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MORBID DEFILEMENT: A CASE FOR SPECIFIC STATUTORY RECOGNITION IN NIGERIA

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Abstract

For many centuries, the endemic violence against women was accepted as part of normal everyday life. It was only in the 2nd half of the 20th century with the diversification of women's ability and active feminism that this sad situation was made known, and steps taken to gradually eliminate it. Among the most pronounced acts of violence on women are rape, sexual harassment, obnoxious widowhood practices, female genital mutilation and others. These acts no doubt leave indelible traumatic marks on the victims. These acts again are perpetrated on living women and girls, but it would seem that the sexual indignities on women know no bounds between life and death. The Criminal Code Act has various provisions dealing with treatment of dead bodies; some clear, others not so specific. This paper seeks to examine the incidences of sexual indignities on dead bodies and perhaps make a case for specific statutory recognition of such act.

An overbearing principle in Criminal Law is that Legislatures, and not Courts, should define the paths and contours of criminal prohibitions. Equally over arching is the rule of lenity in statutory construction which requires that textual ambiguities in criminal statutes be resolved in favour of accused persons. Be that as it may, there is need for specific provision on conceivable acts and/or omissions amounting to crime, to avoid the delegation of the definition of criminal conduct.

The Criminal Code Act contains provisions (SS 242 and 246) on prohibited acts and omissions on dead bodies or parts of dead bodies. Indecent interference and/or indignity as used in the Criminal Code Act (S. 242 (1) (b)) lend itself to multiplicity of acts or omissions and non specific. That the law thought it worthwhile to make provisions and criminalize certain acts and omission on a corpse means a belief in the intrinsic worth of a corpse, and like all things of worth and value, it deserves respect and dignity. The law makers probably never adverted their minds to the possibility of sexual indignities on a corpse since the thought of it sounds absurd, weird, and immoral, yet it is happening now. Laws on morality, (especially one based on a morbid and eerie act of lying with a dead body) are notoriously difficult to argue because sex crime may be another's past time or even gender orientation. The world has become a global village and mobility is very high among people of the world. Acts and omissions, thought to be alien to Nigeria are fast becoming part of us and the earlier these are checkmated by legislation, the better for the society. It is no longer an unknown episode that some people are sexually aroused by the sight of a dead body and in fact do have sexual intercourse with dead women, some while they are still at the morgue and some exhumed from the grave for the same morbid purpose. There are still lawless and weird elements out there, who disrespect and desecrate the dead. This is a new dimension to perversion which requires specific legislation to keep it in check. To drive home the psyche of these perverts, perhaps a little insight to what constitutes a corpse is necessary.

Corpse

Death is the cessation of all vital functions of the body including heart beat, brain activity and breathing. It is the termination of the particular processes of life's cessation. It is also the condition or state of a formerly living body. Apparent in death, is the tendency to believe that there is no consciousness. However, in modern scientific enquiry, the origin and nature of consciousness are yet to be fully understood. A corpse is a dead body. The vital processes of life such as consciousness in the physical have ceased. A corpse can therefore, not reject any body neither can it give informed consent to anything. It cannot oppose anything or anybody. The psyche of a corpse lover is therefore, construed to be that of not wanting opposition, rejection, and wanting to be in total control. Sexual attraction to a corpse is a weird but uncommon phenomenon called Necrophilia.

Necrophilia

This is also known as thanatophilia or necrolomia. The word nerophilia is artificially derived from the ancient Greek words nekros (dead) and philia (love) and appears to have originated from Krafft-Ebing (1886). 34 cases of necrophilia reviewed showed that the individual's motivation for this behavior ranged from the desire to possess an unresisting and un-rejecting partner (68%), reunions with a romantic partner

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(21%), sexual attraction to corpses (15%), and overcoming feelings of isolation (15%), to seeking self-esteem by expressing power over a homicide victim 12% (J P Rosman, P J Rosnick 1989).

Historically

This phenomenon is an age old one since Herodotus (440BC) wrote in the Histories that to discourage intercourse with a corpse, ancient Egyptians left deceased beautiful women to decay for three or four days before giving them to the embalmers thus;

The wives of men of rank when they die are not given at once to be embalmed, nor such women as are very beautiful or of great regard than others but on the third or fourth day after their death (and not before) they are delivered to the embalmers. They do so about this matter in order that the embalmers may not abuse their women, for they say that one of them was taken once doing so to the corpse of a woman lately dead, and his fellow crafts men gave information.

In some societies, the practice was enacted owing to a belief that the soul of an unmarried woman would not find peace; and so among the Kachin of Myanmar, versions of a marriage ceremony were held to lay a dead virgin to rest which would involve intercourse with the corpse. Similar practices existed in some pre-modern Central European societies when a woman who was engaged to be married died before the wedding. Religiously acts of necrophilia are reportedly displayed on Moche artifacts of Peru. It was reportedly used as a means of communicating with the dead.

A detailed write-up on the classification of necrophilia is not within the ambit of this paper but suffice it to say that there are ten types of necrophiles, namely, role players, romantic necrophiles, necrophilic fantasizers, tactile necrophiles, fetishistic necrophiles, necromutilonaniacs, opportunistic necrophiles, regular necrophiles, Homicidal necrophiles and exclusive necrophiles. It also exists in animals with a number of authentic observations. Kees Moliere made such observation while in his office in Natuur museum Rotterdam. He heard the thud of a bird hitting the glass façade of the building. He looked out and found a drake mallard lying dead about two meters from the building. Next to that was a second drake mallard standing close by. According to the observer, the living drake picked at the corpse of the dead one for a few minutes and then mounted the corpse and began having sex with it. The act of necrophilia lasted for about 75 minutes, in which time; the living drake took two short breaks before resuming with copulation behavior (Mseliker, History Museum). This seems to be the first recorded case of necrophilia in the mallard-duck although not the only recorded case of homosexuality within the bird family.

Specific Instances of Necrophilia

On September 2, 2002, Nicholas Grunke, Alexander Grunke and their friend Dustin Radke attempted to excavate a female corpse at a local cemetery so that Nicholas could engage in sexual intercourse with the corpse. The Grunkes and Radke brought excavation tools, a tarp, and condoms to the cemetery, and proceeded to dig a hole into the body's grave side. The three men managed to expose the top of the corpses vault, but fled after being unable to open the vault and hearing another car driving into the cemetery. A police officer subsequently arrived at the cemetery in response to a call reporting a suspicious vehicle on the grounds. The officer encounters Alexander Grunke, noticed his supplies, and placed him in custody. The Grunkes and Radke were charged in a Wisconsin State Court with damage to cemetery property, attempted criminal damage to property and attempted third-degree sexual assault.

The man accused of murdering model Sally Anne Bowman had sex with her dead body after drunkenly stumbling across her corpse but denies murdering her. Chief Mark Dixie, 37 was said to have taken advantage of the situation after discovering the 18 year olds body in Croydon South of London. Sexual indignities were performed as the victim lay dying or was dead. The prosecution said that forensic tests showed DNA from semen found on the victim's body came from the defendant. The chances of the DNA being somebody else's were one billion to one. His blood finger print was also found on her left shoe and bite marks were found on her body (Reuters.com).

A 24 year old New York City man remains jailed after he was found allegedly having sex with a 92 year old woman's corpse inside the morgue of the hospital where he worked. Anthony Merino who works as a lab technician at Holy Name Hospital in Teaneck, M.J, was arrested Sunday after police responded to a call from a security guard at the hospital. The guard reported witnessing the lab technician sexually desecrating the woman's dead body, according to police. The security guards at the hospital said they caught Merino in the act of necrophilia. They transported Merino to the police station; he said and charged him after conducting a police interview. A spokesman for the Teaneck, M J police told ABC News, "when you think you've heard and seen it all, something like this happens" (abc news).

Residents of Karasburg, located at the southern tip of Namibia are still coming to terms with the brutal act of a local mortuary attendant who they suspected of having sex with a corpse over the festive season. Karasburg Major Julius Kalopa told informante that the victim had been an employee of the municipality of Karasburt for over 20 years. Kalopa revealed that the municipality staff, the victims family, and local residents were still coming to grips with the horrific incident in which Van Hendricks, a 30-year-old morgue attendant is alleged to have had sexual intercourse with the corpse of a 44 year-old woman on December 23 2009. Kalopa said Karasburg residents had

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never heard of such a perverted act, and expressed grief that whilst the victim's family were mourning the tragic death of a loved one following a horrific road accident, salt was added to wound by defiling the corpse. Karasburg Acting Regional Commander confirmed that police had arrested Hendricks and charged him with violation of a dead body (Mboya, 2010).

The Caption Peter Orlando Agard is today a man of history, tells the story of a man that has the dubious distinction of becoming the first person to be convicted in Barbados for having sexual intercourse with a corpse. The case, the first of its kind in Barbados, saw 11 witnesses taking the stand, including hospital orderly Mark Griffith, who said he had gone into the morgue to deposit two severed limbs in a freezer, when on pulling open one door that was already slightly ajar, he saw a sight that put fear in his heart. According to Griffith the first thing he saw was one of the dead bodies exposed from the way they usually bring them from the ward. The sight made him run. He saw another object in there with her. It was a human object. He saw an individual on top of the dead. When police interviewed Agard, he told them in a written statement that he was accustomed to "dealing" with the "deads". When asked to explain "dealing with" he told the police "sexing the dead women, nuh!. He told police his actions were as a result of too much brandy and a failure to ejaculate after having sex with two different women (Moontown Barbados 2010).

In Nigeria rumours abound of Mortuary attendants having sexual intercourse with corpses. Thieves have severally invaded graves to steal things buried with the dead. The practice of juju is also ripe in Nigeria. If people sleep with mad women for rituals, they could also sleep with corpses for same. The fact that there has been no definite recorded incidence in Nigeria does not mean it is not happening. Hypocrisy pervades every aspect of life in Nigeria. It may be passed off as a taboo here, instead of finding a concrete legal solution to it. If it is happening in other parts of the world, then it is either already happening here or is likely to start happening soon. A heinous crime such as sexual desecration of a corpse should not be let off by tagging it a taboo.

Legal Framework – Statutory and Judicial

Many countries have a legal framework protecting the incidences of sexual assault on corpses.

U.S.A

There is no Federal law in the United States of America prohibiting necrophilia but the various States have their own laws. The Wisconsin Sexual Assault Statutes for instance prohibits "Sexual intercourse with a person without the consent of that person. It states in the relevant section thus;

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(3) Third Degree Sexual Assault. Whoever has sexual intercourse with a person without the consent of that person is guilty of a class G felony. Whoever has sexual contact in the manner described in sub.(5) (b) 2 or 3 with a person without the consent of that person is guilty of a class G felony.

Consent as used in this section means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence subject to the provisions of S. 972.11(2) marriage is not a bar to prosecution. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant (940. 225 (6)).

Death of Victim: This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse (940, 225 (70)). This provision is very clear in relation to the focal point of this paper. It makes it an offence to have sexual relation with anybody who for any reason cannot give informed consent including unconsciousness. It goes further to eliminate spousal immunity and specifically buttresses the fact of whether the victim is alive or dead. This is specifically construed to prohibit necrophilia.

In *State .V. Grunke (2008)*, the Wisconsin Supreme Court applied the above Sexual Assault Statute to attempted Sexual Intercourse with a corpse. The State Supreme Court ruled in reinstating charges against three men accused of digging up a corpse, so one of them could have sex with it. The court waded into the case after lower court judges ruled that nothing in State laws banned necrophilia. Those decisions prompted public outrage and a push by a State lawmaker to make sex with a corpse a crime. In a 5 – 2 decision, the High Court said Wisconsin law makes sex acts with dead people illegal because they are unable to give consent. The ruling reinstated the attempted sexual assault charges against twin brothers Nicholas and Alexander Grunke, and Dustin Radke all 22. The charges carry a punishment of up to 10 years in prison (US News). The decision makes Wisconsin among the more than 20 states that prohibited necrophilia in the USA. California joined the group in 2004 when after prosecutors said they couldn't bring charges in some cases without an official ban (US News).

Anthony Merino was arraigned on a charge of desecrating human remains of a 92 year old woman inside the morgue of the hospital where he worked, this is a second degree crime in New Jersey. A judge set bail at \$400,000 with conditions that included Merino surrendering his passport and submitting to a psychological evaluation. He faces a maximum of 10 years in prison.

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United Kingdom

Sexual penetration with a corpse was made illegal under the Sexual Offences Act 2003. This is defined as depictions of “Sexual interference with a human corpse” (as opposed to only penetration) and would cover “depictions which appear to be real acts” as well as actual scenes (Wikipedia). By the Criminal Justice and Immigration Act 2008, it is also illegal to possess physical depictions of necrophilia, electronic or otherwise. Necrophilia pornography falls under the governmental description of extreme pornography, of which, possession is classed as illegal under the aforementioned act.

New Zealand

Under Section 150 of the New Zealand Crimes Act 1961, it is an offence for there to be misconduct in respect to human remains. This Statute may be applicable to human remains although there is no case as yet that would test this observation. Misconduct in this provision is not specific or direct however, there has not been any case to test the intention of the law maker here. Misconduct is a general term which embraces sexual misconduct, and by implication extends to it; however this could be cemented by either pronouncement by the Courts in a real life case or an amendment, or addendum to remove the ambiguity.

India

The Indian Penal Code (S. 297) under “Trespassing on burial places, etc, states as follows;-

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, commits any trespass in any place of worship or on any place of sculpture, 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 shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Although Necrophilia is not explicitly stated in this provision, a proven case of necrophilia could be convicted under the provisions. There have been, several allegations by relatives of dead women that the dead bodies of their kin were defiled in the night by mortuary attendants but none have been proven (Agrawal 2009).

Barbados

It is a common law offence and therefore has no prescribed sentence. It is in line with this that Agard who was found guilty of the common law offence of having sexual intercourse with the corpse of Donna Braithwaite had his sentencing at large.
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The sentencing was to be done later in the sessions by Justice Maureen Crane-Scott. He was to find his way later to the probation Department for one of three reports ordered by the Court. He was also subjected to psychiatric and psychological reports.

Necrophilia is also not a statutory offence in Namibia. For example, no specific legislation covers the act; it is rather treated as a common law crime with no minimum sentence.

Philippines

A Senate Bill 2267 has been passed in the Philippines. This Bill proposes to criminalize Necrophilia or Carnal knowledge with the dead. The proposed punishment for cadaverous copulation is “reclusion perpetual to death and a fine of p 100,000 to p 500,000 (about US\$2000 – 10,000).

Nigeria

Nigeria’s Criminal Code Act has various provisions dealing with human remains as follows; Misconduct with regard to corpses: any person who –

- (1) Without lawful justification or excuse, the proof of which lies on him.
- (a) Neglects to perform any duty imposed upon him by law, or undertaken by him, whether for reward or otherwise, touching the burial or other disposition of a human body or human remains; or
- (b) Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not;
- (2) Eats or receives for the purpose of eating any part of a dead human body, is guilty of a misdemeanor and is liable to imprisonment for two years.

While eating or receiving for the purposes of eating any human flesh is clear in the provision, offering any indignity is not so clear as the provision did not specify what amounts to indignity.

S.246 of the same Code provides for burials in houses thus;

Any person who without the consent of the President or the Governor buries or attempts to bury any corpse in any house, building premises, yard, garden, compound or within a hundred yards of any dwelling – house, or in any open space situated within a township, is guilty of a misdemeanor and is liable to imprisonment for six months.

This provision is clear. Apparently, it is also not stringent, as some villages are situated in urban settlements and still bury their dead ones in their family compounds. S. 329A deals with unlawful possession of human head as follows;

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- (1) Any person who receives or has in his possession a human head or skull within six months of the same having been separated from the body or skeleton with the intention that such head or skull shall be possessed by himself as a trophy, juju or charm or transferred by him to any other person as a trophy, juju or charm, is guilty of a felony and is liable to imprisonment for five years.
- (2) Where in any prosecution under this Section of this Code, it is proved that the person charged, received or had in his possession a human head or skull within six months of the same having been separated from the body or skeleton, it shall be presumed that the person charged received or had in his possession such head or skull with the intention specified in subsection (1) of this Section, unless the contrary is proved.
- (3) A prosecution for an offence under this section of this code shall not be instituted except by or with the consent of a law officer.
The rationale for the six months in this provision is not quite clear. If the head had been separated for 7 months or more, does it make it any less a heinous crime? Unless even the law makers are so versed in juju, trophy charm that they know human head cannot be for any of these purposes after six months.

Justification for Specific Provisions

The provision in S.242 to the effect that none should offer indignities to the corpse is not clear. Acts that could amount to indignity for the purpose of the provision were not specified neither were improper and indecent interference specified. Even though non- of such case has been tried in Nigeria, it is likely that when a case comes up, the court might hold that offering indignities to and improper and indecent interference with a corpse did not extend to acts of necrophilia. It probably would end like the decision of the lower Court in *State .V. Grunke (2008)* where the Court held that the sexual assault statute did not criminalize necrophilia. It went further to say that;

Viewing the entire statute in context and in light of its purpose of protecting bodily security ... the statute is ambiguous.

This is also another time Nigeria would use words in an Indian Statute *viz* ‘offer indignities’ and while India applies theirs properly via some solid way, Nigeria would not do likewise. The inclusion of the Fundamental Objectives and Directive principles of State Policy in the Constitution of the Federal Republic of Nigeria (as amended) was probably an Innovation borrowed from India. But while India enforced their own provisions *via* S.13 of their Constitution, Nigeria made its Chapter II non-justifiable. Because of the multifarious religious and cultural beliefs, in Nigeria which

are further re-enforced and compounded by endemic condition, such a statute should not lend itself to multiplicity of interpretation but should be specific.

The issue of the property and possession rights of a corpse may be raised here. In the ordinary use of the term, a property right does not exist in a corpse. For the purpose of burial however, the corpse of a human being is considered to be property or *quasi*-property, the rights to which are held by the surviving spouse or next of kin. Interference or possession (even if temporarily) through sexual intercourse, be it by mortuary attendants, or whoever, is interference with the right of the surviving spouse or the next of kin, who will also feel aggrieved if any indecent interference is meted out to the Corpse. When dead relatives are cremated, their remains are sometimes placed on the mantel piece in homes to remind their loved ones of them. This could for some people constitute articles upon which special emotions are attached. Act of sexual assault on a corpse is not to be lumped together with other acts, where it could be interpreted to be ambiguous. It deserves a specific and clear criminalization. Necrophilia could also be a motive for murder. If a person is attracted to a corpse and feels the urge so uncontrollably, he could kill in order to have carnal knowledge of the corpse of his victim.

Spousal Cadaverous Copulation

By S. 357, Criminal Code Act (for the South) and 282 Penal Code Act (for the North) of Nigeria, a husband cannot be held criminally responsible for rape on his wife. The issue now is whether this controversial situation should be extended to the dead body of a wife. The corpse of a spouse is a property of the other spouse for the purposes of burial. He should be aggrieved if any indecency or indignity (for the purpose of this paper, sexual indecency) is offered or perpetrated on the body of the wife before he claims it for burial. In that case, should he have the exclusive right to offer the indignity on the corpse of his wife? The writers should think not. Besides, for the purposes of marriage, and all the rights and obligations accruing thereto, death is the termination point. This means that consortium terminates at the death of a spouse. Even if the man had the right to sexual intercourse without the consent of the wife, this ends with the death of the wife.

Many countries have criminalized spousal intercourse without consent. Some have added a clause to show that the fact of marriage is not a defense to rape. Nigeria and a few other tradition bound societies have not. Extending this sexual violation to the dead body of the wife would be tantamount to gross relegation of womanhood to the debris of obscurity. Rape on a wife is a serious violation of her human rights but, sexual assault, and desecration of her corpse is a heinous crime without pardon either by the living or the dead.

Recommendations

Defilement of corpses is a reality in many societies. The rumours of it are also rife in Nigerian society. The following are recommended as the way forward.

Specific Legislation

It is suggested that either a specific legislation is made to cover this crime or the existing laws are amended to give specific protection against sexual indignity on the corpse of women. The amendment should read as follows;

S. 242(1) (b)

Improperly or indecently interferes with, or offers any sexual indignity to any dead human body or human remains, whether buried or not.

Advocacy

This also requires advocacy campaign. It is one thing making legislations, and another needing to apply them. If no reports and/or arrests are made, there, will be no opportunity to test or apply legislations. Most of the prosecutions in other jurisdictions were prompted by report or call to law enforcement agents by colleagues of the accused persons. Awareness should be created among the morgue attendants about possible occurrences of people sleeping with the dead and the need for them to be vigilant and report any such act.

Law Enforcement Agencies

The police should be educated on the fact that whatever happens in other parts of the world has the potentials of happening here too. Sexual desecration of a corpse is a heinous crime and should not be passed over as a taboo where the perpetrators are only stigmatized. They should be prosecuted.

Conclusion

This paper has tried to establish the reality of necrophilia in other parts of the world. It could happen here if it is not happening already. The writers have also made known both the statutory and judicial legal frame work in relation to sexual indignities on a corpse in these countries. It is a frightening reality which requires specific attention in our statute books. We do not have to wait for it to become an epidemic before we begin to scamper for our usual feeble ineffective and fire brigade solutions. To avoid or better still stop further sexual desecration of our dead loved ones requires a vigilant stance from all concerned, hospital managements, social welfare, law enforcement agents, and every person. The legislature requires the help of everyone to give their legislations, the opportunity to be tested and applied. The time is now; everybody has the civil duty to report any such act to the law enforcement agencies.

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