



# THE RECONSTRUCTION OF HOMOSEXUALITY AND ITS CONSEQUENCES IN CONTEMPORARY IRAN

THE SOAS JOURNAL OF POSTGRADUATE RESEARCH

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- Department/Centre:** School of History, Religions and Philosophies
- Publication:** The SOAS Journal of Postgraduate Research,  
Volume 10 (2016-17), Pages 25-47  
Exploring fluid times: Knowledge, minds and bodies
- Stable URL:** <http://eprints.soas.ac.uk/24678/>
- Key words:** Iran – sexual minorities – criminal law – homosexuality –  
constructionism – human rights
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# THE RECONSTRUCTION OF HOMOSEXUALITY AND ITS CONSEQUENCES IN CONTEMPORARY IRAN

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## ABSTRACT

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There has been a substantial increase in recent years in studies on the condition of sexual minorities in Iran, whereas until about 12 years ago this was a somewhat neglected area. However, the focus of such studies has been on identity issues. By contrast, the purpose of this article is to focus on the objectification of such minorities by the authorities and the way they deal with them. This includes the likely impact of recent changes in the criminal law relating to homosexual conduct in Iran. The focus will be on homosexuality rather than transgender issues from 2000 onwards. Sources used include recent reports by human rights organisations, Iran's penal code and articles in the official and semi-official press in Iran.

I argue that the regime in Iran has adopted a hybrid of 'pre-modern' and 'modern' ideas and methods in dealing with 'homosexuality', with a shift towards more 'modern' methods in more recent years. 'Homosexuality' is being reconstructed in Iran and the previous distinctions between mental orientation and physical actions have become blurred.

This article has relevance to historical debates on constructionism. Moreover, it has practical impact as it is relevant to the raising of human rights issues, not only inside Iran, but also in other countries with relevance to Iranian refugees. The latter issue is particularly pertinent at the present time given Trump's attempt to ban all Iranians from entering the USA and anti-immigrant campaigns and policies in other countries, including the UK.

## INTRODUCTION

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There have been a number of academic studies on sexual minorities in Iran in recent years. The focus of such studies tends to be the question of identity and how individuals see themselves.<sup>1</sup> Afsaneh Najmabadi also looks in detail at official views of sexual minorities with strong emphasis on transgender people.<sup>2</sup> However, there is little research by academics on the treatment of sexual minorities by the Iranian criminal justice system, and where undertaken there are often major misunderstandings. For instance, Bucar and Shirazi suggest that cases involving consensual homosexuality are not likely to be tried in Iran because the burden of proof is so high.<sup>3</sup> They disregard the most common form of proof for serious sexual offences, which is the same for non-consensual offences, as in Iran they are different forms of the same crime. They also make no reference to the new penal code, which was available at the time of publishing their work. Moreover, they rely heavily on Sunni sources, which are not accepted as authoritative in predominantly Shi'a Iran.<sup>4</sup> There is clearly scope for further work on this subject.

Janet Afary makes brief reference to the policing of homosexuality in Iran.<sup>5</sup> She argues that the current regime in Iran is not 'countermodern' and that Foucault's theories on the 'technologies of power' such as systems of surveillance can help us to understand the way power works in the current regime as much as during the preceding government.<sup>6</sup> Darius Rejali makes a similar argument in his work on torture in Iran with regard to the emergence of 'modern' Iranian penal practices in the course of the 20<sup>th</sup> century, which carried on even though some 'pre-modern' forms of punishment were reintroduced after the fall of the last

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<sup>1</sup> Janet Afary, *Sexual politics in modern Iran* (Cambridge: Cambridge University Press, 2009), 351-358; Pardis Mahdavi, 'Questioning the global gays(ze): constructions of sexual identities in post-revolution Iran' in *Social Identities* 8, No 2, (March 2012), 223-227; Katarczyna Korycki and Abouzar Nasirzadeh "Desire recast the production of gay identity in Iran" in *Journal of Gender Studies* 25, No. 1 (2016), 150-65; Ahmad Karimi 'Iranian homosexuals; social identity formation and the question of femininity' in *Culture & Psychology* 22, No. 2 (2016), 296-313; Ahmad Karimi, "Hamjensgara belongs to family; exclusion and inclusion of male homosexuality in relation to family structure in Iran" in *Identities: Global studies in culture and power* (2017), available at <http://dx.doi.org/10.1080/1070289X.2017.1286921> [accessed 20 February 2017].

<sup>2</sup> Afsaneh Najmabadi, *Professing selves: Transsexuality and same-sex desire in contemporary Iran* (Durham and London: Dukes Press Ltd, 2014).

<sup>3</sup> Elizabeth M Bucar and Faegheh Shirazi, "The 'invention' of lesbian acts in Iran: Interpretative moves, hidden assumptions, and emerging categories of sexuality" in *Journal of Lesbian Studies* 16, No. 4, (2012), 418. I discuss this form known as the 'knowledge of the judge' rule below.

<sup>4</sup> Bucar and Shirazi, *Lesbian acts*, 422, 424-425, 427-428.

<sup>5</sup> Afary, *Sexual politics*, 358-359.

<sup>6</sup> Afary, *Sexual politics*, 267; Michel Foucault, *Surveiller et punir: Naissance de la prison* (Paris: Gallimard, 1975), 30-32. Please see Bibliography for translations of non-English titles.

Shah in 1979.<sup>7</sup> Foucault described such ‘pre-modern’ punishments as *supplice*, including torture, corporal punishments and public forms of execution calculated to inflict pain.<sup>8</sup> Somewhat earlier than in Iran, in France by the 19th century *supplice* upon the body gave way to ‘modern’ practices, which were more hidden and more scientific and aimed to reshape the mind with less emphasis on bodily punishment.<sup>9</sup> Parallel with this argument was Foucault’s description of the ‘sodomite’ as a *relaps*. This indicates an offender who had proved himself impenitent by repeating his offence, thus becoming liable to capital punishment and no more than the subject of a juridical process.<sup>10</sup> However, from the late 19th century the *homosexuel* became an *espèce* (species) who was then objectified and pathologised and subjected to medical and psychiatric examinations and investigations.<sup>11</sup> Similar constructionist views have been expressed by others, with David Greenberg, for example, also postulating that the ‘medicalisation’ of ‘homosexuality’ took place towards the end of the 19th century.<sup>12</sup> I agree that there is a great deal of truth in this. However, I argue that the regime in Iran has developed a hybrid of ‘pre-modern’ *supplice* and more ‘modern’ and ‘scientific’ approaches to homosexuality and its punishment in combination, although as we shall see there may be a shift to a more ‘modern’ approach in recent years.

Using that central argument, the purpose of this article is to examine the official views and legislation on sexual minorities in Iran and how this impacts the lives of individuals either through punishment or medical treatment. To that end, key questions explored in this article include: How does medical knowledge contribute to control the bodies and minds of sexual minorities? How far are there any ‘premodern’ and ‘modern’ elements in the theory and operation of punishment of the body for same sex behaviour? How far have recent changes in the law impacted on cases?

I commenced research on this topic in 2005 and 2006 because I discovered that immigration departments in many countries, including the UK and the Netherlands, poured cold water on the suggestion that sexual minorities were persecuted in Iran or put in danger

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<sup>7</sup> Darius M Rejali, *Torture and modernity: Self, society and state in modern Iran* (Boulder: Westview Press, 1994) 121-122. For clarity I draw on Iranian historians in using the terms ‘modern’ and ‘pre-modern’ to refer roughly to the periods of Iranian history before and after the Constitutional Revolution of 1906 whereas Foucault uses the term ‘modern’ to refer roughly to the period since the late 18<sup>th</sup> century in France and Britain. Although some of Foucault’s claims may be open to question I agree that the term ‘modern’ signifies qualitative changes in a number of fields including scientific discourse, sexuality and penal practices and that ‘more modern’ does not necessarily mean kinder or less repressive. Afary, *Sexual politics*, 19ff, 111ff; Rejali, *Torture*; Foucault, *Surveiller et punir*, 14-15; Foucault, *Les mots et les choses: Une archéologie des sciences humaines* (Paris: Gallimard, 1966), 229, 238-39, 315.

<sup>8</sup> Foucault, *Surveiller et punir*, 42-44. In the current Iranian context this includes such punishments as stoning, short drop hanging and whipping. Rejali, *Torture*, 121.

<sup>9</sup> Foucault, *Surveiller et punir*, 17-18, 24.

<sup>10</sup> Michel Foucault, *Histoire de la sexualité: La volonté de savoir* (Paris: Gallimard 1976), 59. The *relaps* rule also applied to witchcraft and heresy with which sodomy was associated. Lynne Huffer, *Mad for Foucault: Rethinking the foundations of queer theory* (New York: Columbia University Press, 2010), 73; Brian P. Levack, *The witch-hunt in early modern Europe* (New York and London: Routledge, 2013) 52, 93-94.

<sup>11</sup> Foucault, *La Volonté de savoir*, 59-62.

<sup>12</sup> David Greenberg, *The construction of homosexuality* (Chicago and London: University of Chicago Press, 1988), 397-433.

if repatriated.<sup>13</sup> Reliable sources to counter such claims were very thin indeed. Fortunately, there are now many well-documented reports by human rights organisations that can be drawn upon to support such cases.<sup>14</sup> However, these are largely neglected in academic studies so I intend to use them as key primary sources in this article. In spite of improvements in recent years, the situation has become critical again with Trump's ban on Iranian refugees, resulting in many Iranians who had been granted refugee status becoming trapped in transit in Turkey.<sup>15</sup>

There is not enough space here to do full justice to the subject and this article does not pretend to be comprehensive. As a result of limited space, I also cannot elaborate much on transgender issues. By contrast to homosexuality, these have been far better covered in other studies on Iran.<sup>16</sup> My focus will be on the treatment of homosexuality by the criminal justice system in Iran during this century.

I will tackle first the terminology used in official circles. I then examine medical interventions that aim to cure homosexuals, comparing Iran with past practices in other countries such as the UK and the USA. I will then look at the criminal law including the recent changes in the new penal code. Finally, I look at how the law is enforced in practice by selecting and examining a small number of criminal cases. The last task will prove to be particularly challenging to research due to the lack of transparency in the Iranian criminal justice system.

Official sources include speeches and statements by leading Iranian politicians, a key religious text, legal codes and press reports. These sources are counterbalanced by reports by and personal consultations with human rights organisations. I also use official, and some direct confidential correspondences with individuals with knowledge of a relevant criminal case and, where not possible, such contacts made by another researcher visiting the country. In the latter case, I ensured that the source was reliable and that the information could at least partially be corroborated by other sources. Extreme care was put into ensuring confidentiality, given potential consequences.

## TERMINOLOGY

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The most commonly used term in official circles and in the press in Iran relating to homosexuality is *hamjensbāzy* or *hamjensbāz* when referring to the person. The term *hamjensbāz* is also used as an abusive epithet. According to Arsham Parsi, who is an advocate

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<sup>13</sup> Letter by H Anderson, Country Policy Team, British Home Office, to author, 19 October 2005; Letter from Rita Verdonk, Minister for Immigration and Integration, to Second Chamber of States-General of the Netherlands, 5403360/06/DVB, 28 February 2006.

<sup>14</sup> Faraz Sanei, "We are a buried generation: Discrimination and violence against sexual minorities in Iran" (New York: Human Rights Watch, 2010); IHRDC, 'Denied identity: Human rights abuses against Iran's LGBT community' (November 2013); Outright Action International (OAI), "Human Rights Report: Being Transgender in Iran" (New York: OAI, 2016); "Human Rights Report: Being Lesbian in Iran" (New York: OAI, 2016).

<sup>15</sup> Arsham Parsi, "Affect of US Immigration Moratorium on the lives of LGBT refugees in Turkey," 28 January 2016. Available at <http://irqr.ca/2016/?p=455> [accessed 29 January 2016].

<sup>16</sup> Najmabadi, *Professing selves*; Raha Bahreini, "From perversion to pathology: Discourses and practices of gender policing in the Islamic Republic of Iran" in *Muslim World Journal of Human Rights* 5, No. 1 (2008).

for sexual minorities from Iran seeking asylum, the term is very rarely a term of self-description except among some of the older generation.<sup>17</sup> They literally mean ‘same sex play’ or ‘player’. They are terms hard to translate and some suggest that the terms are linked to ‘predatory’ stereotypes or confined to the passive partner.<sup>18</sup> However, *hamjensbāz* appears to be derived from the Anglo-American phrase and concept ‘practising homosexual’.<sup>19</sup> This English phrase also has highly negative and pejorative overtones.

These Persian terms are of relatively recent origin and appear to have gained currency in the 1960s.<sup>20</sup> They relate to a very ‘modern’ and ‘scientific’ but still highly negative view of homosexuality, regarding it as having a medical and psychological rather than demonic origin. The terms were popularised in the works of Hasan Hasuri and later by other medical specialists such as Muhammed Muvahhidi.<sup>21</sup> Hasan Hasuri was trained as neurologist in the USA and clearly brought with him highly negative theories on homosexuality that were highly prevalent at the time.<sup>22</sup> *Hamjensbāzy* is, therefore, a broad term relating to actions, rather than feelings or desires.

Almost the reverse is true of a somewhat different term, *hamjensgerāy*. This term may have emerged a little later and was used in the Iranian press by 1973 and in a negative way.<sup>23</sup> The word *hamjensgerā* refers to people in the singular, while *hamjensgaryan* in the plural and can refer to men or women. It is often used as a term of self-description, by contrast to the more negative term *hamjensbāz*. Literally when employed it means ‘same sex orientation’, or ‘oriented’ in the case of an individual. It refers to feelings and desires rather than actual actions. Therefore, in their original meanings, *hamjensgerāy* seems to be related primarily to the mind, whereas *hamjensbāzy* to the actions of the body. Curiously though, in the new penal code they now use the term *hamjensgerāy* in place of *hamjensbāzy* to describe all same sex acts including sexual kissing and touching.<sup>24</sup>

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<sup>17</sup> Telephone interview with Arsham Parsi, 14 March 2017.

<sup>18</sup> Afary, *Sexual politics*, 352. Email from Hossein Alizadeh, regional coordinator at Outright Action International (OAI), to author, 08 November 2007.

<sup>19</sup> Potkin Azarmehr, a researcher for Manoto TV, gave me this straightforward definition, personal communication, 10 September 2010.

<sup>20</sup> Two much older terms existed by the late nineteenth century, *bachchahbāzy* and *amradbāzy* referring to pederasty, Afsaneh Najmabadi, *Women with moustaches and men without beards: Gender and sexual anxieties of Iranian modernity* (Berkeley: University of Californian Press, 2005), 56, 60, 147-148; *-bāz* is also used in various non-sexual contexts including to describe soldiers, pigeon hobbyists and gamblers.

<sup>21</sup> Najmabadi, *Professing selves*, 57-58.

<sup>22</sup> *Ibid*, 55.

<sup>23</sup> *Ibid*, 57.

<sup>24</sup> Qanun-e Majazat-e Islami [Islamic Penal Code], 2013, Article 237.



Typically, it is the term *hamjensbāzy* that is used in public speeches and the legal media in Iran.<sup>25</sup> However, the term *hamjensgerāy* is also sometimes used. As one example, the former President of Iran, Mahmoud Ahmadinezhad, in response to questions about ‘homosexuals’ or ‘gays’ in the USA most notoriously stated “we do not have the hamjensbāz (translated to audience as ‘homosexuals’) like you have in your country” and that “absolutely such a thing does not exist as a phenomenon” in Iran.<sup>26</sup> In a subsequent interview the following year he attempted to clarify his remarks suggesting that it was the open practice of *hamjensbāzy* that was prohibited. Curiously he switched to *hamjensgerā* when denying the possibility of their execution other than for murder, rape or drug offences and that otherwise they were “not known to be hanged”.<sup>27</sup> In other words, Ahmadinezhad implied a distinction between *hamjensbāzan*,<sup>28</sup> who express and act upon their desires in some kind of public way as in the USA, and another type of *hamjensgerā*, who keep their actions private and secret.<sup>29</sup>

Distinctions by officials are sometimes made in a different way. Arsham Parsi was told by an Iranian official at Geneva in October 2006 “there are two types of *hamjensgerā*.”<sup>30</sup> There are those who are sick. The official had no problem with them ... they deserved help. It was the other group he had a problem with - deviants who he believed corrupted Iranian society”.<sup>31</sup> This diplomat expressed a relatively esoteric official view that comes not from Shi’a traditions but more ‘modern’ views of sexuality. Similar views were prevalent in Europe and North America in the 1950s and 1960s and earlier. This was expressed, for instance, in trials for homosexuality in the UK in the 1950s distinguishing between the ‘inverts’, who cannot help themselves and are ‘sick’ and can be sent for medical treatment, and the depraved ‘pervert’ merely acting out ‘lust and wickedness’, who should be sent to prison.<sup>32</sup> Najmabadi suggests that this distinction sometimes works in a different way in Iran. Medical specialists since the late Pahlavi period often distinguish between *tarajens* (transsexual), people who can be helped, and *hamjensbāzan*, who are regarded as corrupt and depraved and worthy of

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<sup>25</sup> For example by Ayatollah-e Ozma Seyyed Ali Khamenei, the head of state in Iran: ‘The Leader’s Remarks in Meeting with Chairman and Members of the Assembly of Experts’ 26 May 2016. Original Persian sound clip - relevant sentence from 12 mins 55 secs: <https://tinyurl.com/y8dmbb5p>. Official English translation: “They legalize homosexuality (*hamjensbāzy*) in countries, [and] not only legalize it, but [also] strongly boo those who have [any] objection to this; can corruption go any higher than this?” in <http://leader.ir/en/speech/15163/The-Leader’s-Remarks-in-Meeting-with-Chairman-and-Members-of-the-Assembly-of-Experts> [accessed 15 March 2017].

<sup>26</sup> Extract from CNN broadcast of Q&A after speech of Mahmoud Ahmadinezhad at Columbia University, New York, 24 September 2007 <https://www.youtube.com/watch?v=xou92apNN4o&t> [accessed 11 August 2017] Trans. Hossein Alizadeh, email to author, 08 November 2007.

<sup>27</sup> *Democracy now*: Interview between Mahmoud Ahmadinezhad and Amy Goodman and Juan Gonzalez, Part 2, 26 September 2008. [https://www.democracynow.org/2008/9/26/iranian\\_president\\_mahmoud\\_ahmedinejad\\_on\\_iran](https://www.democracynow.org/2008/9/26/iranian_president_mahmoud_ahmedinejad_on_iran)

<sup>28</sup> Plural form.

<sup>29</sup> Ahmadinezhad, *Democracy now*, 2008.

<sup>30</sup> Arsham Parsi told me this was the Persian word used, Interview, 14 March 2017.

<sup>31</sup> Craig and Mark Kielburger, “Speaking up for gay rights in Iran” in *Huffington Post*, 13 May 2009. Available at [http://www.huffingtonpost.com/craig-and-marc-kielburger/speaking-up-for-gay-right\\_b\\_174776.html](http://www.huffingtonpost.com/craig-and-marc-kielburger/speaking-up-for-gay-right_b_174776.html).

<sup>32</sup> Aleardo Zanghellini, *The sexual constitution of political authority: The ‘trials’ of same-sex desire* (Routledge, 2015), 171-172.

punishment.<sup>33</sup> I would argue that the distinction is not always as neat and tidy. There are 'bad' *tarajens* who fall foul of the law<sup>34</sup> and 'good' *hamjengaryan*<sup>35</sup> who are repentant and comply with the law, or even volunteer for treatment. In the next section I will consider such treatments and their origins.

## TREATMENTS OF MIND AND BODY

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At the time of the emergence of the terms *hamjensbāzy* and *hamjensgerāy* in Iran, the predominant scientific view inside and outside the country was that homosexuality was a 'psychopathological condition' that could be cured.<sup>36</sup> Both the 1952 and 1968 versions of the influential Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association classed homosexuality along with other 'sexual deviations' and drug and alcohol addiction as a 'sociopathic personality disturbance'.<sup>37</sup> As Greenberg points out, psychological behaviourists had a strong influence at this time. They denied that sexual orientation could be innate. Therefore, it could be cured by 'reconditioning', which included 'aversion therapy' techniques.<sup>38</sup>

Such views still influence the official opinion on homosexuality in Iran. Behind the Ayatollahs lurk today's medical experts. Specialists at the Shahīd Beheshtī University denounced the final removal of homosexuality from the DSM as 'unscientific' and due to political pressure.<sup>39</sup> As we shall see, their psychologists play a key role in the treatment and attempted cures of homosexuality. Summing up their general approach on changing behaviour, the social psychology department quotes a phrase from Kurt Lewin, a prominent American psychologist and behaviourist who died in 1947, though he personally did not write much on homosexuality:

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<sup>33</sup> Afsaneh Najmabadim, "Verdicts of science, rulings of faith: Transgender/sexuality in contemporary Iran" in *Social Research in Social Research: An International Quarterly* 78, No2 (2011), 5.

<sup>34</sup> OAI, *Being Transgender in Iran*, 31-33.

<sup>35</sup> Plural form.

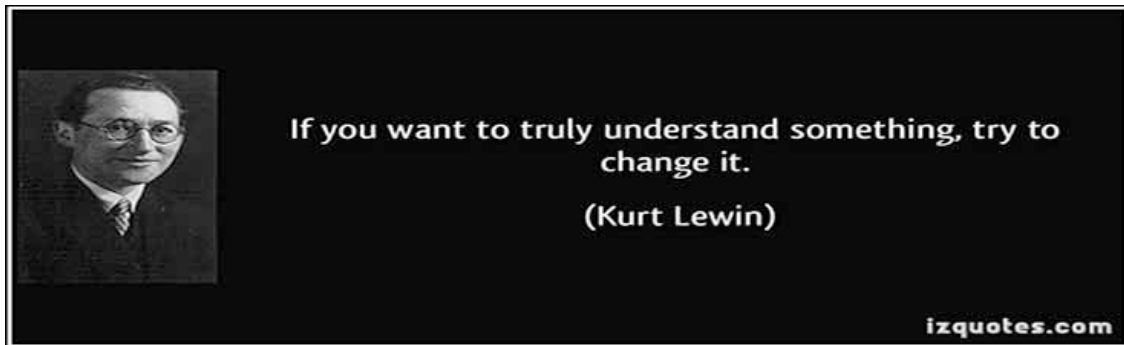
<sup>36</sup> Martin Weinberg and Colin Williams, *Male homosexuals: Their problems and adaptations* (New York: Oxford University Press, 1974), 3-4.

<sup>37</sup> Diagnostic and statistical manual: Mental disorders (Washington: American Psychiatric Association, 1952) 7; DSM II: Diagnostic and statistical manual of mental disorders (Washington: American Psychiatric Association, 1968), 79.

<sup>38</sup> Greenberg, *Homosexuality*, 431.

<sup>39</sup> Najmabadi, *Professing selves*, 347, no. 72.





Motto of Social Psychology Department of Shahid Beheshti University

[http://en.sbu.ac.ir/Faculties/Education\\_and\\_Psychology/phycologyresearch/Pages/Goals.aspx](http://en.sbu.ac.ir/Faculties/Education_and_Psychology/phycologyresearch/Pages/Goals.aspx)

Source of image, izquotes.com: <http://izquotes.com/quote/111460> [accessed 11 August 2017]

Attempts to cure homosexuality were frequent in the 1950s and 1960s, particularly in the UK, USA and West Germany, where male homosexual conduct was treated as a serious crime before the late 1960s. Some cases involved castration or brain operations.<sup>40</sup> Most usually they included aggressive hormone treatments and 'aversion therapy' techniques, including nausea-inducing drugs and electric shocks.<sup>41</sup> Studies at the time suggested such treatments were successful in only a few cases and in some others there was even an increase in homosexual activity afterwards.<sup>42</sup>

As is well known, sex change operations are not only legal in Iran, but officially encouraged. They date back from a *fatva* of Ruhollah Khomeini.<sup>43</sup> In many cases they clearly make a positive difference to peoples' lives. However, in many other cases such operations are performed involuntarily and on those who are not genuine transgender people. The Human Rights Watch organisation has evidence of a number of Iranian *hamjensgaryan* being subjected to such therapies in the present day, including hormone treatment and electric shocks. In addition, there are reports of forced sex changes.<sup>44</sup> Arsham Parsi, a specialist advocate for Iranian sexual minority refugees, estimates that up to 45% of the sex change operations are performed on *hamjensgaryan* to 'cure' them of their sexual orientation. The end result is typically serious distress to those forced to undergo such operations inappropriately. Some flee the country in order to escape such a fate.<sup>45</sup>

One case of flight to escape this fate involved Maryam, a young female *hamjengerā*. She had had repeated problems with the authorities because of her sexuality in the capital,

<sup>40</sup> Norman St John Stevas, *Life, death and the law: A study in the relationship between the law and Christian morals in England and the United States* (London: Eyre & Spottiswoode, 1961), 227; Greenberg, *Homosexuality*, 432.

<sup>41</sup> Tudor Rees and Harley Usill, *They stand apart: A critical survey of the problem of homosexuality*, (London: Heinemann, 1955), 127-130; Greenberg, *Homosexuality*, 431-432; 'Sexual Aversion' broadcast BBC2, 8 August 1996.

<sup>42</sup> Gordon Westwood, *A minority: Report on the life of the male homosexual in Britain* (Edinburgh: R&R Clark Ltd, 1960), 48.

<sup>43</sup> IHRDC, *Denied identity*, 12-13; Najmabadi, *Professing selves*, 165-167.

<sup>44</sup> Sanei, *Buried Generation*, 38-41. See also Mohammed Yadegarfar and Fatemeh Bahrambardian, "Sexual orientation and human rights in the ethics code of the Psychology and Counselling Organization of the Islamic Republic of Iran" in *Ethics & Behavior* 24, No.5, 358-359.

<sup>45</sup> BBC Newsnight Report, 5 November 2014 <https://www.youtube.com/watch?v=xEfoPsWpxTc> [accessed 15 February 2017].

Tehran. She had been expelled from school shortly before taking her exams and she was prohibited from studying at any other school. Around the year 2000, at the age of 19, she finally found a job, but was again caught out and referred to her employer's 'Office of Guiding' in charge of the policing of morals in that company. She was assumed to be mentally ill and made to take medications to treat this. A reputable and sympathetic doctor disputed this diagnosis and said that she was simply a homosexual and had no mental illness, but her employer's 'Office of Guiding' refused to accept this. When she told her 'guides' that the treatment was having no effect, her employer dismissed her. She was arrested shortly afterwards by plain-clothes officers. They repeatedly burned her skin with cigarettes and practised psychological torture methods on her, including blindfolding. She could hear the screams of other prisoners being tortured in cruder ways. After a few days she signed a confession. She was then referred to two female psychologists at the University of Shahīd Beheshti. They tried to persuade her to undergo a sex change operation:<sup>46</sup>

They tried to convince me that I was falsely inculcating myself with the notion that my attraction is only to females. At the end of this 'treatment', they offered to change my sexuality through surgery, and later ordered me to have it. "No", I said. "I'm Maryam, a girl, and I do not want to be a man!" The female doctor told me, "If you don't change your sexuality and you continue unlawful acts, your future will be a death sentence".<sup>47</sup>

After enduring this treatment for six months, she attempted suicide. Fortunately her mother managed to save her by taking her to hospital. Shortly afterwards, she fled to Turkey and was awarded refugee status by the UNHCR soon after.<sup>48</sup>

In another, more recent, case a twenty-four year-old male *hamjengerā* received both, a doctor's recommendation to change sex and a court order warning him that if he refused he would be considered for prosecution before a clerical court.<sup>49</sup> In Europe's distant past the unrepentant or recidivist 'sodomite' (Foucault's *relaps*) would be passed on by the clergy to the secular authorities for punishment. In contemporary Iran the medical expert can pass them on to the clergy for punishment. It is to this topic that I shall now turn.

## LAW ON PUNISHMENT OF THE BODY FOR CRIMES OF THE BODY

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Under the secular law of the regime of the Pahlavi dynasty sex between men was completely illegal and could be punished up to ten years imprisonment under certain circumstances. However, there were no legal penalties for sex between females. Since 1979 and the overthrow of the last Shah, sex between men can be punished with the death penalty under certain circumstances, while sex between women has been criminalised.<sup>50</sup>

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<sup>46</sup> Doug Ireland, "A tale of persecution in Iran" in *The Advocate*, 13 September 2006. Available at <https://www.advocate.com/news/2006/09/13/tale-persecution-iran> [accessed 5 March 2017]

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.

<sup>49</sup> IRQO, "The violations of economic, social and cultural rights of lesbian, gay, bisexual and transgender (LGBT) persons in the Islamic Republic of Iran," March 2013, 12.

<sup>50</sup> IHDRC, Denied identity, 5.

The penal code of Iran uses the term *lavāt*, which is related to the name of the prophet Lot (*Lūt* in the Qur'ān) and the story of Sodom. The association of this story with homosexuality is controversial, but suffice to say that the religious authorities in Iran interpret it in this way. One widely circulated and influential work that gives this interpretation is *Gonāhan-e Kabīrah* (Major Sins) by Grand Ayatollah Dastagheib who was a leading figure in the early years of Khomeini's regime but was assassinated in 1981.<sup>51</sup> Such works are not merely religious tracts, but the basis for law. Dastagheib was uninfluenced by medical theories and did not use such terms as *hamjensbāzy* or *hamjensgerāy* in this book, although he did use the 'modern' phrase *enherāf-e jensī* (sexual deviance).<sup>52</sup> He viewed such 'deviance' in purely religious terms citing a range of centuries' old Shi'a traditions on the subject prohibiting all forms of same sex conduct, particularly penetration.<sup>53</sup> The origin of *lavāt* was Satan who taught the *qawm-e Lūt* (tribe of Lot) such acts, which they then proceeded to do in front of each other. Executions are accordingly justified because where it becomes open *enherāf-e jensī* it then spreads throughout society, as was the case with the *qawm-e Lūt*, which resulted in divine destruction.<sup>54</sup> The judge can choose from a range of methods of *supplice*, including stoning or burning the person alive for this crime.<sup>55</sup> We shall now turn to the current provisions of the Iranian penal code, including the use of the death penalty.

Since 2013 a new version of the penal code has been put in force. As Nayyeri points out, this was the outcome of a process that intended to reform its provisions, although in practice such reforms have proved limited, and in some cases penalties have even been increased.<sup>56</sup> The previous version of the penal code defined *lavāt* as *vati'* (congress) between males, and specified that it can take the form of *dakhūl* (literally 'entering' or 'penetration' i.e. anal penetration) or *tafkhīz* (literally rubbing).<sup>57</sup> The old code used the phrase '*tafkhīz va nazāir*' (*tafkhīz* and the like or similar) suggesting a broad range of sexual acts, but the new code restricts the term *tafkhīz* to inter-femoral intercourse.<sup>58</sup> The present version of the code also restricts the definition of the term *lavāt* to *dakhūl* and treats *tafkhīz* as a separate but related crime.<sup>59</sup> Sex between women has never been classed as *lavāt*; rather, the term *mosaheqeh* and, once again, the new code give a more restricted definition.<sup>60</sup> This is derived from the Arabic term *sihaq* and again relates to genital 'rubbing', in this case between females. The term *zenā*

<sup>51</sup> Ayatollah-e Ozma-e Syed-e 'Abdol-e Hossein-e Dastagheib-e Shirazi, *Gonāhan-e Kabīrah* [nd] [own translation]; Interview with Arsham Parsi, 14 March 2017; Arsham Parsi and Marc Colbourne, *Exile for love: The journey of an Iranian queer activist* (Halifax and Winipeg: Roseway Publishing, 2015), 12-13.

<sup>52</sup> Dastagheib, *Gonāhan-e Kabīrah*, 208.

<sup>53</sup> Ibid, 203-211.

<sup>54</sup> Ibid, 208.

<sup>55</sup> Ibid.,207-208.

<sup>56</sup> Mohammed Hossein Nayyeri, "New Islamic Penal Code of the Islamic Republic of Iran" in *Human rights in Iran Unit: Research Paper Series* (University of Essex. 2012) p. 4. See also Faraz Sanei, *Codifying repression: An assessment of Iran's new Penal Code* (Human Rights Watch, 2012).

<sup>57</sup> Qanūn-e Mājāzat-e Islāmī (QMI 1991), Article 108. [own translation]

<sup>58</sup> QMI 1991, Article 121; QMI 2013, Article 235; IHRDC, *Denied identity*, 12.

<sup>59</sup> Qanūn-e Mājāzat-e Islāmī (QMI 2013). For convenience the old and new versions of the penal code will from now on be referred to respectively as QMI 1991 and QMI 2013.

<sup>60</sup> QMI 1991, Article 127; QMI 2013, Article 238; IHRDC, *Denied identity*, 12.

refers to anal and vaginal penetration between males and females who are not married to each other.<sup>61</sup> This can also carry harsh penalties including even death by stoning for those who are married to others.<sup>62</sup> However, Shi'a jurisprudence does allow 'temporary marriage' between a male and a female.<sup>63</sup> No kind of marriage is tolerated between two people of the same sex and therefore sexual relations between them are always illegal. As before, cases of rape or paedophilia involving penetration are not a distinct offence but are a form of *zenā*, if the victim is female, or *lavāt*, if the victim is male, and absence of consent is a defence to either charge.<sup>64</sup>

As stated above, *hamjensgerāy* is now used in the new penal code. The old code did not use that word and only used *hamjensbāzy* in the context of the definition of *mosaheqeh*.<sup>65</sup> The context now refers to the punishment for sexual behaviour, such as 'kissing or touching as the result of lust (*shavat*)', as punishable by the suppliance of between 31 and 74 lashes with the whip at the judge's discretion.<sup>66</sup> Accordingly, in official doctrine *hamjensgerāy* now clearly refers to any kind of physical expression of same sex desire and not just the mental element.

With the implementation of a new penal code in 2013 the death penalty is now more restricted to homosexual behaviour in response to international criticisms on this issue in recent years. Under the old law, the mere fact of anal penetration between males was sufficient to warrant a mandatory death sentence.<sup>67</sup> Now, this only applies in certain circumstances. Firstly, the only cases where the death penalty would apply to both parties is where the insertive partner is married or he is a non-Muslim and the passive partner is a Muslim. Secondly, in cases where there is force and coercion only the insertive partner would be liable to the death penalty and no punishment would apply to the victim. Finally, in other cases a death sentence would apply to the passive partner only, whereas the insertive partner would be punished by 100 lashes for the first three offences and only by death if he had been convicted a fourth time.<sup>68</sup> The harsher treatment of passive partners is in part due to the greater social stigma attached to them and has the support of some Shi'a traditions.<sup>69</sup>

A further change is that the new code places restrictions on investigations into consensual sex offences committed in private, though this does not amount to decriminalisation. In cases of *vuqu'-e jorā'm-e manāfiye 'effat* (crimes contrary to chastity) 'any type of investigation of and interrogation to discover the hidden affairs and things concealed from the public view shall

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<sup>61</sup> QMI 2013, Article 221.

<sup>62</sup> QMI 2013, Articles 224-225.

<sup>63</sup> Afary, *Sexual politics*, 285-287.

<sup>64</sup> IHRDC, *Denied identity*, 22.

<sup>65</sup> QMI 1991, Article 127.

<sup>66</sup> QMI 2013, Article 237; IHRDC: English Translation of Books I & II of the New Islamic Penal Code available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>

<sup>67</sup> QMI 1991, Article 110.

<sup>68</sup> QMI 2013, Article 136 & 234; IHRDC, *Denied identity*, 9-10.

<sup>69</sup> *Ibid*, 8.

be prohibited'.<sup>70</sup> This does not apply where there has been a confession or other admissible evidence or where there are allegations of coercion or deception or anything else impacting on consent.<sup>71</sup>

In many other respects there has not been much change. *Tafkhīz* and *mosaheqeh* are still punishable by 100 lashes for the first three offences and death upon conviction for a fourth time or on the first occasion where the 'active party' in a *tafkhīz* case is non-Muslim and the other party a Muslim.<sup>72</sup> The forms of proof are the same. This can be four witnesses seeing the act, in practice rarely used, confession repeated before the judge four times, and finally the '*elm-e hakīm* (knowledge of the judge).<sup>73</sup> Other lesser offences have a lower standard of proof.

Anna Enayat is a Middle Eastern specialist at Saint Antony's College, Oxford. She points out that the 'knowledge of the judge' alone is sufficient to prove the crime of *lavāt*. This term was defined in the 1992 Iranian textbook of general criminal law as meaning 'the judge's certainty that a crime has been committed ...'. She adds: 'the 'knowledge of the judge' can be described as circumstantial or ordinary evidence. It has long been the most important method of proof for the crime of *lavāt*.<sup>74</sup> It includes the use of medical evidence for penetration. It is therefore a very 'modern' form of proof compared to the other two pre-modern forms.<sup>75</sup> I shall now consider how such cases operate in practice.

## PUNISHMENT OF BODIES FOR CRIMES OF THE BODY SINCE 2000

It is extremely difficult to get information on individual sex cases. Faraz Sanei and Anna Enayat both tell us that normally the hearings are held 'in camera' with restricted access to the court and restrictions on reporting.<sup>76</sup> Mr K, a lawyer who had been involved with cases concerning consensual homosexuality, stated that such cases were rarely reported. He gave as the main reason, 'Islamic clerics insisted that these cases remain private to try and protect the Islamic society from being corrupted, and that publicity might cause other people to commit these sinful activities'.<sup>77</sup> While the reaction of the outside world is also a consideration, such a fear would appear to be the principal reason for such secrecy as was

<sup>70</sup> QMI 2013, Article 241; Trans IHRDC.

<sup>71</sup> Ibid.

<sup>72</sup> QMI 2013, Articles 136, 236, 239.

<sup>73</sup> QMI 2013, Articles 164-200, 211-113; IHRDC, *Denied identity*, 10-11.

<sup>74</sup> Anna Enayat evidence in RM and BB (homosexuals) Iran CG [2005] UKIAT 00117, available at [http://www.ait.gov.uk/judgmentsfiles/j1766/00117\\_ukiat\\_2005\\_rm\\_bb\\_iran\\_cg.doc](http://www.ait.gov.uk/judgmentsfiles/j1766/00117_ukiat_2005_rm_bb_iran_cg.doc).

<sup>75</sup> Only these two forms are referred to in Gohhanan-e Kabir, Dastagheib, 207-208.

<sup>76</sup> Sanei, *Buried Generation*, 27; Anna Enayat in *ibid*.

<sup>77</sup> Mr K in RM and BB (homosexuals), Iran CG [2005] UKIAT 00117, 11-12.



the case in Early Modern Europe reflecting what might be seen as a 'pre-modern' attitude to such crimes.<sup>78</sup>

Some cases of *lavāt* are reported in the officially sanctioned press and either portray the case as one of rape or in a few cases as involving blackmail. While this may be fair reporting of some cases, these publications will rarely question official information; therefore, reports need to be treated with extreme caution. They are often vague and uninformative. The Boroumand Foundation which monitors executions in Iran repeatedly cautions about taking such reports at face value, given repeated reports of 'trumped up charges' against political opponents, which included sexual offences and poor standards in the judicial process.<sup>79</sup>

Mr K himself defended once a student in a case of consensual homosexuality that, typically, was not publicised. His client was sentenced to death in Tehran for *lavāt*. Mr K stated that the youth had been convicted by confession. Sperm had been found in his body indicating that he had been receptive and as such would still be liable for execution under the present law. The offences took place in a room in a student dormitory with his roommate but no information is known about the punishment for the latter. They had both been reported to the dormitory authorities by another student.<sup>80</sup>

Two later capital cases, which also clearly involved consensual homosexuality, were, untypically, reported in the Iranian press in 2005. Both involved allegations of blackmail. The first of these cases was a report in '*Etemād*' about another case in Tehran in March 2005.<sup>81</sup> No other source, official or otherwise, is known to exist about this case. The case came to light when the wife of a male wrestler discovered a video of her husband and a much older man having sex and took it to the authorities making a complaint. The husband was arrested and confessed. The older man was described as a *hamjensbāz* both, by the wife and her husband, evidently not considering himself to be one. The older man was very rich and gave the younger man a great deal of money. He said the video was made secretly for the purpose of blackmail in case the older man ceased such payments. The older man also confessed after interrogation. Both were sentenced to death.<sup>82</sup> The fact that the younger man was married aggravated the offence and meant that he would still be liable for execution under the current law. So would the older man, provided that he was the receptive partner, although the article referred to him as a *motajāvoz*, which normally means rapist, suggesting he was the 'corrupter' and therefore the guiltier of the two.<sup>83</sup>

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<sup>78</sup> For instance in 17th century Scotland trials and executions for sodomy (as in Iranian law defined in Scottish Law as penetration between males only) and bestiality were often but not invariably carried out in secret for fear that the publicity would spread such crimes. George Mackenzie, *The laws and customs of Scotland in matters criminal* (Edinburgh: Andrew Anderson, 1699), 81-82, 279.

<sup>79</sup> See for example the disclaimer on the Hadi Safdari case: <https://www.iranrights.org/memorial/story/-4510/hadi-safdari>.

<sup>80</sup> Mr K Evidence to UKIAT 00117, 13.

<sup>81</sup> 'Zānī bā afshāye yek film-e vīdeoye shōhar-esh rā beh 'edām kashānd' in '*Etemād*, 25 Esfand 1383, 25 March 2005 [own translation]; Sanei, *Buried generation*, 29.

<sup>82</sup> Ibid.

<sup>83</sup> Ibid.



The second of these cases was in Bojnord in Khorasan province in the north-east of the country. Unlike the two previous cases, for this one it is known that the execution was carried out. This case is especially important compared to other cases as it is certain that it involved consensual homosexuality and that it led to an execution, a possibility discounted in some quarters, including those examining asylum cases in many countries. A man named Hadi Safdari was executed there for *lavāt* on 28 April 2005. This case was publicised in both Kayhan and the local Quds Daily newspapers, both fairly conservative publications in Iranian terms. No other sources are known about this case independently of the official press. Neither of these articles make any suggestion of rape and both suggest that again the case came to light due to video evidence. Once again, the claim was made that the video was made for blackmail.<sup>84</sup>

The Quds Daily headline called the defendant ‘Jabbar Singh’, perhaps referring to the notorious villain ‘Gabbar Singh’ in the Bollywood classic *Sholay*, thus relating *hamjensbāzy* to organised crime.<sup>85</sup> The article stated that he had a previous conviction for homicide after murdering his wife, but was released from prison after 18 months with the consent of his dead wife’s family. The person filming the sexual encounter was not sentenced to death, but was sentenced to be whipped as he was merely filming the activity and not taking part in it. The article does not make any mention of any sentence for the other partner, although under the new law if he was receptive, he and not the insertive partner would be liable for execution.<sup>86</sup>

Three months later, in July 2005, two youths, whom I shall call M and A,<sup>87</sup> were executed in a public square in Mashhad in the same province.<sup>88</sup> A number of contradictory official claims were made giving different ages to suggest that they were both over eighteen.<sup>89</sup> However, the youths were quoted as saying that they were both aged seventeen.<sup>90</sup> The lawyer of M stated that his client was sixteen at the time of sentence.<sup>91</sup> The youths were also quoted saying that they had been subjected to beating and abuse.<sup>92</sup>

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<sup>84</sup> Boroumand Foundation, Repor, available at <https://www.iranrights.org/memorial/story/-4510/hadi-safdari>.

<sup>85</sup> ‘Hokm-e ‘edām-e ‘Jabbār-e Singh’ dar Bojnōrd ejrā shod’ in *Quds Daily*, 10 Ordibehesht 1384, 30 April 2005. [own translation].

<sup>86</sup> Ibid, in *Quds Daily*, 30 April 2005.

<sup>87</sup> Their real names are uncertain but were probably Mohammed ‘Asgari and ‘Iyād ibn Kāzim al Marhuni (aka Ayaz Marhoni).

<sup>88</sup> Simon Forbes, *Mashhad, Place of martyrdom* (August 2006). Available at [http://irqr.ipower.com/English/files/MASHHAD%20PLACE\\_OF\\_MARTYRDOM.pdf](http://irqr.ipower.com/English/files/MASHHAD%20PLACE_OF_MARTYRDOM.pdf) [last accessed Jan 2017] See also Sanei, *Buried generation*, 28; IHRDC, *Denied identity*, 21.

<sup>89</sup> Forbes, *Mashhad*, 23.

<sup>90</sup> ‘‘Edam dar malā’-e ‘ām-e dū nūjavan-e Khorramsharī dar Mashhad/mohokūmān: az majāzāt-e ‘aml-mān bey-etelā’ būdīm’ in *ISNA Khorasan*, 28 Tir 1384, 19 July 2005 [own translation].

<sup>91</sup> ‘Dar iyn ‘edām dū nūjavan dar Masshad vakīl yek az ‘edam shodaḡān: sinn-e mōvakīl-e man dar hokm-e divān’aliye keshvar 16 sāl zikr shodeh ast,’ in *ISNA Khorasan*, 2 Mordad 1384, 24 September 2005 [own translation]; *ISNA Khorasan*, 19 September 2005.

<sup>92</sup> Ibid.

The Iranian Students New Agency (ISNA), quoting an official source, described their crime as one of *lavāt-e beh 'onf* (forcible sodomy).<sup>93</sup> Another account of the case appeared in Quds Daily just before the execution to help attract a crowd to witness this public *supplice*. It published a statement attributed to another teenager aged thirteen, explaining that his bicycle disappeared while in a shop and on his way to a class at 8pm in the evening. He was then approached by two males and was asked for a small amount of money and went to retrieve his bicycle. Once in a secluded place these two males and others drew knives and proceeded to perform *ā'māl-e khilāf-e akhlāq* (practices contrary to morals) upon him.<sup>94</sup>

An alternative account attributed to local male and female sources states that the thirteen-year old, F, was known to M and A and that parts of this statement were contested in court.<sup>95</sup> A number of passers-by disturbed a group of teenage males having sex with each other and shouted out. A woman, who later became a witness in court, looked out of her window and saw F fellating M and called over her husband who was a police officer. She told the court that there was no sign of coercion. Following their arrest, M, A and F were all sent for a medical examination which proved that they had all recently engaged in anal intercourse making it a capital case. The sources claim that the judge did not believe the claims that F had resisted the other two and sentenced him to be whipped.<sup>96</sup> Unlike his co-defendants, he was under the age of fifteen at the time of the crime, so not liable for execution. This was of course not how the Iranian press reported the case.

Their punishment clearly resembled a 'pre-modern' *supplice*. In addition to the death by strangulation on the gallows, M and A were also sentenced to 228 lashes for theft, drinking alcohol and disturbing public order, an unusually high number of lashes to accompany an execution.<sup>97</sup> They also made a point of holding the execution in public, which is now only done in a minority of capital cases in Iran. The public nature of their actions may have been a factor, given the traditional beliefs about Lot's tribe mentioned above<sup>98</sup> and the fact that A was reportedly unrepentant when arrested. Moreover, some local sources stated that F's father was a senior officer in law enforcement.<sup>99</sup> Another source, a former official in the Iranian Foreign Ministry who has since fled the country, disclosed that the father was a senior officer in the Islamic Revolutionary Guards Corps whose functions include law enforcement.<sup>100</sup> This is an extremely powerful body in Iran. One of the sources of the

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<sup>93</sup> Ibid.

<sup>94</sup> 'Bā hokm-e sho'ab-e 133 dādghāh-e kayfarye Mashhad anjām shōd: 'edam- dū khalāfkār dar Meidan-e 'Edālat' in *Quds Daily*, 19 Jly 2005 [own translation with input from Anna Enayat].

<sup>95</sup> Emails from Adfhere Jama, former editor of Huriyah magazine, to author, 12 July 2006, 14 July 2006. Interview with Jama, 01 December 2007. Jama had received messages from his sources and went to Mashhad to meet them in the spring of 2006. He was shown a group photograph including F. Some minor details of Jama's information were corroborated by the late Mansour Ahwazi, an Iranian Arab politician, who had not discussed the case with Jama but had his own contacts inside Iran; personal communication with author, June 2006.

<sup>96</sup> Email from Adfhere Jama to author, 12 July 2006.

<sup>97</sup> *Quds Daily*, 19 July 2015; *ISNA Khorasan*, 19 July 2015.

<sup>98</sup> Dastagheib, *Gonāhan-e Kabirah*, 208.

<sup>99</sup> Email from Adfhere Jama to author, 12 July 2006.

<sup>100</sup> I exchanged emails with the source in 2006 and his ISP was of the Iranian Foreign Ministry.

alternative account was reportedly arrested, beaten and raped for discussing the case with a foreign researcher in 2006 ending any outside contact on the case.<sup>101</sup>

Similar issues are raised in a much more recent case, although like most such cases it was not publicised in the Iranian media. Hassan Afshar was executed in a prison in Arak on 18 July 2016. According to an Amnesty International report he had no access to a lawyer nor was he allowed to be present in the court when sentence was passed. He had been arrested in December 2014, when he and two other youths had been accused *lavāt-e beh 'onf* with another teenage boy. Hassan Afshar was aged seventeen at the time and claimed that 'the sexual acts were consensual and that the complainant's son had willingly engaged in same-sex sexual activities before'.<sup>102</sup> If that had been accepted by the courts, under the new law it was the passive partner rather than Hassan who might have faced a death sentence. However, this was not accepted and Hassan was the one sentenced to death.<sup>103</sup>

The true nature of such cases remains controversial, especially as consent is often an issue also in Western rape cases, though the law in Iran is constructed very differently. A lawyer from Shiraz, Hossein Raeesi, who had worked on many *lavāt* cases, stated in 2013 that many cases alleged to be rape were in fact cases of consensual homosexuality and that such claims were often made by the passive partner to save themselves from execution.<sup>104</sup> The way the law is now constructed gives an added incentive for such claims and also for claiming blackmail, given the differences in the sentences of the active and the passive partner.

In addition to such capital cases, there are numerous reports of members of sexual minorities being subjected to the *supplice* of whipping for consensual homosexual conduct or because of the way they dress.<sup>105</sup> One such case was reported in *Rooznameye Sobhe Khabare Jonoub* (Southern Daily Morning News), a local paper based in Shiraz. A local assistant judge was quoted as warning families to better control the use of the internet by young people. A 'troop of *hamjensbāzan*' had been arrested for using the internet to make appointments for *ā'māl-e manāfiye 'effat* (practices inconsistent with chastity). Four defendants were sentenced to be whipped.<sup>106</sup> Later reports revealed that the convictions were the result of an entrapment sting by undercover agents in Yahoo chat rooms.<sup>107</sup> Evidence included printouts from these chat rooms and forced confessions after violence and the threat of worse torture. At least one had been fined by a court the previous year for attending a party for *hamjensgaryan* and was

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<sup>101</sup> Emails Jama to author, 14 July 2006, 21 July 2008.

<sup>102</sup> Amnesty International, "Iran: Hanging of teenager shows authorities brazen disregard for international law," 3 August 2016 in <https://www.amnesty.org/en/latest/news/2016/08/iran-hanging-of-teenager-shows-brazen-disregard-for-international-law/>.

<sup>103</sup> Ibid.

<sup>104</sup> IHRDC, *Denied identity*, 22; Mohammed Mostafe'i, another lawyer who had worked on sex cases told me such disputes over consent were not uncommon in homosexual cases; personal communication, 10 September 2010.

<sup>105</sup> Examples: IHRDC, *Denied identity*, 23-25; OAI, *Being lesbian in Iran*, 16; *Being transgender in Iran* 32-33.

<sup>106</sup> 'Hoshdār-e mo'aven-e qazāiye dādgustariye Fārs: khānevadeha estefādeh-e javānan az īnternet rā kontrol konand' in *Rūznameye Sobh-e Khabar-e Jonūb*, 13 June 2004 [own translation].

<sup>107</sup> Sanei, *Buried generation*, 54-57.

warned following his second trial that if he were caught again he would be executed, just as a 'pre-modern' *relaps* would have been.<sup>108</sup>

One of the judges told the newspaper that this was not the first case of this nature. Others, with an average age of twenty, had been caught using the internet for 'behaviours contrary to morals and contrary to law'.<sup>109</sup> This shows that the technology of the internet is a two-edged sword for sexual minorities in Iran. On the one hand, it provides new opportunities for people to meet each other and learn about their sexuality. On the other hand, it gives the authorities greater scope for surveillance and for entrapping individuals.

## CONCLUSION

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In spite of the limitations of this article, some preliminary conclusions can be drawn for further investigation. As I stated at the beginning of this essay, official attitudes and practices relating to sexual minorities are a hybrid of the 'pre-modern' and the 'modern'. Iran has clearly been influenced by 'medical views' of homosexuality that existed in countries such as the UK and USA. This was at a time when homosexuality was illegal in all these countries and during Iran's late Pahlavi period. This challenges the common and simplistic perception that the treatment of homosexuals in Iran is derived only from religious belief. Even the provisions of the penal code against same-sex behaviour, which are strongly influenced by traditional religious views, include both 'pre-modern' and 'modern/scientific' elements. The term *hamjensgerāy* is now used in legislation and in a way that blurs the past distinction with *hamjensbāzy* and, hence, between sexual orientation in the mind and engagement in actions by the body. Homosexuality is being reconstructed by the regime in Iran, modifying the constructions of the late Pahlavi period. This has implications for asylum seekers, since asylum is granted on the grounds of membership of a 'particular' and persecuted 'social group', as it is now clearer that Iranian law targets a particular type of person rather than particular acts.<sup>110</sup>

The modifications of the law show that international pressure and commentary can pressure the regime to modify the severity of punishments in such cases. However, it also shows the limitations of such likely changes in current political circumstances. It is still very difficult to gauge the extent of change in practice. However, I have shown that in some cases where death sentences were passed for consensual homosexuality, such sentences would not be passed now, whereas in other cases, such sentences may still be passed. Although executions and other mandatory penalties for these offences may have been restricted, homosexual behaviour remains completely illegal including acts of intimacy.

In combination with these developments in the legal framework, there may have been a shift to medical interventions rather than punishment, as used to be the case in countries such as the UK and USA in the 1950s and early 1960s, when arrests of homosexuals

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<sup>108</sup> Doug Ireland 'They'll kill me – A gay Iranian torture victim speaks' in *Gay City News*, 20 September 2005; Sanei, *Buried generation*, 55-57.

<sup>109</sup> *Rūznameye Sobh-e Khabar-e Jonūb*, 13 June 04.

<sup>110</sup> Guy S Goodwin Hill and Jane McAdam, *The refugee in International Law* (Oxford: Oxford University Press, 2007), 36.

increased dramatically. This is not necessarily a sign of greater tolerance. Those who refuse to comply with such treatments can of course be subjected to punishments, making participation far from voluntary. Moreover, some of these treatments may actually amount to physical and/or psychological torture. The most drastic of such methods can of course be a forced sex change, which many would consider to be gross abuse of their human rights and dignity. Currently, the future prospects for *hamjensgaryan* in Iran seem very bleak. However, as has happened with the USA and the UK authorities since the 1960s, the regime in Iran may come to realise that their intensified efforts to ‘cure’ or otherwise eliminate homosexuality are likely to fail, and ultimately could create the space for more tolerance.

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Simon Forbes's main interests are in the field of international and transnational history, including the arms trade and religious ideas on war and sexuality. He taught a short course on the international relations of the Pahlavi regime in Iran at SOAS for two years. His Birkbeck MA dissertation was on relations between Britain and Iran, 1973-78. He is currently completing a PhD at SOAS on missionaries and war in China, 1931-45.

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