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## SODOMY: THE GREATER SIN

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### ABSTRACT

Sodomy has always been a well criticized act in the popular interpretation of Islamic, Jewish and Christian religious books. Islam particularly always had highly conservative approach towards it. This has been a major barrier for Islamic nations and others stopping them from decriminalizing it or even substituting it for a lighter punishment. This article seeks to analyze the Islamic view on sodomy. Author later refutes the popularly held notion of it on factual as well as critical basis. We will here be focusing upon the homosexual encounters' bestiality is not discussed in Islamic texts and in this paper as well. The aim is to prove that even the primary religious texts of Islam do not explicitly condemn sodomy.

### SODOMY – A Introduction

Sodomy refers to a sexual act that involves penetration of sex organs into mouth or anus of the other.<sup>60</sup> Sodomy is called "Buggery" in British English. It is a broader term that incorporates approximately all copulation actions that are not procreative in nature. It encompasses the following:

- Deviant sexual action of anal penetration<sup>61</sup>
- Sexually active homosexual relations amongst men
- Sexual encounters with minors<sup>62</sup>
- Oral genital contracts<sup>63</sup>
- Bestiality or Zoophilia (consummation between human beings and animals)<sup>64</sup>

<sup>60</sup> Sodomy, LII / LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/wex/sodomy> (last visited Feb 26, 2023).

<sup>61</sup> Sodomy | sexual behaviour | Britannica, <https://www.britannica.com/topic/sodomy> (last visited Feb 26, 2023).

<sup>62</sup> Id

<sup>63</sup> Id

### ORIGIN OF THE TERM-

The word "Sodomy" is derived from the two cities Sodom and Gomorrah mentioned in Chapter 18 and 19 of Book of Genesis in Bible.<sup>65</sup> "Sin of Sodom," is the God's judgement on the sinful towns of Sodom and Gomorrah. Lot (a Biblical character) extends an invitation to two angels who have been deployed to the cities to spend the night with his family.<sup>66</sup> Lot's home is surrounded by the men of Sodom, who demand that he bring the visitors out so that they may "know" them (a euphemism for sexual intercourse).<sup>67</sup> The Sodomites threaten to "do worse" with Lot than they would with his visitors after Lot insists that the messengers are his guests and gives them his virgin daughters instead.<sup>68</sup> The Sodomites are then blinded by the angels, "so that they would weary themselves to find the door."<sup>69</sup>

### ISLAM ON SODOMY

#### THE COMMON VIEW AND THE RELIGIOUS TEXT

In "Al Quran," the religious text of Muslims, 6 references that has 42 verses could be correlated to homosexuality.<sup>70</sup> In "Hadith", the word "Liawat" refers to sodomy and "Al-Sihaq" is for lesbians. This indicates that lesbians did not come under the purview of sodomy as their sexual encounters do not involve anal penetration. Holy Quran, Surah An-Nisa in 4 verse (1) says that the existence of humans is

<sup>64</sup> Id

<sup>65</sup> The Book of Genesis, [https://www.vatican.va/archive/bible/genesis/documents/bible\\_genesis\\_en.html](https://www.vatican.va/archive/bible/genesis/documents/bible_genesis_en.html) (last visited Feb 26, 2023).

<sup>66</sup> Id

<sup>67</sup> Id

<sup>68</sup> Id

<sup>69</sup> Id

<sup>70</sup> Shahrul Mizan Ismail, *LESBIANS AND GAYS ACCORDING TO INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW*, LEG. NETW. SER., 4.

the result of male and female copulation. Procreation becomes unimaginable in case of the same sex couple.<sup>71</sup> Homosexual acts are considered “Fahisyah” i.e., indecency which covers adultery, bestiality, pedophilia, and homosexuality.<sup>72</sup> Verse 54-58 of “Surah An-Naml” mentions that how Allah condemned, warned and later rained down stones on Prophet Lout’s people who demanded to commit sodomy with angels of Allah.

Imam ar-Rid’a and Imam Ja’far as-Sadiq said that sodomy is the eleventh sin and infact a greater sin than adultery, so it should be retributed accordingly.<sup>73</sup> The latter even said that penetrating anal is a greater sin than penetrating vagina and that Allah destroyed “Umma” of Prophet Lut due to their indulgence in sodomy but did not annihilate a single man for adultery.<sup>74</sup> The Prophets according to Wasa’il ul-Shia (Shiite book on Hadith Islam) say that A person who engages in sodomy with a boy will foster a Janabat (impurity) that is so strong that not even all the water in this world can wash it away.<sup>75</sup> He will experience the wrath of Allah, a curse, and the deprivation of all mercy.<sup>76</sup> In addition, Allah places the person who permits another to mount him from behind in order to commit sodomy on the edge of hell, in sweltering heat until all the people have been counted. He then commands that he be cast into Hell.<sup>77</sup>

Amir ul-Mu'min 'Ali said that a person who has committed this sin must likewise be burned after being put to death.<sup>78</sup> He argues that the homosexual is the only person who should be stoned to death twice.<sup>79</sup> It is considered “haram” to lustfully eye a young boy, who has not yet

developed facial hair. One must also refrain from eyeing children of rich and slaves.<sup>80</sup> All this is considered a greater crime than glaring a girl under veil. According to Imam Ja’far al-Sadiq, the Holy Prophet said, that if someone passionately kisses a young man, Allah will bind a rein of fire to his mouth on the day of judgement.<sup>81</sup> “He will punish the man who passionately kisses a boy for a thousand years in Hell.”<sup>82</sup> Islam prohibits any two people who have attained the age of understanding from sleeping together, if they are not husband and wife.

### **ISLAMIC WAY OF PUNISHING SODOMY: THE SHARI’A**

Shari’a is the “modus operandi” of Islam. It incorporates preaching of Quran and Hadith. Various Islamic scholars (Ulama), debates between major schools of various Islamic jurisprudence, court judgements and customs and traditions shaped and interpreted the Shariat. Laws concerning sodomy and the punishment for it, is mentioned in this. According to Shari’a, marriage is not a sacred bond but a contractual agreement in which the man proved financial assistance in return of sexual exclusivity and access.<sup>83</sup> This concept does not fit in the case of homosexual (here gay) relations. So, the concept of homosexual marriage is non-existent in the Shari’a.

Shias and Sunnis have different interpretations and hence follow different schools of Islamic jurisprudence. Different schools have different versions of the Shari’a. There exist five schools altogether- Hanafi, Hanbali, Shafii, Maliki and Jafari.<sup>84</sup> Now we can deduce that there is no universal law and authority on sodomy in Islam and hence the situation gets more ambiguous,

<sup>71</sup> Id

<sup>72</sup> Id

<sup>73</sup> Sodomy is a Sin Greater than Adultery, SHIA STUDIES’ WORLD ASSEMBLY (2021), <http://shiaudies.com/en/4664/sodomy-is-a-sin-greater-than-adultery/> (last visited Feb 26, 2023).

<sup>74</sup> Id

<sup>75</sup> Id

<sup>76</sup> Id

<sup>77</sup> Id

<sup>78</sup> The Punishment of Sodomy - Islam Guidance, [https://www.sibtayn.com/en/index.php?option=com\\_content&view=article&id=3387:the-punishment-of-sodomy&catid=703&Itemid=503](https://www.sibtayn.com/en/index.php?option=com_content&view=article&id=3387:the-punishment-of-sodomy&catid=703&Itemid=503) (last visited Feb 26, 2023).

<sup>79</sup> Id

<sup>80</sup> Eleventh Greater Sin: Sodomy, (2022), <https://www.al-islam.org/greater-sins-volume-1-sayyid-abdul-husayn-dastghaib-shirazi/eleventh-greater-sin-sodomy> (last visited Feb 26, 2023).

<sup>81</sup> Id

<sup>82</sup> Id

<sup>83</sup> What Does Islam Say About Gay Marriage? Muslim Scholar Explains - Variety, <https://variety.com/2015/voices/opinion/islam-gay-marriage-beliefs-muslim-religion-1201531047/> (last visited Feb 26, 2023).

<sup>84</sup> The Five Schools of Islamic Law, AL-BURĀQ, <https://al-buraq.org/products/the-five-schools-of-islamic-law> (last visited Feb 26, 2023).

vague, tyrannical and unregulated. A better way of reaching to an opinion would be analyzing sodomy laws followed by different nations which are either theocratically Islamic, have Muslim majority or a substantial Muslim population.

### **SODOMY LAWS OF DIFFERENT NATIONS**

#### **IRAN**

One of the most conservative and brutal laws on sodomy are followed in Iran. Article 233 of the Islamic Penal Code of Iran describes “Livat” as penal penetration into a man’s anus till the point of circumcision.<sup>85</sup> The “Hadd” punishment mentioned in article 234 directs death penalty for the active partner if he exercised force and coercion and fulfills the “Ihsan” criteria (conditions of a valid marriage) otherwise would be beaten 100 lashes. The passive party will face death penalty in all circumstances.<sup>86</sup> And if the active party is non-Muslim, only consequence is death penalty.<sup>87</sup> According to article 235, “Tafkhiz” is the homosexual encounter which does not reaches to the point of circumcision.<sup>88</sup> The punishment for both parties is 100 lashes in this case. If the active party will face death penalty if he is non-Muslim.<sup>89</sup> Article 236 determines 30-40 lashes punishment for other homosexual acts, if proven.<sup>90</sup> It is contended that approximately 4000-6000 homosexuals are executed in Iran since 1979.<sup>91</sup> Recently, Mehrdad Karimpour and Farid Mohammadi were hanged in prison of Maragheh for sodomy.<sup>92</sup>

#### **SAUDI ARABIA**

The case is approximately similar in Saudi Arabia. But they have not reportedly resorted to

death penalties in the recent times. The regime considers homosexuality as extreme. In the current scenario, gay men are usually arrested, imprisoned, tortured and flogged.

#### **PAKISTAN**

The term “homosexuality” is not mentioned in the law but “carnal intercourse against the order of nature”<sup>93</sup> is considered criminal in Pakistan which is punishable in form of a fine or imprisonment of 2 years to live. Under the Shari’s laws it is punished by whipping, death or imprisonment.<sup>94</sup>

#### **BRUNEI**

Brunei adopted the Shari’a Penal Code in 2013 which punished sodomy with death mainly by stoning. But, after the 2019 protests the sultan announced not to enforce death penalties, however there is no change in the law as of now.

#### **AFGHANISTAN**

Article 427 criminalizes homosexuality in Afghanistan and the offence is punishable with imprisonments and incites honor killings mentioned in article 398.<sup>95</sup> So basically, homosexuality is highly condemned in Afghanistan even before the capture of Taliban.

#### **INDONESIA**

MUI (Majelis Ulama Indonesia) Fatwa 57 of 2014 directs governance and penance of sodomy and homosexuality.<sup>96</sup> The general provisions in it are-

<sup>85</sup> United Nations High Commissioner for Refugees, *Refworld | Iran: Islamic Penal Code*, REFWORLD, <https://www.refworld.org/docid/518a19404.html> (last visited Feb 26, 2023).

<sup>86</sup> Id

<sup>87</sup> Id

<sup>88</sup> Id

<sup>89</sup> Id

<sup>90</sup> Id

<sup>91</sup>Two Gay Men Hanged In Iran After Being Jailed For “Sodomy,” UNILAD (2022), <https://www.unilad.com/news/two-gay-men-hanged-in-iran-20220202> (last visited Feb 26, 2023).

<sup>92</sup> Id

<sup>93</sup> United Nations High Commissioner for Refugees, *Refworld | Pakistan: Situation of homosexuals, including the application of laws towards homosexuals, the number of prosecutions of homosexuals and their outcomes; whether any regions have an open and active gay community*, REFWORLD, <https://www.refworld.org/docid/4784def1c.html> (last visited Feb 26, 2023).

<sup>94</sup> FACTSHEET UNITED STATES COMMISSION on INTERNATIONAL RELIGIOUS FREEDOM SHARI’A AND LGBTI PERSONS, (2021).

<sup>95</sup> LGBT Rights in Afghanistan, EQUALDEX, <https://www.equaldex.com/region/afghanistan> (last visited Feb 26, 2023).

<sup>96</sup> Murry Darmoko, *Application of Islamic Law in Handling LGBT (ASEAN Religious Social Harmonization)*, RES. GATE.

- Sodomy is known as “Liwath” which is unlawful in nature. “Hadd” and “Ta’zir” are the types of punishments.

The legal provisions are-

- “Orient” sexual orientation is considered to be disorder and deviant in nature. Sodomy is haram, cruel and sinful. It is punishable by Hadd and Ta’zir. Maximum punishment is death penalty.

The recommendations made are-

- The society and the authorities should dis-allow deviant sexual orientations like homosexuality and behaviors like sodomy from existing. Same sex marriages are criminalized. Prevent deviant sexual activity in society through rehabilitation and socialization.

### **MALAYSIA**

Malaysia has retained article 377 that upholds the sodomy laws from the British era. Sodomy can result in imprisonment for 2 years, canning or a fine.<sup>97</sup> Anyone engaging in “Liwat” is guilty of an offence under section 28 of the Syariah Criminal Offences Enactment, 1995 and subject to a maximum fine of 5,000 ringgit, a term of imprisonment up to three years, a period of whipping not to exceed six strokes, or any combination of those penalties. Recently it sought amendment in Sharia laws to form stricter laws to counter those who promote LGBTQ and hence “insult Islam.”<sup>98</sup> Other nations Nigeria, Yemen, Mauritania, Qatar, Somalia, Sudan and United Arab Emirates have death penalty as the highest form of punishment for sodomy.

### **REFUTING THE COMMON BELIEF**

The aforementioned perspective of viewing a human, non-humanly must be against even the most cruel law ever laid. Quran has always been open to interpretation, that led rise of Shia

<sup>97</sup> FACTBOX: Sodomy laws in Malaysia and elsewhere | Reuters, <https://www.reuters.com/article/us-malaysia-sodomy-idUSKLR8083620080717> (last visited Feb 27, 2023).

<sup>98</sup> FACTBOX: Sodomy laws in Malaysia and elsewhere | Reuters, <https://www.reuters.com/article/us-malaysia-sodomy-idUSKLR8083620080717> (last visited Feb 27, 2023).

and Sunni sect. both have very different notions of Quran. It further gets divided into various schools, which propagate beliefs that are starkly different. Here are few reasons to substantiate the authors belief that ‘no religious scripture can ever disregard, what god has created.’

- i. Neither Quran nor Sunna directly refers to same sex relations and sodomy as a sin or crime. Muslim scholars rely upon famous story of “Lut” to deduce “Liwat or sodomy amounting to “Zina.” Now, there can be various versions of that story.
  - a. The popularly advertised version, the shows people of Sodom demanding “to see” the guests of Prophet Lut. Later, after warnings Allah destroyed the whole place by stoning.
  - b. A more critical version, which illuminates the fact that people of Sodom forcibly asked “to see” Lut’s guests. This shall be condemning male rapes and not sodomy.

Version (a) condemns sodomy but version (b) condemns male rapes.

Even in today’s times there is less awareness on male sexual harassment. Quran then talked about it and sought to eradicate it. It is the conservative mindset of people who are fearful and homophobic to accept it. Apart from this, there is no mention of sodomy in the whole Quran and Sunna, as such.

- ii. Muslim scholars, since historical times have celebrated homoeroticism, i.e., marveled the beauty of young men and boys, especially those who still do not have facial hair.

For example, Abdallah al-Shabrawi was well-known scholar and poet in the 18th century. He served as the rector of al-Azhar in Cairo, which is still one of the most esteemed institutions of higher learning in the Islamic world. He composed numerous poems honoring young

guys and dedicated one in love to his male student. Ottoman sexuality was similar to that of ancient Greece and Rome in many aspects, as scholars of Ottoman history and literature Walter Andrews and Mehmet Kalpaklı have demonstrated. Young boys were frequently thought of as more perfect objects of desire and love than women, as opposed to stigmatising males who had a sexual urge for other guys.

Same-sex love did not violate Islamic law. Even for jurists, love for another man was broadly acknowledged.

- iii. Even a few Sunni Hadith scholars have disregarded the Hadith condemning "Liwat" as unreliable.
- iv. Even if it is considered to be a crime, there is no specific punishment defined for sodomy in any of the primary religious texts as mentioned. So, the death penalties and other cruel punishment imposed by various nations is based on their own homophobia and whims and fancies of patriarchal scholars. And even it an act is considered to be sinful, there is always a possibility of people committing it and also god should deter people from committing it. For all this, there should be some punishment explicitly mentioned for it. But we find no presence of such a thing.

Even if one believes in those scriptures, a proven fact is that homosexuality and the resultant sodomy is not any mental illness. It is not in human hands to control it. And those were written and interpreted ages ago when there was no sensitization on these issues and homosexuals were looked down upon. Human rights is by far the most important aspect of every law that is framed. As American women rights activist said, " law is not law, if it violates the principles of eternal justice." This "eternal justice" refers to a notion of universal justice that should eternally be provided to people

universally. This involves every person living or dead on this earth and the animals and plants.

The current scenario demands nations to look above the theocratic boundaries, that they themselves set up. Giving people the freedom to be as God created them is the least we can do for them.

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