

APOSTASY & FREEDOM OF BELIEF IN MUSLIM PERSPECTIVE

A Brief Exposition^{*}

Mohamed Imran Mohamed Taib

Centre for Contemporary Islamic Studies (CCIS)

Imran_taib@yahoo.com

Apostasy or *irtidad/riddah* (in Arabic) comes from the root word *radd*, which means "to retreat, to retire, to withdraw from or to fall back from". Within the context of Muslim jurisprudence (*fiqh*), the word implies the abandonment or renunciation of Islam. An apostate therefore is known as a *murtadd*. This term has evoked so much sentiment among Muslims and non-Muslims alike. Some Muslims today are calling for harsh punishments for apostates, ranging from death to imprisonment. According to a recent survey, 86% of Jordanians supported death penalty for apostasy; followed by Egyptians (84%); and Pakistan (76%). Support from Indonesians stood at 30% while Turkey was lowest with 5% supporting. (Pew Research Centre, 2010) Many Muslim-majority countries, including Afghanistan, Pakistan, Egypt, Saudi Arabia, Iran and Malaysia, have enacted laws that target apostates as well as attempts to convert Muslims to other faiths. These lawmakers and their supporters claim to uphold "Islamic law" and regard apostasy as a severe crime that undermines the state, Muslims and their sacred religion – therefore the need to regulate it through the penal code.

Meanwhile, freedom of religion is regarded as an important aspect in a modern, democratic society. Article 18 of the UN Declaration of Human Rights, of which many Muslim nations were also signatories of, states that "*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.*" (UNDHR, 1948)

Two of these positions were seen as contrasting worldviews – one "Islamic" and the other "Western". This is how some people have framed the issue that one was forced into a kind of false dilemma. Muslims who disagreed with the conservative position on the need to punish apostates were accused of being "westernized", "secular" or "liberal" – euphemisms for being "ignorant" or "non-committed" Muslims who somehow "rejects God's law (*shari'a*)". On the other hand, some non-Muslims were quick to judge the conservative position as being representative of *the*

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“Islamic position”. Both were actually fundamentalist positions that reduced Islam into monolithic and essentialist understanding; ignoring the intricacies and complexities that were discussed within the Islamic traditions. Thus, in both positions, the laborious task of investigating, research and truth-searching were glossed over in the interest of taking an ideological side – whether to position Islam as a form “resistance” to the “imperial West”, “conniving Jews and Christians” and “corrupting forces of modern society”, or to demonise Islam as “barbaric”, “evil” and “incompatible with progress and modern society”. One’s position on apostasy therefore becomes a defining marker of where one’s “commitment” to Islam or modern liberal values lies. This is how the issue has unfolded in recent years in Malaysia, and in many other Muslim societies since the dawn of Muslim resurgent politics in the late 20th century.

Islamic legal rulings on apostasy

Despite what fundamentalist Muslims and islamophobic non-Muslims may argue about Islam's harsh punishments for apostasy, Muslim scholars past and present do not have a unanimous view on this matter. No doubt, the dominant view in classical Islam stipulates some form of punishment, including death to apostasy; but one cannot view the matter as a foregone conclusion. As highlighted by a well-respected contemporary Muslim jurist, Taha Jabir al-Alwani (2008), though the Qur’an was swift in condemning apostasy, the sacred text was silent on the matter of worldly punishment for the apostate, or what is known as *hadd* (pl. *hudud*).¹ Apostasy, therefore, does not come under what is popularly known as *hudud* law today. In fact, what is undeniable is the Qur’an’s commitment to freedom of conscience and belief, as best expressed in an oft-quoted verse, “*There is no compulsion in religion...*” (Q.2:256).² Some two hundred verses in the Qur’an can be brought forth to strengthen the view that the sacred text does not condone any form of coercion that violates one’s conscience or freedom of belief (al-Alwani, 2008: 90).

Several Companions of the Prophet such as Umar ibn al-Khattab (d.644), Ibrahim al-Nakha’i (d.715) and Sufyan al-Thawri (d.778) were among those who rejected capital punishment for apostasy. In more recent times, respected scholars such as Mahmud Syaltut (grand sheikh of Al-Azhar University, d.1963) and S.A. Rahman (chief justice of Pakistan, d.1990) were among those who disagreed on meting out punishment for mere apostasy. Others, ranging from reformist traditionalists such as Gamal al-Banna and Muhammad Abu Zahra (d.1974), to moderate modernists and liberal scholars such as Fathi Osman (d.2010), Mohammed Hashim Kamali, Muhammad Shahrur and

¹ Muslims regard the Qur’an, being God’s revelation, to be the primary source in deriving religious laws. The second source is the Hadith, or the prophetic tradition – usually the collected sayings and deeds of Prophet Muhammad. Beyond these two sources, religious scholars relied on *ijtihad* (independent reasoning), which may employ various juristic tools and methodologies developed by the various schools of law.

² In the famous Qur’an exegesis *Tafsir Al-Manar*, Rashid Reda explained that this verse was revealed prohibiting the Ansar (Medinan Muslims) who wanted to compel their children to convert to Islam from their initial Jewish faith. (Cited, Al-Alwani, 2008: 82-85)

Abdullahi An-Na'im also came to the same conclusion on Islam's rejection of any form of punishment for apostasy.³

Yet, the reformist arguments were often buried under juristic positions that developed within a certain context in late Islamic periods.⁴ As 'imperial Islam' grew as a result of territorial expansion and growth of Muslim dynasties, Muslim jurists failed to make distinctions between "*apostasy simpliciter and apostasy combined with treason or severance of allegiance to the State.*" Thus, as Rahman argued, jurists of the past often "*tacitly assumed that every apostate from Islam deserves the death penalty, not merely as a renegade from the true faith, but also as a muharib – an active rebel.*" (Rahman, 1996: 3) Rather unfortunately, ideologues of Muslim revivalist movement such as Mawdudi (d.1979) of Pakistan's Jamaat-e-Islam and Syed Qutb (d.1966) of Egypt's Muslim Brotherhood, chose to select certain juristic understanding from past scholars and presented this as an "Islamic position" in order to reclaim Islam's superiority that were perceived to have been battered by centuries of colonisation and humiliation by imperial powers in the West.

Much of the arguments developed by jurists who supported the death penalty for apostates were derived not from any clear text of the Qur'an, but from several *ahadith* (sing. *hadith* – sayings and deeds of the Prophet). But Muslim scholars had noted that many of these *ahadith* were contentious and problematic in both *sanad* (chain of transmission) as well as *matn* (content).⁵ In addition, these *ahadith* were of singular narration,⁶ which brings into question their validity to be used as a basis for lawmaking in Islam. Last but not least, classical Islamic scholarship stipulates that no *hadith* can replace or abrogate a clear Qur'anic verse. Thus, the existence of dubious *ahadith* – such as when the Prophet supposedly said "*Whoever changes his religion, kill him!*" and "*The blood of a Muslim...cannot be shed except in three cases: in qisas [retaliation] for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam and leaves the Muslims.*" (*Sahih al-Bukhari*) – cannot

³ For an extensive list of scholars and articles supporting freedom of belief and rejecting punishment for apostasy, see <http://apostasyandislam.blogspot.com/2007/03/signatories-to-statement-about-islam.html>.

⁴ Wael Hallaq notes that capital punishment for apostasy "reflects a later reality and does not stand in accord with the deeds of the Prophet." (Hallaq, 2001:120)

⁵ *Sanad* and *matn* were two main criteria used in *hadith studies* to determine the status of a prophetic report, whether it is authentic (*sahih*), weak (*dhaif*), hasan (*good*) or mawdu' (*fabricated*). For example, a *hadith* will be classified as weak if one of the narrators in the chain of transmission is known to have poor memory – for he/she may have erred in reporting what he/she heard from another narrator before transmitting the report further. Similarly, a *hadith* whose content is considered irrational or contradicts clearly a verse from the Qur'an, can be classified as fabricated for the Prophet could not have gone against the Qur'an, or display irrational behaviour or spoke nonsense.

⁶ A *hadith* can either be *mutawatir* or *ahad*. *Mutawatir ahadith* are those narrated by many people that it is not conceivable that so many people could have agreed on an untruth, thus confirming the strength of the transmission and veracity of the *hadith*. *Ahad ahadith* are those with singular narration and does not fall into the category of being widely transmitted (*mutawatir*).

be upheld to deny the many verses in the Qur'an that clearly stood for freedom of belief. More so, no reports can be found in the corpus of authentic *hadith* where the Prophet had supposedly killed apostates. In fact, the contrary was true, as Imam al-Syafi'e noted: "*During his [Muhammad's] time, there were some among the believers who became apostates, and then return to Islam; the Prophet did not kill them.*" (Al-Alwani, 2008:116).

Focusing on sociopolitical context

Therefore, it is clear that differences of opinion do occur among the religious scholars (*ulama*) on whether an apostate should be punished, and if yes, whether it should be death (either immediately or after a grace period for repentance), or by other means of punishment such as imprisonment (ranging from few years to life sentence).⁷ Thus, what constitutes the "Islamic legal position" must be sought beyond the text to the realm of context, where politics and competing interests intersect with the interpretive process of the sacred text. Under what circumstances would a particular religious interpretation dominate and why were the more tolerant, open or progressive interpretations of Islam less attractive to the masses and elites alike?

Firstly, we have to understand that Muslims who adopt a rigid and singular interpretation of "what Islam says" on certain legal issue often display ignorance of the complexities, depth and richness of the Islamic traditions. Legal rulings in Islam are never a straightforward process of plucking verses from the Qur'an and Hadith to justify "what God wants" and calling it "*shari'a*". One has to consider various aspects in lawmaking such as knowing the difference between "*shari'a*" (God's Law – often a set of abstract principles stipulated in the Qur'an such as justice, compassion, equality, etc), "*fiqh*" (jurisprudence – that is, the process of deriving law from the primary sources and employing diverse methodologies developed within the various schools of legal thought), and "*ahkam*" (positive laws – that is, the end result of lawmaking process). It will be a mistake, for example, to consider whatever laws that a state adopt to punish apostates as "*shari'a*" or "God's Law". No laws enacted by a ruler or a government through the parliament can ever be sacralised and viewed as "God's Law", despite it being called "*shari'a* law" and administered through a "*shari'a* court". This is basic legal literacy that lay Muslims often were not equipped with and thus subjected to slogans by political actors and groups intending to stoke the religious sentiments of the unassuming masses.

⁷ Supporters of capital punishment for apostasy often appealed to what is known as *ijma' ulama* or consensus of the *ulama*. Mahbulul Islam, a lecturer at the International Islamic University of Malaysia, for example, states that "There was no disagreement, rather a consensus of the companion of the prophet (*ijma' al Sahabah*) with regard to the capital punishment of an apostate based on the Sunnah [example] of the prophet. This has been the law as well as belief of Muslim ummah all over the world for the last 1400 years. Disagreement among the contemporary Muslim intellectuals, authors and writer are recent phenomenon only." (ABM Mahbulul Islam, 2008:181). Contrast this with Al-Alwani who disagreed that there was any consensus, arguing that the appeal to consensus was meant to prevent other (future) *ulama* from investigating the matter further or do rethinking (Al-Alwani 2008:1).

Secondly, the psychology of a nation emerging from a traumatic colonial period and subjugation must be taken into account. Most of the Muslim-majority countries were once subjected to colonial incursions and now struggling to modernise in the face of greater challenges of globalisation and continued economic (and often political) domination by Western powers. The call for an “Islamic state” is an example of a postcolonial struggle to redefine one’s national identity after years of being humiliated and subjugated. Thus, if Muslims were once dominated by the West, they must now prove at all cost that Islam is superior and the way to prove Islam’s superiority is through seizing political power and implementing symbols of Islam derived from the past age. Thus, rhetoric such as “*Islam is the solution!*” and clarion call for implementation of “*shari’a/God’s law*” became hallmark of this struggle to define one’s exclusive identity in rejection of what is perceived as the “corrupt, decadent and immoral Christian/Zionist/West”. Under these circumstances, it is difficult to speak on the issue of apostasy without being drawn into the pre-delineated lines of what is “Islamic” and “Western”.

Thirdly, in many cases, the charge of apostasy is often an excuse to rid potentially subversive ideas that can challenge existing power holders, which may include the politicians as well as the religious elites. In 1985, Sudanese reformer Mahmoud Muhammad Taha was hanged on charges of apostasy. The context was the transition of Sudan into an “Islamic republic” as a way of bolstering power and public support for the then President Numeiri. An-Na’im, a leading Muslim scholar on human rights argued that the execution of Taha “*involved silencing an outspoken critic*” and was “*also generally aimed at other segments of the political opposition.*” (An-Na’im, 1986:197) Several other cases can be highlighted to argue why charges of apostasy were often politically motivated and thus bringing into serious question on the issue of enacting apostasy law within state penal code. Such cases led to al-Alwani declaring that *riddah* (apostasy) is first and foremost a political issue and religious factor plays a secondary, if not inconsequential role in determining it (Al-Alwani, 2008:11)

Fourthly, cases where apostasy charges were contested has also got to do with ambiguity in contemporary legal system, particularly in former British colonies. This is clearly seen in the case of Azlina Jailani (also known as Lina Joy), a Malaysian Malay who applied first in 1997 to have her name changed to reflect her new Christian status. The name change was accepted the following year but the National Registration Department (NRD) refused to change her religion status (‘Islam’) in the identity card. Joy eventually appealed to the High Court, arguing that she should not be subjected to the Syariah Court since she is no longer a Muslim; but the Court upheld the NRD’s decision on grounds that Malays are defined as Muslims in the Malaysian Constitution and thus governed by the Syariah laws. Her final appeal to the Federal Court failed when the Court ruled in 2007 that only the Syariah Court has the power to remove her designation of ‘Islam’ from her identity card.

This brought into question discriminatory practices in a modern nation-state, where dual legal system exists with no recourse for a citizen to be governed by the system of his/her choice. Malaysia and Singapore serve as examples where in the latter, the

Administration of Muslim Law Act (AMLA) governs anyone born a Muslim in the country in matters of personal laws such as marriage, divorce and inheritance; while other (non-Muslim) citizens are governed by civil laws such as Women's Charter and the Wills Act. India, which is also heir to the British colonial system, has rectified the dualism by giving Muslims a choice to be governed by either the civil or syariah personal law – thus protecting the rights of individuals to be full citizens, while upholding legal pluralism. This is an option not open to Muslims in Malaysia and Singapore, although in the case of apostasy, the latter guarantees freedom of belief for all via the state Constitution art. 15.

The liberty to change one's religion is guaranteed for Muslims in Singapore due to the secular foundation of the country. This, ultimately, is a necessity to protect fundamental right to conscience, and, as An-Na'im argues, to protect the honesty and authenticity of religious convictions for a community. An-Na'im goes further to say that protecting the possibility of dissent and heresy is important for *"there is no orthodoxy that was not a heresy when it started. From this perspective, every religious community should safeguard the psychological and social as well as political possibility of heresy and disagreement among its members, because that is the best indicator of the honesty and authenticity of the beliefs and practice within that community. Believers must always remain within their religious community completely voluntarily or leave by their complete free choice – there is simply no human or religious value in coerced religious belief or practice."* (An-Na'im, 2009:282) Any form of coercion, including preventing one from leaving the religion, will only create hypocrisy, a situation strongly condemned in the Qur'an and termed as *"munafiq"*.

Conclusion

An Iranian thinker, Abdolkarim Soroush once argued that distinction need to be made between *religion (din)* and religious knowledge (*ma'rifat al-din*). He argued that while religion is sacred and heavenly, the understanding of religion is human and earthly. Thus, while religion remains constant, religious knowledge and insight undergoes change (Soroush, 2000:31). This paradigm is useful in formulating our position on apostasy. Whether or not Islam stipulates punishment for apostasy falls within the paradigm of *religious thinking*, which eventually will be determined by the changing context and realities that shape our understanding of religious laws. In fact, this is how Muslim scholars today argued for rejection of punishment for apostasy. Punishment for apostasy formulated in the past was intricately related to state matters such as treason and rebellion, not mere renunciation of one's religion. (Shaltut, in Kamali 1995:36) Today, however, this distinction is clearer and freedom of belief is an entrenched aspect of basic human right, accepted by global communities. Therefore, we can say that our deeper understanding of human rights and greater sensitivity to all forms of oppressive discrimination should lead to new insights in our Islamic legal formulations. This, after all, is part of the continuous and evolving attempt to realise the higher intent (*maqasid*) of God's Will/Law (*shari'a*), which among others, stipulates the 'protection of life' and 'protection of belief'.

As argued above also, earthly punishment for apostasy was never mentioned in the Qur'an and jurists had to rely on several *ahadith*, which were contested in its reliability to be used in *tashriq* (lawmaking process). In the Qur'an, verses such as Q.4:137 ("*Those who believe then disbelieve, again believe and again disbelieve, then increase in disbelief, Allah will never forgive nor guide them in the (right) way.*"), clearly "*indicates that these Muslims had a series of defections from Islam, and yet they were allowed to remain free and lived to do as they wished several more times without mention of a punishment by death.*" (Saeed, 1994:27) These, and dozens other Qur'anic verses cannot be ignored and overwrote by a few dubious reports in prophetic sayings (*qauli hadith*).

Lastly, one cannot address controversies involving apostasy issues from a mere theological position. Islam, as it is, is a dynamic religion with rich traditions and diverse manifestations. Even in legal matters, one cannot adopt a singular, dogmatic and essentialist position without falling into the trap of conflating the *interpreter of God's Will* with the *Will of God Himself*. To do so will be to commit the act of authoritarianism (El Fadl, 2001). Every issue involving apostasy must be squarely located within the dynamics and context of that particular society. The recent controversy over JAIS' raid in a community event organized at the Damansara Utama Methodist Church, serves as an example. The issue is not so much about what Islam says about apostasy (as if "Islam" can speak for itself without human interpreters who themselves are limited and circumscribed by their context); rather, the issue must be viewed from the sociopolitical development of Malaysia over the past four decades in long-term analysis, and in recent political contestations in recent times.

Here, three main factors account for the deterioration of Christian-Muslim relations in Malaysia in the last few years. First is the experience of colonialism that generates racial and religious dynamics within the Malaysian society from independence onward. Second, is the agenda of "islamisation" that besets the country ever since the wave of Muslim resurgence overwhelms Malay society from the 1970s. And third, is the recent loss of 2/3 majority in parliament for the ruling party UMNO, which saw the political scrambling to win new allegiances and recover lost electoral grounds through stoking racial and religious sentiments. All these forms the backdrop by which we can better understand the rise of conservatism in Malaysia, beset by various controversies from the ban of the use of the word "Allah" in the Bible, to the raid on DUMC under the pretext of weeding apostates and curbing apostasy.

The issue of apostasy, as argued above, is never a straightforward affair of religious choice, but rather, embedded within certain social and political dynamics unique to each country in case. Therefore, the most appropriate question to be asked is not "What does Islam say about apostasy", but rather, "Why do Muslims chose a certain position on apostasy when the jurists differ in the actual rulings for apostasy?" The framing of the question thus, is important in directing our thoughts to more fruitful insights, understanding, and eventual proposal for reform. []

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