

Shari‘a Law and the Legality of Consumption of *Khat* (*Catha Edulis*): Views of Australian Imāms

Mr. Abdi Hersi

PhD candidate, National Centre of Excellence for Islamic Studies (NCEIS), Griffith University, Nathan Campus. Email: a.hersi@griffith.edu.au

A/Prof Mohamad Abdalla

Director (QLD Node), National Centre of Excellence for Islamic Studies Australia (NCEIS) Griffith University, Nathan Campus. Email: m.abdalla@griffith.edu.au. Ph: +617 3735 6983

Abstract

Khat is a natural amphetamine plant whose effects are similar to those produced by other known psychostimulants such as amphetamine and its congeners. *Khat* is indigenous to Yemen, Ethiopia, and East Africa, and is the new emerging drug in a number of countries in the West, including Australia. There is evidence to show that Muslims are the primary consumers of *Khat*. Literature on the consumption of *Khat* generally focus on the effects it has on communities in terms of consumption, trade and cultivation of the stimulant plant from a botanical, pharmacological, social and economic perspectives. There is a dearth of literature on the Islamic legal position on this stimulant plant. This gap is in part due to the failure to detect the extent to which consumers of *Khat* relate it to the religion of Islam. Given that there is a strong association between Muslims and the consumption of *Khat*, the purpose of this paper is to examine the legality of the consumption of *Khat* from an Islamic perspective using primary and secondary sources, and for the first time, the views of leading Australian Muslim religious scholars (Imāms). The findings can help in the reduction of the consumption of this new drug, and by extension its consequences. Findings can also help policy makers in Australia, and other interested parties, appreciate the legal dimensions of the debate and its possible impact on any regulatory frameworks.

Keywords: *Khat*, Sharia Law, Imam, Australia, Maqasid

1. Introduction

Khat is a stimulant that is chewed for its energising and stimulant effects. The active ingredients of *Khat* are cathinone, cathine and norephedrine, which produce euphoric and cardiovascular effects similar to amphetamine. The effects of *Khat* vary from one person to another, but it is known that it has short and long terms consequences, including ‘increase in severity of psychological problems; difficulty sleeping; impotence; gastrointestinal tract problems, such as constipation; inflammation of the mouth and other parts of the oral cavity; and oral cancer.’¹ Medical scientists categorise *Khat* as a vegetal materials that humans ingest not for their nutritive value but to experience psychoactive effects.² Furthermore, the amphetamine like structured element (Cathinone) found in *Khat* plant is understood to be responsible for mental disturbances observed in some chronic *Khat* users. A repeated administration of this active principle in humans has been found to illicit behavioural responses such PPI disruptions, stereotypes, and non-regulatory drinking, that are considered to model psychotic symptoms.³ Other evidence shows that as an amphetamine *Khat* increases the risk of mental illness when used excessively.⁴

* We are indebted to several colleagues, Shaykhs and Imāms for their participation, invaluable advice and comments. We would also like to express our gratitude to Gregor Shepherd for proof reading an earlier draft of this manuscript.

¹ Australian Drug Foundation (2013).

² Graziani, Millela and Nencini (2008), p 762.

³ Graziani, Millela and Nencini (2008), p 775.

⁴ Bhui and Warfa (2007), p 1866.

Although there is no evidence that *Khat* chewing increases the incidence of specific diseases, the habit may have detrimental health consequences when associated with unhealthy lifestyle.⁵ Additionally, regular consumption of *Khat* seriously affects the social and economic life of users and poses a hazard to both the user and the community.⁶ For example, a cross sectional survey of 4000 people found that the habitual use of *Khat* is closely associated with an increased risky sexual behaviour and the spread of HIV infections.⁷ Other research shows that some Somali women believe that *Khat* is the cause for ‘marriage break-ups, male unemployment, and male impotence—both sexual and in a broader sense.’⁸ Other research examined any causal relationship between *Khat* and unemployment, crime, violence, public order and family breakdowns, income diversion and integration to host societies and found no strong evidence that links *Khat* consumption to any of these social harms.⁹ However, in socially conservative societies like Saudi Arabia and Somalia, the perceived social harms could be stronger than that of other rather more liberal societies.

The chewing of *Khat* is common in some countries of east Africa and the Arabian Peninsula, and has a ‘deep-rooted social and cultural tradition in some Muslim, Somali and Yemeni cultures.’¹⁰ *Khat* has been introduced to Australia recently by East African and Middle Eastern migrant groups primarily from ‘Somalia, Ethiopia, Eritrea, Oromo, Kenya and Yemen.’ The extent of the use of *Khat* in Australia is unknown, ‘however in 1993 it was estimated that 700–1000 people in Melbourne enjoyed *Khat* chewing.’¹¹ It is possible that the consumption of *Khat* has increased in Australia in recent years due to an increase in immigration of people from East African and Middle Eastern countries. As a result, there is a growing interest in understanding the plant, its social and health effects, and any cultural and religious significance it may have to these migrant groups. Countries like the United States equate *Khat* to heroin, LSD and Ecstasy and categorised it as a schedule 1 drug,¹² but Australia does not illegalise the consumption of *Khat* but its import is restricted and a licence is required to import and a permit must be obtained for each new shipment.¹³ There is evidence, however, demonstrating that *Khat* contains central nervous system stimulants in the form of alkaloids (*cathinone* and *cathine*, among others), and considers *Khat* as a psychoactive substance and hence a drug.¹⁴

Despite its harms the use of *Khat* is central to the lives of some members of the East African and the Middle East immigrant communities.¹⁵ For example, it has been suggested that chewing *Khat* is a central activity during the week long Yemeni wedding.¹⁶ There is evidence that emigrants from East Africa region and Arabian Peninsula try to maintain the habits of chewing *Khat* in their resettlement countries in the West. The fact that to some Muslims *Khat* is an accepted part of recreational and religious activities¹⁷ can imply that the traditions of *Khat* consumption will continue in Australia unless illegalised.¹⁸ However, there are uncertainties about the legal frameworks of *Khat* and whether it should be legalised or not in Australia¹⁹. The fact that the consumption of *Khat* is associated with cultural—and at times—religious (as shall be demonstrated later) significance, poses significant challenges to policy makers in Australia. If *Khat* is seen by some Muslims as an accepted part of recreational and Muslim religious activity, targeting *Khat* by authorities and policy makers may be seen as targeting these communities.²⁰ Understanding the legality of the consumption of *Khat* from an Islamic law perspective can be useful in its regulation.

⁵ Graziani, Millela and Nencini (2008), p 776.

⁶ Balin and Balint (1994), p 125.

⁷ Dawit et al (2006), p 61.

⁸ Carrier (2008), p 807.

⁹ Anderson and Carrier (2011)

¹⁰ Australian Drug Foundation (2013).

¹¹ Australian Drug Foundation (2013).

¹² Beckelerg (2008), p 752.

¹³ Australian Drug Foundation (2013).

¹⁴ Carrier (2008), p 803.

¹⁵ Armstrong (2008).

¹⁶ Wagner (2005), p 137.

¹⁷ Armstrong (2008).

¹⁸ Sikiru (2010).

¹⁹ Douglas and Pedder (2011).

²⁰ Armstrong (2008).

2. Muslims and Khat Consumption

Muslim populated nations such as Yemen, Somalia, and Djibouti are famously identified as nations where the consumption of *Khat* is prevalent.²¹ Ironically, even the non-Muslim societies of East Africa and the Arabian Peninsula see the consumption of *Khat* as a Muslim affair. For example, in the Ethiopian orthodox Christian communities *Khat* chewing was seen to be a sign for conversion to the Muslim faith.²² Overall, whilst some non-Muslims including the Yemeni Jews use *Khat*, the practise is usually associated with Muslims.²³ The association between Muslims and consumption of *Khat* is further confirmed in the way *Khat* has played a symbolic function to distinguish Christianity from Islamic powers.²⁴ Even in predominantly Christian countries like Kenya, Ethiopia and Uganda the prevalence of the consumption of *Khat* is anecdotally believed to be higher in provinces and regions where Muslims live. In Ethiopia, for instance, 55% of *Khat* users are Muslims as compared to 35% Christians.²⁵ Ethiopia produces *Khat* in the order of \$400 to \$500 million at wholesale price per year and exports one third of this to mainly Muslims inhabited Djibouti, Somalia, the Somali Regional State (Ogaden) and the Somali community in Addis Ababa²⁶. In nearly all of these areas, the consumers are Muslims.²⁷

Despite its harmful effects, there is evidence dating back to the fifteenth and sixteenth centuries demonstrating Muslims' justification for the use of *Khat*.²⁸ For example, Gebissa (2004) in the introductory chapter of his book titled *The Leaf of Allah* recounts the following words of Adem Aliyu Jaylan:

Khat is a tree that God loves. It's a tree blessed by Rabi (God) and given to us. This is a tree that man cannot command. A lot of people with power have tried to control it, especially the price of selling the leaves. None has succeeded so far. This tree is not just another ordinary plant; it is a "Leaf of Allah."²⁹

The sentiments expressed above are not isolated. In fact, various 'spiritual' and 'religious' connotations have been ascribed to *Khat* including: the 'flower of paradise',³⁰ and 'sustenance of the righteous'.³¹ To some, its existence and discovery is linked to mysticism and Jinn (spirits).³² In contrast, *Khat* is seen as an ungodly and unholy plant in certain circles of the Christian communities in these regions. In particular, the spiritual meaning of *Khat* between Muslims and Christians in Ethiopia is remarkable. Whereas *Khat* is seen as a 'holy' plant by some Muslims, it is seen as a cursed plant by the Ethiopian Christian Orthodox communities, 'Khat was cursed by God forever to be chewed by humans because of causing a divine displeasure when God came to Earth and all the plants bowed before him showing ultimate respect with the exception of Khat'.³³ Justifying the use of *Khat* and the debate over its legality continues unabated among Muslims, as the next section will demonstrate.

3. Methodology

This study examines the Islamic legal perspective on the use of *Khat* based on two methods. First, a textual analysis was used as a secondary source to examine the Islamic legal perspective on *khat* consumption. This involved an analysis of the body of revealed law found in the Qur'ān and Sunnah (Prophetic traditions), and the use of a host of non-revealed sources of juristic reasoning known as (*ijtihad*).

Second, for the first time, the study harnesses the views of twenty (20) Australian Muslim Imāms and religious scholars from Queensland and Victoria.

²¹ Armstrong (2008).

²² Gebissa (2004), p 52.

²³ Varisco (1986).

²⁴ Anderson, Beckelerg, Hailu and Klein (2007).

²⁵ Sikuru & Babu (2009)

²⁶ Gebissa (2008).

²⁷ Gebissa (2008).

²⁸ Anderson, et al. (2007)

²⁹ Gebissa (2004), p 3.

³⁰ Anderson, et al. (2007), p 2.

³¹ Wagner (2005), p 125.

³² Wagner (2005), p 125.

³³ Anderson, et al. (2007).

This group were selected on the basis of their expertise in matters of Sharī'a³⁴ law. All of the interviewees graduated in various fields of classical Islamic studies from overseas universities and institutions in the Middle East, Africa and the South East Asia. Their levels of education varied from advanced diploma to postgraduate levels. Their institutional affiliations within Australia varied and include Imāms of mosques and Islamic colleges, academics and senior executives of Islamic associations. Some of these scholars had a combination of these roles.

In order to gather the views of these scholars, a focus group method is selected due to the fact that the scholar's interaction and synergy can produce data that cannot be obtained through individual in-depth interviews, and because the group share a common relationship to the topic.³⁵ The study aims to gain an understanding of how Australian Muslim scholars form their opinions on the Sharī'a position of *khat* and the legal underpinnings of their scholarly positions.

Purposive sampling was employed as a strategy to recruit these scholars with variations in age, birth place, gender and religious orientation and backgrounds.³⁶ The scholars were also recruited through the help of a number of Muslim community associations in Brisbane and Melbourne. A total of 20 scholars participated in 2 focus groups, one in Brisbane and another in Melbourne. Analysis of the data collected was at two levels. Information was first transcribed and read several times and then Islamic legal rulings advanced by scholars were identified from the data. The analysis focused on the responses scholars provided to the research questions regarding the Islamic legal ruling on *Khat*.

4. *Khat: Analysis of revealed and non-revealed sources*

There are considerable debates about the religious legality of the consumption and use of *Khat* within Muslim societies. The Islamic legal position of the stimulant plant *Khat* is somewhat ambiguous and there are various rulings about it that are often contradictory. The plant *Khat* is characterised by a great deal of officio-legal, socio-cultural and economic uncertainty.³⁷ These controversies and uncertainties seem to extend to the Islamic legal rulings. For example, a community engagement forum conducted in the United Kingdom (UK) by the National Drugs and Race Equality found that, depending on which Shaykh (religious leader) is being followed, members of the Somali community believe that the use of *Khat* is harmless and therefore *ḥalāl* (permissible), while others deem it harmful and therefore *ḥarām* (impermissible).³⁸ The notable absence of comprehensive scholarly Islamic literature on this perspective adds to the confusion of the Islamic legal ruling over the use of *Khat*.

Across the Muslim world, opinion is sharply divided amongst Islamic scholars about whether *Khat* should be considered permissible, impermissible or simply *makrūh* (detested or discouraged). This debate is based on inferences made from verses found in the Qur'ān³⁹ and Sunnah that mainly relate to intoxicants. The key to these debates are understanding the intoxicating elements that are found in *Khat* and their impact on human body and society at large. In some cases, the debate is blended with cultural and customary traditions. In order to appreciate the debate, it is necessary at this stage to briefly understand how legal rulings (*aḥkām*) are derived in Islamic law.

The term Sharī'a refers to a body of explicit revealed laws (*naṣṣ*, *nuṣūṣ*) found in the primary sources of the Qur'ān and Sunna (sayings, actions and tacit approval of Prophet Muhammad), which provide the subject matter of the law. The *naṣ* is fixed and unchangeable and largely general, with basic principles such 'do not approach prayer whilst intoxicated,'⁴⁰ or '...Intoxicants and gambling...are an abomination of Satan's handwork:

³⁴ Usually spelt Sharia but other spellings include Shariah, Shari'a and Syariah. Phonetically, however, Sharī'a is a more accurate spelling and this will be used henceforth in this article. In the transliteration of Arabic terms and names the article uses macrons (such as ū, ṣ, ḥ, ā) to enable Arabic speakers and specialists to re-establish precise equivalence of the words.

³⁵ Walter (2006), pp 106-107.

³⁶ Morgan (1996).

³⁷ Sikiru (2010).

³⁸ Buffin, Mir, & Mirza (2008).

³⁹ Also spelt Koran and Quran

⁴⁰ Qur'ān 4:43.

eschew such (abomination), that you may prosper.’⁴¹ Such explicit laws can also be found in the Sunnah as in the saying of Prophet Muhammad ‘...every intoxicant is *ḥarām*(unlawful)...’⁴² and ‘whatever intoxicates in a greater quantity is also unlawful in a small quantity.’⁴³ However, the primary sources of Sharī‘a does not have explicit text for every issue, and that is why scholars apply *fiqh*, or jurisprudence, as means of finding answers.

Fiqh refers to ‘knowledge of practical legal ruling derived from their specific evidence’ that is better known as a body of laws deduced from the Qur’ān and Sunna to cover specific situations not directly treated in the revealed sources.⁴⁴ Unlike the Sharī‘a, *fiqh* ‘is flexible and changes according to the circumstances under which it is applied, and it tends to be specific.’⁴⁵ The process of deducing legal laws is undertaken through independent legal reasoning (*ijtihad*)⁴⁶ based on secondary sources including *ijmā’* (general consensus of the learned); *qiyās* (analogical reasoning); *istihsān* (juristic preference); *istiṣlāh* or *maṣlaḥamursala* (consideration of public interest); *sadd al-dharāi’* (blocking the means); *istiḥāb* (presumption of continuity); and ‘urf (customary practice).⁴⁷ Essentially, *fiqh* deals with rational endeavour through speculative reasoning and does not enjoy same authoritative status as Sharī‘a. It is concerned with the detailed manifest aspects of individual conduct, evaluated on a scale of five values: (1) Obligatory (*wajīb*); Recommended (*mandūb*); Permissible (*mubāḥ*); Reprehensible (*makrūh*); Forbidden (*ḥarām*).

Furthermore, in developing its legal system scholars take into account the higher objectives of Sharī‘a, known as *maqāṣid al-Sharī‘a*,⁴⁸ and divide it into two general categories: (1) higher objectives of the lawgiver, and (2) objectives of those accountable before the law.⁴⁹ Like Imām al-Ghazālī (d.1111), Imām al-Shāṭibi (d. 1388) concluded that the major objectives of Sharī‘a are the preservation of (1) religion, (2) human life, (3) progeny, (4) material wealth and (5) human reason. He further opined that Islamic law aims to preserve essential and other interests by preserving their *existence* and also protecting them from annihilation.⁵⁰

Therefore, in deriving legal-ethical rules, qualified scholars first examine the Qur’ān and Sunna for particular *naṣ*—explicit textual evidence. In the absence of a clear *naṣ*, jurists employ judicial reasoning to arrive at positive law. As an example, therefore, in deriving a legal ruling about intoxicants would all agree that its consumption is forbidden (*ḥarām*) based on the explicit textual evidence found in the Qur’ān and Sunnah leading to *ijmā’* (general consensus of the learned) on this matter. However, scholars would also concur that the use of intoxicants such as alcohol may at times be necessary to fulfil any of the higher objectives of Sharī‘a, such as the preservation of life, but not for recreational purposes. The problem arises in the absence of explicit textual evidence, as in the case of *Khat*. This leads to a multiplicity of opinions depending on a host of factors including a scholar’s personal bias, cultural influence, and the extent of their understanding of the text.

4.1 The *ḥalāl* (lawful/legal) argument

Although a minority view, proponents of the argument that *Khat* is permissible (*mubāḥ*) in Islam rely on the fact that there is not a single verse in the Qur’ān or Sunnah that mentions *Khat*. They argue that unlike *Khat*, drinking alcohol and wine is explicitly identified as a disruptive social evil and Islam gradually implemented a four step prohibition approach.⁵¹

⁴¹ Qur’ān 5:90.

⁴² Narrated by Muslim.

⁴³ Narrated by At-Tirmithi, Abu Daawood & Ibn Maajah.

⁴⁴ Abdalla (2012).

⁴⁵ Abdalla (2012).

⁴⁶ According to Kamali (2008), pp 162-3, *ijtihad* means ‘striving or exertion; it is defined as the total expenditure of effort by *amujtahid*, in order to infer, with a degree of probability, the rules of *Sharī‘ah* from the detailed evidence in the sources.’

⁴⁷ Khuja, Qardawi, Uthman, & Al-Qatan (1981), pp 149-150.

⁴⁸ Other terms that are used interchangeably to mean the same thing are *maqāṣid al-Shāri‘* (the higher objectives of the lawgiver), and *al-maqāṣid al-shar‘iyyah* (legal objectives). See Al-Raysuni (2006), p xxi.

⁴⁹ Al-Raysuni (2006), p 107.

⁵⁰ Al-Raysuni (2006), p 109.

⁵¹ As in the following verses: ‘And from the fruits of date-palms and grapes, you derive strong drink (this was before the order of the prohibition of the alcoholic drinks) and a goodly provision. Verily, therein is indeed a sign for people who have wisdom. Quran (16:67); and ‘O you who believe! Approach not the prayer when you are in a

Consequently, there are hardly any disagreements about the rulings of alcohol in the Qur'ān because it came with the force of a divine command. Proponents of this argument also point to a number of spiritual rituals that the consumption of *Khat* aids such as reading the Qur'ān and performing prayers. A study conducted in Butajira, Ethiopia where *Khat* usage is legal showed that 80% of chewers used *Khat* to gain a good level of concentration for prayers, to facilitate contact with God and to discourage them from criminal activities.⁵² The social and cultural benefits of *Khat* are also cited by some of the scholars of this discourse. Proponents of the permissibility of *Khat* are literalist who ignore the social, physical, psychological and economic harms of *Khat* and ignore the higher objectives of Islamic law.

4.2 The *Makrūh* (detested/discouraged) argument

Some scholars argue that *Khat* is neither permissible (*mubāḥ*) nor forbidden (*ḥarām*) but is reprehensible (*makrūh*). This is based on their belief that *Khat* is not bad if it is consumed in moderation, but if used in excess becomes forbidden, despite the fact that this contradicts a textual evidence (*naṣ*) from the Sunnah that states: 'Whatever intoxicates in a greater quantity is also unlawful in a small quantity.'⁵³ One of the main advocates of this ruling is the former chief Mufti of Uganda who himself grew the plant *Khat* in Uganda.⁵⁴ Proponents of this argument rank *Khat* consumption with smoking tobacco and cigarettes. This is the weakest of all arguments and is considered to be a minority scholars' view.

4.3 The *Ḥarām* (prohibition) argument

The majority view among scholars is that *Khat* should be considered forbidden (*ḥarām*). Although there is no explicit text to support this argument, however these scholars use the broader definition of intoxicant found in the Qur'ān and Sunnah, and utilise the higher objectives of Islamic law (*maqāsid*) to arrive at their conclusion. Their rationale is that Islamic law clearly stipulates that whatever clouds the mind is considered an intoxicant and therefore should be regarded harmful. Using the *maqāsid* concept of *istislāh* or *maṣlaḥamursala* (consideration of public interest), scholars arrived at their conclusion based on the detrimental effects *Khat* has on health, economy, society and the environment. In doing so, they considered a number of facts such as, for example, the report by the Agricultural Resource Authority of Yemen which reported that *Khat* is depleting scarce water resource in Yemen.⁵⁵

5. Views of Australian Muslim Scholars

Our research found that some of the scholars interviewed had an intimate knowledge and experience of the plant; others had only limited understanding through their scholarly readings only and not experience with *Khat* users. This knowledge gap is due to the fact that *khat* use is generally associated with Muslims in particular regions such as East Africa and Arabian Peninsula. Whilst the majority of scholars were from these regions, others were from non-*khat* consuming societies and therefore had limited exposure to the plant. This latter group appeared to be exercising caution in offering a legal opinion (*fatwa*) on a plant in which they are unfamiliar with.

drunken state until you know (the meaning) of what you utter, nor when you are in a state of *Janaba*, (i.e. in a state of sexual impurity and have not yet taken a bath) except when travelling on the road (without enough water, or just passing through a mosque), till you wash your whole body. And if you are ill, or on a journey, or one of you comes after answering the call of nature, or you have been in contact with women (by sexual relations) and you find no water, perform "Tayammum with clean earth and rub therewith your faces and hands (Tayammum). Truly, Allah is Ever Oft-Pardoning, Oft-Forgiving. Quran (4:43); 'Verily, We have sent you with the truth (Islam), a bringer of glad tidings (for those who believe in what you brought, that they will enter Paradise) and a warner (for those who disbelieve in what you brought, they will enter the Hell-fire). And you will not be asked about the dwellers of the blazing Fire. (Quran 2:219); 'O you who believe! Intoxicants (all kinds of alcoholic drinks), gambling, Al-Ansab, and Al-Azlam (arrows for seeking luck or decision) are an abomination of Satan's handiwork. So avoid (strictly all) that (abomination) in order that you may be successful. Satan wants only to excite enmity and hatred between you with intoxicants (alcoholic drinks) and gambling, and hinder you from the remembrance of Allah and from As-Salat (the prayer). So, will you not then abstain?' Quran (5:91).

⁵² Varisco (1986), p 3.

⁵³ At-Tirmithi, Abu Daawood & Ibn Maajah

⁵⁴ Beckerleg (2006).

⁵⁵ IRIN (2007).

Examples of comments by this group include the following: ‘I don’t know. We know with alcohol that after it’s consumed the guy, he cannot tell between a can and a bottle. He won’t know who is the mother and who is the sister. That is how, so the question I’m asking is *khat* on that level?’ Another commented, ‘*Aḥukm* [legal ruling] can be given based upon the different aspects of *khat*. To really understand what we are dealing with. I mean we only know a little from what we’ve heard but to really understand the herb.’

On the other hand, among the interviewees were some scholars who have used *Khat* in their young days, and had a firsthand experience with the drug, as this scholar states: ‘[...] for your information I started chewing *khat* when I was 12 years old and I stopped when I was 18, so I was still under age.’ They demonstrated an intimate theoretical knowledge of the plant, its use and the perceived harms and benefits associated with it, as the following Imām recounts:

[...] I’ve been to Yemen before, 20 years ago, and we landed in the afternoon. And when we just got out of the airport, we’ve seen those people. Everybody in Yemen, in Sana has got the *khat*. We didn’t know that before. We didn’t know about *khat* before. And you can see people they just like ah, it’s unbelievable. They’re just sitting around, relaxing. They can’t even [be] talking properly. So you can [see] what *khat* is doing to those people.

Initial discussions between scholars about *khat* were necessary and helped set the scene for later discussions about their understanding of the legality of *khat* under Islamic law. It may have also helped some participants who lacked intimate knowledge of the plant. Overall, the discussions of both focus groups were lively and scholars occasionally challenged or sought legal proof for opposing views. However, they generally appeared to have agreed on the impermissibility (*tahrīm*) of *khat* consumption for a host of reasons.

In their attempt to advance the prohibition argument, scholars used both primary and secondary sources of Islamic law as evidence to support their position. One scholar linked the prohibition to wastefulness (*isrāf*) expressed in the Qur’ān: ‘Surely the wasteful people are the brothers of the devils, and the devil was a rejecter of his Lord.’ Another cited the legal maxim: ‘*kullu muskirin ḥarām* [that is] all intoxicants are forbidden.’ He further used the meaning of a Prophetic tradition and claimed: ‘anything which changes your stimulation, take [...] your mind, it is *ḥarām* [prohibited].’ Another agreed and added: ‘Prophet Muhammad, peace be upon him, said in one hadith that every [...] addictive substance is prohibited, [it] is illegal. [This] is what we call illicit. Illicit substance. So, based on those two evidences, I say that *khat* is prohibited. It should not be used at all.’ He further substantiated his opinion based on verses from the Qur’ān and declared:

And the other is the ayah [verse of Qur’ān] ‘*wayuhilulahu maṭayyibāt, wayuharrimu ‘alayhim al-khabā’ith*’ [and He has permitted the pure things to consume, and has forbidden for them the filthy things] and obviously *khat* is one of the ‘*khabā’ith*’ (filthy things). It can’t be considered a *ṭayyibah* (pure and good thing) it is obviously *khabā’ith* (filthy). A plant that is *khabā’ith* (filthy) because all this destruction and it is considered *ḥarām* (forbidden). And I think they, the proofs, the evidence, the ulema (scholars) based on the hadith, ‘*la ḍararwa la ḍirār*’ [there should be no harm or harming], and *khat* causes *ḍarar* (harm).

Given that there is no explicit text in the Qur’ān or Sunnah to prohibit the consumption of *Khat*, the aforementioned scholars have arrived at their conclusion using *qiyas* or analogy based on the precedent that intoxicants and unwanted wastefulness is not permitted according to the clear text of the Qur’ān and Sunnah.

Ironically, the notable absence of an explicit text(s) is used by some Muslims to argue for the permissibility of *khat*. The logic of this argument, however, was challenged by one scholar on the basis that ‘the Qur’ān cannot outline and specify [all] items that are prohibited because as time goes by new... products come into the market. So, [...] the laws of Islam are universal, and therefore [there are] *uṣūl* or principles under which our laws are derived (*sic*)’. This scholar further elaborated by citing the following incident from the Sunnah as a textual evidence of what has become known as *ijtihād* (independent legal reasoning):

[...] when Muadh bin Jabal was sent to Yemen, Prophet Muhammad escorted him out and asked him a few questions. And he asked him, ‘how are you going to make decisions amongst the people of Yemen?’ He said, [I will explore the] ‘Qur’ān’.

And then he asked him, ‘if you do not find [an answer] in the Qur’ān, what will you do?’ He said, ‘I will look at your Sunnah.’ He asked, ‘if you do not find in my Sunnah, then what will you do?’ He said, ‘I’ll use my, I’ll make *ijtihad*. This scholar advanced his argument of impermissibility based on evidence from the Qur’ān: ‘*wa-la tulqu bi aydikum ila-ttahlukah* [do not throw yourselves to destruction]’ and then concluded that ‘if *khat* falls under that category, from the *mukhaddarat* [drugs/intoxicants] or anything stimulants which are harmful to our body, and depending on how harmful it is, then according to that I think [the] ‘*ulema* [scholars] and *fuqaha* [jurists]... will give a ruling of its prohibition.’

The sentiment expressed aforementioned was echoed by all the twenty other scholars. In the discussion group, no Muslim scholar agreed that *khat* was lawful. Additionally, in substantiating their position the interviewees argued that those who assume that *khat* is permissible or detestable ignore the higher objectives of Sharī’a law —*maqāsid*. Among these is the protection of human life and reduction or elimination of harms, which should be kept in mind when assessing the legality of *Khat* consumption. This is highlighted in the following statement:

[...] the purpose of the Islamic Sharī’a is to protect [the] five essentials (sic). The five necessities they call... And I think, that *khat*, when you look at that list, goes against two or three of that. So it destroys the health of the individual, physically and mentally.

Another scholar said: ‘there is another general rule in Islam, when you [are] looking at something, when it’s *halal* (permissible) or *haram* (forbidden), you weigh between the benefits and the negatives, the harms and the benefits. And again in that principle *khat* is *haram* (forbidden) because there is no benefit in *khat*.’ In rebutting the argument that *Khat* is *halal* because it increases alertness during acts of worship such as the performance of prayers, one scholar said: ‘You cannot use some harm (sic) substance in order to assist you in *ibadāt* (religious rituals).’ He further said: ‘And Allah is not forcing us to make *ibadāt* to such an extent where we [are] getting involved in taking drugs... *la yukallifu Allahuna fisanilla was’aha* [God does not burden a soul with more than it can bear].’ To further substantiate his answer, the Imām cites a Ḥadīth as evidence for the impermissibility of the use of *khat* in acts of worship:

When *Rasulullah* [God’s Messenger] *sallallahualayhi wasallam* [God’s peace and blessings upon him] came to the *masjid* [mosque] and he found a rope between two poles and he asked about that, and they said it’s for Zaynab [the prophet’s daughter] and he said, ‘what she does with it?’ They said to him, ‘to help with standing [while in prayer]’, and he said ‘*alaykum bimatutiqun*’ [perform what you can bear], pray when you can, and do not use outside aid.

6. Implications for Australia

A growing number of Muslims have migrated to Australia in the past several decades. Muslims as people of distinct faith group in a multicultural Australia bring into Australia their unique diverse cultural and belief systems. The consumption and use of *khat* is an illustration of how migrant groups introduce elements of their ancestral home culture into their receiving societies. Concerns of *Khat* becoming a mainstream drug are warranted as lawful importation has been in the rise in Australia for the past decade.⁵⁶ The growing numbers of African and Middle Eastern migrant cohort to Australia coupled with their increasing use of *Khat* has profound implications for Australia’s law enforcement, policy makers and the general public. The Islamic legal ruling of *Khat* consumption has two discerning implications for Australia: (1) the possibility that individual *khat* users and groups may claim that *khat* consumption has some cultural and religious significance for them and, therefore, the potential to contest against any perceived government “intrusion” of their cultural and belief systems; (2) Muslims consumers of *khat* justifying its consumption based on their assumption that Sharia law allows it, and in doing so ignoring Australian common law,⁵⁷ as Douglas and Hersi (2010) found that strong views expressed by Muslims in Australia about *Khat* consumption are influenced by their understanding of Sharia law. To evaluate this common assumption it is critical to understand the views of Australian Muslim religious scholars on *khat* consumption. Such views as presented in this paper can help policy/law makers arrive at conclusions that are based on informed expert views and not cultural assumptions.

⁵⁶ Douglas and Pedder (2011).

⁵⁷ Douglas and Hersi (2010), p. 3.

At a more practical level, public policy makers and the government may benefit from the expertise of Muslim scholars as *Khat* is alleged to have a relationship with a range of public policy matters such as unemployment, crime, violence, public order and family breakdowns, income diversion and integration of migrants to host societies. Concerns have been raised that there is the potential that *Khat* may become a widely used mainstream drug. In particular, findings in this paper could provide government and policy makers an insight into what is the considered Islamic ruling of *khat*.

7. Conclusion

This paper demonstrated the Islamic view on *khat* theoretically and based on the views of local Australian religious leaders. Despite the differences of views about the legal and harmful effects of *khat* it is evident from the aforementioned discussion that there is overwhelming evidence, from an Islamic legal perspective, that *Khat* should be prohibited based on its multi-faceted harm. All the religious scholars interviewed expressed no hesitation in considering *Khat* as a prohibited substance. They substantiated their views on textual based on the sources of Islamic law, and personal experience with people whose lives have been drastically impacted by the drug. These opinions are particularly important because of their religious weight, which can be used to debunk any argument of the Islamic legality of *Khat*. Consumers of *Khat* often justify their habit using religious arguments, and the views expressed in this paper counter such arguments. Findings in this paper are thus important because it demonstrates why *khat* consumption can be prohibited based on Islamic legal theory, and the juristic opinions of local Muslim scholars. This is of significance especially for law/policy makers who seek to find appropriate measures for the regulation of *khat* consumption in Australia. The ultimate decision of state prohibition of *Khat* rests on the shoulders of Australian policy makers, who would consider a host of factors before legislating against *Khat*. Our findings here can help in this process in the way that it sheds light on the legality of the consumption of *Khat* based on the views of local Australian Imams. Further research, however, would be encouraged with a wider group of Imams and religious leaders. Furthermore, the families of *Khat* users can be interviewed to ascertain the extent of the harm imposed upon them, if any.

References

- Abdalla, M. (2012). Sacred Law in Secular Land: To What extent should Sharia Law be followed in Australia? *The Griffith Law Review*. Volume (21) Issue (3) (2012), pp.657-679.
- Al-Hebshi, N. N., & Skaug, N. (2005). Khat (Catha Edulis) - An Updated Review. *Addiction Biology*, 10, 299307.
- Anderson, D., Beckerleg, S., Hailu, D., & Klein, A. (2007). *The Khat Controversy: Stimulating the Debate on Drugs*. New York: Berg Publishers.
- Anderson, D. M and Carrier, N. C (2001) Khat: Social Harms and Legislation A Literature Review, Occasional Paper 95, Home Office, p. 1-50.
- Armstrong, Edward G (2008) Research Note: Crime, Chemicals, and Culture: On the Complexity of Khat, *Journal of Drug of Issues*, vol 38, pp 631-648.
- Balint, G A and Balint, E. E (1994) On the Medico-Social Aspects of Khat (Catha edulis) Chewing Habit, *Human Psychopharmacology*, 9, p. 125-128.
- Beckerleg S (2008) Khat Special Edition Introduction, *Substance Use and Misuse*, 43, 749-761
- Beckerleg, S (2006) What Harm? Kenyans and Ugandan Perspectives on Khat, *African Affairs*, Vol 105/419 p 219-241
- Bhui, K and Warfa, N (2007) Drug Consumption in Conflict Zones in Somalia, *Public Library of Science Medicine*, 4, (12), p. 1865-1866.
- Buffin, J., mir, Y., & Mirza, I. (2008). *Findings from Community Engagement Forums*. Paper presented at the Khat: Current Reviews from the Community around the UK.
- Elmi, A. S. (1983). The Chewing of Khat in Somalia. *Journal of Ethnopharmacology*, 8, 163-176.
- Carrier, N (2008) Is Mira a Drug? Categorizing Kenyan Khat, *Substance Use and Misuse*, Vol 43, p 803-818
- Dawit, A, Debella, A, Dejene, A, Abebe, A, Mekonnen, Y, Degefa, A and Ketema, L (2006) Is Khat-chewing associated with HIV risk behaviour? A community-based study from Ethiopia, *African Journal of Aids Research*, 5, (1) p. 61-69
- Graziani, M, Millela, M and Nencini, P (2008) Khat Chewing from the pharmacological Point of View: An Update, *Substance Use and Misuse*, 43, 762-783.
- Gebissa, E. (2008). Scourge of Life or an Economic Lifeline?: Public Discourses on Khat (Catha Edulis) in Ethiopia. *Substance Use and Misuse*, 43, 784-802.
- Gebissa, Ezekiel (2004) *Leaf of Allah: Khat and Agricultural Transformation in Harerge, Ethiopia 1875-1991*, James Currey Ltd, Oxford.
- Interpretation of the Meanings of the Noble Qur'an in the English Language. Trans. Muhammad Muhsin Khan, Muhammad Taqi-ud-Din Al-Hilali. Riyadh: Darussalam, 2001.
- Kamali, H. (2008). *Shari'ah Law: An Introduction*, Oneworld Publications
- Kamali, H. (2006). *An Introduction to Shariah*. Kuala Lumpur: Ilmiah.
- Masud, M. K. (1995). *Shatibi's Philosophy of Islamic Law*, Kuala Lumpur: Islamic Book Trust
- Sikuru, L (2010). Khat (CATHA EDULIS): The Herb with Officio-Legal, Socio-Cultural and Economic Uncertainty, *South African Journal of Science*, vol 106 (3/4) p. 1-4.
- Sikuru, L., & Babu, S. M. (2009). Khat (Catha Edulis): Academic, Health and Psychological Effects on "mature" Students. *African Journal of Drug & Alcohol Studies*, 8(2), 49-59.
- Raysuni, A (2006) *Imam al-Shatibi's theory of higher objectives and intents of Islamic law*, Kuala Lumpur: Islamic Book Trust
- Varisco, D.M (1986) On the Meaning of Chewing of QAT (Catha Edulis) in the Yemen Arab Republic, *International journal of Middle East Studies*, vol 18, p. 1-13.
- Wagner, M (2005) the Debate between Coffee and Qat in Yemeni Literature, *Middle Eastern Literatures*, Vol 8, 2, p. 121-149