

Homosexuality: The Emerging New Battleground in Islam

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It doesn't matter if you agree or disagree with my interpretations; even the classical Qur'an commentators disagreed on many details. Disagreement deepens our understanding of the Qur'an. ~ Muhammad Asad

Not even seven thousand years of joy can justify seven days of repression ~ Hafez¹

¹نی دولت دنیا به ستم می ارزد / نی لذت مستی اش الم می ارزد / نه هفت هزار ساله شادی جهان / این محنت هفت روزه غم می ارزد

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As in the case of Jews and Christians, the topic of homosexuality is not easy for Muslims. Amongst various Christian denominations, it has led to rifts within congregations.² The conversation in Christian and Jewish circles in North America has happened in the context of the LGBTQ and civil rights movements over several decades. However, the conversation in Islam, specifically in the North American context, is relatively new. In Muslim countries, homosexuality has conventionally been viewed as a behavioural trait in the context of pederasty and aggressive desire in gender-segregated societies. This, however, is being challenged by a growing number of Muslim youth, especially in the West, who do not wish to perpetuate a behavioural paradigm, in which one marries to keep face and have sexual encounters with members of the same gender on the side. Muslim LGBTQ groups and individuals have increasingly become socially and politically visible as technology and media have allowed them to network and share resources.

In terms of addressing the concerns of LGBTQ Muslims in a theological context, Scott Kugle was the first to broach the subject substantially through his essay in *Progressive Muslims* in 2003³ and then his book in 2010.⁴ The other substantial work includes a book chapter by Jahangir in 2010⁵, a paper by El-Menyawi in 2012,⁶ and an article⁷ and book⁸ by Jahangir and Abdullatif in 2016.

²Winnipeg Free Press, "Church Rift May Be Irreparable," 19 July 2016, www.winnipegfreepress.com/opinion/analysis/church-rift-may-be-irreperable-387377411.html.

³Scott Kugle, "Sexuality, Diversity, and Ethics in the Agenda of Progressive Muslims," in *Progressive Muslims: On Justice, Gender, and Pluralism*, ed. Omar Safi (Oxford: Oneworld Publications, 2003), 190-234.

⁴Scott Kugle, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims* (Oxford: Oneworld Publications, 2010).

⁵J.B. Jahangir, "Implied Cases for Muslim Same Sex Unions," in *Islam and Homosexuality*, ed. Samar Habib (Greenwood, Conn: Praeger, 2010), 297-326.

⁶Hassan El-Menyawi, "Same-Sex Marriage in Islamic Law," *Wake Forest Journal of Law & Policy* 2 (2012): 375-531.

⁷J. B. Jahangir and H. Abdullatif, "Investigating the Islamic Perspective on Homosexuality," *Journal of Homosexuality*, 63, volume 7 (2016): 925-954.

⁸J.B. Jahangir and H. Abdullatif. *Islamic Law and Muslim Same-Sex Unions* (Lanham, MD:

However, thirteen years after his essay, Kugle's work was scathingly critiqued by Mobeen Vaid.⁹ This critique is significant as unlike other conservative Muslim responses, it engages with Kugle's scholarship in detail and also forms the foundation of subsequent critiques to his work.¹⁰ The timing of this critique is interesting for it comes in the aftermath of the Orlando gay bar shooting. Immediately after Orlando, Nihad Awad, the Executive Director and the founder of the Council on American-Islamic Relations (CAIR) offered historic words to stand by the LGBTQ community.¹¹

Eschewing theological positions, Awad mentioned that the Muslim community stands shoulder to shoulder with the LGBTQ community. In Toronto, the Muslim and the LGBTQ communities got together for Iftar dinner and signed joined statements against hatred and discrimination.¹² Such instances of solidarity have been quite rare and

Lexington, 2016.

⁹Mobeen Vaid, "Can Islam Accommodate Homosexual Acts? Quranic Revisionism and the Case of Scott Kugle," *Muslim Matters*, 11 July 2016, <http://muslimmatters.org/2016/07/11/can-islam-accommodate-homosexual-acts-quranic-revisionism-and-the-case-of-scott-kugle>.

¹⁰Jonathan Brown, "A Pre-Modern Defense of the Hadiths on Sodomy," (forthcoming), www.academia.edu/33016757/A_Pre_Modern_Defense_of_the_Hadiths_on_Sodomy.

This work briefly engages Kugle (2010) on the Hadith texts relegating the critique of the Qur'anic texts to Vaid (2016). While a detailed critique of Brown's work is beyond the purview of this article, it may be noted that he defends the death for sodomy texts that have been rejected by many past Muslim scholars and also contemporary conservative Muslim scholars. Elsewhere, in a different paper, he quotes that if a text makes you cringe, it could not be attributed to the Prophet. Yet, despite the cringe-worthy persecution of gay men by ISIS, who have actually enacted such texts, in Chechnya and Uganda amongst other places, he chooses to defend the death texts. In a different paper, he mentions that Ibn Abbas texts sometimes exhibit aberrant views on temporary marriages and interest-based transactions. Yet, in the context of the death texts, he goes at great length to defend the Ibn Abbas version of those texts. Brown uses Suyuti (d. 1505) to bolster his case; however, he does not recognize that Suyuti himself noted that Lot's people sodomized travelers to drive them away, which does not allow for the equation of sexual conduct of Lot's people with that of LGBTQ persons. Additional points raised by Brown are subsumed and addressed in this article.

¹¹Nihad Awad, "CAIR: Muslims Stand United with LGBT Community," Associated Press, 12 June 2016, YouTube, www.youtube.com/watch?v=zHSpqQILd8k

¹²Steven Zhou, "Muslim Leaders Break Bread with Toronto Queers," NOW, 29 June 2016, <https://nowtoronto.com/news/muslim-leaders-break-bread-with-toronto-queers/>.

low-key before Orlando. It is worth noting that in Canada, based on a 2016 Environics survey, Muslims were found to more likely reject homosexuality than other Canadians, although second generation Muslims were more likely to accept it.¹³ Likewise, according to the Pew Survey, as of 2011, U.S. Muslims were split on homosexuality with 39% for accepting and 45% for discouraging it.¹⁴ Given strongly held Muslim opinions on homosexuality, perhaps these responses signal the beginnings of an engagement that had been previously absent. As such, the more conservative elements within the North American Muslim community have perhaps felt the need to re-assert their orthodox position by supporting a response to Kugle's work.

Kugle needs no defense for he himself has asserted that critiques, including those by gay readers, have led him to "deeper theological research" and that he is "happy to see" his "conclusions challenged."¹⁵ However, the critique must be addressed as it raises some points that are commonly held by conservative Muslims in their bid to prohibit LGBTQ Muslims from leading an honest life based on intimacy, affection and companionship. Even post-Orlando, while Muslim community elders have expressed solidarity with the LGBTQ community, they have not shown the same regard for LGBTQ Muslims. This is perhaps because Muslim community members hold misconceptions on homosexuality that prevent a meaningful discussion on the concerns of LGBTQ Muslims.

It is important to address the religious basis of Muslim homophobia, as Asifa Siraj points out in her study, based on U.K. Muslims, that amongst various variables like education, age and gender, it is levels of religiosity that is the most influential variable directly associated with intolerance and opposition to "homosexuality" and that having a

¹³The Environics Institute, "Survey of Muslims in Canada 2016," April 2016, www.environmenticsinstitute.org/uploads/institute-projects/survey%20of%20muslims%20in%20canada%202016%20-%20final%20report.pdf.

¹⁴Michael Lipka, "Muslims and Islam: Key Findings in the U.S. and Around the World," Pew Research Centre, 27 February 2017, www.pewresearch.org/fact-tank/2017/02/27/muslims-and-islam-key-findings-in-the-u-s-and-around-the-world/.

¹⁵Susan Henking, "Coming Out Twice: Sexuality and Gender in Islam," *Religion Dispatches*, 17 April 2012, <http://religiondispatches.org/coming-out-twice-sexuality-and-gender-in-islam/>.

higher level of education did not have an influence on such attitudes.¹⁶

In what follows, fourteen salient points from the critique, which are sometimes articulated by conservative Muslim leaders, will be delineated followed by a point-by-point deconstruction of the author's arguments. Additionally, common Muslim misconceptions on homosexuality will be addressed, as they influence religious opinion and form the basis for Muslim homophobia. Thus, while we focus on addressing the author's critique, we also address arguments and misconceptions broadly upheld by conservative Muslim leaders, scholars and community stakeholders. It is to be noted that while conservative Muslim leaders predominately address male homosexuality, the case of lesbians is derived from that. As such, in addressing the critique, the case of Muslim lesbians is generally subsumed.

Deconstruction of the author's fourteen points

Each of the fourteen points made by Mobeen Vaid in his critique of Scott Kugle's work is discussed and deconstructed below. Each subtitle in this section comprises a counterclaim to rebut a claim made by the author.

1-Consensus on homosexuality does not hold

The author invokes the *ijma* (consensus) argument on the prohibition of homosexuality and claims that scholars from across all Muslim schools of jurisprudence have differed over questions of punishment of same-sex acts, but have never differed on their prohibition. He also mentions that only "certain liberal denominations in the West" are LGBTQ-affirming.

However, if one went by Shafi's definition as the consensus of all Muslims, it is nearly impossible to have *ijma*. In Islam, there is no consensus on the definition of *ijma* (consensus). Furthermore, while

¹⁶Asifa Siraj, "The Construction of the Homosexual 'Other' by British Muslim Heterosexuals," *Contemporary Islam* 3 (2009): 41-57.

some scholars are quick to invoke *ijma*, past *ijmas* can and have been challenged. This can be noted from how Wahabi scholar Ibn al-Uthaymeen (d. 2001) went against the *ijma* on the validity of forced marriages of minor girls that was based on the Hadith pertaining to Aisha mentioned in Sahih Bukhari¹⁷ or, as some scholars claim, based on the explicit meaning of the Qur'an, "unimpeachable, parallel reports," *sunna* (Prophet's teachings) and consensus.¹⁸ Indeed, past jurists have been accused of breaking consensus only to have their opinions become the main point of view of the Muslim community.

Mohammad Omar Farooq references the jurist Bazdawi (d.1100) to assert that if a past *ijma* is later found unsuitable, it can be replaced through reasoning with a new *ijma*, and also mentions Muslim reformer Sayyid Ahmad Khan (d. 1898) who sometimes invalidated the *ijma* of the Companions to contend for a fresh *ijma* in light of changed circumstances.¹⁹ Likewise Hashim Kamali references past jurists who held that the *fatwa* (legal edict) of a Companion did not constitute a binding proof in Islamic jurisprudence, and also references both Shafi (d. 820) who stated that scholars have sometimes abandoned the *fatwa* of a Companion, as well as Iqbal (d. 1938), who opined that later generations were not bound by the decisions of the Companions.²⁰

Past jurists did not issue a legal opinion on same-sex unions. They could not do so in the absence of contemporary developments²¹ in

¹⁷We are grateful to Anas Mahafazah for this point.

¹⁸J. Brown, "Reaching into the Obscure Past: The Islamic Legal Heritage and Reform in the Modern Period," in *Reclaiming Islamic Tradition: Modern Interpretations of the Classical Heritage*, ed. Elisabeth Kendall and Ahmad Khan (Edinburgh: Edinburgh University Press, 2016), 100-135.

¹⁹Mohammad Omar Farooq, "The Doctrine of Ijma: Is There a Consensus?," June 2006, www.scribd.com/document/45747285/The-Doctrine-of-Ijma-Is-there-a-consensus.

²⁰Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd edition (UK: The Islamic Text Society, 2003), 256; 318-319.

²¹While we allude to the contemporary consensus position amongst professional psychology and psychiatry bodies, it is also important to acknowledge the point noted by Rabbi Gershom Barnard that medical opinion gradually evolved from hormonal treatment to psychoanalysis to behavioral conditioning to saying that there is no treatment to finally indicating that there is

psychology²² and because they only dealt with questions at hand and the question was never raised. Thus, whatever *ijma* Vaid refers to never addressed the question of a legal contract between same-sex couples. Therefore, he cannot assume an answer for a question that was never addressed unless he goes over the texts and identifies what is applicable and equally not applicable on the issue of a same-sex legal contract.

Same-sex acts outside a legal contract were deemed forbidden; however, the Hanafi jurist al-Kawakibi (d. 1685) confirmed that based on the phrase ‘what their right hand possesses’ in verses 23:6 and 70:30, which generally alluded to female concubines, there were those who deemed *liwat* with male slaves permissible.²³ While some may try to view this opinion as aberrant or based on *shubha* (doubt), yet it remains an alternate minority opinion. This of course cannot be generalized, as males in general are non-receptive sexual entities. However, Muslim communities in the Siwa Oasis accepted a form of same-sex union with no objection from their elders or local scholars.²⁴

In contemporary times, members and scholars associated with U.S.-based Muslims for Progressive Values, Canada-based Universalist Muslims and U.K.-based Inclusive Mosque Initiative have challenged any consensus on homosexuality. Based on Shafi’s definition of *ijma*, the consensus does not hold. In other Abrahamic religions, major Judaic branches – Conservative and Reform - affirm same-sex

nothing to treat. LGBTQ movements helped this evolution of viewpoints by challenging heterosexism, which led to the responses by professional bodies in psychology and psychiatry by moving away from the initial oppressive characterization of homosexuality.

²²We adopt the essentialist perspective on sexual orientation as opposed to the constructionist lens. This is because while sexual identity differs from culture to culture, the underlying entity of a person exclusively attracted to member of the same-sex remains the same. (See Q. Rahman and G. Wilson, *Born Gay: The Psychobiology of Sex Orientation* (London: Peter Owen Publishers, 2008.) Additionally, Kugle argues that while the constructionist lens is good for academic exercise, it is not very effective in addressing human rights for vulnerable and struggling people. Refer to Susan Henking, “Coming Out Twice: Sexuality and Gender in Islam. [See n. 16.]

²³Khaled El Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago Press, 2005), 124.

²⁴Ahmed Fakhry, *Siwa Oasis* (Cairo: The American University in Cairo Press, 1973), 41–43.

unions. Even the author's mentor, Yasir Qadhi, has claimed that only a small minority of Jews and Christians in the United States oppose same-sex unions.²⁵ In 2006, Rabbis Dorff et al. wrote a combined responsum on homosexuality for the Committee on Jewish Law and Standards and expressly stated as follows:

Celibacy is even less feasible for those who never voluntarily decided to take such a vow as a matter of religious devotion and vocation, but rather simply discovered themselves to be gay or lesbian. God, after all, created us as sexual beings. That does not justify all sexual acts, but it does indicate that God intended that we be able to express ourselves sexually. Jewish law should therefore show gays and lesbians, as it shows heterosexuals, the circumstances in which sexual relations are permitted. [. . .] Heterosexual marriage between two Jews remains the halakhic ideal. For homosexuals who are incapable of maintaining a heterosexual relationship, the rabbinic prohibitions that have been associated with other gay and lesbian intimate acts are superseded based upon the Talmudic principle of *kvod habriot*, our obligation to preserve the human dignity of all people.²⁶

2-Permanent celibacy violates Islamic values

The author argues that inclinations should be separated from behaviour and prescribes restraint, claiming that it is not a unique burden for those "struggling with same-sex desires." He mentions that even in the straight context desire may not have a permissible outlet as in the case of "poverty, disease, looks, happenstance" and the lack of "eligible Muslim bachelors." This opinion is not exclusive to the author's critique and has become a staple of contemporary conservative Muslim discourse.

²⁵Yasir Qadhi, "LGBT Issues in Modern Islam, Questions in Singapore," YouTube, 15 September 2015, www.youtube.com/watch?v=9Tsf29m9_O4.

²⁶Rabbis Elliot N. Dorff, Daniel S. Nevins and Avram I. Reisner, "Homosexuality, Human Dignity and Halakhah: A Combined Responsum for the Committee for Jewish Law and Standards," 6 December 2006, www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/20052010/dorff_nevins_reisner_dignity.pdf.

In contrast to such downplaying of burdens, the late Maher Hathout, regarded as the father of American Muslim identity, mentioned that the parallel between the straight and the gay is not exact, for the latter has no alternatives. He proposed that we must at least guarantee dignity and privacy to homosexuals.²⁷ Moreover, Islamic law does not inflict the oppression of permanent celibacy. Islamic teachings ward off celibacy by making marriage rites simpler, emphasizing *taqwa* (ethical consciousness) over looks, and accepting, if not encouraging, the marriages of Muslim women to non-Muslim husbands.²⁸

Permanent celibacy as a test from Allah is not an Islamic value because needless suffering is *abath* (useless) and self-imposed hardship is not piety. Allah's law is both reasonable and known through appeal to reason, which is why the law does not inflict unreasonable prescriptions and cause oppression. It is argued that "trials are harder for those with strong faiths but they are lighter for those with weaker faith."²⁹ This necessitates the question that when did gays, often viewed contemptuously, become so exalted to be severely tested? Thus, arguing that homosexuality is an abomination while prescribing permanent celibacy as a test, as if those being tested are exalted with strong faith, is paradoxical.

There do seem to be some opinions in Muslim legal manuals that view homosexuality as a test. However, instead of imitation, such opinions, which can be traced back to the 14th-century scholar Ibn Taymiyyah (d. 1328), warrant a careful scrutiny. Ibn Taymiyyah mentioned in his exegetical work that while men generally tilt towards women, some would also be tested in their tilt toward beardless boys. However, this is not a test of lifelong celibacy, for the desire towards boys was deemed aggressive. It was construed as the same desire channelled to women.

²⁷Maher Hathout, "When Homosexuality Hits Home," *Straight Talk Podcast*, www.stitcher.com/podcast/straight-talk-podcast-with-dr-maher-hathout/e/when-homosexuality-hits-home-22033123.

²⁸Junaid Jahangir, "Muslim Women Can Marry Outside the Faith," *Huffington Post*, 21 March 2017.

²⁹Mushfiqur Rahman, "Islamic Perspectives on Trials and Tribulations," www.scribd.com/document/98819845/Trials-Tribulations-by-Mushfiqur-Rehman, 2004.

Such scholars understood sexuality based on the medical knowledge available to them. Ibn Taymiyyah asserted that it is the insertive partner who has the desire for sex, whereas the receptive partner has no sexual desire except for disease, affliction, financial reasons, or other aims.³⁰ Al-Ruḥaybani believed that the insertive partner's semen poisons the receptive partner's body such that he does not remain deserving of any good.³¹ Ibn Qayyim (d. 1350) opined that the receptive partner is dealt a death through penetration after which no life can be wished.³² Likewise, Ibn Kathir (d. 1373) felt that such a person has nothing beneficial for creation.³³

The general opinion that the male is not an entity for receptive intercourse has to be understood in the context of the medical knowledge available to the past jurists. However, should such opinions continue to inform current rulings in Islamic jurisprudence? Indeed, such extra-textual information that shaped juristic works can be replaced by contemporary consensus amongst professional psychological and psychiatric bodies.³⁴ According to a task force of the American Psychological Association, the struggle between faith and homosexuality has been associated with anxiety, panic disorders, depression, and suicide ideation.³⁵ Most individuals are not super

³⁰Aḥmad ibn 'Abd al-Ḥalīm Ibn Taymiyya, *Tafsīr Sūra Āl 'Imrān*, Tafsīr of ch. ٢٤، الموسوعة الذهبية، علومه وعلومه [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM.

³¹Muṣṭafā ibn Sa'd ibn 'Abduh Al-Ruḥaybānī, *Maṭālib Ūlī al-Nuḥā fī Sharḥ Ghāya al-Muntahā: kitāb al-ḥudūd; bāb al-zinā*, in الموسوعة الذهبية للحديث النبوي الشريف وعلومه [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM.

³²Ibn al-Qayyim. *Al-Jawāb al-Kāfī li Man Sa'ala 'an al-Dawā' al-Shāfī*, in الموسوعة الذهبية للحديث النبوي الشريف وعلومه [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM.

³³Ibn Kathīr. *The History of Ibn Kathir – Bidaya and Nihaya*, trans. Abul Fida Imad uddin Ibn Kathir Damishqi (Karachi: Nafees Academy Urdu Bazaar, 1988) 9: 185.

³⁴J.M. Bailey, P.L. Vasey, L.M. Diamond, S.M. Breedlove, E. Vilian and M. Epprecht, "Sexual Orientation, Controversy and Science," *Psychological Science in the Public Interest*, no. 2 (2016): 45-101.

³⁵American Psychological Association, "Task Force on Appropriate Therapeutic Responses to Sexual Orientation." (2009). Report of the American Psychological Association Task Force on

moral figures to be constantly fighting nature through a celibate lifestyle. On living without intimacy and human touch, one Muslim author wrote, “How could a human being, let alone a Muslim, suggest such a lifestyle for a fellow human being - especially when it’s a lifestyle they don’t accept for themselves?”³⁶ The 14th-century jurist Shatibi recognized that some human dispositions are so inherent that to deny them would be to harm human beings irreparably. The human need for intimacy, affection, and companionship is so deeply ingrained that prescriptions that ignore them lead to *taklif ma la yutaq* (creation of obligations that cannot be met). Therefore, permanent celibacy is rejected as unIslamic.

3-The proper analogy of same-sex relationships is with non-procreative relationships

The author supports the analogy of same-sex relationships with extra-marital affairs. He argues the Qur’an does not contain explicit punishments for rape, incest, bestiality, and necrophilia, just like homosexuality, but they are all immoral and prohibited. He also argues that even if a genetic marker for same-sex attraction were discovered it is not clear what “principle could be used as a moral justification for acting upon genetic predispositions.”

However, the analogy of homosexuality with polyamory is inappropriate. The only common element is that of desire and it is this legal unsophistication that also perpetuates analogies with eating pork and drinking wine.³⁷ Furthermore, analogies with rape, incest, bestiality, and necrophilia do not hold because such instances are marked by lack of consent, exploitation, severing of family ties, and closeness due to milk, semen and blood ties. In Conservative Judaism,

Appropriate Therapeutic Responses to Sexual Orientation, www.apa.org/pi/lgbt/resources/therapeutic-response.pdf.

³⁶Umm Zakiyyah, “Muslim Boys Have Sexual Needs, But Muslim Girls Don’t?,” *Muslim Village*, 24 January 2014, <https://muslimvillage.com/2014/01/24/48869/muslim-women-are-asexual/>.

³⁷Mariam Gomaa, “Standing for Marriage Equality as a Muslim,” Guest Column, *The Daily Northwestern*, 3 April 2013.

Rabbis Dorff et al. effectively commented on such analogies and “slippery slopes” as follows:

Some have maintained that once we permit homosexual Jews to create unions that are celebrated in some form of Jewish ceremony and to be students and ultimately graduates of our professional schools, all other sexual prohibitions of the Jewish tradition will soon fall as well. This kind of “slippery slope” argument is faulty on several grounds. First, the very essence of moral and legal sophistication is the increasing ability that one learns to distinguish cases. Second, the arguments that we have mustered to permit homosexual unions and ordination simply do not apply to adultery, incest, bestiality, rape, or any of the other prohibitions of sexual acts in the Torah.³⁸

In terms of principles and moral justification for same-sex unions, marriage rests on affection, intimacy, and companionship, especially in the case of the marriage of elderly women and sterile couples. If such benefits are afforded to them then there seems no reasonable objection to deny the same to gay couples. However, it is internalized disdain that prevents this better analogy of same-sex relationships with non-procreative straight relationships.

4-Medieval knowledge should be updated in jurisprudence

The author describes Dawud al-Zahiri (d. 909) as the “paragon for Muslims struggling with same-sex desires.” By alluding to al-Zahiri, he upholds chastity as a prescription for LGBTQ Muslims. As a child, Dawud al-Zahiri was bullied and nicknamed “poor little sparrow.” When his father affirmed that nickname, he told his father that he was as mean as the bullies for laughing at him.³⁹ He dedicated his book to his love, Ibn Jami, and confessed to his teacher Niftawayh that he was dying due to unfulfilled love for another man. Such scholars

³⁸Rabbis Dorff, et al., “Homosexuality, Human Dignity and Halakhah.” [See n. 27.]

³⁹Louis Massignon, *The Passion of al-Hallaj: Mystic and Martyr of Islam*, trans. Herbert W. Mason (Princeton: Princeton University Press, 1994), 167.

also composed pederastic poetry. This trope of death by love allowed jurists like al-Ramli (d. 1550)⁴⁰ and Ibn Qayyim⁴¹ to tolerate glances and kisses to prevent the greater evil of the lover's death. However, it would be absurd to advise Muslim LGBTQ youth today to accept being bullied, love from afar, glance and kiss, compose pederastic poems, sit on a severed camel hump,⁴² and expect martyrdom through inner struggles. Indeed, medical knowledge, social norms and juristic opinions cannot be frozen in the times of the past jurists. Thus, as noted under point 4 above, jurisprudential assumptions that informed past legal opinions must be updated.

5-The coercion notion is very clear in the account of Lot

The author claims that the Qur'an does not have contemporary notions of "sexual orientation," "rape" and "consent," but that it still contains normative doctrine related to them. He also claims that there is no mention of "coercion, force and aggression" in the context of Lot's people despite the Qur'an's using such words elsewhere. Thus, he substantiates his argument that the Qur'an condemns instances of consensual same-sex relationships.

However, normative doctrines on rape and consent are analogically deduced from the Qur'an. This lack of clarity has caused problems in places like Pakistan, where raped women, who cannot produce witnesses, remain vulnerable under *hudud* laws by getting charged with adultery.⁴³ Likewise, analogical deduction from the Qur'an causes problems in interpreting verses on Lot's people. In the context of Lot's people the phrase "approach men with desire instead of

⁴⁰Khaled El Rouayheb, *Before Homosexuality in the Arab-Islamic World, 1500-1800* (Chicago: University of Chicago Press, 2005), 139.

⁴¹Joseph Norment Bell, *Love Theory in Later Hanbalite Islam* (New York: State University of New York Press, 1979), 129.

⁴²J.B. Jahangir, "Updating 5 Muslim Beliefs on Homosexuality," *Huffington Post*, 8 September 2016, www.huffingtonpost.ca/junaid-jahangir/muslim-beliefs-on-homosexuality_b_11877536.html.

⁴³Usmann Rana, "The Jamat-e-Islami and Rape," *The Express Tribune Blogs*, 2 July 2011, <http://blogs.tribune.com.pk/story/6709/the-jamat-e-islami-and-rape/>.

women” has been used in verses 7:81, 26:165-166 and 27:55. This is plainly read to connote a condemnation of consensual same-sex relationships. However, it is important to recognize that generally approaching men with desire constitutes sexual violation, as men in general are not partial to the overtures of other men. The absence of words that connote force and aggression in the context of Lot’s people does not imply the absence of coercion, just as it is true in the context of raped women who are charged with adultery.

Coercion is very clear in the account of Lot if we understand the Qur’an by the Qur’an. The only instance where the Qur’an illustrates how Lot’s men approached other men is when it shows how they came knocking on Lot’s door and forcibly demanded access to his guests who clearly were not consenting to sex.⁴⁴ This is much clearer than anything else the author has chosen to understand from the account of Lot. In essence, the Qur’an clearly illustrates the approach of Lot’s people as coercive and the author’s point does not hold.

6-Terminology on the actions of Lot’s people developed over time

The author claims that the term *amal qaum lut* (acts of Lot’s people) appears in early Hadith reports but is not different from the later juristic terms *luti/liwat*, all of which “unambiguously” allude to male anal intercourse. By making such an argument he bolsters the claim of a clear position on the prohibition of anal intercourse between males.

Notwithstanding textual authenticity, the first Caliph of Islam is reported to have Iyas bin Abdullah bin Abd Yalil burned for *amal qaum lut*. However, Iyas not only left Islam along with his tribe Bani Amer but also killed the followers of the Prophet in their tribe.⁴⁵ This context of apostasy wars, false prophethood, rebellion, and murder of many Muslims does not allow for the conclusion that the

⁴⁴ See verses 11:77-80 and 15:67-72.

⁴⁵ Ibn ‘Abd al-Barr, *Al-Tamhīd li Mā fī al-Muwatta’ min al-Ma’ānī wa-l-Asānīd*, in الموسوعة الذهبية [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd edition, (London: Turath Publishing), CD-ROM, 5: 316.

word unambiguously referred to male anal intercourse. Moreover, texts attributed to the *Tabiun* (followers of the companions) contain varied descriptions of these terms. One text, as follows, attributed to one of Abu Hanifa's teachers – Ibrahim Al Nakhai (d. 713) – and found in the *Musannaf Abdul Razzaq*, indicates the term *luti* was not completely or universally understood as referring to male anal intercourse: "About a man who called another man 'Luti,' Ibrahim said: His intent, he is to be asked what he meant?"⁴⁶ According to this text, the term *luti* required explanation, as it did not have the precise meaning of a person involved in male anal intercourse. Given the life-span of Abd ar-Razzaq as-San'ani (d. 833), the author of *Musannaf Abdul Razzaq*, it may be concluded that even about 150 years after the Prophet's migration, there was no consensus on the meaning of words associated with *liwat*, which were defined by the later jurists.

7-Sexual acts are lawful due to legal contract not procreative context

Referring to the word *hiratha* (tillage), the author claims that sexual relations are only lawful and praiseworthy when they occur within a paradigmatically procreative context. However, based on verse 2:223, traditional scholars have differed on whether the "tillage" refers to bearing children or something beyond that, which could include mutual spiritual and emotional fulfillment.⁴⁷ Minority scholars have also based the permissibility of anal intercourse on the word *anna* in the verse, which can accommodate meanings of both 'when you will' and 'where you will.' Shia scholars like Tabatabai assert the permissibility of anal intercourse on the basis of the verse on Lot's offer of daughters because he knew they were not seeking vaginal intercourse.⁴⁸

⁴⁶Abd ar-Razzāq Al-San'ānī, *Muṣannaf 'Abd al-Razzāq*, vol. 7, in الموسوعة الذهبية للحديث النبوي [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM, 426.

⁴⁷Fakhr al-Dīn Abu Abdullah Muhammad ibn Umar ibn al-Husayn at-Taymī al-Bakrī at-Ṭabaristānī Al-Rāzī, *Tafsīr al-Rāzī*. Commentary on verse 2:223 in الموسوعة الذهبية للحديث النبوي [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd edition, (London: Turath Publishing), CD-ROM.

⁴⁸Allama Muhammad Hussein Ṭabāṭabā'ī, *Tafsīr al-Mīzān*, commentary on Verses 2:222–223,

Indeed, the permissibility of a wide range of sexual acts other than vaginal intercourse and the woman's decision to remain married even if the penis is damaged, both allude to the fact that sexual acts are not lawful because of a procreative context but because of a legal contract.

8-Jurists ruled on the apparent, not the hidden

The author claims that the Qur'an celebrates diversity on the basis of tribal, ethnic, and national groupings but not sexual orientation, as they have no bearing on belief or actions in contrast to sexual orientation. He also makes a "prohibition despite diversity" argument by asserting that the acknowledgment of sexual diversity may co-exist with prohibitions of sexual acts outside heterosexual relationships.

However, national, tribal, and ethnic groupings have bearing on both beliefs and actions. This is evident through nationalism, political conflicts, singing anthems, racism, etc. Additionally, outside a heterosexual context, past jurists disagreed with one another on the permissibility of the marriage of the *khunthā mushkil* (intersex persons), as follows, which weakens the "prohibition despite diversity" argument:

The Ḥanbalīs differed in their marriage. Al-Khiraqī mentioned that the *khunthā* decides according to what they say. If they said that they are male and that they desire women, then they can do so. If they said that they are female and they desire men, then they can do so. This is because only they can decide and no one else can decide this. So, their word is accepted as the word of the woman is accepted when she says that she has menstruation or the period. They, the *khunthā*, may know themselves according to the desires as they see which of the two sexes they desire.⁴⁹

www.shiasource.com/al-mizan/ (accessed 27 January 2016).

⁴⁹ "khunthā mushkil," *Kuwaiti Encyclopedia of Fiqh*, الموسوعة الذهبية للحديث النبوي الشريف وعلومه, [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM.

Moreover, as noted by the Shafi‘i jurist al-Āmidī (d. 1233), jurists ruled on the apparent and not the hidden,⁵⁰ which means that in the absence of developments in contemporary psychology they could not rule on the marriage of those who were constitutionally and exclusively attracted to the same gender. Some jurists did subsume the *khunthā mushkil* into a heterosexual framework; however, their understanding of gender prevented them from ruling on a legal contract for same-sex couples. This is because men were viewed as non-receptive entities and therefore male receptivity to penetration was viewed through the lens of *ubnah* (affliction). No wonder, the religious scholar al-Rāghib (d. 1108–09) described a woman sodomizing an effeminate man with a dildo as an ultimate sexual irregularity.⁵¹ Thus, the prohibition of sexual acts outside heterosexual relationships has to be understood based on the socio-medical knowledge of the times of the past jurists.

9-Men approaching other men constitutes sexual violation

The author mentions that of the six Qur’anic passages that deal with homosexual acts,⁵² only one deals with the crimes of highway robbery and evil deeds in public assemblies, thus concluding that the emblematic crime of Lot’s people remains sexual intercourse between men. Verses like 7:81 use the definite article “al” (the) to refer to men and women. As such, he asserts that the Arabic definite article often refers to a generic class and not a specific referent and claims that the men and women in the verses on Lot’s people refer to a general class and not specific men and their wives. By arguing as such, he contends that the Qur’an condemns same-sex relationships.

Indeed, the operative phrase used in the Qur’an as in verse 7:81 is “approaching men with desire instead of women.” However, restricting this desire to that of a sexual nature does not explain why

⁵⁰Christian Lange, *Justice, Punishment and the Medieval Muslim Imagination* (Cambridge: Cambridge University Press, 2008), 193.

⁵¹Everett K. Rowson, “The Categorization of Gender and Sexual Irregularity in Medieval Arabic Vice Lists,” in *Body Guards: The Cultural Politics of Gender Ambiguity*, ed. Julia Epstein and Kristina Straub (New York: Routledge, 1991), 68.

⁵²See verses 7:80-84, 11:77-83, 15:57-77, 26:160-175, 27:54-58 and 29: 28-35.

the entire nation of Lot's people as opposed to a small sexual minority amongst them approached other men. This particularization to evoke an "emblematic" crime is unwarranted, as exegetical literature is clear that the actions of Lot's people included "ambushing travelers, apprehending their goods, and killing them" (highway robbery) and thereafter "telling obscene jokes, passing gas, and laughing" (evil deeds in public assemblies). In order to condemn same-sex unions, passage 29:28-35 has to be sidelined to ignore the context of highway robbery and public evil deeds. This weakens the argument that the verses are reflecting the issue of same-sex unions.

However, Muslims who proffer the traditional position sometimes argue that making the verse about coercion would lead to justifying the coercion of women. But then making the verse about gay men leads to instigating them to approach women. If so, who would be willing to provide their daughters and sisters to uphold a particular Qur'anic interpretation? The way out of both absurd conclusions is to read the verse plainly but without prejudice. The verse is contrasting approaching men, who generally are not partial to the advances of other men, with approaching women, who generally are partial to the advances of men. It is in this sense that generally approaching men instead of women is deemed exploitative and hence reprehensible, for the former are non-receptive partners but the latter are receptive.

The critic claims that the Qur'an refers to general categories of men and women in the verses on Lot's people. However, this supports the thesis that the verses are not referring to a minority of men classified as gay but to all men. Indeed, the conduct of the entirety of Lot's people has to be evoked on an issue pertaining to a minority, which is unwarranted. Moreover, general categories always hold room for exceptions such as the *mukhannathun* (effeminates), *khunthā mushkil* (indeterminate sex) and natural eunuchs or in contemporary terms asexuals, transgender and intersex persons and gays. Thus, the Qur'anic verses on Lot's people are about exploitation rather than same-sex relationships.

10-Reliance on exegetical works through a heterosexist lens leads to paradoxes

Borrowing from the exegeses of Tabari (d. 923), Zamakhshari (d. 1143) and Razi (d. 1209), the author claims that exegetes explained the phrase “no claim on Lot’s daughters” as being uninterested in marriage, lack of sexual interest in women and having exclusive desire for men. He also mentions the lack of exegetical precedent for Lot’s people having wives. He questions whether Kugle ignored the *qasas* (stories) of Ibn Kathir (d. 1373) for it attributes the invention of penetrating men and leaving women to Lot’s people. The operative phrases used in the exegesis of Ibn Kathir are “none among the children of Adam had preceded” and “leaving righteous” females.⁵³

However, paradoxically, in the context of 26:165-166 that depict Lot’s people as approaching males instead of the mates created for them, the author states that traditional exegetes mention that Lot’s people engaged in anal sex with both men and women. Some exegetical works also mention that Lot’s offer was for the people to go back to their wives. In another paradox, he attacks Kugle for asserting that the exegete Tabari was fixated on anal intercourse, yet, through other exegetes, he emphasizes that the phrase “*leaving what your Lord has created for you from your mates*” referred to interest in anal intercourse rather than vaginal intercourse.

Yet another paradox arises, when the author mentions in the context of 27:54-58 that Lot’s people were aware of the immorality of same-sex acts and disparaged Lot and his followers as “pure.” However, in the context of 11:78, he mentions that Lot’s people deemed marriage as false and wrong and homosexual intercourse as legitimate and right. Indeed, reliance on exegetical works through a heterosexist lens leads to such paradoxes.

⁵³Abū l-Fidā’ Ismā’īl ibn ‘Umar Ibn Kathīr, *Tafsīr Ibn Kathīr*, commentary on verses, 7:80-81, الموسوعة الذهبية للحديث النبوي الشريف وعلومه [The Golden Encyclopedia of the Prophetic Golden Ha-deeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM.

Furthermore, reliance on Ibn Kathir leads to the problem that homosexual acts existed prior to 1800 BCE, the time of Lot's people. Apart from 3000 BCE Mesopotamia,⁵⁴ historical record traces same-sex conduct as far back as 10,000 years in the Melanesian region and 40,000 years ago among aboriginal people of all racial lines.⁵⁵ Indeed, such paradoxes do not allow for extrapolating a clear position on homosexuality.

11-Lot's offer of daughters has challenged exegetes

The author feels Kugle's exegesis is revisionist when he states that Lot was merely making a "sarcastic tongue in cheek" comparison with the offer of his daughters. He also mentions that Lot's daughters by virtue of their gender are deemed "purer" as mates and as such opposite sex acts hold a purity that same-sex acts do not. By arguing as such, heterosexual relationships are supported and homosexual relationships are condemned.

However, Lot's offer of daughters has challenged exegetes to the extent that there does not appear to be a unique explanation for the offer. Some claim that he offered his daughters for marriage, others claim he was offering the women of the town as the father of his people, still others claim he was telling them to go back to their wives, and a fourth category of exegetes claim that he was merely pricking their conscience.⁵⁶ Thus, Kugle's claim is not revisionist.

The word "purer" has been used instead of the word "pure." In terms of comparisons this means where one act is more pure, the other is not necessarily impure. Alternatively, this means if one act is dirty then the other is less dirty. This helps explain the idea that Lot's offer of daughters, whether his own, the town women, their wives, or merely to prick their conscience, rested on the idea that to approach women

⁵⁴Gordon Wenham, "The Old Testament Attitude to Homosexuality," *Expository Times* 102, (1991): 259-363, www.biblicalstudies.org.uk/article_attitude_wenham.html.

⁵⁵James Neill, *The Origins and Role of Same-Sex Relations in Human Societies* (Jefferson, NC: McFarland, 2011), 50, 72.

⁵⁶Jahangir and Abdullatif, *Islamic Law and Muslim Same-Sex Unions*, ch. 2.

sexually was less dirty of an option, as they are in general receptive to the advances of men. In contrast, approaching other men is the dirtier option, as they are in general not receptive to such overtures. Thus, Lot's offer is better explained through the notion of implied consent. If the offer is explained by affirming heterosexuality, the concern about consent will remain unresolved.

12-The *qasas* (stories) literature reflects the exploitation theme

The author claims that the *qasas* (stories) genre consisted of *Israeliyyat* (patristic and midrashic traditions) and is not used as proof in juristic works. He asserts that while Kugle critiques Hadith, he liberally uses the weaker genre of *qasas*. He also attacks Kugle for erroneously identifying al-Kisai as the famous transmitter of the seven canonical readings of the Qur'an, and amends Kugle's translation that "forcing themselves" in the context of the actions of Lot's people should be replaced by "providing compensation." Furthermore, the author argues that Kugle ignored *qasas* passages that mention Satan assuming the receptive role to entice Lot's people for they would have refused to be receptive partners. He claims that repeated raping led to consensual intercourse and that the ultimate moral outrage was same-sex behaviour with mutual consent and pleasure.

However, it is important to distinguish between using *qasas* information to understand better and using Hadith to kill, condemn or curse others. Using patristic and midrashic traditions is supported by Qur'anic verses like 16:43 that recommend asking people of the scriptures "if you do not know." However, Prophetic teachings on warding off *Hadd* punishments and to accept what is attributed to him other than the Qur'an very carefully sets the bar very high for referencing Hadith.

Quoting the wrong al-Kisai is interesting. The al-Kisai, who gave Muslims one of the seven canonical readings of the Qur'an was noted as one of the most learned persons even as he openly

confessed to illegal same-sex relations.⁵⁷ The translation emendation is also interesting, as whether Lot's people are viewed as forcing themselves or giving compensation, both cases reflect exploitation as opposed to mutual consent. The exploitation theme also becomes manifest by noting the author's referencing of the *qasas* to indicate that Lot's people would have refused to be receptive partners. This confirms the thesis that in general men are non-receptive entities. The author mentions that repeated rape led to consensual intercourse with pleasure. This reflects an understanding of sexuality through the lens of addiction, in which consent can never be assumed.

13-Scholars can be referenced without agreeing with all their opinions

The author claims that Kugle champions Ibn Hazm but ignores that Ibn Hazm prescribed the *tazir* (discretionary) punishment for same-sex acts and mentioned texts that forbid both men and women from seeing the *awra* (intimate parts) of the same-sex. The author also references another text that indicates that Allah cursed men who imitate women and vice versa. By alluding to such texts, he bolsters his case of the prohibition of same-sex relationships.

However, Ibn Hazm also cautioned against *taqlid* (imitation) of past scholars.⁵⁸ This means that there can certainly be disagreement with their opinions, including on the permissibility of a legal contract that legitimates same-sex relationships. This is also the thrust of Kugle's message when he views Islam through the lens of flowing water as opposed to a stagnant pool of water. Indeed, many scholars have quoted other scholars favourably and respectfully without agreeing with all their opinions.

Notwithstanding authenticity issues, the *awra* texts are about modesty instead of legal relationships. This becomes clear when

⁵⁷Michael Muhammad Knight, "Queering the Qur'an," *Vice*, 13 November 2012, www.vice.com/en_ca/read/queering-the-quran.

⁵⁸Millat Ibraheem, "Imaam Ibn Hazm on Taqlid," 11 March 2009, <https://millatibraheem.wordpress.com/2009/03/11/imaam-ibn-hazm-on-taqlid/>.

in one text, referenced by the author; women are forbidden from lying uncovered under the same sheet lest one describes the other to her husband. Furthermore, looking at the *awra* of the opposite gender is also forbidden and these texts are not used to prohibit legal relationships.

The Hadith on cursing the *mukhannathun* (effeminate) are deemed weak for multiple reasons.⁵⁹ Furthermore, the tradition distinguishes between intentional and innate feminine dispositions of the *mukhannathun* and also highlights the context of lewdness when a *mukhannath* by virtue of their access to female quarters started describing the beauty of a woman to an unrelated man.⁶⁰ Thus, extrapolating from these texts to prohibit same-sex unions is a huge stretch.

14- Oppression in Allah's name is still oppression

The author claims that the prohibition of homosexual behaviour is known by necessity as part of faith for it falls in the same category as belief in God, the Prophet, five daily prayers, fasting in Ramadan and other foundational beliefs and practices. He alludes to the legal maxim that all sexual acts are prohibited unless expressly allowed and also asserts that the plain reading of the verses is so clear that no exegetes have differed on their interpretation. By arguing as such, he sustains his case of the prohibition of same-sex relationships.

However, placing the prohibition of homosexuality on par with the six articles of faith and the five pillars of faith is a polemical and unjustifiable tactic.⁶¹ The foundational principle of Islam is *Tawhid*

⁵⁹Yūsuf ibn 'Abd al-Raḥmān Al-Mizzī, *Tahdhīb al-Kamāl*, in الموسوعة الذهبية للحديث النبوي الشيف [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM, 20: 278-282.

⁶⁰Ibn Hajar al-'Asqalānī, *Fath al-Bārī*, 12: 160; also see Ibn 'Abd al-Barr, *Al-Tamhīd li Mā fi al-Muwaṭṭā' min al-Ma'ānī wa-l-Asānīd*, 22: 272–273, in الموسوعة الذهبية للحديث النبوي الشيف وعلومه [The Golden Encyclopedia of the Prophetic Golden Hadeeth and its Sciences], 2nd ed. (London: Turath Publishing), CD-ROM.

⁶¹Brown (forthcoming) references the scholars Razi and al-Haytami who proposed that the prohibition of homosexuality was an axiomatic part of faith. However, the prohibition is more appropriately termed as part of a derived ruling that rests on independent reasoning. Additionally,

(Oneness) and not obsession with anal intercourse. Moreover, the legal maxim on the prohibition of sexual acts unless expressly allowed implies that express verses will have to be sought for every sexual act between married couples. The issue at hand is not one of the immorality or prohibition of sexual acts but one of a legal contract that legitimizes them. Can such a legal contract be offered to a minority segment of Muslims to fulfill their legitimate need for affection, intimacy and companionship?

The only barrier to same-sex unions is that of reading Islamic texts through deep-rooted prejudices and social conditioning. Kugle's bias is clear - the legitimate human need for affection, intimacy and companionship. His critics need to recognize their deep-rooted heterosexism, which is often masked through the loud touting of God's law. Indeed, peddling *zulm* (oppression) of permanent celibacy by resorting to "Allah says so" is still oppression.

Having addressed the specific fourteen salient points from the critique, it is also necessary to have a broader look at how homosexuality is addressed in conservative Muslim circles. In this regard, we address the common Muslim misconceptions on homosexuality, as they influence religious opinion and form the basis for Muslim homophobia.

Addressing common Muslim misconceptions on homosexuality

Progress on affirming LGBTQ Muslims hinges on addressing the deep-rooted heterosexism that informs scriptural reasoning. This entails dispelling misinformation on homosexuality within Muslim communities. Common misconceptions include the conflation of sexual

it is noteworthy that Razi viewed the recipient of anal intercourse through the lens of disease and al-Haytami viewed the receptive partner as being dishonoured. This indicates their understanding of homosexuality was confined by the medical knowledge and social mores of their times. Additionally, Muslim scholars like Ebrahim Moosa have noted that, "early Muslim jurists could give verdicts contrary to the explicit text." Behnam Sadeghi notes the same for Hanafi scholars just as Kecia Ali notes for Shafi. This indicates that when external evidence allows, the text can be fundamentally revisited.

abuse with homosexuality, explaining the latter through pornography, associating sexual conduct and fatal diseases with homosexuality and trusting reparative therapy. In what follows such misconceptions are replaced with a fact-based understanding of homosexuality.

1-Affection and companionship do not arise from sexual abuse

The documentary *The Dancing Boys of Afghanistan* reveals the sexual abuse of boys, often used as surrogates in gender-segregated societies.⁶² Saudi men have been noted to temporarily access male youth when their wives are pregnant or menstruating.⁶³ Childhood sexual abuse has been associated with anal intercourse, later in life, with wives or other males, as a form of misdirected revenge.⁶⁴ However, it is highly unlikely that love and affection for another person could arise from something ugly and painful as sexual abuse.⁶⁵ The problem is that of reverse causality. Children who later identify as LGBTQ are often socially isolated and therefore vulnerable to abuse. Thus, mainstream researchers and professionals reject the notion that sexual abuse turns an individual gay.⁶⁶

2-Watching pornography does not change sexual orientation

Conservative Muslim leaders sometimes establish causality between watching pornography and sexual orientation. However, it has been noted that heterosexuals and asexuals occasionally view homosexual pornography despite having no desire in masturbation or establishing

⁶²Frontline, *The Dancing Boys of Afghanistan*, PBS, 20 April 2010, www.pbs.org/wgbh/frontline/film/dancingboys/.

⁶³Nadya Labi, "The Kingdom in the Closet," *The Atlantic*, May 2007, www.theatlantic.com/magazine/archive/2007/05/the-kingdom-in-the-closet/305774/.

⁶⁴A.M. Alhamad, "Impact of Childhood Sexual Abuse on Adult Sexual Orientation in a Group of Saudi Males," *European Psychiatry* 28 (1995): Supplement 1, 2013, www.sciencedirect.com/science/article/pii/S0924933813769323.

⁶⁵Katy, "The Problem with the Belief that Child Sexual Abuse Causes Homosexuality / Bisexuality," Pandora's Project, 2009, www.pandys.org/articles/abuseandhomosexuality.html.

⁶⁶Gregory Herek, "Facts About Homosexuality and Child Molestation," http://psc.dss.ucdavis.edu/faculty_sites//rainbow/html/facts_molestation.html.

a sexual relationship with members of the same gender.⁶⁷ As such, watching pornography does not determine sexual orientation. In essence, sexual behaviour and practices have to be distinguished from sexual orientation.

3-Sexual practices cannot be conflated with sexual orientation

There are promiscuous heterosexuals just as there are monogamous homosexuals. Conflating AIDS with gay men is unwarranted. Indeed, in the context of Sub Saharan Africa, we do not associate AIDS with heterosexuals but with unsafe sexual encounters. Additionally, while many heterosexuals engage in anal sex, many gay men do not engage in that activity even in casual encounters in the freest of societies.⁶⁸ Thus, sexual practices have to be distinguished from sexual orientation.

4-Muslim professionals don't necessarily support sexual orientation change efforts (SOCE)

The negative impact of SOCE include depression, hopelessness, loss of faith, deteriorated relationships with family, poor self-image, social isolation, intimacy difficulties, self-hatred, sexual dysfunction, suicidal ideation, feelings of being dehumanized, increase in substance abuse and high-risk sexual behaviours.⁶⁹ Given that SOCE therapists have not produced rigorous scientific research to bolster their claims, major health associations have condemned SOCE therapies, including the Lebanese Medical Association for Sexual Health (LebMASH), who released a position statement on SOCE in 2013, which included the following excerpt:

Currently, the global consensus among healthcare providers is that

⁶⁷"Does Porn Really Determine Your Sexual Orientation?," *The Asexual Visibility & Education Network*, July 2013, www.asexuality.org/en/topic/89486-does-porn-really-determine-your-sexual-orientation/.

⁶⁸"Go Ask Alice, Not All Gay Men Have Anal Sex," Columbia University, <http://goaskalice.columbia.edu/answered-questions/not-all-gay-men-have-anal-sex>.

⁶⁹American Psychological Association, "Task Force on Appropriate Therapeutic Responses to Sexual Orientation," (2009).

homosexuality is a normal and natural variation of human sexuality without any intrinsically harmful health effects. [. . .] Similar to left-handedness and other human attributes, homosexuality is likely manifested due to a mixture of genetic and environmental factors. [. . .] In the same way that heterosexuality is not a choice, homosexuality is not a choice either. [. . .] Efforts to change sexual orientation are not based on any sound scientific evidence. On the contrary, this practice has been abandoned due to proven failure and serious harmful effects. ... LebMASH urges healthcare providers in Lebanon to refrain from this unethical and potentially harmful practice. We also urge health care organizations to take a strong position against such practices.⁷⁰

Concluding Remarks

Among the salient points made in this article, it is argued that any consensus on homosexuality does not hold, permanent celibacy violates Islamic values, heterosexism prevents the analogy of same-sex relationships with non-procreative relationships, medieval knowledge should be updated in jurisprudence, reliance on exegetical works leads to paradoxes and oppression in Allah's name still constitutes oppression. It is emphasized that the issue at hand is not the permissibility of sexual acts but that of the validity of a legal contract for same-sex couples. It is also argued that past jurists ruled on the apparent not the hidden and therefore in the absence of developments in contemporary psychology, they could not rule on same-sex unions.

Mobeen Vaid's criticism of Scott Kugle's seminal work through hermeneutical gymnastics that equate LGBTQ Muslims with Lot's people and which downplay the legitimate human need for affection, intimacy and companionship as mere urges and whims is instigated by a deep-rooted heterosexism. The same prejudice allows placing the prohibition of homosexuality on par with the six articles of faith

⁷⁰Lebanese Medical Association for Sexual Health, Position Statement on Sexual Orientation Change Efforts (SOCE), 17 May 2013, <https://lebmesh.wordpress.com/2013/05/17/ps1-en/>.

and the five pillars of Islam. However, there is painstakingly detailed scholarship available to Muslim professionals⁷¹ and religious scholars⁷² that affirms the human need of LGBTQ Muslims for intimacy, affection and companionship.

This scholarship allows dispelling Muslim misconceptions on homosexuality and deconstructing the arguments of conservative Muslim leaders, as has been manifest in this article. The principal arguments, as made in points 8 and 9, indicate that the past jurists viewed homosexuality negatively because of their understanding of homosexuality through the lens of exploitation and based on their understanding of gender and masculinity. Given that males are generally viewed as non-receptive entities and in the absence of developments in contemporary psychology, they could not be reasonably expected to provide rulings on the concerns of sexual minorities.

Indeed, while they did rule on the legitimacy of sexual acts outside a legal contract, they have not addressed the legitimacy of a legal contract between two men or two women. Their understanding of gender prevented them from doing so, as according to them the male is the active partner whereas the female is the receptive partner. This is why scholars like al-Raghib viewed the penetration of a male by a woman as the ultimate sexual irregularity and why Shafi (d. 820) reasoned that a man is the one who marries or takes a concubine and a woman is the one who is married or taken as a concubine simply on the basis that she is different.⁷³

Moreover, past jurists addressed the receptive partner through the lens of affliction or disease. They addressed the active partner through the lens of aggressive desire and therefore were able to

⁷¹Jahangir, J.B. and H. Abdullatif, "Investigating the Islamic Perspective on Homosexuality," *Journal of Homosexuality*, 7 (2016): 925-954.

⁷²Jahangir, J.B. and H. Abdullatif, *Islamic Law and Muslim Same-Sex Unions*.

⁷³Kecia Ali, *Marriage and Slavery in Early Islam* (Boston: Harvard University Press, 2010), 178-179.

prescribe marriage and having sex with wives as outlets. They were horrified by the rampant sexual exploitation of boys and male slaves and that may have coloured their strong condemnation of homosexual intercourse. Homosexuality as it exists today in the form of same-sex relationships may have been present but dwarfed by the overwhelming cases of exploitation.

There are contemporary conservative Muslim leaders and scholars who are sensitive to the concerns of gay Muslims but are incapable of finding a way to affirm them within understanding of Islamic law. They may end up prescribing what they well understand as not ideal but what is the best they can come up with, whether it is “celibacy for life” or like the late Maher Hathout say that “if you have to do it then keep it to yourself.” However, such leaders and scholars should be open minded enough to recognize that others who have a greater stake in the issue may be better suited at finding a legal accommodation of gay Muslims in the society. They should be attentive to the plight of gay Muslims, listen to their conclusions with an open mind and without bias based on cultural readings of the texts.

Progress on the concerns of LGBTQ Muslims requires that deep-rooted prejudices be checked and misconceptions on homosexuality be addressed before undertaking scriptural analysis. Such progress also warrants rethinking of gender and masculinity. Our understanding of gender should not be constrained to the binary and should account for gender expression, sexual orientation and gender identity. Progress also requires that instead of reducing LGBTQ Muslims to misguided desires, laziness and fads, we can acknowledge the universal human need for intimacy, affection and companionship that allows us to affirm LGBTQ Muslims. Indeed, heterosexism is not an Islamic value but affirming the values of intimacy, affection and companionship is.