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The Punishment for Apostasy – Can It Be Suspended

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Abstract.....	4
Introduction.....	4
The Punishment for Apostasy in Other Religions	4
The Biblical Teachings Regarding Apostasy.....	5
The History of the Punishment for Apostasy in the Judeo-Christian Tradition	5
The Classical Position and Contemporary Scholarly Discourse Within Islam	6
Why Only in Muslim Countries?	9
Is this Punishment Binding on the Muslim Legislatures?	10
Conclusion.....	14
Bibliography.....	15

Abstract

The punishment for apostasy in Islamic law (Shari`a) is one of the most frequently raised questions about Islam. This paper will not focus on addressing the controversy within contemporary Islamic scholarly circles over the validity of this punishment; it will rather focus on a more practical inquiry: is this punishment binding on the imams/legislatures in Muslim countries, or can they suspend it? A question that I answer in the affirmative. Before the main question is examined, a necessary context is provided by mentioning the textual routes of this punishment in the Bible and Islamic traditions, as well as its practice by Jews, Christians and Muslims.

Introduction

In the past, Muslim countries were not only like the nearby Christendom, but the punishment for apostasy/heresy was less of a phenomenon in Muslim lands than Medieval Europe, for example. However, the current conditions in Europe, its offshoots, and the bulk of Christian majority countries are much different. There are, now, more religious freedoms granted to the citizens of those countries. Although a good development, it was not merely a voluntary attempt to show courtesy to people of other faiths, but rather a conviction Europeans came to adopt about the importance of religious relativism for the civic good. Such conviction came about after centuries of religious wars and fanatic bloodshed. One of the last such wars was The Thirty Years' War between 1618 and 1648.⁽¹⁾

Regardless of how and why religious relativism and pluralism became the norm in Europe, the contrast between the current practices of European countries and Muslim ones makes the Shari`a's treatment of the apostates a favorite theme for many and a constant agenda item in most debates. Additionally, the continued statutory criminalization of apostasy in many Muslim-majority countries, despite the rare enforcement of those statutes, continues to have serious political ramifications. In this paper, I will attempt to answer the following questions: was Islam the only religion that prescribed a punishment for the apostates? If not, why are the Muslim countries the only states where a punishment for apostasy is still canonized? (Note that the Islamic law pertaining to this matter is enforced only by the courts in Muslim lands.)⁽²⁾ Finally, is this punishment binding on Muslim legislatures to uphold, or can they suspend it?

The Punishment for Apostasy in Other Religions

The discussion here focuses on the Abrahamic faiths. The Eastern philosophies have been more accepting of religious relativism, pluralism, and even syncretism. After all, it is expected of the founders of those philosophies, as men, to not claim a monopoly on the truth. However, in the Abrahamic faiths, there is a completely different paradigm: a messenger who is bringing a Divine message to humanity. It would not be expected of God to be indifferent to man's choice of a deity.

(1) Meister, C. (2010). *The Oxford Handbook of Religious Diversity*. Oxford University Press.

(2) Ibn Qudāmah, A. I. (1388 A.H. 1968 CE). *Al-Mughni*. Cairo: Maktabat al-Qahirah, vol. 9, p. 8.

The Biblical Teachings Regarding Apostasy

There is no doubt that the Biblical teachings (particularly in the Old Testament, which is the Word of God according to both Jews and Christians) are explicit on the capital punishment for apostasy. The following are Biblical verses instructing the killing of the apostates and heretics.

2 If there be found among you, within any of thy gates which the LORD thy God giveth thee, man or woman, that hath wrought wickedness in the sight of the LORD thy God, in transgressing his covenant, 3And hath gone and served other gods, and worshipped them ... 5Then shalt thou bring forth that man or that woman, which have committed that wicked thing, unto thy gates, even that man or that woman, and shalt stone them with stones, till they die. (Deuteronomy 17:2-7, KJV)

6 If thy brother, the son of thy mother, or thy son, or thy daughter, or the wife of thy bosom, or thy friend, which is as thine own soul, entice thee secretly, saying, Let us go and serve other gods ...9 But thou shalt surely kill him; thine hand shall be first upon him to put him to death, and afterwards the hand of all the people.10 And thou shalt stone him with stones, that he die; because he hath sought to thrust thee away from the LORD thy God. (Deuteronomy 13:8-9, KJV)

1 If there arise among you a prophet, or a dreamer of dreams, and giveth thee a sign or a wonder, 2 And the sign or the wonder come to pass, whereof he spake unto thee, saying, Let us go after other gods, which thou hast not known, and let us serve them; 3 Thou shalt not hearken unto the words of that prophet, or that dreamer of dreams ... 5And that prophet, or that dreamer of dreams, shall be put to death..." (Deuteronomy 13: 1-4, KJV)

The History of the Punishment for Apostasy in the Judeo-Christian Tradition

The Bible itself tells us about the most famous case of applying the death penalty to the apostates. That is when the three thousand Levites who worshipped the calf were condemned to death. Here is what Moses (peace be upon him) commanded them to do:

27 And he [Moses] said unto them, Thus saith the LORD God of Israel, Put every man his sword by his side, and go in and out from gate to gate throughout the camp, and slay every man his brother, and every man his companion, and every man his neighbour. 28 And the children of Levi did according to the word of Moses: and there fell of the people that day about three thousand men. (Exodus 32:27-28, KJV)

The history of inquisitions shows that Christians, represented by the papacy, have applied the capital punishment for apostasy and heresy for centuries.⁽¹⁾ In the *Inquisition*, Edward Peters states the following:

When faced with a convicted heretic who refused to recant, or who relapsed into heresy, the inquisitors were to turn him over to the temporal authorities - the "secular arm" - for animadversio debita, the punishment decreed by local law, usually burning to death.⁽²⁾

Of the most popular executions carried out as a consequence of those inquisitions was that of Giordano Bruno, who was an Italian Dominican friar, philosopher, and astrologer, known for his cosmological theories. He was found guilty of heresy by the inquisitors, and burned at the stake in

(1) The punishment of the heretics and apostates did not start with the inquisitions, for sure, but the era of the inquisitions was the most recent segment in the history of this punishment in Christendom.

(2) Peters, E. (1989). *Inquisition*. University of California Press, p. 67.

Rome's Campo de' Fiori in 1600 CE.

In addition to the punishment inflicted upon conviction, a papal bull, entitled *Ad extirpanda*, was issued in 1252 by Pope Innocent IV authorizing the use of torture by the inquisitors.⁽¹⁾

It is important to note here, that in the history of Islamic legislation, torture was never sanctioned to extract a confession of apostasy, because simply an outward denial of apostasy (or repentance) was sufficient, according to the vast majority, to end the case.⁽²⁾

The Classical Position and Contemporary Scholarly Discourse Within Islam

If we take the four schools of Sunni Islam as the representatives of the classical Islamic views on matters of law, then their agreement is that the male apostate, who fails to repent, should be killed. There are some reports from Omar ibn Al-Khaṭṭāb, Ibraheem al-Nakh'iy, and Sufyān Ath-Thawriy that his repentance should be sought indefinitely.⁽³⁾ Such reports are sometimes countered by other reports supporting the position of the four schools, such as in the case of 'Omar and Ibraheem.⁽⁴⁾ Otherwise, they are considered invalid interpretations by the majority.

As for the contemporary scholars, there are various directions of the new discourse. Some scholars maintained the validity of the punishment; others denied it, while a third group differentiated between apostates who do not actively threaten the community (by assaulting the religion) and those who do⁽⁵⁾. Finally, another group of scholars argued that this punishment, though established, is not binding on Muslim legislatures to uphold. To them, it is not a ḥadd (fixed punishment designated by the Divine).⁽⁶⁾ The proofs of the last group will be mentioned later in the paper, and those for the third group will be mentioned during the discussion of the other viewpoints. As for the scholars who validate the punishment and those who deny it, I will summarize their arguments here. The deniers cite the following verses of the Quran:

﴿لَا إِكْرَاهَ فِي الدِّينِ قَدْ تَبَيَّنَ الرُّشْدُ مِنَ الْغَيِّ فَمَنْ يَكْفُرْ بِالطَّاغُوتِ وَيُؤْمَرْ بِاللَّهِ فَقَدْ اسْتَمْسَكَ بِالْعُرْوَةِ الْوُثْقَىٰ لَا انْفِصَامَ لَهَا وَاللَّهُ سَمِيعٌ عَلِيمٌ﴾

There is no compulsion in the religion; right-mindedness has already been evidently (distinct) from misguidance. (Al-Baqarah 2:256, Ghali)

﴿وَقُلِ الْحَقُّ مِن رَّبِّكَ فَمَن شَاءَ فَلْيُؤْمِن وَمَن شَاءَ فَلْيُكْفُرْ﴾

And say, "The Truth is from your Lord; so whoever decides, then let him believe, and whoever decides, then let him disbelieve." (Al-Kahf 18:29, Ghali)

﴿فَذَكِّرْ إِنَّمَا أَنْتَ مُذَكِّرٌ ۖ لَّسْتَ عَلَيْهِم بِمُصَيْطِرٍ﴾

So remind them! Surely you are only a constant Reminder; You are not in any way a dominator over them. (Al-Ghāshiyah 88:21-22, Ghali)

They also argue that some of the reports supporting the punishment of the apostate are not

(1) Bishop, J. (2006, May). Aquinas on Torture . *New Blackfriars*, 87(1009), 229–237.

(2) Al-'Asqalaniy, A. i. (1379 A.H. 1959 CE). *Fath al-Bāri* . Beirut: Dar al-Ma'rifah, vol. 12, p. 269.

(3) Ibn Hazm, Ali. (n.d.). *Maratib al-Ijmaa'*. Beirut: Dar al-Kutub al-'Ilmiyyah, p. 127.

(4) Al-'Asqalaniy, A. i. (1379 A.H. 1959 CE). *Fath al-Bāri* . Beirut: Dar al-Ma'rifah, vol. 12, p. 268.

(5) Al-Qaradawi, Y. (1417 A.H. 1996 CE). *Jareemat ar-Riddah wa 'Uqubat al-Murtadd fi Daw' al-Quran wal-Sunnah* (First ed.). Jordan: Dar al-Furqan, pp. 52-53.

(6) Al-'Awwa, M. S. (1427 A.H. 2006 CE). *Fi Usool an-Nizam al-Jinaiy al-Islami* (Second ed.). Cairo: Safeer Al-Dawliyah, pp. 179-210.

specific, and they may be understood in the context of rebelling against the community, such as in the following ḥadeeth of the Prophet:

" لَا يَحِلُّ دَمُ امْرِئٍ مُسْلِمٍ يَشْهَدُ أَنْ لَا إِلَهَ إِلَّا اللَّهُ وَأَنِّي رَسُولُ اللَّهِ إِلَّا بِأَحَدٍ ثَلَاثٍ النَّيْبُ الرَّانِ وَالنَّفْسُ بِالنَّفْسِ وَالتَّارِكُ لِدِينِهِ الْمَفَارِقُ لِلْجَمَاعَةِ "

"It is not permissible to take the life of a Muslim who bears testimony that there is no god but Allah, and I am the Messenger of Allah, but in one of three cases: the married adulterer, a life for life, and the deserter of his religion (Islam), abandoning the community." (Saḥeeḥ Muslim Book 28, Hadeeth 34)

Some contemporary scholars argue the addition at the end is not inconsequential to the meaning of the ḥadeeth, and they cite classical scholars who pointed out the distinction, like Ibn Taymiyyah (RA), who indicated the difference, not to deny the punishment for apostasy, but to affirm that for rebellion.⁽¹⁾

The ḥadeeth that is most explicit on the punishment of apostasy is that in which Al-Bukhari and others reported that the Prophet said,

" مَنْ بَدَّلَ دِينَهُ فَاقْتُلُوهُ "

"If somebody changes his religion, kill him." (Al-Bukhari Book 56, Hadith 226)

This seems to be the strongest proof for the punishment of apostasy. The deniers of the punishment argued that it is counter to the Quran, and that its implication is controversial since it means anyone who changes his religion, regardless of his original one, is to be killed. They also cite that it is a singular report⁽²⁾, and that some scholars do not take those as proof in the domain of ḥadd punishments.⁽³⁾ Finally, they argue that the Prophet himself never applied that punishment in his life, which is true, as will be discussed later.

The arguments of the deniers, however, did not find much support in Islamic orthodoxy of the past, for the following reasons:

- As for the argument of the reports being singular, it is important that we point out that the scholars who invoked this point in this particular discussion did not deny the authority of those reports in general⁽⁴⁾, but they only pointed out that the ḥudood (fixed punishments designated by the Divine) may be beyond their scope of operation. This is still not true. The

(1) Ibn Taymiyyah, Aḥmad. (n.d.). Aṣ-Ṣarim Al-Maslool 'ala Shatim-ir-Rasool . Saudi Arabia: Al-Ḥaras al-Waṭani As-Su'oodi, p. 319.

(2) Reported by a small number (the threshold is controversial) in each layer of the chain of narration, making the transmission speculative, not certain, even if the chain is deemed acceptable, and the ḥadeeth is deemed authentic.

(3) Shaltoot, M. (1421 A.H. 2001 CE). Al-Islam 'Aqeedah wa Shari'a (Eighteenth ed.). Cairo: Dar Ash-Shurooq, p. 281.

(4) The singular reports are those transmitted to us by a lesser number of narrators than that needed to justify certainty in their transmission. Although not definitive in their transmission, they are definitely binding on us in the domain of 'amal (practice), by consensus. They are also authoritative in the domain of 'aqeedah (belief), according to the stronger position - in the author's view. A small number of scholars questioned their authority in the area of ḥudood. Their rejection in the area of practice is an assault on the entirety of Islam. Having said that, if someone rejected the transmission of one of those reports, he would have not committed an act of disbelief. In summary, while one is not supposed to have a certain belief that the Prophet uttered those words, all of us Muslims are bound to comply with the ḥadeeth, and act upon it, once it is deemed authentic.

simplest proof on this is the agreement of all madhahib on using them here.⁽¹⁾

- As for the argument of the hadeeth(s) contradicting the Quran, one must admit that there is some contradiction between the punishment for apostasy, as related in the Sunnah, and the apparent implications of the verses of the Quran mentioned here above. The fact that the Quran has no mention of a worldly punishment inflicted by the judiciary is also uncontested. However, that contradiction is not impossible to reconcile. The earlier scholars indicated that the verses of the Quran forbid forcing people to change their religion into Islam, but they do not give a license to Muslims (who are not recent converts) to abandon Islam. Finally, it may still be said that the lack of mention of the punishment in the Quran still has practical consequences, particularly the fact that the denier of this punishment does not commit an act of disbelief by his denial.
- Admittedly, the agreement of the four schools is not a valid consensus, but it has an undeniable weight in Islamic orthodoxy. They agreed on the punishment for men. It is also hard to find someone before them who explicitly denied it, except some contestable reports from one or two scholars. The consensus⁽²⁾ was later reported by Ibn al-Mundhir, An-Nawawi, Ibn Rushd, and Ibn Qudamah.⁽³⁾
- Although there is one explicit hadeeth on this punishment, there are a few others that support it, albeit with some controversy over their establishment and meaning, but there is also the early practice of the Companions, such as one report from Abu Musa and Muadh while they were in Yemen. In that report, Mu`adh said about the punishment, "it is what Allah and His messenger decreed." This could have possibly been Mu`adh's understanding of what Allah and His messenger decreed. Despite that, it still corroborates the reports traceable to the Prophet.
- Additionally, while we do not take the rulings of our religion from the Bible, but the legislations of those before us are invoked as a secondary source of legislation, when they are not counter to our sources, and when their authenticity is verified by our revelation. In this case, there is the Quranic mention of the story of the Levites who were commanded by Moses (peace be upon him) to kill themselves and the prophetic traditions that are in agreement with the explicit text of the Bible.
- In summary of this part, in order to challenge the validity of the orthodox position, one must reject the consensus (reported by three verifying scholars) and the agreement of the four schools (as far as male apostates are concerned). One must also have an esoteric interpretation of the reported ahadeeth, and reject the action of the Companions, or question

(1) Ibn Al-Mundhir, A. B. (1425 A.H. 2004 CE). *Al-Ishrâf 'ala Madhahib al-'Ulamâ'*. Ra's al-Khaymah : Maktabat Makkah Ath-Thaqafiyyah, vol. 8 p. 54.

(2) This consensus is also not definitive. However, when verifying scholars report a consensus that was not confirmed in the time of the Companions, it must still be treated as a speculative proof. It adds a huge burden on its opponent to refute it and validate his argument.

(3) Ibn Al-Mundhir, A. B. (1425 A.H. 2004 CE). *Al-Ishrâf 'ala Madhahib al-'Ulamâ'*. Ra's al-Khaymah : Maktabat Makkah Ath-Thaqafiyyah, vol. 8 p. 54; Ibn Rushd al-Hafeed, A. a.-W. (1425 A.H. 2004 CE). *Bidayat al-Mujtahid wa Nihayat al-Muqtaṣid*. Cairo: Dar al-Hadeeth, vol. 4, p. 242; Ibn Qudamah, A. I. (1388 A.H. 1968 CE). *Al-Mughni*. Cairo: Maktabat al-Qahirah, vol. 9, p. 8.

the transmission of reports related to us by the most authentic sources, or decline the authority of singular reports in this domain. The deniers failed – in the author's view – to mount a formidable argument that could make all of this justified. Moreover, while I do not have any doubt that some of the deniers are well meaning scholars, their arguments can have some serious consequences on our understanding of the religion and our approach to the law, in general, not only in this issue.

This particular part of the paper was presented for completeness, and to make the reader aware of some of the discourse on the punishment itself and its validity. However, the main thesis of this paper is whether that punishment, established as valid in the four schools of Sunni Islam, is binding on the rulers/legislatures to uphold.

Why Only in Muslim Countries?

There are no more inquisitions in Europe and the Western countries in general. The last case in Spain, for instance, was in 1826 when Cayetano Ripoll, a school teacher, was executed by garroting for allegedly teaching Deism.⁽¹⁾ This is not to say that killing the apostates has completely stopped in non-Muslim communities. This is certainly untrue. However, it is still true that the vast majority of countries with non-Muslim majority do not currently criminalize apostasy, while many Muslim countries still do, and in a few of them, it is a capital punishment, although rarely enforced.

There are several explanations that could be offered concerning this phenomenon. For the more conservative Muslims, some may say that this punishment was established in all Divine revelations, and previously practiced by all of their followers, and the mere fact that Western countries abandoned the practice in favor of religious pluralism should not make us automatically follow suit. Others, particularly of the groups called political Islamists, argue that the despotic governments in Muslim countries do not have the needed legitimacy to take any courageous steps to suspend that punishment. Another group argues that the main reason behind the criminalization of apostasy is that the Muslim people have been under pressure to abandon their religion for centuries. First, there were crusades, and then colonialism, and now there is a perceived Western hegemony, and there is also the economic factor and the exploitation of poverty by some missionaries who prey on people's needs. When people feel threatened, they become keener on closing the gates and protecting their identity. A discussion over suspending this punishment in Algeria during the French occupation, for instance, would have sounded ludicrous. Even though the punishment was not enforced in reality, no scholar of any caliber would have been able to suggest its suspension, on an intellectual level, while his countrymen were witnessing the demise of two million martyrs. While Europe was progressing towards religious pluralism and liberty for all of its citizens, it was simultaneously conquering and occupying the vast majority of Muslim lands. Finally, there are those Muslims who reject the validity of the punishment for apostasy. They consider all of the laws which criminalize it un-Islamic. To them, the continuity of this punishment is a mere failure of judgment on the part of the Muslim scholars and legislatures that uphold it.

(1) Law, S. (2011). *Humanism: A Very Short Introduction*. Oxford University Press, p. 23.

Is this Punishment Binding on the Muslim Legislatures?

The more practical and consequential question is whether the punishment for apostasy could be suspended or it is binding on the Muslim legislatures and judiciaries. I believe it is not binding; here are my reasons:

- 1- Although the specificity of the cause does not restrict the general applicability of the statements of the revelation, knowing the context of the legislation at the time of its foundation facilitates the understanding of the 'illah/manât (effective cause) of the ruling and enables the mujtahid to apply it within its accurate scope of operation. In the case of the punishment for apostasy, Sheikh Muhammad Rasheed Reda (RA) said the following regarding its context (translation by the author),

The apostates of the disbelievers of Arabia used to return to fighting against the Muslims and oppressing them. Therefore, the legitimacy of killing them is more apparent than killing the rest of the disbelievers who were in war against Islam. Some of the Jews would even pretend to accept Islam then apostatize to disrepute the religion. Allah described those when He said, "And a section of the population of the Book said, 'Believe in that which has been sent down upon the ones who have believed in the early part of the daytime and disbelieve at the last part of it, that possibly they would return (i.e. to your religion). (Al-Imrân 3:72, Ghali) It appears that the command to kill the apostates was meant to deter the evil of the disbelievers and the plotting of those Jews. It was for reasons dictated by the political environment of that time, which may be known now as part of the politico-military rules of engagement, but it was not to oppress the people. Do you not see that when some Muslims attempted to force their own children to accept Islam after having earlier converted to Judaism, the Prophet prevented them upon a revelation from Allah.⁽¹⁾

So far, nothing can be deduced from this clarification of context, but it is important to keep in mind while we address the other points that are more legally consequential. It is also equally important to keep in mind that there is not a single authentic report of the Prophet enforcing any punishment on any apostates, as will be discussed.

- 2- It is known that the ḥadd punishment cannot be waived. So, if we can establish that some people abandoned Islam during the time of the Prophet, and they were not punished, then we may have a good reason to say that this punishment is not required by the Divine from the imams/legislatures to uphold at all times. There are a few cases that can be cited here.

A) Allah said,

﴿سَتَجِدُونَ ءَآخِرِينَ يُرِيدُونَ أَن يَأْمَنُوكُمْ وَيَأْمَنُوا قَوْمَهُمْ كُلًّا مَا رُدُّوْا إِلَى الْفِتْنَةِ أُرْكَسُوا فِيهَا فَإِن لَّمْ يَعْزِلُوْكُمْ وَيَلْقَوْا إِلَيْكُمُ السَّلَامَ وَيَكْفُرُوا أَيْدِيَهُمْ فَخُذُوهُمْ وَأَقْلُبُوهُمْ حَيْثُ تَفَقَّطْتُمُوهُمْ وَأُولَٰئِكَ جَعَلْنَا لَكُمْ عَلَيْهِمْ سُلْطٰنًا مُّبِيْنًا ۖ﴾

You will find others who wish to obtain security from you and [to] obtain security from

(1) Reda, M. R. (n.d.). *Asilah min Ba'd Ahl-il-'Ilm bi Tunis*. Al-Manâr, 10, 285.

their people. Every time they are returned to [the influence of] disbelief, they fall back into it. So if they do not withdraw from you or offer you peace or restrain their hands, then seize them and kill them wherever you overtake them. And those - We have made for you against them a clear authorization. (An-Nisā' 4:91, Sahih International)

Commenting on this verse, Ibn Katheer (RA) relates from al-Ṭabari (RA) that he said,

Mujahid said that the Ayah was revealed about a group from Makkah who used to go to the Prophet in Al-Madinah pretending to be Muslims. However, when they went back to Quraysh, they reverted to worshipping idols. They wanted to be at peace with both sides. Allah commanded they should be fought against, unless they withdraw from combat and resort to peace.

The point here is that this group who used to go in and out of Islam were not to be fought if they withdrew from combat and resorted to peace.

B) Al-Bukhari and Muslim reported from Jabir ibn Abdullah ؓ that a Bedouin took an oath of allegiance in Islam with the Messenger of Allah ﷺ. A fever befell the Bedouin in Madinah. He came to the Messenger of Allah, and said, "Release me from my pledge." The Messenger of Allah ﷺ refused. Then he came to him again and said, "Release me from my pledge." The Messenger of Allah ﷺ refused. Then he came again and said, "Release me from my pledge." The Bedouin left and the Messenger of Allah ﷺ said,

"إِنَّمَا الْمَدِينَةُ كَالْكَبِيرِ تَنْفِي خَبَائِثَهَا وَيُصْنَعُ طَيِّبُهَا"

"Madinah is like the blacksmith's furnace. It removes the impurities and purifies the good." (Saḥeeḥ al-Bukhârî Book 93, Hadith 71)

In this authentic report, we find that the Messenger of Allah ﷺ was not intent on chasing those who apostatize to punish them. He clearly indicated that if someone did apostatize, then it is his loss, and it is also the work of Allah who removed him from the community of the believers.

C) It has been also narrated on the authority of Anas ؓ that Quraysh made peace with the Prophet ﷺ and laid the condition on the Prophet ﷺ that anyone who joined them from the Muslims, the Meccans would not return him, and anyone who joined the Muslims from them, the Muslims would send him back to Mecca. The Companions said: Messenger of Allah, should we write this? He said:

"نَعَمْ إِنَّهُ مَنْ ذَهَبَ مِنَّا إِلَيْهِمْ فَأُبْعِدَهُ اللَّهُ وَمَنْ جَاءَنَا مِنْهُمْ سَيَجْعَلُ اللَّهُ لَهُ فُرْجًا وَمَخْرَجًا"

"Yes. One who goes away from us to join them -may Allah keep him away! and one who comes to join us from them (and is sent back) Allah will provide him relief and a way of escape." (Saḥeeḥ Muslim Book 32, Hadith 114)

In this report, it is clear that the Prophet favored peace with Quraysh over the loss of some members of the community of the believers to them. He even accepted, in pursuit of that peace, an imbalanced treaty where Quraysh may keep those who become Muslim, yet he would not prevent those who return into disbelief from joining Quraysh. In our times, if other nations offered to keep the gates between the religions open and allow the historical conflicts to be transferred to the intellectual domain, should we refuse? I believe that we should not. However, as discussed later, we should ensure that they hold true to their offer. We are not fewer or weaker than the community of Muslims in Madinah at the time of Ḥudaybiyah, who were surrounded by hostile unbelievers.

D) D) It was also reported by Al-Bukhari that when the Prophet distributed something among his followers, a man said, "This distribution has not been done justly and is not for the sake of Allah." "I went to the Prophet and told him (of that). He became so angry that I saw the signs of anger on his face. Then he said, "May Allah bestow His Mercy on Moses, for he was harmed more than this; yet he endured patiently." (Saḥeeḥ al-Bukhâri Book 60, Hadith 78)

Here is a man who accused the Prophet of injustice, which amounts to disbelief, and the Prophet left him without punishment. Commenting on this, Ibn Ḥajar agrees that he apostatized, but he said that the Prophet left him to reconcile his heart.⁽¹⁾ The justification Ibn Ḥajar (RA) provides for not punishing this man is one, among many others, that would allow the Muslim legislatures to suspend that punishment.

E) When Ibn Salool said, "when we go back to al-Madinah, the mighty (referring to himself) will drive out the humiliated (referring to the Prophet)", and 'Omar asked the Prophet to permit him to kill Ibn Salool for this and other past demonstrations of disbelief and rebellion, the Prophet said, "Let him O Omar; lest the people will say Muhammad kills his companions." Once again, this person made an open statement of disbelief, and he was left unpunished. Now, the question is whether we are in a greater need, in our times, to reconcile hearts and avoid the negative impressions killing the apostates may result in.

F) There are some other instances where people committed acts of disbelief, but they were left unpunished, such as the one who accused the Prophet of favoring his cousin Az-Zubayr in judging between them. Once again the same explanation of reconciliation was used by Ibn Hajar. (2)

G) Finally, I also agree with the deniers of the punishment that there has not been a single case where the Prophet commanded the killing of a particular apostate. The report about Umm Marwan (Or Umm Roman) is weak according to the most notable hadeeth scholars, such as Ibn Hajar.⁽³⁾

3- In al-Mughni, Ibn Qudamah separates between the punishment for apostasy and the ḥudood (fixed punishments designated by the Divine).⁽⁴⁾ In Sharḥ al-'Aqeedah As-Safareeniyah, the late Sheikh Muhammad ibn 'Uthaymeen denied that the punishment for apostasy, which he validates, is a ḥadd. He said that the ḥadds do not drop upon repentance, whereas the punishment for apostasy does.⁽⁵⁾ I believe the punishment of apostasy belongs to the section of As-Syasaḥ ash-Shar'iyah more than it belongs to the ḥudood. After all, if it were a ḥadd, the Prophet would have meted it in all of the cases above. He said,

"تَعَاَفُوا الْخُدُودَ فِيمَا بَيْنَكُمْ، فَمَا بَلَّغَنِي مِنْ حَدٍّ فَقَدْ وَجِبَ"

Forgive the ḥadd punishments among yourselves; once it (the case) reaches me, it becomes binding. (Sunan Abi Dawud Book 40, Hadith 26)

This distinction is consequential to our discussion, because the application of ḥudood was

(1) Al-'Asqalani, A. i. (1379 A.H. 1959 CE). *Fath al-Bâri*. Beirut: Dar al-Ma'rifah, vol. 12, p. 299.

(2) Ibid., vol 5, pp. 39-40.

(3) al-'Asqalani, I. h. (1419 A.H. 1989 CE). *Al-Talkhees al-Habeer*. Beirut: Dar al-Kutub al-'Ilmiyah, vol. 4, p. 136.

(4) Ibn Qudamah, A. I. (1388 A.H. 1968 CE). *Al-Mughni*. Cairo: Maktabat al-Qahirah, vol. 9, p. 8.

(5) 'Uthaymeen, M. i. (1426 H 2005 CE). *Sharḥ al-'Aqeedah As-Safareeniyah*. Riyadh: Dar al-Watan, vol. 1 p. 670.

more emphatically required of the Muslim judiciaries, who were instructed to be strict in their execution.

- 4- If 'Omar ؓ suspended the agreed upon ḥadd of theft, during the year of the famine, because of reasons pertaining to its manâṭ (effective cause) and its other declarative rules (aḥkâm waḍ'iyah), including al-mawâni' (hindrances of application), then it is quite acceptable to re-examine the punishment for apostasy in light of the same thinking.

Suspending such punishment would not be a matter of mere abandonment of a ruling on the mere basis of public interest. It is rather based in the very manâṭ (effective cause) of the ruling. It is like 'Omar's choosing not to divide the annexed lands between the conquerors despite the objection of some companions who followed a more literalist approach to the matter. And it is like 'Uthman ordering the lost camels to be picked and not left because the Prophet's command to leave them was at a time where there was much security in the Madinah, causing little concern that it could be stolen. In this case, we will be choosing the way of the Prophet in overlooking the apostasy of people, as described above, because it suits our current conditions. The societies and legislatures in Muslim-majority countries will need then to determine the appropriate methods of deterring people from insulting the religion and its symbols. The freedom of cursing a Prophet like Jesus (peace be upon him) in some countries does not make it binding on Muslim-majority countries to allow the same. The dominant powers in today's world need to understand that different nations have different value systems. Continuing to ignore this fact and seek complete conformity with one value system will only result in more contention and conflict. Every people should be given the right to choose for themselves how to prioritize their values and apply them within the current realities of the time.

Conclusion

The punishment of the apostate is one of the major points of contention between the Muslims and non-Muslims. It is a constant agenda item on most of the debates. It has a substantial impact on the contemporary world politics. In this paper, I show that this punishment is not an Islamic peculiarity. The Bible is more explicit on it than any part of the Islamic tradition. It was also upheld in practice by the Jews and Christians before Muslims. However, at least officially, it is now almost exclusively canonized in some Muslim countries. The reasons behind this apparent discrepancy are not simple to break down. There are multiple reasons, some of which are theological, while many are political. The established position on this issue in Islamic orthodoxy was not substantially challenged by Muslim scholars until recently. While I did not find the challenges to the orthodox position maintaining the validity of this punishment supportable, I found that it is not a ḥadd (fixed punishment designated by the Divine), and that its suspension is within the capacity of Muslim legislatures. Finally, it remains to be said that the Muslim communities will need to find other ways to prevent the many forms of subtle coercion and diversion of the masses away from their religion by powers that use their military and economic superiority to pave the road for well-orchestrated (often politically motivated) missionary campaigns that exploit the despair and poverty of the overwhelmed masses.

Bibliography

- 'Uthaymeen, M. i. (1426 H 2005 CE). *Sharḥ al-'Aqeedah As-Safareeniyah* . Riyadh : Dar al-Watan.
- Al-'Asqalâniy, I. ḥ. (1419 A.H. 1989 CE). *Al-Talkhees al-Ḥabeer*. Beirut: Dar al-Kutub al-'Ilmiyah.
- Al-'Asqalaniy, A. i. (1379 A.H. 1959 CE). *Fath al-Bâri*. Beirut: Dar al-Ma'rifah.
- Al-'Awwa, M. S. (1427 A.H. 2006 CE). *Fi Usool an-Nizam al-Jinaiy al-Islami* (second ed.). Cairo: Safeer Al-Dawliyah.
- Al-Ḥafeed, A. A.-W. (1425 A.H. 2004 CE). *Bidayat al-Mujtahid wa Nihayat al-Muqtaṣid*. Cairo: Dar al-Ḥadeeth.
- Al-Mundhir, A. B. (1425 A.H. 2004 CE). *Al-Ishrâf 'ala Madhahib al-'Ulamâ'*. Ra's al-Khaymah: Maktabat Makkah Ath-Thaqafiyyah.
- Al-Qaradawi, Y. (1417 A.H. 1996 CE). *Jareemat ar-Riddah wa 'Uqubat al-Murtadd fi Daw' al-Quran wal-Sunnah* (First ed.). Jordan: Dar al-Furqân.
- Bishop, J. (2006, May). Aquinas on Torture . *New Blackfriars*, 87(1009), 229–237.
- Hazm, A. i. (n.d.). *Maratib al-Ijmaa'* [The Rankings of Consensus]. Beirut: Dar al-Kutub al-'Ilmiyyah.
- Law, S. (2011). *Humanism: A Very Short Introduction* . Oxford University Press.
- Meister, C. (2010). *The Oxford Handbook of Religious Diversity*. Oxford University Press.
- Peters, E. (1989). *Inquisition*. University of California Press.
- Qudâmah, A. I. (1388 A.H. 1968 CE). *Al-Mughni*. Cairo: Maktabat al-Qahirah.
- Reda, M. R. (n.d.). Asilah min Ba'd Ahl-il-'Ilm bi Tunis. *Al-Manâr*, 10, 285.
- Shaltoot, M. (1421 A.H. 2001 CE). *Al-Islam 'Aqeedah wa Shari'a* (Eighteenth ed.). Cairo: Dar Ash-Shurooq.
- Taymiyyah, A. i.-u.-Ḥ. (n.d.). *Aṣ-Ṣarim Al-Maslool 'ala Shatim-ir-Rasool* . Saudi Arabia: Al-Ḥaras al-Waṭani As-Su'oodi .