

Bill No. LII of 2023

THE INDIAN PENAL CODE (AMENDMENT) BILL, 2023

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further to amend the Indian Penal Code, 1860.

BE it enacted by Parliament in the Seventy-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Indian Penal Code (Amendment) Act, 2023.

Short title and commencement.

(2) It shall come into force at once.

45 of 1860. 5

2. After Section 377 of the Indian Penal Code, 1860, the following section shall be inserted, namely:—

Insertion of new section 377A.

"377A. Whoever voluntarily harms the dignity or right of a dead person, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine."

STATEMENT OF OBJECTS AND REASONS

In a recent judgment in *Rangaraju and Vajapeyi Vs. State of Karnataka*, the Court has observed that the act of sexual assault on a dead body does not come under any provision of the IPC. The Court has recommended that the Indian Penal Code, 1860 should be amended to make necrophilia, *i.e.*, a sexual attraction or act involving a person engaging in sexual activities with a deceased body, an offence. The Division Bench passed the order acquitting the accused from the charges of raping a 25 year old woman after murdering her.

2. The Supreme Court in its various judgments has held that the right to dignity prevails even after death. In *S. Sethu Raja Vs. The Chief Secretary* [W.P. (MD) No. 3888 of 2007] decided on 28th August, 2007, the petitioner had brought to the court's attention, the Supreme Court's stand on right to accord decent burial or cremation to a dead body, as interpreted from its decision in *Ramsharan Autyanuprasi and Another Vs. Union of India* (AIR 1989 Supreme Court 549) in which it held thus,

"13. It is true that the life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Art. 21 of the Constitution."

3. Further, the apex court, in *Pt. Parmanand Katara Vs. Union of India & Ors.* [1995 (3) SCC 248] had observed thus,

"..the word and expression 'person' in article 21, would include a dead person in a limited sense and that his rights to his life which includes his right to live with human dignity, to have an extended meaning to treat his dead body with respect, which he would have deserved, had he been alive subject to his tradition, culture and the religion, which he professed. The State must respect a dead person by allowing the body of that dead person to be treated with dignity and unless it is required for the purposes of establishing a crime, to ascertain the cause of death and be subjected to post-mortem or for any scientific investigation, medical education or to save the life of another person in accordance with law, the preservation of the dead body and its disposal in accordance with human dignity."

4. In *Ashray Adhikar Abhiyan Vs. Union of India* (AIR 2002 SC 554), the Supreme Court had upheld the right of a homeless deceased to have a decent burial as per their religious belief and the corresponding obligation of the State towards such people.

5. Many countries in the world have laws on necrophilia. In the UK, any kind of sexual harassment or inappropriate physical conduct with a dead body is against the law, and conviction in this case can lead to a jail term of six months to two years or a fine. Legislation against necrophilia also exists in Canada, New Zealand and South Africa. In Canada, without using the word necrophilia, it is mentioned that maximum sentence of 5 years can be cited for harming the dignity and rights of a dead body. At the same time, in New Zealand, a provision has been made for a maximum punishment of 2 years regarding this law.

6. It is, therefore, the need of the society that a law for providing punishment for necrophilia should be made by creating a new offence under Indian Penal Code (IPC).

Hence, this Bill.

A.D. SINGH

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further to amend the Indian Penal Code, 1860.

(Shri A. D. Singh, M.P.)