

LOVE OF DEAD: CONCEPTUAL STUDY OF NECROPHILIA

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ABSTRACT

The paper discusses about the age old practice of necrophilia, the love to dead. The history related to it and the religion, customs and laws of the world are reviewed to question the roots that how a person or his psychological capacity can be responsible for the same.

The question asked in this paper is why aren't there any strict rules for the same.

Keywords: Sexual necrophilia, Religion, History, Psychology, Law, Sexually

INTRODUCTION

Concept of Necrophilia :

People thought that the intensity of cruelty of crimes was increasing day by day but who knew there were several crimes or abusive acts that were been continued from the first century A.D¹, one such abusive act is paraphilia.² Paraphilia is an abnormal condition of a person when he/she is sexually aroused either by fantasizing or engaging in abnormal sexual activities i.e. the activity that the most people don't consider sexually stimulating .It can be done by use of a particular object or by an act, such as feces or making obscene telephone calls or even by children, animals and even dead bodies^{3,4} Yes, people do get aroused by dead bodies, such abnormal sexual activity relating to dead bodies is called Necrophilia, which is a part of paraphilia.

¹"A.D." stands confusingly for a Latin phrase: anno domini ("in the year of the Lord"—the year Jesus was born). The 1st century was the century that lasted from AD 1 to AD 100 according to the Julian calendar.

² https://en.wikipedia.org/wiki/Necrophilia#cite_note-10

³ What are paraphilias, international society for sexual medicine ,<https://www.issm.info/sexual-health-qa/what-are-paraphilias/>

⁴ [paraphilias,psychology today ,https://www.psychologytoday.com/us/conditions/paraphilias](https://www.psychologytoday.com/us/conditions/paraphilias)

Necrophilia or love of the dead, has generally been applied to two kinds of phenomena: **sexual necrophilia**, i.e. a man's desire to have sexual intercourse or any other kind of sexual contact with a female corpse, **nonsexual necrophilia**, i.e. the desire to handle, to be near, and to gaze at corpses.⁵ Necrophilia, also known as ‘necrophilism’, ‘necrolagnia’, ‘necrocoitus’, ‘necrochlesis’, and ‘thanatophilia’⁶, it means sexual attraction to the dead.

The term necrophilia is derived from the Greek words nekros (corpse,dead body) and philia (love, friendship).⁷ Belgian physician Joseph Guislain introduced the term necrophilia in his lecture⁸.

“ It is within the category of the destructive madmen [aliénés destructeurs] that one needs to situate certain patients to whom I would like to give the name of necrophiliacs [nécrophiles]. The alienists have adopted, as a new form, the case of Sergeant Bertrand, the disinterrer of cadavers on whom all the newspapers have recently reported. However, don't think that we are dealing here with a form of phrenopathy which appears for the first time. The ancients, in speaking about lycanthropy, have cited examples to which one can more or less relate the case which has just attracted the public attention so strongly. ”

‘Necrophagist actually feed on decaying dead bodies’⁹. There are varieties of necrophagist. Starting from those who just wish to touch and taste the private parts of dead body like breast, to those who desire to eat their particular parts, to those who want to eat their body. In 1989, Jonathan Rosman and Philip Resnick classified necrophilia into three types based on the acts of the necrophiles on the dead, as: **Homicidal Necrophilia**- they murder a person to obtain the body for sexual satisfaction; **Regular Necrophilia**- they use available dead bodies for sexual pleasure; **Necrophilic Fantasy**- they just fantasize about the sexual activity with corpses without carrying out any necrophilic acts.¹⁰

⁵Selwyn M. Smith „&” Claude Braun, Necrophilia and lust murder :report of rare occurrence,,Journal of the American Academy of Psychiatry and the Law Online September 1978, 6 (3) 259-268;

⁶ Anil Agarwal , Forensic and Medico-legal Aspects,CRC Press 7 dec 2010,page no 1

⁷ <https://en.wikipedia.org/wiki/Necrophilia>

⁸ Guislain, J. Leçons Orales sur les Phrénopathies, ou Traité théorique et pratique des maladies mentales. Cours donné à la clinique des établissements d’aliénés à Gand. L. Hebbelynck, Gand, Belgium, 1852, p. 257.

⁹ ,Anil Aggrawal, necrophilia forensic and medico-legal aspect,introduction.

¹⁰ J.P. Rosman and P.J. Resnick, Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia, 17.2 the Bulletin of the American Academy of Psychiatry and the Law Bull Am Acad Psychiatry Law, 154 (1989)

Diagnostic and Statistical Manual of Mental Disorders¹¹, has categorised ten different types of necrophiliacs. The stages of necrophilia vary from class I to class X.¹²

- I. **Role players:** They don't have sex with a dead body but they pretend a living person to be dead and enjoy sex with them .
- II. **Romantic necrophiles:** They are the people who unable to accept the fact that their close one or people they share romantic relationship are dead , so they preserve their body .
- III. **Necrophilic fantasizers:** They fantasize the dead , they masturbate in presence of dead bodies .
- IV. **Tactile necrophiles:** They like to touch the bodies , like some erotic parts , boobs and they even manipulate them to get an orgasm .
- V. **Fetishistic necrophiles:** They Cut the parts of a dead body like breast and mummify it to keep it to themselves so that they can fulfill their fetish and necrophilic act .
- VI. **Necromutilomaniacs:** They not only touch the body to feel the organism but they also vandalize the body also.
- VII. **Opportunistic necrophiles:** These are the people who are satisfied with having sex with a living being but if they get a chance to have sex with dead they won't withhold themselves . The real necrophilic activities start from here .
- VIII. **Regular necrophiles:** They are the classic necrophilic who prefer to have sex with dead even though they can have sex with living being also.
- IX. **Homicidal necrophiles:** They are the most dangerous category, they do have sex with living beings but their urge to have sex with dead is so strong that they can kill anyone for it.
- X. **Exclusive necrophiles :**They can not have sex with living beings , they only have sex with dead.

¹¹ The *DSM-5* (Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition) has categorised ten different types of necrophiliacs.

¹² www.ivcc.edu/uploadedFiles/_faculty/_mangold/DSM%205.pdf

There are several references to necrophilia in art and literature, the most common is "Sleeping Beauty", a classic childhood tale, in which the body of a young lady comes back to life by sexual touch (kiss) of the Prince Charming. Some "Overwhelming Metal" melodies, creations of wall paintings expressly manage to show how necrophilia was present in our history.¹³

Since necrophilia isn't illicit or criminalized in numerous nations and is been continued from a long time, individuals like Carla Valentine who practise necrophilia and spread such unthinkable on the planet. She is a funeral home specialist, the organizer of Dead Meet, a web based dating and online site only for death industry experts¹⁴ It's the primary dating and online site for individuals who work in the "demise industry," which implies that you can meet anybody from an undertaker to a preserving professional, to a taxidermist on the site. It ought to be noticed that the site isn't entirely devoted to necrophiliacs, however it appears the point isn't really forbidden among potential clients. She runs a blog titled "The Chick and the Dead", with one of its objective being to instruct guests about the a wide range of structures this sexual want can take. So possibly, two people could utilize the site to meet and fulfill low-level necrophilia desires by means of imagination or pretend.¹⁵

Necrophilia in Ancient, medieval & Modern Times:

The history clearly describes how Necrophilia has been present since the first century AD. The Moche who were also known as "Greek of Andes" ruled over some parts of Peru from 1st century to 8th century. In 1980s archeologist find their "paintings in pyramids which depicts the people having sex with dead and creatures"¹⁶ 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.

The Father of History Herodotus explain in his book 'The Histories' that Egyptian did not immediately preserve the elegant women dead body but they left body to decay or rot for 3-4 days so that sexual intercourse with corpse can be prevented¹⁷.

¹³ anil aggrawal overview and Historical Aspects, necrophilia forensic and medico-legal aspect page no 17

¹⁴ hayley campbell ,https://www.vice.com/en_us/article/xd5kz7/dead-meet-is-a-dating-site-for-people-who-work-in-the-death-industries-322

¹⁵ the chick and the dead ,<https://www.target.com/p/chick-and-the-dead-life-and-death-behind-mortuary-doors-hardcover-carla-valentine/-/A-51626545>

¹⁶ jános Boros; Iván Münnich; Márton Szegedi (1988). *Psychology and Criminal Justice: International Review of Theory and Practice*. Walter de Gruyter. p. 242.,<https://www.revolvy.com/page/Incidents-of-necrophilia>

¹⁷ jános Boros; Iván Münnich; Márton Szegedi (1988). *Psychology and Criminal Justice: International Review of Theory and Practice*. Walter de Gruyter. p. 242.,<https://www.revolvy.com/page/Incidents-of-necrophilia>

Literature like Babylonian Talmud¹⁸ describe that King Herod¹⁹ had preserved the body of a lady in a honey for 7 years who killed herself to avoid marriage. Some says that he did it because of having sexual intercourse with dead body and some says that he never committed necrophilia.²⁰

Many serious cases of necrophilia came from the modern period. The following are some of the hideous and scary cases from modern history²¹ :

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 François 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.

In the early nineteenth century, the Catholic Church discussed "What Kind of sin it is to have carnal connection with a female corpse (coirecum foemina mortua)," and came to the conclusion that it should neither be considered whoring (fornicatio) nor bestiality, but pollution with attendance to whoring (Esse pollutionem et fornicationum affectivam)²²

India's most famous case and the two most notable necrophiles of present times 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 necrophilic acts came to public attention in December 2006 during Noida serial murder investigations. This case is famous as the Nithari case²³.

There were many collective necrophilia activities that took place earlier in times, these acts were taken place in the battlefields by military soldiers. During the Russo-Turkish War of 1877–1878 and Moroccan campaigns of 1919–192 soldiers were engaged in necrophilia acts (vaginal and anal intercourse) with dying soldiers on a battlefield²⁴ and even during the French insurrection of 1871, many people were deported to New Caledonia as punishment. i.e. native Kanakas were necrophiles, when they could not get a white woman alive, they got hold of her corpse and

¹⁸ Babylonian Talmud (3rd–5th centuries CE)

¹⁹ King Herod of Judea (73/74 BCE – 4 BCE), Roman client king of Judea Herodian kingdom

²⁰ Bava Batra 3b., https://www.sefaria.org/Bava_Batra.3b?lang=bi

²¹ Anil Aggarwal, Necrophilia: Overview and Historical Aspects 2011

²² de Ligorio DA, Theologia Moralis—Illustrissimi Ac Reverendissimi. È Prelo Janssens et Van Merlen, in Platea Coriariorum, Antverpiae, 1821.

²³ Anubhav pandey, All you need to know about Nithari Serial Killings, <https://blog.ipleaders.in/need-know-nithari-serial-killings/>

²⁴ https://en.wikipedia.org/wiki/Incidents_of_necrophilia

violated it. Numerous witnesses declared that the unfortunate women and girls of the colony were first decapitated and then violated. The bodies were then erotically mutilated.²⁵

Religion and Necrophilia

There are so many evidence of in history of different religion like hinduism, Islam etc. Like in christianity Necrophilia was considered by the Catholic Church to be neither whoring ("fornicatio") nor bestiality, but "pollution with a tendency to whoring"²⁶.

In hinduism like the Aghoris²⁷ who reside in garden of remembrance, drink urine from skulls, sit on dead bodies, use human bones for their rituals and ceremonies and also for jewelry. This small group of people do sex with dead bodies (necrophilia) and even eat some parts of corpses. Aghori signifies "non terrifying" in Sanskrit, and may allude to how individuals from the faction see their death.²⁸.

It has been proposed that the "curse of pharaoh's tomb"²⁹ fantasy was created to avoid the necrophilia acts. One of the reason of covering them profoundly or in strong rock and marble tombs approaches to keep them away necrophiles An incident in india a female who was engaged was dead before marriage, her fancé had to have sex with the dead girl before she could be incinerated. the custom must be completed before the village priest.³⁰

It was believed that an unmarried woman's soul would not find peace. A marriage ceremony was therefore solemnized among the Kachin of Myanmar for a virgin who has died. This implies intercourse with a dead body³¹

Even in Islam there are so many rumors which may be right or may not be. One of the highlighted one is about the The Prophet Muhammad who is a the founder of islam allowed

²⁵ Dr. Jacobus, French Army surgeon, in *The Abuses, Aberrations, and Crimes of the Genital Sense*. Charles Carrington, Paris, 1900.

²⁶ <http://quotes.yourdictionary.com/author/quote/579539>

²⁷ The Aghori are a small group of ascetic Shiva sadhus in india,nepal and south east asia..their practices are contradictory to orthodox Hinduism.

²⁸Sarah Gordon,https://www.dailymail.co.uk/travel/travel_news/article-2975435/Incredible-images-life-India-s-cannibal-Aghori-tribe.html

²⁹ The **curse of the pharaohs** is an alleged curse believed by some to be cast upon any person who disturbs the mummy of an ancient Egyptian person, especially a pharaoh.

³⁰ 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.

³¹ Nico P. Swartz,*The Judicial Implications of Necrophilia* ,Published 30th May 2015,page no 2

"necrophilia", by having sexual relations with cadavers, and also allowing one his disciple to have intimate contact with one of his deceased daughters.³²

It is difficult to understand that why a person would want to do such inhuman acts , necrophilia has been tried to explain in psychological and medical terms.

Psychological and medical reasons

Many psychologist have tried to explain the causes and medical reason to necrophilia .The most common reason they found is low self-esteem and fear of rejection as explained by Rosman and Resnick³³. They have explained how necrophiles find dead bodies as sexual object that wont reject them. They find dead bodies satisfying their low self esteem needs and a partner who will not get tired of them easily.

He develops an exciting fantasy of sex with a corpse, sometimes after exposure to a corpse. As Ernest Jones said: "The dead person who loves will love forever and will never be weary of giving and receiving caresses.

The case of 23 year old boy was reported in British journal of psychiatry by Neville Lancaster ³⁴ reported that the boy had murdered his music teacher and had sex with her .The student IQ was checked and there was no psychological and mental disorder found. Further it was found that boy had a normal romantic relationship with his music teacher. But it was also checked that only after use of alcohol and chemicals then only he could perform those acts.

This case explains that a necrophile is not mentally disturb .He must have something that would trigger him to act that way.

In *West v State* (1989), Mississippi Supreme Court)³⁵, a psychoanalytic explanations for necrophilia is furnished where a psychiatrist has testified that a necrophiliac is an individual who seek or enjoy sex with persons that he or she believe to be or who are dead'' ³⁶

³² http://materiailamica.com/index.php/Accusations_of_Necrophilia_in_Islam

³³ Rosman, Jonathan P., and Phillip J. Resnick. "Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia." *Bulletin of the American Academy of Psychiatry and the Law* 17 (1989):153–163

³⁴ Lancaster, N. (1978). Necrophilia, Murder and High Intelligence: A Case Report. *British Journal of Psychiatry*, 132(6), 605-608. doi:10.1192/bjp.132.6.605

³⁵ *West v State* 553 So.2d 8(1989), Mississippi Supreme Court)

³⁶ Nico P. Swartz, The Judicial Implications of Necrophilia Publ 30th May 2015 , page no 3

Necrophiles have been characterized as mentally deficient, incapable of obtaining a consenting sexual Partner. The use of alcohol or drugs may have been an important factor in helping some of the perpetrators overcome their inhibitions and actually perform their necrophilic acts.

Examination of dead body in the investigation of necrophilia:

Pathologist other than the routine and ancillary procedure has to check whether the corpse has been sexually abused or not. This is done by checking injuries and confirm if they are ante-mortem, post-mortem or peri-mortem. It is possible to find mutilation and multiple bite marks on the body, these marks are checked by histopathological examination which differentiate the injury and also date them by the histochemical study. The anal dilatation is a common post mortem phenomenon but anal dilation with the rigor mortis in other part of body is an evidence of necrophilic action. Examinations like DNA i.e. when skin cells are left on objects when they are touched or casually handled. The investigation of finger -prints is important as it checks the exclusion /inclusion of suspects. Fetish activities are also investigated by checking for missing cloth like bra, panties and even clipped public hair.³⁷

Is necrophilia illicit or not ?

"People have different attractions. Mine just happens to be to corpses." — Haiden³⁸

Philosophers explain the legitimacy of necrophilia on moral grounds. There have been two conflicting arguments, one who believe necrophilia to be ethically wrong i.e anti-necrophilia and other who find necrophilia ethically correct i.e pro-necrophilia³⁹. McKearn⁴⁰ has given her reasoning on ethical grounds where She does not find it ethically and morally wrong but she finds it legally, socially, or hygienically not correct and thus does not encourage it. She argues that once a man dies, his remains losses individual identity. Necrophilia is wrong for people who think body to be a person. She says that body loose individual character after death.

John Locke and Thomas Reid have tried to explain the concept of personhood and individual identity by giving example of pilot and plane. They explain that body is first a fundamental

³⁷ H. T. D. W. Ariyaratna ,Medico legal issues in necrophilia and other related matters,medico-legal journal of Sri-lanka, ,pg.4

³⁸ Daniel Oberhaus,The Little Death: Living and Loving as a Necrophiliac https://www.vice.com/en_uk/article/yvxem5/the-little-death-living-and-loving-as-a-necrophiliac-511

³⁹ Dammika Ariyaratne, Medico-Legal Journal of Sri Lanka Vol. 3, No2 December2015,https://www.researchgate.net/publication/308490363_Medico_legal_issues_in_necrophilia_and_others_related_matters

⁴⁰ McKearn, S. Dead Sexy: An Essay on the Ethics of Necrophilia

holder of the individual or his identity. Once a man dies, he gets rid of the physical body. It is similar, when a pilot of plane comes out of the plane to land safely when the plane wracked up .

David Hume and Derek Parfit explain their view on the basis of same example. They explain that body is just a shell of an individual it earlier contained. They say that once personality is made up by observations. The body contains no property of individual after death, similar to death of pilot in plane.

Mary Anne Warren has explained the concept of personhood by six characteristics which are Sentience i.e The capacity to have conscious experiences, usually including the capacity to experience pain and pleasure., emotionality i.e The capacity to feel happy, angry, sad, loving, etc., Reason i.e The capacity to solve new and relatively complex problems., Capacity to communicate i.e By whatever means, messages of an indefinite variety of types., Self-awareness i.e Having a concept of oneself as an individual and/or as a member of a social group.and Moral agency i.e The capacity to regulate one's own actions through moral principles or ideals. An entity need not have of these attributes to be a person. And none of them is absolutely necessary. Some people may be unemotional, some cannot.⁴¹

Many people would in fact not meet all the criteria of personhood but if all six are missing then the entity can not be called a person.

Author used the criteria to explain if fetus is a person or not. However, the same criteria may be applied to a corpse to state that corpse is not a person. Since a corpse has lost its personal identity, necrophiles are not disrespecting a person by having sex with a corpse.

Necrophilia is not limited to moral or ethical legality, the effects on society is also a basis to check the social legality.

- 1- **Break down of social norms, ethics and family**-Necrophilia is unnatural ,it not only breaks the family but it also violates the ethical conduct of a society.
- 2- **Increasing criminal offences**-In order to set the body, a necrophile commits crimes like trespassing on burial grounds, kidnapping, murder for their lust and sexual fantasies.
- 3- **Disrespect to society and dead**- Committing necrophilia on a body who never consented is disrespect to the body or human and even to the family that has the emotions connected

⁴¹ Mary Anne Warren – On the Legal and Moral Status of Abortion, available at <https://philosophyintrocourse.com/phi-2600-090-fall-b/mary-anne-warren-on-the-legal-and-moral-status-of-abortion/>

to it. Necrophilic disrespect them by stealing the body from burial grounds, disturbing their peace. It is disrespect to the religion which taught us the ceremonies and process for the burying of dead body for resting and peace.

Something which is disrespectful should made illegal. There are several countries in the world making necrophilia illegal.

Something which is disrespectful to society or people should be forbidden, a few countries have worked towards it and a few are still finding its way ,

According to Sarah Kay⁴², the laws stem from old world religious notions. "Laws referring to necrophilia or mutilation of corpses are laws referring to principles of desecration. Desecration is tied to morality more than it is tied to sheer legal logic; it is an idea that somehow the respect and honor due to the body while it was alive perseveres in death. Laws relating to Necrophilia differ from country to country like it is legal⁴³ in some countries like North Carolina, Kansas, Louisiana, Oklahoma whereas states like washington, france considered it as an offence.

France⁴⁴

In France, article L225-17 of French Penal Code makes necrophilia an offense. It allows the judge to punish necrophiles for “affect on the integrity of a corpse.” The punishment is 1 year of prison and up to 15,000 Euros.

The famous Bertrand case took place in france. Sergeant François Bertrand was in army. In year 1841, he was arrested and jailed for one year for committing necrophilia. The word necrophilia was coined because of this case.

Washington⁴⁵

Chapter 9A.44 of the Revised Code of Washington (RCW) deals with sexoffenses. Section 9A.44.105 provides punishment for necrophilia (“Sexuallyviolating human remains”). It states, (1) Any person who has

⁴²human rights lawyer available at https://www.vice.com/en_us/article/9bg5qy/should-corpse-be-treated-like-people-or-property-422

⁴³ Weinstein, 4/16/14, Gawker, Here are the States Where Blowjobs Are Illegal but Necrophilia’s Cool, available at: <https://gawker.com/here-are-the-states-where-blowjobs-are-illegal-but-necr-1563878569>; T. Bigler, 4/16/2014, Necrophilia is legal in These States, available at: <https://gawker.com/here-are-the-states-where-blowjobs-are-illegal-but-necr-1563878569> last seen on 10/12/15.

⁴⁴ Nérophilie [in French]. Available from <http://fr.wikipedia.org/wiki/N%C3%A9rophilie>. Retrieved May 25, 2007 36 <http://www.legislation.govt.nz/act/public/1961/0043/latest/DLM327382.html>

⁴⁵ available at <http://app.leg.wa.gov/RCW/default.aspx?cite=9A.44.105>

sexual intercourse or sexual contact with a dead human body is guilty of a class C felony.

(2)As used in this section: (a)“Sexual intercourse” (i) has its ordinary meaning and occurs upon any penetration, however slight; and (ii) also means any penetration of the vagina or anus however slight, by an object, when committed on a dead human body, except when such penetration is accomplished as part of a procedure authorized or required under chapter 68.50 RCW or other law; and (iii) also means any act of sexual contact between the sex organs of a person and the mouth or anus of a dead human body.

(b)“Sexual contact” means any touching by a person of the sexual or other intimate parts of a dead human body done for the purpose of ratifying the sexual desire of the person.

In *State v. Ryan*⁴⁶, the defendant broke into the same funeral home twice within six days and damaged property, stole items, and made sexual contact with several corpses. The Washington Court of Appeal upheld the trial court's imposition of an exceptional sentence, despite the defendant's argument that the sentencing court improperly considered his sexual contact with the corpses. Ryan could not, however, be charged with necrophilia because "Ryan's contact with the corpses was apparently not a crime at the time he broke into the funeral home and Shortly after Ryan's initial arrest, a bill was introduced in the state legislature making necrophilia illegal⁴⁷.

UNITED KINGDOM⁴⁸

Necrophilia is considered as an offence under Section 70 of Sexual Offences Act 2003 making it illegal ,if any person intentionally performs an act ofsexual penetration with any part of dead body. Punishment for such an act is imprisonment for a term not exceeding six months or fine or both.

India

There is no law in India to punish such offenders. The only law related to corpses in India is Section 297⁴⁹ of the Indian Penal Code entitled "Trespassing on burial places, etc.", states as follows:

⁴⁶ 899 P.2d 825 (Wash. Ct. App. 1995).

⁴⁷ TYLER TRENT OCHOA & CHRISTINE NEWMAN JONES.,Defiling the Dead: Necrophilia and the Law page no 561 & 562

⁴⁸ Available at <https://www.legislation.gov.uk/ukpga/2003/42/section/70>

‘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 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’.

For a person to be punished under this act, the pre-condition is to trespass after this he must have an intention to offer indignity to a corpse that can be done by having sex with a corpse, etc.

Example: A morgue worker won't be punished under this act for offering indignity to a corpse as he did not fulfill the precondition of trespassing.

In the eyes of law, a dead body becomes a kind of "property" for the next of kin that makes necrophilia a vandalism and not a sexual attack against a person.

In October, 2015, three men in Uttar Pradesh gang raped the corpse of a woman and left it twenty feet far from the grave, naked. They had dug up the grave of the woman who had succumbed to death due to the excessive pain while giving birth to a child. Now the question is under what provisions would such people be punished, whether under section 297 for trespassing into the burial ground and offering indignity to the corpse or under section 377 for unnatural sexual intercourse.⁵⁰

RIGHT TO DIE

Living individuals have countless rights; however, the dead have rights in a full-scale sense in two primary zones

- (a) Disposal of bodies
- (b) Offence against the dead body.

⁴⁹ <https://indiankanon.org/doc/15048/>

⁵⁰ India Today, available <https://www.india.com/news/india/shocking-three-gang-rape-woman-after-digging-body-from-grave-in-uttar-pradesh-655705/>

Corps have right to rest undisturbed and unmolested. Even engravings like RIP (Rest In Peace) can be found on christian tombs.⁵¹

The Indian Penal Code defines a person in Section 11 to include any company or association of body of persons whether incorporated or not.

Section 297 OF IPC deals with trespass on burial places - However, 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. No one has the privilege to bother and damage the tranquility of dead individual. Dead bodies are not person in the eyes of law. They are semi subjects under the steady gaze of the law.

The word 'person' is explained in Art. 21, includes a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed.”

In Pt. Parmanand Katara, Advocate v. Association of India and Anr. 14,⁵² the Supreme Court held in an issue identifying with strategy for execution of capital punishment of hanging under Punjab Jail Manual as cruel and violative of Art.21 of the Constitution of India as pursues: - "We concur with the candidate that privilege to respect and reasonable treatment under Art.21 of the Constitution of India isn't just accessible to a living man yet in addition to his body after his demise." These cases feature that the word 'person' in Article 21 incorporates a dead individual in a restricted sense. Henceforth additionally in instances of necrophilia and PMSR, the Court should view a dead body as 'individual' according to law having rights given to them in a restricted sense. This acknowledgment of the lawful identity of a dead individual is additionally basic to secure the interests of the general public all in all.

⁵¹ Nasim P Beena ,Right of a dead, International Journal of Management Research & Review,

⁵² <https://www.casemine.com/judgement/in/575fd23e607dba63d7e6713b>

Madras High court in its recent judgement *Amrutha v. the state of kerala* (AIR 2018)⁵³ Justice S. Vaidyanathan said that even dead persons have got a right of privacy and their souls should not be disturbed, as they have an immortal life after their death.

The Indian Succession Act 1923 provides for the execution of the will of a person, after he has died. A person also has a right to protection of his dead body, to be mutilated, wasted or its organs to be taken out, except by the consent of the person, when he was alive or on the consent of his kith and kin or the state if the body is unclaimed, under the Transplantation of Human Organs Act 1994.

International laws for dead

Many international covenants and laws specifically deal with the rights of the dead. Some are described below.

- (a). Article 16, II nd paragraph of Geneva Convention 1949 IV provides “ The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect. As far as military considerations allow, each Party to the conflict shall facilitate the steps taken to search for the killed and wounded, to assist the shipwrecked and other persons exposed to grave danger, and to protect them against pillage and ill-treatment.”⁵⁴
- (b). Article 3(a) of the 1990 Cairo declaration on Human Rights in Islam provides “In the event of the use of force and in case of armed conflict- it is prohibited to mutilate dead bodies
- (c). The Central African Republics Iristacors Manuel (1999), states in volume 2 that “ Dead enemy must be treated well”
- (e). The UK Military Manual (1958) states “The dead must be protected against maltreated as a war crime”⁵⁵
- (f). The US Field Manual (1956) provides that “Maltreatment of dead bodies” is a war crime. US. Naval Hand book (1995) provides that mutilation and other mistreatment of the dead are representation of war crimes.⁵⁶

⁵³<https://www.livelaw.in/even-dead-persons-have-got-a-right-of-privacy-and-their-souls-should-not-be-disturbed-madras-hc-rejects-plea-of-a-woman-who-claimed-to-be-jayalalithaas-daughter-read-order/>

⁵⁴ http://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.33_GC-IV-EN.pdf

⁵⁵ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_gb_rule113

⁵⁶ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_cou_us_rule113

(h). UN Commission on Human Rights

In a resolution adopted in 2005, on human rights and forensic science, the UN commission on Human Rights underlined” The importance of dignified handling of human remains, including their proper management and disposal as well as of respect for the needs of families.⁵⁷

Conclusion

It is an old saying that one should learn from one's mistake and experiences, following the same India should learn from other countries and make some strict laws and eradicate such fetish activities so that cases like Nithari not place again.

Dead is not considered as person in the eyes of law but it was a person earlier. It has all the rights to prevail it`s dignity even after being dead and rest peacefully. Madras High court has right said that even death has a right to privacy which should not be disturbed.

Therefore, we conclude body of a dead person is no one's property and has all the rights to its privacy and to rest peacefully and in a dignified manner.

⁵⁷ Nasim P Beena ,Right of a dead, International Journal of Management Research & Review,page 299