On Homosexuality

Rabbi Mayer Rabinowitz


The Committee on Jewish Law and Standards of the Rabbinical Assembly provides guidance in matters of halakhah for the Conservative movement. The individual rabbi, however, is the authority for the interpretation and application of all matters of halakhah.

For those of us who consider ourselves halakhic Jews, it is sometimes difficult and challenging to reconcile our dedication to the halakhic process with our concern for the needs of the individual. One of the most challenging such issues is homosexuality.

While the halakhah itself may not always change to suit the purposes or conditions of individual Jews, the halakhic community must concern itself with both "halakhah" and "community."

Both Rabbi Artson¹ and Rabbi Roth² have written detailed papers representing two diametrically opposed points of view. Rabbi Artson would sanctify a monogamous homosexual relationship, while Rabbi Roth upholds the traditional halakhic view that prohibits homosexual acts. Both reach their conclusions based upon detailed analysis of the relevant texts — biblical and rabbinic — as well as information gathered from psychiatrists, psychologists, sociologists, and anthropologists.

However I find that both papers have missed some very important elements in this issue, and neither represents a consensus of the CJLS.

It is very clear that the prohibition against homosexuality is biblical.³ Nowhere does the Torah explain the reason why homosexuality is prohibited. While the Torah uses the term מנה ביום המועד for describing homosexuality, the Torah does not explain why it is a מנה ביום המועד.

Rabbi Artson’s attempt to separate a loving monogamous homosexual relationship from the term מנה ביום המועד falls short. He attributes reasons and conditions to the text which are simply not there. Rabbi Roth’s analysis of whether מנה ביום המועד is an inherent or attributed qual-

¹ “Gay and Lesbian Jews: A Teshuvah,” presented to the CJLS.
² Joel Roth, “Homosexuality,” above, pp. 613-675.
³ Lev. 18:22 and 20:13.
It also misses the point. Since we do not know the reason why it is a חטאת, it makes no
difference whether the quality is attributed or inherent. Therefore, any attempt to change
the law on the basis of reasons is impossible.

In order to define a halakhic position on homosexuality, we must deal with the prohibition
itself, and not with the variety of reasons or interpretations offered. The very fact that
there are many interpretations proves that we do not know why homosexuality is prohibited.

A biblical law may be changed by either reinterpretation or abrogation. The verses
in Vayikra leave no room for interpretation; they are clear, specific and the intention is
directly stated. We are left, therefore, with the possibility of utilizing the method of
לֶפֶשׂ סִבָּה מִן הָדוֹר הָדֹר, of abrogating biblical law. In order to determine if this method is
applicable to the issue of homosexuality we must understand this concept of abrogation
and its application.

The rabbis have the power to abrogate biblical law. This right was exercised infrequently,
as a last resort, and only when the Rabbis were convinced there was sufficient
cause and compelling reason to do so. At the same time, they were convinced that it
had to be done for the betterment of the Jewish people as a whole, not simply for
the benefit of a minority of the people. An examination of the precedents for the abro-
gation of biblical law indicates that this process was applied only for such compelling
reasons as preserving family life, maintaining a livelihood, and protecting against the
erosion of halakham.

Both Rabbis Artson and Roth have discussed the etiology of homosexuality. Many oth-
ers have done so as well. What is clear is that there is no agreement in the literature as to
the cause, manifestation and treatment of homosexuality. Therefore, it is impossible at this
time to “prove” that there are as yet grounds for abrogating biblical law. Even if we were
to be presented with absolute proof that homosexuality is genetic, the burden of proof
would be on those wishing to abrogate the law to show that it is necessary and beneficial
for the majority of the Jewish people.

The first commandment given by God in the Torah is the commandment to procreate. The
biblical premise is that of heterosexuality. There is no doubt that heterosexuality is the
world view of the Torah and the Rabbis. This is how Judaism understands the will of
God. The fact that procreation may be possible through new techniques such as artificial
insemination and surrogate motherhood, as well as adoption, does not negate the premise
of heterosexuality that Judaism adheres to as the will of God. Therefore these techniques do
not present sufficient reason to abrogate the law.

All legal systems aim to incorporate the needs and requirements of the largest num-
ber of members of the group for the benefit of the group as a whole. However, there is

---

4 Some examples of rabbinic interpretations are: Sefer HaHillulah, 209; Torah Temimah, Lev. 18:22; Tosafot and
Rosh, B. Nedarim 51a, s.v. הרמה זחף חטאת; Rabbi David Hoffman in his commentary to Lev. 18:22.
5 To argue, as Rabbi Artson does, that the prohibition refers only to certain types of homosexual relationships
is wrong. רַעֲשֵׁנוֹ צְבָא אֲשֶׁר צְבָא שִׁלֹשָׁה in the verse is contrasted to בְּשֵׁית. To claim a restriction on one would
require the same to be said about the other. In fact, a loving monogamous heterosexual relationship for
men was not known or prescribed in the Torah.
6 B. Yevamot 89b-90b. See also Tosafot Nazir 43b, s.v. והלמה.
7 M. Eduyot 6:1.
8 B. Sanhedrin 2b-3a; B. Gittin 36a-36b.
9 B. Berakhot 54a; 63a.
10 Gen. 1:28.
11 Gen. 2:18ff.
no legal system that does not impose some restrictions upon a minority of the group. These restrictions are imposed because the law gives the greater value to the overwhelming majority. Not everyone is given the same opportunity or protection. There is no legal system that can take into consideration the needs of each individual in the group. Consideration of והנחתת לMeritosis תמשיית - of whether we take into account the needs of the minority of cases is rejected for practical reasons, because it would be impossible to maintain a system if every minority or exception were incorporated into the law.

In addition, even if we are willing to take into consideration the new techniques of procreation, the needs of a minority, and a definite knowledge of the etiology of homosexuality, there still remains the question of whether abrogating the law is for the betterment of the majority. There is no doubt that the abrogation will benefit the homosexual community. However, we must be convinced that this abrogation will definitely benefit the non-homosexual community as well.

The approach of the Torah and rabbinic Judaism’s understanding of God’s will concerning the issue of homosexuality should not have to be defended. The burden of proof is on those who wish to change the law. The majority, and not the minority, is the basis upon which the question should be decided.

The halakhic community has always tried to accommodate individuals who may violate religious injunctions. Norms have been maintained, while those who do not or cannot observe the norms were and are still part of the community. This is done out of a concern for the survival of Judaism, and sensitivity to the situations of human beings and the realities of life. An example of this is the way the CJLS dealt with the various issues concerning Shabbat in the 1950s. A similar approach must be used in the case of homosexuality. We must differentiate between the norm and the individuals who violate it. The burden is upon those who observe the norm to make those who do not observe it feel part of the community.

However, we must draw a distinction between those Jews who do not observe the prohibitions against homosexuality, and those who openly advocate homosexuality as a viable, alternate Jewish lifestyle. The Jewish community must be educated to understand and accept homosexuals, many of whom are committed Jews. They must be welcomed in our synagogues and organizations, and we must make them feel a part of our community.

Therefore, we declare that it is a prohibition for synagogues, individuals and organizations to discriminate against gays and lesbians. By prohibiting this type of behavior, and by educating the community, we can succeed in eliminating within our organizations and synagogues the unfair use of homosexuality as a weapon.

Private sexual practices should not be a criterion for office or for leadership. When such a preference does become known, but not advocated as a viable alternate Jewish lifestyle, it should be treated in the same manner as we treat our other violators of halakhic norms.

Each of us makes choices as to what we will or will not observe; then we resolve for ourselves the conflicts that our choice creates. The community does not judge us on the basis of these conflicts, nor should it judge the homosexual on the basis of his or her homosexuality alone. The community, rather, must be a support and a haven for any Jew

12 B. Yevamot 119a.
13 B. Yoma 9a; Bava Kamma 6b.
in conflict, and should, through acceptance and compassion, help the Jew come closer
to resolving those conflicts.

However, the homosexual who openly advocates homosexuality as a totally accept-
able alternate Jewish lifestyle represents a very different problem to the Jewish com-
munity. In maintaining his or her position, the “advocate” openly and clearly promotes a
position which is contrary to halakhah, the ideals and norms of Judaism. It is, therefore,
unfair and inappropriate that such “advocates” hold positions of honor or leadership
within congregations, communities and schools committed to halakhah. We would not
extend those privileges, for example, to those who would claim that non-
номинатив
is
an acceptable alternate Jewish lifestyle. A position of leadership or honor requires a
commitment to the norms of halakhah.

The creation of synagogues or other religious institutions specifically for a group that
advocates a position that is contrary to halakhah is inconsistent with a commitment to
halakhah. Each institution has sub-groups within the membership that share common
interests and needs. There is no need to develop new institutions for each sub-group. In
fact, it is the responsibility of our institutions and synagogues to welcome homosexuals as
members, and to offer them all the privileges available with membership. However, any
organized action or program that would advocate homosexuality as an acceptable viable
Jewish lifestyle would be prohibited.

Membership categories should reflect the traditional heterosexual premise of Judaism,
that is to say, family membership in a category that applies to people who are blood rela-
tives, or whose status as a family is recognized and sanctified by Judaism.

Jews who wish to enter the rabbinate, cantorate or the field of Jewish education as
leaders of the community must abide by the halakhic norms that the community
accepts and sets. Therefore, those who “advocate” homosexuality as an acceptable
alternate Jewish lifestyle would not and may not be accepted. It is understood that reli-
gious leaders commit themselves to leading halakhic lives that uphold the norms of
Judaism. All Jewish religious leaders face conflicts between their personal practice and
commitments to halakhah, or between their needs and adherence to halakhah.
Nevertheless it is expected that when one’s personal needs or practice are no longer
consistent with the accepted norms of halakhah, such leaders will resign their positions.
This is a choice all of us face, and these choices dictate where and how we live and in
what profession we work.

Halakhah does not guarantee the right for everyone to become a rabbi or cantor
or Jewish leader. Theoretically, it does provide the opportunity to do so if certain
requirements are met. The advocacy of a position that is opposed to a norm, such as
homosexuality, would and does disqualify such a person. It is not a matter of fairness
or “rights.” It is a matter of “obligation” — חובה — and how one settles personal conflicts
with halakhah.

Conclusions

1. Judaism’s view of the will of God as expressed in the Torah and by the Rabbis is
that of heterosexuality.

2. The only way to change the halakhah concerning homosexuality is by means of
abrogating biblical law — קはどうי הנומין
. In order to do so, the needs of the majority
of the community must prevail, and it must be shown that such abrogation is for the over-
all good of the Jewish community.
3. We hereby declare that it is an איסור—a prohibition—to discriminate against gays or lesbians in all areas of life.

4. We hereby declare that it is an איסור—a prohibition—to discriminate against gay and lesbian individuals in synagogue membership.

5. Homosexuals who advocate homosexuality as an acceptable alternate Jewish lifestyle are prohibited from holding positions of leadership in our synagogues, institutions and schools.

6. It is a חיזוק—an obligation—for our synagogues, institutions and schools to welcome homosexuals (non-advocates), and to offer them the same privileges offered to all other members, many of whom have conflicts between their personal lives and needs, and their commitment to halakhah.