

# Same-sex marriages are not Islamically permissible, even if they are legally permissible

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The jubilation that many Muslim activists, organisations and “scholars” expressed on the occasion of the American Supreme Court ruling regarding same-sex marriage was quite surprising. And on the other hand, a number of Muslims inappropriately reacted with calls for hatred, discrimination and violence. Neither extreme represents a true Islamic perspective. Although this is a clear case where the law of the land must be critiqued through the Islamic law and its ethical framework, the disagreement can in no way lead to discrimination and violence as this would betray the spirit and principles of Islamic law itself. Thus, in order to outline a balanced Islamic position on this complex matter we must consider the following dimensions of the issue:

1. During the time of the Prophet of Islam (peace be upon him), people of mixed gender, to use an Islamic expression, lived as a natural part of the society of Medina. The most authentic hadith narrations show that they were treated by the Prophet and his companions with dignity and kindness, and that they took part in all aspects of Medina’s social and religious life. The hadith narrations that incite hate or violence against gays are not authentic and the fatwas that are based on them are simply wrong.
2. Islam differentiates between sexual orientation and sexual behaviour. In Islam, no orientation is a “sin” per se, and all forms of sexual desires are tests from God in this worldly life. However, acting upon one’s desire is a different matter. It is clear in the Quran and the Prophetic tradition that all sexual activities, other than between a male and a female who are married, are sins. This includes activities that involve males, females, or both. The Quran calls such activities acts of indecency or immorality (fahisha) and they fall under the general definition of non-premissible sex (zina).
3. There is a difference between legalising same-sex marriage in a secular political system and religious sanction, whether in Judaism, Christianity, or Islam. In all monotheistic religions, marriage is sanctioned by God rather than human invention. In Islam particularly, every Islamic marriage vow includes the following statement: “This marriage is conducted based on the Book of God and the Tradition of His Prophet”. The Book of God and the Tradition of His Prophet sanctions marriage only between a male and a female who are within permissible categories and not any two consenting individuals. The Quran precisely details prohibited and thus invalid marriages; a man marrying his mother, daughter, sister, aunt, niece, milk-kin, mother-in-law, step-daughter, or a married woman. It is to be noted that many of these unions are considered illegal by current secular laws. But two males or two females cannot possibly get married under the Islamic law. These provisions are an integral part of Islam and are not subject to alternative interpretation or any difference of opinion among scholars of Islamic law. The purpose for this prohibition has been clearly and extensively researched by such scholars

in light of the sanctity of marriage as divinely ordained and its purposes and higher objectives.

4. The ruling at hand is a historic ruling that changes the very legal definition of marriage in the United States and will potentially have an impact on many countries around the world. There is a difference between a supreme court decision and a decision based on a democratic process. The justice system should not be a vehicle for passing legislation that has not been subject to public scrutiny, especially given the fact that judges are not elected officials. Moreover, both partisan politics and the pressure of contemporary lobby groups whose values may not represent public values also undermine democracy and democratic oversight. Democratic processes are much more complex than a simple citizen polling exercise, which was claimed in the media to have supported the ruling. An issue of such great consequence should have been subject to a national referendum in order to credibly reflect the values of the majority and not just the interests of lobby groups.

5. Some colleagues objected to the religious argument against legalising same sex unions on the grounds of separation of church and state. They noted that a ruling in a secular state is based on rationality and not religion, and thus religion cannot preach to the state what to legalise. Here the claim is misguidedly attributing rationality to secularism and irrationality to religion. As noted above, however, this is not the case as Islamic law extensively sets out the rational basis for the prohibition of same-sex unions, as indeed is agreeable to many non-Islamic philosophies.

6. The role of religion in defining right and wrong cannot be discounted as it continues to shape who we are and how we behave, America is no exception. To deny this would be to deny the source of many of our modern laws that prohibit certain behaviours, for example incestuous relationships, even though they may be based on consent.

In conclusion, same-sex marriage will remain an invalid and impermissible union from the Islamic point of view. Moreover, nothing in the Supreme Court ruling or the social and legal consequences that will result from it should compromise the rights of believers across all monotheistic religions to express and live according to their values. That said, I must reiterate that this position does not negate other Islamic values of tolerance, peace, mercy and kindness toward all.