



**4th NATIONAL  
MOOT COURT COMPETITION 2023**  
*IN COLLABORATION WITH*

**VIDHISASTRAS (ADVOCATES & SOLICITORS), NEW DELHI**

**25th - 27th February, 2023**

**MOOT  
PROPOSITION**

- 1.** Jifi is a country which is known for its finest standards of living and the best education system for the students all over the world. Peepal is a northern state in Jifi with a population of 20 crores and it shares its border with Jifi's capital Vasu. It is an educational hub and has many universities where students from across Jifi come for higher studies and young people also move to Peepal in search of better living facilities.
- 2.** Vidya Bagchi aged 23 is from Baksa which is a small district in the state of Dakshin Pradesh in Jifi. She belongs to a very poor and an orthodox family. Vidya moved to Peepal in late 2019 for her higher studies at Elite University and joined the course of Journalism and Mass Communication. She got very much bedazzled to the limelight of the city and to become a part of the crowd she started changing herself completely. She made her presence available and was active through several social media accounts and started publishing her made-up life on social media platforms. Vidya became a famous face and gained 250K followers on Instagram.
- 3.** She also started working with brands and started accepting paid promotions being an influencer. Even though she was a fashion and beauty influencer, she tried to make content on trending social topics to get more reach. Her contents were often controversial. Her post based on a communal issue in December became highly controversial and due to mass reporting by social media users, her account was taken down by Instagram. She tried to get her account back, but it didn't see any result. Therefore, she started another account with slight changes in her username and still due to her popularity, she was able to make 100K followers for her second account. And she continued to create content on various political, legal and social issues. And these topics were picked and chosen by her and she made sure that the topics were trending and controversial. Below most of her posts, she used to get negative comments.
- 4.** She had 50K+ followers on snapchat and she used to post photos with funny filters and makeup videos over there. One such follower on snapchat was Prajapati Pandey, a 22-years old boy who was from the capital city Vasu. Prajapati Pandey was a B-tech student and was a die-hard fan of movies, he used to fantasize the songs in which the hero follows the heroine and finally they fall in love and live happily ever after. He used to address Vidya as his "lady crush" to his friends and used to tell his friends that she is his "future wife". He used to attend the events where Vidya was invited as a guest.
- 5.** On 25th July 2021, there was a human chain protest which was organized by the student's union at Makroli University, Vasu, where Vidya was invited as a guest. The agenda of the protest was the release of Mustaque Gaappan, a journalist who has been arrested under the charges of Unlawful Activities Prevention Act. The gathering had more than 5000 students from various parts of the country. The speech of Vidya was highly controversial and the students of the opposition party of the University Students Union i.e, Bharat Ekta Vidyarthi Union, B.E.V.U, who were present at that time in the campus stood up against this and started pelting stones at the protesting students. Many vehicles and other public and private properties were destroyed. The situation became chaotic and Police had to charge Lathi and use tear gas.

**6.** The video clippings and bits from Vidya's speech became viral and hashtags against her were trending on Twitter and other social media. Vidya posted a story after a couple of days on her Instagram that she was getting death threats and rape threats from various accounts. After around a week the situation became normal. On the evening of August 5th, 2021, Prajapati Pandey posted a story on his Instagram account which was an interior picture of a café. On the same day Vidya also posted a picture from a café with some empty plates and glasses with a sticker "sukoon".

**7.** On the morning of 6th August, 2021, the Police officers in the PCR van of the police near Vasu-Peepal highway received a message that a body of a girl was lying dead on the side of the road. When the PCR police van reached the spot, they found a semi-nude body of a young girl with extreme injuries all over the body. A handbag was lying nearby with a driving licence and Aadhar Card with the name Vidya Bagchi and a phone 13 pro max was also found. The police sent the body for autopsy to DAIMS, Vasu and sent the mobile phone for the detailed examination at FSL, Vasu. In the post-mortem report the cause of death is mentioned as blood loss from the stab injury which is around 5 cm wide and 7 cm deep on the abdomen and the vulva. It was also mentioned by the surgeon that she was subjected to brutal rape ante-mortem and various objects were also inserted buccally and into her anally.

**8.** When police started the investigation on the death of the deceased. They came to know about many factors. As Vidya has earned hatred from many people due to her controversial content, getting threat messages was a daily thing in her life. Also, during investigation, while checking the CCTV footage of the cafe where Vidya went before her death, police found that Prajapati Pandey was entering the cafe after her and was sitting on the opposite table to her. And as soon as Vidya left the place, he also left the cafe but drove his bike in the opposite direction to where she went. A suspicious van could be seen following Vidya.

**9.** While checking the footage of other places where she had gone before death, they found the presence of that van at those places as well. The police had enough ground to search for that van and its owner for questioning and went to his address, but the owner and van was found nowhere, Police also went to Prajapati Pandey's house and his parents said, since the day when Vidya's death news came on the TV, he was behaving very madly and left the house that day itself. The parents of Prajapati Pandey also informed police that he loved her so much and his room is decorated with the photos of Vidya. And when police searched the room, they found one autograph of her, framed on his wall. When police tried to track his number, it was switched off. Later, the police found the van and group of four accused persons was also caught. During investigation the samples found on Vidya's body matched with the accused persons and a CCTV footage was also recovered which captured Vidya's body being thrown out of the van.

**10.** 1. After one week, on 13th August 2021, the investigating team received a call from the hospital where her dead body was kept saying that the body was missing. The team rushed to the hospital. The CCTV outside the mortuary was not working. The team started searching for the body and found the body in a dump yard which was 200 meters away from the hospital. The police took the body back to the hospital. After the medical examination, it was found that the dead body was raped again. And some new injuries were found on various organs in her body which includes her vulva area, lips and neck. As there were many fluids on her body which seeped from the dump yard, the forensic team couldn't find any biological evidence.



**11.** The officers tried to get the CCTV footage from the shops around the hospital, they saw Prajapati Pandey walking in front of the hospital's main gate and carrying some big thing. He was looking very shabby. Based on these leading factors police arrested Prajapati Pandey from an Ashram nearby. The head saint of the Ashram said that he reached the Ashram only a couple of days ago and was crying since the day he came there. The forensic team who took his phone for the examination found that, out of the 5000 photos in his phone gallery around 800 pictures and videos were of Vidya Bagchi. He even had her photo as his wallpaper. And his location when the body went missing and earlier two days was nearby the hospital. There were enough grounds for the police to suspect Prajapati Pandey and he was arrested by Police on 18th August 2021.

**12.** According to the Crime Records Bureau report of 2021, 59445 cases related to crimes against women were reported in Peepal and this was the highest number of crimes in any state reported that year in Jifi and 13640 cases alone were reported in Vasu. After the arrest of Prajapati Pandey and other group of culprits, a public outcry demanding death penalty for the accused started all over the country, and as the topic was in limelight every regional and national news channel and online media started discussions and prime time debates on the topic. Some NGOs who led protests and rallies even demanded for introducing new legislations for dealing with Necrophilia.

**13.** "News you should know" an independent online news agency conducted an investigative series on the hot topic of the hour i.e., Necrophilia and found that the mortuary staff in some hospitals in Vasu allows people to engage in sexual intercourse with unclaimed dead bodies in mortuaries by charging amount from them. And they posted about this finding on their social media pages and this ignited a fire of online protests all over the world. Some international celebrities posted videos and opinionated posts against this. And "#shameonjifi and #letthemRIP" were trending on Instagram and Twitter after this news.

**14.** As the Union Government Elections were around the corner, the current government at Central level was having the pressure to find a solution for the issue. The Hon'ble Supreme Court in the light of ongoing protests gave a strict warning to the Central and State governments to control the protests and to come up with solutions immediately. Therefore, a commission was appointed by the Union Government on 1st September 2021 to look into the matter and this committee was headed by Retd. Justice Anthony Gonsalves. After one month, the report was submitted by the commission suggesting the enactment of a new legislation to deal with the offence of Necrophilia. Accordingly, a bill was passed in the parliament and after getting the assent of the President, a new legislation named 'The Necrophilia (Prevention and Prohibition) Act, 2021 was enacted in Jifi and the Act came into force on 1st November 2021.

**15.** The police submitted the chargesheet on 12th December 2021 under sections 302,362,376,376A,377, 297 of Jifi Penal Code along with section 4 and 6 of The Necrophilia (Prevention & Prohibition) Act 2021. The police added the hospital attendant Balaram and Mortuary staff Sivamani as the accused number 6 and 7 in the chargesheet by finding that they were negligent in their duty and it was with their help the dead body reached outside the hospital. The matter was tried by the court of sessions and the group of four culprits was found guilty of murder and it had no connection with Prajapati Pandey. While Prajapati Pandey along with hospital staff was found guilty of helping Prajapati to take out body from the hospital. The hospital staff Balaram and Sivamani accepted that for money they have helped Prajapati to take the body out of mortuary.

They were charged under section 297 of Jifi Penal Code and were punished for imprisonment of 10 months. While based on the video from CCTV and mobile location of Prajapati, statements of hospital staff and residues found on Vidya's body after enhanced medical examination proved that Prajapati Pandey has committed a crime of necrophilia under The Necrophilia (Prevention and Prohibition) Act, 2021 under section 4 and 6 and was given the punishment of life imprisonment and fine of 5 lakh rupees.

**16.** The judgement of the Court of Sessions was upheld by the High Court in the appeal filed by Prajapati. Now, Prajapati has approached the Hon'ble Supreme Court by challenging the validity of sections 4 and 6 and constitutionality of The Necrophilia (Prevention and Prohibition) Act, 2021 and its retrospective effect. He is also contending that he should be charged only under Section 297 of Jifi Penal Code under which maximum imprisonment is one year.

**17.** Hon'ble Supreme Court has also received some petitions regarding offence of necrophilia and its relation to violation of fundamental rights and the constitutionality of the Act itself. As per the orders of the Hon'ble Supreme Court, all the petitions have been merged and is now to be heard by Hon'ble Supreme Court.

### **ISSUES:**

- 1) Whether the writ petition is maintainable in the Hon'ble Supreme Court?
- 2) Whether the retrospective application of the provisions of the Necrophilia (Prevention & Prohibition) Act, 2021 is unconstitutional?
- 3) Whether the offences under the Necrophilia (Prevention & Prohibition) Act, 2021 are violative of Part III of the Constitution?

Students can frame any other issue(s) accordingly.

\*Laws of Jifi is analogous to Laws of India

## **THE NECROPHILIA (PREVENTION AND PROHIBITION) ACT, 2021**

An act to deal with the prevention and prohibition of the offence of Necrophilia and other crimes against the dead bodies and to deal with the rights of the dead people

### **SHORT TITLE, EXTENT AND COMMENCEMENT-**

- (1). (I) This Act may be called the The Necrophilia (Prevention & Prohibition) Act, 2021
- (ii) It extends to the whole of the Territory of India
- (iii) It shall come into force on such date as the Government may by notification in the Gazette, appoint:- And this act shall be retrospective in effect irrespective of the date of commencement.

## **2. DEFINITIONS - IN THIS ACT, UNLESS THE CONTEXT OTHERWISE REQUIRES —**

- (1). Cemetery" means an area of ground where dead people are buried which is under the control of a church or Christian missionary etc.
- (2). Corpse" means the dead body of a human being
- (3). Kabristan" means the burial land for the burial of dead bodies of Islam worshippers, usually attached to a Mosque

- (4) "Mortuary" means the room or building where dead bodies are kept for or after autopsy
- (5) Necrophilia" means and includes sexual attraction to or sexual contact with dead bodies or A morbid fondness for being in the presence of dead bodies or The impulse to have sexual contact, or the act of such contact, with a dead body, usually of men with female corpses.
- (6) Relatives" means and includes any person related to the dead person through blood relation, adoption or marriage.

**Explanation** - If a person's body is claimed by a friend or neighbour or any other person on behalf or absence of family, they will be deemed to be a relative of the dead person

### **3. OFFENCE OF NECROPHILIA**

- (1) If a person who is within the territory of India engages in any activities which comes under the definition of Necrophilia given under sub-section(5) of Section 2 of this Act, the he is said to have committed the offence of Necrophilia

**Explanation** - Out of three conditions under Sub-section (5) of Section 2, either one, two or all of it will be falling under the offence of Necrophilia

### **4. PUNISHMENT FOR NECROPHILIA**

Any person who commits the offence of Necrophilia shall be punished with a minimum imprisonment of 7 years and not exceeding Life Imprisonment and shall also be liable for fine not exceeding 5 lakh rupees

### **5. APPOINTMENT OF CHIEF MORTUARY OFFICER**

State Government shall appoint a Chief Mortuary Officer in every hospital with a mortuary facility to look after the compliances required for the maintenance of mortuary as per mentioned in the provisions of this Act. The qualifications of the officer may be decided by the State Government after the consultation with the respective State Health Ministries.

### **6. PUNISHMENT FOR USING DEAD BODY ETC. FOR UNETHICAL USES**

- (1) Any person who uses the dead body for any unethical purposes including unauthorized use for studies, usage of organs and skeleton for witchcraft or wizardry, or selling dead bodies and remaining's for other immoral or unethical purposes shall be punished with the imprisonment of not exceeding 5 years and shall also be liable to fine up to 3 lakh rupees.
- (2) If any hospital staff is found as indulged in such offence mentioned in sub-section (1) then they will be subjected to the imprisonment up to 7 years and fine up to 5 lakh rupees and their license shall be dismissed.



## **7. DUTIES OF HOSPITAL**

- (1) Hospitals shall maintain a diary with the details under below mentioned headlines in every hospital and non-compliance will lead to disciplinary procedure mentioned in the Indian Medical Association guidelines and rules

### **Headlines for the Entry diary**

- a) Name, age and address of the dead person (if available)
  - b) Height and weight
  - c) Identification details
  - d) Date and time of death (if not known enter the estimated date and time)
  - e) Place of Death (if not known enter the place where body was found)
  - f) Condition of the body when received by the hospital
  - g) Cause of death
  - h) Date and time of Post Mortem along with details of Doctors and Staff
  - i) Details of receipt of dead body by relatives etc. including their name, address, signature and Government issued ID number
- Details pertaining to the condition and specification of the dead body including injuries, marks etc when the body was received at the hospital, during autopsy, post autopsy and during handing over the body to the relatives

## **8. DUTIES OF DOCTORS**

Every doctor who is assigned with the duty of dealing with corpses shall perform it with utmost care and the details of the doctors and other staff assisting them shall be updated on the same day in the separate diary maintained for this purpose.

## **9. DUTIES OF MORTUARY STAFF**

Mortuary staff including the hospital Attendants, Security guards, apprentice etc shall take care of the dead bodies in the mortuary with utmost care. They shall ensure the storage conditions, temperature etc inside the mortuary are maintained properly. Also, it shall be ensured that no unauthorized person is entering the premises.

## **10. DUTIES OF CHIEF MORTUARY OFFICER**

It shall be the duty of the Chief Mortuary Officer to ensure that -

- (1) the conditions of the mortuary are adequate,
- (2) the CCTV maintenance is up to date,
- (3) the diary entries are updated on daily basis,
- (4) unauthorized people are not entering the mortuary premises,
- (5) the staff in the mortuary premises are following the guidelines of IMA,
- (6) to report any malpractices taking place inside the mortuary,
- (7) to send the unclaimed bodies for forensic tests to ensure a decent burial post-procedure
- (8) to maintain details of bodies and samples sent for re-autopsy and to forensic labs
- (9) to keep the belongings of the bodies including jewelleries, clothes, footwears and other accessories in a locker room and it shall only be handed over to those who are authorized and verified to claim the body

- (10) to report immediately to the nearest police station if any body, sample, or item is missing from the mortuary or the premises of mortuary
- (11) to report to the Superintendent of the Hospital if any suspicious or indecent act is committed by the mortuary staff and if such act falls under the definition of any crime under any statute, then it shall be the duty of the Superintendent of the Hospital to report to the nearest Police station.

## **11. RIGHT OF THE DEAD BODY TO HAVE A DECENT BURIAL**

- (1) Every dead person shall have the right to a decent burial and it must be ensured by the family or relatives in the case of claimed dead bodies and in case of unclaimed or unidentified bodies it shall be the duty of the hospital to ensure a decent burial of the dead body
- (2) If the religion of the unclaimed dead person is known then the burial shall be done accordingly to the religious rituals
- (3) In case of the absence of knowledge pertaining to the religion of the dead person, then the cremation shall be done in the cremation centre owned by the state government

## **12. MAXIMUM PERIOD TO KEEP A DEAD BODY IN MORTUARY**

- (1) In case of unknown and unidentified bodies, the maximum period for keeping the dead body in the mortuary shall be 60 days starting from the date of advertising in the newspaper with the photo and other known details
- (2) In case of other claimed dead bodies this period shall not exceed more than 15 days or directed by the court as the case may be

## **13. POWER TO MAKE RULES**

The state or central government may, by notification in the Gazette, make rules to carry out the provisions of this Act.



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