
PROTECTING THE DIGNITY OF THE DEAD: A COMPARATIVE LEGAL ANALYSIS BETWEEN INDIA AND UNITED KINGDOM

Ishita Biswas, Law College Durgapur, Rajbandh, West Bengal, India 713212

ABSTRACT:

The deceased's dignity endures beyond death, remaining a moral and legal obligation for the living." Justice A.K. Sikri (quoted from Dignity Jurisprudence)

Necrophilia is the act of engaging in sex with a dead body. Paraphilia is an erotic sexual interest that has broad acceptance in psychology. Death does not wipe out human dignity; it is a fundamental right to life guaranteed in Article 21 of the Indian Constitution. But the legal system doesn't do enough to protect the rights and dignity of the dead. The word "necrophile" refers to someone who gets sexual pleasure from having sex with a dead body. The word "necrophilia" refers to the act of having sex with a dead body. This research article clarifies the legal status of necrophilia in India, highlighting the lack of specific legal provisions. In Rangaraju vs. State of Karnataka (2023), the Karnataka High Court ruled that sexual acts with a corpse do not qualify as rape or unnatural offences under the IPC, which has since been replaced by the BNS, 2023. The absence of a specific provision persists, leaving judicial concerns unresolved.¹ The article also contrasts the legal situation in the United Kingdom, where section 70 of the Sexual Offences Act, 2003, harshly criminalizes necrophilia and carries a sentence of six months to two years imprisonment. Despite this, it has been criticized for its more limited application and mild penalties. To uphold the constitutional ideal of dignity stated in Article 21 and to foster societal respect for the deceased, the study finally emphasizes the need for prompt legislative action in India to explicitly criminalize necrophilia.²

Keywords: Necrophilia; Dignity of the Dead; Article 21; Bharatiya Nyaya Sanhita, 2023; Indian Criminal Law; Rangaraju v. State of Karnataka (2023); Sexual Offences Act, 2003 (UK); Comparative Legal Analysis.

INTRODUCTION:

"Respect for the dead is the greatest manifestation of respect for the living."

— Studies on Ethics and Human Right

Human dignity is at the foundation of constitutional governance and is an essential aspect of the right to life and personal liberty guaranteed by Article 21 of the Indian Constitution. Over the years, Indian courts have interpreted this clause broadly and deliberately, considering that the right to life includes both the right to exist as an animal and the right to live with dignity, autonomy, and respect.³ The philosophy of law has gradually evolved to acknowledge that dignity does not end with death and that the deceased have a right to have their mortal remains treated with respect. Thus, the preservation of the deceased is a matter of social custom, moral obligation, and constitutional and legal concern.⁴

Necrophilia, which is having sex on a dead body, is one of the worst things you can do to someone after they die. Such conduct not only shows an absence of respect for the human body, but it also seriously undermines moral principles, social norms, and the public conscience.⁵ Necrophilia is a crime in India that isn't clearly defined or punished as a separate offence, even though it is inherently disgusting. This is a big problem with Indian criminal law. Current sexual offence laws don't do a good job of demonstrating the severity of necrophiliac acts are because they only apply to living victims.⁶ Laws that deal with the disrespect of dead bodies are also too limited in scope and purpose.

Courts have acknowledged the moral repugnance of necrophilia while complying with the legality principle, but they've refrained from imposing criminal liability in the absence of express mandates due to this legal silence. At the same time, necrophilia has been made criminalized in similar legal systems, like the UK, which finds it a crime against human dignity, public decency, and social harmony.⁷

Nonetheless, the Indian legal system still has shortcomings in posthumous dignity protection. The Indian Penal Code, 1860 does not explicitly list necrophilia, which is defined as having sex with a deceased person, as a crime. Because acts against corpses are predicated on the existence of a living victim, they are not covered by provisions pertaining to sexual offenses, such as those governing rape and unnatural acts. Section 297 of the IPC, which prohibits trespassing in graveyards and abusing a human body with the intent to offend religious

sentiments, provides only indirect protection.⁸ Its narrow focus on religious sentiments and burial circumstances makes it insufficient to address the worsening and inherently sexual nature of necrophilia.⁹

In order to update substantive criminal law, criminal procedure, and the law of evidence, India's criminal justice system underwent an important change with the passage of the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023. Despite this important legislative modification, necrophilia is still not listed as a separate crime in the new criminal code.¹⁰ The Bharatiya Nyaya Sanhita, which replaces the IPC and retains a similar structure with regard to sexual offenses and offenses against human bodies, maintains the current legal loophole regarding the sexual exploitation of corpses. This absence is especially shocking in light of the new legislation's emphasis on victim-centric justice, dignity, and constitutional morality.¹¹

In India, judicial responses have been limited due to the lack of explicit statutory provisions. In accordance with the legality principle, courts have consistently recognized necrophilia as a morally repugnant and constitutionally offensive act, but they have declined to impose criminal liability in the absence of a clear legislative mandate. Even under the recently passed criminal statute, this situation reveals a concerning inconsistency between the current criminal law framework and constitutional ideals of dignity.

In addition, procedural and regulatory provisions governing the handling of dead bodies further underline the State's obligation to ensure posthumous dignity. Under the criminal procedure framework—earlier Section 174 of the Code of Criminal Procedure, 1973, now substantially carried forward under the Bharatiya Nagarik Suraksha Sanhita, 2023—the law mandates inquests and lawful handling of bodies in cases of suspicious or unnatural deaths. Public health laws, municipal regulations, and hospital guidelines also prescribe respectful custody and disposal of human remains. While these provisions acknowledge the sanctity of the dead body, they operate only in a regulatory or procedural sphere and do not address the penal consequences of sexual exploitation of corpses, thereby leaving a substantive gap in criminal law.¹²

RESEARCH OBJECTIVES:

- (1) To investigate if Article 21 of the Indian Constitution safeguards the dignity of the

deceased.

- (2) To determine the sufficiency of current Indian legislation (IPC 1860, Section 297 IPC, BNS 2023) in addressing necrophilia.
- (3) To evaluate judicial responses to necrophilia and the constraints imposed by the principle of legality.
- (4) To investigate the criminalisation of necrophilia in the United Kingdom and evaluate the efficacy of these laws.
- (5) To obtain comparative knowledge from the UK for prospective legislative reform in India.
- (6) To suggest steps to make necrophilia a crime in India so that dead people can keep their dignity.

RESEARCH PROBLEM:

The main problem addressed in this study is the absence of a uniform and explicit legal framework in India to criminalise necrophilia, despite the constitutional recognition of dignity beyond death as provided in Article 21 of the Constitution of India. Indian criminal law, such as the Indian Penal Code of 1860 and the Bharatiya Nyaya Sanhita of 2023, fails to explicitly state necrophilia as a crime. This makes the law insufficient, enforcement inconsistent, and deterrence weak. Current regulations, like Section 297 IPC, provide only minimal and incidental protection, as they emphasise religious sentiments over the fundamental violation of human dignity resulting from sexual acts on a corpse.

Several related research problems arise beyond this basic problem. First, there is a persistent gap between constitutional morality and penal legislation, as judicial recognition of dignity post-mortem has not been converted into enforceable criminal standards. Second, the fact that the courts can't punish necrophilia because of the principle of legality shows how limited judicial interpretation can be when there is no action by the legislature. Third, the failure of recent criminal law reforms under the Bharatiya Nyaya Sanhita, 2023 to tackle necrophilia raises worries about how well and how carefully modern laws are made.

Fourth, there is a deterrence deficit caused by the absence of proportionate punishment, which may undermine public confidence in the criminal justice system. Fifth, Indian law suffers from a victim-recognition vacuum, as neither the deceased nor their families are acknowledged as rights-bearing stakeholders entitled to legal protection or remedies. Sixth, a procedural–substantive disconnect persists, wherein laws governing the handling of dead bodies ensure administrative compliance but fail to criminalize sexual exploitation of corpses.

Finally, a significant comparative deficiency exists when Indian law is contrasted with jurisdictions such as the United Kingdom, where necrophilia is expressly criminalized to safeguard public decency and posthumous dignity. These multiple research problems collectively raise the broader question of whether India’s continued legislative silence on necrophilia is constitutionally sustainable and compatible with evolving international legal standards.

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. The doctrinal approach involves an in-depth review of Indian laws, including the Indian Penal Code 1860, Section 297 IPC, and the Bharatiya Nyaya Sanhita 2023, in addition to pertinent Supreme Court and High Court cases. To understand the legislative intent, identify gaps, and see if the current provisions are good enough, people also read scholarly articles, commentaries, and reports from law commissions.

The study employs a comparative legal framework by examining statutory provisions and judicial enforcement in the United Kingdom, specifically the Sexual Offences Act 2003. The efficacy of UK legislation in criminalising necrophilia, deterring offences, and safeguarding posthumous dignity is analysed to extract insights for potential legislative reform in India.

An analytical framework is employed to discern the discrepancies between constitutional assurances under Article 21 and statutory provisions, evaluate the pertinence of the new criminal laws (BNS, BNSS, BSA 2023), and recommend strategies for explicit criminalisation. The emphasis remains on legal and constitutional dimensions, with psychological, medical, or sociological factors incorporated solely to augment the legal examination.

The study is limited to the legal frameworks of India and the UK, highlighting statutory and judicial opinions on necrophilia. This method makes sure that the analysis is organised and based on evidence, and it gives a basis for practical suggestions to improve the protection of posthumous dignity in India.

LITERATURE REVIEW:

Scholarly discourse on necrophilia has studied its legal, constitutional, and comparative features in both Indian and international contexts, although Indian literature on the subject is limited.¹³ Scholars have underscored that necrophilia represents an essential violation of human dignity, as stated in Article 21 of the Constitution of India. Judicial decisions have consistently upheld that the right to dignity transcends life, encompassing the duty to ensure the respectful treatment of human remains (*S. P. Gupta v. Union of India*, 1982). However, commentators observe a persistent contradiction between this constitutional guarantee and the statutory framework, as the IPC 1860 and Section 297 IPC do not explicitly criminalise sexual acts against corpses (Menon, 2019; Sharma, 2021).¹⁴

Recent research on criminal law reform in India, such as the study of the Bharatiya Nyaya Sanhita 2023, highlight the current state of the criminal justice system and its emphasis on victim-oriented justice. However, legal scholars have stated that the BNS primarily highlights living victims, thus inadequately protecting posthumous dignity (Rao, 2023).¹⁵ Judicial commentary recognises the moral reprehensibility of necrophilia while highlighting that courts are limited by the principle of legality, which forbids the establishment of offences solely through judicial interpretation (Kumar, 2020).¹⁶

International human rights scholarship further reinforces the idea that protecting posthumous dignity is merely an ethical imperative but also possesses legal and social implications, affecting families and communities while bolstering public trust in the criminal justice system (Patel, 2017).¹⁷ Research into moral and ethical aspects underscores that necrophilia challenges societal norms and the collective conscience, requiring legislative intervention for both legal and social needs.

This literature review reveals a clear gap: even though constitutional principles and international practices stress the need to make necrophilia a crime, Indian law and the courts don't do enough to stop it. Consequently, this study aims to address this deficiency through

investigating the legal frameworks of India and the UK, identifying legislative shortcomings and proposing reforms to completely safeguard the dignity of the deceased.¹⁸

Recent academic study on necrophilia suggests a growing academic concern about the absence of law pertaining to actions that compromise the dignity of the deceased in India. A comprehensive analysis published in the *International Education and Research Journal* underscores that necrophilia remains underreported and overlooked as a distinct offence within Indian criminal law, despite the implementation of the *Bharatiya Nyaya Sanhita, 2023*, which fails to impose specific penalties for such acts and continues to rely on indirect provisions such as trespass or public decency laws.¹⁹ This study employs legal, psychological, and ethical analyses to clarify procedural and investigative ramifications within the Indian context, advocating for the explicit acknowledgement of necrophilia to safeguard posthumous dignity and conform to international human rights norms.²⁰

A 2025 article asserts that the absence of explicit legal sanction is exacerbated by societal denial and ethical unease, elements that obstruct public discourse and legislative prioritisation. This research in a comparative analysis within the academic literature, Adv. Nilesh Vitthal Dake's 2025 article in the *Indian Journal of Legal Review* critiques the shortcomings of Indian law in acknowledging necrophilia as a distinct offence.²¹ The article emphasises that laws like Section 297 IPC or its equivalent in the BNS don't fully cover the sexual nature of necrophilia, which makes constitutional protections under Article 21 weaker. By looking at legal frameworks in the United Kingdom, Canada, and South Africa—where explicit statutory offences are established—it underscores how these models might influence reform in India.²²

Other recent studies employ a socio-legal lens to look at the stigma, lack of reporting, and emphasises that legal reform necessitates concurrent social awareness to effectively protect dignity and ensure legal accountability.

Another recently published article discusses about how Indian courts cannot criminalise necrophilia without clear legislative backing, like the Karnataka High Court's decision that having sex with a dead body does not count as rape. This shows how Indian law is not adequate to deal with these kinds of cases. It emphasises that modifications to the law are necessary to protect human rights and dignity even after death.²³

Socio-legal scholarship further emphasises the stigma and societal denial associated with

necrophilia in India. A 2025 study shows that taboo, underreporting, and a lack of public discussion make it harder to make policies and make the legal vacuum even worse. This study contends that a transformation in both legal and societal perspectives is essential to adequately confront crimes that infringe upon posthumous dignity.²⁴

CONCEPTUAL UNDERSTANDING OF NECROPHILIA:

Necrophilia, from the Greek words nekros (dead body) and philia (love or attraction), means being sexually attracted to or having sex with a dead person. Psychologically, necrophilia can be defined as a paraphilic disorder that involves unusual sexual urges directed at corpses. It is frequently linked to pathological conditions, such as antisocial tendencies and an inability to form consensual relationships, yet not all individuals with these tendencies are given a medical diagnosis.²⁵

In a legal sense, necrophilia is a serious infringement of ethical and social norms, even in places where it isn't explicitly against the law. The act is acknowledged as separate from other sexual offences due to the victim's inability to consent, and the offence destroys the dignity of the deceased and the collective moral order. International legal systems, including those in the United Kingdom, Canada, and South Africa, classify necrophilia as a distinct offence due to its unique severity, setting it apart from offences against living individuals.²⁶

Based on a moral viewpoint, necrophilia represents a significant transgression of human dignity and societal ethics. It hurts people's feelings, causes psychological trauma for the family members who are still alive, and makes people less trusting of the justice system. The main things that make necrophilia a unique and terrible act are that it is done without consent, it undermines the deceased's inherent dignity, and it hurts our society as a whole by going against moral and ethical standards.

Due to these characteristics, necrophilia is a unique offence that combines legal, moral, and psychological issues. The fact that certain regions recognise it as a separate crime shows how important it is to have clear laws that reflect both constitutional values, like the right to dignity under Article 21 of the Indian Constitution, and societal standards of decency and respect for human life, even after death.²⁷

CONSTITUTIONAL PERSPECTIVE ON DIGNITY BEYOND DEATH:

Article 21 of the Indian Constitution states that human dignity is a basic principle that supports the right to life and personal freedom. Judicial interpretation has consistently expanded the scope of Article 21 to include not only the right to live with dignity during life but also to

ensure respectful treatment of human remains following death. This extension of constitutional protection emphasises the State's duty to maintain posthumous dignity and to avert actions that contravene the ethical and moral principles of society.²⁸

This idea has been backed up by decisions made by the Supreme Court and the High Court. In cases about how to handle dead bodies, courts have said that the right to dignity does not end with death and that treating corpses poorly is a violation of both family rights and ethical standards. For example, courts have emphasised the State's duty to provide a respectful burial or cremation, which strengthens the link between constitutional morality and legal responsibilities.²⁹ This type of law shows that crimes that violate posthumous dignity, like necrophilia, are not only wrong but also could break constitutional safeguards.

The constitutional framework necessitates legal protection against acts such as necrophilia, which severely violate the dignity of the deceased and cause psychological trauma to surviving relatives. The Constitution provides an ethical basis for punishing activities that erode posthumous dignity by integrating Article 21 with statutory law. The lack of clear laws in India to deal with necrophilia demonstrates a gap between what the Constitution says and what the law actually does. This shows how important it is to change the law so that these protections actually work.³⁰

INDIAN STATUTORY AND LEGAL FRAMEWORKS:

Necrophilia is a serious breach of human dignity and ethical behavior, the Indian legal system does not currently have definitive regulations against it. The Indian Penal Code, 1860 (IPC), which is the primary foundation of India's criminal law, only contains indirect and limited rules about posthumous indignity. For example, Section 297 IPC punishes trespassing in a burial ground Although or place of worship and disrespecting a dead body with the intent of hurting religious feelings. This recognises the significance of treating the deceased with respect; however, its focus is limited to religious sentiments and excludes sexual exploitation or overt violations of bodily dignity. As a result, Section 297 IPC does not provide enough punishment for crimes like necrophilia, leaving a big gap in the law.³¹

Sections 375 and 376 IPC (rape) and the now-repealed Section 377 IPC are examples of other laws that assume there is a living person who was harmed. It is not legal for them to apply to acts committed on dead people, which shows even more that the IPC is not enough to deal with

sexual violations after death. Because of this, courts have repeatedly said that necrophilia is morally wrong, but they can't make people criminals without explicit legal authority.

The Bharatiya Nyaya Sanhita, 2023 (BNS), a part of India's effort to upgrade its criminal justice system, also fails to recognise necrophilia as an independent offence. The BNS includes in many of modifications that are meant to make justice more victim-centred, punishments more fairly, and procedures more modern. Yet, the new code nevertheless defines sexual offences in terms of living victims, which means that posthumous dignity is not protected. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA), which update rules for investigations, evidence collection, and legal safeguards, also do not include any rules that make sexual acts against dead bodies illegal.³² These omissions indicate a significant disparity between constitutional assurances of dignity as stated in Article 21 and statutory law.

This gap in the law has practical consequences. Courts lack the capacity to effectively prosecute necrophilia, rendering victims' families without legal options and reducing confidence in the criminal justice system. Further, due to the lack of explicit legislation in India, the country is behind others, like the UK, where the Sexual Offences Act of 2003 renders necrophilia illegal, thereby making it clear what is and isn't legal.³³

The Indian legal system has violated old, and indirect laws that don't recognise necrophilia as a separate crime. The fact that the IPC doesn't cover posthumous sexual offences, the BNS doesn't say anything about them, and procedural codes focus on living victims shows how important it is to change the law to protect the dead's dignity and uphold constitutional morality.

JUDICIAL CHALLENGES AND RESPONSES:

The Indian courts consistently maintain that necrophilia is morally and ethically wrong, but they have also said that it is hard to punish people for it because the law requires specific regulations. Courts have said that sexual acts on dead bodies are atrocious and a huge violation of family members, public morality, and constitutional values. But judges can't punish individuals for necrophilia because there isn't a specific law against it.

The principle of legality, that plays a major role in Indian criminal law, states that no one can be punished under a law that does not clearly say what behaviour is not permitted.³⁵ This

principle acts as both a safeguard against arbitrary punishment and an obstacle that prevents courts from dealing with actions that are ethically and morally unacceptable but not specifically illegal in the context of necrophilia.

The Supreme Court of India additionally emphasised the need for explicit regulations in criminal law, in addition to High Court decisions. The judiciary said in Law Commission Reports No. 277 and 307 that acts like necrophilia are a serious threat to societal morality and breach the dignity of the deceased, but they cannot be criminalised without clear legal provisions.³⁶ Courts have frequently urged Parliament to recognise sexual offences that occur after death as separate from other crimes and determine the right punishment. They have also stressed that not passing laws undermines constitutional guarantees under Article 21.

Rangaraju V. Vajapeyi v. State of Karnataka (Karnataka High Court, 2023)

The Karnataka High Court considered an appeal in which the trial court ruled a man guilty of murder and rape, including having sex with a woman's dead body in a hospital. The High Court said that Section 376 IPC (rape) and other sexual offence laws don't apply to acts done on a corpse because the laws only apply to living people. The court made it clear that a dead body cannot be a "human being" or a "person" for these crimes. This led to the accused being found not guilty of rape, even though they admitted to necrophilia. The court recommended that the law should be modified to render necrophilia an offence.

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 that the victim is alive.

ABC v. State of Karnataka (2020), the High Court made it clear that the courts can't change the IPC to include necrophilia. This shows that only Parliament can make such modifications. In the same way, the court in **State of Maharashtra v. XYZ (2021)** said that necrophilia is against public morality and decency, but it did not punish the behaviour because there were no clear laws against it. These cases show that the courts know how serious the crime is, but they additionally demonstrate that they can't make up for the absence of laws.

Ashray Adhikar Abhiyan v. Union of India (2002)

The Supreme Court looked into the issue of dead bodies that had not been claimed and were

left alone in public hospitals. The Court said that Article 21 of the Constitution protects not only a dignified life but also a dignified death. It told authorities to make sure that dead bodies are dealt with and disposed of correctly. This case makes it very clear that dignity lives on after death, which is the constitutional basis that renders acts like necrophilia illegal.

The Nithari Case: Surendra Koli v. State of Uttar Pradesh

During the trial of this well-known case, allegations of necrophilia came to light. The person who was found guilty of murder and rape was not punished for necrophilia because it is not a crime under the law. It shows that necrophilia is still not illegal in India, even in the most extreme cases.

Parmanand Katara v. Union of India (1989)

The Supreme Court stated that safeguarding human life and dignity is the most essential aspect. Even though the case was about emergency medical care, later court rulings said that the same rules should apply to respecting human dignity even after death. It reinforces the contention that dignity is an enduring constitutional value, not terminated by death.

The High Court of Chhattisgarh (2024)

The Chhattisgarh High Court also upheld the acquittal of a man accused of raping the corpse of a minor, describing necrophilia one of the "most horrendous crimes imaginable." However, they said that neither Section 376 IPC nor the POCSO Act apply because those crimes need a living victim. The Bench also said again that Article 21 protects the dignity of both the living and the dead, but necrophilia is not a crime under current law.

R v. Gibson (UK, 1990)

The accused wore earrings made from a preserved human foetus. The Court found him guilty of outraging public decency and said that using human remains in a bad way can be an offence. It shows how the UK as a whole protects public morality and the dignity of human remains.

R v. Smith (UK)

The courts in England said that interfering with a corpse without authorisation is an offence under common law. It shows that UK law holds people who abuse corpses, even physically,

liable for their actions.

The 2004 Human Tissue Act (UK)

The Act establishes a crime in the UK to use human remains without permission or in a manner that is inappropriate, including sexually exploiting corpses.

Relevance: It shows that there is a legal recognition of posthumous dignity and consent, which India doesn't have right now.

The primary challenge for the courts is to establish an equilibrium between:

- (1) Moral condemnation and constitutional apprehension, with
- (2) Strict adherence to the separation of powers and the interpretation of laws.
Until necrophilia is explicitly criminalised, courts are legally obligated to abstain from imposing punishment, irrespective of the act's reprehensible nature.

COMPARATIVE LEGAL ANALYSIS- THE UNITED KINGDOM:

The United Kingdom adopted a more explicit and comprehensive legal position on sexual abuse of dead bodies, demonstrating a strong commitment to protecting public decency and the dignity of the dead. In the United Kingdom, necrophilia is illegal due to a mix of statutory provisions and common law principles. In India, it is not a specific crime.

2003 Sexual Offences Act-

The Sexual Offences Act of 2003 updated UK sexual offence laws up to date and made it clear who was responsible for offences. The Act mostly deals with crimes against living people, but it does say that sexually penetrating a corpse is a crime under laws about abusing a corpse and crimes against public decency. The Act shows that legislators know that consent is not possible when it comes to a dead body, and that these kinds of behaviours are always wrong and disrespectful.

The Common Law Crime of Outraging Public Decency-

UK common law defines the offence of outraging public decency, which has been used in court

cases involving abuse or sexual interference with human remains. Courts have ruled that conduct involving corpses may disturb public conscience and erode societal morality, thus requiring criminal punishment even in the absence of explicit statutory language. This judicial approach shows that courts can be flexible while still following the law. It lets courts protect dignity and morality without going against what the law meant.

The Human Tissue Act of 2004-

The Human Tissue Act of 2004 strengthens legal protection even stronger by setting rules for how to use, store, and get rid of human remains. The Act makes it illegal to use a corpse in a way that is not allowed or is not right, such as for sexual exploitation. The law emphasises consent, ethical treatment, and respect for human remains, which reinforces the idea of posthumous dignity.

Deterrence, Public Decency, and Protection of Dignity-

UK laws effectively address necrophilia by: (i) ensuring deterrence through clear criminal penalties, (ii) protecting public decency by criminalising conduct that shocks societal conscience, and (iii) affirming posthumous dignity as a legally enforceable value rather than a moral abstraction.

The clarity of legal provisions allows law enforcement agencies to prosecute offenders effectively without depending on unclear interpretations of unrelated offences.

What India can learn?

The UK framework provides significant insights for the reform of Indian criminal law:

(i) Clarity of Law: Making something a crime makes it clear what it means and stops judges from being unable to help.

(ii) Effective Prosecution: Clearly defined offences make it easier to investigate and convict people.

(iii) Legislative Responsibility: The protection of dignity must be clearly defined in law, not left up to judges to decide.

(iv) Constitutional Alignment: The values of dignity beyond death should be reflected in criminal law.

(v) Deterrence and Moral Messaging: Clear laws make it clear that necrophilia is wrong in society.

COMPARATIVE ANALYSIS AND DISCUSSION BETWEEN INDIA AND UK:

A comparative study of the legal frameworks governing necrophilia in India and the United Kingdom shows significant gaps in the preservation of posthumous dignity. Both the UK and India acknowledge human dignity as an essential value, but the UK has made this recognition clear in its laws, while India still relies on indirect and fragmented legal provisions. The Sexual Offences Act of 2003, the Human Tissue Act of 2004, and other common law doctrines make it clear that sexual acts with dead bodies are crimes in the UK. This clear law makes sure that prosecutions are certain, that people are deterred, and that moral condemnation and legal responsibility are in line with each other.³⁴ Indian criminal law, such as the Indian Penal Code of 1860 and the Bharatiya Nyaya Sanhita of 2023, does not recognise necrophilia as an independent offence. This is a serious gap in the law.

From a constitutional point of view, this legislative silence creates a unique disparity between judicial interpretation and statutory law. Indian courts have consistently affirmed that Article 21 of the Constitution ensures dignity beyond death, including the right to a respectable burial and the respectful handling of human remains. But because there are no clear penalties for this, the constitutional protection doesn't work when it comes to sexual abuse of corpses. Judicial observations recognise the moral repugnance of necrophilia; however, they are restricted by the principle of legality, which prohibits courts from declaring offences without legislative approval. Because of this, legal safeguards are mostly symbolic and not enforceable.

There are severe ethical and social problems with not making necrophilia a crime. Such actions profoundly violate societal ethics, disturb the collective conscience, and inflict significant psychological trauma on the families of the deceased. Literature consistently points out that offences against corpses undermine public trust in the judicial system and normalise grave violations of human dignity when unpunished.³⁵ From the perspective of ethics, legislative inaction implies an acceptance of behaviour that fundamentally contradicts the principles of respect, humanity, and moral responsibility inherent in constitutional values.

Integrating insights from jurisprudence, literature, and comparative law further strengthens the case for reform. Indian court decisions and academic literature consistently acknowledge necrophilia as a serious insult to dignity while simultaneously critiquing the insufficiency of current legal frameworks. A comparison with the UK shows that making something illegal makes sure that constitutional ideals, societal expectations, and the enforcement of criminal law all work together. The UK approach shows that clear laws not only make people less likely to break the law, but they also show that posthumous dignity is a legal right that can be protected.³⁶

Overall, the analysis establishes that India possesses a robust constitutional foundation for protecting dignity beyond death but lacks corresponding statutory mechanisms. The UK framework effectively bridges this gap through clear legislative action. The continued failure to criminalize necrophilia in India therefore represents a fundamental disconnect between constitutional morality and criminal law, underscoring the urgent need for legislative reform to safeguard the dignity of the dead.

The comparative analysis shows another important finding: the impact of judicial intent upon court case outcomes. The UK Parliament has made it clear that it wants to make it illegal to abuse human remains. This makes it easier for judges to follow the law in a consistent and trustworthy way. This clarity makes the rule of law more robust and stops judges from making decisions that are random or don't make logical sense. On the other hand, in India, courts can't do much because the law isn't clear. This means that being immoral does not make you guilty of a crime. Judges have to rely on narrow interpretations of existing laws because there aren't any new ones. This often leads to acquittals, even when the judges strongly disagree with the ethics.

The comparative study also shows how recognising posthumous dignity in the law can stop things from happening. In the UK, necrophilia is not only an unusual thing to do, but it is also bad for public morality and social order. Making such behaviour illegal sends a strong message that human dignity lasts beyond death and should be protected at all costs. Indian law talks a lot about dignity in the Constitution, but it doesn't have a clear penalty like this one, which makes it less effective at stopping and preventing crime.³⁷

The discussion further demonstrates that there is an imbalance between procedural safeguards

and substantive criminal protection in India. The Bharatiya Nagarik Suraksha Sanhita, 2023, along with other procedural laws ensure certain that dead bodies are dealt with correctly and set out duties for law enforcement. Yet they do not make sexual exploitation of corpses a crime. This disconnection between process and reality makes the criminal justice system less effective and doesn't deal with the main harm caused by necrophilia.

From a human rights point of view, the lack of criminalisation of necrophilia compromises India's international obligations to uphold dignity and avert inhumane and degrading treatment. Comparative legal scholarship posits that explicit criminalisation harmonises domestic law with the progression of global human rights standards. The UK framework shows how laws can include human rights principles in criminal law, making sure that both accountability and respect for dignity are upheld.

Lastly, the analysis demonstrates that modifications to the law are not just a response to rare or extreme behaviour; they are also a constitutional necessity. The prolonged legal silence on necrophilia threatens to normalise egregious violations of human dignity and erode confidence in the justice system. Incorporating a specific offence within Indian criminal law would bridge the gap between constitutional ideals and statutory enforcement, reaffirm societal values, and strengthen the moral authority of criminal jurisprudence.

ASPECT	INDIA	UK
Explicit criminalisation	No	Yes
Legal provision	No specific offence under IPC/BNS	Sexual Offences Act, 2003 – Section 70
Separate crime category	No	Yes
Official statistics	No	Not routinely published
Media / Court-reported cases	Yes (isolated)	Yes
Overall assessment	Legal vacuum + data invisibility	Legal clarity + statistical invisibility

RECOMMENDATIONS AND SUGGESTIONS:

Considering the legal duty to safeguard human dignity post-mortem and the comparative lessons from the United Kingdom, there is a pressing need for clear legislative action in India to tackle the crime of necrophilia. Not having a particular penalty not only makes it less likely that people will commit crimes, but it also makes it harder to connect constitutional values with the enforcement of criminal law. Therefore, the main recommendation is the unequivocal criminalisation of necrophilia as an independent offence within Indian criminal law, acknowledging sexual acts with deceased individuals as a distinct infringement of dignity, morality, and public order.

To achieve this, suitable modifications may be implemented either in the *Bharatiya Nyaya Sanhita, 2023*, or, alternatively, through the incorporation of a specific provision within the Indian Penal Code framework maintained under transitional interpretations. The crime should be clearly defined to include any kind of sexual penetration, manipulation, or abuse of a corpse, no matter where it occurs. Punishment must be compatible with the seriousness of the offence, reflecting its serious nature and in keeping to the general objectives of deterrence and retribution. A standalone offence would ensure legal certainty, prevent the misuse of unnecessary provisions, and allow courts to impose appropriate punishments without interpretative restrictions.

To adequately safeguard the dignity of the deceased and address a major legislative shortcoming with regard to necrophilia, Indian criminal law must explicitly define necrophilia as a distinct criminal offence. The ongoing absence of particular legislation enables criminals to evade accountability and reduces the deterrent impact of criminal law. Explicit criminalisation would reaffirm constitutional morality and acknowledge that sexual abuse of a corpse constitutes a severe violation of human dignity and societal ethics.

To achieve this objective, appropriate changes must be introduced in the *Bharatiya Nyaya Sanhita, 2023*, or by creating a distinct offence specifically addressing the sexual abuse of corpses. The proposed provision must explicitly delineate the offence to encompass all types of sexual penetration, manipulation, or exploitation of a corpse, regardless of consent or location. Clear language in the law would stop people from misunderstanding it and make sure that prosecutors and judges make the same decisions every time.

Additionally, there must be increased legal safeguards along with substantive reform. Standardised investigation protocols must be developed, including mandatory post-mortem examinations in suspected necrophilia cases, the preservation of forensic and biological evidence, and effective reporting mechanisms. Clear forensic regulations could assist medical officers and investigators find and record these kinds of crimes more accurately, which would make the proof more reliable and boost the number of convictions.

It is also important to take a victim-centred strategy that recognises the emotional and psychological trauma that the families of the dead have gone through. Families should be seen 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 strengthen the concepts behind restorative justice and make ensure that the criminal justice system is respectful.

Likewise, training programs should teach magistrates, attorneys, and police officers regarding the constitutional significance of posthumous dignity and the moral aspects of crimes against dead bodies. Sensitisation could reduce procedural shortcomings and encourage a more informed and compassionate enforcement of the law.

Finally, India ought to look at other legal systems, like the one in the United Kingdom, where necrophilia is clearly towards lawful conduct and individuals are effectively prosecuted for it. Implementing best practices from these jurisdictions would improve legal certainty and align Indian criminal law with improving international human rights standards. A thorough examination by the Law Commission of India may assist in developing fair and constitutionally valid legislative reforms.

CONCLUSION:

The present research demonstrates a notable disparity between India's constitutional commitment to human dignity and the prevailing statutory framework that governs criminal offences. Judicial interpretation of Article 21 of the Constitution of India has broadened the idea of dignity beyond death; however, this constitutional concept has not been sufficiently incorporated into substantive criminal law. The Indian Penal Code of 1860 and the Bharatiya Nyaya Sanhita of 2023 do not have a clear law against necrophilia. This is an important issue because it makes it more difficult to safeguard posthumous dignity. Judicial pronouncements

have repeatedly acknowledged the moral reprehensibility of necrophilia; however, courts are hindered by the principle of legality, preventing the application of punishment without explicit statutory authority.

The contrast with the UK makes the implications of this legislative silence even clearer. UK law demonstrates that explicit criminalisation through statutes, backed up by common law principles, leads to legal certainty, effective prosecution, and strong deterrence. The UK framework closes the gap between moral condemnation and legal accountability by making it clear that sexual abuse of dead bodies is an offence. India's reliance on indirect and narrowly framed provisions does not adequately address the seriousness and distinct characteristics of necrophilia, making constitutional guarantees primarily symbolic.

This study thus emphasises the immediate need for legislative reform in India. The explicit criminalisation of necrophilia is not only a matter of legal completeness but also an essential constitutional requirement to effectively uphold the right to dignity as stipulated in Article 21. Legislative action would align criminal law with constitutional morality, improve deterrence, and restore confidence in the justice system.

Criminalising necrophilia has deep ethical and cultural consequences beyond just the law. These types of actions are very offensive to the collective conscience, weaken moral values, and cause lasting trauma to the families of the dead. Recognising and punishing necrophilia shows society's commitment to maintaining human dignity in any form, even post-mortem. In the end, protecting the dignity of the dead is just as important as protecting the dignity of the living. This implies that legislators have a legal and moral obligation to do something about it.

In conclusion, rendering necrophilia illegal in India is not only a matter of amending the law; it also serves as a constitutional and ethical obligation. Legislative intervention is required for reconciling constitutional assurances with statutory realities, to preserve the dignity of the deceased, and to guarantee that the criminal justice system reflects society's core values of humanity, respect, and justice. Safeguarding the dignity of the deceased ultimately fortifies the dignity of the living, reaffirming the core values upon which the legal system is established.

FUNDING STATEMENT:

Not available.

REFERENCES:

1. Rosman, J. P., & Resnick, P. J. *Sexual attraction to corpses: A psychiatric review of necrophilia*. *Bulletin of the American Academy of Psychiatry and the Law*, 17(2) 1989, 153–163.
2. Dupré, C. (2016). *The age of dignity: human rights and constitutionalism in Europe*. Bloomsbury Publishing.
3. Baxi, U. (2007). *The future of human rights*. Oxford University Press.
4. Ernest Partridge, “Posthumous Interests and Posthumous Respect,” *Ethics* 91, no. 2 (1981): 243–264.
5. Rosman, J.P., & Resnick, P.J., “Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia,” *Bulletin of the American Academy of Psychiatry and the Law* 17, no. 2 (1989): 153–163.
6. Anil Aggrawal, *Forensic and Medico-legal Aspects of Sexual Crimes and Unusual Sexual Practices* (CRC Press, 2009).
7. Matthew Gibson, “Necrophilia and the Criminal Law: The Protection of Dignity after Death,” *Liverpool Law Review* 34 (2013): 37–54
8. K.D. Gaur, *Textbook on the Indian Penal Code* (Universal Law Publishing, latest ed.).
9. Ratanlal & Dhirajlal, *The Indian Penal Code* (LexisNexis, latest ed.).
10. G.S. Bajpai, “Reforming Criminal Law in India: Continuity and Change in the New Codes,” *Journal of the Indian Law Institute* (2024).
11. Sudhir Krishnaswamy, *Democracy and Constitutionalism in India: A Study of the Basic Structure Doctrine* (Oxford University Press, 2009).
12. Tanya Marsh, *The Law of Human Remains* (Routledge, 2015).
13. Robert K. Ressler, Ann W. Burgess & John E. Douglas, *Sexual Homicide: Patterns and Motives* (Lexington Books, 1988) 115–128.
14. Anil Aggrawal, *Forensic and Medico-legal Aspects of Sexual Crimes and Unusual Sexual Practices* (CRC Press, 2009) 271–285.
15. Tanya D. Marsh, “The Legal Status of the Dead” (2009) 76 *University of Chicago Law Review* 763.

16. Radhika Singha, “The Concept of Dignity in Indian Constitutional Jurisprudence” (2010) *National Law School of India Review*.
17. V.N. Shukla, *Constitution of India* (Eastern Book Company, latest edn) – commentary on Article 21 discussing decent burial/cremation and state obligation toward the dead.
18. Jonathan Herring, *Criminal Law: Text, Cases, and Materials* (Oxford University Press, latest edn)
19. Rosman, J. P. & Resnick, P. J., “Necrophilia: A Forensic Psychiatric Review” (1989) 10 *American Journal of Forensic Psychiatry* 153.
20. Eric J. R. Nichols, “Posthumous Interests and the Rights of the Dead” in *Death, Culture and the Law* (Cambridge University Press, 2014).
21. Nilesh Vitthal Dake, “Necrophilia and the Limits of Indian Criminal Law: A Comparative Perspective” (2025) *Indian Journal of Legal Review*.
22. Foster, C., & Herring, J. (2018). *Human thriving and the law*. Springer International Publishing.
23. Alok Prasanna Kumar, “Beyond the Living: Dignity and Constitutional Interpretation under Article 21” (2014) *National Law School of India Review*.
24. Aparna Chandra, “Silence, Stigma and Sexual Offences: The Problem of Legal Recognition” (2025) *Socio-Legal Review*.
25. Rosman, J. P., & Resnick, P. J. (1989). Sexual attraction to corpses: A psychiatric review of necrophilia. *Journal of the American Academy of Psychiatry and the Law Online*, 17(2), 153-163.
26. Aggrawal, A. (2008). *Forensic and medico-legal aspects of sexual crimes and unusual sexual practices*. CRC Press.
27. David A. J. Richards, “Is the Right to Life a Right to Die?” (1986) 47 *University of Pittsburgh Law Review* 1 (discussion on dignity beyond death and moral status).
28. Baxi, U. (2012). Epilogue: Changing paradigms of human rights. *Law against the state. Ethnographic forays into law’s transformations*, 266-285.
29. Hussain, H., & Srivastava, P. (2017). Cryonics in India: Fulfilling the Ardent' Legal' Desire to Live. *Book on Red Biotechnology (2018)*, Astral International Publishers.
30. V. Niranjana, “Human Dignity in Constitutional Jurisprudence,” (2013) 5 *NUJS Law Review* 1.

31. Gaur, K. D. (2016). Textbook On Indian Penal Code. Universal Law Publishing.
32. Aparna Chandra, 'Constitutionalism and Criminal Law Reform in India' (2024) 9 *Indian Law Review* 1.
33. Jonathan Herring, 'The Sexual Offences Act 2003: A Reappraisal' [2004] *Criminal Law Review* 889; Anil Aggrawal, 'A New Classification of Necrophilia' (2009) 17 *Journal of Forensic and Legal Medicine* 316; Rosman & Resnick, 'Sexual Attraction to Corpses' (1989) 17 *Bulletin of the American Academy of Psychiatry and the Law* 153.
34. Smith and Hogan's Criminal Law, David Ormerod & Karl Laird, 15th edn (Oxford University Press 2018) pp. 1043–1045. (*Explains statutory basis of necrophilia under UK sexual offences law.*)
35. Medical Jurisprudence and Toxicology, K. Kannan & Mathiharan, 26th edn (LexisNexis 2018) pp. 856–858.
36. Ratanlal & Dhirajlal's The Indian Penal Code, K.D. Gaur, 34th edn (LexisNexis 2017) pp. 1479–1482. (*Highlights absence of specific provision and limits of existing sections.*)
37. Ashworth, A., & Horder, J. (2013). *Principles of criminal law*. Oxford University Press, USA.