American Journal of Multidisciplinary Research & Development (AJMRD)
*Volume 06, Issue 06 (**June - 2024**), PP 14-26*
ISSN: 2360-821X
www.ajmrd.com

Research Paper **Open Access**

A Legal and Philosophical Analysis of the Offence of 'Carnal Knowledge against the Order of Nature' In Zambia

Natasha Chirwa-Lungu

ABSTRACT:-This research investigates the legal and philosophical aspects pertaining to the offence of 'carnal knowledge against the order of nature' in the context of Zambia. The objective of this research is to provide a thorough examination of the legal framework that governs this particular offence in the Zambian legal system. This analysis will encompass the historical development, statutory basis, and current interpretations of the offence. Furthermore, this research examines the philosophical foundations that shape the understanding of the 'order of nature' in the socio-cultural milieu of Zambia.

This study employs an interdisciplinary methodology, integrating legal analysis and philosophical inquiry in order to elucidate the intricacies linked to the offence. The analysis involves a thorough examination of pertinent statutes, case law, and legal commentary in order to identify the developing patterns in judicial interpretation pertaining to this particular offence. In addition, this study examines the socio-cultural and philosophical viewpoints that influence the conceptualization of 'carnal knowledge against the order of nature'. It also assesses the consequences of these conceptualizations on personal freedoms and human rights.

Through a critical analysis of the legal and philosophical aspects of this offence, the research makes a valuable contribution to the continuing scholarly discussion surrounding the convergence of law, culture, and morality. The results of this study have the potential to provide valuable insights for legal professionals, politicians, and academics regarding the consequences of the existing legal structure and its compatibility with modern human rights norms. Furthermore, the primary objective of this study is to foster more extensive deliberations regarding the function of law in mirroring and influencing society norms, specifically in relation to sexual behavior and personal freedom.

Key words: carnal knowledge, morality, against the order of nature, criminal law, criminal liability and freedom of conscience

I. INTRODUCTION

The offence of carnal knowledge against the order of nature refers to sexual acts that are considered taboo or immoral in a particular society or culture. This offence is often associated with same-sex relations, but it can also include other forms of sexual behavior that are deemed deviant or unnatural. The crime against nature or unnatural act has historically been a legal term in English-speaking states identifying forms of sexual behavior not considered natural or decent and are legally punishable offenses.[1] Sexual practices that have historically been considered to be "crimes against nature" include masturbation[2], sodomy and bestiality.[3]

From a philosophical perspective, the offence of carnal knowledge against the order of nature raises questions about the nature of morality and the role of the state in regulating sexual behavior. Soble[4] discusses a wide range of issues, including sexual consent, pornography, prostitution, and homosexuality. He also discusses the role of the state in regulating sexual behavior. It has also been argued by some other philosophers that morality is based on natural law, which is determined by the inherent nature of things.[5] According to this view, sexual acts that violate the natural order are inherently immoral and should be prohibited by the state. Others argue that morality

[1] William Blackstone (1753), Commentaries on the Laws of England, Book 4, Chapter 15, Section 4
[2] See Rose v. Locke, 1975, 96 S.Ct. 243, 423 U.S. 48, 46 L.Ed.2d 185
[3] Andrews v. Vanduzer, N.Y.Sup. 1814 (January Term, 1814) (Vanduzer accused Andrews of having had connection with a cow and then a mare and the court understood this to mean that Vanduzer was going around telling others that Andrews had been guilty of the crime against nature with a beast.
[4] "The Ethics of Sex" by Alan Soble (2004)
[5] Gauthier, David. The Moral Order: An Introduction to Natural Law Ethics. The Catholic University of America Press, 2007.

is not based on natural law, but rather on social conventions and cultural norms.[6] According to this view, sexual acts that are deemed immoral are not inherently so, but are rather the result of social and cultural conditioning. This view suggests that the state should not be in the business of regulating sexual behavior, but should instead leave it up to individuals to determine what is right and wrong for themselves.[7] Hampton[8] argues that the state should not interfere in people's personal lives, except in cases where there is a clear and compelling reason to do so. She discusses a variety of issues, including freedom of speech, freedom of religion, and the right to privacy. Regardless of one's philosophical perspective on morality, the offence of carnal knowledge against the order of nature raises important questions about the role of the state in regulating sexual behavior. Some argue that the state has a legitimate interest in regulating sexual behavior to promote public health and safety, while others argue that such regulation is an infringement on individual freedom and autonomy.[9] Rose[10] argues that the state has increasingly intervened in people's personal lives, particularly in the area of sexuality. He discusses the implications of this for individual freedom and autonomy.

The issue of having sex or carnal knowledge against the order of nature has been a thorny issue for some time for obvious reasons. For some people the confusion starts from a basic understanding of what amounts to 'un-natural sexual act' and who qualifies to be the judge of that. There is no question to it being accepted as a crime when the act has been forced or inflicted on someone as the identity of the victim and perpetrator is clear[11], but a problem arises when the act is done between two consenting adults. The trier of facts is then placed in the unenviable position of determining who exactly is being harmed between the two parties doing the "unnatural act" to each other, and who qualifies to be a victim in those circumstances?[12]

The Zambian Constitution[13], upholds a person's right to freedom of conscience, belief or religion, and specifically, Article 19 (1) of the Constitution states that, 'Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of conscience, and for the purposes of this Article the said freedom includes freedom of thought…' However, Section 155 (a) and (c) of the Penal Code[14] provides that,

'Any person who, (a) has carnal knowledge of any person against the order of nature; or (c) permits a male person to have carnal knowledge of him or her against the order of nature; commits a felony and will be liable, upon conviction, to imprisonment for a term not less than fifteen years and may be liable to imprisonment for life…'

The offence of carnal knowledge against the order of nature in Zambia criminalizes consensual sexual acts between adults that are deemed "unnatural", including same-sex sexual activities. This offence has been subject to criticism by human rights advocates and legal experts who argue that it violates principles of non-discrimination, privacy, and dignity, and undermines the protection of human rights.[15] However, there is limited legal and philosophical analysis of the issue, particularly in the context of Zambia. This research aims to address this gap in knowledge by providing a comprehensive legal and philosophical analysis of the offence. In furtherance of that, this article will critically analyze Section 155 of the Penal Code in light of the meaning of freedom of conscience, belief and thought as provided for in Article 19 of Cap 1. However, specifically, the research will explore the historical origins, legal framework, and philosophical underpinnings of the offence, and assess its compatibility with international human rights law and principles of non-discrimination, privacy, and dignity. By providing a rigorous analysis of this controversial issue, this research will contribute to ongoing debates about the regulation of sexuality and the protection of human rights in Zambia and beyond.

II. HISTORICAL AND CULTURAL ORIGINS OF THE OFFENCE

This section examines the historical evolution of the offence often known as 'carnal knowledge against the order of nature' in Zambia, tracing its origins from early legal frameworks to present-day regulations. The

[6] Durkheim, Emile. The Elementary Forms of Religious Life. The Free Press, 1995
[7] Rawls, John. A Theory of Justice. Harvard University Press, 1971
[8] "Freedom and Limits of State Action" by Jean Hampton (1992)
[9] Friedman, Milton. Capitalism and Freedom. University of Chicago Press, 1962
[10] "The Body Politic: The Regulation of Sexuality in the Modern World" by Nikolas Rose (1999)
[11] As proven by the case of Chitalo v The People (Appeal 354 of 2013) [2014] ZMSC 108 (13 October 2014); where a male person was caught red handed having inserted his penis in the mouth of a two (2) year old and was convicted to 25 years imprisonment
[12] As proven by the case of Japhet Chataba, 39, and Steven Sambo, 31 who were initially convicted of the subject offence and latter pardoned by the then republican president Edgar Lungu a year after serving their 15 year jail sentence.
[13] cap 1 of the laws of Zambia
[14] Cap 87 of the laws of Zambia
[15] Human Dignity Trust. (2023). Zambia. The Human Dignity Trust - Changing Laws, Changing Lives interactive tool. Retrieved from: https://twitter.com/HumanDignityT

North Carolina legislation is directly traceable to that which was probably the first English statute on the subject[16], a law passed in the year 1533.[17] It provided that the "detestable and abominable vice of buggery committed with mankind or beast" was to be a felony and that persons convicted of such an act should suffer the pains of death as felons were accustomed to do, and that "no person offending in any such offense should be admitted to his clergy." The old English statute was adopted in North Carolina in 1837 with only one important difference. The word "buggery" was removed from the code. The statute thus read: 'Any person who shall commit the abominable and detestable crime against nature… with either mankind or beast, shall be adjudged guilty of a felony, and shall suffer death…'[18]

The term "buggery" includes both sodomy and bestiality.[19] However, all three terms are often used to cover the same acts. Sodomy, in its broadest sense, includes carnal copulation by human beings with each other or with a beast.[20] Bestiality is generally understood to mean an act between mankind and beast,'[21] but some authorities say that the act with an animal is buggery and that bestiality includes sodomy and buggery.[22] The word "sodomy" is said to be derived from the name of the Biblical city of Sodom where sexual acts between man and man per anum are believed to have been prevalent.[23] Thus it is not surprising that the common law considered only per anum acts to come within the meaning of sodomy.'[24]

Courts disagreed until the early 19th century as to whether the act had to be finished (resulting in ejaculation) in order to be a crime. Because of how crucial this issue was believed to be, English law was specifically changed in 1828 to state that convictions for buggery and rape did not require ejaculation proof. It was unlawful to engage in same-sex acts with another adult, and regardless of whether the other adult consented, both parties to the act were responsible for the offence. The crime against nature, done with humanity or beast, was historically more commonly referred to by its longer name, the disgusting and abominable (or abominable and detestable, or, occasionally, infamous) crime against nature. The Buggery Act of 1533 is where this phrase first appeared.

As can be seen, for much of modern history, a "crime against nature" was understood by courts to be tantamount to "buggery", and to include anal sex and bestiality. It is also closely related to, and was often used interchangeably with the term sodomy.[25] It may also mean any non-procreative sexual activity.[26][27][28][29]Initially, the term sodomy, which is taken from the tale of Sodom and Gomorrah in the Book of Genesis as stated

[16] 1 Wharton, Criminal law 963 (11th ed. 1912)
[17] 25 Hen. VIII, c. 6 (1533).
[18] N. C. Rev. Code, c. 34, § 6 (1837).
[19] Ausman v. Veal, 10 Ind. 356, 71 Am. Dec. 331 (1858); Miller, handbook of Criminal Law 437 (1934).
[20] z Strum v. State, 168 Ark. 1012, 272 S.W. 359 (1925); Ausman v. Veal, 10
Ind. 356, 71 Am. Dec. 331 (1858). See also 2 Bishop, Criminal Law LA-v § 1191
(2d ed. 1913) ; 1 Wharton, Criminal Law 579 (11th ed. 1912) and the authorities 1 1cited therein.
[21] Miller, Handbook of Criminal Law 437 (1934).
[22] 41 Wharton, Criminal Law 968 (11th ed. 1912).
[23]Commonwealth v. Poindexter, 133 Ky. 720, 118 S. W. 943 (1909) ; Ausman v. Veal, 10 Ind. 356, 71 Am. Dec. 331 (1858). See 1 WHARTON, CRIMINAL LAW
963, n. 6 (11th ed. 1912).
[24] Rex v. Jacobs, 1 Russ. & Ry. 331, 168 Eng. Rep. 830 (1817) ; People v. Moore, 103 Cal. 508, 37 Pac. 510 (1894); Mascolo v. Montesanto, 61 Conn. 50, 23 Atl. 714 (1891); Commonwealth v. Poindexter, 133 Ky. 720, 118 S. W. 943
(1909) ; State v. Vicknair, 52 La. 1921, 22 So. 273 (1893)
[25]Sodomy (/ˈsɒdəmi/), also called buggery in British English, generally refers to either anal sex (but occasionally also oral sex) between people, or any sexual activity between a human and an animal (bestiality).
[26] Sauer, Michelle M. (2015). "The Unexpected Actuality: "Deviance" and Transgression". Gender in Medieval Culture. London: Bloomsbury Academic. pp. 74–78. doi:10.5040/9781474210683.ch-003. ISBN 978-1-4411-2160-8.
[27] Shirelle Phelps (2001). World of Criminal Justice: N–Z. Gale Group. p. 686. ISBN 0787650730. Retrieved January 13, 2014
[28] John Scheb; John Scheb, II (2013). Criminal Law and Procedure. Cengage Learning. p. 185. ISBN 978-1285546131. Retrieved January 13, 2014
[29] David Newton (2009). Gay and Lesbian Rights: A Reference Handbook, Second Edition. ABC-CLIO. p. 85. ISBN 978-1598843071. Retrieved January 13, 2014.

above,[3031]was generally limited to homosexual anal sex.[32] Sodomy laws in many countries criminalized the behavior. In the Western world, many of these laws have been overturned or are routinely not enforced.[33]
According to **Dr. Vageshwari Deswal**[34], **'order of nature'** as stated by Section 377 of the Indian Penal Code, means events that are normal and expected to occur naturally if there is no artificial or manmade impediment to the same. While unnatural is an act or behavior, contrary to that considered as natural. As per Section 377, only the penis-vaginal sexual intercourse is natural, while all other forms of carnal intercourse such as anal or oral are unnatural. One reason could be that since only the former leads to perpetration of life, so it is logical to construe the same as 'in the order of nature', but can it be understood to imply that all else is perverse to nature?[35] She went on to say if we have to swear by all things natural, then we need to give up technological advancements - our computers, smartphones, usage of electricity, automobiles etc., all contributing towards destruction of nature… the list is endless… natural versus unnatural is a perennial debate. Who decides what is natural and what is not, since there are human interventions in every sphere of nature. If the majority is allowed to dictate terms and impose its choices upon the minority, wouldn't that trample our sacrosanct human rights Studies that prove that the majority of early human societies were polygamous? If humans are polygamous by nature then the institution of marriage which imposes monogamy is unnatural and should be abolished.[36]

And there lies the problem. In the modern world we live in, the way of doing things has greatly advanced both positively and negatively. We live in an age of virtual reality, computer-animated graphics, and digital manipulation. What can clearly be seen is that our society is getting confused about what's real and what's not, what's natural and what's unnatural. We have artificial sweeteners, artificial flavoring, artificial color, artificial hair, artificial this and artificial that and it has come to be the norm because these are the times that we are living in. What is clearly undeniable is that even the manner or the act of having sex has advanced or changed. Depending on one's perception, one can say that certain acts like BDSM (bondage, discipline (or domination), sadism, and masochism (as a type of sexual practice) which basically means sexual activity involving such practices as the use of physical restraints, the granting and relinquishing of control, and the infliction of pain between two consenting adults is natural or unnatural. There are so many movies widely televised of people having carnal knowledge of each other in ways that do not seem to be atypical, the famous one which is even on Netflix is 'fifty shades of grey', which won an award as being the most read book turned into a movie. The question is, should we even be talking about how people are having sex in the privacy of their home or otherwise…how many couples would end up being arrested for having oral or anal sex if that were the case?

Most legal minds have misunderstood or misinterpreted the phrase "sexual crime against the order of nature". This phrase was echoed by Chief Justice Warren Burger in the 1986 case of **Bowers v hardwick**[37] where the Supreme Court upheld a Georgia anti-sodomy law. Prior to that case in 1697, a Massachusetts law was passed which forbade "the detestable and abominable sin of buggery (anal sex) with mankind or beast, which is contrary to the very light of nature."

The Georgia law in the Bowers case was overturned by the Supreme Court in the landmark case of **Lawrence vs Texas.**[38]This was a momentous decision of the U.S. Supreme Court in which the Court ruled that

[30] Bullough, Vern L.; Bullough, Bonnie (2019) [1977]. ""Unnatural Sex"". Sin, Sickness and Sanity: A History of Sexual Attitudes. Routledge Library Editions: History of Sexuality (1st ed.). New York and London: Routledge. pp. 24–40. doi:10.4324/9780429056659. ISBN 978-0-429-05663-5. S2CID 143758576
[31] J. D. Douglas; Merrill C. Tenney (2011). Zondervan Illustrated Bible Dictionary. Zondervan. pp. 1584 pages. ISBN 978-0310492351. Retrieved September 21, 2013.
[32] Nicholas C. Edsall (2006). Toward Stonewall: Homosexuality and Society in the Modern Western World. University of Virginia Press. pp. 3–4. ISBN 0813925436
[33] Sullivan, Andrew (March 24, 2003). "Unnatural Law". The New Republic. Archived from the original on July 2, 2010. Retrieved November 27, 2009. Since the laws had rarely been enforced against heterosexuals, there was no sense of urgency about their repeal. (Or Sullivan, Andrew (2003-03-24). "Unnatural Law". The New Republic. Vol. 228, no. 11.)
[34]an academician, author, feminist and activist working as a Professor at the Faculty of Law, University of Delhi
[35] https://timesofindia.indiatimes.com/blogs/legally-speaking/unnatural-offences-decrypting-the-phrase-against-the-order-of-nature/
[36] ibid
[37] Bowers v. Hardwick (1986) is a U.S. Supreme Court case in which the Court considered whether a person had a Constitutional right to engage in homosexual sex. In this case, Georgia passed a statute criminalizing both oral and anal sex.
[38] 539 U.S. 558 (2003)

sanctions of criminal punishment for those who commit sodomy are unconstitutional.[39] The Court reaffirmed the concept of a "right to privacy" that earlier cases, such as **Roe v. Wade**[40], had found the U.S. Constitution provides, even though it is not explicitly enumerated.[41] The Court based its ruling on the notions of personal autonomy to define one's own relationships and of American traditions of non-interference with private sexual decisions between consenting adults.[42]

The brief facts and ruling of the **Lawrence case** was that in 1998, John Geddes Lawrence Jr., an older white man, was arrested along with Tyron Garner, a younger black man, at Lawrence's apartment in Harris County, Texas. Garner's former boyfriend had called the police, claiming that there was a man with a weapon in the apartment. Sheriff's deputies said they found the men engaging in sexual intercourse. Lawrence and Garner were charged with a misdemeanor under Texas' anti-sodomy law; both pleaded no contest and received a fine. Assisted by the American civil rights organization Lambda Legal, Lawrence and Garner appealed their sentences to the Texas Courts of Appeals, which ruled in 2000 that the sodomy law was unconstitutional. Texas appealed to have the court rehear the case, and in 2001 it overturned its prior judgment and upheld the law. Lawrence appealed this decision to the Texas Court of Criminal Appeals, which denied his request for appeal. Lawrence then appealed to the U.S. Supreme Court, which agreed to hear his case.

The Supreme Court struck down the sodomy law in Texas in a 6–3 decision and, by extension, invalidated sodomy laws in 13 other states, making same-sex sexual activity legal in every U.S. state and territory. The Court, with a five-justice majority, overturned its previous ruling on the same issue in the 1986 case of Bowers v. Hardwick, where it upheld a challenged Georgia statute and did not find a constitutional protection of sexual privacy. It explicitly overruled Bowers, holding that it had viewed the liberty interest too narrowly. The Court held that intimate consensual sexual conduct was part of the liberty protected by substantive due process under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution. Lawrence invalidated similar laws throughout the United States that criminalized sodomy between consenting adults acting in private, whatever the sex of the participants.[43]

2.0. Philosophical Perspectives of the offence

There exist various philosophical opinions regarding the moral implications of engaging in sexual acts that deviate from the natural order. Certain philosophers have posited the notion that the said behavior is criminal because it is ethically and morally wrong as it violates natural law. While other philosophers have contended that the act of crime constitutes a detrimental infringement upon an individual's right to privacy.

The philosophical dispute regarding the offence of carnal knowledge against nature's order is multifaceted and intricate. It is clear that there are compelling arguments on both sides of the debate. Therefore, whether or not to criminalize this behavior is an internal decision that each society must make for itself.

2.1. A definition of law

The reason there has been much controversy on the offence in question is because of the perennial debate of morals vs law. That is why there is need to establish a definition of law before delving in the general nature and essence of morality and law from a philosophical perspective. There are many widely accepted definitions of law but for the purposes of this article, the general and accepted definition of law is that it is a scheme of social control and not a scheme of individual control.[44] What this means is that the individual is free to control his own conduct, so long as it does not affect others. He may choose his own vocation, choose his own domicile, and regulate his own conduct in a thousand and one other ways, without any interference by the law, provided he alone is concerned. But if his conduct affects the lives of his fellowmen, then there is a possibility of control by the law. A solitary human being would have no wants against other human beings. Hence there would be no social interests. But the more people are thrown into contact with each other, the more social interests they have. In the complex modern world, if many social interests were not recognized and protected, life would be intolerable. The human race, through warfare, degeneracy, ignorance and laziness

[39] Chemerinsky, Erwin (2015). Constitutional Law: Principles and Policies (5th ed.). New York: Wolters Kluwer. ISBN 978-1-4548-4947-6.

[40] Roe v. Wade, 410 U.S. 113 (1973), was a landmark decision of the U.S. Supreme Court, which ruled that the Constitution of the United States protects a right to abortion before fetal viability, and after fetal viability if the pregnancy endangers the pregnant woman's life or health.

[41] Chemerinsky, Erwin (2015). Constitutional Law: Principles and Policies (5th ed.). New York: Wolters Kluwer. ISBN 978-1-4548-4947-6

[42] Nowak, John E.; Rotunda, Ronald D. (2012). Treatise on Constitutional Law: Substance and Procedure (5th ed.). Eagan, Minnesota: West Thomson/Reuters. OCLC 798148265

[43] 15 Geo. Mason U. C.R. L.J. 105 2004–2005; 102 Mich. L. Rev. 1555 2003–2004

[44] https://www.studymode.com/essays/Law-And-Social-Control-42794974.html

would soon destroy itself.[45] 'Law, then, is a system of social control, for the protection of those social interests which society in some way decides shall be protected.'[46] [47]What should be recognized from this definition is the fact that the law will not interfere in the conduct of an individual if his acts do not interfere with any other person's interests or as long as he does not injure/harm his neighbor. The neighbor principle as enumerated by Lord Atkin in the famous case of **Donoghue v Stevenson**[48]established that one must take reasonable care to avoid acts or omissions that could reasonably be foreseen as likely to injure one's neighbor. A neighbor was identified as someone who was so closely and directly affected by the act that one ought to have them in contemplation as being so affected when directing one's mind to the acts or omissions in question.[49]

2.2. Nature and essence of law

In order to understand the nature of law, it is necessary, not only to know what its purpose is, but also how it accomplishes its purpose. As a matter of fact, the greater part of the scheme of social control known as law consists of the means whereby it accomplishes its purpose.[50] Basically, one needs to understand what law is before they can establish whether a particular act is against the law or not. Thus, it is important to decipher the essence of law or the characteristics that comprise the law…something so cardinal, that cannot be taken away from it…which goes without saying and cannot be argued against. The philosophy of law is interested in the general question: What is Law? This general question about the nature of law presupposes that law is a unique social-political phenomenon, with more or less universal characteristics that can be discerned through philosophical analysis. General jurisprudence, as this philosophical inquiry about the nature of law is called, is meant to be universal. It assumes that law possesses certain features, and it possesses them by its very nature, or essence, as law, whenever and wherever it happens to exist.[51]

2.3 The philosophical debate of morality vs law

From a philosophical perspective, **The Hart-Fuller**[52] debate is perhaps one of the most interesting academic debates of all times that took place in jurisprudence on the nature and essence of law focused on the relevance of morals in the law. It validates the division that exists between the positivist and the natural school of thought regarding the role of morals in the law. While, Hart argued that law and morality are distinct from each other, Fuller was of the view that there exists an intrinsic connection between law and morality and that the law derives its authority from its consistency with morality.[53] Further, the latter argued that the power and authenticity of the law emanates from morality. Dworkin,[54] in his legal philosophy challenges the traditional distinction between morality and law and argues that there are no clear and objective moral truths, and that the law must therefore be based on a variety of moral principles, including principles of justice, fairness, and equality.

The debate discusses the verdict rendered by a decision of a post-war West German court on the following case:

"A German woman denounced her husband to the authorities in accordance with the anti-sedition laws of 1934 & 1938. He had made derogatory remarks about Hitler. The husband was prosecuted and convicted of slandering the Fuhrer, which carried the death penalty. Although sentenced to death he was not executed but was sent as a soldier to the Eastern front. He survived the war and upon his return instituted legal proceedings against his wife. The wife argued that she had not committed a crime because a court had sentenced her husband in accordance with the relevant law of the time. However, the wife was convicted of 'illegally depriving another of his freedom', a crime under the Penal Code, 1871, which had remained in force throughout the Nazi period. The court described the Nazi laws as "contrary to the sound conscience and sense of justice of all decent human beings" (1951)".[55]

If we follow Harts positivist views, the decision given by the Court was wrong, because hart believes that no matter how heinous the Nazi laws were, they were in accordance with the Enabling Act passed by the Reichstag,

[45] "The Future of Life" by Edward O. Wilson (2002)
[46] http://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/jurisprudence-Unit-I.pdf
[47] https://www.sociologyguide.com/social-control/law.php
[48] [1932] AC 562 (HL Sc)
[49] https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100227619
[50] "A Definition of Law" by Roscoe Pound (1923)
[51] 'The Nature of Law,' Published by the Stanford Encyclopedia of Philosophy on May 27, 2001, https://plato.stanford.edu/entries/lawphil-nature/
[52] Tommaso Pavone, „A Critical adjudication of the Fuller- Hart debate', available at https://scholar.princeton.edu/sites/default/files/tpavone/files/fullerhart_debate_critical_review.pdf
[53]"The Hart-Fuller Debate and the Nature of Law" by Frederick Schauer (1994)
[54] The Morality of Law" by Ronald Dworkin (1986)
[55] Harvard Law Review, 1951, pp. 1005–7, Lon Fuller, The Morality of Law (Yale University Press c 1964) 245 – 255

and were valid. It satisfies Hart's rule of recognition.[56] Positivists believe in a separation between the law as it is and the law as it should be. Legal rights and moral rights are not related, beyond mere coincidence. Hart believes the method of deciding cases through logic or deduction is not necessarily wrong, just as it is not necessarily right to decide cases according to social or moral aims.[57] Fuller on the other hand recognized the Court's decision because it created respect for law and morality, and by using his 8 desiderata Fuller states that all Nazi laws were illicit. This justifies the courts overlooking of the earlier 1934 Act and upholding the wife's conviction.[58]

It is clearly not in dispute that the issue of having carnal knowledge against the order of nature is more a moral than a legal problem especially where it involves two consenting adults, as the whole issue arises from the fact that certain people's moral sensibilities are offended and disgusted by the act. A question then begs to be answered as to whether all immoral acts should form part and parcel of the law and be regarded as illegal? Or should there be a cut-off point where certain acts regarded as immoral are clearly distinguished from the law to avoid it being used or regarded as a tool to violate one's privacy? The act of engaging in "carnal knowledge against the order of nature," has been subject to legal prohibition in numerous nations across different historical periods. The issue of criminalizing it frequently connects with the Hart-Fuller debate, as it prompts inquiries into the incorporation of morality within legal frameworks.

The positivist perspective posits an argument in favor of criminalization. The potential justification for criminalizing "carnal knowledge against the order of nature" can be examined through a positivist lens, wherein its alignment with the rule of recognition is considered. If a society's legal framework prohibits certain actions, those actions are deemed legally legitimate, irrespective of moral considerations.[59]

The Natural Law perspective presents a compelling argument against the criminalization of certain behaviors. In contrast, proponents of natural law theory would contend that the act of criminalizing "carnal knowledge against the order of nature" is in violation of the fundamental principles of natural law. The argument put out is that these laws are ethically objectionable and erode the credibility of the legal framework.[60] The ongoing discourse surrounding the punishment of "carnal knowledge against the order of nature" remains pertinent in contemporary times, given that numerous jurisdictions have either abolished or are contemplating the abolition of these statutes. The ideas put out by both Hart and Fuller continue to exert significant influence in shaping the discourse surrounding this topic.[61]

Both Hart and Fuller make a strong argument for their stance. It cannot be denied that there is a link between morals and law and also that there is a distinction between the two. It all depends on the circumstances of each and every case, that is why we have two existing schools of thought that support both arguments- the natural and the positivist school of thought.

The thing about morals is that at some point due to societal development, they cease to be immoral because the perception of society has changed or shifted such that what was regarded as immoral 50 years ago is no longer the case. The time period, the people affected, the place and culture is essential for consideration purposes in such issues. In **Forsythe v DPP and the AG of Jamaica** the courts said, 'That a law is valuable not because it is 'the law' but because there is 'right' in it and laws should be like clothes; the Laws should be tailored to fit the people they are meant to serve.'[62]It does not auger well to hold on to principles that can no longer be viewed in the same way as they were when initially enacted.

A clear distinction between laws and morals is that the former is concerned with legal rights and duties which are protected and enforced by the State. They are backed by sanction, and therefore if one disobeys the laws of the State, they are liable to be punished. The latter categorizes human behavior as good or bad.[63] The cannons of morality however are based on moral duties and obligations. If one does not adhere to the standards of morality that is prescribed, he cannot be held legally liable. However, morality involves incentives of sorts. When we do the right thing, we experience virtue and enjoy praise and when we do the wrong thing, we suffer guilt and disapprobation. Both, law and morality channel human behavior.[64]

---

[56] "The Concept of Law" by H.L.A. Hart (1961)

[57] Hart, H. L. A. (1958). "Positivism and the Separation of Law and Morals". Harvard Law Review. 71 (4): 593–629

[58] Steven Shavell, „ Law versus morality as regulators of conduct", [2002] Vol 4, no. 2, American Journal and Economics review at p. 227-257

[59] "The Morality of Law" by H.L.A. Hart (1965)

[60] "The Morality of Law" by Lon Fuller (1969)

[61] "Legal Positivism and Morality" by Joseph Raz (1979)

[62]Forsythe v DPP and the AG of Jamaica

[63]"Beyond the Hart-Fuller Debate: A Critical Reconstruction of Legal Positivism" by Neil MacCormick (2007)

[64] Steven Shavell, „ Law versus morality as regulators of conduct", [2002] Vol 4, no. 2, American Journal and Economics review at p. 227-257

While morality is concerned with regulating both the internal and external conduct of men, law is concerned only with regulating the external affairs of men. While it can be said that, law brings within itself some reflection of public morality, it is also true that certain actions may not be illegal according to law, but maybe unacceptable to morality.[65] Therefore, we are often plagued with questions about whether or not morality should be enforced by law or whether laws would still be binding if they do not reflect moral principles. That is the crux of the matter in this article.

III. IMPLICATIONS OF THE OFFENCE FOR INDIVIDUAL AUTONOMY AND FREEDOM OF CONSCIENCE

One thing that none of us can run away from is the fact that though every human being is entitled to freedom of conscience, it should however not be unlimited. If it infringes on another person's rights or seriously offends cultural and societal beliefs, it should then be checked. Every home, community, locality, village, town, city and country has rules. Yes, some rules may appear restrictive, but what should be born in mind is the fact that they are there not necessarily for the good of an individual but the good of the community which ultimately satisfies and covers the individual. This does by any stretch of the imagination mean there is an infringement on individual autonomy where individual wants and needs are disregarded. As it is not possible to please every individual's wants and needs since they are diverse…one has to find a meeting point where you win some and lose some, with the overall goal being that the general wellbeing of the community remains undisturbed. We need to move away from looking at issues narrowly to looking at them from a broader perspective. That's where law comes in…as a regulator to maintain order in chaos.

As much as international human rights may advocate to a great degree on upholding an individual's rights, whether we like it or not, it is what we believe in morally that shapes who we are…we cannot choose some and leave out some. The belief system does not come from nowhere, we found it, it raised us up and made us who we are. It is in our blood line and cannot just be thrown away as suddenly not good enough…there is somewhere we are coming from. The Bible in Jeremiah 6:16 says, 16 This is what the Lord says: "Stand at the crossroads and look; ask for the ancient paths, ask where the good way is, and walk in it, and you will find rest for your souls. But you said, 'We will not walk in it.'

There is a reason why certain acts were prohibited in the past. It was not only because the people of old were unenlightened, backward, uneducated…no…there was more to it than met the eye. The world has been in existence for a long while, and so if something was good for society, it would have existed in some way long before now. However, the bone of contention here is the fact that this study provides a critical evaluation of the effects of the offence on the rights and freedoms of individuals not the community, considering its significance within the wider framework of international human rights norms. As we weigh the pros and cons, we should remember that the accepted definition of law is that it is a scheme of social control and not individual control.

One thing that cannot be denied is the fact that the act of carnal knowledge against the order of nature is something that most have regarded as unnatural hence the requisite offence and follow-up punishment. That is why there is so much controversy on whether behaviors that fall under this category should be punished or not. As we delve in this subject, we need to consider whether the law was created for the purpose of punishing the offenders or to deter them? What cannot be denied as well is the fact that no one is forced to engage in such activities; for those who do enter, do so willingly. If there is harm of any kind, one would say, it is self-inflicted. But then, if we take the view that law is meant as a deterrence, the question is, if a person is caught violating this law, should they be punished by imprisonment or is there some other more befitting solution?

If therefore, we go by the definition of law which is that it is a scheme of social control and not individual control, then the offence in question would not satisfy the dictates of the principles of law because looked at from one angle, it seems to control an individual's actions which strictly speaking affect only that specific individual. Although, if we delve a little bit further, are we saying that even though a particular action does not affect society as a whole but only specific individuals who choose to find themselves in such a place, the law should not interfere? Are we saying we only care about something if it affects the general populace but not individuals? But then doesn't a wrong begin at individual before it progresses to group level? Thus, shouldn't we control it before it escalates…even though it may look like we are entering into the personal space of an individual? If we categorize things in this manner, then we can clearly see a serious link between morals and laws because the two though coming from different perspectives, are targeted at addressing the same issue for the common good. That said, let's now consider the concepts of freedom of conscience and individual autonomy in detail.

[65] "The Immorality of Nazi Law" by Lon Fuller (1969): This article critiques the application of Hart's positivism to the Nazi legal system, arguing that Fuller's concept of legal morality provides a more nuanced and morally sensitive approach to evaluating the validity of laws. Fuller contends that laws that are incompatible with fundamental moral principles cannot be considered valid, regardless of their conformity to a rule of recognition.

3.1 The concept of freedom of conscience

Freedom of conscience, also referred to as freedom of thought, belief, or religion, encompasses the entitlement of individuals to possess and engage in their own personal views and convictions. It incorporates a wide array of beliefs, practices, religious views, philosophical convictions, and personal values. The notion of protection includes the safeguarding of individuals from any form of coercion or obligation to embrace or adhere to a specific religion or belief system. Individuals are afforded the opportunity to exercise agency in selecting, modifying, or disavowing their personal convictions in a manner devoid of any form of compulsion.[66] The term "carnal knowledge against the order of nature" is frequently linked to legislation that prohibits specific sexual behaviors, particularly those that are considered non-heteronormative or deviating from societal norms.[67] It is imperative to acknowledge that the laws and its ramifications exhibit significant diversity throughout various jurisdictions, owing to the influence of cultural, religious, and historical variables on legal systems.[68] It is all dependent on the kind of people it is meant for…that is, their culture and beliefs.

In numerous instances, legal statutes that prohibit "carnal knowledge against the order of nature" have been employed to specifically target and prosecute consensual same-sex relationships and activities. These legislations have been subject to critique due to their encroachment on personal autonomy and the right to freedom of conscience.[69] Supporters of LGBTQ+ rights contend that these regulations contravene fundamental tenets of individual autonomy, egalitarianism, and the entitlement to personal privacy.[70]

3.2 The concept of individual autonomy

Individual autonomy refers to the inherent ability of individuals to exercise their own agency in making choices and decisions pertaining to their lives, without being subjected to any form of coercion or undue influence.[71] The recognition of this right is enshrined in international legal instruments as well as numerous state constitutions, highlighting its status as a fundamental human entitlement.[72]

Individual autonomy encompasses several fundamental components. The concept of self-determination posits that individuals possess the inherent entitlement to autonomously make decisions pertaining to their own life, free from external influence.[73] The principle of freedom from coercion posits that individuals ought not to be compelled or subjected to undue influence in order to make choices contrary to their own volition.[74] The principle of freedom from undue influence asserts that individuals should not be subject to manipulation or persuasion that leads them to make decisions that are not aligned with their own best interests.[75] The notion of respecting individual differences entails the recognition and appreciation of the many values, opinions, and choices held by individuals.[76]

---

[66] Universal Declaration of Human Rights, Article 18 (1948): "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

[67] The Wolfenden Report (1957): This landmark report, commissioned by the British government, recommended the decriminalization of private homosexual acts between consenting adults. The report argued that the existing laws against "carnal knowledge against the order of nature" were based on outdated moral and religious beliefs and that they had no place in a modern legal system.

[68] "Sexuality and the Law" by Martha C. Nussbaum (1999): This book provides a comprehensive overview of the legal regulation of sexuality, including the history, philosophy, and politics of "carnal knowledge against the order of nature" laws. Nussbaum argues that these laws are based on prejudice and discrimination and that they should be abolished.

[69] The Yogyakarta Principles (2006): These principles, developed by a group of international experts, outline the principles of international human rights law in relation to sexual orientation and gender identity. The principles affirm that the criminalization of "carnal knowledge against the order of nature" violates the right to sexual autonomy and the right to privacy.

[70] "Sex and the Law: An Encyclopedia of Sex Discrimination, Harassment, and Abuse" by Richard F. Tewksbury (2005): This encyclopedia provides an in-depth examination of the legal issues surrounding sex, including the history, current state of the law, and future directions. The entry on "carnal knowledge against the order of nature" laws provides a detailed overview of the legal and political debates surrounding these laws.

[71] "The Human Right to Individual Autonomy" by James Griffin (2008)

[72] "The Right to Privacy" by Alan Westin (1967)

[73] "The Oxford Handbook of Autonomy" (2017)

[74] "Autonomy and the Law" by John Christman (2009)

[75] "The Ethics of Self-Determination" by Gerald Dworkin (1988)

[76] "The Human Right to Individual Autonomy" by James Griffin (2008)

The significance of individual autonomy stems from various factors such as the fact that it enables individuals to make decisions that are aligned with their optimal outcomes, it facilitates individual growth and advancement, it facilitates the cultivation of an individual's perception of personal value and confidence.
The criminalization of consenting sexual behaviors among adults might be regarded as a breach of individual autonomy. The aforementioned issue poses a challenge to the fundamental right of individuals to exercise autonomy over their own bodies and engage in intimate relationships. The process of criminalization carries several adverse consequences for the autonomy of individuals, which encompass:
The imposition of limitations curtails individuals' autonomy in determining their own sexual and reproductive decisions. This action constitutes a breach of individuals' autonomy, which denotes the entitlement to exercise agency over one's own life choices without unwarranted intervention from external parties.
This phenomenon perpetuates detrimental misconceptions pertaining to sexual orientation and gender identity. This phenomenon has the potential to result in instances of discrimination and acts of violence targeting individuals who identify as LGBTQ+.

The phenomenon engenders an atmosphere characterized by apprehension and social stigma among individuals identifying as LGBTQ+, hence impeding their ability to embrace a lifestyle that is both transparent and genuine. The potential consequences of this phenomenon can be profoundly detrimental to individuals' psychological and physiological well-being.

3.3 Implications for Freedom of Conscience:

Laws prohibiting same sex relationships can potentially impede the exercise of freedom of conscience. Individuals who identify as LGBTQ+ and those who support them may experience apprehension in expressing their sexual orientation or gender identity due to concerns of potential legal repercussions, such as imprisonment or prosecution. This phenomenon can impede individuals' engagement in public debate and hinder their ability to advocate for their rights.

The enactment of legislation specifically aimed at regulating particular sexual acts could potentially be perceived as a violation of the fundamental right to freedom of expression and conscience. This encompasses the articulation of an individual's sexual orientation and the entitlement to partake in mutually agreed-upon sexual endeavors without apprehension of legal repercussions.

Numerous international human rights organizations, including prominent entities like Amnesty International and Human Rights Watch, have actively endorsed the decriminalization of consenting same-sex partnerships. The authors contend that these legislations infringe upon inherent human rights, such as the entitlement to privacy and the absence of discriminatory practices.

3.4. The Legal Challenges

In numerous legal jurisdictions, people and advocacy groups have raised concerns over the validity of laws that criminalize engaging in "carnal knowledge against the order of nature." Legal disputes frequently revolve around matters pertaining to equality, privacy, and the entitlement to non-discrimination.

3.4.1. Changes in the Legal Environment:

Certain nations have implemented measures to revoke or modify legislation that deems consensual same-sex partnerships as criminal offences. Frequently, these modifications are indicative of shifting cultural perspectives and an acknowledgment of the significance of safeguarding individual liberties and entitlements.
It is certainly undeniable that individual autonomy and freedom of conscience are fundamental human rights that protect individuals' ability to create their own views and make their own decisions about their life. These liberties are necessary for a vibrant and diverse society. These rights, however, are not absolute and must be balanced against other essential interests such as public safety, public order, and others' rights.[77]

3.5. Limitations on Freedom of Conscience and Individual Autonomy

3.5.1. Public Security

Individual autonomy and freedom of conscience may need to be constrained in some instances to safeguard public safety. Individuals, for example, may be prohibited from expressing their opinions or engaging in activities that provoke violence or hatred.[78] Individuals may also be prohibited from using chemicals that impair their ability to operate machines safely or drive.

[77] "The Limitations of Liberty" by Isaiah Berlin (1958): This book explores the limitations of individual liberty and the need to balance it against other important interests.
[78] "John Stuart Mill on Liberty" by John Stuart Mill (1859): This classic work examines the limits of individual freedom and the importance of social order.

3.5.2. Public Safety

Individual autonomy and freedom of conscience may also need to be constrained in order to maintain public order. Individuals, for example, may not be permitted to interrupt public events or engage in activities that hinder traffic. Individuals may also be prohibited from using loudspeakers or other devices in a way that disrupts the peace and quiet of others.[79]

3.5.3. Others' Rights

Individual autonomy and freedom of conscience must be weighed against the rights of others.[80] Individuals, for example, may be prohibited from expressing their ideas or engaging in acts that discriminate against or harass others.

Ultimately, a balance has to be established amongst these competing interests in order to have social order in society. However, it is not easy to be for or against the criminalization of same sex activities because however way one looks at it, there are consequences to be had on both ends of the stick. Allowing individuals to be unfettered in their sexual activities destroys the moral fabric of society, while criminalizing it goes against the fundamental human right to be free to be who one wants to be. Every society therefore has to strike a balance depending on its own cultures, traditions and moral fabric that has shaped who they are as a people. The decision to do so should not be interfered with by those outside it. This is akin to rules in a particular household. A neighbor should not be allowed to interfere in how a particular couple raises their own children unless the method to do so is harmful to those children's welfare. What we should recognize is the fact that this is a delicate issue that needs to be handled with care and serious analysis of the issue from all angles.

IV. WAY FORWARD: MAKING A FIRM STANCE MORALLY AND LEGALLY

As has been pointed out above, there are certain beliefs that are embedded in our systems because they have shaped who we are as a people. In as much as we may mix with other cultures and traditions, there are certain aspects about who we are that can never be changed because they are an integral part of who we are.

One question we need to ask ourselves is the intention of the drafters of Section 155 of the Penal Code of Zambia which basically criminalizes same-sex relationships? When you read the pre-amble of the Zambian Constitution, it provides as follows:

WE, THE PEOPLE OF ZAMBIA: ACKNOWLEDGE the supremacy of God Almighty; DECLARE the Republic a Christian Nation while upholding a person's right to freedom of conscience, belief or religion;

And when you read Romans 1:18-32, you see the seriousness of the issue;

God's Wrath on Unrighteousness

18 For the wrath of God is revealed from heaven against all ungodliness and unrighteousness of men, who [d]suppress the truth in unrighteousness, 19 because what may be known of God is [e]manifest [f]in them, for God has shown it to them. 20 For since the creation of the world His invisible attributes are clearly seen, being understood by the things that are made, even His eternal power and [g]Godhead, so that they are without excuse, 21 because, although they knew God, they did not glorify Him as God, nor were thankful, but became futile in their thoughts, and their foolish hearts were darkened. 22 Professing to be wise, they became fools, 23 and changed the glory of the incorruptible God into an image made like [h]corruptible man—and birds and four-footed animals and creeping things.

24 Therefore God also gave them up to uncleanness, in the lusts of their hearts, to dishonor their bodies among themselves, 25 who exchanged the truth of God for the lie, and worshiped and served the creature rather than the Creator, who is blessed forever. Amen.

26 For this reason God gave them up to vile passions. For even their [i]women exchanged the natural use for what is against nature. 27 Likewise also the [j]men, leaving the natural use of the [k]woman, burned in their lust for one another, men with men committing what is shameful, and receiving in themselves the penalty of their error which was due.

28 And even as they did not like to retain God in their knowledge, God gave them over to a debased mind, to do those things which are not fitting; 29 being filled with all unrighteousness, [l]sexual immorality, wickedness, [m]covetousness, [n]maliciousness; full of envy, murder, strife, deceit, evil-mindedness; they are whisperers, 30 backbiters, haters of God, violent, proud, boasters, inventors of evil things, disobedient to parents, 31 [o]undiscerning, untrustworthy, unloving, [p]unforgiving, unmerciful; 32 who, knowing the **righteous**

[79] "The Harm Principle" by John Stuart Mill (1859): This essay argues that the only legitimate purpose of government is to prevent harm to others

[80] "The Right to Privacy" by Alan Westin (1967): This book examines the right to privacy and its relationship to freedom of conscience and individual autonomy.

judgment of God, that those who practice such things are deserving of death, not only do the same but also approve of those who practice them.

You cannot say you know God but fail to acknowledge Him. The Zambian people through acknowledging the supremacy of God Almighty adheres to every Christian principle. That is where they are coming from and it is enshrined in their Constitution. It's not about legalizing gay rights, it's about upholding the both legal and moral principles for the good of society. Just because the whole world has decided to allow people be free to be whatever they want to be even though it may be to their detriment, it doesn't mean Zambia should follow suit. As Emile Durkheim[81] said,

"…we must not say that an action shocks the common conscience because it is criminal, but rather that it is criminal because it shocks the common conscience."

And as Brian Doolan[82] said,

"The purpose of criminal law is to forbid conduct that unjustifiably inflicts or threatens substantial harm to the individual or to the public interest."

There are some activities that some individuals engage in that can potentially rip the fabric upon which society is based on if left unchecked just because the act affects on those specific individuals. Let's look at the case of **R v Brown,**[83] whose facts were as follows:

This involved a group of men who engaged in consensual sadomasochistic activities. These activities included cutting, branding, and piercing each other's bodies. The participants were charged and convicted of various offenses, including assault occasioning actual bodily harm and unlawful wounding. The House of Lords was asked to consider whether these acts should be considered criminal even though they were consensual. The court ultimately held that the activities were indeed criminal, even though they were consensual. The court reasoned that there were public policy reasons for criminalizing these types of activities, as they were seen as morally and socially unacceptable. The court also noted that the harm caused by these activities could not be adequately consented to, as the harm was so severe that it went beyond the bounds of what a person could reasonably be expected to endure. The House of Lords upheld the convictions and found that consensual sadomasochistic activities were not a defense to the criminal charges brought against the defendants. The court held that the public policy against allowing such activities to occur was more important than the right of individuals to engage in consensual activities of their choosing.

What should be recognized is the fact that there is more to it than meets the eye. If society were to look at issues in a black and white perspective, without considering the grey areas, there would be no serious advancement. There is need to look at issues from a wholistic picture and that is by making room for the grey areas. Let me give a simple example as an illustration. People who use drugs use them at their own peril and so do people who smoke, however the consequences of those actions are devastating not only to the individual but society as well. Sometimes society needs to come in to regulate not only group but individual behaviors. The law should be concerned not only about how someone's actions may affect another person but also how an individual's actions can affect themselves because like it or not, we are connected and even if someone may not harm another person physically, they can affect them. For example, what kind of society would we be if we had to watch someone set themselves on fire? Strictly speaking, they are harming only themselves, but they do come from a family, they have friends and they belong to a community and a society. Can we just walk on by and say to ourselves that its none of our business what one does to themselves…even when we can clearly see that it is wrong? The law should be protective in nature for everyone whether the harm is self-inflicted or not. The difficult question is whether such individuals should be punishable by law in the same way that those who inflict harm on others are punished? It goes without saying that any person who decides to inflict harm on themselves is not someone who can be taken to be in the right frame of mind and two wrongs do not make a right. Therefore, sending someone to prison for inflicting harm on themselves is not a solution, other remedial measures should be applied that effectively sorts out the problem.

V. CONCLUSION

The offence of carnal knowledge against the order of nature highlights the complex and nuanced nature of morality and the role of the state in regulating sexual behavior. It is a contentious issue that requires careful consideration and thoughtful analysis from a variety of philosophical perspectives. Being naturally disgusted or having one's moral sensibilities offended should be separated from what is strictly required for an act to become criminal. When an act is criminal, it is not only the victim who is harmed but society as a whole, but then society needs a victim first before it can claim to be harmed…that is the essence of criminal law.

[81] American Journal of Sociology, Vol,40 (1934), pp 319-328 by the University of Chicago.
[82] Principles of Irish Law, Brian Doolan, Edition 8, Published by Gill & Macmillan, 2011.
[83] [1994] 1 AC 212 (House of Lords)

The term "carnal knowledge against the natural order" refers to sexual practices deemed immoral or prohibited in certain cultures, often associated with same-sex partnerships. In English-speaking regions, this term has been historically used to describe sexual activities considered improper or unnatural and therefore forbidden. There is ongoing philosophical debate on the nature of morality and the government's role in regulating sexual behavior, with differing views on whether morality is based on natural law or influenced by cultural norms.

The Zambian Constitution protects freedom of conscience, belief, and religion, yet consensual sexual acts deemed "unnatural," including same-sex relationships, are outlawed under Sections 155(a) and (c) of the Penal Code. This paper provided a comprehensive legal and philosophical analysis of this offense, examining Section 155 in light of freedom of conscience and contributing to discussions on sexuality control and human rights protection in Zambia and globally.

The concept of "crime against nature" has been outlawed in various countries, with Western nations repealing many such laws. Philosophical perspectives vary on the moral implications of deviating from the natural order in sexual behavior, with debates on whether such acts violate natural law or individuals' right to privacy. The issue of criminalizing same sex relationships remains relevant, with arguments for and against such laws based on positivist and natural law perspectives.

The debate on the punishment for acts against the natural order underscores the complex interplay between morality and law. While individual rights are protected, considerations for the community's well-being are paramount. International human rights frameworks safeguard individual autonomy and conscience freedom, emphasizing the importance of balancing personal beliefs with societal needs.

Laws prohibiting certain sexual behaviors can infringe on individuals' rights to privacy and freedom of conscience. Such legislation may create fear and stigma, hindering the expression of gender identity and sexual orientation. Balancing legal frameworks with moral considerations is crucial to address societal challenges while upholding fundamental human rights. As much as such acts maybe prohibited, it's important to approach this topic with sensitivity and understanding, while also considering the well-being and rights of such individuals.

Ultimately, promoting acceptance, understanding, and support for such individuals is essential for their well-being and for creating a more just and equitable society. It's important to approach this issue with empathy, compassion, and a commitment to human rights and dignity for all individuals, regardless of sexual orientation or gender identity while seeking for better solutions to the problem.

We must however be clear on how to proceed from this point onwards. When someone is doing something that is wrong, for example adultery…there is no law that says it is a crime even though so many people may be hurt by that person's actions. However, it would not be prudent or right…and if I have to stretch it a little bit…lawful to watch someone clearly digging a pit for themselves. You who knows the truth needs to enlighten them…guide them on the right path. However, how you handle the issue is what is important…no judgement, no discrimination should be perceived. You do not tolerate the act but you can empathize by opening the person's eyes to the perils of their actions.

That said, Zambia may have been on the right track when it decided to criminalize same sex relationships, however, the modus operandi is what is wrong. The act is immoral but not criminal, therefore, what is important is finding better solutions to helping individuals who find themselves in this kind of scenario without condoning their behavior because the longer it is tolerated the more degeneracy finds itself in society. Because like it or not, as long as one is a consenting adult, no one really has a problem with it, but what if it gets to a point where one is defiled by someone from the same sex? As much as being defiled by the opposite sex is devasting, it is worse when one is violated by someone from the same sex when they do not even identify as LGBTQ+. That's the crux of the matter that needs careful consideration before simply accepting anything and everything. At the end of the day, any act that is condoned to the detriment of society will ultimately affect future generations.