But Mens Rea is not defined in Indian Penal Code. Mens Rea has been defined with ill intentions such term has been used. (i.e Intention, Negligence, Knowledge and Voluntarily).

Under Indian Penal Code crime committed in unsound mind will be exempted from punishment. Section 84 of the Indian Penal Code, a person of an unsound mind shall act—nothing is an offence committed by someone who is currently unable to know the nature of the act or does what is wrong or contrary to legislation due to a lack of a sound mind.⁶ But necrophilia is a disease that somewhere called ‘Paranoid Schizophrenia’.⁷ Here the person does not consider the corpse as dead and having imagined it as a living one, the person gets attracted sometimes sexually or sometimes emotionally with the corpse. Our sex determines who we are and how to live. Sexuality, whether one like it or not, is a major part of our psyche. Our individual thoughts, dreams and fantasies set us apart from each other.⁸ Necrophilia literally means love with a dead body. According to Hucker (1990) the term was introduced by Guislain, a Belgian psychiatrist.⁹ India has witnessed few Necrophiliac like Kohli in Nithari Murder case (Noida), Akan Saikia in Assam, Kamruzzaman Sarkar in Hooghly, Parth Dey in Robinson Street (West Bengal). Section 377 is the penal provision in where unnatural sex is punishable. Any carnal intercourse against the nature with man, women even animal will be punishable. Explanation of Section 377 denotes penetration is sufficient to prove carnal intercourse which is necessary to the offence described in this Section. Kohli, Akan Saikia, Kamruzzaman made sexual intercourse after killing their sexual object but Parth Dey case is different. Partha De of the Robinson Street "Horror House" case, who, in 2015, had spent more than 7 months with the skeletons of his sister Debjani De and the skeletal remains of their two dogs.¹⁰ Here the evidence of sexual intercourse was not found. Now this paper would like to find out how many types of necrophiliac are living in our society? What are the different characteristics can be found in them? And what process are being taken by our Indian Law and other jurisdictions to redress them.

⁵Rajni Negi, Mens Rea: Mental Element in Crime, Law Times Journal, <https://lawtimesjournal.in/mens-rea-mental-element-in-crime/>.

⁶ In Chapter IV- ‘General Exceptions’, which is based on that no action would lie but without guilty mind. Indian Penal Code, 1860.

⁷ J Rosman & Phillip Resnick, *Sexual attraction to corpses: A psychiatric review of necrophilia*. The Bulletin of the American Academy of Psychiatry and the Law. 17. 153-63 (1989).

⁸ A.K Vasuden et al, *Necrophilia: A Study of the Psychoanalysis in the Characteristics of the Offenders Who Sexually Molest the Dead*, Medico-legal Update, Vol.19, No. 2, July-December (2019), DOI Number: 10.5958/0974-1283.2019.00136.1.

⁹ Ibid.

¹⁰ AsiaVille Desk, *What is Necrophilia and some well known cases of Necrophilia from India*, 18 December 2020, <https://www.asiaville.in/article/what-is-necrophilia-and-some-well-known-cases-necrophilia-in-india-67368>.

II. TYPES OF NECROPHILIA

Necrophilia is a term derived from the Greek words *philios* (attraction to/love) and *nekros* (dead body) and involves the sexual attraction to a dead body. It is also known as necrophilism, necrolagnia, necrocoitus, necrochlesis, and thanatophilia, it may be seen by itself or in association with a number of other paraphilias, namely sadism, cannibalism, vampirism (the practice of drinking blood from a person or animal), necrophagia (eating the flesh of the dead), necropedophilia (sexual attraction to the corpses of children), and necrozoophilia (sexual attraction to the corpses of or killing of animals – also known as necrobestiality). There are various types of Necrophilia in our society which are given in following chart:¹¹

Type	Typology of Necrophiliacs	Characteristics
1	Genuine necrophilias	Persistent sexual attraction to corpses with recurrent intense urges and sexually arousing fantasies involving corpse over a period of six months.
2	Pseudo necrophilias	Transient attraction to a corpse and prefers sexual contact with living partners too.
3	Violent necrophilias	Homicidal necrophiliac tendencies to kill to obtain corpses for sexual intercourse.
4	Fantasy necrophilias	Fantasize or play-act sexual contact with corpses, often without direct physical contact. Arousal by viewing the dead bodies of strangers in funeral homes or morgues.
5	Romantic necrophilias	Continue to relate sexually to their beloved as they cannot bear to be separated from their loved one.
6	Sadistic necrophilias	Sadistic acts involving biting, devouring, overtly attacking and mutilating the body parts of the deceased while performing the sexual act.
7	Regular necrophilias	Performance of sexual acts with corpses, as their jobs provide access to come in contact with dead bodies.

¹¹ Supra note 10.

8	True necrophilias	They are exclusively interested in the corpses and not in the living person. They are capable of killing a person to get a corpse.
9	Opportunistic necrophilias	They usually have sexual intercourse with the living but if an opportunity arises they would molest the dead.
10	Platonic necrophilias	Sexual gratification obtained by viewing the dead body rather than touching them. They also experience erections whenever the thought of a funeral arises.
11	Fetishtic necrophilias	They are not interested in the actual sexual act with the dead but rather get sexual gratification by collecting portions of the dead body or the inner wears worn by them as souvenirs.

III. LEGAL GAP IN INDIAN CRIMINAL LAW

If we want to analyze what are legal steps taken by India on this issue, we have to understand the definition of a person and the legal rights provided to the dead body. Interestingly, the word person has been derived from the Latin word *persona*, which means the mask worn by a person.¹² Gradually the concept has been evolved. Few proponents regarded person as a human being and it is called 'natural person' though few also considered idols, company, gods, etc. all are given the status of 'juristic person'. According to Salmond, a person can be anyone capable in law to acquire rights and duties.¹³ Person is basically classified natural and juristic. Natural persons are human beings, legal persons, on the other hand, maybe called artificial persons. They are imaginary persons who have rights and duties in law and in whom law vests personality by way of fiction. Now if this is so, are the dead to be considered legal person?

Salmond was of the view that the personality of a man commences from his birth and ends with his death. It is said that they cease to have any rights as all their duties and interests cease with their death.¹⁴ But according to Indian Law the last wish of a dead body should be executed if

¹² V D Mahajan, *Principles of Jurisprudence and Legal Theory* 178-179 (5th ed. 2021).

¹³ Bryant Smith, *Legal Personality*, 37 Yale L.J 283, 284-285 (1928).

¹⁴ Ruchika Jha, *Theories of Corporate Personality*, Law Times Journal, <https://lawtimesjournal.in/theories-of-corporate-personality/>.

he made any will orally or written before death. The enforceability thus depends on the fact that the person in the name of whom the will has been made is a living person or not. Hence, the fact that a deceased's testament is enforceable, so it can be considered Indian Law protects the reputation of the dead. Does this point to the fact that dead are legal persons? The reputation of the dead is protected by law and a libel on the dead would be actionable under law. Libel means any form of publication carrying false statement causes damage anyone's reputation. So, defamation against dead body is punishable according to Indian Law. According to Section 499 of Indian Penal Code "whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person".¹⁵ According to Section 500 of IPC whoever commits it, will be punishable with simple imprisonment for a term which may extend to two years, or with fine, or with both.¹⁶ When humans die, they don't have any duties and also can't be subjected to any punishment. Therefore, when humans die they become mere things and hence do not enjoy the position of a legal person.

In matter of Necrophilia there no provision exists which criminalizes the "particular act of necrophilia" if no trespass has been committed. Under Section 297 of Indian Penal Code If any person with the intention or knowledge of wounding or insulting the religion of any person, commits trespass in any place set up for funeral rites or set up as a depository for the remains of the dead or treats a dead body with indignation or causes disturbance to people assembled to carry out funeral rites of the dead, he or she shall be punished for a term extending to one year or fine or both.¹⁷ But a morgue keeper, 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. Section 297 only penalizes the trespassers. Section 377 of Indian Penal Code 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. In explanation of this section denotes penetration is sufficient to constitute the carnal intercourse

¹⁵ Indian Penal Code, 1860.

¹⁶ Indian Penal Code, 1860.

¹⁷ Indian Penal Code, 1860.

necessary to the offence.¹⁸

In Nithari case 2006 serial killers Surendra Koli and Mohinder Singh Pandher were booked after it was discovered that 19 girls were missing. It was later found that the duo used to murder the girls and thereafter had sexual intercourse with the body.¹⁹ In May 2020, a 50-year-old man in Assam was arrested by the police for his alleged sexual intercourse with a dead body of a 14-year-old girl. He was charged under Indian Penal Code Sections 306 (abatement of suicide) and 377 (unnatural offenses) and POCSO Act's Section 8 (punishment for sexual assault).²⁰ In July, a 30-year-old shopkeeper murdered a 32-year-old woman customer and later had sexual intercourse with her in Maharashtra's Palghar.²¹ In June 2019 in another shocking tale from 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 booked under IPC Sections 302 (murder), 307 (attempt to murder) and 376 (rape).²² On another case in West Bengal Partha De of the Robinson Street "Horror House" case, who, in 2015, had spent more than 7 months with the skeletons of his sister Debjani De and the skeletal remains of their two dogs. Though Partha was eventually charged with IPC Sections 268 (public nuisance), 269 (negligent act likely to spread infectious disease) and 176 (omission to give notice or information to public servant by person legally bound to give it), the media reports and a sections of experts kept accusing Partha De of having necrophiliac tendencies based on dubious diary entries.²³

First and foremost, corpses and cadavers can be found at a host of other places, besides burial grounds, such as morgues, crimes scenes etc. Secondly, persons like morgue keepers, guards of the morgue or guards of the burial grounds cannot be held liable even though they have been caught indulging in any such act, as they didn't commit a trespass.

Lastly, even if it is proved by the prosecution beyond any reasonable doubt that a person defiled a corpse by trespassing into the burial ground, he would be punished with an imprisonment of not more than one year or fine or both. But it is pertinent to note here that in any sagacious human's view, the punishment, not extending one year, is very less. It can hardly be believed

¹⁹ Ramesh Vinayak & Dilip Bobb, *Nithari killings in Noida catch society off-guard*, India Today, January 22, 2007.

²⁰ Utpal Parashar, *51-yr-old tried to have sex with corpse he pulled out from grave, arrested*, Hindustan Times, May 21, 2020.

²¹ IANS, *Palghar stunned by necrophilia, a man raped woman's corpse*, The Tribune, July 04, 2020.

²² Santanu Chowdhury, *I shudder every time I hear a knock on the door*, The Indian Express, June 16, 2019.

²³ Supra note 12.

that punishment of such degree would be enough to intimidate a criminal.

The unsuccessful debate as to the applicability of Section 377 to be invoked in cases of necrophilia has been ongoing for a long time. The technical difficulty in applying this provision to cases of necrophilia is that the provision mandates the “voluntary” engagement in carnal intercourse against the order of nature with any man, woman or animal. While sexual intercourse with a corpse is squarely against the order of nature, the element of voluntariness remains unsatisfied in necrophilia. Hence the law seems redundant in such cases.

It is a high time where the Law Commission of India, can play a vital role and come up with some model laws to deal with the act of necrophilia as an offence in the Indian Penal Code.

IV. INTERNATIONAL SCENARIO

In the case of necrophilia New Zealand provides a section under the Crimes Act, 1961 which prescribes two-year imprisonment to those who treat dead bodies with indignity. These dead bodies may be buried or not.²⁴ In United Kingdom also there is similar provisions, such as Section 73 of Sexual Offences Act 2003²⁵ Section 14 of the South African Law “A person who unlawfully and intentionally commits a sexual act with a human corpse, is guilty of the offence of committing a sexual act with a corpse”.²⁶ While the United States of America Lacks a Federal Law for the same, different states have their own laws punishing these offenses. In the USA, there is no federal law that penalizes the same, but each state has their legislation – in Washington necrophilia is a Felony, Nevada also penalizes the offence under a felony. However, in Texas, it is only a misdemeanour. There are no laws governing sex with a corpse in New Mexico, Nebraska, Vermont, Kansas, Kentucky, Louisiana, and North Carolina.²⁷

Canadian law also categorizes the act of defiling the dead as illegal. Section 182 of the Criminal Code of Canada, 1985.²⁸ Although the wording of both the Indian and the Canadian provision seems similar, the Canadian provision is wider and includes any person under its ambit, as

²⁴ Crime Act, 1961, Section 150, Misconduct in respect of human remains.

²⁵ 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 6 months or a fine not exceeding the statutory maximum or both;(b)on conviction on indictment, to imprisonment for a term not exceeding 2 years.

²⁶ Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007.

²⁷ Masters REL, Lea AEE. *Perverse Crimes in History: Evolving Concepts of Sadism, Lust-Murder, and Necrophilia—From Ancient to Modern Times*. The Julian Press, New York, 1963. As cited in Dr. A. Aggarwal, *Forensic and Medico-Legal Aspects*, 6, CRC Press, New York, (2011).

²⁸ 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.

against the Indian provision which includes only those persons who have performed an act of trespassing to the burial grounds. Also, the punishment designated by the Canadian Law is five times more than the Indian Law.

V. CONCLUSION

Necrophilia is a disease which is a rarest of rare due to its various types. In Violent necrophilias, Sadistic necrophilias, True necrophilias and Fetishist necrophilias the nature of the disease more violent than other types of necrophilias. In the cases of Genuine necrophilias, Pseudo necrophilias, Fantasy necrophilias, Romantic necrophilias, Opportunistic necrophilias and Platonic necrophilias the nature is less violent. Measuring the nature of the various types of necrophilia it can be said the punishment of it may not be same in every cases. The *mens rea* is not same in every types of necrophilias. But considering the legal position of a dead body in India the necrophilia might be a issue that should be identified properly based on its various types. In *Paramananda Katara v Union of India*,²⁹ the Supreme Court Of India recognized that right to life, to fair treatment and dignity, extends not only to a living person but also to their bodies after death. In *S. Sethu Raja v The Chief Secretary case*³⁰ the Supreme Court again considered the same judgment given in *Paramananda Katara*³¹ case. So, to protect the dignity of a dead body India may follows the principles given in U.K Sexual Offenses Act 2003 or may follows the provisions of defamation that is also lied upon a person after his demise. Not only that considering the various nature and types of this offense India as a developing nation across the world can also establish a “High Level Committee” to define it and make it punishable. This is a disease comes from the sexual perversion. If we try to define it in a straight jacked way the problem can't be prevented and it will be increasing day by day.

²⁹ 1989 AIR 2039.

³⁰ W.P.(MD)No.3888 of 2007.

³¹ Supra note 30.

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