
Sexual Assault on dead bodies: A Serious crime outside the framework of the Indian Law

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The Karnataka High Court has recently given a landmark judgment about sexual abuse on dead bodies. In this case, 21-year-old girl returns home from computer class at 3:30 p.m. every day. One day, when she did not come home till late, her family thought that she must have gone to a friend's house. In the evening, her brother hears that one girl has been murdered, he goes there and finds out that she is his sister. They believe that someone stripped of her clothes and threw her in the bush and raped her and killed her by slitting her throat so that she would not tell anyone. During the investigation, the police arrested the accused and when the case came before the court, the court framed two charges against him. The first one is that the accused killed the girl and then raped her dead body. In this case, the Sessions Court found the accused guilty and sentenced him to life imprisonment for murder and ten years for raping her dead body. The accused challenged this sentence before the Karnataka High Court. The High Court convicted him of murder, but acquitted of rape charges. The court concluded that even if rape is proved, there is no provision of punishment in Indian law for rape on dead body. Doing this with a dead body is a mental illness called Necrophilia.

Murder first or rape first?

After reading the judgment of the Karnataka High Court, one important point is that this case is based on circumstantial evidence (no eyewitnesses) and from the various facts before the Court, it has been concluded that exactly how the crime should have been committed, who should have committed it. The court did not discuss any evidence regarding the first murder or the first rape. The charge of murder which was earlier fixed in the lower court is upheld. If there was a case of rape first and murder later so that the truth does not come out, or murder during harassment, punishment under 376 would also have

been given. But by maintaining the conclusion that the murder took place first, it is considered that the sexual abuse was committed on the dead body. The Hon'ble High Court has discussed in this judgment what definitions have been given in the law in relation to person, dead body, woman, man as it is a crime of sexual abuse on a dead body.

Provisions of the Indian Penal Code refer only to living persons. According to Section 3(42) of the General Clauses Act, Person means an individual, company or group of individuals. The definition of person is given in section 11 of the Indian Penal Code, while section 10 defines a man and a woman. According to this, women or men of any age. According to Section 377, the offense of unnatural intercourse is to have physical intercourse with any woman, man or animal against the law of nature. This includes a person of any age according to the definition of a man and a woman. When age is mentioned, it is in reference to a living person. This does not include dead bodies.

What exactly is necrophilia?

Necrophilia is sexual intercourse with dead bodies. Necrophilia - This is a morbid attraction to death and the dead, and in particular, a sexual attraction to corpses. It is a psychosexual disorder and is classified under the group of disorders called 'paraphilia'. Necrophilia comes from the Greek words nekros meaning dead body and philos meaning love/attraction. Although necrophilia mainly involved men, occasional examples of women necrophilia have been reported.

Section 46 of the Indian Penal Code defines death. Also, according to the Indian Penal Code, rape refers to a living person and does not include a dead body, as sexual intercourse against the person's will is rape. A dead body is not capable of consenting or resisting and a dead body

does not have emotions so abuse on a dead body cannot be termed as a crime unless the existing law is amended. According to the Transplantation of Human Organs and Tissues Act, some provisions have been given about organ donation. This law says that after the death of the person, the organ should not be black marketed or sold. Although it is not a crime under Indian law, there are certain human rights even after death. According to Article 21 of the Constitution of India, every person has the right to live and die with dignity and to receive proper treatment and cremation after death.

What is the law in other countries?

Different countries have laws in this regard and according to Section 70 of the United Nations Sexual Offences Act 2003, if a person knowingly inserts any part of his body into any part of the body of a deceased person, the punishment for such a person can be up to two years, if found guilty. Necrophilia is a crime under section 3 of Canada's Criminal Procedure Code of 1985, punishable up to five years in prison. In New Zealand Criminal Law 1961 section 150 provides for a sentence of up to 2 years. Section 14 of the Criminal (Sexual Offences) Act 2007 criminalizes necrophilia in South Africa.

Countries where Necrophilia is an offence :

THE UK: In the United Kingdom, Section 70 of the Sexual Offences Act, 2003 makes it an offence for a person who intentionally sexually penetrates, knowingly or recklessly, any part of his body into any part of a dead person. The punishment for the same ranges from 6 months to a term not exceeding 2 years.

CANADA: In Canada, Section 182 of the Criminal Code of Canada, 1985 makes Necrophilia punishable. The punishment in Canada is imprisonment for a term of not more than five years. The law in Canada appears to be similar though not identical to Section 297, IPC.

NEW ZEALAND: In New Zealand, Section 150 of the Crimes Act, 1961, serves imprisonment for two years to any person doing any act on the corpse, whether buried or unburied, to harm its dignity.

SOUTH AFRICA: In South Africa, Section 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 prohibits necrophilia.

In India, corpses don't have the rights of a legal person. But there are several judgments that uphold the right to human dignity even after death. Will the right to dignity be extended to prevent sexual violation of corpses?

Right to a dignified funeral of an unclaimed body :

Even an unclaimed body has the right to be

respectfully buried according to its religion. If an heirless corpse is found, efforts are made to find his heirs, and if they are not found, a funeral is conducted by the government. If someone trespasses or commits any crime in the place of funeral such as crematorium, graveyard, there are more or less provisions in the Indian Penal Code. There is a provision of punishment up to 3 years if someone tries to grab the property of the deceased person. If anyone defames a deceased person, the offense of defamation under section 499 is committed. Although there are many such provisions, sexual assault with dead bodies is not considered a crime in India.

Mental patients who cannot satisfy their lust with a living person do such things with dead bodies because the dead body cannot resist in any way and one can do whatever one wants with that body. We have also heard of dead bodies being removed from graveyards and this being done to dead bodies in mortuaries. Some accused kill to fulfill their need and then have sex with the dead body. In this case too, the accused had a prior history of molesting women and failed therefore he must have committed the murder.

Important recommendations to the government in the judgment of the High Court :

The Karnataka High Court, in its judgment, said that the state government expressed concern over incidents of sexual harassment by security guards in many government as well as private hospitals where dead bodies are kept, especially young women. It is said that the body should get the respect it deserves. In this case, even if the said person was proved to have committed unnatural intercourse, the Hon'ble Court held that unfortunately, since it was a dead body, the person could not be punished under the relevant section. Here the court has stated that Article 377 needs to be amended.

In this judgement, the High Court has recommended to the central government that 377 should be amended. Accordingly, CCTV should be installed in all the mortuaries, regular cleanliness should be maintained in the mortuaries, dead bodies should be kept in proper clean environment, curtains or screens should be installed where the premises of the mortuaries are not in the façade. Efforts should be made to sensitize the staff. We can expect the government to consider these matters in the new upcoming laws.

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