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NECROPHILIA IN INDIA: A CRITICAL ANALYSIS OF LEGISLATIVE GAPS AND THE NEED FOR SPECIFIC CRIMINAL LEGISLATION

~ Riya Kumari

ABSTRACT

In India i.e. the Indian criminal law does not have a single provision or law that separately penalises any sexual acts committed on a dead human body. Courts have clarified that any such conduct have to be held that it falls outside the ambit of the offence of rape and outside the offence of unnatural intercourse i.e. to be leaving it to be get addressed, if happen at all, through the residual offence of offering indignity to a corpse, which carries a maximum sentence i.e. one year. The Bharatiya Nyaya Sanhita, 2023, which replaced the Indian Penal Code on the 1st July 2024, which reproduced this position without correction or any amendment. This paper will trace the doctrinal reasons for the gap it will also examines the decisions of the Karnataka and Chhattisgarh High Courts and the Hon'ble Supreme Court's for the refusal to intervene, and it situates the main problem within the Article 21 and Article 20(1) of the Constitution, it will also compares foreign approaches, along with the answers the principal objections for such reform, and it proposes such a model provision with institutional safeguards, furthermore it argues that a specific, gender-neutral offence is constitutionally defensible and practically necessary and needed such legislation in India.

Keywords: Necrophilia; Sexual Offences Against Human Corpses; Indian Criminal Law; Bharatiya Nyaya Sanhita, 2023; Section 301 BNS; Indignity to a Human Corpse; Article 21; Article 20(1); Constitutional Protection; Comparative Criminal Law; Gender-Neutral Legislation; Criminal Law Reform.

I. Introduction

The criminal law of each and every country is expected to be get protect human dignity also to prevent serious wrongdoing. However, this type of certain situations has several gaps in the

law. One of the major issues is necrophilia, which means to have the sexual attraction towards or sexual acts committed with a dead human body.

This is an important legal question that led to arises when a person commits a sexual act on a dead body i.e. the person should be punished specifically for rape or another sexual offence? In India the courts have considered this major question and have to be held that the existing definition of rape does not cover sexual acts committed on a dead body.

This issue received considerable attention in the landmark case of Rangaraju @ Vajapeyi v. State of Karnataka.[1] In this case, the has accused murdered a young woman and subsequently committed a sexual act on her dead body. The Sessions Court convicted him of murder and rape. However, the Hon'ble Karnataka High Court set aside the rape conviction because the victim was already dead when the sexual act was committed. The court had observed that Indian law did not have a specific provision i.e. dealing with such conduct and recommended that the Central Government should introduce appropriate legislation for this type of conduct and offence.

A similar issue was arisen and considered by the Hon'ble Chhattisgarh High Court in Neelkanth @ Neelu Nagesh v. State of Chhattisgarh[2] in this case the issue involved the murder of a nine-year-old girl. One of the accused has committed rape while the girl was alive, whereas subsequently the co-accused has committed a sexual act on her body after her death. The court has not treated the further act as rape under the IPC or as an offence under the relevant POCSO provisions. The co-accused was further convicted under Section 201 IPC[3] for causing the disappearance of evidence.

The matter had subsequently reached the Hon'ble Supreme Court in February 2025. In the case of State of Karnataka v. Rangaraju @ Vajapeyi,[4] the Hon'ble Supreme Court has dismissed the State's Special Leave Petition and found no reason to have a different point of view from the Karnataka High Court, observing that necrophilia was not an offence under the existing law.

These decisions show that Indian criminal law does not directly recognise and never have such punishable offence for the sexual violation of a corpse as a separate criminal offence.

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[1] Rangaraju @ Vajapeyi v. State of Karnataka, Criminal Appeal No. 1610 of 2017 (Karnataka High Court, May 30, 2023), 2023 LiveLaw (Kar) 197.

[2] Neelkanth @ Neelu Nagesh v. State of Chhattisgarh, 2024: CGHC:48449 (Chhattisgarh High Court, December 10, 2024).

[3] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 201 (Causing Disappearance of Evidence of Offence, or Giving False Information to Screen Offender).

[4] State of Karnataka v. Rangaraju @ Vajapeyi, SLP (Crl.) No. 5403 of 2024 (Supreme Court of India, February 4, 2025).

The Bharatiya Nyaya Sanhita, 2023, which replaced the IPC on the 1st July 2024, was having an opportunity to address this gap and major issue. However, it had retained the relevant provisions without introducing any specific offence dealing with sexual acts committed on dead human bodies.

This paper will argue that the absence of such a provision is an important and much required and have weakness under the Indian criminal law. In India the law should not depend only on offences i.e. murder, concealment of evidence or indignity to a corpse when the actual wrongdoing is sexual in nature.

The paper will first explain the meaning and background of necrophilia and then will examine the existing legal provisions, judicial decisions, constitutional principles and foreign laws. Finally, it will propose a separate criminal provision and practical institutional safeguards i.e. required under the Indian Law.

II. CONCEPTUAL AND CLINICAL FRAMEWORK

The word necrophilia has derived from the two Greek words i.e. nekros, meaning dead body, and philia, meaning attraction or affection. In general terms, necrophilia mainly refers to a sexual attraction towards dead bodies or sexual conduct that involves a dead human body.

In literature the necrophilia is as a type of paraphilic interest. However, it is important to clarify that every person who commits such an act may not have the same psychological condition or motivation.

A well-known psychiatric study done by Jonathan P. Rosman and Phillip J. Resnick, titled as Sexual Attraction to Corpses: A Psychiatric Review of Necrophilia, published in 1989, which was examined with different categories of necrophilic behaviour.[5] The authors had distinguished between persons who experience a genuine sexual attraction towards corpses and those who commit such acts for other reasons i.e. for their pleasure.

For instance, some of the offenders may have a continuing sexual attraction towards dead bodies. Others seek this an act out of opportunity, curiosity, control, or other personal motives. There are other people also who seeks an experience such thoughts or fantasies but never act upon them.

The Anil Aggrawal, in his work Necrophilia i.e. a Forensic and Medico-Legal Aspects (2011), which has also examined different forms of necrophilic behaviour it also discussed its importance from a forensic and legal point of view.[6]

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[5] Jonathan P. Rosman & 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).

[6] Anil Aggrawal, Necrophilia: Forensic and Medico-Legal Aspects (CRC Press, 2011).

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR), which was published in 2022, it has discussed necrophilic interest within the category of other specified paraphilic disorders. However, there is a clinical interest and the commission of a criminal act are the two different matters.[7]

There are two important points that criminal law should consider.

Firstly, the offenders may have different motives.

Some of the offenders may murder a person to obtain access to their body. Others can commit a sexual act after killing that person for an unrelated reason. In some cases, the offender may be a hospital employee, mortuary worker or another person who has access to dead bodies because of their professional duties.

Therefore, the legislation should not assume that all the offenders act in the same manner. The offence should cover different forms of sexual conduct involving a dead human body.

Secondly, a psychological condition does not automatically remove criminal responsibility.

A person cannot avoid criminal liability merely by claiming to have a particular sexual interest or psychological condition. The question arises of legal insanity that must be examined separately under the applicable legal principles and evidence.

Under Indian criminal law, the defence relating to unsoundness of mind is governed by Section 22 of the BNS.[8] A medical diagnosis alone does not establish that the legal requirements of this defence are satisfied.

The Hon'ble Karnataka High Court has also raised the concern about the possibility of mortuary workers misusing their access to dead bodies. Such conduct arises to raise a serious question about the institutional responsibility and their safety of the persons whose bodies are kept in hospitals and mortuaries, so there is no reliable national figure specifically showing the number of necrophilia incidents that is happen with in India. However, there is absence of a separate offence or statistical category that does not prove such incidents never occur. Some of the cases may be recorded under other offences.

Therefore, the law should and must recognise the problem and provide a clear legal framework to deal with it such type of offence.

III. THE EXISTING LEGAL FRAMEWORK WITHIN INDIA

A. Rape: The Legal Requirement of a Living Victim

[7] American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (5th ed., Text Revision, 2022).

[8] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 22 (India).

Under Section 375 of the Indian Penal Code, 1860,[9] where the rape was defined through specified sexual acts committed by a man against a woman in circumstances mentioned under the provision and as per the Section 376[10] which prescribed the punishment for rape.

As the Bharatiya Nyaya Sanhita, 2023, the corresponding provision is Section 63 of BNS,[11] also as per Section 64[12] it provides the general punishment for constituting rape. As per the Section 63 it retains the requirement that the victim must be a woman and includes circumstances relating to consent and the ability to communicate consent.[13]

The central problem that arises whether a dead body can be treated as a woman who is unable to communicate consent.

In the Karnataka case, the prosecution had argued that the provision dealing with a woman who is unable to communicate consent could cover a dead body. According to this argument, a corpse is completely unable to communicate consent and should therefore fall within the ambit of the provision.[14]

However, the court has rejected this interpretation.

There is the major difference between a living person who cannot communicate for the consent and a dead body.

A living person may be unable to communicate because of illness, unconsciousness, disability or another condition. A dead body is no longer a living person capable of exercising sexual autonomy i.e. unable to live again. The definition of rape as per the Section 375 IPC,[15] and its corresponding provision under Section 63 BNS,[16] cannot simply be extended to include conduct that the statutory language does not cover.

This principle of strict interpretation of criminal laws is also an important concept. A person cannot be punished for an offence by giving a penal provision a meaning that it cannot reasonably carry.

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[9] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 375 (Rape).
[10] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 376 (Punishment for Rape).
[11] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 63 (India).
[12] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 64 (India).
[13] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 63–64; Indian Penal Code, 1860, No. 45 of 1860, §§ 375–376 (India).
[14] Rangaraju @ Vajapeyi v. State of Karnataka, Criminal Appeal No. 1610 of 2017 (Karnataka High Court, May 30, 2023), 2023 LiveLaw (Kar) 197.
[15] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 375 (Rape).
[16] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 63 (India).

In the case of Tolaram Relumal v. State of Bombay,[17] the Hon'ble Supreme Court has explained the penal provision i.e. reasonably capable of two interpretations therefore, the interpretation should be favourable to the accused and should be preferred.

Therefore, although this result may appear unsatisfactory, so the courts cannot create a new criminal offence by extending the meaning of rape beyond its statutory definition.

This shows why Parliament needs to introduce a separate provision dealing specifically with sexual acts committed on dead bodies.

B. Unnatural Offences: The Removal of Section 377 IPC

As per the Section 377 of the IPC,[18] it deals with voluntary carnal i.e. intercourse against the order of nature with any man, woman or animal.

It may appear that this provision could have been used to punish sexual acts committed on dead bodies. However, the Karnataka High Court rejected this argument because the provision did not specifically include a dead body.

The court also recommended either amending Section 377[19] to cover such conduct or introducing a separate criminal provision.

However, this legal position has changed after the Hon'ble Supreme Court has led the decision in the landmark case of Navtej Singh Johar v. Union of India.[20]

In this aforementioned case, the Hon'ble Supreme Court has read down Section 377 IPC[21] and held that consensual sexual relations between adults could not be criminalised under this provision.

The Bharatiya Nyaya Sanhita, 2023, has subsequently omitted Section 377 altogether.

It is an important to clear that the omission of Section 377 of the IPC that does not mean that every act has previously covered by it has become lawful. While the other offences can still apply depending on the facts, including rape, offences involving children and other applicable provisions as given under the codify law.

Also, the Parliamentary Standing Committee i.e. our Home Affairs, has mentioned in its 246th Report on the Bharatiya Nyaya Sanhita, 2023, also expressed concern about the omission of Section 377.[22] It was highly recommended to retaining the provisions that deals with non-

[17] Tolaram Relumal v. State of Bombay, AIR 1954 SC 496.
[18] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).
[19] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).
[20] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[21] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).
[22] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).

consensual sexual acts along with the sexual offences against minors and bestiality. However, this Committee had never specifically recommended a separate offence of necrophilia.[23]

The absence of Section 377 from the BNS makes it even more important to consider a separate provision for sexual acts committed on dead bodies.[24]

C. Indignity to a Corpse: The Existing Residual Provision

The closest existing provision that is dealing with indignity to a dead human body is Section 297 of the IPC. Its corresponding provision is Section 301 of the BNS.[25]

Section 301 BNS[26] deals with trespassing on burial places and offering indignity to a human corpse.

The provision punishes a person who, with the intention of wounding the feelings of another person or insulting the religion of another person, or knowing that such feelings or religious sentiments are likely to be affected, trespasses on a place of burial or offers indignity to a human corpse.

The punishment may extend to imprisonment of one year, or fine, or both.[27]

Although this provision can be relevant in cases involving improper treatment of a corpse, it does not adequately address sexual violation of a dead body.

There are three main problems.

First, the provision does not directly focus on sexual violation.

The language deals with indignity to a corpse which deals with interference with burial places. It has never created a separate offence based on the sexual nature of the act.

Second, the required intention creates difficulties.

The provision refers to the intention to wound feelings or insult religious sentiments, or knowledge that such consequences are likely. However, if an offender who secretly commits a sexual act on a dead body may not have the intention to commit such offence or to insult a particular religion or hurt the feelings of any person.

Therefore, this provision may not adequately address every case and situation.

Third, the punishment is limited.

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[23] Department-Related Parliamentary Standing Committee on Home Affairs, 246th Report on the Bharatiya Nyaya Sanhita, 2023, paras. 1.16–1.17 (November 2023).

[24] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).

[25] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 297; The Bharatiya Nyaya Sanhita, 2023 (Act No. 45 of 2023), § 301.

[26] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 301(India).

[27] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 301; Indian Penal Code, 1860, No. 45 of 1860, § 297 (India).

The maximum punishment under Section 301 BNS[28] is one year. This may be inadequate for serious sexual violations, particularly where the offender has abused a position of trust or has committed the act after murdering the victim.

Therefore, Section 301 is not a complete substitute for a separate offence of sexual violation of a corpse.[29]

D. Ancillary Provisions and POCSO

Apart from the provisions discussed above, prosecutors may rely on other criminal provisions depending on the facts of a particular case.

For example, Section 201 IPC dealt with causing the disappearance of evidence of an offence or giving false information to protect an offender.

Its corresponding provision is Section 238 BNS, not Section 241.

Section 238 BNS punishes a person who, knowing or having reason to believe that an offence has been committed, causes evidence of that offence to disappear with the intention of protecting the offender from legal punishment, or provides false information for that purpose.[30]

In the Chhattisgarh case, the co-accused was convicted under Section 201 IPC because he participated in concealing the evidence by burying the body.

However, this provision does not directly punish the sexual act. It punishes the separate act of concealing evidence.

This means that an offender who commits a sexual act on a corpse but does not conceal the body may not be punishable under this provision on that basis alone.

The Protection of Children from Sexual Offences Act, 2012 (POCSO) which also raises an important issue.

As per the Section 2(1)(d) defines a child as any person below eighteen years of age. Section 3 defines penetrative sexual assault against a child.[31]

In the Chhattisgarh case, the Hon'ble High Court did not apply the relevant rape and POCSO provisions to the sexual act committed after the child's death.

This creates a serious legal concern. Also, when the dead body belongs to a child i.e. minor, the law never provides a separate offence specifically addressing the sexual violation of that body.

[28] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 301 (India).
[29] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 301 (India).
[30] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 238; Indian Penal Code, 1860, No. 45 of 1860, § 201 (India).
[31] Protection of Children from Sexual Offences Act, 2012, No. 32 of 2012, §§ 2(1)(d), 3 (India).

The purpose of POCSO Act is to protect the children from any sexual offences. However, its provisions cannot simply be extended to conduct that falls within the outside their statutory definitions.

A separate offence should therefore cover sexual acts committed on the bodies of deceased persons, irrespective of their age or gender.

E. The BNS: Continuity Without Correction

As per the Bharatiya Nyaya Sanhita, 2023, which came into force on the 1st July 2024 and which is now replaced by the Indian Penal Code, 1860.

It has introduced several changes to Indian criminal law. However, it has never introduced a separate offence for any sexual acts committed on dead bodies therefore, any relevant provisions which concerns the offence of rape and indignity to a corpse largely continue the earlier legal framework.

The Hon'ble Karnataka High Court had already recommended the legislative action in May 2023, also the Parliamentary Standing Committee also examined the BNS in 2023. However, the final legislation did not create a specific offence dealing with necrophilia.

The Chhattisgarh High Court considered the issue in December 2024, after the BNS had come into force. The Supreme Court also considered the Karnataka matter in February 2025.

These developments demonstrate that the legal gap has been clearly brought to the attention of the judiciary and the legislature.

The BNS therefore represents a missed opportunity to address this particular problem.

IV. JUDICIAL RESPONSE

A. The Karnataka High Court in Rangaraju

One of the most important and landmark Indian decisions dealing i.e. with necrophilia is Rangaraju @ Vajapeyi v. State of Karnataka, Criminal Appeal No. 1610/2017, decided on the 30th May 2023.[32]

This case has involved the murder of a young woman followed by a sexual act committed on her dead body. The Sessions Court had convicted the accused under Section 302 IPC[33] for murder and Section 376 IPC[34] for the offence of rape.

However, the Hon'ble Karnataka High Court had partly allowed the appeal in this case. It has maintained the murder conviction but had set aside the conviction for rape.

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[32] Rangaraju @ Vajapeyi v. State of Karnataka, Criminal Appeal No. 1610 of 2017 (Karnataka High Court, May 30, 2023), 2023 LiveLaw (Kar) 197.

[33] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 302 (Punishment for Murder).

[34] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 376 (Punishment for Rape).

The Hon'ble court has examined its legal meaning of rape under the Section 375 IPC[35] and also the applicability of Section 377 IPC.[36] It held that the existing provisions did not cover sexual acts committed on a dead body. The Hon'ble court has also recognised that the conduct was way too serious and that Indian law did not contain and never have a such law for this type of a specific offence to address the sexual violation of a corpse.

This judgment is very important as the court did not simply discuss the legal problem. It had also recommended so many legislative reform.

The court had also suggested that the Central Government should consider amending the existing law or introducing a new separate provision to punish such acts.

It has also referred to the other laws of so many countries i.e. including the United Kingdom, Canada, New Zealand and South Africa, which has provisions for dealing with the interference with or sexual violation of dead bodies.

The court has also referred to the Hon'ble Supreme Court's decision is in the case of Pt. Parmanand Katara v. Union of India, which was recognised that dignity and respectful treatment must be given after their death.[37]

The Hon'ble Karnataka High Court has correctly recognised that the judiciary cannot create an offence where the legislature has not provided yet any such type of the offence.

This decision therefore, highlights the need for Parliament to introduce a specific criminal provision or amendment.

B. The Chhattisgarh High Court

Another important and landmark decision was held in the case of Neelkanth @ Neelu Nagesh v. State of Chhattisgarh,[38] the case concerned with the commission of the offence rape also the case involve a murder of a nine-year-old girl.

According to the prosecution, one of the accused has committed rape while the child was alive and later murdered her. The dead body was then taken away and buried with the assistance of the co-accused, Neelkanth @ Neelu Nagesh afterwards the co-accused has committed a sexual act on the dead body before it was buried. The trial court had convicted the principal accused

[35] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 375 (Rape).
[36] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).
[37] Pt. Parmanand Katara v. Union of India, (1995) 3 SCC 248; Rangaraju @ Vajapeyi v. State of Karnataka, Criminal Appeal No. 1610 of 2017 (Karnataka High Court, May 30, 2023).
[38] Neelkanth @ Neelu Nagesh v. State of Chhattisgarh, 2024: CGHC:48449 (Chhattisgarh High Court, December 10, 2024).

under several provisions, including Sections 376(3),[39] 363,[40] 302[41] and 201 IPC,[42] along with the relevant provisions of the Act i.e. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The co-accused was further convicted under Section 201 IPC[43] for causing the disappearance of evidence and was sentenced to seven years of imprisonment.

However, he was not convicted for rape under the IPC or the relevant provision of the POCSO offences in relation to the act committed after the child's death.

The High Court has examined the issue and relied on the reasoning adopted by the Hon'ble Karnataka High Court in Rangaraju.

It was recognised in this case that every dead body deserves dignity and respectful treatment. However, it was also held that the existing criminal provisions could not be extended to punish the sexual act as rape. The court has also refused to introduce an offence through judicial interpretation where no such offence has still existed in the statute.

This judgment is way more significant because it has involved the body of a child. It shows that the absence of a specific provision which creates a gap even in situations where the deceased person was a minor.[44]

C. The Supreme Court

The issue has been arisen subsequently and reached the Hon'ble Supreme Court in the case State of Karnataka v. Rangaraju @ Vajapeyi,[45] in this case the State of Karnataka has challenged the decision of the Hon'ble Karnataka High Court, which had argued that the relevant provisions should have and need to cover the act committed on the dead body.

On 4th February 2025, a Bench comprising Justice Sudhanshu Dhulia and Justice Ahsanuddin Amanullah dismissed the Special Leave Petition.

The Hon'ble Supreme Court has observed that the respondent had been convicted for the offence of murder but the Hon'ble High Court had set aside the rape conviction because the sexual act had been committed on a dead body.

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[39] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 376 (Punishment for Rape).
[40] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 363 (Punishment for Kidnapping).
[41] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 302 (Punishment for Murder).
[42] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 201 (Causing Disappearance of Evidence of Offence, or Giving False Information to Screen Offender).
[43] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 201 (Causing Disappearance of Evidence of Offence, or Giving False Information to Screen Offender).
[44] Neelkanth @ Neelu Nagesh v. State of Chhattisgarh, 2024: CGHC:48449 (Chhattisgarh High Court, December 10, 2024).
[45] State of Karnataka v. Rangaraju @ Vajapeyi, SLP (Crl.) No. 5403 of 2024 (Supreme Court of India, February 4, 2025).

The Court had stated that, there is nothing had been shown for establish that necrophilia was an offence under the existing law, it saw that no reason to take a different point of view from the opinion of the Hon'ble High Court.[46]

This order is way more important because it confirms that the existing statutory provisions do not provide a separate offence i.e. termed as necrophilia.

However, there is an important legal distinction should be made.

The Hon'ble Supreme Court has dismissed the Special Leave Petition through a reasoned order in the aforementioned case. Therefore, it should not be described as a non-speaking order.

At the same time, dismissal of an SLP does not automatically mean that the High Court judgment has to be merged into the Hon'ble Supreme Court's order. The principles relating to merger and the effect that led to dismissal of an SLP was explained in the case of Kunhayammed v. State of Kerala.[47]

The Hon'ble Supreme Court's order should be understood according to its actual reasoning which has come. It confirms that the Court has found no reason to interfere with the High Court's decision, but it should not be treated as a detailed judgment laying down a comprehensive new legal test as per the Article 141 of The Constitution of India, 1950.[48]

Thus, order has further demonstrated the limits of judicial interpretation. If Parliament has not created a specific offence or specific legislation that punishes, courts cannot punish a person by introducing a new offence through his own interpretation.

D. Assessment

The decisions of the Hon'ble Karnataka High Court, Chhattisgarh High Court and the Hon'ble Supreme Court reveal an important problem in Indian criminal law.

The courts have recognised this type of seriousness of the sexual acts committed on dead bodies. However, they have also recognised that the existing statutory provisions do not directly cover any such conduct.

Their approach was based on the principle that criminal liability must be supported by an existing legal provision and that needs to be interpreted.

This was an important protection given under the rule of law therefore, Courts cannot punish individuals merely because their conduct appears immoral or disturbing.

At the same time, the law should not remain silent about serious forms of wrongdoing.

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[46] State of Karnataka v. Rangaraju @ Vajapeyi, SLP (Crl.) No. 5403 of 2024 (Supreme Court of India, February 4, 2025).

[47] Kunhayammed v. State of Kerala, (2000) 6 SCC 359; Constitution of India, art. 141.

[48] The Constitution of India, 1950, art. 141.

Where a particular act is not covered by existing offences, Parliament must examine whether a new offence is necessary and needed in India.

The problem is therefore not that the courts have failed to act but the main issue is that the existing legislation does not provide a clear and specific remedy.

Legislative reform is the appropriate solution for the Necrophilia.

V. CONSTITUTIONAL DIMENSIONS

A. Dignity After Death under Article 21

As per the Article 21[49] of the Constitution of India it states that no person shall be deprived of life or personal liberty except according to the procedure established by law.

The Hon'ble Supreme Court has interpreted Article 21 broadly also made the scope broader and has recognised that the right to life includes the right to live with human dignity.

In the case of Francis Coralie Mullin v. Administrator,[50] Union Territory of Delhi, the Hon'ble Supreme Court has explained that the right to life includes the right to live with human dignity and basic human necessities i.e. food, shelter, house, clothing in this case.[51]

Similarly, in the landmark case of Justice K.S. Puttaswamy (Retd.) v. Union of India, the Hon'ble Supreme Court has recognised the importance of dignity, privacy and personal autonomy as constitutional values, this case is also known as Right to Privacy case.[52]

There was an important decision concerning the dignity after death is which was held in this case Pt. Parmanand Katara v. Union of India.[53] in this case, the Hon'ble Supreme Court has recognised that the dignity and respectful treatment of a human body should continue even after death. The Court has further emphasised that the dead body should be treated with dignity and should not be subjected to disrespectful treatment under any circumstances.

In another case of Ashray Adhikar Abhiyan v. Union of India,[54] the Hon'ble Supreme Court has also considered the importance for providing a decent burial or cremation to the persons who had died without any proper support or identification.

The Hon'ble Supreme Court has further considered in the situation that was happen in India i.e. the dignity of dead bodies during the COVID-19 pandemic in its proceedings concerning the proper treatment of COVID-19 patients and dignified handling of dead bodies in

[49] INDIA CONST. art. 21.
[50] Francis Coralie Mullin v. Administrator, Union Territory of Delhi, (1981) 1 SCC 608.
[51] HARISH RANA V. UNION OF INDIA (2026 INSC 222) (SC) 244.
[52] Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.
[53] Pt. Parmanand Katara v. Union of India, (1995) 3 SCC 248
[54] Ashray Adhikar Abhiyan v. Union of India, (2002) 2 SCC 27.

hospitals.[55] These decisions shows that in India i.e. Indian constitutional jurisprudence recognises the importance of respecting human dignity even after death.

However, a legal distinction is necessary and needed.

As per the Article 21[56] it primarily protects living persons. A dead body cannot independently exercise its personal liberty or enjoy life in the same manner as a living person is doing.

Therefore, it should be legally inaccurate to state that all the corpse directly exercises all the rights guaranteed under Article 21.[57]

The better argument is that the constitutional value of human dignity creates an obligation on the State to ensure respectful treatment of human remains.

This obligation may support the introduction of legislation that protects dead bodies from sexual violation and other forms of serious indignity.

As per the Article 51A(e)[58] of the Constitution this is also relevant. It states the fundamental duty on every citizen to renounce practices derogatory for the dignity of women.

Although this provision does not independently create a criminal offence, it reflects the constitutional importance of dignity and respect for women.[59]

Therefore, In India our Parliament should consider the constitutional value of dignity while framing a specific law or to make any amendments for preventing sexual violation of dead bodies.

B. Legality and Article 20(1)

As per the Article 20(1) of the Constitution protects individuals against retrospective criminal punishment.[60]

It provides a safeguard to the accused that no person can be convicted for an act that was not an offence when it was committed. It has also prevented the imposition of a greater punishment than the one that could have been imposed under the law in force at the time of the offence.

This principle is known as nullum crimen sine lege, meaning that there can be no crime without law. It is one of the most important protections given under the criminal law.

In the context of necrophilia as a crime, this principle explains why our Indian courts cannot simply extend the definition of rape to include sexual acts committed on dead bodies.

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[55] In Re: Proper Treatment of COVID-19 Patients and Dignified Handling of Dead Bodies in Hospitals, Suo Motu Writ Petition (Civil) No. 7 of 2020, order dated June 19, 2020 (Supreme Court of India).
[56] INDIA CONST. art. 21.
[57] INDIA CONST. art. 21.
[58] Constitution of India, art. 51A(e).
[59] Constitution of India, art. 51A(e).
[60] Constitution of India, art. 20(1).

If the existing legal provision does not cover the such conduct, a court cannot create a new offence through their own interpretation and punish an accused person retrospectively. This does not mean that the conduct should be always kept remain outside criminal law forever, therefore the Parliament has the authority to introduce a new offence through legislation.

However, any such legislation must operate prospectively. A person cannot be punished under the new provision for an act committed before that provision came into force.

Therefore, this principle of legality supports the need for legislative reform and amendment while also protecting the rights of the accused given under the Article 20 of the Indian Constitution.[61]

VI. COMPARATIVE PERSPECTIVES

A comparison will be discussed with foreign legal systems it will help explain how other countries deal with these types of sexual acts and indignity i.e. involving dead human bodies.

Several countries have introduced provisions that deals with the interference with human remains or sexual activity involving corpses.

These provisions differ in their wording, scope along with the punishment.

A. United Kingdom

The United Kingdom has a specific provision that use to deal with sexual activity involving a corpse.

As per the Section 70 of the Sexual Offences Act 2003 which was originally concerned with sexual penetration of a corpse.

However, this legal position was changed following the Crime and Policing Act 2026.

With effect same effect from 29th September 2026, as per the Section 70 which was replaced by a broader scope for the offence titled Sexual activity with a corpse.[62]

The amended provision which covers all the intentional sexual touching of any part of the body of a dead person, also it includes where the offender knows or is reckless as to whether the body is dead.

The punishment on conviction on indictment may extend to seven years where the act which involves penetration and five years in other cases.[63]

This amendment is very important because it had recognised that any sexual violation may involve both penetrative and non-penetrative acts.

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[61] Constitution of India, art. 20(1).

[62] Sexual Offences Act 2003, c. 42, § 70, as substituted by Crime and Policing Act 2026, § 115 (UK), effective September 29, 2026.

[63] Sexual Offences Act 2003, c. 42, § 70, as substituted by Crime and Policing Act 2026, § 115 (UK), effective September 29, 2026.

The United Kingdom's approach which provides a useful instance for India because it defines and punishes at the same time along with the prohibited conduct directly instead of relying on general provisions concerning indignity to a corpse.

B. Canada

Canada deals with the offences which involves a dead body under the Section 182 of its Criminal Code. As per the Section 182(b)[64] which punishes a person who improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not.

This type of offence is punishable by the imprisonment of up to five years on indictment.[65]

This provision has it broader impact than any specific offence of necrophilia because it covers different forms of improper interference with the human remains. It used to recognise that dead bodies deserve legal protection even after his death.

However, there is provision which does not define necrophilia as a separate sexual offence.

In India there is a need to learn from Canada's approach by recognising the dignity of human which remains as a protected legal interest. However, a separate sexual violation offence would provide greater clarity in the context of necrophilia.

VII. OBJECTIONS TO REFORM

Introducing a new separate criminal offence may raise certain objections. These objections should be considered carefully before any recommendations for the legislative reform.

A. Rarity and Over-Criminalisation

One of the arguments against introducing a separate offence is that necrophilia is a rare form of misconduct and which has not occurred frequently.

According to this argument, the criminal law should not be expanded to deal with every unusual or uncommon act.

However, the rarity of an offence does has not automatically mean that it should not be criminalised or never been to be criminalised.

The main purpose of criminal law is not limited to punishing such offences that has be occur frequently. It has also protected important interests against serious forms of wrongdoing.

B. The Harm Question

Another objection is raised i.e. a dead person cannot experience any type of physical pain or emotional suffering.

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[64] Criminal Code, R.S.C. 1985, c. C-46, § 182(b) (Canada).
[65] Criminal Code, R.S.C. 1985, c. C-46, § 182(b) (Canada).

According to this argument, any sexual acts committed on a corpse may be considered a victimless offence because the deceased person is no longer alive.

This argument has raised an important question about the basis of criminal law punishment.

The harm principle, associated with John Stuart Mill and later developed by Joel Feinberg, suggests that criminal punishment should generally be justified by preventing harm to others.

Patrick Devlin and H.L.A. Hart have also debated the relationship between law, morality along with the power of the State to punish conduct.[66]

However, there are several reasons why sexual violation of a corpse should not automatically be treated as a victimless act.

First, the family of the deceased may suffer serious emotional harm.

Discovering that a deceased family member's body has been sexually violated may cause significant distress and psychological suffering.

Second, human dignity continues to have legal importance after death.

The Supreme Court has recognised that dead bodies must be treated with dignity and respect.

This demonstrates that the legal system does not treat human remains as ordinary objects without any protected interest.

Third, such conduct may create risks for living persons.

In few other cases, an offender may kill a person to obtain access to their body. In other cases, the offender may misuse professional access to the dead bodies.

The possibility of such conduct which also raises certain concerns about public safety and institutional trust.

Fourth, the law has already recognised certain interests that to be continue after death.

For example, the BNS contains provisions relating to defamation concerning deceased persons and dishonestly or fraudulently dealing with property connected with deceased persons.[67]

These provisions show that the legal system may recognise certain interests even after a person's death.

Therefore, the argument that the dead cannot suffer should not be treated as a complete answer to the question of criminalisation.

A separate offence can be justified by the need to protect human dignity, the interests of families, public confidence and the proper handling of human being remain.

VIII. PROPOSED REFORM

[66] John Stuart Mill, On Liberty (1859); Joel Feinberg, Harm to Others (1984); Joel Feinberg, Offense to Others (1985); Patrick Devlin, The Enforcement of Morals (1965); H.L.A. Hart, Law, Liberty, and Morality (1963).

[67] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, §§ 315, 356 (India).

A. Where the Offence Belongs

There are three possible approaches for introducing a specific offence of necrophilia in Indian criminal law.

First approach: Amendment of Section 63 BNS[68]

One the option it would be to amend the existing definition of rape under Section 63 of BNS to include the dead bodies.

However, this approach is not advisable.

The offence of rape is based on sexual autonomy, consent and the protection of a living victim.

A dead body cannot exercise consent or personal autonomy as the dead body cannot respond.

Including dead bodies within the definition of rape it may create unnecessary confusion about the nature of the offence and ambiguity.

Therefore, a separate provision would be more appropriate for this crime.

Second approach: Reintroduction of Section 377 IPC

Another option would be to introduce a new provision similar to the former Section 377 IPC.[69]

However, this approach would not be suitable.

As the Section 377[70] was primarily concerned with certain forms of carnal intercourse. Its interpretation also changed after the Hon'ble Supreme Court's decision in Navtej Singh Johar v. Union of India.[71]

Furthermore, the BNS does not contain Section 377 this Section has not been given as it has been earlier omitted.

A new offence should therefore be drafted specifically for sexual acts committed on dead human bodies instead of attempting i.e. better to revive the former provision.

Third approach: Introduction of a separate provision

The best approach would be to introduce a new provision in the Bharatiya Nyaya Sanhita.

This provision could be placed near Section 301 BNS[72] or within the chapter i.e. dealing with the offences relating to the human body.

A separate provision would make the law clearer and ensure that the sexual violation of a corpse is recognised as an independent criminal offence.

It would also allow the Parliament to provide appropriate punishment and special protection in cases involving abuse of professional trust.

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[68] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 63 (India).
[69] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).
[70] The Indian Penal Code, 1860 (Act No. 45 of 1860), § 377 (Unnatural Offences).
[71] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[72] Bharatiya Nyaya Sanhita, 2023, No. 45 of 2023, § 301 (India).

IX. CONCLUSION

The major issue of necrophilia in India highlights an important gap in the criminal justice system. Although the Indian law contains several provisions that deals with rape, murder, disappearance of evidence and indignity to a corpse, it does not any contain separate offence that directly punishes sexual acts committed on dead human bodies.

The decisions of the Karnataka High Court and Chhattisgarh High Court which has demonstrated that the existing provisions are relating to rape and sexual offences cannot simply be extended to cover conduct committed after a person's death i.e. the person is dead.

The Hon'ble Supreme Court's order in State of Karnataka v. Rangaraju @ Vajapeyi which further confirms that the existing law does not provide a separate offence of necrophilia.

These decisions also demonstrate the limits of judicial interpretation and judicial activism. Courts must follow the language of criminal statutes i.e. to be read word by word and cannot create new offences merely because certain conduct is serious or disturbing.

The constitutional argument for legislative reform is supported by the importance of human dignity as per the Article 21. Although a dead body cannot independently all exercise the rights of a living person, the Hon'ble Supreme Court has recognised that human dignity and respectful treatment must continue even after death.

To introduce a separate offence, the Government should strengthen their safety measures in hospitals, mortuaries and burial grounds. Proper access records, CCTV monitoring, staff supervision, forensic investigation and separate crime statistics can help prevent such incidents and improve accountability.

Therefore, the dignity of a human being should not lose its importance after death and should be given dignity.

Parliament should therefore introduce a specific, gender-neutral offence i.e. dealing with the sexual violation of a human corpse which needs to be strengthen the existing institutional safeguards. Such reform would address an important gap in Indian criminal law and ensure that the dignity of deceased persons who should receive a proper legal protection.