

Beyond the Grave: "An Analysis of Necrophilia Laws Worldwide and Need for Explicit Legislation in India"

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Abstract

The recent ruling by the Karnataka High Court, asserting that sexual intercourse with a deceased person cannot be classified as rape, highlights the necessity for a specific legal framework addressing necrophilia in India. This article analyzes the limitations of Section 297 of the Indian Penal Code (IPC) in addressing necrophilia and examines the implications of the court's decision in Rangaraju v. State of Karnataka. The discussion emphasizes the importance of respecting the dignity of the deceased and proposes amendments to existing legislation. Comparisons are drawn with laws in other jurisdictions, such as the United Kingdom, the United States, and France, to provide a global perspective on the issue. The article concludes that there is a need for comprehensive legislation explicitly addressing necrophilia, reflecting a commitment to upholding human rights and dignity even after death. Establishing a global committee to define and establish punishments for necrophilia could facilitate a unified international approach, considering the complex interplay between legal, cultural, and ethical aspects surrounding the treatment of the deceased.

Keywords: Necrophilia, Karnataka high court ruling, Indian penal code (IPC), dignity of the deceased, legal framework, international approach

INTRODUCTION

Recently, The Karnataka High Court ruled in *Rangaraju v. State of Karnataka* that sexual intercourse with a dead person cannot be considered rape. This judgment conspicuously highlights the need for a specific legal framework addressing necrophilia in India. The right to life, encompassing the right to live with dignity, extends until a person's death, and this principle may also extend to the right to die with dignity. While certain laws in India address the concept of dying with dignity, such as Section 297 of the Indian Penal Code [1] which penalises trespassing in burial places, there is a lack of explicit legislation regarding necrophilia.

In this article, we aim to analyse Section 297 of the IPC and its limitations in addressing necrophilia. It examines the implications of the court's ruling in *Rangaraju v. State of Karnataka* [2], emphasising the importance of respecting the dignity of the dead and proposing recommendations for legal amendments. Additionally, this article provides an overview of laws pertaining to necrophilia in other jurisdictions worldwide, including the United Kingdom, the United States, and France.

By delving into these aspects, this article aims to shed light on the legal framework surrounding

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necrophilia in India and other parts of the world, ultimately advocating for the enactment of comprehensive and explicit legislation to address this issue and uphold human rights, even in death.

THE RIGHT TO DIE WITH DIGNITY

The Supreme Court [“SC”] has upheld the dignity of the dead previously in various judgments; for example, in *Paramanda Katara v. Union of India* [3], it was held that right to life under Article 21 extends not only to a person alive, but also to the dead. In *Ashray Adhikar Abhiyan v. Union of India* [4], the SC observed that the dignity of the dead must be respected and a deceased homeless person has a right to decent cremation. Though the courts have upheld the dignity of the dead, it has not explicitly mentioned necrophilia. A Section in the IPC which addresses the rights of the dead is Section 297.

Section 297 of the Indian Penal Code

Section 297 of the IPC [5], comes close to addressing Necrophilia but do not explicitly address it. The Section lays down that “any person who 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.” It is agreeable that the Section is trying to address the crimes against the dead, but the catch is that, the Section addresses only places of worship or burial places and leaves out other places, where instances of necrophilia have been observed. For example, the case of Nithari Serial killings [6] in which the perpetrator murdered 19 girls and had sexual intercourse with their corpses in a bungalow.

Secondly, the Section also 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,” But again, the Section protects the religious rights of the people and not protect the dead against any crime like necrophilia.

Analysis of Section 377 of the Indian Penal Code

Section 377 [7] of the Indian Penal Code states that whoever has carnal intercourse against the order of the nature with any man or women or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also liable to fine.

The first aspect that has to be looked into is “voluntary,” finding out whether the sexual intercourse took place with or without the consent of the dead is not possible. The prosecution of the accused would depend on whether the corpse gave consent or not.

The second aspect is that of “unnatural,” which would essentially, mean that sexual intercourse which would not lead to procreation or is uncommon and must be punished. Therefore, it can be said that necrophilia is *prima facie* against the order of the nature as it does not lead to procreation.

The third aspect is “man or woman,” Section 10 of the IPC defines “man or woman” as a person (male or female) of any age. Corpses, although not alive, is still considered human. Therefore, we can come to the conclusion, that this Section makes an attempt to address necrophilia indirectly.

Analysis of *Rangaraju v. State of Karnataka* [8]

The facts of the case are that, a person was charged under Sections 302 and 376 of the IPC, for committing the offence of murder and rape of a young girl. The sessions judge held that the accused murdered the young girl while she was returning from her computer classes and later on committed rape on her. The accused appealed to the High Court of Karnataka to set aside the convictions under Sections 302 and 376 of the IPC.

The question in front of a Division Bench comprising Justice Veerappa and Justice Venkatesh Naik was whether the act of committing sexual intercourse with a dead body comes under the ambit of rape under Section 376 of the IPC.

The *amicus curiae* in this case, pointed out that the Indian penal laws do not recognise necrophilia, and even though Section 297 of the IPC, penalises the trespass in burial places, it does not even remotely address the issue of necrophilia.

The court opined that the Sessions Judge was wrong in convicting the accused for the offence of Rape as, a Dead body cannot be called a human or a person. The court further opined that it can be termed as rape only if sexual intercourse is committed against the will of the person. The will of the person is certainly not in question, as the dead body is not a person and cannot protest.

Recommendations by the Court

The court emphasised on the right to life under Article 21 of the constitution and held that it is much more than just mere animal existence, and also opined that right to dignity is also expanded to a dead person. The court also set out some recommendations to amend the Section 377 of the IPC to include “dead body of Men, Women or Animal” or introduce an altogether new provision in the Act, to include sadism, necrophilia, voluntary carnal intercourse against course of nature with dead body of a woman. The court also gave instructions to the Karnataka State Government to install CCTV cameras in hospitals and also recommended some steps for maintaining mortuaries.

LAWS SURROUNDING NECROPHILIA ACROSS THE WORLD

The concept of necrophilia is not new, people have been practising this since ages. Some civilizations practised it as a ritual while some have had rituals in order to prevent it. For instance, the Egyptians were known to leave the corpse of women without burying for three to four days, so that the body rots in order to prevent sexual intercourse with the corpse.

Let's have a look at different laws of countries related to necrophilia in order to understand the different perspectives:

United Kingdom

United Kingdom penalises the act of having sexual intercourse with a corpse under Section 70 of Sexual offences Act, 2003. [9] The punishment is up to 2 years, but as per records, nobody had been prosecuted under this Section until June 2021, when a hospital worker [10] was convicted for having sexual intercourse with almost 100 corpses.

United State of America

Unlike the United Kingdom, the U.S.A do not have any federal law on necrophilia, but have left it up to the individual states to decide on this subject. Around 40 out of the 50 US states have some form of law penalising criminal activities concerning the dead. Arizona, Hawaii, Georgia, and Rhode Island have laws specific to necrophilia [11].

France

It's intriguing that France doesn't consider necrophilia illegal and hasn't penalised it yet. The reason behind this is that, France believes in marrying the dead, and is of the view that marrying the dead is even older than *Magna Carta*. This is termed as '*Ghost marriage*.' There are also instances where a living person marries a dead person and this is called “necrogamy.” Article 171 [12] of the French Civil Code legalises this practice.

CONCLUSION

In conclusion, there is the need for a specific legal framework addressing necrophilia in India. The court's ruling in *Rangaraju v. State of Karnataka* emphasised the importance of respecting the dignity

of the dead and acknowledged that the right to life extends even after death. While Section 297 of the IPC addresses crimes against the dead, it falls short of explicitly addressing necrophilia.

The court recommended amending Section 377 of the IPC to include necrophilia and suggested the introduction of a new provision to address voluntary carnal intercourse against the course of nature with a dead body. Additionally, the court emphasised the need for measures such as installing CCTV cameras in hospitals and improving mortuary facilities to prevent such acts.

Considering the laws on necrophilia, we need to examine laws and provisions in different parts of the world as well as delve into the history and culture of each country. Considering, the history and culture of India, nowhere in the past necrophilia has been considered normal. Therefore, one needs to look at the Jurisprudence on necrophilia in United Kingdom and the United States. For instance, In Wisconsin, the criminal prohibition against necrophilia is linked to the concept of sexual autonomy and consent. Consent is defined as a voluntary agreement for sexual activity by a competent individual through words or actions. The law also presumes incapacity for those who cannot express unwillingness due to mental illness, unconsciousness, or physical inability. The prohibition against necrophilia is part of Wisconsin's sexual assault statute, covering both living and deceased victims. This approach underscores that necrophilia is considered a crime violating the principle of consent, as exemplified in the 2008 case *State v. Grunke* [13]. Even in UK, the case of David Fuller, a hospital electrician who sexually abused numerous bodies in hospital mortuaries over a 12-year period and has also admitted to historic murders of two women, has drawn attention to the significant disparity in sentencing for necrophilia-related crimes.

New Zealand's Crimes Act of 1961 [14] includes a provision for a two-year imprisonment penalty for those who treat dead bodies with indignity, whether they are buried or not. Similarly, in Canada, the act of defiling the dead is deemed illegal under Section 182 of the Criminal Code of Canada [15], 1985. These legal measures underscore the commitment of both countries to uphold the dignity and respect of the deceased.

It is evident that there is a need for comprehensive and explicit legislation in India to address necrophilia as a distinct crime. India can draw inspirations from relevant statutes of the other countries to fight such menace. Respecting the dignity of the dead and upholding human rights, even in death, is crucial in maintaining a just and civilised society.

Creating a "High-Level Committee" on a global scale to define and establish punishments for necrophilia could contribute to a unified approach to addressing this issue internationally. By doing so, societies could work together to establish clear legal boundaries and penalties, while also acknowledging the broader cultural and ethical implications surrounding the treatment of the deceased. As a result, despite the scientific understanding that deceased bodies ultimately consist of decomposing tissues and bones, the historical reality that they were once living individuals necessitates a legal examination of when and for how long the rights and interests they possessed during life can be claimed by either the deceased themselves or their legal representatives. This intricate legal inquiry is intertwined with our cultural perceptions of death and our ongoing dedication to honoring the deceased.

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