

Lesbian, Gay, Bisexual and Transgender Rights in Iran

Analysis from Religious, Social,
Legal and Cultural Perspectives



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I G L H R C
INTERNATIONAL GAY AND LESBIAN
HUMAN RIGHTS COMMISSION

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HUMAN RIGHTS COMMISSION**

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Introduction

In present-day Iran, lesbian, gay, bisexual and transgender (LGBT) individuals suffer from human rights violations and are denied the basic freedom of being who they are. Abuses are perpetrated by the Iranian government, the judiciary system and by non-state actors such as schools, communities and families. No one is held accountable for these serious violations of basic rights.

In a country of over 75 million people, the population of LGBT Iranians is estimated in the millions, much like their numbers found in societies of similar size. But in Iran, due to multiple pressures and restrictions, this community is invisible and experiences much suffering and pressure from all parts of society to conform to gender norms.

LGBT Iranians live within a rigid system of social, religious and legal values and norms, dictated by the government.

Every society imposes norms or cultural values. The religious infrastructure in Iran produces a political and legal “supra-structure” defined on the basis of traditional Shi’a jurisprudence. This ideological system rarely allows other voices, and upholds strict religious interpretations.

In 2014, the International Gay and Lesbian Human Rights Commission (IGLHRC) brought together scholars, lawyers, activists and experts from diverse backgrounds and fields to explore new approaches to improve the human rights situation for LGBT Iranians. Our overall goal was to open a window onto new views of LGBT rights in Iran, along with practical strategies to improve advocacy for LGBT rights in Iran.

Held in Düsseldorf, Germany, the 2014 conference was the second of its kind hosted by IGLHRC, with the focus on the human rights of LGBT Iranians. The first conference in 2012 resulted in developing legal strategies and resources, including booklets to support advocacy for LGBT rights within the Iranian court system. These booklets are available at <http://www.iglhrc.org/iran>.

This volume presents the participants’ diverse approaches to the question of LGBT rights in Iran. The articles range from a scholar’s exploration of whether the Qur’anic concern for justice should be interpreted to include the human rights and dignity of LGBT people; and a journalist’s focus on the neglected question of bisexuality in Iran; to a lawyer’s analysis of recent reforms to the Iranian criminal code on the rights of defendants in same-sex criminal proceedings. Most of the articles presented in the current booklet were originally submitted in Persian.



While IGLHRC has made every effort to accurately reflect the authors' points of view in the English translations, sometimes the details presented in the Persian text were too detailed and technical to be translated for an international audience, hence forcing us to present a shorter version of the Persian text, while remaining faithful to the core argument.

The International Gay and Lesbian Human Rights Commission is committed to furthering its goal of expanding advocacy opportunity for LGBT Iranians and welcomes ideas, thoughts and critiques that can help accelerate progress toward dignity, equality and human rights for LGBT Iranians.

We are grateful to the scholars, experts, activists and researchers who have helped us to better materialize the objectives of this conference.

Farid Haerinejad
Iran Project Manager
International Gay and Lesbian Human Rights Commission



An Introduction to the Authors



Mehrangiz Kar

MEHRANGIZ KAR graduated from the Department of Law and Political Science at Tehran University. She is a veteran journalist, attorney and researcher in the field of human rights. She practiced as an attorney in Iran for 22 years.

In 2002, after enduring political pressures and being sentenced to jail, Kar was forced to relocate to the United States. In 2002 she was awarded the Ludovic Trarieux Prize in recognition of her life-long accomplishments and in 2004 was honored by Human Rights First.

She has served as a fellow at the National Endowment for Democracy, the Woodrow Wilson Center, the American University in Washington DC, the University of Virginia in Charlottesville and Columbia University.

Most recently, she was a Radcliffe Fellow at Harvard University and is currently based at the Carr Center for Human Rights Policy at Harvard's John F. Kennedy School of Government. She has been recognized as a Scholar at Risk through an international network of universities and colleges working to promote academic freedom and to defend the human rights of scholars worldwide. Kar wrote and published fifteen books in Iran.

Since her relocation to the United States, she has written six books in Persian, and one book and several articles in English surrounding human rights and constitutionalism. She also participated in IGLHRC's first conference on LGBT rights in Iran in 2012.



Hossein Raeesi

HOSSEIN RAEESI practiced law in Shiraz, Iran for 20 years and served as a two-term board member of the Fars Province Bar Association and the founder and the former head of the Human Rights committee of the Far Province Bar association for eight years. He is the founder of Neday-e Edalat (Voice of Justice) Legal Association in Shiraz.

Raeesi, as a pro bono attorney, was involved in defending political prisoners, journalists, LGBT people, women and children, and members of minority groups, who were sentenced to death. He has been nominated for several awards, including the Robert F. Kennedy Memorial Foundation in 2007.

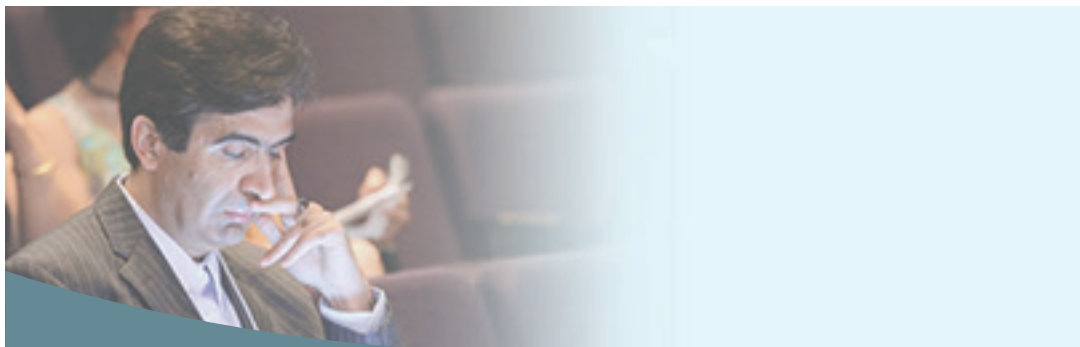
In 2012, he relocated to Canada due to pressure from the Iranian government. Since 2012, he has collaborated with human rights organizations and global networks on issues including domestic violence and protecting children. He has written a book on justice for children. Raeesi was also involved with research projects at the University of Albany in New York and Chicago School of Law. He was among the participants of the IGLHRC conference in Germany in the summers of 2012 and 2014.



Mehri Jafari

MEHRI JAFARI studied law in Iran, passed the bar exam and became a licensed lawyer. A poet and human rights activist in Iran, she focused on women, children and LGBT issues. Her poetry has been published and she has written books and essays on human rights.

Jafari recently relocated to England and has continued her activities. She holds a bachelor's degree in law from Tehran University, and a master's degree from the Law School of the University of West London (UWL).



Arash Naraghi

ARASH NARAGHI is an Associate Professor of Philosophy and Religion at Moravian College in Pennsylvania. His field of expertise includes Ethics, Philosophy of Religion, Islamic Mysticism, and Contemporary Islamic Theology. His most recent publications include *Ethics of Human Rights* (Tehran, 2010), *The Soul's Mirror: On Rumi's Life and Ideas* (Tehran, 2010), *A Theology of Absence: An Islamic Experience* (Tehran, 2011), and *Civility and Toleration* (Tehran, 2013).



Sh. M.

SH. M. studied in Hozeh [Shiite Seminary] and Qom University in Philosophy. His field of expertise includes Islamic Jurisprudence (*figh*), Philosophy of Ethics, Gender and Sexuality.



Mehrdad Alipour

MEHRDAD ALIPOUR holds a Ph.D. in philosophy from the University of Qom in Iran, and was an assistant professor in the Research Institute for Social Sciences and Islamic Studies. At the same time, Alipour studied and taught in the Seminary (Howzeh) of Qom for 18 years. From 2010 to 2012, he served as a guest researcher in the Department of Philosophy at McGill University in Canada, and is currently a research fellow in the Faculty of Theology at VU University Amsterdam. He has written about philosophy, philosophy of religion, *Usul al-Figh* (philosophy of Islamic Jurisprudence), and gender studies.



Zeynab Alsadat Peyghambarzadeh

ZEYNAB ALSADAT PEYGHAMBARZADEH started her voluntary activities in the field of gender and sexuality in 2003. She has also worked as a researcher, social activist, and journalist. In 2011, Peyghambarzadeh relocated to Sweden and continued her activities there. She is one of the co-founders of the Persian website “dojensgara” (which means bisexual in Persian). Peyghambarzadeh holds a bachelor’s degree in sociology from Tehran University, and a master’s degree in gender studies from the Lund University in Sweden.



Mani Mostofi

MANI MOSTOFI is a human rights lawyer, advocate, and international law expert. He is the director of Impact Iran, a human rights advocacy coalition. Mostofi is former Communications Director and Sr. Researcher at the City University of New York’s Human Rights in Iran Unit. He has been a researcher at Human Rights Watch and the International Campaign for Human Rights in Iran, and co-supervisor of a project at Fordham’s Walter Leitner Human Rights Clinic. Mostofi has investigated LGBT rights, Internet freedom, arbitrary detention, economic sanctions, and freedom of religion in Iran. He has also worked on the abuse of migrant workers in Bahrain, domestic violence in New Zealand, and torture in Malawi. As a researcher, Mostofi published a dozen human rights reports and conducted over 100 interviews in the field, including co-leading a project to gather testimony from Iranian LGBT refugees in Turkey and Canada. Mostofi has a master’s degree in Middle Eastern Studies from the University of Texas at Austin and received his Juris Doctorate from Fordham University School of Law in 2009.



Chapter 1
Legal Approaches



Iranian Legal Experts and Issue of LGBT Rights

Mehrangiz Kar

Contemporary debates among Iranian legal experts address the situation of sexual minorities as an age-old dilemma in Iran. Yet, these debates are unprecedented in Iranian society, even among secular intellectuals.

The dominant political elite, relying on an official religious stance, refuses to tolerate any non-conforming sexual conduct or gender expression. LGBT individuals' self-disclosure of their sexual orientation and/or gender identity is a staggering challenge to themselves as well as to the Iranian society. In order to deal with this pervasive challenge, positive, practical and proactive approaches are required.

Members of the LGBT community in Iran are viewed as the ones who depart significantly from mainstream religious values or social expectations. LGBT rights activists thus face huge obstacles in their efforts towards accommodating their identity in the current context of Iranian society.

Iran is a country with a majority Shi'a Muslim population. It is argued, therefore, that the inner-religious research could provide religious reasons and legal solutions based on which the Iranian legislative institutions would amend the discriminatory laws against sexual minorities and help put an end to the rights violations and marginalization they experience. However, these studies, I would argue, will not provide solid and adequate solutions to the predicament of sexual minorities. Efforts must be made outside of the scope of religion, along with efforts to shift the religion-based views of Muslim jurists toward more inclusiveness.

A group of experts in the fields of Islamic studies, jurisprudence, and Muslim affairs suggest that the concept of homosexuality in Islam must be examined in a historical context. In other words, these experts, relying on Kant's theory of justice, believe in a context-dependent conception of justice. The dominant religious approach to justice, according to these experts, must not be utilized as the foundation of legal system and judiciary as it is constituted now.



In addition, the same experts focus on the good and evil nature of any conduct for or against another human being. According to this approach, sexual minorities are humans and born to their sexual orientation, similar to heterosexuals. Therefore, any harassment, punishment and act of humiliating or holding them accountable to their sexual orientation, constitute “evil” and therefore, against “reason.”

LGBT people are hounded on all sides in Iran. The laws are stacked against them, while they are vulnerable to harassment, abuse and violence from their families and society.

Critiques

These progressive religious intellectuals acknowledge sexual minorities’ plight resulting from regulatory mechanisms including legal, domestic and social. They inquire whether it is possible to provide an innovative strategy toward the reading of Islam with the goal of reaching a reliable and powerful religious discourse that would convince people to end inhumane conduct against the LGBT community.

These experts argue that if the religious authorities supported this narrative, the Iranian society would be more tolerant of the issue. On the one hand, I believe, such a discourse could attract powerful/active support of some religious authorities, though it is unlikely that the religious establishment, as a whole, would endorse it.

Furthermore, Iran’s judicial system and the Guardian Council¹ jurists do not believe in the Kantian idea of “reason,” “good” and “evil.”

The Iranian government presents an official narrative of Islam; any alternative is viewed as subversive and, therefore, would be rebuffed and repressed by the government.

As a result, inner-religious research would not resolve the dilemma of accommodating the LGBT community by Iranian society. In order to achieve a solution, the best possible avenue is to seek and deploy capacities available in other arenas outside the religious sphere, such as art, in order to challenge the traditional view, while the potentials in the Islamic jurisprudence should be explored and be brought to the attention of jurists for possible legislative reform.

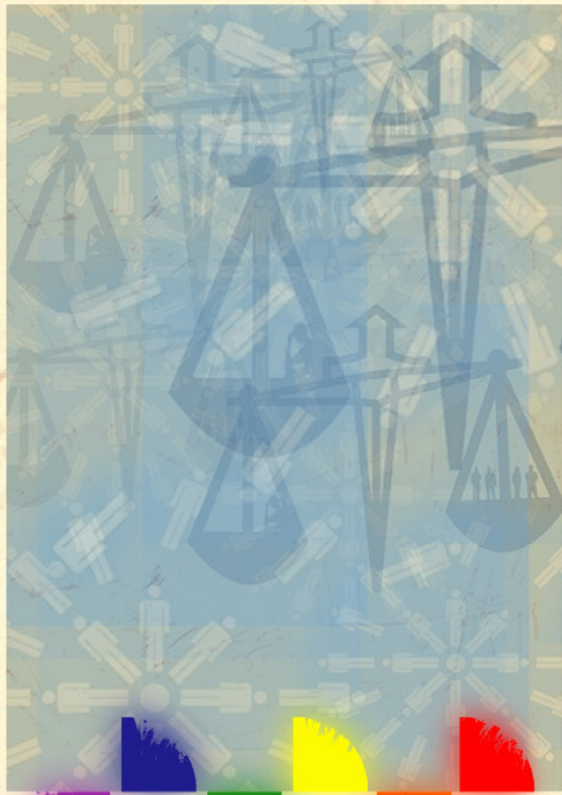
¹ The Guardian Council of the Constitution is an appointed body of 12 religious and legal scholars, which is responsible for the interpretation of Iran’s Constitution and for ensuring the compliance of parliamentary legislations with Islam and the Constitution.



Seeking Solutions through the Deployment of Non-religious Tools

LGBT people are hounded on all sides in Iran. The laws are stacked against them, while they are vulnerable to harassment, abuse and violence from their families and society.

One glimmer of hope comes from recent films, documentaries, music and other art focused on LGBT Iranians, offering a new perspective that may change attitudes. For example, the 2011 Iranian movie *“Facing Mirrors—Ayenehay-e Rooberoo”* shows the possibility of gradual attitude transformation towards sexual minorities by religious people. In the film, a traditional religious woman initially shows strong aversion and repulsion towards a transgender woman. Later, by observing the suffering of the trans woman as she experiences violence by her father, the religious woman eventually comes to the conclusion that inflicting such pain and suffering on others is the embodiment of “evil” in a religious sense.





Same-Sex “Crimes”² in Revised Iranian Code of Criminal Procedure

Hossein Raeesi

This paper examines the due process laws and legal protections provided for detained homosexual individuals during the “preliminary investigations” under the new Islamic Code of Criminal Procedure ratified by the Guardian Council in 2013, which has been waiting to go into effect since October 2014.³

According to the document referenced at the preamble of the law, the new Code of Criminal Procedure has been updated in accordance with the state’s policy to Islamize the legal system in Iran. Nevertheless, the new Iranian Code of Criminal Procedure includes amendments, which offer better protection for individuals charged with homosexual conduct.

The criminal procedure laws are key to establishing the innocence or guilt of an alleged offender before the court. The revisions to the new Iranian Code of Criminal Procedure reduce the risk of wrongful conviction of homosexual defendants.

Therefore, lawyers can protect their clients in the course trial, using due process procedures. For instance, if an individual would be charged with a same-sex “offense,” thanks to the provisions of revised Code of Criminal Procedures, the likelihood of a successful defense at the trial is now greater than before. Though, to avoid being overly optimistic, we should emphasize that such a success depends on the proper enforcement of the law.

According to the Iranian Penal Code there are serious risks of being sentenced with capital punishment for those charged with same-sex relations. Because of this, lawyers and defendants must be informed of these revisions and the potential opportunities

² Editorial Note: Although the author used the word homosexual and same-sex relations, generally, most cases argued in this article are related to men accused of being involved in same-sex relations. The new Code of Criminal Procedures can be applied both to men and women.

³ Based on a bill currently considered by the Iranian parliament, there is a possibility that 40 articles of this law may be changed, and their implementation postponed.



provided in the new Code of Criminal Procedures to protect LGBT individuals from being detained or convicted of same-sex “crimes.”

The protection of privacy provides a great legal argument to defend clients charged with same-sex acts.

The revisions and modifications of new Code of Criminal Procedures include:

1. **Presumption of Innocence**

This principle was introduced in the Article 37 of the Constitution, which states: “Innocence is to be presumed, and no one is to be held guilty of a charge unless his or her guilt has been established by a competent court.” The Old Iranian Code of Criminal Procedure did not have a direct reference to this principle. The new law, however, includes the presumption of innocence, which implies that the negation of people’s personal freedom denotes the denial of presumption of innocence; also, the prohibition of the violation of individuals’ privacy without a legally-obtained warrant suggests that innocence is to be presumed. This Code of Criminal Procedures also emphasizes the human dignity of all people, which stems from the presumption of innocence. It is noteworthy that, for the first time, protecting individuals’ dignity is recognized in Iranian law.

It appears that repression of homosexuals on the basis of their same-sex conduct in Iran is contrary to individual’s personal freedom, and should be considered an invasion of their privacy, or to be in conflict with their inherent dignity.

In every criminal act, there should be the proof of both mental state⁴ and the criminal conduct. Challenging these aspects of a crime within the current court system in Iran is not easily attainable. However, the emphasis of the new law on the principle of assumption of innocence requires authorities to immediately inform the defendant of his/her charges. While defending individuals charged with a same-sex “crime,” the lawyer can question the alleged criminal conduct⁵ of the defender, arguing that it is not possible to demonstrate cost-benefits and proportionality of the punishment for the alleged same-sex acts. Also, it should be argued that based on the principle of fairness

⁴ *Mens rea*: Latin for “guilty mind”; guilty knowledge or intention to commit a prohibited act.

⁵ *Actus reus*: Latin for a prohibited act.



in legal rulings and the emphasis on the assumption of innocence, a private, natural and harmless act cannot be subject to punitive measures.

The lawyer's stress on the principle of presumption of innocence for his/her client will oblige the authorities to fully inform the defendants of the charges and evidence against them.

2. Protection of Privacy

Without violation of individual's privacy, it is almost impossible to criminally charge homosexuals of a same-sex "crime" in Iran. The revised Iranian Code of Criminal Procedure for the first time stipulated the principle of protection of individuals' privacy as a legal requirement, which itself rests upon the principle of the presumption of innocence. For instance, Article 4 of this law states that violation of presumption of innocence results in invasion of the individual's privacy. Articles 137-154 of the new Code of Criminal Procedures also uphold this position. The protection of privacy provides a great legal argument to defend clients charged with same-sex acts.

3. Right of Access to Attorney During Preliminary Investigations

Iranian Code of Criminal Procedure in general has restricted the right of access to an attorney for defendants. The old Iranian Code of Criminal Procedure did not honor this right for homosexual defendants. The revised Code, however, acknowledges this right for individuals charged with sexual "crimes," including same-sex "offenses."

Attorneys must inform their male clients charged with sodomy that the best way of protecting their lives and the lives of their partners is to make no confessions. Otherwise, they will be charged with a *hadd* crime, on sexual grounds, which could carry a death sentence, at least for one of the parties engaged in same-sex behavior.

A confession can be made by the defendant either due to his lack of knowledge about the terrible consequences of his confession, and/or through torture or under duress. Without a confession, *hadd* "crimes," such as same-sex conduct (either between two men or two women,) cannot be easily proved, especially if there is no private plaintiff involved in the case.

If the new law is fully enforced, the defendant is not subject to torture or pressure, and is properly informed of his right to remain silent (to avoid self-incrimination), the right to have access to lawyer, and the right to become aware of the consequence of his confessions, then there would be no reason for the defendant to make a confession; thus proving a same-sex



practice will become extremely difficult, and potentially the charges would be dropped.

Some might argue that the judge can use the principles of “knowledge of judge”⁶ in proving *hadd* “crimes,” even without a confession. It is noteworthy, however, that in sexual “crime” cases, “knowledge of judge” may function only if the offender has allegedly committed rape, or if he confessed during pre-trial investigation, even if he denies his earlier confession in the court.

The presence of an attorney from the beginning of an investigation will assist the defendant in protecting his/her life and the life of his/her same-sex partner by allowing them to avoid self-incrimination.

Contrary to old Code of Criminal Procedures, the revised Code has considered the right of access to a lawyer for defendants of sexual “crimes.”

Articles 48 and 190 of the new law recognize the right of defendants to access a lawyer within the initial investigation phase, upon their request. Furthermore, the investigatory judge must inform the accused of the right to a lawyer, and offer a court-appointed lawyer if the accused cannot afford one. According to the notes under Article 191, however, if the accused are charged with a national security or other serious offense, they can still be denied the right to counsel for one week. (Perhaps lawmakers did not view attorneys trustworthy enough to allow their presence in the course of interrogations for what they consider major crimes.)

For years, debates have swirled around the validity and reliability of forced confessions extracted under torture in Iran. A cluster of clerics, such as Ayatollah Makarem Shirazi, endorses the validity of confessions extracted under torture on the condition that the offense *really* would have been committed.

4. Right to Remain Silent

One of my clients, who was sentenced to stoning for allegedly committing a sexual “crime,” told me in our first consultation session that had she known what she learned from other prisoners before, she would have never been sentenced to jail time or stoning.

⁶ “Knowledge of judge” (Article 211-213 of the Iranian Penal Code) implies “certainty resulting from conclusive evidence.” This can be used as a supplement to the multiple testimonies from witnesses that are required for evidentiary support in a criminal case.



According to Article 197 of the new Iranian Code of Criminal Procedure, a defendant has the right to remain silent. If s/he chooses to refuse to answer any questions, this refusal should be noted in the investigation document and be signed by the defendant. The silence of the defendant in the course of investigation and interrogation until an attorney is present or can provide legal counsel to her/him, offers new opportunities for individuals to avoid self-incrimination.

Despite popular belief in Iran, silence does not mean consent. Silence has no meaning in legal arguments and cannot be interpreted as a sign of agreement.

The right to remain silent is especially effective in cases of individuals charged with same-sex conduct when both parties engaged in consensual same-sex practice, if there is no plaintiff or claimant against them.

5. Invalidity and Unreliability of Forced Confessions

For years, debates have swirled around the validity and reliability of forced confessions extracted under torture in Iran. A cluster of clerics, such as Ayatollah Makarem Shirazi, endorses the validity of confessions extracted under torture on the condition that the offense *really* would have been committed. Another group of clerics, however, acknowledges no reliability and validity for forced confessions. These clerics include Ayatollahs Montazeri, Sanei, Bayat Zanjani and Vahid Khorasani.

According to Article 60 of the revised Code of Criminal Procedure, the extraction of confessions under empathic, deceptive, reluctant and compulsive questions, in the course of investigation and interrogations and before the court, is prohibited.

For the first time, Iranian law addresses due process violations such as resorting to violence against a defendant to force a confession, and invalidates such confessions. This will allow the defendant or the defense team to appeal the court's ruling, even after the end of the appeal process, by providing evidence that the defendant was coerced to confess under duress. Needless to say, the lawyers need to undergo training to fully understand how to use the new regulations effectively to better defend their clients.

Also, according to Article 61 of the Criminal law, the law enforcement agents should follow standards set by the law for the preliminary investigation. The new law is especially sensitive to the admissibility of the confessions, requiring interrogators and law-enforcement agents to comply with a set of rules that requires the protection of the defendant's rights – including his/her right to have access to lawyer and confession without coercion or duress.



Under the new Code of Criminal Procedure, there is no doubt that any confession made under torture or pressure is considered to be “fruit of the poisonous tree,” and hence, inadmissible, regardless of whether it is factually true or not. In the past, some religious rulings, including an opinion from Ayatollah Makarem Shirazi, were used to justify the coerced confession as long as it was proved to be accurate. Under the new law, this reasoning is no longer considered valid and a forced confession is inadmissible in the court of law.

6. Defendant Must Be Informed of his Charges and Rights

The lack of awareness of a defendant of his/her rights and the reasons for his/her detention can lead to tragic consequences. According to the revised Code of Criminal Procedure, however, the defendant must be informed of the charges and his/her rights. The defendant must immediately be informed of the charges and have access to an attorney and legal counsel, in accordance with Article 5 of the new law. In addition, Article 6 of Code of Criminal Procedures holds that all individuals being investigated and interrogated in the course of criminal procedures, including the alleged offender (defendant), the victim and witnesses, must be informed of their rights and all the means and mechanisms for this purpose must be arranged and provided.

In addition to the rights-related amendments in the revised Code of Criminal Procedures, there are other factors, which may have significant roles in lessening the pressure on the defendant:

a. Defendant’s Family Awareness of his Charge

Due to lack of awareness about homosexuality and homosexuals’ rights, most Iranian families do not honor their sons’ sexual rights. Defendants, thus, do not share information about their situation, the reasons for their detention or the charges against them with their families. However, if families were aware of these rights and honored them, it could lessen the pressure defendants face in the course of preliminary investigations.

b. Examination of Sexual “Crimes” Cases in Courts

Before the approval of the revised Code of Criminal Procedure in Iran, public prosecutor offices were required to investigate cases of sexual crimes that might have resulted in death sentence. Since the Iranian Code of Criminal Procedure was amended, however, it is the sole responsibility of the courts to investigate cases of sexual “crimes,” which include allegations of same-sex relations. This, along with the requirement to respect defendants’ rights in “preliminary investigations,” has reduced the possibility of conviction and capital punishment for homosexual defendants.



Islamic Jurisprudence-inspired Legal Approaches towards Male Homosexuals in Iran

Mehri Jafari

Introduction

A quick glance at different approaches by Muslim jurists to various “crimes,” including same-sex conduct, illustrates that depending on circumstances and perspectives, Shari’a-based rulings on sexuality and sexual conduct can differ, be reformed or even amended. An examination of the potentials for Shari’a reform is critical because many same-sex practicing Iranians are possible victims of punishments stipulated in the Iranian Islamic Penal Code, which is inspired and justified by Shari’a. These draconian laws have forced the majority of homosexuals to hide their sexual identity.

This essay aims to examine Islamic jurisprudence (*figh*) perspectives, which could provide a basis of possible legal changes in Iranian Penal Code.

Difference Between Law and *Figh*

The concepts of “religious jurisprudence” (*figh*) and “law” are inherently different. *Figh* deals with the observance of rituals in individuals’ relations with God, and in the broader sense it talks about the right of the public and the boundaries of human dignity as it is understood by religious sources.

The concepts of “religious jurisprudence” (*figh*) and “law” are inherently different. *Figh* deals with the observance of rituals in individuals’ relations with God, and in the broader sense it talks about the right of the public and the boundaries of human dignity as it is understood by religious sources.⁷ Law, on the other hand, is concerned

⁷ Meshkini, Mirza Ali, *Istilahat al-Osould va Mo’zam Abhathiha*, Qom: Alhadi publication, sixth



with individuals' rights and freedom in society and endeavors to define these rights for every individual in relation with other individuals as well as the authorities, including religious powers. These individual freedoms and rights are protected by laws, which in a democratic society are decided by members of the society. In this view, the individual "rights" are determined by the society, which is substantially different from how the Islamic Jurisprudence determines and understands individual rights.⁸

...A cluster of Iranian Shi'a clerics, including late Ayatollah Khomeini, have argued that the most severe punishment, such as stoning and setting people on fire, should await any man engaged in sexual practice with another man.

Islamic Jurisprudence and Criminalization of Same-Sex Sexual Conduct

There are different Sunni and Shi'a approaches to male and/or female same-sex relations. A vast majority of Sunni experts in Islamic jurisprudence (*fuqahā'*) consider same-sex practice to be in the same category of adultery (*zina*), which should be punished by discretionary corporal punishment (*ta'zir*), including flogging, and not execution, as long as the parties involved are not involved in a heterosexual marriage. Within Sunni Islam, the Hanafi School of Jurisprudence considers same-sex relations as a minor sin, even a lighter sin than committing adultery, which does not require *hadd*⁹ punishment. *Sahih al-Bukhari*¹⁰ even goes as far as saying that similar to other crimes punishable by *ta'zir*, sodomy is punishable by maximum 10 lashes.¹¹

Under Shi'a jurisprudence, which provides the base for current Iranian Penal Code, however, same-sex sexual conduct carries a *hadd* penalty in its most severe form, including death. For instance, a cluster of Iranian Shi'a clerics, including late

edition, 1995, 1st volume, p. 180; and Shabkhiz, Mohammad Reza, *Ozule-figh-i Daneshghahi*, Tehran: Legha Publication, first edition, 2012.

⁸ Emami, Seyed Hassan, *Hoghugh Madani*, Tehran: Islamiye Publication, second edition, 2010, volume 1, p. 125.

⁹ In Islamic jurisprudence, *hadd* is a specific punishment that is non-negotiable and has already been clearly mandated by religion to be imposed for certain acts.

¹⁰ *Sahih al-Bukhari* is a collection of *hadith* authored by the 9th century Sunni scholar, Imam Muhammad al-Bukhari.

¹¹ *Sahih al-Bukhari*, Bukhari, Imam Muhammad al Ismael, Beirut: Dar Ibn Kathir, 1993, volume 6, p. 2512.



Ayatollah Khomeini, have argued that the most severe punishment, such as stoning and setting people on fire, should await any man engaged in sexual practice with another man. Others have prescribed the death penalty for the active party (or sodomizer), and flogging for the passive party (or sodomized). And according to a third group of clerics, the sodomized must be executed, while only flogging must be enforced against the sodomizer. The revised Islamic Penal Code, currently implemented in Iran, rests on this interpretation of the Shari'a law and applies the death penalty to the sodomizer, and flogging to the sodomized.

It is noteworthy to underline the significance of the “knowledge of the Judge” in the imposition of *hadd* punishment in cases of same-sex sexual acts in Iran.

“Knowledge of Judge” and its Role in Imposition of *Hadd* Punishment

Based on the current Shi'a establishment's interpretation of Shari'a, lawmakers have assigned more significance to the role of a judge's knowledge than to defendants' “confession” and/or “denial” of an alleged crime.

In the debates around the legal protection of sexual minorities in Iran, the issue of the judge's knowledge to determine whether a *hadd* crime occurred or not should not be underestimated. This is because within the Iranian legal system, judge's knowledge has had a significant role in deciding the imposition of death penalty for cases of *hadd* crimes.

Not only the old Islamic Penal Code but also the revised provisions of this law rely on what they refer to as the knowledge of the judge to convict a defendant of a crime. Based on the current Shi'a establishment's interpretation of Shari'a, lawmakers have assigned more significance to the role of a judge's knowledge than to defendants' “confession” and/or “denial” of an alleged crime. Contrary to Shiite views, prominent Sunni clerics argue that the judge is not allowed to rely only on his knowledge to convict a defendant of a crime.

Other than the knowledge of the judge, the only other methods to prove sodomy are either through the defendant's confession – which is retractable until the last minute – or having four male witnesses who testify they have simultaneously and clearly witnessed the act of sexual penetration between two men (or the touch of



two females' sexual organs on each other). Given the importance of the knowledge of the judge in convicting those charged with sodomy and the abundance of conflicting opinions among religious scholars on this issue, it is critical to eliminate the knowledge of the judge as a method of proving *hadd* crimes.

Article 241 of Islamic Penal Code also forbids any intrusion and investigation aimed at "exposing crimes," unless the crime is kidnapping, abduction, or the possibility of rape and sexual assault.

According to the revised Islamic Penal Code (Article 173), if the defendant, at any stage, even during the enforcement of the execution order, recants his confession to a *hadd* offense that is punishable by stoning or death, the death sentence shall be immediately revoked and be replaced with one hundred lashes as punishment for adultery or sodomy (*lawat*).

On the other hand, Article 212 of the same law states that if the knowledge of the judge is contradictory to other legal evidence, that evidence shall not be admissible for the judge, and the judge, explaining the reasons for his knowledge and the grounds for rejecting other evidence, shall deliver the judgment.

Although Article 211 of the Penal Code has obliged the judge to explain the reasoning for his ruling, the pertinent note under this article explains that the judge can rely on "experts' opinion, examining the crime scene, local inquiries, statements of informed sources, reports of law enforcement officers, and other circumstantial and hearsay evidence" that typically results in judge's knowledge.

This demonstrates the significant role of judge's knowledge in deciding the fate of an alleged criminal. It appears that lawmakers have intended to expand the scope of sources and customary methods on which a judge may rely to derive his knowledge about the occurrence of a crime. For example, in small towns a judge may rely on local people's reporting, a report from a police station or confessions extracted under the pressure or torture of police or an interrogator as sources of his knowledge. Therefore, the evidentiary provision of Iran's Penal Code enables judges to rely on vague circumstantial evidence to determine whether a crime has occurred even in the absence of other evidence or in the presence of exculpatory evidence. Such an expansive and lowly-defined power of the judge poses serious threats to the life of a defendant accused of sodomy.



I would argue that extending the authority of the judge to use even unreliable sources of knowledge or evidence for the conviction of an alleged criminal is contrary to the principle of *Dar'a*. This *fiqh*-based principle, reflected in the chapter 6 of the revised Islamic Penal Code, underlines the presumption of innocence. The principle of *Dar'a* rests on the *Dar'a hadith* and other Islamic scripture stating that “bring[ing] hesitation and doubt about [the] occurrence of *hadd* crimes will avert the *hadd* punishments....” In line with this principle, Article 121 of the new Penal Code, which states that if for *hadd* crimes—such as adultery, sodomy, and lesbian sex—the *hadd* punishment cannot be pursued just based on speculations.

Article 241 of Islamic Penal Code also forbids any intrusion and investigation aimed at “exposing crimes,” unless the crime is kidnapping, abduction, or the possibility of rape and sexual assault.

Therefore, it seems that the conditions and stipulations foreseen for the imposition of *hadd* punishment through *Dar'a* principle—which is equally applicable to confession and witness testimony—is intended to make it difficult for the court to resort to *hadd* punishment. These safeguards against the possibility of easy conviction for those charged with *hadd* crimes can protect the safety and privacy of people in a traditional society. Lack of interest in the implementation of a *hadd* penalty among some Muslim experts, as *Dar'a* principle requires, is evidenced by the extent to which they argue for the inadmissibility of implementation of *hadd* during the occultation of infallible Imams.

Equally tricky in proving a *hadd* crime is the issue of testimony of witnesses for a *hadd* crime, such as sodomy (*lawat*). If less than four witnesses appear before a religious court, their testimony is not admissible and they are required to receive 80 lashes for false sexual accusation (*ghazf*).

Sodomy in the Revised Islamic Penal Code Comparing to the Old Penal Code

Amendments to the Islamic Penal Code are worthy of examination with respect to the laws and punishments of sexual “crimes” including homosexual practice, rape of a same-sex Muslim by a non-Muslim or an individual engaged in permanent marriage. For instance, contrary to the old Islamic Penal Code—where both the sodomizer and the sodomized could be sentenced to death—the revised Penal Code does not prescribe capital punishment for the sodomizer anymore, only requiring death sentence for the sodomized. This illustrates the deployment of new adaptation of the Shari'a and makes us ponder on the possibility of more humane interpretation of Shari'a law in more cases.



Article 234 of the new Islamic Penal Code states that for same-sex conduct, the sodomizer, if found guilty of being involved in consensual same-sex relations, will receive 100 lashes, as opposed to the death penalty, which was required in the old Islamic Penal Code. The sodomizer will only be sentenced to death if he is involved in a permanent [heterosexual] marriage (*muhsan*) and he was involved in non-consensual sex (rape). Under Article 109 of the old Islamic Penal Code, punishment by death awaited both parties engaged in same-sex relations.

In effect, the new Penal Code has institutionalized multiple discriminations against sexual minorities by categorization of sexual minorities based on their sexual position (sodomizer vs. sodomized), religion and marital status. For instance, Article 234 (1) requires death penalty for a non-Muslim sodomizer who has sex with a Muslim.

Under the new Penal Code, other forms of homosexual conduct, such as “lustful” kissing and touching requires 31 to 74 lashes. Whereas according to the old penal code, lustful kissing between two men or two women was punishable by up to 60 lashes, and two men “who are not related by blood ... found naked under the same cover” were to be punished by up to 99 lashes. The old law was silent on punishment of other forms of homosexual intimacy although had talked about non-penetrative sex (*tafkhez*).

The Iranian lawmakers have not revealed the basis of the new Islamic Penal Code. It seems, however, that the difference between the old and the new Islamic Penal Codes in Iran is due to a shift in clerical interpretation of Shari’a. For instance, the set of Islamic scriptures such as *hadith* which have inspired the new Penal Code are totally different than those used to justify the old one. This shows the degree to which these religious references are flawed and unreliable, and open to change.

The Potentials of Islamic Jurisprudence in Supporting Sexual Minorities’ Rights

Some Muslim intellectuals such as Arash Naraghi have introduced a reformist approach in Islamic jurisprudence, based on which sexual relationships between homosexuals would be defined as different from sodomy. For instance, Naraghi argues that homosexual relations between two men or women have been criminalized on the basis of the Qur’anic story of the people of Lut who were thought to be engaged in “sodomy.” However, according to Naraghi, only non-consensual same-sex conduct or rape are condemned and prohibited in the Qur’an.



A quick review of the Qur'anic story¹² shows that the people of Lut had the tendency to rape and desired both men and women. These sexual proclivities are different from the sexual orientations, such as modern-day homosexuality. Naraghi argues that homosexuality is not prohibited in the Qur'an.

Conclusion

Exploring flexible religious interpretations, including those of Naraghi, and Islamic principles such as *Dar'a* could pave the way for amending the discriminatory criminal laws against sexual minorities in Iran. The application of *Dar'a* principle, for instance, could help with the protection of those charged with sodomy. In addition, new interpretations of the Qur'an in accordance with the exigencies of time and place could prohibit the criminalization of same-sex conduct and thus would contribute to protecting individuals' lives.

¹² Qur'an, al-A'araf, 84.



Chapter 2

Religious Approaches



The Quran and Human Rights of Sexual Minorities

Arash Naraghi

I.

The essence of liberation theology is cooperation with the oppressed (*mazlum*) and attempts to fulfill justice. The ideal goal of liberation theology is to remove any unjust discrimination from social life and decrease the suffering of flesh-and-blood human beings.

Liberation theology starts with deep compassion and empathy towards victims of violence and unjust discrimination, and is mixed with social movements seeking social justice moving forward.

Without a doubt, one of the most significant pillars of Qur'anic culture is particular sensibility and keenness towards justice (*adalah*) and defending the oppressed: "And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, 'Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?'"¹³

As the spirit of Qur'anic culture is keenness for justice, it is one of the pillars around which Muslims must develop their understanding of religion.¹⁴ The key question is: would (and should) we extend the Qur'anic concern for justice to include the human rights and dignity of sexual minorities?

My response to this question is yes. But in order to explain my view, first I need to explain the following two questions:

First: Why, from my perspective, is any Qur'anic exegesis (*tafssir*) which is open to discrimination (*tab'iz*) on the grounds of sexual identity and

¹³ Qur'an, al-Nisā', 75.

¹⁴ Farid Esack is one of theologians who attempt to advocate for a type of Islamic liberation theology on the basis of a "liberating" interpretation. See: Esack, Farid, *The Qur'an: A User's Guide*, Oxford: Oneworld, c. 2005.



orientation¹⁵ morally unjustified?

Second: Why and under what circumstances should a rationalist Muslim offer an interpretation of the Qur’anic verses which renounce any discrimination based on sexual orientation and gender identity?

The significant question for Muslims who believe in sexual and gender justice is not whether or not the traditional interpretation of the Qur’an is compatible with sexual justice. The answer to this question seems to be obvious: The traditional interpretation of the Qur’an is not compatible with sexual and gender justice. But the key question, for them, is whether it is possible to re-examine and re-interpret the claimed “apparent” meaning (*Zuhur*) of the relevant Qur’anic verses, if necessary, to offer a legitimate interpretation of the text which is consistent with the requirements of sexual and gender justice.

I can articulate the general structure of my response in the following argument:

1. Humans are all equal and any discrimination against them is unjust unless there is a morally sufficient reason for it (Principle of Justice).
2. From metaphysical and epistemological perspectives, morality (i.e., its foundations, principles and reasons) is in principle independent from and prior to religion. It means, among other things, that the approval of religious authorities (including God) is not a necessary condition for moral validity.
3. There is no morally and rationally sufficient reason to condemn homosexual identity and orientation as such.
4. Therefore, discrimination based on homosexual identities and orientations is against the principle of justice and thus morally unjustified.
5. Some Muslim scholars believe that a number of Qur’anic verses discriminate against people on the ground of sexual identities and orientations (particularly homosexual identities and orientations).

¹⁵ Editorial Note: The author uses the term “homosexual orientation and identity” throughout the article to discuss the moral basis of discrimination based on individual’s sexual identity.



6. If these scholars were correct, then the Qur'an would include verses that are unjust and morally inappropriate. However, (according to Muslims' beliefs), divine words are devoid of injustice and immorality.

Therefore:

- a. Either Muslims should show that at least one of premises 1 to 3 above is wrong, and therefore, those Qur'anic verses which discriminate against people on the ground of homosexual identities and orientations are neither unjust, nor morally inappropriate;
- b. Or they should affirm these premises, but illustrate that an interpretation of the Qur'an that allows sexual/gender discrimination is wrong; and thus it is possible, and necessary to postulate a narrative of the Qur'an, which does not entail such unjust discriminations against people based on their sexual orientation and gender identity.

I argued somewhere else for the truth of premises 1 to 3,¹⁶ and here I simply assume them as true or at least plausible assumptions. I also, as a Muslim, believe in premise.

7. Therefore, in my opinion, any commentary on the Qur'an that endorses discrimination against people on the ground of sexual identities and orientations is morally inappropriate.

However, the ones who stand by premises 1 to 3 and 7 should answer the following question: Is it possible to postulate a narrative of the Qur'anic verses, which negates any discrimination on the ground of sexual identity and orientation?

In my view, the answer is yes. However, the consistency between the Qur'anic text and the requirements of (sexual and gender) justice can be achieved through at least two different, but not necessarily incompatible, ways:

First: The commentator may provide an interpretation of the Qur'anic text, which is free of any discrimination based on sexual identity and

¹⁶ Here, I assume the truth of the first premise (principle of justice), but about the second and third premises, I have argued somewhere else, and thus will not repeat those arguments here. For the second premise, see my article: "Does morality depend on religion?" and for the third premise, see "the Qur'an and Dilemma of Human rights of Sexual Minorities;" both of these articles are accessible at my website: www.arashnaraghi.com



orientation. This task can be achieved through, for example, literary and linguistic criticism of the text, and offering new reading of the text which is consistent with the requirements of (sexual and gender) justice. In this approach, the commentator seeks for what we may call “positive or strong consistency.”

Second, the commentator may contextualize the text, that is, s/he may examine the socio-historical background of the relevant parts of the Text (what the Qur’anic commentators call “occasions of revelation”), and see whether the rationale behind the Qur’anic verdicts (i.e., their *ratio legis*) still holds and whether they are still applicable to the contemporary era. In this approach, the commentator preserves the traditional reading; however, s/he challenges the applicability of the content to the new socio-historical context. Here the commentator is seeking for what we may call the “negative or minimum consistency.”

In this article, I explore the possibilities of these two approaches, while applied to the case of gays’ and lesbians’ human rights and dignity.

Why and under what circumstances should a rationalist Muslim offer an interpretation of the Qur’anic verses which renounce any discrimination based on sexual orientation and gender identity?

II.

Without doubt, the prevailing interpretation of the Qur’anic verses seems to be open to discrimination based on sexual orientation and identity. Of course, traditional interpretations are also compatible with other types of discrimination. For instance, from the perspective of traditional commentaries, one may justify the institution of slavery, legal inequality among men and women, and also inequality among Muslims and non-Muslims. Those Muslims who consider these discriminations morally wrong and unjust have no choice but to refute the validity of those traditional interpretations. From their perspective, one cannot appeal to the authority of such discriminatory interpretations to reject the possibility of new understanding of the Qur’an, which is more sensitive to the requirements of justice, including justice based on sexual orientation.

Therefore, the significant question for Muslims who believe in sexual and gender



justice is not whether or not the traditional interpretation of the Qur'an is compatible with sexual justice. The answer to this question seems to be obvious: The traditional interpretation of the Qur'an is not compatible with sexual and gender justice. But the key question, for them, is whether it is possible to re-examine and re-interpret the claimed "apparent" meaning (*Zuhur*) of the relevant Qur'anic verses, if necessary, to offer a legitimate interpretation of the text which is consistent with the requirements of sexual and gender justice. This has been a persistent question among the Qur'an's commentators, including those in the modern era, in some other contexts.

For instance, on the creation of human beings, the author of *al-Mizan* asserts: "[...] there is no doubt that the relevant Qur'anic verses clearly indicate that the human generation traces back to Adam and his spouse Eve (*Hawwa*).” But immediately and cautiously, he adds: “although offering a new interpretation (*ta'wil*) [of these Qur'anic verses] is not impossible.”¹⁷

Similarly, Muslims who believe in sexual justice, along with traditional interpreters, may even acknowledge that the “apparent” meaning of the relevant Qur'anic verses is consistent with discrimination based on gender and sexual orientation. However they can also raise the question whether it is possible to offer a new interpretation (*ta'wil*) of those verses that is not committed to such discrimination.

Ibn Hazm draws attention to the point that according to the Qur'anic passages, God's punishment descended upon Lut's wife as well. However, according to Ibn Hazm, it is completely obvious that her sin cannot be considered as a “homosexual” act. So it seems more accurate to say that the main cause of retribution against Lut's people was their denial of God's messengers rather than “homosexual” conducts.

The main difference between the views of Muslims who believe in sexual justice and those of traditional interpreters of the Qur'an is not whether the “apparent” meaning of the Qur'anic verses suggests discrimination based on sexual and gender discrimination. But the central question is as follows: even if we grant that the “apparent” meaning of the text, as the traditional commentators suggest, discriminates between people based on their sexual identity and orientation, is it possible to offer a new but legitimate interpretation (*ta'wil*) of the text which is not committed to such discrimination?

¹⁷ Tabatabai, Muhammad Hossein, *al-Mizan fi Tafsir al-Qur'an*, al-Nisā', 1. Also, see the translation of *Tafsir al-Mizan*. Vol 4, p. 225.



The most evident Qur'anic evidence to justify discrimination on the basis of sexual/“homosexual” identity is the story of Lut's people.

Therefore, for those Muslims who believe in sexual and gender justice, the main question would be reduced to the following: Would the Qur'anic narrative of this story be open to an interpretation which accommodates sexual/gender justice?

As far as I can see the answer is yes. In other words, there are some elements in the Qur'anic narrative that make it possible to offer a new legitimate interpretation of the claimed “apparent” meaning of the story, according to which discrimination based on sexual identity and orientation is justified.

The Qur'anic narrative on Lut's people simply sketches the general structure of the relevant events, and hardly elaborates the details. Therefore, it is difficult to accurately identify the very specific type of “homosexual” conduct which was common among them.

Let's examine some of these elements:

First Element: The majority of traditional commentaries attempt to show that the major sin committed by the Lut's people and led to their punishment was nothing but the crime of “homosexual” conduct. Therefore, wherever in the Qur'an Lut condemns his people for the “grave sin” or “abomination” (*al-fahishah*),¹⁸ the traditional commentators interpret *al-fahishah* as tantamount to “sodomy” (*lawat*).¹⁹ But the Qur'anic narrative and some “extra-textual evidence” reveal that people of Lut committed several grave sins. Thus, there is no reason to construe the “abomination” that was the main reason for their punishment as tantamount to “homosexual” conduct.

As a matter of fact, from the Qur'anic perspective, the grave sin committed

¹⁸ For example, the Qur'an (7:80), (29:28).

¹⁹ Probably, Ṭabarī is the first commentator who provided the exegetical meaning of “abomination” (*al-fahishah*) in the Qur'anic narrative of Lut's community, tantamount to sodomy (*lawat*); and, thus, interpreted the relevant verses on the basis of this understanding. al-Ṭabarī, Abu Ja'far Muhammad ibn Jarir. Eds. Bashshar 'Awad and Isam Faris al-Harastani (Beirut: Mu'assasah al-Risalah Institute, 1994, Vol 3, p. 163). Also, the author of *al-Mizan* unequivocally emphasizes that “abomination” (*al-fahishah*) [in the context of narrative of people of Lut] is tantamount to *lawat*” (translation of *Tafsir al-Mizan*, vol 16, p. 182).



by the people of Lut was their denial of messengers of God: “The people of Lut denied the warning [i.e. the messengers of God]”²⁰; “The people of Lut denied the messengers.”²¹ And “If they reject you [Prophet], so did the people of Noah before them, and those of ‘Ad, Thamud, Abraham, and Lut.”²² And according to the Qur’an, rejecting the prophets was the main reason God punished the people of Lut: “The people of Noah, ‘Ad, and firmly-supported Pharaoh rejected their prophets before them. Thamud, the people of Lut, and the Forest-Dwellers each formed opposition [against theirs]. They all rejected the messengers and they were deservedly struck by My punishment.”²³ Also, “The people of Lut rejected the warnings. We released a stone-bearing wind against them, all except the family of Lut. We saved them before dawn as a favor from Us.”²⁴

In addition to the grave sin of disbelief (*kufir*) and rejecting the prophets, the people of Lut committed other wrongdoings as well: “How can you lust after men, waylay travelers, and commit evil in your gatherings?”²⁵ The only answer his people gave was, ‘Bring God’s punishment down to us, if

20 al-Qamar 33.

21 al-Shu’ara 160.

22 al-Hajj 42-43.

23 al-Sad 12-14 also, Qaf 12-14.

24 al-Qamar 33-34.

25 A group of commentators have translated “obstructing the road” as tantamount to “robbery,” “banditry,” and “thieving.” In *Tafsir al-Mizan*, it reads: “some commentators have said that “obstructing the road” is tantamount to blocking the roads to their city [city of Lut community]. When people of Lut went out of town, they obstructed the way to the passengers who intended to enter their city. Then, each one of them threw a stone to these passengers. They trapped the one who was hit by the stone, then; and stole his property and engaged in sodomy with him, and also took three Dirhams, as compensation, from them. They also referred to a judge in their city who judged unfairly and advocated for the people of the city. Other exegetics have said: “obstructing the road” means others’ sin, and that in addition to this despicable act, they committed robbery.” A group of *riwayat* also confirms the same meaning. For example, in a *riwayat* from Imam Jafar Sadiq about the people of Lut, it is read: “[the men of the community] appointed individuals to stay on the way and let them know when travelers were passing from there because they had the intention of engaging with them in that lewd act” (*al-Mizan fi Tafsir al-Qur’an*, Vol 10/345). But, a group of other interpreters including Tabatabai have interpreted “obstruction of the road” as tantamount to “spaying” [avoiding sex with women and preventing childbearing.] And their reasoning, contrary to the view of the first group, is that “the context of the verse” implies this meaning; and apparently their intention by “the context of the verse” was the same assumption that as if the grave sin of people of Lut was their “same-sex” act (translation of *Tafsir al-Mizan*, vol 16, p. 183). But, it seems that the interpretation of the first group of interpreters is superior to the second group’s, because in addition to the fact that the unequivocal meaning of “obstructing the roads” is “robbery” and “blocking the road”, according to the Qur’an, the men of Lut’s community were married to their wives (and inevitably, had kids): “And leave what your Lord has created for you as mates? But you are a people transgressing.” (al-Shuara 166), and therefore, their act was not preventing their childbearing.



what you say is true.”²⁶ Some commentaries on “committing evil in their meetings,” explained that people of Lut committed a variety of wrongful actions in their meetings, such as using profane language to insult each other, gambling, stoning pedestrians and strangers, playing tambourine and flute, and appearing totally nude and conducting sodomy (*lawat*) in public.²⁷

According to the Old Testament as well, Lut’s people committed a variety of grave sins: “This was the guilt of your sister Sodom: she and her daughters had arrogance, abundant food and careless ease, but she did not help the poor and needy. Thus they were haughty and committed abominations before Me. Therefore, I removed them when I saw it;”²⁸ Also, in the Book of Jude: “and just as Sodom and Gomorrah and the surrounding cities, which likewise indulged in sexual immorality and pursued unnatural desire, serve as an example by undergoing a punishment of eternal fire. Also because people of Sodom and Gomorrah and other cities committed adultery, they were afflicted them to his wrath.”²⁹ In addition, Josephus, the historian in the first century A.D. writes on the Sodom people: “They hated strangers and offended them by act of sodomy against them.”³⁰

Ibn Hazm al-Andalusi (384-456 A.H), a prominent Muslim jurist and theologian (*mutakallim*) of Zāhirī school of thought, also in his critique of traditional commentaries on the Qur’anic verses about Lut’s community explicated:

Almighty God’s punishment descended to the people of Lut is not due to the reasons they [the previous commentators] assumed [i.e., the mere sexual relations among men]. But Almighty God told them: “The people of Lut rejected the warnings. We released a stone-bearing wind against them, all except the family of Lut. We saved them before dawn as a favor to Us: this is how We reward the thankful.” He warned them of Our onslaught, but they dismissed the warning – they even demanded his guests from him – so We sealed their eyes – ‘Taste My [terrible] punishment and [the fulfillment of] My warnings!’³¹ And God also says: “when Our messengers came to Lut, he was troubled and distressed on their account. They said, ‘Have no fear or grief: we

26 al-Ankabut, 29.

27 See Tabatabai, Muhammad Hossein, *al-Mizan fi Tafsir al-Qur’an*, Vol 16, p. 183.

28 Ezekiel, 16: 49-50.

29 Jude, 7.

30 Quoted in Richard Wolff, *A Commentary on the Epistle of Jude*, Grand Rapids: Zonder Van Publishing House, 1960, pp. 76- 77.

31 al-Qamar, 33-37.



shall certainly save you and your household, except for your wife - she will be one of those who stay behind.”³² [...] Almighty God explicitly said that the people of Lut were disbelievers [and denied the prophecy of His prophets], and due to this fact, He sent down a stone-bearing wind against them. The rain of stones as their punishment was not due to that “particular” wrong doing [i.e. sodomy], but due to their denial of God’s messengers. Therefore, those who commit to the same act as Lut’s people should not be stoned unless they would be identified as infidels. Otherwise, those who penalize them by inflicting such punishment [i.e. stoning] are acting contrary to Almighty’s decree, and their justification which is based on those Qur’anic verses is not valid, and their action is contrary to God’s decree.”³³

In addition, Ibn Hazm draws attention to the point that according to the Qur’anic passages, God’s punishment descended upon Lut’s wife as well. However, according to Ibn Hazm, it is completely obvious that her sin cannot be considered as a “homosexual” act.³⁴ So it seems more accurate to say that the main cause of retribution against Lut’s people was their denial of God’s messengers rather than “homosexual” conducts. Therefore, it is quite clear that Ibn Hazm clearly, and contrary to commentators such as Tabari and Tabatabai, does not equate “abomination” (*al-fahishah*) to “sodomy” (*lawat*).

Second Element. According to the Qur’anic passages, at least one of the examples of “abomination” (*al-fahishah*) or disgraceful act which was common among Lut’s people is that the males of the community lustfully approached men rather than women.³⁵ Most of the traditional commentators have interpreted these verses as if they condemn “homosexual” behaviors purely on the basis of them being “homosexual.” But it seems there is further room for interpretation because according to the Qur’an, the dishonorable act of Lut’s community has been an unprecedented act: “Indeed, you commit such immorality as no one has preceded you with from among the worlds.”³⁶

In interpreting this verse, commentators proposed two possible meanings: According to the first reading, the “practice” at issue, as it was common

32 al-Ankabut, 33.

33 Ibn Hazm, al-Andalusi, *al-Muhallā bi al-Athār (The Sweetened or The Adorned Treatise)*, Ahmad Shākir, Beirut: al-Maktab al-Tijari, 1960, Vol 1, p. 393 (last chapter, “*Masailut-ta’zir wa ma la hadda fih*,” Dilemma 2303: “Action of Lut’s community” (*Fi’al-i Qawm-i Lut*)).

34 Ibid.

35 For example al-A’raf 81; and al-Naml 55.

36 al-Ankabut, 29.



among those people, was unique with no precedent among other communities in the world. And according to the second reading, Lut's people were the first in the world who started that "practice" (i.e., engaging in same-sex conduct), and no community before them had committed such an act.³⁷

...the "despicable act" common among the people of Lut was not a simple act of sexual conduct among men, but the violent use of a sexual act as a (political) tool to break down and liquidate the rivals. If, instead of men, the women of Lut's community had invaded his house for the purpose of violation of physical integrity of those angels, would their deeds have been deemed appropriate? And would the guests have been engaged in such an activity? Most likely, the answer is no.

According to the first reading, the practice God points to in this verse is not a mere sexual relationship between two men as such, but rather that the very particular type of relations common among people of Lut. As far as the second reading, however, the same-sex conduct (regardless of its form and content) is measured as inappropriate and blamable, and worthy of divine retribution. A group of commentators, including the author of *al-Mizan*, prefers the second reading. But it seems that the first reading is preferred over the second one from several perspectives, for it is certain that the history of same-sex relations precedes the history of Lut's community. For example, the experts on the Old Testament believe that among the people of Canaan, Babylon and other pagans of the region, it was a ritual that a group of boys offered themselves to the pilgrims in temples, and the sexual relations with these "male prostitutes" was part of their sacred rituals. Since "homosexual" activity was strongly associated with the idolatrous practices of the surrounding pagan nations, it is probable that the negative attitude of the Old Testament to "homosexual" relations among men was an attempt to distance itself from the costumes of the pagans and idolaters, and to establish a distinct religious identity among other rival religions.³⁸

³⁷ Tabatabai, Muhammad Hossein, *al-Mizan fi Tafsir al-Qur'an*, Vol 16, p. 182

³⁸ For example see: Blair, Ralph, *An Evangelical Look at Homosexuality*, Chicago: Moody Press, 1963, p.3. Also, Boswell, John, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*. Chicago: The University of Chicago Press, 1980, Ch.4. Also, Boswell, John, *Same-Sex Unions in Premodern*



Therefore, it is difficult to accept that people of Lut commenced homosexual practices for the first time. The first reading mentioned earlier, then, sounds more convincing. Accordingly, the Qur'anic verse³⁹ should be scrutinized as a view on a particular form of homosexual relations common among the people of Lut—a type which was unprecedented among other communities. This form of expression, i.e., statements in universal form which in fact refer to particular instances in specific time and place, is not unprecedented in the Qur'an.

There is no sign or remark in the Qur'anic narrative suggesting that the sexual practice of Lut's community was beyond pure sexual lust, and ever led to a meaningful human communication and a deeply emotional attachment. On the contrary, the Qur'anic narrative clearly suggests that their sexual practice often involved violence and no regard for dignity of their victims.

For example, in the story of Joseph, the Qur'an in a description of "women" says: "This is your [women's] treachery: your treachery is truly great."⁴⁰ Most of the traditional exegetists believe that this verse reveals the true nature of all women, that is, the reference of this verse is all women in all times and places.⁴¹ But as a matter of fact, interpreting this verse as a "universal statement (i.e., a statement that covers all instances of the subject term in all times and places)" makes it a clearly false claim. Therefore, it is more accurate to understand the subject referred to in this verse as only those women who plotted a conspiracy against Joseph, that is, to understand it as a "general statement (i.e., a statement that covers all instances of the subject term in a particular time and place)."⁴² The mere existence of a universal quantifier does not necessarily make the

Europe. New York: Vintage Books, 1994.

³⁹ al-'Ankabut, 29.

⁴⁰ Yusuf, 28.

⁴¹ The author of *al-Mīzan* is one of the commentators who interprets that verse, on the basis of a type of extremely problematic psychology, as a universal statement, i.e., a statement that covers all instances of the subject term in all times and places. See the translation of *Tafsir al-Mīzan* for this verse.)

⁴² The terms, "universal statement" (*qaziyyeh haqqiyyah*) vs. "general statement," (*qaziyyah kharijiyyah*) have been common in *'Ilm-i Usul al-Figh* by Ayatollah Mirza Hassan Naeini. The first one is a statement that covers all instances of the subject term in all times and places). The second one is a statement that covers all instances of the subject term in a particular time and place.



statement “universal.” Sometimes statements with universal quantifier are in fact “general” rather than “universal,” that is, they refer to all members of a particular group in a particular time and place.

On this basis, there is a possibility that the male members of Lut’s community engaged in a type of sexual relations with men that was of their own, and what ignited God’s wrath and anger against them was not “homosexual” relations as such, but rather a very particular type of sexual relations. If so, then the main question would be as follows: what was that particular type of “homosexual” relations among the people of Lut?

Third Element. The Qur’anic narrative on Lut’s people simply sketches the general structure of the relevant events, and hardly elaborates the details. Therefore, it is difficult to accurately identify the very specific type of “homosexual” conduct which was common among them. The only place in the Qur’an that offers a relatively detailed description of the prevailing sexual conduct among the people of Lut in the context of a particular event is the story of angels visiting Lut. Probably, on the basis of some inter-textual and external signs related to this event, it would be possible to stipulate about some characteristics of the particular type of “homosexual” conduct common among people of Lut.

Let’s examine those signs:

First: From the Qur’anic perspective, the most important characteristic of what Lut’s people did in that particular event could be viewed as the continuation of their grave sin, i.e., their denial of God’s messengers. One of the most sacred and inviolable values of the peoples in those days was liberality and generosity, especially with regards to one’s guests. As soon as someone received another as a guest, the host would take him under his protection; hospitality was invoked as a marker of dignity, nobility, and special or high status of the host. Therefore, it can be assumed that one of the most significant ways to show animosity against someone was to offend and humiliate his guest. Hostility against a guest was deemed as offensive and discourteous towards the host and his status. In order to deny and humiliate Lut as a prophet of God, hence, his people forbade him to admit guests into his house (which was a marker of generosity, honor and social status). “They said, ‘Did we not forbid you to extend hospitality to strangers?’”⁴³; and when they became aware of the presence of stranger visitors as Lut’s guests, they tried to dishonor him as the host by treating

⁴³ al-Hijr,70.



his guests disgracefully. Lut's words addressing the invaders clarify their primary intention, which was degradation of Lut: ([Lut] said, "Indeed, these are my guests, so do not shame me. And fear Allah and do not disgrace me."⁴⁴ And "So fear Allah and do not disgrace me concerning my guests. Is there not among you a man of reason?"⁴⁵ The same point has been addressed in the Old Testament: "But Lut went out to them at the doorway, and shut the door behind him, and said, 'Please, my brothers, do not act wickedly [...] only do nothing to these men, inasmuch as they have come under the shelter of my roof.'⁴⁶

Therefore, it appears that the invasion of the house of Lut was not for the explicit purpose of sexual pleasure, but to humiliate Lut by dishonoring him as a host and denial of his dignity and status as a divine prophet. In this context, sexual acts with members of the same-sex should be rendered as a type of political tool to exert power over the rivals and defeat them—a means similar to the practice of sexual humiliation against political prisoners and inmates in jails.

In light of this interpretation, a more sensible and precise inference can be made regarding Lut's offer to the attackers: "He said, 'O my people, these are my daughters; they are purer for you. So fear Allah and do not disgrace me concerning my guests. Is there not among you a man of reason?'"⁴⁷; and "[Lut] said, 'These are my daughters, if you would be doers.'⁴⁸

Here it seems that Lut is offering his daughters to the mob of men, and his suggestion seems quite problematic.

First, did Lut literally offer his daughters to a mob of men? Was this act—sacrificing those innocent girls—"purer" and more "virtuous?" The answer is obviously no.

Most of traditional exegetists deem Lut's offering of his daughter to the mob of men, aimed at marriage rather than engaging in sexual affairs with his guests.⁴⁹ In the context of this story described by the Qur'an, however, there is no explicit statement on marriage. But, even if this interpretation were

⁴⁴ al-Hijr, 68-69.

⁴⁵ Hud, 78.

⁴⁶ Genesis, 19: 6-9.

⁴⁷ Hud, 78.

⁴⁸ Hijr, 71.

⁴⁹ For example, see: Tabatabai, Allamah Muhammad Hossein, translation of *Tafsir al-Mīzan*, Vol 10, pp. 505-506.



accepted, it would remain problematic:

There is no doubt that the number of daughters of Lut was far less than the number of the men of his community.⁵⁰ Did Lut have the right to offer his daughters to marry with more than one man (men who were invaders), without their consent?

On the other hand, one might suggest, along the same line with traditional commentators, that this story (at least) implicitly suggests that same-sex relations as such are wrong, and relationships with the opposite sex are “purer” and more “virtuous.” This interpretation, if true, clearly is not consistent with the interpretation we suggested.

To address this problem, one may understand “Lut’s offer” as follows:

First: Lut’s people knew that disgracing the guests was an offense and against the virtue of hospitality, dignity and prestige of the host. This was abhorrent to a value system dear to the community. Lut testifies in his own words that his people were aware of this: “And [mentioned] Lut, when he said to his people, ‘Do you commit immorality (abomination) while you are aware of its immoral nature?’”⁵¹ Despite this awareness, Lut’s community targeted his guests’ physical integrity⁵² in order to disregard and degrade Lut’s dignity and status, and cause him shame and embarrassment.

Second: Lut’s community knew well that any sexual claim concerning Lut’s daughters would also be inappropriate. In response to “Lut’s offer,” they declared: “You know very well that we have no right to your daughters. (Hud 79);” therefore, according to their own value system, having sexual relations with women to whom they had no right, would be considered as wrong.⁵³

⁵⁰ According to the Old Testament, Lut had two daughters (Genesis, 19: 8).

⁵¹ al-Naml, 54.

⁵² The Qur’anic narrative underlines that those guests were “strangers.” For example, “He said, ‘Indeed, you are people of unknown’ (al-Hijr 62). This is a significant point because strangers, who shared no kinship ties with the tribe, were less consequential targets for several reasons. First, it would not have breached the fundamental principle of tribal life which was to uphold kinship ties; and second, it would not have been followed by fear of revenge. However, for instance, violence against Lut’s daughters would have fulfilled none of those conditions. Also, in the history of the Prophet’s life, Quraysh, on a similar basis, avoided any serious attack to the Prophet and other Muslims of the Bani Hāshim tribe, particularly during the days of Abu Talib. But, with no trouble, they treated Muslims of no strong tribal ties with violence and harassment.

⁵³ This is one of the possibilities presented by Tabatabai about the meaning of this verse (See: the translation of *Tafsir al-Mizan*, Vol 10, p. 509).



Third: “Lut’s offer” of his daughters should not be considered as an actual “offer” or “invitation.” Lut did not actually intend to offer his daughters to the invaders. What he tried to do was to invoke the moral conscience of his people in order to protect his guests. His words must be read as a rhetorical question with a denying tone. In addressing his people, he was actually saying the following: “would that be appropriate for you to get intimate with my daughters?” Obviously your answer is, “Of course not!” Because you view this act incongruous to your value system. Now given the same value system, your offense to my guests and violation of their bodily integrity is wrong. According to the same value system forbidding your sexual affairs with my daughters, you must avoid any affairs with my guests.” The people responded to Lut: “indeed, you know what we want.”⁵⁴ Their main goal was nothing but to deny the status of Lut as a prophet. Therefore, after invading his house and humiliating his guests, they mockingly asked him, “Bring God’s punishment down on us, if what you say is true.”⁵⁵ It was as if their intention was to harass and defame his guests so that Lut would become desperate and leave the city: “Drive them out of your town! These men want to keep themselves chaste.”⁵⁶ And “They replied, ‘Lut! If you do not stop this, you will be driven away.’”⁵⁷

The second important characteristic of the story of the angels visiting Lut’s house denotes that Lut’s people, by invading his house, intended to violate the physical integrity of his guests. According to the Qur’an, these people hastened to Lut’s house and demanded his guests; and Lut found himself helpless and abandoned.⁵⁸

The Qur’anic term for “hastened (*yuhra’una*),”⁵⁹ implies the use of “threat” and force.⁶⁰ It can be stipulated that the “despicable act” committed by the people of Lut involved use of violence and violation of Lut’s guests’ bodily integrity.⁶¹ This analysis, thus, denotes that the act of Lut’s people should be

⁵⁴ Hud, 79.

⁵⁵ al-Ankabut, 29.

⁵⁶ al-A’araf, 82.

⁵⁷ ash-Shua’ra, 167.

⁵⁸ Hud, 78-80.

⁵⁹ Hud, 78.

⁶⁰ The Translation of *Tafsir al-Mizan*, Vol 10, p. 504

⁶¹ According to some riwayat, Lut, in response to the angles, described his people: “I swear to God that the people of this city trap men and engage in sodomy with them to the extent of blood gush from their bodies” (*al-Mizan fi Tafsir al-Qur’an*, Vol 10, p. 518).



taken as a clear case of rape (or attempted rape).

Therefore, the “despicable act” common among the people of Lut was not a simple act of sexual conduct among men, but the violent use of a sexual act as a (political) tool to break down and liquidate the rivals. If, instead of men, the women of Lut’s community had invaded his house for the purpose of violation of physical integrity of those angels, would their deeds have been deemed appropriate? And would the guests have been engaged in such an activity? Most likely, the answer is no.

There is, however, another point in the Qur’anic narrative that is not explicit in the Text itself. According to some Islamic sources (*hadith and riwayat*), the angels appeared to Lut in the form of two youths (beardless boys). For instance, there is a lengthy narrative on the story of people of Lut in *Usul al-Kafi*, according to which Iblis (*Satan*) for the purpose of turning the sexual tendency of the people of Lut appeared to them in the form of a charming youth (*Ghilman*), and people of Lut “found him so handsome that they had never seen such a youngster before.”⁶²

According to the same *riwayat*, the story about sexual habits of the people of Lut began with a sexual affair with that youth. The *riwayat* indicates that divine angels appeared to Lut and his people “in the form of male youths” or “beardless boys.”⁶³ The author of *al-Mizan* also applies the same language in his description of angels’ appearance, and explains that they were “handsome beardless youths.”⁶⁴ Most of the narratives, which condemn “sodomy” (*lawat*) and regulate its punishment, describe it as a sexual practice between an adult man (*rajul*) and a young boy (*ghulam*).⁶⁵

Such descriptions indicate that the particular sexual activity practiced by the people of Lut (which was later called *lawat* in the Islamic jurisprudence) had been committed on children and youth.

⁶² Tabatabai, Muhammad Hossein, *al-Mizan fi Tafsir al-Qur’an*, Vol 10, p. 345. Tabatabai believes that “verbally, this riwayat is not problem-free” but he does not question its reliability, and relies on it to confirm his own interpretive considerations about the story of Lut community.

⁶³ Ibid, Vol 10, p. 345 & 353.

⁶⁴ Ibid, Vol 16, p. 125.

⁶⁵ For example, see, *Wasail al-Shi’a*, Vol 20, Chapter 3 from the Chapters on *Haddi lawat*, Vol 8. In Persian language, the term “*luti*,” (attributed to the tribe of Lut) has been used as tantamount to “pederast” and “a man who engages in sexual relationship with a young beardless boy (*Ghulam*)” (See: Dehkhoda dictionary). Some authors of books on the Islamic law also interpreted *luti*, as the one who commits *lawat*, and tantamount to pederast. For example, see Abbas-Ali Mahmoudi, *Islamic Criminal Law, Sexual Crimes*, Vol 2, Nehzat-e Mosalmanan Publications, 1980. The book is in Persian.



In the ancient world, sexual relations among adult men with children and youths have been the most common and known form of same-sex relationships. Various forms of these relations have been acknowledged among Canaanites, Babylonians, other pagans and infidels in the region, and among the people influenced by the culture of ancient Greece and that of the Far and Near East; and even centuries later, it gave rise to Sufi traditions known as a rituals of *shahed-bazi* and *sohbate ahdass* in the Muslim world.⁶⁶

The Qur’anic narrative on the “despicable act” of Lut’s people, concerning same-sex relations among their males, can be explained as below:

First: Most likely sexual relations among men as such are not subjected to the critical approach of the Qur’an. What the Qur’an condemns is a very specific type of same-sex relation which was common among the people of Lut.

Second: The very specific type of same-sex relation which was common among the people of Lut was as political tool, particularly with the intention of humiliation of Lut and denial of his prophethood.

Third: This form of sexual relation is characterized as an act of transgression in which the perpetrator uses violence to impose himself to the victim without his consent to violate his bodily integrity. Consequently, it should be identified as an instance of rape.

Fourth: So far I have postulated sexual relations among people of Lut (which was later called *lawat* in Islamic jurisprudence) as tantamount to “homosexuality” as understood in contemporary era. But such a conjecture is extremely doubtful.

“*Lawat*” is no more than a pure sexual act. In such a relationship, the parties merely seek sexual pleasure with each other, and their sexual propensity towards each other does not exceed the one’s physical body. Therefore, sodomy (*lawat*) is typically devoid of human emotional attachment.

“*Luti*” (sodomite) does not view his partner as someone who would share his joy and sorrow with him, and even more so, he does not identify himself

⁶⁶ For example, See: Boswell, John, *Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century*. Chicago: The University of Chicago Press, 1980, Ch.4; Dover, K.J., *Greek Homosexuality*. Cambridge, MA: Harvard University Press, 1978, 1989. Also, Shamisa, Cyrus. *Shahedbazi in Persian literature*. First Edition, Tehran, Ferdous Publications, 2002.



as a caring companion or someone who is equal to his sexual partner. The relationship of *luti* with his sexual partner would be built only on the basis of sexual drives, and he shows no indication of long-lasting and respectful love toward his partner.

Luti never considers his same-sex relations as a component of his personal and social identity. He engages in a sexual relationship with men, but he never incorporates his “homosexual” propensity and conduct as a part of who he really is. Same-sex relationships are sought by *luti* only for the sake of transient pleasure and entertainment, and that of escaping from pressures of mundane everyday life. While he would establish his life in relationship with women and building family in its common sense, sometimes he engages in same-sex relations too.

He does not see any significant difference between his own personal and social identity and life style from that of other “men” in his society. He already adopted a prevailing societal conception of a “heterosexual man” as a model for his own sexual identity, and he is quite content and comfortable with this identity. So he identifies himself as a “man,” as it is conceived by a patriarchal society, even though his sexual and aesthetic taste in some occasions might be rather different than his fellow male friends in the society. Therefore, while *Luti* is engaged in same-sex relations along with his heterosexual life style, he never faces an “identity crisis.” He sees himself at “home,” yet his home has a further room for “special entertainment.”

The Qur’anic narrative shows all the signs of “lutian” type of same-sex relations among the people of Lut. For example, the Qur’an depicts their sexual practice as nothing more than “lust” after men: “How can you lust after men instead of women?”⁶⁷

There is no sign or remark in the Qur’anic narrative suggesting that the sexual practice of Lut’s community was beyond pure sexual lust, and ever led to a meaningful human communication and a deeply emotional attachment. On the contrary, the Qur’anic narrative clearly suggests that their sexual practice often involved violence and no regard for dignity of their victims.

This means that the ultimate goal of those deeds was domination and sexual pleasure and satisfaction, without loving understanding and mutual respect.

Also, according to the Qur’anic narrative, when the men of community

⁶⁷ an-Naml, 55; al-A’raf, 81.



attacked Lut's house, he "offered" his daughters to them. Given the traditional interpretation of the event, Lut had some reasons to believe that intruders had sexual propensity towards women as well. This thought does not sound baseless, because according to the Qur'anic narrative, the men of Lut's community espoused with female mates: "What, do you come to male beings, leaving your wives that your Lord created for you?"⁶⁸ If so, it is difficult to deem men who had sexual desire toward women and espoused with female mates, as those who have innate and irreplaceable sexual propensity toward the same sex.

But, "homosexuality," as understood in the modern era, exceeds the mere sexual relation between two same-sex parties and it is intimately associated with their personal and social "identity." Charles Taylor, for example, argues that in the modern world, the notion of "identity" and the effort to recognize the diversity of identities have become more pronounced. According to him, one of the distinguishing characteristics of the modern world is the belief that every individual has her/his own unique "inner voice," and everyone ought to live an authentic life proportionate to that voice (which represents one's true self).

Every human being is human in her/his own unique and authentic way, and s/he ought to recognize her/his unique mode of being, and conduct an authentic life accordingly, not in a manner of an imitation of others.⁶⁹ In the modern world, humans' distinctive traits play a more crucial role in their identity formation. People seriously demand their own unique identities to be recognized and revered.

In the modern world, people are more inclined to identify themselves in terms of their distinctive characteristics (especially those that often have been denied, humiliated, or repressed) rather than their common features. For example, women emphasize their "feminine" identity, blacks their "black" identity, and homosexuals their "homosexual" identity. A recourse to highlighting a distinctive identity is a reaction towards a repressive culture that deems diversity as danger, and tries to assimilate people in homogenizing society in conformity with the power structures, in order to preserve and protect the power structures as much as possible.⁷⁰

In this context, homosexuals consider their sexual orientation as an important component of their identity as a human being, and they demand deference and recognition of their identity, the right to honestly establish

68 al-Shuara, 165-166.

69 Taylor, Charles, "The Politics of Recognition", in *Multiculturalism*, ed. by Amy Gutmann, Princeton University Press, 1994, pp. 25-73.

70 Kruks, Sonia, *Retrieving Experience: Subjectivity and Recognition in Feminist Politics*. Ithaca, NY: Cornell University Press, 2000, p. 85.



their individual and social life in accordance with their true selves, and to try to self-actualize themselves as dignified and honorable persons. In this situation, homosexuality is not merely a sexual act but it is a mode of “being” and consequently, a style of “living” in accordance to that mode—a “living” accompanied by variety of deep human emotions and attachment. In this sense, “homosexuality” should be viewed as a product of the modern world—an unprecedented phenomenon in the pre-modern era.⁷¹

Of course, there is no doubt that in the pre-modern era sexual relations between two same-sex individuals were a known phenomenon and sometimes common, but it seems that the conceptual binary of “homosexual vs. heterosexual” was almost absent in pre-modern thought. In the ancient world, sexual behaviors were mainly judged on the basis of one’s position in the act of sexual penetration, and not necessarily on the grounds of the gender of the sexual partner. In other words, sexual relations were not measured on the scale of one’s partner being “male” or “female”; rather, the significant gauge was the role one played in the act of penetration as “active” or “passive” partner. In those days, “masculinity” was not necessarily defined in terms of one’s sexual encounters with “women”; it was permissible for a man to approach both women and men. But according to their value system, a man, for the sake of his masculinity, should have not been the subject of sexual penetration.

The principle of sexual relations with other men (particularly youths) was measured as “natural” or at least acceptable. In their eyes, however, being penetrated was considered the essence of shame and disgrace. Hence in the mentality of the pre-modern world, the conceptual binary of “active vs. passive” rather than that of “homosexual vs. heterosexual” played a more determinant role in their understanding of human sexuality and sexual identity.⁷²

⁷¹ Joseph Massad the professor of Modern Arab Politics and Intellectual History in the Department of Middle Eastern, South Asian, and African Studies at Columbia University, also believes that “homosexuality” and the dilemmas of “human rights of sexual minorities” is a modern Western concept, and has absolutely no record in the Arab-Islamic history and culture. Therefore, he believes that western gay rights movements are far from a correct understanding of the Arab world, and blames that international human rights organizations which advocate for homosexual rights in the Arab world impose more restrictions particularly on same-sex relationship among men, more than they would be liberating. To become familiar with his views in this regard, see: Massad, Joseph, “Re-Orienting Desire: The Gay International and the Arab World,” *Public Culture* 14(2): 361-385, (2002).

⁷² For more information about this difference in the bedrock of ancient Rome and Greece cultures, see: Dover, K.J., *Greek Homosexuality*, Cambridge, MA: Harvard University Press, 1978, 1989. Halperin, David M., *How to do the History of Homosexuality*. Chicago: University of Chicago Press, 2002. Nussbaum, Martha C. and Juha Sivola (eds.), *The Sleep of Reason: Erotic Experience and Sexual Ethics in Ancient Greece and Rome*, Ed. Idem. Chicago: University of Chicago Press 2002.



It can therefore be claimed that “*lawat*” and “homosexuality” are two different concepts. Mere sexual relations with the same sex do not make one “homosexual.” It is possible that someone would engage in same-sex relations but wouldn’t be identified as “homosexual.” On the other hand, someone may identify himself as “homosexual” without necessarily getting sexually involved with a same-sex partner. In other words, the relation between “homosexuality” and “same-sex sexual relations” is not the relation of identity, even though the intersection of the two concepts is not a null set.

Thus, from the fact that the Qur’anic narrative condemned the common sexual relations among the people of Lut does not follow that the Qur’an also condemned “homosexuality” as such.

...the Qur’an treats “homosexual” relations among men and women differently. The Qur’anic verses hold the sexual encounters among the men of Lut absolutely blameworthy; however, sexual relations among women are not addressed in these passages.

Fifth: It is noteworthy that the subject of “homosexuality” among women has not been addressed in the Qur’anic passages. Several commentators, however, have asserted that in the following verse, the word “*al-fahishah*” (abomination and lewd act) might refer to homosexual encounters among women: “If any of your women commit a lewd act, call four witnesses from among you, then, if they testify to their guilt, keep the women at home until death comes to them or until God shows them another way.”⁷³

According to some narratives, the story of “people of Ar-Rass” (*Ashab-i Rass*)

About the Muslim World also see: Musallam, Basim, *Sex and Society in Islam: Birth Control before the Nineteenth Century*, New York: Cambridge University Press, 1993.

And also, Shamisa, Cyrus. *Shahed bazi in Persian Literature*, first Edition, Ferdous Publication, 2002.

Also, in this book, see the discussion about transgender women (*mukhanathat*): Tfāshī, Shehāb Eddīne Aḥmad, *Nuzhat al-albāb fīmā lā yūjad fī kitāb* (1992). Compiled and edited by Juma’a Jamal. London. Riad El-Rayyes Books Ltd. pp. 249-308.

In the same book, you can see Zakaria Razi’s views about “transgender women” and “transgender men” (See: Ibid, pp. 302-308) but it is clear that there is no tie between the concept of “transgender” and its dimensions with that of “homosexuality.”

⁷³ al-Nisā’, 15. This is one of the possibilities referred to by the author of *al-Mizan*. See the translation of *al-Mizan*, Vol 4, 369-370.



in the Qur'an, and their fate⁷⁴ had something to do with the practice of “*musahiqah*,” interpreted as lesbianism or homosexual relations between women.⁷⁵ Yet, the vast majority of exegetists have asserted that these verses refer to adultery and not lesbianism; also throughout the Qur'an, there is no indication that would relate the story of the people of Ar-Rass with lesbianism. But if homosexuality as such were morally wrong, then homosexuality among women should also be considered as bad as homosexual conduct among men.

Nonetheless, the Qur'an treats “homosexual” relations among men and women differently. The Qur'anic verses hold the sexual encounters among the men of Lut absolutely blameworthy; however, sexual relations among women are not addressed in these passages.

Henceforth, it is conceivable that sexual encounters between two same-sex individuals are not subjected to the Qur'anic condemnation, because if that were the case, this blame should have been extended to the sexual relations among women as well. As indicated earlier, it could be surmised that the Qur'anic condemnation was exclusive to the particular type of sexual affairs common among the males of the Lut community—sexual relations with the purpose of denial of God's messengers and particularly that of humiliation of Lut.

Consequently, based on the five elements indicated earlier, it seems plausible to assume that the “apparent meaning” of the relevant Qur'anic verses does not unequivocally condemn “homosexuality” as such, and even if some commentators believe that the “apparent meaning” of those verses does have such connotation, then those passages seem to be open to new interpretations which are more consistent with the requirements of sexual justice.

⁷⁴ al-Furqan, 38; al-Qaf, 12.

⁷⁵ For example, in the *Usul-i Kafi*, it is read: “a bunch of women came to the presence of Imam Sadiq. One of them, asked about *musahaqah*. Imam said: its punishment is tantamount to the penalty of adultery. The other one asked: has this been mentioned in the Qur'an? Imam said: yes. She asked: where? Imam said: *Rass* women.” And also in *al-Dor al-Manthour* (*ad-Dorral Manthour*, transliteration), it is read: “two women asked from Imam Jafar ibn-i Muhammad: do you consider women's sleeping together forbidden in the Book of God? He said: yes, this is the action of those women who were living at the time of Tubb'a, and those women who were with Rass” (translation of *al-Mizan*, Vol 15, p. 303.)

III.

Yet, let's assume that the Qur'anic verses would have unequivocally condemned homosexual conduct as such and the "apparent" meaning of these passages is not open to any new interpretation. If so, is there an alternative way to create consistency between those teachings and the requirements of sexual justice? The answer is, in my opinion, still yes.

In recent decades, a group of Muslim modernists have deployed a comprehensive methodology to understand the Qur'an, which is a kind of sympathetic socio-historical approach to the holy text. Among Muslim modernists, Fazlur Rahman should be viewed as one of the pioneers of this new approach to interpretation of the Qur'an.

Rahman's exegetical process consists of two steps: First, the interpreter should try to understand the holy text in its cultural and socio-historical context (the process of "contextualization).⁷⁶ And then he should capture the "intended" or the "heart" of its meaning abstracted from the contingencies of its context at the time of revelation, and bring it to the reader's horizon of meaning in the contemporary era.⁷⁶ The rationality of this approach can be demonstrated as below:

The Scripture or the Revealed Text, in essence, is considered as a type of message which is communicated between God and human. In order to communicate this message so that its meaning will be comprehended by the receiver, at least two conditions must be satisfied: first, the sender must employ a system of signs or symbols that is common between him and the recipient. For example, if God addresses an Arabic-speaking people, the message should inevitably be conveyed in Arabic: "We have never sent a messenger who did not use his own people's language to make things clear for them."⁷⁷ And also: "We have made it a Qur'an in Arabic, that you [people] may understand."⁷⁸

But the second condition, which is more significant, is that the speaker should consider the culture and the level of knowledge of his recipients, and his message should be proportional to their backgrounds. The revealed message inevitably comes into "language of the people" (*lisani qawm*) in order to make the content accessible to the recipients. However, the "language of the people" in this context is not merely the Arabic language, but it goes beyond the mere language and includes the culture (i.e., the level of knowledge and Life-world) of the people at the time of revelation.

⁷⁶ For example, see Rahman, Fazlur, *Islam and Modernity: Transformation of an Intellectual Tradition*, Chicago, IL: University of Chicago Press, 1982, pp. 5, and 13-22.

⁷⁷ Ibrāhīm, 4.

⁷⁸ al-Zukhruf, 3.



On this basis, one may claim that the Qur’anic text consists of two distinctive worlds: the first world is a reflection of the Arab culture at the time of Revelation, as the immediate addressees of the message; and the second world contains the heart of the Qur’anic timeless message, i.e., the message God intended to convey to humans through revelation. It is the second world that represents the *essence* of the holy text. The first world is simply a necessary condition to communicate effectively to the people at that time; it functions merely as a bridge to lead people to the heart of the message, i.e., the second world.

Therefore, contemporary exegetists’ mission is to purify the essence of the Qur’anic message from the contingencies of the Arabs’ culture at the time of revelation in order to understand and re-experience the heart of revelatory experience in the contemporary horizon of meaning.

One of the most significant consequences of such analysis of the structure of the Qur’anic text or the revelatory discourse is to acknowledge that some sections in the Qur’an belong to the first rather than the second world of the Text; they are simply a reflection of the socio-historical context of the Revelation, and God had to incorporate them into His message to effectively communicate with the immediate addressees of the message. The adoption of those sections to the text does not necessarily mean their definitive and unconditional approval by God. Those sections cannot be identified as essential to the heart of the Qur’anic message; and therefore, being a Muslim does not require submission to these sections. One of the major key criteria that can differentiate the elements of the first world of the text from those of the second world is the principle of justice.⁷⁹ In other words, if the Qur’an presents a provision inconsistent with principle of justice and that there would be no further potential for reinterpretation of this provision, then a devout Muslim may rightfully conclude that that section belongs to the first rather than the second world.

Muslim modernists occasionally have taken advantage of this method to understand the “problematic” sections of the Qur’an and find a solution for the so-called “problems.”

For example, it seems that the Qur’an, deterministically and with no potential for interpretation, allows men to marry up to four wives. But, Muhammad ‘Abduh thought that polygamy was “one of the archaic customs of the Arab world,” and believed that Islam in fact has tried to abolish this pre-Islamic practice in a step

⁷⁹ For example, Khaled Abou El Fadl is one of the modern Muslim intellectuals who considers the fulfillment of justice as the ultimate goal of the Qur’anic teachings, and thus underlines the strong role of justice principle as the guiding principle of understanding the Qur’an. To become familiar with his views, see: Aboul El Fadl, Khaled, *Speaking in God’s Name: Islamic Law, Authority and Women*, Oneworld, 2001, pp. 27- 30.



by step process. According to the Qur'an, where men's polygamy is concerned, they must treat their wives justly; because this is literally impossible, the Qur'anic message should be interpreted as prohibiting men from polygamy.⁸⁰

About this custom mentioned in the Qur'an, Fazlur Rahman states: "Muslim modernists, on the other hand [i.e., contrary to the traditionalist commentators], tend to give primacy to the demand for justice plus the declaration of the impossibility of justice [in the case of polygamy], and say that permission for polygamy was meant to be only temporary and for a restricted purpose."⁸¹

In other words, these Muslim modernists argue that the polygamy provision in the Qur'an has been a reflection of Arabs' culture at the time of revelation, and its adoption by the Qur'an should not be considered as unconditional approval by God. If we lay out the principle of justice as the prerequisite of discerning the sacred scripture, then inevitably we will conclude that the spirit of the Qur'an, through a gradual process, invites Muslims to eliminate these injustices.

One of the major key criteria that can differentiate the elements of the first world of the text from those of the second world is the principle of justice. In other words, if the Qur'an presents a provision inconsistent with principle of justice and that there would be no further potential for reinterpretation of this provision, then a devout Muslim may rightfully conclude that that section belongs to the first rather than the second world.

It is not restricted to the Qur'anic provisions on polygamy. As another example, according to the Qur'an,⁸² in crediting a transaction for a specific period, the credit should be written down, and there should be two witnesses to the deed. The witnesses can be two adult males, and if two are not available, one male and two women "so that if one of the women should forget, the other can remind her."⁸³ Fazlur Rahman states that this verse also represents the socio-historical circumstances of those days. Women in those days, due to a variety of social and cultural constraints,

⁸⁰ Abduh, Muhammad, *al-a'mal al-Kamilah lil-Imam Muhammad 'Abduh*, Vol 6, Tahghigh Muhammad 'Ammarah, Beirut, al-Muassasah al-'Arabiah lid-dirasat wan-nashr, 1972, Vol 2, pp. 84, 85, 94, and 365.

⁸¹ Rahman, Fazlur, *Major Themes of the Qur'an*, Bibliotheca Islamica, 2nd ed., 1994, p. 33.

⁸² Baqarah, 282.

⁸³ al-Baqarah, 282.



were not used to dealing with such matters, and the possibility of their being “forgetful” was greater than for men. In that specific context, it was not unjust to equate the testimony of two women with that of one man. In the modern era, however, women have become conversant with financial affairs and have knowledge and experience in economic matters. Those laws are not applicable to our time, and implementing them would be unjust discrimination against women.⁸⁴ From the perspective of Muslim modernists, most laws regarding women in the Qur’an reflect the specific cultural and historical conditions at the time of revelation, and therefore, we should consider them as a part of the first world on the Text.

These provisions aimed to fulfill justice in those days’ circumstances, but as the historical conditions have changed in the modern era, the implementation of those laws leads to inappropriate discrimination against women and, hence, against the justice-demanding spirit of the Qur’an.⁸⁵

In the Qur’anic passages as well as the Old Testament, the very first prayers of prophets to God were to be granted lots of children. On this basis, in pre-modern moral and legal systems, the sexual act had merely instrumental value, and its most important function was reproduction.

As another example, Muslim modernists have applied such an approach with regard to slavery in the Qur’an as well. For many traditional commentators of the Qur’an, the apparent meaning of the Qur’anic verses clearly recognizes slavery and the relevant Qur’anic verses seem explicit enough to not leave any room for reinterpretation.⁸⁶ But, Muslim modernists such as Fazlur Rahman assert that the mere existence of such verses in the Qur’an does not necessarily denote its permanent and unconditional approval by God. Fazlur Rahman treats this issue below:

“As an immediate solution, the Qur’an accepts the institution of slavery on the legal plane. [In those days] no alternative was possible, since slavery was

⁸⁴ Ibid, pp. 48-49.

⁸⁵ Fazlur Rahman is one of the modern intellectuals who believes in such generalizations. To become familiar with his views about the Qur’an and the dilemma of equality of women and men rights, for example, see: Rahman, Fazlur, *Major Themes of the Qur’an*, pp. 49- 51.

⁸⁶ To become familiar with the view of some contemporary commentators in defense of slavery, for instance, see: Tabatabai, Muhammad Hossein, *al-Mizan fi tafsir al-Qur’an*, Vol 6, p. 338-357.



ingrained in the structure of society, and its overnight wholesale liquidation would have created problems which it would have been absolutely impossible to solve, and only a dreamer could have issued such a visionary statement. But, at the same time, every legal and moral effort was made to emancipate the slaves and to create a milieu where slavery ought to disappear. Here again we are confronted by a situation in which the clear logic of the Qur'anic attitude was not practiced in actual history by Muslims. [...] These examples [also including women and wine], therefore, make it abundantly clear that whereas the spirit of Qur'anic legislation exhibits an obvious direction towards the progressive embodiment of the fundamental human values of freedom and responsibility in modern legislation, the actual legislation of the Qur'an had to partly accept the then-existing society as a term of reference. This clearly means that the actual legislation of the Qur'an cannot have been meant to be literally eternal by the Qur'an itself."⁸⁷

In other words, Fazlur Rahman considers slavery as a part of the Arabs' life-world at the time of revelation, which reflected inevitably in the first world of the holy text. However, the laws of slavery in the Qur'an do not necessarily prove its permanent and unconditional approval by God. Here, on the basis of justice criterion, it can be judged that the slavery laws should not be claimed as belonging to the second world of the text. Thus being Muslim does not require submission to these laws.

Similarly, one can claim that the Qur'anic verses on "homosexual" conduct are reflections of the particular historical conditions of people in the pre-modern era. In that era, average life expectancy was short and mortality was high. On the other hand, body labor was the most significant productive source militarily and economically. A greater number of children was associated with more power and wealth. Reproduction gradually turned out to be a moral virtue in the value system of pre-modern societies. In the Qur'anic passages as well as the Old Testament, the very first prayers of prophets to God were to be granted lots of children. On this basis, in pre-modern moral and legal systems, the sexual act had merely instrumental value, and its most important function was reproduction. Thus any form of sexual act with no children resulting was deemed morally inappropriate. For example, masturbation, anal sex with women, use of birth control methods, as well as sexual relations with same-sex individuals was viewed morally and religiously a sin.

Abundant reproduction was essential to the survival of the human species, defending the integrity of the society, and a flourishing economy. This exigency was reflected in

87 Rahman, Fazlur, *Islam*, 2nd edition, Chicago: University of Chicago Press, 1979, pp. 38-39.



the value system of society in the form of sanction and condemnation of any sexual act that did not lead to reproduction.

But in the modern era, the average life expectancy of humans has increased multiple times, and the role of body labor in economic and military affairs has dramatically declined. Further, the birth rate is several times higher than the death rate. The modern era is the age of human population explosion.

In the modern era, henceforth, reproduction is not necessarily regarded as a virtue, and the ultimate goal of sexual relations has changed from reproduction to pleasure or mutual understanding. This evolution has presented itself in the value systems of the modern world as well.

In the modern value system, moral condemnation of sexual activities that do not lead to reproduction has been gradually denied or questioned. One can assume that the provisions on homosexuality in the Qur'anic narrative reflect the value system of the Arab culture at the time of revelation. Since in the modern era, the situation has changed so significantly that the provisions fail to reflect the *ratio* (the reason why a provision is being enunciated), the law/provision must change accordingly. On this ground, one may argue that there is no need to follow the archaic value system any longer, and it is neither justifiable nor just to apply such a value system to human life in the modern era.

In sum, if Muslims conclude that discrimination on the ground of sexual orientation and identity is unjust, and that Qur'anic legislation on homosexual conduct is not open to being reinterpreted, then they can view these provisions, similar to the laws about women and slaves, as belonging to the first world of the sacred scripture. Therefore, one can remain a devout Muslim while denying the extension or application of those laws to the modern era.

IV.

Suppose that one believes the apparent meaning of the Qur'anic verses on the condemnation of "homosexuality" is not open to reinterpretation; one also strongly believes that the content of these verses belongs to the second (rather than the first) world of the Text, and is thus essential to the Qur'anic message. For these people, homosexual conduct is deemed as absolute sin; a devout Muslim as such must submit him/herself to the words of God, and avoid such activities. If so, will the debates on the rights of sexual minorities, at least from a religious perspective, end? In my view, the answer is still no.

In my opinion, the Qur'anic narrative of Abraham's reaction to the fate of Lut's people is very much illuminating. As the Qur'an states, when angels informed Abraham about



the fate of Lut's people, and reported that God would descend his wrath upon them, Abraham argued with God concerning the people of Lut⁸⁸: "Then, when the fear left Abraham and the good news came to him, he pleaded with Us for Lot's people, for Abraham was forbearing, tender-hearted, and devout. 'Abraham, cease your pleading: what your Lord has ordained has come about; punishment is coming to them, which cannot be turned back.'"⁸⁹ The ponderable point in the Qur'anic narrative is that Abraham was forbearing and compassionate toward the people who committed multiple grave sins, and were condemned to divine unavoidable punishment. He did plead with God to forgive them. And more importantly, God did not reprimand him for defending those people. On the contrary, He praised him for his patience and compassion for the sinful.

Abraham's manner is a great lesson to the people of faith and virtue to show patience and compassion to the sinful, particularly those whose sins do not harm others. Aversion towards sin should not prevent the man of faith to exercise compassion towards the sinner.

V.

In conclusion, Muslims who consider discrimination on the ground of sexual orientation and identity unjust, inevitably face this question as to whether it is possible to interpret the Qur'an as divine word consistent with sexual justice. If the reasoning presented in this paper could be considered reliable, the claims below would be acceptable:

First, it seems that the Qur'anic verses on condemnation of "homosexual" relationships are not explicit and unequivocal, and if they were, the potential for reinterpretation would be available.

Second, even if the claimed apparent meaning of the Text were not open to reinterpretation, Muslims still could consider the content of those verses as a reflection of people's culture at the time of revelation, and hence, one can remain a devout Muslim, while questions the authority and application of those verses in the modern era.

Third, even those who consider "homosexual" conduct a definite and absolute sin, they (following Abraham's footsteps) ought to adopt patience and compassion toward the "sinners," particularly when the "sin" does not harm others, and avoid humiliation and use of violence against those whom they consider as "sinners."

⁸⁸ Some commentators have claimed that Abraham in fact stood up to defend Lut and his family rather than the People of Lut. However, this interpretation is extremely questionable. The author of *al-Mizan* also strongly believes that "in these verses, Abraham intended to defend people of Lut; not Lut, himself." The translation of *al-Mizan*. Vol 16, p. 185, and Vol 10, p. 486 & 530.

⁸⁹ Hud, 74-76.



Homosexuality in the Traditional *Ijtihadic*⁹⁰ Paradigm

Sh. M.

The Main Question

Is there any way to legitimize homosexual conduct on the basis of Islamic jurisprudence (*fiqh*) in Iran?

On the basis of traditional *Ijtihadic* paradigm, I would argue for this potential in Islamic jurisprudence. This argument is silent about the permissibility of sexual practice by other sexual minorities including bisexuals in Islam. It might even sound as if Islam negates their rights. For the purpose of the examination of the definition of other terms (e.g. bisexuality) and that of human rights of other sexual minorities, further research should be conducted in the Islamic jurisprudence. The focus of this paper is only on the homosexuality in Islam.

A particular reading of Shi'a Islam, which is dominant in Iran's judiciary system, condemns homosexual relations as a punishable offense as well as a sin. I would argue, however, that it is possible to prove (1) the need for the examination of homosexuality as a *modern* concept by Muslim jurists; and (2) that homosexual conducts could be permissible in Islam and thus homosexuals would be permitted to act upon their sexual orientation.

An extensive Islamic literature including the *Usul-i Kafi*,⁹¹ dealing with the

⁹⁰ In Shiite jurisprudence, *ijtihad* means the examination of Islamic sources by a religious scholar to find out the religious rules that is applicable to particular situation. It is a form of legal reasoning that is used to find out solutions to questions affecting the Muslim community. For more information in this regard, please see the detailed analysis of the definition of *ijtihad* in the Wikipedia of *fiqh* (in Persian): <http://www.wikifeqh.ir> (accessed May 8, 2015).

⁹¹ *Usul-i Kafi* is the first of a three-part book written by Mohammad-ibn- Yaqub-ibn Ishaq, one of the most prominent Shiite Scholars. This book one of the key references for all Shiite scholars. A more detailed explanation of *Usul-i Kafi* is available on the article on Wikipedia entitled "Shiite" (in Persian): http://fa.wikishia.net/%D8%A7%D8%B5%D9%88%D9%84_%DA%A9%D8%A7%D9%81%DB%8C (accessed May 8, 2015).



Islamic jurisprudence (*fiqh*)⁹² issues, presents critical remarks on sodomy (*lawat*) and same-sex conduct between two women (*musahaqah*). Multiple arguments have examined this dilemma from two perspectives: A cluster of critical arguments consider homosexual conduct as an act condemned by God and a punishable offence or a sin threatened by punishment after death. According to other arguments, *lawat* and *musahaqah* are also crimes punishable by law, which should be imposed by the Imam or a judge trained in jurisprudence (*hakem-i shar'*).

In the broader picture, it can be understood that the Qur'an condemns the people of Lut due to their evil doings on diverse grounds. In addition, the reason for the Qur'an to decry their sexual acts is that those sexual activities were conducted just for the purpose of lust (and not as an inborn/natural drive). They were engaged in sexual conduct with men while they had sexual tendencies towards women as well. The Qur'an, therefore, describes them as the ones who exceed limits (*musrifun*).

While these two perspectives might be complementary, the premises on which their relevant arguments rest are different. If homosexuality would not be deemed a sin, the legal system would not enforce any punishment against it. Therefore, the decriminalization of homosexual behaviors requires that they would not be defined as a sin, and, thus, no religious prohibition would be imposed on them. On the other hand, however, Muslim scholars may define same-sex conduct as an unforgivable sin; while similar to gossiping, it is argued, no penal law would have to be enforced against it in the Islamic jurisprudence. Or some Muslim scholars might believe in this Islamic principle that *hadd* punishment must be suspended in the absence of infallible Imam. These principles and views allow us to justify sexual freedom in general.

This essay aims to prove that Islam does not consider homosexual act as a sin; thus it would not be punishable by law, regardless of whether one believes that the imposition of *hadd* punishment during the occultation of infallible Imam is allowed or not.

⁹² Figuratively, *fiqh* means: knowledge about Islamic legal rulings from their sources.



Subject in a Legal Statement

Every Shari'a-based legal statement consists of a "subject"—the matter dealt with as a dilemma—and an Islamic ruling (*Hokm*). In order to draw inference about homosexual acts and render a Shari'a ruling on it, a jurist must comprehend the subject matter very well. If not, he will err. For instance, usury (*riba*) is forbidden and considered a major sin according to Islamic economic jurisprudence. However, the permissibility or prohibition of bank interest in Islam is surrounded by heated debates among Muslim scholars. Due to the vagueness of the definition of the concept of *riba*, the general consensus (*ijma'*) among Muslim scholars equating *riba* to banking interest is still questionable. This example shows how a careful examination of each concept is central to issuing the proper relevant Shari'a ruling. This example and many others that contain subjects of apparently similar nature reflect the influence of temporal and spatial contexts on how various deeds could be perceived differently under diverse circumstances and labels, and thus would be subject to diverse rulings.

Homosexual conduct is a similar issue. In order to render the proper religious ruling on homosexual relationships, the first step is to comprehend this concept in the context of Islamic scriptures.

Most Muslim jurists do not differentiate between male homosexual conduct and sodomy (*lawat*). Therefore homosexual acts are believed to be sinful, prohibited acts. But, are these two phenomena really identified as equivalent in Islamic scriptures such as the Qur'an and *hadith*?⁹³

A particular reading of Shi'a Islam, which is dominant in Iran's judiciary system, condemns homosexual relations as a punishable offense as well as a sin. I would argue, however, that it is possible to prove (1) the need for the examination of homosexuality as a *modern* concept by Muslim jurists; and 2) that homosexual conducts could be permissible in Islam and thus homosexuals would be permitted to act upon their sexual orientation.

Islamic scriptures provide critical arguments against same-sex sexual acts in at least two different contexts: One is in the context of the Islamic jurisprudence (*fiqh*) and Shari'a rulings about sodomy (*lawat*), and the other is in commentaries (*tafsir*) on the Qur'an.

⁹³ Islamic narratives, sayings or aphorisms from the prophet and Shi'a Imams.



The Qur'an provides statements only about *lawat* (not *musahaqah*). It is important to understand the Qur'anic account on *lawat* within the context of temporal and spatial circumstances in order to issue the accurate ruling on this matter. Otherwise, erroneous rulings might be issued, which will substantially affect the rights of people.

Qur'anic verses on *lawat* have been presented in the context of the story of the Prophet Lut mentioned in numerous *surahs* in the Qur'an. To understand the broader picture, these stories should be examined in an integrated context. While the Qur'an describes the people of Lut and condemns various misconduct and sins committed by them, the Muslim scholars' commentaries on this story focus on their sexual acts (sodomy), and other sins of theirs receive minimal attention in these interpretations.

Qur'an describes the people of Lut as the ones who rejected God's messengers.⁹⁴ These people are also described as the ones with proclivity to commit theft and other crimes as well such as highway robbery and performing shameful acts in public, as mentioned in one place in the Qur'an.⁹⁵ But their major crime, frequently mentioned in the Qur'an, was same-sex relationships, and then defiance. When Prophet Lut warned his people about divine retribution, they challenged him to bring it on.⁹⁶ The people of Lut also demonstrated the desire to rape the travelers and tourists and anticipated to do so with Lut's guests as well. This act is measured an extremely disgraceful act (grave sin) according to the Qur'an's view. The people of Lut rejected his warning.⁹⁷ "And (Lut) did warn them of Our Punishment, but they disputed the warning."⁹⁸ The Qur'an also mentioned the word "*lawat*" in many other *surahs* such as al-Naml and al-A'raf, and decried it as one of the sins committed by the people of Lut. In al-A'raf, the Qur'an says: "Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people." In this verse, "with desire" means that the people of Lut committed this act lustfully and without any other drive. It could also mean that these people were trapped by their desire and lust; the Qur'an, thus, describes them as transgressors: "And leave what your Lord has created for you as mates? But you are a people of transgressing." The Qur'an calls those who committed it as the ones who exceed limits (*musrifun*)⁹⁹ and transgress boundaries (*Qaumun 'Aadoon*).¹⁰⁰

⁹⁴ Qur'an, al-Shuara, 160.

⁹⁵ Qur'an, al-Ankabut, 29.

⁹⁶ Qur'an, al-Ankabut, 29.

⁹⁷ Qur'an, al-Qamar, 33.

⁹⁸ Qur'an, al-Qamar, 36.

⁹⁹ Qur'an, al-A'raf, 81.

¹⁰⁰ Qur'an, al-Shu'ara', 166.



In the broader picture, it can be understood that the Qur'an condemns the people of Lut due to their evil doings on diverse grounds. In addition, the reason for the Qur'an to decry their sexual acts is that those sexual activities were conducted just for the purpose of lust (and not as an inborn/natural drive). They were engaged in sexual conduct with men while they had sexual tendencies towards women as well. The Qur'an, therefore, describes them as the ones who exceed limits (*musrifun*).¹⁰¹

In order to elaborate and elucidate on the situation of Lut's community and their act of sodomy, it is also significant to evaluate the Islamic quotes or narratives (*riwayat*) in addition to the Qur'an. This requires thorough research, as it deserves, which is not the aim of this essay. I am, however, going to glean some of those quotes in Shi'a accounts of Islam for the purpose of this paper.

The significant features of homosexuality include lack of attraction to the opposite sex, that homosexuals are born to their sexual orientation, and that they have found this in themselves since they have become aware of their sexuality. Sexual orientation in homosexuals functions differently from that in the people of Lut, who just lustily approached their same-sex while they could have approached women. Those people were not born with a tendency of engaging in same-sex conduct.

First, let's review a number of narratives about the people of Lut. In the books such as *Bihar-al-Anwar*¹⁰² and *Jame' Ahadith-Alshi'a*,¹⁰³ there are two accounts of the story of Lut community and their act of sodomy. In both accounts, it was Satan who led those people astray to fall in his trap. Both accounts, therefore, condemn sodomy (*lawat*) as a despicable act. In addition, *lawat*, in both accounts, is defined as a sexual act with 12 to 16-year-old male youths.

According to these narratives, people of Lut became so used to this sexual act that

¹⁰¹ Qur'an, al-A'araf, 81.

¹⁰² *Bihar-al-Anwar (Sea of Light)* is a 110 volume collection of hadith by renowned 17th century Shiite scholar Allameh Majlesi. For more information, see Ansari, Nasiruddin, undated, "Bihar al-Anwar: The Most Comprehensive Encyclopedia of Islamic Sciences", <http://www.imamreza.net/eng/imamreza.php?id=3200> (accessed May 8, 2015).

¹⁰³ *Jame' Ahadith-Alshi'a* is a 31- volume compilation of hadith published in 1961 under the supervision of Grand Ayatollah Seyed Hassan Tabatabai. For more information, please see the Shiite Wikipedia's entry for this book (in Persian): <http://fa.wikishia.net/>



they would not approach their women; rather they intended to fulfill their desires and lusts with under-aged young men, which is presented in Qur'an as a transgression.

In many other Shi'a narratives on the prohibition of sodomy, the terms of *amrad* (handsome beardless youth) and *ghulām*¹⁰⁴ (young servants with new beard over their lips) have featured prominently. For example, in the book, *Mustadrak al-Wasa'il-ush Shi'a*,¹⁰⁵ in the section of prohibition of sodomy (and other acts such as lustful touching), only the terms of *amrad* and *ghulām* have been applied to underline the ones with whom same-sex conduct is forbidden. Also, one of the *riwayāt* (sayings) cites Prophet Muhammad: "whosoever kisses a youth with sexual desire, God will throw him to Hell."

The author of *Bihar al-Anwar* draws our attention to another narrative on the conversation between Ja'far ibn-i- Muhammad (the sixth Shi'a Imam) and a believer who inquired as to why sodomy was prohibited. A Muslim asked the Imam: "why is sodomy forbidden?" The Imam responded: "because if sexual intercourse with young males would have been permissible, then men would not approach women, and as a result the reproduction of offspring would cease to continue and lots of horrible outcomes would emerge."¹⁰⁶ This narrative indicates that the Imam's mindset on the prohibition of sodomy focuses on sexual conduct with young males and not among adult men. As indicated, the analyses of many narratives elucidate that in any context where sodomy is discussed, it refers to sexual acts with male teens.

The concept of sodomy, according to Islamic scriptures, has two components: (1) The conduct of the act, which is sexual intercourse with male teens, and (2) the purpose of the act: which is for pleasure. According to the Qur'an and Islamic narratives, the reason for condemning the community of Lut was their acts to gain more sexual pleasure while they could approach women for the same purpose.

However, these two components are not available in what is understood as homosexuality in the present day. Homosexuality is defined as natural and inborn sexual orientation according to modern science.¹⁰⁷ The significant features of

¹⁰⁴ The plural form of it is *ghilmān*.

¹⁰⁵ *Mustadrak al-Wasa'il-ush Shi'a* is a 18-volume book of *hadith* compiled by Hossein al-Nuri al-Tabarsi, a prominent 19-century Shiite scholar. You can find out more about this book on Shiite Wikipedia's entry for Mirza Husayn Nuri : http://en.wikishia.net/view/Mirza_Husayn_Nuri (accessed May 8, 2015).

¹⁰⁶ Majlisi, Mohammad Baghir, *Bihar-al-Anwar*, Beirut: Dar al-ihya al-turat al-Arabiya, 1983, Volume 10, p. 181.

¹⁰⁷ The American Psychological Association, "Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts," 2009, <http://www.apa.org/about/policy/sexual-orientation.aspx> (accessed May 8, 2015).



homosexuality include lack of attraction to the opposite sex, that homosexuals are born to their sexual orientation, and that they have found this in themselves since they have become aware of their sexuality. Sexual orientation in homosexuals functions differently from that in the people of Lut, who just lustily approached their same-sex while they could have approached women. Those people were not born with a tendency of engaging in same-sex conduct. This is the reason why the Qur'an calls people of Lut as the ones who exceed limits (*musrifun*).¹⁰⁸ Homosexuals, however, would not be categorized as *musrifun* because they are born to and act according to their sexual orientation.

Another *hadith* also evidently focuses on the inborn nature of homosexuals' sexual orientation: "Amro says: I told Imam Jafar ibn-i Muhammad that such person was a mature adult but invited people to himself [for sex], verily God afflicted him.¹⁰⁹ Imam asked me: does he invite people to himself in Jāme' mosque? I said: No. He said: does he do this at the door of his house? I said: No. Then, he said: so, where does he do this? I said: in his private. Imam said: so, God has not afflicted him. He is a man of lust and pleasure, and will not sit on heavenly rugs."¹¹⁰ The analysis of this conversation illustrates the mindset of the Imam and the believer clearly. The believer asks about the situation of a mature adult man who invites people to himself for sexual pleasure. In their conversation, neither Imam nor the believer used the term "sodomy." Therefore, according to this narrative and with respect to others mentioned earlier on the meaning of sodomy, it can be surmised that sodomy is the term applied to underscore the sexual acts with young men.

Also, according to this narrative, the Imam's questions from the believer shows the difference between a person who is "afflicted by God" and the one who engages in homosexual conduct lustfully and only for the purpose of pleasure.

This story also illustrates that there are some people who are mature adults (not youth), but they are "afflicted" and cannot hide their sexual orientation. They are *born* to their "affliction." These people cannot "choose" their sexual orientation and, therefore, should not be blamed or punished for who they are sexually.

The above analyses of the Islamic narratives and the Qur'anic accounts indicate that homosexual conduct is different from sodomy. These two separate matters, therefore, demand two different rulings.

¹⁰⁸ Qur'an, Al-Iraf, 81.

¹⁰⁹ This means he was *born with* his sexual orientation.

¹¹⁰ This *hadith* is cited in multiple Shiite sources.



Religious Sources on Homosexual Conducts

The previous section illustrated that homosexual activities differ from sodomy in the context of the Qur'an and the Islamic narratives. Also, there is a rule in the Islamic jurisprudence that every matter demands a religious law. It is thus essential to conduct research on religious sources for jurisprudence in order to apply this law to homosexual acts.

The principal sources in Shi'a jurisprudence are: 1) the Qur'an, 2) *sunnah* (the examples set by the Prophet and Shi'a Imams), and 3) reason. The first two sources, initially, must be referred to in the process of *ijtihad* to infer the right ruling on an issue. But if a jurist is unable to draw the right religious ruling, then he refers to reason to render the right ruling for believers.

As for homosexual relationships, with respect to their definition as explained earlier, no clear and authoritative statement or ruling can be found in the Qur'an and *sunnah*; therefore, the third source, reason (*'aql*) should be referred to. While reason is acknowledged as a source of *ijtihad* in Shi'a jurisprudence, and there is consensus among Shi'a scholars about reason as a religious principle source, the current traditional *ijtihad* schools in Iran do not prioritize it in the process of *ijtihad*.

It is said that man is civil, or social, by nature (*al-insan madani bi't-tab'*). This means that s/he by nature has this proclivity to be related with others in different dimensions of life. But, on a deeper level, most people seek to have a special relationship which could result in feelings of security and tranquility for them. In heterosexuals, the sexual relationship with the opposite sex is a physical relationship in which the sexual and emotional needs of the heterosexual person can be satisfied.

Rational judgment or ruling is essential as the foundation of religious ruling.¹¹¹ Rational judgment is divided into "independent rational judgments (*mustaqillat-i 'aqliyah*) and dependent rational judgments (*mustaqillat-i qair-i 'aqliyah*)." According to Mozaffar, dependent rational judgment is a conditional proposition with religious statement as its antecedent. The Muslim scholar (*mujtahid*)¹¹² must prove this antecedent when drawing inference to render a proper ruling. Also, every

¹¹¹ Mozaffar, Mohammah Reza, *Osul-al-Figh*, 1st edition, Qom: Ismailiyan Publication, 1991, p. 206.

¹¹² Mujtahid is recognized as an Islamic scholar who is competent in interpreting Shari'a by *ijtihad*.



conditional proposition with a conditional clause of non-religious antecedent is called independent rational judgment because there is no requirement to bring in the religious proof.¹¹³

According to *Mu`tazilah*¹¹⁴ and Shi'a theologians (*mutakallimūn*¹¹⁵), “whatever is ordered by reason is ordered by religion and whatever is ordered by religion is ordered by reason.”¹¹⁶ In accordance with this principle, which is known as the “rule of correlation” (*qa'idah al-mulazamah*), religious laws may be inferred from the sole verdict of reason. There is correlation between the obligatory nature of an act and the obligatory nature of its prerequisite (*Muqaddamah alwajib*). Reason only finds interests (*masālih*) and harms (*mafāsīd*) in any subject or act. These interests and harms will be fundamental for the ruling rendered by Shari'a.

The most significant subject found and recognized by reason is decency/goodness (*husn*) in justice ('adl) and indecency/badness (*qubh*) in cruelty (*zulm*) and injustice. Justice is extensively understood as “placing everything in its rightful place.”¹¹⁷ Any act other than this is considered to be unjust. The verdict of reason on the unjust nature of cruelty, and the decency of justice is not inferred from Shari'a because reason is considered as criterion and scale (*mizān*); thus in accordance with the “rule of correlation” (*qa'idah al-mulazamah*), whatever is ordered by reason is ordered by religion, and whatever is ordered by religion is ordered by reason.

As addressed in the *Usul-i Kafi*, rational goodness equates to any act admired and encouraged by the people of reason and understanding (*uqalā*). However, any act that is disapproved and censured by *uqalā* is defined as indecent. It can be surmised then that a reason-based decent act could rationally be conducted. An indecent act, which is understood by practical reason ('*aql-i 'amali*) as indecent, however, must not be carried out.¹¹⁸

Ruling on homosexual activities should be sought in independent rational judgments (*mustaqillat-i 'aqliyih*). We should thus examine whether homosexual orientation

113 Mozaffar, Mohammah Reza, *Osul-al-Figh*, 1st edition, Qom: Ismailiyan Publication, 1991, p. 173.

114 *Mu`tazilah* (*al-mu`tazilah*) is a theological school of thought within Islam originating in the eighth century.

115 A scholar of *kalām* is referred to as a *mutakallim* (plural *mutakallimūn*) as distinguished from philosophers, jurists and scientists. '*Ilm al-Kalām* (literally “science of discourse”).

116 *kullu ma hakamah bi al-shar' hakamah bi al-'aql and kullu ma hakamah bi al-'aql hakamah bi al-shar'*

117 Sabzevari, Hadiyen-al Mahdi, *Sharho-al-asma- al-hosnna*, Ahlol-bait research and publication institute, digital version: <http://lib.ahlolbait.com/parvan/>

118 Mozafar, Mohammah Reza, *Osul-al-Figh*, 1st edition, Qom: Ismailiyan Publication, 1991, p. 219.



and conduct can exemplify the rule of rational goodness (*husn*) and badness (*qubh*) in order to be able to find the right religious ruling in accordance with rule of correlation (*qaidah al-mulazamah*). In order to make this issue clear, first we should understand what it means to say: “homosexuality is a sexual orientation” and what purpose and qualities, elements and properties distinguish it.

Therefore, I am going to first examine what heterosexuality means among people and what this concept brings to people’s mind customarily.

It is said that man is civil, or social, by nature (*al-insan madani bi ṭ-ṭab’*). This means that s/he by nature has this proclivity to be related with others in different dimensions of life. But, on a deeper level, most people seek to have a special relationship which could result in feelings of security and tranquility for them. In heterosexuals, the sexual relationship with the opposite sex is a physical relationship in which the sexual and emotional needs of the heterosexual person can be satisfied. As the Qur’an¹¹⁹ points to this need in human beings:

“And of His signs is that He created for you from yourselves mates that you may find tranquility in them; and He placed between you affection and mercy. Indeed in that are signs for a people who give thought.”¹²⁰ The point made by the Qur’an is that all humans by nature have this need. This means that *everyone* seeks tranquility as the purpose of their marriage. The emotional and sexual propensities of a heterosexual to his/her opposite sex are deemed so natural that it sounds stupid to ask its cause. Similar to a heterosexual relationship which is regarded natural, homosexual orientation can be considered natural. *Uqalā* would also view this sexual orientation as natural as they also consider that it is a fundamental right of a person to have a close relationship with someone to achieve tranquility.

Now, if *uqalā* approve the naturalness of heterosexuality on the ground of its purpose, then they would also affirm the naturalness of this proclivity or internal sexual orientation on the same grounds as heterosexuality.

On the other hand, as contended earlier, homosexuality is defined as an “innate and natural” sexual orientation. This is the view that psychologists have held over the course of years. The opponents of homosexuality who claim it as an “illness or tragic deviation from natural state for human being,” however, have not substantiated this claim, as far as I know.

¹¹⁹ Qur’an, al-Rum, 21.

¹²⁰ The Arabic transliteration: “*Wamin ayatihī an khalaqa lakum min anfusikum azwajan litaskunoo ilayha wajaAala baynakum mawaddatan warahmatan inna fee thalika laayatin liqawmin yatafakkaroon*”



If these premises imply that homosexuality is neither unnatural nor an illness, and that every homosexual feels its naturalness to himself, then forcing homosexuals to marry their opposite sex [or enter into a heterosexual relationship,] would not serve the purpose of marriage for human beings as stated by the Qur'an: "He created for you from yourselves mates that *you may find tranquility* in them (al-Rum)." A spouse of opposite sex for a homosexual would not offer tranquility to him. This bond even could cause constant psychological and emotional suffering. In addition, sexual satisfaction would not be gained from this relationship.

If *uqalā* agree on the innate nature of homosexuality, then how could they condemn acting on it? Or in other words, is it legitimate to censure the person who did not "choose" his sexual orientation? It is noteworthy that engagement in same-sex *conduct* is a choice, and, hence, it could be condemned, and rendered impermissible. But how could *uqalā* justify this, and forbid homosexuals of acting on their sexual orientation and remain sexually frustrated or lonely? Would the *uqalā* not be blameworthy if they would vex homosexuals on the ground of their innate sexual orientation about which they had never had a choice?

Now, what has been explained so far can be formulated based on the premises below:

First: Human beings are born with a sexual orientation such as homosexuality.

Second: From a scientific perspective, homosexuals are neither deviating from the natural state of human beings nor are they ill; they are born with their sexual orientation.

Third: Prohibition imposed on homosexuals from acting on their sexual orientation causes constant suffering.

What is justice (*'adalah*) on the basis of these premises? According to the third premise, if inhibiting homosexuals from acting on their sexual orientation would result in their perpetual suffering, this would be unjust and cruel (*zulm*). Therefore, if *uqalā* fully hold to these premises, they would not deem homosexuals blameworthy.

Similarly, if these premises would be subjected to reason, it would absolutely affirm permissibility of homosexual conduct. On the basis of rule of correlation (*qa'idah al-mulazamah*), therefore, religion would render permission for homosexual conducts.

With respect to the details mentioned earlier, the next point is that homosexuality is different from what has been regarded as sodomy in the Qur'an and other Islamic scriptures, thereby requiring a different religious ruling (*hukm*). But, if the difference



between homosexual conduct and sodomy is not acknowledged, religious statements cannot overcome “intellective certitude.” (*yaqin-i ‘aqliyyah*). As the contemporary expert scholars in [*usul al-fiqh*] (*al-Usuliyun*) say that: “when the sole verdict of reason (*malzum*) reached certitude about correlation (*mulazamah*) with religious ruling (*lazim*); and if the certainty of the *malzum* would not be questioned, then, certitude about *lazim* is achieved. It can thus be concluded that the absoluteness (*hujjiah*) of any argument (*hujjah*) is proven on the condition of reaching certitude about it as a sufficient criterion. It is not only unreasonable to prohibit reaching certitude but also, by certitude it is possible to prove the certainty of every argument.”¹²¹

Hence, as indicated earlier, from these three premises on homosexual orientation and conduct, *uqalā* would conclude that homosexuality is permissible. To allow them to be who they are would be the implication of the acknowledgment of indecency (*qubh*) in afflictions experienced by homosexuals as a consequence of the anti-homosexual culture of Iran. Justice demands granting homosexuals the freedom to be and act on who they are sexually, and reason cannot refute this argument.

However, *usuliyun* might critique the above argument. According to these experts, the verdict of reason (*hukm-i ‘aql*) on permissibility of homosexuality is not absolute. This verdict, in accordance with *usuliyun*, would be valid, provided that the Qur’an and sunnah would not forbid homosexuality. If homosexuality and sodomy, however, are viewed as the same subject, no intellectual verdict will be valid to grant freedom to homosexuals. In response to this critique, I would argue that the invalidity of intellectual verdict and its absoluteness would be accepted on the condition of availability of a direct order (*nass-i sairh*) from the Prophet (*Shāri’*) on prohibition of homosexuality. Such an order, hence, would undermine the absoluteness and validity of the intellectual verdict on this issue. But, on the one hand, religious statements such as Qur’anic verses and other Islamic scriptures (such as Imams’ quotes or sunnah) on this particular case are ambiguous and indirect. The absolute ruling (*hukm*) on this case, on the other hand, has been found through intellectual argument, and the absoluteness of this ruling has no proportion with the Prophet’s and the Qur’an’s statements, as there is no direct order available in this regard. This absolute verdict of reason, henceforth, according to Mozaffar,¹²² stems from innate reasoning and no argument can invalidate it.

In conclusion, it is noteworthy to highlight that this essay has examined the possibility of legitimizing homosexuality only on the grounds of reason as one of the three principles of *ijtihad*. In order to elaborate on this topic, research on

¹²¹ Mozaffar, Mohammah Reza, *Osul-al-Fiqh*, 1st edition, Qom: Ismailiyan Publication, 1991, p. 127.

¹²² Ibid.



Islamic jurisprudence and sunnah and historical studies are recommended. Historical analysis and research on the Qur’anic verses and narratives in the context of the era of legislation (*‘asri tashri’*) are required to examine the situation of homosexuals. In addition, historical research on the Islamic community after the era of legislation can be used to examine whether homosexual acts were held sinful or even whether this type of sexual behavior was recommended as it is addressed in the Qābūs ibn Wušmagīr’s Will (*Ghaboosnameh*)¹²³ to his son, Gilanshāh. These historical studies would be a precursor to studies in Islamic jurisprudence and research on various hadith including the doctrine of “no damage, no distress (*la zarar, la haraj*),” and the principle of justice. This essay did not address these sources of inference in Islamic jurisprudence. However, research on these sources by others might contribute to the literature aiming to render permissibility to sexual freedom of homosexuals.

It is imperative to note that this article was a concise examination of homosexuality from the “rational reasoning” perspective. The author is of the opinion that prerequisite of a *fiqh*-based research of this subject is a historic study of homosexuality before and during the onset of Islam. Such a historic view can help us better understand and analyze Qur’anic verses and *hadith*. Such a historic overview would also allow us to understand how during certain eras, same-sex relations were not considered taboo, but rather they were encouraged. Qābūs ibn Wušmagīr’s Will (*Ghaboosnameh*) to his son, Gilanshāh, is an example of this.

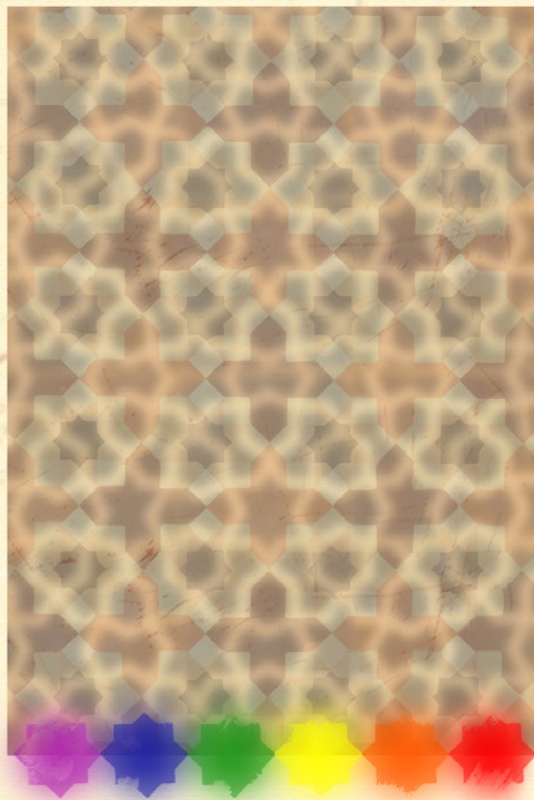
Conducting these historical studies would pave the way for *fiqh* and hadith-based research, which would eventually help us secure religious permission for same-sex relations and homosexuality. In accomplishing this goal, it is equally important to utilize a number of well-established *fiqh* principles, such as the Principle of Fairness,¹²⁴ Principle of No Harm,¹²⁵ and the Principle of No Hardship.¹²⁶

¹²³ *Ghaboosnameh* or the book of Kabus, is a 11th century literary book written by Persian prince, Keikabus, as a guide for his son, Gilanshah.

¹²⁴ *Idalah* in Arabic

¹²⁵ *La-Zarar* in Arabic

¹²⁶ *La-Haraj* in Arabic





Same-Sex Desires and Acts in Islam A Theological Reflection on Kugle's and Naraghi's Approaches

M. Alipour

Introduction

Naraghi,¹²⁷ a Shi'a theologian, and Kugle,¹²⁸ a new convert to Sunni Islam, both engage in an interpretation of the Qur'an, according to which same-sex desires and acts, or 'homosexuality' based on the term used by them, is permissible in Islam or at least it has not been prohibited.¹²⁹ Contrary to patriarchal/traditional commentators, they argue for the potential of providing an interpretation of the Qur'an, or that of Islam in general, according to which, same-sex desire and acts are rendered permissible or at least consistent with Islam. Both Kugle and Naraghi are informed by the Qur'anic verses, particularly the story of the tribe of Lut stated several times in the Qur'an,¹³⁰ and they are aware that these traditional and patriarchal understandings of the Qur'an imply the illegitimacy of same-sex desire and acts in

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- 129 Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), http://www.radiofarda.com/content/o2_arash_naraghi_responses_to_web_readers/2158664.html 9 (Accessed July 2014); Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=449> (accessed July 2014); Arash Naraghi, "A Reflection on Sexual Minorities," 2004, (in Persian), <http://arashnaraghi.org/wp/?p=345> (accessed July 2014); Kugle, Scott, 2007, "Sexual Diversity in Islam" in *The Voices of Islam*. Cornell and Safi (eds). London: Praeger Publishers ; Kugle, Scott, 2014, *Living Out Islam: Voices of Gay, Lesbian, and Transgender Muslims*. New York: New York University Press; Kugle, Scott, 2010, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims*. Oxford: Oneworld Publications.
- 130 Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), http://www.radiofarda.com/content/o2_arash_naraghi_responses_to_web_readers/2158664.html (accessed July 2014); Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), Kugle, Scott, <http://arashnaraghi.org/wp/?p=449> (accessed July 2014); Kugle, Scott, 2007, "Sexual Diversity in Islam" in *The Voices of Islam*. Cornell and Safi (eds). London: Praeger Publishers.



Islam. Both, however, found their arguments on new premises of understanding Islam and the Qur'an, and by citing some traditional Muslim jurists, such as "Ibn Hazm al-Andalusi (994-1064)." These experts argue that these verses do not denote the prohibition of same-sex acts, and that divine wrath descended upon the Lut's tribe was due to a range of actions such as murder and robbery, committed by these people, which constituted their infidelity; also, their grave disobediences included the rejection of Lut's Prophethood and coercive sex or rape.¹³¹ Furthermore, Naraghi explains that even if these verses denote the impermissibility of sexual desires and acts by same-sex individuals, it is possible to interpret this manifestation (*dhohor*); and even if the interpretation is impossible, it is still possible to claim that this Qur'anic verdict (i.e., their *ratio legis*) is contingent (*arazi*) to the religion, thus only belonging to the time of revelation, rather than being intrinsic (*zati*) which refers to instances in all times and places.¹³²

Kugle and Naraghi came to similar conclusions about the permissibility of same-sex desires and acts in Islam. However, they applied two different methodological processes to reach this interpretation.

Kugle and Naraghi came to similar conclusions about the permissibility of same-sex desires and acts in Islam. However, they applied two different methodological processes to reach this interpretation. In the next section, I will examine their methodological processes to show the similarities and differences of these two approaches.

Naraghi's and Kugle's Approaches to Islamic Interpretation of Same- Sex Desires and Acts (Differences and Similarities)

Since Naraghi investigates sexual desires and acts from a philosophical perspective not from within Islamic sources in order to propose a new understanding and interpretation of the Qur'an about the im/permissibility of same-sex desires and acts, particularly with respect to the verses about the tribe of Lut, he outlines multiple philosophical, ethical, and theological principles. Based on one of his principles

¹³¹ Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=93> (accessed July 2014); Kugle, Scott, 2010, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims*. Oxford: Oneworld Publications, p. 49-56

¹³² Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=14> (accessed July 2014).



religions, including Islam, must negate discrimination and pivot around justice. In his earlier article “A Reflection on Sexual Minorities,”¹³³ Naraghi tries to provide a new interpretation of homosexuality beyond religious perspective which accepts or tolerates this issue, implicitly advises the religious scholars to take the philosophical and ethical reflections as serious and rebuild responses to this case that are more compatible with the humane demands and her/his ethical concerns.¹³⁴ According to Naraghi, following this advice is plausible on the basis of independence of “validity of moral judgments — ontologically, epistemologically and psychologically — from divine laws.”¹³⁵ In accordance with this perspective, religious verdicts (Shari’a laws) in every case, such as homosexuality, should be understood as consistent with moral principles or at least, must not be inconsistent with morality. Further, with a much stronger systematic argument and by applying the ‘liberation theology,’ Naraghi makes an effort to discover the rationale behind the Qur’anic approaching the historical context.¹³⁶

Liberation theology is based on a socio-political movement that some Christian theologians had addressed and applied to rethink their understanding of Christianity and the New Testament in favor of the poor and the oppressed.

Kugle, however, investigates the subject of same-sex desires and acts often from within Islamic sources and scriptures, although he tries not to value patriarchal interpretations of Islam, and remain adherent to liberation theology method. Kugle, as an expert in theology, evaluates the ideas of traditional scholars on multiple grounds including interpretation (*tafsir*), tradition (*sonnah/hadith*), jurisprudence (*figh*), and morality.

¹³³ Arash Naraghi, “A Reflection on Sexual Minorities,” 2004, (in Persian), <http://arashnaraghi.org/wp/?p=345> (accessed July 2014).

¹³⁴ Arash Naraghi, “A Reflection on Sexual Minorities,” 2004, (in Persian), <http://arashnaraghi.org/wp/?p=27> (accessed July 214).

¹³⁵ Arash Naraghi, “Reflections on a critique,” 2006, (in Persian), <http://arashnaraghi.org/wp/?p=577> (accessed July 2014).

¹³⁶ Arash Naraghi, “Qur’an and the Rights of Sexual Minorities,” 2010, (in Persian), http://www.radiofarda.com/content/o2_arash_naraghi_responses_to_web_readers/2158664.html/ (accessed July 2014); Naraghi, Arash, 2010, “Qur’an and the Rights of Sexual Minorities,” (in Persian), <http://arashnaraghi.org/wp/?> (accessed July 2014).



Naraghi's Ethical – Philosophical Approach

Liberation theology is based on a socio-political movement that some Christian theologians had addressed and applied to rethink their understanding of Christianity and the New Testament in favor of the poor and the oppressed. These theologians countered church (particularly the Catholic church) monopoly as the only source of understanding and interpretation of the holy book, which had resulted in regulations and laws only in favor of the dominant groups. Others including the oppressed and the poor, thus, found this opportunity to read and interpret the holy book for themselves. This understanding even could be different than the church's rigid interpretation and official readership.¹³⁷ Among Muslim scholars, Farid Esack is one who offers a liberating interpretation of the Qur'an or Islam.¹³⁸

Based on liberation theology, Naraghi believes that justice is the spirit of the Qur'anic culture and that Muslims' understanding of the Qur'an must pivot around justice as one of the most significant principles. Hence, from the moral viewpoint, according to Naraghi, any interpretation tolerating discrimination on the basis of sexual orientation is inappropriate. A Muslim should try to understand the Qur'anic passages on same-sex desire and acts consistent with the principle of negation of discrimination against sexual minorities.¹³⁹

To understand the Qur'anic teachings on same-sex desires and acts, Naraghi as a philosopher of religion emphasizes the following principles:

1. Ethics is reason-based, prior to, and independent of religion.¹⁴⁰
2. The principle of justice should be laid out as an essential principle in understanding the Qur'an.¹⁴¹
3. It is always necessary to rethink, rebuild, and refine the understanding of

¹³⁷ To become familiar with this movement, see "A Concise History of Liberation Theology," <http://landreform.org/boff2.htm>, undated, (accessed May 8, 2015).

¹³⁸ See Esack, Farid, 2002, *The Qur'an: A Short Introduction*. Oxford: Oneworld Publications; and Esack, Farid, 2005, *The Qur'an: A User's Guide*. Oxford: Oneworld Publications.

¹³⁹ Arash Naraghi, 2010, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian) <http://arashnaraghi.org/wp/?p=1> (accessed July 2014).

¹⁴⁰ Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=449> (accessed July 2014); Arash Naraghi, "Reflections on a critique," 2006, (in Persian), <http://arashnaraghi.org/wp/?p=1> (accessed July 2014).

¹⁴¹ Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), http://www.radiofarda.com/content/o2_arash_naraghi_responses_to_web_readers/2158664.html/ (accessed July 2014); Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=1> (accessed July 2014).



religion, including Islam.¹⁴²

4. The age of patriarchal interpretation of the Qur'an is over.¹⁴³
5. Some Islamic laws are intrinsic (*zati*) to Islam and are applicable to all times. However, some are contingent (*'arazi*) and are true only in a specific period, i.e., the time of revelation.¹⁴⁴

According to these premises, Naraghi¹⁴⁵ proposes a new interpretation based on which human rights and dignity of sexual minorities must be observed.¹⁴⁶ To prove the Qur'an's openness and consistency with human rights of sexual minorities, Naraghi (2010b, 2) examines two different approaches: positive (*ijabi*) or maximum consistency, and negative (*salbi*) or minimum consistency.¹⁴⁷ Contrary to commentators who provide patriarchal interpretation of the Qur'an, Naraghi claims that there is no Qur'anic direct text on prohibition of same-sex desires and acts. The Qur'anic narrative condemns abomination (*al-fahishah*) committed by the tribe of Lut; and according to Naraghi,¹⁴⁸ based on several reasons, "abomination (*al-fahishah*)" is not associated with homosexuality.

Therefore, on the one hand, Naraghi is aware that many of traditional exegetists believe that the Qur'anic verses on the tribe of Lut denote the negation of same-sex desires and acts. And it seems that these verses, at least, preliminary imply prohibition of such desires and acts. On the other hand, previously, Naraghi, prior to, and independent from religion, explained that homosexuality is not necessarily inappropriate. Also, according to Naraghi, the Qur'an should not impose discrimination and unjust acts against people on sexual grounds. How can this preliminary dilemma be answered? In order to reach a consistent understanding of the

¹⁴² Arash, Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), http://www.radiofarda.com/content/o2_arash_naraghi_responses_to_web_readers/2158664.html (accessed July 2014).

¹⁴³ Ibid.

¹⁴⁴ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=12> (accessed July 2014).

¹⁴⁵ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=1> (accessed July 2014).

¹⁴⁶ Ibid.

¹⁴⁷ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=2> (accessed July 2014).

¹⁴⁸ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), http://www.radiofarda.com/content/o2_arash_naraghi_responses_to_web_readers/2158664.html (accessed July 2014).



Qur'an with negation of discrimination on the basis of sexual orientation, Naraghi tries to resolve the dilemma between the ethical approach and the preliminary understanding of Qur'an by applying two methods: the first method provides an interpretation of the Qur'anic verses which is distilled from sexual and gender discrimination. In this method, the exegetist obliges the "positive or maximum consistency." The second method applied by Naraghi suggests that those Qur'anic verses with implications of sexual discrimination belong to the past, and cannot be applied to the issues in the contemporary era.¹⁴⁹ In this method, the interpreter needs to reach "negative or minimum compatibility."

Based on liberation theology, Naraghi believes that justice is the spirit of the Qur'anic culture and that Muslims' understanding of the Qur'an must pivot around justice as one of the most significant principles. Hence, from the moral viewpoint, according to Naraghi, any interpretation tolerating discrimination on the basis of sexual orientation is inappropriate.

Through the deployment of the first method and on the basis of extra- and inter-textual evidences, Naraghi analyzes the verses on Lut community and tries to show that the Qur'anic narrative on the tribe of Lut does not condemn same-sex desires and acts.¹⁵⁰ He eventually concludes that first, while the story of Lut's community condemns sodomy (*lawat*), it does not condemn homosexuality as a modern concept, and second, even if we accept that some evidence can substantiate these verses, that evidence can be easily reinterpreted.

Then, by applying the second method and with the negative or minimum consistency, Naraghi tries to provide another solution for this dilemma. According to this method, Naraghi assumes that the Qur'anic verses condemn same-sex desire and acts, and that these verses cannot be reinterpreted. He suggests that, similar to the approach of a cluster of Modern Muslim intellectuals, such as Fazlur Rahman, to the cases such as polygamy and slavery, it is possible to apply the second method called "historical empathic critique of scripture," and examine the Qur'anic verses about the tribe of Lut. According to this method, it is possible to consider the Qur'anic verdicts on homosexuality, women, polygamy, and

¹⁴⁹ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=2> (accessed July 2014).

¹⁵⁰ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=11> (accessed July 2014).



slavery, as a reflection of Arabs' culture that entered the Qur'an at the time of revelation, and thus, are part of the "first world" of the holy text;¹⁵¹ these are the verdicts that are contingent to religion (*'araziat*). With this approach, a believer can remain a devout Muslim without being submissive to all those laws.¹⁵²

The essence of liberation theology, for both Kugle and Naraghi, is the negation of discrimination on each and every ground, and in consistency with justice. But neither of these scholars clarifies tools and methods used by liberation theology to reach a new understanding. Furthermore, neither Kugle nor Naraghi elucidates the similarities and differences of liberation theology and traditional methods, and how they might be conversant to each other.

Eventually, Naraghi understands that some believers/commentators might not accept the possibilities of these two methods, and would believe in unconditional inconsistency of the Qur'anic verses with same-sex desire and acts, and thus in condemnation of homosexual desire and acts by the Qur'an; these believers, according to Naraghi, may consider those Qur'anic passages as the ones which cannot be interpreted because they would argue that those verses convey a message that belongs to the second world of the holy text (*zatiat-i din*). In this case, Naraghi advises these believers to adopt a tolerant approach and, in the same line with Abraham, be patient and empathetically treat homosexuals and not to be "eager towards punishing the sinful," particularly the "sin" which doesn't hurt others... and "avoid humiliation and violence towards them."¹⁵³

¹⁵¹ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/> (accessed July 2014).

¹⁵² Arash Naraghi, "Qur'an and the Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=14> (accessed July 2014).

¹⁵³ Arash Naraghi, "Qur'an and Rights of Sexual Minorities," 2010, (in Persian), <http://arashnaraghi.org/wp/?p=15> (accessed July 2014).



Kugle's Theological Approach

Kugle, on his behalf and occasionally on behalf of homosexual Muslim activists, explains that debates about homosexuality in Islam must be centered around liberation theology, which has the potential to create and expand new horizons in discovering and interpretation of Islamic scriptures and resources on homosexuality.¹⁵⁴ Kugle considers liberation theology as an approach to understand the religion as a “distinct way of talking about God,”¹⁵⁵ and believes that with this method it is possible to work “from within religious traditions to stand against the drive to power of patriarchal and priestly elites who speak for those traditions.” Consequently, Kugle considers that, contrary to patriarchal interpretation, it is possible to reach a different understanding of Islam. Kugle’s progressive approach to interpretation rests on seven principles:¹⁵⁶

1. The inherent dignity of all human beings as bearing the breath of God;
2. The sacredness of life such that all persons may pursue the highest spiritual aspirations of well-being in this world and salvation in the next;
3. The ethic of pluralism;
4. Order with justice;
5. God’s speech is meaningful;
6. Faith complements reason, such that the Qur’an must be understood in the light of observed experience, scientific exploration, and reasoned argument about human nature;
7. Love is the goal.

Then, Kugle examines the tools of interpretation of the Qur’an. According to Kugle, prior exegetists have applied some of these tools in their process of interpretation; Modern Muslim intellectuals have also added to the toolbox, later. These tools include:

“(1) Striving for linguistic accuracy so that all interpretations of the Qur’an that conform to the grammatical conventions of Arabic are

¹⁵⁴ Kugle, Scott, 2014, *Living Out Islam: Voices of Gay, Lesbian, and Transgender Muslims*. New York: New York University Press, p. 47.

¹⁵⁵ Kugle, Scott, 2010, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims*. Oneworld Publications, p. 37.

¹⁵⁶ *Ibid*, p. 41.



possible and constitute authentic meanings of the text; (2) maintaining the Qur'an's primacy – in its own use of language, its own retelling of narratives, and its own principles – rather than falling back on cultural prejudice, pre-Islamic patterns, or related scriptural traditions; (3) affirming the Qur'an's integrity, so that its interpretation will not be limited to a word-for-word translation, a phrase-by-phrase explanation, or a verse-by-verse assertion but will refer back to other uses of terms or ideas in the whole Qur'an; (4) clarifying the Qur'an's context, for, though scripture is eternally relevant, the context in which the Qur'an was revealed shapes the language and form in which its message is expressed; (5) focusing on principles, because ethical principles are the core of the Qur'an's guidance, and interpretation brings them forth from the language of the Qur'anic message; (6) restraint in imposing rules until one has fully explored whether a rule is in accord with underlying principles conveyed in the Qur'an; and (7) embracing moral optimism, for our understanding of the Qur'an is not determined solely by the technical tools of interpretation (like grammar, linguistics, Arabic poetry, history of the early Islamic community, and comparison with other scriptures) but is also shaped by our attitude"¹⁵⁷

Relying on modern science and results of scientific tests, Kugle argues that homosexuals are born to their sexual orientation (and that their sexuality is part of their inherent personality), and thus they are an example for the Qur'anic teaching of diversity and difference in humanity and human society.

With these principles and tools in mind, Kugle examines the Qur'anic verses including Hujurat 13, Shoura 8, Rum 22, Nisa 4, and, following Khaled Abou El Fadl, indicates that the Qur'an has accepted diversity in humanity as part of God's creative will.¹⁵⁸ Sexual and gender multiplicity is also part of this diversity and thus Qur'anic verses on acceptance of differences in humanity should embrace it too. It is noteworthy that according to these verses, the valid and accepted diversity is the difference on the basis of nature and God's creation. Now, is homosexual orientation and activity compatible with this natural diversity based on the creation? Kugle's

¹⁵⁷ Ibid, pp. 41-42.

¹⁵⁸ Ibid, pp. 43-44. Also see Abou El Fadl, Khaled, 2002, *The Place of Tolerance in Islam*. Boston, MA: Beacon Press.



answer to this question is yes. Relying on modern science and results of scientific tests, he argues that homosexuals are born to their sexual orientation [and that their sexuality is part of their inherent personality], and thus they are an example for the Qur'anic teaching of diversity and difference in humanity and human society.¹⁵⁹ With this perspective, Kugle, similar to some previous intellectuals, such as Ibn Hazm, tries to reinterpret the verses on the tribe of Lut. However, his interpretation does not pivot around their same-sex proclivities and acts. In fact, according to Kugle, divine wrath over people of Lut was not only due to their same-sex acts, but it was a consequence of their disbelief (*kufir*), denial of Lut prophecy and other evil doings. And even if their same-sex conduct is also to be considered as one of their grave sins, it is clear from the textual and external evidence that their grave sins were not confined merely to this act known later as sodomy (*lawat*) in the Islamic jurisprudence, but it included rape and lustful acts while they were married to their wives too.¹⁶⁰

Kugle knows that in order to find Islamic perspective and verdict (*hukm*) about same-sex desires and acts, the mere understanding and interpretation of the Qur'an is not sufficient. Although the Qur'an is the first and most superior Islamic source, there are other reasons and sources which should be examined. These sources include the reports attributed to the Prophet Muhammad (*sunnah*), legal reasoning by analogy (*qiyas*), and the consensus of jurists (*ijma'*). Therefore, he tries, by conducting research in these sources, to explicate that these sources are also open to valid and positive interpretation of same-sex desires and acts.

In the chapter on *sunnah/hadith*, Kugle first explains that all reports (*hadiths*) on same-sex desires and acts are solitary reports (*khobar al-wahid*) which means they have a chain of transmission that, at some point, relies on the word of one narrator unconfirmed by any other. Thus there is no *hadith mutawatir* (with successive and multiple chains of narration). Second, none of these reports (*hadiths*) are reliable, whether due to defective chain (e.g. fabricated chain or unreliable narrators) or weak text owing to conceptual ambiguity, contentious text due to lack of embedded information, or misapplication of the context.¹⁶¹

In addition, these reports (*hadiths*) by themselves suffer from so much conflict and inconsistency. Also, the study of oral *sunnah* based on the prophet's life

¹⁵⁹ Ibid, pp. 45-48.

¹⁶⁰ Ibid, pp. 49-56.

¹⁶¹ Kugle, Scott, 2007, *Sexual Diversity in Islam* in *The Voices of Islam*. Cornell and Safi (eds), London: Praeger Publisher, p. 150; and Kugle, Scott, 2010, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims*. Oneworld Publications, pp. 84-124,.



found no *hadith* about the Prophet punishing an individual in an actual historical event. Therefore, no reliable story about punishing of same-sex conduct remained. Rather, the only context-rich report of punishment is *hadith* received from the companions of the Prophet (Muhammad's disciples and the later followers of those disciples). The logic of the proper punishment have been applied by them is legal analogy with fornication (*zina*). Thus, it can be concluded that penalty for homosexual intercourse is also death.¹⁶² But since the reliability of this logic in analogy of adulterous heterosexual intercourse and homosexual penetration was not established, therefore it is not possible to accept their *ijtihad* (independent or original analysis based on intellectual effort and ethical discretion) in the interpretation of religion.¹⁶³

Kugle also examines homosexual desire and acts, known as sodomy (*lawat*) and *musahaqah* in the Islamic jurisprudence from traditional scholars' perspective. Kugle explains the numerous serious conflicts and contentious nature of classical *fatwas* on same-sex desires and acts. However, by entering in *jurisprudential* debates of various Islamic schools of thought and examination of their reasons and approach towards homosexual acts and desire, he challenges those approaches, and makes an effort to provide counter-arguments to traditional interpretations of the Qur'an by reminding of his previous argument that the Qur'an does not condemn homosexual acts and desire. Also, in response to traditional arguments on the basis of reports (*hadiths*), Kugle re-quotes his argument that they are not reliable to confirm the im/permissibility of same-sex desires and acts. Logic of *qiyas* and analogy, according to Kugle, also cannot be applied and relied on.¹⁶⁴ The only source remaining is consensus (*ijma*) as an independent reason. Applying examples of contentious historical debates among Muslim jurists, Kugle argues that it is impossible to arrive at a meaningful consensus.¹⁶⁵

Critical Reflections on Naraghi's and Kugle's Methodological Process

Although the prominent strengths of research by Kugle and Naraghi can inspire future research, some Methodological limitations challenge these theories' adequacies. Here, I try to address adequacies and limitations of Naraghi's and Kugle's approaches:

¹⁶² Ibid, 2010, pp. 98-100.

¹⁶³ Ibid.

¹⁶⁴ Ibid, pp. 145-146.

¹⁶⁵ Ibid. pp. 167-172.



1. Kugle and Naraghi have applied liberation theology as the foundation of their research. This foundation strengthens both methods. Naraghi lays out the *priori* premises, which are critical to classical understanding of the Qur'an. Similar to Naraghi, Kugle also outlines such principles. Naraghi, however, tries to illustrate the relation of these *priori* premises to the understanding of the Qur'an, while Kugle does not clarify how and for what purpose he applies these principles. To establish his argument, Kugle deploys *ijtihadic* method (traditional method of understanding Islam). It is not clear, however, how this method speaks to liberation theology, for him.
2. The essence of liberation theology, for both Kugle and Naraghi, is the negation of discrimination on each and every ground, and in consistency with justice. But neither of these scholars clarifies tools and methods used by liberation theology to reach a new understanding. Furthermore, neither Kugle nor Naraghi elucidates the similarities and differences of liberation theology and traditional methods, and how they might be conversant to each other.
3. Both Kugle and Naraghi, whether they were aware of each other's study or not, have conducted an in-depth research on the Qur'anic verses about the tribe of Lut. By cultivating the story of that community, they have made efforts to discover denotative, connotative and implicit prims of these verses. In this process, both scholars challenged the traditional commentaries of the Qur'anic passages on the story of Lut community, and produced a new and more consistent interpretation with history of Lut's community. This exegesis suggests openness and flexibility of the Qur'an about homosexual desire and acts.
4. Research on Islam and Islamic exegesis requires proper tools and methods. *Ijtihadic*¹⁶⁶ method, as a unique technique, has been widely accepted among Muslim intellectuals to discover and understand Islamic teachings. *Ijtihadic* method has the potential to accommodate critical perspectives,

166 It should be noted that there are, at least, two different analyses of *ijtihad* among Muslim scholars. In the first analysis, *ijtihad* is a method to endeavor to derive Islamic laws of Shari'a from reliable sources, such as Qur'an, *hadith/ sunnah* (oral tradition of the prophet/ the prophet's example), consensus (*ijma*), and reason ('*aql*). In the second description, *Ijtihad* consists of drawing on personal opinion (*ra'y*) or analogy (*qiyas*) in cases that are not covered by the Qur'an and *hadith*. Shiite scholars do not believe in the second meaning of *Ijtihad*. Sunnite scholars, on the other hand, while holding both meanings to be true, emphasize for *ijtihad* the second one, i.e., *qiyas* or personal opinion. (see Al- Jassas, Ahmad Ibn Ali, 1994, *Al- Fosul Fi al- Usul*, Ed. Ajil Jasim, Vol. 4, Kuwait: *Wezarat al- Oghaf*, p. 23 and 273; *Ibn Qudameh al- Maqdasi, Moaffaq al- Din*, 2002, *Rozat an- Nazir va Jannat al- Manazir*, ed. Abdal Karim Namlh, Vol. 2, Beirut, Lebanon: *Moassasah al- Rayan Lettebat va an- Nashr*, pp. 333-4 and 338-41).



models and new apparatuses, and thus commands widespread allegiance of Muslim intellectuals. It is thus critical for researchers to apply this method, positively (*thobutan*) and substantively (*ithbatan*). It is positively (*thobutan*) essential because reason and Shari'a, both, support it. Also, substantively (*ithbatan*), it is fundamental, because it facilitates a dialogue with traditional scholars.

Therefore, in accordance with *ijthadic* methodology, a Muslim scholar should not limit his religious understanding of the problem of homosexuality, to the Qur'anic passages about the tribe of Lut. But, s/he should examine each and every religious source to reach a new interpretation. Without a thorough examination, no exegesis is reliable and trustworthy; because a reliable argument or religious verdict is the one, which is also supported by other religious sources than the Qur'an including reports (*hadiths*), consensus (*ijma'*) and reason (*'aql*). In order to reach a reliable ruling on a subject, these sources too must be examined alongside the Qur'an. Kugle, in contrast to Naraghi, has applied this method in his research, and methodologically, this is his strength.

5. One of the inadequacies of Kugle's methodology is his Sunni-inspired approach to *hadith*, which is different from Shi'a for several reasons. While Sunnis claim that there is a century-long gap between oral and written *sunnah/hadith*, Shi'a scholars assert that infallible Imams made the continuation and connection of oral and written *sunnah/hadith* possible. Shi'as, thus, created the science of codicology (*'Ilm al-Fihrist*) alongside the science of narration (*'Ilm al-Rijāl*). Historical codicology traces the documents and reports to the age of the Prophet. Sunnis never adopted this approach to *hadith* because until the time of the second Caliphate, they were prohibited from writing down the *sunnah* and *hadith*.¹⁶⁷
6. To reach a new understanding of the Qur'an, Kugle's arguments pivot around the significant principle of the need for consistency of religious interpretation with new scientific findings; and Naraghi's argument's emphasis on the independent status of ethics and its primacy over religion. From Kugle's perspective, the incompatible Qur'anic interpretations with scientific findings are invalid. According to Naraghi, the inconsistent interpretations with moral principles are not reliable. These views could be reliable if we would believe in non-paradigmatic nature of science—meaning that we would view science absolutely free of predispositions,

¹⁶⁷ My notes from the class with Ayatollah Sayyid Ahmad Madadi. To become familiar with his views, you can visit Ayatollah Madadi's website (in Persian), <http://dorous.ir/persian/article/8762/> (accessed March 2015).



methodological bias, motifs, etc.—and thus would believe in non-paradigmatic ethics and science. In the present day, however, the philosophy of science poses questions about the non/paradigmatic nature of science and its findings. Since the middle of the twentieth century, the paradigmatic nature of science has been accepted by a wide array of philosophers of science, feminists, critical paradigm thinkers, interpretive paradigm thinkers, and Christian scientists. From this perspective, we may not provide a general thorough discussion about ethics and science. When we discuss ethics, these questions can be posed: which paradigm of ethics? Also, when we discuss sciences such as biology and/or psychology, the questions about their specific paradigm to which they are affiliated might be posed.

7. As indicated earlier, Kugle's and Naraghi's approaches are essentialist. Essentialism is unable to support itself, according to a cluster of intellectuals.¹⁶⁸ Additionally, it limits these approaches to permissibility of only *homosexual* conduct, in Islam, among other types of sexual activities. Kugle's and Naraghi's arguments cannot support bisexuals and homosexuals who do not view their sexual orientation as essentialized (inborn).

Overview to the Paradigm Shift in “Ijtihadic” Hermeneutical Method on Same-Sex Desires and Acts

As indicated in the last section, Naraghi's and Kugle's approaches to Islam and homosexuality are limited by inadequacies. Therefore, I would argue for a new approach inspired by “the *Ijtihadic* Paradigm of Religious Science;” and I name it the “paradigm shift in *Ijtihadic* hermeneutical method on Same-Sex Desires and Acts.”¹⁶⁹

The structure of my approach rests on six premises:

First: I agree with the scholars such as Naraghi and Kugle on the permissibility of same-sex desire and acts in Islam; and that same-sex desire and acts are not inappropriate morally and theologically, and no punishment should be legally rendered upon them. Methodologically,

¹⁶⁸ See David Halperin, 2002, *How to Do the History of Homosexuality*, Chicago: University of Chicago Press; and Anne Phillips, 2010, *What's Wrong with Essentialism?*, *Distinktion: Scandinavian Journal of Social Theory*, 11:1, pp. 47-60.

¹⁶⁹ *Ijtihadic* Paradigm of religious science is a process that I have found in the ground of discovering, understanding and producing Islamic teachings from Islamic resources. To become familiar with this perspective, see: Alipour, M. & H. Hasani, (2010), *The Ijtihadic Paradigm of Religious Science-Persian*, Iran: Howzeh & University Press.



however, I apply a different process than Naraghi's and Kugle's to reach to this conclusion.

Second: The key feature of my approach is its paradigmatic nature; similar to science, its methods and findings, which are paradigmatic in nature.

Third: The paradigm that I apply in my approach to understanding same-sex desires and acts in Islam, is the "paradigm shift in *Ijtihadic* hermeneutical method;" therefore, the macro foundations, general principles, sources, reasons, process of knowledge production, theory and the construction of a model based on relevant foundations and sources, all, are inspired by this paradigm. From this perspective, the knowledge produced by this paradigm can be, qualitatively and quantitatively, distinguished from that of other paradigms.

Fourth: Due to the paradigm shift in *Ijtihadic* hermeneutical method, research on the "philosophy of *Ijtihad*" is required to understand the *ijtihadic* nature of this project. An in-depth understanding of the process of *ijtihad* will be constituted by an argument engaged in the constellation of multiple perspectives including the semantics, epistemology, and ontology of *ijtihad*. The philosophy of *ijtihad* guides us to distinguish paradigm of *Ijtihad*, process of *Ijtihad*, and methodology of *Ijtihad* from each other. In the next step, the philosophy of *ijtihad* presents an opportunity for discursive dialogue with the traditional method of *Ijtihad*; and thus, a possibility for assessment and critique, and for offering alternative perspectives.

Fifth: Being inspired by the paradigm shift in *Ijtihadic* hermeneutical method, this research endeavors to examine foundations, principles, and methods of multiple Islamic schools of thought. It also tries to assess them on the basis of adequate resources and reasons of this paradigm, to provide a perspective which is substantively (*ithbatan*) more effective, and epistemologically more truthful. Beyond essentialist and constructivist epistemologies, the paradigm shift in *Ijtihad* will enable the scholar to analyze the im/permissibility of both homosexual and bisexual desires and acts.

Sixth: As mentioned, paradigm shift in *Ijtihad* substantively has more potential than the two methodological processes discussed above to engage in dialogue with traditional scholars.



These debates, regardless of the production of religious science or knowledge, aim to open new gates for Islamic communities and Muslim believers, and thus invite sexual minorities to tranquility and peace. Secondly, they seek to provide a ground for decriminalization of homo/bisexual acts and desires in the Islamic Penal Code. This goal would be fulfilled only by creating a discourse consisting of elements also accepted by traditional theologians. This method, thus, will pave the way for traditional scholars to understand this modern subject in detail and issue new fatwas in favor of sexual minorities.

Conclusion

This paper endeavored to discuss multiple views on im/missibility of same-sex desires and acts in Islam. It shows that permissibility of same-sex acts and desire in Islam is plausible. The research on the permissibility of same-sex or homosexuality in Islam would pave the way for the examination of religious perspectives about homosexuals' marriage, commitments and contracts in these relationships as new life styles, and the potential for their recognition.



Chapter 3

Socio-Political Approaches



Iranian LGBT Movement Without B

Zeynab Alsadat Peyghambarzadeh

Bisexuality has received minimal attention from the Persian media and journals on LGBT human rights in recent years. Iranian bisexuals have no voice of their own and have been judged based on homosexuals' stereotypes. This paper aims to present and examine the existing stereotypes and judgmental thoughts about Iranian bisexuals, as well as critical response by bisexuals and some homosexuals to these stereotypes.

The following are the most common clichés about bisexuals in Persian media:

Disregarding Bisexual Category among Other Sexual Minorities' Categories

Persian media have provided little room for bisexuals' independent voice, and homosexuals have primarily represented sexual minorities. One of the most common clichés is that there is no such category as bisexuality among diverse categories of sexualities and sexual practices. The Persian LGBT publications, such as "Cheragh,"¹⁷⁰ "Aghaliat,"¹⁷¹ and the LGBT section of Radio Zamaneh,¹⁷² often claim to represent lesbian, gay, bisexual, and transgender communities, though it is very rare to see them publishing anything on bisexuals. Recently, a Facebook page¹⁷³ has been set up for Iranian bisexuals, though most of its content is either related to homosexuality or transsexuality.

¹⁷⁰ The last issue of *Cheragh* ("lamp" in Persian) was published in November 2008. After that date, the publishers changed the name of the magazine to Neda. The complete archives of the magazine are available online at <http://cheraq.net/> (accessed May 8, 2015).

¹⁷¹ The archives of Aghaliat (minority in Persian) e-magazine are available online at: <http://www.aghaliat.blogspot.com/> (accessed May 8, 2015).

¹⁷² Radio Zamaneh is a Netherland-based Persian radio station. The LGBT section of the radio is available online at this address: <http://www.radiozamaneh.com/category/lgbt> (accessed May 8, 2015).

¹⁷³ The page could, at least until early May 2015, be found at <https://www.facebook.com/iranianbi> (accessed May 8, 2015).



Similarly, many documentaries made in recent years about the Iranian LGBT community, and academic research conducted on this issue, lack any attention to Iranian bisexuals. Among documentaries, one can mention BBC Persian's documentary, "Under the Razor of Gender"¹⁷⁴ and Farid Haerinejad's "Out Of Iran; Iran's Unwanted Sons and Daughters."¹⁷⁵

The scholarly work of historians such as Afsaneh Najm Abadi and Janet Afary shows that similar to other societies, for centuries there have been Iranians who were involved in simultaneous parallel sexual relations with both sexes. Perhaps the only research that has studied Iranian bisexuals as a separate category was conducted by Azadeh Nemati,¹⁷⁶ though their sampling of bisexuals is so small that it is difficult for the findings to be scientifically meaningful.

Persian media have provided little room for bisexuals' independent voice, and homosexuals have primarily represented sexual minorities. One of the most common clichés is that there is no such category as bisexuality among diverse categories of sexualities and sexual practices.

Existing online groups in Persian – including open chat rooms and social network groups – are often dedicated to lesbians, gay men, or transsexuals, and vocationally all of them, but Iranian bisexual men and women have no place in cyberspace where they can discuss their issues in Persian.

Perhaps these realities have prevented many people to come out as "bisexual" in cyberspace, and can explain why prominent Iranian LGBT activists rarely identify themselves as bisexual.

The same logic goes with a human rights report that has addressed the LGBT situation in Iran. In a 2010 report of Human Rights Watch (HRW)¹⁷⁷ about the situation of

¹⁷⁴ BBC Persian's Documentary "Under the Razor of Gender" is about sex-reassignment surgery in Iran. The documentary was made available in Persian on YouTube on November 9, 2014 at this address: <https://www.youtube.com/watch?v=08UeMed-T3s> (accessed May 9, 2015).

¹⁷⁵ The Persian version of Farid Haerinejad's 2013 documentary, "Out of Iran" is available in full-length on YouTube: <https://www.youtube.com/watch?v=TsPHc3hfGnU> (accessed May 9, 2015).

¹⁷⁶ Nemati, Azadeh, et al, *A Comparison of Early Maladaptive Schemata among Homosexual, Bisexual and Heterosexual People in Iran*, 2014, *Journal of Gay & Lesbian Mental Health*, 18.

¹⁷⁷ Human Rights Watch, "We Are a Buried Generation," 15 December 2010, <http://www.hrw.org/>



the LGBT community in Iran, bisexuals were described and judged by homosexuals. However, this report asserts that individuals from every category among sexual minorities, including bisexuals, were interviewed. Additionally, the report cited a bisexual category twice and each time, it inserted homosexuals' judgments about bisexuals without offering any critical examination of their views.

In the HRW report, either bisexuality is being used by Iranian psychologists to oppress homosexuals or bisexuals are defined as homosexuals who are married and claim that they are bisexual. In the first case, Farrokh, a 28-year-old gay male from Karaj, told Human Rights Watch "his parents took him to a series of psychiatrists and psychologists after he told them that he was gay."¹⁷⁸ As the report continues, according to Farrokh, some of these specialists were self-styled "Islamic psychiatrists" who convinced him that he was not homosexual: "When I was 17 years old my parents took me to a psychiatrist, in part because they suspected I was gay. I told my psychiatrist that I thought I was gay and he told my parents [about my confidential conversation with him]. It was very unprofessional of him to do this. They started pressuring me. Then they took me to an Islamic psychiatrist who told me I had an illness but that I could get better ... By the time I was 21 they had convinced me that I was, in fact, bisexual. Everyone is bisexual, they said. 'If you want you can be a heterosexual.'"¹⁷⁹

If from these psychologists' perspective, everyone is bisexual, then, how can an individual decide to become heterosexual and not to remain bisexual? In the same report, Shadi, a 23-year-old lesbian, said: "There are a lot bisexual women in Iran who are actually lesbians, but they have to be bisexual in order to survive."¹⁸⁰

Also, the HRW report states "Several lesbians who spoke to Human Rights Watch said that many married women in Iran who had relationships with women on the side did not self-identify as lesbians but thought of themselves as bisexuals."¹⁸¹

From this perspective, the category of bisexuality does not exist, and even a number of Iranian homosexuals argue in favor of removing bisexuality as an independent category within the Iranian LGBT community. Examples of this

reports/2010/12/15/we-are-buried-generation-0 (accessed August 10, 2014).

¹⁷⁸ Ibid, p. 39.

¹⁷⁹ Ibid, p. 39.

¹⁸⁰ Ibid, p. 77.

¹⁸¹ Ibid, 75.



debate can be seen in the post on the Small Media Facebook page.¹⁸² Also, some activists call themselves LGT rights activists.¹⁸³

Although judging by its name, the International Gay and Lesbian Human Rights Commission is thought to only defend homosexuals' human rights, it has addressed the issues of other sexual minorities in a number of its publications. But, even in those publications which bring bisexuals to the attention of the reader, this sexual minority has been dismissed at some points. For example, in one of the booklets¹⁸⁴ which addresses bisexuals as well, under the section discussing the strategies of defending the rights of sexual minorities, bisexuals have been given no specific attention. In page 39 of this booklet,¹⁸⁵ the author asserts that most women whose husband files a complaint with the court for having extramarital same-sex relations are homosexual. This assertion has disregarded another possibility, as a number of these women might be bisexual too.

Bisexuals are also disregarded in most of these publications,¹⁸⁶ which provide advice for the legal defense¹⁸⁷ of LGBT community members arrested.

Iranian bisexuals have no voice of their own and have been judged based on homosexuals' stereotypes.

¹⁸² An example of this argument was made on the 17 March 2012 post on the Facebook page of Small Media, regarding LGBT. This post is available to members only. Small Media's Facebook page is available at: <https://www.facebook.com/SmallMedia> (accessed May 9, 2015).

¹⁸³ Shadi Amin, "Lesbophobia and Feminism: an interview," 17 May 2012, (in Persian) <http://www.radiozamaneh.com/43632> (accessed May 9, 2015).

¹⁸⁴ IGLHRC, "How to Cover LGBT Issues; A Guide for Persian Media Professionals," 1st edition: 2013, (in Persian) http://iglhrc.org/iran/fa/Fa_Publications_MediaGuides (accessed January 19, 2015).

¹⁸⁵ IGLHRC, "How to Effectively Defend LGBT Clients: A Defense Strategy Manual for Legal Experts in Iran," 1st edition: 2013, (in Persian) http://iglhrc.org/iran/fa/Fa_Publications_Defending (accessed January 19, 2015).

¹⁸⁶ IGLHRC, "How to Document and Report Human Rights Violations: Human Rights Documentation for the Iranian LGBT Community," 1st edition: 2013, (in Persian), http://iglhrc.org/iran/fa/Fa_Publications_Human_Rights_Documentation (accessed January 19, 2015).

¹⁸⁷ IGLHRC, "How to Advocate for Your Legal Rights in Iran: A Defense Strategy manual for the Iranian LGBT Community," 1st edition: 2013, (in Persian), http://iglhrc.org/iran/fa/Fa_Publications_Legal_Self_Defense (accessed January 19, 2015).



Treating Bisexuals as Lustful and Libidinous

Lustful and libidinous actions are stereotypically attributed to bisexuals. Many Iranian homosexuals think that bisexuals often would like to engage in simultaneous parallel relationships with both males and females. For instance, in a discussion on a member-only Iranian female homosexuals and bisexuals' Facebook¹⁸⁸ page in 2012, an individual who identified herself as lesbian stated: "bisexuals want diverse sexual experiences, and after a short while leave their girlfriends; they are not trustworthy." Another lesbian, on the same page, wrote: "when your girlfriend leaves you for a man, it is so painful." Another member of this page, who believed that bisexuals eventually would choose to be heterosexual, stated: "I have never seen an old bi [bisexual]." Another lesbian, contrary to this comment, believed that: "bisexuals, when get aged, would like to engage in relationship with women because they do not find what they want in relationship with a man. Also, a woman can easily fall in love with them and will not lose her interest to them like men. If bisexuals would engage with men, it is because it was easier [to access to a man rather a woman]; their relationship will not last and after a short while, they will need a deep relationship with a woman."

One of the reasons that a group of homosexuals do not include bisexuals in the community of sexual minorities is their assumption that bisexuals conform to social norms, and, hence, are not subjected to discrimination.

One of the lesbian members of this page in response to a bisexual member emphasized that not *all* bisexuals have simultaneous relationships with men and women. She commented: "My dear, I agree with you, and respect you and the community of bisexuals, but there are few number of bisexuals who wouldn't leave their partner and wouldn't engage in a relationship with a lesbian just to have sex. It is two years that I, myself, have been in a relationship with a bi. And I can tell you that I became sometimes naughty [that I wanted to be with someone else] but I can trust that she never did so. This is great. But, not the majorities are like this, my dear. I have seen women who did not like their husband so they become attracted to a girl and after a short while, they forget everything. One of my friends committed suicide after a year because a woman, who wanted to forget her relationship with her ex-boyfriend, started dating her, and unfortunately, the future of a person was ruined [by suicide]."

¹⁸⁸ This Facebook page could, at least until early May 2015, be found at <https://www.facebook.com/iraniabi> (accessed May 8, 2015).



Switching from Homophobic Stereotypes to Biphobic Clichés

Some homosexuals, in their description of bisexuals, resort to heterosexuals' homophobic sentiments and clichés. For instance, the blogger of the blog, "*hamjensgaray e man bavar nakon tanhaeeiat ra*,"¹⁸⁹ identifies bisexuals as "*hamjensbaz*"¹⁹⁰ and states: "*hamjensbaz* or bisexual is a person who sexually engages in same-sex relationship, and emotionally gets involved with opposite sex; in long term, s/he will be attracted to opposite sex and marry him/her. If you ask a *hamjensbaz* to select between a man and a woman, the choice of same-sex partner will be a temporary choice; [this is something that] some psychiatrists identify it as sexual curiosity and some say that the person acts upon his/her same-sex urges because s/he doesn't have access to opposite sex."

This blogger also believes that psychiatrists can "cure" bisexuals. He also states that bisexuals are the addressees of the *Surah* Lut of the Qur'an; the blogger also addresses bisexuals: "O' the ones who are bisexuals, I know that you insult me because your deeds are similar to the people of Lut. The adversaries of homosexuals are due to your inhumane acts. It is because of your acts that nobody would know the difference between homosexuality and *hamjensbazi*, and everyone looks at them the same. But, I think if you become a believer, God will forgive you because Gabriel told Abraham that even if there were only five believers among them, God's wrath would not descend upon them, because people of Lut did not believe in God and his Prophets; they also committed rape against others."

In the Facebook page of RanginKaman radio,¹⁹¹ a homosexual also commented: "I am homosexual not *hamjensbaz*. I am so angry. I am looking for love, not lust. I am 18 years of age, and can handle loneliness, but I hate two things: 1) those *hamjensbaz* who pretend to be homosexual and bisexuals ..." ¹⁹² This post was later removed from this Facebook page.

¹⁸⁹ "My darling homosexual: don't believe your loneliness," a Persian blog deleted from the Iranian blog host company, Blogfa: <http://homosexualman.blogfa.com/post/1>; HomoeTehran Blog, "What does it mean to be a faggot and how is it different from bisexuality," 21 September 2010, (in Persian) <http://homotehran.blogspot.se/2010/09/blog-post.html> (accessed August 10, 2014).

¹⁹⁰ *Hamjensbaz* is a Persian derogatory term to refer to homosexuals.

¹⁹¹ Radio Rainbow (Rnaginkaman in Persian), is an online Persian radio Dario dedicated to LGBT issues. Their website is: <http://www.radioranginkaman.org/> (accessed May 9, 2015).

¹⁹² The Facebook page for the Persian LGBT internet-radio (Radio Ranginkaman) is: <https://www.facebook.com/Radioranginkaman> (accessed May 9, 2015). The deleted post cited here was accessed February 28, 2014.



Bisexuals are not Subject to Discrimination

One of the reasons that a group of homosexuals do not include bisexuals in the community of sexual minorities is their assumption that bisexuals conform to social norms, and, hence, are not subjected to discrimination. For instance, Shadi Amin in an interview with Radio Zamaneh states: “We should speak clearly [as to what group we are speaking about]. We should clarify whether we speak about homosexuals for whom their sexual practice carry the penalty of execution in Iran; or we speak about transsexuals that should go under surgery [for sex reassignment] without any legal process; or we talk about bisexuals who usually live in conformity with social norms while sometimes they are involved in sexual relations with their same-sex. Pressures on each of these different groups, and legal discriminations [against them] are totally different.”¹⁹³

Using a similar logic, a report published by “Justice for Iran” and “6Rang” about forced sex reassignment surgery in Iran, reproduce this stereotype that all bisexuals have a “feminine” appearance and thus are not subject to discrimination.¹⁹⁴ The report only refers to bisexuals in a section about a group of Iranian female football players, who were barred from the team by the Iranian authorities. The report stated: “Furthermore, officials repeatedly refer to female players whose appearance is not typically feminine as bisexual, and subject them to harassment and ban from participation in the games.”¹⁹⁵

Challenging Biphobia

There have been few examples of biphobia being challenged in Persian media. For instance, on March 17, 2012 a debate took place on the member-only section of Small Media’s LGBT Facebook group page about the call to eliminate ‘bisexuality’ from the LGBT. Amir, a homosexual, had shared a blog post he had written on the topic asking, “Can those who say bisexuals should be eliminated from the LGBT community, and we should become LGTs instead, prove that they are not bisexual themselves? Who will determine who is bisexual and who is not? ... One thing is clear: sexual desire for same-sex partner is part of a bisexual’s sexual orientation ... if a bisexual man or woman is attracted to someone from

¹⁹³ Shadi Amin, “Lesbophobia and Feminism: an interview,” 17 May 2012, (in Persian), <http://www.radiozamaneh.com/43632> (accessed May 9, 2015).

¹⁹⁴ 6rang, “Stop Reparative Therapies & Mandatory Sex Reassignment Surgeries: Homophobia, Transphobia and Health Care Abuse in the Islamic Republic of Iran”, June 2014, <http://6rang.org/english/wp-content/uploads/2014/06/Stop-Reperative-TherapiesMandatory-Sex-Reassignment-Surgeries.pdf> (accessed May 9, 2015).

¹⁹⁵ Ibid, p. 14.



the same sex, what is the difference between him/her and a homosexual? ... When you make bisexuality a taboo, and marginalize them, the natural reaction from bisexuals is to keep their sexuality a secret; and do you realize how harmful this could be? Putting pressure on bisexuals to get them to identify themselves [as] homosexual, or to exclude them from homosexual community if they can't identify themselves as homosexuals, will create a phenomenon called 'ex-gay', which will harm the theoretical and political-social status of our community and bring us disrepute."¹⁹⁶ Male and female homosexual bloggers of "*Hamjensgarayan e Tehran va Iran*" (Homosexuals of Tehran and Iran in Persian) consider the term "*hamjensbaz*" as insulting, and believe that this term should not be applied to describe bisexuals.¹⁹⁷

Bisexuals are, more than any other category among sexual minorities, lonely and rebellious. Adherence to inner voice and sense of self as a bisexual is a painful, heroic and tragic action. Bisexual men and women are [considered] so despicable and rogue that it is not easily possible to fit them in a social norm system.

Delaram, a lesbian, also writes in Maha journal:¹⁹⁸ "it is better for us, homosexuals, to put an end to our improper judgments about bisexuals. Aren't we judged improperly in our everyday life? Why should we then judge others unfairly? If you [we] don't, like others, provide improper judgments about us, and you want that they would think about homosexuality [properly], we ourselves should think [about others' sexuality] too and learn more about human [sexual] nature."¹⁹⁹

¹⁹⁶ Small Media, "LGBT Republic of Iran: An Online Reality?" May 2012, <http://smallmedia.org.uk/lgbtrepublic.pdf> (accessed August 10, 2014), p. 82.

¹⁹⁷ HomoeTehran Blog, "What does it mean to be a faggot and how is it different from bisexuality," 21 September 2010, (in Persian), <http://homotehran.blogspot.se/2010/09/blog-post.html> (accessed August 10, 2014).

¹⁹⁸ Maha was an online journal for Iranian LGBT in Persian. Their website was last updated in March 2008, but the entire archives of the magazine is available in Persian at this address: <https://majalehmaha.wordpress.com>

¹⁹⁹ *Maha*, January 2006, Vol. 13, available in Persian at: <http://majalehmaha.wordpress.com/%D8%B4%D9%85%D8%A7%D8%B1%D9%87-%D8%B3%DB%8C%D8%B2%D8%AF%D9%87-%D8%AF%DB%8C-%D9%85%D8%A7%D9%87-1384/> (accessed August 10, 2014).



Sometimes, bisexuals have found an opportunity to defend themselves. Sima, an Iranian bisexual, in an interview with *Cheragh* journal says: “In my opinion, a bisexual might be viewed as a person with more opportunity to select his/her partner but I believe that bisexuals are subject to discrimination, and in some cases, even more than homosexuals.... A bisexual, on the one hand, is considered weird by heterosexuals; and on the other hand, homosexuals view him/her as a heterosexual who is in conformity with [the] majority.”²⁰⁰

An Iranian bisexual also writes in his blog: “Owing to lack of sufficient information and common preconceptions, most homosexuals think that bisexuals are homosexuals who have not acknowledged their sexual orientation yet and/or are not brave enough to identify themselves as gay or lesbian. There are lots of bisexual women who are considered ‘disloyal’ or ‘conservative,’ by lesbians, because they fall in love with men. Bisexuals are, more than any other category among sexual minorities, lonely and rebellious. Adherence to inner voice and sense of self as a bisexual is a painful, heroic and tragic action. Bisexual men and women are [considered] so despicable and rogue that it is not easily possible to fit them in a social norm system. Bisexuals have no room, neither in dominant and rigorous heterosexual culture, nor restricted among the homosexual community. Bisexuals are marginalized in between two subcultures.”²⁰¹

²⁰⁰ *Cheragh* magazine, “An interview with an Iranian bisexual woman,” May 2007, (in Persian), <http://cheraq.net/28/08.htm> (accessed August 10, 2014).

²⁰¹ Shahrokh Raisi, “Bisexuality,” August 2006, (in Persian), <http://www.cheraq.net/19/4.htm> (accessed August 10, 2014).



Iranian's Queer Internet Human Rights Successes and Setbacks

Mani Mostofi

Like all Internet users, lesbian, gay, bisexual, and transgender (LGBT) Iranians go online to access information, communicate and engage with others, and to express themselves. They look for news and helpful life tips, make friends in chat rooms and dating sites, organize gatherings on social media, and share their views in blogs.²⁰² For LGBT individuals in Iran however, access to the Internet and online content is acutely important.

State policies criminalize LGBT activity and speech, which, alongside social norms that stigmatize LGBT people, renders public information about or specifically relevant to minority sexual orientations and gender identities largely inaccessible.²⁰³ When such orientations and identities are discussed publicly it is usually in the form of derogatory speech that contributes to misconceptions and bigotry.²⁰⁴

Spaces for LGBT expression, association, and assembly are dramatically limited and carry social and legal risks, including family disownment, domestic violence, arrest, flogging, and potentially, even death sentences.²⁰⁵ For many, it is difficult to find positive information about sexual minorities.

²⁰² Small Media, "LGBT Republic of Iran: An Online Reality?" May 2012, <http://smallmedia.org.uk/lgbtrepublic.pdf> (accessed August 10, 2014).

²⁰³ Human Rights Watch, "We Are a Buried Generation," 15 December 2010, <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation-0> (accessed August 10, 2014).

²⁰⁴ IGLHRC, Iranian Queer Organization, "Human Rights Violations of People in the Islamic Republic of Iran on the Basis of their Sexual Orientation and Gender Identity: Submission to the UPR," 2014, <http://iglhrc.org/content/human-rights-violations-people-islamic-republic-iran-basis-their-sexual-orientation-and> 2014 (accessed August 10, 2014).

²⁰⁵ Human Rights Watch, "Codifying Repression," 29 August 2012, <http://www.hrw.org/reports/2012/08/29/codifying-repression> (accessed August 10, 2014); Iran Human Rights Documentation Center, "Islamic Penal Code of the Islamic Republic of Iran", <http://www.iranhrdc.org/english/english/human-rights-documents/iranian-codes/index.1.html> (accessed August 10, 2014).



Virtual platforms, though not without risks, serve as a relatively freer environment for LGBT Iranians to seek out information and other LGBT people to communicate with. Internet access—while a right in itself—is a means by which LGBT Iranians successfully access a host of other rights. In this context, Internet freedom should be understood as a core component of the bundle of human rights vital for LGBT people in Iran.

At the same time, authorities are engaged in an aggressive program of limiting Internet freedom, including blocking disfavored websites, restricting social media, regulating content and speeds, and arresting and imprisoning bloggers and netizens.²⁰⁶ These policies hit LGBT Iranians uniquely hard because so much of their public life is by necessity routed through cyber space. In effect, escalations in state control over the Internet are a setback for LGBT Iranians as a whole.

“Not till age 17 did I understand what it meant to be gay and that I am gay,” said Nima a 26-year-old Iranian gay male. “Before that I just saw myself as a sissy or a slut, a faggot. Wealthier families had access to the Internet, but I didn’t. My father considered the Internet as *haram*, even though we had a computer in the house.”

This article will first outline the significant role the Internet plays in the exercise of key rights for LGBT people, namely facilitating identity formation, access to information, access to community and association, and individual expression. Next, we examine how state policies directly undermine those rights for LGBT persons. And lastly, we will look at how Iranian Internet policies undermine the right of sexual minorities to information, expression, assembly, and association.²⁰⁷

²⁰⁶ Ahmed Shaheed, “Situation of Human Rights in the Islamic Republic of Iran,” 4 October 2013, <http://shaheedoniran.org/wp-content/uploads/2013/10/N1350031.pdf> (accessed August 10, 2014); Reporters Without Borders, “Internet Enemies: Iran,” <http://en.rsf.org/internet-enemie-iran,39777.html> (accessed August 10, 2014).

²⁰⁷ While this article does not delve extensively into privacy rights, they are an ever-present issue in LGBT Internet freedom issues and worthy of extensive study.



LGBT Activity Online

Forty-eight interviews with LGBT Iranians serve as the basis for this article and the conclusions held within. These interviews were not conducted originally for this article and interviewees were not asked about Internet use.²⁰⁸ Still, 32 people specifically mentioned going online as a key part of their LGBT experience in Iran. They explained how social media, chatrooms, blogs, websites, Internet searches, or other online platforms helped them navigate various aspects of their lives and meet other LGBT people. In some unfortunate cases, Internet activity also led to confrontation with authorities and arrest.

Of these 42 individuals, 29 are gay men, eight lesbians, seven transgender women, and four transgender men. LGBT rights experts note that Iranian gay men are most active online and lesbians and transgender people less so.²⁰⁹ Still, two transgender men interviewees and six lesbians did provide information about their Internet use.

Not all LGBT association and expression takes place online of course. Queer Iranians have sought ways to connect and speak out long before the Internet existed. Nonetheless, it is fair to say that the Internet, for those with access, has become for many LGBT Iranians an invaluable tool for accessing information, connecting with a community, forming association with other LGBT Iranians, and self-expression.

Identity Formation

For many LGBT Iranians, the Internet plays a pivotal role in their identity formation. The Internet often provides them with access to information, or sound information, about minority sexual orientations and gender identities for the first time in their lives. Interviewees reported seeking information from basic searches, LGBT websites, blogs, and other LGBT Internet-users participating in chat-rooms and social media. As Amir, a 22-year-old gay male from northern Iran, explained:

“When [Iranian President] Ahmadinejad said the term *hamjensbaaz* on television, I remember he used that specific term and not gay. I remember feeling like, oh, that’s me. I was 17. I went on the Internet

²⁰⁸ All interviews conducted by the International Gay and Lesbian Human Rights Commission and the Human Rights in Iran Unit at the City University of New York-Brooklyn College in September 2012 and December 2013.

²⁰⁹ Small Media, “LGBT Republic of Iran: An Online Reality?” May 2012, <http://smallmedia.org.uk/lgbtrepublic.pdf> (accessed August 10, 2014).



and searched to understand the meaning of these terms. Until this speech, I had never had a sexual encounter with a man. In school I had a big crush on one of my [male] teachers even though I didn't even understand what that meant. After exploring the Internet to find out more information on what it meant to be "gay." I found a Yahoo chat room that was specifically LGBT; from there I found others like me."²¹⁰

Like Amir, many others reported searching for terminology and definitions, particularly non-pejorative definitions, related to sexual orientation and gender identity that helped them feel more conformable with themselves. Several interviewees expressed they did not even know there was such a thing as "homosexual," or "transgender people" until they began using the Internet. Often the Internet provided their first exposure to the terminology, or non-derogatory terminology, for same-sex attractions, people with these attractions, or gender non-conformists.

Virtual platforms, though not without risks, serve as a relatively freer environment for LGBT Iranians to seek out information and other LGBT people to communicate with. Thus, Internet access—while a right in itself—is a means by which LGBT Iranians successfully access a host of other rights. In this context, Internet freedom should be understood as a core component of the bundle of human rights vital for LGBT people in Iran.

The notion of online-self-discovery was so prevalent amongst LGBT interviewees that a few specifically mentioned not having Internet access as an obstacle to their identity formation. "Not till age 17 did I understand what it meant to be gay and that I am gay," said Nima a 26-year-old Iranian gay male. "Before that I just saw myself as a sissy or a slut, a faggot. Wealthier families had access to the Internet, but I didn't. My father considered the Internet as *haram*, even though we had a computer in the house."²¹¹

²¹⁰ All interviewees are given pseudonyms to protect their privacy. Interview with Amir, IGLHRC, HRIU-CUNY (September 2012).

²¹¹ Interview with Nima, IGLHRC, HRIU-CUNY (September 2012).



Finding the Community and Going Offline

Going online helps LGBT Iranians learn about and meet other LGBT people “like them,” learning about their lives and experiences and relevant issues to LGBT people in Iran and elsewhere. This process helps them cultivate a sense to membership in a community—local, virtual, or global—and further strengthens their identity. Marjan, a 22-year-old lesbian, provided an illustrative account:

“When I was in high school, I had a girlfriend but I didn’t understand what it meant to be a lesbian. I went on the Internet and found more information on what it meant to be LGBT. When I first started researching, [I remember thinking] ‘oh so this is what I am?’ Until this point, I thought I had a problem, that I was the only one, that I was alone. I read stories about other women and their relationships online. That’s when I realized that I was part of the homosexual community. On the Internet I would read a lot of articles and journals about lesbians. There was an online magazine called *Neda*. [Some of the other] online homosexual magazines that I would frequent were *Mahan* and *Cheragh*; these were more broadly LGBT focused. *HamJenseman* was another and was strictly lesbian. I used to visit *HamJenseman* a lot, but they eventually stopped publishing it.”²¹²

Iran’s 2009 Computer Crimes Law (CCL) criminalizes content deemed “immoral” and sexually “obscene.” Article 14 provides that:

Whoever uses computer systems, telecommunications systems or data carriers to publish or distribute immoral content, or produces or stores them with the intention of corrupting the society, will be sentenced to imprisonment for between 91 days to 2 years or will be fined or both.

The Internet also provides a platform for online association for LGBT Iranians. Chat forums, social media, and dating sites like Yahoo Groups, Yahoo 360, Manjam, and more recently Facebook have been serving as virtual spaces for LGBT Iranians to meet, share ideas, and often organize offline gatherings. As Hadi, a gay male from Tehran describes:

²¹² Interview with Marjan, IGLHRC, HRIU-CUNY (September 2012).



“On Facebook we have a network of gay communities [and] all sorts of online conferences are advertised and information is exchanged and shared.”²¹³

For many interviewees these online associations marked their first encounter with an LGBT community. Raha, a lesbian from Tehran, described her participation in *HamJenseman*, a Yahoo Group, as pivotal to her sense of self and ability to navigate her way through Iranian society as a lesbian.

As Raha recalled:

“The first time I heard the word “lesbian” was from my naughty cousin. We saw two girls in a park and he said they were lesbians. I thought he was talking about porn lesbians and not me. I thought ‘eeeww.’ I thought it was ‘only me’ that was really this way. I was searching on Yahoo and found *HamJenseman*, an Iranian lesbian group. I was excited. I chatted them and I got my first message, which said, ‘we are lesbian women from Iran.’ It explained what they were and it was amazing to me. They were Iranian and they spoke my language. We didn’t talk about sex or dating, we shared ideas about how to cope with our issues as lesbian women in Iran, how to be in society, and deal with our families.”²¹⁴

Several LGBT interviewees described that online groups often transitioned into offline communities in the form of gatherings, parties, and sustained friendships. People also used these platforms to find dates and sexual partners. As Sassan described:

“When I was 15 or 16, I found a gay website and got a response alerting me to [the dating-site] Manjam. At the time I still thought I was the only homosexual in Iran, and that no one else in my city shared the same feelings. We started having small gatherings; we would move from place to place to avoid the authorities. And I realized there is a community. I was exploring; I hadn’t figured anything out yet. I did know the laws, but we weren’t afraid of the authorities; I think we probably felt strength in numbers.”

213 Interview with Hadi, IGLHRC, HRIU-CUNY (September 2012).

214 Interview with Raha, IGLHRC, HRIU-CUNY (September 2012).



Learning about Health and Rights

LGBT interviewees also used the Internet to access information regarding their health. One transgender man discussed how he used a Google Search to learn more about gender confirmation surgery. A gay male shared that, after seeking help from a doctor, he went online to see if homosexuality was a mental disorder and to find a cure.

Three interviewees discussed seeking out information regarding how to address human rights problems they faced. One gay man said that after a friend's arrest he contacted rights groups, including the International Gay and Lesbian Human Rights Commission, to inform them as to what happened and ask what to do. Others reported they learned about the UN's refugee process through Internet searches and online contacts.

Rights groups and UN bodies have consistently raised concerns about state repression and censorship of legitimate online activity: including the arrests of bloggers and Internet users, blocking of websites, and slowing of Internet speeds. In many ways these abuses are reflected in the LGBT context.

Expressing Ideas and Online Activism

Some interviewees also said that the Internet provided a platform to express their ideas about sexuality, gender norms, LGBT rights, and politics to a wider audience. A few tried to engender support for LGBT people in Iran from other non-queer activists. Mohammad, a gay male blogger, explains:

“Writing on my blog was the first time I felt a sense of security. It also gives you a chance to meet others who think like you. Because in our society people like us are invisible. When you create a blog, you also create a larger group of people that interact with you. This creates a sort of illusion that you're changing things. But then through chats and interchanges, you very quickly realize that you cannot change what you thought you could change, and you start to think about the dangers of your involvement. Unfortunately, homosexuality is not treated as a priority issue in the human rights discourse even amongst the opposition groups.”²¹⁵

215 Interview with Mohammad, IGLHRC, HRIU-CUNY (September 2012).



Legal Restriction on Online LGBT Speech and Association

Iranian law outlaws and criminalizes consensual same-sex relations, prescribing flogging and death sentences as punishments. But what about LGBT activity online?

On the surface, laws that restrict Internet use do not specifically and clearly target LGBT speech, association or assembly. Nonetheless, these laws are vague in language and broad in application and have a recognizable impact on LGBT activity online.

Most major social media platforms are blocked in Iran. This includes Facebook, which hosts a large number of Iranian LGBT groups and pages. Facebook, according to LGBT rights experts, is currently the most popular platform used by LGBT Iranians.

Legal Restrictions Impacting Sexuality, Sexual Orientation, and Gender Identity

Iran's 2009 Computer Crimes Law (CCL) criminalizes content deemed "immoral" and sexually "obscene." Article 14 provides that:

Whoever uses computer systems, telecommunications systems or data carriers to publish or distribute immoral content, or produces or stores them with the intention of corrupting the society, will be sentenced to imprisonment for between 91 days to 2 years or will be fined or both.²¹⁶

Article 15 additionally mandates prison or steep fines if "one encourages the public access to immoral content or facilitates access to this content," or "provokes" or "invites" the public to "participate in crimes against chastity ... or acts of sexual perversion."²¹⁷

Notes in the CCL elaborating on these two articles explain that immoral content consists of "pornographic" or obscene content or images, sounds or texts that

²¹⁶ Computer Crimes Law, Article 19, 2009.

²¹⁷ Ibid, Article 15.



depict complete nudity, genitals, or sexual acts.²¹⁸ Despite these notes, the text of articles 14 and 15 are vague and invite overbroad enforcement.

The Commission to Determine the Instances of Criminal Content (CDICC) identifies and blocks sites and articulates censorship standards derived from the CCL. The Telecommunications Company of Iran, Internet Service Providers, and the Ministry of Information and Communication Technology use these standards in determining which online content to block.²¹⁹ The Commission has listed 78 forms of forbidden content, including “stimulation, encouragement, persuasion, threats or invitation to immoral acts, prostitution, [and] crimes against chastity or sexual perversion” as well as redistribution and re-publication of any content that “violates public decency.”²²⁰

Such open-ended prohibitions on immoral, sexual and obscene expression or assembly can be found in other Iranian laws as well. Article 640 of Iran’s Penal Code prohibits anyone from distributing, producing, displaying or otherwise dealing in media such as writing, newspapers, film, or “basically anything, that violates public prudency and morality.”²²¹ Articles 639 also criminalize establishing, facilitating, or encouraging a “place of immorality or prostitution.”²²² Article 6 of the Press law states it is illegal to propagate “obscene and religiously forbidden acts and publishing indecent pictures and issues which violate public decency.”²²³

The CCL and other laws never mention restrictions on LGBT content specifically; however, rights groups have warned that the broad language about “immorality” and “chastity” would likely directly apply to LGBT content in the Iranian context. In Iran, homosexuality and non-binary transgender identities are seen as obscene and a threat to traditional cultural and religious norms. As Ayatollah Sadeq Larijani, head of Iran’s judiciary, recently said, “Based on our religious beliefs, these people (*hamjensbazha*)²²⁴ are not tolerated ... Islam believes in the inherent dignity and innocence of all

²¹⁸ Computer Crimes Law, Notes to Article 14 and 15, 2009.

²¹⁹ Small Media, “Iranian Internet Infrastructure and Policy Report,” June 2014, <http://www.smallmedia.org.uk/content/119> (accessed August 10, 2014).

²²⁰ The List of Examples of Criminal Content can be found on the official website of Iran’s Cyber Police, online: <http://www.cyberpolice.ir/page/2551> (accessed on August 20, 2014).

²²¹ Penal Code of the Islamic Republic of Iran, Article 640, 1996, <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html> (accessed August 10, 2014).

²²² Ibid, Article 639.

²²³ The Press Law, Article 6, 1986, <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/3201-the-press-law.html> (accessed August 10, 2014).

²²⁴ *Hanjensbazha* is the plural form of *hamjensbaz* in Persian, which means faggots



humans, and therefore does not tolerate this filth [i.e. homosexuality].”²²⁵

Officials have also clearly stated that authorities actively try to stop “homosexual propaganda” as a matter of law and policy. The Secretary of Iran’s High Council for Human Rights, Mohammad Javad Larijani, Sadeq Larijani’s brother, explained that, “in our country, homosexuality is a form of sickness. It is illegal to promote homosexuality, and we have strict laws in this regard.”²²⁶ He later noted that, “if someone wants to break the law through homosexual propaganda, or if they want to promote this behavior, our laws have very severe penalties for them.”²²⁷

Together the CCL, Press Law, and Penal Code provide authorities with broad discretionary powers to determine social and sexual morality, censor, and punish legitimate online expression related to sexuality, minority sexual orientation, and non-conformist gender identity. Additionally, Article 639 of the Penal Code effectively empowers authorities to target members of LGBT social media groups and organized community chatrooms for facilitating a “place of immorality.”²²⁸

Legal Restrictions on Civil and Political Expression and Association

The CCL also contains provisions that could be used to target civil-political discourse around sexual orientation, gender equality, or LGBT rights. Article 18 says, “Using a computer or telecommunication system to disseminate lies ... with the intention of damaging the public, disturbing the public state of mind, or that of the official authorities” is punishable by prison or a steep fine.²²⁹

Authorities have used similar provisions in the Penal Code to punish individuals and groups for disfavored expression, association, and assembly.²³⁰ Articles

²²⁵ <http://www.dadiran.ir/Default.aspx?tabid=84&AlbumID=466-1638>

²²⁶ High Council for Human Rights, “Javad Larijani: Human Rights is not the bounty of America and Europe,” 15 March 2013, <http://www.humanrights-iran.ir/news-30829.aspx> (Persian), (accessed August 10, 2014).

²²⁷ Hossein Alizadeh, “UN to Iran: Protect LGBT People. Iran’s Spin Doctor Responds with Bad Medicine,” *Huffington Post*, 1 April 2013, http://www.huffingtonpost.com/hossein-alizadeh/un-to-iran-protect-lgbt-p_b_2984535.html (accessed August 10, 2014).

²²⁸ Penal Code of the Islamic Republic of Iran, Article 639.

²²⁹ Computer Crimes Law, Article 18.

²³⁰ Ahmed Shaheed, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,” 13 March 2014, <http://shaheedoniran.org/wp-content/uploads/2014/03/A-HRC-25-61-updated.pdf> (accessed August 10, 2014); Human Rights Watch, “You Can Detain Anyone for Anything’: Iran’s Broadening Clampdown on Independent Activism,” January 2008, <http://www.hrw.org/reports/2008/iran0108/iran0108web.pdf> (accessed August 10, 2014). NOTE: With the cited HRW report established violations accruing under Iran’s prior Penal Code, national



498 and 499 prohibit establishing, directing, or membership in a group with aims to disrupt national security.²³¹ Article 500 criminalizes “propaganda” against the system and Article 610 prohibits collusion against national security.²³² While these laws seem to implicate national security, they are vague and do not have a clear scope. In practice, authorities have used these laws to punish human rights activism, critiques of the government, minority religious expression, and the organization of gatherings and associations along those same lines.²³³

Given the abusive history of authorities in enforcing security laws, Article 18 of the CCL and similar provisions in the Penal Code could be used to punish online LGBT rights advocacy and even membership in social media groups organized around such a purpose.

Suppression of Online LGBT Activity

Rights groups and UN bodies have consistently raised concerns about state repression and censorship of legitimate online activity: including the arrests of bloggers and Internet users, blocking of websites, and slowing of Internet speeds. In many ways these abuses are reflected in the LGBT context.

International Legal Context

Iran is a party to the International Covenant on Civil and Political Rights (ICCPR) and obligated to protect free expression and access to information (Article 19), freedom of assembly (Article 21) and freedom of association (Article 22)—including online.²³⁴

Article 2 of the ICCPR requires that these and other rights be ensured without discrimination. While Article 2 does not explicitly mention discrimination against sexual minorities—it does mention sex and other grounds for discrimination—the

security provisions remain largely unchanged.

²³¹ Penal Code of the Islamic Republic of Iran, Articles 498 and 499.

²³² Penal Code of the Islamic Republic of Iran, Articles 500 and 610.

²³³ Ahmed Shaheed, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,” 13 March 2014, <http://shaheedoniran.org/wp-content/uploads/2014/03/A-HRC-25-61-updated.pdf> (accessed August 10, 2014).

²³⁴ Frank LaRue, “Promotion and protection of the right to freedom of opinion and expression,” 10 August 2011, <http://www.ohchr.org/Documents/Issues/Opinion/A.66.290.pdf> (accessed August 10, 2014); Ahmed Shaheed, “Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran,” 13 March 2014, <http://shaheedoniran.org/wp-content/uploads/2014/03/A-HRC-25-61-updated.pdf> (accessed August 10, 2014).



United Nations Human Rights Committee, charged with interpreting the ICCPR, has repeatedly made clear that no right found in the Covenant can be denied on account of sexual orientation or gender identity.²³⁵ The United Nation's Special Rapporteur on the right to freedom of opinion and expression,²³⁶ and Special Rapporteur on the rights to freedom of peaceful assembly and of association²³⁷ have affirmed this position.

Iran often invokes “public morality” to justify limitations on freedoms of expression, association and assembly of individuals and organizations. The ICCPR provides narrow “public morality” exceptions found in articles 19, 21, and 22. However, laws restricting these rights must be legally clear and “must themselves be compatible with the provisions, aims and objectives of the Covenant,” and must “not violate the non-discrimination provisions of the Covenant.”²³⁸

The Human Rights Committee, for example, has found that Russia's anti-Homosexual Propaganda law violated the ICCPR, and could not be justified on the grounds of public morality.²³⁹

LGBT Websites and URLs

The Computer Crimes Law and other laws place criminal liability on users, content providers, and Internet Service Provider (ISP) for online content that violates subject matter restrictions. In practice, state censors, and ISPs have blocked over five million websites, with thousands more identified and blocked daily.²⁴⁰

²³⁵ *Toonen v Australia*, Human Rights Committee Communication No. 488/1992, UN Doc CCPR/C/50/D/488/1992 (1994), para. 8.7; Human Rights Committee, Concluding Observations of the Third Periodic Report of the Islamic Republic of Iran, UN Doc CCPR/C/IRN/CO/3 (2011), para. 10, where the Committee reaffirmed that “all of these matters [including discrimination on the basis of sexual orientation and gender identity] fall entirely within the purview of the rights contained in the Covenant.” See also, e.g., *Irina Fedotova v the Russian Federation*, Human Rights Committee Communication No. 1932/2010, UN Doc CCPR/C/106/D/1932/2010, (2012).

²³⁶ Frank La Rue, “Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression”, UN Doc A/HRC/26/30/Add.2 (2014).

²³⁷ Maina Kiai, “2014: The year in assembly & association rights,” 9 January 2015, <http://freeassembly.net/rapporteurreports/2014-year-in-review> (accessed May 7, 2015).

²³⁸ Human Rights Committee, General Comment No. 34 (article 19), at para. 26; see also, General Comment No. 22 (article 18), at para. 8.

²³⁹ *Irina Fedotova v the Russian Federation*, Human Rights Committee Communication No. 1932/2010, UN Doc CCPR/C/106/D/1932/2010, (2012).

²⁴⁰ “Iran Blocking Access to 5 Million Websites,” Radio Free Europe/Radio Liberty, http://www.rferl.org/content/Iran_Blocks_Access_to_5_Million_Websites/1351604.html (accessed August 10, 2014).



The impact of these laws on online LGBT content is quite clear. State censors target the most basic information about sexuality, sexual orientation and gender identify. A study of censorship of the popular online encyclopedia Wikipedia found that 189 Persian-language pages about sex and sexuality are filtered.²⁴¹ This included fairly scientific and academic entries entitled “*hamjensgaraai*,²⁴²” “*transseksuaal*,²⁴³” “*lesbian*,” and “*deegarjensgaraai*.²⁴⁴”²⁴⁵

The test indicated that most blocked Wikipedia articles related to LGBT sexuality, sexual orientation, and minority gender identity were intentionally blocked. However, Iran uses two methods to block online content. The first is to intentionally designate a URL as invalid.²⁴⁶ The second is using keyword filters that indiscriminately block pages based on character patterns in their URLs. Blacklisted keywords include: “*lesbian*,” “*gay*,” and the derogatory term “*hamjensbaz*,” For example, any website with a URL containing the word “*lesbian*” is automatically filtered regardless of content.²⁴⁷ State censors have also blacklisted LGBT keywords in languages other than Persian.²⁴⁸

Another set of tests run on thousands of URLs revealed state censors have restricted both Persian and English LGBT websites, including rights groups such as the Iran Queer Organization, 6Rang, or the International Gay and Lesbian Human Rights Commission; the popular LGBT Iranian blog 5pesar.wordpress.com; and the website for the US-based LGBT magazine *The Advocate* (theadvocate.com).²⁴⁹

²⁴¹ University of Pennsylvania, Human Rights in Iran Unit, “Citation Filtered: Iran’s Censorship of Wikipedia,” 7 November 2013, <http://cgcsblog.asc.upenn.edu/2013/11/07/citation-filtered> (accessed August 10, 2014).

²⁴² *Hamjensgaraai* in Persian means homosexuality.

²⁴³ *Transseksuaal* in Persian means transsexual.

²⁴⁴ *Deegarjensgaraai* in Persian means being queer, though it does not have any negative connotation.

²⁴⁵ University of Pennsylvania, Human Rights in Iran Unit, “Citation Filtered: Iran’s Censorship of Wikipedia,” 7 November 2013, <http://cgcsblog.asc.upenn.edu/2013/11/07/citation-filtered> (accessed August 10, 2014).

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ OpenNet Initiative, “After the Green Movement: Internet Controls in Iran, 2009-2012,” 15 February 2013 (accessed August 10, 2014, <https://opennet.net/blog/2013/02/after-green-movement-internet-controls-iran-2009-2012> (accessed August 10, 2014).

²⁴⁹ Colin Anderson, unpublished proxy tests, on file with author.



Social Media

Much of the LGBT online experience is through social media. For interviewees, the individuals and community found on social media often became their primary source of information regarding sexual orientation, sexuality, LGBT culture, and more. Social media also became the primary platform for association, with semi-organized and fluid groups, and sub-communities often forming around certain identities, issues, or geographies.

Most major social media platforms are blocked in Iran.²⁵⁰ This includes Facebook, which hosts a large number of Iranian LGBT groups and pages.²⁵¹ Facebook, according to LGBT rights experts, is currently the most popular platform used by LGBT Iranians.²⁵² Some Iranian officials, including Iran's new president, have been advocating for unblocking Facebook and other social media.²⁵³ In October 2013, however, CDICC Secretary Abdolsamad Khoramabadi announced that the CDICC has no intention of unblocking Facebook because of continuing concerns over intelligence and criminal content.²⁵⁴

Yahoo Groups has been frequently used by LGBT Iranians, but were restricted in Iran over the last several years by the company itself in an attempt to not violate international trade sanctions on Iran.²⁵⁵ LGBT Iranians reported that in the past, several LGBT Yahoo groups were blocked. Recently, Yahoo announced service to Iran would resume.²⁵⁶

Censors have also blocked the popular, gay male dating site Manjam, which had remained unfiltered for a notably long period of time, leading some in the community to speculate that authorities had allowed access to Manjam so Iranian gay men would expose themselves.²⁵⁷

250 Ahmed Shaheed, "Situation of Human Rights in the Islamic Republic of Iran," 4 October 2013, <http://shaheedoniran.org/wp-content/uploads/2014/03/A-HRC-25-61-updated.pdf> (accessed August 10, 2014).

251 Ibid.

252 Email correspondence with the Iranian Queer Organization, August 2014.

253 "Iran Rethinks Facebook Under Rouhani," Al-Monitor, <http://www.al-monitor.com/pulse/originals/2013/09/iran-reconsiders-facebook.html#> (accessed August 10, 2014).

254 Small Media, "Iranian Internet Infrastructure and Policy Report," June 2014.

255 Lorenzo Franceschi-Bicchierai, "Yahoo Account Policy Hurts Iranians' Free Speech, Activists Say," Mashable, 1 May 2014, <http://mashable.com/2014/05/01/yahoo-iran-email> (accessed August 10, 2014).

256 National Iranian American Council, "NIAC Welcomes Yahoo Decision to Reverse Iranian Email Restrictions," 16 May 2014, <http://www.niacouncil.org/niac-welcomes-yahoo-decision-to-reverse-iranian-email-restrictions> (accessed August 10, 2014).

257 Colin Anderson, unpublished proxy tests, on file with author; Small Media, "LGBT Republic of Iran:



Viber, an Internet-based messaging platform primarily used on smartphones, is also a popular way for LGBT Iranians to communicate directly.²⁵⁸ Earlier this year Viber was briefly blocked inside Iran, but became unblocked after the company made modifications to its system.²⁵⁹

Circumvention and Speed

Website blocking is a notable barrier for LGBT people and other Iranians trying to fully access the Internet. Free expression group Small Media notes that a blocked platform “creates a digital divide. Only tech savvy individuals can access blocked content.”²⁶⁰

Many Iranians employ Internet circumvention tools to access blocked content, including filter-breakers, and virtual private networks (VPNs). Authorities aggressively try to strip users of these avenues as well. For example, in January 2013, ISPs and Iranian authorities started aggressively blocking VPNs that allow users to bypass filters.²⁶¹ Psiphon 3, likely the most popular circumvention tool in Iran, has also come under attack and was blocked for a period of time in February 2014. According to a Fars News Agency article published that month, the CDICC developed plans to block eight major circumvention tools.²⁶²

Additionally, Iranian authorities and ISPs place limits on users’ Internet connection speeds. In fact, Article 24 of the Computer Crimes Law makes the use of international scale bandwidth illegal in Iran without a permit.²⁶³ Even with circumvention tools, slow speeds render many websites, especially advanced one’s like Facebook, difficult and sometimes impossible to use.

“It’s hard to constantly have to keep up with the various filter breakers and proxies. And Internet speed is incredibly slow so it’s even difficult to go on Facebook,” Mohammad, a gay blogger, explained. “This is all to say that I stopped being really

An Online Reality?” May 2012, <http://smallmedia.org.uk/lgbtrepublic.pdf> (accessed August 10, 2014).

258 Email correspondence with the Iranian Queer Organization, August 2014.

259 Small Media, “Iranian Internet Infrastructure and Policy Report,” June 2014.

260 Small Media, “LGBT Republic of Iran: An Online Reality?” May 2012, <http://smallmedia.org.uk/lgbtrepublic.pdf> (accessed August 10, 2014).

261 Small Media, “Iranian Internet Infrastructure and Policy Report,” March/April 2013, <http://smallmedia.org.uk/content/88> (accessed August 10, 2014); Small Media, “Iranian Internet Infrastructure and Policy Report,” June 2014 (accessed August 10, 2014).

262 Ibid.

263 Computer Crimes Law, Article 24, 2009.



active while I was still in Iran because the Internet speed was always very slow and would constantly cut out.”²⁶⁴

Offline Repression

In addition to blocking content, Iranian authorities have directly targeted and arrested LGBT Internet users and used Internet activity as a foundation for criminal charges.

For example, in February 2014, the head of the Cyber Police in Ilam province told the semi-official ISNA news agency that authorities arrested a person responsible for posting gay-related content online and charged him with promoting immorality and homosexuality on social networks. The detainee initially denied all charges but eventually confessed.²⁶⁵

Mohammad said one of the reasons he stopped blogging was because of security risks.

“After I began my blog, I very quickly realized that if you go beyond a certain line in Iran, you are no longer secure. You have to do more than set up a fake identity; the authorities usually know who is behind the blog.”²⁶⁶

Rights groups have reported that security forces regularly monitor social media and popular Internet dating sites in order to lure and entrap unsuspecting gay men.²⁶⁷ Human Rights Watch recorded evidence of such entrapment schemes in Shiraz, Tehran, and Isfahan starting in 2004.

Several of the Interviewees who provided testimony used in this article relayed

²⁶⁴ Interview with Ali Reza, IGLHRC, HRIU-CUNY (December 2014).

²⁶⁵ “Perpetrators of Gay Content on the Internet,” Iranian Students’ News Agency, (Feb. 4, 2014), <http://isna.ir/fa/news/92111510907/%D8%AF%D8%B3%D8%AA%DA%AF%DB%8C%D8%B1%DB%8C-%D8%B9%D8%A7%D9%85%D9%84-%D8%A7%D9%86%D8%AA%D8%B4%D8%A7%D8%B1-%D9%85%D8%B7%D8%A7%D9%84%D8%A8-%D9%87%D9%85%D8%AC%D9%86%D8%B3-%DA%AF%D8%B1%D8%A7%DB%8C%DB%8C-%D8%AF%D8%B1> (accessed March 14, 2014).

²⁶⁶ Interview with Mohammad, IGLHRC, HRIU-CUNY (September 2012).

²⁶⁷ International Gay and Lesbian Human Rights Commission, Iranian Queer Organization, “Human Rights Violations of People in the Islamic Republic of Iran on the Basis of Their Sexual Orientation and Gender Identity: Submission to the UPR,” 2014, <http://iglhrc.org/content/human-rights-violations-people-islamic-republic-iran-basis-their-sexual-orientation-and-2014> (accessed August 10, 2014); Human Rights Watch, “We Are a Buried Generation,” 15 December 2010, <http://www.hrw.org/reports/2010/12/15/we-are-buried-generation> (accessed August 10, 2014).



such experiences. Ashkan recalled his arrest:

“Someone chatted me and described himself as exactly the type of person I liked. So I met him, he was handsome and dressed really well, not wearing a uniform or anything. We met, said hello, turned the street and a car came right beside us and stopped. ... Two men got out put a blindfold me, hand-cuffed me, and put me in the car.”²⁶⁸

One gay male interviewee also reported his participation in Manjam and the fact that his use of the Internet to organize a gathering of gay friends served as part of the basis for authorities charging him with the crime of “establishing place of immorality and prostitution.”²⁶⁹

Conclusion

Sexual minorities in Iran have an important relationship with the Internet. It serves as a conduit to key human rights—expression, association, and assembly—in a context where laws and official policies criminalize LGBT activities, and social norms isolate LGBT persons. By going online LGBT Iranians can express their ideas, access information and communities, and strengthen their identity formation.

The government’s Internet restrictions in the form of censorship, regulating connection speeds, arrests and prosecutions of netizens, and criminalization for a wide range of content, all undermine the ability of LGBT Iranians to access their rights. As such, Internet freedom in Iran should be considered a core LGBT right.

²⁶⁸ Interview with Ashkan, IGLHRC, HRIU-CUNY (December 2014).

²⁶⁹ Interview IGLHRC, HRIU-CUNY (December 2014).



