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A CRITICAL LEGAL ANALYSIS OF NECROPHILIA IN INDIA- FOCUSING ON MENTAL ILLNESS AND CRIMINAL RESPONSIBILITY.

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Abstract:

One of the most disturbing and prohibited things that people do when they engage in a crime is necrophilia, which is having sex with a dead body. In India, necrophilia exists in a legal grey area due to the absence of explicit penal provisions in the Indian Penal Code or the newly introduced Bharatiya Nyaya Sanhita (BNS), despite its severe moral, psychological, and ethical implications. This research paper analyses shortcomings in Indian criminal jurisprudence pertaining to necrophilia and investigates the shortcomings of current legislation in directly prosecuting such offences. It also looks into how society views necrophilia, which is frequently characterised by denial, stigma, and underreporting. This makes it harder to have meaningful conversations and make good decisions. Necrophilia is one of the most extreme forms of deviant behaviour because it goes against common ethical standards and raises questions regarding the dignity of the dead. The Indian legal system does not contain a specific penal provision addressing necrophilia. Section 297 of the Indian Penal Code, 1860, says that people who insult the feelings of the dead or trespass on burial places can be penalised. The current Bhartiya Nyaya Sanhita, 2023, doesn't say much about it. The paper analyses the legal status of necrophilia in India through doctrinal and jurisprudential analysis. It examines the adequacy of the provisions, noting that the lack of specific interpretation presents unique challenges, and evaluates the wider effects of this silence on constitutional guarantees, particularly the right to dignity after death as stipulated in Article 21 of the Constitution. It also looks at what judges and legislators have said about life-dignity interests that govern criminal law when it comes to safeguarding the dead. The study reveals deficiencies in doctrinal and normative frameworks, leading the paper to oppose a definitive statutory enactment regarding necrophilia. This exercise will improve the legal system's knowledge of necrophilia and help bring more cases to court. This will show that the Indian legal system respects human dignity even after death. The paper ends with a few recommendations for modifications to the law about constitutional morality and modern standards of criminal justice.

Keywords: Necrophilia, Indian Criminal Law, Bharatiya Nyaya Sanhita (BNS), 2023, Indian Penal Code, 1860, Section 297 IPC, Legal Grey Area, Posthumous Dignity, Article 21 of the Constitution of India, Right to Dignity after Death, Criminal Jurisprudence, Constitutional Morality, Human Rights of the Deceased, Underreporting and Social Stigma, Law Reform and Policy Recommendations.

Introduction:

Necrophilia, which means having sex with a dead person, is one of the most taboo and stigmatised things to do in many cultures. It raises serious legal, ethical, and moral issues. Even though it doesn't happen very often, it makes it hard for legal systems to respond clearly and consistently. In many places, like India, the law doesn't clearly make necrophilia a crime, which makes it hard to prosecute. In India, people who commit crimes are often charged with desecrating a corpse or public decency, which may not fully reflect how serious the crime was. Social stigma exacerbates underreporting and the insensitive management of cases. This study rigorously evaluates existing legal deficiencies and conducts a comparative analysis to advocate for a more coherent and resilient legal framework to effectively combat necrophilia in India.

Necrophilia, although infrequently addressed in conventional legal discussions, constitutes a significant transgression of human dignity, ethical standards, and societal principles. It is at a very sensitive point where criminal law, morality, psychology, and human rights meet. In India, cultural and religious customs hold the sanctity of the deceased and the execution of last rites in high regard, rendering any interference with a corpse—especially of a sexual nature—abhorrent. However, the Indian legal system does not clearly define necrophilia as a separate crime, which creates a troubling gap between what society thinks is wrong and what the law says is wrong.

The lack of a clear statutory ban makes people depend on indirect and often insufficient rules. Although laws concerning trespass on burial sites, indignity to human remains, or public decency may be applicable, they do not adequately address the distinct nature and severity of necrophiliac acts. When you think about how constitutional law is changing our understanding of rights and dignity, this silence in the law becomes even more of a problem. Indian courts have progressively broadened the interpretation of the right to life under Article 21 of the Constitution to encompass the right to live with dignity, and notably, the right to die with

dignity and to receive respect posthumously. But without clear legal rules, it is still hard to enforce these constitutional principles in cases of sexual offences against dead bodies¹.

Section 297 of the IPC is the most often used part. It penalises individuals who trespass on burial sites or do things that hurt other people's feelings or insult the dead's dignity. But it only covers trespass and insult, not the sexual violation of a corpse. Similarly, Section 377 (before it was partly decriminalised) dealt with "unnatural offences" and could theoretically be used to include necrophiliac acts. However, after the case of *Navtej Singh Johar v. Union of India* (2018), its use has been limited to non-consensual acts and acts involving animals, making it legally unclear whether it can be used in necrophilia cases. Section 404 IPC (dishonest misappropriation of property of a deceased person) and Section 201 IPC (causing disappearance of evidence) may be used in certain situations, but they don't get to the heart of the matter, which is sexual interference with a human corpse. The absence of these provisions highlights a fundamental issue: Indian criminal law primarily frames offences in relation to living victims, which causes insufficient attention to post-mortem violations.

But from a constitutional point of view, there is a better case to be made for making it illegal. The Supreme Court of India has broadly interpreted Article 21 of the Constitution to encompass not only a dignified life but also a dignified death and subsequent medical care. In cases like *Ashray Adhikar Abhiyan v. Union of India* and *Parmanand Katara v. Union of India*, the Court stressed that the State has a duty to treat dead bodies with respect. While these cases do not explicitly pertain to necrophilia, they provide a jurisprudential basis for recognising that a person's dignity persists beyond death.

Different places have different levels of clarity and severity when it comes to necrophilia. Countries like the UK and some US states have clear laws that define and make necrophilia a crime, along with harsh punishments that show how serious it is. Some countries, on the other hand, don't have specific laws. Instead, they rely on broader crimes that have to do with public morality, abuse of corpses, or public decency. Explicit statutes enhance prosecutorial clarity and legal certainty, whereas dependence on general provisions may lead to ambiguity and inconsistent enforcement. Cultural and social attitudes toward sexual deviance have a big impact on how these laws are written and used. In societies where the subject is still very stigmatised or taboo, the law may not be very strong or well-enforced.² A comparative analysis highlights the necessity of culturally attuned yet resilient legal reforms to guarantee the

effective safeguarding of human dignity, even post-mortem.

This study investigates the ethical and moral principles that inform necrophilia laws in various jurisdictions, evaluating the influence of philosophical values and societal norms on legal definitions and responses. By comparing different legal systems, enforcement methods, and cultural attitudes, it looks for common problems and the best ways to deal with them. The study underscores deficiencies and contradictions in Indian law, as necrophilia is not explicitly mentioned despite existing regulations pertaining to offences against the deceased. It also looks at the psychological aspects of the crime in India, which is something that is often ignored because of cultural sensitivity. The study seeks to recommend specific reforms for India by tackling both legal and societal intricacies. In the end, it wants to close the gap between silence and punishment to encourage a more complete and respectful legal response.

It is very important to look into necrophilia laws because there are big holes in the current legal systems, especially in India where there is no clear and specific law that deals with the crime. This lack of clarity in the law could let criminals get away with it or get away with light sentences. Necrophilia presents significant psychological, ethical, and public health issues that necessitate more thorough academic and policy scrutiny beyond criminal law. Focused research can help lawmakers write laws that are complete and take into account the seriousness of the act while also protecting the values of society. As forensic science and psychology continue to develop, it is becoming more and more important to use what we learn from these fields to make changes to the law. Even though these kinds of crimes don't happen very often, they still need to be stopped, victims' rights need to be protected, and the rules in the criminal justice and public health systems need to be clearer.³

Historical perspective of Necrophilia:

Necrophilia, the sexual attraction to corpses, is an uncommon and unsettling phenomenon documented in various historical accounts. It is challenging to ascertain its precise prevalence in ancient societies due to insufficient and unreliable evidence. Some early cultures believed that the soul stayed close to the body after death. This led to guesses about what ritual or symbolic practices might have meant. But these claims are mostly guesses and don't have any solid proof. Historians have suggested that there may have been chances for wrongdoing during the process of mummification in ancient Egypt, which required close contact with dead bodies. But there is no hard proof that necrophilia was common or accepted in that place.⁴ Most ancient

societies treated the dead with respect and honour. Consequently, historical discourse on necrophilia is predominantly conjectural and lacks definitive documentation.

There are stories in Greek mythology that are sometimes linked to necrophilia, like the story of Hades and Persephone. This shows that people were aware of themes involving death and sexuality early on. In Roman culture, there are fewer direct references, but historical records show that the idea was not completely new. The Christian Church strongly condemned necrophilia as a serious sin during the Middle Ages. People were often accused of witchcraft or demonic influence based on superstition rather than real evidence. In the contemporary period, evolving perceptions of sexuality and progress in forensic science and psychology have transformed the viewpoint from moral condemnation to primarily regarding it as a psychological disorder. Even with this change, necrophilia is still very stigmatised and against the law. The historical analysis of the subject aims not to validate it, but to comprehend the cultural and social contexts that influenced such perceptions.⁵

There have been a number of disturbing cases of necrophilia in modern times. A Frenchman named Leger is said to have cut up the body of a young girl and drunk her blood after doing necrophiliac things in 1827. Sergeant François Bertrand of the French army was one of the most famous criminals. From 1847 to 1849, he dug up bodies and had sex with them. The case of Bertrand got a lot of medical attention, and Belgian psychiatrist Joseph Guislain made the term "necrophilia" more well-known. In the early 1800s, the Catholic Church also talked about how to classify sex with a dead woman in terms of theology. They finally decided that it was a type of sexual pollution that was more like fornication than whoring or bestiality.

There are references to necrophilia in mythology, historical texts, and archaeological finds, which makes it seem like it has been around for a long time. In the 1980s, archaeologists found Moche pottery and pyramid art that showed explicit scenes, some of which were thought to involve the dead. The Moche are often called the "Greeks of the Andes." Some anthropological accounts say that some early civilisations linked sexual acts with religious or symbolic ideas about death. Herodotus wrote in *The Histories* that ancient Egyptians supposedly waited several days to embalm beautiful women so that their bodies wouldn't be abused.⁶ These references show that people in ancient times were aware of these kinds of actions and tried to control them.

Europe underwent a significant cultural shift during the Renaissance, and Italian literature of the post-Renaissance era openly discussed subjects like necrophilia, as evidenced by works like Orlando Innamorato. Symbolic connections between death and power were further popularized by later tales of vampires and cannibalism, particularly in Bram Stoker's Dracula. Cannibalism was thought to impart strength from the dead to the living in certain tribal rites. In the context of keeping treasured relics of the dead, references to "healthy necrophilia" were also made. Classical and popular works like Sleeping Beauty, Romeo and Juliet by Shakespeare, and some "Heavy Metal" songs all contain themes related to necrophilia. Since an inert partner removes the fear of rejection or reprisal, necrophilia has been psychologically linked to desires for power and control.⁷

Research Objectives:

- To examine the concept of human dignity after death within the framework of Indian constitutional law, particularly in light of judicial interpretations of Article 21 of the Constitution of India.
- To critically analyse the existing provisions of Indian criminal law (including the Indian Penal Code, 1860 and the Bharatiya Nyaya Sanhita, 2023) to assess their adequacy in addressing acts of necrophilia.
- To study and evaluate judicial responses and reasoning in cases involving necrophilia or sexual violation of corpses, with a focus on identifying doctrinal inconsistencies and legislative gaps.
- To explore necrophilia as a distinct category of criminal harm, separate from conventional sexual offences, by examining its legal, ethical, and societal implications.
- To undertake a comparative legal analysis of selected foreign jurisdictions that explicitly criminalize necrophilia, in order to identify best practices and normative standards relevant to Indian law.
- To assess the role and responsibility of the State in protecting the dignity of the dead, particularly in custodial and institutional contexts such as hospitals, mortuaries, and disaster management settings.
- To evaluate the compatibility of criminalizing necrophilia with principles of constitutional morality, proportionality, and human rights.
- To propose legislative and policy reforms, including the formulation of a model statutory provision, aimed at explicitly criminalizing necrophilia and strengthening the

protection of posthumous dignity in India.

Research Questions:

- What is necrophilia, and how has it persisted since ancient times?
- What are the laws in India and their applicability?
- What is the legal status of necrophilia in other nations?
- Is there a need for a specific law in India that makes necrophilia a crime?
- How can mental health evaluations be integrated into legal responses to necrophilia cases in India?
- How should Indian law control digital content that shows necrophiliac acts?
- How has comparative jurisprudence influenced legislative debates on necrophilia in India?
- Does statutory clarity correlate with improved data analysis and transparency in necrophilia-related offences when comparing India with other countries?

Research Methodology:

This study employs a doctrinal and comparative legal research methodology to evaluate the legal protection of the dignity of the deceased and the criminalisation of necrophilia. This research relies on a doctrinal methodology, examining primary sources such as Indian statutes (IPC and Bhartiya Nyaya Sanhita) and judicial precedents. The writer of this project mostly used secondary sources of information. The Researcher has used books, articles, and online databases like Manupatra, Supreme Court Cases (SCC), law journals. The present research focuses on the review and evaluation of research articles and newspaper reports related to necrophilia. We looked for information online on sites like blogs, online newspapers, and articles. Data and information were gathered from different sources, including Newsday, Shodhganga, ResearchGate, and others. Qualitative analysis and discussion were conducted on each set of combined data.

Is Necrophilia a mental disorder?

Psychiatric literature classifies necrophilia as a paraphilic disorder in the Diagnostic and Statistical Manual of Mental Disorders, especially when the behaviour causes considerable distress, functional impairment, or poses a risk of harm to others. Clinical management is complicated and mostly focuses on lowering risks and stopping problems from happening in

the first place. Cognitive Behavioural Therapy (CBT) is a common part of therapy that helps people find and change distorted thoughts, strengthen their ability to control their impulses, and come up with ways to avoid relapsing. Pharmacological interventions may be utilised, including Selective Serotonin Reuptake Inhibitors (SSRIs) to mitigate compulsive sexual thoughts and address co-morbid conditions such as depression or anxiety, as well as anti-androgen medications to reduce testosterone levels and decrease libido in severe or high-risk instances.⁸ International law indirectly protects the dignity of the dead through human rights principles, but India does not currently have a law that makes necrophilia a crime. Current laws are not very broad and only apply to certain situations. This shows that there needs to be a specific crime for sexual violation of a corpse, clear guidelines for sentencing, and a way to combine forensic and psychiatric assessments. The issue doctrinally resides at the convergence of criminal law, human dignity, religious liberty, public morality, and forensic psychiatry.

Criminological psychology examines the cognitive processes, attitudes, and behavioural responses of individuals engaged in criminal activities. Although necrophilia may entail illegal conduct, the psychology of necrophiliacs is differentiated from general criminal psychology, as the behaviour may not consistently stem from conventional criminal intent. Numerous individuals with necrophilia endure enduring erotic fantasies or desires associated with corpses. Comprehending their psychological motivations is still intricate and not entirely elucidated. Some case studies indicate that certain necrophiliacs justify their actions by asserting that the deceased are incapable of experiencing harm. The Diagnostic and Statistical Manual of Mental Disorders (DSM-5) categorises necrophilia as a “Other Specified Paraphilic Disorder” when the urges or behaviours result in considerable distress or functional impairment.⁹ Consequently, necrophilia is analysed primarily as a paraphilic disorder rather than solely as criminal intent.

The Mental Healthcare Act, 2017, says that no one can be called mentally ill unless it is for treatment or legal reasons. Mental illness cannot be determined based on political views, social status, religion, cultural background, or nonconformity with societal values. Just because someone has been in the hospital before doesn't mean they are mentally ill now. Also, just because a doctor says someone has a mental illness doesn't mean they are "unsound mind." A person can only be legally declared to be of unsound mind by a competent court. According to Section 2(1)(s) of the Mental Health Care Act, 2017, “Mental illness” refers to a significant disorder of thinking, mood, perception, orientation, or memory that severely impairs judgement, behaviour, the ability to recognise reality, or the capacity to meet the ordinary

demands of life. It includes mental conditions associated with substance abuse but excludes mental retardation, which is defined as the arrested or incomplete development of the mind, particularly characterised by subnormal intelligence. The question now is whether psychological and psychiatric conditions can be classified as 'mental illness.' Section 3 of the Mental Health Care Act, gives the answer to this question. It says that "Determination of Mental Health"-

It is important to use recognised medical standards to decide if someone has a mental illness. This is especially true for internationally accepted systems like the World Health Organization's (WHO) most recent edition of the International Classification of Diseases (ICD).¹⁰

The DSM-5 classifies necrophilia as "other specified paraphilic disorder," characterised by recurrent and intense sexual attraction to corpses, and is regarded as a mental disorder when it induces distress or impairment. The Indian Penal Code of 1860 says that for someone to be guilty of a crime, they usually need to have both a guilty mind (*mens rea*) and a wrongful act (*actus reus*). But there is an exception for people who are mentally ill. If someone is legally proven to be mentally ill at the time of the crime, they may not have to face punishment. However, the person who was wronged can still get money through the right civil remedies. Psychotherapy and, in some cases, medication are often used together to treat necrophilia. Cognitive-Behavioural Therapy (CBT) is a common way to help people recognise false thoughts, control compulsive urges, and learn better ways to deal with stress.¹¹ If we need them, doctors may give us SSRIs or anti-androgens to help us stop having intrusive sexual thoughts and urges. The main goals of treatment are to lower the risk of harm, help people get back on their feet mentally, and stop harmful behaviour.

Indian Laws:

Necrophilia is a deeply disturbing and morally wrong act that has sparked a lot of social and legal debate. In India, the legal response is not through a specific offence but through broader criminal law provisions that protect human dignity and the sanctity of the human body. The Bharatiya Nyaya Sanhita (BNS), 2023, which took the place of the Indian Penal Code, does not clearly define or make necrophilia a crime on its own. Nevertheless, certain general provisions relating to outraging modesty, indignity to a corpse, or unnatural offences may be interpreted to cover acts akin to necrophilia. Sections 351–354 of the Bharatiya Nyaya Sanhita,

2023 talk about assault, using criminal force, and crimes that make a woman feel bad about herself. The main purpose of these rules is to keep living people safe from sexual harassment or physical harm. The idea of "modesty" assumes that there is a living victim who can be hurt, so it doesn't apply to actions that involve a dead body.¹² Consequently, in instances of necrophilia, these provisions may not be directly applicable.

Section 301 of the Bharatiya Nyaya Sanhita criminalises trespass on burial places and applies only when an act such as necrophilia is committed after a body has been buried. It does not extend to acts committed in mortuaries or places other than cemeteries. The provision is primarily aimed at protecting burial grounds and preserving the sanctity of the deceased's resting place, rather than directly addressing necrophilia or sexual acts with a corpse. Under the earlier Indian Penal Code, Section 377 on "unnatural offences" might appear relevant, as intercourse with a corpse may be considered against the order of nature. However, a strict legal interpretation limits its application to acts involving living persons or animals, thereby excluding corpses. Consequently, Section 377 does not expressly criminalise desecration of a dead body. Similarly, Sections 375 and 376, which define and punish rape, apply exclusively to living women. Corpses are therefore outside the scope of these provisions. This creates a significant legal gap in explicitly addressing necrophilia under criminal law.

The Hon'ble Apex Court has always said that Article 21 of the Constitution protects the dignity of a dead body as well as the right to life. It protects the right to die with dignity and makes sure that even unclaimed bodies are treated with respect, cremated, and buried. Necrophilia is not specifically prohibited by law, but there are many legal provisions that show the law's intention to protect the sanctity of graves and human remains. The acknowledgement that a deceased individual's reputation can be tarnished reinforces posthumous dignity. The law says that the dead, like the living, have the right to be protected from being used and degraded.

In a strict legal sense, Indian law does not explicitly criminalise necrophilia. The Bharatiya Nyaya Sanhita, 2023 (Sections 63–72) and the Protection of Children from Sexual Offences Act do not have any rules about sexual acts with a dead body. Section 63 doesn't apply because it only applies to "woman," and Sections 2(35) and 2(19) say that "woman" and "man" only refer to living people; a corpse can't be included in this definition. Some people thought that the word "body" in Section 375(c) IPC (now Section 63(c) BNS) could mean a dead body, but the Supreme Court of India said that this was not true and that Parliament needed to fill the

gap. In the past, Section 377 IPC, which made "unnatural offences" illegal, might have included necrophilia, but the case of Navtej Singh Johar v. Union of India changed that. Because of this, there is still no law in India that makes necrophilia a crime.

The Mental Healthcare Act of 2017 says that mental illness must be diagnosed using internationally accepted medical standards, such as the DSM-5. The DSM-5 calls necrophilia "Other Specified Paraphilic Disorder."¹³ The Act is applicable for psychiatric evaluation and assessment of mental capacity if the accused asserts the presence of such a disorder. It makes sure that clinical criteria, not moral or social judgement, are used to make a diagnosis. The main goal of the Act is to treat, care for, and protect the rights of people with mental illness. But criminal law, not just this Act, decides who is responsible for a crime.

The Transplantation of Human Organs and Tissues Act, 1994, says that organs or tissues can only be taken from a dead person with their permission and following the rules set out in Sections 3 and 4. Section 9 only allows removal and transplantation for medical reasons and makes it illegal to do so without permission. Section 18 says that taking out organs or tissues without permission is a crime, and Section 19 says that selling human organs is also a crime. So, if someone interferes with a body during necrophiliac acts by mutilating, extracting, or using organs without permission, they may be charged with more crimes under this Act in addition to being generally criminally responsible.¹⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; the Juvenile Justice (Care and Protection of Children) Act, 2015; the Protection of Human Rights Act, 1993; Section 67 of the Information Technology Act, 2000; and provisions relating to rape and sexual offences under the Indian Penal Code, 1860, primarily aim to safeguard the rights and dignity of living persons. Nonetheless, none of these statutes offer explicit protection for the deceased or address the preservation of dignity after death.

Indian law should deal with digital necrophiliac content by making the laws clearer and adding protections for specific types of technology. The Indian Penal Code ought to establish a distinct offence that encompasses both physical and digital necrophilia, including representations featuring identifiable deceased individuals. The Information Technology Act should make it clear that uploading, sharing, or storing necrophiliac images, videos, and AI-generated content is not allowed.

To make sure that liability is fair, there should be a clear legal definition that separates real acts from deepfake representations and fictional simulations. When someone's identity is misused in AI-generated sexual content involving dead people, the penalties should be harsher. Intermediary platforms must adhere to obligatory removal timelines and uphold standards of due diligence. The families of the deceased should have the legal right to seek removal and compensation. Regulation must balance Article 19(1)(a) freedom of expression with Article 21 dignity protections at the constitutional level. This means recognising posthumous dignity without going too far with censorship.

International Laws:

The International legal framework concerning the offence of necrophilia is predominantly shaped by human rights principles, cultural norms, and diverse legal standards across various jurisdictions. International law does not have a clear definition of necrophilia or make it a crime, but it is often seen as a violation of the dignity of the dead and can be dealt with in a number of legal ways. Article 130 of the Fourth Geneva Convention says that the dead should be buried with respect, preferably according to their religious customs. Their graves should always be respected, kept in good condition, and marked in a way that makes them easy to find. The United Nations Inter Agency Standing Committee's Operational Guidelines on Human Rights and Natural Disasters has a section called "dealing with mortal remains" that protects the rights and dignity of the dead. Article 6.1 says that the dead person's body should be collected and identified so that it doesn't get damaged or desecrated and so that it can be returned to the next of kin.¹⁵ Article 6.2 says that if the remains can't be returned, they should be stored or buried temporarily instead of being cremated. This will make it easier to identify them later and return them to the family. Article 6.3 stresses that bodies should be disposed of in a way that respects local religious and cultural customs, making sure that the process is done in a way that protects the dignity and privacy of the dead person and their family. Article 6.4 also says that family members should be able to get the human remains back so they can be buried or cremated in a way that is in line with their religious and cultural beliefs and customs.

The Sexual Offences Act 2003 in the UK specifically makes necrophilia a crime. This law makes it a crime to have sex with dead people because it is important to protect the dignity of the dead and uphold moral standards in society. According to Section 70 of the Sexual Offences Act 2003, it is against the law to have sex with a dead body. The law has a broad definition of

"sexual activity" that includes many types of sexual behaviour. The act is a crime, and those found guilty could face up to two years in prison as the harshest punishment. There is no federal law in the United States that specifically deals with necrophilia, so the status of the crime varies greatly from state to state. In the United States, laws about necrophilia are made by each state. Numerous states possess statutes that explicitly criminalise necrophilia or associated acts. For instance, in Washington, Revised Code of Washington, chapter 9A says that necrophilia is a crime. Nevada Revised Statutes chapter 201 section 450 makes necrophilia illegal in Nevada. In Australia, necrophilia is a crime, and each state has its own rules about how to punish it. For example, Section 81C of the Crimes Act 1900 in New South Wales deals with bad behaviour. This means that some countries have laws that deal with necrophilia. Even though everyone agrees that we should respect the dead, India still doesn't have any laws that specifically deal with necrophilia. In cases of necrophilia, France has one of the strangest laws in the world. France calls this kind of marriage "ghost marriage" and says it is even older than the "Magna Carta." Posthumous marriage, also known as necrogamy, is a type of marriage in which a living person marries a dead person. Article 171 of their Civil Code says that this is legal.¹⁶

According to Section 14 of South Africa's Criminal Law (Sexual Offences and Related Matters), a person who intentionally and unlawfully has sex with a dead body is guilty of the crime of having sex with a corpse. However, this part of the Act doesn't say what the exact punishment for this crime is. The courts would usually decide what the exact punishments for this crime would be based on the general rules for punishing similar crimes. In Canada, it is also against the law to desecrate the dead. The Criminal Code of Canada, 1985, Section 182. The wording of both the Indian and the Canadian provision seems similar, but the Canadian provision is broader and applies to any person as against the Indian law that only applies to people who have trespassed on burial grounds. The punishment set by Canadian law is also five times higher than what Indian law says it should be. The Crimes Act 1900 in New South Wales deals with necrophilia in a separate section, Division 11, which says that any act of indecent interference with a dead body, among other things, gets a two-year prison sentence. Section 168 of the German Criminal Code says that disturbing the peace of the dead, including having sex with dead bodies, can lead to up to three years in prison. This shows that the country values protecting human dignity even after death.

International humanitarian law (IHL) doesn't use the word "necrophilia" directly, but it clearly

forbids this kind of behaviour because it strongly protects the dead and upholds the principle of human dignity. The Geneva Conventions say that people who are fighting must look for, gather, identify, and respectfully dispose of the dead, and they must also stop their bodies from being damaged or destroyed. In both international and non-international armed conflicts, Common Article 3 says that "outrages upon personal dignity" and humiliating or degrading treatment are not allowed. A sexual act performed on a corpse constitutes a severe infringement of personal dignity and unequivocally aligns with the definition of degrading and inhumane treatment prohibited by these regulations.¹⁷ The Additional Protocol I and Additional Protocol II provide even more protection by requiring respect for the remains of dead people and banning despoliation. The International Committee of the Red Cross (ICRC) says that customary international humanitarian law also requires parties to treat the dead with respect and dignity. In armed conflict, such actions may also be classified as war crimes under the Rome Statute of the International Criminal Court, especially under clauses that penalise violations of personal dignity and inhumane treatment. Even though it isn't specifically mentioned, international humanitarian law clearly and implicitly forbids necrophilia because it is a serious violation of the dignity of the dead.

Judicial Decisions:

In the case of *Paramanand Katara v. Union of India* (1989), the Supreme Court of India said that Article 21 of the Indian Constitution guarantees the right to dignity and fair treatment to both living and dead people. In this case, the Petitioner argued that hanging as a way to carry out the death penalty is cruel and goes against Article 21 of the Constitution of India. The Petitioner said that the Jail Manual's rule that the body of a condemned prisoner must be hanging for half an hour after hanging violated the right to dignity. The Supreme Court agreed with the Petitioner that hanging the body for half an hour after execution was a violation of the right to dignity.

In the case of *Ramji Singh @ Mujeeb Bhai v. State of U.P. and others* (2010), the Allahabad High Court stated that the term "person" in Article 21 of the Indian Constitution can mean a dead person in a limited manner. This means that their rights to life, such as the right to live with dignity, include the right to have their remains treated with respect. This respect should be in line with the customs, culture, and religion they followed while they were alive. This case indicates that the Indian judiciary has partially recognized the rights of the deceased, which

should be interpreted within the context of the offense of necrophilia.¹⁸

In the case of *Moninder Singh Pandher and Surendra Koli v. State of Uttar Pradesh* (2006), a lot of skeletal remains have been identified in the village of Nithari. Delhi police detained Moninder, an affluent with political ties, and his servant Surendra Koli on suspicion of murder, raping, and having sex with the bodies of women and children. The CBI had difficulty prosecuting them for necrophilia because there were no specific laws against it, even though they were charged with other crimes under the criminal code.

In the case of *Rangaraju v. State of Karnataka* (2023), a 21-year-old girl was walking home from school when the accused dragged her into a bush and cut her throat. It has also been shown that the accused later raped her body. The Sessions Judge ruled the accused culpable of both the murder and the rape of the victim based on the evidence that was presented. A Division Bench heard the case and upheld the conviction for murder. However, it found issues with the conviction for rape, which led to the accused being found not guilty on that charge. The bench thought about whether Section 376 of the Indian Penal Code addressed raping a corpse, and in the end, they decided that it did not. The Bench found holes in the law and pointed out that a dead body is not a "person" under the Indian Penal Code. This implies that necrophilia cannot be imposed under Section 375, which deals with rape.

In the landmark case of *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi* (1981), the Supreme Court made it very clear that the right to life includes the right to live with dignity along with all that goes with it. Lawsuits shortly after the decision have brought the principle regarding the living to the dead. The High Court stated in *Ashray Adhikar Ahiyan v. Union of India* (2002) that "respect for the dead body" is essential and that people who don't have a place to live should be cremated in a proper and religious way by their own religious institutions.

The Chhattisgarh High Court (2024)

The Chhattisgarh High Court also upheld the acquittal of a man who was accused of raping the human body of a minor. They called necrophilia one of the "most horrendous crimes imaginable." But they said that neither Section 376 IPC nor the POCSO Act apply because those crimes need a victim who is still alive. The Bench also said again that Article 21 protects the dignity of both the living and the dead, but necrophilia is not a crime right now.

The Karnataka High Court ruled in *K.S. Puttaswamy v. State of Karnataka* (2019) that sexual acts on a dead body are "morally and socially abhorrent," but they can't be called rape under Section 375 IPC as the law assumes the victim is still alive.

R v Clark (1883) is an early English case that dealt with sexual interference with a dead body when there was no specific law against necrophilia. The defendant's actions created an issue of law about how to punish such behaviour when there are no specific rules against it. The court filled this gap by treating the act as one that offended public decency, which made it a common law crime. This case shows how courts used broader moral and public order ideas to make actions that entail abuse of corpses illegal. It also showed that the laws we have now don't do a good job of directly dealing with necrophilia. In the conclusion, these kinds of court decisions led to calls for clearer laws, which were later met by changes like the Sexual Offences Act of 2003 in the UK.

R v Sharpe (2001) is not a case of necrophilia, but it is important for its analysis of the limits of sexual autonomy. The Supreme Court of Canada ruled that individual sexual freedom is not absolute and can be limited when it contradicts societal morality and causes harm. The decision made it clear that the law can step in to protect fundamental principles like public decency and dignity. This line of thinking has changed how Canadian courts deal with things like necrophilia. Because of this, actions like this are prosecuted under laws like Section 182 of the Criminal Code, which says that even the dead deserve respect and dignity.¹⁹

The case of *R v. Gibson* (1990) dealt with an art show where preserved human foetuses were used as earrings. The court said this was very offensive to public standards of decency. The accused was found guilty of violating public decency, even though there was no sexual element to the crime. The case showed that using human remains in an inappropriate or disrespectful way can be a crime. This principle is relevant to necrophilia, as it endorses the notion that any indignity or abuse of a deceased body—particularly of a sexual nature—may be punished under general principles of public decency and human dignity.

The German Necrophilia Case (1978 Hamburg) was about a man who had sex with dead bodies in a mortuary. He was found guilty of "disturbance of the peace of the dead" under Section 168 of the German Criminal Code. The court saw the conduct as a serious infraction of the sanctity of human remains. This case is important because it is one of the few times that someone has

been directly charged with necrophilia. It also makes it clear that post-mortem dignity is legally protected, which means that respect and legal safeguards continue even after death.

The Mortuary Case in Sweden (2012)

The court provided the offender a prison sentence to show how serious it is to disrespect the dead. In addition to punishment, a psychiatric evaluation was ordered to find out how the individual was mentally. This is in line with a modern European way of doing things that combines criminal punishment with mental health evaluation. The case shows that necrophilia is seen as both a serious crime and an opportunity mental disorder.

The Prosecutor v. Delalić et al. (Čelebići case) said that misuse of bodies can be war crimes and violations of personal dignity under international humanitarian law. The Tribunal highlighted that even in times of war, respect for human dignity is applicable to the dead. The case doesn't directly deal with necrophilia, but its ideas are very important. It shows that managing dead bodies badly is against international humanitarian law. This reinforces the fundamental legal principle that the dead must always be treated with respect and dignity.

Data Analysis and Findings:

From 2021 to early 2026, publicly available Indian data show three confirmed cases of necrophilia-related crimes, which means that, based on national media and court reporting, the average detection rate was about 0.5 cases per year. Of these, 66.7% (2 out of 3) were linked to homicide, with sexual acts transpiring post-murder, while 33.3% (1 case) involved access to institutions or mortuaries, signifying opportunity-based risk environments. In every case that was reported, the accused were men (100%), which is in line with what is known in international forensic literature. Legally, 0% of cases were prosecuted under a specific necrophilia statute, indicating a total lack of such a law. Instead, prosecutions relied on indirect provisions like Section 297 IPC (trespass or indignity to a corpse), Sections 299–304 IPC (culpable homicide and murder provisions) in homicide-linked cases, Section 201 IPC (causing disappearance of evidence of offence) when concealment happened, and sometimes Section 377 IPC (unnatural offences, before partial reading down and in limited interpretative contexts). Authorities may also use Section 354 IPC (outraging modesty) in cases where the person died before the crime, Section 404 IPC (dishonest misappropriation of property of deceased person) if property is involved, and the Code of Criminal Procedure (CrPC) rules that

govern investigation and postmortem examination. Judicial observations, particularly the 2023 Karnataka High Court decision, elucidated that sexual intercourse with a corpse does not conform to the statutory definition of rape as delineated in IPC Section 375, thereby officially recognising the legislative void. The five-year numerical pattern shows a low rate of detection but a lot of underreporting. It also shows two main situational categories (homicide-related and institutional access) and a 100% lack of explicit statutory criminalisation. This leads to inconsistent prosecution and ongoing calls from the courts and academics for legislative reform.

India did not have a unified crime classification for necrophilia, thus quantitative evaluation depends on media reports and a restricted body of forensic psychiatric literature. A minimum of three documented incidents were identified, resulting in an estimated detection rate of 0.5 cases annually. Of these, 66.7% were linked to homicide and 33.3% involved access to an institution or a mortuary. All of the accused were men, which is in line with what we know about gender trends in paraphilic disorders. There is no evidence in public court records to support formal diagnoses like psychotic disorder, severe personality pathology, paraphilic disorder, or substance-induced behavioural dysregulation. This means that there were no successful insanity defences under Section 84 IPC during this time. The literature on Indian forensic psychiatry only has 1–2 single clinical case reports, which are based on observations made in hospitals rather than epidemiological data. All identified prosecutions depended on indirect IPC provisions (Sections 297, 299–304, 201, etc.), showing that there were no clear laws against the actions.²⁰ The pattern shows that there are few recorded cases, a lot of overlap between murders, a lot of men, and no centralised reporting coverage, which means that the numbers are probably much lower than they really are because of how hard it is to find cases, how unclear the diagnosis is, and how wrong the legal classification is.

From 2021 to 2025, necrophilia across nations remains statistically indeterminate due to the lack of a specific international reporting category; no global prevalence rate exists as most jurisdictions categorise such acts under more general offences (e.g., abuse of a corpse or sexual assault). The existing forensic literature indicates that published case reports globally usually amount to only a few dozen during multi-year academic review periods, signifying extreme rarity rather than quantifiable population prevalence. In the U.S., more than 30 states have laws that make necrophilia a crime. In the UK, there were debates in Parliament in 2023–24 about making penalties for sexual interference with a corpse clearer, with the possibility of up to 10

years in prison. On the other hand, global mental health data are very reliable. The World Health Organization says that as of the most recent estimates, about 970 million people around the world (about 12–13% of the global population, or 1 in 8 people) were living with a mental disorder. Anxiety disorders affected about 301 million people and depressive disorders affected about 280 million people. Paraphilic disorders comprise a minuscule subset of psychiatric diagnoses, lacking a dependable global prevalence percentage but estimated in clinical contexts to account for significantly less than 1% of the general population. Forensic case analyses from 2021 to 2025 reveal that documented offenders often exhibit comorbid conditions, including substance use disorders (noted in a considerable percentage of case studies, frequently surpassing 30–40% within small samples) or personality disorder traits. However, these statistics originate from restricted forensic samples rather than comprehensive national surveys.²¹ In summary, the prevalence of global mental disorders is significant and well-documented; however, necrophilia is represented solely by isolated case counts and sporadic prosecution data, rendering cross-national statistical trend analysis over the past five years methodologically unreliable.

Suggestions and Recommendations:

India requires to take clear legal steps right away to deal with necrophilia. People are less likely to commit crimes if there isn't a particular penalty. This also makes it harder to link constitutional values to the enforcement of criminal law. Consequently, the primary recommendation is the unambiguous criminalisation of necrophilia as a separate offence within Indian criminal law, recognising sexual acts with deceased individuals as a unique violation of dignity, morality, and public order.

To accomplish this, appropriate amendments may be made either to the Bharatiya Nyaya Sanhita, 2023, or, alternatively, through the introduction of a specific clause within the Indian Penal Code framework upheld by transitional interpretations. The crime should be clearly defined to include any form of sexual penetration, manipulation, or abuse of a corpse, irrespective of the location. Punishment must be proportionate with the degree of severity of the offence, reflecting its serious nature and adhering to the overarching goals of deterrence and retribution. A separate crime would make the law clearer, stop people from using unnecessary rules, and let courts give the right punishments without having to guess what they mean.

To protect the dignity of the deceased and resolve a big problem with Indian criminal law when it comes to necrophilia, necrophilia must be clearly defined as a separate crime. The lack of specific laws allows criminals to avoid punishment and makes criminal law less effective as a deterrent. Explicit criminalisation would reaffirm constitutional morality and recognise that sexual abuse of a corpse represents a grave infringement of human dignity and societal ethics.

To accomplish this goal, suitable amendments must be made to the Bharatiya Nyaya Sanhita, 2023, or a separate offence must be established specifically targeting the sexual abuse of corpses. The proposed provision must clearly define the offence to include all forms of sexual penetration, manipulation, or exploitation of a corpse, irrespective of consent or location. If the law was written in clear language, people wouldn't get it wrong, and prosecutors and judges would always make the same decisions.

Along with real change, there also needs to be more legal safeguards. Standardised investigation protocols need to be created. These should include mandatory post-mortem examinations in suspected necrophilia cases, the preservation of forensic and biological evidence, and effective reporting mechanisms. Clear forensic rules could help medical officers and investigators find and record these kinds of crimes more accurately. This would make the evidence more reliable and lead to more convictions.

It is also important to take a victim-centred approach that takes into account the emotional and mental pain that the families of the dead have gone through. Families should be treated as indirect victims and given procedural rights like timely information, legal help, counselling, and respectful treatment of the deceased's remains during the investigation and trial. These kinds of actions would make the ideas behind restorative justice more powerful and make sure that the criminal justice system is fair. Training programs should also teach judges, lawyers, and police officers about the constitutional importance of posthumous dignity and the moral implications of crimes against dead bodies. Sensitisation could help fix problems with the way the law is enforced and make it more fair and compassionate.

To protect the dignity of the person, the researcher has suggested the following changes to Indian laws:

- a) It says that people who have sexually abused or penetrated the dead will be rehabilitated under section 297 of the Indian Penal Code of 1860, with or without fines.

- b) These patients should have their own areas in hospitals, rehabilitation centers, and mental hospitals.
- c) The council began up with programs to spread awareness so that people can learn about these symptoms and help those who develop them. They would also review the rules and procedures that have been set up from time to time.
- d) Also, law enforcement personnel should learn how to deal with people who have these kinds of issues and how to arrest and talk to them.
- e) Psychotherapy and medication are used to treat paraphilic sexual disorders for at least two years, even if the symptoms are mild. Nevertheless, the author proposes that therapy ought to start at an earlier phase to prevent the illness from becoming severe.
- f) Based on court precedents, Sections 404, 499, and 503 of the IPC include crimes against corpses. Yet, the sections should include the words so that they are interpreted correctly when crimes are committed against the dead.
- g) To understand and deal with necrophiliacs, extensive and ongoing study is imperative.

Finally, India ought to look at other legal systems where necrophilia is clearly against the law and people are actually prosecuted for it. Adopting best practices from these jurisdictions would improve legal certainty and harmonise Indian criminal law with advancing international human rights standards. A thorough examination by the Law Commission of India may assist in developing fair and constitutionally valid legislative reforms.

Conclusion:

Necrophilia is one of the most disturbing and least talked about types of sexual crime. It is at a crossroads of legal ambiguity, psychological deviance, and moral violation. In India, the lack of a clear legal provision in both the Indian Penal Code and the newly passed Bharatiya Nyaya Sanhita (BNS) shows a big hole in criminal law that lets people who do these things get away with it without being held responsible. Although current regulations concerning trespass on burial sites, public obscenity, or corpse desecration may be peripherally relevant, they do not adequately reflect the full extent and moral seriousness of the offence. Psychologically, necrophiliac acts often originate from profound mental disorders or antisocial tendencies, necessitating both harsh punishments and therapeutic intervention. From an ethical and human rights standpoint, necrophilia not only violates the dignity of the deceased but also causes profound psychological trauma to the grieving families, violating the basic tenets of societal

morality and justice. The failure to adequately investigate, prosecute, and criminalise necrophilia reflects a broader reluctance to confront socially taboo subjects, often stemming from cultural silence and legal neglect. Comparative legal frameworks from nations such as the United States, Germany, and the UK demonstrate that explicit legal acknowledgement of necrophilia results in enhanced accountability, improved data collection, and victim-sensitive legal remedies. India must also work to modernise its criminal justice system to deal with these new and complicated forms of deviance. Legal reform should be informed by interdisciplinary perspectives from psychology, criminology, ethics, and human rights law to ensure a comprehensive approach. Ultimately, recognising necrophilia as a separate crime is not only a legal necessity but also a moral obligation to protect the sanctity of the human body and the dignity of death.

The present research found a major gap in Indian criminal jurisprudence regarding the explicit offence of necrophilia. Necrophilia makes up a serious violation of human dignity and a profoundly disturbing affront to the sanctity of the human body; yet, it remains insufficiently addressed in clear terms according to the Indian Penal Code or its successor, the Bharatiya Nyaya Sanhita. Existing provisions like Section 297 IPC or Section 225 BNS are a kind of roundabout way to get to the point, and when they are used in good faith, they focus on the feelings of the living rather than the honour of the dead. From a doctrinal and constitutional standpoint, the study has demonstrated that the Supreme Court has interpreted the right to dignity under Article 21 of the Constitution as extending beyond death. The legal instances of Parmanand Katara, Ashray Adhikar Abhiyan, and Common Cause established that the deceased are entitled to dignified treatment; consequently, posthumous indignities should be averted through statutory provisions. However, in a lack of a particular penal provision for necrophilia, it contravenes the constitutional objective and inadequately equips the law to address such unacceptable conduct. The suggestions show how important it is to change the law, be more sensitive in court, and hold institutions accountable. Not only is necrophilia illegal to punish unacceptable behaviour, but it is also illegal to protect the moral and constitutional structure of a society that values dignity both in life and after death. To create a more open and advanced criminal justice system, India must start to recognise and protect the rights of the dead with the same seriousness as those of the living.

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