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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LEGAL LACUNAE IN ADDRESSING NECROPHILIA: A JURISPRUDENTIAL AND STATUTORY REVIEW

AUTHORED BY - ADV. SITHARA SHAJI

Abstract

This article undertakes a critical examination of the legal vacuum surrounding necrophilia within the Indian criminal justice system. While necrophilia—a sexual act involving human corpses—is widely considered morally reprehensible and psychologically deviant, Indian law remains silent on its explicit criminalization. Through a jurisprudential lens, the paper explores the concept of posthumous dignity, arguing that the legal system must extend protection to the deceased as a matter of ethical and constitutional obligation. Despite the introduction of the Bharatiya Nyaya Sanhita, 2023, the statutory framework fails to incorporate provisions that address necrophilic conduct, leaving enforcement agencies and victims' families without clear legal recourse. By drawing upon comparative legal frameworks from jurisdictions such as the United Kingdom and the United States, and reflecting on historical and cultural contexts, the article highlights the enduring presence of necrophilia and the need for comprehensive statutory reform. A case study of the Nithari killings further illustrates the judicial and procedural challenges posed by the absence of specific legal recognition. The paper concludes by recommending targeted legislation that affirms posthumous dignity, ensures accountability, and aligns Indian criminal law with global ethical standards.

Keywords:

Necrophilia, Posthumous Dignity, criminal law, Nithari Case, Legal Reform,

I. INTRODUCTION

Criminal law exists to safeguard individual rights, maintain public order, and uphold collective morality. Yet, certain actions that deeply offend societal conscience remain inadequately addressed in existing legal frameworks. One such action is necrophilia, defined as the performance of sexual acts with or attraction toward a human corpse¹. Despite its disturbing nature, necrophilia continues to fall outside the ambit of explicit criminalization in several jurisdictions, including India. The absence of legal recognition of such conduct not only reflects an outdated legislative mind set but also undermines the dignity of the dead and the emotional integrity of surviving families.

Historically, India's criminal justice system operated under the Indian Penal Code, 1860² a colonial-era legislation that, while far-reaching for its time, did not anticipate certain modern social and ethical challenges. The recent introduction of the Bharatiya Nyaya Sanhita, 2023³, while aiming to modernise the penal code, largely retains the structural framework of its predecessor and similarly fails to address necrophilia explicitly.

In the absence of targeted provisions, such conduct is addressed—if at all—under broadly framed laws concerning the desecration of burial sites or indignity to human remains. These are often insufficient to convey the specific gravity and moral repugnance of necrophilic acts. This legal ambiguity raises pressing jurisprudential and ethical questions: Does the law have a duty to protect the dignity of the deceased? Can human dignity persist beyond death? Should the legal system criminalise acts that violate core societal values even if they do not cause direct harm to the living?

This article critically analyses the statutory void in Indian criminal law concerning necrophilia, through a jurisprudential lens and a comparative legal approach. It aims to advocate for legislative reform that recognises necrophilia as a distinct criminal offence, reflecting evolving societal standards of morality, dignity, and human decency—even in death.

¹ Priyanshi Vashishtha and Kartikey Pandey, "Necrophilia and different perspectives of the offence" 2 *Jus Corpus Law Journal* 402 (2022).

² The Indian Penal Code, 1860 (Act no 45 of 1860).

³ The Bharatiya Nyaya Sanhita, 2023 (Act no 45 of 2023).

II. JURISPRUDENTIAL CONCERNS: DIGNITY BEYOND DEATH

Necrophilia, derived from the Greek words nekros (dead) and philia (love), refers to a deviant sexual fixation on corpses⁴. While often sensationalised in popular media, necrophilic acts are well-documented in forensic psychiatric literature⁵ and raise grave legal and ethical concerns. These includes violation of bodily sanctity, impossibility of consent, and desecration of human remains. The widespread cultural revulsion that such acts provoke has historically contributed to both social ostracisation and legal neglect.

A central challenge in legally addressing necrophilia is the status of its subject that is the corpse which is not recognised as a legal person. Indian law, like many other legal systems, does not confer personhood upon the deceased, thus creating a foundational gap: the dead cannot be bearers of rights in the legal sense. Although the dead are not considered legal persons, jurisprudence and customary law recognize that certain rights persist beyond death namely, the right to dignity, the right to a decent burial, and the right against desecration.

The principle of posthumous dignity the idea that human dignity persists beyond death has found indirect recognition in Indian constitutional jurisprudence. Article 21⁶ of the Constitution, which guarantees the right to life and personal liberty, has been interpreted by courts to encompass human dignity. Though not explicitly extended to the deceased, judicial pronouncements in cases involving unlawful exhumation or mutilation of corpses have acknowledged the sanctity of human remains⁷.

Nevertheless, neither the Indian Penal Code, 1860, nor the Bharatiya Nyaya Sanhita, 2023, contains provisions specifically criminalising necrophilia. Sections such as 301⁸ of the BNS, which penalise injury to dead bodies or trespass of burial sites, do not address the sexual and psychological dimensions of necrophilic conduct.

India has enacted comprehensive legal protections against sexual abuse through statutes like

⁴ Supra note 1

⁵ Anil Agarwall, *Necrophilia Forensic and Medico-Legal Aspects* (CRC Press, Boca Raton, 1st edn.).

⁶ The Constitution of India, art 21.

⁷ *Adhikar Abhiyan v. Union of India*, AIR 2002 SC 554: the Supreme Court declared that the dignity of the departed must be protected and that a deceased homeless person has the right to a respectful cremation in accordance with his or her religious customs., *Parmanand Katara v Union of India*, AIR 1989 SC 2039: the Supreme Court of India ruled that Article 21 applies to both living and dead people.

⁸ Supra note 3, s.301.

the Protection of Children from Sexual Offences Act, 2012, the Sexual Harassment of Women at Workplace Act, 2013, and the Information Technology Act, 2000. However, none of these laws extend protection to the deceased, thereby exposing a critical lacuna in the statutory framework.

In contrast, numerous jurisdictions have enacted legislation explicitly criminalising necrophilia. Various U.S. states and the United Kingdom, recognise the unique societal and moral harms posed by such acts. The legal clarity in these jurisdictions highlights the pressing need for Indian lawmakers to address the existing statutory vacuum.

Furthermore, the absence of specific legal safeguards carries significant social consequences. Families of the deceased may suffer profound psychological trauma upon learning of such violations, only to discover that the law offers them no clear recourse. This not only compounds their grief but also erodes public trust in the criminal justice system. In sum, India's current legal architecture leaves the deceased vulnerable to moral indignities such as necrophilia. There is an urgent need for reform to recognise posthumous dignity as a cornerstone of legal and ethical governance.

III. STATUTORY ANALYSIS: GAPS IN BNS

Indian legal framework

The Indian Penal Code, 1860, long regarded as the foundation of Indian criminal law, was developed in a colonial context that did not envisage modern psychological and sexual offences such as necrophilia. The Bharatiya Nyaya Sanhita, 2023, though introduced as a reformative statute, maintains much of the IPC's original structure and does not specifically criminalise sexual acts involving corpses. Section 301 of the BNS penalise injury to dead bodies and trespass on burial places. However, these provisions are designed to uphold public order and reverence for burial practices rather than address the distinct violation of necrophilic acts.

This legislative oversight presents significant enforcement challenges. In the absence of specific provisions, authorities must rely on general laws ill-equipped to reflect the full moral and psychological weight of necrophilia. This may result in lenient sentencing, ambiguous charges, and a lack of deterrent effect. Additionally, victims' families are deprived of a clear and targeted legal remedy.

Impact of Legislative Silence

The legislative void surrounding necrophilia results in profound practical and ethical consequences. Law enforcement agencies face difficulty in categorising and prosecuting necrophilic acts due to the absence of precise legal definitions. Courts, similarly, operate in a vacuum, lacking guiding precedents or statutory mandates to address such conduct.

This not only impedes legal accountability but contributes to the underreporting of such crimes. In cases that do reach court, charges are often diluted, leading to disproportionate punishment and undermining the gravity of the offence. The silence of the law on this issue signals not merely a statutory deficiency, but a failure to uphold the broader moral underpinnings of the criminal justice system. Families and communities affected by such acts are left without closure, exacerbating psychological trauma and diminishing faith in legal institutions. This failure of legislative recognition thus represents an abdication of both legal duty and ethical responsibility⁹.

Comparative legal approaches

Several countries have moved decisively to criminalise necrophilia. In the United States, multiple states have enacted laws that explicitly prohibit sexual acts involving corpses. For instance, California Code, Health and Safety Code-HSC Section 7052¹⁰ penalises sexual contact with a dead body, while New York¹¹ and Texas¹² have adopted similar statutes.

Under section 70 of the United Kingdom's Sexual Offences Act 2003¹³, criminalises the "sexual penetration of a corpse," thereby establishing a clear legal boundary that affirms posthumous dignity.

These laws not only serve punitive and deterrent functions but also reflect societal condemnation and provide redress to bereaved families. They embody a recognition of the moral, psychological, and symbolic harm inflicted by necrophilic acts and affirm the necessity of safeguarding the dead within a legal framework. In contrast, India's continued legislative silence reflects a reluctance to confront taboo subjects. A comparative legal approach

⁹ Supra note 1 at 408.

¹⁰ California Health and Safety Code, s. 7052.

¹¹ New York Penal Law, art. 130.

¹² Texas penal code, s 42.08.

¹³ United Kingdom's Sexual Offences Act 2003, s 70.

underscores the importance of statutory clarity and moral responsibility, reinforcing the need for India to enact specific laws criminalising necrophilia.

Need for Specific Legislation

General provisions such as those addressing injury to dead bodies or trespass on burial sites are inadequate to capture the specific violation posed by necrophilia. There is a pressing need for legislation that defines necrophilia as a distinct offence, with appropriate penalties and procedural clarity. Such a statute should rest on three core jurisprudential principles:

1. **Recognition of posthumous dignity**—affirming that human dignity does not end at death.
2. **Deterrence of morally reprehensible conduct**—through proportionate punishment.
3. **Provision of redress to affected families**—acknowledging their trauma and reinforcing the legitimacy of their legal grievances.

Supplementary provisions should also be considered to regulate the handling, transport, and preservation of human remains, thereby ensuring holistic protection against related violations. Enacting a specific provision addressing necrophilia would not only fill a legislative void but also harmonise Indian law with global best practices, upholding the dignity of the deceased and reinforcing the moral legitimacy of the justice system.

IV. Historical and Cultural Perspectives on Necrophilia

Necrophilia, far from being a modern anomaly, has deep historical roots and has been documented in various ancient cultures. Herodotus, often regarded as the “Father of History,” recorded that the ancient Egyptians took specific precautions to prevent necrophilic acts¹⁴. In his work *‘The Histories’*, he noted that the bodies of women of high social status were not immediately handed over to embalmers. Instead, they were left to decompose for three to four days before preservation to deter the embalmers from committing sexual acts with the corpses¹⁵.

Legend also surrounds historical figures such as King Herod, who was rumored to have engaged in sexual activity with the corpse of his wife, Marianne, for seven years after her death.

¹⁴ Jonathan P. Rosman and Phillip J. Resnick, “Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia” 17 *Bulletin of the American Academy of Psychiatry and the Law* 153 (1989)

¹⁵ Neelakshi Bhaskar, “Necrophilia Legal Perspective” 2 *International Journal of Legal Science and Innovation* 243 (2020)

Similarly, Greek tyrant Periander was accused—albeit metaphorically—of necrophilic behavior, described in Herodotus’s account as “baking his bread in a cold oven.”

In antiquity, necrophilia was not confined to royal myths. Sailors returning home with corpses were often suspected of engaging in necrophilic acts due to the extended isolation of voyages, the lack of oversight, and the opportunities presented by unmonitored access to dead bodies. This suggests that necrophilia was not only present but also acknowledged as a possibility in seafaring cultures¹⁶.

Archaeological evidence also supports the ancient origins of necrophilia. During the 1980s, researchers uncovered murals in pyramids attributed to the Moche civilization also known as the "Greeks of the Andes" depicting scenes of sexual activity involving the dead. The Moche, who inhabited what is now northern Peru from the 1st to the 8th century CE, often featured necrophilic imagery in their ceramics. These artifacts include portrayals of women masturbating male skeletons, pointing to a cultural or ritualistic association with the dead¹⁷.

Certain civilizations reportedly practiced necrophilia as a ceremonial or traditional rite. For instance, Hittite laws, which spanned from the 16th to the 13th century BCE, explicitly permitted sexual intercourse with corpses. Additionally, historical records from the Later Yan dynasty of northeast China reveal that Emperor Murong Xi maintained a sexual relationship with the corpse of his empress, Fu Xunying, even after she had been placed in a coffin¹⁸.

European history also records instances of necrophilic expression. In Renaissance Italy, during the moral upheaval that followed the Black Death and before the onset of the Roman Inquisition, literature often contained sexual themes, including necrophilia. One example is *Orlando Innamorato* by Matteo Maria Boiardo, first published in 1483, which includes allusions to necrophilic desires¹⁹.

In modern times, necrophilia continues to surface in disturbing criminal cases. American serial killer Jeffrey Dahmer, for example, is known to have engaged in necrophilic acts. Dahmer sought to create submissive sex slaves by drugging his victims, and when his plans failed, he

¹⁶ Pradeep Kumar, Sushma Rathee and Rajiv Gupta, “Necrophilia: An Understanding” 7 *The International Journal of Indian Psychology* 607 (2019)

¹⁷ *Id.* at 608.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

resorted to killing them. He then kept their corpses for extended periods, performing sexual acts on them until decomposition rendered the bodies unusable. He admitted that his necrophilic behavior was driven by a desire for complete control and the inability of the dead to leave him or protest²⁰. Similarly, British serial killer Dennis Nilsen also exhibited necrophilic tendencies, preserving corpses for sexual gratification²¹.

Despite its ancient presence, the term “necrophilia” was not formally coined until 1850 by Belgian psychiatrist Joseph Guislain. Its broader academic usage only began after Richard von Krafft-Ebing included it in his 1894 work *Psychopathia Sexualis*, where he described necrophilia as a "horrible manifestation of sadism."²² His misunderstanding continued through 1941 when Abraham A Brill stated that necrophiliacs were psychotic, mentally deficient, and incapable of finding a consenting partner²³.

These historical accounts and evolving interpretations demonstrate that necrophilia is not a recent or isolated pathology but rather a recurring phenomenon embedded within human societies across time and cultures.

V. CASE STUDY

The Nithari killings, also known as the 2006 Noida serial murders, occurred in Nithari village, located in Sector 31, Noida, Uttar Pradesh. Between 2005 and 2006, numerous cases of missing children mostly from lower-income families were reported, but the local police failed to initiate serious inquiries into these disappearances.

On 29 December 2006, the case came to light when skeletal remains of individuals, mostly children, were discovered in a drain behind the house of Moninder Singh Pandher, a local businessman, and his domestic worker, Surinder Koli. The forensic evidence suggested that many of the victims were sexually assaulted, murdered, and dismembered, with some reports alleging instances of necrophilia and cannibalism.

²⁰ Supra note 16 at 608

²¹ *Ibid*

²² Anil Agarwal, “A New Classification of Necrophilia” 16 *Journal of Forensic and Legal Medicine* 316 (2009).

²³ Supra note 16 at 608.

Following public outrage, the case was handed over to the Central Bureau of Investigation (CBI) in January 2007. The CBI arrested Surinder Koli, who confessed to the crimes, detailing a pattern of luring victims to the house, committing rape and murder, and disposing of the bodies in a drain or pit behind the house. While Koli was convicted in multiple cases and sentenced to death, Pandher was initially exonerated but was later convicted in a few of the trials.

In a significant legal development, the Karnataka High Court ruled in May 2023 that sexual acts performed on a dead body do not amount to rape under Section 375²⁴ of the Indian Penal Code. The court clarified that rape requires the victim to be alive, and as a dead body cannot consent or qualify as a "person" under the IPC, such acts fall outside the ambit of existing rape laws.

This interpretation was subsequently affirmed by the Supreme Court of India in February 2025. The apex court noted that Indian penal law does not recognize necrophilia as an offence and emphasized the need for legislative reform to criminalize such acts specifically.

In October 2023, the Allahabad High Court acquitted both Koli and Pandher, citing lack of credible evidence, procedural irregularities, and inadmissible confessional statements obtained without procedural safeguards under the Evidence Act and Code of Criminal Procedure. The court criticized the CBI for its tunnel-visioned investigation and failure to explore alternative motives such as organ trafficking.

Following the High Court's ruling, the CBI filed Special Leave Petitions (SLPs) before the Supreme Court of India. On 17 July 2024, the Supreme Court issued notice in the case titled *State through CBI v. Surinder Koli*²⁵ indicating its willingness to review the acquittals. The matter was listed for final hearing on 25 March 2025. As of now, the legal proceedings are ongoing in the court.

The Nithari killings serve as a grim reminder of the vulnerabilities in India's criminal justice system, particularly in cases involving heinous and morally reprehensible acts like necrophilia.

²⁴ The Indian Penal Code, 1860 (Act no 45 of 1860) s. 375.

²⁵ Neutral Citation No. -2023:AHC:199091-DB

While Surinder Koli's confessions included explicit references to sexual acts with corpses, the absence of a specific legal provision criminalising necrophilia severely constrained the judiciary. The Karnataka High Court's 2023 ruling—and its subsequent affirmation by the Supreme Court—clearly demonstrates the existing statutory lacuna. Despite public outrage and forensic evidence suggesting sexual abuse of dead bodies, courts were compelled to interpret the law narrowly, ultimately allowing a miscarriage of justice in certain instances. The Nithari case thus underscores the urgent need for legislative clarity to ensure accountability for necrophilic acts and uphold the sanctity and dignity of the deceased.

VI. CONCLUSION

The continued absence of explicit legal provisions criminalising necrophilia in India reflects a deeper failure to evolve the criminal justice system in line with contemporary moral and ethical standards. Necrophilia, though rare, represents a profound violation of posthumous human dignity and causes irreparable trauma to families of the deceased. The inadequacy of relying on general provisions reveals a statutory framework unprepared to address the unique and deeply disturbing nature of such acts.

Comparative legal models from jurisdictions like the United Kingdom and the United States demonstrate that it is both possible and necessary to enact specific provision targeting necrophilic conduct. These statutory provision recognise the symbolic and societal harm inflicted by such acts and provide victims' families with a sense of justice.

Recommendations for Reform:

- 1. Enactment of Specific Legislation:** The Indian Parliament should introduce a dedicated provision within the Bharatiya Nyaya Sanhita or a standalone statute explicitly criminalising necrophilia, incorporating clear definitions, penalties, and procedural guidelines.
- 2. Recognition of Posthumous Dignity:** Jurisprudence should evolve to affirm that the right to dignity extends beyond death, reinforcing legal protection for human remains and guiding judicial interpretation in future cases.
- 3. Institutional Training and Sensitisation:** Law enforcement personnel, forensic experts, and judicial officers should be sensitised to handle cases involving necrophilia with the psychological nuance and legal precision such cases demand.

4. **Public Awareness and Victim Support:** Campaigns should be initiated to raise public awareness about the gravity of necrophilic acts and to establish support structures for bereaved families facing trauma compounded by legal inaction.
5. **Holistic Regulatory Measures:** Supplementary regulations should be introduced to ensure ethical treatment of corpses in hospitals, morgues, and funeral homes, thereby preempting opportunities for necrophilic abuse.

In conclusion, addressing necrophilia through targeted legal reform is not merely a legislative necessity but a moral imperative. A just society must protect the dignity of its members both living and deceased and ensure that its legal framework reflects the evolving conscience of its people.

