

Necrophilia and Indian Penal Law: A Doctrinal Study on Lacunae and the Need for Specific Criminalization.

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Abstract

Necrophilia represents one of the most extreme forms of deviant behavior: it goes against common morality and raises posthumous dignity concerns. The Indian system of law does not spell out an explicit penal provision against necrophilia. The Indian Penal Code, 1860, Section 297, provides the distant remedy of acts insult the feelings of the dead or trespass on burial places. Not much is provided about it in the current Bhartiya Nyaya Sanhita, 2023.

The paper conducts doctrinal and jurisprudential investigations into the necrophilia's legal position in India. It probes into whether the provisions are adequate, with the absence of specific interpretation posing its own set of difficulties and analyzing the larger picture of whether this silence harms constitutional guarantees-wise, the right to dignity after death under Article 21 of the Constitution. Alongside, it studies judicial pronouncements and parliamentary intent in defining life-dignity interests that govern criminal law with respect to the protection of the deceased.

With these gaps revealed in the study on doctrinal and normative grounds, the paper argues against an outright statutory enactment on the issue of necrophilia. This exercise shall enhance legal clarity and shall act as a tool to bring more cases of necrophilia to prosecution, hence, bringing to the core the Indian legal system's acknowledgment of human dignity even after death. The paper concludes with some recommendations on legislative reform concerning constitutional morality and contemporary standards of criminal justice.

Keywords: Necrophilia, Indian Penal Code, Bhartiya Nyaya Sanhita, posthumous dignity, specific criminalization.

1. Understanding Necrophilia: Legal and Ethical Dimensions

Necrophilia, from Greek 'nekros' meaning dead and 'philia' meaning love, is an attraction or sexual act involving a dead human body. Rare and deeply stigmatized in secrecy, necrophilia is perhaps the most disturbed type of deviant behavior creating intense difficulty for criminal law, social morality, and the philosophical roots of dignity. A recognized psychiatric paraphilia, necrophilia is currently classed as an "Other Specified Paraphilic Disorder" in the DSM-5-TR, especially about acts of necrophilia that involve harm or non-consensual parties, such as a corpse¹.

¹ AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 705 (5th ed. text rev. 2022).

In India, however, necrophilia remains outside the scope of specified penal provisions. The closest section under the Indian Penal Code, 1860, is Section 297, which penalizes trespassing into burial places or offering indignity to human corpses with intent to wound the feelings of persons who are mourning for those dead². This provision, however, is of a limited scope-it is mainly drafted with the view of protecting religious sentiments and public order rather than the dignity of the deceased. The newly enacted Bharatiya Nyaya Sanhita, 2023, which repealed the IPC, retains a similar provision in Section 301 but equally fails to deal with actual sexual interference with a dead body³.

The absence of specific penal laws creates both doctrinal and prosecutorial lacunae. When considered by the courts, necrophilic acts are prosecuted usually as an offence under general provisions such as Section 297 IPC, which does not suffice in view of the gravity and peculiar nature of the offence or sometimes for public obscenity or mischief, which are grossly inadequate in regard to the nature and magnitude of the act. This lacuna takes away from retaining the criminal law its retributive and expressive functions, and it runs the risk of denting the confidence of society in the capacity of the legal system to respond to instances of such extreme moral violations.

Apart from the legal aspect, necrophilia engages serious questions on ethical treatment around the remains of a human. The posthumous dignity within the realm of legal and moral philosophy has attained near-complete acceptance in that posthumous dignity shelters some interests or symbolic rights for a person. Indian jurisprudence has laid down a similar principle. In *Parmanand Katara v. Union of India*, it was emphatically held by the Supreme Court that the dignity of the dead must be preserved and protected as an extension of the dignity of life⁴. Subsequently, in *Common Cause v. Union of India*, the Court interpreted Article 21 as encompassing the right to live with dignity as well as the right to die with dignity, thereby giving an indirect acknowledgment to the non-extinction of human dignity even after death⁵. Necrophilia being considered an illegal act should directly clash with constitutional morality and the ever-growing understanding of posthumous rights. But that ethical failing is not confined to the gross act alone-it, in fact, extends to the failure of the state to accept a form of residual dignity concerning the dead, who are also worthy of social recognition. This implicit denial of recognition of dignity by the law adds to the offense.

To conclude, necrophilia has an unusual and neglectful positioning within Indian legal discourse. Though derided worldwide as an aberration, its non-mention in the penal statute book speaks of a rather grim neglect of legal policy and constitutional morality. Given the growing jurisprudential reliance on posthumous dignity, the law must immediately develop to explicitly and unambiguously protect these most egregious forms of desecration. Legislating in this regard is not just a subject of criminal law but an absolute constitutional mandate.

2. Indian Penal Law and the Treatment of Posthumous Acts.

The Indian legal system, although voluminous and deeply entrenched in common law traditions, has given almost little emphasis to posthumous rights. Indian jurisprudence does recognize certain kinds of symbolic

² The Indian Penal Code, No. 45 of 1860, § 297, INDIA CODE (1860) (punishing trespass into burial places or indignity to human corpses intended to wound feelings).

³ The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 225, GAZ. OF INDIA, EXTRAORDINARY, Dec. 25, 2023.

⁴ *Parmanand Katara v. Union of India*, (1995) 3 S.C.C. 248, ¶ 3 (India) (“Right to dignity and fair treatment is not only available to a living man but also to his body after death”).

⁵ *Common Cause v. Union of India*, (2018) 5 S.C.C. 1, ¶ 145 (India) (“The right to die with dignity is an intrinsic facet of Article 21”).

or ethical obligations toward the dead persons, but these are recognized mostly as a matter of religious practices, public decency, or evidentiary applications, as opposed to some matter of substantive penal law. Thus, the paint brush does not broadly criminalize an act that is morally reprehensible: the desecration of the dead and death of sexual exploitation—again, most glaringly, necrophilia.

Section 297 of the Indian Penal Code, 1860, serves as the mainstay in respect of the posthumous dignity of man. It penalizes entry in places of burial and acts which are, with intent, calculated to wound the feelings of persons in respect of any act of burial or cremation⁶. While it speaks of indignity to human corpse, the demeaning is not on the inherent dignity of the dead, but on the emotional or religious sentiments of the living. Therefore, incidents of necrophilia may not always go within its purview, especially if no mourners or family members were involved or if the intent to hurt religious sentiments cannot be established. In this connection, since the provision is compoundable, bailable, and non-cognizable, it attempted to lessen the seriousness with which the legal system treats offences against corpses. It could neither treat the dead body as a legal subject nor recognize any residual legal personhood, resulting in a doctrinal vacuum to this end.

The introduction of Bharatiya Nyaya Sanhita, 2023 is supposed to be a progressive reform of India's colonial era criminal statutes. Otherwise, Section 301 BNS, which replaces Section 297 IPC, just reproduces the original provision through slight linguistic changes, missing out on any enhancement in the protection for the dead⁷. Thus, there is no special provision introduced for necrophilia or sexual offences against corpses—an oversight by legislators in approaching such grave violations of posthumous dignity.

This unpreparedness stands as a testament to the failure to surgically address the evolving conceptualization of posthumous harm against constitutional morality and an expanded interpretation of Article 21 by the Supreme Court. Since it amounts to interpolating laws whose purpose was never to protect corpses or posthumous dignity, to charge necrophilia under S. 292–294 (obscenity), or under S. 505 (public mischief) is legally improper. Even the chain of custody and stages of treatment of a deceased body about forensic analysis under the Indian Evidence Act, 1872, fail to constitute substantive penal consequences of sexual violation of the corpse. This patchwork legal regime only adds to the compelling need for passing a separate penal provision for necrophilia. The absence of a specific provision goes to reflect the positivist bend that the Indian penal system tends to adopt: that of criminalizing only conduct that directly causes harm to legal persons. However, in modern juristic thinking, symbolic victims, especially the dead, are increasingly being seen as being worthy of protection—not just for their sake alone, but more importantly, for the sake of collective conscience and moral values of society.

The dead, who have no personhood under law, are often conferred with a special dignity under Indian law under various forms of protection and sanctity-wariness, be it in respect to burial rites or handling of remains or religious practices. Indian law, however, prohibits no infringements on such dignity, and imposes no penal consequences for a breach thereof. This leaves a class of offences like necrophilia outside the possibility of an effective prosecution.

3. Doctrinal and Constitutional Analysis of Dignity After Death.

The principle of human dignity is a foundation stone of Indian constitutional jurisprudence. Though

⁶ The Indian Penal Code, No. 45 of 1860, § 297, INDIA CODE (1860) ("trespassing on burial places or indignity to human corpses intended to wound the feelings of others").

⁷ The Bharatiya Nyaya Sanhita, No. 45 of 2023, § 225, GAZ. OF INDIA, EXTRAORDINARY, Dec. 25, 2023.

originally applied only from the perspective of life and liberty, over the years, the courts of India have come to the realization that the right to dignity under Article 21 of the Constitution extends, in certain cases, even after death. It forms the doctrinal and ethical basis for marking as criminal acts such as necrophilia that grossly abrogate posthumous dignity.

Article 21 of the Constitution of India states: "No person shall be deprived of his life or personal liberty except according to procedure established by law."⁸ This article primarily safeguarded against the state exercising arbitrary power; however, over the years, by several judicial interpretations, its ambit has been enlarged to include the right to live with dignity. In the landmark case of *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁹, the Supreme Court was categorical in holding that the right to life includes the right to live with dignity and all that goes along with it. Lawsuits following the decision have brought the principle concerning the living to the dead.

The judgment in *Parmanand Katara v. Union of India* stands incidentally as a ceaseless landmark for recognizing dignity after death. The Court upheld that a person's right to dignity ends not with death, and the dead body of a person should be treated with respect and protected from indignity¹⁰. This statement was reiterated in the case of *Ashray Adhikar Abhiyan v. Union of India*, where the Supreme Court directed the State for the decent cremation of unknown and homeless deceased persons¹¹. Taking the issue forward on the line of passive euthanasia, the apex court in *Common Cause v. Union of India*, while declaring the right to die with dignity as a subsidiary right under the right to life with dignity, reinstated that the dignity does not cease to exist upon the occurrence of death¹².

These decisions serve the constitutional basis which would ground the argument that any act which is violative of the integrity and sanctity of a human corpse, such as in the case of necrophilia, is in fact an infringement of Article 21, though the subject is not alive.

From a doctrinal perspective, criminal law is both utilitarian and expressive of society's moral condemnation. The criminalization of necrophilia is not merely against the infliction of harm but also against the community standing for dignity, respect, and sanctity of the human body. The deceased cannot, strictly speaking, be considered legal persons; however, Indian jurisprudence has generally recognized some limited posthumous rights in the nature of:

- Right to a proper burial or cremation.
- Protection from defamation of the dead.
- Right of the family to unobstructed performance of religious rites; and
- Legal control over the corpse for funeral or evidentiary purposes.

Such recognitions signal the dawn of a quasi-personhood of the deceased in Indian law, which in turn furnishes the exigencies for statutory protection to sex or other indignities visited upon a corpse.

Constitutional morality in itself is an important ethical dimension underscored in landmark cases such as *Navtej Singh Johar v. Union of India* within which the State must legislate and interpret laws towards constitutional values rather than majoritarian morality¹³. Through legislation criminalizing necrophilia, it cannot merely be said that we enforce an idea of morality, for the constitutionally mandated dignity,

⁸ INDIA CONST. art. 21.

⁹ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, ¶ 6 (India).

¹⁰ *Parmanand Katara v. Union of India*, (1995) 3 S.C.C. 248, ¶ 3 (India).

¹¹ *Ashray Adhikar Abhiyan v. Union of India*, (2002) 2 S.C.C. 27 (India).

¹² *Common Cause v. Union of India*, (2018) 5 S.C.C. 1, ¶ 145 (India).

¹³ *Navtej Singh Johar v. Union of India*, (2018) 10 S.C.C. 1, ¶¶ 78–80 (India).

humanity, and social order are at stake.

4. Recommendations for Reform

Under Indian penal law, necrophilia is an act not criminalized by virtue of the lack of appropriate statute. This however sets an injury to the rule of law and the notion of posthumous human dignity. In augmenting this lacuna, the consistency of law is hardly the only consideration; rather, the elevation of moral and constitutional values under Article 21 of the Indian Constitution stands out as a critical consideration. The following recommendations are directed at legislative and policy reforms in this regard:

4.1 Enactment of a Standalone Penal Provision for Necrophilia

- A fresh provision has to be inserted into the Bharatiya Nyaya Sanhita, 2023, making necrophilia expressly a criminal act. This provision should:
- Define necrophilia as any act of sexual penetration or sexual contact with a dead body.
- Should be treated as cognizable, non-bailable, and non-compoundable offences.
- Provide for rigorous imprisonment which shall not be less than 7 years, which shall extend up to life imprisonment, along with a fine.
- Include several aggravating facts such as holding and custodial position of an offender with respect to the corpse (i.e., morgue staff, police, hospital workers).
- This would remove the ambiguity and allow effective prosecution while forging a criminal law in keeping with the modern concept of dignity after death.

4.2 Judicial Recognition of Posthumous Dignity in Theory

The legislature should ideally institute a statutory recognition of posthumous dignity, possibly in the context of an amendment to the Preamble or the General Explanation chapter of the BNS. This would lay the basis for punishing any desecratory acts, lewd exploitation of human remains for gain, such as necrophilia, illegal organ harvesting, or ritual dismemberment.

4.3 Amendments to Medical and Forensic Protocols

Since many cases of death-related sex may be occurring within institutional settings like morgues and forensic laboratories, they should be incorporated into amendments to the Transplantation of Human Organs and Tissues Act, 1994 and the forensic protocols:

- Strict biometric-based custody of bodies.
- Installation of CCTV monitoring in Morgans.
- Penal accountability for institutional failure to report or prevent such acts.

4.4 Sensitization and Capacity Building of Law Enforcement

The police, forensic teams, and judicial officers are to be trained in the criminal and constitutional effects of necrophilia. Training modules at judicial academies and police training centers should cater to the following topics:

- Rights of the deceased under Indian constitutional law.
- Legal duties of State institutions in protecting the deceased.
- The ethical consequences of inaction or procedural lapses.

4.5 Law Commission Reference and Public Consultation

The Law Commission of India should be formally referenced for the conduction of a national study on posthumous rights and necrophilia, which may include:

- Comparative analysis of other jurisdictions (e.g., Germany, UK, and some U.S. states where

necrophilia is explicitly criminalized);

- Consulting with forensic, psychiatric, legal, and constitutional experts; and
- Drafting a model penal provision for insertion into the BNS.

4.6 Judicial Guidelines Until Legislative Action

Until such time as a statutory reform is passed, directions can be issued by the Supreme Court under Article 142 and by the High Courts under Article 226 for the following purposes:

- On directions to have all acts of sexual assault and necrophilia mandatorily registered under Section 225 BNS or under similar legislation, along with whichever sections are deemed fit for obscenity or public nuisance.
- To prescribe further details in the protocols for investigating crimes against the deceased.
- To declare that posthumous dignity forms an integral part of the right to life under Article 21.

These recommendations are grounded in doctrinal consistency and constitutional necessity. The acts of necrophilia may be criminalized through explicit legal provisions to remedy extreme acts of moral transgression and to endorse constitutional morality, dignity, and justice as values held dear by the Indian State—even beyond death.

Conclusion

The present research has brought to light a glaring lacuna in the Indian criminal jurisprudence concerning the explicit crime of necrophilia. While a violation of human dignity in the grave sense and a very disturbingly obscene act against the sanctity of a human body, necrophilia still remains unaddressed in specific terms under the Indian Penal Code or its successor, the Bharatiya Nyaya Sanhita. Existing provisions such as Section 297 IPC or Section 225 BNS are a sort of indirect route and their bona fide application targets the sentiments of the living rather than the dignity of the deceased.

The study, from a doctrinal and constitutional perspective, has shown that the right to dignity under Article 21 of the Constitution has been interpreted by the Supreme Court as extending beyond death. The jurisprudence in *Parmanand Katara*, *Ashray Adhikar Abhiyan*, and *Common Cause* laid down that the deceased deserve dignified treatment and, therefore, posthumous indignities should be prevented by statutory measures. However, where such a special penal provision for necrophilia is absent, it undermines the constitutional objective and fails to prepare the law against such repugnant behavior.

The suggestions given highlight the urgent need for legislative reform, judicial sensitivity, and institutional accountability. Necrophilia is criminalized not simply to punish unaccepted conduct but to maintain the moral and constitutional edifice of a society that values dignity both in life and after death. Accordingly, with a view to engaging with a criminal justice system that is more inclusive and evolved, India must move towards recognizing and protecting the rights of the dead with the same solemnity as those of the living.