

**An Analysis of the Discursive Representations of Women's Sexual
Agency in Online Fatwas: A Case Study of askimam.org**

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DECLARATION


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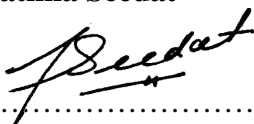
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ABSTRACT

Combining a feminist post-structural methodology with a legal interpretive framework located in classical texts, this study analysed six fatwas on South African-based Mufti Ebrahim Desai's online fatwa platform, askimam.org, to provide insights into the discursive representations of women's sexual agency. By virtue of their potential to provide data on lived experiences of sex and intimacy in modern contexts, and the legal interpretive reasoning they prompt, the analysis of these fatwas revealed competing and complementary discourses on women's sexual agency. Petitioners grapple with the dissonance created by their pietistic loyalty to the legal tradition of marriage, and expectations of mutuality within contemporary marriage. They rely on varying dimensions of health to argue for women's choices in the sexual arena. In their responses, some muftis accommodate women's sexual refusals and desires using an ethical framework, and they support mutuality using strategies of sexual communication and benevolent masculinity. Unlike other facets of health, which are managed in the juristic space as spiritual concerns, physical health concerns related to sex are managed within a biomedical ethical paradigm, thus linking sexual rights to physical health. The study shows the potential for muftis to link sexual rights to psychological and emotional facets of health and the possibilities to adopt an ethical paradigm that includes other medical and allied therapies. Amongst the fatwas produced by Desai and his students, Desai's own fatwa, in the context of reform inclinations on his website, suggests this possibility. Although the online fatwas of askimam.org do not diverge substantially from the legal logic of Muslim marriage, they provide a glimpse into how Deoband muftis are thinking about the model of marriage, through an emphasis on mutuality and health and well-being, in order to preserve the marriage and maintain the stability of the contemporary Muslim family. The study proceeds to analyse how foundational sources, Qur'an and hadith, are utilised in this regard, and concludes with an analysis of how the online space is gradually reformulating traditional concepts and norms, thus facilitating new prospects for reconfiguring gender relations.

Key Terms: Sex, sexual agency, sexual health, fatwas, Muslim marriage, online, Internet, muftis, Deoband.

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INTRODUCTION: DESIRING SEX OR NOT?

My first week into marriage, I developed “honeymoon cystitis”. I had told Zain that we needed to take everything slowly but he hadn’t listened. Before leaving for honeymoon, the doctor ordered that we refrain from having sex for at least a week. Zain was annoyed, but he didn’t say anything (Cassim 2015: 138).

In the above account the Muslim wife’s desire to “take things slowly” in terms of the frequency of sex in the early days of marriage are not heeded until she develops a medical problem. She remarks that her husband is “annoyed” at her subsequent lack of sexual availability. The writer’s experience might be linked to internalised understandings of the legal framework of a Muslim marriage which scholars such as Kecia Ali (2006: 13) and Amina Wadud (2006: 236-241) maintain, is characterised by the prioritising of male sexual rights and female obedience, sexual availability and passivity. They assert that these female functions are often linked to financial controls.

Amina Wadud further suggests that this type of marriage construct denies women control over their bodies and a deciding say on the terms of sexual intimacy. It engenders a “sexual politics of domination” (2006: 236) and creates a situation where women are made sexually vulnerable to HIV and AIDS and sexually transmitted disease. So while World Health Organisation estimates show that “80% of heterosexual women with A.I.D.S are monogamous and have only ever had sex with their husbands”, Wadud suspects that “the percentage would be even higher for Muslim women” (2006: 235). Against this backdrop, my study aims to provide insights into the discursive representations of women’s sexual agency in a case study of the fatwas on South African Deoband Mufti Ebrahim Desai’s fatwa forum, askimam.org. The objectives are to first identify the discursive construction of sexual agency in Desai’s fatwas on askimam.org, second to gauge to what extent and effect these fatwas enable the negotiation of women’s sexual and reproductive health

choices, and third to analyse to what extent foundational sources, Qur'an and hadith¹, feature in the discursive representations of women's sexual agency.

I employ a feminist post-structural paradigm and analytical frameworks of both feminist discourse analysis and classical Islamic legal interpretive methodologies. Accordingly, I begin this thesis with a few definitions of 'sexual agency' that have been posed by scholars, to arrive at a place for further analysis of the concept within Muslim marriage. For some, "sexual agency is typically characterized as a woman's decision to consent to sex because she desires it or to choose not to have sex because she does not desire it" (Geary, Baumgartner, Wedderburn, Montoya & Catone 2013: 438). Others describe 'sexual agency' as "the possession of and control of ones body and sexual choice" (Akintola, Ngubane & Makhaba 2012: 389), and as "the ability to act according to one's will in the sexual realm" (Crown and Roberts 2007: 386).

By virtue of the fact that sexual agency is concerned with women's understanding and learning about their own "desires, pleasures and experiences" in the sexual realm in order to negotiate and control their sexuality and sexual choices, inhibiting it results in limited capacity in sexual decision making. Consequently, and as Wadud indicates, in male dominated normative relationships of a Muslim marriage, negotiations for safer sex practices are constrained, exposing women to sexually transmitted diseases, HIV and AIDS, and unwanted pregnancy (Lesch & Kruger 2005: 481)².

Potentially, 'sexual agency' includes ideas of consent, sexual availability, sexual satisfaction, desire, submission, force, coercion, mutuality, knowledge and information about religion, sexual and bodily rights and concerns - ideas which feature prominently in the literature on Muslim marriage. Drawing upon these concepts, I also expand the scope to include Muslim marriage, because until now most scholarship on the concept 'sexual agency' has been in reference to young adult and adolescent women (Averett, Benson & Vaillancourt 2008; Bell 2012; Crosby, Diclemente, Wingood, Salazar, Head, Rose & McDermott-Sales 2008; Froyum 2010;

¹ Traditions, sayings and deeds narrated from the Prophet Muhammad (Kodir 2007: 202).

² Lesch and Kruger (2005: 481) describes sexual agency in terms of both reflexivity and autonomy. Reflexivity "as the ability to use certain principles to reflect on the suitability of different options regarding sexual behaviour"; and autonomy "as the ability to envision and choose between different options and to act according to that choice".

Geary, Baumgartner, Wedderburn, Montoya, & Catone 2013; Lesch, Kruger 2005; Quatch 2008).

Cassim's inability to effectively communicate her desire to refrain from frequent sex is mirrored in a marginal study of sexual agency within marriage which focuses on "sexual communication" as an important pre-condition to prevent coercive sex in young South Indian wives. The study was done in the context of related studies that indicated young married women had limited control over sexual experiences and that this was a key factor contributing to their vulnerability to STD's, unwanted pregnancy and HIV and AIDS. It revealed that adequate sexual communication might permit women an opportunity to negotiate safe and voluntary sex. The researchers proposed that "policy makers seeking to enhance young women's sexual communication need to consider providing sex education to young women before they marry" (Pande, Falle, Rathod, Edmeades & Krishnan 2011: 102).

Consequently, in this study, based on the literature that follows, I locate 'sexual agency' in the capacity to choose when to have a sexual experience, with whom to have a sexual experience, to choose how to define and express oneself sexually, to choose how one wants to engage in sexual activity, and to be in a position to negotiate sexual choices that determine one's sexual health and well-being.

Context and Grounding

Easy access by Muslims to online muftis, also known as juris-consults who constitute part of a wide group of ulama (religious scholars), and the anonymity provided by the Internet, allows for the freedom to articulate intimate sexual issues and seek counselling and religious legal advice for these (Bunt 2003; Chawki 2010). In the offline world the patriarchal gendered perspectives of ulama based on traditional readings of foundational sources are mediated into society by means of popular religious literature and lectures. These are internalised and, as research shows, can lead to constrained religious personhoods with regard to sexual agency and subsequently hamper sexual reproductive health decisions (Shaikh, Hoel, Kagee 2011; Hoel and Shaikh 2013). South African based research reveals that women's

contemporary experiences and understandings of sexual agency are also ambivalent. Some women reject the mainstream perspectives completely, others internalise them, further constraining their experiences, and others resist them when they find themselves in perilous marriage situations (Shaikh, Hoel, Kagee 2011; Hoel and Shaikh 2013).

The Internet has generated increased individualization and privatization of religion and new usages in activism and decision-making, but it has also entrenched conformity and compliance with religious authorities and dominant doctrines (Bunt 2003; Campbell 2012; Kutscher 2009; Sisler 2011). Yet there is a paucity of research on how mediations between sexual agency and health needs related to sex happen online, and specifically how sexual agency is articulated and negotiated in online fatwas. Research on how authority figures and structures are combining contemporary social realities and the Internet with gender concerns, how Muslim women are applying the resources offered on the Internet and to what extent they are contributors to online content and not just content itself is also limited (Bunt 2003; Chawki 2010; Imtoul & Hussein 2009; Marcotte 2010; Piela 2010).

Further to this, online religious interaction can provide a glimpse into offline social conditions and religious practices in changing contemporary social realities (Bunt 2003; Campbell 2012; Kutscher 2009; Sisler 2011). An analysis of the interlocutory space of online fatwas, where petitioners provide “social data” and muftis use legal interpretive techniques to relate to that data, could provide insights into how fatwas constitute an aspect of the discursive Islamic tradition, and how ambivalent perspectives and experiences of sexual agency are mediated (Campbell 2012; Larsen 2015).

In South Africa, debates between the ulama and the State on the regulation of Muslim marriages are on-going (Amien 2010; Rautenbach 2009). They include negotiating between classical notions of marriage, which are framed as women’s obedience and sexual availability contingent on financial controls, and contemporary notions of marriage specific to the South African social and legal context. Recent research confirms that online fatwas have the potential to destabilise normative forms of religious authority, establish a “new manifestation of a Muslim ummah” (religious

community) and inform and influence the legislative processes of incorporating aspects of Islamic law into the secular legal system for Muslims in minority contexts (Sisler 2009: 51; 2011: 1152-3), as well as contribute towards reforming trends in women's sexual health (Kort 2005). Online fatwas can therefore provide insights into ulama's "new *ijtihād*" (independent reasoning) perspectives on contemporary lived realities of ordinary Muslims (Kort 2005: 363).

Further, Mohamed Shahid Mathee's (2011b: 75) research on historical fatwas from Timbuktu suggests women's agency in terms of their knowledge of sexual rights and obligations within a Muslim marriage can be revealed through an analysis of fatwas. Therefore, researching sexual agency in the online fatwas of a South African religious scholar who identifies with the Deoband legal school thought from India, where forty per cent of South African Muslims have their roots (Omar 2004: 2; Kutscher 2009: 39), provides insights into ways in which religious knowledge articulates with sexual and reproductive health concerns amongst Muslim men and women.

Outline of Chapters

In addition to this introduction and the conclusion, this study is comprised of ten other chapters. Chapter one examines the fatwa as a genre of Islamic texts and sketches mufti Ebrahim Desai's institutional, historical and situational context. It provides further insights into the intellectual background of legal opinions generated by Desai and his students in response to the lived experiences of men and women in contemporary Muslim marriages. Chapter two is a literature review of scholarship at the intersections of Islamic law, and sexuality and the Internet. It offers a vantage point from which the main research questions can be answered by focussing on four themes: first on textual, ethical and legal contestations; second on social and political controls of Muslim women's sexuality and rights with a particular focus on South Africa; third on Islam, the Internet and Muslim women; and fourth, research on online fatwas including askimam.org.

Chapter three traces the history of feminist theory, and its fraught and tentative relationship with Islam, linking this to my own ontological position. It expounds on

the validity of feminist post structural theory for understanding why women in religious contexts accept subordinate subject positions and examines feminist research in a non-liberal tradition such as Islam where notions of freedom and agency do not align with liberal ideas. Chapter four explains the decision to use a collective case study design and sketches the analytical methodologies and the research design used in this study. A feminist post structural discourse analysis framework in conjunction with traditional analytical approaches of classical Islamic legal scholars is employed in order to produce the instruments, data, and to generate the analyses.

Chapters five, six, seven and eight outline the four discourses identified in the selected fatwas. Chapter five finds the most prominent societal and institutional discourse, which is also internalized by ordinary Muslim men, women, and jurists, is the discourse of male sexual need. It examines its link to divine approval, and its consequence for women's sexual agency. I also note how a reliance on textual sources affords muftis greater authority and credibility. Chapter six expands on the second discourse, that of the female right to sexual satisfaction, and illustrates how muftis navigate the fraught space between the legal logic which regulates sex in a Muslim marriage and the ethical-moral exhortation of female sexual rights discourse, using links with physical health and well-being. Chapter seven discusses the discourse of mutuality, relaying how petitioners and muftis deal with the dissonance between ideas of mutuality in modern marriages in contrast to juristic doctrine that proposes a marriage akin to dominion, by locating responses in the ethical logic of marriage and advocating strategies of sexual communication and a benevolent masculinity that prioritises a marriage imperative. Chapter eight explains the discourse of health and well-being in the fatwas, and its links to piety, through expressions of religiosity, which are implicit in both the petitions and the answers. It further analyses conceptual and theological aspects to reflect how participants in the fatwas contemplate physical health relative to their social, psychological and emotional concerns.

In a second level analysis, chapter nine traces competing and complementary agency in the interplay between the four discourses identified in the selected fatwas. In addition it expounds on analyses relating to the second research question, to gauge to what extent women's sexual health negotiations are enabled in the fatwas. I show that muftis refer to health and allied professionals only for physical health and not for

other health concerns. Further these responses are mainly reasoned in an ethical paradigm located in biomedical terms. But I also show that there is room for muftis to respond to non-physical health dimensions in an ethical paradigm located in therapeutic terms. Chapter ten offers insights relating to the third research question, namely the extent to which foundational texts are used in the representations of women's sexual agency. It also exposes potential reforming trends and shifts permitted by the online space.

The brief concluding chapter contains discussions, conclusions and recommendations for future research. It reveals that both muftis and petitioners experience a dissonance between modern expectations of marriage and the jurisprudential legal framework. In addition, both exhibit a loyalty to the latter, as arising out of their spiritual belief system. When called upon to resolve issues arising out of this dissonance, Muftis exhibit varying responses towards the ethical logic of marriage without diverging from its legal paradigm. I propose that the analysis of Desai's fatwas on askimam.org reveals potential areas of transformation in the existing online fatwa space, demonstrating that muftis may be positioned to enact a *fiqh* (jurisprudence) partial to women's concerns at the intersection of the ethics of marriage and health, thus facilitating possible reformulations of gender relations.

A Discursive Tradition

In line with the philosophical reflections of Talal Asad (1986), Islam in this study is viewed as "...neither a distinctive social structure nor a heterogeneous collection of beliefs, artefacts, customs and morals. It is a tradition... [which]... consists essentially of discourses that seek to instruct practitioners regarding the correct form and purpose of a given practice that, precisely because it is established, has a history" (Asad 1986: 20).

The term "discourse" as used in this dissertation, is referred to in its Foucauldian designation as,

...forms of knowledge or powerful sets of assumptions, expectations and explanations, governing mainstream social and cultural practices. They are systemic

ways of making sense of the world by inscribing and shaping power relations within all texts, including spoken interactions. Discourses are in turn closely associated with ‘discursive practices’: social practices that are produced by/through discourses (Baxter 2003: 7).

In this vein, Asad calls Islam a ‘discursive tradition’, characterised by a conceptual reflection on the *past* through how a practice is instituted and established, and which is important for understanding and reformulating the *future*, in which the said practice and its goal can best be secured or modified or abandoned. This occurs through a *present*, which determines how the practice “is linked to other practices, institutions and social conditions” (Asad 1986: 20). Hence his argument is that within this discursive tradition, meaning-making occurs not just through scholarly commentaries, but also through the practices of ordinary Muslims within their present contemporary contexts. In this way the present can be made intelligible through a reflection that includes both “continuities with past practices, pedagogies and arguments as well as an understanding and reformulation of contemporary and future conditions and experiences” (Mahmood 2011: 115). As will be demonstrated in this thesis, the fatwas in this study form an important component of a discursive Islamic tradition and suggest how traditional pedagogies and practices are being reformulated to meet contemporary needs.

Translation and Terminology

Muftis and petitioners sometimes use Arabic or Urdu words and phrases when expressing themselves spiritually or religiously. Arabic is the language of the Quran and Urdu is a language medium often used in Deoband madressas³. In instances where Arabic or Urdu terminology has been used, they will be italicized and transliterated, and I will provide an explanation either in the form of a footnote or in parenthesis the first time they appear, and continue to use them in the text thereafter. An exception to this will be frequently used terms like ‘fatwa’, ‘madressa’, ‘mufti’, ‘Hanafi’, ‘Deoband’, ulama, Quran and hadith, which will not be italicised or transliterated. I also employ a familiar anglicised plural of these words, hence ‘fatwas’, ‘madressas’, ‘muftis’, ‘Hanafis’ and ‘Deobandis’. The plural of ‘hadith’ will

³ Religious schools or seminaries (Moosa 2015).

remain ‘ahadith’. All other Arabic terms are transliterated and italicised according to the table in Appendix 5. All quotes from the fatwas analysed in this study will also be italicised for easier reading. In addition, the fatwas will be quoted verbatim with no adjustments made to the language in the text.

CHAPTER ONE: ORIENTATION AND BACKGROUND

This chapter first describes the fatwa genre as a form of legal interpretation and, second, sketches Mufti Ebrahim Desai's institutional, historical and situational context. It provides further insights into the legal opinions generated by Desai and his students in response to the queries posed by men and women in contemporary Muslim marriages.

1.1 What is a Fatwa?

While the more theoretical aspect of the Shari'a is embodied in the literatures dealing with the 'branches' of substantive law (*furū' al-fiqh*) and with the 'roots' of legal methodology and jurisprudence (*uṣūl al-fiqh*), its more practical aspect is embodied in fatwas issued by muftis in response to questions posed by individuals in connection with on-going human affairs... The accumulation of fatwas issued by muftis in diverse social and historical settings served to stimulate the development of the *sharī'a* from below, in response to the specific needs of particular Muslim communities (Masud, Messick and Powers 1996: 4).

Islamic legal interpretation is a specialized field in which fatwas are deemed the practical aspects of the *sharī'a* (Islamic law). A fatwa means a verdict or judicial pronouncement given by a religious legal scholar (mufti) in response to a question posed by a petitioner (*mustafti*). Due to its moral nature it is neither binding nor enforceable and is generally not a verdict in a court of law. Its coercive influence depends on the authoritative status accorded to the mufti by the petitioner in Muslim minority contexts (Chawki 2010: 166; Hallaq 1993; Hossain 2002: 1; Larsen 2015; Masud, Messick & Powers 1996: 3-32). It is assumed that the fatwa-issuing mufti is pious and possesses superior religious knowledge so that his advice will be aligned with "Gods judgement". "A fatwa therefore plays an important role in the formation of the pious Muslim self" (Larsen 2015: 201).

The structure of a fatwa comprises of both an enquiry and an answer. Questions or enquiries can pertain to all aspects of life, must be real and should not be theoretical. Scholarship on fatwas indicates that the enquiries are valuable and often used as sources of research because they provide insights into the actual problems and concerns of particular societies (Larsen 2015; Masud, Messick & Powers 1996). Fatwas thus “reflect the thoughts, feelings, experiences and ordeals of people. Any rejection of the worldliness of the fatwa genre ...would make nonsense of their form and contents”. Fatwas tell stories about themselves and the ordinary men and women who appear in them (Mathee 2011a: 85).

The question posed to the mufti immediately establishes a relationship between the parties in an interlocutionary space. It also constrains the scope of the interpretation of the question because the mufti must only rely on the facts before him and doesn't usually probe any further into the facts (Hallaq 1993; Hossain 2002; Illar 2010; Masud, Messick & Powers 1996: 20-26). He can only rely on his own knowledge if it is “directly reflected in the articulation of the question” (Illar 2010: 579). As Lena Larsen (2015: 201) notes, fatwas are “complex and can serve multiple functions” because questions can be divided into two main types that elicit varying responses. Generic petitions elicit informative answers where the “mufti's authority is constructed by virtue of superior knowledge”; and personal petitions elicit answers that take “the moral responsibility of the individual for granted”. This suggests that fatwas serve a ‘therapeutic function’ too, where the mufti deals with pietistic concerns by not only providing information, but also providing guidance on refining the moral and spiritual growth of the petitioner.

In his response, the mufti must fulfil two procedural criteria pursuant to Islamic law. First, he must understand the question and, second, he must consult with scholarly authorities within the legal schools. If a resolution is not still possible, he then uses historically established methods of judgment known as *qiyās* (analogical deductions), *ijmā* (consensus), and *ijtihad*. Answers are usually not arbitrary but set on some precedent found within the collections of fatwas found in the *fiqh* literature. Different legal schools have their own compilations of *fiqh* literature (Hallaq 1993; Hossain 2002; Illar 2010; Masud, Messick & Powers 1996: 20-26).

Historically, fatwas from the different Islamic schools⁴ (*madhāhib*) were preserved in compilations for future reference and “individual muftis displayed varying degrees of juristic proficiency and different discursive styles” (Masud, Messick & Powers 1996: 4). In this regard, Wael Hallaq (1994: 65) further attributes the development and continuous transformation of Islamic law as also contingent on muftis.

...the juridical genre of the fatwa was chiefly responsible for the growth and change of legal doctrine in the schools, ... [accordingly], our current perception of Islamic law as a jurists law must now further be defined as a mufti’s law. Any enquiry into the historical evolution and later development of substantive legal doctrine must take account of the mufti and his fatwa.

Fatwas are sought on a range of issues by many Muslims living in minority Muslim contexts, where communities negotiate between local secular liberal state norms, which incorporate ideas of gender rights, and the social, political and juridical frameworks of Islam. Online fatwas in particular establish imams and muftis as cyber counsellors and jurisconsults (Chawki 2010; Kutscher 2009; Larsen 2015: 216).

Larsen (2015: 216) puts forth that fatwas are components of a discursive Islamic tradition, constituting discourses between the petitioner and the mufti. Her view that they are “situated at the interface between worldly dealings and the process of theorising about them” is embedded in a subtext of piety. It can thus be argued that through petitioners’ queries and muftis’ answers, modern fatwas provide an interface between the pietistic concerns attached to worldly happenings and the pietistic legal and therapeutic devices used to theorise about them.

1.2 Mufti Ebrahim Desai

The very act of asking someone for a fatwa is the most explicit recognition of that person’s religious authority. Ebrahim Desai exemplifies a scholar who, although being trained in non- Azhari institution outside of the Arab world, gained global

⁴ *Madhāhib* is the plural reference to the four major Sunni schools of law (*Ḥanafī*, *Shāfi‘ī*, *Mālikī* and *Hanbalī*), which flourished and became widespread in the 2nd and 3rd centuries of Islam (Weeramantry 1988: 49).

recognition mainly through mass support accumulated via information and communication technology (Sisler 2009: 67).

Desai is identified as the author and acknowledged religious authority figure of askimam.org, where every fatwa on the site is approved and sanctioned by him.⁵ In a description of Desai, Jens Kutscher states, “a mufti is a product of his environment - be it geographical or even more so ideological and educational” (2009: 39). Locating Desai’s social, political and institutional context as well as his transnational reach provides insights into the content of approved and sanctioned fatwas on his website.⁶

Muhammad Khalid Masud, Brinkley Messick and David Powers (1996: 4) argue that there is a paucity of Western scholarship on muftis because of their unfamiliar non-litigious role as well as their historically less institutionalized activity. In South Africa, the latter argument is possibly less relevant, because many muftis are known to be affiliated to ‘councils of theologians’, which are also defined according to specific legal schools, as is the case with Ebrahim Desai. They do however remain outside the structures of a liberal secular state and function in an institutionalised manner within community structures.

The following section first traces the roots of the Hanafi⁷ Deoband legal school that Desai and his student muftis are affiliated with, paying particular attention to its history, educational institutions and curriculum, providing further context to the sources and mode of reasoning employed in the online fatwas in this study. I further sketch Desai’s various Deoband affiliations both in South Africa and India, by providing an overview of his training, his various *iftā* (fatwa-making) activities, and his effect and potential influence on different ulama structures in South Africa.

⁵ About Us, askimam.org, [Online] Available at: <http://askimam.org/about>. [Accessed on 23 November 2015].

⁶ In chapter four, an analytical framework depicting five strategies for analysing fatwas based on the treatises of classical Muslim legal theorists is outlined. One of these strategies includes an understanding of the institutional, historical and situational context out of which a fatwa arises which is provided here.

⁷ Weeramantry (1988: 49) stipulates this as the first and largest of the four Sunni legal schools and named after jurist Abu Hanifa (700-67).

1.2.1 Background

The majority of South Africa's Indian Muslims comprise approximately forty per cent of the South African Indian population (Omar 2004: 2) and are situated mainly in the provinces of Kwa-Zulu Natal (KZN) and Gauteng. Three "broad strands" of Islam have been identified in KZN: The Deoband tradition, Barelwi and Reformist (Vahed 2006: 46).

According to his website askimam.org (2011), Mufti Ebrahim Desai's educational background in terms of his training, teaching and practice is located in the first tradition which also subscribes to the Hanafi school of jurisprudence. He trained at two Deoband seminaries in India; first, Jamia Islamia, Dhabel for seven years, where he completed the basic Ālim Course, and a post graduate course in *ifta*. He then completed a second *ifta* course at another Deoband seminary under the guidance of the late Mufti of India and author of *Fatawa Mahmoodiyya*,⁸ Mufti Mahmud al-Hasan Gangohi. Currently Desai is based at Darul Iftaa Mahmudiyyah, in Sherwood, Durban, a training institute for muftis.⁹

Goolam Vahed (2000: 59) stipulates that ultimately the kind of Islam that manifests in Durban depends on the training institutions the ulama train and teach at, both in South Africa and India. The madressas and Islamic seminaries are strongly influenced by North Indian culture, with the result that content is mediated through Indian history, culture and language. To illustrate, Desai's Indian pedagogical heritage has an influence on the form and content of his madressa syllabus as seen in the inclusion of Urdu texts, as well as the heavy influence of the Deoband canon (described below) on the curriculum at Darul Ifta, where he currently teaches.¹⁰

⁸ GANGOHI, M. H. n.d. Fatawa Mahmoodiyah 25 Volumes Islamic books library [online] Available from: <https://islamicbookslibrary.wordpress.com/2012/03/19/fatawa-mahmoodiyah-25-volumes-by-shaykh-mufti-mahmood-hasan-gangohi-r-a/>. [Accessed on 30 October 2015].

⁹ Askimam.org 2011, About Us. Available from: < <http://askimam.org/about>>. [Accessed on 15 October 2015].

¹⁰ Daruliftaa.net 2013, Available from: <<http://www.daruliftaa.net/index.php/courses-admissions>>. [Accessed on 30 October 2015].

1.2.2 The Deoband School of Thought

In a summation of Barbara Metcalf's (1982) substantive work on the Deoband school of thought, Abdulkader Tayob (1999: 70-71) states that the Deoband School is characterized by her as,

An aloofness from the state but without overt opposition to its excesses, a careful balance between Sufism and legalism but with a puritan emphasis on the early authorities of Islam; and, more important, an alliance with the merchant class as opposed to subservience under political rulers.

Spurred on by far-reaching changes in Northern India in the late eighteenth century such as the loss of Muslim rule through the demise of the Mughal dynasty, and British colonization, the ulama who until then had been concerned mainly with the ruling Muslim elite, instead sought to purge ordinary Muslims, who were now regarded as the repositories of faith, from the influence of Hindu norms and customs. Their intention was to establish a purer and more correct Islamic practice and a closer adherence to Islamic tenets and early authorities (Metcalf 1990; 2002; Moosa 2015; Sikand 1999). The reformist agenda of the movement created a "heightened sense of religious affiliation as the primary focus of social identity in a pluralistic society" (Metcalf 1990: 5).

The influence of Sufi thought and practice was a rich and strong feature of the movement, with the resulting "signature tropes" being a "blend of piety, devotions and politics" (Moosa: 2015: 105). "The original Deobands were both ulama and Sufis, offering 'a composite form' of religious leadership" (Metcalf 2002: 10). Today, Desai continues to be representative of this as illustrated by both the daruliftaa and darulmahmood websites, the former devoted to the sciences of *tafsir*, hadith and jurisprudence and the latter devoted purely to the *tasawwuf* (Sufi) dimension of spiritual belief.¹¹

The emphasis on the internal over the external which is integral to Sufi thought contributed to the movement's "political adaptability" and strategy of accommodation

¹¹ Daralmahmood.org 2015, Available from: < <http://tasawwuf.daralmahmood.org>>. [31 October 2015].

so often observed in the apolitical stance of contemporary Deoband movements. This stance enables a coexistence with secular and liberal traditions and implicitly fosters the privatization of religion associated with the modern liberal state (Metcalf 2002: 16). But the orientations of Deoband graduates are varied and diverse. Some are politically active, while others choose to remain apolitical, concentrating mainly on internal moral reform (Moosa 2015: 105). Vahed suggests the latter orientation is mirrored in contemporary South African Deoband seminaries where “the lack of sustained intellectual development may be due to the fact that theological debate is discouraged” and apoliticism and non-controversy promoted. No attempt is made “to develop an Islamic view to respond to the problems facing Muslims” (Vahed 2000: 59-60).¹²

Metcalf’s (1982) third characterisation of the movement, as being closely aligned to the Indian merchant class, is also reflected in South Africa. Vahed submits that the movement is usually funded by the Indian trading class who came from the state of Gujerat in India. Examples of this funding are in the establishment of the KwaZulu-Natal *Jamiat ul Ulama* or ‘Council of Theologians’¹³ in 1955 (Vahed: 46) as well as in the example of Madressa *Inaamiyah*, in Camperdown, where Desai was head of hadith studies for ten years, and which as the website states is funded by a wealthy trader family.¹⁴

1.2.3 The Deoband Madressa

Central to the Deoband reformist plan of transforming society was the focus on education through proselytizing, pamphlets, books and the creation of a religious elite through the training of ulama as community leaders. These leaders were considered as

¹² Vahed argues that the main strategy in dealing with contemporary challenges in Muslim minority contexts is to blame both Western imperialism and secularism as contrary to Islamic values, for the economic, social and political challenges of society and to also condemn them as the main culprits in the moral laxity of western Muslims. The thrust of this line of reasoning is that contemporary problems are due to Muslims not relying on authentic and proper teachings. He says: “many Muslims believe that once they gain access to Islamic knowledge through the ulama, conform to the sacred scriptures, and return to the true form of Islam, a purified Islamic culture will emerge and that this will lead to the upliftment of Muslim civilization” (Vahed 2000: 60).

¹³ Meaning ‘Council of Theologians’.

¹⁴ Madressa al Inaamiyyah. Available from: < <http://www.alinaam.co.za>>. [Accessed 30 October 2015].

...educated in the classical disciplines, the heirs of the medieval legal traditions (*mazhab*) in religious law (*fiqh*), as well as the heirs of the medieval sufi orders (*silsila*) in inner knowledge and personal experience (*tariqa*) (Metcalf 1990: 5).

The key Deoband institution became the madressa (Qasim Zaman 1999: 294), which according to Ebrahim Moosa became the “hegemonic player in madressa franchises in the late 19th century...[and]..evoked theological partisanship, which in turn spawned rapid growth of diverse madrasa networks” in the 20th century. Today, there are numerous Deoband seminaries all over the South East Asian subcontinent and in minority contexts like South Africa (Moosa 2015: 106).

1.2.3.1 Phases of Education

In the fourth of five phases of curriculum reform in Islamic education on the Indian subcontinent, the Nizami curriculum of the 18th and 19th century Deoband reformist movement incorporated 14th century texts and a pedagogical approach that emphasised theological debate and the rational Muslim tradition. This proved to be “...the most successful and durable version of the long established knowledge tradition”, and was given the status of a “canon in the madrasa tradition” (Moosa 2015: 128).

In its early iteration the Nizami syllabus centred on subjects like philosophy, logic and theology, but in the fifth phase of iteration, during the 20th and 21st century, Moosa says it was ‘tweaked’ in a different direction. The newer iteration emphasised the sciences of *tafsīr* (Quranic interpretation), Hadith and *fiqh*, and also minimized the “philosophical edge of the curriculum” (2015: 84). Desai’s Daruliftaa curriculum also reflects a noticeable absence of philosophy.¹⁵

This shift signals a move away from the cultivation of a scholar who would have been able to “function in the world as a humanist intellectual” (Moosa 2015: 120-121) toward one who takes “refuge in a debilitating dogmatism”, so that “intellectual mediocrity” is recycled and portrayed as piety (Moosa 2015: 134). This argument

¹⁵ Daruliftaa.net 2013, Available from: < <http://www.daruliftaa.net/index.php/courses-admissions>>. [Accessed 30 October 2015].

aligns with Vahed's assessment above, of the existence of a counter-reformist trend within South African madressas through diminished sustained intellectual development and a discouragement of theological debate.

Moosa also observes that despite the obvious liability, some important and valuable features of the earlier scholastic traditions have been retained in contemporary madressas like the embracing of “didactic texts”, the fostering of “hermeneutical skills”, the imparting of a “core of knowledge of foundational teachings in every discipline” and the notion of apprenticeship and a “master teacher” (2015: 121).

The website of the Darul Ifta mufti training institute, which was set up by Desai, also attests to this inclination. So, for example, the curriculum outline for the post graduate mufti courses include both numerous Hanafi Deoband texts by renowned master teachers in the Deoband school like Ashraf Ali Thanwi and Hadhrat Shah Saheb, and certain sourcebooks and classical texts like those of Qurtubi's *Ahkāmul-Quran*, *Tafsīr Baydāwī* and *Tafsīr ibn Kathīr*.¹⁶ In addition, the “about us” page of askimam.org states that Desai also teaches “*Sahih Bukhari Shareef*, *Mishkat al Masabīh* and *Al Hidayah* at Madrasah Nu'māniyyah, Chatsworth, Durban”.¹⁷

This brief perusal of the genealogy of the current Deoband madressa curriculum and the sourcebooks used provides insights into the extent to which the answers provided by Desai and his students in the online fatwas diverge from or comply with normative Deoband trends.

1.2.3.2 Master Teachers

In the madressa tradition, “master teachers” and their texts are valued and integral to the scholarly formation of apprentice students. Moosa describes three characteristics of the ideal “master teacher” as, first, being an example of acting on his knowledge, second, training students in the way Prophet guided his companions and, third, assisting a student to “imitate and internalize the exemplary conduct of the master-

¹⁶ Daruliftaa.net 2013, Available from: < <http://www.daruliftaa.net/index.php/courses-admissions>>. [30 October 2015].

¹⁷ Askimam.org 2011, About Us. Available from: < <http://askimam.org/about>>. [15 October 2015].

teacher”. In addition, some master teachers are authors of their own texts, which are then equally valued and emphasised (2015: 126).

Desai was afforded an opportunity for apprenticeship with firstly Mufti Ahmad Khanpuri Saheb of Dhabel and then another master teacher, the late Mufti of India and author of *Fatawa Mahmoodiyya*, Mufti Mahmud al-Hasan Gangohi. Moosa, who was also taught by Gangohi in the late 1980’s, describes him as a well travelled “Sufi master”, who received many visitors and answered their questions “skilfully, humorously and pithily”. Desai himself is arguably “master teacher” to the students of *Darul-ifta al Mahmudiyyah*, the institution where he teaches and from where all his fatwas are generated. A survey of the structure of the fatwas on askimam.org (2011) reveal that while Desai’s students hail from different geographical locations, they generate the bulk of fatwas, and as master teacher he is the final authority, as indicated by the closing line at the end of each fatwa: “checked and approved by Mufti Ebrahim Desai”. In the foreword of his online publication *Contemporary Fatawa volume 2*, which is a compilation of selected online fatwas and accessible as a free download on the daruliftaa site, Desai says, “...most of the fatwas [herein] were answered by the students of the Darul Iftaa as part of their training in becoming Muftis” (Desai n.d.).

Fatwas on Desai’s site often include the Arabic sources, and sometimes the English sources are listed at the end to provide the mufti’s rationale. They sometimes cite from Gangohi’s multi-volume text, *Fatawa Mahmoodiyya* and other foundational Hanafi texts. Notably, the Arabic sources are usually listed after Desai’s signature line. The form and content within individual fatwas vary depending on the intended recipient. Following the norms of *iftā*, the Arabic sources are not meant for the petitioner but rather a means by which the student apprentice explains his reasoning to the master teacher,¹⁸ who in this case is Desai. This sheds more insights into the student-teacher relationship and provides a better vantage place for analysis of the fatwas answered by Desai’s students in this study.

¹⁸ Masud, Messick and Powers point out that in line with the classical *adab al- mufti* treatises, answers are more formal and all reasoning is provided when a particular mufti addresses another mufti. Muftis who are “commonly affiliated with particular schools of law, cite authors and authoritative works specific to those schools”. A mufti muqallid should accept the opinion of the best jurist of his school and “attribute his answer to him” (1996: 25).

It can be argued further that Desai is a master teacher by virtue of his affiliation with a host of inter-linked teaching institutions and websites which provide an online religious space for ordinary Muslims and other scholars. The websites are listed as idealwoman.org, daruliftaa.net, and darulmahmood.org. Another affiliated website in which his fatwas, advice and talks are found is the UK-based Darulfiqh.com. Herein Desai's additional credentials are listed as:

Executive member of KZN *Jamiatul Ulama* (The Council Of Muslim Theologians), Secretary of *Jamiatul Muftien* (The Council of Muftis) – This is an organisation comprising of the senior Muftis of South Africa from 12 Darul Iftaa's, Head of the Fatwa Department of KZN *Jamiatul Ulama* (The Council Of Muslim Theologians), Head of the Judicial Committee of KZN *Jamiatul Ulama* (The Council Of Muslim Theologians), Official Arbitrator of commercial and marital mediations/arbitrations.

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1.2.4 Muslim Personal Law (MPL)

As a master teacher, Desai is amongst a few key scholars and organisations who influence the contentious processes for the recognition of Muslim marriages in South Africa.

The KZN *Jamiat Ulama* joined the Muslim Judicial Council (MJC) of Cape Town, the Deoband *Jamiatul Ulama* Transvaal (Johannesburg based), the *Sunni Jamiatul Ulama* and the *Sunni Ulama* in 1994, to form the United Ulama Council of South Africa UUCSA - a body whose main purpose was to “unify, coordinate and represent Muslims of South Africa on a national and international level”. Notwithstanding the general apolitical stance of the South African Deoband movement, one of the main issues taken up by UUCSA was the recognition of Muslim Personal Law in mitigation of the numerous applications by Muslim women to the South African courts, for relief from unjust experiences in marriage and divorce (UUCSA 2011; Vahed 2000: 65).

¹⁹ DarulFigh. 2012. Profile of Mufti Ebrahim Desai . Available from: < <http://darulfiqh.com/profile-of-mufti-ebrahim-desai-daamat-barakatuhum/>> [Accessed 29 November 2015].

South African Muslims are a minority religious community and Muslim marriage and divorce law to date has not been codified in South African law. This has meant that consequences arising out of these marriages, including divorce, death of a spouse, inheritance, maintenance, are not ordinarily state-regulated (Amien 2006; Rautenbach, 2009). The end of Apartheid marked a new phase in the attempted recognition and regulation of Muslim marriages, underpinned by the strong community debates that fluctuated between androcentric patriarchal notions of Muslim women's agency in marriage and a more gender equal, egalitarian one. In addition to this there had been extensive critiques and debates in terms of the potential conflicts arising out of the two Constitutional imperatives: freedom of religion and right to equality in terms of legislation (Amien 2006; Amien 2010; MacDonald 2010; Rautenbach 2009; Jeenah 2004). The state is bound by the Constitution to accommodate religious diversity, but it has to do this in a way that does not conflict with other Constitutional provisions like the right to equality. The traditional religious practice and understanding of a Muslim marriage encompasses discriminatory practices that do not meet these imperatives (Amien 2010: 745).²⁰ These discriminatory practices speak to issues of sexual and reproductive self-determination and women's control over their bodies and the capacity to consent to sex. Further to this, as a signatory to CEDAW²¹, South Africa has also committed to ensuring the sexual reproductive health rights of all women (Department of Health 2011).²²

UUCSA along with other Muslim bodies made numerous submissions to parliament on the contents of the various draft bills including the latest Muslim Marriages Bill, reaching some level of consensus with Muslim civil society movements on the need for state recognition, codification and regulation of Muslim marriages.²³ One of the

²⁰ Correlating with other documented research (Ali 2003; 2006; Mir-Hosseini 2009), Amien (2010: 745) describes these discriminatory practices as: "dower in exchange for sexual access and reproductive faculties; *tamkīn* (submission of wife in exchange for a unilateral obligation on the husband of maintenance); a husband's right to polygyny without a wife's knowledge, presence or consent; the unilateral divorce by a husband" (which as Ali and Mir Hosseini point out, is linked to dower and sexual access).

²¹ An acronym for the Convention on the Elimination of all Forms of Discrimination Against Women. <http://www.un.org/womenwatch/daw/cedaw/>

²² Refer to draft document on Sexual and Reproductive Health Rights: Fulfilling our Commitments, 2011-2021 and beyond.

²³ UNITED ULAMA COUNCIL OF SOUTH AFRICA. 2011. Letter to Minister of Justice and Constitutional Development Available from: http://www.uucsa.org.za/index.php?option=com_content&view=article&id=6:letter-to-minister-of-

main points of contention raised by UUCSA was that authority should be given to Imams to arbitrate in marital disputes.

Against the backdrop of Desai's theological affiliations, a study of his fatwas on women's sexual agency might provide a peek into how ordinary Muslims realise ideas of sexual agency in their petitions to the ulama. To what extent can we note possible shifts, displacements, reforming trends, and the potential to inform the on-going legislative processes where Muslim marriages remain unregulated and where online fatwas are generated and sanctioned by a venerated and highly respected 'master teacher' of the Deoband Hanafi tradition like Mufti Ebrahim Desai remains to be seen.

1.3 Conclusion

The introduction conveyed the background, context and real world problem underlying the research problem and it exposed the lacuna in the research on women's sexual agency within Muslim marriages. This chapter explored the common understanding of what a fatwa is. Mufti Ebrahim Desai's institutional, historical and situational context was sketched and a brief synopsis done of the roots of the Deoband school of thought, the madressa seminary as the key Deoband institution, the genealogy of its syllabus, and the geographical and institutional links between it and South African Indian Muslims. This backdrop to Mufti Desai and the askimam.org fatwas on sexual agency inform the analysis that follows of legal opinions generated by Desai and his scholars in response to the lived experiences of men and women in contemporary Muslim marriages.

CHAPTER TWO: REVIEW of LITERATURE

...The vast majority of Muslim wives, those with gentle husbands, husbands of polygyny (open or secret), husbands of violence and abuse, upright husbands of moral standing, and husbands of A.I.D.S., open their legs to their men as they are not only expected, but commanded to do by that which is most popularly understood as 'Islam' (Wadud 2006: 236).

The purpose of this review of literature is to create a vantage point from which the main research question can be answered by first focusing on textual, ethical and legal contestations of sexual agency in the Islamic foundational sources, second on social and political controls of Muslim women's sexuality and rights with a particular focus on South Africa, third on Islam, the Internet and Muslim women and sex, and fourth on online fatwas including askimam.org.

Section one examines reformist responses to aspects of sexual agency reflected in the foundational Islamic texts and the classical legal system of Muslim marriage. The approach aligns with Asad's argument that a study of Islam should begin with how Muslims approach their tradition.

One should begin as Muslims do, from the concept of a discursive tradition that includes and relates itself to the founding texts of the Quran and the Hadith (Asad 1986: 20).

Section two surveys contemporary religious, social and political controls of women's sexual agency, and to what extent modern Muslim contexts both internationally and locally rely on androcentric interpretations of foundational texts. Tensions between these controls and Muslim experiences of changing social realities in the context of sexual reproductive health rights are explored, with a particular focus on South Africa.

Section three provides a synopsis of literature at the intersection of Islam, the Internet and Muslim women. It provides an account of Islam as a discursive tradition within the virtual space of the Internet, which proves to be an instant gateway into the

contemporary Islamic landscape. The Internet's potential for new usages and practices particularly in activism and decision-making is highlighted and the limited range of scholarly work on contemporary Muslim women's online sexual health concerns is related.

Section four provides an appraisal of current research on fatwa sites and online fatwas in minority contexts, with a particular focus on mufti Ebrahim Desai's website, askimam.org.

2.1 Sexual Agency in Foundational Discourses

Bearing in mind that religious texts are employed in formulating normative discourses around sexual health and agency, scholarship highlights the ways in which historical treatises on a wife's duty to be sexually available produce a classical legal discourse in tension with contemporary ethical discourses (Ali 2006: 13; Wadud 2006: 236-241). Alternative reformist responses offer interpretations of primary texts, which recognise a wife's choice and agency in sexual decision-making and posit a reformulation of the classical legal system of Muslim marriage away from dominion and towards mutuality and reciprocity (El Fadl 2001; Mir-Hosseini, Sharmani & Rumminger 2015; Shaikh 2004; Shaikh, Hoel Kagee 2011).

In Muslim communities around the world, conservative forces and actors linked to the religious right rely on selective interpretations of Islam to oppose sexual diversity and gender equality (Helie and Hoodfar 2012: 3).

These conservative interpretations of foundational scriptures co-exist with emancipatory ones, resulting in varying standpoints. The combination of these different interpretations with "diverse and locally defined cultural values" and contemporary social realities can lead to the promotion or abjuration of sexual and bodily rights for women (2012: 4).

Notably, emancipatory interpretations arise from within the foundational sources of the Islamic tradition and not necessarily from elsewhere. Anisa Helie and Homa Hoodfar in a survey of sexuality in varying historical and contemporary Muslim

contexts assert that the sexual plurality prevalent in Muslim culture prior to its encounters with the West reveals the extent to which women and sexual minorities had, and continue to draw on, existing Islamic traditions for empowering and transformative strategies and reforms in the domain of sexual rights, undermining the reductive widespread belief that these are necessarily Western- inspired reforms (2-3).

In keeping with this trend within the house of Islam, Ali (2006) in her intrepid work *Sexual Ethics and Islam* provides a critical overview of traditional and contemporary interpretations of the Quranic verses and hadith dealing with sex, towards the formulation of an “Islamic ethics of sexual intimacy”. Ali (2006: 116) points out that there are numerous verses in the Quran attesting to the moral and spiritual equality of both genders, rendering men and women “ontologically equal as human creations”, even as other verses render them unequal in the social realm. In making sense of this differentiation, modern interpretive trends move away from traditional modes of thinking about men as superior to women, towards a neo-traditional²⁴ more palatable, but in some views also problematic approach, which stresses the complementarity of male and female roles and responsibilities (Ali 2006: 184; Mir-Hosseini 2009: 17; Wadud 2006: 28).

Scholars also provide other explanations for the differential treatment of genders, ranging from Asma Barlas’ (2009: 199) argument that, “difference is not always unequal”, to the argument that the

...ontological equality of all human beings takes precedence over the earthly, temporally bounded regulations that privilege men over women...[so that] specific discriminatory regulations which are discriminatory towards women need not apply always, or in every context (Ali 2006: 116).

Ali questions the efficacy of these interpretations in creating an ethics of sex. Verses on sexual intimacy are similar to those on marriage and divorce in so far as they both

²⁴ Mir-Hosseini (2009: 17) argues that Neo traditionalists diverge in approach from traditionalists both in the sources they use, and their “mode of argumentation”. Quran and hadith are used alongside western psychological and sociological scientific proofs, whereas overly gender-biased *fiqh* texts are downplayed. Attempts to reveal a less patriarchal Islam and accommodate women’s aspirations of equality in post- colonial contexts resulted in a complementarity approach which was both oppositional to western values and apologetic in its attempts to explain away gender bias in Islam’s foundational texts, further accentuating “internal contradictions and anachronisms in *fiqh* rules”.

speak to men about women, but dissimilar in “content and tone”. She asserts that those relating to marriage and divorce guide men to create ameliorative measures for better conditions for women, enabling and encouraging certain marital freedoms and agency, but the ones on sexual intimacy continue to give men absolute control over sex and contraception.

In summary, foundational sources such as Quran and hadith are employed in formulating normative discourses around sexual health and intimacy, in ways that give men control over women. I now turn to an overview of three sets of Quranic verses and some hadith texts in this regard, including reformist responses to them.

2.1.1 Quranic Verses

Three sets of Quranic verses are often identified by scholars as assuming female passivity and dependency and assigning male control over female bodies and sexuality which Ali (2006:116) describes as not wholly misogynistic but certainly androcentric. These are Q 2:187²⁵, Q 2:222-223²⁶ and Q 4: 34²⁷.

Ali argues these verses point to a decided “asymmetry in Gods speech” as men are spoken to about women, commanded to “behave in a particular way towards them”, and appear to have a “degree of control over women’s bodies”. In spite of this, Ali (2006: 112-113) stresses that a higher ethical standard is implied in the text, as

²⁵ *Permitted to you, on the night of the fasts, is the approach to your wives. They are your garments and ye are their garments. Allah knoweth what ye used to do secretly among yourselves; but He turned to you and forgave you; so now associate with them, and seek what Allah Hath ordained for you, and eat and drink, until the white thread of dawn appear to you distinct from its black thread; then complete your fast Till the night appears; but do not associate with your wives while ye are in retreat in the mosques. Those are Limits (set by) Allah: Approach not nigh thereto. Thus doth Allah make clear His Signs to men: that they may learn self-restraint* (Quran 2:187, Translated by Abdullah Yusuf Ali 1989).

²⁶ *They ask thee concerning women's courses. Say: They are a hurt and a pollution: So keep away from women in their courses, and do not approach them until they are clean. But when they have purified themselves, ye may approach them in any manner, time, or place ordained for you by Allah. For Allah loves those who turn to Him constantly and He loves those who keep themselves pure and Your wives are as a tilth unto you; so approach your tilth when or how ye will; but do some good act for your souls beforehand; and fear Allah. And know that ye are to meet Him (in the Hereafter), and give (these) good tidings to those who believe* (Qur'an 2: 222-3 Translated by Abdullah Yusuf Ali).

²⁷ *Men are the protectors and maintainers (qawwamūna) of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct (nushūz), admonish them (first), (Next), refuse to share their beds, (And last) beat them (lightly); but if they return to obedience, seek not against them Means (of annoyance): For Allah is Most High, great (above you all)* (Qur'an 4:34 Translated by Abdullah Yusuf Ali).

illustrated in Q 2: 187, because even as men yield superior control and agency in sexual relationships, they are simultaneously subject to divine oversight and scrutiny.

With respect to verse, Q 4: 34, scholars have rendered a wide range of meanings. Some sustain androcentric viewpoints, favouring male authority and female obedience. Others produce more egalitarian notions of the marital bond, stressing complementarity and limiting male power over wives (Abou El Fadl 2001; Ali 2006; Barlas 2009; Chaudhry 2013; Doi 1989; Esposito 2001; Hidayatullah 2014; Shaikh 2007; Silvers 2006; Wadud 2006).

In particular, the notion of *qiwāma*²⁸ arising out of the word ‘*qawwamūn*’ meaning “protectors, maintainers, guardians”, has been used to assert a husband’s right to command and discipline wives. Added to this, a wife’s sexual availability and sexual obedience is linked to the normative interpretation of the word *nushūz* (recalcitrance).²⁹ Scholars have re-appraised both concepts from within the Islamic tradition, according with Helie and Hoodfar’s (2012: 1-2) thesis that transformative strategies and reforms in the area of sexuality arise out of the Islamic tradition itself (Ali 2006; Mir-Hosseini, Sharmani & Rumminger 2015).

Regardless of the varying interpretations of Q2: 222-223, each interpretation concludes with male dominance and control of sexual relations, and presumes female passivity. Nonetheless, they simultaneously assert that the Quran protects women, by dictating male restraint during sex (Ali 2006: 130).

One dominant interpretation of the verse is to locate it in the context of the (im)permissibility of contraception. Some fundamentalist scholars like Maududi³⁰ emphasise the sanction against contraception, an opinion that curbs a woman’s right to choose to have children.

²⁸ See Mir-Hosseini, Sharmani & Rumminger 2015, *Men in Charge? Rethinking Authority in Muslim Legal Tradition*, for a critical engagement with the notion of *qiwāmah*, from within the Muslim tradition, towards an egalitarian reconstruction and reform.

²⁹ See Mernissi (1996: 13) for the normative androcentric definition of *nushūz* (generally referred to as recalcitrance and for Mernissi as rebellion) and Ali’s (2006: 120-121) and Wadud’s (2006) more nuanced analysis which allows space for a more egalitarian construct.

³⁰ Maududi explains the metaphor of *harth* as “man being the tiller and the woman the tilth” with the only objective being procreation and careful cultivation (Sachedina 1990: 109).

This is increasingly contradicted by alternative perspectives which allow for “rational participation”³¹ in deciding to contracept or not (Saleem 1969: 258). Numerous contemporary discourses also indicate that sex in Islam is also viewed in terms of non-procreative purposes, mutual pleasure and fulfilment and that contraception should be mutually negotiated (Shaikh 2011: 355). Another interpretation of these verses allows for differential sexual positions and the proscribing of anal sex and sex during menstruation, a protective measure which promotes male and female sexual health through the curbing of forms of sex which are deemed risk factors in the spread of HIV and AIDS (Balogun 2010: 461).

Fatima Mernissi, in her seminal feminist reading of historical Islamic texts (1991: 146-147), mentions the ambiguous nature of these verses, and their susceptibility to numerous interpretations, which requires exegete Imams to be extra-vigilant. She critiques contestations in the work of classical Sunni exegete Tabari, sketching the conflicting variances in Tabari’s reasons for revelation (*aṣbāb al-nuzūl*) of these verses, which prioritise questions of sexual positioning. Like Saleem (1969), she notes the interpretation of women as objects, whose bodies are controlled by men precluding their right to protest. Citing Tabari’s extensive accommodation of questions about the (im)permissibility of sodomy of wives, she criticises classical scholars like him for their lack of courage in codifying sexual ethical principles which recall the equality, free will and agency of both partners.

It was this timidity on the part of the Imam toward the necessity to evolve principles that makes the verses so malleable, and makes opportunism in their interpretation a structural, almost institutional feature in Islam (Mernissi 1991: 147).

By far the most controversial interpretation of Q 2: 222-223 is the perceived sanctioning of a male licence for sexual access to wives whenever and however a husband wants. Subsequent to which, the verses can be interpreted in terms of women being the sexual property of men, so that forceful and violent sexual coercion

³¹ Mohammad Saleem (1969: 258), in a critical analysis of orthodox perspectives of this verse, doesn’t indicate if this “rational participation” is only open to husbands or to women too, but acknowledges that if a deduction as to the “status of women in Islam” is to be made from this one verse alone, then women as objects for procreation might be surmised. He argues like others (Barlas 2009) that the verse has to be understood in relation to others.

is regarded as legally sanctioned by Qur'an (Ali 2006; Barlas 2005; 2009; Bennet 2004; Hidayatullah 2014; Izugbara 2001).

As a case in point, in the Dutch film *Submission*, Q 2:223 is written onto a woman's back and translated as, "a man may take his woman in any manner, time or place ordained by God". Noting the inflammatory potential of this interpretation Barlas responded: "I don't think there's a more powerful or troubling way to suggest that Muslim women's oppression is codified in the scripture itself" (Barlas 2005: 16).

It has also been suggested that these perspectives of women's sexual passivity and lack of consent in relation to these verses can be used to justify marital rape and sexual coercion, making women vulnerable to sexually transmitted diseases (Bennet 2004; Balogun 2010; Izugbara 2001).

In an attempt to unearth the ethical ethos underpinning these verses, Barlas (2009: 160) widens the semantic scope of the word *harth* and argues these verses cannot be read on their own, but within a wider context with other verses³² prescribing mutuality, intimacy and reciprocity in marital relations. She suggests that the Quran requires uncorrupted and non-violent sexual behaviour between spouses and precludes marital rape and forcing women into sex.³³ In a divergent, less palatable analysis, Ali insists that the choice of metaphor of a field denotes the passivity of an object, not that of an active consenting participant even if it is read alongside others on marriage (2006: 130). Her argument is that while women are given a certain level of agency in the verses on marriage and divorce, the verses on sexual intimacy like Q 2:222-223, place men in control over sexual intimacy and contraception (2006: 125-130).

Regardless of how these verses are interpreted, whether in relation to contraception, sexual positions or sexual availability, Ali (2006) like Mernissi (1991) before her, and Aysha Hidayatullah (2014) later, insists that they preclude a woman's sexual

³² Barlas (2009: 160) refers to Quranic verses Q 9:71 and Q 30: 21 in this respect.

³³ Barlas (2009: 160-165) argues that according to Q 5:6, lawful sex is neither "lewd nor lustful", and that while it doesn't refer to the wife's will or to "the idea of consensual sex", by virtue of imputing "will" as moral agents in other verses like Q 4:19, it imputes will on women as sexual beings, because "this moral agency is not sexualized by the Quran" (160).

freedoms, and simultaneously place all sexual relations, including men's access to women's bodies, within the "scope of divine regulation" (Ali 2006: 129).

Scholars draw on the work of modern philosophers like Fazlur Rahman, Nasr Abu Zayd and Mohammed Arkoun to propose new gender-just possibilities to androcentric verses like the ones featured above (Ali 2006; Hidayatullah 2014; Mir-Hosseini, Sharmani & Rumminger 2015; Rhouni 2008; 2010). Some also propose the incorporation of Sufi thought, focusing on core concepts related to the human soul's innate spirituality and the God-human relationship (Shaikh 2012; Silvers 2006).

But honesty about the inherent androcentrism in the verses on sexual intimacy, and an acknowledgment of the strength of interpretations that favour male dominance and control, is regarded as the first step towards reform efforts to create egalitarian ethical Quranic interpretations for gender justice (Ali 2006; Hidayatullah 2014; Mir-Hosseini, Sharmani & Rumminger 2015; Rhouni 2008; 2010). Referring to an essay focusing on Q: 4:34 by Esack (2001), Ali (2006: 126) states:

Esack demonstrates that while classical commentaries oversimplify the matter of women's devotion to God and obedience to husbands, modern apologetics and feminist analyses frequently overlook the very clear authority delegated to men over women's bodies.

In a similar vein, Hidayatullah in a radical critique of exegetical approaches employed by female exegetes, argues that they fail to "rescue" the text from an inherently male bias, have not managed to account for verses that disallow women sexual freedoms, and have been "reluctant" to hold the Quran, which is regarded as the unadulterated word of God, responsible for its "misreading". Thorny androcentric meanings are instead attributed to "interpretive errors" or "linguistic difficulties" of human beings, or to "problematic hadith" (2014: 132-133). She adopts Ali's (2006: 133) stance and warns against imposing on the text what it does not intend.

When exegetes of feminist *tafsir* claim that their interpretive results are what the Quran actually "says" or really "intends", they risk making pronouncements that are just as authoritarian as those that they seek to combat (Hidayatullah 2014: 143).

Summarily, while 20 years ago Mernissi criticized classical scholars for their timidity, which led to the malleability of androcentric verses, others today (Ali 2006; Hidayatullah 2014; Rhouni 2008) are asking feminist interpreters of Quran to be honest about the inherent male bias in the verses on sexual intimacy; they call for clearer, more serious definitions of principles of justice, kindness, and love; and for “theorising afresh concepts of equality and sexual difference using a discursive rather than a definitive approach to ideas of equality, and to the Quran as text” (Seedat forthcoming 2016: 7). Some propose new gender-just possibilities gleaned from the work of modern philosophers, while others propose the incorporation of Sufi thought.

2.1.2 Hadith

Varying and competing discourses of sexual agency in the hadith also inform Muslim sexual praxis as several well-known hadith traditions assert sexual availability as a wifely duty and a husband’s right (Bennet 2007: 376; El Fadl 2001: 213-215; Hoel and Shaikh 2013: 79; Kodir 2007: 67-90). Khalid Abou El Fadl (2001: 211-212) asserts that the hadith traditions play a greater primary role than the Quran in determinations of spousal obedience, contribute more to “the general denigration of the moral status of women” and have drastic normative “theological, moral and social consequences”, requiring a “conscientious pause”³⁴ for further theorizing and reflection in order to accord better with the Quranic ethos of marriage, which he argues is mutuality, reciprocity and harmony.

These hadith³⁵ vary in details, telling wives to sexually comply, whether cooking or “on the back of a camel”. In some, where husbands invite wives to bed and wives choose not to engage in intercourse, non-compliant wives incur the curse of angels. In one hadith God’s wrath is incurred by non-compliance and only alleviated by pleasing one’s husband. The message in these hadith “place women’s sexual duties to

³⁴ Abou El Fadl (2001: 94) proposes a “faith-based objection” as an option for dealing with a crisis of conscience which arises out of a conflict between one’s personal faith conviction and the determinations of the text (both Quran and hadith). He proposes a “conscientious pause”, not as a “whimsical” dismissing of the text, but instead affording a “responsible and reflective” person the opportunity for further reflection and intense investigation of the text, “suspending judgement until such a study is complete”. If the impasse is intractable then, “Islamic theology requires that a person abide by the dictates of his or her conscience”.

³⁵ See Kodir (2007: 67-90), Ali (2006: 11), and El Fadl (2001: 211-216) for an overview of these ahadith.

husbands under the ambit of divine concern, and divine approval is contingent on a husband's approval" (Ali 2006:11).

In his crucial work *Hadith and Gender Justice*, Faqihuddin Abdul Kodir (2007) provides a gender sensitive critical re-interpretation of some hadith, without compromising on the "exacting methods required by hadith scholarship" (2007: 26). Utilizing the Quranic concept *tawhid*³⁶ as an analytic lens, he advocates for a contextualised critique to reveal historical socio-cultural objectives of gender insensitive hadith, emphasising foundational Islamic principles of justice and welfare. Vastly different interpretations are revealed, for example, in his linguistic comparison of classical scholars' records of the hadith³⁷ that supposedly calls for a wife to be sexually compliant even when cooking. Kodir illustrates a difference in readings, which "does not assert a wife's total obedience in fulfilling her husbands needs", and instead makes space for a wife's rights to sexual enjoyment (Kodir 2007: 74).

2.1.3 Fiqh

Notwithstanding contemporary reformist responses, foundational texts are also consistently employed in jurisprudential (*fiqh*) works to create a normative perspective of male sexual dominance. Ali (2010) locates hierarchical discourses on consent and sexual availability in the classical legal framework of marriage, which is characterized by an exchange of dower for sexual access and continued sexual availability for financial support. She argues this system of marriage was developed in a socio-historical context predicated on an analogy to slavery and other normative forms of ownership. Modern Muslim notions of marriage still uphold the spousal rights and privileges of the classical legal model but provide new rationales, which obscure the linkages to ownership and slavery in order to tie in better with contemporary social norms of partnership reciprocity in marriage. Essentially, Ali argues that the classical framework continues to undergird Muslim discourses on sex and marriage today, and mitigate against the attainment of mutuality in marital sexual interactions (Ali 2003; Ali 2006: 13).

³⁶ Kodir (2007: 211) defines *tawhid* as the "belief in or affirmation of the oneness of God".

³⁷ For a reference to this hadith see Kodir (2007: 182).

Leila Ahmed in her formative book *Women and Gender in Islam* suggests

...two distinct voices within Islam, and two competing understandings of gender, one expressed in the pragmatic regulations for society... the other in the articulation of an ethical vision (Ahmed 1992: 65-66).

Ahmed theorises that Muslim women have internalized these two Islamic voices; the pragmatic legal voice, in which marriage is deemed an institution of sexual hierarchy and the ethical voice, “virtually unheard by rulers and lawmakers” and which “stressed the importance of the spiritual and ethical dimensions of being and the equality of all individuals” (1992:66).

Building on Ahmed’s theories, other scholars have offered a complete overhaul of the legal tradition of Muslim marriage away from dominion and towards mutuality and reciprocity as a possible remediatary measure. Contemporary legal theoretical reform efforts are propelled by the idea that Islamic legal theory is pliable, and reactive to social, political and ideological forces (Ali 2006; El Fadl 2001; Mir-Hosseini 2009). For example, Ziba Mir-Hosseini (2009: 1-3) points out distinctions in Islamic legal categories. The first is between *fiqh* and *sharī‘a*. *Fiqh* is regarded as “human, mundane, temporal”, open to juristic reasoning, speculation and extrapolation and is therefore “malleable to changing socio political and historical contexts”, while “*sharī‘a* is divine, sacred and universal and cannot be changed”. The second distinction is between *muāmalah*, which, regulates relations between humans and is open to “rationalizations” and “social forces”, and *ibādah*, which regulates God-believer relations and is limited in scope for rationalization and change. Gender relations, like those in marriage, belong mainly to the legal category of *muāmalah*.

Like Ali, Mir-Hosseini is of the opinion that there is a dissonance between the legal framework of marriage, which she describes in terms of an exchange of *tamkīn* (wifely obedience and sexual availability) for *nafaqa* (maintenance), and the ethical ethos framework of marriage based on the ontological equality and mutuality of men and women. The latter is articulated in modern experiences and understandings of mutuality and reciprocity in marriage. The dissonance can be alleviated by moulding a new *fiqh*, based on the idea that “when social reality changes, then social practice

will effect a change in the law” (2009: 3). This change is more easily achievable in the realm of human relations, *muāmalah*.

Arguably, when gender relations veer from the category of *muāmalah* to *ibādah* as will be noted later in this chapter, and where dominant perspectives of primary texts deem women’s sexual availability under the ambit of divine concern and approval by enmeshing gender relations with the sacrality of God believer relationships, then reform efforts may prove more difficult.³⁸ Added to Ali’s compelling claim that contemporary Muslim marriage is still based on a classical framework of sexual availability in exchange for support, the enactment of marriage reforms within the existing framework appears unfeasible. Modern piecemeal modification of the existing marriage framework in order to render analogous rights based on mutuality and reciprocity will not succeed. Instead, what is required is a divergence from “the overall framework of gender differentiated rights and duties set forth by classical jurists” (Ali 2006: 13).³⁹

We indicated above that foundational Islamic texts simultaneously promote male dominance and control of sexual relations and protect women by dictating male restraint during sex, promoting a wife’s sexual satisfaction and encouraging a husband’s obligation to satisfy her (Ali 2006: 9-13, Kodir 2007). This last notion of Islam as a sex positive tradition has also co-existed with two conflicting views. Firstly, female sexuality is considered a potential source of corruption (*fitna*) and potentially dangerous for society. Paradoxically, the second view is divine concern and approval of male sexuality, which is more potent than female sexuality and must be “satisfied through a wife’s constant sexual availability” (Ali 2003: 12).

Fatna Sabbah (1984: 116) describes this construct of a dangerously potent female sexuality as the “omnisexual woman”,⁴⁰ further suggesting that women are impacted

³⁸ This is illustrated by Hoel and Shaikh in “Sex as Ibadah: Religion, Gender, and Subjectivity among South African Muslim Women” (Hoel and Shaikh 2013: 1; 79-81).

³⁹ Ali states: “For as long as the legal tradition views marriage as a an exchange of lawful sexual access for dower, and continued sexual availability for support...to the extent that these doctrines still inform Muslim discourse, mutuality in sexual rights cannot be a requirement, merely an ideal” (Ali 2006: 13).

⁴⁰ Fatna Sabbah (1986: 34-43) traces the interplay between erotic and orthodox discourses in the creation of the construct, which she describes as the “omnisexual woman”. The negative and dangerous female sexual potency of the omnisexual woman is a threat and danger to society.

negatively by it, because it justifies onerous societal controls and restrictions on them, while male potency justifies societal sanction of polygyny and unilateral repudiation of wives. In addition, these notions also favour a “sexual politics of domination” as suggested by Wadud in chapter one, which severely inhibit women’s sexual choices and their ability to decide the terms of sexual engagement (2006: 236).

Having provided an overview of varying, contradictory and competing interpretations of women’s sexual agency in foundational texts, from normative androcentric notions to reformist ones, and the link between the textual, ethical and legal aspects of the Islamic tradition, in the next section I survey contemporary social and political controls of women’s sexual agency. I note the extent to which these interpretations are relied on, and their impact on sexual reproductive health rights in modern Muslim contexts both internationally and locally. I explore tensions between these controls and Muslim experiences of changing social realities in the context of sexual reproductive health rights, with a particular focus on South Africa.

2.2 Sexuality and Social Control

A study of the role of religion in constructing the context of women’s sexuality must include an analysis of the interaction of particular religious schools and customs with the socio-economic conditions and politics in a particular geographic location at a particular time (Ilkarracan 2001: 11).

Pinar Ilkarracan (2001) suggests that the most powerful tool of patriarchy in most societies is the control over women’s sexuality through collective political and social measures. The socio-economic and political landscape of different Muslim communities dictate which mechanisms are used to maintain this control. If religion is used in constructing women’s sexuality, then an analysis of the interaction of the particular religious schools with the socio-political and economic landscape is needed.

In Turkey, dominant discourses on women’s sexual agency using the primary sources of Islam have resulted in contradictory constructions of female sexuality, correlating with Ali (2006) and Sabbah (1986) that positive sexual experience and the attainment of sexual pleasure is encouraged, but women are construed as an irrational, emotional

source of *fitnah* (social chaos) and men as rational, capable of self-control and having to assert control over women's sexuality (Ilkarracan 2001: 1). This binary perspective of male and female rests on ideas of duality and polarity in the philosophical construct of human beings as body and mind and is further reflected in a Nigerian study.

Using a post-structuralist theoretical model, C. Otutubikey Izugbara (2004: 16-18) notes how the normative discourse of male sexual dominance and privilege and women's "sexual self- donation"⁴¹ are played out amongst the Hausa Muslim community. Focusing on "sacred narratives", he observes how Prophetic traditions and Quranic verse 2:223, are used to encourage androcentric notions of male and female sexuality and sanction male control of women's sexuality.

Linda Rae Bennet (2007) explores the gap between religious doctrine and social experience in Indonesia, and illustrates how androcentric views arising out of religious doctrine are being challenged by egalitarian readings of Quran. In a section on *zina* (illicit sex), she refers to contestations in Indonesian society on what constitutes marital rape. Various interpretations of the primary Islamic texts elicit a range of interpretations from dominant sexist ones, such as a man has the right to hit his wife if she refuses sex, to more egalitarian notions of sexual agency, such as her right to negotiate consent or even outright refusal (Bennet 2007: 376; Kodir 2007: 67-76).

Recent research in Australia (Marcotte 2015: 9; Piela 2010)⁴² and South Africa has made valuable contributions to gauge the extent of changing social realities and the associated sexual praxis of Muslim women negotiating between religious and social experience.

⁴¹ Izugbara argues that the dominant narrative of Q 2:223 combined with that of numerous ahadith that "good women do not refuse their husband sex", is internalized by women themselves, placing them in a self-coercive position.

⁴² I will refer to this research later in a survey of Muslim women's online sexual health concerns.

2.2.1 South Africa

South African studies comprise theological, ethical and sociological analyses of women's narratives. They deal with the tensions created between asymmetrical gender constructs and the lived experiences of Muslim women by centralising women's experiences in the process of knowledge production, and highlighting social and political controls on sexuality. They demonstrate women's responses to the uneven gender dynamics of marriage, and how these impact on decision-making regarding sexual reproductive health (Hoel, 2012; Hoel 2014; Hoel and Shaikh 2013; Hoel, Shaikh and Kagee 2011; Shaikh 2007; Shaikh, Hoel & Kagee 2011)⁴³.

Sa'diyya Shaikh and Nina Hoel's studies correlated with others (Ali, 2006; Izugbara 2001; Ilkarracan 2004; Bennet 2007; Piela 2010) in identifying three dominant religious discourses that led to tensions and ambivalences in women's experiences of sexual intimacy and agency. Namely, sexual intimacy is related to the spiritual realm so that piety is expressed in ways that stress the sacredness of the sexual act, Islam is sex positive and sex affirming, and a good Muslim woman is obedient, sexually available to her husband and subject to divine oversight (Hoel and Shaikh 2013: 79-81).

While discourses of positive sexuality confront the body/spirit dichotomy of sexuality (Ali 2006; Anwar 2006; Ilkarracan 2001; Izugbara 2004; Sabah 1986), they are not "accompanied by affirming views of women" because "the same traditional Muslim discourses that contain positive evaluations of sexuality are also embedded in hierarchical gender power relations" (Hoel and Shaikh 2013: 79).

In the case of asymmetrical relations that are abusive and devoid of compassion, discourses of positive sexuality, as well as approaches to the God-believer relationship which link God's will and approval with that of a husband's can lead to psychological coercion and physical and emotional abuse (Hoel and Shaikh 2013: 85). This ties in with both Bennet's (2007) and Wadud's (2006: 239) analyses that rape,

⁴³ The research report (Shaikh, Hoel and Kagee 2011) was generated from data collected from 262 women through the means of questionnaires and focus groups in different communal locations. Other papers explored personal narratives in semi structured in-depth interviews.

abuse and Muslim women's vulnerability to HIV can be linked back to religious understandings of women's bodies and sexuality.

The researchers also found women's responses to be ambivalent in terms of the paradoxical relationship between religious expressions of mutual sexual reciprocity and the emphasis on women's sexual availability. It was noted how this ambivalence impacted their health decisions.

Firstly, internalized "gendered understandings of the God-believer relationship" informed many women's personhood, resulting in a constrained sexual agency and inability to insist on preventative measures to HIV and AIDS, and STD's in situations of increased risk as in the case of a first wife who is unwittingly enlisted into a polygynous union which arises out of her spouses infidelity (Hoel and Shaikh 2013: 69; Hoel, Shaikh & Kagee 2011: 122).⁴⁴ Secondly, some women do not subscribe to the dominant sexual availability discourse, believing instead in their right to consent, mutuality and "a healthy and fulfilling sexual life", and thirdly, some challenge and contest the dominant discourses and subvert these towards more egalitarian and ethical ones, mainly when personal social realities become difficult and imperilled (Hoel and Shaikh 2013: 77).

This third response aligns with an earlier study by Shaikh (2007) who demonstrates how women in abusive marriages engage in a "*tafsir* of praxis" to displace mainstream understandings of sexual availability. Likewise, in a study on the hypothetical uptake of microbicides, women indicated that if faced with spousal infidelity they would use microbicides without consultation (Hoel, Shaikh and Kagee 2011: 122). They displayed resistance to mainstream perspectives and relied on the God-believer relationship through the theological concept of *khalīfa*⁴⁵ in which they enact moral agency through an internalized perspective of Islam as life preserving and life-affirming.

⁴⁴ Hoel, Shaikh and Kagee (2011) cite research by Bangstad (2004) which demonstrated that male infidelity was the main reason for polygynous marriages amongst Cape Town's Muslims, and Toefy (2002) who found that the main cause of Muslim women asking for a divorce was also their husband's infidelity.

⁴⁵ See Wadud's definition in *Inside the Gender Jihad* (2006: 32-37) where she says being *khalifa* is "equivalent to fulfilling ones human destiny as a moral agent", resulting in the responsibility to create and partake in a just society.

Hence, the research indicates that women's tenuous personal life experiences, the availability of alternative discourses, and the potential expression of "dianomous" modes of moral agency (Bucar 2010),⁴⁶ may lead to ambivalent perspectives of sexual agency (Bennet 2004; Balogun 2010; Izugbara 2001; Shaikh, Hoel, Kagee 2011). These generate a more ethical sexual praxis (Shaikh 2007; Hoel and Shaikh 2013) thereby demonstrating that South African women's lived experiences can provide new understandings, potentially leading to reform of contemporary *fiqh* rules from within the Islamic tradition as suggested by Mir-Hosseini (2009: 3).

2.2.2 The Ulama in South Africa

Three themes emerge in the study of gender and ulama in South Africa; tensions between traditional norms and contemporary realities, the hierarchical authority of the ulama and, lastly, their gendered ontological assumptions of women, which entrench male privilege. Tensions between traditional norms and contemporary realities become evident when ulama formulate religious legal prescriptions using classical legal doctrine, while government proposes legislation for the recognition and regulation of Muslim marriages informed by contemporary human rights approaches to sexual reproductive health rights (Amien 2010; Department of Health 2011). Studies indicate that the epistemological privilege and the authority of the ulama play a significant role in women's health decisions and choices. The microbicidal study cited earlier also noted that women believe that an ulama sanction of microbicides would encourage its uptake (Hoel, et al, 2011: 101). In addition, women's experiences of the ulama during divorce proceedings confirms that ulama locate themselves at the apex of a hierarchy of religious authority, and their gendered ontological assumptions

⁴⁶ Adding to Mahmood's (2011) theory on the agency of the pious female subject outside of the liberal humanist framework, Bucar (2010: 666) investigates religious women's agency in a way that comprehends women's intentional or even unintentional "creative ruptures in obedience to tradition", thus making space for women's "innovative" and "ambiguous" "enactment of religious traditions". She demonstrates how the neologism *dianomy*, diverges from autonomy, theonomy and heteronomy and is a viable approach which "recognises that both an individual and her community are important; that agency is shaped within specific conditions and yet can also point beyond them, and that there is a possibility of creative compliance that is not necessarily intentional resistance". See Bucar 2010 for a full overview of the notion of "creative compliance".

entrench male privilege and impact sexual reproductive health choices (Hoel 2011: 129). Women were expected to accept unjust and potentially dangerous marital relationships in the “spirit of reconciliation” even in instances of abuse and infidelity, were unable to get assistance in exiting marriages, and abusive husbands were ignored by some ulama. This lack of agency in terms of divorce, directly affects women’s ability to make healthy sexual choices in the context of abuse in marriage which when combined with the reality of HIV and AIDS in instances of infidelity, becomes a key determinant of their sexual reproductive health rights.

This raises two concomitant and interrelated areas of concern in South Africa. Firstly the negotiation between the ulama groups and government (with regard to the MPL process) mirrors the “social and political” measures in place to control women’s agency as problematized by Ilkkarrakan (2001: 1). Secondly, the on-going disagreements over the contentious Muslim Personal Law (MPL) process has retarded law-making and leaves ambiguous the legal nature of women’s autonomy with regard to decision making in marriage and divorce.

The role of the ulama in health rights and decision-making is significant because the *fatwas* that form the focus of this research are generated by a member of the South African Deoband Hanafi ulama who participates in mufti councils and *ulamā* structures that bear an influence on MPL debates. When combined with Ali’s (2003, 2006) and Mir-Hosseini’s (2009) more radical contentions that a classical system which is not conducive to mutuality underlies contemporary Muslim marriage and sexual legal discourses, it becomes important to understand the place of religious authority in the MPL legislative process in South Africa.

As already mentioned in chapter one, ulama bodies have been active participants in the legislative processes involving the current Muslim Marriages Bill (2010). The bill has been criticized for lack of adequate regulation and flawed procedures (Shura Yabafazi, Legal Aid Clinic, Nadel 2006). Ulama bodies have made submissions to the Bill that place more emphasis on controls by religious leaders, going so far as to argue for a state-backed religious arbitration process and an independent judicial bench for

Muslim marriages⁴⁷ (UUCSA 2011). This relates Mir-Hosseini's (2009) argument that through the codifying of Muslim family law through procedural rules, governments introduced reforms, although the substance of classical laws remained unchanged. "This gives the classical *fiqh* construction of gender rights a new life and unprecedented power. It could now be imposed through the machinery of the modern nation-state" (2009: 27).

The remedial approach to the dissonance between the legal construct of marriage and the ethos of the *sharī'a*, offered by Ali (2006: 13) and Mir Hosseini (2009: 3), is to allow for Muslim social practices and experiences within contemporary contexts to mould a new *fiqh*, shifting the normative hierarchical gender paradigm to a reformist one. The implications of this for MPL in minority contexts like South Africa is that this may open the possibility of the enactment of Muslim marriage laws which may be more in line with both South African constitutional imperatives and what reformists argue are Quranic *sharī'a* imperatives of equality, justice and fairness.

According to Masud, Messick and Powers, "the *sharī'a* developed by means of human juristic efforts into a comprehensive and detailed corpus of law that was continuously adjusted to changing circumstances" (1996: 4). They argue that the more practical aspects of *sharī'a*, are embodied in fatwas, indicating the importance of analysing them as well as the individual mufti's discursive styles within different contexts and changing circumstances. Through an analysis of my primary sources, the online fatwas of South African mufti Ebrahim Desai, I explore to what extent contemporary experiences and practices of sexual agency have the potential to mould the *fiqh* arguments of the ulama in line with this suggestion.

To summarise, this section details the religious and political controls of sexual reproductive health rights of Muslim women in South Africa and elsewhere, and to what extent these rely on normative interpretations of foundational textual sources. An overview of the tensions between these controls and modern Muslim experiences

⁴⁷ UNITED ULAMA COUNCIL OF SOUTH AFRICA. 2011. Letter to Minister of Justice and Constitutional Development Available from: <http://www.uucsa.org.za/index.php?option=com_content&view=article&id=6:letter-to-minister-of-justice-and-constitutional-development&catid=2:muslim-marriages-bill&Itemid=5 > [29 November 2015].

and understandings of mutuality and rights within the sexual arena, particularly in Desai's geographical context, South Africa, was provided. This section also alluded to proposed remedial options arising out of mechanisms found within the legal interpretive space to resolve these tensions. These proposed mechanisms rely on an account of Islam as a discursive tradition. With this in mind, the next section surveys existing literature on Islam, the Internet and Muslim women, noting both the online potential for new usages and practices particularly in activism and decision-making, and the limited scholarly work on contemporary Muslim women's online sexual health concerns.

2.3 The Internet and Muslims

... 'traditional' Islamic landscapes and environments in contemporary contexts must be recorded and analysed, but if a holistic contemporary understanding of Islam is sought, then part of that interpretive process has to include ... a discussion about the Internet (Bunt 2003: 4).

Scholars have shown that the Internet facilitates the production of diverse Muslim discourses by providing a space for transforming religious expression and understandings, activism, networking, decision making and information (Alwi 2009; Anderson 2003; Bunt 2003: 2-6; Chawki 2010; Kutscher 2009; Marcotte 2015; Piela 2010).

The combination of new media [like the Internet] and new contributors to religious and political debates, fosters an awareness on the part of all actors of the diverse ways in which Islam and Islamic values can be created and feeds into new senses of a public space that is discursive, performative, and participative, and not confined to formal institutions recognized by state authorities (Eickelman & Anderson 2003: 2).

But the extent of "the diverse ways in which Islam and Islamic values can be created" depends too, on the degree and scope of participation of ordinary Muslims. Christopher Helland (2005: 3) makes a clear conceptual distinction between religion online (where traditional pre-existing religious traditions are the primary reference point) and online religion (where people are living their religion on and through the Internet medium as another space through which religious meaning and activity

extends into). This conceptual distinction clarifies the variety and extent of religious participation on the Internet, as most religious websites fall somewhere in the continuum between these two points, leading to disparities in opinions on the Internet's revolutionary potential on the practice of religion in Western contexts.

Initial speculations that traditional religious authorities would be displaced and challenged were offset by later arguments that this potential has not been fully achieved because of the controlled and limited range of online religion. Religious authorities and old establishments adapted to the new communication medium and found new ways to establish influence through propagation and control. While technologically capable of making sites more interactive and closer to the 'online religion' model, they chose not to, instead limiting and controlling users' communication and interactions (Anderson 2003; Bunt 2003; Campbell 2012; Helland 2005: 295; Sisler 2011: 1153).

In terms of Muslim experiences, Gary Bunt explains (2003: 2):

The extensive application of the Internet as a means of projecting Muslim authority and disseminating religious opinions represents a long-term and technologically adept integration of religious symbolism and traditional notions of power...

But he concedes that the Internet also "breaks the monopoly of traditional Islamic scholarship and leadership", partly due to non-traditional centres of scholarship, authority, organisations and individuals entering into the information marketplace and "influencing traditional regions of Islamic learning".

Others argue that the increased individualisation and privatization of faith⁴⁸ in the democratic virtual world has created opportunities to undermine established religious authorities and inform state policies in minority contexts (Campbell 2012; Ho, Lee & Hameed 2008; Kort 2006; Sisler 2011).

⁴⁸ Surfers in Singapore reveal that Muslim Internet usage is more linked to personal issues of religiosity and less concerned with traditional religious institutions and activities (Ho, Lee & Hameed 2008).

As Muslims have become more educated with increased access to religious texts, the authority of the *ulama* and what is seen as legitimate and authentic *ijtihad* changes (Kort 2009: 366).

Therefore, scholars suggest that even though the Internet “asserts conformity and compliance with established religious authorities” (Sisler 2011: 11153) it has also simultaneously engendered “new usages and practices, which could significantly shape the production and consumption of knowledge” (Sisler 2009: 59), particularly in decision making and activism - two principle sectors in cyberspace (Anderson 2003; Bunt 2013; Chawki 2010; Kutscher 2009; Sisler 2011: 69).

In addition, a study of the nexus between religion and the Internet in Western contexts suggests that the Internet provides a peek into the personal realities of religious lives and practices that until now has not been possible. It is also an indicator of the current contemporary state of religion in society, illuminating “the social reality of life in a networked society” (Campbell 2012: 3-5), where online trends are just a reflection of the changes happening offline and not necessarily the cause. Online practices are clearly embedded in the values and systems of offline culture, providing “an interesting and important microcosm for studying trends within religious practice and meaning-making in society” (Campbell 2012: 3).

Analogous studies on online interactions of Muslims attest to Helen Campbell’s thesis (Ho, Lee & Waipeng, 2006; Imtoul & Hussein, 2009; Marcotte, 2015; Piela, 2010). In line with the above assertions, the Internet by virtue of its fluidity and easy accessibility can provide an instant portal into the discursive contemporary Islamic landscape.

2.3.1 Muslim Women, the Internet and Sexual Health

Research on Muslims and the Internet has increased over the last twenty years with studies on a virtual *umma*^h, CIE’s (Cyber Islamic Environments), E-jihad and online fatwa sites (Anderson, 2003; Bunt 2000; 2003; 2009; Chawki 2010; Illar 2010; Kort 2006; Sisler 2011). Alexis Kort (2006: 365) suggests that an exploration of gender in online religion would demonstrate the extent of reforming trends on the Internet.

Scholars note the limited research on how authority figures and structures are combining contemporary social realities and the Internet with gender, as well as on how Muslim women are applying the Internet, and the degree to which they are “content originators”, and not just “simply content” (Bunt 2003: 210; Chawki 2010; Imtoul & Hussein 2009; Marcotte 2015; Piela 2010). In particular, it has been documented that there is a dearth of online research on issues of sexuality and the sexual health of Muslim women (Chawki 2010; Imtoul & Hussein 2009; Marcotte 2015; Piela 2010).

The few existing studies point to the Internet as a unique, innovative and democratic space for such research because firstly, it “obscures the line between public and private spaces” (Kort 2005: 367), opening the latter to marginalised audiences like women, who have been traditionally excluded from male-dominated spaces of public Islam, thereby fostering a sense of community and belonging (Bunt 2003; Chawki 2010; Imtoul & Hussein 2009; Kort, 2005). Secondly, the Internet enables engagement about sexuality, sexual health, gendered identities and religiosity in an uninhibited way due to the anonymity of online dealings, allowing for easier access to health seeking advice from jurisconsults on fatwa sites, and to other community members in vibrant online forums (Read Kort 2006; Piela 2010 Marcotte 2015). It has also been argued that the mufti acts not only in the traditional role of jurisconsult, but also as a cyber-counsellor (Chawki 2010; Illar 2010; Sisler 2011).

Current research on gender relations and sexual health concerns on online forums and fatwa sites further provide insights into the challenges and debates that arise out of changing social realities of contemporary Muslim society, and echoes Campbell’s hypothesis that what is happening online is a reflection of offline understandings, challenges and practice. It can also potentially inform sexual education practice and policy (Marcotte 2015; Piela 2010; Kort 2006). The dynamics of the online space also exemplifies Asad’s (1986) view of a discursive Islamic tradition which links traditional (past) discourses with future, alternative discourses on sexuality through interactions with (present) contemporary social realities.

Kort’s (2006: 367) analyses of online interpretations of Q 4:34 and other pedagogical and edificatory material on domestic abuse on four Muslim websites is a case in point.

The Internet (what she refers to as *Dar-al cyber Islam*) enables the change and reformulation of traditional concepts of umma, ulama and *ijtihad*, contributing towards a “gradual process of reform” with regard to domestic violence, thereby empowering women. This reform occurs not by the inclusion of “radical or overly liberal views” but in a gradual process of “re-intellectualization of Islamic discourse”. Kort’s assessment of the notion of a “cyber-ummah” correlates with Ali Mazrui’s and Alamin Mazrui’s (2001) thesis that “new technology will give Islam a chance to realise its original aim of transnational universalism” (quoted in Kort 2006: 367). I attend to her thesis further in detail below.

Adding to this, Anna Piela (2010: 250) explores Muslim women’s discursive online interactions on gender relations and maintains that the Internet provides an “agora” where women explore each other’s Islamic identities, and “piety is fostered through online interactions with Islamic knowledge” and in the “cyber *umma*”. A strong sense of belonging and a supportive accepting online community in which women are willing to “coexist and collaborate” is thus created.

This signals a departure from localized Islamic identities and a potential to negotiate new, global ones based on a celebration of commonalities and an awareness of differences, [further enabling the generation of new and alternative discourses] (Piela 2010: 433-434).

In spite of these alternatives, women still tend to make choices that make them complicit in their subordination in a form of “patriarchal bargaining”.⁴⁹ In a study of what the researchers call “the myth of the happy celibate”, Alia Imtoul and Shakira Hussein examine the range of competing and contradictory online gendered discourses on female desire and celibacy, illustrating how disparities between contemporary realities and conservative discourses on sexual purity, desire, consent, and chastity conflates with faith identity, and results in “Muslim women making choices which reduce autonomy and bolster patriarchal constructions of womanhood” (Imtoul & Hussein 2009: 29). This resonates with Hoel and Shaikh’s (2013) argument mentioned earlier, about how normative understandings of the God believer

⁴⁹ Kandiyoti (1988) quoted in Imtoul & Hussein (2009: 29).

relationship generated internalized ambivalent religious subjectivities that limited Muslim women's sexual health.

The extent to which young Muslims in a minority context unproblematically subscribe to this normative position, and paradoxically combine it with contemporary understandings and attitudes on sexual issues, was the focus of Roxanne Marcotte's (2015) "crypto ethnographical" study on another online space where Muslim women negotiate issues of sexual health space, the popular Australian Muslim online site: Muslim village. As another example of the discursiveness of the sexual health online landscape of Muslim women, she explored to what extent a "virtual environment can lend itself to expressions of more creative, indigenous and hybrid gendered discourses (2015: 65). Through discussions on sexuality (including marital rape), ordinary women's opinions matched those of renowned academics Ali (2006) and Mir Hosseini (2009), and interrogated the theoretical-legal perspectives on consent and sexual agency. Women noted the dissonance between their modern notions of marriage, inclusive of consent and mutuality, and a classical framework in which consent and sexual agency is tenuous; with the result they rejected traditional binary discourses of female sexuality.⁵⁰

What is especially noteworthy for my research on online fatwa's and sexual health is the trend noted by both Marcotte, and Imtoual and Hussein of male forum contributors ignoring Muslim women's sexuality by "interpolating a Muslim male audience for their comments and thus ignoring Muslim women or by sexualizing non-Muslim women and by default de-sexualising Muslim women" (2009: 35). It remains to be seen if the male participants on women's sexual agency in my research on the fatwas of Ebrahim Desai are similarly inclined. Particularly in Marcotte's study, women responded to male gendered discourses that downplayed their sexual health concerns, by accessing fatwas which upheld the over-riding principle of not perpetrating undue harm and ensuring protection of one's body as part of faith, thereby exercising agency.

⁵⁰ Women in Marcotte's study rejected the binary discourse of the chaste, virtuous virgin or wife, versus the licentious, lustful, divorced or widowed temptress also reflected in Ali's (2006), Anwar's (2006) and Sabbah's (1986) synopsis of classical Islam's paradoxical portrayal of male and female sexuality.

In summation, this section briefly surveyed the field of limited scholarly work on contemporary Muslim women's online sexual health issues within a discursive Islamic tradition, showcasing the tensions between women's modern expectations and experiences of sex as including of mutuality and reciprocity and traditional notions located in textual sources and classical juristic doctrine. It detailed the Internet's potential for new usages and practices particularly in activism and decision-making, and clarified its role as a democratic, innovative and easily accessible space providing anonymity and ease in health seeking behaviour, particularly around sex and sexuality. The assertions in this section point to the Internet's ability to provide a portal into the contemporary discursive Islamic landscape, of which fatwas "constitute an important aspect", by virtue of providing us with "insight into the dynamics of continuity and change in the Islamic tradition" (Larsen 2015: 202).

In the next section, I provide an appraisal of current research on online fatwas within minority contexts. I also detail the importance of online fatwas as accounts of women's sexual reproductive health concerns, culminating with an overview of recent research on the fatwas of mufti Ebrahim Desai and his website, askimam.org. This is because the primary sources utilized in this study to gather information on Muslim women's sexual agency in contemporary contexts are Desai's online fatwas on his website askimam.org.

2.4 Online Fatwas

It is precisely the imaginary space of transnational *umma* (Muslim community), enhanced by the Internet and communication technologies, where the traditional Islamic law regains its significance and relevance to the daily life through constant discussions, inquiries and admonitions (Sisler 2009: 56).

Because of their non-binding nature, *fatwa* websites enable individualisation promoting voluntary adherence to Islamic law (Chawki 2010; Hossain 2002). Cyberspace can be a great help in issuing fatwas, all of which may enrich people's lives. Numerous help-seeking questions posed to cyber-counsellors on existing sites are of an extremely sensitive nature, often pertaining to issues of a sexual or marital

nature, which could be difficult to discuss in an offline encounter with a religious authority figure (Bunt 2003; Chawki 2010).

It is useful here to contemplate the link between the attainment of piety (by pleasing God in all worldly interactions and activities) and sexual intimacy as revealed by Hoel and Shaikh (2013) in their nuanced analysis of the sacredness of sex. Scholars suggest the moral juridical nature of fatwas means that they are sought by individuals including women, towards the attainment of piety even in sexual dealings. This accords with the two qualifiers already mentioned for studying gender and sexuality online, namely a democratic open space for deeply personal and sensitive doctrinal issues to be raised, and the anonymity afforded by the virtual realm (Marcotte 2010; Piela 2010; Kort 2006). The Internet, as already noted, functions as a mediator of religious practice, where some religious opinions and questions are easier to articulate in cyberspace than the physical world.

Ensuing from this, my research on the sexual agency of women in online fatwas intends to delve into this relatively unexplored area. In addition, scholars note too that the enhanced interactivity and depth provided by Internet sites and the transnational audiences they attract allow fatwa sites to influence and shape Muslim opinion in transnational contexts and contribute to the transformations of religious understandings and expressions in relation to existing norms in those contexts (Kutcscher 2009; Mazrui and Mazrui 2001; Bunt 2003).

Amongst some of the concerns in existing research on online fatwas is that it is difficult to gauge the impact of the fatwas because of the fluid nature of the Internet, and the implications of placing sensitive information online where the contexts are not entirely understood by participants. Other considerations include questions on how the mufti's process and access the information. In relation to the fatwas of mufti Ebrahim Desai, the effect or influence of the mufti's advice cannot be gauged (Bunt 2003) but the interlocutory space provided by the fatwas can still tell stories of ordinary people's lives, thus tying in with both Campbell's (2012) thesis above on the nature of online religion as an indicator of societal realities, and Mathee's (2013) description above of the story-telling nature of a fatwa. The clear benefits for ordinary people to be able to access scholarly opinions on issues of Islamic jurisprudence can

also pose a threat to classical jurisprudential rules. The proliferation of cyber fatwas results in “fatwa shopping” which creates “confusion, uncertainty and discordance”, and “deharmonizes Islamic jurisprudence online”. In addition, the tensions created between modern practices and classical doctrine lead to competition between the different juriconsults for their political legal interpretations to be authoritative and legitimate over each other’s (Illar 2010: 591).

In the offline world, the process of asking for a fatwa on intimate personal issues, characterised in the exchange between the question of the questioner and the answer of the mufti, is a regular occurrence, but the information is not publicly available for study. Only a few studies have been done in South Africa on the content of contemporary fatwas, one of these on gelatine (Mitha 2012) and another on ulama divorce records (Toefy 2002). In the online world, fatwas are more easily accessible and available for research and those in minority contexts further accord with previously mentioned research on Islam and the Internet: increased individualisation and privatization of faith, an undermining of established religious authority, displacing of traditional authority structures, and potentially influencing educational and legislative policies.

Vit Sisler’s work on “Islamic cyber-counselling” on four minority context fatwa websites demonstrates that since the Internet enables fatwas to be generated depending on the amount and type of petitions websites aggregate, it allows for a “bottom-up approach”, permitting ordinary Muslims, the petitioners, to “set the agenda for the issues to be discussed on most ...websites”, and constituting “a new manifestation of a Muslim *umma* where there is independence from traditional religious authority and institutional hegemony...” (2011: 1152-1153).

In an earlier study on the conflicts and negotiations in fatwas between Islamic law and European legal systems, Sisler argues that through the new public sphere of the Internet, “different and often conflicting concepts of coexistence between Islam and the state are negotiated” (2009: 51). The concepts that emerge out of these interactions can subsequently inform and influence the legislative processes involved with incorporating aspects of Islamic law into the secular legal system, like the

already present incorporation of mediation and arbitration institutions for Muslim marriages into European legal systems.

Other research on online fatwas include the difference between private and state mufti's (Kutscher 2009) and analytical comparisons of private websites in minority contexts, including the fatwa sites of mufti Ebrahim Desai (Bunt 2013: 167-179; Chawki 2010; Kort 2006; Kutscher 2009). The most recent research by Larsen (2015) dealt with fatwas on spousal rights and roles in Western European contexts where marriages of mutuality and shared responsibilities prevail. Larsen showed how petitioners grappled with the dissonance between their modern lived realities of marriage and the legal norms dictating wifely obedience stemming from foundational sources. Mufti's answers, in turn, reflected attempts to promote reconciliation, to protect the "stability of the Muslim family in the West" and to stay "within the parameters of the dominant legal opinions in transnational Muslim fatwa discourse delineat [ing] the boundaries within which they can deliver new fatwas" (Larsen 2015: 216).

2.4.1 Askimam.org

Ask-imam represents a Muslim institution/individual in a minority context, which has acquired a broad global audience for its opinions, which are sought from a variety of religious perspectives. Several new 'fatwas' emerge on the site everyday, making this a site likely to receive substantial return visits from interested surfers. The questions themselves indicate some of the challenges facing Muslims today, although it is not possible to quantify the effect or influence that this information has on individuals or communities (Bunt 2003: 171).

Sisler (2009: 65) argues that askimam.org appears to be "a technically-updated mirror" of the site ask-imam.com, which is described by Bunt (2003: 167-172) as well organized and easily searchable, presenting "English language resources and opinions" and giving a local South African Imam international prominence. Through his website Desai has acquired a global audience and generated numerous concise fatwas in categories like marriage, prayer, women and health and wellness (Bunt 2003: 167-168).

Answers on the website reflect the religious outlook of the Deoband Hanafi school of thought and are concise, do not always provide substantial textual analysis and justifications, and acknowledge the difference between *ijtihād* and fatwas.⁵¹ His approach “follows casuistic and legalistic interpretations of *sharī‘a* (Islamic law) focussing more on individual deeds and their requirements” (Sisler 2009: 65).

The range of questions on his site reflects many themes addressed on other sites, and are handled with “seriousness and sensitivity” (Bunt 2003: 167-68). Answers though tend to diverge from those on Muslim majority sites, reflecting more the contemporary challenges of Muslims in minority contexts (Bunt 2003; Chawki 2010; Kutscher 2009; Kort 2006). This is salient since scholars have noted that some fatwa sites in Muslim minority contexts are more open and pragmatic in dealing with contemporary challenges and others are more conservative and limited (Kutscher 2009; Chawki 2010). Studies on Desai’s online fatwas make arguments for both conservative (Kutscher 2009: 39) as well as reforming trends (Kort 2006: 378-380), the latter particularly on the issue of domestic violence.

In an analytical comparison of fatwas dealing with Muslim perspectives of non-Muslims in a minority context, Kutscher describes askimam.org as “conservative” and “supporting counter-societal developments” probably due to the “mufti’s ideological geographical and educational environment”. He contends the apartheid system of “non-integration” may have somewhat contributed to the Desai’s conservative and mono-doctrinal orientation (2009: 39).

In contrast, Kort (2006: 378) demonstrates reforming trends in Desai’s fatwas relating to domestic abuse. Referring to a particular fatwa generated on the earlier site, askimam.com, she states: “Desai powerfully comes out and says to men that it is totally unacceptable and un-Islamic to harm their wives in any way, regardless of what the Quran may or may not say”. She calls this the “most revolutionary step towards Islamic reformation on the issue of violence against women”. In Kort’s assessment,

⁵¹ Bunt (2003: 172) asserts that Desai and his team don’t regard themselves as *mujtahids* (those scholars who engage in *ijtihād*). Their process of *iftā* is regarded by them instead as *taqlīd* (the practice of following the opinions of others, or even of an established school of law). See Chapter four on the typologies of muftiship.

Desai promotes “self-accountability, reform and a no-harm approach”, affecting a strong move away from traditional conservative perspectives on domestic abuse.

In summation, this section provided an overview of fatwa sites and online fatwas as an important feature of the discursive Islamic landscape by virtue of providing insights into the changing relationship between legal argument and interpretation and people’s social realities as portrayed in them. The anonymity provided by the online space allows for the generation of fatwas on a range of issues including sexual reproductive concerns. Recent research on askimam.org argues for both conservative and reforming trends on the website. Kort’s study on domestic abuse which took the latter position, was the only one I located which focused on sexual health within the fatwas of mufti Ebrahim Desai on askimam.org, exposing a substantial gap in the research on how South African-based online fatwas are “telling stories” (Mathee 2011: 26) on women’s sexual health and to what extent contemporary experiences and social realities influence these fatwas.

2.5 Conclusion

This study has the potential to expand the scope of ‘sexual agency’ by focusing on Muslim marriage, the classical legal construct of which entails gendered provisions, which bring a woman’s right to self-determination, sexual agency and autonomy under the dominion of her husband, where it is potentially curtailed and where sexual availability is linked to financial controls. Foundational religious texts are employed in jurisprudential works to create a normative perspective of male sexual dominance and female sexual passivity. These exist alongside contrasting notions of a positive sexuality and a potent dangerous female sexuality, which in turn, justify onerous societal controls and restrictions of women. Alternative reformist readings and usage of foundational texts have proposed a reformulation of the classical legal system of Muslim marriage away from dominion, towards mutuality and reciprocity. In minority contexts, women’s lived experiences exist in tension with mainstream readings and subsequent societal controls, and can provide new understandings of foundational texts, potentially leading to reform efforts in terms of legal rulings.

The literature further indicated that in South Africa, debates between the ulama and the State on the regulation of Muslim marriages are ongoing. They too include negotiating between classical notions of marriage, which are framed on non-mutuality and sexual availability, and contemporary notions specific to the South African legal context. I add here a notable gap in the research that is outside the scope of my study, which is to gauge independent Muslim women's lived experience, understandings and practice of contemporary marriage in South Africa, in relation to their perspectives on the proposed Muslim Marriages Bill.

Recent research also confirms that the Internet has generated increased individualization and privatization of religion, new usages in activism and decision-making and that online religious interaction can provide a glimpse into offline social conditions and religious practices and potentially change offline religious manifestations in changing contemporary social realities. In particular, online fatwas have the potential to undermine other forms of religious authority and inform secular legislative processes and policies for Muslims in minority contexts as well as contribute towards reforming trends in women's sexual health issues by providing new perspectives on contemporary lived realities of ordinary Muslims.

Easy access by Muslims to online jurisconsults and the anonymity provided by the Internet allows for freedom to articulate intimate sexual issues and seek counselling and religious legal advice. There is a paucity of research on how these mediations on sexual reproductive health needs happen online, and specifically how sexual agency is articulated and negotiated in online fatwas. Research on how authority figures and structures are combining contemporary social realities and the Internet with gender concerns, how Muslim women are applying the resources offered on the Internet and to what extent they are contributors and not just content subjects is also limited.

The assertions in this section point to the Internet's ability to provide a portal into the contemporary discursive Islamic landscape, of which fatwas "constitute an important aspect", by virtue of providing us with "insight into the dynamics of continuity and change in the Islamic tradition" (Larsen 2015: 202). Researching sexual agency in the online fatwas of a South African religious scholar who identifies with the Deoband legal school thought from India, where forty per cent of South African Muslims have

their roots, provides insights into the mediation of religious knowledge with sexual and reproductive health concerns amongst Muslim men and women.

CHAPTER THREE: THEORETICAL FRAMEWORK

This chapter describes the theoretical research paradigm of this study. It traces the history of feminist theory, and its fraught relationship with religion, particularly Islam, linking my own ontological position. It explains feminist post structural theory for investigating women's religious experiences in a non-liberal tradition, where notions of freedom and agency do not align easily with liberal ideas.

3.1 Reflections

In this section I contextualize my motivations, experiences and ontological (re)positioning in order to highlight personal, social and geo-political influences on this study. Keeping in mind that intellectual rigour through constant self-reflexivity rather than the attainment of complete objectivity is a feature of the post structural research paradigm, my personal location also informs my intellectual work, and must be declared at the outset.

Shaikh (2003) notes that Muslim women's experiences of Islam within varying social, economic and cultural milieu fall somewhere on the continuum of a just ethical Islam and an expression of Islam that marginalizes and oppresses. In this respect, my experience as a middle class South African Muslim woman of Indian ancestry has been one of tension and dissonance between an ethics of justice and equality which I read in Islam's primary texts, and my experience of a patriarchal communal Islam characterised by gender conservatism and exclusion. This has motivated my rejection of androcentric normative trends in search of a more inclusive public Islam. My personal intellectual and spiritual pursuits are influenced by the exposure in Quranic study groups (*halaqāt*) to the writings of a wide range of modernist and feminist Muslim scholars. Through these readings I was further emboldened by a reading of Islamic history which engaged with issues of gender justice.

The socio-political context of apartheid South Africa formed the backdrop for my engagement with the Islamic ideals of social justice and equality of all human beings,

made salient within the progressive Muslim movement in South Africa. This further informed my activism in the quest for gender justice within my community where I was involved in what Margot Badran⁵² describes as “movement activism”⁵³ within the structures of the Muslim Youth Movement. Further, I have engaged in grassroots women-led initiatives, particularly to promote women’s access to the mosque and *Eid-Gah*⁵⁴, which challenged masculine spiritual privilege and promoted inclusion of women in sacred spaces.

Muslim women’s responses to masculine bias have been varying and diverse. It has been documented that some women adopt a secularist stance in a complete rejection of religion, perceiving patriarchy and androcentrism to be so integral to faith that any reforms can only happen outside of religion; others internalize the sexism inherent in normative expressions of Islam and promote these as Islamic; while others in varying contexts, regard faith as integral to an uncompromising realization of ideals of gender justice and equality (Rhouni 2008; Seedat 2013; Shaikh 2003; Zine 2004; 2006). It is in the latter group that I locate myself as a believing Muslim woman.

With this ontological position, I feel it prudent to qualify my use of feminist theory due its contested nature, both within the house of Islam and within the field of feminism itself. My use of feminist theory is cognisant of the contentions of the field of feminism, the uncertain position of religion in feminist theorizing, and the fraught relationship between Islam and feminism.

3.2 Feminism and Islam

There is not a single definition of “feminism” because the feminist movement comprises various articulations such as liberal, radical, Marxist, socialist, psychoanalytical, post-modernist and postcolonial. Feminist critique of patriarchal

⁵² Margot Badran, “Feminism,” in *The Oxford Encyclopaedia of the Modern Islamic World*, ed. John Esposito (New York: Oxford University Press, 1995).

⁵³ Shaikh (2003: 157) states that Badran describes three types of feminist expression amongst Muslim women, namely feminist writing, everyday activism and movement activism which includes “political and even confrontational movements for women’s emancipation”.

⁵⁴ “An open space usually on the outskirts of the city where the Prophet preferred to perform the Eid Prayer” (Ismail 2002: 36).

values and interests in social theory displaces the normativeness of the experience and knowledge of the rational unitary male subject who sets the standard for all other knowledges and experiences (Gandhi 1998; Hesse-Biber 2013; Mama 2002; Weedon 1987). The focus on women's experience in the process of knowledge production highlights the asymmetrical gender constructs within various locations in society. (Appelrouth & Edles, 2010: 331).

In the late 20th century, the critique of feminists of colour and third world feminists showed the feminism of its time to be permeated by a "liberal individualism" which undermined its project (Hooks 1984: 8). Interrogating the interconnectedness of categories of difference amongst them, such as race, class, and nationality, they provided insights for women beyond the white middle class subject of Western feminism. They challenged the universalizing assumptions of a homogenous "common oppression" which mystified and obscured working class and third world women's struggles (Fourie 2001; Harding 1986; Hooks 1984; Mama 2002; Mohanty 1988; Mohanty 2003; Zine 2002).

In response to these critiques by third world women and through interactions with movements like post colonialism and post modernism, the diversity and plurality of women's experiences was included by Western feminist theorists and feminist research took a turn towards "difference research" (Hesse-Biber 2013: 6). Despite attempts to record the experiences and realities of third world women, these endeavours were nevertheless regarded by third world feminists as lacking in rigour, meticulous research and nuance, instead homogenizing the plight of third world women and producing a 'monolithic' object; a woman whose cultural and religio-political contexts rendered her passive and without agency and voice.

Western feminists alone become the true 'subjects' of this counter history. Third world women on the other hand never rise above the debilitating generality of their 'object' status (Mohanty 1988: 80).

This insular approach of Western feminists to third world and black women has nowadays been re-inscribed to Muslim women against prevailing imperialist and neo-colonial reductive narratives of a misogynistic oppressive Islam, so that Muslim

women are similarly cast as a homogenized, monolithic subjugated entity in need of saving (Abu Lughod 2002; Hoel 2013; Shaikh 2003; Thobani 2005; Zine 2002). There appears to be a lack of astute analysis and meticulous research of the experiences and perspectives of Muslim women by Western scholars who ordinarily regard themselves as cognisant of questions of diversity, so that distortions that entrench and support negative stereotypes of Muslim women are favoured.

This reductionism, says Shaikh, is connected to an increasing global presence of Islamophobia (2012: 287), providing the rationale for why even some third world feminists who contest Western essentialising tropes of themselves, produce an analogous treatment of Muslim women and Islam. As a case in point, Shirin Edwin (2007) argues that African feminists in shaping a place for African feminist thought, are guilty of bias against Islam and its role in the lives and experiences of many African women. Through an analysis of the work of Nigerian novelist Zaynab Alkali, Edwin (2007) notes how African feminists paradoxically discredit Islamic marriage practices while defending similar practices like polygyny and dower in traditional African societies.

In addition to the current cultivation of Islamophobia, racism and “Othering” of Muslims post-911, historically a “vexed” relationship between Islam and feminism has existed, borne out of the latter’s historical association with Empire (Mahmood 2011: 1). Discourses on Islam, feminism and gender rights are embedded in a history of Christian/Muslim conflict, “colonial and neo-colonial civilizing missions in Muslim territories, nationalist responses to colonialism and orientalist scholarship” (Shaikh 2003: 149).

As Shaikh (2003:149) argues, the consequences to the reductive xenophobic and racist misrepresentations of Muslims has been a “reactive siege mentality” and “defensive posturing towards the West” or alternative counter representations of the West as a monolithic immoral and greedy entity. Because feminism, due to its imperialist colonialist legacy has been discredited and heavily stereotyped within Muslim communities, women who don its label or use its tools are similarly maligned and discredited. Muslim women and men with feminist commitments thus find themselves in a minefield,

...having to navigate the terrain between being critical of sexist interpretations of Islam and patriarchy in their religious communities, while simultaneously criticizing neo-colonial feminist discourses on Islam. The fact that Muslim women resist both narratives while sometimes moving between their critiques is a consequence of the way in which they are situated within this larger minefield (Shaikh 2003: 155)

A complexity is thus created in how and where women are situated within both narratives. Particularly, Muslim women who do feminist work, like myself, are wary of these geo-political and communal landscapes in which our work is undertaken and how our communities perceive the use of theoretical lenses like feminism.

Jasmin Zine suggests that by revealing and challenging some of the oppressive power dynamics in our societies, rupturing and interrogating patriarchal and hierarchical gender constructs, we risk being co-opted by the imperialist agenda and understood as further entrenching and supporting the current political climate of rampant Islamophobia and racism on the one hand, while simultaneously within our communities, accused of being agents of Western imperialism (2006: 11-15). Zine quotes Khan (2001) and states:

As researchers we must be not only responsible for what we write, but also 'examine how our work might be read given that racism and imperialism influence our lives' (Zine 2006: 15).

Therefore the convergence of Islam and feminism is cautious and fraught and there is no single set of principles that can be defined as an essential monolithic Islamic feminism.

Amongst Muslim women who do gender work, some operate from outside a faith paradigm rejecting Islam altogether as a means for reform, while others whose gender affirmative work arises out of a faith imperative have varying and conflicting positions amongst themselves. Amongst these, some adopt the label, others eschew it but make use of feminist tools, others internalize paternalist discourses and defend them using the apologetic neo traditional rhetoric of complementary roles, and others easily adopt the "feminist" label without the "Islam" qualifier (Abu-Lughod 2002;

Badran 2005; Hoel 2013; Seedat 2013a; Seedat 2103b; Shaikh 2003; Zine 2002; Zine 2006: 11).

In accommodating these various positions, Fatima Seedat (2013a; 2013b) in her recent scholarship on the convergence of Islam and feminism, argues for a tentative productive space between the two paradigms. This avoids “easy conflations or inflations of the space between them”, and maintains instead “a critical view of how and why they may or may not converge”. The conundrum that Muslim women face, says Seedat, is not their “inability to articulate their position”, or what to call their equality work, but rather how to “locate this work given the pre-existing discursive frameworks that insist on claiming all struggles for sex equality within the framework of feminism” (Seedat 2013b: 43). Seedat's assertion resonates, as does her view that Islamic feminism is most valid when it is self-critical, aligns against empire, and is embedded in a broader critique of inequality and injustice. Taking into cognisance my geographical, ideological and spiritual positioning as earlier outlined, Islamic feminism is thus relevantly described for me by Shaikh as, “one of the most engaged contemporary responses to the core Quranic injunction for social justice of our time” (2003: 159).

Shaikh insists that the term “feminist” is valuable to retain because it “situates women’s praxis in a global political landscape”, provides for collaboration and alliances for shared strategies between feminists in varying locations, and it creates a shared vocabulary for “critical consciousness surrounding gender politics”. By not embracing the term and rejecting it as a Western concept, we are conceding that gender rights discourses belong to the West and this marginalises the “indigenous histories of protest and resistance to patriarchy by non-Western women” (2003: 155).

Shaikh’s argument for retaining the term is augmented by recent positive trends that are beginning to contribute to the further transformation of the contours of feminism. Generally, the inclusion of women’s religiosity within dominant feminist discourses (Hoel 2013: 75) has not adequately integrated “women’s faith commitments and participation in non-liberal traditions” like Islam (75). Saba Mahmood’s (2011) work on women’s agency and freedom within the pietistic movement in Egypt is a case in point. Mahmood illustrated how the secular liberal framework of feminism could not

embrace the agency of pious believing women. But as Hoel argues, critiques by 3rd world women and believing women particularly those in non-liberal traditions, is beginning to result in a multiplicity of articulations of feminism. In this way the contours of feminism continue to be reconstituted and become increasingly varied, versatile and nuanced, incorporating “broader questions of diversity, location, and the fluidity of multiple subjectivities”, through the introduction of new “productive conceptual and analytical methodologies” as well as incorporating the “liberatory potential” of non-liberal faith traditions, thereby extricating “feminist theorising from ethno-epistemological assertions and homogenous master narratives” (Hoel 2013: 80-81).⁵⁵

It is in this vein that I turn to feminist post-structural theory as an appropriate theory for my study of women’s sexual agency in online fatwas. It provides space to engage in gender affirmative work from within a non-liberal faith paradigm and allows me to both expose oppressive gender power dynamics and to uncover potential liberating and transformative impulses that arise from within this paradigm.

3.3 Feminist Post Structural Theory

Feminist post structural theory (FPST) came about as a response to the critique that women’s experience alone is not a sufficiently rigorous measure of analysis. It was offered as a theory with an agenda to transform knowledge production and women’s access to knowledge, through an understanding of their experience as it relates to power within society (Appelrouth & Edles 2010; Chopp 1996; Mama 2002; Weedon 1987). It is a theory that accommodates different and competing subjective positions without necessarily having a particular “truth value”;

... It is not enough to refer unproblematically to experience...we need a theory of the relationship between experience, social power and resistance...Theory must be able to address women’s experience by showing where it comes from and how it relates to material social practices and the power relations which structure them. It must be

⁵⁵ Hoel (2013: 80-81) refers to productive methodologies like ‘intersectionality’, ‘situated knowledges’ and ‘politics of location’, by Crenshaw (1995), Haraway (1991) and Rich (1986) respectively. She argues that these more nuanced feminist lenses “cultivate a fertile ground for the study of religion, religious lives and feminist approaches to religion in particular”.

able to recognise and account for competing subjective realities and demonstrate the social interests on behalf of which they work (Weedon 1987: 8).

Subsequently, feminist scholars (Mama 2002; Weedon 1987) suggested FPST as the ideal theoretical lens in this regard. It is also a theory with an emphasis on knowledge production through an exploration of relations of language, social constructs and processes, subjectivities and power, which assists in “understanding, changing and transforming social and cultural practices that constitute, reproduce and contest gender power relations” (Weedon 1987: vi).

Relevantly, Judith Baxter distinguishes ‘post structuralism’ from the general philosophical movement ‘post modernism’ as a branch of the latter, in that it is not,

...specific to a single school of thought or academic discipline, but is constituted by a plurality of theoretical positions. However, the specific locus of its interest is in *language* as a ‘site’ for the construction and contestation of social meanings (Baxter 2003: 6).

Hence it is through language that an analysis of power, social meanings and construction of subjectivities is done. By examining sexual agency in the online fatwas of mufti Ebrahim Desai, the main research question, which is to identify the discursive representation of sexual agency in online fatwas, will be attended to within a feminist post structural paradigm, so that the interplay of knowledge, power and social practice and their influence on the construction and experience of the sexual agency of Muslim women is revealed. Fatwas themselves are also

...considered as discourses between the petitioner and the mufti, or as an interplay between legal argument and social and cultural reality. Fatwas can therefore provide us with insight into the dynamics of continuity and change in the [discursive] Islamic tradition (Larsen 2015: 202).

In their Foucauldian designations, power and forms of knowledge are inextricably linked, producing subjects through a series of discursive practices. Relatedly, “post structuralism proposes a subjectivity which is precarious, contradictory and in process, constantly being reconstituted in discourse each time we think or speak” (Weedon 1987: 32), thereby accommodating subjectivities which are multiple and

dynamic, continuously produced in the course of social relations, and providing for a more nuanced data collection and analysis process. For example, in my interrogation of the fatwas, FPST allowed for simultaneous and competing subject positions amongst all participants, in which power and powerlessness was in a constantly fluid and changing system. Post structuralism is therefore appropriate to the feminist concerns of this research,

...not as the answer to all feminist questions but as a way of conceptualising the relationship between language, social institutions and individual consciousness which focuses on how power is exercised and on the possibilities for change (Weedon 1987: 19).

3.3.1 Feminist Post Structural Theory and Fatwas

In diverse historical settings of restricted literacy and restricted control of the essential cultural capital that *sharī'a* knowledge represents, the relation between mufti and questioner is a relation of power (Masud, Messick & Powers 1996: 21).

Underpinning the interlocutory space of the fatwas, amongst the questioner (*mustafti*) and the *mufti* and the question (*istiftā*) and answer (*iftā*) “lies a complex social and interpretive relation”. The trust and reliance placed on the fatwa by the *mustafti* is inextricably dependent on their reliance on the mufti’s piety, religious knowledge and sense of justice. Of relevance too is an understanding of the social relation between knowledge and power, as the “conceptual distinction between the *mufti* and *mustafti*, involve[es] diametrically opposed statuses with respect to the key activity of *sharī'a* interpretation” (Masud, Messick & Powers 1996: 20-21). In this social relation only the Mufti is regarded as the interpreter and the questioner is the follower, establishing a wide hierarchical difference between the two.

But this is not only true for historical settings and fatwas. Contemporary online fatwas exhibit a similar relation of power. As a case in point, a question from a petitioner in South Africa posed to the Mufti on askimam.org states:

I would be very much grateful if you could kindly tell me the definition of fatwa and its important . insyaAllah with ur sharing i will share the knowledge to my friends⁵⁶

The hierarchical difference between the petitioner and the mufti produces a discourse of power in relation to *sharī'a* knowledge as seen in the petitioner's trust and dependence on the Mufti's knowledge. The petitioner has also donned a follower status, promising to disseminate the knowledge.

Potentially, imposing a post structural lens onto the online fatwas of Ebrahim Desai in this research study, provides us with further "insight into the dynamics of continuity and change" (Larsen 2015: 202) with regards to sexual health rights in the discursive Islamic tradition, and potentially exposes shifts and displacements in the relation of power between male and female members of society, the mufti, his students and his doctrinal school.

3.4 Conclusion

This chapter provided a description of my ontological positioning, located my motivations and experiences and highlighted particular personal, social and geo-political influences that had a bearing on my choice of FPST as a research paradigm. Against the backdrop of the fraught and vexed relationship between feminism and Islam, FPST's contention that there is no particular truth value, and its ability to explain why women accept subordinate subjective positions, rendered it a relevant feminist lens for centralising women's faith-based lived experiences, understandings and practices within a non-liberal tradition like Islam. The next chapter provides an overview of the research design employed in this study.

⁵⁶ See Fatwa # 18511 called Fatwa Y in Appendix 2

CHAPTER FOUR: METHODOLOGY AND RESEARCH DESIGN

This chapter sketches the analytical methodologies and the research design used in this study. A feminist post structural discourse analysis framework (FPDA) in conjunction with traditional analytical approaches deployed by classical legal scholars is employed in this study, in order to produce the instruments, the data and to generate the analysis.

In the first section, a synopsis will be provided of both FPDA and the classical legal interpretive frameworks used for fatwas located in *adab-al-mufti* treatises as outlined by Masud, Messick and Powers (1996). Section two follows with a description of the research design, the rationale for using askimam.org, sampling and data sourcing and production.

4.1 Analytical Approaches

4.1.1 Feminist Post Structural Discourse Analysis (FPDA)

In this study, the interplay of knowledge, power, social practice and their influence on the construction and experience of the sexual agency of Muslim women is revealed using a qualitative analytical approach of Feminist Post Structural Discourse Analysis (FPDA).

Baxter describes FPDA as an analytical framework that is in line with feminist post structural theory (FPST), with its roots in post modernism. FPDA has a transformative agenda and is well suited to exploring how discourses shape and produce competing, and multiple subject positions in which power and powerlessness is in a constantly “fluid and changing matrix”. FPDA can be used as a supplementary analytical approach to Critical Discourse Analysis (CDA) or Conversation Analysis (CA) and focuses on the complexity of subjects. It challenges polarisation and oppositional pairs of thought; and has an anti-materialist tendency where materiality is understood through cultural and social discourses (Baxter 2003: 42-57). In this

regard, FPDA cannot support any agenda that, in Michel Foucault's terms, may become a 'will to truth' and therefore 'a will to power'. In other words, FPDA cannot support a political or indeed, a theoretical mission, which might organise itself into a "regime of truth" and one day become its own "grand narrative" (Foucault 1980: 109-133).

Even though FPDA may be used as a supplementary analytical approach in relation to CDA, it is distinctive in that unlike CDA it does not give in to polarities. It does not presume that women are consistently disadvantaged or victims, explains the intricate patterns of relations of discourses that produce dramatic power shifts, and allows space for a multiplicity of subject positions of power and powerlessness, through "continuous shifts in the negotiation for power" (Baxter 2003: 48).

Mahmood (2011) illustrated in her *Politics of Piety* that for women in non-liberal traditions like Islam, a secular liberal framework of agency and freedom precludes other versions of agency that are based on religious practices towards the attainment of piety. In view of Mahmood's hypothesis and the description of FPDA above, the latter appears to be an appropriate methodology for analysing the discursive shifts of power exhibited by Muslim women, their husbands and the jurists in the fatwas.

In addition to a FPDA framework, analytical approaches, which were traditionally deployed by classical Islamic legal scholars, were also used to analyse the fatwas in this study. The use of frameworks for analysing fatwas that stem from classical Islamic methodologies locates the work firmly within the traditional legal interpretive framework. As noted by Muslim feminist scholars, especially those doing *tafsir* work, locating the work firmly within the traditional methodological lineage while at the same time critiquing its androcentric underpinnings renders its feminist endeavour more credible than a methodology that ignores the historical analytic approaches of the Islamic sciences (Hidayatullah 2014: 33-36, 145).

4.1.2 *Adab-al-Mufti* Treatises

The *adab-al-mufti* treatises of classical Muslim social and legal theorists, “elaborates on the detailed features of the mufti’s position and on the processes of the interpretive interchange” (Masud, Messick and Powers 1996: 15). They thus provide an overview of the classical legal interpretive framework for fatwa analysis. By paying attention to elements within classical treatises like the basic characteristics of a mufti, the conditions and requirements for the position, the kind of interpretive relation between muftis and questioners and the basic structural elements of the fatwas, Masud, Messick and Powers (1996) outline a substantial framework for the exploration of this specialized field of Islamic legal interpretation.

In a case-based volume on Islamic legal interpretation dealing with fatwas from the pre-modern to the modern era, the above scholars suggest that compared to historical fatwas, modern fatwas deal more with broader social relations and issues of family law, while the discourses of modern muftis have been consciously revised to accommodate their “perceptions of new societal conditions” (Masud, Messick and Powers 1996: 29). In addition, new media technologies⁵⁷ have altered fatwas through “basic discursive changes, a shift in authorial voice, new rhetorical forms, and a greatly expanded and differently constituted readership”. Finally, the transnational nature of modern fatwas tends to “speak to the common experiences of widely differing communities” (1996: 31).

The authors’ compilation of the analyses of fatwas by various scholars from different disciplines indicates that even as these substantial shifts occur, the analytical approaches of classical legal theorists continue to be relevant for the analysis of the modern fatwa genre, and that “...the issuance of fatwas in the electronic media age retains some of the institution’s former character as a societal barometer, as modern muftis respond to the specific concerns and the changing worldly circumstances of their questioners” (31).

⁵⁷ The authors refer specifically to print and broadcast media, but the same can be said for the online space (Masud, Messick and Powers 1996: 31).

I draw out their analytic method from the five strategies the editors proposed that contributors to their volume use when analysing individual fatwas, namely, to begin with the institutional context in which the fatwa arises, note the sources used by the mufti, “the language and rhetorical strategies employed, the method of reasoning and the intended audience” (1996: x). These five strategies, have been employed in this study as an analytical framework for examining sexual agency in online fatwas.

The institutional context and sources used in Desai’s fatwas were outlined in chapter one through an overview of the Deoband school of thought and the genealogy of its curriculum. I add to it in this chapter through considerations of the mufti and muftiship. In terms of the additional strategies of exploring language and rhetorical approaches, I used rhetorical and language tools, noting too whether the tone in the fatwas resemble a rhetoric characteristic of the Deoband school, which Metcalf describes as that of utilising “a straightforward simple language, ideally accessible to anyone” (Metcalf 1996: 187). Some of language tools were drawn from a Hallidayan approach to linguistic analysis and were used to analyse the verbal text in some of the fatwas.⁵⁸ In addition, Hilary Janks (1997: 335) provides a useful checklist for the systematic linguistic analysis of verbal texts, in order to provide for a richer more nuanced analysis.⁵⁹ Some of these linguistic tools were used, and only when they were valuable for a textual analysis that complemented the strategy drawn from the work of Masud, Messick and Powers as outlined above.

In terms of the last two proposed strategies, the method of reasoning and intended audience, I approach these through an analysis of the structure of the fatwa, the form of the disclaimer and the deconstruction of the answer as outlined below.

⁵⁸ The resources offered by Hallidayan grammar are often used as a heuristic device – a possible entry point - for the analysis of verbal texts often in a CDA approach. See Janks (1997: 335) and Wodak (2002: 16). I sparingly used some of these grammatical tools in the analysis of the fatwas.

⁵⁹ Janks’ checklist includes lexicalisation, patterns of transitivity, the use of active and passive voice, the use of passivisations and nominalisation, the choices of mood, the choices of modality or polarity, the thematic structure of the text, the information focus, and cohesion devices. Not all of these grammatical resources were employed for the text level analysis of the fatwas.

4.1.2.1 Considerations on Mufti's and the Muftiship

The *adab-al-mufti* treatises of the classical Muslim legal and social theorists explore the qualities of a mufti, the different typologies,⁶⁰ the conditions for mufti candidates, and important features for the Muftiship.

A mufti should be a pious person who is an expert in the field of Jurisprudence. A mufti who makes a fatwa founded on rumours and instincts will become a sinner and his action haram. Such a mufti is sinful because of his blatant lie towards Allah Ta'ala and Rasullullah (Sallallahu Alaa'hi Wasallam) (Fatwa Y in Appendix 2).⁶¹

The job of a mufti has a positive and a negative side. In terms of the qualities of piety and religious knowledge, the mufti is "identified as the heir of the Prophets" and fulfils a *farḍ kifāya* (societal obligation) to provide religious guidance (Masud, Messick and Powers 1996: 16-17). But his errors are so punishable that the mark of a well-trained mufti of integrity was reticence and caution in the issuing of fatwas (16).

i Typologies of Muftis

Depending on his competence with regard to his employment of *ijtihād* (independent reasoning), Hallaq (1996) and Masud, Messick and Powers describe four different types of mufti's. The highest category and the most learned are the *Mustaqill*, independent mufti's who used only Quran, hadith, *qiyās* (analogical reasoning) and "unfettered" *ijtihād* (independent reasoning). A mark of this category of mufti was that he does not engage in *taqlīd* (the practice of following the opinions of others) or even of an established school of law. Opinions were instead innovative, creative and original.

Another category, which incorporates the majority of contemporary muftis, is the *Muqallid* (associated mufti). They responded only within the parameters of the established legal school (*madhab*), and consulted opinions of jurists across time and space in that school. Opinions had to conform to existing opinions. This level

⁶⁰ For a description of the genealogy of mufti typologies and the categorisations of muftis into formal categories, see Hallaq (2001) *Authority, Continuity and Change in Islamic law*, Chapter one.

⁶¹ Askimam.org. 2011. Fatwa # 18511, 2010. Available from: <http://www.askimam.org/public/question_detail/18511>. [Accessed 15 October 2015].

emphasises too, “the proper acquisition of the requisite knowledge through the basic instructional mechanism of memorisation, with the principal texts being the authoritative manuals of the particular schools” (Masud, Messick and Powers 1996: 17).

ii Other Features of the Muftiship

Fatwas mainly provide determinations of law, assuming a set of facts, while judgements mainly provide determinations of fact, assuming a set of laws (1996: 17).

Additional features of muftiship emerged in the treatises through technical contrasts with judgeship. Women and slaves for example could be muftis, but not *qādi* (judges). The interpretive acts of both muftis and *qādi* were distinctive in that each had different orientations to the “relationship of law and fact” (17).

Muftis are only reliant on what the petitioner says, and textual sources. Fatwas do not comprise of testimony and are non-litigious. Facts are accepted at face value, do not have to be proven, and the process is non-adversarial, with the mufti’s considered opinion regarded as non-binding.

A judgement is a “creative” (*insha’i*) or performative act, a quality it shares with other categories of legal speech acts such as testimony and binding contractual utterances. Very different as a discursive act is the informational or communicative nature of a fatwa. In this respect, a mufti is comparable to a transmitter of hadith (19).

Historically, in the case of judgements, court records were kept, but no precedent setting was incorporated within judgement rulings, and therefore no form of publishing or referencing occurred. In the case of fatwas though, they were collected in book form and cited across space and time, impacting the law considerably; and it is “in this light that the burden of the mufti as a human interpreter of God’s law may be seen as even greater than that of the judge” (19).

While nowadays too, fatwas are compiled in book form, the online space makes them a lot more accessible and egalitarian, ensuring that not just muftis but ordinary Muslims can retrieve them at any time.

4.1.2.2 *On Questions and Answers*

The *adab-al-mufti* treatises also provide a framework for analysing the structure of the fatwa through an evaluation of both the question and the answer.

i The Question

“The interpretive process between mufti and questioner begins with the posing of the question”. According to this framework, questions are analysed by variations in their construction and framing. Investigations of the question centre on the author, whether it was on behalf of someone else, whether intended to be a trick question or posed as a series of questions intended to elicit a desired response. Framing the question also includes the one who is speaking, indicating “motivated and selective renderings of the facts and issues”. There may also be a reformulation by official scribes of the question in preparation of the final fatwa. Because the mufti is not acting as a judge, he takes the question at face value, and does not usually ask additional questions. Therefore, as the field of the response is determined by the framing of the question, the question not only “initiates the mufti’s interpretive activity but also constrains it” (Masud, Messick, and Powers 1996: 20-25).

ii The Answer

The mufti begins the answer by first comprehending the question and requires a knowledge of the customs, language and linguistic nuances of the petitioner. Some historical fatwas deal with simple legal questions by providing a legal answer free from doubt. The *adab-al-mufti* treatises encouraged mufti’s to refrain from providing an answer if uncertain, and to instead respond with an “I don’t know” (1996: 23). But despite this caution, many mufti’s both public and private, have responded to “routine informational questions”, so that “part of the fatwa-issuing work of many noted scholars typically is devoted to the giving of ordinary opinions to private questioners” (23).

Of significance for this study of online fatwas in relation to sexual and reproductive health concerns would be to note to what extent the answers in the fatwas on sexual health concerns are legalistic, falling within the ambit of training of the individual

muftis, and to what extent they venture into providing advice, opinions and sexual health counselling, in relation to how the questions are posed to them.

Differences in form and content of the answers also occur, depending on who the questioner is and for whom the answer is intended. If the *mustafti* is a layperson, the general rule is that the mufti does not have to explain his reasoning; he can be concise and more informal. But when he addresses another mufti, his answers are more formal and all his reasoning should be provided. In this regard, those muftis who are “commonly affiliated with particular schools of law, cite authors and authoritative works specific to those schools. “A mufti *muqallid* should accept the opinion of the best jurist of his school and attribute his answer to him” (25). This trend is illustrated in some of the fatwas on askimam.org, where students who generate the answer which is then further ‘checked and approved’ by the mufti, often cite Arabic sources in their reasoning at the end of the fatwa, most likely intending them for Desai’s perusal.

The last step in the interpretive process is the deconstruction of the answer characterised sometimes by follow-up questions, which ask for, or provide further information to elicit another response if the answer is not adequate. Sometimes a second opinion from a different mufti is also sought. This step is valuable in providing additional information for a case and provides an opportunity for a diachronic analysis of mufti’s opinions. In this study, two of the fatwas in the sample which originated from the same petitioner provided an opportunity for such an analysis.

iii Disclaimers

The treatises also note that fatwas include disclaimers at the end, usually in the form of versions of *Allahu-alam* (and Allah knows best) (1996: 24). As a reflection of this trend, all the fatwas I inspected on askimam.org contained two disclaimers. The first one aligns with historical fatwas and is found immediately after the answer in the form of, “And Allah Ta’ala knows best”. The second disclaimer is a little ambiguous and found at the end of the entire fatwa. It reads:

Askimam.org issues pertaining to Shariah. Thereafter, these questions and answers are placed for public view on www.askimam.org for educational purposes. However,

*many of these answers are unique to a particular scenario and cannot be taken as a basis to establish a ruling in another situation or another environment. Askimam.org bears no responsibility with regards to these questions being used out of their intended context (askimam.org 2011).*⁶²

The disclaimer goes on to stress that the answer has to be read only in conjunction with the question, that it cannot be used as evidence in a court of law and any links to other websites does not mean the mufti necessarily endorses all the content on those sites.

In light of, firstly, the emphasis on consulting the opinions of other jurists across time and space in the Deoband school, secondly the idea that the fatwa compilations are precedent setting works for use in other scenarios and contexts in the field of legal interpretation, and thirdly, that there is an emphasis on “public interest in a consideration of legal questions” in the Hanafi school of jurisprudence (Weeramantry 1988:50), the second disclaimer on askimam.org, ventures a move away from traditional modes of legal interpretation.⁶³ This statement in the disclaimer is especially relevant in light of the fact that some of Desai’s approved and sanctioned fatwas over a range of different categories have been compiled in book form in two volumes called *Contemporary Fatwas* and in another book called *Al-Mahmood*, suggesting a certain reliance on them as references to similar contemporary concerns in disparate contexts and situations.⁶⁴

Having provided a synopsis of both the FPDA framework and legal interpretive analytical approaches found in *adab-al-mufti* treatises of classical scholars, the next section sketches the research design used in this study.

⁶² As an example refer to: Askimam.org. 2011. Fatwa # 18511, 2010. Available from: <http://www.askimam.org/public/question_detail/18511>. [Accessed 15 October 2015].

⁶³ The first two points are mentioned in chapter one on the Hanafi Deoband legal school.

⁶⁴ See the Daruliftaa website.

<<http://www.daruliftaa.net/index.php/resources/publications/viewcategory/27-publications>>. [Accessed 30 October 2015].

4.2 Research Design

The information from the fatwas on askimam.org is the primary data in this study. Secondary data includes other online content by Desai and his students, and additional literature or sources referred to in the fatwas. These sources of data were triangulated to provide more rigour to the research process.

4.2.1 Rationale for Using askimam.org

My reasons for choosing askimam.org (2011) stems firstly from Bunt's (2003: 167) and Mohamed Chawki's (2010: 175) assessments that it is a well-organised, easily researchable site, which, like those in Muslim majority contexts, contains a range of fatwa, reflecting varying themes dealing with religiosity, piety and health. The distinct feature is that answers generated on the website diverge from the ones in Muslim majority contexts; instead reflecting the contemporary challenges of Muslim minority contexts. In addition, the Deoband school in which Desai is located, is also shared by many established religious authority figures and structures in South Africa so that his fatwas provide insights into the religious thought and trends within the South African Deoband structures.

A further and chief consideration for choosing askimam.org instead of the other websites affiliated to the Mufti where he is regarded as a decisive and authoritative religious figure, relates to the form, content and researchable potential of these sites. The main websites mentioned on askimam.org are daruliftaa.net (2013), the website of Desai's mufti training institute; idealwoman.com, which is administered by and directed at women towards the construction of an ideal Muslim womanhood; and daralmahmood.org (2015), which has an emphasis on *tasawwuf* (Sufism). Considering that the idealwoman site's intended audience is Muslim women, and that the site claims to be administered by women, it could potentially fill the lacuna in women's online participation. It would subsequently appear credible to select my fatwa samples and gather my data from it. But an overview of the content on idealwoman.org revealed why this is not the case.

There were very few fatwas on sexual agency as compared to the askimam.org site where the range of social issues and concerns in relation to sex, sexual health and reproduction were substantially more significant. From this I deduced that askimam.org appeared to be the repository for the majority of Mufti Ebrahim Desai's fatwas, and that using this site to gather my primary data on notions of women's sexual agency in online fatwas would be the most reliable way forward.

4.2.2 Sampling and Selection

This is a collective case study in which the issue of sexual agency within multiple fatwas authorised by one individual were analysed (Creswell 2012). My rationale for using this approach as opposed to an instrumental or intrinsic approach, stems from my preliminary overview of the data, which demonstrated that one particular case as required in an instrumental approach would be unable to provide data on the broad range of issues encompassed by the notion of sexual agency as outlined in the literature. Secondly, an intrinsic approach, which would have focussed only on the Imam's fatwas to the exclusion of the phenomenon of sexual agency under scrutiny, would not have served the purposes of this research (Creswell 2012). Using a purposeful sampling method, Desai's fatwas on the site ask-imam.com were selected to gain an understanding of the notions of sexual agency as identified in the literature.

Two main approaches were used in the preliminary selection of fatwas. Firstly, because askimam.org is easily searchable, an online keyword search of 'contraception', 'sex', 'abortion', 'sexual health', 'agency', 'sexual consent', '*tamkin*' and 'wife obedience', were done immediately prior to archiving the sites. By way of a conceptual analysis, I read and recorded every fatwa that dealt with any aspect of sexual agency as defined by me in chapter one. This included themes associated with consent, male control, pleasure, desire, sexual satisfaction, force, sexual violation, female passivity, sexual availability, choice, consent in both licit and illicit sex in relation to questions on contraception, abortion, fertility, sexual positions, and sexual health. Secondly, after archiving the website, I then redid the keyword search in addition to two readings of all the fatwas in the website's categories of marriage, divorce and miscellaneous *fiqh* in order to provide additional rigour to the selection process.

An initial large sample size of 120 fatwas dealing with the broad notion of sexual and reproductive agency including both male and female agency, were identified. These included fatwas by both men and women, related to sex and contraception both inside and outside the context of marriage. Consistent with my research aims of analysing the discursive constructions of married women's sexual agency in the fatwas of askimam.org, and assertions that petitioners' questions are a rich source of "social data" which can provide insights into the lived experiences, actual problems and concerns of men and women in society (Larsen 2015: 201), the 120 fatwas were further investigated through a process of textual analysis for further refinement according to the framing of the question by the petitioner.

As established in the introductory chapter, in this study the scope of 'sexual agency' within a discursive religious tradition like Islam has been expanded from the focus on young unmarried women to include married women in a religious community. The underlying rationale being that Muslim marriage in its classical and normative delineation is a marriage of dominion (Ali 2006; Wadud 2006). Following on a reading of the literature on sexual agency in the introduction, I located sexual agency in terms of the capacity to choose when and with whom one wants to experience sex, to choose how to define oneself sexually, to choose how one wants to engage in and negotiate around sexual activity, and to be afforded choices in making health decisions in relation to sex and sexuality.

In line with this definition, I chose to focus on those fatwas that only dealt with petitions that spoke to these ideals of sexual agency relating to the capacity to choose to have sex in marriage. Those that dealt with other aspects of agency in the realm of reproduction, contraception, abortion and fertility, as well as questions on what should not be divulged before marriage, the afterlife, and reasons for the prohibition of polygyny, were excluded. The questions dealing with desire in the afterlife and polyandry, by virtue of providing insights into contemporary women's thoughts on equality and justice in marriage, and their resistance to normative beliefs, were kept aside as beneficial for a possible supportive analysis, but were not included in the main sample. Overall, these fatwas, including the others on contraception, reproduction, abortion and fertility, all warrant additional research. This meant that

only those questions which divulged firstly what kind of sexual possibilities wives wanted and were experiencing in terms of their desires, pleasures and experiences of sexual and bodily controls and rights, and secondly what was being divulged in terms of what wives didn't want in terms of sex were included in the final sample of 26 fatwas.

Selection of Fatwas for Data Production

By virtue of the personality of Ebrahim Desai as the master teacher and creator of the website in this case study, the selection process incorporated an overview of the authorship of the fatwas. Of the 26 fatwas, most were answered by students of Mufti Desai even though he had a final say in approving and sanctioning them. Only four fatwas were answered directly by him, two⁶⁵ of which comprised of enquiries which related to purely pietistic concerns eliciting brief, perfunctory and legalistic responses, providing very few insights into the Mufti's thinking.

I selected the remaining two fatwas for analysis. I attribute my decision to the potential of both these fatwas to provide deeper insights towards my research goals. For instance, in fatwa # 17537, from hereon referred to as fatwa A (seeAppendix 1), Desai's response was explanatory and therapeutic according with Larsen's (2015: 201) typology of fatwas. His answer in fatwa # 15085, from hereon referred to as fatwa B (seeAppendix 1), although equally perfunctory, diverged from the others in that instead of dealing directly with the pietistic concerns of the petitioner, Desai mainly dealt with the husband's biomedical sexual health constraints in the context of satisfying his wife. In addition to these two fatwas, another two related ones were selected. Fatwa # 18350, from hereon referred to as fatwa C (seeAppendix 1) and # 16306, from hereon referred to as fatwa D (seeAppendix 1), both comprised of similar enquiries to those answered by Desai, except that his students answered them, providing an opportunity to gain insights into the master/ student relationship in the context of sexual health concerns.

⁶⁵ See fatwa #24644: http://www.askimam.org/public/question_detail/24644 and fatwa # 14954 : http://www.askimam.org/public/question_detail/14954.

In addition, two other fatwas, # 32049, from hereon referred to as fatwa E (seeAppendix 1) and # 32362, from hereon referred to as fatwa F (seeAppendix 1), generated by the same female petitioner and answered by two different students, were also selected for a diachronic analysis, to add further insights to the deconstruction of the answers of the fatwas. This process, as earlier outlined, is important though not always possible because the anonymity of petitioners makes it impossible to determine which fatwas are generated by the same petitioner over a period of time. These two fatwas were unique by virtue of being the only ones in the sample that were written by the same petitioner with a second petition following upon the response to her first, providing a window into the reality of what happens when a petitioner acts in accordance with the advice of a jurist, the subsequent experiences and concerns that arise, the type of follow up questions provoked, and the attempts by the petitioner to elicit a favourable response from the jurist regarding her circumstances. The follow-up question in this case dealt particularly with the sexual agency concerns of the petitioner and was an attempt by her to elicit a religious response from the mufti in line with her psychological, mental and pietistic concerns.

To summarise, the final six selected fatwas, as displayed inAppendix 1 are identified as follows:

17537- A

15085 - B

18350 - C

16306 - D

32049 - E

32362 - F

Other fatwas from the larger sample were also occasionally referred to in the analysis. These are displayed inAppendix 2.

4.2.3 Data Sourcing

Archiving of Internet material is imperative in order to maintain, stabilize and preserve the object of the study for further documentation and critique (Bunt 2003: 16; Brugger, 2005). “Micro-archiving” is the best option when working in an amateur set-up, with limited computer storage space, time, resources and technical knowledge.

I chose one of the four methods as proposed by Niels Brugger (2005: 21), namely archiving the entire website or parts of it, at a given moment in time which allows for analysis of the content of fatwas without requiring a continuous online presence. One of the shortcomings of this approach is that it is not possible to gauge movement between the elements that occur when there is a continuous online presence. The software I chose to use was Sitesucker⁶⁶. It saves webpages from URLs, and all linked webpages within the original site. It is limited in browsing capabilities but manages to archive the entire website.

4.2.4 Data Production Strategy and Analysis

Using FPDA as an analytical approach in data analysis makes allowances for multiple and silent voices in the *fatwas*, where women's voices are mediated by men and men speak about women. As part of the first step in the data production strategy, and in the location of discourses, an instrument in the form of an analytic schedule (see Appendix 3) was developed to be applied in a level one analysis to the selected fatwas, using a combination of both Masud, Messick and Powers (1996) proposed analytical framework, and Baxter's textual approach for locating discourses as outlined in her FPDA management team study (2003: 138).

In addition, I had to be cognizant of the context in which the petitioner was speaking, what issues were being discussed, how the issues were addressed, as well as how the responses were delivered and by whom. I kept in mind the requirement of the FPDA approach for data analysis, that sources of data be taken from a range of different voices in order to showcase a plurality of perspectives. Baxter proposes allowing space in the production and analysis of data for multiple, different voices and accounts (polyphony) as well as competing silenced, minority voices alongside official and dominant accounts (heteroglossia). Polyphony and heteroglossia, in particular, makes spaces for multiple, silent and marginalised voices, allowing for further rigor and reliability in data analysis (Baxter 2003: 67-73).

⁶⁶ See Appendix 4 for details.

Amongst the means she proposes to generate polyphony in the data, is to deploy different analytical frameworks and rhetorical strategies, so that “one author might produce multiple and perhaps competing versions of the same act of discourse analysis, so in a sense there would be no ‘original’ or authorized version”. (Baxter 2003: 67-58). In order to generate polyphony in this way, chapter seven herein brings in the use of an additional analytic lens provided by critical male studies.

Baxter further advocates both a synchronic and a diachronic textual analysis of data. The latter assists in the identifying of discourses with an emphasis on the language used by participants, “plotting the discursive relationships of particular social groups over a period of time”. These discursive relationships, which are shaped by particular versions of social reality, can be plotted and named through a perusal of the fatwas dealing with sexual agency. It can assist in identifying the discourses in these fatwas. A synchronic analysis entails a “detailed micro-analysis of short stretches of broken discourse” and includes a denotative (descriptive) and connotative analysis of data (Baxter 2003: 73).

Therefore, in order to provide answers to the research questions of this study, which were to firstly identify discourses in the fatwas dealing with women’s sexual agency, secondly to explore to what extent and to what effect the fatwas enabled women’s negotiation of sexual reproductive health, and thirdly to ascertain the use of foundational texts in the construction of these discourse within the fatwas, I adhered to Baxter’s suggestion and focussed on language “as the site where the construction and contestation of social meanings” in the relationships between the mufti, his students and the petitioners, were discursively produced (Baxter 2003: 6).

4.2.5 Additional Considerations

Speaking to issues of trustworthiness and credibility, data from the fatwas of Desai were triangulated against other online material produced or sanctioned by him. Noting consistencies and dissonances in these comparisons further speak to reliability and rigour in data production and analysis.

The findings and analyses of this study are potentially transferable to other structures and authorities also aligned with Desai's Deoband legal school, both locally and internationally, thereby providing a range of possibilities in dealing with contemporary sexual health concerns available to other Deoband muftis and established religious structures in Muslim minority contexts.

Even though the Internet is widely used, gender and socio-economic disparities confine accessibility to an elite few, creating a "digital divide" (Bunt 2003: 8-9; Chawki 2010: 178). Bunt (2003) argues that *fatwa* sites are accessed mainly by middle to upper class Muslims. The scope of this study cannot be generalized to all Muslim communities, although it may offer a research model specifically for researching the responses of Deoband scholars to contemporary sexual health concerns in Muslim minority contexts.

There are also theoretical limitations attendant to being an insider in the South African Muslim society. As depicted in chapter three, Muslim women scholars who work within a feminist paradigm attest to often having to tread a precarious line between being co-opted into projects that promote imperialist tendencies of Islamophobia and racism, and maintaining a critical stance within their community by revealing and challenging oppressive power dynamics. Therefore, I needed to be aware of the geo-political and communal landscapes in which my feminist work is undertaken. In this regard, the constant self-reflexivity, which is a central feature of my chosen theoretical paradigm proved valuable.

A methodological limitation noted at the beginning of this study was that FPDA has mainly been used to analyse conversations and in-depth interviews in small-scale ethnographic studies (Baxter, 2008). Using it in a more ossified, albeit interlocutory space where mainly men speak about and on behalf of women, like that of online fatwas, has not been tested.

A further methodological limitation relates directly to online research. I used "micro-archiving" as the best approach for an amateur set-up, with limited computer storage space, time, resources and technical knowledge. Micro-archiving, however, could not mitigate against the continuous and rapid changes to the website content during the

actual archiving process, due to the fluidity, complexity and unpredictability of the Internet as a “dynamic object” (Brugger 2005: 21). In addition, because the archived work is stored offline, I was unable to gauge movement between the elements that occurs when there is a continuous online presence. Certain ethical considerations must also be noted when archiving the Internet for research purposes. Brugger (2005: 13) states that legislation limiting or prohibiting the publication of archived online material differs from country to country. To avoid any ethical impasse, the archived material for this project was not published, but instead stored on my personal computer and a copy stored on a flash-drive was produced for university records.

4.3 Conclusion

This chapter explored the analytical methodologies and the research design employed to gather and analyse data in order to meet the research aims of analysing the discursive representations of Muslim women’s sexual agency in online fatwas.

Through a purposeful sampling approach, six fatwas were selected for analysis. Two were answered by Desai himself and two were similar petitions answered by his students. In addition, two petitions, which were the only ones in the sample generated by the same petitioner, were included to provide insights into the deconstruction step of fatwa analysis.

Data was sourced from the website through a process of micro-archiving and produced through a content analysis of the fatwas and a textual analysis of selected fatwas. The production and analysis of data utilized both legal interpretive analytical frameworks grounded in classical Islamic methodology and an FPDA approach. The former strategy locates the work within a traditional methodological lineage, while the latter has a transformative agenda, making space for competing, multiple and different voices and accounts as well as subordinate ones. The intention was to extract discourses, locate knowledge and power, and plot social relationships and multiple subject positions in order to add insights to the aims of the research study.

CHAPTER FIVE: SEXUAL RIGHTS: MALE SEXUAL NEED AND FEMALE DUTY

After applying the analytical tools to the fatwas, and with the first objective of this study in mind, namely to identify the discursive construction of sexual agency in the fatwas, my analysis began by identifying discourses in the data gathered, for which I was to re-read the fatwas and my raw data notes many times. It was through subsequent re-readings that categories finally emerged from the data. I remained cognizant of the notion of “authorial fictionalizing”, so that I did not impose discourses on the data (Baxter 2003).

Bearing in mind that “...discourses are always connected to other discourses which were produced earlier, as well as to those that are produced synchronically or subsequently”, branded as the “the intertextuality of a text”, four main discourses (some with sub-categories) of women’s sexual agency in the context of their sexual reproductive health rights were identified, both individually and intertextually (Fairclough and Wodak 1997: 276). These were identified as discourses of sexual rights (formulated as male sexual need and female sexual satisfaction), a discourse of mutuality, and a discourse of health and wellbeing. In the fatwas the discourse of sexual rights is gendered, so that for husbands the discourse was constructed as one of male sexual need and female sexual responsibility to fulfil that need, and for wives it was constructed as female sexual satisfaction and a male obligation to fulfil. Both these discourses also intersect with the remaining two discourses of mutuality and health and well-being as will be seen.

Though the chapter includes a number of other fatwas, the analysis focuses on a fatwa that best portrays the discourse of male sexual need. The remaining discourses are addressed in subsequent chapters.

5.1 “If a Husband Ask to his Wife for Sex, and if she Refused”

The insistence of men’s sexual needs and wives responsibility to fulfil them has competed for prominence in modern intra-Muslim discourses on sex, with the recognition of female sexual needs (Ali 2006: 9).

The discourse that prioritises male sexual need and its inter-textual links with the other discourses identified in this study is best illustrated in fatwa C⁶⁷ published on October 2009 (see Appendix 1). In this section I will only deal with the first enquiry in the petition. The second one will be dealt with in chapter eight.

Questions

1- “ if a husband ask to his wife for sex, and if she refused oftenly. with reasons that she is not in mood, and after this, if husband indulge in some other immoral and sinful activities, then what would be position of both in front of ALLAH?

2- if a muslim, dont want to live , due to extra stress ,pain, and unhappines in his life, can he commit suicide ? is there any possibility that ALLAH forgive his sin, as he is aksing to ALLAH to resolve his problems but ALLAH didnt.

Answer 1

When a husband and wife make nikaah Allah Ta’ala grants certain rights and privileges to one over the other. It is the duty of the man to provide shelter for the woman and to take care of her needs. Similarly, it is necessary for the woman to obey her husband at all times and to respect his authority over her.

Rasulullah has mentioned

“If I had to command anyone to make Sajdah (prostrate) to another person, I would of instructed the woman to make Sajdah to her husband”

Rasulullah also mentioned

When a man calls his wife to bed and she refuses, he then spends the night upset and angry with her, the angels curse her till the morning.”

If a woman has a valid reason for not responding positively to her husband, she should discuss this with him.

If there is no valid reason for not responding to him, she should rather obey him and save herself from the curses of the angels. However, if she does not offer herself to her husband, it

⁶⁷ Askimam.org. 2011. Fatwa # 18350, 2009. Available from:
< http://www.askimam.org/public/question_detail/18350>. [Accessed 15 October 2015]

does not give him the right to abuse his chastity and to involve himself in any illicit relations. If he commits any evil or immoral act, he will be responsible for his own actions and answerable for it on the day of Qiyaamah....

And Allah knows best

Wassalaamu `alaykum

Ml. Rayhaan Docrat,

Student Darul Iftaa

Checked and Approved by:

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

5.2 Description

Description of the Petition

The participants in this fatwa are the wife, the husband, Mufti Desai, his student Rayhaan Docrat, God and the Prophet. In the petition, a male petitioner from Pakistan frames the first question as a religious request. The husband, who is the petitioner, requests sex from his wife and she refuses because she is not in the mood. The husband inquires about the effects of her refusal and his consequent “immoral and sinful activities” on their individual God-believer relationships.

The effect in the petition is to produce a narrative where a woman’s sexual choice is positioned as the potential cause of her husband’s “immoral and sinful activities” and secondly, where her choice is constructed as though it impacts the “position of both [the wife and the husband] in front of Allah” thereby linking the husband’s ‘immoral and sinful activities’ with the wife’s refusal. The question is centred on the subsequent God-believer relationship of both the husband and the wife.

Description of the Answer

The answer generated in South Africa provides a rationale for the male sexual needs discourse and locates its origins in Prophetic traditions. It is provided by a student of the Mufti, Maulana Rayhaan Docrat at the DarulIftaa centre, and it is checked and approved by Mufti Desai. The petitioners question is initially outlined by the imam as a question of complementary marital obligations of rights and privileges, but then focuses particularly on the discourse of male sexual needs and privileges and female

sexual responsibility within a Muslim marriage. Docrat comprehends the question as it was presented by the husband in terms of his sexual and marital rights. He answers prescriptively and within a normative classical framework, citing firstly hadith sources to establish male sexual dominance and female obedience, then subsequently explaining the dire consequences women invite if they refuse sex through a traditionalist discourse of female obedience and male financial responsibility and dominance. As a response, male sexual need, Docrat suggests, is prioritised and under the ambit of the wife's responsibility and duty, while female financial needs, maintenance and shelter are a man's responsibility.

In his response, the scholar takes up the dynamic between the husband's request for sex and the wife's refusal and re-presents the terms of the marriage contract, suggesting this grants the couple "certain rights and privileges to one over the other". Providing shelter and caring for her needs requires that she "obey her husband at all times and [to] respect his authority over her". The dynamic of male need and female responsibility is also transformed into female sin; when a wife refuses her husbands bed "the angels curse her till the morning".

The thematic structure of the text moves on to directives. In terms of what should happen if the wife is "not responding positively" in the absence of valid reasons, the jurist returns once again to the husband's concern that his wife refuses because "she is not in the mood" and attends to the spouses God-believer relationships. Using hadith and Quran, Docrat suggests that the wife save herself from 'cursing angels' and the way to do this is to obey her husband. The import of the directive is that the wife's relationship with God and her standing with the angels, who are God's messengers, is mediated by her obedience to her husband. The husband's God-believer relationship on the other hand, the jurist explains, is not influenced by his wife's actions. He is responsible for his own actions and answerable for them on the last day of judgement and by extension, the afterlife. The equation of male need and female responsibility is not so easy as to allow the scholar to relieve the petitioner from responsibility for his sinful indulgences. The scholar makes clear that the wife's refusal does not excuse the husband from responsibility for "illicit relations". He is personally responsible for "any evil or immoral act" and will be held to account in the hereafter.

5.3 Discussion

Islam is viewed as a sex positive religion, with an acknowledgement of the positive aspects of female sexuality. Ali contends that this view coexists with, and is challenged by, two other narratives (Ali, 2006: 8-13). One of these common narratives, that of the importance of male sexual need which is viewed as potent, and its connection to the discourse of women's responsibility to fulfil male desire, finds resonance in this fatwa. In this narrative male sexual needs and access to wives is prioritized to such an extent that female sexual availability is a central legal aspect to a Muslim marriage such that a wife's non-availability renders her in violation of the legal parameters of the marriage contract. The narrative of male sexual need and female responsibility to fulfil that need coexists paradoxically with another view of "women as sexually insatiable and thus prone to create social chaos" (Ali 2006: 9). In this narrative, female sexual desire is regarded as important and has to be satisfied by men as their ethical moral obligation to control the potential dangers of an unfulfilled female sexual need.

Feminist scholars Mernissi (1991), Sabbah (1984) and more recently Ali (2006) have noted the tensions in the discourse of sexual rights and obligations in the Islamic classical tradition. This potent and limitless male sexual appetite is constructed against a female sexuality that, if unfulfilled, is potentially dangerous, and wanton - a potential source of corruption (*fitna*) to society thereby affording it power and requiring controls to keep it in check. I will extrapolate on the potentially sinful female sexuality later. For now, I focus on the discourse that reveals itself most prominently in the fatwas, namely the male sexual need discourse that views men's sexual appetite as limitless and potent. My reading of the fatwas confirms the literature on male sexual need and in this chapter we see how the discourse intersects with a number of other discourses while it maintains its dominance.

Significantly, this discourse is not usually described as dangerous to the social order. Potent male sexual need is rather managed through the lawful provisions of polygyny, unlike women's sexual potential that can only be managed through her one lawful husband. In Sabah's view, potent male sexuality is also subject to boredom and can be managed by repudiation;

Since fornication is forbidden, the Muslim man must not only guard against it by increasing the number of legitimate wives, but also by changing them through repudiation as soon as he feels boredom creeping into his relationships with his partners (Sabbah 1984: 116).

A brief analysis of the dynamic of male sexual need and female responsibility tells us how the jurists view a wife's refusal. The petitioner problematizes his wife's refusal. The mufti, in this case Docrat, recognizes it and subsequently also undermines her refusal. Linguistically, the wife is present in the text through her husband's narrative of their actions. While the active voice is used for himself, the petitioner uses the passive voice and nominalisations to describe his wife's refusal to have sex with him. The husband says she "refused", while Docrat refers to her action as "not responding positively to her husband" or "not responding to him". While the active voice is used for himself, the petitioner uses the passive voice and nominalisations to describe the wife's refusal to have sex with him. Nominalization is the process of turning a verb into a noun and passivisation is choosing the passive voice over the active (Billig 2015), the effects of which are to delete agency, so that "identified agents of action [are] turned into agentless statements". Nominalisations can also reify processes and qualities so that they become "things, impersonal and inanimate rather than contingent on the result of human action" (Billig 2015). Through nominalisation of the wife's action, the petitioner reifies her action and undermines her agency to refuse.

Another means to reify female agentival capacity as a responsibility to fulfil rather than the capacity to refuse male sexual need is reflected in the pattern of transitivity (Halliday 1985: 101)⁶⁸, where every verb and its associated process is identified. Janks describes these processes as material, verbal, mental, relational, behavioural and existential (Janks 1997: 335).

The husband constructs himself as having verbal capacity to say what he wants and the mufti, by suggesting the wife discuss her valid reasons with her husband's, also constructs her as having the ability and agency to verbally speak her mind. But, this

⁶⁸ Halliday asserts that language allows individuals to "build a mental picture of reality" and to make sense of "goings on"[as well as] of doing, happening feeling and being" (1985: 101). In this respect, "transitivity specifies the different types of processes that are recognized in the language and the structures by which they are expressed" (101).

agency is constructed differently for the man and the woman. The wife's agency is constrained by what the mufti considers her appropriate reason to refuse. Rather than refuse, according to the mufti, appropriate agency in a woman is displayed when she obeys, when she respects, she prostrates and she discusses what her valid reasons for refusal of sex are. In this way a traditional view of male authority over female sexuality is buttressed by the discourse on male sexual need and female responsibility to fulfil that need. The wife has agency but only within the terms of this traditional marital structure where the husband's authority and sexual needs are prioritised.

This does not detract from the fact that she still refuses him without a seemingly "valid" reason, displaying resistance and agency against the male sexual need discourse of the text, thereby creating a slippage in power, and moving herself from a position of powerlessness to one of power. This reveals that some women are choosing to exercise agency to reject this discourse. I will return to this in the discussion later on the discourse of mutuality in fatwa A.

The husband also advances the suggestion that in terms of Islamic law, a wife's rejection of sex with her husband, and his consequent immoral actions, has a repercussion on her God-believer relationship. In his question, the husband suggests the threat to the wife's God-believer relationship can also become a coercive tool that would cause her to engage in sex after having refused to have sex with him. The link between a wife's refusal and her God-believer relationship occurs in another fatwa as well. In fatwa A,⁶⁹ which will be analysed in further detail in chapter seven, the male petitioner from the UK is speaking about his wife in relations to his own sexual need. The fatwa reads:

My wife got very low sexual desire. I want to have intimacy every other day or after week, she doesn't let me even touch her. I feel very bad and then I don't know what to do. Is there any sin when wife rejects her husband. Can you please explain to me about this situation (See Appendix 1).

Whereas the first petitioner left open the possibility that his illicit sexuality had implications for his wife's relationship with God, this second petitioner is specific

⁶⁹ Askimam.org. 2011. Fatwa # 17537, 2009. Available from: <http://www.askimam.org/public/question_detail/17537>. [Accessed 15 October 2015].

about the link between his wife's rejection and God's disapproval. Here too the husband says what he wants by subscribing to the discourse of male sexual need and female responsibility and also linking it to a woman's relationship with God.

5.3.1 Internalisations of the Dominant Discourse

Lest we believe that only male petitioners subscribe to the idea that wives are compelled to fulfil male sexual need, fatwa F⁷⁰ shows that women also internalize the belief. Here the female petitioner who was sexually molested as a child feels forced into consummating her arranged marriage and resorts to the Mufti to argue for an annulment. She says:

My 'husband' knew about my traumatic childhood experience but forced kissed me and touched when I was sleeping...i cried in the bathroom because I felt violated and hurt. I really do not like him, and I feel like I can't full fill (sic) my duty as a wife towards him. How can I love someone when I was forced into this?

Her trauma and pain are mediated through what she considers her "duty as a wife towards him". She has internalized the dynamic of male need and female responsibility and her responsibility is intensified as duty. She is constrained by this responsibility, as she experiences a tension between her refusal, the feelings of violation, and her duty. She says further on at the end of the petition:

I know i won't be able to full fill my duty as his wife, it's not fair to me nor to him...I don't want this marriage. Never did. Isn't this void?

She moves from 'feeling' to 'knowing' that she won't be able to fulfil her duty to fulfil his sexual need, appealing to the ethical ideal of fairness to bolster her argument. Beyond the idea that women must fulfil male sexual needs, this woman petitioner has also internalized the two divergent voices in Islam described by Ahmed (1992: 65-66),⁷¹ namely the pragmatic legal voice, in which marriage is deemed an institution of sexual hierarchy, and the ethical voice, "virtually unheard by rulers and lawmakers"

⁷⁰Askimam.org. 2011. Fatwa # 32362, 2015. Available from:
<http://www.askimam.org/public/question_detail/32362>. [Accessed 15 October 2015].

⁷¹ Refer to chapter two section 2.1.3.

and which “stressed the importance of the spiritual and ethical dimensions of being and the equality of all individuals” (65-66).

Drawing on Ahmed’s thesis, I argue that the petitioner’s argument can be understood in two ways. Firstly, she could be arguing that what is not fair to her is to be in a situation where she cannot fulfil her duty, and given her admitted failure to meet this duty on the basis of her diminished emotional and psychological capacity, she should also be released from the marriage. Secondly, she could be arguing that what’s fair to her is her right to refuse consummation and force, and to not want the marriage. Viewed both ways, she appeals to the ethical voice as described by Ahmed, through a discourse of ethics of fairness.

I argue that there is a slippage occurring here as she simultaneously accepts and resists the dominant discourse of male need and female responsibility in favour of a subordinate discourse of an ethics of fairness in this context. This synchronic movement, once again puts her in a subjective position of power in relation to the discourse of male sexual need. For this discussion, the above fatwas demonstrate that the dominant male sexual need and female responsibility discourse and its links to a woman’s relationship with God, has been internalized by ordinary men and women in the fatwas under discussion, and is often offset by another discourse, that of fairness.

Muftis too who mediate theological and moral concepts into society through sermons, popular literature and fatwas, have understood the prioritizing of male sexual need and female responsibility as the dominant discourse. For example, in fatwa # 15104, hereon referred to as fatwa G⁷², a newly-wed female petitioner asks whether she can avoid washing her hair during the ritual purification required after sex, because the frequent sexual intercourse and subsequent ritual washing has created sinus problems and headaches for her. Citing a Hanafi textual source, the student mufti grants her a concession but still prioritises male sexual need even in the face of her pietistic ritual and biomedical concerns. He says in fatwa G (see Appendix 2):

⁷² Askimam.org. 2011. Fatwa # 15104, 2007. Available from: <http://www.askimam.org/public/question_detail/15104>. [Accessed 15 October 2015].

It is permissible for you to make masah of your head instead of washing your head in ghusl if washing almost everyday is causing you serious headaches and other sicknesses Allaamah Shaami states “A woman should not withhold herself from her husband, i.e. out of fear of falling ill due to Ghusl (bath) becoming obligatory on her. Rather, she has been granted concession regarding washing her hair. (Raddul Muhtar, vol 1, pg 153).

In this analysis, fatwas F and G are fringe examples from other petitions on the website, and they provide a glimpse into the discourses that support the discourse of male sexual need, namely that male sexual need is a priority and female availability is a responsibility, according with the literature and further confirming that this a dominant discourse within the Muslim mind.

5.3.2 ‘Wives are Meat - Slaves are Fish’

Returning to the discussion of the main fatwa in this chapter, Fatwa C and the priority for male sexual fulfilment underpinning it, Docrat’s reference to a husband’s marital duty to provide financial support for the wife and her obligation to obedience (including sexual obedience), further stems from classical jurisprudence on marriage, which takes its cue from the laws of ownership and slavery. Consequently, marriage is described as an exchange of the dower (*mahr*) for sexual access and continued sexual availability for continued financial support (Ali 2003; 2010). This classical legal logic with its “gender- differentiated marital claims beginning with dower and carried through to divorce” (Ali 2006:9) also underpins Desai’s stance in two other fatwas; the first one on slavery and concubinage by Desai himself and the other on consummating a marriage sanctioned by him but generated by a student of his.

In fatwa # 17032, hereon referred to as fatwa H⁷³, answered in August 2008, Desai replies to a query regarding the Islamic ruling concerning slave women and concubines. He refers the petitioner to what he describes as his “standard answer” which he then proceeds to outline in three pages. Of significance is his use of the classical jurisprudential underpinnings of a Muslim marriage. He states in fatwa H:

⁷³ See Appendix 2, referring to fatwa # 17032, Available from: <http://www.askimam.org/public/question_detail/17032>. [Accessed 15 October 2015].

...A free woman cannot be 'possessed', bought or sold like other possessions; therefore Shariat instituted a 'marriage ceremony' in which affirmation and consent takes place, which gives a man the right to copulate with her. On the other hand, a slave girl can be possessed and even bought and sold, thus, this right of possession, substituting as a marriage ceremony, entitles the owner to copulate with her. A similar example can be found in the slaughtering of animals; that after a formal slaughtering process, in which the words, "Bismillahi Allahu Akbar" are recited, goats, cows, etc.; become "Halaal" and lawful for consumption, whereas fish becomes "Halaal" merely through 'possession' which substitutes for the slaughtering...

In other words, just as legal possession of a fish that has been fished out of the water, makes it Halaal for human consumption without the initiation of a formal slaughtering process; similarly legal possession of a slave woman made her Halaal for the purpose of coition with her owner without the initiation of a formal marriage ceremony.

The classical jurisprudence differentiates between wives and concubines, but the two relationships share a similar legal construct that prioritises male sexual fulfilment. Another fatwa # 30630, hereon referred to as fatwa I⁷⁴, and dated November 2014, in response to a question about the appropriate behaviour for consummating a marriage prior to the “*ruksati*” which the scholar jurist defines as the “customary handing over of the wife into the custody of the husband”, explains the scope of the husband’s right to sexual fulfilment as ‘he pleases’. The answer states:

In principle, once the contract of nikāh has been concluded, the husband is entitled to sexual intimacy with his wife. The wife has the right to refuse his sexual advances or to travel with him until he submits the mahr mu‘ajjal (the mahr due immediately). After submission of the mahr mu‘ajjal, the husband is at liberty to take her where he pleases.

These fatwas demonstrate that the discourse that prioritises male sexual need is a consequence of the classical legal logic of a Muslim marriage. It is accompanied by discourses of obedience and financial support reflected in two concepts of *qiwāma* and *wilāya*.

⁷⁴ Askimam.org. 2011. Fatwa # 30630, 2014. Available from: <http://www.askimam.org/public/question_detail/30630>. [Accessed 15 October 2015].

Qiwāmah generally denotes a husband's authority over his wife and his financial responsibility towards her, and ...*wilayah* generally denotes the right and duty of male family members to exercise guardianship over female members... (Mir-Hosseini, Al-Sharmani and Rumminger 2015: 1).

The term *qiwāma*, although not mentioned in the Quran, derives from the term *qawwamun* (meaning protectors and maintainers) in Q 4:34. As noted in chapter two, this verse has been used to assert a husband's right to command and discipline wives.⁷⁵ According to the above scholars, by relying on a notion of femininity that is constructed normatively as weak, requiring protection and guidance, and a masculinity which is constructed as strong, powerful and dominant, "these two concepts play, and continue to play a central role in institutionalizing, justifying and sustaining gender inequality in Muslim contexts"(2015: 1). In addition, fatwa C also establishes *qiwama* through well-known hadith.

The discussion of *qiwama* and wifely obedience adds substantive theoretical form to the argument that male sexual need is a prominent discourse, and further to this Docrat makes reference to women bowing to husbands, which reflects his Deoband gender ideology. This ideology is characterised by male domination and priority and female subordination and submissiveness to men, collectively considered as a divinely sanctioned social order. In an overview of second generation influential scholar Ashraf Ali Thanwi's writings on women, and their influence on the women of the Deoband-led proselytizing movement the *tabligh jamaat*⁷⁶, Ambreen Agha suggests that this ideology constructs women as precious "objects" or "jewels" that adorn the house. Women are "exclusively accessible to their husbands" and male domination and female submission is rationalized as "an act of God" (2015: 7).

In addition, the idea that the wife's God-believer relationship is mediated by her husband is also underpinned by the body/ spirit dichotomy found in the gender ideology of the Deoband legal school. Through an in-depth analysis of Thanwi's book

⁷⁵ See chapter two, section 2.2.

⁷⁶ For an explanation of this movement, see Vahed (2000: 46). He describes the *tabligh jamaat* as a proselytizing, pietistic, grassroots movement which is an offshoot of the Deoband movement, allied to it, and concerned with providing religious guidance on all matters. It is always led by Deoband-trained or Deoband-affiliated ulama.

for women, the *Behishti Zewar*, which is still in use in South Africa today, Metcalf suggests that the Deoband reformers' goal was to establish a correct hierarchy in all areas. This included women's position, which was determined in terms of a hierarchical gender ideology arising out of classical legal specifications.

In a period of alien rule and disruptive change, the reformers were driven to establish boundaries for belief and behaviour that would ensure order among humans and between humans and God. Women were to be subordinate to men, children to their elders, [and] the humble to the great... (Metcalf 1990: 37).

In this way "proper hierarchy had to extend from earth to heaven" (37). Scholars show that women's subordinate inferior status emphasised the body/ soul dichotomy prevalent in classical texts. Women are considered as akin to the body, sensual, irrational and physical, while men are akin to the soul, stronger in mind and intelligence, rationally and spiritually superior (Anwar 2006; Shaikh 2004).

Similarly Thanwi's work "portrayed women as having a weaker *nafs* (self) and *aql* (intelligence)" while his writings, which "favour female submission and subordination, are held in high esteem and his teachings adhered to in daily lives" (Agha 2105: 6). Desai's Darul Ifta mufti-training institute includes some of Thanwi's texts in its curriculum, providing evidence that Desai and his students are influenced by Thanwi's work.⁷⁷

This hierarchical gender ideology appears to be a dominant orthodox perspective in various other Muslim discursive spaces. As Izugbara (2004: 16-18) has shown,⁷⁸ the binary of male and female sexuality prioritizes male sexual dominance and privilege. He shows how Quran and hadith are also used to encourage androcentric notions of male and female sexuality and sanction male control of women's sexuality. Similarly, in fatwa C, Docrat uses two Prophetic traditions (hadith), as a strategy to convincingly prop the male sexual need discourse. This accords with assertions in the literature that

⁷⁷ Refer to: <http://www.daruliftaa.net/index.php/courses-admissions>.

⁷⁸ Refer to section 2.3 in chapter two. Izugbara argues that the dominant narrative of Q2: 223 combined with that of numerous ahadith that "good women do not refuse their husband sex" is internalized by women themselves, placing them in a self-coercive position.

religious texts are employed in formulating normative discourses around sexual health, agency and expression (El Fadl 2001; Mir-Hosseini, Sharmani & Rumminger 2015; Shaikh 2004; Shaikh, Hoel Kagee 2011).

5.3.3 Supplicating Wives, Angry Husbands and Cursing Angels

We have seen in this chapter, how muftis use hadith texts to render the wife's God-believer relationship contingent on her obedience and subservience to her husband, while they leave the husband's relationship to be contingent only upon his own actions. Bennet's work singles out in particular the 'cursing angels' hadith cited by Docrat in fatwa C. She says,

The most sexist interpreters of this hadith claim that it establishes a woman's refusal of her husband's request for sex as a sin, and further that it is acceptable for a husband to strike his wife if she does refuse him (Bennet 2007: 376).

Kodir (2007) and Abou Fadl (2001) point to several similar hadith that are also usually cited to keep women obedient and to coerce them to be open to sexual overtures from their husbands, or else incur the wrath of angels and/or God's ire. This confirms Abou El Fadl's observations above (2001: 211- 212) on the influence of hadith in spousal obedience and the denigration of women. These hadith "place women's sexual duties to husbands under the ambit of divine concern, and divine approval as contingent on a husband's approval" (Ali 2006:11).

The usages of the hadith quotes are in the main body of the fatwa, and quoted in both English and Arabic. They are not just in Arabic small print at the end of the fatwa, but also in English, the language of the petitioners and of the interlocutors of the website, meaning that Docrat has chosen to provide his reasoning not just to other jurists and the approving Mufti but to the petitioner, and the English reading public. He is either both aware of mainstream knowledge of and familiarity with these hadith, and/or he is purposefully creating familiarity with these hadith by prioritizing these over other hadith that could support female sexual assertiveness.

He also prioritizes an interpretation of these hadith that does not support absolute female submissiveness, but which makes allowance for "valid reasons" for refusal.

Abdul Kodir (2007) and Bennet (2007) have reviewed the various interpretations and versions of the ‘cursing angels’ hadith cited by Docrat in the fatwa. They argue that classical and modern scholars all do not subscribe to a wife’s absolute submission in terms of her sexual services. Some interpretations state that she will only be sinful and therefore cursed by angels dependent on her husband’s emotions, like when he is angry at her refusal, while others suggest that she is “entitled to reject her husband’s call for sexual activity if it is certain to hurt her, or if she is engaged in fulfilling a religious obligation” (Kodir 2007: 73). These alternative interpretations, argues Kodir, provide a glimpse into legal scholarly attempts to create “opportunities for the woman to enjoy sexual relations or refuse them” (73).

Attesting to the fact that the hadith play a greater role in women’s experience and understandings of sexual agency, Hoel and Shaikh (2013) and also Marcotte (2015) have shown that women were familiar with, and had internalized the general message in many popular hadith like the ones used in this fatwa. In Marcotte’s study, Australian women in online forums rejected the discourse of male sexual need, particularly the notion of a dangerous female sexuality and passivity, while in Hoel’s and Shaikh’s study, women displayed ambivalent responses to particularly the “cursing angels” hadith, depending on their life experiences. Some women in their study carefully negotiated the hadith without outrightly rejecting it, but “in ways that reflect a deep resistance to patriarchy”. Others who experienced abusive marital encounters, also in the face of HIV and AIDS, challenged its authority by invoking other ethical theological concepts of a just, merciful God as a means of resistance. Still others dealing with promiscuous husbands chose to reject the hadith and instead emphasized ethical-moral discourses of mutuality and consent (2013: 83-85). In light of Ahmed’s (1992) idea that Muslim women have internalized a legal pragmatic and an ethical spiritual voice, Hoel and Shaikh’s study shows how and when the ethical voice trumps the legal one in relation to the ‘cursing angels’ hadith cited by Docrat.

Accordingly, I argue that much like the women in Shaikh’s study, the wives in fatwa C and A have either negotiated, resisted or rejected the discourse of female responsibility to fulfil male sexual need and enacted their capacity to refuse. In contrast, the wife in fatwa F has internalized her responsibility as duty. However she’s

able to use this same concept of duty to also argue for her release from the marriage, given her admitted failure to meet this duty.

I argue that even though only the mufti in fatwa C has used the hadith and the muftis in the other fatwas A and F have not, the mufti in F can nevertheless rely on this hadith and others like it, which female and male petitioners seem familiar with, to reinforce his ruling. Docrat's reasoning reflects, in the contemporary Deoband madressa curriculum, the emphasis of hadith over philosophical reasonings (Moosa 2015: 120).

To summarise, the discourse that prioritises male sexual need underpins the legal logic of a Muslim marriage and is complemented by views of a potent male sexuality, male financial obligation, continued female sexual availability, female responsibility, sin, and a potentially dangerous, sinful female sexuality that needs to be kept in check.

5.3.4 “She Should Discuss this with Him”.

In Fatwa C, Docrat proscribes the wife's agentival capacity by insisting that her refusal must be preceded by a discussion to ascertain whether her refusal is legitimate. In making space for sexual communication to be initiated by the wife, another temporary power slippage occurs. The wife is given agency by the jurist to verbally explain her reasons for refusal. This slippage is mirrored in Kodir's contention that a nuanced interpretation of the cursing angels hadith provides opportunities for refusal. Docrat states, *“If a woman has a valid reason for not responding positively to her husband, she should discuss this with him”*. The implication is that in the absence of valid reasons for refusal, the power slippage reverts and the dominant dynamic is re-established. The valid reasons alluded to by Docrat may be gauged from other fatwas in my sample⁷⁹ which also deal with women refusing sex; however in each instance the valid reason is decidedly health-related, namely instances of post-natal pain, and pregnancy.

⁷⁹ Refer to fatwa's # 18778 hereon referred to as J and # 24644 hereon referred to as K and # 27692, hereon referred to as L in Appendix B.

In the same fatwas that indicate some reasons Docrat might find valid, we also find the petitioner's, who are all men, are enquiring about the consequent possibilities of achieving sexual satisfaction through masturbation or through their wives touching them.

The petitioner in fatwa J for example asks:

If wife does not want to have sex (because she feels pain in her private parts and also she is tired looking-after her small baby), then is it permissible for the husband to masturbate?

The answer in fatwa J, by a student of Mufti Desai, states:

In principle, it is not permissible for a man or woman to masturbate/self stimulate themselves. This is substantiated by clear juristic texts cited in various books. However, if a husband desires his wife to masturbate him, it will be permissible despite it still being regarded as an undesirable act.

The fatwa concludes by citing texts used in the Deoband curriculum.

Notably, even in the face of an undesirable act, i.e. masturbation, the mufti prioritizes male satisfaction and female responsibility to fulfil it. In fact he uses a distinctive rhetorical persuasive method of citing Deoband sources in this regard. No mention is made in the answer about the wife's agency in regard to masturbation, so that only her physical biological health constraints are regarded as valid reasons for refusal to engage in intercourse. Her feelings about whether she wants to "masturbate" her husband are not considered, neither does Docrat consider her post-partum status. Once again the mufti prioritizes male sexual satisfaction.

5.4 Key Observations

The analysis of the main fatwa C in this chapter, demonstrated that male sexual need and its link to divine approval, is a prominent societal and institutional discourse, and in accordance with the literature, is internalized by ordinary Muslim men and women, and muftis. It is entrenched within the legal logic governing a Muslim marriage, to the

extent that even in the face of women's pietistic concerns and instances of weakened physical health, it is prioritized.

Husbands are familiar with the discourse of male sexual need, and tend to emphasize the link between a wife's refusal and God's disapproval so that the perceived threat to the wife's God-believer relationship arising out of her refusal becomes a coercive tool to prompt her into having sex.

When dealing with male petitioners' sexual needs, some jurists like Docrat resort to familiar hadith texts to buttress this discourse, allowing women limited and inadequate agency, in this instance by advocating for a conditional and restricted sexual communication, which in this case depends on the wife's physical health concerns. Kodir argues that the nuanced interpretive approaches in the *fiqh* to the 'cursing angels' hadith demonstrates that even as jurists use primary sources to buttress dominant discourses, they endeavour to allow women space to refuse sex and to allow for their sexual fulfilment, albeit minimally.

The analysis also supported evidence in the literature that the internalized perspectives of male sexual need presented here in familiar hadith, is not acceptable by some women. This is evidenced too by the agentival role played by the wife in her refusal to engage in intercourse because "she was not in the mood", and is sometimes offset by a discourse of fairness. Determined by life experiences and their internalization of a pragmatic legal Islamic voice and an ethical voice, women evoke the ethical voice by negotiating, resisting or rejecting the discourse of female responsibility to fulfil male sexual need and instead enact their capacity to refuse.

The analysis also exposed the fact that Mufti Desai himself subscribes to the legal logic governing marriage, in line too with the traditional hierarchical Deoband gender ideology. But in chapter seven we will see how Desai also disrupts this gender ideology. For now, I focus on the paradoxical and challenging sub-discourse of female sexual satisfaction where the tension between the legal logic governing a Muslim marriage and its ethical moral paradigm is starkly apparent.

CHAPTER SIX: FEMALE SEXUAL SATISFACTION AND MALE DUTY

6.1 “He Wants to Pay her Rights and Save her from any Sin” Fatwa B

As in chapter five, the discourses on sexual rights are gendered. In this chapter I focus on the discourse of female sexual rights, which is often described as female sexual satisfaction and male duty. This discourse has strong intertextual links to the discourse of male sexual need, and is further linked to the other discourse of mutuality.

Reflecting the discourse of female sexual rights, in an analysis of a fatwa by a Saudi Mufti, Kecia Ali brings attention to the tensions,

... between moral exhortations surrounding wives sexual rights in marriage, and the legal logic governing sex as part of the structure of gender-differentiated marital claims beginning with dower and carried through to divorce (Ali 2006: 9).

These tensions are also evident amongst the fatwas that reflect the discourse of female sexual satisfaction in this study. To illustrate, fatwa #15085, referred to as fatwa B⁸⁰, which was answered by Desai himself.

Question:

May Oral Sex be permissible if the husband is suffering from premature ejaculation and is unable to give orgasm to her wife through vaginal intercourse alone? He wants to pay her rights and save her from any sin? In such conditions may he use oral sex in addition to vaginal intercourse for her orgasm.

Answer:

In the name of Allah, Most Gracious, Most Merciful

Assalaamu `alaykum waRahmatullahi Wabarakatoh

The husband should undergo treatment for premature ejaculation.

And Allah knows best

⁸⁰ Askimam.org. 2011. Fatwa # 15085, 2007. Available from:
< http://www.askimam.org/public/question_detail/15085>. [Accessed 15 October 2015].

Wassalam
Mufti Ebrahim Desai
Darul Iftaa, Madrassah In'aamiyyah

6.2 Description

The petitioner's concern centres on the permissibility of oral sex in the context of premature ejaculation, and further concern for his wife not attaining sexual satisfaction through vaginal intercourse. His questions pertain to two main issues - the permissibility of oral sex, which he asks about twice, and the consequences of his inability to 'pay' his wife's sexual rights and his duty to save her from "any sin".

His reasoning links the lack of female sexual satisfaction, which he calls "her right", to her potential for sin. The husband believes that he is responsible for his wife's sexual satisfaction; it is his responsibility to "save her from any sin" arising from this unpaid right. In response, using a single sentence, Desai prescribes without any elaboration, simply that the husband undergo presumably medical treatment for his premature ejaculation.

6.3 Discussion

6.3.1 Discussion of the Petition

An analysis of the dynamic of female sexual satisfaction and a husband's duty brings into question the legitimacy of the wife's right to sex and who might be responsible for fulfilling that right. Once again the wife is present in the text through her husband's narrative in terms of what he understands her rights are. The use of the active voice by the husband in terms of his actions gives him agentival capacity and control over the situation.

The petitioner's concern for his inability to pay his wife's sexual rights and his duty to save her from any sin, speaks to female sexual rights in the form of satisfaction, and complements the discourse of sexual sin arising out of a dangerous female sexuality. Feminist scholarship on sexuality in Islam juxtaposes ideas of positive mutual

sexuality with a potent and divinely protected male right to sexuality and a socially dangerous and potentially sinful female sexuality (Ali 2006, Sabbah 1986). Ideas on the potent male sexual need were captured in chapter five in the discourse on male sexual need and female responsibility. Here I focus on the latter discourse.

Sabbah's (1986: 34-43) 'omnisexual woman' reflects the interplay between what she calls the erotic and orthodox discourses, is a threat to society, and is kept in check through onerous societal controls, which undermine her potentially dangerous sexual appetite. Unlike potent male sexuality which has multiple opportunities for expression⁸¹ within the context of marriage, the 'omnisexual woman' only has sexual access to her one husband. For Sabbah, the limited options a wife has for fulfilling her sexual needs are what render her sexuality socially dangerous and potentially sinful. This also exacerbates a husband's responsibility to fulfil, to manage, and thus to control her sexuality.

The petition above supports this idea, and the effect is to produce, firstly, a narrative where female sexuality is important and has to be satisfied. Secondly, the sexuality of a wife is her husband's responsibility to satisfy and control, lest she be prompted toward sin. Thirdly, the husband's duty is to also "rescue" her from unfulfilled sexual need to avoid sin. Through the discourse of sin, the wife's God-believer relationship is not dependent only on her individual choices, but also dependent on her husband's efficacy in ensuring her sexual satisfaction.

The petitioner links the wife's rights, to the notion that unsatisfied female sexuality is potentially sinful. He makes himself responsible for saving her from sin by satisfying her needs. In this regard the husband in the petition intends to "save her", his wife, from creating chaos in society through her potential for illicit sexual actions. Couched in these terms, the petitioner appeals to an ethical and "moral exhortation" of female sexual rights which in Ali's view is contrary to the classical "legal logic governing sex" (2006: 9) in a Muslim marriage. The legal logic prioritises male sexual needs and female sexual availability (12). Ali argues that, "whatever the ethical importance of a husband satisfying his wife and thus enabling her to keep chaste"(13) and prevent her

⁸¹ Sabbah contends that for men, extra-marital sex is managed through the legal lawful provisions of polygyny and unilateral repudiation of wives. By contrast, the only lawful way to manage female sexuality is through sexual satisfaction by her one lawful husband (1986: 34-43).

from inflicting “social havoc”, in fiqh texts, “sex is, by and large, a male right and a female duty”. In other words, sex is not regarded as a female right, even though satisfying a wife is a husband’s duty. The reciprocal right to this male duty is not the right of the wife to sex but the right of the society to be protected from the wife’s unfulfilled sexual need. This is illustrated by classical scholar Al-Imam Al-Ghazali (d 505 H/1111 AD) in the book on the etiquette of marriage from his work the *Iḥyā*; “it is true that intimate relations should be more or less frequent in accordance to her need to remain chaste, for to satisfy her is his duty” (Ghazali and Farah 2012: 127).

Evidence that Muslim women too, have internalized this classical fiqh view is noted in an excerpt from fatwa # 30959, hereon referred to as fatwa M⁸². A female petitioner tells the Chicago jurist Sohail ibn Arif that her husband’s lack of attention may lead her to sin:

*...my husband doesn't keep marital relations with me I have spoken to him nicely argued with him even asked for divorce as from his part he doesn't show any intimacy only basic hugs and kisses now n then which just aren't enough....
I don't want to fall into haram out with my marriage I have told him this...*

Hoel and Shaikh point out that “gender-biased religious traditions... are powerful in shaping women’s gendered subjectivity” (2013: 87). Similarly, the woman in this fatwa has accepted that it is her husband’s duty to satisfy her. She uses it in an agentival way though, as a coercive measure to argue for her husband to provide her with ‘intimacy’. In the answer the jurist also relies on the discourse of sin to argue for her right to sexual satisfaction, but he focuses on both female and male sin.

In the answer, ibn Arif in fatwa M, tells the female petitioner:

...Preserving one's chastity is one of the noble objectives of nikāh. Since the need to preserve one's chastity is common to both husband and wife, the right to intimacy also belongs to both husband and wife. As a result, it is necessary for your husband

⁸² See Appendix 2. Refer to # 30959, 2014. Available from: <http://www.askimam.org/public/question_detail/30959>. [Accessed 15 October 2015].

to fulfil your needs to prevent you from falling into harām. Failure to do so without an acceptable reason would make him in a sinner in the sight of Allah.

Ibn Arif initially equalizes both the husband's and wife's sexual rights by linking them to the preservation of mutual chastity. He then insists that the wife's "needs" must be fulfilled by the husband to prevent her from sinning. He begins with a discourse of mutuality, and then undermines this discourse by reverting to a view of a husband's duty to save the wife from a potentially sinful position due to a dangerous unfulfilled sexuality.

In her analysis of the Saudi fatwa mentioned at the beginning of this chapter, Ali points out that "concepts of reciprocity and mutuality permeate even conservative Muslim discourses", even as contemporary Muslim discourse within Western contexts continues to incorporate "strongly gendered understandings of male female sexuality" (Ali 2006: 9). Similarly, Ibn Arif in fatwa M advocates for mutuality in marital sexual relations, while simultaneously grounding his answer within the conservative view of a dangerous female sexuality. His answer, in essence, subscribes to both the rights discourse as well as the duty discourse of *fiqh* texts, further aligning with observations by feminist scholars that discourses of sexual rights are fraught with internal tensions of a simultaneously positive female sexuality and a sinful dangerous one.

Ibn Arif shows the complexity of the dynamic between male duty and female sexual need by making the husband's sin contingent on the wife's sin. The result is a paradoxical shift in power to the wife. He affords the wife some level of control over her husband's God-believer relationship, through her sin. He links the discourse of female sexual satisfaction and male duty to a man's relationship with God. The husband's relationship with God is determined by his actions in how he manages and controls his wife's sexual satisfaction. The jurist doesn't say if the husband becomes a sinner only by virtue of failing to satisfy his wife, thus rendering her sexuality dangerous. Neither does he show whether any sinful actions as a result of her unsatisfied sexuality will incur sin upon him. Either way, the wife's sexual satisfaction is made to mediate the husband's relationship with God.

This differs substantially from the narrative in chapter five on male sexual need, where the wife's relationship was dependent on her responsibility to make herself sexually available and her obedience to her husband who was portrayed as the intermediary between wife and God in such a way that his anger and subsequent disapproval of her made her sinful. There the husband's relationship with God is not influenced by his wife, and is rather dependent on his personal relationship with God and through his individual actions. By contrast, in this narrative, the husband still maintains his personal God-believer relationship, but this time it is determined by his capacity to fulfil his wife's sexual needs and his capacity to keep her satisfied.

There are three main slippages to the dominant discourse on male sexual need, noted in the above fatwa. First, a shift in power occurs when mutual sexual rights are prioritized, female sexual rights are recognized, and when both receive the same priority as male sexual needs. Second, by acquiescing to and then relying on the normative gendered view of a negative and dangerous female sexuality which is a man's responsibility to control, the wife has at her disposal a coercive measure to argue for intimacy with her husband. Third, the jurist, ibn Arif, renders the wife powerful in her ability to control her husband's God-believer relationship by making him a sinner should her sexual needs go unfulfilled.

6.3.2 Discussion of the Answer

Returning to the main fatwa under discussion, fatwa B, even though the framing of the question focused on the permissibility of oral sex in relation to female sexual satisfaction, Desai chose to prioritise male sexual health, strategically answering the question in an indirect way. His answer can be described as prescriptively therapeutic, partially aligning with Larsen's (2015: 210) description of a personal petition, which elicits answers that take "the moral responsibility of the individual for granted". She states these serve a therapeutic function where the Mufti deals with pietistic concerns by providing guidance that is geared towards refining the moral and spiritual growth of the individual⁸³. It appears that in this case though, the response to the petition in

⁸³ As mentioned in chapter two, Larsen describes two main types of questions in fatwas that elicit different responses. She states that in addition to personal petitions, generic petitions elicit informative answers where the "mufti's authority is constructed by virtue of superior knowledge" (2015: 210).

fatwa B diverges from the actual question itself, does not provide any clear moral and spiritual directives, but it does serve a therapeutic function in the form of advice for the petitioner's physical, in this case, sexual/biological well-being.

Desai could have answered in any number of ways. He could have directly answered the actual question by denouncing oral sex and deeming it impermissible, as do numerous other askimam.org fatwas on the subject. But that answer would not have resolved the issue of the sexual rights of both spouses, the sexually unsatisfied wife nor the husband who is not able to sexually perform sexually. Alternatively, Desai could have denounced the oral sex, and instead provided the husband with other options to sexually satisfy his wife. Instead, he focused only on male physical sexual health, prioritising normative sexuality, i.e., restoring the biological ability to ejaculate appropriately and to be able to engage in satisfactory vaginal intercourse. It appears on the surface as if he completely ignored the two concerns of permissibility of oral sex and female sexual satisfaction. But it could also be argued that his rhetorical strategy indirectly deals with both questions; i.e. he solves the problem of male sexual incapacity so that wife may be sexually satisfied through vaginal intercourse. This trend to prioritise male sexual health and not to address female satisfaction is also noted in another fatwa answered by Mufti Ibn Arif. Fatwa # 23651 hereon referred to as N⁸⁴. The male petitioner's request is as follows:

I wanted to know if it was permissible to use One hour Per week for some penis exercises which helps you solving premature ejaculation. I feel that my wife is not fully satisfied with the size and time it takes. I do all my Islamic responsibilities so i basically wanted to know whether this is haram.

Answer:

It would be best first of all to consult a physician to undergo proper treatment for premature ejaculation.

It is also permissible to perform these exercises provided the following conditions are met:

a.) It must not involve any haram – such as watching any sort of instructional video or reading any instructions which contain explicit images.

⁸⁴ Askimam.org. 2011. Fatwa # 23651, 2012. Available from: <http://www.askimam.org/public/question_detail/23651>. [Accessed 15 October 2015].

- b.) If the exercise involves any aid/equipment – or involves any touching of the penis – these should all be operated by the wife and not by husband to himself.*
- c.) The aid/equipment that is involved should not cause ejaculation.*
- d.) The exercises should not result in any harm or bodily injury to oneself.*

Sohail ibn Arif, the same Chicago jurist who also answered fatwa M, frames his answer in relation to both the male petitioner's premature ejaculation problem and the pietistic constraints of penis exercise, ending with a directive to avoid harm or bodily injury to oneself.

The response from Desai in Fatwa B and Ibn Arif's in Fatwa N, indicate that in instances of male petitioners' pre-occupations with their wives' sexual satisfaction in the face of their husbands' physical sexual health issues, the latter is treated with urgency, as are the men's related pietistic concerns. The silence of the jurists on the accompanying concerns over female sexual satisfaction could be viewed in two ways. Firstly, by ignoring the husband's concerns for the wife's sexual satisfaction, Desai may be suggesting that this is not her right aligning with Al-Ghazali's opinion above. Secondly, as Ali (2006: 9) suggests, despite the concerns of the petitioners for female sexual satisfaction, because the legal jurisprudential framework supports the discourse of male need, the discourse of female satisfaction which is only supported by a 'moral ethical' framework and not by the legal logic of the law, is rendered a subordinate status in Muslim legal spaces. Desai's answer could be a reflection of Ali's sentiment:

Despite the scholars' acknowledgement of the importance of female sexual satisfaction in the sexual act, the overwhelming weight of the Muslim legal and exegetical tradition is on women's obligations to make themselves sexually available to their husbands, rather than the reverse. This bias in the sources emerges even in contemporary discussions that attempt to discuss male and female rights in parallel, highlighting the immensity of the task for those who would redefine sex within marriage as a fully mutual endeavour (Ali 2006: 9).

Thus, it could be argued that the lack of additional information in Desai's answer and his reliance only on biomedical advice can be viewed as a responsible way to deal with the biomedical sexual health of his petitioner. But, it could also be a strategy to avoid dealing with the tension between the 'legal logic' governing sex in marriage which prioritises male sexual need, and the ethical "moral exhortations" (Ali 2006: 9)

of female sexual satisfaction. His strategy ensures the sexual needs of both husband and wife are fulfilled without having to undermine either paradigm.

When navigating between the difficult legal concept of a marriage of dominion and the real life marriage where petitioners suggest a certain amount of mutuality and reciprocity in sexual relations, sometimes, as fatwa B demonstrates, the mufti supports both the legal logic and the ethical moral paradigms of marriage. He also avoids the tension between these two when it comes to female sexual rights by prioritising the physical sexual health concerns of the petitioner. In this way Desai facilitates both male and female sexual needs allowing for a slight slippage in the discourse that prioritises male sexual need. At other times, as will be seen in fatwa A in the next section, he leans decidedly towards the moral ethical paradigm. Another fatwa, fatwa D, demonstrates how a student of Desai's does precisely that, within the discourse of female sexual satisfaction.

6.4 “She Says I Do Not Satisfy Her Sexually” Fatwa D

In another fatwa which deals with the discourse of female sexual satisfaction and male duty, fatwa #16306, referred to as fatwa D, reads as follows ⁸⁵:

I got married 2 years ago but my wife seems to be unhappy. she says I do not satisfy her sexually. what should I do? Also can a man and women masturbate each other for pleasure. Also is it haram for a women to reach an orgasm by her husband masturbating her?

Assistant Mufti Muhammad Zakariyya Desai answers in fatwa D using bullet points.

- 1. At the outset, it is important that you consider the feelings of your wife in this regard. If she claims that you are not satisfying her, you should obtain professional medical advice on this issue. You are newly married and should avoid any type of resentment from your wife.*
- 2. It is permissible (Shaami Page 355 Vol. 2)*

⁸⁵ Askimam.org, 2011. Fatwa # 16306, 2008. Available from: <http://www.askimam.org/public/question_detail/16306>. [Accessed 15 October 2015].

6.4.1 Description and Discussion

The question is framed as pietistic concern for a male petitioner in relation to both male and female sexual satisfaction. A young married woman is able to communicate her sexual needs and desires to her spouse who then appeals to the mufti for pietistic directives in relation to mutual sexual satisfaction. An analysis of this fatwa also reveals as in fatwa B, the presence of the wife in the text through the husbands narrative. But here the husband couches the question not in terms of his wife's right to sex, but rather in terms of her needs, desires and pleasures as she has presented them to him. The use of the active voice by the husband and the jurist to describe the wife's claims, in effect recognises her agentival capacity in her experience of sexual satisfaction.

This petition provides clear possibilities for a both a wife and a husband to be satisfied, and also addresses the husband's pietistic concerns. But the answer differs from the others above, in that assistant mufti Zakariyya Desai foregrounds the wife's unhappy feelings and then prioritises the biomedical sexual health concerns of the husband. Thereafter, the mufti returns to the wife's feelings and links it to concern for the preservation of the marriage. The protection of the marriage in the face of the wife's possible resentment at her right not being fulfilled is the basis from which Zakariyya Desai appears to advocate what might be called a 'benevolent masculinity' characterised by kindness and concern for a wife's feelings and needs.

The jurist in this fatwa disrupts the combined discourses of female sexual satisfaction, male duty and sin in favour of a subordinate complementary combination of female sexual satisfaction with mutuality and wellbeing. The focus here is on the discourse of female satisfaction which Zakariyya Desai supports here not as a legal right but as a moral ethical concern for the integrity of the marriage. Here it is viewed as a right in the interests of marital relations based on mutual intimacy, similar to Ibn Arif in his answer on mutual marital rights above in fatwa M. The difference between Zakariyya Desai and Ibn Arif, is that the latter continues to rely on the resilient gendered notions of sexuality. Zakariyya Desai instead deals with the tensions between the legal and

ethical moral paradigms by locating his answer firmly within the ethical moral exhortation of female sexual satisfaction, linking it to female psychological and emotional well-being and male biomedical health concerns, creating a decided slippage in power by validating the wife's resistance to the discourse of male need and recognising her concern for her sexual satisfaction. In doing so, he refers to a Deoband textual source to stress this mutuality in sexual relations.

6.5 Key Observations

This chapter outlined the discourse of female sexual rights by describing the female right to sexual satisfaction and the underlying discourse of female sin that accompanies it. In light of the above, Ali's thesis that the overwhelming weight of the Muslim legal and exegetical tradition is on women's obligations to make themselves sexually available to their husbands and that female sexual satisfaction although recognized is downplayed, may be somewhat true. However, the fatwas analysed in this section also divulge a certain fluidity in the jurists approaches.

They demonstrated that when faced with concerns by male petitioners about female sexual rights in the context of male sexual health concerns, jurists navigated the tensions between the legal logic of a prioritised male sexual need and the ethical moral paradigms of female sexual need by either remaining silent or making a decided shift towards the ethical moral paradigm. The former approach as noted in fatwa B concurs with classical guidelines of the qualities required of a well-trained Mufti of integrity, one of which was reticence and caution in the issuing of fatwas.⁸⁶

In fatwa D, the jurist Zakariyya Desai's answer leaned towards an ethical moral paradigm, deviating from the legal logic of male sexual need as well as the classical gendered notions of male/ female sexuality. Instead he advocates a consideration of the wife's feelings and her psychological and emotional well-being, in conjunction

⁸⁶ As mentioned in chapter four, the job of a mufti has a positive and a negative side. In terms of the qualities of piety and religious knowledge, a mufti is equated with the Prophets, but his errors are so punishable that the mark of a well-trained mufti of integrity is reticence and caution in the issuing of fatwas (Masud et al 1996: 16).

with bio-medical interventions for the husband, bolstering a form of benevolent masculinity and promoting marriage as the primary imperative.

When faced with concerns of female sexual rights by a female petitioner, Ibn Arif in fatwa M advocates for mutuality in marital sexual relations while simultaneously embedding his argument in normative views of a dangerous female sexuality and male duty to satisfy it. This aligns with Ali's earlier two contentions: that mutuality and reciprocity permeate the rulings of even conservative jurists, and that "strongly gendered understandings of male and female sexuality" is found in even contemporary Muslim discourse. Ibn Arif's manoeuvring is a clear reflection of Ali's thesis in a minority Muslim context.

In response to male petitioners, both Ibn Arif in fatwa N and Mufti Desai in fatwa B, located their answers mainly within biomedical parameters, choosing reticence and caution and avoiding the direct question of female sexual rights, couched as female satisfaction, instead dealing with both male need and female need indirectly. Zakariyya Desai's approach in fatwa D, by foregrounding female psychological and emotional wellness and male biomedical health, is indicative of increasingly fluid juristic trends within contemporary contexts. It appears that jurists might understand that the sexual desires, expectations and experiences of ordinary Muslims within modern contexts function within two different discourses - mutuality, and discourses of health and wellness - and that a reliance on considered gendered perspectives of male female sexuality in their fatwas will prove counterproductive. The societal and institutional discourses in this regard will be covered in the next chapter.

This chapter therefore provided a synopsis of first how female petitioners who acquiesce to prominent discourses use the same as a coercive measure to fulfil sexual desires, as noted in fatwa M. Second it divulges how jurists navigate the fraught space between the "legal logic governing sex" in a Muslim marriage and the ethical moral exhortation of female sexual rights discourses within contemporary societies where marriage is increasingly understood as relations of mutuality and reciprocity, and where "gendered understandings of male female sexuality" continue to exist. Third, discourses of health and wellbeing are seen to provide a means to navigate between the two paradigms of a Muslim marriage - from the legal towards the ethical-moral in

terms of women's sexual rights discourses. For example in the fatwas on male sexual inability, the answers prioritised male biological sexual health issues, while in fatwa D where biological health concerns were absent in the petition, Zakariyya Desai prioritised female emotional and psychological well-being. Desai's approach in fatwa A in the next section further supports this analysis.

Finally, what is especially noteworthy in the sample of online fatwas on sexual agency in my study, is that the trend noted by both Marcotte (2015) and Imtoul & Hussein (2009) of male forum contributors ignoring Muslim women's sexuality by "interpolating a Muslim male audience for their comments and thus ignoring Muslim women or by sexualizing non-Muslim women and by default de-sexualising Muslim women", is not overtly displayed here (Imtoul & Hussein 2009: 35). Instead, petitions like some outlined in this section point to male contributors' anxieties with regard to the sexual concerns of their wives, especially in relation to the discourse combination of female sexual satisfaction and mutuality. An overview of the larger sample of fatwas as mentioned in my section on sampling, indicate that this trend is also occurring in the area of contraception and reproduction, inferring that some husbands in contemporary Muslim marriages are demonstrating concern and care about their wives' sexual satisfaction and sexual and reproductive health concerns even if these concerns continue to be grounded within gender asymmetric discourses. For example, it is unclear how many male petitioners' concerns for their wives sexual satisfaction are underpinned by internalized pietistic perspectives of male duty to satisfy and control the potentially chaos-producing female sexuality which if left unsatisfied negatively impacts the husband's God-believer relationship.

An important question raised in the analysis in this chapter is that while it is generally accepted by mufti's that the idea of mutuality exists in questions related to female sexual rights as a discourse of sexual satisfaction, the question of female sexual rights as reciprocal desire, where wives' rights to sex itself and a say to how sex happens and not just to their satisfaction to avoid danger to society within the male dominated sexual act, is another matter. The analysis of fatwa C in the previous chapter revealed that this idea is not so easily accepted especially within the legal logic of a marriage of dominion. In addition, the idea of reciprocal desire is contentious as long as the female sexual rights discourse emphasizes sexual satisfaction as a male duty to protect

society from the potentially chaotic female sexuality (Ali 2006: 13). As Ali asserts, as long as these “gender differentiated rights and duties” which underpin the legal logic of a Muslim marriage continue to exist, mutuality in sexual relations cannot be a requirement, merely an ideal” (13).

Muftis within contemporary societies do understand that marriage is increasingly experienced and understood as relations of mutuality and reciprocity. As established, Desai is informed of these expectations through South African societal discourses. But he is also informed by other petitions on the askimam.org site that point to female petitioners’ expectations of marriage as reciprocal desire too. As a female petitioner in fatwa # 17012, hereon referred to as O, expounds:

When I tell my non-believer friends what girls cant practice polyandry while guys can practice polygny, I find it hard explaining it to them why Allah has programmed women to not be able to have multiple husbands....

It should be the girl's prerogative whether or not to have multiple husbands, even if it may not necessarily be beneficial for her. But if the right has been given to man, women should get it too...The question really is, maybe its hard for some women, maybe other women find it not so hard, but why the ruling only for women to not marry more than one, or carry additional burden. There are many men who would find it hard dealing with mental stress and physical pains too in general life, but why did the religion generalize?

Ultimately, the question of whether women have the autonomous right to initiate sex for their own pleasure and enjoyment as men do, without the underlying negative gendered constructions of a dangerous female sexuality within the fatwas of askimam.org warrants further exploration. Chapter seven sheds some light on the matter.

CHAPTER SEVEN: MUTUALITY

7.1 “Intimate Relation is a Mutual Issue between the Spouses”

There is a mismatch between views of marriage and sexual intimacy as based in mutual consent and reciprocal desire and the entire structure of classical jurisprudential doctrines surrounding lawful sexuality (Ali 2006: xxv).

In this chapter, I analyse the discourse of mutuality through an analysis of fatwa A,⁸⁷ which is another answered by Desai. Earlier we examined the petition in fatwa A to illustrate the dominance of the male sexual needs discourse. Here it serves a further function as we examine the Mufti’s response which produces a further discourse, that of mutuality. The fatwa also provides a glimpse into how the petitioners and muftis on askimam.org remain committed to the legal rules governing Muslim marriage, yet articulate views based on mutuality. Through the use of this and other fatwas, this chapter also explores how conflicts and tensions between the moral ethical logic and the legal logic of marriage as theorized by Ali, are managed by all participants in the fatwas.

Fatwa A is found in the website’s category of marriage, dated Feb 2007 and is generated by a male petitioner from the UK. It is answered by Mufti Desai himself and is therefore a valuable insight into the *iftā* approach of Desai relative to his students.

Question:

“ My wife got very low (sic) sexual desire. I want to have intimacy every other day or after week, she doesn’t let me even touch her. I feel very bad and then I don’t know what to do. Is there any sin when wife reject her husband. Can you please explain to me about this situation.”

Answer:

⁸⁷Askimam.org. 2011. Fatwa # 17537, 2009. Available from: <http://www.askimam.org/public/question_detail/17537>. [Accessed 15 October 2015].

“Intimate relation is a mutual issue between the spouses. Apart from the wife fulfilling her marital obligations, it is important that the husband takes the feelings, tempo etc. of the wife into consideration before becoming upset. By the husband forcing the issue upon the wife, sometimes it could create estrangement in the marriage. Instead of the husband worrying about the sin of refusing him his marital right, rather talk to her and enquire if she experiences any difficulty in doing so. By the husband forcing the issue upon the wife, she will eventually feel used for this purpose and become demoralized which could possibly ruin the marriage and complicate matters further”.

7.2 Description

The petition is framed as a question about sin and presents the interlocking associations of a wife’s low sexual desire and rejection of intimacy and sex with her husband. The husband asserts his own sexual need by expressing how many times a week he wants “intimacy”. He also expresses feelings of helplessness and despondency and appeals to the Mufti for assistance in the form of an explanation about the link between her rejection of him and her sin. As already established in chapter five, through the mention of her sin in the context of her rejection of him, the husband draws attention to the wife’s God- believer relationship to coerce her to make herself sexually available to him.

The Mufti’s answer is framed in terms of emotional/psychological health with interlocking associations of mutual intimacy, wifely obligations and benevolent husbandly consideration. Desai initially locates his argument in a mutual intimacy discourse, then recognizes both the wife’s “marital obligations”, and the husband’s right to disapprove and to be angered by her rejection of him. He asks that the husband weigh the male sexual rights and female responsibility discourse against consideration of her “feelings, tempo etc...before becoming upset”. Desai cautions against forcing the issue of wifely non-compliance, and advises the husband against “worrying” about his wife’s sin in “refusing him his marital right”. He instead advocates for both communication about sexual needs initiated by the husband, and further consideration of a wife’s feelings, which he describes as “feeling used for sex” and becoming “demoralized” which could lead to marital breakdown.

7.3 Discussion

7.3.1 Discussion of the Petition

The petition reveals a slippage in the dominant discourse of male sexual needs as a right towards one of female sexual assertiveness in the form of the wife's choice to refuse. Even as the husband says what he wants by subscribing to dominant discourses of male sexual rights and female sexual availability and sin, as in fatwa C in chapter five above, the wife is simultaneously constructed as having agentival capacity by her refusal of sexual intimacy. The wife shows a certainty in not wanting sex. The husband is uncertain about what to do, about his need for sex, his wife's sin, and what he should do generally. He uses a rhetorical strategy of direct language to describe his wife's rejection and appeals to the legal framework of a marriage to regain his agency. She is thus constructed by the petitioner, as a both powerful subject with agentival capacity making her own decisions with regard to her agency in the sexual arena and a powerless subject of the legal discourse, which portrays her as sinful if she does not fulfil her husband's rights by being sexually available. Arguably, the petitioner's question is framed in terms of the wife's direct disruption of the prominent discourse of husbandly sexual needs and wifely availability, and the consequent God-believer relationship of the wife, which is dependent on her obedience to her husband.

Through the linguistic patterns of transitivity, the husband constructs the wife as having mainly material processes, while he constructs himself as having material, mental and behavioural processes. The wife having mainly material processes implies a level of autonomy and agency in relation to him. She acts without the husband's permission and is not obedient. And he expresses his despondent feelings that result from her agency.

These linguistic patterns suggest a contradiction in the discourse of husbandly sexual rights and wifely obligations, where the two accompanying ideas of female sexual availability and divine approval (noted in chapter five) are undermined in favour of a wife's choice to refuse. Within these competing discourses, the wife is constructed by the petitioner, as a simultaneously powerful subject with agentival capacity making

her own decisions with regard to her agency in the sexual arena and a powerless subject of the legal discourse, which portrays her as sinful if she does not fulfil her husband's rights by being sexually available. Arguably, the petitioner's question is framed in terms of a direct disruption of the prominent discourse of husbandly sexual needs and wifely availability, and the consequent God-believer relationship of the wife, which is dependent on her obedience to her husband.

The petition in fatwa A together with others including fatwa C, D and M above, provide glimpses into how women are making sexual choices with regard to their "desires pleasures and experiences" of sexual intimacy (Lesch & Kruger 2005: 481). Many do this by balancing pietistic concerns with sexual desire, while others also resist the Deoband gender ideology thereby informing Desai and the other jurists of women's contemporary experiences, expectations and understandings of marriage as relations of mutuality and reciprocity.

As an example of the former, the petition in fatwa #31509, hereon referred to as S⁸⁸, reads:

*During haiz if wife insist to have sex using condom when there is very little or almost no bleeding during the three days wait period of haiz.
Is it permissible in islam or not? There is no forcing or desire shown from husband for sex. It is only wife expectation.*

As examples of the latter, the petition in fatwa # 28553 hereon referred to as P reads⁸⁹:

"Have women only been created to satisfy their husbands? Is that the only reason to be a wife? So women don't have any value?"

Similarly the petition in fatwa # 14847, hereon referred to as Q reads⁹⁰:

⁸⁸ Askimam.org. 2011. Fatwa # 31509, 2014. Available from:
< http://www.askimam.org/public/question_detail/31509>. [Accessed 15 October 2015].
See also fatwa # 28092, (hereon referred to as fatwa R) in this regard.

⁸⁹ Askimam.org. 2011. Fatwa # 28553, 2014. Available from:
<http://www.askimam.org/public/question_detail/28553>. [Accessed 15 October 2015].

⁹⁰ Askimam.org. 2011. Fatwa # 14847, 2007. Available from:
<http://www.askimam.org/public/question_detail/14847>. [Accessed 15 October 2015].

How can something that has been created for something else be equal to it? I've always heard that men and women are equal in Islam depending on their actions, but I find it hard to swallow that the very nature of women is to be subservient to men?

Scholarship on fatwas indicates that petitions are valuable sources of research because they provide insights into the actual problems and concerns of particular societies (Larsen 2015; Masud, Messick & Powers 1996). Whether they point to women rejecting the Deoband gender ideology, or provide glimpses into lived experiences where women are making choices in the sexual arena with regard to their 'desires pleasures and experiences', while simultaneously balancing pietistic considerations, the petitions above suggest that some wives exercise agency by making choices reflecting their preferred sexual experiences. In the discussion of the answer that follows we see also that where muftis view women's choices in terms of mutuality they may also recognise that ideas of mutuality and reciprocity are prevalent in modern Muslim marriages.

7.3.2 Discussion of the Answer

A study of the answer finds the mufti using at least five strategies to guide the petitioner toward a discourse of mutuality. He is aware that modern marriage is under social pressure to function on ideas of mutuality, and further that the classical law on which he offers his opinion rests on an imperative to preserve rather than dissolve an existing marriage. Thirdly, he finds value in spouses communicating sexual concerns with each other and next he advocates what may be described as a benevolent masculinity. In the midst of these, Desai also brings attention to the issue of force, which is the final strategy addressed in this chapter.

Linguistic patterns of transitivity reveal that the Mufti constructs the husband as having mainly material and verbal processes, which means he is able to act and speak at will. Desai on the other hand constructs the wife as having mental and behavioural processes, which in the context, affords greater agency of action to the husband in

terms of how the issue should be handled. The language patterns reveal that Desai recognises the husband's dominant role, but at the same time tempers it by suggesting a level of compassionate authority from the husband thereby also assigning the husband a paternal role. He suggests a benevolent consideration of the wife's well-being in the interests of saving the marriage, and also asserts that sexual intimacy is mutual between the spouses.

This analysis is reinforced by the direct language used to describe the husband's agentival and actor capacity in contrast to the passive tense used to refer to the wife's feelings. The Mufti says: "rather talk to her and enquire if she experiences any difficulty". In this way the Mufti affords the husband agency, while simultaneously shifting away from the coercive sin discourse, which relies on divine approval of male sexual right.

In a synchronous move, an additional and significant slippage occurs, when even as the husband's agentival capacity is supported through the use of direct speech on what he should do, nominalisations and passivisations to describe the husband's feelings and concerns converts these into "agentless statements" (Billig 2008: 786). Nominalization and passivisation "especially when used by official speakers lend themselves to ideological uses" (786). This is reflected in the Mufti's inclination away from the discourse of female sexual availability and male sexual right and wifely sin, toward mutuality. This passivisation and nominalization of the husband's feelings, I argue, contradicts other linguistic patterns and allows for the downplaying of discourses of both coercive sin and male sexual right in terms of the "*the wife fulfilling her marital obligation*". The husband's agentival capacity in terms of his sexual right and his wife's sin is somewhat weakened, revealing a possible shift as Desai's answer does not emphasise the normative hierarchical Deoband gender ideology we saw earlier in chapter five. To theorise this shift, I offer an analysis that points to Desai's social context. Desai may be influenced in this regard, by modern communal and societal discourses that challenge this ideology which originates in classical thought on sexual intimacy.

7.3.2.1 Societal Discourses

In addition to being informed by the voices of female petitioners on his website (as divulged in section 7.3.1 above), it can be surmised that Desai emphasizes mutuality, and discourages male force and anger in fatwa A, because he is moreover aware of ideas of equality and mutuality in contemporary societal views of Muslim minority contexts. He is conceivably cognizant of nuances in gender relations in minority contexts like South Africa, where gender symmetrical discourses on sexual health rights exist.

South Africa, as a signatory to CEDAW, has committed to ensuring the sexual reproductive health rights of all women (Department of Health 2011). The Department of Health draft on sexual reproductive health rights (2011) sketches guidelines for the protection of sexual and reproductive health rights of both men and women under the South African legal system. It stipulates:

Sexual health requires a positive and respectful approach to a person's sexuality and sexual relationships. To be sexually healthy, people need to be able to have pleasurable and safe sexual experiences, free of coercion, discrimination and violence. For people to have and keep their sexual health, their sexual rights must be respected, protected and fulfilled.... (Department of Health 2011: 3).

In addition, South African legal discourses are also enmeshed with intra-community debates within the minority Muslim community. Potential conflicts arise out of the two Constitutional imperatives of freedom of religion and right to equality in such a way that the traditional religious practice and understanding of a Muslim marriage encompasses discriminatory practices that do not meet Constitutional imperatives of equality, with the result that Muslim marriages remain unregulated and Muslim wives are severely disadvantaged (Amien 2006; Amien 2010; MacDonald 2010; Rautenbach 2009; Jeenah 2004).

Recent case law points to Muslim women increasingly turning to the South African courts for relief in difficult marriage and divorce situations. Often these court rulings are in contravention of the classical Islamic jurisprudential marriage rules, compelling ulama intervention. Ulama bodies like the KZN Jamiatul Ulama (The Council Of

Muslim Theologians) had, through its inclusion in the United Ulama Council of South Africa UUCSA, participated in developing the latest Muslim Marriages Bill as part of a process towards the recognition and regulation of Muslim Marriages in South Africa (UUCSA 2011; Vahed 2000: 65). According to the darulfiqh website, Desai is an executive member of the KZN council of theologians (Jamiat), meaning he is at least exposed to the debates and contestations of the South African Muslim Marriages process.⁹¹

The linguistic patterns in his answer above point to Desai's shift from prioritising classical legal doctrines on sex in marriage, and could mean that the above societal and institutional discourses provide jurists like him with an overview of modern expectations of sexual intimacy in marriage as infused with notions of mutual consent and reciprocity, and clashing with "the entire edifice of classical thought on sex and sexuality" (Ali 2006: xxvi).

Desai's strategy as informed by his context within South Africa and by his petitioners' expectations as outlined herein, is to discourage the husband from "forcing" his wife. His rationale is that it will lead to the wife feeling used for sex and to feelings of 'demoralisation' and finally to marital breakdown. In this way, there is also an additional tension between the discourse of male sexual needs rights and that of the wife's feelings and morale in the mufti's answer so that the wife moves into a position of power, in that it is assumed that if she feels used in the sexual act she will feel demoralized and exert further choice of non-consent, resulting in marital breakdown.

I will extrapolate from Desai's viewpoints of this in the discourse on health and well-being in the next chapter. For now, this discernible trend to downplay the dominant discourses of male sexual priority and female availability and divine sanction of these, particularly in minority Muslim contexts is evidenced in other fatwas located in minority contexts.

⁹¹ Refer to chapter one section 1.2.4 for more detail.

In fatwa # 19494 (hereon referred to as fatwa U⁹²) from South Africa for example, the petition focuses on the issue of custody, but mentions a woman's refusal to consummate her marriage. The question and the answer deals only with the Islamic legal custody concerns without further mentioning the wife's refusal to engage in sex. Similarly, in fatwa # 28508 originating in the United States (hereon referred to as fatwa V⁹³), and found in the website's category of 'miscellaneous *fiqh*', dated March 2014, the female petitioner asks for clarity on what constitutes a type of divorce called *khula*⁹⁴. She speaks about both herself, her husband and an imam from her community, explaining her reasons for refusing sex. Notably these reasons are not valid ones according to the legal logic of marriage

I was upset i had refused to have marital issues w my husband since he would introduce me as his friend instead of as his wife to his coworkers.

In his answer the Zambian jurist says

....By you refusing to have conjugal relationship due to personal reasons with your husband does not mean the child you are expecting is illegitimate, nor does it mean you are divorced from your husband....

The jurist ignores the traditional idea of a husband's right to sex and wife's obligation to make herself available. He instead foregrounds her question on what constitutes a *khula*, in addition supporting her refusal, by accepting "personal reasons" as a justification.

This adds to the impression that there is a trend in askimam.org fatwas to downplay the dominant discourse of male sexual needs rights, and indirectly sanction a woman's right to refuse. It speaks to the notion of reciprocal desire raised in the last chapter and surprisingly demonstrates that many muftis, by virtue of their silence in the face of overwhelming legal support of male sexual rights, are favouring reciprocity and mutuality within marriage.

⁹² Askimam.org. 2011. Fatwa # 19494, 2011. Available from: <http://www.askimam.org/public/question_detail/19494>. [Accessed 15 October 2015].

⁹³ Askimam.org. 2011. Fatwa # 28508, 2014. Available from: <http://www.askimam.org/public/question_detail/28508>. [Accessed 15 October 2015].

⁹⁴ A form of divorce where the wife secures her release from the marriage by financially compensating the husband (Mansoori 2009: 133).

Having outlined lived experiences as articulated by petitioners in the fatwas, and muftis' responses to normative male sexual rights discourses in the context of modern marriages of mutuality, I now focus on marriage as an imperative and the techniques Desai proposes for protecting it.

7.3.2.2 *The Marriage Imperative*

Desai, stresses the marriage imperative through his attempts to relieve the petitioner's wife from coercion. He asks the husband not to "*force the issue upon the wife*", in case it creates "*estrangement in the marriage*". A few sentences later, he once again expresses concerns over the wife's emotions of being forced into sex and the resulting negative morale, which he says, could "*ruin the marriage and complicate matters further*".

Traditional Muslim thought, also central to the Hanafi Deoband ideology, considers marriage as a safeguard for chastity, and vital to the development and stability of the family, and by extension, the well-being of society. In this respect, marriage is regarded as imperative and incumbent upon every physically and financially able adult Muslim man and woman. Numerous hadith in the corpus of Islamic popular literature on marriage are cited to encourage its uptake and preservation, while Quranic verses like Q 30:21 and Q 2:187, that attest to mutuality and reciprocity are also invoked (Doi 1989: 31; Esposito 1982: 14-15).

In both responses by Desai and Zakariyya Desai respectively,⁹⁵ this marriage imperative is underpinned by the discourse of mutuality. I argue that Desai accentuates this marriage imperative by giving precedence to the wife's feelings and morale, enacting a shift away from mainstream juristic praxis in this regard⁹⁶ (Hoel 2011: 129). The literature revealed the more common experience to be that women are faced with a "marriage at all costs" approach by the ulama and expected to accept unjust and potentially dangerous marital relationships in the "spirit of reconciliation" even in instances of abuse and infidelity. They are unable to get assistance in exiting marriages, and abusive husbands are ignored by some ulama in the interests of

⁹⁵ Refer to Desai's response in fatwa A in this chapter, and Zakariyya Desai's response in fatwa D which is analysed in chapter six.

⁹⁶ As illustrated in chapter two in Hoel's study on women's experiences of the ulama during divorce proceedings.

preserving the marriage, illustrating that the marriage imperative in opposition to mutuality and consent is a dominant discourse within the institutional religious authority structures. Due to the lack of agency experienced by women in terms of divorce, a “marriage at all costs” approach of the marriage imperative can severely hamper the sexual reproductive health choices of women in perilous marriage situations. (Hoel 2011: 129).

Desai’s form of articulation of the marriage imperative in fatwa A on the other hand, moderates the prominent male sexual rights discourse and using both a discourse of mutuality, and a discourse related to feelings and morale - the latter two being indicators of health and well-being. Whether Desai views the wife’s emotional and psychological state as a health issue or purely as a means to an end in terms of the marriage imperative will be explored in the next chapter on health and well-being. Also explored will be the integral connection between spiritual belief and health and well-being, in relation to the notion of *ibādah* (worship) as an important facet of a Muslim marriage.

For now I note that Desai’s position here is in harmony with Zakariyya Desai’s approach in fatwa D already analysed in chapter six, which also favours mutuality and advocates for male biomedical intervention and a sensitivity to the psychological and emotional well-being of the wife. The distinction is that Zakariyya Desai does this in the context of prioritising female sexual satisfaction. He foregrounds the wife’s feelings, before dealing with the husband’s biomedical health concern and the permissibility of masturbation, particularly for the wife’s fulfilment. The newly married status of the couple has a bearing on Zakariyya Desai’s answer, also influencing his interests in saving the marriage.

Combining both Desai’s and Zakariyya Desai’s concern for mutuality we find that their responses also address the “mismatch” between the legal logic and the modern expectations of sex and sexuality in marriage “based on mutual consent and reciprocity” (Ali 2006: xxv). By relying on both the discourse of mutuality and the discourse of psychological and emotional well-being, either as the biomedical sexual health concerns of the husband or the wife’s psychological and emotional well-being or both, they locate their answers away from the jurisprudential logic of marriage

towards 'ethical exhortations' as explained by Ali (2006). As a feature of the mutuality in a marriage, they also advocate for effective communication of sexual concerns between spouses and a form of 'benevolent masculinity'. As Desai says,

...Instead of the husband worrying about the sin of refusing him his marital right, rather talk to her and enquire if she experiences any difficulty in doing so...

The mufti in this case offers an alteration of the authoritative hegemonic masculinity in order to keep the marriage intact.

7.3.2.3 Sexual Communication: Communicating Sexual Concerns between Spouses

The mufti's in the fatwas already analysed, particularly Docrat, Desai and Zakariyya Desai, all advocate for communication of sexual concerns between spouses. Docrat places the responsibility for communicating her reasons for non-consent on the wife. He says, "...if a woman has a valid reason for not responding positively to her husband, she should discuss this with him..." The mufti's proposals in this regard are in line with a study that pointed to sexual communication as an effective strategy to prevent coercive sex and to afford young wives an opportunity to negotiate safe and voluntary sex. One of the key proposals of the study pointed to the provisions by policy makers of providing sex education to young women before they marry, in order to enhance their sexual communication (Pande et al 2011: 102).

Drawing from these considerations, it can thus be suggested that prospective Muslim spouses receive sex education as well as adequate education on the jurisprudential rules governing sex and sexuality, so that the clashes between their ideas of mutuality and consent and the classical edifice of marriage might be better negotiated and managed prior to, and within marriage.

7.3.2.4 Benevolent Masculinity

Bjorn Krondorfer and Stephen Hunt (2012: 198-200) maintain that attempts to reconfigure and alter masculinities so that women are not prejudiced requires unsettling the triad of patriarchy, power, hierarchy and privilege. They state, "power proclaims and enforces gender disparity, hierarchy maintains it, and privilege denies that such disparity exists".

Using their approach, I suggest that Desai, even as he subscribes to and is located in a hierarchical model of gender relations, also attempts to undermine the prevailing gender disparity towards a form of mutuality. He is cognizant of male privilege within the discursive legal space of marriage, and attempts to displace it towards a benevolent masculinity that empowers and enables women. He says, “...it is important that the husband takes the feelings, tempo etc. of the wife into consideration before becoming upset ...” Desai is aware of the jurisprudential gendered limitations placed on women in the context of sexual intimacy, and expresses the possible health and well-being repercussions of such limitations on the wife and ultimately the marriage and the family.

He nevertheless remains caught within the male privilege of the jurisprudential framework. For example, his promotion of a benevolent masculinity continues to be embedded in classical jurisprudential doctrine associated with ideas of the wife’s “marital obligations” and “sin” in rejecting her husband in both the petition and the answer. The idea that the wife has a mediated God-believer relationship, through her obligations to be submissive and obedient to her husband, and the threat of divine disapproval at her refusal, which becomes a coercive mechanism diminishing her human and spiritual wholeness within the bedroom, prevails.

Halkano Abdi Wario (2012: 253), in a study on the constructions of masculinity amongst the peripatetic men of the *tablighi* movement suggests that by virtue of the apolitical stance of Deoband affiliated groups like the *tablighi jamat*, the hegemonic masculinity avoids “some of the most visible forms of masculine power in favour of non-political engagement, avoidance of heated debates of all nature, pacifism, and temporal delegation of household headship” with the result that an ambivalent mix of different facets of masculine power exists in parallel with a normative subservient and subordinate femininity⁹⁷. These are entrenched in the gender ideology of the *tabligh* movement. In his study, Wario theorises the existence amongst the peripatetic Deoband *tabligh* men, of a fluid, alterable and reconstructable masculinity through a “transnational flow of practices of how to be proper Muslim men”. I argue that Desai

⁹⁷ Refer to footnote 76, chapter five for an explanation of this movement.

in this fatwa A and Zakariyya Desai in fatwa D provide similar options in the transnational online space. Thus a similar mobility and fluidity of ideas of masculinity to the peripatetic men of the *tablighi* movement is enacted in the transnational online space of askimam.org, potentially enabling women's agency.

7.3.2.5 Force and Coercion

Desai's strategies in dealing with male concerns of wifely non-compliance in sexual intercourse are to advocate for sexual communication and a benevolent masculinity towards keeping the marriage intact. But he precedes these with advice which dissuades the husband from "forcing" his wife into sex. Desai's rationale links the discourse of force with the emotional and psychological well-being of the wife. He says:

By the husband forcing the issue upon the wife, she feels used for this purpose and becomes demoralized which could possibly ruin the marriage and complicate matters further.

Significantly, Desai does not negate the option of using force. He instead discourages it, citing her feelings and the resultant marital breakdown as the rationale. No jurisprudential logic is used in his answer, warranting an interrogation of this notion of force and coercion as it functions against with the discourse of mutuality. We will recall earlier in this chapter, a male petitioner in fatwa S refers to the idea of male force in a marriage. He declares in the context of sex during menstruation,

Is it permissible in islam or not? There is no forcing or desire shown from husband for sex. It is only wife expectation.

In a framework of marriage that ensures male sexual satisfaction through female sexual availability and where a wife's recalcitrance may lead to physical castigation, the possibilities for forced compliance are real. The literature points to contestations on the recognition of marital rape as a form of violation in Islam (Bennet 2007; Ali 2006). Wadud (2006: 236) suggests further that, "according to *sharī'a*, if a Muslim man desires intercourse with his wife she must comply. If she does not she is guilty of *nushūz* (recalcitrance)", an argument drawn from various interpretations of Quranic 4:34 that the husband may beat his wife if he deems her guilty of *nushūz*.

Relevant excerpts from two fatwas in my sample find that ordinary Muslims and jurists who are committed to the relevance of the classical jurisprudential tradition as a pietistic requisite, experience a tension when the discourse of force intersects with discourse of mutuality. These two fatwas initiated by the same female petitioner, who had been sexually molested as a child, were generated within a few weeks of each other. They lend themselves to a diachronic analysis of the competing discourses of force and mutual consent as it relates to lawful sex before and within marriage. One petition was written before the female petitioner's marriage and the other after. Excerpt of Fatwa # 32049, hereon referred to as fatwa E:

I am to be wed to this guy who is religious and my mom loves him. I on the other hand do not.....

..I do not agree to this marriage, at the start I was ok with it because I told him and my parents I wated to get married a year later after m studies (my mom didn't care..she said I wont find another guy like him).....

...One week ago, I told the guy I feel sad that no one values my opinion, that I wished I could have gotten married a year later then now.....My parents yells at me, threaten to kill me and my mom was about to jump out the window to suceded.....I got a few minor kicks and bruises from them. They said it was my fault for not strongly saying no earlier and now its too late...if they stop the wedding they will lose their respect and won't be able to show their face anymore in the mosque. They also said it'd my fault if no one will marry my other siblings.

..... My mom expects me to connsuamte the marriage, but I am scared. I HATE the idea of him touching me, i feel grossed and throwing up (my mom thought about him, how he maybe he has hope -- she doesn't really care what I feel)...Please help me. I do not feel at peace, I feel like im going crazy.

The petitioner initially remains silent on the issue of marriage, then agrees in principle to the idea, and then finally decides, and clearly articulates that she doesn't want to marry this person. She expresses conflicting feelings in terms of being compelled into a marriage she does not want, of managing parental expectations, of feelings of anger and betrayal at her parents, of her anger at the 'guy' for colluding with her mother, and of feelings revulsion at being touched and the fear of sex with her future husband.

The UK jurist, Saleem Khan, interprets her question as to whether she should go ahead with the *nikāḥ* (marriage) or not. After stating he understands her predicament, Khan completely ignores all the emotional and psychological concerns, the abusive displays of coercion and force, and downplays her agentival capacity in terms of her right to consent to the marriage in Islamic law, and instead emphasises the ‘marriage imperative’ and a trust in her parents and God:

In principle, you are an adult and you have an independent right in Shariah to withdraw from this marriage arrangement. However, in the context of the circumstances you are facing, you seek our help, probably our advice. Often in life we have to distinguish permissibility from practicality. What may be permissible may not necessarily be practical or ideal.

Later on he says:

Our advice is you change your mind-set and proceed with the marriage. Living together will give both of you the opportunity to win over each other’s hearts, which will dominate all negativities. If you trust your parent’s love for you then change your attitude and look forward to making the marriage a success. After adopting all possible means for a successful marriage, place your trust in Allah.

Khan advises the petitioner to get married and to trust in her parent’s choices for her, imposing a normative gendered subjectivity on her, that “*girls are supposed to be apprehensive, and to give the boy the benefit of the doubt*”. Bearing in mind that the legal framework of a Muslim marriage strongly supports female agency in terms of consent before marriage, but severely restricts it within the marriage, it is significant in this instance that Khan advises the unmarried petitioner to disregard her legal right to withhold consent to the marriage. Abdur Rahman Doi (1989) in his book *Women in Sharī‘a*, presents numerous ahadith and Quranic sources that attest to the importance of free consent before marriage (1989: 35). He argues that even the great hadith scholar Bukhari (194-256 H810-880 AD) stressed this aspect of consent to the effect that one of the chapters of his hadith compilation is called: *When a man gives his daughter in marriage and she dislikes it, the marriage shall be annulled*.

In addition, a foundational Hanafi text, which is used in Desai's curriculum in his mufti training institute, *Mukhtasar al Qudūrī*, relates in the book of marriage:

The marriage of a free, major, sane woman is concluded with her consent, even though a guardian does not conclude it [for her], according to Abu Hanifa...be she a virgin (*bikr*) or a previously married woman who had consummated her marriage... it is not permitted for the guardian to compel a sane, major virgin [to marry] (*Al-Qudūrī* n.d: 379-380).

Arising from these theoretical viewpoints, it can be concluded that the idea of consent to marriage is stressed as an important Islamic legal requirement, and a woman's agency in her decision is strongly upheld and respected within the traditional Hanafi legal framework. But after a *nikāḥ*, and particularly after consummation, her capacity or the requirement that she consent to further sex is not a matter of consensus amongst scholars. Many render her consent subordinate to her wifely obedience and subservience to her husband, to the extent that she should make herself sexually available in order to fulfil her husband's sexual right, as is reflected in the fatwa below.

In fatwa # 32362, hereon referred to as F that follows a few weeks later, the idea of force is played out once again, this time in relation to the same petitioner refusing to engage in intercourse or intimacy with her new husband. She mentions that she went ahead with the marriage with the intention of building trust and love before sex. But she is being coerced by both her mother and her husband to consummate the marriage. A section of the petition in fatwa F reads:

Petition 2:" ...They both knew I had my monthly cycle and I wasn't ready. I told them it was in the quran that you shouldn't force a woman or touch her when she's in her monthly cycle but they didn't seem to care...

...My 'husband' knew about my traumatic childhood experience but forced kissed me and touched when I was sleeping...i cried in the bathroom because I felt violated and hurt. I really do not like him, and I feel like I can't full fill my duty as a wife towards him. How can I love someone when I was forced into this? Forced marriage is against islam....

... "I know i won't be able to full fill my duty as his wife, it's not fair to me nor to him"

I don't want this marriage. Never did. Isn't this void?

I observed in chapter five that the theoretical dialectic and the rhetorical patterns this petitioner displays suggest an internalization of the two divergent voices that Ahmed describes, leaning towards the ethical voice through her appeals to fairness within her marriage. Now we can tell that the petitioner also displays a religious commitment to the classical Islamic legal tradition. The first is obvious in terms of petitioning a legal scholar twice, for assistance, and the second is evident in accepting her "duty" to fulfil her husband's sexual needs in her second petition despite her views of what's fair and what's lawful.

I noted in chapter five that a slippage occurs as she resists the discourse of male sexual need. Now this synchronic movement puts her temporarily in a subjective position of power in relation to the discourse of male sexual need and accompanying ideas of force.

The above fatwas demonstrate how a petitioner attempts to balance concerns of religiosity which are located for her in normative legal understandings of marriage (her understanding of wifely duty) with contemporary personal desires and expectations of mutual consent in marriage and arising out of the ethical voice of fairness.

Fatwa E further exemplifies the manner in which a mufti can go beyond psychological and emotional appeals of abuse and force of a petitioner, and her concern about the dominant discourse of consent before marriage, to what he believes is an important issue of the practicality of marriage regardless of the circumstances. In this case he uses a rhetorical strategy of foregrounding his own concern and opinion on the importance of the marriage imperative. The idea of force and the dominant discourse of mutual consent before marriage are both linked to the legal logic of a Muslim marriage. The psychological and emotional concerns of the petitioner and the notions of fairness are embedded in the ethical exhortations of marriage. The analysis suggests that Khan uses his position as a religious authority figure to advise in such a way that he removes the petitioner from a position of relative power as an unhappy

unmarried woman, where she has a legal choice to consent, to one of powerlessness as a married unhappy woman where her lawful choices to mutual consent to sex are diminished and where the idea of force continues to be present. This demonstrates how a jurist attempts to balance his own concerns for the marriage imperative, by shifting away even from the legal rules of mutuality before marriage.

Judging from the excerpts of these fatwas, and the experiences of women undergoing divorce procedures in Hoel's and Shaikh's (2013) study as noted in the literature, the ultimate demonstrator of the tenacity of the marriage imperative in modern juristic discourses is divulged through firstly, a glimpse into how the legal rules of mutual consent before marriage and consummation can be undermined by a jurist, and secondly, how a "marriage at all costs" articulation can also severely hamper the sexual reproductive health choices of women in perilous marriage situations. In both scenarios conditions are created that jeopardise female sexual agency.

As noted though in this chapter, Desai's approach diverges from the juristic praxis in Hoel's and Shaikh's study and to that noted in fatwa E. He also stresses the marriage imperative, but gives precedence to the wife's psychological and emotional health relayed as her "feelings of demoralization" and her potential feeling of being 'used for sex', through an encouragement of sexual communication and a benevolent masculinity.

7.4 Key Observations

The main fatwa analysed in this chapter provided a useful glimpse into how petitioners and different jurists who are committed to the "relevance of the classical tradition" deal with the mismatch between the jurisprudential rules of a Muslim marriage and modern expectations of reciprocity and mutuality in marriage. Through the internalization of both a pragmatic legal Islamic voice on marriage, and an ethical voice, some women evoke the ethical voice by negotiating, resisting or rejecting the discourse of female responsibility to fulfil male sexual need and instead enact their capacity to refuse as theorized by Ahmed (1992: 65-66). The chapter further divulged how female petitioners on askimam.org are challenging the normative hierarchical

Deoband gender ideology, suggesting ideas of mutuality in modern Muslim marriages particularly those in minority Muslim contexts.

Women's experiences, understandings, and expectations of sexual intimacy in marriage, added to South African gender symmetrical discourses within the legislative arena, conjoined with intra-Muslim debates and contestations on the recognition of Muslim marriages, may influence Desai's emphasis on mutuality and restraint of male coercion in fatwa A. Desai's answer in this fatwa differs from Docrat's in fatwa C in its endeavour to provide space for women's refusal within this moral ethical framework.

In chapter six, when faced with concerns about female sexual rights in the context of male sexual health concerns, I argued that jurists deviated from the legal logic of a Muslim marriage towards the ethical moral logic while simultaneously remaining loyal to classical gendered notions of male female sexuality. They accepted that the idea of mutuality exists in ideas of female sexual rights as satisfaction. They also located their arguments at the convergence of discourses of mutuality and health and well-being. In this chapter jurists responded similarly, except that here the "mismatch" between modern expectations and classical jurisprudential rules led to a modulation of the prominent male sexual needs discourse towards ethical moral exhortations. There appears to be a trend on askimam.org to downplay male sexual rights discourses. Through their silence on a women's refusal of sex as demonstrated in fatwas C, U and V, muftis stressed mutuality and attended to the question of female sexual rights as reciprocal desire, where wives' rights to sex and to say how sex happens, and not just to their satisfaction within the male dominated sexual act, is tacitly tolerated. Five possible strategies were revealed to guide petitioners towards this discourse of mutuality.

The pervasive discourse of force and coercion and the tension between a discourse of force and the discourse of mutuality, especially within a marriage was elaborated on. Petitioners and muftis resisted the discourse of force, creating a disruption of power by using health and well-being discourses to argue for legal or ethical strategies to alleviate psychological and emotional suffering. For petitioners, their rationale was undergirded by modern expectations of mutuality in marriage. For muftis, their

rationale was underpinned by the marriage imperative. The tenacity of the marriage imperative in contemporary juristic reasoning and how it can either facilitate or impede women's sexual agency was also recognised. In the former effect, when this imperative is reliant on the discourses of mutuality and health and well-being, it moderates the prominent male sexual rights discourse. In the latter effect, in cases where women are in perilous and tenuous marriage circumstances, it can prove harmful.

Two ethical strategies, sexual communication and an alteration of the hegemonic masculinity to a benevolent but enduring paternalistic masculinity were observed as tools used in the interests of preserving the marriage. It showed that sexual communication as an effective route for protecting young women's sexual agency in a non-liberal tradition like Islam, requires adequate pre-marital sex education as well as knowledge of the jurisprudential rules governing sex and sexuality in a Muslim marriage. Finally, the benevolent masculinity advocated by Desai points to a mobility and fluidity in the transnational online space, of ideas of masculinity which can potentially improve women's lived experiences of sex and sexuality in marriage.

CHAPTER EIGHT: HEALTH AND WELL- BEING

8.1 Introduction

Religiosity and spirituality integrate into the way people come to make sense of their health and well-being. Despite being two separate constructs, religiosity and spirituality are connected with overlapping dimensions that relate to beliefs and practices (Yehya and Dutta 2010: 846-847).

In this study an intertextual discourse of health and well-being extends over all the fatwas referred to in distinctive ways by both petitioners and muftis. The links between health and well-being and to piety through expressions of both religiosity and spirituality are implicit in both the petitions and the answers. Moving from the premise that health includes physical, emotional and psychological well-being, I notice that the discourse of health and well-being is sometimes articulated by petitioners as a pietistic, by which is meant a religious and spiritual, concern related to suffering and affliction broadly conceptualized as physical, emotional and psychological. Muftis deal with these articulations through a variety of legal, pietistic and therapeutic responses.

The first section of this chapter looks at conceptual approaches to, and theological positions on, health and well-being. In the second section I examine the fatwas to demonstrate the mufti's responses to health concerns. An overview of how physical health is conceptualized is demonstrated by fatwas B, D, G and K, L, and M. In terms of social, emotional and psychological health concerns, three responses were identified in the fatwa sample: the first response is spiritual counselling demonstrated by fatwas C and E. The second response is a legal response demonstrated by fatwa F and the third is a preventative therapeutic response demonstrated by fatwas A and D.

Further to the analysis, an investigation into the website indicates an additional potential response which is characterized by the inclusion of someone who is not a mufti. In this scenario, the mufti brings in a professional allied health professional, from the perspective of a sociologist with a background in psychology. I reflect on this briefly here and draw conclusions on it in the following chapter

8.2 Conceptual Positions and Theoretical Approaches

8.2.1 Health and Spirituality

Scholars suggest that spiritual beliefs are integral to physical as well as other dimensions of health and well-being (Ochieng 2010: 104; Ashy 1999: 256.) Participants in Bertha Ochieng's study, for example, argue for the connection between spiritual beliefs, relationships with family and everything else they do.

Spiritual beliefs promoted a broadly holistic view of the individual, which encompassed the physical as well as the psychological, and social dimensions of health and well-being (2010: 104).

Subsequently, any policies or strategies directed at improving peoples' health and well-being are to be coupled with their belief system because,

... the salutatory effects of the spiritual beliefs and practices that result from participating in worship and prayer...[are]... associated with psychological health and well-being (Ochieng 2010: 105).

As an example in Islam, Majed Ashy states:

...praying five times a day helps to reduce psychological stress and to keep the structure and discipline in the life of an individual. It also gives one a chance to express feelings, hopes, needs... (Ashy 1999: 256).

Representative of these views, fatwas in this study show that spiritual and religious beliefs are integral to an individual's physical, social, psychological and emotional health and well-being. In this chapter, petitioners articulate and jurists advocate a reliance on spiritual and religious beliefs and practices when dealing with health concerns. This chapter highlights individuals' varying health needs in the sexual arena to examine the degree to which these needs receive attention and the sorts of attention they receive. Are the physical and emotional and psychological dimensions of sexual health receiving similar attention and are all deemed to be facets of health in the fatwas?

8.2.2 Two Theological Positions

Deterministic and free will theodicy offer two views of health and suffering (Sachedina 1990: 24-25). The “determinist theodicy” describes suffering and affliction as God’s plan to improve humanity. It is either a form of punishment; an expiation of a previous sin or it is a trial, or test of faith from God. This theological positioning prompts a passive response of patience and endurance through suffering, accompanied by dubious attitudes to medical treatment. By contrast, “free will theodicy” features human misconduct through disbelief as a means that leads to suffering. It triggers an “active response” so that the human being who is the cause of his/her own suffering has a responsibility to enact good deeds in the world in negation of suffering. The implication is that “health is preferable to sickness, a strong believer is better liked than a weak one, and seeking a cure does not contradict submission to God’s decisions about humanity”, effecting affirmative attitudes to medical treatment. In his description of the two theological positions, Abdul Aziz Sachedina concludes,

...in contemporary Muslim biomedical ethics, the free will theodicy – founded upon divine justice and human moral agency - has gradually become the dominant approach in dealing with human suffering through illness (25).

It is unclear if in Sachedina’s mind, “illness” appears to be referring to only physical afflictions or not. But, as Ashy explains, Islamic tradition recognises at least four types of disease which attest to the inclusion of other facets too as described by Khan (1986) quoted in Ashy (1999: 256):

Diseases in the Islamic tradition are of four types: spiritual, functional, structural, and superficial.... Spiritual diseases are the most severe, such as schizophrenia. Functional diseases are the disturbances that are manifested in imbalances of temperament. Structural diseases affect size, number, or form of organs. Superficial diseases are those of the skin or hair...

Given that a holistic view of health and well-being includes not just physical but also psychological and emotional dimensions, and that the latter dimensions are within the ambit of “spiritual” and functional” afflictions also recognized as a form of illness or disease requiring treatment, I now intend to ascertain to what extent and how these approaches to human suffering and affliction have been extended to include various

facets of health in relation to sex and sexuality in the fatwas. Petitioners expressed health concerns in multiple dimensions all relating to pietistic concerns and muftis dealt with health concerns in varying ways.

8.3 Muftis Responses

8.3.1 Responses to Physical Health

We saw above that Desai in fatwa B and Zakariyya Desai in fatwa D dealt with the male petitioners' mention of physical sexual affliction - premature ejaculation - by advocating for outside intervention. They applied the "free will" theodicy of contemporary Muslim biomedical ethics when dealing with the physical health concerns of their male petitioners.

Jurists also locate themselves within a biomedical ethical space when it comes to the physical health concerns of female petitioners. In chapter five, a female petitioner in fatwa G enquires about the permissibility of not washing her hair during the ritual purification required after sex, because the frequent sexual intercourse and subsequent ritual washing had created sinus problems and headaches for her. Student jurisconsult Ya'qoob Dadabhai responded with a legal ruling granting her a pietistic concession on the basis of her physical health concerns. Fatwa G showed that female physical health in the face of male sexual need and concerns of piety are also addressed, as legitimate biomedical concerns, which can be alleviated through jurisprudential mechanisms in the context of pietistic concerns. This trend is further exemplified in the mufti's response to the first enquiry in fatwa C in chapter five, where Docrat prioritises male sexual need, yet advocates legal mechanisms to validate the wife's refusal to engage in sexual intercourse. The "valid reasons" which sanction her refusal were illustrated through fatwas K, L and M, as physical health reasons associated with pain and pregnancy.

Clearly when it comes to the physical sexual health concerns of both male and female petitioners, Muftis are attuned with the trends of contemporary Muslim biomedical ethics, enacting and advocating a "free will" theodicy resulting in affirmative attitudes

to either legal manoeuvres or outside interventions. I now ascertain how social, psychological and emotional facets of health are dealt with in general in the fatwas through an overview of the second petition in fatwa C, and then in the context of sexual agency in the other fatwas in the main sample - A, D, E and F.

8.3.2 Responses to Other Dimensions of Health

8.3.2.1 “Place your Trust in Allah”

Earlier, in chapter five, I addressed the first of the two enquiries presented in Fatwa C. In order to further survey how emotional and psychological health and well-being is managed by jurists, I now turn to an analysis of the second enquiry in fatwa C. The petition stated:

1- if a husband ask to his wife for sex, and if she refused oftenly. with reasons that she is not in mood, and after this, if husband indulge in some other immoral and sinful activities, then what would be position of both in front of ALLAH?

2- if a muslim, dont want to live , due to extra stress ,pain, and unhappines in his life, can he commit suicide ? is there any possibility that ALLAH forgive his sin, as he is aksing to ALLAH to resolve his problems but ALLAH didn't (sic).

The second enquiry in the petition centres on pietistic concerns in relation to suicide which is conceptualized as sin. The male petitioner expresses that his appeals to an Omnipotent God to resolve his problems and challenges have not rendered satisfactory results, and asks the mufti if God will forgive the sin of suicide. The petitioner blames the omnipotent God's failure to resolve his various social, emotional and psychological challenges for his suicidal inclinations. In his answer Docrat states:

2) In actual fact, suicide does not put a stop to all problems and worries, rather it puts a start to much more distress and problems (in the Qabr⁹⁸ and in the hereafter). As believers in the Kalimah, we believe in Taqdeer and that all good and bad is from Allah. Many a times Allah Ta'ala afflicts a person with certain problems and

⁹⁸ Arabic word for the grave.

calamities, this is only a test from Allah and he wants to see how we respond to these adverse conditions. Whether we are patient and put our reliance on Allah, or do we turn our backs and have an evil perception regarding Allah. Accordingly Allah Ta'ala will reward the person, whether it is apparent in this world or the hereafter.

Rasulullah has mentioned:

“Whoever kills himself in this world using some kind of object, He will be punished with the same item on the day of Qiyaamah”

If a person makes dua and asks Allah to help and assist him, then he should not lose hope and continue asking Allah. If his duas are not answered immediately, then too, he will not leave empty handed. He will see the fruits of his sacrifice later.

Docrat's argument is located in an eschatological and pietistic framework. He denounces suicide as a way out of “problems and worries”, implies that it creates new “stress and problems” in the afterlife, and appeals to the God-believer relationship. He advises dealing with the psychological, pietistic and emotional concerns of the petitioner, through patience, prayer and reliance on God.

Docrat's answer can be viewed in a number of ways. Firstly, reflecting Ochieng (2010) and Ashy's (2009) analysis, the mufti places prominence on the petitioner's spiritual beliefs as part of health and well-being. Docrat foregrounds the link between the spiritual and the emotional and psychological concerns of his petitioner, firstly by re-establishing faith and belief in Gods omnipotence, and secondly through a description of the theological aetiology of his affliction. Recognising the belief system of the individual allows the mufti to advocate prayer, trust and reliance in God as means through which emotional and psychological health and wellbeing are achieved. Yehya and Dutta (2010: 846) state:

Religion informs the cosmologies within which individuals come to develop understandings of who they are, what health means to them, and the ways in which health choices ought to be developed...It offers an alternative entry point beyond the biomedical model for understanding the ways in which alternative rationalities are constituted in articulating meanings of health, understanding healing practices, and actively participating in health-related choices.

In line with this deliberation, I note that Docrat emphasises the trials of the afterlife, and attempts to dissuade the petitioner from suicide by providing a pietistic alternative

to the biomedical model for health and well-being choices, fully congruent with traditional Muslim thought on the aspect of spiritual disease (as noted by Ashy 1999) which is here expressed as suicidal tendencies.

Alternatively, it can be argued that the holistic view of the individual is undermined when a serious question on suicide is dealt with solely as a crisis of pietistic belief. Docrat, whose training as a jurist does not incorporate psychological or psychiatric expertise, does not refer the suicidal petitioner to a trained medical or allied professional. Instead, the jurist rather adds an additional stress to the petitioner's existing psychological, emotional and mental unease in the form of an eschatological apprehension. Both enquiries are now attached to sin and the sin of suicide in the second enquiry becomes a matter of further pietistic concern when it is also linked to torment in the afterlife.

In this way Docrat services the psychological and emotional health and well-being concerns of his petitioner purely through spiritual leadership. He overlooks the possible positive contributions of health workers and social workers. He also overlooks the potential impact of the male petitioner's mental state on his wife, whom the petitioner complains about in the first question with regard to her refusal to engage in sexual intercourse, which he implies is the cause of his subsequent "immoral" activities in society. In this way the mufti deviates from traditional Muslim values and objectives with regard to counselling which considers both the welfare of the individual and others in society. Docrat's response seems at odds with Mumtaz Jafari's analysis that Islamic counselling considers both the individual and the collective well-being of society (1993: 330-331).

More disquieting and clearly not aligning with Jafari's assessments is mufti Khan's approach to the female petitioner who had been sexually molested as a child and does not want to get married in fatwa E.⁹⁹ This fatwa is important because it deals with the

⁹⁹The petitioner in fatwa E says: "...Two weeks ago, I expressed my concern with my parents. I told my mom i was assulated when I was a child and was kind of scared of marriage and consummating. She didn't care as much expect the fact I was ok and called me stupid because I shared it also with the guy. They won't stop the marriage.....I feel very depressed. And I really hate talking to the guy now, I have bad thoughts like how he would die. I want to run away. My mom expects me to connsumate the marriage, but I am scared. I HATE the idea of him touching me, i feel grossed and throwing up (my mom thought about him, how he maybe he has hope -- she doesn't really care what I feel)".

social, psychological and emotional health concerns of a petitioner in the context of sexual agency. Her question is framed as an appeal for help in terms of her emotional and psychological state and arises out of her trepidation and fear of an arranged marriage.

In response to her acute feelings of suffering and affliction, when Khan prioritises the “practicality” of marriage over the “permissibility” of her not consenting to the marriage,¹⁰⁰ he ignores her psychological and emotional trauma and instead he advocates a pietistic trust in God. He advises her to change her mind-set, proceed with the marriage and place her trust in her parent’s good intentions and Allah.¹⁰¹

To summarise, in contrast to Sachedina’s analysis, Docrat and Khan appear to digress from a free-will theodicy of contemporary Muslim biomedical ethics. They adopt the “passive response” based on “determinist theodicy” to their petitioners’ psychological and emotional suffering, resulting in absolutely no reliance on outside interventions by medical or allied professionals and in Khan’s case no spiritual counselling either for the petitioners’ emotional psychological suffering.

I argue that even if the above two jurists do recognize other facets of health and consider that spiritual beliefs and practices contribute to physical, emotional and psychological health and well-being, they are not trained to deal with severe emotional and psychological health concerns, which they relegate solely to pietistic interventions, thereby controverting even the objectives and values of Islamic counselling to consider the combined individual and the collective well-being of society.

Other Muftis in this study, however, approach the social, psychological and emotional facets of health and well-being differently. They initiate a “free will theodicy”, not

¹⁰⁰ Khan in fatwa E responds: In principle, you are an adult and you have an independent right in Shariah to withdraw from this marriage arrangement. However, in the context of the circumstances you are facing, you seek our help, probably our advice. Often in life we have to distinguish permissibility from practicality. What may be permissible may not necessarily be practical or ideal.

¹⁰¹ Khan further says: Our advice is you change your mind-set and proceed with the marriage. Living together will give both of you the opportunity to win over each other’s hearts, which will dominate all negativities. If you trust your parent’s love for you then change your attitude and look forward to making the marriage a success. After adopting all possible means for a successful marriage, place your trust in Allah.

necessarily located within modern Muslim biomedical ethics, but which nevertheless triggers an active response in varying ways illustrated in the section below.

8.3.2.2 “We Advise you to Seek the Intervention”

A few weeks after her first petition (Fatwa E), the same female petitioner has gotten married and, again appeals for assistance, in Fatwa F. She concludes by asking if what she now considers now a “forced marriage” is possibly “void”, and the rest of the petition points to obvious abuse, and social, emotional and psychological trauma.

1.Mom threatens me (kick me out of the house) to consummate marriage when I felt uncomfortable and didn't want to. She wanted to save face in front of his family.

2.He emotionally blackmails here and there to consummate the marriage.

3.He tells my mother everything, whenever she asked him if we consummated he says no, and then my mom emotionally blackmails me and hurts me.

4.I ended up in a psych ward because I felt trapped and really betrayed by everything.

...My ‘husband’ knew about my traumatic childhood experience but forced kissed me and touched when I was sleeping...i cried in the bathroom because I felt violated and hurt. I really do not like him, and I feel like I can’t full fill my duty as a wife towards him. How can I love someone when I was forced into this? Forced marriage is against islam.

Everyday I come home - I feel sadness. I feel depressed and trapped in my own home. I tried to give it a chance, but right now, I really can’t. I don’t find him sexually, emotionally and physically attractive. We also have culture differences and I just can’t make sacrifices for someone I don’t love.

My parents told me to accept it because allah made me get married for a reason, they said im acting out..but I am depressed and hurting inside. If everything happens for a reason..than why is there such thing as - forced marriages is against islam? Why can’t they see that?

My parents expect me to consummate in summer when i’m suppose to go visit him...I just want to run away. I know i won't be able to full fill my duty as his wife, its not fair to me nor to him.

I don’t want this marriage. Never did. Isn’t this void?(sic).

The Australian Jurist Haris Siddiqui assists by suggesting legal mechanisms for terminating the marriage.

We take note of your negative feelings in the marriage even after giving it a chance. We advise you to seek the intervention of some senior person in the family and some senior 'aalam in whom your parents have confidence and confide in them. Explain to them how you feel and the negative consequences of moving ahead. Request them to assist you to amicably terminate the marriage through a talaaq. Make them explain to your parents that the negative consequences of moving forward in the marriage are probably more than terminating the marriage and it is in their interest to be part of amicably resolving the problem.

Siddiqui's rhetorical strategy does not prioritise the feelings of abuse or trauma. He refers to these only as "negative feelings" and as a rationale for ending the marriage. The psychological and emotional health issues, and the prospects of ending up "in a psych ward", only serve as logical reasons to end the marriage. These issues are not taken up by Siddiqui as health concerns requiring appropriate interventions.

Firstly, Siddiqui's response while it completely bypasses the obvious health concerns, is an active response through legal mechanisms. It is facilitative in that it affords the woman agentival capacity to exit the marriage on the grounds that staying could result in "negative consequence". Rhetorical mechanisms to this effect include the jurist's use of active directives. He tells her to "explain", to "request", to "make them explain", further constructing the woman as having verbal processes, capable of articulating what she wants and convincing others of what is best in the circumstances, placing her in a subjective position of power.

On the other hand, the jurist also constructs the petitioner as powerless because, while he locates power in her, he simultaneously locates power in other male members and also relocates power to her parents. Her agency to exit her marriage must be mediated by a male scholar, and he ignores ethical accountability for her parents' abuse. Instead, she is told to continue to trust in her parents and their involvement in her marriage is accepted. In this way there has not been an interrogation of the ethics of parental involvement, the issues of force and abuse, nor an adequate intervention for her emotional and psychological well-being.

While the way forward proposed by this jurist may at first glance appear facilitative, it is arguably also more onerous and time consuming, possibly jeopardizing her fragile mental and emotional state. To illustrate, the jurist advises that she obtain a *ṭalāq* through a process mediated by a senior family member and a religious scholar. In suggesting she needs assistance he is advocating for the “*aalim*” to convince the husband to release her through the pronouncement of a *ṭalāq*. In the practice of Muslim marriage and divorce law, a husband is not compelled to issue a *ṭalāq*, in which case a wife may apply for a judicial separation (*faskh*). The different schools of law differ on what constitutes a *faskh*, some stipulating stringent requirements, placing undue burdens on women (Mansoori 2009: 155). Relatedly, the literature reveals that Muslim women find it very difficult to exit even long term abusive marriages when they request a *faskh* through a religious scholar. Hoel’s study of women’s experiences with the ulama during divorce proceedings underscores the hierarchical authority of the ulama, noting how their gendered ontological assumptions entrench male privilege, hamper women’s attempts for a *faskh*, and impacts on their sexual reproductive health rights (Hoel 2011: 129).

In contrast to Docrat and Khan who used a passive response to psychological and emotional afflictions, Siddiqui’s approach even as it aligns with the “free will theodicy” in triggering an active response to suffering, provides no indication that the wife’s psychological and emotional afflictions are viewed as a facet of health. The mufti’s response to emotional and psychological affliction is not located in a biomedical ethical framework, but purely within the legal framework of marriage. He also fails to fulfil the holistic requirements of counselling within Islam as described by Jafari and does not view the petitioner in a holistic manner as suggested by Ocheing and Ashy.

Others like Desai and Zakariyya Desai in fatwas A and D appear to be more sensitive to the emotional and psychological well-being of wives and have chosen to promote preventative provisions to avoid suffering in this facet of well-being.

8.3.2.3 “Don’t Ruin the Marriage”

In chapter seven, when dealing with male sexual needs, Desai asks his male petitioner in fatwa A to consider his wife’s feelings and not to force the issue of her “marital

obligation”, advocating for sexual communication and a benevolent masculinity. Similarly, Zakariyya Desai in fatwa D in chapter six, when dealing with female sexual satisfaction in the context of premature ejaculation, also advocates consideration of the wife’s feelings even as he prescribes medical interventions for the husband. Both jurists appear to be sensitive to the emotional and psychological well-being of wives and have promoted preventative measures that avoid suffering in the interests of keeping the marriage intact.

Here the marriage imperative is linked to a wife’s emotional wellbeing, the premise being that a healthy emotional and psychological state promotes the chances of a marriage remaining intact. This could stem from the idea that a Muslim marriage comprises both of a spiritual (*ibāda*) and relational (*muāmalā*) component (Mansoori 2009: vii).

In line with Ochieng’s and Ashy’s opinions, the *ibāda* component of Desai’s fatwa is twofold. In the first, the mufti considers providing sound legal advice a form of worship or a pietistic duty which is enhanced by encouraging the couple to remain married. Second the couple that remains married is also performing a pietistic duty when they persevere through their challenges to make the marriage succeed. Maintaining the integrity of Muslim marriage is a pietistic practice for both the mufti and the petitioner; through the fatwa both are “participating in worship and prayer” (Ochieng 2010: 105). Saving the marriage is a form of worshiping and pleasing God, and contributes to the petitioner’s psychological and emotional wellbeing. So in Desai’s answer in fatwa A in the previous chapter, even though he does not advise marriage counselling with a suitably qualified professional, the mufti takes on the role of cyber-counsellor and religio-legal advisor and accordingly advocates for a consideration of the wife’s emotional and psychological state to keep the marriage intact. This analysis suggests that responses which consider the emotional and psychological well-being of a wife are triggered by a marriage imperative which is regarded as a form of participating in worship.

In addition, it could be argued that Desai has internalized the Islamic traditional views on disease as described by Ashy earlier, and therefore sees emotional and psychological illness or affliction as a spiritual or functional facet of health and illness

(Ashy 1999: 256). In this regard he adopts the “free will theodicy” approach, and offers what Sachedina describes as an “active response” to his male petitioner’s emotional suffering in the form of cyber-counselling. Through the encouragement of a benevolent masculinity and adequate sexual communication, Desai also aligns with the goals and values of Islamic counselling, which in this case is to firstly develop the male petitioner’s Islamic self (*nafs*) which “needs to be healthy, balanced and well integrated” where the self is “directed towards a pursuit for the pleasure of God”, and ultimately towards its own contentment (1993: 330-331). Secondly, by advocating a consideration for the wife’s feelings of demoralization and being “used” for sex towards the goal of keeping the marriage and by extension the family and society intact, Desai aligns with the additional objective that counselling in Islam “...is not concerned with the welfare of the individual only; it seeks to achieve the wider social well-being” (Ashy 1999: 336).

This speaks to the competencies of the mufti’s, who are not trained in the biomedical or allied socio-psychological therapeutic field, but rather in the jurisprudential and spiritual traditions of their Deoband jurist training.¹⁰² This is reflected in the above rulings on physical health in which muftis refer petitioners to outside interventions, but not so for other facets of health. Desai’s approach is a clear example of this. He advocates interventions for premature ejaculation as seen in fatwa B in chapter six, but does not advocate interventions by a marriage counsellor or other allied professionals in fatwa A in chapter seven.

In this regard, because emotional and psychological afflictions are also regarded as “spiritual” or “functional” afflictions, they are dealt with by muftis in a therapeutic way and solely within the juristic space, as seen in fatwas C and E and F. But the question arises on whether the muftis’ training in the spiritual and jurisprudential space is sufficient to provide a remedy for emotional and psychological sexual health afflictions. This is especially significant when the muftis’ concern for the wife’s emotions are undergirded by the classical philosophical underpinnings of gender difference, ideas of male-female duality and chaotic female emotions.

¹⁰² For an overview of this Sufi inclination in the Deoband school see chapter one section 1.2.2 .

Philosophical thought demarcates the duality of the male and the female and this philosophical imprint was incorporated into the Islamic intellectual tradition. Etin Anwar traces it back to

... Plato and Aristotle and later to modern philosophers such as Descartes and Kant...[and encompasses] a dualistic understanding of humanity in which male is associated with reason, spirit, and mind, while female is associated with nature, matter and body (Anwar 2006: 11).

The gendered divide between mind and body meant that women were associated with matter and a chaotic assemblage of emotions and feelings, while men were associated with reason and control. Desai's answer, in fatwa A, even as he proposes a benevolent masculinity, points to this philosophical preference, as husbands are asked to consider the emotional state of their wives in a paternalistic way.

Calling for the rejection of this "gendered split between mind and body", Shaikh suggests that the construction of the human being in classical Islamic thought was based on the presumption that the

...normative being at the centre of religious thought was male... [so that] ...the female human becomes the Other, thereby diminishing a human wholeness and spiritual potential. This conclusion is one that runs contrary to the very essence of qur'anic ethics and has enormous repercussions in the lives of Muslim women in various ways (2004: 107).

Representative of Shaikh's analysis, the accepted normativity of a wife's "sin" of rejecting her husband in both the petition and the answer in fatwa A resonates with similar stances in the other fatwas in this study. The mediated God-believer relationship of a wife through her obligations to be submissive and obedient to her husband, and the danger of divine disapproval of her refusal, becomes a coercive mechanism within the bedroom, diminishing her human and spiritual wholeness. This challenges the assertions that spirituality is "particularly beneficial for the health of individuals", and further, the argument that "the positive aspects of a spiritual dimension need to be introduced and valued in strategies to promote health and well-being" (Ochieng 2010: 107).

Drawing from Shaikh's theory, the primacy of the wife's feelings in Desai's answer could denote that his goal is not so much to protect her psychological and emotional health in order to ensure her wholeness and spiritual potential, but rather a means to achieve the marriage imperative. For as long as the philosophical ideal of the female associated with the body remains, the muftis' role as cyber-counsellors will continue to diminish women's wholeness and spiritual potential, limiting the subject positions available to women, and their ability to be positioned as powerful within the discourse of health and well-being.

In summation, the above fatwas indicate when it comes to the physical sexual health concerns of both male and female petitioners, muftis, including Desai, are attuned with the trends of contemporary Muslim biomedical ethics, and advocate a "free will" theodicy resulting in either legal manoeuvres or outside biomedical interventions. By contrast, psychological and emotional afflictions, even if they are viewed as facets of health, are not viewed as requiring professional interventions. They are either dealt with through spiritual pietistic counselling or by using legal or in-house therapeutic mechanisms. Notably, these approaches do not encourage of outside interventions by medical or allied professionals. The question arises on whether Desai as author and head mufti of askimam.org recognizes that muftis' training which is largely within the spiritual and jurisprudential space, might be insufficient as a remedy for emotional and psychological sexual health afflictions.

8.3.2.4 *"Seek Professional Help"*

After perusing the fatwas on askimam.org, it is not possible to suggest that Desai as the chief mufti and principal authority on the website does not recognize the need for allied professional input when dealing with social, mental and emotional health. The presence of what appears to be an in-house female counsellor and social worker on askimam.org reveals a more holistic intention in petitions relating to emotional and psychological facets of health.

Sister Fadila has a B.A. in Sociology & Psychology from Unisa (University of South Africa), and is regarded as a qualified social worker. A quick website search with the keyword "fadila" reveals numerous petitions by men and women, which are answered

by her, dating back to 2007. Like the other scholar jurists, these are also “approved and sanctioned” by Desai, with the only distinctions being that sometimes Fadila also provides her contact numbers for petitioners to contact her directly and that the petitions answered by her require psychological and therapeutic input.

I argue that the inclusion of her expertise on his website and the manner in which he trusts and sanctions her answers, reveals Desai’s inclination to recognize general emotional and mental discontent as a health concern that warrants professional input, outside the ambit of a jurist’s expertise. But an inconsistency amongst the fatwas on the website as noted in discrepancies between Desai’s position in Fatwa A, Docrat’s in C, and Khan’s in E, demonstrates the tensions between the traditional approach by muftis to psychological and emotional health which is viewed as spiritual health requiring pietistic interventions only, and an approach to these dimensions of health which are informed by ethical concerns arising out of petitioners’ lived experiences and expectations of mutuality in modern marriages. This inconsistency is also apparent in the variations between Desai’s personal approach and the fatwas of his student muftis which he nevertheless approves and sanctions. It is unclear too, about what criteria are in place on askimam.org for petitions to be answered by Fadila, leading to a further inconsistency in the fatwas.

These inconsistencies may be due to one, or a combination of three possible reasons: firstly, to the difference between the interpretive abilities of, and restrictions on the teacher Desai as compared to his students (more on this in the concluding chapter), secondly, to the fluidity of the constantly changing online space, or thirdly, because of possible administrative constraints in terms of how petitions are allocated to the different jurists. As a latter case in point, the two questions in fatwa C of a wife’s rejection of her husband and his suicidal tendencies which are managed entirely by Docrat in 2009, contrasts with another petition answered by Fadila in 2007.¹⁰³ She receives two questions, one legalistic and the other therapeutic from a male petitioner. The first centres around the legal rules of the time of post-coital *ghusl* (obligatory bath), and the second question deals with the petitioner’s emotional and psychological trauma as a result of witnessing his father’s violent attacks on his mother, and his own

¹⁰³ Refer to fatwa # 15840 referred to as fatwa T in Appendix 2.

childhood experience of abuse. In her lengthy answer Fadila answers the first question like a jurist would, using traditional *fiqh* legal sources. The second answer is purely therapeutic, and at one point states:

“...it is also important that you, your brothers and your sister, seek professional help immediately”.

This is exceptional, because apart from instances of physical health concerns, such as premature ejaculation, none of the jurists in my sample refer petitioners to health care professionals, or to any other medically aligned intervention when faced with the psychological or emotional facets of health. This aspect is managed purely through spiritual or legalistic religious interventions.

Overall, although Desai’s inclusion on his website of a female health professional schooled in both sociology and psychology warrants additional investigation, it can be inferred from her inclusion that he views psychological and emotional afflictions as dimensions of health and well-being, which cannot be resolved solely within juristic jurisdiction. In this scenario, even though the philosophical underpinnings of chaotic female emotions as based on gender differentiated notions of difference may still prevail, Fadila’s presence suggests that facets of health which are not physical may be situated not only in a biomedical ethical space, but perhaps also in a context of therapeutic social, psychological and emotional ethics.

A point of contemplation is that apart from Fadila, no other sociologist, psychologist or allied professional is referred to in any of the fatwas in the larger sample, pointing to Desai’s control over the extent of inclusion of allied health consultants on his website. Bunt has observed that as a “means of projecting Muslim authority”, the Internet offers options for “a long-term and technologically adept integration of religious symbolism and traditional notions of power” (2003: 2). But through the incorporation of sister Fadila’s expertise and opinions into the legal interpretive space of the online fatwas of askimam.org, Desai’s approach aligns with Bunt’s additional assertion that the internet also “breaks the monopoly of traditional Islamic scholarship and leadership”, partly due to non-traditional centres of scholarship, authority,

organisations and individuals entering into the information marketplace and “influencing traditional regions of Islamic learning” (2).

In this way, as scholars suggest, even though established religious entities use the Internet to further entrench conformity and compliance with authority, the Internet has also engendered “new usages and practices, which could significantly shape the production and consumption of knowledge”, particularly in decision making and activism - two principle zones in cyberspace (Anderson 2003; Bunt 2013; Chawki 2010; Kutscher 2009; Sisler 2011: 69).

By answering some online fatwas as a mufti would, Fadila, a female sociologist, disrupts the traditional interpretive legal framework of the *adab al-mufti* treatises, potentially creating new “usages and practices”. No mention is made of her having received mufti training either and this results in a reformulation of traditional notions of ulama. Her presence significantly alters the normative attitude of the fatwas above, so that emotional and psychological afflictions are not just deemed pietistic concerns. They have a significant dimension of health, requiring expertise outside the ambit of the jurists and affiliated possibly with “contemporary Muslim biomedical ethics” (Sachedina 1990). The clear distinction between Desai’s approach as compared to his students indicates that this view has not filtered through sufficiently. As mentioned, Fadila’s inclusion and her contributions on askimam.org certainly warrants further research.

8.4 Key Observations

This chapter explored the discourse of health and well-being across all the selected fatwas in the sample. In the first section, conceptual and pietistic considerations were outlined. Drawing on Ochieng’s, Ashy’s and Jafar’s research, it was established that spiritual belief and practice is important for the physical emotional and psychological health and well-being of an individual, that in Islamic tradition illness or disease incorporates all dimensions, and that counselling in Islam is concerned with the welfare of both the individual and society through submission to God.

Varying articulations of suffering and affliction are linked to theological positions which in some articulations advocate a “passive response” in relation to the “determinist theodicy”, resulting in sceptical approaches to treatment options, and in other articulations advocate an “active response” in line with “free will theodicy”, resulting in the promotion of treatment interventions.

The second section looked back over all the fatwas in the sample and noted the main trends that inform an analysis of the dynamic of the health and well-being discourse. Overall, petitioners expressed health as encompassing various dimensions, and all relating to a pietistic dimension. Some expressed physical constraints as seen in fatwas B, D and G, others in the main sample, expressed a host of emotional and psychological challenges such as sadness, hopelessness, depression, suicidal tendencies, and despondency. Petitioners positioned themselves strongly within the discourse of health and well-being and the complementary discourse of mutuality in their appeals to muftis for alleviation of their suffering.

Mufti’s respond to articulations of suffering and affliction in varying ways linked to theological positions as described by Sachedina. Some advocate a “passive response” in relation to the “determinist theodicy”, and others advocate an “active response” in line with “free will theodicy”. Questions were raised about whether varying health needs in the sexual arena receive holistic attention. In particular, I explored the way in which the physical dimension of sexual health and the social, emotional and psychological dimensions were conceptualized in the mufti’s answers and what treatment solutions were specified.

When faced with male and female physical health concerns, muftis generally offer a solution in line with a biomedical ethical framework confirming Sachedina’s thesis that in the face of “illness”, which is conceptualized as a physical health affliction, the ‘free will theodicy’ has become the dominant approach in Muslim biomedical ethics. Even when prioritising male right to sexual fulfilment, muftis downplay this right in favour of the wife’s “valid “ reasons for refusal based on physical health and wellbeing, and offer legal mechanisms or outside interventions, as noted in the analysis of fatwa C and the accompanying K, L, and M.

By virtue of traditional Islamic views on disease and illness, which consider non-physical facets of health as spiritual and pietistic concerns, even when the “freewill theodicy” and the subsequent “active response” is enacted by jurists in these cases, solutions are not located in biomedical ethics, but rather in accordance with a pietistic, jurisprudential and therapeutic agenda. When faced with various facets in the context of sexual health, such as social, emotional and psychological concerns, muftis responded in three ways. First, as noted in fatwas C and E, Docrat and Khan enact a “determinist theodicy” and locate their answers in line with spiritual pietistic frameworks only. Second, Siddiqui in fatwa F enacts a legal response in the form of a legal tool, in this instance a *ṭalāq* mediated by a male third party. He completely ignores the petitioner’s obvious psychological and emotional health afflictions, and does not advocate any spiritual or additional allied professional interventions. Third, Desai and Zakariyya Desai in fatwas A and D are sensitive to the emotional and psychological well-being of wives and choose preventative therapeutic measures to avoid suffering in this facet of well-being. Both latter responses also align with the ‘free will theodicy’.

The two muftis, Desai and Zakariyya Desai, do not deal with non-physical facets of health within the ‘biomedical ethical space’ (as is done for physical health concerns), but their reasoning is rather situated within an ethical space of marriage. They are distinct from the other muftis in the sample though, in that they also deal with emotional and psychological facets of health in accordance with the holistic objectives of Islamic counselling through the therapeutic strategies of sexual communication and benevolent masculinity to maintain the stability of the marriage and the family in society. Other muftis appear more concerned with the welfare of the individual in relation to God, and the emphasis on the individual in relation to both society and God is minimal.

Of significance too, even though Desai, the chief mufti of the site, responds to physical health issues within both the ethical moral paradigm of marriage and the biomedical ethical space by advocating for outside interventions, he does not similarly advocate interventions by a marriage counsellor or other allied professionals in fatwa A; neither does he provide compelling legal rationales for his ethical moral positions. The implication is that in the mind of the jurists, treatment for physical health is

considered primarily in terms of a biomedical model. Whether this is the case for all physical health constraints appearing on the website cannot be established and requires further research. On the whole, mufti's competencies are highlighted in that they are clearly not trained in the biomedical or any allied field, but rather only in jurisprudence and spirituality. And while physical health concerns are mainly preferred for biomedical or other interventions, no mufti refers to an allied health professional when emotional and psychological sexual health concerns come to the fore.

A further potential response to other dimensions of health on askimam.org was provided by the presence of Fadila. The style and number of fatwas answered by her attests to Desai's inclination to recognize emotional and psychological discontent as a sexual health concern that warrants professional input outside the ambit of a jurist's expertise, not located necessarily in a biomedical ethical space, but perhaps in a therapeutic ethical space. Her presence and input also substantiates scholars' claims of the Internet's potential to create new "usages and practice" (Sisler 2009: 59) so that the traditional legal interpretative space incorporates juristic expertise along with the expertise of health and allied professionals.

The fact that her expertise is sought also potentially disrupts the muftis' role as the only cyber counsellors on askimam.org and allows for professionals with different ideologies that are not underpinned necessarily by philosophical imprints of gender. In this way, drawing from Shaikh's theory, women's wholeness and spiritual potential might not be diminished and they might be afforded more powerful subject positions within the discourse of health and well-being.

CHAPTER NINE: COMPETING AND COMPLEMENTARY AGENCY IN THE DISCOURSES OF WOMEN'S SEXUAL AGENCY

The fatwas analysed in this study revealed competing and complementary webs of discourses in relation to women's sexual agency. Using feminist post structural discourse analysis and the analytical frameworks drawn from the *adab-al-mufti* treatises as described by Masud, Messick and Powers (1996), four main discourses were identified. These were male sexual rights, female sexual satisfaction, mutuality, and health and wellbeing.

In response to the first research question on the discourses on sexual agency in the fatwas, sections one and two of this chapter present a brief methodological commentary and key findings, noting how both petitioners and muftis engage with the identified discourses. Complementarity, tensions, and disruptions in the interplay between these discourses are exposed. Section three addresses the second research objective, namely to gauge the extent to which the fatwas enabled the negotiations of women's sexual health, revealing varying approaches to the different health dimensions by both petitioners and muftis. Finally, section four details additional prominent discourses which were identified in the fatwas and which played a significant role, pointing to the need for further research.

9.1 Petitioners Approaches to Sexual Agency Discourses

The analysis shows that sexuality in the fatwas is gendered in terms of a discourse of male sexual need and female sexual availability. In situations where wives refuse to engage in intercourse, male petitioners position themselves strongly within these discourses¹⁰⁴ and position their wives as relatively powerless. A complementary discourse of divine approval and wifely sin supports this position so that the perceived threat to the wife's God-believer relationship arising out of her refusal becomes a coercive tool to prompt her into having sex. This additional discourse is further examined below.

¹⁰⁴ This tendency was seen in petition one in fatwa C in chapter five and in fatwa A in chapter seven.

It is further evident that the discourses of male need and female availability do not operate independently. They interact with other discourses, which may in some situations allow a woman¹⁰⁵ to locate herself in a strong position in the discourse of male sexual rights using ideas of fairness, which she may also apply to both herself and her husband. In doing so a wife may disrupt her ordinary position of powerlessness and prioritise her personal desires and expectations of mutual consent, values characteristic of contemporary understandings of marriage.

Importantly for this study, women also use the health and well-being discourse as a means to acquire agency within the sexual realm. A woman may use the discourse of male sexual rights to argue for an annulment to release her from a marriage where she cannot fulfil a husband's rights because of her emotional and mental state, in this way positioning herself strongly within the discourse of health and well-being.¹⁰⁶ In yet another situation where a woman's physical health is affected due to excessive sexual demands as a newly-wed, a female petitioner positions herself as powerless within the male sexual rights discourse,¹⁰⁷ but simultaneously also positions herself as powerful using a discourse of health and well-being. This suggests that a powerful position within the discourse of male sexual rights does not necessarily guarantee that male sexual need is always prioritised by both wives and muftis in the fatwas in this study. In some fatwas,¹⁰⁸ wives were themselves powerful in their refusal to engage in sexual intimacy while in others, as in chapter six, both men and women positioned wives strongly within competing discourses of male and female sexual rights discourse to which was added the complementary discourses of mutuality and of health and well-being.

¹⁰⁵ Refer to the analysis of fatwa E and F in chapter five and seven.

¹⁰⁶ In the face of severe physical, emotional, and psychological suffering, the female petitioner in fatwas E and F locates herself both as powerless and powerful within the health and well-being discourse. In fatwa F she assumes power within this discourse when she uses her emotional and psychological state to argue for a legal mechanism to exit the marriage.

¹⁰⁷ See fatwa G in appendix 2.

¹⁰⁸ Referring to fatwas A and C in chapters five and seven respectively.

In some situations a link is forged between the male and female sexual rights discourses and the portrayal of female sexuality as negative and dangerous.¹⁰⁹ In these cases, both male and female petitioners position the wife as simultaneously powerful and powerless by relying on the normative gendered view of a dangerous female sexuality that is a man's responsibility to control. In fatwa M for instance, where the couple are having marital problems and the husband chooses not to have sex with his wife, she uses the potential danger of her unmet sexual need as a coercive measure to argue for her right to sexual intimacy and his duty to fulfil that right.

Lastly, the analysis in chapter eight revealed that petitioners also link suffering and affliction in all facets of health and well-being to pietistic considerations.¹¹⁰ Thus, petitioners position themselves strongly within the discourse of health and well-being and the complementary discourse of mutuality in their appeals to muftis to alleviate their suffering and facilitate agency within the sexual realm.

9.1.1 Key Findings – Petitioners

Askimam.org petitioners demonstrate how contemporary women and men are making choices in the sexual arena with regard to their “desires pleasures and experiences” (Lesch & Kruger 2005: 481), exploring possibilities for sexual satisfaction and intimacy and how these are weighed against pietistic concerns.

Determined by life experiences and an internalized ethical voice, and consistent with observations in the scholarship,¹¹¹ women in the fatwas negotiate the pragmatic legal aspects of sexuality by negotiating, resisting or rejecting the discourse of female responsibility to fulfil male sexual need and instead enact their agency in a variety of ways, amongst these the capacity to refuse.

¹⁰⁹ Referring to fatwas B and M. Also refer to section 9.4 for further extrapolation on the discourse of sin in relation to the view of a dangerous female sexuality.

¹¹⁰ Chapter eight included an analysis of all the fatwas in the study. This tendency was demonstrated particularly in the analysis of the second enquiry in fatwa C and the petition in fatwa E.

¹¹¹ As already noted, Ahmed (1992: 66) refers to women's negotiations of the ethical and pragmatic voices. Building on Ahmed's thesis, Hoel and Shaikh's (2013) study on negotiations of sex amongst South African women demonstrate this trend too. See chapter two section 2.2

Male and female arguments in the fatwas prioritise female sexual need and resist hierarchical and normative gender constructs, which integrate male desire with female subservience and obedience. Some women in the fatwas shape powerful subjective positions for themselves, by locating themselves boldly within discourses that otherwise render them powerless. Women also identify positions of power within discourses of mutuality and health and well-being, and prioritise ideas of mutuality and reciprocity in modern Muslim marriages particularly those in minority Muslim contexts.

But they simultaneously display a pietistic commitment to the classical Islamic tradition. This aligns with Ali's thesis that many Muslims remain thus committed, but experience a tension between traditional marital norms which prioritise male need and female availability and the stress on "consent and mutuality in contemporary Muslim discourses on marriage and gender relations" (2006: xxiii). In this regard, the petitioners in the online fatwas on askimam.org are much like Muslim petitioners in Europe who

...seek fatwas as authoritative legal and religious opinions that can help them navigate the tensions and conflicts arising from the new realities of their marriages and family lives. They are aware of the traditional norms regulating gender relations, but their daily experiences of their marital roles diverges from these norms" (Larsen 2015: 215).

9.2 Muftis Approaches to Sexual Agency Discourses

This study revealed that muftis are not uniform in their approach to the sexuality discourses presented by the petitioners. In the face of male petitioners' complaints about their wives' refusal to engage in intercourse, a mufti like Docrat located his answer within the legal space of a Muslim marriage entirely, placing a heavy reliance on foundational textual sources. He positions the male petitioner as powerful within the male sexual right discourse and the wife as powerless, subservient and obedient to the husband.¹¹² Docrat nevertheless allows a temporary slippage in power when he makes space for sexual communication to be initiated by the wife. The wife is given

¹¹² See the analysis of fatwa C in chapter five.

agency by the jurist to verbally explain her “valid” reasons for refusal which other fatwas established as biomedical reasons.¹¹³ The wife is located in a position of power in this regard within the discourse of health and well-being, because her physical biological health constraints are regarded as valid reasons for refusal to engage in intercourse. This slippage in power aligns with Kodir's (2007: 67-90) thesis¹¹⁴ that even through a reliance on foundational texts which position women as powerless within the male sexual right discourse, some jurists simultaneously employ nuanced interpretive approaches and endeavour to position women as powerful.

Also in an instance of a male petitioner's concerns of a wife's refusal to engage in intercourse, Desai¹¹⁵ responds differently from Docrat. As illustrated in chapter seven, he inclines towards the ethical space of a Muslim marriage, and emphasises mutuality and restraint of male coercion, force and anger. Desai is possibly influenced in his answer by the lived realities of Muslim women who find themselves in marriages of mutuality and reciprocity. As a prominent mufti within the South African Deoband landscape, he is also potentially informed by both South African gender symmetrical discourses within the legislative arena, and intra-Muslim debates and contestations on the recognition of Muslim marriages. He positions wives within discourses of mutuality and health, rendering them powerful within these.

When faced with petitions about a male duty to fulfil female sexual need, mufti's approaches are also varied.¹¹⁶ Here Desai chooses reticence and caution in avoiding the direct question of female sexual rights, which petitioners couched as female satisfaction. Instead, he grants a powerful position to the husband in the discourse of health and well-being by prioritising male physical health, in this way dealing with both male sexual need and female sexual satisfaction indirectly. For the wife, Desai's approach functions to simultaneously position her powerfully within the discourse of female sexual satisfaction and powerlessly within the competing male right to sexual fulfilment. Zakariyya Desai in fatwa D on the other hand, positions both the husband

¹¹³ As seen in chapter five, these reasons are articulated variously in fatwa's K, L and M in biomedical terms.

¹¹⁴ Refer to section 2.1.2 in chapter two.

¹¹⁵ See analysis of fatwa A in chapter seven.

¹¹⁶ See the analysis of fatwa B answered by mufti Desai, and fatwa D by student mufti Zakariyya Desai, in chapter six.

and wife in powerful positions within the discourse of health and well-being, by advocating for a consideration of the wife's feelings and her psychological and emotional well-being, in conjunction with bio-medical interventions for the husband.

The discourse of health also complements both female sexual satisfaction and male sexual rights discourses. Where muftis are faced with physical health afflictions, they frequently offer a response in line with contemporary biomedical ethics. In some instances legal concessions are offered to support a husband's sexual right and a wife's related physical health concerns.¹¹⁷ Where a wife refuses to have sex because of a physical health affliction, legal concessions are granted to support a wife's refusal of sex,¹¹⁸ and where concerns hinge on female sexual satisfaction, male petitioners are told to access medical and allied interventions.¹¹⁹

When faced with non-physical facets of health, muftis demonstrated varying responses. Desai and Zakariyya Desai in particular position both husbands and wives across the fatwas as powerful within both the discourse of mutuality and the discourse of health and well-being. For husbands this positioning is mediated through the physical facet of health, and for wives, through the emotional and psychological dimension.¹²⁰

There is also a tension between the health discourse and the discourse of male sexual rights when Desai modulates the latter discourse in favour of his ethical exhortations to mutuality, remaining cognisant of contemporary social norms, discouraging the pervasive force discourse, and preserving the existing marriage through devices such as effective sexual communication and a benevolent masculinity. The latter devices are not seamless however, relying on the goodwill of the husband. In some instances they facilitate women's agency in the sexual arena and in other scenarios hamper it. Also when the marriage imperative relies on the discourses of mutuality and wellbeing, it moderates the prominent male sexual rights discourse but in cases where

¹¹⁷ Refer to fatwa G in chapter five.

¹¹⁸ See the analysis of fatwa C in chapter five where Docrat indicates that a wife can refuse to engage in sexual intimacy with her husband if she has valid reasons. These valid reasons as established in fatwas K, L and M are biomedical physical ones.

¹¹⁹ In the context of premature ejaculation. Refer to fatwas B and D in chapter six.

¹²⁰ As seen in their responses in fatwas A, B and D.

women are in perilous and tenuous marriage circumstances, the marriage imperative can prove harmful.¹²¹

I also argued in chapter seven,¹²² that sexual communication as a strategy for protecting young women's sexual agency in a non-liberal tradition like Islam requires both adequate pre-marital sex education as well as knowledge of the jurisprudential rules governing sex and sexuality in a Muslim marriage. In this way women in contexts where marriage is viewed as incorporating ideas of mutuality, are in a better position to enact agency and negotiate their sexual needs and desires.

9.2.1 Key Findings – Muftis

Fatwas are excellent examples of how Muftis are engaging with social and cultural realities, using Islamic arguments. By analysing the *fatwas* and what Muftis are saying and not saying, by deconstructing their *ijtihad* and how they define and consider the different elements of the topic involved, it is possible to use *fatwas* to help dismantle and rebuild religious discourse on gender norms and rights (Larsen 2015: 216).

The varying responses in the fatwas reveal how muftis negotiate the complex networks of power in the discourses of male and female sexuality, modulating these with discourses of health and well-being, and discourses of mutuality. The analysis revealed that muftis' responses mirrored two interconnected observations made by Ali (2006). The first is that even conservative muftis include concepts of reciprocity and mutuality in their responses. Second, "a strongly gendered understanding of male-female sexuality... [continues to permeate]...much contemporary Muslim discourse, including that produced in Western contexts" (2006:9).

It could be argued that like some petitioners, muftis on askimam.org, too, remain true to the classical Islamic legal tradition, but might understand that the sexual 'desires, expectations and experiences' of ordinary Muslims within modern contexts function within the discourses of mutuality, and of health and well-being. Some realise that an undue reliance in their answers on distinctive gendered perspectives of male-female

¹²¹ As seen in fatwa E and F. See chapter seven.

¹²² See chapter seven section 7.3.2.3.

sexuality found in foundational sources will prove counterproductive to keeping the marriage intact and subsequently maintaining the stability of the family. This explains the trend to downplay male sexual rights and female sexual availability and the trend to rely instead on discourses of mutuality and health and well-being. In doing so they meet the lived realities of petitioners and provide a means to navigate between the two paradigms of a Muslim marriage, moving from the legal, where ideas of dominion produce undue systems of control in Muslim marriage, towards the ethical, where ideas of mutuality and reciprocity preside.

Muftis' employment of the discourse of health and well-being however appears inhibited. Depending on varying theological positions, they displayed a clear delineation in their responses to physical health as compared to other facets of health; they locate physical health within a biomedical ethical space, and non-physical health within the spiritual and jurisprudential space.

9.3 Negotiating Health

To what extent and effect do the fatwas enable the negotiation of women's sexual health? It appears that in the minds of the petitioners, in addition to physical health, non-physical facets are relevant in their petitions. They require muftis to enact mechanisms to alleviate psychological and emotional suffering and affliction.

In their responses, and based on where they were situated theologically, muftis considered health in a different ways. Physical health is considered within a biomedical ethical space, and social, emotional and psychological facets of health are only dealt with within the ambit of the pietistic, jurisprudential space, so that contemporary biomedical ethics dictate muftis' responses to physical health concerns. As a result, muftis encourage outside interventions or they enact legal mechanisms that prioritise biomedical concerns. Muftis are thus situated within the ethical logic of marriage and the biomedical ethical paradigm when physical health concerns are raised. The latter provides more leeway in terms of granting women concessions within the jurisprudential framework of marriage. By contrast, the non-physical facets of health, although located within the ethical space of marriage, is managed entirely by pietistic and legal interpretive mechanisms.

Further to this analysis and the argument in chapter eight that muftis exhibited three responses to non-physical health, an investigation into the website indicates a fourth potential response characterized by the inclusion of someone who is not a mufti. In this scenario, the mufti brings in a professional allied health professional, namely a sociologist with a background in psychology. The presence of Sister Fadila on the website indicates Desai's inclination as the head mufti to diverge from the normative position and to recognize to some extent emotional and mental discontent as a therapeutic health concern that warrants professional input outside the ambit of a jurist's expertise. It implies an epistemic shift in relation to traditional conceptualisations of emotional and psychological health and illness and opens up the possibilities of treatment based not only on a biomedical ethic that prioritises physical health concerns in the sexual realm, but perhaps also on a therapeutic ethic that prioritises mental and emotional health too.

Human rights activists working in the area of sexual rights have suggested that the best way to "positivise" sexual rights and give them legal muscle is to link them strategically to health imperatives (Mattar 2008). The trend toward positivising sexual rights is also evident in the 2011 South African Department of Health draft on sexual reproductive health rights (Department of Health 2011). I have argued above that when it comes to physical health concerns, muftis consider both the ethical logic of marriage and the biomedical ethics of health. When muftis use these two ethical paradigms to innovate legal rulings that divert from normative rulings based on the legal logic of marriage, they transform the ethics of marriage into legal concessions. This has the potential to 'positivise' women's sexual health rights thereby expanding what is permissible in terms of sexual agency. Aware of fatwa mechanisms, Frank Vogel (1996: 269) has observed how the "fatwa method" can "lend flexibility even to compulsory legal determinations" so that multiple legal outcomes on any single issue can be extracted. This points to the potential for a *fiqh* that is responsive to changing circumstance as others have suggested (Ai 2003; 2006; Mir-Hosseini 2009).¹²³ In this instance, the change pursues an ethical paradigm which is located in therapeutic terms

¹²³ Refer to chapter two, section 2.1.3 for the discussion pertaining to this suggestion.

of other medical and allied professionals, particularly psychologists and social workers.

From the above theoretical positions it can be extrapolated that if muftis on askimam.org afford credence to the female sexual emotional and psychological well-being as a health imperative that requires external allied therapeutic health interventions as a matter of routine, then social, psychological and emotional sexual health complaints of wives might prompt muftis to locate their answers both within the ethical logic of marriage as well as an ethical paradigm allied within the therapeutic terms of allied health professionals. This proclivity is evident in Sister Fadila's approach as noted in chapter eight.¹²⁴ For muftis, hypothetically, this would mean that in the instance of the suicidal petitioner in fatwa C, Docrat might have referred him for external professional interventions. In another hypothetical scenario where severe emotional and psychological afflictions arising out of experiences of sexual molestation is articulated by the female petitioner in fatwa E and F, the first mufti Khan might have referred her to a psychologist or other allied health professional instead of advising her to continue with the arranged marriage. If she did continue with the marriage, as in fatwa F, the second mufti Siddiqui might have done the same in terms of protecting her health. Instead he offered legal mechanisms to alleviate her suffering.

As with the biomedical ethical space, this therapeutic ethical space might provide further leeway for muftis who are faced with couples whose lived experiences of marriage prioritize mutuality and reciprocity, to offer further concessions, and in addition to therapeutic mechanisms to offer legal mechanisms which enable women's sexual agency while remaining true to the jurisprudential marriage framework.

To illustrate, Siddiqui above might have referred his petitioner for both allied health interventions based on her health state, and further suggested more rigorous legal concessions to terminate the marriage. As the fatwa currently stands, he does enact a legal mechanism based on her "feelings", but these are mediated by a third party requiring the husband's cooperation. Siddiqui might suggest too that she be granted

¹²⁴ Refer chapter eight section 8.3.2.4, in which Sister Fadila's response in fatwa T is to refer the petitioner and his family for external counselling.

either a *faskh* or that she use a *khula* mechanism to exit the marriage.¹²⁵ In another hypothetical scenario, Desai in fatwa A, instead of just discouraging force in spousal sexual relations as he does, might outrightly prohibit it in mitigation of the psychological and emotional health implications which he alludes to.

As with physical health, which muftis employ in an ethical paradigm located in biomedical terms, this opens up the possibilities for muftis to also positivise sexual rights by creating links with other dimensions of health, which may be employed in an ethical paradigm located in therapeutic terms. In this way Muslim women's lived marriage experiences of sexual agency in modern contexts might be transformed so that their 'desires, experiences and expectations' within the sexual realm are given weight by virtue of the complementarity of the discourse of health and well-being with the discourse of mutuality, and the productive tension of these two discourses with the prominent male sexual rights discourses.

9.4 Additional Prominent Discourses

In addition to the four main discourses above, another key finding in this research, and a feature of intertextuality, is the presence of related discourses. Concepts of sin and force produce additional discourses which effect how people speak about and conceptualise sexual health within Muslim marriage. These discourses were not substantially investigated in this study, but feature prominently, and are areas for further research. The following section exposes the minimal findings evidenced in the fatwas.

Some male petitioners construct a wife's God-believer relationship so as to link God's approval with that of a husband's; the link functions as a coercive mechanism to address a wife's refusal for sex, which is further constructed as sin.¹²⁶ Even though women have generally internalised these perspectives, female petitioners clearly ignore this discourse¹²⁷ and instead enact autonomy and independence of choice with

¹²⁵ For a full description of these divorce options refer to Mansoori (2009: 133,155).

¹²⁶ The male petitioners in fatwa C (analysed in chapter five) and fatwa A (analysed in chapter seven) display this trend.

¹²⁷ Refer to the mention of fatwas A, C, U and V in chapter seven, section 7.3.2.1.

regard to sexual intimacy, correlating with evidence in the literature on South African women's perspectives on sexuality (Hoel and Shaikh 2013: 85). In an alternative approach where a husband's God-believer relationship is threatened if he does not fulfil his duty to sexually satisfy his wife, male petitioners forward arguments in favour of women's sexual satisfaction,¹²⁸ and female petitioners argue for the right to sexual intimacy thereby positioning themselves as powerful within a gendered discourse which ordinarily renders them as powerless.¹²⁹

Apart from Docrat, most muftis downplay male sexual rights discourses and do not censure women who exercise choice and autonomy in terms of sexual availability.¹³⁰ However, because they continue to subscribe to the gendered understandings of male and female sexuality, muftis do not outright censure the male sexual rights dimension of the divine disapproval and sin discourse. Without relinquishing these gender differentiated understandings, in another response, a mufti also uses the sin discourse as a coercive measure for the husband to fulfil his wife's sexual rights.¹³¹

Likely because of the prominence of the male sexual rights and female sexual availability discourse, evidence in the literature and fatwas¹³² denotes a discourse of force. In addition, both petitioners and muftis recognise the pervasive presence of this discourse, which they also experience in tension with discourses of mutuality, and health and well-being.

The study showed that petitioners created a disruption of force by using health and well-being discourses to argue for legal mechanisms to alleviate psychological and emotional suffering. Muftis do not censure this discourse but downplay it using ideas of mutuality and health. As a further point of analysis, the fatwas clearly demonstrate, too, the tension between force and consent. A distinction was noted in a comparison of the discourse of consent before contracting a marriage and after. In the former circumstance, consent and mutuality discourses existed in a complementary

¹²⁸ Refer to the analysis of fatwas B and D in chapter six.

¹²⁹ Refer to the analysis of fatwa M in chapter six.

¹³⁰ Refer to chapter seven, section 7.3.2.1.

¹³¹ Refer to fatwa M in chapter six.

¹³² See particularly fatwas E, F and S in this regard in chapter seven.

relationship, while the reverse was true for the latter circumstance.¹³³

9.5 Summary

This chapter offered a synthesis of the interplay of all the discourses on women's sexual agency in the fatwas, as identified in the previous four chapters. Through a synthesis of both petitioners' queries and muftis' responses, it revealed competing and complementary agency within the four main discourses of sexual rights, female sexual satisfaction, mutuality, and health and well-being, by noting contestations, disruptions and slippages of power. Additional discourses which featured prominently within the fatwas were also identified for further research.

This chapter further explored the second research objective to gauge the extent to which the fatwas enabled the negotiations of women's sexual health, revealing varying approaches to the different health dimensions by both petitioners and muftis. It pointed out the potential for muftis to link sexual rights of Muslim women to varying dimensions of health within the context of sexual intimacy. In the next chapter, to answer the third research objective, I focus on the extent to which foundational texts such as Qur'an and hadith are used in the representations of women's sexual agency, with an emphasis on the role of the Internet in a discursive Islamic tradition.

¹³³ See the analysis of the dynamic between force and consent in fatwas E and F in chapter seven, section 7.3.2.5

CHAPTER TEN: FOUNDATIONAL SOURCES IN ‘DAR AL-CYBER’

Islamic thought initially divided the world into two spheres - *dar al-Islam*, and *dar al-harb* (the territory of Islam and the territory of war) [and]...there is [now] a growing acceptance of the notion of the ‘territory of treaty’ or *dar al-ahd*, and the ‘territory of preaching’ or *dar al-da’wah*. (Kort 2005: 368)

To the territories *dar al-Islam*, and *dar al-harb*, Kort adds the cyber Islamic environment which she calls *dar al-cyber Islam*. Entering *Dar al-cyber Islam*, I provide reflections on how the petitioners in the online fatwas in this study are experiencing sexual relations within contemporary marriages. I also identify ways in which muftis, through their various jurisprudential approaches, may provide for ordinary Muslims to continue to be loyal to the classical legal tradition and at the same time create spaces within this tradition which support ideas of sexual relations in marriage based on mutuality and reciprocity and supportive of health and well-being.

My intention in this chapter is related to the third research question, which is to examine the extent to which foundational texts are used in representations of women’s sexual agency in the fatwas. Finally, in line with assertions in the literature that the Internet is able to provide a portal into the contemporary discursive Islamic landscape of which fatwas “constitute an important aspect”, by virtue of providing us with “insight into the dynamics of continuity and change in the Islamic tradition” (Larsen 2015: 202), a further intention in this chapter is to expose the effect of the online space for petitioners and mufti’s alike and points to the role of the Internet in the discursive Islamic landscape.

10.1 Foundational Sources

The study above showed that classical traditional thought on rights, roles and responsibilities in a Muslim marriage, the underlying Deoband gender ideology¹³⁴ and

¹³⁴ Refer to chapter five section 5.3.2.

the normative view of wifely obedience and subservience as arising out of foundational textual sources¹³⁵ underpins all mufti responses and petitioners' perspectives and understandings. While none of the petitioners in the fatwas refer to foundational sources, only one mufti refers to familiar hadith sources.¹³⁶ Significantly, even when muftis' answers are framed entirely within the legal parameters of such a marriage, the fatwas generally do not use foundational textual sources to reinforce juristic opinions.

But the Quran is used in the context of sexual agency within Desai's purview. While the three *Quranic* verses, which commonly underpin notions of sexual agency in Muslim marriage, as mentioned in chapter two,¹³⁷ are not mentioned in any of the fatwa's under scrutiny, Q2: 222-223 is mentioned in other fatwas on the site in the context of detailing permissible sexual positions and proscribing anal sex.¹³⁸ The preference Desai and his student hold for this interpretation over two other interpretations, which pertain to contraception and undisputed female sexual availability, is further corroborated in a publication on the Darul iftaa website, entitled *Etiquettes of Marital Relations* (nd: 14):

Intercourse is permissible in any position, from front or rear, so long as anal sex does not take place, for that is haram. The example of the Quran for women is that of a farm; which can be approached from any direction, provided the seeds are planted only in the farm and not elsewhere! Similarly any method of approach is permissible, whether husband is on the wife or vice-versa, or whether they are on their sides or from the rear, whether sleeping flat or whether squatting, all positions are permissible, so long as his "seeds" are planted in the "farm" and not elsewhere.

Further to the lack of Quranic references in the fatwas studied, Docrat buttresses the male sexual needs discourse when dealing with a male petitioners' concerns of wifely refusal of sex in fatwa C, by using familiar hadith sources.¹³⁹ His approach accords with Abou Al-Fadl's assessment that hadith traditions play a greater primary role than the Quran in determinations of spousal obedience. Hadith contribute more to "the

¹³⁵ Refer to introductory chapter and chapter two section 2.2.

¹³⁶ Referring to fatwa C analysed in chapter five.

¹³⁷ Refer to chapter 2, section 2.1

¹³⁸ See fatwas # 19786 (fatwa W) and # 28610 (fatwa X).

¹³⁹ Docrat uses familiar authentic hadith. These are explained in chapter five section 5.3.3 and refer to supplicating wives, angry husbands and cursing angels.

general denigration of the moral status of women” and have drastic normative “theological, moral and social consequences”, requiring a “conscientious pause”¹⁴⁰ for further theorizing and reflection in order to accord better with the *Quranic* ethos of marriage, which Al-Fadl argues is mutuality, reciprocity and harmony (2001: 94).

Therefore in answering the third research question, no Quranic texts are used in any of the sample fatwas, but other fatwas on the site mention Q2: 222-223 in the context of (im)permissible sexual positions, which does not necessarily overtly prioritise male sexual rights discourses. The only time foundational sources were used in the study was in the form of two familiar hadith, one depicting ‘supplicating wives’ and the other depicting ‘angry husbands’ and ‘cursing angels’. Both are used to buttress the male sexual rights discourse. In instances where muftis chose to instead modulate this discourse with ethical exhortations in an attempt to manage the mismatch between modern marriage expectations and its jurisprudential rules, no similar usage of foundational texts were accessed.¹⁴¹

This omission is significant in light of another study mentioned in chapter two that points to ‘revolutionary reforming trends’ in Desai’s perspectives of domestic abuse, on his site. The fatwa analysed in Kort’s study also precludes foundational sources (2006: 378). Kort argued that Desai promotes “self-accountability, reform and a no-harm approach”, affecting a strong move away from traditional conservative perspectives on domestic abuse. Similarly, and consonant with Kort’s study, it can be argued from this study that reforming trends are also present on askimam.org in relation to sexual agency, through namely the presence of a boisterous discourse on female sexual rights in the form of satisfaction, a modulation of the discourse on male sexual rights, including a tacit tolerance of reciprocal desire,¹⁴² and the recognition of non-physical facets of health requiring outside expertise, suggested by the inclusion of sister Fadila.

¹⁴⁰ Abou El Fadl (2001: 94) proposes a “faith-based objection” as an option for dealing with a crisis of conscience which arises out of a conflict between one’s personal faith conviction and the determinations of the text (both Quran and Hadith). He proposes a “conscientious pause”, not as a “whimsical” dismissing of the text, but instead affording a “responsible and reflective” person the opportunity for further reflection and intense investigation of the text, “suspending judgement until such a study is complete”. If the impasse is intractable then, “Islamic theology requires that a person abide by the dictates of his or her conscience”.

¹⁴¹ Desai in fatwa A and Zakariyya Desai in fatwa D.

¹⁴² As noted in the analysis in chapter seven of main fatwas A and D and supporting fatwas U and V.

It could also be argued that Desai's silence when dealing with wives who refuse sex with no "valid" reason, not just in terms of their health or sexual satisfaction, may be regarded too as a revolutionary move. Muftis, in their silence, are perhaps not championing women's agency, but tacitly tolerating their resistance to one of the most essential dictums of a Muslim marriage - that of male sexual access and female sexual availability.

But I stop short of describing these reforming trends as 'revolutionary' for two reasons. First, the persistence of the philosophical underpinnings of the legal logic of marriage characterised by a male-female duality continues to inform muftis in their role as cyber-counsellors, in ways that risk diminishing women's wholeness and spiritual potential (Shaikh 2004).¹⁴³ Second, the absence of foundational textual rationales in the fatwas tends to lend less support to reforming trends within them. Gregory Kozlowski (1996: 247) argues, "fatwas are often significant for what they cannot or will not say, as well as for what they actually communicate". Thus, I maintain that the oversight in Kort's analysis is that by ignoring the absence of textual rationales and foundational sources in Desai's fatwas, she fails to note that hermeneutical trends and philosophical views which permit abuse, continue to persist in his legal logic. This is further salient in light of what the literature earlier revealed,¹⁴⁴ that the internalisation of dominant androcentric interpretations of foundational texts often leads to constrained presentations of female Muslim personhood, which in hierarchical, asymmetrical gender relationships could potentially hamper sexual reproductive health rights. Docrat's response in fatwa C where he supports the male sexual rights discourse using hadith sources is analogous of this inclination. Hence I argue that, in addition to his strong personal denouncement, a judgment of the 'revolutionary' potential for reform in a mufti's fatwa perhaps should also require that the denouncement be strengthened by evidentiary motivations arising out of foundational texts. As an illustration, alternative hadith and Quranic texts which support a modulation of male rights discourses and

¹⁴³ An example of how this philosophy plays out is illustrated in chapter six, where the idea of reciprocal desire is fraught with contradictions because of tendency of the female sexual rights discourse to emphasise sexual satisfaction as a male duty to protect society from the potentially negative and chaotic female sexuality (Ali 2006: 12).

¹⁴⁴ See chapter two sections 2.2 and 2.3.

prioritises discourses of female sexual satisfaction, mutuality and health and well-being exist in the authentic corpus of foundational sources and might be used by muftis to buttress reformist trends in fatwas.

10.2 Imam.org in ‘Dar-al cyber’

The physical and theological concept of the *ummah* ... is changing in part due to globalization and the Internet. One can see the altering of the tangible space or territory of Islam as a condition for change in Islamic thought. Changing concepts of the *ummah* have been integral for Muslims in the West, helping to reconstitute both the notion of *ulama* and *ijtihad* (Kort 2006: 368).

Challenges faced by ordinary Muslims in the changing social realities of contemporary society are revealed in the enquiry of the fatwas in this study in as much they did in historical fatwas. The difference in the online space is that a vast number of generated fatwas such as those on askimam.org are maintained on the site over a period of at least ten years, providing a diachronic overview of multiple petitions by multiple petitioners and muftis, from varying geographical contexts. In addition, the dynamic between scholar and petitioner and how the religious orthodoxy meets the modern concerns of society is exposed, as is the ability of the online space to allow for the mediation of the muftis’ ideas to policy makers and the public as postulated by Sisler (2009: 51).

Numerous scholars have also noted the Internet’s potential to provide an instant portal into the discursive contemporary Islamic landscape (Alwi 2009; Anderson 2003; Bunt 2003: 2-6; Chawki 2010; Kutscher 2009; Marcotte 2015; Piela 2010). Further to which, in light of Campbell’s (2012: 3-5) thesis that online trends are a reflection of the changes happening offline in contemporary society and not necessarily the cause, it can be extrapolated that any reforming trends or disruptions of the dominant discourses within the online fatwa space has the potential to facilitate the production of diverse Muslim discourses and expressions, understandings and praxis.

More specifically, Kort (2006: 367) theorises that the Internet blurs “traditional notions of physical space, and by extension, challenges theoretical space”, eventually changing and reformulating traditional notions of ummah, ulama and *ijtihad*, contributing towards a gradual process of reforming trends in gender relations. This alteration and reformulation occurs not by the inclusion of “radical or overly liberal views” but in a gradual process of “re-intellectualization of Islamic discourse”. In considering Kort's theory I now turn to Desai's online fatwas on sexual agency in this study in order to gauge to what extent the online character of his fatwas effect reformulation of the traditional concepts of ummah, ulama and *ijtihad*, in terms of potential reform in gender relations.

10.2.1 Reformulation of Traditional Concepts

10.2.1.1 Ummah

Wario's (2012: 253) research on peripatetic *tablighi* men pointed to the presence of a fluid, alterable and reconstructable masculinity produced through a “transnational flow of practices of how to be proper Muslim men”. Drawing from this theoretical reflection, I propose that some fatwas on askimam.org, particularly those in this study that moderate male sexual rights discourses and point to the promotion of a benevolent masculinity instead, provide similar options in the transnational virtual space of the Internet. A similar effect might occur as formulations of reconstructable and alterable masculinities, exhibited by peripatetic *tablighi* men, potentially ensue in cyberspace too, offering the possibilities of unsettling hierarchy and patriarchy, and accommodating women's sexual concerns. This accrues with Mazrui's thesis that “new technology will give Islam a chance to realise its original aim of transnational universalism” (Mazrui quoted by Kort: 2006: 367) and reflects a new formulation of the concept of ummah which some scholars have dubbed the “cyber –ummah” (Imoutal & Hussein 2009). The noted tendency of muftis to be aware of contemporary expectations of marriage and to subsequently downplay the normative male sexual rights discourse and emphasise female sexual satisfaction as well as mutuality and health and well-being, potentially also aligns with Sislers contention that the amount and type of petitions websites aggregate allows for a “bottom-up approach”, permitting ordinary Muslims, the petitioners, to “set the agenda for the issues to be discussed on most ...websites”, thus constituting “a new manifestation of a Muslim

umma where there is independence from traditional religious authority and institutional hegemony...” (2011: 1152-1153).

10.2.1.2 Ulama

The sample of fatwas in this study exposed inconsistencies in the answers of the different muftis. Firstly, head mufti Desai’s recognition of other facets of health as requiring outside interventions is not followed consistently on the website as noted in chapter eight. Secondly, his trend towards mutuality is not clearly articulated and consistently applied across all the fatwas sanctioned and approved by him, indicating his synchronic hold on the legal jurisprudential framework in terms of how his students answer questions. Particularly, Desai’s response in fatwa A was situated entirely within the ethical space of marriage, and was mirrored only by Zakariyya Desai, revealing some variance from the overall tenor of the entire website.

This speaks to two facets of muftiship on askimam.org. First, it calls into question the competencies and training of muftis for petitions requiring either counselling for social, emotional and psychological sexual health afflictions or those requiring therapeutic strategies to maintain the integrity of the marriage. While her credentials in terms of her allied health professional expertise is mentioned, no indication is afforded as to sister Fadila’s religious training. An overview of the numerous fatwas answered by her reveal that she answers petitions related to legal, religious and therapeutic concerns and answers as both a counsellor and a mufti would. Her presence and input on the website affords a glimpse into the kind of answers Mufti’s would be able to provide if they were adequately trained or if they partnered with an allied professional when dealing with petitions requiring additional counselling or therapeutic strategies; it also points to the necessity for additional research in this regard.

Second, it also speaks to the mufti scholar-teacher relationship and the ability of senior muftis to be more flexible when dealing with women’s sexual agency concerns as compared to younger muftis who tend to be bound by the constraints of the legal logic and its philosophical underpinnings. To illustrate, Desai in fatwa A does not refer to any primary sources or Deoband Hanafi sources in privileging the subordinate discourse of mutuality and consent and promoting a benevolent masculinity. When

weighed against a similar fatwa like C, where student jurist Docrat uses hadith texts to buttress his obvious partiality to the dominant male sexual rights discourse, a potential shift of power may have occurred within the master-teacher space, so that the student's rhetorical strategy of referring to foundational sources may render his argument more persuasive.

At a textual level I could also argue that when the mufti uses the passive voice to describe the husbands actions, he weakens his agentival capacity as a religious authority figure. A more direct wording like "don't force the issue" or "don't worry about her sin", might give the Imam more agency as an authority figure, and his directive would perhaps have more impetus to transform how husbands treat wives, thereby affording wives more power, further strengthening the discourse of mutual consent while still maintaining juristic authority.

Alternatively, this argument may be offset by the institutional discourses of the Deoband system of master and teacher within the madressa seminaries. Desai as the master-teacher, author of this website, and acting in conformity with the *adab-al mufti* works, does not need to justify his legal opinion to a layperson. Retaining his power and authority, his fatwa is credible by virtue of the perceived reliability of the Mufti himself in terms of his knowledge and piety. As the master-teacher of both imam.org and the mufti training institute Darul Fiqh, Desai's position within the Deoband structures in South Africa also cannot be ignored. Trends of mutuality and reciprocity within his fatwas, which are easily open to scrutiny by his students due to the fatwas' long-term online presence, might have the potential to influence their juristic approaches. In addition, other community members with similar concerns are also informed by his answers. To illustrate, the fringe fatwas dealing with wives' refusal of sex in chapter seven pointed to a general trend amongst the muftis to downplay the dominant discourses of male sexual priority and female availability, particularly in minority Muslim contexts.

By contrast though, a diachronic analysis of both Docrat's and Desai's fatwas reveals that Docrat's fatwa, which deviates from Desai's approach and instead prioritises male sexual need and female sexual availability, was generated two years after Desai's. This could mean that the above argument regarding the influence of the master-

teacher on his student jurists is not always relevant. But when we consider that the petitioner in Docrat's fatwa originated from Pakistan, a Muslim majority country, where the traditional Islamic legal rules governing a marriage forms part of the legislative system, it could be further argued that Docrat may have been influenced by the social realities of a Muslim majority context. Desai and Zakariyya Desai, by contrast, were aware of the challenges of a minority context. This demonstrates that Docrat did not answer as his master-teacher might have, but instead chose to situate his response within the legal logic of marriage based on the Muslim majority context of out of which the petition is generated. The trend amongst the muftis on askimam.org may be to read the petitioners' concerns and then answer according to norms of the specific geographical contexts.

To summarise, a reformulation of the traditional concept of ulama occurs in one instance when sister Fadila traverses both the juristic and the allied health professional's ambit in her responses to petitions on askimam.org. In addition, by virtue of the operations of the educated Deoband religious elite, the nature of the master-teacher relationship within the madressa seminaries, and the perceived reliability of Desai in terms of his knowledge and piety, it seems that the scholar jurists who can access Desai's online answers would be thus influenced by him, especially in relation to fatwas originating in minority contexts. We may speculate that the result of this shift would be to effect a change in how future questions directly dealing with a wife's refusal to engage in sexual intercourse is dealt with by other muftis on the site. According with Kort, it is possible that a "gradual process of re-intellectualizing discourse" could occur amongst the Deoband Hanafi ulama on askimam.org so that their answers may incline more towards the ethical logic of a Muslim marriage as opposed to the legal logic. This argument points to a possible reformulation of the relationship between the master and teacher and a reformulation in the ways in which *ijtihad* occurs.

10.2.1.3 Ijtihād,

Another important question raised in this analysis is whether Desai as head mufti effected a shift away from a strict adherence to *taqlīd* in relation to the dominant Deoband positions in the discourse of male sexual rights and female sexual availability, especially when his response is compared to Docrat's in fatwa C.

Taqlid can be loosely translated as 'uncritical adherence', and concerns the level of fidelity that one might demonstrate to historical juridical opinions formulated by jurists engaging in *qiyas* or independent legal reasoning (*Ijtihad*)...

The extent to which a *mujtahid* is bound by legal precedent or the positions of eminent legal personalities corresponds to his freedom to formulate novel legal injunctions. Encouraging a *mujtahid* to engage in *taqlid* is to promote a view of Islamic law as more static, in that once a juridical injunction has been promoted by an eminent legal personality, that ruling achieves a normative status for all succeeding generations. Restricting *taqlid*, by contrast, affords the *mujtahid* greater latitude in formulating legal injunctions, and suggests that Islamic law may look different depending on the context in which it is applied (Rumee 2012: 129-130).

In light of Rumee's deliberations and in accordance with Hallaq's (1996: 43) assessment that *muqallid* muftis in later eras also practiced *ijtihād* and behaved like *mujtahids*, Desai functions ordinarily as a *muqallid* mufti, but it is evident in these fatwas that he also performs, though without announcement, a form of *ijtihād*, evident when he locates his arguments within the ethical paradigm of marriage. By remaining within the traditional legal logic of a Muslim marriage, Desai appears to restrict *taqlīd* to followship, yet he also shifts his reasoning so that his fatwa illustrates a move away from a legal approach and towards a more ethical approach. This is salient in light of the mismatch between modern expectations of mutuality and the "classical jurisprudential doctrines" on sex, which Ali highlights (2006: xxv). Desai deals with this mismatch and formulates an opinion in line with his assessment of the contemporary concerns of Muslim men and women in minority Muslim contexts. This illustrates how scholars propose a remedial solution to the dissonance between the classical legal rules of a marriage and modern expectations. The proposals centre on the conceptual difference between the inimitable, immutable *sharī'a* and an alterable *fiqh*, so that social practices and experiences have the potential to mould a new *fiqh*

(Ali 2003: 2006; Mir-Hosseini 2009). Desai's tendency to conform with societal trends of mutual consent points to the activity of *ijtihād*; he considers social practices in a manner that allows him to enact a *fiqh* partial to the ethics of marriage and health.

10.3 Summary

Drawing from the above analyses, the discursive representations of sexual agency on the online fatwas of askimam.org therefore accords with Kort's thesis on a gradual "re-intellectualisation of Islamic discourse" at the site of the Internet, and points to the reformulation of traditional Islamic concepts like of ummah, *ijtihād* and ulama. Thus, the site of the interlocutory space of the fatwas, in *dar al-cyber*, points to the Internet's potential to showcase and be representative of the discursive Islamic landscape, illustrating new usages, and a gradual process of reforming trends in gender relations (Kort 2009: 367).

Overall, no Quranic texts were used in the fatwas in this study. Although other fatwas on the site mention Q2: 222-223 in the context of (im)permissible sexual positions, they do not overtly prioritise the male sexual rights discourse. Instead two hadith texts which are used in fatwa C prioritise the dominant discourse. However, in instances where this discourse is modulated by ethical concerns, no similar usage of foundational texts was found. The study thus revealed that evidentiary motivations arising out of foundational texts are sometimes used by muftis, but mainly to buttress normative gender-asymmetrical discourses. The study further suggests that the ethics-based reformulations found in muftis' answers would be better served if particular Quran and Hadith excerpts that support an ethical paradigm were used.

CONCLUSION

Since the fatwa and the mufti are situated at the interface between worldly dealings and the process of theorising about them, women, drawing on both their life experiences and their knowledge of Islamic arguments, are in a position to contest fatwas and formulate new questions to promote gender equality and rights (Larsen 2015: 216-17).

Through petitioners' queries and muftis' answers, modern online fatwas are at the frontier of where legal interpretation meets cultural and social realities. It is here that pietistic concerns attached to worldly happenings encounter the pietistic legal and therapeutic devices used to theorise about them.

But women's contestations and the reform trends as outlined in the last chapter, cannot be deemed to be simplistic by virtue of the conflict between modern expectations and classical legal thought on sex and sexuality amongst Muslim men, women and muftis who continue to be loyal to the classical tradition. The petitions demonstrated that women are making choices in the sexual arena with regard to their 'desires, pleasures and experiences' that they are exploring possibilities for personal sexual satisfaction and intimacy, and they have expectations of meaningful sexual relationships. But these are weighed against pietistic concerns so that, as the literature also revealed,¹⁴⁵ women continue to remain committed to the classical legal tradition of Muslim marriage which functions in a dynamic of male sexual need and female sexual availability, even while they grapple with the dissonance it introduces with their expectations of mutuality within marriage (Ali 2006; Hoel and Shaikh 2013; Imtoul & Hussein 2009; Larsen 2015; Marcotte 2010; Piela 2010). In dealing with this dissonance, the fatwas revealed that petitioners also relied on ideas of fairness, mutuality and the various facets of health (physical, psychological and emotional) as well as their knowledge of religious rules to argue for choices and possibilities in the sexual arena.

¹⁴⁵ Refer to chapter two.

Called upon to provide solutions to problems arising out of this dissonance, muftis use religious, therapeutic and legal interpretive reasoning. Some relied mainly on an ethics of marriage as mutuality, and a biomedical ethic that prioritised physical health concerns within the sexual realm. With the stipulated aim of keeping the marriage intact and maintaining the stability of the family, some muftis, and in particular Desai, enact a move towards the ethical moral logic of marriage where ideas of mutuality and reciprocity reside. But they continue to remain within the parameters of the legal logic of marriage so that even when Desai appeals to the ethics of marriage in the fatwa he answers, he also approves of his students' responses which may not. Instead, these remain entirely within the legal logic of marriage and traditional norms, which negate reform and do not consider the ethical dimensions of the lived experiences of modern Muslims in marriages of mutuality and reciprocity. The analyses in chapters five, six and seven explicated the deeply ingrained nature of this legal logic. But in spite of this, in Ali's assessment, paying attention to muftis' jurisprudential methods can offer much to Muslim feminists.

The ways in which jurists have related source texts to social contexts demonstrates that the law they constructed has 'always already' been subjected to acts of human interpretation. Their practice both authorizes by example human interpretive reasoning and provides a useful model for constructive dialogue between textual sources and social custom, something that has always mattered a great deal where sex and intimacy were concerned (Ali 2006: 154).

In line with the agenda of feminist post structural theory, this study reveals how Deoband muftis can remain committed to the non-liberal classical legal tradition of a Muslim marriage and yet afford women agency within the sexual realm. First, some occasionally locate arguments which are supportive of women within the ethical logic of marriage where ideas of mutuality, consent and reciprocity prevail. The study also shows that they could do this better by using appropriate Quranic and hadith sources to buttress their arguments. In downplaying male sexual rights, these muftis tacitly tolerate women's defiance in one of the most essential dictums of a Muslim marriage - that of male sexual access and female sexual availability. Second, some are able to recognise non-physical health concerns and allow for external therapeutic expertise and interventions by health and allied professionals. Third, muftis positivise sexual

rights through links with physical facets of health, which they reason in terms of an ethical paradigm located in biomedical terms. The study indicates there is further room for muftis to link sexual rights to other facets of health through an ethical paradigm located in therapeutic terms of other medical and allied professionals, particularly psychologists and social workers. These rights would then also fall within the legal paradigm of marriage. In line with observations on the flexibility of the 'fatwa method' which ordinarily produces multiple outcomes on a single legal issue (Vogel 1996: 269), muftis may bypass existing legal restrictions and offer alternative legal outcomes which support women's 'desires, pleasures and experiences' in the sexual health realm of marriage.

Thus through a reliance on the biomedical and therapeutic ethical paradigms, muftis may be positioned to enact a *fiqh* partial to women's concerns at the intersection of the ethics of marriage and health. In a contemporary discursive Islamic landscape where notions of mutuality, reciprocity, consent and health permeate discourses on male-female relations in marriage, Desai's vision of a mufti's role as described by him below may yet be realized.

The practice of analysing contemporary issues and deducing the relevant rulings of *Shariah* has been the hallmark of the illustrious *fuqaha*. From advances in the medical field to the financial world, the *fuqaha* left no stone unturned in resolving the contemporary issues of their time. As the wheel of time spins us into the 21st century, the present day *ulama* attempt to walk in the shadows of their illustrious predecessors by analysing contemporary issues and deducing the rulings of *Shariah* (Desai n.d).

Larsen (2015: 202) has used Asad's (1986) anthropology of Islam to show how fatwas as discourses between petitioners and muftis constitute an aspect of the discursive Islamic tradition. Reflective of these observations, this study demonstrated that muftis maintain a continuity with past legal and therapeutic pedagogies and practices which determine Muslim marriage as dominion, but are engaged in attempts to enact provisions in a present, where ordinary Muslim men and women's lived experiences of marriage are infused with ideas of mutuality, reciprocity and well-being, potentially leading to reformulations of future practices based on an ethics of both marriage and health. The fatwas in this study therefore form an important component of a discursive Islamic tradition and suggest how traditional pedagogies

and practices are being reformulated to meet contemporary needs. Contrary to Kort (2005) who argues that formulations which disapprove of domestic abuse are 'revolutionary', I conclude that the formulations of fatwas in this study remain within the traditional pedagogies and philosophies, and while they may promote change, muftis do not intend them to be revolutionary.

The Internet, by virtue of altering the tangible territory of Islam into a virtual and fluid transnational space, i.e. *Dar al-cyber*, may feed into a new sense of "public space that is discursive, performative, and participative" (Eickelman & Anderson 2003: 2) yet the potential for revolutionary change has yet to be proven. Nonetheless the online space not only provides a glimpse into the discursive Islamic landscape, it is also a site of the Muslim discursive tradition which is demonstrated by its production of diverse Muslim discourses which engender new usages and practices, and allow for reformulations of traditional notions and norms, thus facilitating new prospects for a gradual reconfiguring of gender relations.

Recommendations for Future Research

Overall, there were a number of areas identified in this thesis, which hold the potential for further research. Chapter six revealed that the question of wives' right to initiate sex for their own pleasure and enjoyment as men do, and not just to their satisfaction within the male dominated sexual act, warrants further exploration within the fatwas of askimam.org. Furthermore, an in-depth analysis of the fatwas of sister Fadila on askimam.org might deliver deeper reflections on the way in which sexual health is conceptualised by her in relation to the muftis on the site. As the only female functioning within the legal interpretive space of online fatwa, further insights might also be gauged and added to the dearth of research on how women are applying the Internet and the degree to which they are "content originators" and not just simply content (Bunt 2003: 210).

The additional discourses of sin, force and consent in the context of women's sexual agency that featured prominently in the study require further investigation, as do the large number of fatwas I came across in my initial search that dealt with women's pietistic concerns in relation to reproduction, contraception, fertility and abortion. It

could be claimed that these areas traverse ethical paradigms located in various spaces - biomedical, therapeutic, pietistic and legal - holding the promise to shed further light on the devices used by muftis to theorise about them.

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APPENDIX 1: MAIN SELECTED FATWAS

17537- Fatwa A¹⁴⁶
15085- Fatwa B¹⁴⁷
18350- Fatwa C¹⁴⁸
16306- Fatwa D¹⁴⁹
32049- Fatwa E¹⁵⁰
32362- Fatwa F¹⁵¹

Full Text of the Main Fatwas as appearing on askimam.org

FATWA A

Category: Marriage

Fatwa#: 17537

Asked Country: United Kingdom

Answered Date: Feb 18,2009

Title: Is there any sin when wife reject her husband. Can you please explain to me about this situation.

Question

My wife got very low sexual desire. I want to have intimacy every other day or after week, she doesn't let me even touch her. I feel very bad and then I don't know what to do. Is there any sin when wife reject her husband. Can you please explain to me about this situation.

Answer

In the name of Allah, Most Gracious, Most Merciful

Assalaamu `alaykum waRahmatullahi Wabarakatuh

Intimate relation is a mutual issue between the spouses. Apart from the wife fulfilling her marital obligations, it is important that the husband takes the feelings, tempo etc. of the wife into consideration before becoming upset. By the husband forcing the issue upon the wife, sometimes it could create estrangement in the marriage. Instead of the husband worrying about the sin of refusing him his marital right, rather talk to her and enquire if she experiences any difficulty in doing so. By the husband forcing the issue upon the wife, she will eventually feel used for this purpose and become de

¹⁴⁶ Askimam.org. 2011. Fatwa # 17537, 2009. Available from:
<http://www.askimam.org/public/question_detail/17537>. [Accessed 15 October 2015].

¹⁴⁷ Askimam.org. 2011. Fatwa # 15085, 2007. Available from:
<http://www.askimam.org/public/question_detail/15085>. [Accessed 15 October 2015].

¹⁴⁸ Askimam.org. 2011. Fatwa # 18350, 2009. Available from:
<http://www.askimam.org/public/question_detail/18350>. [Accessed 15 October 2015]

¹⁴⁹ Askimam.org. 2011. Fatwa # 16306, 2008. Available from:
<http://www.askimam.org/public/question_detail/16306>. [Accessed 15 October 2015].

¹⁵⁰ Askimam.org. 2011. Fatwa # 32049, 2015. Available from:
<http://www.askimam.org/public/question_detail/32049>. [Accessed 15 October 2015].

¹⁵¹ Askimam.org. 2011. Fatwa # 32362, 2015. Available from:
<http://www.askimam.org/public/question_detail/32362>. [Accessed 15 October 2015].

moralized which could possibly ruin the marriage and complicate matters further.

And Allah Ta'ala Knows Best

Wassalamu Alaykum]

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

FATWA B

Category: Character & Morals

Fatwa#: 15085

Asked Country: Pakistan

Answered Date: Apr 23,2007

Title: if the husband is suffering from premature ejaculation and is unable to give

Question

May Oral Sex be permissible if the husband is suffering from premature ejaculation and is unable to give orgasm to her wife through vaginal intercourse alone? He wants to pay her rights and save her from any sin? In such conditions may he use oral sex in addition to vaginal intercourse for her orgasm.

Answer

In the name of Allah, Most Gracious, Most Merciful

Assalaamu `alaykum waRahmatullahi Wabarakatoh

The husband should undergo treatment for premature ejaculation.

And Allah knows best

Wassalam

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

FATWA C

Category: Misc. Fiqh

Fatwa#: 18350

Asked Country: Pakistan

Answered Date: Oct 29,2009

Title: Q 1- if a husband ask to his wife for sex, and if she refused oftenly.with reasons that she is not in mood, and after this, if husband indulge in some other immoralQ- 2 if a muslim, dont want to live , due to extra stress ,pain, and unhappines in his life, can he commit suicide ? is there any possibility that ALLAH forgive his sin, as he is aksing to ALLAH ...

Question

Sir,

Q 1- if a husband ask to his wife for sex, and if she refused oftenly.with reasons that she is not in mood, and after this, if husband indulge in some other immoral and sinful activities, then what would be position of both in front of ALLAH?.

Q-2 if a muslim, dont want to live , due to extra stress ,pain, and unhappines in his life, can he commit suicide ? is there any possibility that ALLAH forgive his sin, as he is aksing to ALLAH to resolve his problems but ALLAH didnt.

Answer

In the name of Allah, Most Gracious, Most Merciful

Assalaamu `alaykum waRahmatullahi Wabarakatuh

1) When a husband and wife make nikaah Allah Ta'ala grants certain rights and privileges to one over the other. It is the duty of the man to provide shelter for the woman and to take care of her needs. Similarly, it is necessary for the woman to obey her husband at all times and to respect his authority over her.

Rasulullah has mentioned: [Arabic text]

“If I had to command anyone to make Sajdah (prostrate) to another person, I would of instructed the woman to make Sajdah to her husband”

Rasulullah also mentioned:

When a man calls his wife to bed and she refuses, he then spends the night upset and angry with her, the angels curse her till the morning.

If a woman has a valid reason for not responding positively to her husband, she should discuss this with him.

If there is no valid reason for not responding to him, she should rather obey him and save herself from the curses of the angels. However, if she does not offer herself to her husband, it does not give him the right to abuse his chastity and to involve himself in any illicit relations. If he commits any evil or immoral act, he will be responsible for his own actions and answerable for it on the day of Qiyaamah.

2) In actual fact, suicide does not put a stop to all problems and worries, rather it puts a start to much more distress and problems (in the Qabr and in the hereafter). As believers in the Kalimah, we believe in Taqdeer and that all good and bad is from Allah. Many a times Allah Ta'ala afflicts a person with certain problems and calamities, this is only a test from Allah and he wants to see how we respond to these adverse conditions. Whether we are patient and put our reliance on Allah, or do we turn our backs and have an evil perception regarding Allah. Accordingly Allah Ta'ala will reward the person, whether it is apparent in this world or the hereafter.

Rasulullah has mentioned: [Arabic Text]

“Whoever kills himself in this world using some kind of object, He will be punished with the same item on the day of Qiyaamah”

If a person makes dua and asks Allah to help and assist him, then he should not lose hope and continue asking Allah. If his duas are not answered immediately, then too, he will not leave empty handed. He will see the fruits of his sacrifice later.

And Allah knows best

Wassalaamu `alaykum

MI. Rayhaan Docrat,

Student Darul Iftaa

Checked and Approved by:

Mufti Ebrahim Desai
Darul Iftaa, Madrassah In'aamiyyah

FATWA D

Category: Character & Morals

Fatwa#: 16306

Asked Country: United Kingdom

Answered Date: Feb 24,2008

Title: I got married 2 years ago but my wife seems to be unhappy. she says I do not satisfy her sexually. what should I do?

Question

I got married 2 years ago but my wife seems to be unhappy. she says I do not satisfy her sexually. what should I do? Also can a man and women masturbate each other for pleasure. Also is it haram for a women to reach an orgasm by her husband masturbating her?

Answer

In the name of Allah, Most Gracious, Most Merciful

Assalaamu `alaykum waRahmatullahi Wabarakatuh

[if !supportLists]1. [endif]At the outset, it is important that you consider the feelings of your wife in this regard. If she claims that you are not satisfying her, you should obtain professional medical advice on this issue. You are newly married and should avoid any type of resentment from your wife.

It is permissible (Shaami Page 355 Vol. 2)

3. Refer 2 above.

And Allah knows best

Wassalam

Muhammed Zakariyya Desai,

Assistant Mufti

Checked and Approved by:

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

FATWA E

Category: Marriage (Nikah)

Fatwa#: 32049

Asked Country: United States

Answered Date: Mar 03,2015

Title: Should i go ahead with Nikah?

Question

I am getting married next week, this is very urgent.

I am to be wed to this guy who is religious and my mom loves him. I on the other

hand do not. My father talked with me to ask my opinion of him at the start but I did not give any because I didn't know what to say. The guy lives in another state, and we talked over the phone for a month. He said he loves so much, and wish I can do the same..I really tried to, but I can't. I don't find him attractive, and it annoys me when he says he loves me.

I do not agree to this marriage, at the start I was ok with it because I told him and my parents I wanted to get married a year later after my studies (my mom didn't care..she said I won't find another guy like him).

Two weeks ago, I expressed my concern with my parents. I told my mom I was assaulted when I was a child and was kind of scared of marriage and consummating. She didn't care as much except the fact I was ok and called me stupid because I shared it also with the guy. They won't stop the marriage.

One week ago, I told the guy I feel sad that no one values my opinion, that I wished I could have gotten married a year later than now. He was sad and cried. I hung up the phone, and he calls my mom right after saying I said these things. My parents yell at me, threaten to kill me and my mom was about to jump out the window to suicide. They said they were really disappointed in me. I got a few minor kicks and bruises from them. They said it was my fault for not strongly saying no earlier and now it's too late since there's a week left, they brought everything for the marriage and they told the community about my marriage...if they stop the wedding they will lose their respect and won't be able to show their face anymore in the mosque. They also said it'd be my fault if no one will marry my other siblings.

I don't know how to cope but to stay outside or stay in college all day long. I am hurt. My parents blame me for hurting them but I feel they do not see me or care. I feel very depressed. And I really hate talking to the guy now, I have bad thoughts like how he would die. I want to run away. My mom expects me to consummate the marriage, but I am scared. I HATE the idea of him touching me, I feel grossed out and throwing up (my mom thought about him, how he maybe he has hope -- she doesn't really care what I feel).

Also another note: we did do istikhara namaz, my parents saw good things but him and I didn't see anything. But I hate him already...I feel really bad.

Please help me. I do not feel at peace, I feel like I'm going crazy.

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

Sister in Islam,

We understand your mind-set and predicament.

In principle, you are an adult and you have an independent right in Shariah to withdraw from this marriage arrangement. However, in the context of the circumstances you are facing, you seek our help, probably our advice. Often in life we have to distinguish permissibility from practicality. What may be permissible may not necessarily be practical or ideal.

It is generally normal for girls to be apprehensive before marriage for various reasons. In many instances it could be the appearance of the boy or his conduct or his family etc. It should be understood that no boy is perfect. Even if you choose a perfect match for you, you will still be apprehensive in some way or the other. You will have to reach a point of compromise and trust in Allah for whatever has to happen.

In your case, there are some positives in the boy. You say his conduct is good. There is also humility in him. Your parents chose him for you. Surely they must have considered him to be the most suitable for you based on their love for you and their experiences in life.

Our advice is you change your mind-set and proceed with the marriage. Living together will give both of you the opportunity to win over each other's hearts, which will dominate all negativities. If you trust your parent's love for you then change your attitude and look forward to making the marriage a success. After adopting all possible means for a successful marriage, place your trust in Allah.

Make lots of Dua to Allah to assist you in the marriage.

And Allah Ta'ala Knows Best

Saleem Khan

Student Darul Iftaa Bradford, UK

Checked and Approved by, Mufti Ebrahim Desai.

www.daruliftaa.net

FATWA F

Category: Marriage (Nikah)

Fatwa#: 32362

Asked Country: United States

Answered Date: Mar 19,2015

Title: Mother and husband pressuring daughter to consummate marriage

Question

Here was my pervious question:

http://www.askimam.org/public/question_detail/32049

I went ahead with the marriage, when my heart wasn't into it and a lot of things happen. First, I tried to give this marriage a chance and trying to get know my husband and built trust before getting intimate right away but..

1.Mom threatens me (kick me out of the house) to consummate marriage when I felt uncomfortable and didn't want to. She wanted to save face in front of his family.

2.He emotionally blackmails here and there to consummate the marriage.

3.He tells my mother everything, whenever she asked him if we consummated he says no, and then my mom emotionally blackmails me and hurts me.

4.I ended up in a psych ward because I felt trapped and really betrayed by everything. They both knew I had my monthly cycle and I wasn't ready. I told them it was in the quran that you shouldn't force a woman or touch her when she's in her monthly cycle but they didn't seem to care.

My 'husband' knew about my traumatic childhood experience but forced kissed me and touched when I was sleeping...i cried in the bathroom because I felt violated and hurt. I really do not like him, and I feel like I can't full fill my duty as a wife towards him. How can I love someone when I was forced into this? Forced marriage is against islam.

Everyday I come home - I feel sadness. I feel depressed and trapped in my own home.

I tried to give it a chance, but right now, I really can't. I don't find him sexually, emotionally and physically attractive. We also have culture differences and I just can't make sacrifices for someone I don't love.

My parents told me to accept it because Allah made me get married for a reason, they said I'm acting out..but I am depressed and hurting inside. If everything happens for a reason..than why is there such thing as - forced marriages is against Islam? Why can't they see that?

My parents expect me to consummate in summer when I'm suppose to go visit him...I just want to run away. I know I won't be able to full fill my duty as his wife, it's not fair to me nor to him.

I don't want this marriage. Never did. Isn't this void?

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

Sister in Islam,

We take note of your negative feelings in the marriage even after giving it a chance.

We advise you to seek the intervention of some senior person in the family and some senior *‘aalim* in whom your parents have confidence and confide in them. Explain to them how you feel and the negative consequences of moving ahead. Request them to assist you to amicably terminate the marriage through a *talaah*. Make them explain to your parents that the negative consequences of moving forward in the marriage are probably more than terminating the marriage and it is in their interest to be part of amicably resolving the problem.

And Allah Ta’āla Knows Best

Muhammad Haris Siddiqui

Student Darul Iftaa Melbourne, Australia

Checked and Approved by, Mufti Ebrahim Desai.

APPENDIX 2: SUPPORTING FATWAS

15104- G¹⁵²

17032- H¹⁵³

30630- I¹⁵⁴

18778- J¹⁵⁵

24644- K¹⁵⁶

27692- L¹⁵⁷

30959- M¹⁵⁸

23651- N¹⁵⁹

17012- O¹⁶⁰

28553- P¹⁶¹

14847- Q¹⁶²

28092- R¹⁶³

31509- S¹⁶⁴

15840- T¹⁶⁵

¹⁵² Askimam.org. 2011. Fatwa # 15104, 2007. Available from:
<http://www.askimam.org/public/question_detail/15104>. [Accessed 15 October 2015].

¹⁵³ Askimam.org. 2011. Fatwa # 17032, 2007. Available from:
<http://www.askimam.org/public/question_detail/17032>. [Accessed 15 October 2015].

¹⁵⁴ Askimam.org. 2011. Fatwa # 30630, 2014. Available from:
<http://www.askimam.org/public/question_detail/30630>. [Accessed 15 October 2015].

¹⁵⁵ Askimam.org. 2011. Fatwa # 18778, 2013. Available from:
<http://www.askimam.org/public/question_detail/18778>. [Accessed 15 October 2015].

¹⁵⁶ Askimam.org. 2011. Fatwa # 24644, 2010. Available from:
<http://www.askimam.org/public/question_detail/24644>. [Accessed 15 October 2015].

¹⁵⁷ Askimam.org. 2011. Fatwa # 27692, 2013. Available from:
<http://www.askimam.org/public/question_detail/27692>. [Accessed 15 October 2015].

¹⁵⁸ Askimam.org. 2011. Fatwa # 30959, 2014. Available from:
<http://www.askimam.org/public/question_detail/30959>. [Accessed 15 October 2015].

¹⁵⁹ Askimam.org. 2011. Fatwa # 23651, 2012. Available from:
<http://www.askimam.org/public/question_detail/23651>. [Accessed 15 October 2015].

¹⁶⁰ Askimam.org. 2011. Fatwa # 17012, 2008. Available from:
<http://www.askimam.org/public/question_detail/17012>. [Accessed 15 October 2015].

¹⁶¹ Askimam.org. 2011. Fatwa # 28553, 2014. Available from:
<http://www.askimam.org/public/question_detail/28553>. [Accessed 15 October 2015].

¹⁶² Askimam.org. 2011. Fatwa # 14847, 2007. Available from:
<http://www.askimam.org/public/question_detail/14847>. [Accessed 15 October 2015].

¹⁶³ Askimam.org. 2011. Fatwa # 28092, 2014. Available from:
http://www.askimam.org/public/question_detail/28092. [Accessed 15 October 2015].

¹⁶⁴ Askimam.org. 2011. Fatwa # 31509, 2014. Available from:
< http://www.askimam.org/public/question_detail/31509>. [Accessed 15 October 2015].

#19494- U¹⁶⁶

28508-V¹⁶⁷

19786-W¹⁶⁸

#28610- X¹⁶⁹

18511-Y¹⁷⁰

Full text of the Supporting Fatwas

FATWA G

Category: Misc. Fiqh

Fatwa#: 15104

Asked Country: South Africa

Answered Date: Apr 26,2007

Title: I am a newly married woman and my husband and I are having

Question

Assalaamu-alaikaum

I am a newly married woman and my husband and I are having intercourse almost every night. I have been performing ghusl diligently each morning after intercourse and before my Fajr salaah. However, recently I have been suffering with sinus problems and mild headaches and I believe it is because of washing my hair every day. I previously never suffered with these conditions as I used to wash my hair once a week because of its length. Is there any alternative ghusl procedure I could follow that will allow me to skip washing my hair everyday? Can I perform masaah of my hair instead?

Jazakallah,

Answer

In the name of Allah, Most Gracious, Most Merciful

Assalaamu `alaykum waRahmatullahi Wabarakatoh

¹⁶⁵ Askimam.org. 2011. Fatwa # 15840, 2007. Available from:
<http://www.askimam.org/public/question_detail/15840>. [Accessed 15 October 2015].

¹⁶⁶ Askimam.org. 2011. Fatwa # 19494, 2011. Available from:
<http://www.askimam.org/public/question_detail/19494>. [Accessed 15 October 2015].

¹⁶⁷ Askimam.org. 2011. Fatwa # 28508, 2014. Available from:
<http://www.askimam.org/public/question_detail/28508>. [Accessed 15 October 2015].

¹⁶⁸ Askimam.org. 2011. Fatwa # 19786, 2014. Available from:
<http://www.askimam.org/public/question_detail/19786>. [Accessed 15 October 2015].

¹⁶⁹ Askimam.org. 2011. Fatwa # 28610, 2014. Available from:
<http://www.askimam.org/public/question_detail/28610>. [Accessed 15 October 2015].

¹⁷⁰ Askimam.org. 2011. Fatwa # 18511, 2010. Available from:
<http://www.askimam.org/public/question_detail/18511>. [Accessed 15 October 2015].

It is permissible for you to make masah of your head instead of washing your head in ghusl if washing almost everyday is causing you serious headaches and other sicknesses Allaamah Shaami states "A woman should not withhold herself from her husband, i.e. out of fear of falling ill due to Ghusl (bath) becoming obligatory on her. Rather, she has been granted concession regarding washing her hair. (Raddul Muhtar, vol 1, pg 153)

This Fatwa should not be abused for minor and trivial sicknesses. In that case the ghusal will not be valid

And Allah knows best

Wassalam

ML. Ya'qoob Dadabhai,

Student Darul Iftaa

Checked and Approved by:

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

FATWA H

Category: Misc. Fiqh

Fatwa#: 17032

Asked Country: United Kingdom

Answered Date: Aug 18,2008

Title: I have heard of the Islamic ruling concerning slave women and concubines. I have heard that slave owners may have sexual intercourse with their female slaves, without marrying them.

Question

I have heard of the Islamic ruling concerning slave women and concubines. I have heard that slave owners may have sexual intercourse with their female slaves, without marrying them.

Please specify the ruling and specify situations where this is acceptable, how this is not sinful, and is not zina.

Answer

**In the name of Allah, Most Gracious, Most Merciful
Assalaamu `alaykum waRahmatullahi Wabarakatoh**

Please view our standard answer on the issue.

Wassalam

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

QUESTION: What is the Islamic law with regard to slave-women? Was It permissible to have relations with these slave-women without a formal marriage ceremony?

ANSWER: Firstly, it should be borne in mind that slavery was not something that was introduced by Islam; on the contrary, it was something that had its roots planted long before the advent of Islam. It would not be an exaggeration to state that slavery is probably as old as war itself, because it is one of the consequences of war. Thus,

slavery apparently first reared its head with the first wars that took place on the face of earth. War is a factor that makes soft men stern, kind men harsh and delicate men rugged. A man who cannot bear to see the sight of blood under normal circumstances becomes capable of shedding the blood of hundreds under the pressure of war. Those who were not killed in warfare, used to be taken as prisoners of war. The pages of history will show that many alternative, expedient methods were used through the ages to deal with prisoners of war. Some used to be executed while others would be set free, with or without a ransom. Then, there were others who were neither executed nor set free. These were enslaved.

When Islam came and prospered, its power was challenged by the enemies of Islam and the need to go to war arose. By that time, slavery had virtually become an international custom. It was also rife among the Arabs from the days of darkness and ignorance. Thus, abolishing it instantaneously would have caused chaos and pandemonium among the Arab people. Hence, a process of gradual extirpation had to be implemented. Moreover, if the Muslims would set all their enemy-prisoners free and tolerate their fellow Muslims being captured and enslaved by the enemies, it would have led to a sharp decrease in the Muslim military force and given a great advantage to the enemy forces which was something that the Muslims could not afford. Furthermore, it is a well known fact that warfare tactics used by one side are often countered by the opposing side in order to maintain a balance of power. Hence, wartime diplomacy necessitated the enslaving of prisoners.

In the "Jihaads" (Islamic wars) that took place, women were also, at times, taken as prisoners of war by the Muslim warriors. These women captives used to be distributed as part of the booty among the soldiers, after their return to Islamic territory. Each soldier was then entitled to have relations ONLY with the slave girl over which he was given the RIGHT OF OWNERSHIP and NOT with those slave girls that were not in his possession. This RIGHT OF OWNERSHIP was given to him by the "Ameerul-Mu'mineen" (Head of the Islamic state.) Due to this right of ownership, it became lawful for the owner of a slave girl to have intercourse with her.

It may, superficially, appear distasteful to copulate with a woman who is not a man's legal wife, but once Shariat makes something lawful, we have to accept it as lawful, whether it appeals to our taste, or not; and whether we know its underlying wisdom or not. It is necessary for a Muslim to be acquainted with the laws of Shariat, but it is not necessary for him to delve into each law in order to find the underlying wisdom of these laws because knowledge of the wisdom of some of the laws may be beyond his puny comprehension. Allah Ta'ala has said in the Holy Quran: "Wa maa ooteetum min al-ilm illaa qaleelan" which means, more or less, that, "You have been given a very small portion of knowledge". Hence, if a person fails to comprehend the underlying wisdom of any law of Shariat, he cannot regard it as a fault of Shariat (Allah forbid), on the contrary, it is the fault of his own perception and lack of understanding, because no law of Shariat is contradictory to wisdom.

Nevertheless, the wisdom underlying the permission granted by Shariat to copulate with a slave woman is as follows: The LEGAL possession that a Muslim receives over a slave woman from the "Ameerul-Mu'mineen" (the Islamic Head of State) gives him legal credence to have coition with the slave woman in his possession, just as the marriage ceremony gives him legal credence to have coition with his wife. In other words, this LEGAL POSSESSION is, in effect, a SUBSTITUTE of the MARRIAGE CEREMONY. A free woman cannot be 'possessed', bought or sold like other possessions; therefore Shariat instituted a 'marriage ceremony' in which affirmation and consent takes place, which gives a man the right to copulate with her. On the

other hand, a slave girl can be possessed and even bought and sold, thus, this right of possession, substituting as a marriage ceremony, entitles the owner to copulate with her. A similar example can be found in the slaughtering of animals; that after a formal slaughtering process, in which the words, "Bismillahi Allahu Akbar" are recited, goats, cows, etc.; become "Halaal" and lawful for consumption, whereas fish becomes "Halaal" merely through 'possession' which substitutes for the slaughtering.

In other words, just as legal possession of a fish that has been fished out of the water, makes it Halaal for human consumption without the initiation of a formal slaughtering process; similarly legal possession of a slave woman made her Halaal for the purpose of coition with her owner without the initiation of a formal marriage ceremony.

In short, permission to have intercourse with a slave woman was not something barbaric or uncivilised; on the contrary, it was almost as good as a marriage ceremony. In fact, possession of a slave woman resembles a marriage ceremony in many ways and both have a lot in common with each other. One similarity is this that just as a free woman cannot have two husbands simultaneously, a slave woman cannot be used for intercourse by two owners. Another similarity is that a free woman whose marriage is on the rocks, cannot marry another man until her previous marriage is nullified through divorce, etc. Due to the discrepancies between husband and wife, the marriage sometimes reaches a stage where it becomes virtually impossible for the couple to live as man and wife with the result that divorce is brought into force to nullify marriage ties. Similarly, if a slave woman was married previously in enemy territory to a non-Muslim, and is then captured alone, i.e. without her husband, it is not permissible for any Muslim to have relations with her until her previous marriage is nullified, and that is done by bringing her to an Islamic country and making her the legal possession of a Muslim. Bringing her into Islamic territory necessitates the rendering of her previous marriage as null and void by Islamic law because with her husband in enemy territory and she in Islamic territory, it becomes virtually impossible for them to meet and live as man and wife. That is why it is not permissible to have intercourse with a woman whose husband is also taken into captivity and put into slavery with her. Another resemblance between the two is that, just as a divorcee has to spend a period called "Iddat" before another man is allowed to marry her, similarly, a slave woman has to spend a period called "Istibraa" before her owner can have coition with her.

Another similarity between marriage and possession of a slave woman is that just as the wife becomes a dependant of the husband and he has to provide a home, food and clothing for her, a slave woman also becomes a dependant of her owner and he has to provide a home, food and clothing for her. Yet another similarity is this that just as marriage makes the close relatives of the wife Haraam upon the husband; i.e. he cannot get married to his wife's mother, grandmother, sister, etc., similarly if a man has copulated with a slave woman the slave woman's close relatives also become Haraam upon the owner. With all these similarities it does not make sense to regard copulation with a slave woman distasteful whilst copulation with one's wife is not regarded as distasteful.

A question that may still arise is that why does the owner of a slave woman not marry her before having relations with her? Well, this is impracticable because of a few intricate technicalities. Firstly, we know that a man has to give "Mahr" (dower-money) to his bride. The Holy Quran says:-

[A r a b i c]

Trans: "And allowed unto you is whatsoever is beyond that, so that ye may seek them with your substance (i.e. with your dower-money). " - (4:24).

Thus, "Mahr" is a conditional prerequisite of Nikah. If a man has to marry his slave woman, it would not be possible for him to abide by this condition of 'Mahr' because by Islamic law, a slave does not have rights over any property, i.e. she cannot own anything. In fact, whatever she has with her too, i.e. her clothing, etc., is all regarded as the property of her owner. Therefore, If he gets married to his slave girl and gives her the 'Mahr' she cannot become the owner of it because she has no right of ownership. The 'Mahr' would bounce back to the owner of the slave girl and it would tantamount to giving the 'mahr' to himself. Hence, the owner would become the payer as well as the PAYEE of the 'mahr' which would only result in the mockery of the whole system of 'mahr'. It would be absolutely superfluous to have such a marriage ceremony performed that makes a mockery of the 'mahr' system. Hence, the owner cannot get married to her while she remains a slave girl. However, if he sets her free, then he can get married to her on the basis of her having become a liberated woman. Although the owner himself cannot get married to his slave woman, without giving her freedom, he can get her married to someone else. If he gets her married to someone else, then only her husband can now have intercourse with her and the owner's right of having intercourse with her comes to an end. All these facts prove that the slave girl does not become an instrument of sex; on the contrary, her honour is upheld, in that only one man is allowed to have intercourse with her JUST AS only one man (the husband) is allowed to have intercourse with his lawfully wedded wife. Islam ensured that the slave girl's duties were not restricted merely to domestic chores but also gave her master permission to copulate with her. This concession created an atmosphere of love and harmony between the slave girl and her master. Islam thereby raised the status of the war captive-maidens close to that of wives. It was a psychological cure to her grief-stricken heart, being deprived of her family and thrown into the hands of a strange society.

Rasulullah (Sallallahu Alayhi Wasallam) enjoined his followers to treat the slaves kindly, gently, and, above all, to regard them as members of the family. In this way, they were made to feel wanted; which was far better than treating them as outcasts and leaving them to wander the streets of a strange society in a peniless, destitute condition. Such treatment would have ultimately forced them to take up evil occupations such as prostitution in the case of slave woman in order to fill their hungry stomachs. The First World War in 1914 was a clear reflection of the evils involved in setting captive women free to roam about in a strange society with strange surroundings. During that war, German and English women prisoners on either side were set free to roam the streets with no-one to feed them. The result was obvious that they resorted to other unrefined and uncivilised methods of income on the streets. Thus, it is evident that the Islamic treatment of women prisoners of war was conducive towards better social relations and led to the refinement of their overall social lives..... [continued]

FATWA I

Category: Marriage (Nikah)

Fatwa#: 30630

Asked Country: United Kingdom

Answered Date: Nov 16,2014

Title: Travel before Ruksati

Question

My question is with regards to spending the night with my wife before the ruksati, my father is of the opinion that i should not spend the night or go on holiday with my wife until the ruksati takes place, my wife and her family however find this as unjust but my father is doing so on the basis of it looking disrespectful before my wife has moved in with me, please advice me.

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

In principle, once the contract of nikāh has been concluded, the husband is entitled to sexual intimacy with his wife. The wife has the right to refuse his sexual advances or to travel with him until he submits the mahr mu‘ajjal (the mahr due immediately). After submission of the mahr mu‘ajjal, the husband is at liberty to take her where he pleases.[1]

“Ruksati” or “zifāf” refers to the customary handing over of the wife into the custody of the husband.[2] The purpose of zifāf is to make it possible for the husband to fully exercise his rights as a husband. In traditional Muslim societies, sexual intimacy normally occurred after zifāf.[3] However, zifāf itself is not a condition for enjoying sexual intimacy with one’s wife.[4]

If it is customary in your culture to wait until zifāf before consummating the marriage, or there isn’t a long time before zifāf takes place, it will be better to respect your father’s wishes and delay consummation of the marriage until zifāf. If it is not customary to wait until zifāf or there is a considerable amount of time before zifāf, it will be advisable to explain the above ruling to your father so that he approves of you spending time with your wife before zifāf.

And Allah Ta‘ālā Knows Best

Zameelur Rahman

Student Darul Iftaa UK

Checked and Approved by, Mufti Ebrahim Desai.

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[Followed by Arabic references and footnotes].

FATWA J

Category: Character & Morals

Fatwa#: 18778

Asked Country: Canada

Answered Date: Jun 29,2010

Title: If wife does not want to have sex (because she feels pain in her private parts and also she is tired looking-after her small baby), then is it permissible for the husband to masturbate?

Question

If wife does not want to have sex (because she feels pain in her private parts and also she is tired looking-after her small baby), then is it permissible for the husband to masturbate?

Answer

In the name of Allāh, Most Gracious, Most Merciful

Assalāmu ‘alaykum wa Rahmatullāhi Wabarakātuh

In principle, it is not permissible for a man or woman to masturbate/self stimulate themselves. This is substantiated by clear juristic texts cited in various books. However, if a husband desires his wife to masturbate him, it will be permissible despite it still being regarded as an undesirable act.

(Fatāwa Mahmudiyyah, Vol. 18, Pg. 636/7, Fāruqiyyah)

(Hindiyyah, Vol. 2, Pg. 170, Rashīdiyyah)

(Raddul Muhtār, Vol. 4, Pg. 27, HM Saeed)

(Raddul Muhtār, Vol. 2, Pg. 399, HM Saeed)

And Allāh Ta‘āla Knows Best

Wassalāmu ‘alaykum

Mr. Ebrahim Desai,

Student Dārul Iftā

Checked and Approved by:

Mufti Ebrahim Desai

Dārul Iftā, Madrasah In‘āmiyyah

[Followed by Arabic references]

FATWA K

Category: Marriage

Fatwa#: 24644

Asked Country: Pakistan

Answered Date: Mar 04, 2013

Title: Is it sinful if a person ejaculates due to his wife caressing him?

Question

assalam alaikum warehatulla wabarkatahu!

my wife is pregnant and 31st week has just started, few days back she was not feeling well and don't wanted to have sex; instead she caressed me which caused ejaculation.

I want to know whether this act was sinful?

Please guide me in this regard, shall i offer tauba salaah.

Duaon ka taalib

Answer

In the Name of Allah, the Most Gracious, the Most Merciful

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh

The act in reference was not sinful.

And Allah Ta‘āla Knows Best

Mufti Ebrahim Desai

FATWA L

Category: Jurisprudence and Rulings (Fiqh)

Fatwa#: 27692

Asked Country: Pakistan

Answered Date: Dec 08,2013

Title: Questions of sexual intimacy

Question

If a wife is pregnant in her later stages and can not fulfill the sexual needs of her husband or the wife generally does not feel like having sex then...

1. Is it permissible for wife to masturbate her husband till he ejaculates?
2. If husband wife have shower together, can husband rub his penis into the wifes buttocks in & out and ejaculates at the same time (at no point inserting it into her anus) is this act permissible?

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

It is permissible.

It is permissible[1].

Immad Bin Arshad

Student Darul Iftaa California, USA

Checked and Approved by, Mufti Ebrahim Desai.

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[Followed by Arabic references].

FATWA M

Category: Marriage (Nikah)

Fatwa#: 30959

Asked Country: United Kingdom

Answered Date: Oct 28,2014

Title: My husband is not fulfilling my marital rights. What should I do?

Question

I am after some guidance concerning my marriage. I have been married two years and there's a few things I am really unhappy about with my husband. Although me and my husband are from the same community and born and bred in the UK he has too much of Pakistani culture in him. On the contrary he is very Islamic prays 5 times goes in Jamats and comes from a good Islamic family.

My husband today mentioned to me that his family are my family which I don't disagree with however when I said to him likewise my family is your family he said no they are my in-laws. I want to know from an Islamic perspective if it's true that the wife no longer belongs as such to her own family after marriage and the husband's family is hers but the same doesn't apply to the husband? I have never heard of this in

Islam and assume this is a cultural thing? Also my husband doesn't keep marital relations with me I have spoken to him nicely argued with him even asked for divorce as from his part he doesn't show any intimacy only basic hugs and kisses now and then which just aren't enough. He knows he has this problem but is doing nothing to resolve it and it's leaving me bitter and frustrated in my marriage and towards him.

I have been wanting a baby from a few months after I got married and I am unable to conceive as he won't make an effort unless I initiate first and also doesn't want a child till he's financially stable he states which I think is really unfair on me and my maternal instincts. I have tried talking to him broken down in front of him argued with him but he just acknowledges and nothing changes.

I don't want to fall into haram out with my marriage I have told him this and he just listens he is not prepared to give me a divorce either and says things will get better. Please give me some guidance as I am fed up of his way of thinking and doing things. Jazak Allah A.Ahmed

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

Preserving one's chastity is one of the noble objectives of *nikāh*. Since the need to preserve one's chastity is common to both husband and wife, the right to intimacy also belongs to both husband and wife.

As a result, it is necessary for your husband to fulfill your needs to prevent you from falling into *harām*. Failure to do so without an acceptable reason would make him a sinner in the sight of Allah. [i]

Your husband has acknowledged that a problem exists. As a first step, give him the benefit of doubt and try to find out if there is an external factor such as stress, anxiety or another issue that is causing him to act like this. Perhaps it is something simple that can be resolved but he is reluctant to speak about it due to the sensitivity of the topic. If you can gently coax him into sharing the problem you might be able to help him seek a solution Insha-Allah. However, if you cannot make any progress in finding out the underlying cause of his behavior then you should approach an experienced, local scholar for marital counseling.

The wife of Abdullah ibn Amr (may Allah be pleased with him) when asked by her father-in-law about her husband mentioned that her husband was an excellent man but was not fulfilling her rights. When this was reported to Rasulullah (salallahu alayhi wa sallam), the husband, Abdullah ibn Amr (may Allah be pleased with him) was summoned and told that his wife had a right over him. [ii]

Similarly, in the time of Umar (may Allah be pleased with him), a woman approached him and said that her husband fasts by day and prays by night and she did not like to complain about him. Ka'b (may Allah have mercy on him) was sitting there at the time and understood the woman's intention. He said that this woman's husband is not fulfilling her marital rights.

Umar (may Allah be pleased with him) then appointed him to judge between the husband and the wife. Ka'b (may Allah have mercy on him) summoned the husband and told him that his wife had a complaint. When the husband mentioned his worship and being enthralled by the verses of the Quran, he was told that it was no excuse and he had to fulfill his wife's rights. [iii]

As is evident from the above-mentioned incidents, if your attempts at getting him to share the reason for his behavior are unsuccessful, the best way to resolve this will be

to pursue marital counseling.

In addition, make *duā* (supplication) for yourself and your husband that Allah put love and harmony in your relationship and *barakah* (blessings) in your finances.

You have also mentioned that your husband does not want to have children at this time. *Rizq* (sustenance) is from Allah and your husband should not be duly worried as long as he is making an effort and putting his *tawakkul* (reliance) in Allah. While *azl* (reversible contraception) is allowed for a number of genuine reasons, waiting until one is financially stable is not one of them. Further, your husband needs to take your permission before practicing contraception. [iv] [v]

As for his statement that his family is your family while your family is his in-laws, this is incorrect. You are related to your husband's family by marriage and he is related to your family by marriage. Insha-Allah through marital counseling these minor misunderstandings should also be resolved.

And Allah Ta'āla Knows Best

Sohail ibn Arif, Student Darul Iftaa Chicago, USA

Checked and Approved by, Mufti Ebrahim Desai.

[Arabic Text follows].

FATWA N

Category: Misc. Fiqh

Fatwa#: 23651

Asked Country: United Kingdom

Answered Date: Dec 20,2012

Title: Penis Exercise

Question

Assalamu alaykum hazrat I wanted to know if it was permissible to use One hour Per week for some penis exercises which helps you solving premature ejaculation. I feel that my wife is not fully satisfied with the size and time it takes. I do all my Islamic responsibilities so i basically wanted to know whether this is haram. The exercise is to train the muscle related to that area. Wa alaykum assalam

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

It would be best first of all to consult a physician to undergo proper treatment for premature ejaculation.

It is also permissible to perform these exercises provided the following conditions are met:

a.) It must not involve any *haram* – such as watching any sort of instructional video or reading any instructions which contain explicit images.

b.) If the exercise involves any aid/equipment – or involves any touching of the penis – these should all be operated by the wife and not by husband to himself.

- c.) The aid/equipment that is involved should not cause ejaculation.
- d.) The exercises should not result in any harm or bodily injury to oneself.

And Allah Ta'āla Knows Best
Sohail ibn Arif,
Student Darul Iftaa
Chicago, USA
Checked and Approved by,
Mufti Ebrahim Desai.

FATWA O

Category: Worldly Possessions

Fatwa#: 17012

Asked Country: South Africa

Answered Date: Aug 14,2008

Title: When I tell my non-believer friends what girls cant practice polyandry while guys can practice polygny, I find it hard explaining it to them why Allah has programmed women to not be able to have multiple husbands....

Question

When I tell my non-believer friends what girls cant practice polyandry while guys can practice polygny, I find it hard explaining it to them why Allah has programmed women to not be able to have multiple husbands. The insinuation here is, if it is not the religion that is sexist, it is your Creator who has made it biologically hard for your women to have more husbands. They argue, there are many women who have multiple boyfriends, and live happily. It should be the girl's prerogative whether or not to have multiple husbands, even if it may not necessarily be beneficial for her. But if the right has been given to man, women should get it too.

The same inequality problem arises with testifying. Two women against one man's witness. The argument put forward is women are physically and mentally weaker. But we know there are significant exceptions in the modern world, and if women would have been allowed to build muscular body in gym, etc they too have just as much or more or less the same mental or physical strength to carry normal tasks. If women's periods are such a big deal, then how can you the religion generalize that men would not be falling sick either. Many men fall sick with flu, cold, etc. but in some parts of the world more than other, but that does not mean you take away the rights of doing something they are "probably" capable of.

The question really is, maybe its hard for some women, maybe other women find it not so hard, but why the ruling only for women to not marry more than one, or carry additional burden. There are many men who would find it hard dealing with mental stress and physical pains too in general life, but why did the religion generalize?

It is extremely hard finding a rational answer to the non-believer friends.

Answer

**In the name of Allah, Most Gracious, Most Merciful
Assalaamu `alaykum waRahmatullahi Wabarakatoh**

Before proceeding, it should be noted that it is difficult, rather impossible, to be rational with irrational and unreasonable beings; not to mention being it extremely detrimental to one's Imān to maintain bonds of friendship with such people. Their obstinacy in rejecting the most rational, cogent and soundest of arguments will lead you to frustration, uncertainty and questioning in your own Imān. If your "friends" are christians or jews, they should already understand the impermissibility, innate contemptibility and irrationality of polyandry. If they are atheists, which can be deduced from statements such as "if it is not the religion that is sexist, it is your Creator who has made it biologically hard for your women to have more husbands," how could it be expected of them to understand the rationale of the impermissibility of polyandry when they have failed or rather, chosen to fail to recognize the existence of their Creator? If they agree that women have been created and divinely programmed in such a way that inhibits polyandry, it would then be an exercise in futility to question why Allah chose to do so. What right does the feeble creation have to ask the sublime Creator why He created something in a certain way? As Muslims, we submit in totality to the will and order of Allah Ta'ālā. We do not weigh the commands and dictates of the religion on the scales of our limited and scanty logic. Allah Ta'ālā is Al-Hakīm (the Most-Wise) and His decrees are filled with wisdom and reason whether people can perceive them or not..... [fatwa continues]....

FATWA P

Category: Beliefs and Practices (Aqeedah)

Fatwa#: 28553

Asked Country: France

Answered Date: Mar 03,2014

Title: Have women only been created to satisfy their husbands?

Question

Have women only been created to satisfy their husbands? Is that the only reason to be a wife? So women don't have any value?

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu `alaykum wa rahmatullāhi wa barakātuh.

Just like their male counterparts, women were created for the purpose of worshipping Allah Ta'ālā; that is, to do what is pleasing to Him and refrain from what is displeasing to Him. Allah Ta'ālā says:

"I have not created jinn and man but to worship Me." (51:56)

The Qur'an emphasises the point that man and woman are not different in this respect. Consider the following verses: [Arabic text]

"Verily, Muslim men and Muslim women, believing men and believing women,

devout men and devout women, truthful men and truthful women, patient men and patient women, humble men and humble women, and the men who give *sadaqah* (charity) and the women who give *sadaqah*, and the men....[fatwa continues...]

And Allah Ta‘ālā Knows Best

Zameelur Rahman

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FATWA Q- Excerpt provided

Category: Misc. Fiqh

Fatwa#: 14847

Asked Country: United States

Answered Date: Jan 24,2007

Title: I'm deeply disturbed by the presence of Hoor in the akhirah...

Question

1) My name is technically "Kawthar" but because of where I come from it is pronounced "Kausar," Islamically, does this have any affect, as I've heard that names have an affect on people.

2) I was reading the tafsir in Mariful Quran for Surah Nisaa, in which I understood that women were created for the comfort of men. How can something that has been created for something else be equal to it? I've always heard that men and women are equal in Islam depending on their actions, but I find it hard to swallow that the very nature of women is to be subservient to men? I feel that this is a very broad topic, so it would be greatly appreciated if you could direct to some books or other resources, specifically on the topic of Islam's overall view of women more than specific things like purdah, etc. I'm deeply disturbed by the presence of Hoor in the akhirah. I asked my Alima about this, as we have not discussed that chapter in Mishkaat yet, and she said that this will not affect the happiness of the earthly women in Jannah, because if a woman wants a man to be completely devoted to her, she will have it. From your site I get the impression that as long as a couple gets into Jannah, the women will always be with their husbands and the husbands will always have many wives. Are the woman's desires being dismissed? Or is this simply a desire that women are not supposed to have? My Alima said that I should ask a mufti if this is bothering me.....[Continues]....

Answer

In the name of Allah, Most Gracious, Most Merciful

1. The pronunciation of your name as Kausar is correct.
2. Your objective is based on the assumption that all women are created for the comfort of men. That itself is incorrect as Allah says that women are a garment for you (men) and you (men) are a garment for them (women). It is clear from this verse that both (husband and wife) are a means of comfort for each other.

The issue of hoors in Jannah can be addressed from many angles. Consider just one angle. A woman by nature is beauty conscious. She also tends to compare herself with other women. In her consciousness of her beauty, she generally regards herself to be superior to other women. In that she feels proud of herself.

The Quran describes the hoors of Jannah to be very pretty and beautiful, but the women of this world will be superior to them. They lived in this world, brought Imaan on Allah and practiced deen. They bore the difficulties of this world. How can hoors of Jannah be superior to the women of this world? They did not bear the hardships of this world.

Jannah and everything in it is created for the believers. The women of this world are not created for gifting purposes, rather they will be gifted. The hoors do not have that lofty stage of the women of this world. It is obvious that their beauty will outshine the beauty of the hoors. There can never be any comparison between the two.....

And Allah knows best

Wassalam

Mufti Ebrahim Desai
Darul Iftaa, Madrassah In'aamiyyah

FATWA R

Category: Jurisprudence and Rulings (Fiqh)

Fatwa#: 28092

Asked Country: United Kingdom

Answered Date: Feb 03,2014

Title: Is oral sex a sin?

Question

Please can you advise me, if oral sex is permitted, me and my husband would like to know if we have committed a sin? I have heard according to some scholars, it is permissible, but majority say it is makruh tanzhi, can you advise me further, and also how do i get rid of the habbit.

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

It is encouraging to note that you have mustered the courage to ask about the permissibility of an action, which indicates to the fact that you would like to lead your life according to the commands of Allah.

Shyness and felling ashamed should not be an obstacle in wanting to find out the commands of Allah.

Islam teaches us that every action of ours should display modesty, and there are many Ahadith which emphasise the same, for example: (Arabic text)
Translation-Modesty only brings good (Bukhari, Muslim)
Translation-Modesty is part of Iman, and Iman will take one to Jannah (Tirmidhi)
Allah has created in humans carnal desires, and he has also designated for us ways to fulfil these desires in which modesty plays a great role. Thus any way of fulfilling these desires which is devoid of modesty will not be allowed in Islam. It is for this reason that our Ulama have ruled that oral sex is impermissible. Make tawba and resolve not to commit the sin in future.

And Allah Ta'āla Knows Best

Arif Omar

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FATWA S

Category: Jurisprudence and Rulings (Fiqh)

Fatwa#: 31509

Asked Country: India

Answered Date: Dec 19,2014

Title: Intercourse during menses

Question

During haiz if wife insist to have sex using condom when there is very little or almost no bleeding during the three days wait period of haiz.

Is it permissible in islam or not? There is no forcing or desire shown from husband for sex. It is only wife expectation.

Please guide us in light of islam's teaching.

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

Sexual intercourse during menses is haram even if one uses condom[1].

And Allah Ta'āla Knows Best

Immad Bin Arshad

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FATWA T (Excerpt provided).

Category: Misc. Fiqh

Fatwa#: 15840

Asked Country: United Kingdom

Answered Date: Nov 10,2007

Title: After sleeping with my wife when should gusal be performed, immediately after or can it be done, a few hours later, before fajr.... As a child age around 12 my father used to beat my mother regularly, ...

Question

1. A) After sleeping with my wife when should gusal be performed, immediately after or can it be done, a few hours later, before fajr. As I live in a small house, having a bath at night makes a lot of noise we don't want to upset our parents by having a bath at night, they frowned upon my brother and sister in law, who now moved out, as they used to have bath daily.

B) There are also young children in the house (ages 10, 14, 20) we don't want to give them the wrong impression by having a bath at night or daily. Please advice?

C) My wife is also in the fear that was her hair daily she might become ill, will it gusul be valid if she does masah of the head/hair?

D) If after one has done gusul, the clothes that they wore before and during the time I slept with my wife how should these be handled?

E) will I have to perform gusal again if I touch these clothes?

F) I have to take them to the washing machine, back to bed room, how should this be done?

G) If my wife is washing these clothes does she have to perform gusal again?

2. As a child age around 12 my father used to beat my mother regularly, sometimes as my mother would speak back to him other times for no apparent reason. My mother sustained many injuries broken bones bruised eyes etc.. This was done in front of me, brothers, sister and grand mother (who always made the situation worse) and sometimes in the locked bedroom (could hear my mother screen). My father would also beat me, brothers and sister (when she was 16/17) all for minor little things. I have always felt ashamed that I did not help my mother when this was taking place but I could only comfort her after. My father read five time pay and has done so for a few years now, (has also finally stopped beating my mother) but whenever he speak to my mother, me, brothers and sister and sister in law he always shouts at us and if we were having a normal conversation but he is always shouting. He always belittles me (aged 26) and my brothers (aged 27, 23) and humiliates us at least once a week. Last year my older bother moved into his own house, only a few houses away but hardly every comes to our family home. My father tried to force him to marry his sisters' daughter but unsuccessfully. My now new sister in law does come to visit a few times a week but she is, too used to shouting and belittling by my father. I have got used to this shouting, belittling and humiliation but my wife (who has a double relation to my parents, both our father are brothers and both our mothers are sisters) will not be able to put up with this. I am afraid the same will happen to her. My mother told me a few years ago that my father wanted me to marry his sisters

daughter but never once asked me that I should do this. When I proposed that I wanted to marry my cousin, who now is my wife, everyone was happy except my father. My father never told me that I should not marry her. During the time of our niqah, the few days before and after my fathers was not very happy. Even though my wife is the daughter of my fathers' brother, the treatment by my father towards her has not been very good. She is currently in awaiting her visa for . I am afraid that the same treatment (shouting, belittling and humiliation) will be done towards her but much much worse as she is not his sisters' daughter. I am not in a situation to move into another home. A) What should I do? Me and my two brothers have never stood up to our father was he was beating our mother and I feel totally ashamed at this. I feel the treatment by our father towards our mothers has been totally unjustified and only in the last few years have the beating stopped, again I feel totally ashamed at this. I have felt angered that I did not do anything. Me and my brothers have never talked to each other about his part of our life. All three of us felt that we could not stand up to our father during this time and even now at present, shouting. B) What can we do to calm our father down, now aged around 60. he read five time salah has peformed umrah and twice hajj but when he is at home he always gets angered at minor little things, he is shouting, belittling and humiliating our mother and all his children, and C)I fear will soon be my wife which I will not able to protect her from. My child hood into adult hood has had a great deal of effect on me. I have had counselling, after being referred from doctor, but felt that it was not doing anything and the counsellor was a non Muslim, not understand. D) How can I get over this situation as I feel this is a burden upon me? The only person I have every been open to is my wife, but I don't want to burden her with my previous problems, E) should I tell my wife of the problem that may face her regarding my father, F) Should I tell my wife of my previous sins and my past with my parents so we can have a better understanding of each other and can move on? We have no other family in the , my father would never listen to any others advice. I don't want to dislike/hate anybody, not even my father. G) I have recently seen similar traits in my older brother toward my sister in law, how can I stop this vicious cycle from continuing?

Answer

**In the name of Allah, Most Gracious, Most Merciful
Assalaamu `alaykum waRahmatullahi Wabarakatoh**

1.

A) It is better to make Ghusl as soon as possible and be in a clean state; however, there is no harm or sin in delaying the ghusl provided Salah is not neglected. One who (in the state of janabat) delays ghusl until the time of salaah will not be sinful, because there is ijmaa' (consensus) that the performance of wudu or of the ghusl (for one in janabat, a woman of haidh or nifas) only becomes wajib

(i) when salaah becomes wajib upon him/her, (ii) when s/he intends to perform such an ibadat that is impermissible without wudu or ghusl; for example, when one intends to pray namaz, prostrate (sajdah), recite the Quran or touch it, and likewise perform other acts of ibadat—only then wudu or ghusl (according to one's condition) will become wajib, and before this it is not wajib. However, one should not delay ghusl as it is against that which is best. [umdatul-fiqh, vol. 1, p.175]

It is permissible for a person in the state of janabat to sleep without ghusl or wudu, but it is better and mustahab to perform wudu prior to sleep. [umdatul-fiqh, vol. 1, p.176]

B) See above C) If water, whether cold or hot, is harmful to her, and a reliable

physician has prohibited her from using water then she may make Masah without washing her hair in an obligatory Ghusl. D) If the clothes are pure and have no impurity on them, then one may wear them. However, if there is impurity upon the garments, then it is necessary to wash them (washing it thrice and rinsing it after every wash purifies the garment). [khawaateen kai masaaail or unka hal, vol.1] E) No; merely touching impure clothes does not make ghushl compulsory. F) see above G) No.

2. Jazakallah for sharing your painful experiences with us and for asking for guidelines as to how you could deal with the future.

Allow me to mention at the outset that it is time that wives and children of men who are abusive towards their families are exposed and helped.

Unfortunately, it has to be pointed out that Muslim men who beat up their families are not really practicing Islam. This behaviour has nothing to do with Allah Ta'ala's commandments, nor does this behaviour have anything to do with the sunnah of our beloved Nabi (ﷺ). Islam is clear about how each one of us are to وسلم عليہ اللہ صلی treat our fellow human beings. The treatment of wives and one's children is clearly وصلم عليہ اللہ صلی. The behaviour of a man who beats up وصلم عليہ اللہ صلی described by our Nabi (ﷺ) his family is not in keeping with Islam, in fact it borders on the side of oppression.

Brother, allow me to suggest that although your father has treated the family in this way and although all of you seem to bear the scars of his behavior, do find it in your hearts to forgive him. He is as much a victim as you and your family are. I shall explain later.

However, it is also important that you, your brothers and your sister, seek professional help immediately.....(continues).....

May Allah Ta'ala guide all of you and help you to find the way towards getting through to your father. Please feel free to write again if you wish.

And Allah knows best

Wassalam

Sister Fadila (F1)

Social Dept.

Checked and Approved by:

Mufti Ebrahim Desai

Darul Iftaa, Madrassah In'aamiyyah

FATWA U

Category: Misc. Fiqh

Fatwa#: 19494

Asked Country: South Africa

Answered Date: Oct 13,2011

Title: Does the father have child custody rights?

Question

Sister X and Brother Y were married for 7 years. Sister X consistently refused to consummate their marriage, with one exception, in the 3rd year, which resulted in the conception of their son, now 6 years old.

After 7 years, the brother gave one talaq. The sister abruptly took the child to her

parents' home and telephones to say that she had spoken to lawyers and she was not bringing the child back. She refused to allow the brother to see his child for months until he had complied with all her legal, financial and material demands. They were legally divorced two years ago.

Since then, she has had full legal custody of the child and has used the child as a weapon to force the brother to comply with her every whim, refusing any kind of access every time she believes the father is not obeying her 100%. The father has rearranged his entire life and commutes between two cities to be able to see his son at the weekend, a "privilege" which she sometimes withholds when she is annoyed with the brother.

The brother would like to know the Shari position on his rights, and requests any advice on how to proceed. In the UK, where they live, the law automatically gives custody of a small child to the mother and it is very difficult to overcome this.

Answer

In the Name of Allah, Most Gracious, Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

Every form of oppression and abuse is totally prohibited in Shari’ah. Emotional abuse is just as bad if not worse. The prophet (salallāhu ‘alayhu wa sallam) said, “Fear oppression! Verily oppression will be a means of darkness on the day of judgement.”

(Sahīh Muslim hadith no 2578)

The sister in question has no prerogative to use the child as a weapon to emotionally abuse the father. It is a fact of life that not every two people get along with each other. This does not justify mistreating one another. The consequences of such foolishness from the mother have a universal impact which she may be failing to perceive. Her selfishness will damage the future of her very own child.

The child needs his father just as he needs his mother. The father provides something the mother does not provide and vice versa. Consider the following statistics from the United States:.....(fatwa continues)

And Allah Ta’āla Knows Best
Mawlana Faraz Ibn Adam,
Student Darul Iftaa
UK

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FATWA V

Category:

Fatwa#: 28508

Asked Country: United States

Answered Date: Mar 04,2014

Title: By refusing to have conjugal relations with my husband, does it mean I am divorced?

Question

I had my nikah done w my husband on, 2013 The rukhshati was on end of...., our marriage was consummated on Sept 7, 2013. We had some marital issues durin the month of Sept and since I was upset i had refused to have marital issues w my husband since he would introduce me as his friend instead of as his wife to his coworkers. My husband claims that he spoke to an imam and since I refused sex to him it was considered the first khula.

We tried to work on our relationship throughout the month, but than in October I found out he had married another woman thru nikah/court, he said he married the other woman because I cannot bear kids. The following week I had told him i had become pregnant, he had pressured me into getting an abortion which I refused. I moved back home w my parents in Dec since I was afraid of his pressure of abortion and asked him to decide on which wife he wants to keep.

He claims the Imam told him that was a second khula I have been home at my parents house for 69 days now and I am 5 months pregant. My husband claims the Imam said the child is out of wedlock since i had refused sex a few times to my husband because i was upset. Now my husband says the baby is not his obligation and i am divorced. I had never spoken to an Imam or Judge askin for a khula even so how can this Imam claim that we were divorced back in sept and that our nikah was invalid afterwards?

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

Sister in Islam,

We are sorry to hear about the difficulties you are facing. May Allah Taala help you during these trying moments.

Your husband has misunderstood the term khula and the advice he is getting is also incorrect. Khula is the money/wealth that is paid by the wife to the husband to release her from the nikah in the situation where the wife doesn't want to continue with the nikah [1]. There is also no first and second khula. When a khula is agreed upon one talaq-e-bain (irrevocable divorce) takes place. [2] By you refusing to have conjugal relationship due to personal reasons with your husband does not mean the child you are expecting is illegitimate, nor does it mean you are divorced from your husband.

And Allah Ta'āla Knows Best

Ismail Dawoodjee

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FATWA W

19786 Category: Marriage

Fatwa#: 19786

Asked Country: Canada

Answered Date: Feb 22,2012

Title: Which posture of having sex is forbidden in Islam?

Question

What kind of sex is forbidden in Islam between the husband and the wife? I tried to open your website regarding this matter, but it is not opening. Nowadays, when there is glamour all over, so many newly married people ask this question and they refer to the Quranic verse in which Allah *Subhanahu Wa Ta'ala* says “Orat tumhari khatee hai, jaha say chaho dakhil ho jao.” Please answer this question.

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

The verse of the Quran which you have referred to is as follows:

سَيِّتُمْ أَنَّىٰ حَرَثَكُمْ فَأَتُوا لَكُمْ حَرْثًا يَسَاوُكُمْ...

“Your wives are a place of sowing of seed for you, so come to your place of cultivation however you wish.”

(Quran 2:223)

“...however you wish” in this verse indicates that conjugal relationship can be done in any posture. However, the only posture which is Harām is in the rear.

And Allah Ta’ala Knows Best

Mawlana Abdul Hannan Nizami,

Student Darul Iftaa

USA

Checked and Approved by,

Mufti Ebrahim Desai.

www.daruliftaa.net

FATWA X

Category: Jurisprudence and Rulings (Fiqh)

Fatwa#: 28610

Asked Country: Malaysia

Answered Date: May 01,2014

Title: Boundaries of the beard. Sunnah way to spend the first night with one’s wife?

Question

My first question:

- What are the benefits of beard?
- Does the hairs on cheek & throat counts in beard?
- Can we trim our beard to make it look good?
- Can we shave from specific areas of our cheek to keep the beard in good shape?

My second question:

- What is the best or Sunnah way to spend your first night with your wife?
- Is it necessary to have sexual intercourse on the first night of wedding?
- What is Haram & Halal in sex? (Anal sex & during wife's menstruation, this is clearly indicated as Haram) Is there anything else Haram?
- Is oral sex allowed in Islam? (if yes), then is there any boundary restriction?
- Any restriction/prohibition on sexual positions?

Answer

In the Name of Allah, the Most Gracious, the Most Merciful.

As-salāmu ‘alaykum wa-rahmatullāhi wa-barakātuh.

We as the bondsmen and slaves of Allah are obligated to follow His commandments and obligations without knowing their wisdoms and benefits. Allah is Hakeem (Wise) and His commandments contain hidden wisdoms. He has not commanded us to carry out any act which is void of benefit. However, those benefits are in Allah's infinite knowledge. At times, certain benefits are outlined in the Ahadith of Rasulullah Sallallahu ‘Alayhi Wa Sallam and at times, ‘Ulama through their understanding mention certain benefits.....

.....

Intercourse on the First Night

Engaging in intercourse on the first night is not necessary. If both the spouses feel they are ready for it, they may do so. However, one should keep in mind the comfort of his wife. If she is reluctant or anxious, the husband should not persist in trying to convince her. He should approach the matter with calmness. She is not prepared, the husband should take her feelings into consideration.

Positions in Intercourse

There is no restriction on this in Shari'ah. Allah says:

[8] شِئْتُمْ أَنِّي حَرَّتُكُمْ فَأَتُوا لَكُمْ حَرَّتْ نِسَاؤُكُمْ

"Your women are tillage for you to cultivate. Approach your tillage from wherever you wish.".....

And Allah Ta'ala Knows Best

Nabeel Valli

Student Darul Iftaa Lusaka, Zambia

FATWA Y

Category: Misc. Fiqh

Fatwa#: 18511

Asked Country: South Africa

Answered Date: Feb 23,2010

Title: I would be very much greatfull if you could kindly tell me the definition of fatwa and its important. insyaAllah with ur sharing i will share the knowledge to my friends .

Question

I would be very much greatfull if you could kindly tell me the definition of fatwa and its important. insyaAllah with ur sharing i will share the knowledge to my friends .

Answer

In the name of Allāh, Most Gracious, Most Merciful

Assalāmu ‘alaykum wa Rahmatullāhi Wabarakātuh

If we research the literal meaning of *fatwa* in the Hans Wehr Dictionary, we would conclude that it is to structure a formal legal opinion or a deliverance of formal legal opinions. A fatwa is a legal declaration in *Islam*, issued by an *Islamic* law expert on a specific issue. The plural of *fatwa* is *fataawa*. Usually a *fatwa* is issued at the request of an individual to settle a question concerning *fiqh* or *Islamic* jurisprudence. A scholar skilled in issuing *fataawa* is famously known as a *Mufti*. Issuing of *fataawas* is a great responsibility. *Fatwa* (Judicial verdict) holds a vital role in *Islam* as it helps to explain *Allah Ta’ala’s* law in both religious and worldly matters. The *Muftis* are particularly cautious when announcing *fatwa’s*, due to their far reaching implications and the *Ulama* are well aware of the importance of *fatwa*, thus handling it as meticulously as possible. They have researched and analyzed every discussion of *Usul al-Fiqh* (principles of jurisprudence), briefly or at great length, then ventured out into the field of *Islamic* law. The usage of the word *fatwa* can be found in the Holy *Quran*: [if

الْكَالَةِ فِي يُفْتِيكُمْ اللَّهُ قُلْ يَسْتَفْتُونَكَ

“They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. “(Surah-al-Nisa verse 176)

كُتِبَ مَا تُؤْتُونَهُنَّ لَا اللَّاتِي النَّسَاءَ يَتَامَى فِي الْكِتَابِ فِي عَلَيْكُمْ يُتْلَى وَمَا فِيهِنَّ يُفْتِيكُمْ اللَّهُ قُلْ النَّسَاءَ فِي وَيَسْتَفْتُونَكَ
كَانَ اللَّهُ فَإِنَّ خَيْرَ مَنْ تَفَعَّلُوا وَمَا بِالْقِسْطِ لِلْيَتَامَى تَقُومُوا وَأَنَّ الْوِلْدَانَ مِنَ وَالْمُسْتَضْعَفِينَ تَنْكِحُوهُنَّ أَنْ وَتَرْغَبُونَ لَهُنَّ
عَلَيْمَا بِهِ

“They ask you about women. Say, —Allah answers you about them, and so does what is recited to you from the Book regarding orphaned women whom you do not give what is prescribed for them and tend to marry them, and regarding the weak from the children, and that you should maintain justice for the orphans. Whatever good you do Allah is aware of it. (Surah-al-nisa verse 127)

To issue a *Shari* ruling is a great responsibility and requires sacrifice, piety and great trustworthiness. Prior to *Hazrat Umar (Radiallahu Anhu)* issuing a ruling, he would gather the prominent *sahaba* and consult with them first, then would he issue the ruling having placed full trust on *Allah Ta'ala*.

Dar-ul-Iftah is the *fatwa* institution. Another definition of *fatwa* is the *Shariah*' law illustrated by a *Mufti* to an inquirer in a non-restrictive form. Hence, the inquirer is not restricted or bound by the law arising from the *Mufti's fatwa*. The inquirer has the right to seek a *fatwa* from another *Mufti* or *Muftis*. Furthermore, he can apply the *Fatwa* from another *Mufti*, provided the *Mufti* is an '*Alim* or pious person and well qualified to issue rulings.

A *Mufti* is required to be academically honest. He should not discriminate against people when issuing a *fatwa*, for example by issuing a different *fatwa* for family members and the public. *Fatwa*, however, is an integral aspect of *ibadah*, so a *Mufti* can issue *fatwas* relating to cleanliness, *salaat*, *zakat* and other *ibadaat*.

Rasullullah (Sallallahu Alaihi Wasallam) himself issued *fatwa's* throughout his life. There is a *rasaa'il* (scripture) called *Rasaa'il Muhammadiyah* wherein, during the era of *Nabi (Sallallahu Alaihi Wasallam)* people used to bring their personal issues and a ruling would be given to them.

A *Mufti* should be a pious person who is an expert in the field of Jurisprudence. He is also expected to analyze and research past *fatwa's* as well as make reasonable choices. He should not be content with only extracting and narrating *fatwa's* from other *Muftis*. *Fataawa* differ from one *Mufti* to another, depending on the academic level of the *Mufti*. Consequently, a person who wishes to obtain a *fatwa* should base his selection on the level of mastery and piety of the *Mufti*. A *Mufti* who makes a *fatwa* founded on rumours and instincts will become a sinner and his action is *haram*. Such a *Mufti* is sinful because of his blatant lie towards *Allah Ta'ala* and *Rasulullah (Sallallahu Alaihi Wasallam)*. In a *hadith Rasulallah (Sallallahu Alaihi Wasallam)* said: "Anyone who issues a *fatwa* without knowledge, will bear the sin of issuing the *fatwa*."

In conclusion, issuing of rulings is a mammoth task and requires great determination and excellence in the field of Jurisprudence.

We hope this symposium gives you brief insight and clarity on the topic of *Fatwaas*.

**And Allāh Ta'āla Knows Best
Wassalāmu 'alaykum**

**Mr. Ebrahim Desai,
Student Dārul Iftā**

**Checked and Approved by:
Mufti Ebrahim Desai
Dārul Iftā, Madrasah In'āmiyyah**

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APPENDIX 3: ANALYTIC SCHEDULE FOR FATWAS

1. Which country is the fatwa from? Is it a majority or minority context?
2. When was the fatwa asked and when was it answered?
3. How is the fatwa categorized by the askimam.org team in relation to the search title blurb?
4. How is the question framed and constructed?
5. Who is speaking about whom?
6. Who is the author of both the petition and the answer?
7. How does the mufti comprehend the question? Does he comprehend the question in a legal, pietistic or therapeutic way or a combination?
8. To what extent has knowledge of local customs, colloquial language and linguistic nuances been understood?
9. How is the answer appropriate for the context? Which country is it from? Is it a majority or minority context?
10. How is the solution framed? Is it framed in legal issue, family issue, community issue, health issue, or religious issue?
11. Does the answer address women's agency? Is it prescriptive or facilitative?
12. How is language used and what rhetorical strategies have been employed and how? How do these strategies complement or contradict each other?
13. What is the method of reasoning?

14. Who is the intended audience?
15. What sources of reasoning has the mufti used and how?
16. How is power located in the discussion?
17. Who is speaking about what?
18. Which words, terms or phrases are repeatedly used by the petitioner and the Mufti to describe/ refer to women's sexual agency?
19. What preoccupations, issues, and themes are common?
20. What connections, links and associations are apparent in what people are saying about their situation and what they are saying to each other?
21. What contradictions, oppositions, or competing viewpoints are apparent in what people are saying about their situation and to each other?
22. What and how are women's experiences relayed in the fatwas of askimam.org?
23. How do petitioners' experiences relate to the material social practices?
25. How do women's experiences relate to the power relations which structure them?

APPENDIX 4: ACCESSING THE ARCHIVE

The askimam.org site was archived on 21 September 2015 at 6:33:07 PM, using Version 2.4.6 of the Sitesucker application downloaded from:

http://ricks-apps.com/osx/sitesucker/archive/2.x/2.4.x/2.4.6/SiteSucker_2.4.6.dmg

Sitesucker is an application that automatically downloads websites from the Internet and also duplicates the site's directory structure. The askimam.org website site was archived using this application and is available on a FLASH drive which is attached to the research. The following provides a summary for easy navigation of the archive.

A: Reviewing the Full Archive.

The site is stored on the FLASH drive under the askimam.org sub-directory.

In order to open the site on the archive, the following steps must be taken:

1. Insert the FLASH drive into the USB drive
2. Using the file manager on the PC (on an Apple Mac this will be the Finder application), open the drive.
3. Click on the askimam.org subdirectory.
4. Double click the index.html file.

The home page of the archive will open with the Internet browser in use on the particular PC in use. For example, on my PC the following link will appear on the file explorer:

file:///Volumes/DISK_IMG/askimam.org/index.html

B: Accessing Fatwas

To access a particular fatwa:

Insert the following text in the file explorer of your choice (This will be finder on the Apple Mac):

file:///<XXX>/askimam.org/public/question_detail/34061.html

XXX is the name of the drive and name of the FLASH drive on the particular computer. This will stay consistent for a particular computer. For example, using this flash drive, the following is a sample on the browser of my PC:

For Example on my PC, the text appears as follows:

file:///Volumes/DISK_IMG/askimam.org/public/question_detail/34061.html

The fatwa number above is 34061. By removing that number and replacing it with another, the other fatwas referred to in this research can be individually accessed.

Appendices 1 and 2 provide a list of the relevant fatwa numbers.

APPENDIX 5: TABLE OF TRANSLITERATION.

The table for the system of transliteration of Arabic words and names used by the Institute of Islamic Studies at McGill University:

B = ب	Z = ز	f = ف
t = ت	s = س	q = ق
th = ث	sh = ش	k = ك
j = ج	s} = ص	l = ل
h} = ح	d{ = ض	m = م
kh = خ	t} = ط	n = ن
d = د	z{ = ظ	h = ه
dh = ذ	‘ = ع	w = و
r = ر	gh = غ	y = ي

Short: a = اَ ; i = اِ ; u = اُ

Long: a> = آ ; i> = ي ; ū = و

Diphthong: ay = اِي ; aw = اَوْ