

## Debate

### Decriminalize Paraphilias - Why though?

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#### Abstract

Paraphilias are disorders of sexual preferences. Paraphilias cause serious distress and impairment to the suffering individual. Stigma around the illness makes treatment inaccessible. Paraphilic behaviors often lead to crimes. Most of the paraphilias are as such punishable by law. Thus, the persons with paraphilia are often found in prisons and not in hospitals. Although paraphilias are considered as psychiatric illnesses, there is less emphasis on treatment and rehabilitation of individuals with these illnesses. While safety of victims is a priority, decriminalization of paraphilias is a debatable issue.

**Keywords:** Paraphilia, Sexual deviations, Sexual preference, Mental illness, Stigma, Decriminalization, Law

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#### Introduction

Psychiatric nosology, and to some extent, our understanding of the paraphilias has seen many changes over the years. The law, however, might not have kept up with the same pace. The International Classification of Diseases in its 6th edition (World Health Organization, 1948) first addressed these behaviors as sexual deviations which at the time included homosexuality as well. Up until the 9th edition of ICD (World Health

Organization, 1978), these were called sexual deviations and the definitions were vaguely focused on the act rather than the arousal pattern and distress. The term deviation is used concerning the socio-cultural norms rather than to the biological origins of disorders focused by clinicians. The ICD-10 (World Health Organization, 1992) used the term disorders of sexual preference and defined them likewise with some focus on individual distress. The ICD-10

also stated that *"Social deviance or conflict alone, without personal dysfunction, should not be included in mental disorder as defined here"* (WHO, 1992). Therefore, homosexuality was not considered a mental disorder in ICD-10. Cultural and social factors related to sexuality like social rejection and isolation, stigmatization and criminalization can impact a person's psychological experiences and behaviors which may not reflect an underlying disorder. *"Besides, social or political disapproval has at times resulted in abuse of diagnoses-especially psychiatric diagnoses-to harass, silence, or imprison persons whose behavior violates social norms or challenges existing authority structures"* (Cochran et al., 2014). The ICD -11 (WHO, International Classification of Diseases, 11th Revision, 2019) working group on classification of sexual disorders and sexual health also seems to have arrived on a similar understanding. It advocates for the removal of Fetishism, Fetishistic Transvestism, and Sadomasochism categories from paraphilic disorders (Krueger et al., 2017). The ICD-11 has made a more inclusive and clear attempt at defining these behaviors as it replaces disorders of sexual preferences with Paraphilic disorders, *"persistent and intense*

*patterns of atypical sexual arousal, manifested by sexual thoughts, fantasies, urges, or behaviors, the focus of which involves others whose age or status renders them unwilling or unable to consent and on which the person has acted or by which he or she is markedly distressed"* (WHO, International Classification of Diseases, 11th Revision, 2019).

The most recent edition of the diagnostic and statistical manual of mental disorders describes paraphilias as *"any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners. They cause distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others"* (Edition, 2013).

Sexual masochism, sexual sadism, fetishism, and transvestism are not considered under criminal behaviors. The rest are punishable by law. However, non-consensual sexual sadism may amount to physical or sexual abuse (De Lisi et al., 2017). Sexual sadism is not specifically mentioned in 'The Protection Of Women From Domestic Violence Act, 2005' document but, if amounting to

The following disorders come under paraphilias as per DSM 5 (Edition, 2013)

Paraphilic disorder	Sexual gratification is derived from
Exhibitionism	Exposure of genitals
Fetishism	Use of non-living objects
Frotteurism	Touching and rubbing against a non -consenting person
Pedophilia	Focus on prepubescent children
Sexual Masochism	Receiving humiliation or suffering
Sexual Sadism	Inflicting humiliation or suffering
Transvestic Fetishism	Cross-dressing
Voyeurism	Observing sexual activity

**Table 1: Description of various paraphilic disorders in DSM-5**

physical or sexual abuse, it is considered domestic violence and is punishable by law (Protection of Women from Domestic Violence Act, 2005). Most individuals with paraphilia are diagnosed when they are exposed after they have acted upon these impulses. This is also important to understand that the law does not punish a person with disorder unless they have committed the acts per se. Likewise, criminal intent is not part of the diagnostic criteria of any of these disorders.

The psychiatrists are divided on the belief of whether it is right to criminalize these behaviors or to treat these individuals at par with individuals with similar crimes but not having the disorder. The most important defense is that at the end

of the day, people with these disorders have a neurological dysfunction and need therapy more than incarceration. The criminalization of paraphilias remains debatable, as persons with these disorders indeed cause harm to unsuspecting individuals.

The exact estimates of prevalence of paraphilias are not available (Seto, Kingston, & Bourget, 2014). Evidence supports that patients with paraphilia may have more than one comorbid paraphilic disorder. Paraphilias, can be comorbid with other psychiatric disorders and in certain cases be a symptom of a primary psychiatric disorder. For example, paraphilia may present as an early manifestation of psychosis (Kar & Dixit, 2019; Lesandric, Orlovic,

Peitl, & Karlovic, 2017). Apart from psychosis, anxiety disorders, mood disorders, attention deficit hyperkinetic disorder, and substance use disorders can be associated with paraphilias (Seto et al., 2014). Thus, psychiatric comorbidities run high with paraphilias. Voyeurism, exhibitionism and sexual masochism are common forms of paraphilia among psychiatric inpatients (Marsh et al., 2010).

### **The status quo**

Clinicians, lawyers, media, and other professionals frequently confuse paraphilia with sex offenders. This might result from a lack of understanding or disregard for the psychopathology of the paraphilias. Evidence supports the fact that paraphilias are commonly seen in convicted felons, whether they are serving a sentence or not. Along with crimes of the sexual nature, associated with a certain paraphilic specialty, persons with paraphilia also commit crimes like murder, kidnapping, and rape. This strengthens the belief that these paraphilic acts, in reality, are crimes, even though they may or may not be punishable according to law. The intent here is assumed to cause harm; punish unsuspecting victims and ultimately derive pleasure out of the act. This parallels the intent and nature behind any gruesome crime- i.e. the motive, the motive behind the crime.

According to the behaviorist theory, paraphilia starts with a process of conditioning. In which certain non-sexual objects when frequently used and if associated with a pleasurable sexual activity can become sexually arousing (Joyal, Black, & Dassylva, 2007). This, in a way, can go on to describe the fact that they are not disorders, but in reality, are perversions and should be punished. The role of repentance comes to play at the same time, as for that they must be guilty and remorseful. As these acts are committed to deriving pleasure, the feeling of guilt is subsided, as the feeling of pleasure and satisfaction overpowers the same. Thus, the offender will never feel guilty, nor repent and this cycle will continue all over again. The planning which goes into committing the act especially in cases of pedophilia is elaborate, so as to poach a victim, they try to get close to them and gain their trust, which confirms the fact this is a premeditated plan of action and should be punished. In the end, there is an unsuspecting victim harmed in most of these activities, so to be fair and just towards them, these acts have to be made punishable. Also, another theory called the victim-to-abuser cycle theory (Bagley, Wood, & Young, 1994), explains that most paraphilias have their roots in childhood experiences, and they emerge during adolescent years. Intensification of these sexual

forces is seen in adolescent years. Thus, once these childhood victims become young adults, they try to perpetrate similar acts of sexual abuse in young children, thereby starting a new cycle. Thus, the vicious cycle continues with new vulnerable children. Once they are adults, they do have the mental capacity to make correct judgments and act accordingly but act despite knowing better. This puts them in a place to be penalized for the same, even though they may have suffered the same fate in the past, but they choose to continue the same story. In all these arguments a simple fact which constantly remains is that, a victim is involved, who is innocent. A crime is being committed, so for justice to prevail, this is thus punishable, by law.

### **Is change needed?**

People with paraphilias experience major violations of their civil and human rights. As described in the DSM-5/ICD-10 paraphilias are psychiatric illnesses. How can any disorder be punishable? The law is supposed to be objective and based on evidence than popular belief. The clinical perspective is based on science and aims to minimize these biases. The patient and not society should be our focus. In the age of evidence-based medicine, the clinical diagnoses should be free of the beliefs of the so-called experts, political leaders, and the lay public.

In most of these disorders, acting out due to the underlying psychopathology remains impulsive. This happens without intent and beyond the mental capacity of the individual which is reduced due to the illness (Beech, Miner, & Thornton, 2016).

Can individuals who are carriers of HIV or Hepatitis B be considered as criminals as they cause harm to their partners? Paraphilias are classified as illnesses, as they have a biological basis to it. Multiple theories explain these, most of them having a psychological concept behind it. This results in a repetitive pattern of sexual behavior that is not mature in its application and expression. Childhood trauma experienced by certain individuals, and their inability to emerge from them may lead to sexual fantasies or unusual sexual acts which becomes a means of obtaining revenge for childhood trauma. These are in fact expressions of hostility, formed due to the regression or fixation during the initial stages of psychosexual development (Bagley et al., 1994). This reasserts the fact that paraphilias are occurring to the immaturity of sexual behavior, which has a psychological basis and is not a deliberate phenomenon, carried out to harm anyone, making it only a disorder, although complex but not invariably punishable. It is though that

deviant sexual preferences arise due to vulnerability (Ward & Siebert, 2002). Vulnerability comes out of deficits in intimacy, inappropriate emotions and cognitive distortions which are in turn linked to early life experiences, biological factors and cultural influences. At the end of the day, paraphilias lead to impaired cognitive functioning and bad decisions. Establishing the nature of paraphilias as an illness, due to cognitive impairment, negates the need for punishment for the same. As we move forward in modern times, society becomes more and more accepting and progressive. Sexual delinquencies for example homosexuality, which was considered a taboo as well as a criminal offense under the law, has been decriminalized, with the most supporting evidence of it being that it is a natural outcome and not an offense. Thus with time, it can be said that some of the paraphilic disorders especially in which no victim is directly involved, happens between consenting individuals may be considered as a normal phenomenon. The ICD-11 (WHO, International Classification of Diseases, 11th Revision, 2019) proposals support the same to some extent. The diagnostic criteria of any paraphilic disorder state that the process must cause distress to the individual, that means it is not happening completely due to the will and along with said pleasure;

does trouble the individual. This raises an important point that somewhere in this situation, he may be his victim, and if he is the victim, then how can be punished. Likewise, in earlier times, committing suicide was considered a felony. It was a punishable offense, but now once the biological basis has been established, it has been decriminalized. The same evidence can be used as an adjunct to decriminalize paraphilias. Finally, even if we do punish these individuals, and label them as criminals, will these crimes stop? Punishment might not be the best resort we are seeking in such cases. Paraphilias may often occur in association with other psychiatric disorders or as their manifestation. In persons with mental illness, especially psychosis, judgment can be compromised, resulting in poor decision making and ultimately, committing an offense. Paraphilic patients with comorbid psychiatric illness need to be viewed in this light. This symptom (paraphilia) or manifestation can reduce, once the primary diagnosis is taken care of, again reimposing the need for treatment and not punishment.

## Conclusion

As is clear from this debate, the incarceration of individuals with paraphilia leads them further away from help and is not reformatory. Cognitive behavior therapy, counseling, support groups,

pharmacological management of comorbid psychiatric illness can all help such individuals and in turn, reduce the number of offenses committed by these persons. The status quo act as an agent of social control and at times confuses crimes and moral beliefs with mental disorders. We discussed the basic psycho pathology of paraphilias, nature, and basis as a disorder and as a criminal offense. We try to give a bigger picture of the said disorder. Although, this debate has been much avoided, our point of discussion remains important. The verdict may sway in, either way, this article deals with the topic in hand neutrally, not imposing any ideology or views on anyone. In totality, paraphilias and their effects are an important avenue and proper management guidelines, related to treatment as well as to its legal aspects are needed.

### Disclaimer

No part of this discussion should be interpreted as supporting any sexual activity between non-consenting individuals.

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