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## Necrophilia and different perspectives of the offence

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*Necrophilia is defined as a sexual attraction toward a corpse. Lamentably, the majority of countries in the world do not have a law criminalising necrophilia. In India, the judiciary has reiterated time and again, the rights of the dead. Section 297 of IPC and section 377 of IPC somewhat cover the grievous act of necrophilia. What becomes essential here, is having a definite law to curb the menace of this ghastly act. It is equally important to undertake a psychological review of necrophilia. Both of these are of utmost importance to protect the interests and rights of the dead.*

**Keywords:** *necrophilia, rights of the dead, right to life, necrophiliac.*

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### INTRODUCTION

Lois McMaster Bujold once quoted, “The dead cannot cry out for justice, it is the duty of the living to do so for them.” With an increase in cases of necrophilia as a result of covid 19 wreaking havoc on people’s physical and mental health the impending question arises -Are we doing justice to the dead? “The word necrophilia comes from the Greek word *nekros*, which means corpse, and *philia*, which means love. Necrophilia is defined as sexual intercourse with corpses or sexual attraction to a dead body.”<sup>1</sup> It's a mental disorder defined under the

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<sup>1</sup> Wayne Petherick & Natasha Petherick, *Homicide* (1<sup>st</sup> edition, Academic Press 2019)

umbrella term of paraphilia in which the culprit derives sexual pleasure from abnormal and unnatural activities. A necrophilic is a person who engages in behaviours that are largely motivated by sexual urges. Finding little to no recognition in the majority of countries around the world, necrophilia is abominable, despicable, and disgusting conduct towards a corpse. "Article 130(1) of the Fourth Geneva Convention deals with the dignity and respect of the departed, stating that states should arrange an honourable burial of the dead, whenever feasible in accordance with the person's traditions and religious practices"<sup>2</sup>. The United Nations Commission on Human Rights, in a 2005 decision, emphasized the importance of human remains being handled with dignity, including proper management and disposal, as well as consideration for the needs of families.<sup>3</sup>As far as the countries, in particular, are concerned, Canada, Germany, the UK, and South Africa penalize necrophilia. New Zealand prohibits "misconduct with human remains." In the United States, there is no federal law that criminalizes necrophilia, but each state has its laws. Regrettably, despite numerous and ever-increasing occurrences of necrophilia in India, there are no laws specifically prohibiting necrophilic actions. The most prominent case of necrophilia in India is considered to be that of the "Nithari killings"<sup>4</sup> in 2006. It is one of the most horrifying and gruesome crimes registered in 2006. On suspicion of murdering a 19-year-old girl, police detained a wealthy businessman and his servant. Following a thorough investigation, it was discovered that the two were involved in the murder and sex with the bodies of over a dozen minors. During the trials, it was also discovered that they chopped and ate the body pieces after they were cooked. A similar case is that of "Darbara Singh"<sup>5</sup>, where the accused used chocolates, candies, drinks, and other enticements to lure his victims, then took them to a quiet location and slit their throats. In June 2019, a serial killer was caught in West Bengal for murdering seven women and having sex with their bodies. In general, depending on the specifics of the case, the perpetrator is charged with murder, rape, or sexual assault, but not with necrophilia because

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<sup>2</sup> Geneva Convention (IV) on Civilians, 1949, art.130(1)

<sup>3</sup> V. Venkatesan, 'By Issuing Guidelines to Protect the Rights of the Dead, Has NHRC Rediscovered Its Potential?' (*The Wire*, 16 May 2021) <<https://m.thewire.in/article/rights/nhrc-covid-19-bodies-ganga-rights-of-the-dead/amp>> accessed 15 June 2022

<sup>4</sup> *Surendra Koli v State of U.P.*, (2011) 4 SCC 80

<sup>5</sup> Adra Balagopal, 'Darbara Singh: Indian Serial Killer Who Assaulted & Killed Children' (*Forensic Yard*, 17 December 2021) <<https://forensicyard.com/indian-serial-killer-darbara-singh/>> accessed 15 June 2022

India has no particular statute dealing with such crimes. These cases also imply that necrophilia is a pervasive issue in India that has to be addressed in order to bring justice to the victims and their families.

## WHERE THE LAW STANDS

Article 21 of the Constitution of India states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”<sup>6</sup>. There have been various judicial interpretations of article 21. The ones concerning the dead are the following- *Ashray Adhikar Abhiyan vs Union of India*<sup>7</sup>, *Parmanand Katara v Union of India*<sup>8</sup>, and *Amrutha v The Commissioner*<sup>9</sup>. In *Ashray Adhikar Abhiyan vs Union of India*, the Supreme Court declared that the dignity of the departed must be protected and that a deceased homeless person has the right to a respectful cremation in accordance with his or her religious customs. In the case of *Parmanand Katara v Union of India*, the Supreme Court of India ruled that Article 21 applies to both living and dead people. Even deceased persons have a right to privacy, and their souls should not be disturbed, as they have immortal life after death, the court said in *Amrutha v The Commissioner*. Section 297 of the Indian Penal Code reads “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 the 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>10</sup> This section has a number of flaws. It's included in Chapter XV, 'Offences relating to religion.' Its primary objective is to safeguard burial grounds rather than to defend the rights of the dead. Trespassing to a burial place is one of the section's main requirements, however, it frequently fails because the culprit has not

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<sup>6</sup> Constitution of India, 1950, art.21

<sup>7</sup> *Ashray Adhikar Abhiyan v Union of India (UOI) and Ors.*, (2002) Writ Petition (Civil) No. 143/2001

<sup>8</sup> *Pt. Parmanand Katara v Union of India (UOI) and Ors.*, (1989), AIR 2039

<sup>9</sup> *Amrutha, S. and Ors. v The Commissioner, Greater Chennai Corporation and Ors.*, (2018) Writ Petition No. 33762/2017

<sup>10</sup> Indian Penal Code, 1860, s 297

committed any trespassing. The clause also has a number of limits, such as the fact that those working at the burial site cannot be held guilty of trespassing and so can avoid liability. Another flaw here is the quantum of punishment to the said offender. 1 year is a very less amount of time and an absolute travesty to justice.

Section 377 of the IPC states that “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.”<sup>11</sup> In the case of *Navtej Singh Johar v Union of India*<sup>12</sup>, the Hon'ble Supreme Court decriminalized it to the point that it no longer punishes voluntary sexual behaviour between two adults of any sexual orientation. Three conditions must be met in order for a person to be punished under this clause: [i] voluntary intercourse; [ii] against the order of Nature; and [iii] with any man, woman, or animal. Two of these three requirements are fulfilled in necrophilia. The first one is that intercourse is against the order of nature. According to the Victorian Principle, any sexual act that does not lead to procreation falls under ‘against the order of nature or unnatural’.

The second requirement- intercourse with a man, woman, or animal too is fulfilled. However, determining whether the conduct was voluntary or not becomes problematic. Not having a said punishment for the grievous offence of necrophilia would violate the retribution theory, the deterrent theory, and lastly, the preventive theory.

## THE QUESTION OF INSANITY AND PSYCHO-LEGAL PERSPECTIVE

As has been mentioned before and according to the Diagnostic and Statistical Manual of Mental Disorder, necrophilia, “is a mental disorder wherein the individual is aroused and attracted to fantasies or actual sexual contact with a dead body, and falls under the subclassification of paraphilia.”<sup>13</sup> Necrophilic tendencies are easy to conceal and are almost undetectable until the said act is committed, even after the act is committed, determining whether the said offence

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<sup>11</sup> Indian Penal Code, 1860, s 377

<sup>12</sup> *Navtej Singh Johar and Ors. v Union of India (UOI) and Ors.*, (2018) Writ Petition (Criminal) No. 76/2016

<sup>13</sup> *Diagnostic and Statistical Manual of Mental Disorders* (5<sup>th</sup> edition, 2013)

has taken place is not easy and has taken two post-mortems in certain cases (instances of which are quite rare in India). What makes it more onerous is the fact that not just is necrophilia not defined clearly in our laws but it has multiple classifications, some going as many as ten in number.

The many classifications of necrophilia make it harder for its identification and thus the perpetrator is not convicted easily, barring the exception of being caught red-handed. This leads to the absolute necessity of generating an elaborate system of identification of unnatural sexual offences in the codified laws. But there are greater impediments still in this situation, the most crucial being the question of whether a necrophilic individual is sane or insane. Insanity is a valid defence for any criminal offence, in law. Under section 84 of IPC, which deals with a person of unsound mind, it has been stated that- “Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law”<sup>14</sup>, but in the case of necrophilia the individual is registered to depict normal behaviour before and after the said act is committed. What needs to be determined is the extent of the insanity plea.

When necrophile John Christie was put on trial in the United Kingdom in 1953, his lawyers used the insanity defence, attempting to establish his insanity by attempting to prove that the offender had killed more than the stated number of victims. The defence was quashed by the court.<sup>15</sup> The main flaw in the reasoning was that the legal definition of insanity was not taken into account. Even if one believes that all perpetrators are insane, the insanity defence does not apply to all of them because the defence needs the absence of intent, which is assessed by the offender's psychiatric evaluation. This leaves a lot of scope for misuse of this autonomy and hence raises the question of a uniform test of insanity in such cases. It also raises the question of whether a necrophile is simply defined as an individual who is aroused by coming into contact with a corpse or who kills to satisfy his perversion. In such a case, the quantum of punishment should be increased from just one year in India. The highest any legal system has

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<sup>14</sup> Indian Penal Code, 1860, s 84

<sup>15</sup> *Mary Westlake v Criminal Cases Review Commission* [2004] EWHC 2779

gone is that of *Section 182 of the Criminal Code of Canada*<sup>16</sup>, which ceiling the punishment to a maximum of 5 years. Hence, it is of utmost importance that an exhaustive psychological review of necrophilia and the potential scenarios linked with it, be undertaken. This would not only facilitate the lucidity of the trial but will also make it easier for the identification and conviction of offenders under such offenses.

### ETHICS, IDENTITY, AND THE QUESTION OF CONSENT

Another crucial issue that arises is the issue of ethics. As per many scholars both in the field of science and social science, necrophilia is not considered morally wrong as it is argued that the individual loses his personal identity after death and hence the necrophile is not violating the rights of a person. This line of reasoning has been proven wrong by the landmark case of *Parmanand Katara v Union of India (1989)*<sup>17</sup> the Hon'ble Supreme Court of India recognized that the right to life, fair treatment, and dignity, extends not only to a living person but also to his dead body. These rights have been derived from Article 21 of the Constitution of India.<sup>18</sup> Therefore, the dead body does have a legal and social identity and barring some rights (due to the reason of practicality) is entitled to the fundamental rights. Hence, not only is necrophilia ethically wrong but is morally wrong too as it defiles the person of the dead individual and the sentiments of those who are related to him too. Coming to the question of consent, it has been widely argued that the act of necrophilia doesn't violate the consent of the dead body. But there are two arguments against this, first, that the said dead individual would not have given his consent for sexual intercourse with the offender and second, for all practical purposes, legal procedure mandates that a presumed consent be made before subjecting the dead body to any process for investigation. In addition, a legal framework has been provided for 'expressed volunteerism,' in which the agreement or consent of family members, immediate relatives, or (in some situations) guardians is obtained for the purpose of carrying out the law's investigation procedures. Hence necrophilia does violate the consent of the dead

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<sup>16</sup> Criminal Code of Canada, 1985, s 182

<sup>17</sup> Pt. Parmanand Katara (n 8)

<sup>18</sup> Constitution of India, 1950, art.21

individual and thus, is not only a moral or legal wrong towards the dead individual but to his family and in turn to the whole society.

## CONCLUSION

After great deliberation, observation, and research it can be easily concluded that the laws in India and most parts of the world are insufficient in distinguishing necrophilia as a separate sexual offense, let alone providing safety from it. There is a huge need for proper study on necrophilia and its recognition by legal systems. But the most immediate need is that of educating, sensitizing, and creating awareness amongst people so that they can identify, report, and be safe from such offenses while the law comes with a solution to create provisions for curbing this offense. The largest constitution of the world cannot be silent on grievous crimes like necrophilia. Therefore, it is the need of the hour for the legislators to take cognizance of this despicable offense and provide justice to the dead.