

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

*In the Name of Allah, The Beneficent, The Merciful*

نَحْمَدُهُ وَنُصَلِّي عَلَى رَسُولِهِ الْكَرِيمِ

وَ عَلَى عَبْدِهِ الْمَسِيحِ الْمَوْعُودِ

*We send prayers and blessings upon His (swt) Noble Messenger (saw)  
And upon his (saw) Servant, the Promised Messiah (as)*

يُرِيدُ اللَّهُ لِيُبَيِّنَ لَكُمْ وَيَهْدِيَكُمْ سُنْنَ الَّذِينَ مِنْ قَبْلِكُمْ وَيَتُوبَ عَلَيْكُمْ وَاللَّهُ عَلِيمٌ حَكِيمٌ

Allah desires to make clear to you, and guide you to, the paths of those before you, and to turn to you in Mercy. And Allāh is All-Knowing, Wise [4:27]

## **Summary of the Punishment for Homosexuality** **in the Holy Qur'ān**

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## Summary of the Punishment for Homosexuality in the Qur'an.

### 1. Introduction

Homosexuality and sodomy are both sins in Islam which involve sexual intercourse between those of the same sex, or anal and oral intercourse,<sup>1</sup> performed contra to the ordained laws of Allāh and His ordinance.

There is no punishment for those who commit the sins of homosexuality or sodomy expressly proscribed by the *Qur'an*. However, the *Qur'an* does manifestly declare how Allāh dealt with the people to whom Prophet Lūt (عليه سلام) was sent – The people of Sayyidna Lūt (عليه سلام) who were deeply engrossed in perverse acts of homosexuality, sodomy, sexual promiscuity etc., in ignorance of divine laws were destroyed by Allāh.

The *Aḥādīth* (sayings of the Prophet Muḥammad (صلى الله عليه و سلم)) and the Jurists of the past do offer some advice as to how to deal with homosexuals and these vary from the minimum of arrest and confinement or separation from the rest of society, upto sentencing them to death for severe cases involving sodomy, rape, and violent homosexuality.

The severity of the punishment varies depending on the offender of the crime of homosexuality, the situations surrounding the offence (e.g., consent, rape, etc.), whether it is spreading in the community, how rampant it is and the rate of diseases spreading due to such acts, etc.

According to the sources of the *Sharī'ah*, which constitute the *Sharī'ah* when taken altogether, the minimum punishment that can be appended to people who commit any lewd or obscene acts (termed '*fā-ḥi-shāt*' in the *Qur'ānic* lexicon), not limited to, but including homosexuality, is codified in the primary source of the *Sharī'ah* – The Holy *Qur'an*:

وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا  
فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّىٰ يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا

*“And such of your women who are guilty of any flagrant impropriety - call to witness four of you against them; and if they bear witness, then confine them to the houses until death overtakes them or Allah opens for them some other way.”*<sup>2</sup>

Ḥaḍrat Khalīfatul Masīḥ I, Maulānā Hakīm Nūruddīn (قدس الله سره), the closest companion of Ḥaḍrat Masīḥ al-Mau'ūd (عليه صلوة و سلام) expounding on this verse elucidates:

<sup>1</sup> Sloan, I.J., 'Homosexual Conduct And The Law', (1987, Oceana Publications, USA) p.5

<sup>2</sup> The Holy *Qur'an*, 4:16

*“The meaning of this is clear that a mischievous woman should not be punished without reason, rather four witnesses should testify to her mischief attesting that the woman is mischievous and so she should be arrested. Until such a time that God Almighty shows a way out [i.e. reforms them or provides an exception within the Shari’ah], if a husband and wife both commit mischief then punish both of them – and if they abstain from lewdness and reform their ways then leave them...these rules are for the attention of the government/rulers who are well versed with punishments and it is they to whom the instruction of ‘fa-amsikū-hunnah’ [confine them] refers.”<sup>3</sup>*

This verse thus promotes that as a minimum, such offenders should be arrested and imprisoned and is so advised in full cognisance of the consequence of such acts on the health of the community and the society if such acts were to become the norm.

Purely teleologically, if everyone became homosexual then the human race would end within a few hundred years and so to keep the human race extant until such a time as Allāh gives reprieve, it is essential that there is abstention of such unnatural mechanisms which are in fact a cull caused by unnatural sexual lust.

## 2. What Constitutes the Offence

There is a difference of opinion amongst the ‘*fuqahā*’ (islamic jurists) as to whether the act of homosexuality constitutes ‘*zinā*’ (adultery) or not.

Some clearly hold that homosexuality amounts to adultery whilst others adduce evidences to the contrary and the latter opinion is the majority opinion.

The jurists in the first group who said that it does amount to adultery base their argument on a *hadīth* from Abū Mūsa al-Ash’arī (رضي الله عنه) in which the Holy Prophet Muḥammad (صلى الله عليه و سلم) is reported to have said:

*“When a man comes to another man both of them are adulterers.”<sup>4</sup>*

This view was supported by the synonymy of the nature and characteristics in both acts of homosexuality and adultery as well as the synonymy of the objectives sought to be achieved in both acts of sexual intercourse and satisfaction of lustful desires.<sup>5</sup>

The other group of jurists, which are the majority, state that homosexuality does not constitute adultery as ‘*Urf*’ (customs and norms of society) in most societies does not treat homosexuality like adultery.

The majority of jurists also opine that homosexuality does not constitute adultery as it is asserted that the companions themselves were in disagreement in prescribing the

<sup>3</sup> Ḥaqā’iq al-Furqāan, Vol.2, pp.10-11, commentary on verses 16-17, (Ziā-ul-Islām Press Rabwah, Nazārat Ishā’at Rabwah, Pakistan) [author’s own translation – readers are kindly directed to the original Urdū text]

<sup>4</sup> Al-Shaukānī (1759-1834), Nayl al-Auḡār - Sharḥ al-Muntaqa al-Akhbar, Cairo, 1982, p.207 (narrated by al-Baihaqī)

<sup>5</sup> Ibn Qudāmah, Al-Mughnī, Vol. 9, Dār al Kutub al-‘Arabī, Beirut, 1986, p.61

punishment for homosexuality and it differed from their opinions as to the punishment for adultery.

### 3. Punishment for Homosexuality

All muslim jurists are agreed that homosexuality and sodomy are sexual offences but they differ as to their punishment.

According to the great jurist and founder of the largest school of legal thought within Islām, Imām Abū Ḥanīfa (رضي الله عنه), and the one to which the Ahmadīyyah Muslim Jamā'ah largely subscribes, the act of sodomy and homosexuality does not amount to adultery and therefore there is no *ḥadd* (lit. 'limit') punishment to be meted to the offender except *Ta'zīr* (discretionary) punishments.<sup>6</sup>

*Ta'zīr* has several possible meanings and connotations – *Ta'zīr* literally means chastisement in the broadest, most general, sense.<sup>7</sup> However, in its legal sense it signifies criminal punishment which is not fixed and neither prescribed for by the sources of the *Sharī'ah*.<sup>8</sup> In Islāmic Jurisprudence, *Fuqahā* (jurists) consider *Ta'zīr* discretionary correction, rehabilitation or chastisement.<sup>9</sup> For instance, *al-Mawardī*,<sup>10</sup> the classical scholar and juristic specialist on Islāmic State and Governance defines *Ta'zīr* as:

*“...punishment inflicted in cases of offences for which the law (Sharī'ah) has not enacted written penalties. The rules relating to it differ depending upon who is inflicting it and upon whom it is inflicted. It has this point in common with written penalties: it, too, is a means of reprieve and reprimand which varies with the nature of the offence; however, it differs from them in other respects...”<sup>11</sup>*

There are three main views concerning the punishment for the offence of homosexuality.

#### **View 1:**

One group which holds the position that homosexuality amounts to adultery proscribe that *ḥadd* punishment for adultery should be imposed on the offender.

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<sup>6</sup> Doi, A.R.I., 'Shari'ah: The Islamic Law', (6<sup>th</sup> Ed., 2002, A.S. Noordeen Publishers) pp.242-3

<sup>7</sup> Benmelha, G., 'Ta'azir Crimes', in Bassiouni, M.C., 'The Islamic Criminal Justice System', (1982, Oceana Publications Inc.) pp.212-3

<sup>8</sup> Namely the *Qur'ān*, *Sunnah*, *Ḥadīth*, *Ijma'* of the Companions of the Prophet, *Qiyās* and *Ijtihād*.

<sup>9</sup> Benmelha, G., 'Ta'azir Crimes', in Bassiouni, M.C., 'The Islamic Criminal Justice System', (1982, Oceana Publications Inc.) pp.212-3

<sup>10</sup> Al-Mawardī dies in 1058 in Baghdād where he exercised the functions of Judge (Qāḍī) was and still is a scholar of great repute who has authored great works, of which the most well-known is 'Al-Aḥkām al-Sulṭānīyya' (The Rules of Governance).

<sup>11</sup> 'Al-Aḥkām al-Sulṭānīyya', p.504

This is generally the view held by the Malikīs, Imām Aḥmad ibn Ḥanbal (رضي الله عنه) and one opinion in the Shafī'ī *madh-hab* (legal, jurisprudential school of thought).<sup>12</sup>

These jurists opined that punishment of adultery should be imposed on the offender as it constitutes a prohibited sexual intercourse which is *de facto* similar to adultery. The reason for ambiguity of the actual punishment is that those who claim that the punishment should be the same as that for adultery also differ as to whether the punishment for adultery is lashes or stoning as dictated by their school of legal thought, the commentaries of the *Qur'ān* which they accept, and the community they reside in and how rampant the crime is in that society.<sup>13</sup>

The jurists who favour this view also said that the punishment for adultery should be imposed on offenders of homosexuality as they perceive that acts of homosexuality sufficiently resemble acts of adultery through '*qiyās*', the process of analogical reasoning, which is one of the sources which constitute the *Sharī'ah*.<sup>14</sup>

Some jurists viewed that, the punishment of adultery should only be imposed on the offender, i.e. the active partner, whereas the sodomized victim, i.e. the passive partner, should be flogged with a hundred lashes regardless whether he is a male or female, married or unmarried.<sup>15</sup>

## View 2:

The second group consists of those jurists who opined that the homosexual offender should be imposed with the death penalty irrespective of whether he is married or not, or the degree of participation in the act. Proponents of this view base their opinion on the following narration by Ibn Abbās (رضي الله عنه) that the Prophet (صلى الله عليه وسلم) said:

*"If you find anyone doing as Lot's people did, kill the one who does it and the one to whom it is done; and if you find anyone having sexual intercourse with an animal, kill him and kill the animal."*<sup>16</sup>

<sup>12</sup> Ibn Qudāmah, Al-Mughnī, Vol. 9, Dār al Kutub al-‘Arabī, Beirut, 1986, p.160

<sup>13</sup> As penetration is involved, if the offender is a *muḥsan* (married/non-virgin (depending on school of thought)), he should be stoned to death, and in the case where the offender is *ghair-muḥsan* (unmarried/virgin), a flogging of hundred lashes should be imposed. The latter is based on the injunction regarding the punishment of *zinā* that can be found in the Quran:

"The adulteress and the adulterer - flog each one of them with a hundred stripes. And let not pity for the twain take hold of you in executing the judgement of Allāh, if you believe in Allāh and the Last Day. And let a party of the believers witness their punishment." [The Holy *Qur'ān* 24:3]

And the former is based upon a *Hadīth* of the Prophet (saw):

*"A man came to the prophet who was in the mosque and said: I have committed zina but I regretted it so much' this statement was repeated for four times the prophet then asked the man: 'Are you insane?' The man answered. 'No' Then the prophet further asked the man: 'Are you a muhsan?'" 'Yes'. answered the man Men the prophet said. 'Bring away this man and stoned him to death "* (Narrated from Abū Hurairah)

<sup>14</sup> Ibn Qudāmah, Al-Mughnī, Vol. 9, Dār al Kutub al-‘Arabī, Beirut, 1986, p.162

<sup>15</sup> Al-Shaukānī (1759-1834), Nayl al-Auḡār - Sharḥ al-Muntaqa al-Akhbar, Cairo, 1982, p.287 (narrated by al-Baihaqī)

<sup>16</sup> Ḥadīth No.1243 in 'Bulūgh al-Marām min Adilat al-Aḥkāam', (The Attainment of The Objectives According to the Evidences of the Ordinances) by Imām Ibn Hajar al-Asqalānī, p.275 (1993, Dar el-

Thus this group of jurists hold the punishment for homosexuality to be more severe compared to that provided by the first group.

### **View 3:**

The third group consists of those jurists who opine that homosexuality does not amount to adultery and therefore its punishment cannot be imposed on homosexuals. As stated above, Imām Abū Ḥanīfa <sup>(رضي الله عنه)</sup> favours this view and argued that homosexuals should only be subject to discretionary punishments.

However it shall be noted that the discretionary punishment, according to Imām Abū Ḥanīfa <sup>(رضي الله عنه)</sup>, can sometimes proffer death as punishment depending on the circumstances of the case. This can be imposed in cases whereby the offender is a repetitive offender and shows little or no sign of reform, and as a result of his/her actions society at large is being influenced and thus the punishment is necessary to effect public deterrence.

### **An Important Note:**

It is important for those not well versed with the sources, methodology, philosophy and objectives of the *Sharī'ah*, that the provisions of the *Sharī'ah*, particularly the criminal punishments, are only applicable if certain, very specific, and necessary conditions are fulfilled.

For instance, unless specifically identified, the Islamic punishments contained in the sources of *Sharī'ah* are only to be applied to Muslims, by and Islāmic administration or government, and in accordance with the rules of Islāmic state and governance. Non-muslims (in Islāmic States) are to be ruled according to the laws of their own religions and are not to be forced to accord to Islamic Law, but may choose to be so adjudged. However, if a state is ruled by Islamic governance the laws of the state have to provide legal provisions for all the citizens of the state. In doing so they have executive prerogative to rule the state in the way they deem is best for the interest of their society. They can, therefore, establish certain laws to prevent homosexual practices in society and provide sanctions for those who practice homosexuality in lieu of such laws.

Similarly, there are certain Islāmic legal maxims and principles which must be observed at all times which cannot be fully explained here due to the vastness of the topic, but summarily they enumerate certain principles which ultimately specify that in case of any harm coming to the society as a whole, or there being any doubt as to

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Fikr, Beirut) Bukhārī, Muslim, Abū Da'ūd, al-Tirmidhī and Ahmad transmitted it; its transmitters are authoritative but there is some difference regarding its authenticity and strength.

the conviction of a person, the doubt must be resolved in favour of the victim, as the an incorrect judgement incurs heavy repercussions as regards the divine reckoning.

Additionally, Islāmic Law must be seen in the light of the *Maqāṣid al-Sharī'ah* (the objectives sought to be attained by the implementation of the *Sharī'ah*). This is an extensive concept and theory and is one which, if not maintained or fulfilled, and thus breached, may render the application of the *Sharī'ah* in such a case as invalid.