

LGBT: An Evaluation of Shariah Provisions and The Laws of Malaysia and Nigeria

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Abstract

Lesbian, gay, bisexual and transgender (LGBT) is prohibited by the major religions in the world as it is not only a sheer violation of marriage institution but also disrespect for human being as it contradicts the very nature of man's creation. The mental, emotional and physical completion of the human race is generally achieved through the combination of a male and a female. LGBT however is based on a refutation of this obvious fact, and goes against the laws of procreation. While some countries have legalised LGBT many still consider it abnormal, irrational, unethical and unacceptable to their religious principles, culture and tradition. LGBT is totally against the Malaysian and Nigerian culture, tradition, belief, faith and religion. Malaysia has taken strict measure not to allow LGBT although some have contended that the prohibition of it infringes basic principles of human rights. It is also a punishable crime both under syariah law. Having said the above, this paper therefore discusses the ethical and legal issues surrounding the LGBT and the Islamic viewpoint on the LGBT sexual activities. The social effect of LGBT to the institution of marriage is also discussed. Throughout the discussion and analysis, the qualitative and quantitative methods were applied. The test samples and data are taken from selected Malaysia and Nigeria respectfully. In the end, useful suggestion and solutions were suggested on the LGBT in the interest of society at large.

Introduction

LGBT refers to lesbian, gay, bisexual, and transgender. While some countries have legally permitted LBGT as human rights matter, there are still many countries which are against endorsing or granting permission to it. All Muslim countries including Malaysia and Nigeria are totally against LGBT because it is contrary to the Islamic principles, culture, and tradition. In fact, LGBT is a punishable crime not only under Islamic law but also under the penal laws of Nigeria and Malaysia. Any attempt from any quarter to endorse or legalise LGBT is a heinous and punishable act because it is against the Islamic principle and Muslims should oppose any attempt to legalise LGBT especially in their respectful countries. The act of a criminal is abnormal, irrational, unethical, and unacceptable in society because any rational person will not be involved in any irrational behaviour, character, and attitude such as same sex marriage and bestiality because the real sense of enjoyment is lacking. This is because having intercourse with the same gender or animal is unethical, immoral, uncultured, a sheer violation to the marriage institution and disrespect for human beings (Muhammad, 2000).

Islamic Perspective on LGBT

Islamic law is a divine law encompassing the *Qur'an*, *Sunnah*, *Ijma* (consensus of Islamic jurists), *qiyas* (analogical deduction), *Istihsan* (equality in Islamic law), *Maslahah Mursalah* (public interest), *Urf* (custom) and *Istishab* (presumption of continuity). In addition, *Sadd al-Dhara'i* (blocking the means) and *ijtihad* (personal reasoning) are also included as the sources of Islamic law. The derivation of law from all the stated sources of Islamic law is based on the supremacy and superiority of each source of Islamic law. This is because the *Qur'an* and the authentic hadith of Prophet Muhammad (SAW) are independent and prime sources of Islamic law. The rest are dependent sources that depend on both the *Qur'an* and *Sunnah* of Prophet Muhammad (SAW) (Kamali, 1999, Ashgar, 2004). Therefore, the law on punishment of any committed crime which includes the crime of LGBT must firstly be located in the *Qur'an* and, in the absence of any provision in the *Qur'an*, the *Sunnah* becomes the next dependent primary source of the law. Priority should be given to the sources of Islamic law accordingly until the law is derived. Commitment to the law is the duty of the head of State to protect the society from lawlessness and social disorder, such as the illegality of LGBT in society. On the other hand, some punishments were prescribed by God and they remain fixed. No one is permitted to change these divine punishments, often classified as *hadd* penalties, such as those metted out for theft, adultery or fornication, false accusation of adultery, drinking liquor, or robbery.

Criminal Liability in Islamic Law

Commission or omission of any unlawful or illegal act for which its punishment has been prescribed in the *Qur'an* or *hadith* is known as a *hadd* crime. Every offence is considered as *jinayat* regardless of whether it entails imprisonment or fine or severe punishment (Awdah, 2000). Based on that, any offensive act like LGBT entails severe punishment

or imprisonment or fine on the offender as a deterrent and lesson to others. The Islamic law has specific conditions and principles that make it different from other legal systems. These differences are specifically highlighted in the discussion on the criminal law provisions over the issue at stake. Hence, the judges in the Islamic courts have the right to pass judgment over the criminal liability of an offence based on the Islamic framework and principles. This framework and principles categorise the crimes in accordance with the punishment prescribed for it.

Hudud is defined as a punishment prescribed by God, hence, it is considered a part of the divine prerogative (*huquq* Allah). This assertion denotes that there are various kinds of punishment, among them are those prescribed by God. These latter kinds of punishment do not allow for *ijtihad* as it cannot be reduced or increased. The implication of this is that the prescribed punishment by God must be executed and implemented accordingly regardless of the status of the offender and as such, these kinds of punishments can neither be annulled nor changed by the authority (Awdah, 2000). Hence, there is no immunity for anyone from such prescribed punishment because it is prescribed by God. Therefore, a person who committed LGBT is deemed to have committed a punishable crime, although, the judge can use his discretion where necessary to determine the severity of the punishment against the offender as a deterrent and lesson to others.

The commission of an intercourse with the same gender or with an animal falls under the prescribed punishments for adultery and fornication based on analogy and the punishment must be effected as a deterrent and lesson to others. Moreover, it is compulsory for the authorities to let the execution of such a punishment take its effect and failure to carry out the said punishment amounts to commission of sin by the authority. The authority should not entertain or welcome any threat or pressure from any quarter due to limited aids or financial

support. The implementation of *hudud* is important and necessary to maintain peace, security, and stability in the society; otherwise, the sin and its effect will spread across the country. The essence of this punishment is to prevent the criminal from committing the same offence in future and it also serves as a deterrent to others (Bassiouni, 1982). The execution of the prescribed punishment on LGBT will maintain human dignity, respect for marriage institution, and the society will abide the law.

Qisas, Diyyah and LGBT

Literally, *qisas* is defined as equality and equivalence which means that a criminal who commits or violates the rules and regulation by killing another person should be punished in a way that is similar to his action (Bassiouni, 1982). As for *diyyah*, it is defined as the basic or substantive punishment for quasi-intentional and inadvertent homicide or infliction of wound. This kind of punishment is based on the injunction of *Qur'an* that says: "It is not for a believer to kill a believer unless (it be) by mistake. He who hath killed a believer by mistake must set free a believing slave and pay the blood-money (*diyyah*) to the family of the slain, unless they remit it as a charity," (Qur'an, 4: 92). The messenger of God, the Prophet Muhammad is reported to have said: "Whoever is killed inadvertently as by flogging or beating with a stick or being hit by stone, his blood-price is a hundred camels."

Based on the abovementioned verse, *diyyah* is legally permitted through the payment of fine or compensation to the victim or victim's family as social justice. Therefore, *diyyah* or compensation can be applied and implemented on crime against victim in a situation where the victim was coerced to have sex with the same gender at the point of gun or threaten to be wounded or killed. So, the law must be implemented on any person who committed lesbianism and gay by having intercourse with the same gender wilfully. The other crimes that fall into *qisas* category are wilful murder, wilful

dismemberment of limbs and wilful infliction of injury by mistake (Awdah, 2000).

Types of *Qisas* In The Light of LGBT

Crimes of *qisas* are five, namely, involuntary killing, intentional physical injury or maiming, and unintentional physical injury or maiming. The above are clearly mentioned in the *Qur'an* and *hadith*. These crimes carry the punishment of retaliation or *diyyah* or compensation in accordance with the *Qur'anic* and *hadith* injunctions ((Bassiouni, 1982). The prescribed punishment for any of the abovementioned crimes must be executed and carried out judiciously. For example, if a person is threatened with death or grievous injury, say at gun point or with a sharp weapon, and forced to have sexual intercourse with an animal or another individual of the same gender, and if the victim dies as a result of that sexual intercourse, the offender must be punished accordingly.

Application of *Ta'zeer* Punishment for LGBT

Ta'zeer means chastisement and it is prescribed for such offences that are not categorized as *hudud*. It is a kind of punishment which is not prescribed or mentioned in the *Qur'an* or *Sunnah*. The quantity and kind of such a punishment has been left to the discretion of the Syariah judge to determine according to the circumstances surrounding the case. It is a kind of punishment that ranges from one that is minor in nature, such as admonition and warning, to a severe punishment like lashes or the capital punishment (Awdah, 2000). Therefore, it is up to the judge to see that the punishment he prescribed will serve the purpose of a deterrent punishment against the criminal who committed sexual intercourse with an animal or any similar crime because it is against humanity and abuse to the marriage institution. If such an act failed to be legally and severely curtailed by the authority and allowed to spread, it is feared that many will divorce their wives or husbands, while some may jettison their marriages simply because they are enjoying the impermissible

sex. The marriage institution will then collapse and society will be in disorder.

Ta'zeer as a form of Islamic legal punishment is considered lawful provided that all the guided rules and regulations are properly taken into consideration when determining the punishment of *ta'zeer*. Its legality was established through the tradition of Prophet Mohammed (Syed Tahir, 1987). The ideal thing is not to allow lawlessness, immorality, and unethical act in the society. Otherwise, the rate of crime in society will escalate and society will become lawless where everyone is free to act in accordance with his or her will (Awdah, 2000).

Difference Between *Ta'zeer* and other Punishments

There are differences between *ta'zeer*, *hudud*, *qisas*, and *diyyat* punishments and they are as follow. Firstly, it has been previously mentioned that certain punishment cannot be changed or amended by judges or jurists. This is peculiar to the punishment of *hudud*, *qisas*, and *diyyah* which have been prescribed by God or the prophetic *Sunnah*. Therefore, it is beyond the capacity of the court to amend or change such punishment. Even these punishments cannot be reduced or increased regardless of what may be the status of the offender. On the contrary, *ta'zeer* punishment is not prescribed or stated in the *Qur'an* or *Hadith*, but that which could be determined through the discretion of the court. Therefore, the court is empowered to award the minimum or maximum punishment on the basis of the circumstances that may surround the offence and in line with the gravity of the offence in the best interest of the society and the individual (Ghaouti, 1982).

Secondly, *hudud*, *qisas* or *diyyah* punishments are irrevocable, which means that the court has no jurisdiction or power to intervene. Rather, it's duty is to pronounce the appropriate punishment and execute it accordingly. This is contrary to *ta'zeer* punishment where the judge or the person in charge has the authority or power to reduce

or increase and even pardon the offender as the case may be in the best interest of the society and the community. Therefore, it is unlawful for judges to reduce or pardon criminals based on the severity of the offence. There is no room for immunity under Islamic law especially on any crime where its punishment has been divinely prescribed. Therefore, the punishment must be meted out on the criminal. If the judge sees that the capital punishment against the married person who divorced his wife and committed bestiality will affect the family or society, then, the judge can use his authority to impose a lighter sentence. It has to be ascertain that the judge considered family and societies interest and not the status of the offender.

Thirdly, in *ta'zeer* punishment, the offence and social status of the offender are taken into consideration, whereas the social status of the offender in *hudud*, *qisas*, and *diyyah* categorised crimes are of no consequences and has no impact on the punishment (Awdah, 2000). Despite the fact that the social status can be considered in *ta'zeer* punishment, nevertheless, a lighter punishment must as least be meted out on the offender in order to make him bear the guilt and shame for the crime and see himself as being unethical due to his status.

Types of *Ta'zeer*

Under the Islamic law, there are different kinds of *ta'zeer* punishment which may be imposed on an offender as criminal liability in respect to the crime that might have been committed. However, Islamic law does not prohibit any sort of *ta'zeer* provided that the punishment is able to serve the purpose it was meant for, which is, to rehabilitate the offender and to deter others. Therefore, any kind of *ta'zeer* punishment can be meted out on the offender as a deterrent sentence in the interest of a decent and religious society (Muzammil, 2005). So, *ta'zeer* punishment can be applied on LGBT offenses provided it does not contradict with prescribed punishments.

These types of *ta'zeer* are:

First, Capital punishment: This punishment is not allowed and permitted as *ta'zeer* under the Islamic law because the main objective of *ta'zeer* is to reform and rehabilitate an offender. Therefore, the amputation of a limb or the death penalty is unlawful and invalid under Islamic law principle in regards to *ta'zeer* punishment. Some jurists, however, permit capital punishment for *ta'zeer* on the basis that such a penalty would put an end to the crime in society. The *Hanafites* for example, uphold the view that it is improper to award death penalty as *ta'zeer*. This opinion is also expressed by Ibn Taimiyyah, Ibn al-Qayyim and some disciples of Imam Malik. On the other hand, Imam Malik, Imam Shafi'i and Imam Hanbal were of the opposite view (Ghaouti, 1982).

In this regard, one can say that capital punishment is admissible or inadmissible in case of bestiality and transgender but the power should be given to the judge to determine the fate of the offender. This is because it will serve as deterrent and lesson to others. Therefore, this study agrees with both opinions provided that the judge is given free hands to determine the deterrent punishment after considering all the circumstances of the case. It should also be borne in mind that death penalty has been prescribed in the *Qur'an* and *Hadith*, therefore, no one has authority to go against any of the prescribed penalty. The punishment for bestiality should be harsh enough to maintain law and order in society.

Second, lashes: this kind of punishment is allowed under the Islamic law as *ta'zeer* with the aim of preventing the habitual offenders from committing any of those crimes. According to Imam Malik, an offender may be scourged with more than a hundred stripes despite the fact that the punishment of lashes prescribed on *hudud* does not exceed one hundred stripes. On the other hand, Imam Abu Hanifah held the view that lashes should not be more than 39 while Imam Abu Yusuf said lashes should not exceed 75

(Ghaouti, 1982). This study therefore suggests that judges can consider the implementation of lashes as *ta'zeer* against a culprit of transgender, gay marriage, lesbian and bisexual who intends to commit the crime with concrete evidence to support the allegation. The traces of scourges will remind the criminal whenever he or she intends to recommit similar offence with same gender, and animal (Muhammad, 2002).

Third, banishment: this is another form of *ta'zeer* punishment for offences that the minimum period of banishment is one day while others are of the view that maximum period of banishment should be between six months to one year. On the issue of LGBT, instead of banishing the criminal, it is better to imprison the guilty offender as a deterrent and lesson to others. Banishing the criminal cannot reduce his or her unethical fornication (El Awa, 2000).

Fourth, death by hanging: this is mainly for the *hadd* punishment while some scholars are of the view that death by hanging can also be considered as *ta'zeer* punishment. To this study, death penalty by hanging may not be applicable and implementable unless there are enough and credible evidences to justify the death by hanging of same sex marriage and bestiality in particular.

In addition, admonition and exhortation are also considered as *ta'zeer* under the Islamic law if the court strongly believes that the offender would be rehabilitated by such punishments. Therefore, if admonition and exhortation are found to be suitable as punishment for LGBT offender, it can be adopted provided the case is carefully and firmly studied by the court and judge.

Lastly, on monetary fine is also considered as *ta'zeer* punishment under the Islamic law in a situation where a fine is imposed on the offender as a form of criminal liability. So, if the judge sees that monetary fine is suitable and will serve its purpose for same sex marriage and

bestiality offenders as *ta'zeer* punishment, he or she should be allowed to enjoy the monetary fine. Such monetary fine can be utilized to develop and transform society. The judge should evaluate the financial status and capability of the criminal carefully before awarding the monetary fine in order to achieve the purpose of punishment (Dario, 2008).

Shariah Rulings Against Bestiality

Sexual Offences

Under Islamic law, the married adulterer is liable to the stoning to death while the unmarried person would be flogged (El-Awa, 2000). Stoning the married adulterer will serve as example and strict warning to other married persons who are not adulterer and flogging is to chastise the fornicator and lesson to others (Awdah, 2000). Based on the divine punishment of adultery, sexual crime against animal or forcing innocent person to have intercourse with animal will incur similar punishment or light punishment that will reprimand the offender and lesson to others from committing similar offence. The reason is that, the *Qur'an* provides that the adultery which involved any such crime related to sexual intercourse against another person, both adulterer and adulteress shall be punished accordingly. The punishment for adultery is stoning to death for a married person, or 100 lashes if the offender is unmarried (Muhammad, 2002).

The traditional concept and practice of marriage is that it is a contract between a male and a female, man and woman or masculine and feminine. Therefore, any marriage contract between the same sex or the same gender or animal is illegal and unlawful under Islamic law. The contracting parties of such illegal and unlawful marriage would be liable to the severe punishment. Based on that, bestiality, sodomy, homosexuality, lesbianism, gay marriage or prostitution, is illegal, a punishable crime under the tenets of Islamic law (Muhamamd Iqbal,

1985, Doi, 1984) . If man and man or woman and woman consented on contract marriage, such union contravened the principles of Islamic law and the punishment for such an act has been prescribed, namely, death penalty (Muhamamd 2002). Their act is a sin and crime under Islamic law on the ground that they commit lewdness, a ransgression and violation, and a prohibited act (Q7:80-81, Q 26:166).

Islamic jurists unanimously agree that sodomy and homosexuality constitute *zina* (adultery), which is punishable, but they differ among themselves on the gravity and nature of punishment. The majority of classical scholars opined that the punishment for sodomy and homosexuality falls under (*hudud*) punishment because both are unnatural sexual intercourse between the same gender. On the other hand, Imam Abu Hanifah held the view that sodomy cannot be equated with *zina* (adultery), therefore, is not liable to *hudud* punishment, rather, the offender can be corrected by *ta'zeer*. Similarly, bestiality is a punishable crime under Islamic law regardless of the criminal's social status. According to Imam Shafi'i and Imam Hanbal the punishment for bestiality is stoning to death and the animal subjected to the sexual intercourse should be killed. Contrary to that, Imam Abu Hanifah and Imam Maliki were of the view that the bestiality offender should be punished by *ta'zeer* and animal should be killed but animal flesh is lawful and permissible (Muhammad, 2002). Ibn Qudamah argues in support of Imam Abu Hanifah and others that the offender should be liable to *ta'zeer* punishment because they are majority. To this study, the Imam or judge should be given the power to determine the deterrent punishment based on his discretion and it is submitted that both views can be applied based on the situation, and condition prevailing in the society (El-Awa, 2000) .

Same Sex Marriage and Human Rights

Marriage is a lawful and legal contract between male and female that signifies solemn agreement between the concerned parties. The consented

agreement legalizes conjugal relationship the couples, and procreation is one of the purposes of marriage (Doi,1992, Nasir, 1990, El-Alami, 1992, Ahmed, 1966, Rafiullah 1986, Wani 1995). Since marriage is a union between a man and a woman, it can be inferred that any union between the same sexes or any marriage contract with an animal is considered a crime and a sin. Therefore, committing homosexuality and engaging in same sex marriages and bestiality punishable crimes under Islamic law (Tauqir, 2007).

Article 16 of Human Declaration 1948 provides that men and women of full age have the right to marry with free and full consent of the intending spouses. The article is in harmony and in line with principle of Islamic Law that permit different sex to marry together as husband and wife and against same sex marriage such as lesbian, gay marriage and bestiality or similar illegal intercourse. On the other hand, art. 17 of the Declaration of Human rights also provides that everyone has the right to own property alone as well as association with others (Article 16 and 17, Human Right Declaration of 1948).

It is clear from art. 17 that everyone has the right to enjoying his or her property where acquiring animal is considered as owner's property and he or she has the right to enjoy his or her animal the way owner wants it. The question is whether there is ethical limitation to the usage of animal or the owner can enjoy his or her purchased animal without limitation. It must be stated **outright** that we are accountable for all our deeds, life, property, enjoyment, affluence, and other **worldly possession and activity** in the hereafter (Donnelly, 1991).

Nigeria And LGBT

The Nigerian government has made it clear to the world that LGBT is a punishable offence under Nigerian law. The country will not tender any apology to any nation over her anti-gay marriage and anti-LGBT. The reason is that some of the things that are considered

fundamental human rights in some developed countries such as America, Europe, Asian and in some Africa countries are considered as offences in Nigeria in particular and Africa in general due to the African culture, custom, tradition, and religion. Same sex marriage is a punishable act under Nigerian laws and any person who enter into a same sex marriage contract or civil union commit an offence and are each liable on conviction to a term of 14 year imprisonment.

In addition, any person who registers, operates, participates or make public show of same sex amorous relationship in Nigeria commits an offence and shall be liable on conviction to a term of 10 year imprisonment. Majority of right-thinking and rational Nigerians are in line with the bill passed by the upper house in Nigeria. The reason is that LGBT is totally against the Nigerian culture, custom, tradition, belief, faith, and religion. Based on that, all Nigerian religions unanimously support the bill (Sunnews, 2011).

Reaction from some African countries, like from the late Ghanaian President John Atta Mills, indicates support for the Nigerian position. President Mills made it very clear that he will never imitate, emulate or support any attempt to legalise homosexuality in Ghana and will not compromise morals for money. The Ugandans also share the Nigerian legal position. The Ugandan government, for instance, disagreed with the former United Kingdom Prime Minister, Mr David Cameron, who vowed to stop or shut up any nation that refused or failed to respect gay right in their respectful countries. David Cameron's position sparked and attracted emotional reaction and response from many countries in the whole world. It is discovered from David Cameron that any developing country that depend on or benefit from the United Kingdom will be forced to accept LGBTs and their lifestyle. It has been said that any person who forces others to engage, involve, endorse, accept, or adopt any act without his or her will is considered as having engaged in an act of terrorism. In this

sense therefore, Mr David Cameron seemed to be calling for legalizing immorality that is socially unacceptable by African standard, a position that is equally shared by President Obama (Sunnews, 2011).

The Malaysian Approach

In Malaysia, marriage or sexual relationship between a man and woman who are related (mahram) to each other is forbidden. Penal Code, s. 376A provides that a person is said to have committed incest if he or she has sexual intercourse with another person whose relationship to him or her is such that he or she is not permitted, under the law, religion, custom or usage applicable to him or her, to marry that other person. The punishment for incest under the Penal Code is provided in s. 376B(1) namely, imprisonment for a term of not less than six years and not more than twenty years, and shall also be liable to whipping.

In *Ismail Rasid v PP*, KN Segara J stated:

Incest is a sin that can hardly be forgiven. Therefore, when a father rapes his daughter and is convicted in court, any sentence passed must reflect the abhorrence of society to such a heinous and despicable act. A sufficiently strong and effective signal must also be sent out to would-be rapists of this species that the court would not hesitate to come down hard on them, in order to protect those naive, helpless and innocent children who had placed unquestioning trust, faith, loyalty and confidence in their fathers to be role models as well as pillars of strength and protection at all times, only to see their lives shattered, humiliated and traumatized by an act of lust that could have easily been curbed and controlled by any self-respecting human being [1999] 4 CLJ 402.

Again, in *Mohd Zandere Arifin v PP*, Ahmad Maarop J stated:

In my view the offences committed by the appellant had outraged the feeling of the community, warranting even the maximum sentences to be imposed on him. Furthermore the prevalence of this type of offence must also be taken into consideration by the court in assessing sentence. In this case public interest demands that sentences which shows the society's utter abhorrence for this type of offence be passed. The sentences passed must serve as a plain warning that in this country the severest possible penalty awaits any person who commits incest. I am satisfied that the element of public interest and the consideration that the offences committed by the appellant were very grave must prevail, and override the crushing effect which the sentences will have on the appellant.

Incest is also a crime under the Syariah Criminal Offences (Federal Territories) Act 1992 and the punishment for such crime is stated in section 20. The above section provides: "Any person who commits incest shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof."

Likewise, sodomy and lesbianism is also a crime under the Malaysian laws. For example, s. 25 of the Syariah Criminal Offences (Federal Territories) Act 1997 uses the term *liwat* which appears to overlap with 'sexual intercourse against the order of nature' and 'outrages on decency' in sections 377A and 377D of the Penal Code, respectively. Section 25 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides: "Any male person who commits *liwat* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof." Further, s. 26 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides: "Any female

person who commits *musahaqah* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.” Section 2 of the same Act defined “*musahaqah*” means sexual relations between female persons.

Lastly, buggery with an animal is a crime under the Penal Code s. 377. The above section provides that ‘Whoever voluntarily has carnal intercourse with an animal shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine or to whipping [2006] 5 CLJ 663.

It may be added that it is the obligation of the government and the civil society to preserve and protect public *morality* and decency in a multi-religious and multi-cultural society like Malaysia with Muslim majority.

The stand taken recently by the Malaysian Government and the Immigration Department not to allow gay events and to deny entry to any foreign national intending to organise or attend such events is commendable. Some however argue that gay social functions should be allowed and in the event lewd acts are committed during the function, the authorities will be able to take action. This argument is akin alluring an ant to honey and expecting the ant not to taste it. By creating an avenue for such misdeeds, the country will be encouraging the commission of a sinful deed. The best resort will be to nip it in the bud by preventing such misdeeds by an outright ban.

From the above, if people are coming into Malaysia specifically for the celebration of homosexuality then they should not be allowed entry. If not prevented, it would then be like allowing an evil force to enter into our homes and permitting them to cause further destruction therein. This is what happens when a sinful act is normalised by society. Coupling was never condoned by people of the past, but due

to media, human rights activists etc, coupling has become normalised in our society and as a consequence we witness digression of society, broken homes, teen pregnancy and baby dumping, among others. If appropriate action is not taken it is the society that suffers in the end.

It must be noted that LGBT is totally against the Malaysian culture, tradition, belief, faith and religion. As noted above, it is a punishable crime both under syariah law and the penal laws of Malaysia. The battle for human rights is therefore a battle to restore the rights of people that have been deprived, to restore the dignity of man. Human rights should not be used to promote illegal and immoral activities, irrational behaviour that is contradictory to the very nature man was created.

Frequency Analysis on LGBT

The study applied quantitative methods throughout the finding that covers library, field work, distribution of questionnaires to the Nigerian and Malaysian students. Materials and data from books, statutes, articles from refereed journals, gazettes, decided cases, seminar papers and proceedings, newspapers, writing and relevant websites were consulted for the analysis on LGBT. Researchers consulted some experts in academic institutions such as experienced PhD holders, PhD students and some lecturers in higher institutions of learning like University Malaya, International Islamic University Malaysia, and National University of Malaysia to seek for their views and opinion on questionnaire. Some of their suggestions and comments were found useful to this research and considered.

The researcher distributed three hundred (300) questionnaires to the participants and two hundred and ninety-two (292) were collected from the respondents. In order word, more than 90% of distributed questionnaire was received and considered as a good response . This can be based on the Babbie argument (1989) that achieving a fifty percentage (50%) response can

be considered adequate, sixty percentage (60%) should be regarded as good, while seventy percent (70%) should be considered as a very good response rate for the data analysis.

Concerning respondents, three hundred questionnaires were distributed between January to April, 2012 to Nigerian and Malaysian respondents in Malaysia. The subjects of this study were selected from Nigerian and Malaysian students in Malaysia. Malaysian respondents consist of Malay, Indian and Chinese while Nigerian respondents consist of Yoruba and Hausa respectfully. Three hundred questionnaires were distributed and the researcher managed to recollect two hundred and ninety-two. The questionnaires were keyed into Statistical Package for Social Science (SPSS) for analysis. Mean, standard deviation, and percentile for data analysis on LGBT. Findings of the frequency analysis indicate that the majority of respective respondents understand the concept and the meaning of LGBT. The majority of 82.2% (n=240) understood LGBT and its criminal implication while 17.8% (n=52) does not understand the theory and concept. Also, the frequency analysis shows that 75.3% (n=220) of respondents strongly disagreed that LGBT should be legalised and 24.7% (n=72) agreed on LGBT legislation.

The frequency analysis of respondent understanding towards same sex marriage indicates that 89.7% (n=262) heard about same sex marriage such as lesbian and gay marriage and 10.3% of (n=30) did not understand same sex marriage. For illustration of same sex marriage, majority of participants 87.7% of (n=256) indicated and strongly agreed that same sex marriage should be considered as a punishable crime while 12.3% of (n=36) disagreed. In addition, 67.8 of (n=198) disagreed that nobody has right to punish gay criminal while 32.2% of (n=94) agreed. For the lesbian, 68.5% of (n=200) strongly disagreed that nobody has legal right to punish lesbian and 31.5% of (n=94) agreed that nobody has legal and moral right to punish lesbian.

On the other hand, 78.8% (n=230) of respondents disagreed on the permission of LGBT association and 21.2 of (n=31.5) agreed on legislation of LGBT association globally. Majority of respondents 82.2% (n=240) strongly agreed that bestiality while 17.5 of (n=51) disagreed. Similarly, 58.8% of (n=166) agreed that both offender of bestiality and animal that subjected to offence should be killed following by 42.8 of (n=125) strongly agreed while .3% of (n=1) disagreed on killing of offender and animal. The percentage of 50.3 of (n=147) disagreed that bestiality punishment should be imprisonment and 49.3% of (n=144) agreed that punishment should imprisonment for the bestiality.

Table 1.0
 Table of Frequency analysis on Evaluation of LGBT under Shariah Provisions, Malaysian and Nigerian Laws

No of item	Strongly Agreed	Agreed	Strongly Disagreed	None
1	82.2%	0%	17.8%	0%
2	0%	24.7%	75.3%	0%
3	89.7%	0%	10.3%	0%
4	87.7%	%	12.3%	0%
5	32.2%	%	67.8%	%
6	31.5%	%	68.5%	%
7	21.2%	%	78.8%	%
8	82.2%	17.5%	.3%	%
9	42.8%	58.8%	.3%	%
10	49.3%	%	50.3%	%

Concerning LGBT As A Punishable Crime

The majority of respondent of 57.2% of (n=167) strongly agreed that LGBT should be considered as a crime, 28.4 of (n=83) agreed while 11.3% of (n=33) disagreed and 3.1% of (n=9) were none. It is also discovered from respondent that 49.7% of (n=145) strongly agreed that culprits must be punished legally followed by 44.2% of (n=129) agreed while 2.7% of (n=8) disagreed and 3.4% of (n=10) answered none. The majority of participants of 72.9% of (n=213) strongly agreed that no court should approve same sex marriage, 12.3% of (n=36) agreed, 9.2% of (n=27) disagreed and none were 5.5% of (n=16) respectfully. Percentage of 77.4 of (n=226) strongly agreed that parents or guardians should against the same sex marriage, 10.6% of (n=31) agreed while 6.2% of (n=18) were none and remaining 5.8% of (n=17) disagreed.

On the other hand, 54.1% of (n=158) strongly agreed that those attended same sex marriage should be punished, 30.8% of (n=90) agreed, 10.6% of (n=31) disagreed while 4.5% of (n=13) were none. To the marriage institution, 57.2% of (n=167) strongly agreed that same sex marriage infringes marriage institution, 21.2% of (n=62) agreed, 12.3% of (n=36) none, and 9.2% of (n=27) disagreed. Concerning death penalty, 36.3% of (n=106) disagreed, 30.5% of (n=89) agreed, 20.9% of (n=61) strongly agreed, and 12.3% of (n=36) were none respectfully.

On the imprisonment, majority of 41.8% of (n=122) agreed, 18.5% of (n=54) strongly agreed, 27.7% of (n=81) disagreed and 12.0% of (n=35) were none. Light discipline, 33.2% of (n=97) agreed on light discipline for same sex marriage, 25.0% of (n=73) strongly agreed, 34.2% of (n=100) disagreed, and 7.5% of (n=22) were none. Finally, 46.9% of (n=137) disagreed that sex marriage criminal should be freed, 25.0% of (n=73) agreed, 13.7% of (n=40) strongly agreed, and 14.4% of (n=42) were none.

Regarding to *Shariah* punishment on LGBT,

66.1% (n=193) of respondents strongly agreed that LGBT is punishable under *Shariah*, 21.2% of (n=62) agreed, 6.5% of (n=19) disagreed, and 6.2% of (n=18) of respondent were none. The percentage of participants of 57.5% of (n=168) strongly agreed that *Shariah* punishment is capable of reducing same sex marriage, 30.1% of (n=88) agreed, 7.5% of (n=22) disagreed, and 4.8% of (n=14) were none. Punishment must be based on credible evidence, therefore, 52.7% of (n=154) strongly agreed, 34.2% of (n=100) agreed, while 7.5% of (n=22) were none and 5.5% of (n=16) disagreed respectfully.

In addition, 58.6% of (n=171) strongly agreed that honest and pious authority must handle same sex marriage cases, 33.2% of (n=97) agreed, 5.1% of (n=15) none, and 5.5% of (n=9) disagreed respectfully. However, 37.0% of (n=97) agreed that biological parents should not be punished for their son's sex marriage, 24.3% of (n=71) strongly agreed and also answered none while the remaining of 14.4% of (n=42) disagreed. Similarly, 38.7% of (n=113) agreed that biological parents should not be punished for their daughter's sex marriage, 21.9% of (n=64) strongly agreed, 25.0% of (n=73) answered none while the remaining of 14.4% of (n=42) disagreed.

Ta'zeer punishment can be implemented against LGBT culprits based on that, 37.0% of (n=108) agreed, 13.7% of (n=40) strongly agreed, 26.4% of (n=disagreed), and 22.9% of (n=67) were none. On the issue of fine, 55.8% of (n=163) disagreed with fine punishment against LGBT criminal, 20.2% of (n=59) agreed, 8.6% of (n=25) strongly agreed and 15.4% of (n=45) answered none.

On the other hands, 51.4% of (n=150) strongly agreed that hudud and qisas punishment should apply on LGBT cases, 25.0% of (n=73) agreed, following by 12.3% of (n=36) answered none, and 11.3% of (n=33) disagreed. The majority of 74.7% of (n=218) disagreed with the question that *Shariah* is not the best law to approach LGBT cases, 3.8% of (n=11) strongly

agreed, 5.8% of (n=17) agreed, and 15.8% of (n=46) answered none. Finally, 39.0% of (n=114) strongly agreed that Shariah must be implemented on Muslims only, 31.2% of (n=91) agreed, 20.5% of (n=disagreed), and 9.2% of (n=27) ticked none.

In addition to the frequency on religion, ethics, and rights, 72.6% of (n=212) strongly agreed that LGBT is irreligious and 5.1% of (n=15) disagreed. Similarly, 63.4% of (n=185) strongly agreed that LGBT infringes human dignity and 24.7% of (n=72) agreed but 24.7% of (n=72) disagreed. The majority of respondents of 63.4% of (n=185) strongly agreed that LGBT is uncultured and uncivilised, 22.3% of (n=65) agreed and 7.2% of (n=21) disagreed respectfully.

On the other hand, majority of 65.8% of (n=192) strongly agreed that Islamic scholars must against LGBT unanimously but 6.8% of (n=20) disagreed. Furthermore, 61.3% of (n=179) strongly agreed that fatwa must be issued

against LGBT regardless of any threat from any quarter while 4.1% of (n=12) disagreed with majority. Morally, 73.6% of (n=215) disagreed that LGBT is morally accepted while 8.9% of (n=26) disagreed. The majority of participants of 65.1% of (n=190) strongly agreed that any form of LGBT is unethical and immoral while 6.2% of (n=18) disagreed.

Regarding Islamic principles, 64.7% of (n=189) strongly agreed that LGBT violates Islamic principles but 6.8% of (n=20) disagreed while 15.8% of (n=46) also agreed with majority. Individually, 39.7% of (n=116) strongly agreed that it is individual rights to protect and wage war against LGBT in the interest of society, 38.4% of (n=112) agreed and 13.0% of (n=38) disagreed. Finally, 38.4% of (n=112) strongly agreed that same sex marriage should be rehabilitated after the punishment, 35.3% of (n=103) agreed, and 11.3% of (n=33) disagreed with majority.

Table 2.0
 Table of Frequency analysis on Evaluation of LGBT under Shariah Provisions, Malaysian and Nigerian Law

No. of item	Strongly Agreed	Agreed	Strongly Disagreed	None
11	57.2%	28.4%	11.3 %	3.1%
12	49.7%	44.2 %	2.7%	3.4%
13	72.9%	12.3%	9.2%	5.5%
14	77.4%	10.6%	5.8%	6.2%
15	54.1%	30.8%	10.6%	4.5%
16	57.2%	21.2%	9.2%	12.3%
17	20.9%	30.5%	36.3%	12.3%
18	18.5%	41.8%	27.7%	12.0%
19	25.0%	33.2%	34.2%	7.5%
20	13.7%	25.0%	46.9%	14.4%
21	66.1%	21.2%	6.5%	6.2%
22	57.5%	30.1%	7.5%	4.8%
23	52.7%	34.2%	5.5%	7.5%
24	58.6%	33.2%	3.1%	5.1%
25	24.3%	37.0%	14.4%	24.3%
26	21.9%	38.7%	14.4%	25.0%
27	13.7%	37.0%	26.4%	22.9%
28	8.6%	20.2%	55.8%	15.4%
29	51.4%	25.0%	11.3%	12.3%
30	3.8%	5.8%	74.7%	15.8%

31	39.0%	31.2%	20.5%	9.2%
32	72.6%	17.1%	5.1%	5.1%
33	63.4%	24.7%	24.7%	3.4%
34	63.4%	22.3%	7.2%	7.2%
35	65.8%	18.8%	6.8%	8.6%
36	61.3%	27.1%	4.1%	7.5%
37	8.9%	7.2%	73.6%	10.3%
38	65.1%	16.4%	6.2%	12.3%
39	64.7%	15.8%	6.8%	12.7%
40	39.7%	38.4%	13.0%	8.9%
41	35.3%	38.4%	11.3%	15.1%

Conclusion

Islam commands that marriage between opposite sex is the most effective means in which one can lead a virtuous life free from immorality and emotional inhibition. It is a means of safeguarding one from committing sinful act due to lust and desires (*nafs*) (24:32). The Prophet (SAW) said, “O ye young people, whoever can afford marriage should marry, for that will help him lower his gaze and guard his modesty. Whoever is not able to marry is recommended to fast, as fasting diminishes (his) sexual power”.

Islam prohibited men’s sexual behaviour with other men and this includes also lesbian behaviour. Such acts is considered as something contradictory to the very nature according to which God created man. God’s creation is generally in pairs. A complete phenomenon is generally divided into two complementary parts. Human being, as a complete entity is divided into males and females. The mental, emotional and physical completion of humans is generally achieved through the combination of a male and a female. Homosexuality and lesbianism is based on a refutation of this obvious fact, and is therefore in contradiction with the very nature on which man has been created.

Having said the above, the findings show that majority of respondent strongly agreed that LGBT is illegal, immoral, uncultured, and irreligious. It is discovered that majority of

respondent strongly agreed that LGBT infringes human dignity, personality, and human rights. Therefore, the participants strongly agreed that *Shariah* is the best law to be implemented on Muslims who committed LGBT crime and the Muslim state or authority should not legalised LGBT regardless of threats or pressure from any country. As a final remark, the battle for human rights is a battle to restore the rights of people that have been deprived, to restore the dignity of man. Human rights should not be used to promote illegal and immoral activities, irrational behaviour that is contradictory to the very nature man was created. The mental, emotional and physical completion of the human race is generally achieved through the combination of a male and a female. LGBT however is based on a refutation of this obvious fact, and goes against the laws of procreation.

References

- Ahmed, S. (1966). *Muhammedan Law of Marriage and Divorce*. New York: AMS Press INC, pp.21.
- Article 16 and 17 of Human Rightd Declaration of 1948.
- Ashgar, A. E. (2004). *The Rights of Women in Islam*. U.S.A: New Dawn Press, INC, pp. 7-8.
- Awdah, A. Q. S. (2000). *Criminal Law of Islam*. Delhi: International Islamic Publisher. Vol.1, pp. 73.

- Awdah, A. Q. S. (2000). Criminal Law of Islam. Delhi: International Islamic Publisher. Vol.3., pp. 83.
- Awdah, A. Q. S. (2000). Criminal Law of Islam. Delhi: International Islamic Publisher. Vol.1, pp. 84-85.
- Awdah, A. Q. S. (2000). Criminal Law of Islam. Delhi: International Islamic Publisher. Vol.1, pp. 137-138.
- Awdah, A. Q. S. (2000). Criminal Law of Islam. Delhi: International Islamic Publisher. Vol.1, pp. 85.
- Awdah, A. Q. S. (2000). Criminal Law of Islam. Delhi: International Islamic Publisher. Vol.1, pp. 137-138.
- Awdah, A. Q. S. (2000). Criminal Law of Islam. Delhi: International Islamic Publisher. Vol.2, pp. 259-256.
- Bassiouni, M. C.. (1982). The Islamic Criminal Justice System. U.S.A: Oceana Publication, Inc., pp. 203.
- Bassiouni, M. C. (1982). The Islamic criminal justice system. London: Oceana Publications, Inc., pp. 203-204.
- Bassiouni, M. C. (1982). The Islamic criminal justice system. London: Oceana Publications, Inc., pp. 203-204.
- Dario, M. (2008). (2008). Controlling Crime, Controlling Society. U.S.A: Polity Press, pp.30-34.
- Doi, A. R. I. (1992). Women in Shariah (Islamic Law). Kuala Lumpur, A.S. Noordeen, pp.31-34.
- Donnelly, J. (1991). Universal Human Rights in Theory and Practice. London: Cornel University Press, 93-95.
- El-Alami, D. S. (1992). The Marriage Contract in Islamic Law in the Shariah and Personal Status Laws of Egypt and Morocco. London: Graham & Trotman, pp.41.
- El-Awa, M. S. (2000). Punishment in Islamic Law: A Comparative study. Plainfield, U.S.A: American Trust Publication, pp.10-12.
- El-Awa, M. S. (2000). Punishment in Islamic Law: A Comparative study. Plainfield, U.S.A: American Trust Publication, pp.12-13.
- El-Awa, M. S. (2000). Punishment in Islamic Law: A Comparative study. Plainfield, U.S.A: American Trust Publication, pp.13-19.
- Ghaouti, B. (1982). Ta'zeer Crimes. In Bassiouni, Cherif (ed.) The Islamic Criminal Justice System. U.S.A: Oceana Publication, Inc., pp. 211-214.
- Ghaouti, B. (1982). Ta'zeer Crimes. In Bassiouni, Cherif (ed.) The Islamic Criminal Justice System. U.S.A: Oceana Publication, Inc. pp. 214-218.
- Ghaouti, B. (1982). Ta'zeer Crimes. In Bassiouni, Cherif (ed.) The Islamic Criminal Justice System. U.S.A: Oceana Publication, Inc. pp. 215-216.
- Juliana, T. O. (2011). "No apologies over anti-gay marriage" Sunnews, Abuja, Thursday, December 08.
- Kamali, M. H. (1999). Principles of Islamic Jurisprudence. Selangor, Malaysia: Ilmiah Publishers sdn.bhd, 14-44.
- Muhammad, S. (2002). Outlines of Criminal Law and Justice in Islam. Selangor, Malaysia: International Law Book Service, 19-21.
- Muhammad, S. (2002). Outlines of Criminal Law and Justice in Islam. Selangor, Malaysia: International Law Book Service, 99-113.

Muhammad, S. (2002). Outlines of Criminal Law and Justice in Islam. Selangor, Malaysia: International Law Book Service, pp. 99-113.

Muhammad, S. (2002). Outlines of Criminal Law and Justice in Islam. Selangor, Malaysia: International Law Book Service,, pp. 81-82.

Muhammad, S. (2002). Outlines of Criminal Law and Justice in Islam. Selangor, Malaysia: International Law Book Service, pp. 84-85.

Muhammad, I. S. (1984). The Penal Law of Islam. Lahore, , pp.74-75.

Muzammil, Q. (2005). Muslims and Crime : A Comparative study. England: Ashgate Publishing Limited, pp.31-32.

Nasir, J. (1990). The Islamic Law of Personal Status. London: Graham & Trotman Ltd, pp.41.

Qur'an 7: 80-81 and Quran 26:166.

Rafiullah, S. (1986). Rights of Women in Islamic Shariah. Lahore: Indus Publishing House, pp.30-31.

Sunnews publishing, (2011). "prohibition of same sex marriage. December 07.

Sunnews publishing, (2011). "Dubious gay palliatives from Obama". December 16, .

Syed, T. M.. (1987). Personal Law in Islamic Countries: History Text, and Comparative Analysis. Academy of Law and Religion, pp. 88.

Tauqir, M. K. (2007). Law of Marriage and Divorce in Islam. India: Pentagon Press, pp. 1-9.

Wani, A. M. (1995). The Islamic Law on Maintenance of women, children parents and other relatives. Khashmir: Upright study home, pp. 41.