THE THEORY OF CONSENT IN SEXUAL ABUSE ON ANIMALS

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ABSTRACT:

Sexuality with animals has always been an element of human culture, and it still is today, even far more widespread than generally thought. Recent research from the fields of psychology, psychiatry, criminology and sociology provided a large amount of information and adds some new insight to the rather scarce knowledge existing until then. While zoophilia was severely penalized on ethical and religious grounds for centuries, the age of enlightenment led to more rational views on this topic and consequently milder punishment until finally the sanctions were lifted in most countries. This paper gives a closer look at the existing law points and their loopholes in defining terms which makes it possible for preparators to go free out of the hands of law. Taking into account modern ethical animal welfare concepts, the viewpoint of the "dignity of the animal" as an important factor in the revision of existing laws, as well as the need for revised legislations as a result from this new idea are discussed in this paper.

1. INTRODUCTION:

According to Vocabulory.com, the meaning of bestiality is a kind of sex between a human and an animal whereas according to britannica.com, Zoophilia is a sexual attraction of a human toward a non-human animal, which may involve the experience of sexual fantasies about the animal or the pursuit of real sexual contact with it (i.e., bestiality). It would be pertinent to define another term that is Buggery, thefreedictionary.com says that it means a criminal offense of anal or oral copulation by penetration of the male organ into the anus or mouth of another person of either sex or copulation between members of either sex with an animal.

The feelings of erotic or sexual attachment to, and/or a sexual preference for, non-human animals come under the definition of zoophilia. Not everyone who engages in bestiality is a zoophile, and not all people who identify or would be classified as having zoophilia actually have sex with animals. Obviously, having sexual

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feelings towards the animal is not punishable in any country like a human is not punished if he/she has some sexual feelings towards other humans.

This paper is further divided into 7 parts. The first part deals with the various forms of sexual practices with animals like masturbatory practices, oral practices etc. The second part explains the reasons behind the sexual activities between humans and animals based upon the surveys, books and different research papers. The third part looks at the philosophical viewpoints of various authors in regard to Bestiality and the fourth part shows how the society views and reacts to the cases of Bestiality. In the fifth part, authors would first explain the meaning of dignity in regard to animals and then argue that how the sexual activity between humans and animals violates the dignity of animals. In the sixth part, authors argue about the theory of consent which has been the reason behind the protection granted to humans. In the last part, authors would finally argue that current legal provisions are insufficient in protecting the innocent animals.

2. FORMS OF SEXUAL PRACTICES WITH ANIMALS

When we talk about sexual contact between humans and animals, it is not just interesting but disheartening to know that it got various forms, based on how it is done. Just like there is sexual contact between two humans, there are sexual practices between a human and an animal where most of the time the lead is taken by the human only. According to (Massen 57) there are five kinds sexual acts between human beings and animals:

1. Genital acts (anal - and vaginal intercourse, insertion of fingers, hands, arms or foreign objects)
2. Oral genital acts (fellatio, cunnilingus)
3. Masturbation
4. Frotteurism (rubbing of the genitalia or the entire body on the animal)
5. Voyeurism (observation by third parties during sexual interactions with animals).

This also includes, violent practices where rather than mainly sexual, objects are inserted into the anus or vagina of the animal, inflicting injuries to the animal or killing them. From case studies, there are reports that men cut the throat of birds, choke the animal, or break its neck while sexually penetrating them because the contractions caused by the dying bird increases the sexual excitement for the perpetrator (Bornemann, E). Not just this, but Necrophilic tendencies have been revealed, too: animals are killed in connection with sexual gratification, and the dead body is used for masturbation, or is mutilated or dissected. Small rodents, such as mice or hamsters are put into condoms or tubes and then inserted into the vagina or anus of the person. While the animal dies of suffocation, its movements stimulate the person (Miletski, H. 2002). The insertion of fish or snakes into the vaginas of women has been reported by Dekkers (1994).

“Zoosadism” or animal torture pornography is a recently emerging sexual practice against animal, sometimes it is referred to as “crush” or “squish” porn. When a person is aroused either by watching or committing the crushing of small animals (like kittens or rabbits) it falls under a paraphilia termed as “Crushing” (Beerworth
AA). The extent of this behavior is unknown, and only one such case has been successfully tried in the United States thus far under United States v Richards.

3. WHY SEX WITH ANIMALS HAPPENS?

A survey conducted by Dr Hani Miletski found that most of the men (91%) said that they had sex with animals because they were attracted to them, 75% expressed the reason of love and affection or that they were accepting or easy to please (57%). 7% of the men found that it was their shyness towards humans that made them have sex with animals. However, all women found themselves sexually attracted towards animals (100%). Further, a study of 32 zoophiles conducted by Andrea Beetz has found that some started sexual activities with animals by getting aroused watching animal matings on TV, while others began by touching the genitals of their pet dog out of curiosity.

4. PHILOSOPHY AND BESTIALITY

Philosophy has rare traces of bestiality. Immanuel Kant, a Prussian philosopher has talked about bestiality in "Wrongness of unnatural sex", as the title suggest, Kant opposes the idea of sex between a human and an animal, not only this he also looks upon it with deep disregard and states "bestiality—like masturbation or homosexuality—was not only against the animal nature and humans' natural instincts, but it degraded people "below the level of animals" (cited in Denis 1999, p. 232); by engaging in bestiality, humans neglected their duties to themselves." Kant’s arguments upon casting the humans who engage in bestiality out of the human race, and not giving them rights are put forward in today’s time as well.

Whereas, Jeremy Bentham (1748–1832) approaches the desk with another viewpoint regarding bestiality, and points out the danger of innocent people being wrongly accused on this issue by the people who want to discredit them. This viewpoint has been maintained for years and keeps this topic in the lap of taboos in India (Davies 1982). Rather than considering bestiality as a problem of a single person, the involved animal, and its owner, it has been perceived as a violation of the whole community (Brown 1952, cited in Davies 1982).

5. SOCIETY AND BESTIALITY

Just like bestiality has not touched the lines of philosophy much, it is not discussed in society, and when it is discussed the common reactions of people are ridicule, disgust, as it is regarded as being of little importance and of low prevalence. It is opined that there is a very strong influence of the religious and moral values, condemning of any kind sexual contact with animals, that is why bestiality is generally talked about, in research work, sociology, psychology and law. The problems attached to addressing the topic of bestiality can
be evidenced from a recent situation. Peter Singer, well known for his work Animal Liberation (1975), reviewed Midas Dekker’s (1994) book on bestiality, Dearest Pet, online in Nerve magazine (Singer 2001a), and was heavily criticized by many people, among them Piers Beirne, who regards all sexual acts with animals as interspecies sexual assault (Beirne 1997).

6. VIOLATION OF DIGNITY OF AN ANIMAL

It is necessary to first understand the meaning of “dignity of animals”. According to The Swiss Animal Protection Act the dignity of the animal can be understood as its inherent worth, which must be respected when handling it. If any strain imposed on the animal cannot be justified by overriding interests, this constitutes a disregard for the animal’s dignity. Strain is imposed on the animal when it is caused any pain, suffering or harm. It must not be exposed to anxiety or humiliation. In addition, the dignity of the animal is disrespected if there is major interference with its appearance or abilities, or if it is excessively instrumentalized.’

In an Indian case of Animal Welfare Board of India vs. A. Nagaraja and Ors. (2014) 7 SCC 547, it was held that ‘the “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honor and dignity. [...] The right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well.” The idea of recognizing the dignity of animals is one of the main pillars in modern animal welfare concepts in the gradual legal dissociation. The mere status of being an object or a thing transcends the mere prevention from suffering, pain, damage and fear and denotes a general respect of the physical and mental integrity of every individual animal. This includes, for example, the contacts that concern other animal interests which are to be respected by mankind, to enter into an intimate relationship with a person.

In the light of principles that we discussed above, the utmost important aspect of the dignity of an animal is its sexual integrity. The sexual integrity of mankind – which has been recognized in the jurisprudence of modern criminal law as a legally protected right, includes unhindered sexual development and sensation, the protection from damaging decision-making by sexual exploitation of dependencies, and the protection from sexual harassment. Thus, it infers that the dignity of an animal is not only violated by violent sexual acts, but any zoophilic act which disregards the intentions of an animal and therefore is affected by using some form of force. Authors consider it an important observation because not all animals suffer injuries on body or can show any kind of resistance or aversion. In fact, many animals remain relatively unexpressive during these sexual acts and obediently submit themselves to their owners. Therefore, it is not easy to detect any psychological stress in the process.

It was observed that sometimes even animals (allegedly) voluntarily participate in zoophilic acts or even take initiative on their own (Dekkers 31; Massen 17, 31; Muth 40). But this might not be true because an animal
can do this only if it is used to such behavior or if it has been trained to such unnatural behavior and therefore, it has started focusing on human sexual partner (Frey, Sodomie 2).

Therefore, these trainings do not infringe the free sexual development of opinion of an animal but also pose a danger of creation of a strong dependency. An animal that had repeated sexual intercourse with a human may lose all interest in sexual interaction with others of its kind (Ford/Beach 165; Masters 76).

Violation of sexual integrity of an animal, thus, does not depend upon the question that what an animal feels during a zoophilic act, but rather that whether such act complies with its freewill.

The fact that animals are first exploited to satisfy the sexual desires of humans and then are degraded to sexual objects cannot be refuted despite the continuing assertions of zoophiles that their intimate relationship with animals is not characterized by violence and subordination.

It is quite difficult to admit that a zoophile act can ever happen with mutual consent. Rather, one can only assume that the animal’s consent is forced, either through an artificial fixation on a person or by use of other psychological methods. The labeling of such acts as “animal love” or “sexuality in partnership,” as the people involved often call them, misjudges such circumstances and seem euphemistic in the light of the different methods in practice (Hunold 1970; Massen 1994).

It should be noted that when it comes to the violation of dignity of an animal, not only dignity but the emotional balance and physical well-being of an animal is also disturbed as described by Dr. Kersti Seksel, in a must-read Conference Paper, “The behavioural manifestations of animal cruelty / abuse.

7. THE QUESTION OF CONSENT

“In cases of bestiality, it is usually assumed that violence or force has been exerted towards the animal and therefore the act constitutes animal abuse. However, it is increasingly acknowledged that sexual acts with animals can also be carried out without obvious force, and even with the animal as a seemingly willing participant (Beirne 2000; Beetz 2002). Nevertheless, there exists ‘a widespread opinion that any form of bestiality is abusive because, similar to child abuse, it is impossible to obtain consent from animals (Ascione 1993; Beirne 2000).”

Beirne has very well proposed that any kind of sexual contact with an animal should be viewed as “interspecies sexual assault” rather than as bestiality, because it has different definitions that include or exclude acts other than actual penetration of the animal. According to Beirne (2000), however, all sexual acts between humans and animals, independent of the use of force or the reaction of the animal, are wrong. Adams (1995 cited in Beirne 2000) stated that bestiality almost always involves forced sex because it is
obtained by physical, economic, psychological, or emotional coercion, and in such cases it is impossible to obtain consent. However, not the imbalance of power, but the fact that one of the involved parties does not, or cannot, give or communicate genuine consent to sexual relations is the decisive criterion (Beirne 2000).

It might seem that a lack of resistance could be taken as consent, but that does not mean genuine consent is present just like in sec 375 IPC. To be able to give genuine consent, both parties involved must be conscious, fully informed, and positive in their desires. It is demanded that if these criteria apply to human–human sexual relations they should also apply to humans’ sexual advances to animals, given that animals are sentient beings. Even if the animal communicates protest by scratching, biting, or making sounds, usually the animal will be unable to effectively resist (Beirne 2000). However, the poor ability of some animals to effectively resist should not be the issue: rather, the issue should be the unwillingness or inability of the human to perceive, understand and react accordingly to resistance.

However, he did not seem to favor penalties as harsh as those found in former times. Depending on the country, bestiality was or still is viewed with “moral, judicial and aesthetic outrage” (Beirne 2000, p. 314) and many people react to its mentioning with bewilderment or disgust, rather than intellectual inquiry. Nonetheless, in the nineteenth century many “unnatural offences” like homosexual contact or bestiality were decriminalized and a more liberal stance towards unusual practices has spread. In the US, no federal law on bestiality exists and today only about half of its states have bestiality laws (Beirne 2000). Germany abolished its law on bestiality in 1969, and other European states also do not criminalize every sexual contact with animals. Societal control of bestiality has passed from religion and criminal law to the medical profession of psychiatry, and there is even a degree of dismissal, if not tolerance. Beirne (2001) called this a pseudoliberal tolerance of bestiality and criticized the philosopher Peter Singer (2001), well-known for his work Animal Liberation (1975), for his review of Midas Dekker’s book Dearest Pet, one of the few informative books on human–animal sexual relations. Singer (2001) stated that the cause of the existing taboo against bestiality, and the vehemence with which it is held, is the desire of humans to differentiate themselves from animals, erotically and in other ways. For Singer, sexual relations with animals are to be condemned if they involve cruelty. The issue of consent and the criminal status of bestiality has become a topic that is now repeatedly discussed among animal protectionists, as well as zoophiles (Beetz 2002, 2004). The Humane Society of the United States (HSUS 1999) started a campaign against sexual abuse of animals which, according to the HSUS, is the eroticization of violence, control, and exploitation. The HSUS regards all sexual contacts with animals as abuse, following the arguments given by Asione (1993) and Beirne (2000) that animals lack the ability to give and communicate consent. In contrast to this, zoophiles themselves question this inability of animals to refuse sexual advances in a way that humans can understand, if the humans are willing and sensitive enough to perceive and interpret the signs correctly, and to act accordingly (Beetz 2002). Obviously, this is not consent as defined by law, neither is it conscious consent by a sentient being that is fully informed and positive in its desires. It is probably more difficult to establish the consciousness and the state of being fully informed with animals than it is to deduce from behavior whether an animal is positive in its desires or is at
least not resisting. But it is important to note that many zoophiles do not regard non-resistance as sufficient evidence for consent (Beetz 2002). Instead, they also place great importance on positive reactions from the animal, such as approaching the person, cuddling, rubbing against the person, not trying to move away, and displaying sexual excitement (Beetz 2002). Some zoophiles claim that they carefully react to the nonverbal signs of the animals and some even try to communicate with the animal, as described by Masters (1966), for example. However, to provide a perspective to this discussion of consent in relation to bestiality, other situations need to be considered where an animal's consent is obviously regarded as less important. Everybody agrees that if an animal is deliberately hurt or killed by someone for personal pleasure, then this represents animal abuse. But opinions are divided if the killing or hurting happens in the service of society, for example, slaughtering animals for food or using them in medical research. In these cases, few people stress the question of consent. For the animal, the motivation of the person behind the act very likely makes no difference—it would not consent to any act that causes pain or death. Humans still deal with many animal-related questions with a very anthropocentric view, and as soon as sexuality is involved, reactions become less rational and more emotional and moral. Interestingly, procedures that definitely have sexual characteristics, such as the electrical collection of semen, pregnancy testing or artificial insemination, are widely accepted. And yet, these interactions are probably more uncomfortable than the non-forceful insertion of a human penis or manual masturbation with the intention of personal sexual pleasure (Beetz 2004). Also, a procedure such as neutering has a strong impact on an animal's sexuality, and yet is widely accepted and carried out frequently without raising the question of consent. It is also questionable whether humans really cannot understand at least a little of what an animal tries to communicate, even if this requires some knowledge of the behavior of different species, and perhaps an ability for deduction. It has never been doubted by most animal owners that they know at least some of the likes and dislikes of their own pets, and that they can deduce this from their animal's behavior. Nevertheless, I agree that this approximates, rather than equals, a clear communication of consent. It has to be added to this discussion of consent (in a legal or non-legal sense) that certainly many people engaging in sexual contact with animals either do not have the ability to understand the nonverbal communication of the animal or just do not care about the animal's welfare. They may even deliberately inflict pain and injuries. Opinions about consent in regard to bestiality, however, seem to be influenced much more by emotion and moral attitudes than opinions about other non-sexual issues involving animals. Consent is also not considered important for most of the legislation on bestiality. Still, the main reasons for its criminalization seem to be concerned with morals, together with the possible danger to society due to an association of bestiality with other sexually deviant behavior, in particular sex offending.

Bestiality must be condemned because animals cannot give consent in a way human can readily understand, or cannot resist humans in any significant way due to their sometimes-docile nature or other human-bred features.
8. **INSUFFICIENT LEGAL PROTECTION OF SEXUALLY EXPLOITED ANIMALS**

Different surveys lead to a conclusion that not only the sexual practices with animals are much more common than the ordinary assumption but also infer that such practices are not penalized in some countries. However, it has been observed that such practices are not acceptable when the animals suffer some kind of pain, injury or distress. Thus, the sadistic or violent practices are punishable on the basis of the principle “just and equitable”. It has also been seen that the lack of prohibitions on zoophilic practices is generally defended with an argument that animals are well protected by existing laws. However, this argument can be defeated on the following reasons:

1. As we have already observed above that the legislations only protect animals when it is proved that they have suffered pain, injury or distress and the humans remain exempted until the animals does not suffer any of the aforementioned problems. However, the surveys have observed differently. It can be easily assumed that since there are large number of unrecorded cases of zoophilia, the ration of acts which involve injuries are much higher. In Weidner, 1972, it has been observed that approximately 70% of all zoophilic acts were carried out in a violent manner. There might be some cases where it can be shown that a particular animal didn’t suffer or harm or it didn’t suffer psychological damage or is genuinely cared by its owner. But, just like mature children remain unharmed by sexual interaction, these arguments are not sufficient to claim that the offender should not be punished.

Further, the prosecution of preparators for cruelty to animals is quite difficult as the necessary evidence is not easily available. It has also been observed that proving that an animal has died as a result of an excessive strain due to sexual act also poses substantial problems to investigation authorities when the cause of death cannot be clearly established or the reasonable connection between the death of animal and zoophilic act is not clearly established.

Moreover, the other aggravating factor is that the victim in such cases is mute and can normally be killed lawfully which makes it easy for the preparators to destroy the evidence.

2. It has been observed that the provisions are not enacted for the well-being and integrity of the animals, but are designed by assuming them as a property of their owner. Moreover, the prosecution for damaging of the property can be initiated only when the aggrieved party lodges a complaint. This infers that no enquiry can be initiated until and unless the owner himself consents. Also, the owners are protected when the act has been performed negligently.

3. It has also been observed that the public and private presentation of animal pornography and the acts like producing, importing, offering and distributing the animal pornography is generally prohibited but the zoophilic act itself. Therefore, a person can be easily protected if he confines himself to the boundaries set up by the legislations of cruelty to animals and damage to property.
4. An act of penetration is usually required in the offence of bestiality. It doesn't include the acts like genital touching or oral sex. Therefore, a person who lets a dog lick his genitals in the presence of a minor would escape the prosecution.

5. An absurd position has been observed in the INDIAN PENAL CODE, where a person cannot be set free for acts done in private defense of an animal. Thus, a person who watches the commission of bestiality in front of him cannot lawfully act against the offender.

6. It has been suggested many times that the sex with animals should be treated as a sex with a minor. Since, in India the sexual act with a minor shall be punishable irrespective of the consent of the minor. Thus, giving the same legal protection like a minor to animals would give sufficient protection to innocent animals who don't have the capabilities to understand the consequences of the act.

7. Many of the activists attacked the defense of “consent”. Since, no one asks the animal for its consent while killing it for meat consumption, it is quite absurd to take into account the consent of animals in such practices. It is not clear that whether the consent of animals matter or not in this society.

8. The jurisprudence of rape in humans depends on the principle that the will cannot be imposed on another’s body. The jurisprudence is absent in the case of sexual practices with animals. Animals cannot offer consent and therefore bestiality ought to be criminalized.

9. **CONCLUSION**

Based on the presented information on bestiality and zoophilia, authors believe that the laws should be enacted with keeping the term “dignity of an animal” in mind. Depending on the country, sexual contact with animals can be legal or illegal, and punished either mildly or with imprisonment. Most of the current laws are part of legislation on sex offending, as in the US and the UK, implying that bestiality is not only a sexual offense but one that also needs to be addressed because of its potential danger to society and violation of religious and moral codes. A less anthropocentric view, focusing more on the welfare and protection of animal, would be useful. Of course, defining bestiality as animal abuse probably does not promote a critical and detailed assessment of individual cases in court. Overall, a more promising approach would be to handle cases of bestiality according to animal protection laws, assessing the degree of violence and force and underlying motivations, and using psychiatric evaluations of violent cases to discover whether there are grounds for applying sex offender laws. With this approach, relatively harmless acts such as masturbation a male animal, initiating oral-genital contact or similar, for example, in cases of juvenile experimentation, could be addressed without criminalizing, humiliating and inflicting severe societal consequences on the person involved. Animal protection law needs to be applied in sexual animal abuse cases without focusing too much on the fact that sexuality is involved, except in sadistic cases. As with other forms of abuse, there is need for
research into sexual abuse involving violence and force, non-caring attitudes towards living beings, and especially into cases that reveal pleasure was gained from inflicting pain on animals.

Compliance with Ethical Standards

- **Disclosure of potential conflicts of interest:** This study was not funded by any organization or any person. Authors are students of University of Delhi and have worked on their own.

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- **Ethical approval:** This article does not contain any studies with human participants or animals performed by any of the authors.

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