
THE FORBIDDEN MIND: A PSYCHOLOGICAL, LEGAL AND ETHICAL INQUIRY INTO NON-NORMATIVE SEXUAL BEHAVIOUR AND THEIR PLACE IN MODERN JURISPRUDENCE

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ABSTRACT

With the growing recognition of legal rights and the increasing political and social acceptance of the LGBTQ+ community, lawmakers are brainstorming to integrate them into legal and societal frameworks. While the LGBTQ + community has made a point that the entire society listens to them loud and clear, making significant strides towards gaining societal acceptance, there remains a subset of individuals, in the dark, in the shadows reluctant to reveal their sexual preferences. These individuals are stigmatized, described as ‘mentally ill’ and deemed to have ‘psychological disorders.’

The object of this research paper is to dive into the psychology of these individuals who indulge in acts such as necrophilia, bestiality and paedophilia and evaluate whether these behaviours are truly ‘against the order of nature’. This research paper aims to comprehend a critical question – where do the legislators draw the line when categorizing sexual behaviours as legitimate or illegitimate, natural or unnatural, humane or inhumane, on what basis the line is drawn and what were the considerations taken into account behind these distinctions?

Furthermore, this research paper aims to discuss whether a legislative piece can be enacted, keeping in mind the peculiarity of the act, it seeks to evaluate whether perpetrators of the act can be provided with any legal or human rights. The paper endeavours to determine whether they can be considered analogous to the LGBTQ+ community in terms of legal and societal recognition.

Keywords: Legal rights, LGBTQ+, Psychological, stigmatised, necrophilia, bestiality, paedophilia, social recognition, framework, legislation, constitutional rights, judicial interpretation, human rights, human dignity, criminal law

1. INTRODUCTION¹

Sexuality of Humans means a Homosapien's sexual interest and sexual attraction towards others. It includes the capability to have erotic feelings and sexual experiences. Sexuality is different from gender identity and biological sex (male, female, or intersex). It plays a key role in shaping a human's sexual orientation, which is a being's sexual or emotional attraction and is a complex phenomenon with intellectual, emotional, social, physical and spiritual dimensions. Though being very personal, sexuality is present in social, cultural, political, economic and religious contexts.

There are a lot of violations of human rights when sexual expressions, orientations and gender identities are stigmatised across cultures, regions, classes, and races. This inequality potentially results in poor sexual and mental health and inadequate access to information regarding care and health. All human beings have an inherent right to enjoy human rights without being an exception. After neglecting major issues revolving under and beneath human sexuality, the value of studying various orientations and behaviours of human sexuality is slightly rising in the contemporary world.

The journey of the LGBTQ+ community towards legal and social acceptance has evolved significantly over the centuries, encompassing from widespread discrimination and persecution in the 18th and 19th centuries to a growing societal acceptance in contemporary society.

In the 18th and 19th centuries, there was hardly any societal acceptance of non-binary individuals, people who expressed their sexual preferences non-conforming to the notion set by society were labelled 'mentally ill.' Societal norms were heteronormative, with little to no space for the LBGTQ+ community. Homosexual individuals often faced severe repercussions for their non-conforming sexual orientations or gender identity. The Roman Empire had the well-known *Lex Scantinia*², which prohibited free citizens from indulging in same-sex acts and criminalising homosexual behaviour. Under King Henry VIII *Buggery Act of 1533*, buggery was a criminal act punished by death. In Nazi Germany, from 1933 to 1945, the criminalisation of homosexuality intensified, under Paragraph 175 of the German Penal Code, an estimated

¹ OpenStax, & Learning, L. (n.d.-b). Introduction to sexual behavior. General Psychology. <https://pressbooks.online.ucf.edu/lumenpsychology/chapter/introduction-to-sexual-behavior/>

² Eva Cantarella, *Bisexuality in the Ancient World* (Yale University Press 2002) 104-112.

57,000 men were convicted for being homosexuals³, out of which many were sent to concentration camps. This era was marked by shadows forced to live in secrecy due to fear of persecution, violence, or social outrage.

In the late 19th century, society saw the emergence of LGBTQ+ rights movements, concentrated in Western Countries. The societal norms were challenged, but the norms were too strong for such movements, often faced with significant resistance. The medical community pathologized homosexual individuals. Homosexuality was labelled as a 'Mental Disorder' by The Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association. In the DSM-1, homosexuality was treated as 'Sociopathic Personality Disturbance.' Similarly in 1968 in DSM-II it was categorised as a 'sexual deviation' alongside paedophilia. Not to mention, Conversion therapies aimed at changing an individual's sexual orientation.

The late 20th century changed, not drastically, but marked a turning point for LGBTQ+ rights. The Stonewall Riots in 1968 catalysed the global movement for LGBTQ+ acceptance and rights, directly resulting in widespread movement and people openly expressing their deviation from societal norms. As per Williams Institute's Global Acceptance Index (2021)⁴, on average, acceptance of the LGBTQ+ community has increased since 1980. In recent years, 56 of 175 countries experienced an increase in societal acceptance. However, 57 countries expressed a decline, and 62 countries experienced no change.

Legislative changes are a direct reflection of society's changing order. Many countries have enacted laws recognising the changes in society's dynamics. For instance, the Hon'ble Supreme Court of India ruled in *Navtej Singh Johar v. Union of India*⁵ that Section 377 of the Indian Penal Code, 1860, which criminalised homosexuality, was unconstitutional. The ruling in *Obergefell v. Hodges* in 2015 legalised same-sex marriage in the United States of America. Nepal became the first country in South Asia to recognise same-sex marriage in 2023.

Although the LGBTQ+ community's progress is commendable for gaining societal acceptance and legal protection, this progress highlights a stark contrast in how other sexual minorities,

³ Günter Grau, *Hidden Holocaust? Gay and Lesbian Persecution in Germany 1933-45* (Routledge 1995)

⁴ thisisloyal.com, L. |. (n.d.-b). *Global Acceptance Index Archives*. Williams Institute. <https://williamsinstitute.law.ucla.edu/projects/gai/>

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

like those associated with Necrophilia, Bestiality and Paedophilia, are perceived and treated. This subset of people, unlike the LGBTQ+ community, hasn't come out of the shadows. The LGBTQ+ movement, which has garnered protection via grassroots-level agitation and advocacy, these sexual minorities face complete ostracisation, no legal representation and pathways for support. These groups remain condemned universally and labelled mentally ill, dangerous and deviant without any deeper inquiry into the cause or complexities of their behaviour. This persistent stigmatisation raises questions upon ethics and society about how progress is made selectively, and one picks fruits from the same basket but throws few in the dustbin.

2. DESCRIPTION OF THE RESEARCH

This study and research are conducted using a qualitative doctrinal method to delve into the topic through both primary and secondary sources and methods. This approach includes an analysis of legal principles, statutes, and judicial precedents to frame a theoretical framework. The primary data has been collected through semi-structured interviews with two distinct groups: 1. Practicing psychologists and 2. individuals identifying as part of sexual minority communities. Their identity has been kept anonymous at their discretion. The interview questionnaire consisted of questions regarding psychological traits and personal experiences.

Ethical compliance was ensured by obtaining informed consent from all the participants. All participants were entirely voluntary, and they were informed of their right to withdraw at any point. The sample size included 2 participants (1 Psychologist and 1 member of the sexual minority community).

The secondary data is collected from various research papers, news articles and reputed journals. These sources provide proper insight into our research. The combination of primary and secondary sources will balance our analysis and, hence, contribute to the successful study of the topic.

3. THE SPECTRUM OF HUMAN SEXUALITY – A HISTORICAL PERSPECTIVE ⁶

“Human sexuality is older than the humanity itself.”

⁶ Joshua J. Mark, Ten ancient LGBTQ facts you need to know World History Encyclopedia (2025), <https://www.worldhistory.org/article/1774/ten-ancient-lgbtq-facts-you-need-to-know/>

The perception with respect to homosexuality has differed across societies, in early centuries, society was liberal towards homosexuality. The modern issue with respect to gender identity and civil rights of homosexual individuals i.e. the LGBTQ+ community are relatively recent phenomenon, so are the terms ‘homosexual’ and ‘heterosexual’. There is plethora of evidences which shows that homosexuality was, though not a norm but relatively an accepted notion.

‘Innan’ a popular Mesopotamian goddess who later became famous as Ishtar, had bisexual and transgender clergy.⁷ Similarly, in China there are several tales celebrating same – sex relationship, certainly the best known are the account of Duke Ling of the State of Wei and his lover Xia. In India, same – sex relationship and their existence are cited in numerous ancient Hindu texts.⁸ The Manusmirti, the then law code of 1250 B.C.E., lays down recommendation for ritual purification after the same sex relations. Similarly, the Kama Sutra not only discusses the homosexual relations casually but also encourages same – sex relationship.

Just as the LGBTQ+ community has its roots down rooted in the ancient as well as mythological records all around the world; the practices of Paedophilia, Bestiality and Necrophilia too find their existences.

According to Roesenberger (1968),⁹ the sexual relationship between human and animal began at least between 40,000 to 25000 years ago, in the Fourth Glacial Age. There have been various discoveries of paintings and carving depicting animals having sexual relationship in various ancient religious temples, pointing out towards pre-occupation of ancient man with bestiality. To mention a few, in an Iron Age cave painting from the 7th Century BC, from Val Camonica, Italy, showcases a man having sexual intercourse with a donkey by inserting his penis into its vagina.¹⁰ Similarly, an engraved bone depicting a lioness licking a gigantic human penis or vulva was discovered from the cave of La Madeleine, France¹¹. Similar instances are found in Arab, were women reportedly established sexual relationship with dogs whenever men were not available. Also, the Sultans or the leaders of the East were reported to have kept animals to

⁷ Academus Education. (2021, June 30). *Ancient Mesopotamian transgender and non-binary identities* - by Morg Daniels. <https://www.academuseducation.co.uk/post/ancient-mesopotamian-transgender-and-non-binary-identities>

⁸ Mark, J. J. (2025b, June 24). *Ten ancient LGBTQ facts you need to know*. World History Encyclopedia. <https://www.worldhistory.org/article/1774/ten-ancient-lgbtq-facts-you-need-to-know/>

⁹ Roesenberger, *Bestiality and Human Sexual Behavior* (Academic Press 1968)

¹⁰ Diamandopoulos, Diamandopoulos & Goudas, Pavlos. (2007). Human and ape: The legend, the history and the DNA. Hippokratia. 11. 92-4.

¹¹ Podberscek, Anthony; Beetz, Andrea, eds. (2005). *Bestiality and Zoophilia: Sexual Relations with Animals*. ISBN 978-1557534125.

please their women happy and satisfied. It is pertinent to note that such acts were not punished historically nor were reprimanded by the society.

Paedophilia, has been a part of human history for a long time, though legislated illegal and morally ill, once it was a established practice and even encouraged in majority of the societies. Civilizations such as Rome, Greek and the Samurai all embraced paedophilia, as a means of enlightening young children about love, and to teach them the way of being a better and more respectful lover in the later life. The Samurai termed the practice of taking the young as “Shudō,” or, “The Way of the Young.” The purpose being to allow the apprentice – like bond and to completely learn and understand knowledge required to become a warrior. Till the boy attained the age, the bond was sexual in nature. It was believed that sexual union with women lead to the weakening of spirit, body and mind and thus turning them towards men, sharing battle spirits.¹² Similar practice existed among Greeks known as ‘pederasty’ accepted as ritual rather than a practice, claiming it to be useful for the educational and overall development of the boy. The practice being boy’s father choosing an older man, similarly to that of the father seeking a partner for his daughter.¹³

Just as in the case of Romans, Greeks and Samurais the practice of Paedophilia was relevant in India too. Men and women had liberty to marry anyone irrespective of his age, the only limitation being other religion, caste and sapinda. However, during the latter Vedic Age or the medieval age women had no say and had to obey the rules and adhere to the code of behaviour. Since young girls and boys were considered not irresponsible and not mature enough in love, their parents would usually put them into marriage. The age of marriage differed from time to time and society to society but it was generally found that marriages before the age of 12 was uncommon and the matter of concern only being the compatibility of partners.

utkr̥ṣṭāyābhirūpāya varāya sadṛśāya ca |
aprāptāmapi tām tasmai kanyām dadyād yathāvidhi || 88 ||¹⁴

One shall give his daughter in the proper form, even though she may not have attained (the

¹² Shudō. BoyWiki. (n.d.). <https://www.boywiki.org/en/Shud%C5%8D>

¹³ HistoryExtra. (2024, October 13). *What was pederasty in Ancient Greece?* <https://www.historyextra.com/period/ancient-greece/pederasty-homosexuality-ancient-greece-boys-sparta-girls-plato-sappho-consent/>

¹⁴ : Manusmriti 9.88, translated by Georg Bühler, *The Laws of Manu* (Oxford University Press 1886).

age), to a bridegroom who is of exceptionally distinguished appearance, and her equal.—(88)

Similarly, Necrophilia has found its existence for several millennia, the earliest roots dating back to ancient Egypt. It was reported that to prevent necrophilia it was abstained to send women's bodies to the embalmers. It is also rumoured that King Herod the Great coated his 2nd wife with honey to preserve her body for many years following her death. Herodotus the author of the 'Histories' has written that, to discourage the practice of intercourse with deceased beautiful women, they would let the body decay for three or four days before giving them to the embalmer.

4. DESIRE, DANGER OR DISORDER- A GLANCE AT NON-NORMATIVE SEXUAL MINORITIES

4.1 THE ACT OF BESTIALITY¹⁵

Individuals having sexual and emotional attraction and affection towards animals are widely considered deviant in our society. Such individuals are tagged as Zoophiles. Zoophilia is the feeling of having sexual attraction or preference towards animals. It is a psychological term which is used to discuss about paraphilic activities. On the other hand, bestiality is act of engaging in sexual activities of animals. It is a legal term, often used in criminal laws.

During 1970's, John Money a world-renowned sexologist asserted that zoophilic behaviours are in majority of the cases transitory occurring when a man has no other sexual partner available. The same was disregarded by the research conducted in 2000's, until the advent of internet, reports of zoophilia were collected from case analysis of individuals who had sought some treatment for their unusual sexual orientation. The internet brought the Zoophilic community together and helped collecting their data online from non-clinical samples. The data's report was overwhelming, the self-identified male and female zoophiles reasoned their sexual orientation not because of absence of any human partner, the most common reason being – because of their attraction, affection, desire and their love towards their animals.

In the following case, a Zoophile interviewed by us shared that he was 15 years old when he had an experience with his family dog. He was the person who used to take the dog for daily walk, he fed the dog and also shared his room. At first, he was not sure whether what he did

¹⁵ Andrea Beetz, Bestiality and zoophilia: Sexual relations with animals (2009).

was right or wrong. He tried to get human partners, he tried to be 'normal' but he was not happy with them, he didn't experience the same attachment. When he turned 17, he realised he was not the only one who experienced the said 'abnormality' and this discovery changed his entire life. Upon asking him about his relations with his dog he informed that he loves his dog just like other people love their partner. He stated that zoophilia is not only about sex with animals, but also about relationship. He added that relationship with dogs is more honest, humans lie, that's normal, but a dog can't lie. He stated that people have misconception that it is a classic situation of penetration. He added that's not totally wrong, but it's just a part of it. He mentioned that he likes to be a passive part of it. It's pertinent to note that when he tried human partners he preferred to be on the top. He added that he never penetrated his dog because it's not compatible from the size perspective. Upon asking him about the case of consent he stated that if it would have been the case that my dog didn't like it, he would have run away, he wouldn't have wagged his tail when I called out his name, and he always had the option of running away. When asked about the law banning the acts of bestiality he commented – the law is wrong because it bans sexual relationships to animals without a victim. If someone rapes a dog, it should be banned. But this new law, they ban people like me who loves a dog and where no animal is harmed.

The act of bestiality has several legal, moral and ethical questions. The supporters of the law against bestiality vehemently draw their arguments on the issue of consent. The question of consent, undoubtedly is a sensible approach, since consent is what distinguishes the wrong from the right, the illicit from licit. The question of consent is indeed a determining factor for the protection of individual autonomy. Correct, absolutely correct, but one doesn't comprehend the fact that consent is generally has never been a precondition to the myriad uses of non-human animals in vast areas of fields. If consent has not been an issue for usage of animals for non-sexual purposes, then there seems no reason for existences of a different rule governing sexual use of animals. Just for the sake of stating, if there is a necessity to distinguish which activities directly violate the dignity of a non-human animal it will be vital to derive a principle which clearly demarcates what is wrong, what is right and what is licit and illicit. Also, one forgets non-human animals are deprived of their right of sexual pleasure by neutering them, spaying, without any consideration of the animal's consent.

But one may ask, can an animal give consent? Is the question of consent seriously being debated? Are we equating humans and non-human animals by pondering this question? Before

asking such a question, we must acknowledge the fact that under Indian and American law, domesticated animals, under most circumstances, are covered under the ambit of ‘property.’ Farmers castrate their domesticated animals. Cows are often unnaturally inseminated and are kept pregnant constantly after placing them on ‘rape racks.’ It doesn’t end here, and when they are lactating, their milk is wrung with bare hands and the mother cow is deprived of their calves, which are raised on the tips of injections.

4.2 TRUTH ABOUT PEDOPHILIA¹⁶

“For I think it is Love,

For I feel it is Love,

For I am sure it is nothing but Love!” ~ Lewis Carroll

They say Pedophilia is bad, but in what ways can it be bad, is it really bad? Is pedophilia a desire, disorder or danger? We confuse pedophilia with sexual abuse of a child. In this revolutionary era where the rights of sexual minorities are being taken into consideration, it is necessary to understand that every Pedophile is not a child molester, and every child molester is not a pedophile.

The term “Pedophilia” is originated from Greek words [pai (child) + philia (love)], in literal sense it means to have love for children. Paedophilic disorder in the DSM-5 is classified under paraphilic disorders.¹⁷

Why some men are attracted to women? Why are some of our friends attracted to members of the same gender? What we now know isn’t due to some sort of voluntary choice. In other words, when we were kids, we didn’t sit down and said, “Look, we’ve got some decisions to make. We want to grow up to be attracted to women, or to men, or to boys, or to girls?” In growing up, we all discover who it is we are attracted to. And for those who, in growing up, discover that they are attracted to children, it’s a very alarming discovery to make. And in our

¹⁶ Erin Coates, Pedophiles desperately trying to join LGBT movement with their own “acceptance” flag The Western Journal (2018), <https://www.westernjournal.com/pedophiles-desperately-join-lgbt-movement-acceptance-flag/>

¹⁷ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th edn, American Psychiatric Publishing 2013).

society, most of these kids—and they often realize this by the time they are in their later teen years—are terrified to discuss this with anyone, even a counsellor.

It is astonishing to state that pedophiles have renamed them as minor-attracted persons and few of them have named them as non-offending minor-attracted persons who do not act on their urges. It means that just because they are attracted to a child, they do not sexually abuse them. They have given themselves this new term to distance themselves from the toxicity and social stigma of the connotation of the word pedophile which the society has incorrectly given to the said term.

It is pertinent to note that there is enough scientific evidence which show that children have been attaining the age of puberty mark earlier than in the past. As per a survey conducted by the Federation of Obstetrics and Gynaecologists Society of India (FOGSI), it has been adduced that the age of attaining puberty has gradually dropped. According to the results of the aforesaid survey, it has been reported that 80% of the girls in urban cities are hitting the age of puberty two years earlier than the general age i.e., at the age of 11. The age of majority i.e., 18 has been fixed based on the complete intellectual as well as physical development of an individual. It is germane to note that because of technological advancement in the 21st century, unmonitored access to the internet, and increased interaction amongst peers as well as society, there is evidence that depicts that children have started attaining maturity much earlier than the age it used to be in the past.

Hence, it can be rightly argued that recognizing and allowing sexual relationships between a major and a minor, who has attained puberty, can procreate and has developed intellectually to the extent of possessing mental as well as physical capacity to volunteer into the act of sexual intercourse, is not against the order of nature and is not against the interest of the minor. Moreover, it is pertinent to note that disregarding one's sexual desires can lead to further mental complications. The argument put forth does not in any manner ignores the possibility of child molestation or rape. Such activities must be permitted only when there is no victim of the said act. However, such relationships can be regulated through similar statutes which have been incorporated to regulate the relationships between majors.

4.3 LOVERS OF CADAVERS: UNDERSTANDING NECROPHILIA¹⁸

Necrophilia, a term used in Psychology to describe sexual attraction towards corpses, is highly misunderstood. The term itself was not broadly used until Richard von Krafft – Ebing published his work *Psychopathia Sexualis* in 1894 which tagged this term as a horrible manifestation of sadism.¹⁹

Necrophilia is seen as one of the last big taboos in our world. To this day, psychologists and psychiatrists are still debating the criteria and definition. The current Diagnostic and Statistical Manual for Mental Disorders does not assign a specific or unique code to necrophilia. This is mostly due to not knowing enough about it—research is difficult when the issue is statistically very rare, and people willing to talk about it are even rarer.

The term “necrophilia” actually has ancient roots in Greek history. So, what do we mean? What are the etymological roots of the word? It comes from the Greek word *necros*, which means “dead bodies,” and the Greek word *philia*, which means “an attraction to” or “a love for.” When you connect those two words, you get a love or attraction to dead bodies.

Just like any other orientation, necrophilia also has some underlying causes, like the wish to engage in sexual activity with the dead arises from intense and extreme fear of engaging with potential alive mates. The corpse seems non-threatening emotionally and physically to them hence, it becomes easier for a necrophile to mate and sexually express and act with the cadaver.

The mental feeling of taking someone in control might potentially excite lovers of the dead, as the corpse cannot reject or abuse them.

Some cases delve into how a person has a strong desire to have sex with a cadaver. For instance, it has been found that a person commits necrophilia when he loses his loved one. One can take the example of Judaen, King Herod the Great (circa 74 to 4 B.C). Among all his wives, he loved his second wife, Mariamne, most of whom he executed for adultery charges. But even after her death, he kept her body preserved for 7 years to have intercourse with her.²⁰

¹⁸ (PDF) necrophilia: An understanding, https://www.researchgate.net/publication/334114117_Necrophilia_An_Understanding

¹⁹ Richard von Krafft-Ebing, *Psychopathia Sexualis* (F.A. Davis Company 1894).

²⁰ Josephus, *Antiquities of the Jews* Book XV, Chapter 7.

Necrophilia, being a highly tabooed and widely condemned social behaviour, is deeply rooted in fear of rejection by potential human mates. This fear leads to some individuals to indulge in sexual activities with corpse. While such acts are against societal norms and values, it is pertinent to differentiate between such activities and more egregious acts like murdering someone to fulfil their sexual desires. This distinction is necessary as it highlights a nuanced understanding of necrophilia and an indication towards policy makers, mental health professionals and society to address this issue with sensitivity.

Individuals who indulge in such activities on account of their mental health conditions, the focus must shift from punitive measures to professional intervention. Punishment does little to address the root cause of such behaviour and might in fact aggravate the condition by denying the opportunity for a proper treatment. In fact, a rehabilitative approach along with empathy and psychological support can prove more fulfilling in preventing such acts from recurring. However, the reality being societal stigma marginalises such individuals from seeking such professional help, intensifying the feeling of isolation and escalating the possibility of these individuals engaging in more dangerous behaviours such as going on a killing spree to fulfil their desires.

On the other hand, where mental health is not the result of such action but rather is a conscious act or preference, it challenges the traditional societal boundaries and raises ethical and legal questions. From an objective standpoint, these preferences can be compared to food preferences an individual makes between vegetarian and non-vegetarian food. One potential solution that the society can afford is the establishment of a regulated system like what currently exists such as the donation of organs or whole body for scientific research. It can encompass a regulatory framework which can allow an individual to donate his body posthumously for such activities, which can significantly dwindle the criminal activities relating to this issue. Such activities can provide necrophiliac individuals with a legitimate source to satisfy their desire, reducing the possibility of them indulging in anti-social activities. This hypothetical solution proposed by us may encourage such individuals to come out of their shadows and seek professional assistance as well as satisfy their desires by legitimate means.

Incidentally, this approach to necrophilia would bring a just order in the society recognising and including every individual in the society. From extreme condemnation to the approach of inclusiveness by regulating and rehabilitation would address the root cause of necrophiliac

behaviour, thereby substantially safeguarding the society from potential harm as well as foster an environment of respect, dignity and autonomy of all human beings.

5. THE GREAT DEBATE: ORDER OF NATURE VS. AGAINST THE ORDER OF NATURE²¹

The major argument used against the act of bestiality, necrophilia and paedophilia is, that it is against the order of nature. To understand whether it is truly against the order of nature one must understand what the term itself means. 'Order of nature' means events that unveil on their own, take place on their own, that are normal and are expected to happen, without any artificial or manmade impediment. If we have a look at Section 377 of the Indian Penal Code, 1860 it states that any person who voluntarily has carnal intercourse against the order of nature with whomever, be it with a woman, man or even animal shall be punished with imprisonment for ten years and shall also be liable for fine.

So according to Sec. 377 the only form of natural intercourse is sexual intercourse between a biological man and a biological woman, that too only if it is vaginal, all other forms of sexual intercourse, be it anal or even oral are unnatural. The reason one could think of is only vaginal intercourse between a biological man and a biological woman can lead to procreation, thus it is 'in the order of nature.' Thus, it can be deduced from the above premises if a sexual activity inherently does not lead to procreation, it is 'against the order of nature.' Thus, a biological man having carnal sex with a biological man is against the order of nature, a biological woman having sexual intercourse with a biological woman is against the order of nature and so forth. If we go by this logic then contraception and abortions are against the order of nature and must be outlawed. Similarly, entire medical science is against the order of nature as it interferes with nature. Not only this the law by which we are governed is also against the order of nature as it is man made and interferes with the theory of 'Survival of fittest.' Not only this but all the technological advancement must be given up which interfere and disrupts nature, the count is endless. But on November 2018, the Apex Court of India decriminalised homosexuality by partly striking the provision of Sec. 377, which were held to hamper the fundamental rights of the LGBTQ+ community. The Apex Court held that the protection of sexual orientation lies at the very core of the Fundamental Rights, and the said section is violative of Articles 14, 15 and

²¹ Unnatural offences: Decrypting the phrase, "against the Order of Nature," Times of India Voices (2019), <https://timesofindia.indiatimes.com/blogs/legally-speaking/unnatural-offences-decrypting-the-phrase-against-the-order-of-nature/>

21 of the Indian Constitution. In the judgement the Apex Court failed to acknowledge the rights of sexual minorities, why didn't it acknowledge that it is their preference? What is the difference between LGBTQ+ community and these sexual minorities?

What is natural and what is not who decides? If the majority dictates the terms and draws the line between what is natural and what is not, would not it trample the human rights. Research has proved that early societies practiced early marriage and polygamy, thus if humans have been like this by nature, thus imposing restrictions on such practices is against the order of nature. Similarly, if interbreed sexual intercourse was against the order of nature today we would not have seen the existence of mule, liger, beefalo, zorse and other breed that were a result of crossbreeding.²²

6. CONCLUSION: CALL FOR ACTION

To understand individual rights alongside societal norms and legal justifications for justice, it is essential to separate criminal acts from sexual orientation. A criminal act involves voluntary breaching of set legal norms, with the presence of elements of actus reus (external act) and mens rea (intent or guilty mind). The fundamental identity construct that defines sexual orientation emerges from biological factors while receiving natural psychological and sociocultural influences, and it lacks culpability or harm.

According to John Stuart Mill's definition of the harm principle, criminalization becomes justified and proper where harm to others is evident. Sexual orientation, being personal and private, inherently falls outside the scope of criminal regulation. Modern legal systems enshrine non-discrimination and equality, underscoring that penalizing sexual orientation would contravene these principles by targeting immutable characteristics rather than culpable actions.

Historically, laws conflating sexual orientation with criminal acts, such as Section 377 of the Indian Penal Code, 1860 were used to stigmatize consensual relationships. However, landmark rulings like *Navtej Singh Johar v. Union of India*²³ in India, *Lawrence v. Texas*²⁴ in the U.S.,

²² Melbourne University Brock Bastian, The uneasy truth about human-animal hybrids BBC News (2023), <https://www.bbc.com/future/article/20170222-the-uneasy-truth-about-human-animal-hybrids>

²³ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

²⁴ *Lawrence v. Texas*, 539 U.S. 558 (2003)

and *Egan v. Canada*²⁵ have affirmed the unconstitutionality of such laws, recognizing sexual orientation as a matter of privacy, dignity, and equality.

Sexual orientation, protected under human rights frameworks, is intrinsically connected with privacy, equality, and freedom of expression. Criminal actions, conversely, are public wrongs requiring culpable conduct. Equating the two undermines constitutional morality and human rights jurisprudence. As societal values evolve, laws must be reassessed to respect individual autonomy while maintaining societal order, ensuring that distinctions between identity and culpable conduct are upheld.

The distinction between a criminal act and sexual orientation is pivotal to addressing societal norms, individual autonomy, and evolving legal principles. In advocating for the recognition of necrophilia, paedophilia, and bestiality as sexual orientations rather than criminal offenses, a nuanced approach is necessary. Sexual orientation reflects an enduring pattern of attraction, transcending conventional categories like heterosexuality or homosexuality. Necrophilia, paedophilia, and bestiality, though controversial, may represent intrinsic orientations for some individuals. Recognizing these preferences is not an endorsement of harm but a call for empathetic discourse. Instead of pathologizing these orientations, legal and societal frameworks can differentiate between identity and harmful conduct.

Decriminalizing these preferences shifts the focus from punishment to regulation and support. Policies could include safeguards against harm, counselling for individuals, and public education to reduce stigma. Internationally, harm-reduction strategies for paedophilia, emphasizing therapy and prevention, offer a model for rethinking necrophilia and bestiality.

The intersection of psychology and criminal law presents significant challenges in cases involving pedophilia, necrophilia, and bestiality, particularly when considering the principles of criminal liability—*mens rea* (guilty mind) and *actus reus* (guilty act). These acts, criminalized in many jurisdictions as "against the order of nature," often involve individuals with psychological disorders that may impair their ability to form intent (*mens rea*), raising questions of culpability. The legal concept of *non-compos mentis* (not of sound mind) suggests that severe mental illness may negate the capacity to understand the nature or consequences of an act, potentially undermining *mens rea* and mitigating criminal responsibility. Such

²⁵ *Egan v. Canada*, [1995] 2 S.C.R. 513

individuals may lack control over their urges, further questioning the presence of *mens rea*. In legal terms, the insanity defense and diminished responsibility are potential avenues for absolving or reducing liability, acknowledging that severe psychological conditions may impair an individual's judgment or intent.

From a rehabilitative standpoint, punitive measures may not address the root causes of these behaviors. Instead, therapeutic interventions, such as counseling and medical treatment, are more effective in managing compulsive behaviors and reducing recidivism. A focus on restorative justice aligns with the principles of compassion, while balancing the need to protect vulnerable individuals and ensuring humane treatment for those with mental health conditions.

Ultimately, the criminalization of these acts must account for the mental state of the accused. A rehabilitative approach that addresses psychological conditions is crucial for achieving justice and protecting societal well-being, while balancing public morality with the rights of the mentally ill.

Psychological frameworks, such as the DSM-5, classify these behaviours as paraphilic disorders, warranting treatment rather than punishment when they impair mental health or involve non-consensual actions. Rehabilitation, therapy, and counselling can address compulsive behaviours, emphasizing the principle of diminished responsibility under the doctrine of non-compos mentis.

Alternatively, these behaviours may reflect enduring, intrinsic sexual orientations. Recognizing them as such would require redefining concepts of consent and harm while upholding human dignity and privacy. Global models increasingly focus on rehabilitation over punitive measures. Balancing individual rights with ethical considerations and public safety, this approach aligns with evolving jurisprudence on dignity, inclusivity, and human rights, fostering a compassionate and progressive legal system.

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