

NECROPHILIA- AN UNSEEN FORM OF UNNATURAL OFFENCE UNDER
SECTION 377 OF THE IPC

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ABSTRACT

This article focuses on recognizing Necrophilia as one of the unnatural offences under Section 377 of the IPC 1860. Necrophilia term basically means obtaining sexual gratification by having sexual intercourse with the dead and is considered to be the most bizarre and revolting practices of unnatural and obstinate sensuality. The article will be addressing the issues that why such kind of acts are increasing in our society along with the psychological and clinical reasons for the same. There are also certain comparisons made with the other countries regarding the notion and its legalities.

The main agenda of the article is to discuss the loophole in the Section 377 of the Indian Penal Code and how certain acts of perverse are not yet penalized which aids such perverse acts and accused persons to move freely within the society. The gravity of necrophilia is emphasized and explained that having sexual intercourse with the dead is completely against the laws of nature, and hence it should find a place within the provision. It shall further have references of cases of necrophilia that have been reported over the years in India and what all punishments were rewarded to the accused due to lack of any specific provision for the same such as the Chain man case of 2020, the Serial Killer (Pedophile and Necrophile) etc. In short, this issue needs immediate addressing, especially when it is not so common within the society. The lawmakers shouldn't be waiting for the crime to grow, in order to bring a provision against it.

Keywords- Necrophilia, unnatural offences, Section 377, perverse sexuality

Introduction

We often discuss about the unspoken forms of unnatural offences and one of the most hideous forms of such an unnatural offence is called "Necrophilia" which isn't much talked about but has seen a rise in the last few years. It is being recognized and condemned by many countries and India is yet to do so, as there are no particular laws defining "Necrophilia" and unfortunately it is also not counted as one of the unnatural offences mentioned under Section

377 of the Indian Penal Code 1860 due to the consent issue and corpse not being counted as living being.

The term “Necrophilia” holds its origin from the Greek words “necros” meaning corpse or dead body and “philia” means love or friendship. The entire term means seeking sexual gratification by having sexual intercourse with a corpse or dead body. It is known to be the most bizarre and disgusting practises of abnormal and obstinate form of sensuality.¹ Necrophilia is addressed with other terms also such as necrolagnia, necrocoitus, necrophilism and thanaophilia which basically indicates any kinds of sexual attraction or sexual act involving dead bodies. The World Health Organization (WHO) has classified “paraphilia” in its International Classification of Diseases (ICD) diagnostic manual and it is also recognized as one of the gruesome mental disorders mentioned in the American Psychiatric Association in its Diagnostic and Statistical Manual (DSM).²

It has been witnessed that the corpses used for these sexual gruesome purposes are not fresh dead bodies but they are rather dug from the cemeteries in a decomposed or desiccated condition for gratifying their sexual desires. Necrophilia is mostly seen in males and it is not necessary that the person is just having sexual intercourse with corpses but it is very much plausible for him to be having normal sexual relations with living humans too. These kinds of men are often found to be sex addict which drives them to such ghastly acts.³ But it should be noted that Necrophilia is gender neutral and even though majority of the time males are found as offenders, there have been cases of females too having their sexual intercourse with male dead bodies. This kind of act goes beyond the gender placing and focuses more on individual sexual curiosity.⁴

Recognition of Necrophilia in Various Nations

This problem was not even known until many years and hence no nation or country has any specific jurisdictions or provisions against the act of sexual intercourse with a dead body. Hence, whenever such persons are found or caught, they are charged under other related laws such as “disturbing the peace of the dead”, “defiling a dead body”, “disturbing the law and order” or “hurting the sentiments of relatives of dead”.⁵ As these persons are usually digging up the decomposed bodies, there are no stringent laws against the act of necrophilia. But the laws can be enacted if offender is found with fresh corpse and sexual intercourse is proven with the victim.

¹ Unnatural offences in purview of Necrophilia, Articles- B&B Associates LLP, 23:39 21/01/2022, <https://bnblegal.com/article/unnatural-offences-in-purview-of-necrophilia/>

² Mahmudur Rahman, Defiling the Dead: Necrophilia and the Law, Lawyers Club Bangaldesh.com, 23:42 21/01/2022, <http://lawyersclubbangladesh.com/en/2020/11/21/defiling-the-dead-necrophilia-and-the-law/>

³ Ibid 1

⁴ Ibid 2

⁵ Ibid 1

This situation will help the prosecution in proving that when the corpse was found with the Necrophile, it can be possible that the sexual act was performed with the victim when she was during living and not yet dead, and because of the forceful sex the woman perhaps died later. These kinds of cases get very tricky as the defence often uses the argument that intercourse with a dead woman cannot be called as Rape and hence the defence focuses on the fact that the sexual intercourse took place after the death of the woman and not before, making it a necrophilia case which has no defined set of penalty or far less sentence as compared to heinous crimes such as rape and murder. For instance, in the United Kingdom, Section 70 of the Sexual Offences Act 2009 states that sexual penetration in a corpse is an offense.⁶

South Africa and United Kingdom are the only two nations which explicitly speak of necrophilia and also penalise the offense. Brazil has a law stating that it is illegal to abuse a corpse and even Sweden has laws similar to the one in Brazil. New Zealand also states that it is illegal to involve in “misconduct with the human remains”. Even in United State of America, there is no such Federal law with respect to “Necrophilia” but each state of USA has their own legislation, wherein necrophilia is prescribed as Felony. For example- Nevada penalises the offence under Felony whereas Texas counts it as only a misdemeanour. Then are some of the states where one can find mention of necrophilia or sex with corpse in the legislations such as Vermont, Kansas, New Mexico, Louisiana, Nebraska and North Carolina.⁷

In short, it can be concluded that many nations have recognized this bizarre act as an offence but the gravity of the penalty imposed is not so severe and hence it is taken lightly by the offenders. Many nations do not even speak of it directly which further lowers the severity of the Act. There is need for proper recognition of this offence and not merely as a misdemeanour but as a serious crime.

Mental and Clinical Reasons for Acting in Such Bizarre Manner

As stated above, necrophilia is a serious offence and it has been recognized as well as penalized in many nations, but many also think that the offenders are going through a mental disorder or mental condition which leads them to acting in such disgusting and weird ways. The act of sex with dead bodies- paraphilia is classified by the World Health Organization in the International Classification of Diseases (ICD) Diagnostic Manual and also by the APA in its Diagnostic and Statistical Manual (DSM).⁸

⁶ Ibid 1

⁷ Ishita Sapre and Shivam Kunal, The Curious Case of Necrophilia in India: Why Defiling the Dead Should Be A Penal Offence, Legal Rioters, 23:45 21/01/2022, <https://legalrioters.wordpress.com/2020/08/18/the-curious-case-of-necrophilia-in-india-why-defiling-the-dead-should-be-a-penal-offence/>

⁸ Ibid 2

The term necrophilia was originally coined by Belgian Alienist, Joseph Guislain who used this terminology initially in the year 1950 in his lecture. It was later also known as “Thanatophilia” or “Necrolagnia”, indicating a sickness found among persons wherein they are sexually attracted or indulge in sexual intercourse with the corpses. The disease identified it as a pathological fascination towards human dead bodies which often grows into form of strong desire to engage in sexual act with them.⁹

There are many authors and researchers who have been trying to analyse the reason behind such a horrid act and came up with different explanations of their own describing the reasons leading to necrophilia. The most popular reason is given by Rosman and Resnick. They state that usually offenders with lack of confidence and apprehension of dismissal have been found to indulge in necrophilia. They have explained that necrophiles when questioned often stated that corpses were such carnal article who wouldn't ignore them.¹⁰ In 1989, Jonathan Rosman and Philip Resnick classified Necrophilia into three kinds based on the acts of the necrophiles (persons referred who practise necrophilia).

The first one was Homicidal Necrophilia wherein the necrophile used to murder the person first and then used the corpse to gratify his sexual needs. Then comes Regular Necrophilia where the person usually uses or digs up the decomposed and mummified bodies for satisfying his sexual needs. The last one was Necrophilic Fantasy where the necrophiles just fantasize about the sexual activity with dead bodies without actually carrying out the act in real.¹¹

The offenders usually give same answers to the question “Why”, stating that dead bodies satisfy their poor morale wants and desires. They also refer the corpses as an accomplice or partner who will not get tired of them with no issues and complaints. The offenders are often found to be creating fantasies of intercourse with the corpse after they introduce the corpse, showcasing the 3rd kind of Necrophile mentioned by Rosman and Resnick.¹²

Another analyst researching about necrophilia mentioned that person who adores the dead, will cherish these kinds of act for long lasting period as it will never get tired of giving and getting touches. The common symptoms found in necrophiles are that they are mentally weak, and incompetent of acquiring a consenting sexual companion and hence they go to seek for approval from carcasses.¹³

Current Status of Necrophilia In India

⁹ Id

¹⁰ Jaygajbhiye, Questioning The Unpredictability; A Legal Insight Into Necrophilia, Legal Service India E-Journal, 23:52 21/01/2022, <https://www.legalserviceindia.com/legal/article-4980-questioning-the-unpredictability-a-legal-insight-into-necrophilia.html>

¹¹ Ibid 2

¹² Ibid 10

¹³ Id

One of the first cases of Necrophilia to be registered in India was the famous Nithari Case of 2006 wherein the alleged persons were rich businessman Mohinder Singh Pandher and his cook Surendra Koli. On 2nd March 2007, Koli had confessed to the crime of raping, killing and having sex with the corpses of the children and women in the Delhi Court. Consecutively another case was registered against Koli under multiple sections of IPC including rape, kidnapping, murder and criminal conspiracy. As necrophilia is not identified as crime in India, no case of necrophilia was registered against him.

Subsequently, a case was registered against Koli under various sections of the Indian Penal Code, including rape, murder, kidnapping, and criminal conspiracy. Since necrophilia is not a crime in India, no case could be registered against him.

When the case came into light through further police investigation, Koli confessed to their activities of murdering, slaughtering and eating of dead bodies and then later disposing the bodies in the nearby drainage line which eventually led to the discovery of all the victims. All these acts clearly indicated that the offenders were involved brutally into bestiality and necrophiliac activities. All this confession finally led to awarding of death sentences to both the offenders.¹⁴

It is upsetting to know that there is no explicit law for such gruesome acts in India, however Indian Penal Code, states under **Section 297** "Trespassing on burial places etc." which addresses this issue to some extent. It states that-

*"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 sculpture, or any place set apart for 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."*¹⁵

As per Section 297 of the IPC 1860, it does mention terms like "trespass of any place set apart for performance for funeral rites or depository for remains of the dead" or "offering any indignity to any human corpse" which can be considered that it does cover the act of necrophilia indirectly but from a religious perspective and none other. The section should be amended and it should consider such horrifying acts irrespective of whether it is done to damage the feeling of other religion or not. These kinds of acts are against the entire human community and should not be just restricted to the religion angle only. Apart from that the penalty imposed for this horrid act is far too less compared to the gruesome act it covers within its ambit. It should be increased to at least imprisonment up to 3 years and fine.

¹⁴ Ibid 10

¹⁵ Section 297 of Indian Penal Code 1860

It is very well established that there are no penal provisions specifically for “act of necrophilia” if no trespass has been committed. The subject of sex is still considered as taboo in India and an offence as bizarre as necrophilia is an absurd reality which lies outside the imaginative capabilities of people.¹⁶ It is domineering to highlight that incidence of necrophilia is often related to corpse and it isn’t necessary that the person met his demise earlier or was purposely killed for this horrifying act. India has lately recorded the reports where necrophilia was committed in furtherance of murder signifying the 1st kind of necrophilia classified by Rosman and Resnick (homicidal necrophilia). This kind of perverse sensuality is the unseen threat to our society which needs to be dealt with sooner than it is too late.¹⁷

In another case of Uttar Pradesh, a deaf and mute man was charged under murder and rape, the police commented that, “The accused is a 40-year-old man and attempted to rape the 45-year-old widow initially and, when she resisted, he strangled her to death and raped her body. The naked body of woman was found in sugarcane field and later the pervert accepted of strangling the woman and then raping her.”¹⁸

It is also seen that the offenders are gravediggers and mortuary attendants as they have easy access to the corpses and engage in this activity because of their loneliness and low self-esteem issues. There are many accusations made by the relatives of the dead bodies that the bodies of woman of their kin were defiled in the night by the mortuary attendants and there has been no conclusive proof regarding the same.¹⁹

No Mention of Necrophilia within Section 377

Necrophilia has been an instigator for many offenders to commit the crime of murder, especially when they fail to find a dead body, they often resort to killing someone and then raping the dead body. The magnitude of barbarism of such wrongdoers is off limits and it should be treated stringently in the eyes of law. The punishment prescribed under Section 297 of one year of imprisonment is very less for such ghastly acts offering indignity to human remains by having sexual intercourse.²⁰

As section 297 is not enough to address the issue of Necrophilia, many discuss whether Section 377 of the IPC can be applied to such situations for granting such wrongdoers higher penalty. This section issues a punishment of sentence of life imprisonment or jail up to ten

¹⁶ Ibid 7

¹⁷ Ibid 7

¹⁸ UP: Deaf and Mute man arrested for murder and necrophilia, The Times of India, 23:55 21/01/2022, <https://timesofindia.indiatimes.com/city/bareilly/deaf-and-mute-man-arrested-for-murder-and-necrophilia/articleshow/71569991.cms>

¹⁹ Ibid 1

²⁰ Ibid 7

years along with penalty for any such person who willingly participates in sexual intercourse with any man, woman or animal against the natural order.²¹

The act of necrophilia should come under the ambit of unnatural offences, firstly because having intercourse with corpse can in no sense be counted as “natural” and hence it fits into the definition of unnatural crime. Although, another factor of this provision focuses on “consent” or “willingness”. But there can be no consent obtained from a dead body and if permission is not received, the act is considered to be involuntary which dissuades from the purview of Section 377.²²

Then another feature needs to be looked that the intercourse has to be done with a man, woman or an animal as per Section 377 of IPC but once a person dies, it is referred as “dead body” and no longer as man or woman. Whenever a person dies, he or she becomes quasi-subject to the law which makes it difficult to comprehend the position of necrophilia as an offence under Section 377. As per legal purview, a corpse becomes the property of next of the kin which shall refer necrophilia as vandalism and not as a sexual assault against some individual reducing the gravity of the offence. Thus, it is unfortunate that Section 377 cannot be invoked in the offence of Necrophilia unless the section adds the term “corpse” in the provision along with man, woman and animal. It could totally make a huge impact and instil fear among such offenders.²³

Disturbing Cases of Necrophilia In India

In the last few years, the number of necrophiliac cases have risen in India and some of the most horrifying cases which shook the country are mentioned below. It is an indication that government should be enacting some provision regarding the offence of necrophilia, rather than keeping it hidden under the shadow of other crimes. The most prominent cases of necrophilia are-

- **The Chain Man, 2020 Case**

The accused Kamruzzaman Sarkar or “Chain man” was arrested in June 2020 under the charge of raping and murder of 16 year old girl. The accused was sentenced to death by the District Court in West Bengal’s East Burdwan district.

Sarkar was charged with 15 cases wherein he raped 2, murdered 7 and 6 attempt to murder, the serial killer on loose was also charged with sections related to Robbery. He had committed all these crimes from 2013 to 2019 and his victims were aged between 16-75 years. The accused used to enter the homes of these victims in the afternoon hours on the pretext of taking electricity meter readings and then attack the women. Some of these women even managed to rescue themselves told the Court about his modus operandi.

²¹ Section 377 of the Indian Penal Code 1860

²² Ibid 2

²³ Ibid 2

The accused used strangulate his victims with a cycle chain and then hit them on the head with iron rod to ensure their death, due to which he had earned the tags of “Chain man” in Bengal.²⁴

- **The Serial Killer- Paedophile and Necrophile 2018**

The suspect was a labourer named “Sunil” by the Indian media who was arrested for brutal rape and killing of a 3 year old girl but when the police interrogated him and further investigated, the accused admitted to a series of similar violent sex attacks. The accused used to roam from place to place and sleep wherever he got place. He further confessed that breaking the girl’s leg with brick before raping her used to arouse him.

The major reason for not being able to trace the accused for so long was that he used to take the victims to abandoned areas, and he never carried a mobile phone or fixed place to live or work. The Investigating officer Sumit Kuhar was shocked to know that accused had not only raped and killed three young girls in Gurugram but four in Delhi, one in Jhansi and another in Gwalior in period of two years.²⁵

The accused was so mentally sick and disgusting that he remembered his rapes connecting them to the bhandaras he went to for free food and usually targeted those children who came to get “Prasad” and were alone. The accused was not just a brutal inhuman paedophile but also a necrophiliac as his confession made it clear, that he used to rape the corpses of many of his victims to “make the most of his catch”.

Out of all his confessions, the most sensational case was the rape of a minor in 2013 wherein the girl of Nathupur went missing from a Bhandara in the DLF area and was later found bleeding near a metro pillar. The case led to a huge upheaval amongst the public and the child was referred to Safdarjung Hospital in Delhi where she had to undergo numerous surgeries and long term counselling after which she was sent to relatives.²⁶

- **The Palghar Shopkeeper case, 2020**

One of the latest case of necrophilia dates back to Palghar case of July 2020 amidst the lockdown period due to the Covid-19 pandemic. The case revolves around a shopkeeper who had allegedly killed a woman and then sexually assaulted the corpse of that lady. The accused named Shiva Choudhary was owner of a novelty shop in Nalasopara and was arrested and remanded to police custody till 12th July 2020.

²⁴Bengal’s Serial Killer And Rapist ‘Chain Man’ Sentenced To Death, Superstition Had Landed Him In Police Net, groyourwealth.com, 23:58 21/01/2022, <https://groyourwealth.com/india/bengals-serial-killer-and-rapist-chain-man-sentenced-to-death-superstition-had-landed-him-in-police-net/>

²⁵ Sumedha Sharma, Gurugram rape accused admits to necrophilia, The Tribune- Voice of the People, 00:02 22/01/2022, <https://www.tribuneindia.com/news/archive/haryana/gurugram-rape-accused-admits-to-necrophilia-687352>

²⁶ Id

It was admitted by the alleged person that offence was committed in furtherance of an argument that took place between the two with regard to price of some goods from the shop of the accused. The accused slapped the victim because of the heat of the argument and dragged her by her hair, strangled her and then slit her throat. As he was still in rage, the accused then committed sexual intercourse with the corpse. The entire CCTV footage was found which convicted the accused for murder and rape.²⁷

Conclusion

Thus, it can be concluded that Necrophilia is a horrifying offence which often acts as a motivator for furtherance of other heinous offences such as murder, rape or robbery. But this shouldn't lower the gravity of this unnatural sexual offence committed by these offenders. It is true that this act is considered as mental sickness or disease and can be rectified with appropriate counselling and therapy but that would not reduce the severity of the offence. Hence, with growing cases of necrophilia India should adopt some rigorous laws against this ghastly act and the maximum punishment should be up to 2 or 3 years of imprisonment.

The punishment prescribed under Section 297 is insufficient, largely neglected and vague in terms of necrophilia. India should define the term or make a mention of the same in some legislation, if it cannot be solely constituted as an independent criminal offence.

The ambiguity and vagueness of Section 297 and 377 of the Indian Penal Code in this context are unable to render "Necrophilia" as a crime and hence certain amendments can be made in either of the above-mentioned provisions to include the offence and state its illegality explicitly. As mentioned before, the term "corpse" should be added to Section 377 along with man, woman and animal. The parliament needs to take a clear stance by taking active steps to criminalize such gruesome acts either by making an entire different provision or making some additions in the existing ones. Unless, the legislative is not waiting for an incidence with the intensity of Nirbhaya gang rape case to take place in such context wherein the people will be back on streets to grieve and demand for justice and stringent laws against such sexual offenders.

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²⁷ Palghar stunned by necrophilia, a man raped woman's corpse, The Tribune- Voice of the People, 00:05 22/01/2022, <https://www.tribuneindia.com/news/nation/palghar-stunned-by-necrophilia-a-man-raped-womans-corpse-108480>

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