
FROM COLONIAL LAW TO THE BNS: NECROPHILIA AND THE UNRESOLVED LEGAL GAP IN INDIAN CRIMINAL LAW

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ABSTRACT

The transformation from the Indian Penal Code to the Bharti Nyaya Sanhita, 2023 ("BNS") was popularized as an opportunity to move from the colonial laws and modernize Indian Criminal Law. Yet the recodification has reproduced, almost verbatim, a colonial- era lacuna: the absence of any provision that specifically criminalizes sexual acts committed upon a human corpse (necrophilia). Indian courts continue to rely on section 297 of the IPC (now section 126 read with the corpse- indignity provisions of the BNS) a trespass-and-indignity provision drafted for grave desecration and vandalism in order to deal with an offence that is, in substance, a species of sexual violence. This article critically examines whether necrophilia is presently punishable in India, whether the extant provisions are doctrinally and practically adequate, and whether the constitutional guarantee of dignity under Article 21 extends to the deceased. Employing a doctrinal methodology, the article synthesizes Indian statutory material, constitutional jurisprudence on posthumous dignity, and a comparative survey of the United Kingdom, Canada, the United States, New Zealand, South Africa and Georgia, alongside academic literature on the subject, including recent Indian law-review scholarship and the seminal American analysis in *Defiling the Dead: Necrophilia and the Law*. The article finds that India's reliance on "indignity to a corpse" provisions is conceptually mismatched with the sexual character of necrophilic conduct, that comparative jurisdictions have converged upon express, sui generis offences, and that the constitutional jurisprudence on posthumous dignity read through cases like *Parmanand Katara*, *Ashray Adhikar Abhiyan* and the broader Article 21 dignity jurisprudence that furnishes a sound normative basis for legislative reform. It concludes by proposing a specific penal provision, modelled on comparative best practice but adapted to Indian constitutional values, together with allied evidentiary and procedural reforms.

Keywords: Necrophilia; Bharatiya Nyaya Sanhita 2023; Article 21; posthumous dignity; corpse desecration; comparative criminal law; sexual offences; legislative vacuum.

I. Introduction

The criminal law of a jurisdiction is, in significant part, a record of what a society has bothered to imagine as wrongdoing. Indian criminal law's silence on necrophilia is not evidence that the conduct does not occur, but evidence of a drafting-era blind spot inherited from the Indian Penal Code, 1860 and never corrected in over a century and a half of legislative activity including the wholesale re-enactment of criminal law in 2023.¹ Reported and unreported instances point to a persistent, if underreported, phenomenon: necrophilic acts associated with the Nithari killings of 2006,² acts committed by mortuary and cemetery staff,³ and isolated post-mortem sexual assaults reported from Gurugram, Assam and elsewhere.⁴ In each instance, Indian prosecutors have been compelled to force the conduct into offences like murder, indignity to a corpse, or merely an ordinary rape provisions applicable only to living victims, that were never designed to capture the sexual violation of the dead.

This article argues that India's continued reliance on section 297 IPC/section 126 BNS provisions to address necrophilia is a category error. These provisions criminalize indignity to a corpse in the generic sense which includes trespass on burial grounds, disturbance of graves, mutilation and were never conceived to address the specifically sexual character of necrophilic violation.⁵ Where a specifically sexual offence provision (rape, sexual assault) is invoked instead, Indian courts, following international precedent, would almost certainly hold as courts in California, Michigan and elsewhere have held that “rape requires a living person,” since consent, will and the capacity to be outraged are definitionally impossible for a corpse.⁶ The result is a doctrinal vacuum: the conduct that is most like a sexual offence is punished, if at all, under a provision carrying a maximum sentence of only one year and belonging in substance to the law of property and grave-desecration, not sexual offences.⁷

¹Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, *India Code* (2023); Indian Penal Code, 1860, No. 45 of 1860, *India Code* (1860).

²Khushi Yadav, *Necrophilia and the Legal Framework in India: A Critical Study*, 7 Indian J.L. & Legal Res. 4850, 4858–59 (2024).

³*Id.* at 4859; Nilesh Vitthal Dake, *Necrophilia and the Boundaries of Human Dignity: A Comparative and International Legal Analysis of the Criminalization of Sexual Acts with the Dead*, 5 Indian J. Legal Rev. 826, 827 (2025).

⁴Yadav, *supra* note 2, at 4858–4859.

⁵Indian Penal Code, 1860, No. 45 of 1860, *India Code* (1860), § 297; Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, *India Code* (2023), § 126; Dake, *supra* note 3, at 826.

⁶*People v. Kelly*, 1 Cal. 4th 495 (1992); *People v. Hutner*, 530 N.W.2d 174 (Mich. Ct. App. 1995).

⁷Dake, *supra* note 3, at 826–827.

II. Understanding Necrophilia: Medical, Psychological and Legal Perspectives

The term Necrophilia traces its origin in Greek words *nekros* (corpse) and *philia* (attraction) that denotes sexual attraction, or sexual activity with, a dead body.⁸ In psychiatry, it is grouped under “paraphilia not otherwise specified” in the DSM (Diagnostic and Statistical Manual of Mental Disorders), alongside unusual conditions like klismaphilia (sexual arousal from enemas) and coprophilia (arousal from feces).⁹ A well-known study by Rosman and Resnick (1989) looked at 122 cases and divided necrophiles into two types namely, “genuine” necrophiles those with a lasting sexual preference for corpses, and another type “pseudo necrophiles,” those who commit isolated acts without a fixed preference.¹⁰ Building on this taxonomy, the division is expanded into a ten-level scale, ranging from people who only role-play death with living partners, to extreme cases where offenders kill to obtain a corpse.¹¹

The medico-legal significance of this classification is considerable. Some Indian Scholar argue that only the more serious forms like opportunistic necrophilia, regular necrophilia, and necrophilic homicide should be criminalized, whereas milder fantasy-based or non-acted-upon variants are better handled through psychiatric treatment rather than punishment.¹² The idea is to balance mental-health concerns with criminal responsibility, instead of treating necrophilia as either purely excusable or purely punishable.

Crucially, from a doctrinal standpoint, Indian and comparative authority converge on the proposition that necrophilia is not amenable to the insanity defense in the ordinary case. Because most necrophiliac offenders are capable of appreciating the nature and consequences of their acts, the exculpatory threshold under section 84 IPC (now Section 22 BNS) incapacity, at the time of the offence, to know that the act was wrong is rarely satisfied.¹³ The observation that necrophilia may be viewed by some psychiatrists as a “blatant psychosis” does not, without more, establish legal insanity, a point equally applicable under Indian criminal law's stricter “legal insanity” test as distinguished from “medical insanity.”¹⁴ The conceptual takeaway is

⁸Tyler T. Ochoa & Christine Newman Jones, *Defiling the Dead: Necrophilia and the Law*, 18 Whittier L. Rev. 539, 540 (1997).

⁹American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 522–532 (4th ed. 1994).

¹⁰Jonathan P. Rosman & Phillip J. Resnick, *Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia*, 17 Bull. Am. Acad. Psychiatry & L. 153 (1989).

¹¹ Anil Aggrawal, *Necrophilia: Forensic and Medico-Legal Aspects* (2011).

¹²Yadav, *supra* note 2, at 4858.

¹³ Indian Penal Code, 1860, § 84; Bharatiya Nyaya Sanhita, 2023.

¹⁴*People v. Clark*, 3 Cal. 4th 41, 153 (1992).

that necrophilia sits at the intersection of psychiatric abnormality and culpable criminal conduct precisely the position occupied by other paraphilic sexual offences, which no jurisdiction treats as wholly non-culpable merely because a psychiatric classification exists.¹⁵

Legally, the central conceptual difficulty is that virtually every extant sexual-offence provision, in India and abroad, is drafted around the concept of a person whose will can be overborne and who is capable of consent or its absence.¹⁶ A corpse, definitionally, possesses neither consent nor its absence, no capacity to resist, and as courts across multiple jurisdictions have held that no “feelings of outrage” that the crime of rape is designed to vindicate.¹⁷ This definitional mismatch is the doctrinal root of the legislative vacuum examined in this article.

III. Historical Evolution of Laws on Human Remains

Respect for the dead has always been important across cultures. But historically, laws focus more on preventing disturbance, mutilation, or improper disposal of bodies rather than sexual abuse of corpses.¹⁸ Herodotus records that in ancient Egypt, families delayed handing over the bodies of prominent women to embalmers to prevent mortuary workers from committing necrophiliac abuse. This shows necrophilia existed long before laws addressed it.¹⁹ In medieval Europe, the Catholic Church did not classify necrophilia as prostitution or bestiality but instead treated it as a form of “pollution”, reflecting uncertainty to define the act.²⁰

English common law, which shaped many later codes including the Indian Penal Code of 1860 (now BNS, 2023), treated necrophilia as an “indignity to a corpse.” It was seen as an offence against public decency and the feelings of surviving family members, not as a sexual crime.²¹ Section 297 of the IPC/ Section 126 BNS punishes trespass on burial grounds or showing “indignity” to a corpse, with a maximum sentence of one year. This provision was clearly designed for vandalism or grave- robbing, not sexual violation.²² The American experience mirrors this history: the widely-cited 1997 study by Ochoa and Jones traces how, following the notorious 1995 Forest Lawn Memorial Park incident in which two men were found to have had

¹⁵Yadav, *supra* note 2, at 4856.

¹⁶Ochoa & Jones, *supra* note 8, at 546–549.

¹⁷*People v. Kelly*, *supra* note 6, quoting *People v. Sellers*, 203 Cal. App. 3d 1042, 1050 (1988).

¹⁸Thomas C. Grey, *The Legal Enforcement of Morality* 105 (1983).

¹⁹Yadav, *supra* note 2, at 4856.

²⁰*Id.*

²¹IPC, 1860, § 297; BNS, 2023, § 126.

²²*Id.*

intercourse with corpses in a Californian mortuary, prosecutors discovered, to public astonishment, that California, like most American states at the time, had no statute specifically prohibiting the act, leaving the perpetrators liable only for burglary and theft of mortuary property.²³ This incident triggered a wave of state laws in the 1990s that explicitly criminalized necrophilia, showing that reforms often came reactively after sensational cases rather than through planned lawmaking.²⁴

An important middle ground was introduced by the Model Penal Code in 1962 as it created an “abuse-of-corpse” provision, which criminalizes treating a corpse in a manner that the actor knows would “outrage ordinary family sensibilities,” and which the official commentary expressly states includes, without being limited to, sexual intercourse with a corpse. This broad wording avoided loopholes that would arise if the offence were defined only in terms of penetration, while still covering sexual abuse through interpretation.²⁵ India's own section 297 IPC/ 126 BNS analogue is textually similar to the Model Penal Code's generality (“indignity”) but has never been accompanied by legislative history clarifying that sexual acts fall within its scope.

IV. Legal Position in India

A. Existing Provisions under the IPC and the BNS

India possesses no provision under the IPC, the BNS, or any special statute that expressly names or defines necrophilia as an offence.²⁶ The provision most commonly invoked, section 297 of the IPC (concerning trespass on burial places and offering indignity to a human corpse), has been substantially reproduced in the BNS.²⁷ Both formulations share the defect identified by comparative scholarship: they were drafted to protect the sensibilities of the living against desecration and trespass, not to vindicate the sexual violation of the dead, and both carry a maximum sentence of one year's imprisonment that is grossly disproportionate to the gravity of a sexual assault.²⁸ Successive Indian law-review analyses have concluded, independently of one another, that neither the IPC nor the BNS captures the sexual nature of the offence, forcing

²³Frank B. Williams, *Two Valley Men Arrested in Sex Assault on Corpse*, L.A. Times, Sept. 20, 1995, at B5.

²⁴Ochoa & Jones, *supra* note 8, at 562–564.

²⁵Model Penal Code § 250.10 (1962); Revised Comment to Model Penal Code § 250.10 (1980), *cited in* Ochoa & Jones, *supra* note 8, at 558.

²⁶Dake, *supra* note 3, at 826.

²⁷IPC, 1860, § 297; BNS, 2023, § 126.

²⁸Dake, *supra* note 3, at 826–827.

courts and prosecutors either to rely on the inadequate “indignity” provision or to prosecute the underlying homicide alone, leaving the necrophilic element of the conduct as such entirely unpunished.²⁹

Section 375/376 of the IPC and the corresponding rape provisions of the BNS are, on ordinary principles of statutory construction, inapplicable to a deceased victim. Rape is defined, in both the pre- and post-2023 formulations, as an act committed “against the will” or “without the consent” of a person, concepts that presuppose a living subject capable of forming and communicating (or withholding) consent.³⁰ This is not merely an interpretive inference: it is the position reached, with remarkable international consistency, by every common-law court that has considered the question. The California Supreme Court's holding in *People v Kelly* stated, “rape requires a live victim”, because “a dead body cannot consent to or protest a rape, nor can it be in fear of immediate and unlawful bodily injury,” and because “the essential guilt of rape consists in the outrage to the person and feelings of the victim,” which “a dead body has no feelings of outrage,” is paradigmatic of this reasoning and would, on ordinary principles, apply with equal force to the interpretation of the BNS's rape provisions.³¹ Michigan, Alabama, Kansas, Nevada, Pennsylvania and Wisconsin courts have reached materially identical conclusions under their respective rape statutes.³² There is no principled basis on which an Indian court, applying the plain words of the BNS's definition of rape, would depart from this near-unanimous comparative position.

The consequence is a genuine and, on the present drafting, unbridgeable doctrinal gap: sexual intercourse with a corpse is neither rape (because the victim is not a “person” capable of withholding will or consent) nor adequately captured by “indignity to a corpse” (because that provision was never drafted with sexual violation in mind and carries a punishment wholly disproportionate to it).³³ Where, as in the Nithari case, the offender is also responsible for the victim's death, prosecutors can and do secure convictions for murder but the necrophilic element of the conduct, as such, again escapes independent legal characterization and

²⁹*Id.*

³⁰Indian Penal Code, 1860, § 375; Bharatiya Nyaya Sanhita, 2023, § 63.

³¹*People v. Kelly*, *supra* note 6, at 524–525.

³²*People v. Hutner*, *supra* note 6; *Padgett v. State*, 668 So. 2d 78, 84 (Ala. Crim. App. 1995); *State v. Perkins*, 811 P.2d 1142, 1150 (Kan. 1991); *Doyle v. State*, 921 P.2d 901, 914 (Nev. 1996); *Commonwealth v. Sudler*, 436 A.2d 1376, 1379 (Pa. 1981); *State v. Holt*, 382 N.W.2d 679, 685 (Wis. 1985).

³³*Dake*, *supra* note 3, at 826–827; *Ochoa & Jones*, *supra* note 8, at 543–546 (discussing the parallel inadequacy of California's mutilation provision).

sentencing.³⁴ Where, as in isolated instances reported from Gurugram and elsewhere, the offender is not responsible for the death, Indian law currently affords no meaningful criminal sanction specific to the sexual violation itself.³⁵

B. The Constitutional Perspective: Does Posthumous Dignity Survive Death?

The constitutional argument for reform rests on the proposition, well settled in Indian jurisprudence, that the guarantee of dignity under Article 21 is not exhausted at the moment of biological death. In *Parmanand Katara v Union of India*, the Supreme Court held that Article 21 casts an obligation to preserve life and to treat the human person with the respect the Constitution demands.³⁶ More directly, in *Ashray Adhikar Abhiyan v Union of India*, the courts held that homeless and unclaimed persons are entitled to a dignified cremation or burial in accordance with their religious rites, expressly grounding this entitlement in the posthumous reach of Article 21's guarantee of dignity.³⁷ The Allahabad High Court's reasoning in cases concerning the treatment of human remains has similarly proceeded on the footing that the dignity accorded to a person during life does not evaporate upon death, and that courts should restrict invasive procedures such as unnecessary post-mortem examinations accordingly.³⁸

This line of authority sits comfortably within the broader trajectory of Indian dignity jurisprudence. In *K S Puttaswamy v Union of India*, the Supreme Court described dignity as the “core” of the fundamental rights guaranteed by Part III, informing the content of Article 21 well beyond its bare textual guarantee of life and personal liberty.³⁹ In *Common Cause v Union of India*, the Court extended Article 21's protective ambit to encompass the manner of a person's death, recognizing a right to die with dignity: a holding that, if dignity can inform the process of dying, provides strong interpretive support for the proposition that dignity also informs the treatment of remains thereafter.⁴⁰ If the Constitution protects the dignity of the dying process and the dignity of unclaimed corpses awaiting cremation, it would be doctrinally incoherent to hold that the same Constitution is indifferent to the sexual violation of a corpse arguably the most severe conceivable indignity that can be inflicted upon human remains.

³⁴Yadav, *supra* note 2, at 4858.

³⁵*Id.*

³⁶*Parmanand Katara v. Union of India*, AIR 1989 SC 2039.

³⁷*Ashray Adhikar Abhiyan v. Union of India*, (2002) 2 SCC 27.

³⁸*Ramji Singh v. State of U.P.*, (2009) 5 ALJ 376.

³⁹*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴⁰*Common Cause v. Union of India*, (2018) 5 SCC 1.

C. Judicial Approach and the Legislative Gap

The paucity of reported Indian judicial engagement with necrophilia as such is itself significant evidence of the legislative vacuum. Indian courts have, on the account given in recent legal scholarship, encountered necrophilic fact patterns chiefly as an evidentiary or sentencing feature of murder trials rather than as the gravamen of an independent charge.⁴¹ In cases like *Rangaraju v State of Karnataka*, courts have been squarely admitted the inadequacy of section 297 (indignity to corpse) provisions. They have, consistently with comparative practice, acquitted the accused of rape, convicted instead under the indignity-to-a-corpse provision, and expressly recommended that Parliament legislate to close the gap.⁴²

This is similar to what the Michigan Court of Appeals did in *People v Hutner*, where the court invited lawmakers to fill the gap.⁴³ But in India, Parliament has not acted on these judicial requests.

Because of this, India still relies on a general “desecration of corpse” law to deal with what is essentially sexual violence against a dead body. Other countries like the UK, US (most states), Canada, and South Africa have already moved beyond this and created specific offences. Even the 2023 recodification of Indian criminal law, which renamed and renumbered almost every offence, failed to address necrophilia.⁴⁴ This was a major missed chance to fix the gap.

D. The Rangaraju Vajapeyi Judgment: A Wasted Legislative Cue

The most sustained judicial engagement with necrophilia in Indian law to date is the Karnataka High Court's judgment in *Rangaraju Vajapeyi v State of Karnataka*.⁴⁵ The Court described necrophilia as entailing “a morbid fixation with death and deceased individuals, specifically an erotic allure toward corpses,” and, invoking the DSM-IV classification of paraphilias, observed that the accused's conduct could stem from “rage, curiosity, or lust” rather than from sexual necessity or habit.⁴⁶ Confronted with a charge of rape under section 376 of the IPC, the Court held that the rape provision could not apply because the victim was already deceased at the relevant time, acquitted the accused of that charge, convicted him instead under section 297

⁴¹Yadav, *supra* note 2, at 4858–4859.

⁴²*Rangaraju v. State of Karnataka*, 2023 SCC OnLine Kar 23.

⁴³*People v. Hutner*, *supra* note 6, at 176 n.1.

⁴⁴Dake, *supra* note 3, at 826.

⁴⁵*Rangaraju Vajapeyi v. State of Karnataka*, C.A. No. 1610/2017 (Karnataka H.C.).

⁴⁶Yadav, *supra* note 2, at 4855.

IPC for indignity to a corpse, and expressly recommended that Parliament enact a dedicated statutory provision criminalising necrophilia.⁴⁷

The judgment, though a welcome instance of judicial candour about the inadequacy of section 297, is nonetheless open to at least three lines of criticism. First, the Court's own psychiatric characterisation of the accused's motive sits uneasily beside the caution: describing necrophilic conduct in DSM-IV terms, without clarifying that such classification does not, without more, satisfy the stricter threshold of legal insanity under section 84 IPC, risks inviting future defence counsel to press psychiatric classification toward an excuse that the comparative case law surveyed in this article has consistently, and correctly, rejected.⁴⁸ Second, the recommendation itself carried no binding force and produced no legislative response; as recent Indian scholarship on the point observes, “the practical impact assessment of these recommendations is currently at zero.”⁴⁹ Third, and most tellingly, the timing renders the legislative omission particularly difficult to justify: Parliament's wholesale recodification of Indian criminal law in 2023 post-dated the Karnataka High Court's explicit invitation, yet the Bharatiya Nyaya Sanhita reproduced section 297 IPC's language and one-year penalty almost verbatim, without addressing the specific gap the Court had identified only shortly before.⁵⁰ Read in this light, Rangaraju Vajapeyi is best understood as a reasoned judicial acknowledgment of the legislative gap, followed by legislative inertia that persisted through the very reform exercise that might have closed it.

V. Comparative Legal Analysis

A. United Kingdom

Section 70 of the Sexual Offences Act 2003 expressly criminalises sexual penetration of a corpse, situating the offence within the sexual-offences framework rather than the property or public-order framework and thereby correctly characterizing the wrong as one of sexual violation.⁵¹ The maximum penalty of two years' imprisonment, while criticized by some commentators as inadequate given the gravity of egregious cases, nonetheless reflects Parliament's considered judgment that the offence belongs doctrinally within the sexual-

⁴⁷*Id.*

⁴⁸Indian Penal Code, 1860, § 84.

⁴⁹Yadav, *supra* note 2, at 4850 (abstract).

⁵⁰Bharatiya Nyaya Sanhita 2023 (n 1); Dake (n 3) 826–827.

⁵¹Sexual Offences Act, 2003, c. 42, § 70 (UK).

offences taxonomy.⁵²

B. Canada

Section 182 of the Canadian Criminal Code criminalizes indignity to a dead body in broad terms, encompassing necrophilic conduct within a generalised prohibition rather than a narrowly drawn “penetration” offence, and provides for a maximum of five years' imprisonment which is considerably higher than either the UK or the Indian analogue.⁵³ Canadian courts have applied the provision to necrophilic conduct without definitional difficulty, illustrating the practical workability of a broadly drafted “indignity” offence provided the accompanying penalty is proportionate to the conduct captured.⁵⁴ The Canadian model is instructive for India precisely because it demonstrates that the drafting technique of India's existing section 297 IPC/BNS provision is not itself the defect; the defect lies in the derisory one-year maximum sentence, which signals that Parliament never contemplated the provision capturing genuinely sexual violation.

C. United States

The American experience is the most instructive for a jurisdiction, like India, undergoing wholesale criminal-code recodification. Prior to the mid-1990s a majority of American states had no statute specifically addressing necrophilia, forcing prosecutors to rely on rape statutes (uniformly held inapplicable to deceased victims), general “mutilation” statutes (uniformly held inapplicable absent the removal of a “limb or essential part of the body”), or abuse-of-corpse statutes modelled on the Model Penal Code.⁵⁵ Georgia's statute is unique among American states in expressly using the term “necrophilia,” defining the offence as performing “any sexual act with a dead human body involving the sex organs of the one and the mouth, anus, penis, or vagina of the other.”⁵⁶ Following the Forest Lawn incident, numerous states, including Washington, enacted express statutory bans defining “sexual intercourse” and “sexual contact” with a corpse in granular, penetration-and-contact-based terms.⁵⁷ Ochoa and Jones's own proposed model criminalising “sexual contact” with a corpse defined broadly as

⁵²Dake, *supra* note 3, at 827, 829.

⁵³Criminal Code, R.S.C. 1985, c. C-46, § 182 (Can.).

⁵⁴*Id.*

⁵⁵Ochoa & Jones, *supra* note 8, at 550–561.

⁵⁶Ga. Code Ann. § 16-6-7 (1995).

⁵⁷Wash. Rev. Code Ann. § 9A.44.105 (West Supp. 1995).

“any physical contact committed for the purpose of sexual arousal or gratification” deliberately avoids the narrower “penetration” formulations adopted by states such as Georgia, precisely because a penetration-only definition would fail to capture masturbatory or fetishistic contact falling short of penetration.⁵⁸

D. New Zealand

New Zealand's Crimes Act 1961, through its offence of “improper interference with human remains,” has been interpreted to encompass sexual interference, and reform proposals in Australasian jurisdictions have generally favoured explicit statutory language over reliance on judicial interpretation of “interference” or “indignity,” precisely to avoid the interpretive uncertainty that has plagued the Indian and (formerly) Californian and Michigan positions.⁵⁹

E. South Africa

South Africa's Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, section 14, situates necrophilia squarely within its sexual-offences statute and treats it as a serious sexual offence punishable, in aggravated circumstances, by life imprisonment the most severe comparative penalty surveyed in this article.⁶⁰ This reflects the South African legislature's considered constitutional judgment, consistent with that country's post-apartheid constitutional emphasis on dignity as a foundational value, that violation of a corpse's sexual integrity is analogous in gravity to violation of a living person's sexual integrity, notwithstanding the absence of a living victim capable of experiencing harm in the ordinary sense.⁶¹

VI. Human Rights, Ethics and Jurisprudential Issues

The strongest philosophical objection to criminalising necrophilia is the “harm principle” objection associated with John Stuart Mill: because a corpse cannot be harmed in the morally relevant sense, criminalization of “victimless” conduct is difficult to justify on strict harm-principle grounds.⁶² This objection, however, proves too much if applied consistently, since it would equally undermine the well-established criminalization of corpse mutilation,

⁵⁸Ochoa & Jones, *supra* note 8, at 578.

⁵⁹Crimes Act 1961, s 150 (N.Z.).

⁶⁰Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, § 14 (S. Afr.).

⁶¹Dake, *supra* note 3, at 827, 829.

⁶²John Stuart Mill, *On Liberty* (1859).

unauthorized organ removal and grave desecration such offences that no jurisdiction seriously proposes to decriminalize. The more persuasive jurisprudential answer, often based on Kantian philosophy, is that necrophilia is wrong because: it not (only) wrong with the corpse but (a) the dignity interest that attaches to the human body as an expression of the person who once inhabited it, an interest Indian constitutional law already recognises as juridically cognisable; and (b) the surviving family, whose own dignity and psychological integrity are violated by the desecration of a loved one's remains, a harm the Model Penal Code's official commentary makes central to its own justificatory rationale.⁶³

A related jurisprudential concern, raised by defenders of a narrower “abuse of corpse” framing, is that classifying necrophilia as a sexual offence risks conflating retributive severity with the definitional structure of consent-based sexual offences, given that a corpse cannot, even counterfactually, “consent.” This is a fair conceptual caution, but it is answered by the South African and UK legislative choice to define the offence by reference to the nature of the act rather than by reference to consent, thereby avoiding the incoherence of requiring proof of “non-consent” from an entity incapable of consent, while still locating the offence, for sentencing and stigma purposes, within the sexual-offences taxonomy where it substantively belongs.⁶⁴ India's future reform should adopt this drafting technique rather than attempting, incoherently, to graft a “without consent” element onto a necrophilia offence.

Finally, there is an international human-rights angle. The Geneva Conventions protect the dignity of the dead during war. While those rules don't directly apply to peacetime, they reflect a broader principle: respecting the dead is part of being a rights-respecting society. This principle supports India's constitutional reasoning and strengthens the case for reform, even without binding international law.⁶⁵

VII. Why India Needs a Specific Penal Provision

The Indian Parliament should enact a specific penal provision discussing necrophilia. First, the doctrinal vacuum identified in this article not a matter of academic curiosity but a live prosecutorial problem. Where an offender is not independently guilty of murder, the mortuary

⁶³Model Penal Code § 250.10, Revised Comment (1980), *cited in* Ochoa & Jones, *supra* note 8, at 558; Dake, *supra* note 3, at 828.

⁶⁴Sexual Offences Act, 2003, c. 42, § 70 (UK); Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, § 14 (S. Afr.).

⁶⁵ Geneva Convention, Aug. 12, 1949, 75 U.N.T.S. 31, Protocol I, art. 34.

employee, the cemetery worker, the individual who “happens upon” an already-deceased body, to use the Georgia Supreme Court's phrase in *Lipham v State* Indian law today provides no sanction proportionate to the sexual character of the wrong, leaving such conduct effectively unpunished in substance even where nominally captured by a one-year “indignity” provision.⁶⁶

Second, the constitutional architecture examined, already supplies the normative foundation for reform; what is missing is legislative implementation, not constitutional authority. A statute criminalising necrophilia as a sexual offence would not be creating a novel constitutional value out of whole cloth; it would be giving statutory effect to a dignity interest the Supreme Court has already recognised in analogous contexts.

Third, comparative experience demonstrates that reform of this kind is neither legislatively complex nor politically contentious. Unlike many areas of contested criminal-law reform, no serious constituency defends necrophilia or lobbies against its criminalisation; the absence of Indian legislation is attributable to inattention rather than principled opposition, making this a low-cost, high-clarity legislative intervention.

Fourth, symbolic and expressive considerations, while sometimes dismissed by law-and-economics-oriented critics as insufficient justification for criminalisation, carry particular weight in a jurisdiction particularly India, where the constitutional text and jurisprudence place unusually heavy emphasis on dignity as an organising value.⁶⁷ A criminal code that expressly protects the sanctity of the dead across religious, funerary and cultural contexts while remaining silent on sexual violation of the dead sends an incoherent expressive signal that reform can and should correct.

Opponents may argue that enacting a narrow, rarely-invoked offence is an inefficient use of legislative capacity, or that existing “indignity” provisions, if given a sufficiently generous judicial construction, could be stretched to cover necrophilic conduct without fresh legislation.⁶⁸ This argument is unpersuasive for two reasons. First, judicial stretching of “mutilation” or “indignity” language to cover sexual acts has been rejected far more often than accepted across comparative case law, precisely because “mutilation” doctrinally connotes physical damage to a limb or essential body part, not sexual contact falling short of such

⁶⁶*Lipham v. State*, 364 S.E.2d 840, 842–843 (Ga. 1988).

⁶⁷*Puttaswamy*, *supra* note 39; *Common Cause*, *supra* note 40.

⁶⁸*People v. Stanworth*, 11 Cal. 3d 588, 604 n.15 (1974), *discussed in* Ochoa & Jones, *supra* note 8, at 543–544.

damage.⁶⁹ Second, even where such judicial stretching succeeds, it leaves the penalty structurally mismatched to the gravity of the conduct, since the maximum sentence attached to “indignity” provisions (one year in India) was never calibrated with sexual offences in mind.

VIII. Recommendations

1. Enact a discrete offence. Parliament should insert a new section into the BNS situated within the chapter dealing with sexual offences, not within the chapter dealing with offences relating to the human body's disposal, criminalising sexual acts with a human corpse. Situating the offence within the sexual-offences chapter, following the South African and UK models, ensures doctrinal and expressive coherence with the gravity of the wrong.⁷⁰

2. Define the conduct broadly, not solely by “penetration.” Drawing on the drafting lesson of the Washington statute and on Ochoa and Jones's own proposed model provision, the Indian offence should cover any physical contact with a corpse's sexual organs, mouth or anus, or any other contact undertaken for the purpose of sexual arousal or gratification, to avoid the underinclusiveness of penetration-only formulations such as Georgia's.⁷¹

3. Calibrate proportionate punishment. The offence should carry a maximum sentence materially higher than the one year presently attached to section 297 IPC/its BNS analogue a range of five to ten years, broadly consonant with the Canadian and aggravated-offence tiers of comparative legislation, with enhanced sentencing for offenders occupying positions of trust, analogous to the aggravating treatment such offenders receive under South African law.⁷²

4. Clarify the interaction with homicide offences. Following the Georgia Supreme Court's reasoning in *Lipham v State*, the statute should expressly clarify that where an offender kills the victim in order to facilitate necrophilic intercourse, the offender is guilty of both murder (or the appropriate BNS homicide offence) and the necrophilia offence, avoiding the confusion that has attended the “rape-requires-a-live-victim” line of American cases when courts import that reasoning uncritically into the felony-murder or aggravating-circumstance context.⁷³

⁶⁹*People v. Bullington*, 27 Cal. App. 2d 396, 400 (1938); Ochoa & Jones, *supra* note 8, at 544.

⁷⁰Sexual Offences Act, 2003, c. 42, § 70 (UK); Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, § 14 (S. Afr.).

⁷¹Wash. Rev. Code Ann. § 9A.44.105(2) (West Supp. 1995); Ochoa & Jones, *supra* note 8, at 578.

⁷² Criminal Code, R.S.C. 1985, c. C-46, § 182 (Can.); Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, § 14 (S. Afr.).

⁷³*Lipham v. State*, *supra* note 60, at 842–843.

5. Address evidentiary and procedural safeguards. Drawing on the American experience under Federal Rule of Evidence 404(b) and its state analogues, India's Bharatiya Sakshya Adhiniyam, 2023 should be interpreted, or if necessary amended, to permit evidence of necrophilic conduct as evidence of motive or modus operandi in murder trials, while excluding unduly prejudicial general-propensity evidence unconnected to the charged offence, striking the same balance Indian courts already strike under the “similar fact evidence” doctrine in relation to other sexual offences.⁷⁴

6. Institutional and forensic measures. Independent of legislative reform, the recommendations advanced in recent Indian scholarship mandatory CCTV surveillance in government and private mortuaries, standardised post-mortem protocols capable of detecting post-mortem sexual interference, and sensitisation training for forensic and law-enforcement personnel should be implemented through executive and institutional action, since criminalisation alone, without corresponding detection capacity, will have limited practical effect.⁷⁵

7. Confidentiality protections for victims' families. Given the acute psychological harm inflicted upon surviving family members, the harm the Model Penal Code commentary identifies as the central justification for corpse-abuse offences any prosecution should permit, on application, in-camera proceedings analogous to those available in ordinary sexual-offence trials under Indian law, to protect family dignity during prosecution.⁷⁶

IX. Conclusion

The absence of a specific necrophilia offence in Indian criminal law is not a considered policy choice; it is an inherited gap that survived the most significant recodification of Indian criminal law since 1860 without scrutiny. The doctrinal analysis in this article demonstrates that existing provisions that whether the IPC's or the BNS's “indignity to a corpse” formulation, or the ordinary rape provisions applicable only to living victims are structurally incapable of capturing the sexual character of necrophilic conduct, a conclusion reinforced by comparative case law from California, Michigan, Alabama and beyond, each holding, with striking unanimity, that rape requires a living victim. The constitutional foundation for reform, by contrast, is already firmly established: Indian courts have repeatedly recognised that the dignity

⁷⁴Bharatiya Sakshya Adhiniyam, 2023.

⁷⁵Yadav, *supra* note 2, at 4861–4862.

⁷⁶Model Penal Code § 250.10

guaranteed by Article 21 does not terminate at the moment of death. What remains is legislative implementation.

The comparative survey undertaken in this article suggests a clear and administrable path: a discrete offence situated within the sexual-offences framework of the BNS, broadly defined to capture both penetrative and non-penetrative sexual contact, proportionately punished, and accompanied by clear rules governing its interaction with homicide offences and by institutional measures to improve detection. None of these reforms is legislatively complex, constitutionally doubtful, or politically contentious. What they require is legislative attention that the 2023 recodification exercise conspicuously failed to provide, and that Parliament should no longer defer.