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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE LEGAL STATUS OF NECROPHILIA IN INDIA: AN OVERVIEW

Authored By - Sweta Ghosh¹

ABSTRACT

Every individual has a right to live a life with dignity and that dignity must be protected even after his/her death. There are growing instances of establishing sexual intercourse with dead bodies not only in our country but across the globe and this act is known as necrophilia. Till date many countries adopted provisions to cope up this problem while many countries are still struggle. This article will discuss the concept of necrophilia, present legal status in our country as well as other countries, etc.

Key words- Necrophilia, dead bodies, dignity, right, Indian Penal Code.

INTRODUCTION

Human rights are those rights which are basic, inherent and inalienable. These rights are conferred on every human being irrespective of sex, caste, religion, place of birth, nationality or any other consideration. These rights are also universal in nature. As we know that necrophilia is an act in which a person establishes sexual relation with a dead body, therefore we must know whether such an act violates the dead person's rights or not.

The origin of human rights can be traced back from a Greek play 'Antigone'. In this play, Sophocles describes that Antigone's brother, while he was rebelling against the king, was killed and his burial was prohibited by the cruel king Creon. In disobedience of the order Antigone buried her brother. When she was arrested for violating the order, she pleaded that she had acted in accordance with the 'immutable, unwritten laws of heaven' which even the king could not override. By this we can understand that even the dead bodies have certain basic rights which no one can deny even the supreme authority of the State are immune from violating their rights.

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Necrophilia is a paraphilia whereby the perpetrator gets sexual pleasure in having sex with the dead. Necrophilia is a morbid obsession with death and the dead, and necrophilia was defined as having sexual relations with a dead body. In many jurisdictions there are strict legal provisions against this practice. The term "necrophiles" was first time coined by the Belgian physician in his lecture series, given around 1850. However, there are many related terms such as pseudonecrophilia being used differently by different authors, necessitating the introduction of a new classification system. Necrophilia can be classified into following ten classes-

1. Class I necrophiliacs: Role players are represented by class I. These people do not have sex with a dead body, but get deep exhilaration from having sex with a living person pretending to be dead. It is a kind of sexual role play. Some authors have called this practice pseudonecrophilia.²
2. Class II necrophiliacs: Romantic necrophiles are the normal disheartened people, who cannot bear the pain of separation from their loved ones and also not agree to except that their loved ones have died. As a result, they mummify the dead body of their loved ones and continue coupled sexually to them much as they did in real life. These people show only very mild necrophilic tendencies
3. Class III necrophiliacs: People having a necrophilic fantasy are somewhat less harmful from a legal standpoint. Psychosocially, they show a divergent behavior and are thus abnormal. In reality instead of practically engage in sexual intercourse with the dead, they simply fantasizing the intercourse with the dead. They may visit cemeteries and funeral parlors often for this purpose, and merely the sight of dead bodies may give them erotic pleasure.³
4. Class IV necrophiliacs: Tactile necrophiles go one step ahead of class III necrophiles and need to touch a dead body in some erotic way in order to get an orgasm.
5. Class V necrophiliacs: Fetishistic necrophiles are more abnormal than classes III and IV necrophiliacs, but they still do not engage in any intimacy activity with the dead body. Often, they may keep some portion of the dead body such as pubic hair or a finger to get continuous erotic stimulation. Some remove clothes, especially panties from corpses to keep as fetish objects.
6. Class VI necrophiliacs: Necromutilomaniacs are more severe cases than earlier classes. These individuals also do not engage in sexual intercourse with the dead. However, their erotic pleasure comes from disfiguring the dead body and masturbating simultaneously. As a part of sexual gratification, the offender may often eat the body parts of the corpse
7. Class VII necrophiliacs: Opportunistic necrophiles are quite content having intercourse with the living and would not think of engaging in sexual intercourse with the dead.

² Shaffer L, Penn J. A comprehensive paraphilia classification system. In: Hicky EW, editor. Sex crimes and paraphilia. 1st ed. NJ: Pearson Prentice Hall; 2006. p. 87. [chapter 8].

³ Necrophilia. In: Drzazga J, Charles C. (Eds.) Sex crimes and their legal aspects Thomas: Illinois; 1960, p. 199–204.

8. Class VIII necrophiliacs: regular necrophiles These are the “classical” necrophiliacs, as one normally understands. These people get more pleasure in having sexual intercourse with a dead body rather than with a living person. They would resort to stealing dead bodies from mortuaries or graveyards for the said purpose.

9. Class IX necrophiliacs: homicidal necrophiles This is the most dangerous category of necrophiliacs, where to have sex with a dead body they resort to killing. This practice is also known as homicidophilia.

10. Class X necrophiliacs: exclusive necrophiles These offenders are unable to perform intercourse with the living and because of this they only need dead bodies for sexual intercourse. Since dead bodies is an absolute necessity for them for sex, they may go to any extent to obtain them.

LEGAL STATUS OF NECROPHILIA IN DIFFERENT COUNTRIES

1. USA

There is no individual Federal Laws in United States relating to necrophilia, but there are fifty individual states in USA and each state deals this matter as per their own laws. For example, as per Health and Safety Act of California necrophilia is a felony.⁴

2. South Africa

The Criminal Law (Sexual offences and Related Matters) Amendment Act, 2007 prohibits the sexual intercourse with dead bodies.⁵

3. CRIMINAL LIABILITY IN NEW ZEALAND

In New Zealand necrophilia is not a crime as because there are no express provisions relating to necrophilia in the New Zealand Code. However, indecently interference with or offering any indignity to any dead body is a punishable act as per the New Zealand Crimes Act, 1961.⁶ Those who fail to perform basic duties towards dead bodies can be punished under Section 150 of the New Zealand Crimes Act, 1961.⁶

4. CRIMINAL LIABILITY IN CANADA

The Criminal Code of Canada, 1985 prohibits neglecting duties related to burial of dead body as well as improperly interfering with those dead bodies, which is punishable with maximum 5 years

⁴ Section 7052 of Health and Safety Act, 1973

⁵ Section 14 of Criminal Law (Sexual offences and Related Matters) Amendment Act, 2007

⁶ Section 150 of New Zealand Crimes Act, 1960

of imprisonment.⁷

LEGAL STATUS OF NECROPHILIA IN INDIA

Since ages, it is believed that dead bodies have the right to rest peacefully and unmolested. This includes safeguarding the corpses from getting harmed or disrespected. The living persons are given several rights under various laws, statutes etc. The Supreme Court through its various judgements has held that the right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death and the word 'person' in Article 21, would include a dead person his right to live with human dignity also have an extended meaning to treat his dead body with respect.

In *Jamuna Das Paras Ram v. State of Madhya Pradesh*,⁸ with reference to Section 392 of the Indian Penal Code and in the matters of crime the High Court of Madhya Pradesh had found that the word person cannot be so naturally construed as to exclude the body of human being, i.e., the human body must be given the right, irrespective of being alive or dead.

In *Parmanand Katara vs Union of India*⁹ Supreme Court held that the dignity of a dead body must be maintained and respected while establishing a corresponding duty on the state to ensure decent cremation is served to the person. The “right to dignity and fair treatment under Article 21 of the Constitution of India is not only available to a living man but also to his body after his death,”.

There is no specific provision in the supreme Penal legislation of the country, i.e., Indian Penal Code, 1860 which explicitly outlawing necrophilia. Presently, Section under the Indian Penal Code, 1860 which states that intentionally causing hurt or insult to anyone's religious feelings, or disturbing funeral ceremonies, in places of worship or burial sites, can lead to imprisonment for up to one year, or a fine, or both.¹⁰ But there is no express provision under the said section i, e., Section 297 which specifically penalizing sexual intercourse with the dead bodies.

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*

⁷ Section 183 of Criminal Code of Canada

⁸ AIR 1963 MP 106

⁹ 1989 AIR 2039, 1989 SCR (3) 997

¹⁰ Section 297 of Indian Penal Code, 1860

liable to fine.” In the case of Navtoj Singh Johar v Union of India ¹¹ the Supreme Court of India partly decriminalizes section 377 of the India Penal Code. Against the will of the nature and with any man, women or animal are the essentials criteria to punish an accused under Section 377 of the Indian Penal Code.

Similarly, Section 499 of the Indian Penal Code states that libel or slander against a dead person also establishes the offence of Defamation. Though this section is related to dead persons but not relates to necrophilia.

FEW INSTANCES OF NECROPHILIA IN INDIA

Necrophilia is not provided the recognition it deserves in India. The Indian legal system lacks in providing legal safeguards and contains unclear laws which causes in major loopholes necrophilia. Due to such lacuna, the accused is set free by the judiciary. In recent decade, India has seen an increase number of incidences of necrophilia not only in places like mortuaries but where people are digging up buried bodies and even homicide others for raping their bodies.

The Nithari case (2006)¹² is one of India’s most well-known examples of necrophilia, in which the accused and his servant were arrested after it was discovered that 19 girls had gone missing after visiting the accused’s home. The servant admitted that the accused was responsible for the deaths of 16 individuals.

In another case in Uttar Pradesh, a 40 years old deaf and mute guy killed a woman and raped her corpse.

On June 25, 2015, a 21-year-old woman was returning home after her computer class, when the accused Rangaraju murdered her and after that raped her dead body. The accused was sentenced to rigorous life imprisonment and for raping the victim’s dead body. An appeal was filed before the Karnataka High Court. The high court acquitted him under Section 376 for raping the victim’s dead body as because there is no express provision under the Indian Penal Code or any other penal legislations of the country to punish him for the same.

In May 2020, Assam police detained a 50-year-old man for allegedly having sexual relations with the deceased body of a 14-year-old girl.

¹¹ AIR2018SC4321

¹² Criminalcaseappealnumber1475of2009

CONCLUSION

From the above analysis it is clearly evident that need of hour is to enact provisions for the offence of necrophilia in country. As we are living in a developing society and law is a means to social transformation so for this growing concern relating to sexual intercourse with the dead bodies, we are in need of strict laws to protect the dignity of the dead bodies as well to punish the accused.

Various countries across the globe recognized this growing concern and expressly penalized this offence to a great extent. There is an urgent need to introduce amendments in the Indian Penal Code specially section 297 (because this section is already mentioning provisions for dead bodies) or under section 377 (establishing sexual intercourse with a dead body is not a natural offence, so it will be fitted under section 377) to effectively deal with the cases of Necrophilia and protect the societal interest along with law and order. The status of the dead bodies remains in a very weird position and our Criminal Justice System is still silent. Therefore, it is the need of the hour to take cognizance of this serious issue and protect the interest of society by protecting the dignity of the dead bodies.