



The Divergent Views of Jurists (Fuqaha) on Punishment of Sodomy (Liwat): Its Relevance to our Contemporary Society

Dr. Ja'afar Agaji Abdullahi^{1*}, Dr. Lawal Tambaya Ahmad², Misbahuddeen Muhammad Bashir³

¹Department of Islamic Studies, Federal University, Gusau, Nigeria

²Department of Arts and Social Science, Ahmadu Bello University, Zaria, Nigeria

³Centre for Qur'anic Studies, Bayero University Kano, Nigeria

Abstract: The Arabic term *Liwāt* used for Sodomy refers to the act of the people of prophet Lut(AS.), as they practised the perverted sexual relationship between man and man. And they happened to be the first nation who practised this sane sexual relationship in public. This heinous Sin was not known before to the people of prophet Lut (A.S.). Thus, homosexuality is said to be against the basic institutions and foundations of society, the family and the laws of Allah (S.W.T.) respectively. This article attempts to examine the concept of Sodomy, and its definition, who is a homosexual person? as well as the divergent views of Jurists on the punishment of Sodomy. The paper concludes that the Jurists differed as to the punishment of Sodomy and as such there is no fixed punishment specified for the Crime. Therefore, the malefactor is to be punished by Ta'zir. Thereupon, the paper recommends among others that people should be conscious of their Lord and distance themselves from this heinous act and if the culprit is before the law, he should be punished without favour, fear, mercy and or prejudice.

Keywords: Jurists (Fuqaha), Punishment, Sodomy, Contemporary Society

Copyright © 2024 The Author(s): This is an open-access article distributed under the terms of the Creative Commons Attribution 4.0 International License (CC BY-NC 4.0) which permits unrestricted use, distribution, and reproduction in any medium for non-commercial use provided the original author and source are credited.

Review Paper

*Corresponding Author:

Dr. Ja'afar Agaji Abdullahi

Department of Islamic Studies, Federal University, Gusau, Nigeria

How to cite this paper:

Ja'afar Agaji Abdullahi *et al* (2024). The Divergent Views of Jurists (Fuqaha) on Punishment of Sodomy (Liwat): Its Relevance to our Contemporary Society. *Middle East Res J. Humanities Soc. Sci.* 4(1): 19-25.

Article History:

| Submit: 22.01.2024 |

| Accepted: 24.02.2024 |

| Published: 28.02.2024 |

INTRODUCTION

The crime of *Liwat* otherwise known as sodomy or homosexuality is one of the greatest crimes in Islam. It is the deteriorating lewds for the disposition and nature itself. Allah (S.W.T.) punished the people of *Lut* for their practice of this crime by making the earth sink with them and making stones of *Sijjil* rain on them.

Definition of Sodomy

Wali Ullah (1986:148) sees *Liwat* as:

The carnal intercourse which is against the order of nature with man, woman or animal. The offence consists in sexual intercourse committed against the order of nature by man with a man, or in the same unnatural manner with woman or by a man or a woman with beast in any manner.

While Bambale (2003:40) and Doi (2007:241) define it as "An unnatural act of sex to satisfy one's passion". Bambale (2003:40) adds that it arises in a situation where a man engages another man through the anus to satisfy his sexual urge.

From the definitions above, it could be deduced that the act of *Liwat* is deemed complete when a man commits sex with his fellow man, or he commits sex with a woman in an unnatural way.

The Glorious Qur'an declares the act of sodomy as a heinous sin that brought the wrath of Allah (S.W.T.) on those (people) who are in the habit of committing it. Allah says:

ولوط اذ قال لقومه اتاتون الفاحشة ماسبقكم بما من احد من العالمين.

انكم لتاتون الرجال شهوة من دون النساء بل انتم قوم مسرفون. وما

كان جواب قومه الا ان قالوا اخرجوهم من قريبتكم انهم اناس

يتطهرون. فانجيناه واهله الامراته كانت من الغابرين. وامطرنا

عليهم مطرا فانظر كيف كان عقابة المجرمين. (الاعرف، ٧: ٨٠)

We also sent Lut; He said to his people: "Do you commit lewdness such as no people in creation (ever) committed before you? For you practice your lusts on men in preference to women; you are indeed a people transgressing beyond bounds". And his people gave no

answer but this; they said: "Drive them out of your city; these are indeed men who want to be clean and pure!" But We saved him and his family, except his wife: she was of those who lagged behind. And We rained down on them a shower (of brimstone): then see what was the end of those who indulged in sin and crime! (al-A'raf, 7:80-84).

Allah again says:

قد جاءت امرئيك وانهم ائتهمعذاب غيرمردود. ولما جاءت رسلنا لوطا سىء بهم وضاق بهم ذرعا وقال هذا يوم عصب. وجاءه قومه يهرعون اليه ومن قبل كانوا يعملون السيئات قال يقوم هاؤلاء بناتي هن اطهرلكم فاتقوا الله ولا تخزون في ضيفي اليس منكم رجل رشيد. قالوا لقد علمت مالنا في بناتك من حق وانك لتعلم ما نريد. قال لوان لى بكم قواواوى الى ركن شديد. قالوا يا اوط انا رسل ربك لنصلوا اليك فا سرباهلك بقطع من الليل ولا يلتفت منكم احد الامراتك انه مصيها ما اصابهم ان موعدهم الصبح اليس الصبح تقرب () ماما جاء امرنا جعلنا سافلها وامطرنا عليها حجارة من سجيلمنضود () مسومة عند ربك وما هي من الظالمين ببعيد () (هود، ٧٧-٨٣)

When our Messengers came to Lut, he was grieved on their account and felt himself powerless (to protect) them. He said: This is a distressful day. And his people came rushing towards him, and they had been long in the habit of practising abominations. He said: O my people! Here are my daughters; they are purer for you (if you marry)! Now fear Allah, and cover me not with disgrace about my guests! Is there not among you a single right-minded man? They said: you know well that we have no need of your daughters: indeed you know quite well what we want! He said: would that I had power to suppress you or that I could be take Myself to some powerful support. (The Messengers) said: O Lut! We are Messengers from your Lord! By no means shall they reach you! Now travel with your family while yet a part of the night remains, and let not any of you look back: but your wife (will remain): to her will happen what happens to the people... (Hud, 11:77-83).

From the above verses, it is evident that Allah (S.W.T.) categorically warned the people of Lut and were destroyed because they refused to desist from their ugly act (of sodomy) even after several warnings offered to them by their Prophet (Lut 'A.S.).

Beside the texts of the Glorious Qur'an quoted above, the Prophet (S.A.W.) gave a stern warning regarding this ugly behavior of *Liwat*. According to the narration of Abu Dawud as in Hasan (1985:1245) Prophet Muhammad (S.A.W.) is reported to have said:

قال رسول الله صلى الله عليه وسلم: أربعة يصبحون في غضب الله تعالى ويمشون في سخط الله، قيل له: ومن هم يا رسول الله؟ قال: المتشبهون من

النساء بالرجال، والذين يأتي البهيمة والذي يأتي الرجال (أبو داود، Vol. 2, P. 1245).

The Messenger of Allah (S.A.W) said: four types of people get up in the morning while they are under the wrath of Allah and they sleep the night while they are under the displeasure of Allah. He was asked: who are they O Messenger of Allah? The Prophet replied: those men who try to resemble women and those women who try to resemble men (through dress and behavior) and those who commit sex with animals and those men who commit sex with men (Abu Dawud, Vol. 2 P. 1245).

Liwat is a heinous sin in Islam, a reversal of the natural order, a corruption of man's sexuality and a crime against the rights of females. This is why al-Qaradawi (n.d:169) aptly says:

Islam has prohibited not only illicit sexual relations and all ways which lead to them, but also the sexual deviation known as homosexuality. This perverted act is a reversal of the natural order, a corruption of man's sexuality, and a crime against the right of females. The spread of this depraved practice in a society disrupts its natural life pattern and makes those who practice it slaves to their lusts, depriving them of decent taste, decent manner of living.

Furthermore, the Prophet (S.A.W.) was reported to have said:

قال النبي صلى الله عليه وسلم: من قبل غلاما شهوة عذبه الله تعالى في النار ألف سنة (الطبراني، Vol. 2, P. 911).

The Prophet (S.A.W.) said: One who kissed a boy with passion, Allah Most High will punish him for a thousand years in the fire of hell (al-Tabarani, Vol.2, P. 911).

The Prophet (S.A.W.) again said this about unnatural relationships between two men or two women:

قال عليه الصلاة والسلام: إذا أتى رجل الرجل فهما زانبان وإذا أتت المرأة المرأة فهما زانيتان (البيهقي، Vol. 4, P. 675).

The Prophet (S.A.W.) said: if a man commits an act of sex with a man, they both are adulterers and if a woman commits such acts with a woman, then both of them are adulteresses (al-Baihaqi, Vol. 4, P. 675).

The above traditions are connected to the verses previously quoted above. They elucidate clearly that Allah (S.W.T.) does not want that perverted act practised by the people of Lut. Likewise, the above *Ahadith* of the Prophet (S.A.W) speak the same thing. He said that Allah (S.W.T.) will punish one for a thousand years in hellfire if one kisses a boy or touches him with passion.

Who is a Homosexual person?

A Homosexual person is romantically or sexually attracted to people of his gender or sex. Men who are romantically or sexually attracted to other men are called "Gay" (<https://codemit.net/law/jurisprudential-analysis-of-homosex>). Lexicon-Webster Dictionary (2017) defines a homosexual person as one who is characterized by sexual interest in a person of the same sex, While the Oxford Dictionary of Current English defines a homosexual person in its adjectival form, as a feeling or involving sexual attraction for people of one's sex.

From the above definitions therefore, it could be deduced that a homosexual is a person who prefers and affects affections, intimately and sexually to persons of the same sex; He is a man who would rather have sex with a man; and a woman who would rather have sex with another woman. Thus, it is clear that a homosexual person can either be a man or a woman, where a male homosexual is often referred to as "gay", which according to the Oxford Dictionary of Current English is regarded as a homosexual man. While a female homosexual is known as a "lesbian". The term originates from lesbos; a geek word and homo of Soppo; who expresses her love for women in her poetry.

Punishment for Sodomy

The Glorious Qur'an did not specify exactly the punishment to be meted out to the malefactors of *Liwat*, but it left it open. In this case, the judge may use his discretion to pass judgment he deems proper. Allah says: والذان ياتيا نحا منكم ففادوهما فان تابا واصلحا فاعرضوا عنهما ان الله كان توابا رحيمًا (النساء: ١٦).

If two persons among you are guilty of lewdness, punish them both. If they repent and amend, leave them alone; for Allah is Oft-Returning, Most Merciful (an-Nisa'i, 4:16)

The above Qur'anic verse shows that there is no fixed punishment for the offence of *Liwat*. Thus, the culprit shall only be punished by the way of *Ta'azir*. However, all jurists unanimously agreed that *Liwat* is a sexual offence, but differ in its punishment. Even the *Sahabah* of the Noble Prophet (S.A.W.) differ among themselves regarding the punishment of sodomy. This is because even though the Prophet (S.A.W.) admonished the crime bitterly.

However, Abdul-Fattah (2004:977) discloses that if a man has intercourse with another man the two men are to be executed whether they are *Muhsan* or not. This according to him tallies with the Prophet's (S.A.W.) instruction as narrated by Ibn Abbas (R.A.):

إذا وجد رجلا يفعل عمل قوم لوطٍ إقتلوا الفاعل والمفعول به (الفقه الميسر، (Vol. 2, P. 977

Whenever you find a man committing the act of the people of (Prophet) Lut (i.e. committing sodomy), kill the doer (of the act) and the one to whom it is done (Fiqh-ul-Muyassar, vol. 2, P. 977)

Imam Malik as in al-Jaza'iri (2004:119) is of the view that *Hadd* punishment will be applied whether the offender is married or not. He relies on the following *Hadith*:

عن أبي هريرة رضي الله عنه، قال رسول الله صلى الله عليه وسلم: من وجدتموه يعمل عمل قوم لوط اقتلوا الأعلى والأسفل. وفي قول آخر اقتلوا الفاعل والمفعول به (الجزيري، (Vol. 5, P. 1126).

It is reported by Abu-Hurairah (R.A.) that the Messenger of Allah (S.A.W.) said: if you find someone who is committing an act of the commitment of Lut (that is homosexuality), kill the one on top and the one below. And in another statement, it says: kill the doer and the one with whom the act is committed (al-Jaza'iri, Vol. 5, P. 1126).

As said earlier, the Companions of the Noble Prophet (S.A.W.) themselves differ as to the punishment of a homosexual. Abu-Bakr the first Caliph was of the view that both the offenders should be burnt, while Ali the fourth Caliph held that the offenders should be given stripes and be stoned. Abbas also a Companion of the Prophet (S.A.W.) believed that the culprits should be confined in a bad-smelling place so that they may die by the effect of the stench.

Based on the above discussions and explanations, it could be summed up here that there is no fixed punishment specified for the crime of *Liwat*. The *Sahabah* themselves also differ on the specific punishment to be meted out to the offender of this offence likewise the jurists. Therefore, it could be deduced that, generally, *Liwat* is to be punished by *Ta'azir*.

Bestiality (Sex with Beast)

This simply refers to having sexual intercourse with an animal. Bambale (2003:42-43) aptly states, "This is regarded as a crime and it arises from a situation where a man falls to the level of a beast and commits sexual intercourse with an animal. The animal can be a monkey, dog, donkey, cow, horse, etc."

As to the punishment to be meted out, there are divergent opinions, even though there is a general view saying that it is punishable by *Ta'azir*. He further discusses that, Maliki School is of the view that *Ta'azir* and not *Hadd* punishment should be applied, and that it is lawful when the flesh of the animal which was the subject matter of bestiality is slaughtered. While Shafi'i, Hambali Schools are of the view that *Hadd* punishment of stoning to death should be applied to the individual and the animal and its flesh is unlawful. They relied on the Prophet (S.A.W.) saying:

(Vol. 5, P. 120) اقتلوا البهيمة ومن أتاها (الجزيري)

Kill the animal and the person who committed sexual intercourse with it (al-Jaza'iriy, Vol. 5, P. 120).

The same thing, as stated above, applies in situations where a woman allows an animal like a monkey, dog or donkey to have sex with her. However, other jurists maintained that only an individual can be punished but not an animal since it has no guilty mind.

Divergent Opinions of Jurists (*Fuqahā'*) on the Punishment of Sodomy (*Liwat*)

Both the Glorious Qur'an and the prophetic traditions (Ahadith) adopted a very negative stand on homosexuality between men. It is therefore, not surprising, that most of the legal kinds of literature also reflect a negative attitude, although different views or opinions exist among the schools of jurisprudence (Madhāhib), and within these schools, among their respective representatives. This is due to the part to the divergent approaches adopted by the various Schools to the revealed sources (Qur'an and Hadith).

According to the Malikites and Hanbalites, the required punishment for the acts of sodomy between men is stoning while the shafi'ites hold that the punishment is identical to that of adultery (*Zina*) meaning that a distinction should be made between someone who is *muhsin* and someone who is not *muhsin*. The hanafites on the other hand mere *ta'zir* should be applied (i.e. a discretionary penalty whose aim is to punish and reform the criminal and to deter the public (Ibn 'Abd al-Bar, 1993). Further to the discussion on sodomy some Muslim scholars have presented arguments that although certain same-sex actions are prohibited in Islam, there is no death penalty for sodomy in *Shari'ah*., the main position of Hanafi School is Jurisprudence is that someone convicted of sodomy, which in all schools required from witnesses to testify the act of penetration) is not to be executed but only given a milder punishment or perhaps only disciplined by the *Qadi* (Judge). But the other three Sunni schools of Jurisprudence did consider sodomy to be a death penalty offence (at the very least for the active partner). The disagreement exists because of how different schools of Jurisprudence weighed the evidence from both the Glorious Qur'an and the Ahadith of the Prophet (S.A.W) and how they interpreted it. For the schools that upheld the death penalty, their evidences is as follows:

- Several *Ahadith* of the Prophet (S.A.W) in which he (the Prophet) state that those who commit the act of the people of Lut (A.S), should be killed, the main one being the *Hadith* of Ibn Abbas (R.A).
- An analogy between sodomy and *Zina* which was often punishable by death;
- The rulings of many companions (R.A) and other early Muslim scholars.

Therefore, the Hanafi School differed from his position because:

- The school did not permit declaring something to be a *Hudud* Crime, by analogy sodomy might be analogous to *Zina*, but Allah (S.W.T) and His Prophet (S.A.W) had commanded Muslims to seek the most minimal possible application of *Hudud* laws, so extension by analogy was indulging;
- The Hanafites argued that the Ahadith asserting the death or alth for sodomy were of defeatable authenticity;
- There was far too much disagreement over the proper punishment for sodomy amongst early Muslim scholars to suggest that death was the clear conclusion (www.almadadina.org).

Ibn Hazm's view on sodomy

Ibn Hazm opined that '*Amal qawm Lut* (homosexuality) is one of the major sins (*kaba'ir*), like the consumption of pork, blood, *mayta*, or wine; and like *Zina* and other sins. He further stated that "He who declares it, or any of these other things licit, is a *Kafir* and a *Mushrik* whose lives and goods may be taken. Ibn Hazm condemns homosexuality as an abomination. He further lists the different opinions held by the *Fuqahā'* with regard to appropriate punishment for homosexual acts. According to Adang (2003), Ibn Hazm sums up seven different opinions held by seven different groups of people (*tā'ifat*) as thus:

- Both the active (al-a'la) and the passive partner (al-asfal) are to be burned alive;
- Both the active and the passive partner should be taken to the highest spot of the town and be thrown down from it, and are subsequently to be pelted with rocks;
- Both of them are to be stoned, regardless of whether they are *muhsin* or not;
- Both are to be executed, i.e. by the sword;
- The passive partner is to be stoned, whether he is *muhsin* or not, whereas the active one should be stoned if he is *muhsin*, and slogged if he is not, with the same number of lashes that constitutes the *hadd* punishment for *Zina*;
- The active and passive partners are equal (meaning that they are equally guilty or responsible; their punishment depends not on their position in the act, but on their legal status; whoever of them is *muhsin* will be stoned; whoever of them is not will be given a hundred lashes, as in the case of heterosexual fornication (*Zani*);
- No *hadd* punishment is to be inflicted upon them, and they are not to be executed, but they should be given a *ta'zir* punishment. These, are the views shared by *Ibn Hazm*.

Ibn Hazm then quotes the texts upon which the different parties base their views. As for the first group, i.e., of those who would condemn the culprits to the

stake, Ibn Hazm adduces a report ultimately going back to Ibn Sam'an, who had heard from someone that Khalid b. al-Walid was asked concerning a muhsan "who was taken the way a woman is taken". Abu Bakr ruled that he was to be stoned, and the Companions of the Messenger of God followed this ruling. "All, however, conveyed to the Caliph his opinion that the man should be burned alive. Abu Bakr agreed and wrote to Khálid b. al-Walid that the man should be burned alive. Khálid carried out the sentence. After this account, Ibn Hazm adds several others that deal with burning as a punishment for Hwat. Thus, according to *Ibn Wahb*, Khálid only burned the dead body of the homosexual, i.e., after execution by the sword, the reason being that only God can bum someone in the fire as a punishment. *Ibn Habib* is quoted as having stated that he who bums alive *difâHlfi'l qawm Lât* is not committing a sin. Another report transmitted by *Ibn Habib*, this time with an *isnád*, again deals with Khalid and Abu Bakr. Ali holds this particular sin to be unforgivable and demands that the perpetrators be burned. He says that no nation ever committed this sin, except one (the reference is, of course, to the people of Lut), and it is well known what God did to them. The Companions agree. Abu Bakr communicated the decision to Khalid, and others after him, such as Ibn al-Zubayr (the anti-caliph), Hishám bn Abd al-Malik (the Umayyad caliph), and the amir al-Qasrî in Iraq known to have ordered this punishment in their days, burning alive both men involved in cases of *Liwat*. Ibn Hazm quotes a variation on the same story, as he heard it from Ismâ'il bn Dulaym al-Hadramî, the *qâdî* of Majorca.

Ibn Hazm then moves on to the second view, that homosexuals should be thrown down from a mountain and stoned. He heard the relevant report from the son of the above-mentioned *qâdî*, Ahmad bn Ismâ'il bn Dulaym. Ibn "Abbas was asked about the *hadd* for a *lûtî*, and said: he should be taken up to the highest mountain of the town and be pushed off, head down, and then be pelted with stones. The third group, of those who hold that the active and the passive partner should both be stoned, whether they are *muhsan* or not, also adduces reports in support of its view. According to the first one, which *Ibn Hazm* heard from Muhammad b. Sa'id bn Nabât, "AH stoned a homosexual. Another report has Ibn "Abbas ruling that avirgin (al'bikr, in this case, a young man who has not previously had sexual relations) who is caught in homosexual acts (yüjadhu "alá'l-lütiyya) must be stoned. Ibrâhîm al-Nakha'î is quoted as having said that if anyone deserves to be stoned twice, it is the *lütî*, "while RabFa stated that if a man takes up with a *lütî*, he will be stoned, and neither his being *muhsin* nor any other consideration will help him. Finally, *Ibn Hazm* cites the statement of al-Zuhrî that a *luti* should be stoned, whether he is *muhsin* or not. This view is shared by Ali, Sa'id bn al-Musayyab, Abü'l-Zinád, and al-Hasan. Among the later scholars who accept al-Zuhrî's view, *Ibn Hazm* mentions al-Shâfi'i, Malik, al-Layth bn Sa'id and Ishâq bn Rahawayh.

The fourth view, i.e., that both partners in the crime of homosexuality should be executed by the sword, is based upon a report by Ibn "Abbas (for which no *isnád* is provided) to the effect that both the active and the passive partner should be killed. Ibn Hazm skips the fifth group, and moves to the sixth opinion in the list given at the beginning, viz. that homosexual acts are like *zinâ*: the *muhsin* is to be stoned; the non-*muhsin* is to be flogged with a hundred lashes. Several reports are cited in support of this view. In the first, 'Ata' *bn Abi Rabâh* relates that 'Abd Allah *bn al-Zubayr* had to try seven men caught in homosexual acts. When he inquired about them, four of them turned out to be *muhsin*. He ordered them to be taken out of the haram, and they were stoned to death. The three remaining ones were flogged with several lashes making up the *hadd* punishment for *zinâ* committed by a non-*muhsan*. Ibn "Abbas and Ibn IJmar were with Ibn al-Zubayr at the time and did not dispute his verdict (in other words, they gave their tacit approval). According to al-Hasan al-Basri, a homosexual should be stoned if he is *thayyib* (i.e., sexually experienced, having been married), but if he is a virgin, he is to be flogged. Furthermore, there are certain people, says *Ibn Hazm*, who say that the *muhsin* is to be stoned and the non-*muhsin* is to be flogged with a hundred lashes and to be exiled for a year if he is the active partner, the *fa'i*. The passive one, the *manküh*, however, is to be stoned, whether he is *muhsan* or not. This, the fifth view, is that of the Shafi'i *faqîh* Abu Ja'far Muhammad *bn "Ali bn Yûsuf*, he adds.

Finally, *Ibn Hazm* provides documentation underpinning the seventh and last view: that there is no *hadd* punishment for either partner. He quotes a report about al-Hakam *bn Utayba*, who says that he who commits the act of the people of *Lut* should be flogged, but not to the extent of a *hadd* punishment. This means that *Ibn Hazm*, is of the view of Abu Hanîfa and his followers, and that of Abu Sulaimân (i.e. Dâwud al-Isfahâni, the "founder" of Zâhirism), "and all of our partisans".

After providing the proof texts on which the various parties base themselves, *Ibn Hazm* refutes the views cited, except, of course, that of the seventh group. It is especially in this polemical section that we can see how he applies his Zâhiri methodology to the revealed texts.

Concerning the first group, those who advocate the burning alive of homosexuals, they argue that this is in accordance with the *ymâ*" of the Companions and that this consensus cannot be contradicted. If one objects that "Ali, *Ibn "Abbas*, *Ibn al-Zubayr* and *Ibn "Umar* supported stoning and the *hadd* for *zinâ*, etc. (in other words, that they supported a punishment other than burning) they will say that this cannot be so, because it contradicts their *ijmâ*. This is all they have to say concerning this, but they have no additional evidence, and even this does not constitute proof, because the only one who transmitted it

was *Ibn Sam'an*, who had it from a man who reported *Ibn Sam'an* did not hear it himself that Abu Bakr, etc. But all this is *munqati*, for none of these people knew Abu Bakr. Also, *Ibn Sam'an* is a notorious liar and is described as such by Malik. Moreover, a sound tradition has the Prophet forbidding burning at the stake as a punishment, because only the Lord of the Fire can punish with fire.

Without stopping to refute the views of the second and third groups, as one might have expected, *Ibn Hazm* skips to the opinion of the fourth group - possibly because of the preceding reference to execution by the sword, which is advocated as the appropriate punishment for *liwât* by the fourth group. These people, says *Ibn Hazm*, base themselves on a *Hadith* going back to *Ibn 'Abbas*, who quotes the Prophet as having said that those caught in the act of the people of *Lut* should be executed, both the active and the passive partner. *Ibn Hazm* quotes several similar traditions with the same content, only to reject them, saying that none of them is sound. The first *Hadith*, of *Ibn Abbas*, contains a weak link, as does the second, of *Abu Hurayra*. The chains of the remaining reports contain flaws, and they cannot, therefore, be adduced as proof.

Now, if it is forbidden to spill the blood of a *dhimmi* and even that of a harbi solely on the basis of such flawed reports, then how can it be allowed to spill the blood of a Muslim, be he iniquitous (*fâsiq*) or contrite (*ta'ib*)? If any of what they adduce were sound, we, too, would accept this view, and would not oppose it in anything, says *Ibn Hazm*.

Turning back now to those who subscribe to the third opinion, *Ibn Hazm* states: If we look at those who say that the men are both to be stoned, *muhsin* or not, we see that they argue that this is what God did to the people of Lot, as is said in Q. 11:82f. ("We rained upon them stones of clay, one after the other"). Furthermore, they adduce the reports that were mentioned earlier, to the effect that both the active and the passive partner are to be stoned, *muhsin* or not. *Ibn Hazm* objects that there is no proof of what they say. As for what God did to the people of Lot, it is not as they see it, for other texts from the Qur'an (such as Q. 26:181, 189 and Q. 11:84, 94) make it clear that the people of Lot were punished not for their abomination alone, but also their unbelief (*kufr*). Therefore, they cannot stone a homosexual unless he is also a *kâfir*. If the people who try them act otherwise, they go against Allah's judgment and against the Qur'anic verse that they cite as proof, since they deviate from the legal ruling it contains. God also says that Lot's wife shared in their punishment, and anyone endowed with a bit of reason knows that she did not commit the "act of the people of *Lut*". Therefore, it is clear and beyond any doubt that the punishment described in the Qur'an is not for this act alone. If they object that she, *Lut's* wife aided and abetted in their commission of the crime, they must stone everyone who enables this vice

by acting as go-between or by pandering. If they do not, they contradict themselves and invalidate their proof based on the Qur'an, disobeying it. The Qur'an also relates that *Lut's* fellow-townsmen accosted his guests, whereupon God blinded their eyes. Therefore, they should also blind the eyes of homosexuals, for Allah did not simply stone them, but blinded and then stoned them. If they fail to do this, they go against God's judgement concerning homosexuals and invalidate their proof. Also; they must blind the eyes of anyone who accosts another. Moreover, they should bum alive anyone who tampers with weights and measures, for God burned the people of Shu'ayb for that crime (see Q. 26:181f, 189; 11:84, 94). Likewise, they should execute anyone who wounds another person's she-camel, for God destroyed the people of Salih when they hamstringed the she-camel (cf Q. 91:11-14). After all, there is no difference between God's punishing the people of *Lut* on the one hand—by destroying their eyesight and stoning them because of their abomination—and His burning the people of Shu'ayb for tampering with weights and measures, or His destruction of the people of Salih for wounding the she-camel on the other.

After this lengthy refutation (which, it should be emphasized, attacks the prevailing *Mâlikî* opinion) *Ibn Hazm* turns to the last view, the one espoused by him. According to this view, homosexuality is not punishable by *hadd*. As proof, the people who subscribe to this view use the Qur'anic verses Q. 25:68. They add a Prophetic tradition to the effect that a Muslim's blood may be shed for three things only: apostasy, *zinâ* by a *muhsin*, and homicide.

Allah has forbidden every man, Muslim and *dhimmi* alike, to kill unless it is justified, and there is no justification but in a revealed text (*nass*) or *ijmâ'*. The Prophet forbade taking a life except in the cases of *zinâ* after *ihsân*, unbelief after belief, pandering, a third *hadd* conviction for drinking, and highway robbery (*hiraba*), unless the robber repents. The case of the homosexual is not mentioned among them, so it is forbidden to shed his blood, except if there is a text or an *ijmâ'* including him in the categories of people who may be killed.

Ibn Hazm states that in his view, none of the reports concerning the killing of homosexual is sound. Moreover, none of the things reported about any of the Companions is valid; the accounts about Abu Bakr, Ali and the Companions are *munqati'a*. One of them is from the notoriously unreliable *Ibn Sam'an* on the authority of an unknown man (*majhûl*); the other is from someone on whose accounts one cannot rely. As for the reports going back to *Ibn 'Abbas*, they have been transmitted to all kinds of unknown people, and the same is true for the *riwâyah* concerning *Ibn al-Zubayr* and *Ibn Umar*. One cannot, therefore, rely on the traditions adduced by the Companions concerning this issue. By contrast, the opinion that there is no *hadd* punishment for

homosexuals is reported by al-Hakam *bn* Utayba, who is a well-known and well-connected authority.

It follows, then, says *Ibn* Hazm, that the homosexual should not be executed and not be submitted to a *hadd* punishment, for Allah did not make this an obligation, nor did His Messenger. The status of the homosexual is that of someone who has committed a forbidden act (*atâmunkaran*), and the Messenger of Allah has ordered that such people be subjected to correction {*taghyîr al-munkar bi'l-yad*}, in addition to a *ta'zir* punishment the amount of which has been fixed by the Messenger of Allah and which is not to be exceeded. Elsewhere *Ibn* Hazm explains that *ta'zir* should not exceed ten lashes. Furthermore, the people should be protected from the harm caused by homosexuals, namely by locking the latter up for an unspecified period. *Ibn* Hazm believed that homosexuals should (and could?) be reformed and rehabilitated and that it was the duty of the community to do so. Unfortunately, he provides no further details about the practicalities of this rehabilitation.

Ibn Hazm adduces various texts in support of his view. In the first one, which can be found in Bukhârî's *Sahîh*, *Ibn* Abbas reports that the Prophet cursed effeminate men (*mukhannathm*) and masculine-looking women (*mutarajjilât*) and said, "Drag them out of their houses", and he removed so-and-so, and so-and-so, (i.e., from society, by sending them to prison).

The prison sentence is based on Allah's saying "But help ye one another unto righteousness and pious duty. Help not one another unto sin and transgression" (Q. 5:2). Everyone knows that keeping away the people of *Lut* both the active and the passive partners (*al-nâkîhîn wa'l-mankûhm*) from the people is an act of righteousness and a pious duty, and that leaving them be, i.e. by not interfering, thus, letting them carry on as they please, would amount to helping them unto sin and transgression. Therefore, they should be made to stop.

Now some shameless and stupid people may have the audacity to say that refraining from killing them will encourage them in their acts. Yes, says *Ibn* Hazm sarcastically, and the fact that you do not execute every single fornicator for, after all, some are only flogged is tantamount to declaring *zina* licit; and your refraining from executing every apostate for after all, he is saved if he recants is tantamount to condoning *kufur*, cross-worship, denouncing the Qur'an and the Prophet; and your refraining from killing the eater of pork, may ta, or blood, or the imbibber of wine leads you to allow the consumption of pork, may ta, blood, and wine! Their argument helps them as much as the Qur'anic passage which they cite: "Whosoever helps himself after he has been wronged—against them there is no way of blame"

(Q. 42:41). This means that in the case of homosexuality, a wrong has been committed, and acting against it is justified. However, according to *Ibn* Hazm, people should not exaggerate in their zeal to defend the religion of Allah, and add things that are not part of it: "Allah forbid that we should legislate corrupt laws, based on our personal views {*bi-àràH-nâ*). Let us praise Allah for granting us our adherence to the Qur'an and the *Sunnah*" This is aimed at people who want to impose harsh punishments for which they cannot adduce a scriptural basis, as is required by the *Zâhirîs*.

CONCLUSION

Based on the above discussions and explanations, it could be summed up here that there is no fixed punishment specified for the crime of *Liwat*. The *Sahabah* themselves also differ on the specific punishment to be meted out to the offender of this offence likewise the jurists. Therefore, it could be deduced that, generally, *Liwat* is to be punished by *Ta'azir*.

RECOMMENDATIONS

The paper recommends among other things that:

1. People should fear Allah and distance themselves from committing any crime.
2. When the culprit is before the law, he should be punished at all lost and there should be no mercy in inflicting the punishment.
3. Nonetheless, before the culprit is called a criminal, there must be proof of guilt beyond any reasonable and this should not be under force or durance.

REFERENCES

- Abdul-fatah, M. M. (2004). *al-Fiqhul Muyassaru Minal-Qur'an Was-Sunnah*, as in Shakeir, R.Y. (ed), *Simplified Islamic Jurist Prudence Based on Qur'an and Sunnah*, Vol. 1 & 2; Egypt, Far al-Manarah.
- Adang, C. (2003). *Ibn Hazim on Homosexuality: A Case Study of Zahiri Legal Methodology*, <http://al-qantara.revistas.csis.es/pdfs.semanticscholar.org>>... Retrived on 22nd January 2024.
- Ali, Y. A. (1998). *Modern English Translation of the Holy Qur'an: Meaning and Commentary*, Lebanon, Manar International Corporation.
- Bambale, Y. Y. (2003). *Crime and Punishment Under Islamic Law*, Lagos, Malt House Press Limited.
- Doi, I. A. (2007). *Shari'ah: The Islamic Law*, Kano, al-Yassar Publishers.
- Hassan, A. (1985). *Islam and Contemporary Social Problems*, Zaria, E & G publishers.