THE VOID OF NECROPHILIA LAWS IN INDIAN CRIMINAL SYSTEM:
WHAT NEEDS TO BE DONE

By Abhay Pachauri
From Faculty of Law, Aligarh Muslim University

ABSTRACT

Dead bodies and their cremation or burial are given much importance in Indian culture similarly as is done anywhere in the world. This raises a serious concern when some dead body gets mutilated or disfigured in recourse to any act done over it. There is no law in the Indian Penal Code which specifically takes cognizance of the crime done against dead body, especially to that of sexual acts.

The paper attempts to compare the non-application of the existing penal laws (Ss. 297, 375 and 377) in the commission of necrophilia over the dead body. It deals with the definition, classification and reasons for necrophilia, in reference to the status of the dead bodies and their treatment in India. This also includes the comparative study of existing US Penal Law in various states dealing with crimes against dead bodies. The necessary changes which could be incorporated in the criminal laws in India are also suggested by the author with the upcoming challenges.

Key Words: Necrophilia, Dead, Death, Sexual Intercourse, Corpse

I. INTRODUCTION

An Australian poet Adam Lindsay Gordon, used the Latin phrase ‘De Mortuis, nisi bonum, nil’ to complete the mortuary phrase in his poem “Sunlight on the Sea”. Similar has been used in the late 19th and 20th century in various cinematic and theatrical works. The literal meaning of the Latin phrase translates as ‘Talk no ill of the dead’ or ‘of the dead, say nothing but good’. Though many may not agree with this principle of conferring unnecessary privilege upon the dead as they might not be worthy of the same which was argued quite deeply in Britain in 2013 on the death of its former Prime Minister Margaret Thatcher. Still there is a common parlance among numerous cultures and traditions, which is, to respect the dead bodies be it any rites related to funeral. It is thought as immoral to treat the dead bodies with disrespect. Respect is intimately linked to morality. All good qualities like honesty, wisdom, bravery, kindness, fortitude, genius, etc. elicit respect. It is this respect proposition which has found its place in the customary principles of the International Humanitarian Law which got codified in different set of words within various conventions and laws of international stature and that of countries. Many relates to war crimes, while the other ascribe to the domestic ones.

The Indian Supreme Court in *Pt. Parmanand Katara, Advocate v. Union of India & Anr.* has held in regard to a topic regarding method

---

1 Lawrence of Arabia (1962) film
2 Anton Chekhov, *The Seagull* (Stephen Mulrine tr, Nick Hern Books Ltd 1997) 1, 17
4 [1989] SCR 3 997

PIF 6.242 www.supremoamicus.org
of execution of loss of life sentence of hanging Punjab Jail Manual as inhuman in addition to in violation of Art.21 of the Constitution of India as follows:

"We agree with the petitioner that right to dignity and fair treatment under Art.21 of the Constitution of India is not only available to a living man but also to his body after his death."

Thomas F. H. Stueve in his book Mortuary Law wherein the quasi status of the dead body is spelled out:

“It is not property in the commercial sense, but the law does provide a bundle of rights to the next of kin in relation to that body. The survivor is given the right to take the body for purposes of disposition, to allow body parts to be used within the confines of the law, to exclude others from possession of the body, and to dispose of the body. This bundle of rights renders the dead body the quasi property of the surviving family member.”

A long debate has been going on among the anatomist philosopher regarding the use of unclaimed dead bodies for examination and medical purposes. The sanctity of the dead bodies in India is such that various incidents have been reported where family members refuse to even have post-mortem of the deceased due to procedural abhorrence according to them.

II. WHAT IS NECROPHILIA

Necrophilia is one among the various paraphilia or sexual disorders related with human and are similar in characteristics or could be associated with sadism, cannibalism, necrophagia, vampirism, necropedophilia and necrobestiality. One of the earliest published study made on necrophilia, by Abraham A. Brill characterized necrophiles as mentally deficient, psychotic and incapable of obtaining a consenting partner. Necrophilia is a psychosexual ailment and is classified with the institution of disorders which contain the paraphilias, a subtype of psychosexual ailment related to unusual or bizarre fantasies or acts that are necessary for complete sexual excitement. Necrophilia was also characterized as an "eligibility paraphilia". It is also viewed by some psychiatrist as a "blatant psychosis".

Necrophilia is an act which involves disrespect towards dead body in manner of sexual urge or temptation. The composition of two Greek words nekros, which means ‘corpse’, and philia which means ‘love’ forms the term ‘Necrophilia’. Anil Aggarwal has defined Necrophilia as “Sexual Gratification by having sex with the dead”. Necrophilia is the attraction or act of attaining satisfaction of sexual nature by having intercourse, taking oral pleasure or any doing by which some kind of fulfillment

5 T Scott Giligan and Thomas FH Stueve, Mortuary Law (11th rev edn, Cincinnati Foundation for Mortuary Education 2011) 167
6 Vernon J Geberth, Sex-Related Homicide and Death Investigation: Practical and Clinical Perspectives (CRC Press 2003) 174
7 Abraham Arden Brill, ‘Necrophilia’ (1941) J. Criminal Psychopathology Part I. 433
10 Anil Aggarwal, Necrophilia: Forensic and Medico-Legal Aspect (CRC Press LLC 2010) 1
is achieved of erotic nature, with a corpse or its remains.

It has been referred to as a rare disorder.\textsuperscript{11} The term first appeared in the winter lecture given by a Belgian Psychiatrist Joseph Guislian (1797-1860) when he used it to refer to the case of Sergeant François Bertrand (1824–1850), one of the first reported cases of Necrophile which was in debate pan-national level in France during that time. In 1852, the transcription of his 1850 speech was published in ‘\textit{Leçons Orales sur les Phrénopathies, ou Traité théorique et pratique des maladies mentales. Cours donné à la clinique des établissements d’aliénés à Gand}’ where the word first appeared to be in printed form. Presently necrophilia is exact by the Diagnostic and Statistical Manual of Mental Disorders IV\textsuperscript{12} as an unspecified paraphilia and not using in general settled upon unique diagnostic criterion other than postmortem sexual activity with a frame.

\begin{table}
\centering
\begin{tabular}{|c|c|}
\hline
Class & Tentative Name & Characteristics \\
\hline
I & Role Players & Enjoy to have sex with a living person acting like dead, but not with dead person \\
\hline
II & Romantic necroph & Mummify a part of the body of their loved ones and hold it with them for psychosexual \\
\hline
\end{tabular}
\end{table}

A. CLASSIFICATION OF NECROPHILES

To understand the further discussion, it is required to have a clear classification of various types of Necrophiles. Being a subject of limited study, not much research has been done and, therefore, various classifications have been made by different researchers. Kraft-Ebbing\textsuperscript{13} and Hirschfeld\textsuperscript{14} have their own type of classification respectively. The significant work of Rosman and Resnick (1989) distinguishes between genuine necrophilia and pseudo-necrophilia, the latter being simply a short-term appeal to corpses with a preference for touch with dwelling partners. On the opposite hand Genuine necrophiles as people with a persistent enchantment to corpses has been labeled into 3 sorts: necrophilic homicide (corpse is obtained by murder); regular necrophilia (use of bodies for sexual satisfaction which are already lifeless); and necrophilic fantasy (fantasizing of sexual interest with a corpse without any commission of necrophilic acts).\textsuperscript{15} Latest one is made by Aggarwal where he has divided necrophiles into ten classes each ascribing to a certain characteristics. The same has been provided below:\textsuperscript{16}

\begin{table}
\centering
\begin{tabular}{|c|c|}
\hline
Class & Tentative Name & Characteristics \\
\hline
I & Role Players & Enjoy to have sex with a living person acting like dead, but not with dead person \\
\hline
II & Romantic necroph & Mummify a part of the body of their loved ones and hold it with them for psychosexual \\
\hline
\end{tabular}
\end{table}

\textsuperscript{12} Brill (n 8) 435
\textsuperscript{13} Richard von Krafft-Ebing, \textit{Psychopathia Sexualis} (Arcade Publishing 1886) 59
\textsuperscript{15} Rosman and Resnick (n 12) 154
\textsuperscript{16} Anil Aggrawal, ‘A New Classification of Necrophilia’ (2009) 16 Journal of Forensic and Legal Medicine 316
<table>
<thead>
<tr>
<th>Class</th>
<th>Description</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Necrophiliacs</td>
<td>Fantasize intercourse with the corpse.</td>
</tr>
<tr>
<td>II</td>
<td>Tactile Necrophiles</td>
<td>Interest in the dead to the level of touching its body parts. May manipulate sexual organs for getting orgasm.</td>
</tr>
<tr>
<td>III</td>
<td>Fetishistic Necrophiles</td>
<td>Similar to Class II Necrophiles, but they do the same with strangers</td>
</tr>
<tr>
<td>IV</td>
<td>Necromutilomaniacs</td>
<td>Pleasure comes from mutilating a corpse, rather touching them</td>
</tr>
<tr>
<td>V</td>
<td>Opportunistic Necrophiles</td>
<td>Looks for opportunity for having sex with a corpse.</td>
</tr>
<tr>
<td>VI</td>
<td>Regular Necrophiles</td>
<td>They prefer dead bodies over living for having sexual intercourse.</td>
</tr>
<tr>
<td>VII</td>
<td>Homicidal Necrophiles</td>
<td>Competent to get sexual communication with the living being however they kill someone to have sexual intercourse with his/her dead body.</td>
</tr>
<tr>
<td>IX</td>
<td>Exclusive</td>
<td>Sexual intercourse solely with the dead.</td>
</tr>
</tbody>
</table>

It would be harmful to include Class I and Class III within the definition of Necrophiles as they did not harm or infringe the liberty of any other person.

An act of necrophile is usually been found to be done in the hidden sham of society, or in such type that it’s very hard to determine the act and its nature. Due to this, it becomes difficult for the investigators to found out the reason for the commission for the same.

**B. RATIONALE OF NECROPHILIC ACTS**

Krafft Ebing first commented on this motivational dynamic: “the lifeless condition itself...a human form absolutely without will...is seen to be capable of absolute subjugation, without the possibility of resistance”. In 1980, Hazelwood and Douglas have offered a different theory in cases regard to necrophilia and sexual murder offenders which seek to “outrage society and call attention to [their] total disdain for societal acceptance”. The remarkable patter which has been encountered in cases related to serial sexual murder can be viewed as a signature behavior in which engagement in these types of activities is sexually arousing and forms part of the offender’s vicious sexual-stimulation pattern.

A review of 122 cases shows a variety of reasons for committing Necrophilia. The

---

17 Krafft-Ebing (n 14) 64
most common motive of the true necrophile was to be with a partner who can’t resist or reject, followed by reuniting with romantic partner, attraction towards the corpses sexually, to reap comfort or to overcome loneliness, and at last comes the expressing authority upon a homicide victim. It is worth noting the views in the survey which clearly suggests that nothing in the data prescribe that these necrophiles have abnormality or subnormal intelligence (Only 11% of true necrophiles were psychotic).20

The view of Rosman and Resnick highlighting the reason because of which the necrophilic acts are committed is the ownership of an “unresisting and unrejecting partner”. Similar point was further endorsed by Ressler and Burgess.21

In order to have private access to a corpse, there seems to be an augmented propensity of the necrophiles getting jobs in funeral parlors or morgues though in very odd circumstances these offenders have an exhumed corpse.22

I. LAWS UNDER WHICH NECROPHILIC ACTS ARE CHARGED UNDER INDIAN LEGAL SYSTEM

India is one among the various nations which do not have any designated law for dealing with Necrophilia. In reality, there was a period when a curious custom was prevalent in India relating to necrophilia wherein a women who had been engaged dies before her marriage, her fiancé had to deflower her prior to her cremation.23 The Indian police, in any act related or resembling Necrophilia, charges the offender under Section 297 (Trespassing on burial places)24 and Section 377 (Unnatural sex) 25 of The Indian Penal Code 1860 (hereafter referred as IPC) which is the primary substantial law statute dealing with the penal offences in India. To put emphasis on the need of a separate statute or law dealing with necrophilia, it is important to prove that the present framework is not sufficed.

It is necessary to decode the section to understand that up to what extent these sections secure the deceased against the act of necrophile. The essentials of S.297 to qualify it as such are:

1. The act must be done with the intention to wound the feelings or insulting the religion of any person;
2. That act have to lead to commission of trespass in any area of worship or sepulcher, or any region set aside for funeral rites or as a repository for the stays of the dead;
3. Offering any indignity to the human corpse at the trespassed place.

Intention or Mens Rea, is the presence of necessary element of knowledge to commit wrongdoing which qualifies as the basis of crime. The first and foremost suffice of S. 297 is the commission of act with the

20 Rosman and Resnick (n 12) 159
23 Dr. Anil Aggarwal, Forensic and Medico-Legal Aspects of Sexual Crimes and Unusual Sexual Practices (CRC Press 2008) 310
24 Indian Penal Code 1860, s 297.
25 Indian Penal Code 1860, s 377.
intention to wound or likely to wound the feelings, or insult or likely to insult the religion, of any person. What we have discussed above in the definition and meaning of necrophilia, the only intention must be to mutilate or use the corpse or its parts for sexual gratification. Nowhere there is even a slight need that the prior intention of the accused before committing necrophilia should be to insult any religion or to hurt the feelings of any third person. Rather, the act is intended to seek pleasure to self. But that does not mean that necrophilia could only be committed without hurting the feelings of any person.

The second and third essentials mentioned above involve trespass to a land of various types as listed or trespass for the purpose of posing indignity to the deceased dead body, which again doesn’t serve as an essential for necrophilia. If we take the example of Mortuary attendant, in their case no trespass is conducted. Therefore, if there is indignity being done to a corpse or its body, the attendant won’t be charged under this for the sole reason that he hasn’t completed the essential of trespass.

Therefore, the slight chance when a Necrophile may be convicted under S. 297 is that with the intention, he trespass in to burial land and offends or mutilate the corpse, which may qualify as offering indignity to the corpse. Here also, the intention must be as is mentioned in essential.

Now, talking about S. 377 of IPC, which was to a limited extent, has been decriminalized by the Hon'ble Apex Court in *Navtej Singh Jauhar v. Union of India* but the same is yet to be amended by the legislature. At present, any consensual unnatural sexual intercourse between men or women or between both men and women is not illegal in India.

This Section includes the term ‘against the order of nature’, which is not described in the statute. The act of necrophilia under this section could be committed when:

1. There is carnal intercourse;
2. The intercourse must be against the order of nature, and;
3. The act must be non-consensual between men or between women or between both men and women.

Prima facie, the second condition is fulfilled after going by the literal meaning of the term ‘against the order of nature’ as the same has not been described in the statute or under any judicial precedent by the Indian courts. Now, it is possible, in rare chances, that the necrophilic might do anal intercourse with the dead. Going for the last essential (3.), the act must be done by either man or woman. Sub-clause (10) of Section 2 of IPC defines man as “a male human being of any age” and woman as “a female human being of any age”. This does not depict anywhere meant to intend a deceased man or woman within the act or in any other law at the moment in effect in India. As both of the involvers needs to be alive, therefore the essentials of necrophilia get breached. Still, the police had been consistent to book necrophiles under this section.

---

26 *Navtej Singh Jauhar & Ors v Union of India through Secretary ministry of Law and Justice Writ Petition (Criminal) No. 76 of 2016*

27 HT Correspondent, ‘4th mutilated body found in Delhi in 10 days; man held for necrophilia’ *Hindustan Times* (New Delhi, 7 December 2016) <https://www.hindustantimes.com/delhi/4th-
If we call the act of necrophile as rape under the provision of IPC mentioned under S. 375, there must be fulfillment of certain conditions; the most important of them is that the act must be committed by man against woman. Here also the woman needs to be alive, which doesn’t fit under the description of necrophilia.

Indian Courts have nowhere mentioned that rape could be committed with a dead woman. In the interpretation of the penal statute of India, it could be derived that rape could only be done with a living body or person. The status of a dead body is different to that of a living one so far as Indian Law is concerned.

III. INSTANCES REPREHENSIBLE NECROPHILIC CASES IN INDIA

The case which brought Necrophilia into the mainstream discussion in India was the case of ‘Nithari killing’. In 2006, dead remains of 16 missing persons which mostly belongs to the migrant working class, were found in a village named ‘Nithari’, which is only at a distance of 20 km from India’s capital New Delhi. On December 26, Delhi police arrested Moninder Singh Pandher, and on December 27 his cook Surendra Koli on the grounds of suspicion related to the death of a nineteen year old girl.

State police started investigation, which were later on handed over to the Central Bureau of Investigation (CBI). At a hearing in Delhi Court, Koli reportedly to unburden his conscience, admitted of having raped, murdered and then had sexual intercourse with lifeless bodies of kids and women but absolve his employer Pander from all this. Subsequently, various cases were registered against Koli and Pandher. The trials for the cases are going on in Special CBI Courts, Allahabad High Court and Supreme Court of India. Both of the accused since then are in Dasna Jail.

What is important to note here is that Police found it very difficult to charge the main accused Koli of the act of having sex with the dead. Even the courts, which have given their decision in subsequent cases which are pending against Koli, have found him guilty, in majority of cases, only for murder, other than some where he raped before the murder. This is where the need of criminalizing Necrophilia comes into the context along with the demand of some other acts like pedophilia and cannibalism among some. There has been an upsurge in the crime against the dead since the reported case of Nithari.

The sexual abuse tally accounted for 15 such cases between 2008 and 2015 in Delhi and Uttar Pradesh in the Nithari matter.


30 Pallavi Sengupta, ‘Delhi serial killer held for murdering children, Necrophilia’ One India (New Delhi, 21 July 2015)
It was in Cyberabad where a beggar was raped even after the accused had the knowledge that the deceased has died.\(^{31}\)

In the case of Anil Kumar\(^{32}\), a dead woman was found to be mutilated on the road side by the accused that was later charged with rape and murder. It is hard to understand how a necrophilic act can be termed under the definition of rape. For rape to be done, there has to be a woman, which in this case was a dead corpse.

B. Kemal Pasha, J. in the case of State of Kerala v. Govindswamy\(^{33}\) observed that the accused acted as a Necrophile where he sexually assaulted the girl who was fallen from the train.

In Mumbai, police, during the investigation of a rape and murder case, found out that the accused performed unnatural sex on the deceased after he strangled her with her jeans.\(^{34}\)

Andhra Pradesh police, during the findings of spree of murder cases, found out that the said accused is an infatuated necrophile who has killed numerous girls in the last few months.\(^{35}\) In many cases, even the accused admits that he has committed the act of necrophilia, after killing the deceased.\(^{36}\)

Similar incident happened with a minor girl in Assam.\(^{37}\)

### IV. STATUS AND RIGHTS OF THE DEAD

To suggest and not to inform the prospective reader how Indian Legal system, in essence, treat an individual once it is dead will keep him void of the comprehensive understanding of the topic.

It is much needed for an individual to know what is the status of a being once its soul separates from the material body. There are various schools of Hinduism, including the philosophy of dvaitavada and advaitavada, which discusses in detail of how a body which is nurtured in this nature to be dealt with. Moreover Islam has its own philosophy on the same point of issue. So it would be

---

\(^{31}\) Chirag Gothi, ‘Man caught raping a dead body in Delhi, arrested’ India Today (New Delhi 07 December 2016) <https://www.indiatoday.in/india/story/rape-dead-body-delhi-necrophilia-356069-2016-12-07> accessed at 7 March 2020


favourable to only limit the discussion to legal jurisprudence.

Dead bodies aren’t people. T. Scott Gilligan and Thomas F. H. Stueve (1995), in their book Mortuary law stated that the dead bodies are, without doubt, human, but when one dies, it becomes quasi-subjects before the law.38 Funeral customs all over the world share one common feature that’s the supposition that the deceased has not stopped to live yet.39 Wisconsin State Supreme Court made a keen observation when it decided that dead bodies can be “persons”.40 It intended that in this case two men could be charged with attempted necrophilia or to be clearer, “attempted third-degree sexual assault.” It is difficult to reckon and decide over the status of the dead body and rather impossible to fathom when it is thought taking in view the purity and sacred character which numerous families will envision a corpse to hold– The individual can be dead, but they stay a cherished one.

Salmond has mentioned three things in respect of which the anxieties of the living men extend beyond their lives i.e. after death. These three things are about a man's body, his reputation and his estate. Even law recognizes the right of the deceased person to his property after his death. It recognizes the right to regulate and control deceased property when he ceases to live. Transfer of Property Act, 1882 subjects this right by the rule against perpetuity as well as law of testamentary succession.41

The apparent view which law holds in many of the cases involving necrophilia is that a dead body is regarded as some sort of “property” for the next-of-kin although scores of people find this concept as doubly disturbing. The reason being that in this sense, necrophilia appears to be an act of sabotage and not of a sexual assault in opposition to any person.42 The Indian Supreme Court has held that everybody, when found lifeless on the street, has a right of a decent burial or cremation as per his spiritual religion even supposing he is a homeless man or woman.43

In the Indian context, there are two scenarios relating to the rights of the dead body and its disposal. Where the body is under claim, it is the duty of kith and kin to dispose of the dead body as per the will of the dead, if any, otherwise to the accepted practices of religion and culture prevalent. The dead has the right to protection against the mutilation of the body, its wastement or to take out its organs, unless his own consent during his lifetime or the consent of his kith and kin, after the death has been taken.

Where the body is unclaimed, then the Government of India, being a welfare state, and to protect the rights of the dead body has the duty under the extended elucidation of Art. 21 of its Constitution, to take care of it.

38 Pt Parmanand Katara, Advocate v Union of India & Anr [1989] SCR 3 997
39 William Henry Francis Basevi, The Burial Of The Dead (E P Dutton and Co 1920)
40 State v Grunke, [2008] 311 Wis 2d [439], [443]
41 Prof. S. N Dhyani, Jurisprudence & Indian Legal Theory (Central Law Agency 2015) 249
43 Ashray Adhikar Abhiyan v Union of India [2002] AIR SC 554
The Anatomy Act enforced in India in 1948 has provisions which offer for the hospitals and other medical and educational establishments, bodies of the deceased men and women which might be unclaimed, for the motive of anatomical examination and dissection. The act was uniformly adopted in all states. Being a state subject, every state has its own form of Anatomy act or had adopted one, which covers such criteria but has a common or similar definition of ‘unclaimed body’. Transplantation of Human Organs Act, 1994 (THOA) in S. 5(1) defines an ‘unclaimed body’ as one in a hospital or jail and “not claimed by any of the near relatives of the concerned person within 48 hours from time of death…” The definition in THOA is more suitable and should have a pan-India level of adoption among various states’ Anatomy Acts.

There are situation when a dead body is unsuitable for usage and may be rejected. In such situation, the state must dispose of the body in a decent way as per the religious beliefs of the person which he kept or professed. But before disposal, it must ensure that no crime is committed on the person before, at, or after the time of his death.

It is to be kept in mind that the above procedure is applicable to unclaimed body only and not to unidentified one. The former being one where the death has been occurred due to natural causes and the person is a destitute whereas in the latter case, the death is caused due to some other factors when examined externally. Unidentified body cannot be submitted for medical research, and need to be disposed of, after a detailed enquiry being conducted for establishing its identity and search for its kith. Almost all the states in India have this procedure for unclaimed and unidentified bodies with slight variations, if there’s any.

V. SUGGESTIONS

It would be appropriate to include provision *mutatis mutandis* as per the socio-economic and geographical condition of India in generalizing the provision with the commission of sexual acts with corpse. §32-1364 of State of Arizona would be, more or less, an ideal provision which could be inserted in IPC, which has been mentioned below:

§32-1364. Crimes against the dead; classification
A. It is unlawful for a person, without the authority of law or as normally required to store, prepare, disinfect or embalm a dead human body according to standards of practice in the funeral industry, to mutilate a dead human body.
B. It is unlawful for a person, without the authority of law, to disinter or remove a dead human body or any part of a dead human body from its sepulchre, grave or other interment site, or from the place where the body is awaiting disposition, with malice or wantonness or with the intent to sell or dissect the body.
C. It is unlawful for a person, without the authority of law, to obtain or convert property that is located with or affixed to a dead human body or any part of a dead human body.

human body with the intent to deprive the decedent or the decedent’s estate of the property.

D. It is unlawful for a person to engage in necrophilia. A person engages in necrophilia by:
2. Having sexual contact with a dead human body, other than the contact normally required to store, prepare, disinfect or embalm a dead human body according to standards of practice in the funeral industry.

E. For the purposes of subsection D:
1. "Sexual contact" means any direct or indirect touching, including oral contact, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object.
2. "Sexual intercourse" means penetration into the vulva or anus by any part of the body or by any object.

F. A person who violates this section is guilty of a class 4 felony.

What further needs to be seen and will be a very important parameter while deciding the insertion of the necrophilia provision in Indian law to be looked upon by the designated committee which will be setup at hypothetical time, is that whether ‘Necrophilia’ is a disease which could be treated or not, or whether it’s a natural behavior, similar to the LGBTQ community, though in the latter case no indulgence of any non-consensual being is there.

Similar is the question that in circumstances where the necrophile is the only kith or kin of the deceased to whom the deceased before his/her death has given the right to dispose of the body in whatever manner he/she wants. Whether such immoral act or vice be called as illegal, if the necrophilic acts were committed upon that dead body.

It also needs to be determined that if the act of necrophilia is immoral then will it be proper to deem it as criminal.

The classification of necrophiles done by Aggarwal has some classes which in actual does not even touch any dead body. So, there is also a need to have a proper classification of necrophiles before criminalizing the same.

The Parliament should derive approximation from countries like New Zealand, Sweden and United Kingdom which in some way or the other has provision which criminalize sexual acts with a corpse.

VI. CONCLUSION

Present state of the penal code does not provide any specific provision to deal with the act of necrophilia. Any act done in furtherance of this go unrelated and outside the scope of IPC. This means that in an instance where a dead body is found in any place, say park, and was mutilated for sexual gratification, the committer of the act will remain free from any guilt being imposed on them. Same goes against the constitutional spirit of the country as human dignity has always been surfaced supreme in Part IV, especially in Art. 21 of the Constitution.

India being a culturally and traditionally rich country pays respect to the ethos of rites and rituals involved in the disposal of the dead
body. To have any dear one’s body being mutilated in any manner in recourse to the sexual satisfaction of a necrophilic will be unacceptable to the society at large. We cannot include the act of necrophilia within the head of immoral acts because it not only affects the dead, rather affects the kith and kin of the dead. As the criminal law provisions involve the attention of the society which seeks justice by avenging the wrong via law, the same needs to be included as a crime by the legislature.

Necrophilia also opposes the laws relating to the disposal of the dead bodies in the country. Dead bodies lying in the public place are prone to mutilation by such necrophile. Theft would be registered if a watch has been stolen from the possession of the body, but nothing goes with a necrophile who does intercourse with the dead. Even an unclaimed body cannot be given for the research purpose if it’s deformed or not intact.

As per the understanding of the author with regard to the respect which needs to be given to a dead body and the culture and tradition prevalent in India, it will not be enough to include penal provision to ban necrophilia. Rather, it would be beneficial, that within the same momentum we give proper recognition to the status of the dead body by including any act, which in the general sense, pose disrespect to the deceased body.

*****