

# INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

---

Volume 2 | Issue 2

---

2020

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Legal Science and Innovation**, kindly email your Manuscript at [editor.ijlsi@gmail.com](mailto:editor.ijlsi@gmail.com).

---

# Necrophilia Legal Perspective

---

NEELAKSHI BHASKAR<sup>1</sup>

## ABSTRACT

*Necrophilia is attraction towards dead whether sexual or asexual and this is not a usual or customary practice but is a paraphilic disease. Humans and animals both could be affected by Psychological and Psychiatric conditions which can lead to paraphilic diseases like necrophilia. The author has attempted to use qualitative methodology to understand variations of necrophilia which were defined by Dr. Anil Agarwal so as to improve medical science and for evolution of better treatment but the author found that corresponding laws in India are not such that which could effectively protect dignity of the dead and punish the offenders who are not likely to suffer from any disease rather just acting as opportunistic. Necrophilia can also result in several other sexual diseases which could not only affect the person in direct contact with the dead but also other persons who are sexually connected to the person suffering from necrophilia. The studies of various researchers and the previous cases shows us the changing mindset of necrophiliacs due to social, economic and other factors but has failed to come to a proper solution that too because of the no meeting point of the medical science and law. So, further the author has tried to use quantitative methodology to suggest some solutions to improve the legal perspective towards necrophilia. Modifications and drafting of new provisions are required from time to time but the slighter knowledge of this issue and less care towards this issue would cause serious harms in future, that is why the author has attempted to study all the factors and comparative laws of different countries by mixed method methodology to propose some of the changes required in Indian laws.*

**Keywords:** *Necrophilia, types of necrophilia, Love for dead, Liability for Necrophilia, crimes against dead.*

## I. INTRODUCTION

According to the dictionary of *Merriam Webster*, Necrophilia is an “obsession with and usually erotic interest in or stimulation by corpses”<sup>2</sup>. Necrophilia is also known as necrophilism, necrolagnia, necrocoitus, necrochlesis and thanatophilia. Necrophilia or love for the dead, has generally been applied to two kinds of phenomena: sexual necrophilia, i.e. a

---

<sup>1</sup> Author is a student at Vivekananda Institute of Professional Studies, India.

<sup>2</sup> “Necrophilia” <<https://www.merriam-webster.com/dictionary/necrophilia>> accessed August 8, 2020

man's desire to have sexual intercourse or any other kind of sexual contact with a female corpse or vice versa and nonsexual necrophilia, i.e. the desire to handle, to be near, and to gaze at corpses<sup>3</sup>. Necrophilia is classified as a paraphilia by the World Health Organization (WHO) in its International Classification of Diseases (ICD) diagnostic manual<sup>4</sup>, as well as by the American Psychiatric Association in its Diagnostic and Statistical Manual (DSM)<sup>5</sup>. Abusing with the corpse is not a new concept but it took a long time to define it as a severe medical condition. There exist variations of necrophilia and various authors have attempted to classify kinds of necrophiliacs. But Dr. Anil Aggarwal (Professor of Forensic Medicine) has proposed a new ten tier classification of Necrophilia by way of his research, which is as follows<sup>6</sup>:

#### Class I: Role Players

This kind of necrophiliacs are more into role play. Their sex arousal is not particularly for the dead but for living persons pretending to be dead. Some authors have also named it as Pseudonecrophilia;

#### Class II: Romantic Necrophiles

When necrophiliacs have romantic tendencies which they want to fulfil after being separated from their loved ones, they tend to continue their sexual relationship by preserving the dead bodies of their loved ones or parts of them to feel sexual arousal in future;

#### Class III: Necrophilic Fantasizers

When people only fantasize about having sexual relationship with the dead and just the presence of the dead or any cemetery gives them sexual arousal, erections or pleasure;

#### Class IV: Tactile Necrophiles

Tactile Necrophiliacs are one step ahead of Class III Necrophiliacs. The people falling in this category may have to touch the dead to feel orgasm or assault the dead body to get their sexual arousal. Medical students who get erection while dissecting also falls in this category;

#### Class V: Fetishistic Necrophiles

This class of necrophiliacs is also known as necrofetishists because they tend to cut out parts

---

<sup>3</sup> West SG and Resnick PJ, "Necrophilia" [2016] Unusual and Rare Psychological Disorders 124

<sup>4</sup> "Mortality and Morbidity Statistics," , *International classification of diseases*, vol 11 (World Health Organization 2018) <<https://icd.who.int/browse11/l-m/en>>

<sup>5</sup> *Diagnostic and Statistical Manual of Mental Disorders: DSM-5* (American Psychiatric Association 2017) <<https://www.psychiatry.org/psychiatrists/practice/dsm>>

<sup>6</sup> Aggarwal A, "A New Classification of Necrophilia" (2009) 16 Journal of Forensic and Legal Medicine 316 <[http://www.anilaggarwal.com/ij/sundry/news\\_and\\_notes/316\\_A%20new%20classification%20of%20necrophilia.pdf](http://www.anilaggarwal.com/ij/sundry/news_and_notes/316_A%20new%20classification%20of%20necrophilia.pdf)>

of the dead to preserve it for their sexual arousals just by feeling the parts but they are different from romantic necrophiles as they do not preserve parts out of affection or their romantic feelings;

#### Class VI: Necromutilomaniacs

This class of necrophiliacs is considered to be very disturbed but they do not engage in any sexual intercourse with the dead. They find erotic pleasure by mutilating the dead bodies in a severe way and masturbating simultaneously;

#### Class VII: Opportunistic Necrophiles

This class of necrophiliacs are opportunistic in nature. They generally do not have intercourse with the dead at first instance or fantasize about having sexual intercourse with them but if the situation is such that they get an arousal or erection while in presence of a dead body under any circumstance then they take full advantage of the opportunity and intercourse with the dead;

#### Class VIII: Regular Necrophiles

This class of necrophiliacs are the classic example as they do not feel pleasure while having sexual intercourse with living beings but only find pleasure in having intercourse with the dead although they engage in sexual activities with living persons from time to time;

#### Class IX: Homicidal Necrophiles

This class of necrophiliacs are the most dangerous because they kill people to satisfy themselves sexually. These people are mostly found to be engaged in unnatural sex and often involved in cannibalism;

#### Class X: Exclusive Necrophiles

This class of necrophiliacs find having sexual intercourse with living persons next to impossible and a dead body is a necessity for them to find pleasure.

## II. HISTORY OF NECROPHILIA

Necrophilia is believed to be an age-old concept as people are performing it since years. Around 1980s archaeologists found paintings in pyramids of *Moches* who was also known as ‘Greek of Andes’ which depicted sex with dead. There exist other beliefs according to which some civilizations were such who used to practice necrophilia as some kind of tradition or ritual. The father of history in his book named ‘The Histories’ explained that Egyptians had a culture of leaving a woman’s body to rot for 3-4 days before preservation in order to prevent

sex with the corpse<sup>7</sup>.

Many serious cases of necrophilia came from the modern period. The following are some of the hideous and scary cases from modern history<sup>8</sup>:

- 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);
- 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 case.

History of necrophilia can only be traced from few of the incidents reported because there is no such precedents to understand the causes of rising number of cases.

### III. COMPARATIVE LAWS ON NECROPHILIA

Necrophilia is a psychosexual disease and is actually legal in many countries. And other countries which do believe in privacy of the dead and consider abusing the dead a crime have criminalized it. But the countries who have penal provisions related to the liability for necrophilia are not much developed and are vague in nature.

The concept of necrophilia is not new, people are practicing this since ancient times. It is being believed that during old times there were no fast transportation services so even the dead bodies were transported to different places through ships and the sailors while onboard the ship to meet their needs used to abuse the corpses sexually. There are various incidents reported since then, even there were reports of necrophilia and cannibalism as an integrated

---

<sup>7</sup> Dhare V and others, “Love of Dead: Conceptual Study of Necrophilia ”(2019) 04 International Journal of Social Science and Economic Research <[http://ijsser.org/files\\_2019/ijsser\\_04\\_\\_35.pdf](http://ijsser.org/files_2019/ijsser_04__35.pdf)>

<sup>8</sup> Ibid.

offence<sup>9</sup>. Even during the time of wars in different kingdoms people used to perform necrophilia but there is no data as to when was the first case of necrophilia reported. And in present society, people suffering from this illness tend to take jobs in mortuary, graveyard and sometimes in cremation centres so that they can live in direct contact with the dead and could satisfy themselves whenever they desire so. Though taking jobs in mortuary or graveyard is no offence but it is important to know the candidates' expectations from their respective jobs.

Let's have a look at different systems of different countries related to necrophilia to understand different perspectives:

### **U.K**

Section 70 of the Sexual Offences Act, 2003 criminalizes the act of sexual penetration to a corpse and prescribes a punishment of imprisonment for a term which should not exceed two years. But as per the records, there are no prosecution in the particular offence till now<sup>10</sup>;

### **U.S.A**

The United States does not have any Federal Laws related to necrophilia but they have left it on individual states to decide in this regard. For example: Florida in U.S.A penalizes necrophilia as a second-degree felony, Arizona penalizes necrophilia as class 4 felony, Hawaii penalizes necrophilia under misdemeanour, Alaska penalizes necrophilia as class A misdemeanour. Likewise, other states in U.S.A also have their own provisions to deal with necrophilia<sup>11</sup>;

### **France**

France has one of the bizarre practises in the world in cases of necrophilia. France believes that marrying dead is even older than the "Magna Carta<sup>12</sup>" and is termed as ghost marriage. There is a marriage called Posthumous marriage in which a living person marries a dead person, this is also called necrogamy. This practice is legal according to Article 171 of their Civil Code<sup>13</sup>.

---

<sup>9</sup> Tv P, "Cannibalism and Necrophilia" (*Medium* September 19, 2018) <<https://medium.com/@premisetv/cannibalism-and-necrophilia-311d08de88c7>> accessed August 22, 2020

<sup>10</sup> Participation E, "Sexual Offences Act 2003" (*Legislation.gov.uk*) <<https://www.legislation.gov.uk/ukpga/2003/42/section/70>> accessed August 23, 2020

<sup>11</sup> T. Ochoa T and Jones C, "Defiling the Dead: Necrophilia and the Law, 18 Whittier L. Rev. 539" <<https://digitalcommons.law.scu.edu/facpubs/89>> accessed August 25, 2020

<sup>12</sup> The National Archives, "Magna Carta, 1215" (February 5, 2015) <<https://www.nationalarchives.gov.uk/education/resources/magna-carta/british-library-magna-carta-1215-runnymede/>> accessed September 25, 2020

<sup>13</sup> Rouhette G and Rouhette-Berton A, "Article 171, French Civil Code"

## **New Zealand**

The New Zealand code does not specifically prescribe punishment for necrophilia but according to Section 150 of the New Zealand Crimes Act, 1961, a person is entitled to imprisonment for a term not exceeding two years for “Misconduct in respect of human remains”<sup>14</sup>.

## **India**

There are no specific laws relating to necrophilia in India but Section 297 of the Indian Penal Code, 1860 penalizes the act of ‘Trespassing in burial places’ etc which provides for punishment of imprisonment which may extend to one year, or fine, or with both. But there is no offence defined relating to abusing the dead<sup>15</sup>.

Should the dead also have right to dignity?

This question is not new and is required to be considered urgently. Different countries have different codes to deal with necrophilia but all the countries do not have laws to save dignity of the dead. As stated above France has legalized this bizarre act. Even, sometime back in 2012, there was a rumour that Egypt is enacting a law according to which a man is entitled to ‘farewell intercourse’ with his wife upto six hours of her death. This became the topic of controversy all over the world. But the claims of enactment were turned out to be completely erroneous.

In India, in cases of necrophilia, liability of a person can only be ascertained by Section 297 of the Indian Penal Code, 1860. Before 2018, Section 377 of the Indian Penal Code, 1860 provided for punishment of having unnatural intercourse but this is not the case now, so there is no scope of punishment under any other Indian code. India has different kind of laws to protect different communities from sexual abuse and offences such as Protection of Children against Sexual Offences Act, 2012, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Juvenile Justice (Care and Protection of Children) Act, 2015, Human Rights Act, 1993, Section 67 of the Information Technology Act, 2000, Sections providing for punishment of Rape and other offences related to sexual abuse in the Indian Penal Code, 1860. But none of the laws provide for protection of the dead or their dignity.

Following are the few proposed changes in Indian Laws to protect the dignity of the dead

---

<sup>14</sup> “Crimes Act 1961” (*Crimes Act 1961 No 43 (as at 01 July 2020), Public Act – New Zealand Legislation*) <<http://www.legislation.govt.nz/act/public/1961/0043/latest/whole.html>> accessed August 10, 2020

<sup>15</sup> Trivedi HD, “Section 297,” *Indian Penal Code, 1860* (Eastern Book Co 1981)

based on author's own analysis and research:

1. Introduction of a new section i.e. 297A in the Indian Penal Code, 1860 which will specifically deal will rehabilitation of persons committing sexual abuse, sexual penetration or any other kind of disturbance to the dead and in case of Pseudonecrophiliacs or opportunist necrophiliacs punishment of imprisonment for not more than two years with or without fine;
2. Separate sections in hospitals, rehabilitation centres and mental hospitals to deal with such patients;
3. Establishment of council of members to review the prescribed rules and procedures for necrophiliacs from time to time and the council would also make awareness programs so as to impart knowledge among people and this would even help the persons developing any of such symptoms;
4. Police personnel should be trained in a way so as to deal with persons with any such disorders and further they could detain and communicate with people suffering from such disorders effectively.
5. In India, the dead have mainly two rights i.e. (i) Right to decent burial and (ii) Right not to get disturbed in any manner. Apart from this:
  - Section 404 of the IPC, 1860 which deals with misappropriation with a dead person's property<sup>16</sup>;
  - Section 499 of the IPC, 1860 which also deals with libel or slander against a dead person<sup>17</sup>;
  - Section 503 of the IPC,1860 which deals with criminal intimidation, which also includes threatening a person with injuring the reputation of a dead person dear to him as an offence<sup>18</sup>;

The inclusion of offences related to dead in these sections is based on various precedents which the court provided, but the sections i.e. Section 499 and 503 should itself contain the words so as to interpret the sections clearly in cases of wrongs against the dead;

---

<sup>16</sup> "404. Dishonest Misappropriation of Property Possessed by Deceased Person at the Time of His Death," , *The Indian Penal Code (45 of 1860)* (Universal Law Publishing 2019)

<sup>17</sup> "499. Defamation," , *The Indian Penal Code (45 of 1860)* (Universal Law Publishing 2019)

<sup>18</sup> "503. Criminal Intimidation," , *The Indian Penal Code (45 of 1860)* (Universal Law Publishing 2019)

6. Paraphilic sexual disorders are treated with Psychotherapy and medication at least for two years with even mildest symptoms. But the author suggests that the therapy should start at an earlier stage so that the illness does not turn severe;
7. Extensive and continuous research should be done to understand and deal with necrophiliacs.

#### IV. PSYCHIATRY AND NECROPHILIA

Psychiatry in lay man's term is treatment and prevention of mental, emotional and behavioural disorders<sup>19</sup>. As stated above all necrophiliacs are not ill, some are Pseudonecrophiliacs and some are opportunistic necrophiliacs, so it is difficult to distinguish in terms of mental state because there are different factors which affect a person's mental state from time-to-time. Necrophilia is defined by the DSM-V as "an other specified paraphilic disorder, involving recurrent and intense sexual interest in corpses".

If we are to understand or summarize the behavioural or emotional reasons behind necrophilia then each person would reflect different traits and it is not essential always that a person had been through a traumatizing past or something like that. Scholarly and academic attention has only though, predominantly, been devoted to this sexual paraphilia from the twentieth century onwards (Burg 1982). The lack of attention is surely a consequence of its rarity, particularly in comparison to other sexual paraphilias listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM). When criminologists refer to the 'dark figure' of crime—the amount of unknown, unreported and undiscovered offences—necrophilic acts would be a prime example of offence(s) not accurately reflected in statistics.

The main reasons for under reporting of this disease are as follows which are based on author's research and understanding:

- Lack of proper knowledge among police or investigation personnel about the disease and behavioural patterns;
- Lack of limelight or attention towards this issue by the law-making bodies;
- No proper board of members to review the current needs and laws relating to necrophilia in the society;
- Lack of awareness among people, which makes delay in diagnosis of the disease at an early stage;

---

<sup>19</sup> "Psychiatry" (*Merriam-Webster*) <<https://www.merriam-webster.com/dictionary/psychiatry>> accessed August 28, 2020

- Slow advancement in the field of Psychology in India which is making difficult for Psychologists and the people themselves to understand their own mental condition.

## V. PSYCHOLOGY AND NECROPHILIA

Criminological Psychology is thoughts, views, behaviour and way of responding to a situation of a criminal. Psychology<sup>20</sup> of a criminal is closely associated with necrophiliacs but Psychology of necrophiliacs is a distinct concept from that of a criminal because it is not essential that a necrophiliac is committing an act with criminal mind or intention. Usually, the persons suffering from necrophilia have erotic fantasies and desires but it is still very baffled to understand the exact Psychology of people doing this kind of acts. Even after understanding the Psychology of necrophiliacs from case studies few Psychologists are of the view that necrophiliacs believes that the dead are far from sufferings and using their bodies for a little pleasure would not harm them. In the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), recurrent, intense sexual interest in corpses can be diagnosed under other specified paraphilic disorder (necrophilia) when it causes marked distress or impairment in important areas of functioning.

Does any criminal liability exist for developing such Psychological and Psychiatric condition?

The first time, three classification of necrophilia came to be known after 122 case studies. And presently the situation is turning out to be worse than ever before. According to Section 2(1)(s) of the Mental Health Care Act, 2017<sup>21</sup>, “Mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence”. Now the question here arises is that does Psychological and Psychiatric conditions can be termed as ‘Mental illness’? The answer to this question lies in Section 3 of the Mental Health Care Act, 2017<sup>22</sup> which defines “Determination of Mental Health” as:

8. (1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the

---

<sup>20</sup>“Psychology” (*Merriam-Webster*) <<https://www.merriam-webster.com/dictionary/psychology>> accessed August 28, 2020

<sup>21</sup> “The Mental Healthcare Act, 2017” <<http://egazette.nic.in/WriteReadData/2017/175248.pdf>>

<sup>22</sup> Ibid.

International Classification of Disease of the World Health Organisation) as may be notified by the Central Government;

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force;

(3) Mental illness of a person shall not be determined on the basis of,— (a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person; (b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community;

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness;

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.

As we interpret this section, the words "matters covered under this Act" makes it clear that Psychological and Psychiatric conditions are not mental illness per se but may result into mental illness. This act does not deal with punishment to persons who are suffering from some kind of mental illness.

Necrophilia is defined by the DSM-V as "an other specified paraphilic disorder, involving recurrent and intense sexual interest in corpses". With this, it is clear that necrophilia is kind of a mental illness. According to the Indian Penal Code, 1860, guilty mind with *Actus Reus* which results into crime is punishable under provisions of IPC but there are few exceptions which are given in each respective section, one such exception is mental illness which means a person committing a crime suffering from mental illness will not be punished. Though a person aggrieved from such offence can claim compensation under various civil laws.

## VI. NECROPHILIA IN ANIMALS AND BIRDS

Necrophilia not only develops in humans but there are evidences of necrophiliac symptoms in animals and birds. Symptoms of necrophilia in humans are as follows<sup>23</sup>:

---

<sup>23</sup> 25 maisteri on J, \* N and Doctor-C, "Necrophilia - MediGoo - Health Medical Tests and Free Health Medical Information" (*MediGoo*) <<https://www.medigoo.com/articles/necrophilia/>> accessed August 11, 2020

- Inability to relate with the living;
- Fascination with foul odours;
- Lack of spontaneity;
- Language that includes numerous death-related or the excretory system;
- Appreciation for machines over people;
- Insensitivity to a tragedy involving loss of life;
- Dry skin;
- Interest in sickness and death;
- Incapacity to laugh;
- A tendency to smirk;
- Usually wears dark colors, while disliking bright ones;
- A view that the past is more real than the present;
- A belief that resolving conflict needs force or violence;
- Compartmentalization of emotion and will;
- Tends to be bored;
- Worship of techniques or devices of destruction;
- Tends to break and mutilate small things;
- Enthralled by skeletons.

These symptoms play a vital role to understand necrophiliac behaviour at an early stage but there is no such possibility in cases of animals and birds. But people with specialization in studies of animals and birds have observed inappropriate behaviour which they called necrophilia in animals and birds.

Necrophilia is when an animal engages in a sexual act with a dead animal. It has been observed in mammals, birds, reptiles and frogs. It sometimes occurs in the Adélie penguin and homosexual necrophilia has been reported between two male mallard ducks<sup>24</sup>.

Till now various observations and researches have been made, according to which all animals does not show necrophiliac characters or are not necrophiliacs but there are few animals and birds which are popular for their necrophiliac behaviour such as Crows, Kangaroos, Ducks, Frogs and Toads, Penguins, Sea Lions, Tegu Lizards, Marmosets, Sea Otters, and Dolphins.

---

<sup>24</sup> Starr M, "10 Delightful Animals You May Not Have Known Were Necrophiliacs" (*ScienceAlert*) <<https://www.sciencealert.com/10-delightful-animals-you-may-not-have-known-were-necrophiliacs>> accessed September 1, 2020

On 5 June 1995, first homosexual case of necrophilia was reported between Mallards<sup>25</sup>. In this case an adult male mallard collided with the glass façade of the Natuurmuseum Rotterdam and died. The other drake mallard raped the corpse almost continuously for 75 minutes. Upon performance of dissection, it was revealed that the rape-victim was of the male sex. Various authors have observed that forcible mating is normal reproductive strategy in mallards. Besides necrophilia, lots of other paraphilias have been noted in the wild. Zoophilia, or inter-species sex, has been observed between Antarctic fur seals and king penguins, and between dolphins and porpoises (in both cases against the will of the smaller animal). Many primates are known to practice incest, and female greater horseshoe bats share sex partners with their moms. Bonobo chimps, who seem to use sex as a kind of social glue, do it pretty much every way you can.

As per the Indian laws, animals and birds cannot be punished and even naturally it is not possible but Section 377 stills retain the punishment for bestiality.

## VII. JUDICIAL IMPLICATIONS OF NECROPHILIA

Various incidents have taken place of necrophilia since long ago and which led to evolution of laws in some of the countries but majority of the countries still does not have laws to protect dignity of the dead effectively. In India also, necrophiliacs would only be punished majorly for Murder, Rape or Bestiality and not for offences relating to offences against the dead. The most brutal necrophiliac rape and murder in India was ‘*Nithari*’ case which came into light in 2006 but the debate is still on “whether the increased number of cases of necrophilia in India will lead to the laws dealing specifically with the crime or not?”

The scenario in other countries is no different, various cases have been reported not just having sex with the dead but having sexual intercourse with a living partner after raping a corpse and it leads to uncountable infections and diseases. For example: A girl having sexual intercourse may develop itching in her private parts because of the *maggots* which may transmit from the person engaged in necrophiliac activities to her which are generally found on dead bodies.

Such problems have happened with people developing bacterial infections on their mouth, different kind of infections on their bodies and unknown infections just by a kiss. Courts are focusing on the mental illness element in such cases but there are factors which are affecting more than two parties i.e. the corpse, the person raping the corpse and other persons which

---

<sup>25</sup> “Moeliker, Cornelis & Rotterdam, Natuurmuseum. (2001). The First Case of Homosexual Necrophilia in the Mallard *Anas Platyrhynchos* (Aves: Anatidae).”

are sexually associated with the person raping the dead.

There is an urgent need to introduce laws in this particular field which would also help the courts is ascertaining the exact liability of the offenders.

### VIII. ANALYSIS OF ‘NITHARI’ CASE

This case was the rarest of rare case in the history of India<sup>26</sup>. The ‘Nithari’ case came into light in 2006, when eight skeletons were found in a drain of one house in Noida. Two persons were suspects in this case: (i) Moninder Singh Pandher [owner of the house] (ii) Surinder Koli [domestic help of accused (i)]. More skeletons were found after the investigation, Narco-analysis of the two accused were done and the two accused were sent to CBI inquiry for 14 days in 2007. After this, CBI gave clean chit to accused (i) but accused (ii) indicted as cannibal and was charged with rape of 20 years old girl. Accused (ii) was charged with Abduction, Rape and Murder. Further various charge sheets were filed against accused (i). In 2009, trial court sentenced both the accused to death, further the Allahabad High Court confirmed the death sentence of accused (ii) and acquitted accused (i). But in 2010, the Supreme Court of India stayed the death sentence of both the accused. After this, accused (ii) received several death sentences from the supreme court and in 2017, again both the accused were found guilty for the serial rape and murder cases and were sentenced to death. But, currently, both the accused are alive and the case is still pending.

This case was so brutal that even a lay man got familiar with the disorder of necrophilia. Here, the accused can come under class IV, V, VI, VIII, IX of necrophiliacs defined by Dr. Anil Aggarwal. The accused (ii) was suffering from such illness that he raped, murdered and then ate the parts of victims. Various authors have observed necrophiliacs with traits of cannibalism. Cannibalism is an act of consuming individual of same species as food<sup>27</sup>. Same as necrophilia, there is no specific law for the act of cannibalism in India but the accused can only be convicted under Culpable Homicide as defined in the IPC.

These kind of offences makes it necessary to recognise these crimes as separate offences because with the advancement in technology and society, the disgust in human Psychology is also increasing either by way of any mental illness or by any other factor apart from mental illness.

---

<sup>26</sup> “2009 SCC OnLine All 1117 : (2009) 84 AIC (Sum 2) 2 : (2009) 67 ACC 195”

<sup>27</sup> “Cannibalism” (*Merriam-Webster*) <<https://www.merriam-webster.com/dictionary/cannibalism>> accessed September 3, 2020

## **IX. CONCLUSION AND SUGGESTIONS**

Necrophilia is not any emerging trend or new disorder, but it is an actual problem for which proper procedures should be there. In cases of animals and birds, it is not feasible to punish them for necrophilia but in cases of human beings this should be dealt with proper care. Medical science is evolving in a righteous manner but it definitely requires proper laws to implement things properly. Various studies show the origin of necrophilia but the present society requires much serious outlook on the future.

Though sections in the Indian Penal Code, 1860 clearly have wide ambit to include the crimes against the dead but ambiguity still persists because of no legislation and no clear precedents over the issue. It is true that crimes against dead are lesser in number as compared to dacoity, rape, murder, forgery, white-collar crimes but taking due care at the very initial stage would cause no harm. This is not just the case in India but other countries also lack the proper legal channel in these issues. Previously Section 377 of the IPC used to deal with unnatural offences which included intercourse with the dead but now only Section 297 is there which is also not fairly competent to save the dignity of the dead.

Major developments in medical science have led to inclusion of 'Necrophilia' in DSM-V but here in India there is no such development or recognition of this condition. Development of branch of Psychology and Psychiatry is need of the hour in India because without this it would become difficult to criminalize offences which actually could be made punishable by proper studies in Psychology and Psychiatry. Rehabilitation process should be the key but that also requires research and study. To distinguish between the actual offenders and mentally ill persons, strong and effective provisions are the need of the hour.

\*\*\*\*\*

### References

- [1] Aggrawal A, “A New Classification of Necrophilia” (2009) 16 Journal of Forensic and Legal Medicine 316  
<[http://www.anilaggrawal.com/ij/sundry/news\\_and\\_notes/316\\_A%20new%20classification%20of%20necrophilia.pdf](http://www.anilaggrawal.com/ij/sundry/news_and_notes/316_A%20new%20classification%20of%20necrophilia.pdf)>;
- [2] Aggrawal A, *Necrophilia: Forensic and Medico-Legal Aspects* (CRC Press 2016);
- [3] “Find and Share Research” (*ResearchGate*) <<http://www.researchgate.net/>>;
- [4] “The Surest Way to Legal Research!™” (*SCC Online®*, *Legal Research Solution*)  
<<http://www.sconline.com/>>;
- [5] “Scholar.google.com - Google Scholar” <<https://scholar.google.com/>>;
- [6] Dhere V and others, “Love of Dead: Conceptual Study of Necrophilia ”(2019) 04 International Journal of Social Science and Economic Research  
<[http://ijsser.org/files\\_2019/ijsser\\_04\\_\\_35.pdf](http://ijsser.org/files_2019/ijsser_04__35.pdf)>;
- [7] “Expert Testimony in Necrophilia Cases” [2010] *Necrophilia* 219;
- [8] “Legal and Ethical Aspects of Necrophilia” [2010] *Necrophilia* 195;
- [9] Pemment J, “The Building Blocks of Necrophilia” (*Psychology Today* January 13, 2019)  
<<https://www.psychologytoday.com/us/blog/blame-the-amygdala/201901/the-building-blocks-necrophilia>>;
- [10] Rosman JP and Resnick PJ, “Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia” (*Journal of the American Academy of Psychiatry and the Law* June 1, 1989)  
<<http://jaapl.org/content/17/2/153>>.

\*\*\*\*\*