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Reflections on Islamic marriage as panacea to the problems of HIV and AIDS

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Heterosexual intercourse is epidemiologically the leading factor in the spread of HIV/AIDS. Although the heterogeneous Muslims condemn condom use as leading to *zina,* the Muslim majority regions of North Africa and the Middle East have the lowest HIV prevalence in the world. Through the desk-top approach the paper evaluated Islamic marriage as a possible panacea to the problems of HIV/AIDS. The correlation between religion and the spread of HIV/AIDS has remained ambiguous, for while both Christians and Muslims advanced the same moral values, HIV prevalence peaked among majority adult Christian populations and drastically dropped among majority Muslim populations. This means the Islamic marriage praxis includes some unique features. Such features include obligatory pre-marital circumcision, strict separation of sexes, combined religious, judiciary and political sanction against pre-marital sex, extra-marital sex and compulsory levirate marriage. The unique marriage sanctions are gradually restricting freedoms in the areas of polygyny and divorce; slowly restricting multiple sexual contacts which are epidemiologically prone to HIV/AIDS. Hypothetically, Islamic marriage can impact favorably on HIV/AIDS prevalence.

Key words: Abstinence, fidelity, HIV/AIDS, panacea, *zawj.*

INTRODUCTION

This paper focuses on Islamic marriage principles from within the Islamic Family Laws. By principles the paper refers to accepted rules governing Muslim behaviour in respect of marriage. These principles define morally correct behaviour and attitudes (OALD). The Islamic Family Laws regulate private family life, and this research concentrates on those family laws that deal with marriage preparations and the various types of Islamic marriage. The paper further discusses the HIV/AIDS drivers and their correlation with religious laws. Finally it makes a hypothetical proposition on the possible impacts Islamic marriage might have over the HIV/AIDS scourge.

METHODOLOGY

The study relies on the desk-top approach. This means the argument is created out of a body of knowledge already in the public domain. Such knowledge is accessed from books, journals, the internet, news papers and governments and international organisations policy documents. First the article focuses on the Islamic marriage from which the author draws Islamic marriage against the HIV/AIDS drivers. This being done the focus shifts to

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factors fuelling the spread of HIV/AIDS and the Islamic response to such a discourse with special attention to the preventive principles within marriage. The Islamic response leads to the phenomenological evaluation of Islamic marriage as a possible panacea to the problems of HIV/AIDS; a religious alternative or backup to a consortium of remedies proposed by the secular society.

Background to Islamic marriage principles

The Quran uses the term *zawj* (paring) for marriage, maintaining that it is a solemn covenant (Surah 4:21) "to which God Himself is the first Witness and the First Party" (Abdalati 9886, p.202; *Islamic Dictionary 2015*). The legal term for marriage, *nikah,* literally means 'sexual intercourse' (TISM1). This etymology for marriage denotes it as the only conjugal community and the sole legal framework for procreation (Surah, 4:1). It is treated as a natural instinct from Allah meant to prevent fornication and its fulfillment is figuratively valuated as equivalent to fulfilling half of one's religious obligations (Surah, 17:22), making marriage a religious duty and a moral safeguard. Nevertheless, legally Islamic marriage is not free for all. Muslims insist on the 'responsibilities law,' which excludes from marriage the impotent, those who have no love for children and those who lack financial ability to run a decent family (Esposito, 2001; Olsen, 2009).

Islamic marriage is parentally arranged due to strict family regulations on the separation of sexes enforced by a highly empowered male guardian. For that reason the suitor and the bride only come to meet each other in an arranged meeting and to know each other in wedlock. If the suitor and his betrothed are found together alone they are subject to heavy punishment which may be a hundred lashes (Doi, 1984). For a marriage to be legal it must be public, which is meant to prevent immorality and to create a distinction between marriage and prostitution. The bridegroom undertakes to pay *mahr/sadak* (dowry) exclusively to the bride, who forever must conduct herself decently (Schacht, 1986; Esposito, 2001; Olsen, 2009).

Islamic marriage laws allow polygyny. Muslim men are allowed to marry up to four wives since the Battle of Uhud (625 CE) (in which a lot of Muslim men lost their lives) in order to provide for numerous widows and female orphans in a strictly patriarchal society (Esposito, 2001; Ephroz, 2003; Olsen, 2009). Some Muslims still maintain that "the event may be past but principles remain" (Ali, 1989, note 508). Modernists argue that Surah 4:3 often quoted as allowing four wives is virtually a prohibition by modern exegesis as it puts impossible conditions for polygyny. In modern hermeneutics polygyny is not a principle in Islamic law and therefore not obligatory (Doi, 1984; PCN, 2007; Noebel, 2006). On the political front, Tunisia prohibited polygyny in 1957. The Malaysian Islamic Family Laws Act (1984) specifies that a couple needs written permission from the Syariah Court to contract polygyny. In Syria and Morocco restrictions have been imposed on polygyny based on the 1986 Arab Family Law Project. In these countries polygyny is regulated by government codes administered by the courts which verify the need and level of impartiality (Doi, 1984; PCN, 2007; Olsen, 2009). In that light polygyny has entered a new phase in which its gradual constriction may be postulated.

Islamic marriage among some religious sects still tolerates *mutah* (temporary marriage). The argument is, if a man is out on business it is better to have a constant rather than multiple partners out there (Surah, 4:24). The 'men on business' include merchants, soldiers, students and tourists. Who should the 'men on business' consider for *mutah?* "A woman whose life had(s) fallen into difficulties" (Mujtaba and Lari, 1977, p.108). Marginalization, poverty and vulnerability are considered key drivers for multiple/occasional partnerships and prostitution (Kramer and Berg 2003; Hughes 2004).

Islamic marriage is not indissoluble. Though adultery may lead to divorce it may also lead to death by stoning. If a man divorces his wife he is not allowed to reconcile with her again until she has married another man and has been divorced by him after consummation of the marriage (Roberts, 1971). Modern Muslims however have found a way round it by contracting fake marriages which are only consummated in principle. Such marriages though innovation, are recognized as valid. A woman can be granted divorce in the cases of the husband's continued absenteeism, or chronic illnesses such as leprosy, elephantiasis, lunacy and impotence. The Shariah makes health partners choose to care for the sick (Mujtaba and Lari, 1977; Olsen, 2009). Only competent courts can dissolve marriages in Tunisia, Iraq, Kuwait, Libya, Malaysia, Morocco and Yemen (Doi, 1984; Olsen, 2009). Court interventions make it possible to hypothesize that divorce among Muslims, which has a great potential for increasing lifetime partners, may gradually become difficult (Stanberry and Bernstein, 2000).

Levirate marriage is also permissible among Muslims. In the pre-Islamic era a step son or brother inherited the decease's widow and property even against her will. Compulsory inheritance is now punishable (Ali, 1989). The Quran gives the widow and the divorced the right to dispose themselves in marriage (Surah, 2:232, 240). This means that the levirate marriage can now only be by mutual consent.

Islamic marriage principles

The foregoing discussion has stressed the following points:

1. Marriage as the only conjugal and legal framework for procreation (Surah, 4:1; Abdalati, 1986; TISM1).
2. Strict separation of sexes to stump out fornication or adultery (Surah, 17.22; Schacht, 1986; Esposito, 2001; Olsen, 2009).
3. Heavy penalties for fornication and adultery as deterrent to sexual license (Doi, 1984).
4. The excessive powers of the male guardian to make minors respect the sex boundaries (Schacht, 1986).
5. Only those able to meet the marriage responsibilities should marry (Schacht, 1986; Esposito, 2001; Olsen, 2009).
6. Marriage publicity and registration for authenticity, respect and stability (Olsen, 2009).
7. Compulsory *mahr* payment for wife empowerment (Schacht, 1986; Esposito, 2001).
8. Conditional caring for the chronically ill (Mujtaba and Lari, 1977; Olsen, 2009).
9. Circumcision prerequisite for every man before marriage (BBC, 2009).
10. Strictly formal Islamic dress code (decency) (Doi, 1984; Schacht, 1986).
11. Empowerment of the widow/ divorced to choose who she wants to marry/ demand inheritance from parent or husband's deceased estate. (Ali, 1989).

These legal positions are meant to uphold the principles of pre-marital sexual abstinence, fidelity in marriage, good hygiene (circumcision), responsibility, gradual female empowerment and the preeminence of the law.

HIV/AIDS

The abbreviation HIV stands for human immunodeficiency virus, the precursor for AIDS. The acronym AIDS in turn stands acquired immunity deficiency syndrome. HIV is spread through sexual contact as well as exchange of body fluids (semen, vaginal secretion, anal fluids, blood) and it is only called AIDS when the body immunity system becomes susceptible to some opportunistic

diseases like pneumonia, meningitis and tuberculosis (MSF, 2013). The spread of HIV through unprotected sexual intercourse with an infected partner is exacerbated by multiple concurrent sexual partnerships, migration and gender inequalities (Genrich and Brathwaite, 2005, NAC, 2014). Apart from heterosexuality and homosexuality, drug misuse leads to the sharing of contaminated needles (Hasnain, 2005).

Muslims' response to the HIV/AIDS discourse

Early discussions about HIV/AIDS in the Muslim world described the condition as belonging to the American and European gays and foreign to the conservative Muslim. The Shariah Law severely condemns gay relations based on the Quranic story of Lut, leading to the stigmatization and discrimination of gays and lesbians (Bocci, 2013). Severity of stigma breeds withdrawal and submergence of activities and possibly limits flourishing of the practice; though such withdrawal may lead to perpetuation of conditions that may be moderated or reversed by exposure and cure (Bocci, 2013; NAC, 2013). Although Islamic response to the Shariah Law on gayism is not homogenous, the Muslims are convinced that the open practice in the USA and Europe encourages prevalence (Bocci, 2013). The heterogeneous cover of the Muslim communities is slowly beginning to reveal small exoteric gay-communities susceptible to the virus in a very small but sure way.

One essential debate among the Muslims is based on the use of the condom by the sex workers (Bocci, 2013). Culturally and religiously the condom has a moral challenge that easy accessibility might lead to *zina* (promiscuity) (Genrich and Brathwaite, 2005; Bocci, 2013; Makamure, 2015) condemned both by the Quran and the Shariah. The challenge lies in whether a sane infected adult should ignore personal condition and go ahead to engage in open sex with an HIV free individual. Analogical deduction says 'no,' because the Shariah Law maintains that when confronted by two evils, a Muslim should choose the lesser evil. Tacitly this is an approval for the unpronounced condom use and Zanzibar and Iran have been forthcoming on the issue (Rafiq, 2009; Speakman, 2012). Among the heterosexual couples there is only a 4% chance that HIV positive people adhering to anti-retroviral (ARV) drugs are likely to infect their partners through unprotected sex (NAC, 2014).

In general Muslims saw condom use as ineffective and bodily supported abstinence as the panacea to the problems of HIV and STDs. They believed in the sanctity of marriage contracted according to the religious law of the Islamic faith: *Shariah*. Compact societies, as in the case of the majority of Muslim communities, and religious influence moderate the spread of HIV (Genrich and Brathwaite, 2005; cf Meekers, 1993).

In Muslim countries HIV/AIDS is prevalent among groupings which act contrary to Islamic teaching; the drug injecting groups, the female sex workers and the men having sex with men *(*Kamarulzaman*,* 2013*)*. Of the 15.9 million drug injecting people in the world some in excess of 3 million are known to be living with HIV and AIDS. Resistance to syringe and needle disposal and condom distribution has been partly affected by fear to tacitly advocate for the prosperity of these social and religious misfits. Adherence to Islamic marriage principles including pre-marriage circumcision are thought to account for the low rate of HIV infection among the traditional Muslims in the Middle East and Sub-Saharan Africa. Circumcision reduces new infections by at least 50% (NAC, 2013). Such protective effect is enhanced by the use of the condom (NAC, 2013).

Studies have confirmed that HIV prevalence is low in Muslim majority countries (Rafiq, 2009). HIV/AIDS continue to suffer from moral and religious stigma, but Zanzibar has departed from the norm among Muslim majority communities by accepting condom use in the prevention of HIV/AIDS as all efforts to prevent the influx of foreigners and the quarantine of the infected proved impractical.

Men who travel often are more prone than women to come into contact with people with the disease first, as multiple sexual contacts outside marriage in line with *mutah* (temporary marriage/small house) increase the chances of becoming HIV positive (Genrich and Brathwaite, 2005; Rafiq, 2009; NAC, 2014). But Muslim women are more vulnerable than men because of their lack of sexual and economic bargaining power, which increases the risk of acquiring AIDS (Rafiq, 2009; NAC, 2014). In the Tanzanian communities, circumcision, anti-alcoholism and frequent ablutions are associated with seropositivity.

Hasnain (2005) argues that great emphasis is placed on abstinence and proper use of drug as policy drivers in Muslim majority countries. The disease is easily avoidable through behavioural changes and personal choices. Life style is therefore very important in forestalling HIV/AIDS. The current incidence in the Eastern Mediterranean is 0.3% which is equivalent to Western Europe. Muslims emphasize chaste behaviour and prohibit sexual behaviour outside marriage. Islam prohibits adultery, homosexuality and use of intoxicants, though brothels do exist in some Muslim countries making commercial sex and extra marital sex possible outside the permissible behaviour. Muslim policy makers continue to advocate abstinence from all these risky behaviours. Interestingly, in the Muslim World, religion defines culture and culture gives meaning to every aspect of an individual's life (Hasnain, 2005).

RESULTS

Research has shown that HIV/AIDS is mainly spread through risky behaviours which include sex with multiple partners outside wedlock, or allowed degrees of marriage, such as prostitution and gayism. Literature shows that initial discussions located the condition within the American and European gay fraternity, which almost created complacence among other groups of people. Results of surveys have also shown that the incidences of HIV in the majority Muslim areas of North Africa and the Middle East are 0.15% and 0.3% respectively, which lie in the range of Western Europe. Muslims whose lives are ruled by the religious Shariah Law generally stigmatize those affected by the condition as sinners who have failed the chaste and abstinence tests and therefore destined for Hell. This sentiment is particularly strong because Islam prohibits adultery, homosexuality, use of intoxicants and commercial sex which lie outside the permissible behaviour. In this case the condition is rife among social deviants.

DISCUSSION

The foregoing has shown that sexual behaviour is the key driver of HIV/AIDS. The low incidence of HIV/AIDS among majority Muslim communities may prove that their marriage principles work. Of interest is their insistence on marriage as the only legal sexual framework and procreation as the purpose for the conjugal community (Surah, 4:1). The strict separation of sexes stands as a social construct which enforces abstinence from fornication or adultery. This is particularly possible because the penalties are dear (Doi, 1984). Heavy

penalties have been used as deterrence from time immemorial. The Semitic people have made use of heavy penalties to control sexual behaviour (John 8; *Judaica*, 2008) while the Romans and the French have used them to stamp out opposition (*Britanica*, 2015). The Responsibilities Law reduces the chances of the wife committing adultery to fend for the family in the case of a financially incapacitated husband being allowed to marry. An impotent man would force the wife to secretly experiment with other men to save herself from the shame of childlessness. Continued absenteeism with its financial deprivation in a patriarchal society would have forced the woman into infidelity if she was not freed to join a responsible man of her choice (Schacht, 1986; Kramer and Berg 2003; Hughes 2004; Olsen, 2009).

Taking marriage as a moral safeguard against sexual temptations (Surah, 17:22) has the capacity to deal a blow against the scandalous behaviour exuded by some monks and non-marrying pastors. Marriage publicity has the positive value of authenticating a union and excluding illicit behaviour common in secret marriages (Schillebeeckx, 1978; Schacht, 1986). Secret marriages have problems of instability and replication which is prone to contracting HIV/AIDS which has high incidence among those who change their partners frequently (Genrich and Brathwaite, 2005; Rafiq, 2009; NAC, 2014). Marriage stability on the other hand has the greater value of avoiding multiple contacts.

Although Islam emphasizes compassion it exempts spouses from fundamentalist compassion. Conditional caring for the chronically ill gives an outlet for women whose husbands may have contracted diseases outside wedlock to recues themselves and stay free of the disease (Abdalati, 1986). The foregoing has shown that it is the men who are more prone to come into contact with the disease first because they may contract *mutah* when away from their spouses (Genrich and Brathwaite, 2005; Rafiq, 2009; NAC, 2014).

Circumcision as a prerequisite for every man before marriage has demonstrated some degree of resistance to the HIV/AIDS scourge. The government of Zimbabwe in 2010 rolled out a policy to have all active men voluntarily circumcised as a way of fighting HIV/AIDS. It is argued that circumcision reduces new adult infections by between 40% and 50% (USAID, 2009; NAC, 2014). Other publications show that it is up to 60% effective in some cases (Moyo, Herald 08/01/2012; NAC, 2013).

The Islamic dress code is strictly formal with great emphasis on decency Doi, 1984; Schacht, 1986). Sex workers are known to advertise themselves through dressings that traditionally disregard the norms of decency. Men, for the purposes of prostitution, generally attach themselves to those who subvert the norms of decency.

The Levirate marriage law has empowered the widow to turn down compulsory acquisition and has allowed her to inherit a portion of her father and late husband's property. Inheritance empowers the woman to have livelihood outside marriage. The problem lies where the levirate law has assimilated non Islamic local norms which compel women into marriages that lead to their disempowerment and exposure to HIV/AIDS (Sindiga, 1995; Chimhanda 2002; Rafiq, 2009; Makaudze and Guhlanga, 2010).

The variables that are HIV/AIDS prone are deviations from the Islamic norms. In this regard following the Islamic marriage principles closely, puts Islamic praxis in the panacea category. But the Islamic norms are not without their challenges.

The "Responsibilities Law" excludes the less economically privileged from marriage. Jurists by enforcing this law leave the affected people with no outlet for their sexual emotions beside fornication (though this may relate to an insignificant minority). This fornication however finds moderation in the excessive separation of sexes and the penalties attracted by illicit sexual behaviour (Doi, 1984; Olsen, 2009).

Polygyny creates conditions for dissatisfaction among the wives (Surah, 4:129) and this can be a recipe for disaster. A single marriage with five partners increases the chances for coming across the virus, though strict separation of sexes modifies the extent of illicit heterosexual contact. The principle of temporary marriage even if positively used in the modern world exposes partners to the virus that causes AIDS. If it is meant to target women in need, still some of the women in need may be widows of AIDS victims. The subornation of women which Mujtaba and Lari (1977) describe as "violence and tyranny" leads women to accept a man who has had temporary marriages without complaints.

Divorce by *khul* deprives the woman of livelihood thereby thrusting her into the habit of temporary marriages for survival. Abject poverty that Mujtaba and Lari (1977) discuss is a key driver leading people into illicit bread and butter unions which are prone to contracting HIV/AIDS (Rafiq, 2009; NAC, 2014).The re-marriage law has problems if dogmatically followed. Making reconciling partners remarry only after the woman has consummated and dissolved a marriage with another man exposes partners to the AIDS scourge. Modern Muslims however have found a way round it by contracting fake marriages which are only consummated in principle. Such marriages though innovation, are recognized as valid.

The negation of condom use has dire consequences in mitigating the spread of HIV and AIDS (NAC, 2014). Where the condom has been consistently used the results have shown a reduction in new cases. Due to government policies driven by international norms some Muslims are beginning to accept condom uses in particular scenarios (Rafiq, 2009; Speakman, 2012). Even in such cases abstinence and fidelity in marriage advocated by the Muslim marriage principles are known to be the best approaches to date.

Correlation between religious laws and HIV/AIDS

The correlation between religious laws and HIV/AIDS is an ambiguous one (Du Toit, 2013). While both Christians and Muslims stigmatize HIV/AIDS as emanating largely from sinful risky behaviour and in unison call for abstinence and fidelity in marriage, HIV prevalence peaked among Christian majority adult populations in sub-Saharan Africa; with the same region recording negative prevalence among Muslim populations in direct proportion to Muslim population density (Speakman, 2012; Gray, 2003; Gray, 2004). Swaziland with a majority adult Christian population of 82% has the world's highest prevalence of 25.9% while North Africa and the Eastern Mediterranean with majority Muslims populations have prevalence rates of 0.15 and 0.3% respectively (Speakman, 2012; Roudi 2011; Hasnain 2005). The negative correlation between Islam and HIV prevalence logically emanates from the symbiotic relationship between religio-political authority of the ruler and religious sanction. The Muslim rulers combine both religious and political powers which give weight to their sanctioning of behaviour. In that respect they are able to enforce Islamic family laws in relation to separation of sexes, abstinence, fidelity in marriage, intoxication and circumcision with relative easy. Abstinence and fidelity are even higher among *sudja* Muslims (Muslims with hyper-pigmented spots on their foreheads due to frequent prostration in prayer) leading to even lower HIV prevalence (Kagimu et al., 2012). Circumcision which is a religious obligation for Muslims cuts male risk by 50% and female risk by 30% in relation to sleeping with an HIV positive partner (Epstein, 2008; NAC 2013). Religious impact on the conception about illness which grows stronger with compact and less westernized communities cannot be underestimated (Gray, 2003; Speakman, 2012). Behaving in accordance with religious tenets may have impacts on health and disease transmission, because religion puts constraints on sexuality, and in particular Islamic affiliation inversely associates with HIV seropositivity (Gray, 2003). Islamic ritual washing for example increases hygiene and negatively affects STDs prevalence.

Hypothetical postulation on possible impacts

The information gathered so far persuades this writer to hypothesize that the Islamic marriage can act as a panacea to the problems of HIV and AIDS. This despite the fact that relatively easy divorce among Muslims increases lifetime sexual partners, which epidemio-logically associates with increased HIV risk, because circumcision, and laws banning premarital and extra marital sex moderate the result (Genrich and Brathwaite, 2005; Rafiq, 2009; NAC, 2014). Moreover divorce is increasingly being removed from the private domain into the public court domain (Doi, 1984; Olsen, 2009). Court interventions make it possible to hypothesize that divorce among Muslims may gradually become difficult, further thrusting Islamic marriage into the panacea category (Stanberry and Bernstein, 2000). Polygyny, another controversial area, is under pressure from modern hermeneutics and national governments, who are fighting to further reduce the incidence of multiple life partners (Doi, 1984; PCN, 2007; Olsen, 2009). In this light polygyny has entered a new phase in which its gradual constriction may be postulated. In this regard it can be argued that religion places a code of moral norms which directly impact any understanding of the pandemic related to human social behaviour (Benn, 2002). Where human social behaviour is simultaneously controlled by religious moral codes and political sanction the results reflect low HIV incidence (Hasnain, 2005; Roudi, 2011; Speakman, 2012).

Conclusion

The study has concluded that the Islamic Family Laws make marriage user friendly to a greater extent. This is true of laws that enforce circumcision, virginity and fidelity in marriage. On the corollary there are also other laws that leave gaps for the infiltration of HIV and AIDS. This is especially true for those laws that permit multiple relationships while condemning condom use. Due to limited time and space this paper has not been conclusive on the issues of modernists and *tahlil.* Future research that concentrates on the application of modern hermeneutics in relation to these two issues would help evaluate whether Islamic practice with the Quran as its immutable first source can rise to the level of indisputable panacea to the problems of HIV and AIDS.

ABBREVIATIONS

AIDS: Acquired immunity deficiency syndrome; **ARV:** Anti-retroviral; **HIV:** Human immunodeficiency virus; MSF (Medecins Sans Frontieres 2014); **NAC:** National Aids Council (Zimbabwe); **OALD:** Oxford Advanced Learners' Dictionary; **PCN:** Polygamy is a Conditional Necessity; STDs: Sexual Transmitted Diseases; **TISM1:** The Islamic Sexual Morality I; **USAID:** United States of America International Development.

Conflict of Interests

The author has not declared any conflict of interests.

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