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Between Psychiatry and Punishment: Criminal Liability for Necrophilia After the Omission of Section 377 of the IPC in BNS 2023 – A Comparative Analysis

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Legislative reform in criminal law is generally welcomed as a symbol of legal progress by closing the legal loopholes and ensuring laws remain relevant and just. However, not all legislative reform in criminal law closes the legal gaps. One of the examples is the enactment of the Bharatiya Nyaya Sanhita (BNS), 2023. In BNS 2023, Section 377 of the IPC is entirely omitted, which criminalised voluntary carnal intercourse against the order of nature. This gap raises two important questions: the first is concerning criminal liability, and the second is concerning mental health defence. The BNS Section 63 defines that rape requires a living victim; therefore, it doesn't apply to necrophilia. The BNS Section 301 covers trespassing on burial places and indignity to any human corpse, and not sexual violation. The BNS Section 22 requires that the person at the time of doing the act is incapable of knowing the nature of the act; therefore, this defence will not apply in most necrophilia cases, as people with necrophilic paraphilia disorder retain the capacity to know the nature of the act. This created a huge loophole. This study undertakes a comparative analysis of laws in the United Kingdom, New Zealand, South Africa, and Canada. In some countries, criminal liability is combined with psychiatric assessment and treatment when there is a risk of reoffending. This study emphasises the enactment of sui generis legislation containing both criminal and psychiatric provisions if there is a risk of reoffending, grounded in the principle of posthumous human dignity under Article 21.

Keywords: *necrophilia, section 377, necrophilic paraphilia disorder, sui generis legislation.*

INTRODUCTION

In recent times, India has undertaken various major legislative reforms that focused on improving the legal framework. However, every major legislative reform comes at the risk of creating unintended loopholes in the legal system, especially when an old provision is removed without a replacement. This situation is precisely found in the Bharatiya Nyaya Sanhita (BNS), 2023,¹ which replaced Lord Macaulay's colonial-era Indian Penal Code (IPC), 1860, in the context of necrophilia. The omission of IPC Section 377² has left the victims exposed legally, as there is no legal cover for the criminal misconduct in the cases of necrophilia in India.

Before the BNS 2023³ came into force, IPC Section 377 dealt with unnatural offences.⁴ Though it was never explicitly tested for the cases of necrophilia, this provision constituted the only tenable legal basis. However, it is not completely so, as it misses the word "corpse" to prosecute the alleged conduct. But after the BNS 2023⁵ omitted Section 377⁶ of the IPC entirely, it removed the only tenable legal basis for prosecuting the alleged conduct. As a result, there is no statutory provision in India that directly or indirectly addresses necrophilia.

This loophole creates two major problems that the Indian legal system is currently not equipped to handle. The first problem is that currently there is no provision to prosecute someone who commits necrophilia today, and the second problem is how the legal system should respond to the diagnosed necrophilic paraphilia disorder of the offender. BNS Section 22 requires that the person, at the time of doing the act, is incapable of knowing the nature of the act;⁷ therefore, this is not applicable, as this definition is too narrow to understand and address the psychiatric complexity of necrophilia cases, as the people who are diagnosed with necrophilic paraphilia

¹ Bharatiya Nyaya Sanhita 2023

² Indian Penal Code 1860, s 377

³ Bharatiya Nyaya Sanhita 2023

⁴ Indian Penal Code 1860, s 377

⁵ Bharatiya Nyaya Sanhita 2023

⁶ Indian Penal Code 1860, s 377

⁷ Bharatiya Nyaya Sanhita 2023, s 22

disorder are completely aware of what they are doing. And just like Sections 22, 36⁸ and 301⁹ also do not fill this legislative gap.

This study examines both questions by comparing the legal framework in the United Kingdom, New Zealand, South Africa, and Canada. Therefore, this study focuses on proposing a sui generis legislation stemming from the principle of posthumous human dignity under Article 21 of the Indian Constitution,¹⁰ with proper psychiatric provisions within the sentencing process.

NECROPHILIA: A CLINICAL UNDERSTANDING AND A LEGAL CATEGORISATION

Necrophilia is derived from the Greek words nekros (dead body) and philios (attraction/love). According to Merriam-Webster, necrophilia is an “obsession with and usually erotic interest in or stimulation by corpses.”¹¹ It is one of the psychosexual illnesses. Necrophilia is one of the rare paraphilic disorders that has been known since ancient times. Under DSM-5-TR, no specific code is assigned to necrophilia. Instead, it is included under the code that does not meet the criteria for any of the specific categories, along with several uncommon paraphilias, and six of which are named, other than necrophilia. It is grouped under the code F65.89, which refers to other specific paraphilic disorders.¹² Understanding necrophilia clinically and its legal treatment has historically produced outcomes in different domains that do not always align.

Rosman and Resnick (1989) had reviewed 122 cases, among which 88 cases were from the world literature, and 34 were unpublished cases. They classified the sample into two groups:

- (1) Genuine necrophilia (N = 54) and
- (2) Pseudo-necrophilia (N = 33),

and the remaining 35 cases were not classified due to insufficient data. The genuine necrophilia is classified into three groups:

⁸ Bharatiya Nyaya Sanhita 2023, s 36

⁹ Bharatiya Nyaya Sanhita 2023, s 301

¹⁰ Constitution of India 1950, art 21

¹¹ ‘necrophilia’ (Merriam-Webster) <<https://www.merriam-webster.com/dictionary/necrophilia>> accessed 15 May 2026

¹² *Diagnostic and Statistical Manual of Mental Disorders* (5th edn, APA 2022)

A. Necrophilic homicide (N = 14),

B. Regular necrophilia (N = 21),

C. Necrophilic fantasy (N = 15),

and four cases were not subclassified into these groups due to insufficient data. Pseudo-necrophilia is defined as a “transient attraction to a corpse, but corpses are not the object of his sexual fantasies. He prefers sexual contact with living partners. This group includes sadistic, opportunistic, and transitory cases.”¹³

Aggarwal (2009) listed a ten-tier classification of necrophiliacs based on the increased severity of the disorder: Role players, Romantic necrophiles, Necrophilic fantasiers, Tactile necrophiles, Fetishistic necrophiles, Necromutilomaniacs, Opportunistic necrophiles, Regular necrophiles, Homicidal necrophiles and Exclusive necrophiles.¹⁴ In necrophilic homicide, the necrophiles deliberately kill people to have sex with a corpse. In non-homicidal necrophilia, which is the necrophilic fantasy, the necrophiles obtain jobs in the morgue for the sole purpose of being near dead bodies. This distinction directly affects the question of mens rea in legal proceedings, as it has direct implications in sentencing and psychiatric assessment relevance after conviction.

Currently, the Indian legal system lacks proper statutes and provisions related to this. The legal system struggles in categorising necrophilia as a corpse is neither a living person nor considered as property.

SECTION 377 IPC, BNS 2023 AND THE LEGISLATIVE VACUUM

Earlier, Section 377 of the IPC dealt with voluntary carnal intercourse against the order of nature with any man, woman, or animal.¹⁵ The said provision broadly applied to conduct, including bestiality and other unnatural sexual acts. The Karnataka High Court in the case of Rangaraju @ Vajapeyi v State of Karnataka acquitted the accused of the charges of rape on the victim's dead body and just convicted him of murder. The Hon'ble High Court also pronounced that Section

¹³ Jonathan P Rosman and Philip J Resnick, 'Sexual attraction to corpses: a psychiatric review of necrophilia' (1989) 17(2) The Bulletin of the American Academy of Psychiatry and the Law Journal <<https://pubmed.ncbi.nlm.nih.gov/2667656/>> accessed 15 May 2026

¹⁴ Anil Aggarwal, 'A new classification of necrophilia' (2009) 16(6) Journal of Forensic and Legal Medicine <www.researchgate.net/publication/26337347_A_new_classification_of_necrophilia> accessed 15 May 2026

¹⁵ The Indian Penal Code 1860, s 377

377 of the IPC does not include the term ‘dead body’; therefore, in the cases of sadism or necrophilia, there are no provisions in the IPC to punish those persons who have committed sexual intercourse on the dead body. It also suggested that the central government amend the provisions of Section 377 of the IPC to include the word ‘dead bodies’ or introduce a separate provision for necrophilia or sadism offences.¹⁶ This highlights that the cases of necrophilia were recognised judicially but lacked adequate existing laws to cover them.

The judicial history of Section 377 of the IPC¹⁷ marks a major transformation in the legal framework. In *Naz Foundation v Government of NCT of Delhi and Others*, the Delhi High Court partially read down IPC Section 377 to decriminalise consensual sexual acts of adults in private, however, continuing to cover non-consensual sexual acts.¹⁸ It was overturned by the Hon’ble Supreme Court of India in the case of *Suresh Kumar Koushal & Anr v Naz Foundation & Ors.*, where the Hon’ble Supreme Court of India held that IPC Section 377 does not suffer from the vice of unconstitutionality and the declaration made by the Delhi High Court is legally unsustainable.¹⁹ Later, it was decisively reviewed in *Navtej Singh Johar and Ors. v Union of India*, the Ministry of Law and Justice, where the Hon’ble court upheld equal citizenship and decriminalised consensual sexual relationships between adults. The court decided that Section 377 of IPC constituted a violation of the right to dignity, privacy and sexual autonomy under Article 21, freedom of expression under Article 19, the right to equality under Article 14, and non-discrimination under Article 15 of the Indian Constitution, and it will continue to apply to non-consensual sexual activities against adults, minors and bestiality.²⁰ Within this narrow ambit, necrophilia not fully but still theoretically is a part of a non-consensual act, though never explicitly adjudicated.

Section 297 of IPC,²¹ which is currently Section 301 of BNS, criminalises trespassing on burial places and any such act that causes indignity to any human corpse.²² The ambit of these provisions is too narrow for necrophilia as they address trespass and indignity to the corpse and

¹⁶ *Rangaraju @ Vajapeyi v State of Karnataka* (2023) SCC OnLine Kar 23

¹⁷ Indian Penal Code 1860, s 377

¹⁸ *Naz Foundation v Government of NCT of Delhi & Ors* (2009) SCC OnLine Del 1762

¹⁹ *Suresh Kumar Koushal & Anr v Naz Foundation & Ors* (2014) 1 SCC 1

²⁰ *Navtej Singh Johar and Ors v Union of India Thr. Secretary Ministry of Law and Justice* (2018) 10 SCC 1

²¹ Indian Penal Code 1860, s 297

²² *Bharatiya Nyaya Sanhita* 2023, s 301

not the sexual violation of the corpse. The punishments laid down in this provision are minimal and wholly disproportionate, as necrophilia is a very serious crime.

The Bharatiya Nyaya Sanhita, 2023, was introduced to decolonise Indian criminal law.²³ However, in the process, the IPC Section 377²⁴ was omitted without any provision replacing it. And currently, there is no provision in the BNS 2023²⁵ to address the issues of necrophilia or other non – consensual unnatural acts. In the Parliamentary Standing Committee Report 2023, the gap was expressively acknowledged, and it also noted the absence of any provision related to non-consensual sexual offences and bestiality and recommended that the government include section 377 of IPC in the proposed law.²⁶ Despite this, the existing framework under the BNS 2023 failed to address such conduct as an offence of rape under BNS Section 63,²⁷ which is limited to living victims. Therefore, India has shifted from having an imperfect but still arguable provision to having no provision, creating a legislative vacuum.

CRIMINAL LIABILITY AND MENTAL HEALTH FROM THE INDIAN POSITION –

The omission of Section 377 of the IPC²⁸ in the BNS 2023²⁹ raised the question of criminal liability under which section of the BNS 2023 will the cases of necrophilia be prosecuted? Moreover, both BNS Section 63³⁰ and BNS Section 301³¹ are not capable of dealing with the cases of necrophilia because of their narrow ambit.

IPC Section 84,³² which is currently BNS Section 22, provides that nothing is an offence which is done by a person who, at the time of doing the act, by reason of unsoundness of the mind, is incapable of knowing the nature of the act, that he is doing what is either wrong or contrary to law.³³ In *Jai Lal v Delhi Administration* the Hon'ble Supreme Court stated that to establish that the acts done are not offences under IPC Section 84 three conditions must be proved: first is the

²³ Anubhav Kumar, 'Bharatiya Nyaya Sanhita: An Overview'

<https://cdnbbsr.s3waas.gov.in/s3ec0548042b1dae4950fef2bd2aafa0b9/uploads/2024/05/2024050922.pdf>
accessed 15 May 2026

²⁴ Indian Penal Code 1860, s 377

²⁵ Bharatiya Nyaya Sanhita 2023

²⁶ Standing Committee on Home Affairs, *Report No 246: The Bharatiya Nyaya Sanhita (2023)*

²⁷ Bharatiya Nyaya Sanhita 2023, s 63

²⁸ Indian Penal Code 1860, s 377

²⁹ Bharatiya Nyaya Sanhita 2023, s 22

³⁰ Bharatiya Nyaya Sanhita 2023, s 63

³¹ Bharatiya Nyaya Sanhita 2023, s 301

³² Indian Penal Code 1860, s 84

³³ Bharatiya Nyaya Sanhita 2023, s 22

unsoundness of the mind at the time of the act, second is due to unsoundness of the mind the person is incapable of knowing the nature of the act and third is that he do not understand that what he is doing is wrong or contrary to law.³⁴ Necrophilia is a paraphilic disorder classified in DSM-5-TR as a psychosexual illness and not a cognitive illness. The people with necrophilic paraphilic disorder retain the complete capacity to understand what they are doing and that the act is wrong and contrary to the law. Therefore, this defence will not work in most necrophilic cases.

But criminal analysis does not end by itself just by establishing full criminal liability, because at the sentencing stage, the psychiatric dimension remains relevant even when the defence of mental disorder fails at the liability stage. If punishments are given to the offender without psychiatric treatment in cases of necrophilia, then there are high chances of reoffending. But just like there are no provisions for necrophilia cases, there are also no provisions for mandatory psychiatric assessment after conviction. This thing in Indian law further adds to the problem. Therefore, to fill this gap, reforms are needed in both criminalisation and post – conviction response.

COMPARATIVE ANALYSIS

Many countries across the world still have no provisions to deal with cases of necrophilia. But a comparative study of four jurisdictions shows that some countries have provisions to deal with necrophilia cases, and they don't treat necrophilia as rape. Instead, they deal with it with varying degrees of specificity and severity. In contrast, India is now most legally exposed after the enactment of the BNS 2023.³⁵

In the United Kingdom, Section 70 of the Sexual Offences Act 2003 criminalises the act of sexual penetration of a corpse. If a person is convicted, they may face a punishment of up to 6 months in prison or a fine, or, on conviction on indictment, a punishment of up to two years imprisonment for serious offences.³⁶ Sections 37 and 41 of the Mental Health Act, 1983, allow

³⁴ *Jai Lal v Delhi Administration* AIR 1969 SC 15

³⁵ The Bharatiya Nyaya Sanhita 2023

³⁶ Sexual Offences Act 2003, s 70

courts to impose hospital and restriction orders if a person is convicted and has a chance of reoffending.³⁷ However, there is no record of prosecution.

In New Zealand, under Section 150(b) of the Crimes Act, 1961, if a person improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not, then that person is liable to imprisonment for up to two years.³⁸ Although the criminal laws of New Zealand do not explicitly mention necrophilia, it strongly believes in maintaining the integrity of the dead.

In South Africa, Section 14 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 deals with sexual acts with corpses, which states that if a person unlawfully and intentionally commits a sexual act with a human corpse, they are guilty.³⁹ However, the exact punishment for this offence is not specified here.

In Canada, Section 182(b) of the Criminal Code of 1985 states that if a person improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not, then that person is liable to imprisonment for a term of up to 5 years.⁴⁰

Across these four jurisdictions, necrophilia is considered a distinct offence that provides minimal legal cover. This comparative analysis strongly supports that Indian criminal law should have a provision to deal with cases of necrophilia.

POSTHUMOUS HUMAN DIGNITY AS CONSTITUTIONAL FOUNDATION

Article 21 of the Indian Constitution guarantees the fundamental right to the protection of life and personal liberty.⁴¹ It not only applies to people who are living but also extends to people after death. In the landmark case of *Pt. Parmanand Katara, Advocate v Union of India & Ors.*, the Hon'ble Supreme Court recognised that the right to dignity and fair treatment under Article 21 of the Constitution of India extends not only to a living person but also to the person's body after death.⁴² It was further reaffirmed in *Ramji Singh @ Mujeeb Bhai v State of U.P. & Ors.* where

³⁷ Mental Health Act 1983, ss 37 and 41

³⁸ Crimes Act 1961, s 150(b)

³⁹ Criminal Law (Sexual Offences and Related Matters) Amendment Act 2007, s 14

⁴⁰ Criminal Code, RSC 1985, s 182(b)

⁴¹ The Constitution of India 1950, art 21

⁴² *Pt Parmanand Katara, Advocate v Union of India & Ors* (1995) 3 SCC 248

the Division Bench held that the word “person” in Article 21 of the Constitution includes a dead body in a limited sense and right to life with dignity is extended to the person’s dead body to treat the dead body with some respect which the person would have deserved when that person was alive, subject to the individual’s tradition, culture and the religion.⁴³ Similarly, in *Ashray Adhikar Abhiyan v Union of India and Ors.*, the Hon’ble Supreme Court held that the right to decent burial or cremation of a homeless unclaimed person’s dead body as per the corpse’s religion should also be included in those rights.⁴⁴

All the above landmark cases support the point of posthumous human dignity under Article 21 of the Constitution of India,⁴⁵ but the thing is that it has not yet explicitly addressed posthumous human dignity in the context of sexual violence. But the way the ambit of Article 21 of the Constitution of India is broadened, it could provide a strong foundation for doing so. This constitutional basis is independent of rape classification, and it stands on its own legal footing.

THE CASE FOR SUI GENERIS LEGISLATION

According to the Legal Information Institute, the concept of sui generis is a Latin expression that translates to “of its own kind”. In legal contexts, sui generis denotes an independent legal classification.⁴⁶ When the existing legal framework cannot cover a particular offence, a separate legal framework must be created to address that specific offence. The deficiency of the existing statutory framework under the *Bharatiya Nyaya Sanhita, 2023*,⁴⁷ clearly indicates that necrophilia cases remain unaddressed in India. Therefore, a distinct legal framework should be created to specifically address necrophilia cases.

The new provision must consist of a clear statutory definition of necrophilia as sexual acts with corpses. The criminalisation must be grounded in the principle of posthumous dignity and the dignity of the human dead body. It should not fall within the purview of the rape framework. In the new provision, the basic offence must criminalise all types of sexual acts performed on a corpse, and the aggravated offence must apply if the victim is murdered by the offender.

⁴³ *Ramji Singh @ Mujeeb Bhai v State of U P & Ors* (2009) 5 All LJ 376

⁴⁴ *Ashray Adhikar Abhiyan v Union of India and Ors* (2002) 2 SCC 27

⁴⁵ The Constitution of India 1950, art 21

⁴⁶ ‘sui generis’ (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/sui-generis>> accessed 15 May 2026

⁴⁷ *Bharatiya Nyaya Sanhita 2023*

Psychiatric assessment must be made mandatory in every conviction. Moreover, courts must have a separate sentencing system if paraphilic disorder is identified, and a treatment-based approach alongside custodial punishment. The Indian legal system can embody a similar approach through provisions similar to Sections 37 and 41 of the Mental Health Act, 1983, which allow courts to impose hospital and restriction orders if a person is convicted and has a chance of reoffending.⁴⁸ Moreover, the law should also recognise the family of the victim of necrophilia as second victims. In mortuaries, hospitals, and burial grounds, stronger institutional safeguards must be imposed in order to reduce the possibility of such offences. India can also draw inspiration from other similar approaches from countries like the United Kingdom, New Zealand, South Africa, and Canada. This provision can reinforce the idea under Article 21 of the Constitution of India that the right to dignity belongs to every person even after death.⁴⁹ The main aim should be to ensure respect and justice for all individuals, whether they are alive or dead.

CONCLUSION

Section 377 of the IPC⁵⁰ was omitted in the BNS, 2023,⁵¹ without any replacement. This created a legal vacuum in the criminal law. As a result, serious and morally grave offences like the cases of necrophilia remain unaddressed. Through this study, four points have been established. The first is that IPC Section 377⁵² was the only tenable legal basis to prosecute the cases of necrophilia, though it was never explicitly tested. But following the omission of such a provision left it unaddressed. The second is that neither BNS Section 63, which deals with rape,⁵³ nor BNS Section 301, which covers trespassing on burial places and indignity to any human corpse,⁵⁴ can fill the gap, as they are structurally incapable of handling cases of necrophilia. Third is that BNS Section 22⁵⁵ does not apply in most cases of necrophilia, as it does not impair cognitive understanding, which is necessary for the insanity defence. And fourth is that necrophilia should

⁴⁸ Mental Health Act 1983, ss 37 and 41

⁴⁹ The Constitution of India 1950, art 21

⁵⁰ Indian Penal Code 1860, s 377

⁵¹ Bharatiya Nyaya Sanhita 2023

⁵² Indian Penal Code 1860, s 377

⁵³ Bharatiya Nyaya Sanhita 2023, s 63

⁵⁴ Bharatiya Nyaya Sanhita 2023, s 301

⁵⁵ Bharatiya Nyaya Sanhita 2023, s 22

be treated as a distinct offence and not as rape, which is clearly demonstrated through comparative analysis.