

A Critical Analysis of the Offences and Punishments against Legal Persons in India with Special Reference to Dead Person

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Date of Submission: 15-06-2024

Date of Acceptance: 25-06-2024

ABSTRACT:The concept of dead bodies having the right to rest and not being disturbed has existed since ancient times.A deceased individual is no longer a legal entity in the eyes of law. However, the law takes into account the deceased person's wishes and desires. Offences done against dead person include trespassing of burial place, dishonest misappropriation of dead person's property, defamation, criminal intimidation to damage reputation and the most heinous one is Necrophilia. Here the main objective of the study is to find out the most serious offence regarding a dead person.The researcher has followed the Empirical research method using convenient sampling method.The sample size of the study is 201.The result observed from the study is that most people believed that unnatural carnal intercourse with the dead person is the most serious offence done against dead person. Necrophilia is defined as a sexual desire and attraction to a corpse.

KEYWORDS:Offences, Punishments, Dead person, Legal person,Defamation, Criminal Intimidation

INTRODUCTION:

The concept of dead bodies having the right to rest and not being disturbed has existed since ancient times . Most civilizations, religions, and cultures have accepted and adhere to this concept. In this modern world, where there is a proper legal system and management in place, we can consider the rights of a deceased person, which are recognised under Indian law.This entails

preventing the corpses from being harmed or disrespected.A deceased individual is no longer a legal entity in the eyes of law. When a person dies, he loses the ability to exercise his rights or perform his duties. As a result, a person's legal personality expires when they die. However, the law takes into account the deceased person's wishes and desires. It also ensures that no false harm is done to the deceased's reputation.The Indian Government took various steps to prohibit the activities done against a dead person which includes Indian Penal Code, 1860, which greatly contributes to punishments regarding offences done against dead body and also various judgements given by courts including in the case of Mrs Pat Sharpe v. D Nath Bose that "even if Netaji is dead, it is defamation because the imputation would have harmed his reputation if he were alive and the imputation must be said to have been intended to be hurtful to the feelings of his family or other close relatives." Offences done against dead person include trespassing of burial place, dishonest misappropriation of dead person's property, defamation, criminal intimidation to damage reputation and the most heinous one is Necrophilia. Trespassing on a burial site, place of worship, or place of sepulchre is a punishable offence under Section 297 of the Indian Penal Code, which expressly forbids irreverence to dead bodies.A person prosecuted under Section 404 of the IPC for dishonest misappropriation of a deceased person's property faces imprisonment of any description for a term that may extend to three years, as well as a fine, and if the offender is a clerk or a servant of the deceased person, the

imprisonment may extend to seven years. Section 499 of the Indian Penal Code, which deals with defamation, also states that libel or slander against a deceased person contributes to the defamation offence. Any person who commits an offence under Section 503 of the IPC which talks about criminal intimidation is punishable by imprisonment of either kind for a term that may extend to two years, a fine, or both. Section 377 of the IPC which talks about unnatural offences also includes necrophilia is defined as a sexual desire and attraction to a corpse.

In June 2019, West Bengal, where a serial killer was arrested for murdering seven women and having carnal intercourse with their corpses. On June 26, 2020, a shopkeeper from Mumbai murders a female customer and has carnal intercourse with her corpse. These are just a few examples of incidents that shook the human soul with their behaviour and mode of operation. All of these cases show that necrophilia cases have increased in frequency over time. Many dead bodies were abandoned in rivers during the lethal second wave of COVID-19 in India, raising the possibility of more such heinous crimes. Countries such as UK and USA also prohibits the trespassing of burial grounds and the UK passes Sexual offences Act in which section 70 talks about sexual offences against dead body.

OBJECTIVES:

- To examine whether trespassing of burial grounds is a kind of humiliation to a dead person.
- To analyze the most serious offence regarding a dead person.
- To analyze the statement, the right to live with dignity also extends to a dead person.
- To examine the statement defamation is also applicable to the dead person's reputation.

REVIEW OF LITERATURE:

Jones, I., & Quigley, M(2016), examined Preventing lawful and decent burial: Resurrecting dead offences. It was said that the contemporary use of the offence of preventing a lawful and decent burial contributes to an unnecessary proliferation of overlapping offences, providing prosecutors and juries with a way to assign liability to a person whom they suspect, but cannot prove, is guilty of more serious charges. **Jones I (2017) , examined A grave offence:** Corpse desecration and the criminal law. It was found that only when such an offence is enacted will we be able to ensure that the respect that we deserve in life is reflected in the treatment of our deceased bodies. **Lars Oystein Ursin(2018) , studied Harm to dead** persons. It was said that dead persons can be said to have interests, that posthumous harm is possible, and that harm to a person requires the presence and importance of moral relations – but not necessarily that the person is conscious. Thus we can be harmed while asleep, while in a coma, when dead, or when talked about behind our backs. **Claire Moon(2019), examined What Remains?** Human Rights After Death. It could be argued that the dead, within existing principles, legal codes, and forensic practice, are already understood and treated as if they have at least one, residual, human right: the right to be treated with dignity. I use the word 'residual here deliberately and with reference to two things: first, with reference to the dead body as what is leftover, or what remains of the human after death; **Steven Gallagher(2008), examined Protecting the Dead:** Exhumation and the Ministry of Justice. It was found that another statutory provision applies, the Burial Act 1857, section 25, regulates the exhumation of human remains interred in England and Wales. Section 25 provides that, if human remains are to be exhumed from consecrated ground, that is ground consecrated by the Church of England, and are to be reinterred in consecrated ground then a faculty, an ecclesiastical licence, must be obtained from the Chancellor of the Consistory Court, the ecclesiastical court of the diocese. **M.L.Clark(2005), studied Keep your hands off my (dead) body.** Focuses on the state's use of power to shape (or constrain) ideas of honour and identity in death through the assertion of ever-expanding federal authority over repatriation and burial of the dead, including regulation of which family members can be buried alongside whom in U.S. national cemeteries. **Louis Mullinder(2017), examined A Comparative Study Of The Criminalisation Of The Violation Of A Corpse In Context Of Traditional Medicine In Sub Equatorial Africa, Including Consideration Of Customary Law.** the legal position of the crime of

violating a corpse for the use of body parts in traditional medicine in the Republic of South Africa should not be reviewed to accommodate such use, but that all relevant legal precepts should be reviewed and changed purposefully to provide for clarification for the specificity of this crime and to oppose any perception of such practices and beliefs in traditional medicine as being justified in any manner. **Imogen Jones(2016)**, A Grave Offence: Corpse Desecration and the Criminal Law. suggesting that only when such an offence is enacted will we be able to ensure that the respect that we deserve in life is reflected in the treatment of our deceased bodies.

D.S.Cook, D.S.James(2002), examined Necrophilia: Case Report and Consideration of Legal Aspects .The forensic issues regarding consent to examine the bodies and the nature of the crimes committed, with consideration of international law in this field, are discussed. Necrophilia is an issue that has not been the subject of legal statute in the United Kingdom to date, although this issue is currently under consideration by the Home Office in proposals to reform the law on sexual offences.**Sheelagh McGuinness ,Margaret Brazier(2008)**,Respecting

The Living Means Respecting the Dead Too.One day, sooner or later, our bodies will be burned, or eaten by worms.Given that inevitable fate, how can it be argued that the individual during her life, or her family after her death, have interests in what happens to the corpse prior to its "decent disposal?".**Soumadip Kundu, Amit Ghosh(2021)**, examined Exploration of Necrophilia as an Offence: Myth or Reality.Necrophilia is a psychological disorder that is not addressed by Indian criminal law. It denotes sexual desire, attraction, stimulation or sexual act of a person towards a corpse. Few cases like Nithari case, Robinson Street case, Palghar murder case have witnessed this psychopathic disorder but the Indian law does not recognize this till yet.**Lisa Cherkassky(2021)**, Is Interference with a Corpse for Procreative Purposes a Criminal Offence?. This article takes a unique look at the legality of posthumous gamete retrieval and its contradiction to our shared respect for the dead.

F O NGONGANG, C BIGOT, E NSEME, M SOUMAH, Z SANDO(2021), studied Homicide and corpse dismemberment: A study of one case.In Africa, apart from cases of infanticide, the discovery of the body of a homicide victim in a public place is a relatively common phenomenon, particularly if it involves mutilation.**Michal Najman(2019)**, Division of offences carried out on human corpses due to their statutory object of protection.The conclusions were drawn from the analysis of 48 penal codes, including 15 European, 12 Asian , 9 African and 11 American. It has been shown that the investigated offences do not constitute a homogeneous group due to the statutory object of protection.**John Shute(2015)**, Moral discourse and action in relation to the corpse: integrative concepts for a criminology of mass violence.The criminological literature in relation to mass violence can be organised crudely into three broad periods. The first runs roughly from the publication of the first edition of Lombroso's L'Uomo Delinquente in 1876 until 1942.**Anand Kumar Vasudevan, Prasanthi Krishna Dharma, L. Eccleston(2019)**, Necrophilia: A Study of the Psychoanalysis in the Characteristics of the Offenders Who Sexually Molest the Dead.Necrophilia, which is the erotic attraction to or obsessive fascination with death and corpses⁸, as far as we know is the rarest of all the perversions, nevertheless it expresses succinctly a facet of the perverse strategy that is common to all perversions.**Julien Chopin, Eric Beaugardh(2020)**, Patterns of Necrophilic Behaviors in Sexual Homicide: A Criminological Perspective.Opportunistic, experimental, preferential, and sadistic. Preferential offenders are the only ones who specifically kill their victims in order to have sex with their corpses, while for sadistic, experimental, and opportunistic offenders post-mortem sexual acts were part of a secondary deviant process.**Matthew H.Kramer(2015)**, Do Animals and Dead People Have Legal Rights?.After devoting some attention to the relevant conceptual issues, the essay ponders in detail the moral/political issues. It suggests some answers to the germane moral/political questions, and it takes pains to distinguish those questions from other lines of inquiry with which they might be confused. **Alison Dundes Benteln(2001)**, The Rights of the Dead: Autopsies and Corpses Mismanagement in Multicultural Societies.It is precisely this relationship between the dead and the living which requires close examination. In some cultures the dead have rights that the living are obligated to protect. To determine whether the courts have handled the cases appropriately, one

must first come to terms with the question of whether the dead have rights. **Nyathi, S. F. (2015)**, The rights of the dead: A case of the Ovahimba people of Namibia. The study established that Ovahimba people believe that the spirits of the dead (ancestors) live and communicate with them all the time through the sacred fire. Therefore, they believe that the dead have equal rights as the living.

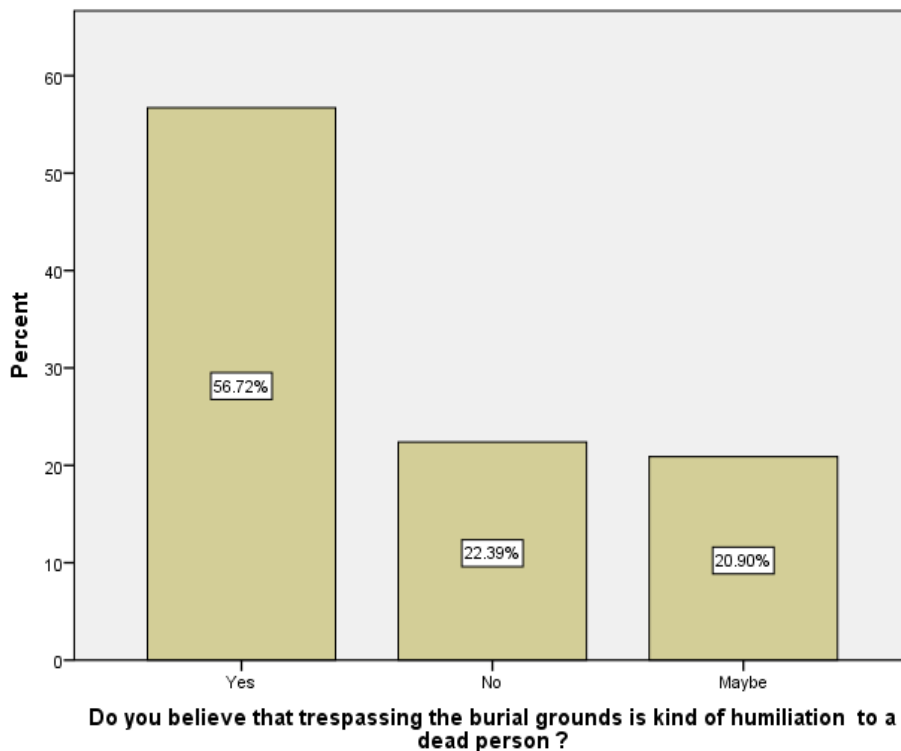
METHODOLOGY:

The research method followed here is Empirical research. A total of 201 samples have been collected out of which all samples have been collected through the Convenient sampling method. The sample frame taken here is of public areas in

and around Thandalam, Chennai, Tamil Nadu . The independent variables are gender, age, educational qualification, occupation and monthly income. The dependent variables are trespassing of burial grounds is kind of humiliation, most serious offence regarding dead person, right to live with dignity extends to dead person and defamation also applicable to dead person's reputation. The statistical tools used here are graphical representation, Chi square test and one way ANOVA test.

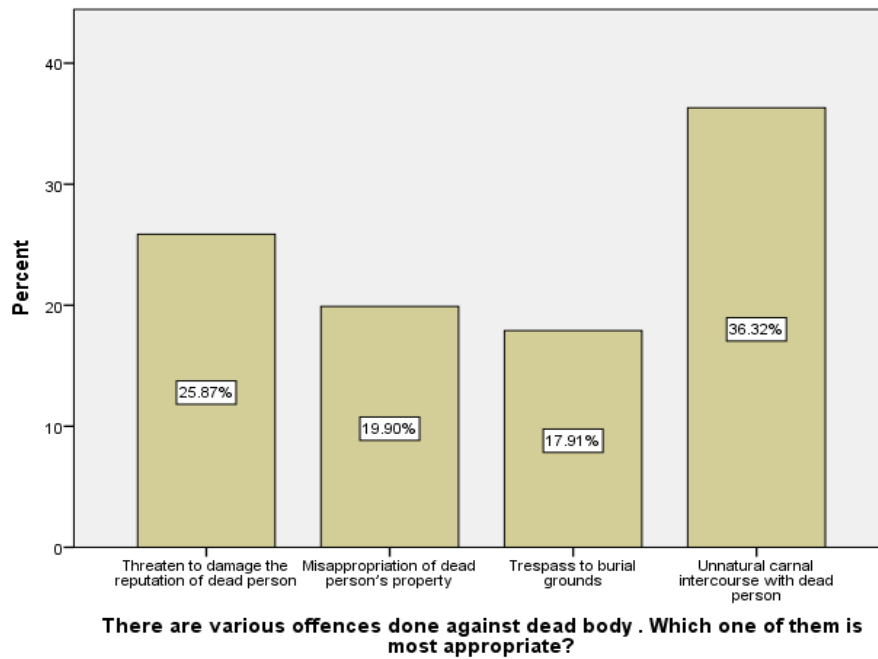
ANALYSIS:

Figure 1



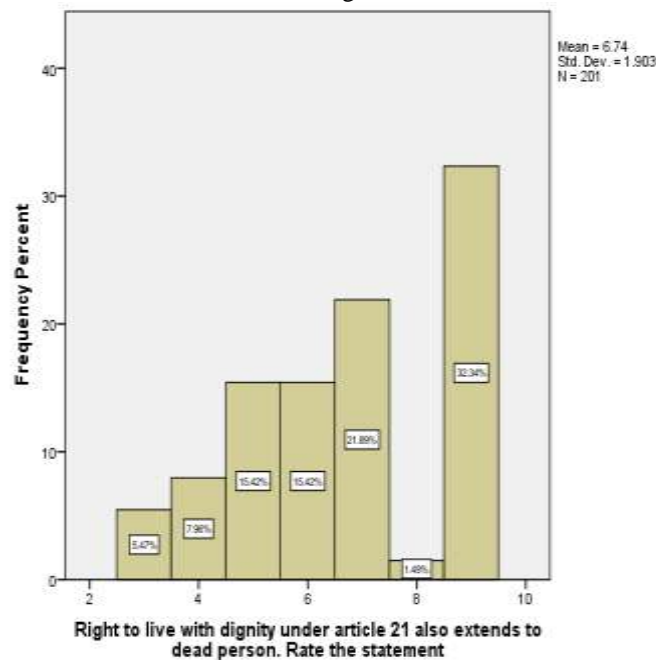
Legend: Figure 1 shows the respondent's views on "Do you believe that trespassing the burial grounds is kind of humiliation to a dead person ?".

Figure 2



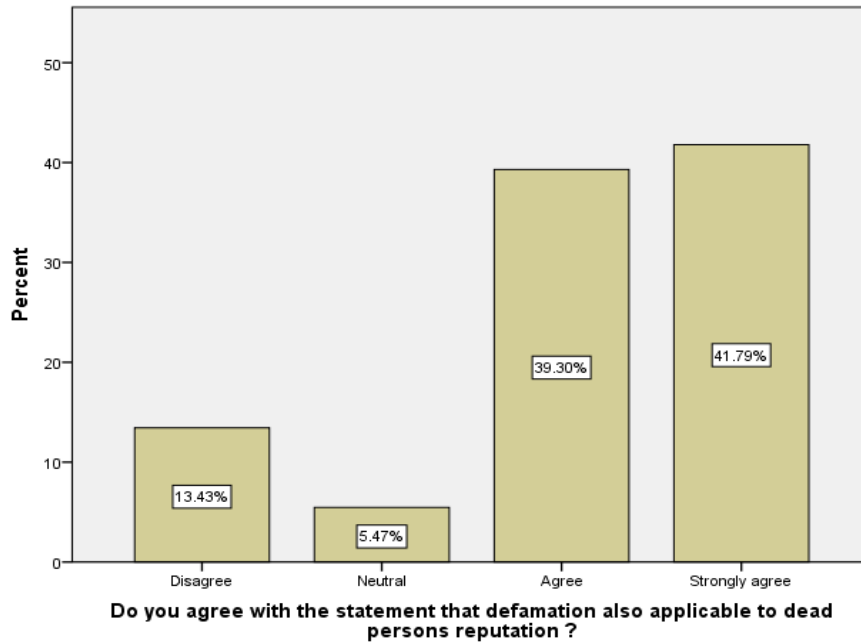
Legend: Figure 2 shows the respondent's views on "There are various offences done against dead body . Which one of them is most appropriate?".

Figure 3



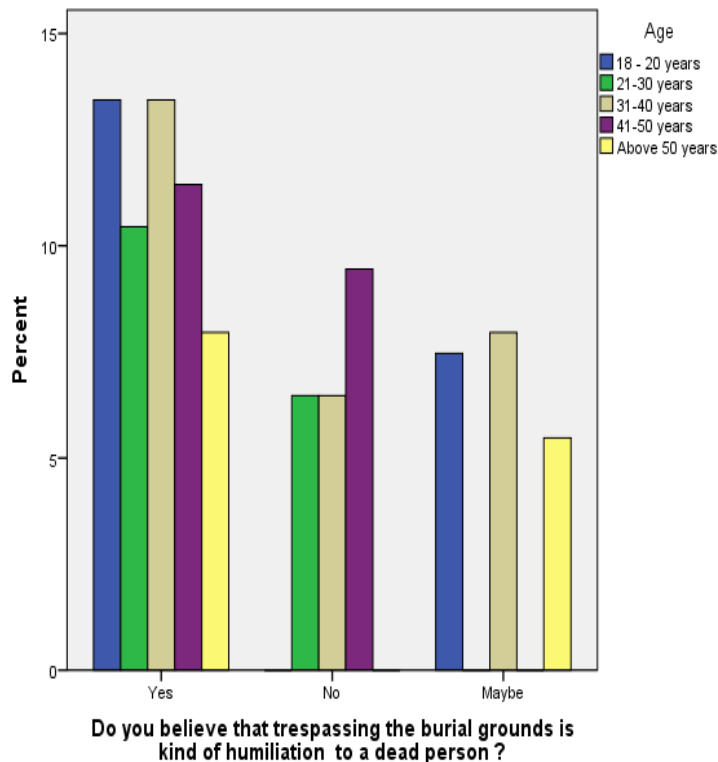
Legend: Figure 3 shows the respondent's views on "Right to live with dignity under article 21 also extends to dead person. Rate the statement".

Figure 4



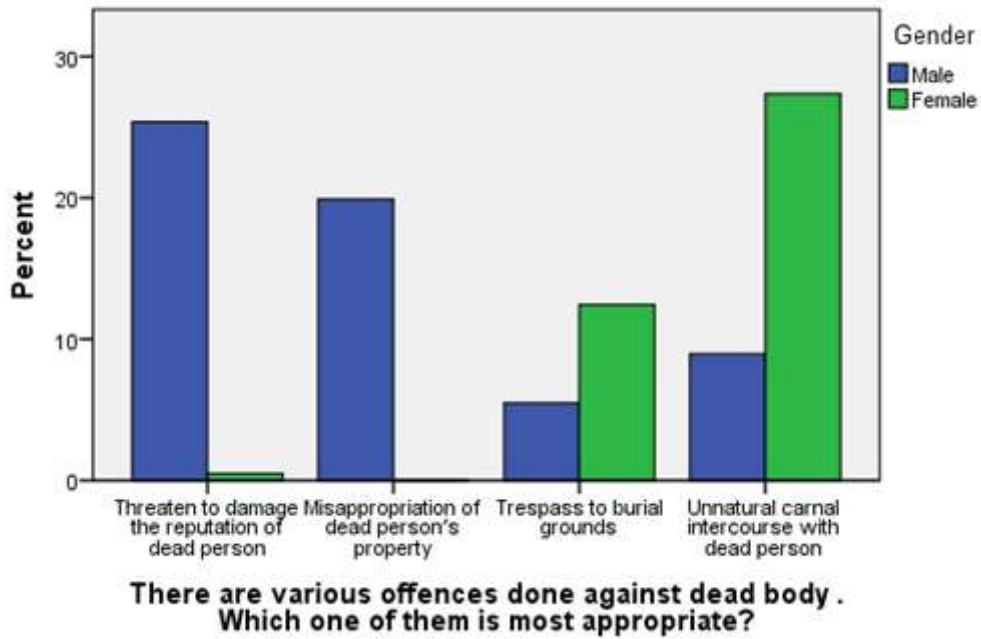
Legend:Figure 4 shows the respondent’s views on “Do you agree with the statement that defamation is also applicable to a dead person's reputation ?”

Figure 5



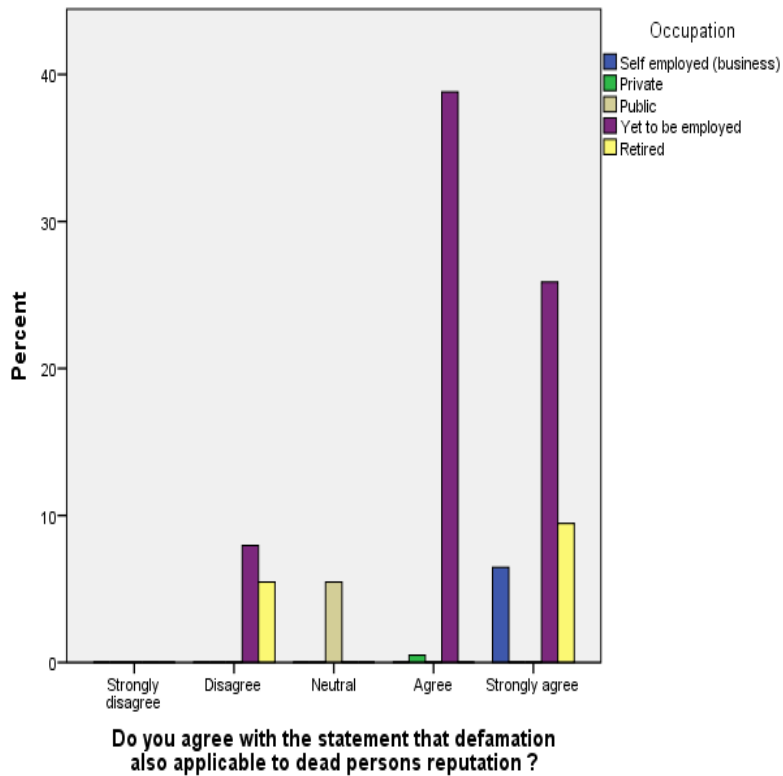
Legend:Figure 5 shows the respondent’s views on “Do you believe that trespassing the burial grounds is a kind of humiliation to a dead person ?” on the basis of age.

Figure 6



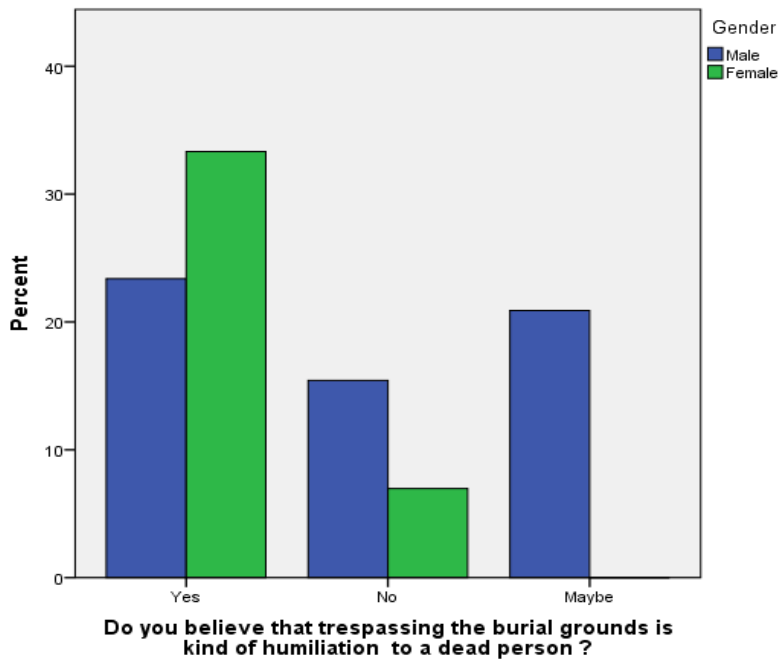
Legend:Figure 6 shows the respondent’s views on “There are various offences done against dead body . Which one of them is most appropriate?” on the basis of gender.

Figure 7



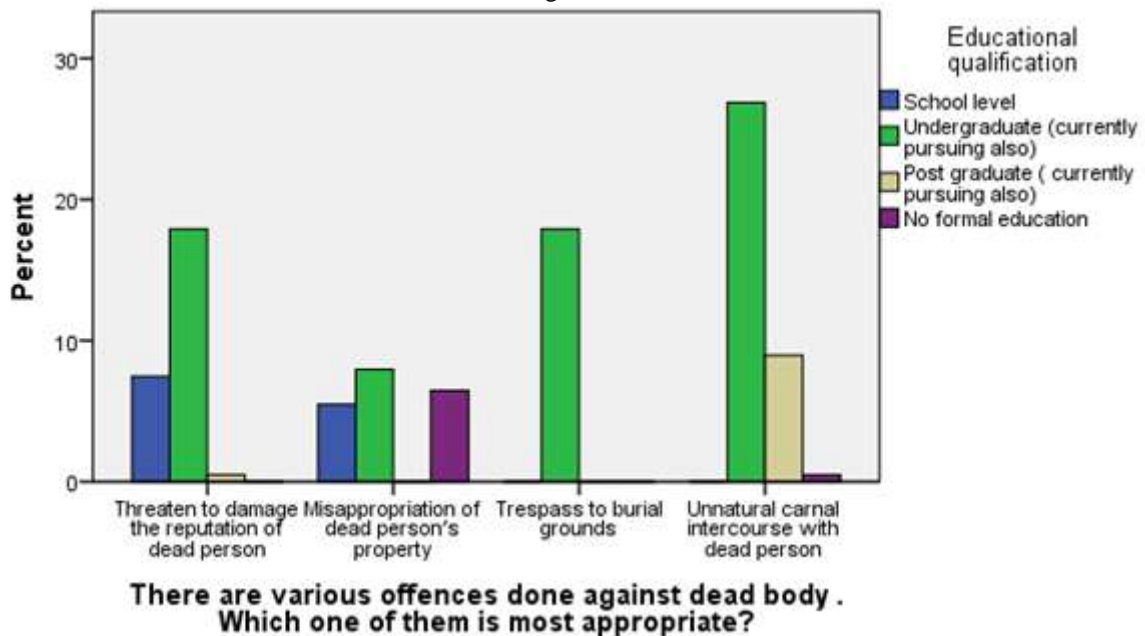
Legend:Figure 7 shows the respondent’s views on “Do you agree with the statement that defamation is also applicable to dead person's reputation ?” on the basis of occupation.

Figure 8



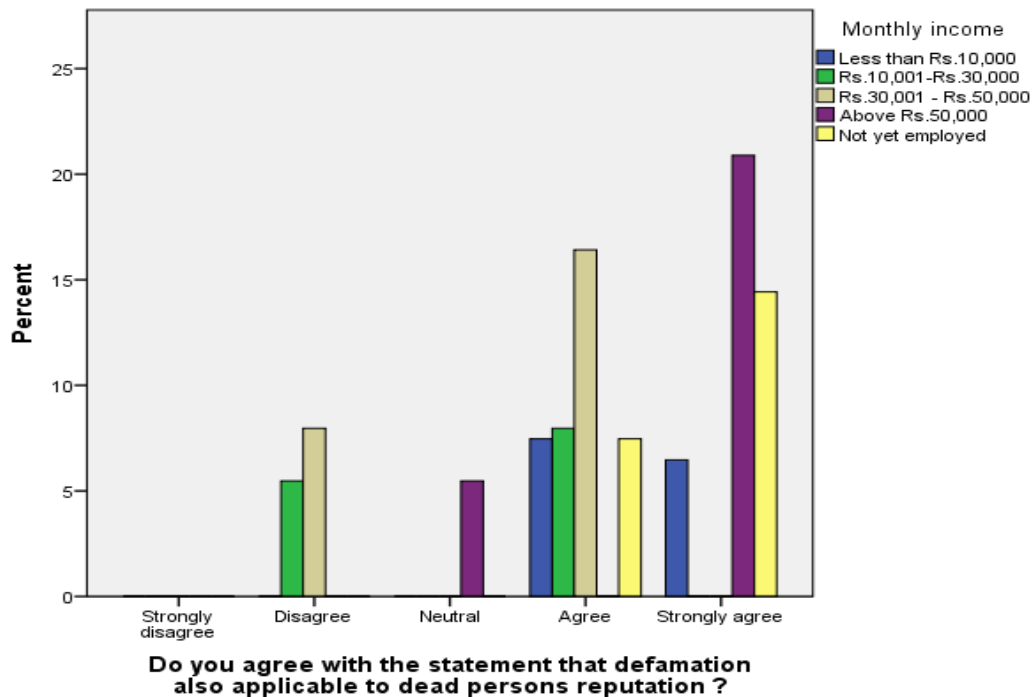
Legend: Figure 8 shows the respondent’s views on “Do you believe that trespassing the burial grounds is a kind of humiliation to a dead person?” on the basis of gender.

Figure 9



Legend: Figure 9 shows the respondent’s views on “There are various offences done against dead body. Which one of them is most appropriate?” on the basis of educational qualification.

Figure 10



Legend:Figure 10 shows the respondent’s views on “Do you agree with the statement that defamation also applicable to dead persons reputation ?” on the basis of monthly income.

Chi-square test:

IDV and DV → Nominal

Null hypothesis : There is no association between trespassing the burial grounds is a kind of humiliation to a dead person and Gender.

Alternate hypothesis:There is association between trespassing the burial grounds is a kind of humiliation to a dead person and Gender.

Gender * Do you believe that trespassing the burial grounds is kind of humiliation to a dead person ? Crosstabulation

Count		Do you believe that trespassing the burial grounds is kind of humiliation to a dead person ?			Total
		Yes	No	Maybe	
Gender	Male	47	31	42	120
	Female	67	14	0	81
Total		114	45	42	201

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	46.099 ^a	2	.000
Likelihood Ratio	60.720	2	.000
Linear-by-Linear Association	45.829	1	.000
N of Valid Cases	201		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 16.93.

Interpretation:

The calculate p value is 0.000. Since p value is <0.05, null hypothesis is rejected at 5% level of significance. So there is association between trespassing the burial grounds is a kind of humiliation to a dead person and Gender.

One way ANOVA:

Null hypothesis: There is no significant difference of various offences done against dead body between ages.

Alternate hypothesis: There is significant difference of various offences done against dead body between ages.

→ Oneway

ANOVA

There are various offences done against dead body . Which one of them is most appropriate?

	Sum of Squares	df	Mean Square	F	Sig.
Between Groups	102.798	4	25.700	26.083	.000
Within Groups	193.122	196	.985		
Total	295.920	200			

Interpretation:

The calculate value is 0.000. Since p value is <0.05, null hypothesis is rejected. So there is significant difference of various offences done against dead body between ages.

RESULT:

It is clear from Figure 1 that 56.72%, the highest number of respondents, believed that trespassing the burial grounds is kind of humiliation to a dead person. (Fig.1). It is clear from Figure 2 that 36.32%, the highest number of respondents, believed that unnatural carnal intercourse with the dead person is the most heinous offence against the dead person. (Fig.2).

It is clear from Figure 3 that 32.34%, the highest number of respondents, strongly agreed that Right to live with dignity under article 21 also extends to the dead person. (Fig.3). It is clear from Figure 4 that 41.79%, the highest number of respondents, strongly agreed that defamation also applicable to dead person's reputation. (Fig.4).

It is clear from Figure 5 that respondents from age group- 41-50 years strongly believed that trespassing the burial grounds is kind of humiliation to a dead person. (Fig.5). It is clear from figure 6 that female respondents believed that unnatural carnal intercourse with the dead person is the most heinous offence against the dead person. (Fig.6)

It is clear from Figure 7 that respondents from the occupation group- yet to be employed

agreed that defamation also applicable to dead person's reputation. (Fig.7). It is clear from Figure 8 that female respondents believed that trespassing the burial grounds is kind of humiliation to a dead person. (Fig.8).

It is clear from Figure 9 that respondents from educational qualification group- undergraduate (currently pursuing also) believed that Misappropriation of dead person's property is the most heinous offence against the dead person. (Fig.9). It is clear from Figure 10 that respondents from the monthly income group- Above Rs.50,000 strongly agreed that defamation also applicable to dead person's reputation. (Fig.10.)

DISCUSSION:

Respondents of 56.72%, believed that trespassing the burial grounds is kind of humiliation to a dead person. This might be due to the fact that a person cannot commit any act that is contrary to the chapter of religious offences because they end up insulting the religion of other people as a result of initiating the other class of people or intentionally annoying the people belonging to the other class. (Fig.1). Respondents of 36.32%, believed that unnatural carnal intercourse with the dead person is the most heinous offence against the dead person. This might be due to the fact that the protection of the right to life and dignity is not only confined to the living persons but also extends to the dead person. (Fig.2).

Respondents of 32.34%, strongly agreed that Right to live with dignity under article 21 also extends to the dead person. This might be due to the fact that the right to live with dignity should be extended so that his dead body is treated with the respect that he would have deserved if he had been alive, according to his tradition, culture, faith and the law. (Fig.3). Respondents of 41.79%, strongly agreed that defamation also applicable to dead person's reputation. This might be due to the fact that Reputation is considered a valuable asset by society. (Fig.4).

Respondents from the age group- 41-50 years strongly believed that trespassing the burial grounds is kind of humiliation to a dead person. This might be due to the fact that every man should suffer to avow his religion and no man should suffer at the insult of another's religion. (Fig.5). Most of the Female respondents believed that unnatural carnal intercourse with the dead person is the most heinous offence against the dead person. This might be due to the fact that news regarding such incidents made an impact in the minds of women as in the case of Nithari serial killings in which the perpetrator murdered 19 girls and had carnal intercourse with their corpses in a Bungalow. (Fig.6.)

Respondents from the occupation group- yet to be employed agreed that defamation also applicable to dead person's reputation. This might be due to the fact that the society which values the reputation as an asset has a real impact that the defamation of the dead has on the family of the deceased. (Fig.7). Most of the Female respondents believed that trespassing the burial grounds is kind of humiliation to a dead person. This might be due to the fact that females who were mostly devoted to religious beliefs had enormously believed that the dead persons are considered to be in the path to god. (Fig.8).

Respondents from the educational qualification group- undergraduate (currently pursuing also) believed that Misappropriation of a dead person's property is the most heinous offence against the dead person. This might be due to the fact that its rights are then possessed by the spouse or next of kin but most of the times they have been usurped by other than the family members. (Fig.9). Respondents from the monthly income group- Above Rs.50,000 strongly agreed that defamation also applicable to dead person's reputation. This might be due to the fact that the defamation of the dead has a genuine impact on the family of the departed in a society where reputation is valued as an asset. (Fig.10.)

LIMITATIONS:

One of the major limitations of the study is the sample frame. There is a major constraint in the sample frame as it is limited to the smaller area. Thus, it proves to be difficult to extrapolate it to a larger population. Another limitation is the sample size of 201 which cannot be used to assume the thinking of the entire population in a particular country, state, or city. The physical factors have a larger impact, thus, limiting the study.

SUGGESTIONS:

It was the duty of the government to take steps against these kinds of offences against a dead person as according to our culture and practices, the dead persons were worshipped equal to the god. The veneration of the dead, including one's ancestors, stems from feelings of love and respect for the deceased. It is related to beliefs in some cultures that the dead have a continuing existence and may have the ability to influence the fortunes of the living. Some people honour their direct, familial ancestors.

CONCLUSION:

The concept of dead bodies having the right to rest and not being disturbed has existed since ancient times. A deceased individual is no longer a legal entity in the eyes of law. However, the law takes into account the deceased person's wishes and desires. Offences done against dead person include trespassing of burial place, dishonest misappropriation of dead person's property, defamation, criminal intimidation to damage reputation and the most heinous one is Necrophilia.

Here the main objective of the study is to find out the most serious offence regarding a dead person. It was found that 36.3%, most of the respondents believed that unnatural carnal intercourse with the dead person is the most serious offence done against the dead person and 25.9% believed that threaten to damage the reputation of the dead person is the most serious offence done against the dead person. It was the duty of the government to take steps against these kinds of offences against a dead person as according to our culture and practices, the dead persons were worshipped equal to the god. There goes a famous saying given by George Eliot "Our dead are never dead to us, until we have forgotten them".

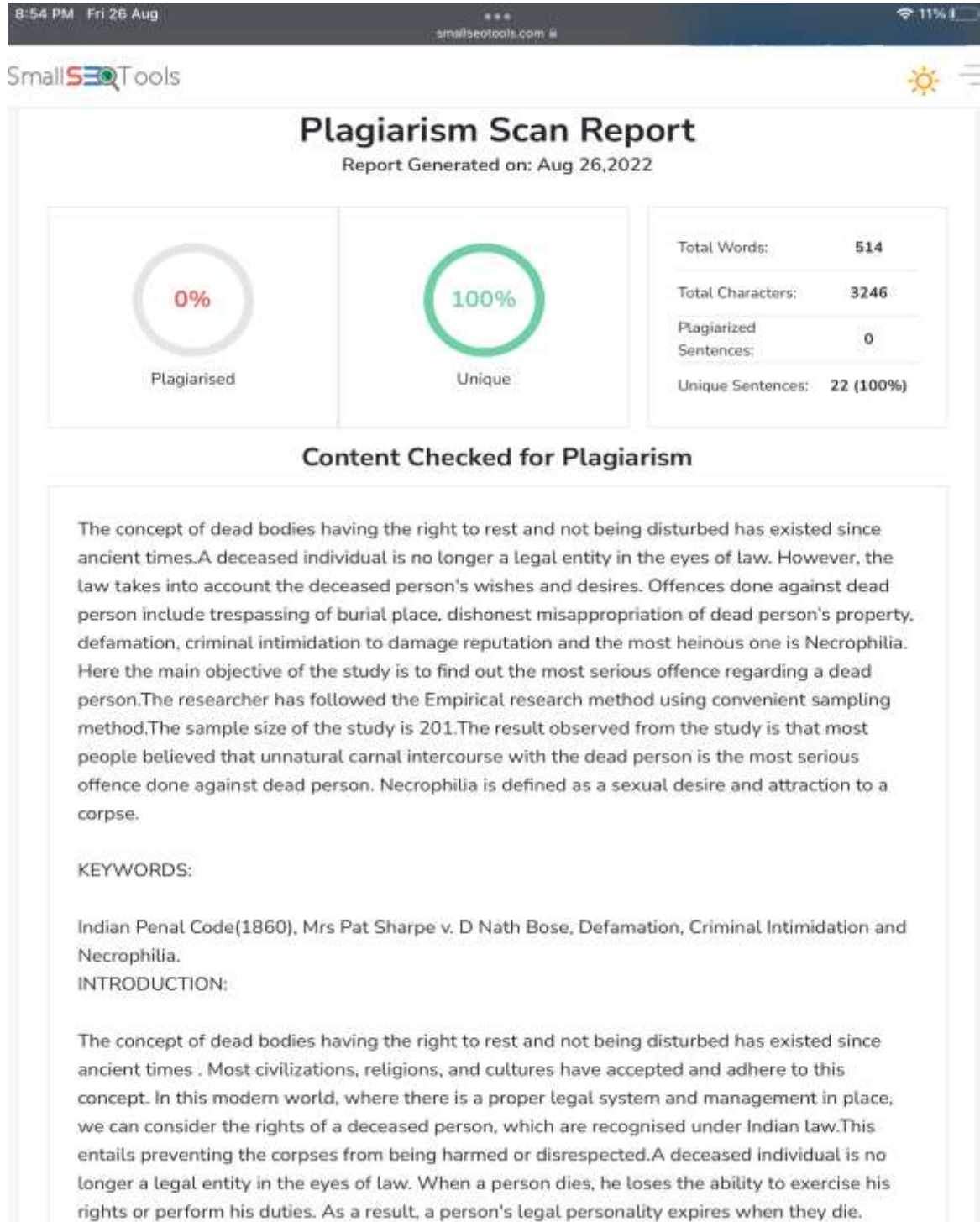
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PLAGIARISM REPORT:





SmallSEOTools



we can consider the rights of a deceased person, which are recognised under Indian law. This entails preventing the corpses from being harmed or disrespected. A deceased individual is no longer a legal entity in the eyes of law. When a person dies, he loses the ability to exercise his rights or perform his duties. As a result, a person's legal personality expires when they die. However, the law takes into account the deceased person's wishes and desires. It also ensures that no false harm is done to the deceased's reputation. The Indian Government took various steps to prohibit the activities done against a dead person which includes Indian Penal Code, 1860, which greatly contributes to punishments regarding offences done against dead body and also various judgements given by courts including in the case of Offences done against dead person include trespassing of burial place, dishonest misappropriation of dead person's property, defamation, criminal intimidation to damage reputation and the most heinous one is Necrophilia. Trespassing on a burial site, place of worship, or place of sepulchre is a punishable offence under Section 297 of the Indian Penal Code, which expressly forbids irreverence to dead bodies. A person prosecuted under Section 404 of the IPC for dishonest misappropriation of a deceased person's property faces imprisonment of any description for a term that may extend to three years, as well as a fine, and if the offender is a clerk or a servant of the deceased person, the imprisonment may extend to seven years. Section 499 of the Indian Penal Code, which deals with defamation, also states that libel or slander against a deceased person contributes to the defamation offence. Any person who commits an offence under Section 503 of the IPC which talks about criminal intimidation is punishable by imprisonment of either kind for a term that



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Plagiarised



Unique

Total Words:	200
Total Characters:	1194
Plagiarized Sentences:	0
Unique Sentences:	8 (100%)

Content Checked for Plagiarism

The concept of dead bodies having the right to rest and not being disturbed has existed since ancient times. A deceased individual is no longer a legal entity in the eyes of law. However, the law takes into account the deceased person's wishes and desires. Offences done against dead person include trespassing of burial place, dishonest misappropriation of dead person's property, defamation, criminal intimidation to damage reputation and the most heinous one is Necrophilia. Here the main objective of the study is to find out the most serious offence regarding a dead person. It was found that 36.3%, most of the respondents believed that unnatural carnal intercourse with the dead person is the most serious offence done against the dead person and 25.9% believed that threaten to damage the reputation of the dead person is the most serious offence done against the dead person. It was the duty of the government to take steps against these kinds of offences against a dead person as according to our culture and practices, the dead persons were worshipped equal to the god. There goes a famous saying given by George Eliot "Our dead are never dead to us, until we have forgotten them".



No Plagiarism Found