

FREEDOM OF RELIGION, APOSTASY AND HUMAN RIGHTS: AN APPRAISAL



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The issue of apostasy is closely linked to the dispute over the shari'a as Islamists contend that under its rule an apostate should be killed. Consequently, they contend that as punishment of apostates is a religious duty, then article 18 of the UDHR which gives Muslims the right to change their religion, ie become apostates, is indeed not compatible with Islam. I would argue here that the religious foundations of this position are not as straightforward as it seems; that there is no clear cut rationale behind apostasy punishment, and that it may after all be in the interest of Muslims to endorse the principle of religious freedom as formulated in Article 18 of the UDHR.

1. Introduction

As the human rights agenda assumed greater importance in recent years, a recurrent debate centring around the universality of these rights and the possibility of their application in all cultural milieus kept unfolding at various levels and forums. The occasion of the 50th anniversary of the Universal Declaration of Human Rights (UDHR) (1948 -1998), seems to have re-focused once again the attention on this debate. Doubts about, and challenges to the universality of the Universal Declaration are being cast from various corners. Our concern here is with the Islamic context of this debate.

By the Islamic context I mean Islam itself as a religious and ideological framework, and the geo-political entity(s) which make up the predominantly Muslim societies, and the corresponding religious and cultural correlations of both. Within this context there are common terms of reference grounded primarily on the shared faith of Islam including certain aspects of its history and polity. On the other hand, however, Muslims as individuals, communities or countries are indeed characterised by significant diversities

owning to their differing historical experiences, divergent local cultures and influences, and the way they associate with and interpret Islam.

It is within this framework that the debate on Islam and human rights must be constructed and addressed. As for the substance of the debate itself, it touches first on the divergent philosophical foundations between the Islamic values and morality, and the values which underlie the principles contained in the UDHR. In this regard it has been argued that the UDHR as a product of the Western liberal tradition is inherently incompatible with the divinely ordained Islamic faith. Furthermore, while the former emphasises rights, the latter is primarily concerned with duties of the individual members of the Muslim community towards themselves and towards *Allah* who has a monopoly of rights.

Although these points are constantly made in theoretical debate, this wholesale approach misleads rather than clarifies. It is important at the outset to address the question of who speaks in the name of Islam. For the purposes of this article I will concentrate here on two parties: governments of Muslim countries on the one hand; and the leaders and activists of Islamist movements on the other.

Owing to their divergent political structures and ideological orientations the governments of Muslim countries do not share a uniform position towards human rights. In this regard one must first point out those governments which are engaged in a process of Islamicization of state and society (such as Iran and Sudan), or which maintain traditional systems of shari'a based legislation (such as Saudi Arabia) and which are likely to invoke Islam as a pretext to curtail the scope of rights enjoyed by their citizens. Yet, reservations on the basis of cultural relativism are increasingly raised effectively by all governments of Muslim countries, secular states included, mostly to deflect criticisms of human rights violations. The same pretext of cultural particularity is sometimes also deployed to express reservations on particular articles of the UDHR or to decline commitments to certain international standards or UN resolutions (such as the ones pertaining to women's rights).

Notwithstanding degrees of variation between them, a common element among Islamist groups, is their claim to represent the cultural authenticity of Muslims and hence their insistence on a

distinct discourse devoid of secular underpinnings. In this context their views on human rights seem to be fluctuating between an outright rejection of the whole scheme as originated in Western culture and the claim that Islam is a more suitable framework for human rights protection and promotion. In general the views of contemporary Islamist on human rights may be summarized along the following lines:

- Islam knew human rights in theory and practice some fourteen centuries before the West;
- The *universality* of the Universal Declaration of Human Rights is questionable as it is just a product of western culture and philosophy;
- The West, which claims to be the champion of human rights, has double standards¹.

Although these and similar points are constantly made – by both governments and Islamist groups – in theoretical debates and political disputes, the reality is somehow different. For all practical purposes, the majority of Muslim states joined the family of nations without reservation to the UDHR and many of them subsequently accepted to become parties to the UN mechanisms of human rights protection. Likewise the Islamist movements which rose in prominence during the last two decades or so, did not campaign for their countries' repudiation of the UDHR and the rest of the human rights treaties. Rather, as most of these movements are primarily opposed to their respective governments and are at the receiving end of state arbitrariness, they stand to gain from these mechanisms despite their Western origin and framework.

In practical/pragmatic terms therefore, the UDHR seems acceptable to Muslim leaders and activists, notwithstanding the theoretical reservations outlined above. However, there are objections to particular articles, which are regarded as incompatible with Islam. The number of such articles differs depending on the

¹ Rudwan Zeyadah: *al-Islamyyun wa huquq al-inssan (Islamists and Human rights) al-Mustaqbal a-'Arabi, markazdirassat al-Wahda al-'arabiyya*, See also Ann Elizabeth Mayer: *Islam and Human Rights*, Westview Press, Boulder San Francisco, 1991 for and insight in the some Islamist human rights projects.

ideological orientation of the disputants². Yet, there are two articles of the UDHR – 16 and 18 – which are regarded as incompatible with Islam by the majority of Islamist leaders, extremists and moderates alike. In this essay I will be addressing the controversy-surrounding article 18.³

Article 18 of the Universal Declaration of Human Rights states:

“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.”(Emphasis added).

During the drafting process of the UDHR 1948, the representative of Saudi Arabia expressed his reservation regarding the formulation of article 18 and was initially supported by some representatives of other Muslim countries present at the time. Their preoccupation related less to the issue of changing one’s religion and more to the danger of opening the door for Christian missionaries, thereby increasing the interference in internal affairs of Muslim countries⁴. Currently, for some Muslims engaged in debates about the universality of human rights, and for members of Islamist groups in particular, this article is not compatible with Islam for religious reasons. The underlying argument for this incompatibility is that it is not acceptable for a Muslim to change his/her religion after embracing Islam. Such an act is generally referred to as

² According to some views there are at least five articles in the UDHR: articles 4, 5, 16, 18, and 19, which apparently contradict Islamic injunctions. See al-Sadiq al-Mahdi: a paper presented to the seminar on *Islamic Perspectives on the UDHR*, November 1998, Geneva. Al-Mahdi, leader of the Sudanese Umma party (an Islamic oriented party) and former Prime Minister of the Sudan believes in the compatibility between Islamic obligations and human rights.

³ Article 16 of the UDHR states: “*Men and women of full age, without any limitation due to race nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution*”. Muslims who oppose the provision of this article argue that in Islam while a Muslim man can marry a Christian or Jewish woman, a Muslim woman may not marry a follower of another religion, and that men and women do not have the seem rights with regard to divorce.

apostasy, which is considered, at least for some Muslims, a crime punishable by death. This view seems to have gained more popularity with the rise of Islamist movements, which became the main opposition groups contending for political power in many Middle Eastern countries. An important feature of the dispute between Islamist opposition groups and their respective governments are the persistent campaigns of the former for the application of Islamic shari'a laws. The issue of apostasy is closely linked to the dispute over the shari'a, as Islamists contend that under its rule an apostate should be killed. Consequently, they contend that as punishment of apostates is a religious duty, then article 18 of the UDHR, which gives Muslims the right to change their religion, ie become apostates, is indeed not compatible with Islam.

The issue is not just an academic dispute but something that is closely linked to practical matters pertaining to law and society in contemporary Muslim societies and in particular linked to issues of shari'a application. Consequently, punishment for apostasy is either explicitly or implicitly provided for in Muslim countries which follow shari'a-based legislation⁵.

I would argue here that the religious foundations of this position are not as straightforward as they seem; that there is no clear cut rationale behind apostasy punishment, and that it may after all be in the interest of Muslims to endorse the principle of religious freedom as formulated in Article 18 of the UDHR.

2. Jurisprudential and political considerations

Apostasy (Arabic: *ridda*, or irtidad), refers to the act of renouncing Islam after having embraced it or for a born Muslim to renounce to Islam either explicitly or by implication. It is generally believed that although Islam does not compel any

⁴ See Asbjorn Eide, et al (ed): The Universal Declaration of Human Rights: A Commentary, Scandinavian University Press, 1992: p 265.

⁵ Article 13 of the Sudan Criminal Code, 1991 provides for apostasy punishment. Other countries like Iran seem to inflict punishment for apostasy without a codified provision in the penal code. See the example of the Baha'is below.

individual to embrace Islam, once one becomes a Muslim they are not allowed to forsake it.

Although there is no explicit Quranic injunction which specifies a particular *worldly* penalty for apostasy, the overriding opinion of traditional Islamic jurisprudence was that an apostate should be killed after allowing him/her time to repent. The jurists tended to support such a ruling by reference to certain prophetic traditions such as: "Whosoever changes his religion, slay him"; and "the blood of a fellow Muslim should never be shed except in three cases: That of the [married] adulterer, the murderer and whoever forsake the religion of Islam"⁶. Whether these traditions are authentic or not is beside the point here. What matters is that the Islamic jurisprudence, which developed during the classical era of Islam, seems to have agreed, in theory at least, that apostasy is a crime punishable by death. This position seemed consistent with a jurisprudence that was the product of a political Islamic order with imperial domination, as well as a product of its own time when political boundaries were to a great extent synonymous with religious boundaries.

Such has been the consensus of the traditional jurists in principle. In practice, however, execution for apostasy had rarely been invoked throughout the history of Islam until the punishment was abolished by the Ottoman Empire, which was also the seat of the Islamic Caliphate at the time. (1844 AD (1260 AH)).⁷ On 21 March 1844, sultan Abdul-Majid decreed that "The Sublime Porte engages to take effectual measures to prevent henceforth the death of the Christian who is an apostate". The decision was apparently in response to pressure from the Ambassadors of Britain, France and Russia following the execution of an Armenian youth in 1843 in Constantinople on grounds of apostasy (S. M. Zewemer, *The Law of Apostasy in Islam*, The Christian Literature Society for India, 1924: pp 23-24).

Modern and contemporary Muslims disagree on the manner of

⁶ See S A. Rahman: Punishment of Apostasy in Islam, Kitabbavan, New Delhi, 1996: pp 56ff

⁷ Cyril Glasse: The Concise Encyclopaedia of Islam, Harper San Francisco, 1989: p44.

classification of the penalty for apostasy within the scheme of shari'a criminal justice and whether it is to be classified as a hadd sanction (specific penalties provided for in the Qur'an), or a'uqubah ta'zeeriyya (a discretionary penalty which is not categorically provided for in the Qur'an, or where the evidence is lacking in a hadd offence)⁸. In the absence of a categorical Quranic sanction, some Muslim scholars argue that the penalty for apostasy is only discretionary to be inflicted by the ruler or judge as appropriate. Accordingly, this school of thought tends to argue that an apostate should be killed only if he declares war on Muslims, and not just on grounds of forsaking Islam without resort to force⁹. Others argue that an apostate should be killed on the authority of the prophetic tradition and in view of the consensus of classical jurisprudence.

Proponents of apostasy punishment tend also to quote from the Qur'an verses which deal with apostasy and seek to interpret them as imposing punishment for apostasy in this world as well as in the Hereafter¹⁰. Opponents of the death penalty for apostasy, however, tend to argue that although the Qur'an spoke about apostates in a very harsh way, there are numerous verses which emphasise freedom of choice, non-compulsion, and that in the end all human beings will be judged individually. Therefore, those who argue in favour of *rida* punishment by quoting from the Prophetic traditions or referring to the verses which speak harshly about apostates are confronted with counter quotes from those who oppose such a position¹¹.

⁸ S Safwat: 'Offences and Penalties in Islamic Law', *Islamic Quarterly*, pp 149ff

⁹ M S. *al-'Awa: al-haqq fil ta'beer (Freedom of Expression)*, Dar al-Shruruq, Cairo, 1998.

¹⁰ See for example *al-Mukashfi Taha al-Kabbashi: al-Ridda wa Muhakamat Mahmoud M Taha fil al-Sudan (Apostasy and the Trial of Mahmoud Muhammad Taha in the Sudan)* Dar al-fjker, Khartoum, no date.

¹¹ S A Rahman argues:

"... [N]ot only is there no punishment for apostasy provided in the Book but that the word of God clearly envisages the natural death of the apostate. He will be punished only in the Hereafter. The Qur'an also visualises the possibility of repeated apostasies by a person, thus negating the justification or necessity of enforcing the punishment of death on a person who declines to revert to Islam within a limited time" Rahman: *Punishment of apostasy* pp

Religious and jurisprudential controversies apart, it may be useful to ask whether it is justified for the community of Muslims to consider it crucial to kill a Muslim who decides to adopt another religion or become an atheist. In addressing this question one should try to look at the possible implications of apostasy on the community of Muslims in today's world.

Islamic legislation covers two dimensions: the relationship between God and human beings as individuals, and the relationships between human beings themselves as a community. The first class of legislation regulates matters of worship (*ibadat*), while the second regulates inter-community matters covering issues of civil transactions and criminal justice. Although, the question of apostasy is essentially a matter relating to the first dimension i.e. the Man-God relationship, its punishment in this world is a matter for the community. So what are the implications of an individual becoming an apostate on the community of Muslims? Unlike other offences punishable under *al-hudud* or *al-qasas* there are no direct physical implications for apostasy. A Muslim who turns into a non-Muslim and declares him/herself as such without any attempt to convert others would have affected the community of Muslims only in terms of reducing its number by one. Indeed his/her action may be deplorable by the rest of the community, but on what logical grounds could such a person be incriminated and punished!

Again if the same person attempts to convince other Muslims, albeit without resort to force or any controversial method, to follow his/her example, the matter would remain in the intellectual/theological domain and concerned members of the Muslim community can mount a counter campaign without resort to violence either. However, if a person who turned into a non-Muslim attempts to win others by force or other unlawful means, the natural course of action for the state or community in question is to try to stop him/her by all necessary means. Yet, the offence in this case would not necessarily be the act of apostasy itself, but the means chosen by the apostate to convert others to his/her new creed.

Sometimes it is argued that an apostate should be killed on the ground of having committed the crime of treason, as his act of forsaking Islam can only be interpreted as such for someone who decided to desert the rest of the community and go

astray¹². This is perhaps an attempt to forward a 'modern' justification to the apostasy punishment, which essentially rests on pre-modern jurisprudential tradition. Yet, it removes the rationale behind apostasy punishment from the religious to the political domain. In effect that is what the apostasy punishment is all about in reality: a political punishment usually pursued by the state either in defence of its own version of Islam, or of the interests of its power holders, or both. Indeed, even during the classical era of Islam, punishment of apostates has been primarily guided by political rather than religious considerations. Such was the case of the "apostasy wars" of the early Islamic period, which are often cited as the more authoritative examples of apostasy punishment¹³.

3. Who is the apostate?

According to traditional Islamic Jurisprudence a Muslim would be declared an apostate if s/he explicitly renounced Islam, has expressed disbelief by words or deeds either explicitly or by necessary implication, or has repudiated what is *necessarily* known to be part of Islamic religion [*ma 'ulima min ad-Din b'l darurah*]. An example of a contemporary and codified definition of apostasy may be found in the shari'a criminal bill enacted by the Legislature of the State of Kelantan in Malaysia in 1994:

- (1) Irtidad is any act done or any word uttered by a Muslim who is a mukallaf, being act or word which according to Syraiah Law [shari'a], affects or which is against the 'aqidah (belief) in Islamic religion: provided that such an act is done or such word is uttered intentionally, voluntarily and knowingly without any compulsion by anyone or by circumstances.

¹² Hyder I. *'Ali: al-Tayrat al-Islamiyya wa qadiyyat al-dimoqratiyya (Islamist Movements and the Question of Democracy)*, markaz Dirassat al-Wahda al-'arabiyya, Beirut, 1996: p181

¹³ Following the death of prophet Muhammad (632 AD) a number of tribes, particularly in Southern Arabia, refused to pay *zakah*, alms -in-tax, to the Prophets successor, Abu Bakr and rejected the authority of Medina. They were declared apostates and fought until the authority of the caliphate prevailed.

- (2) The acts or the words which affect the 'aqidah (belief) are those which concern or deal with the fundamental aspects of Islamic religion which are deemed to be known and believed by every Muslim as part of his general knowledge in being a Muslim, such as matters pertaining to Rukun Islam (Pillars of Islam), Rukun Iman (Articles of Faith) and matters of halal (the allowable or the lawful) or haram (the prohibited or the unlawful)¹⁴.

A straightforward apostate is therefore a person who converts to another religion or become an atheist or non-believer. Other types of apostates are individuals who may be regarded as such by fellow Muslims because of the way they interpret Islam which is then taken as denying what is *necessarily* known to be part of Islam. Accordingly one may classify possible apostates as:

- a) A non-Muslim who converts to Islam and then forsakes it after a reasonable period of time;
- b) A Muslim by birth who after consideration choose to become a non-Muslim,
or;
- c) A Muslim who adopts a particular interpretation of Islam and its main sources which is regarded by others as heretical or a repudiation of what is necessarily known to be part of Islamic religion.

Let us try to examine these categories further. The first category relates to the place of Islam in a multi-religious milieu and touches on the all important question of the relationship between Muslims and non-Muslims. Essentially it highlights the principles of freedom of religion and worship-principles in relation to which contemporary Muslims are usually at pains in asserting that they are well protected under an Islamic order. Hence, if as all Islamic scholars and activists would agree, Islam does not compel anyone to become

¹⁴ Clause 23 of the *Kelantan Syariah Criminal Code (II) bill 1993*, Reproduced as appendix 1 in Rose Ismail (ed): Hudud in Malaysia: The issues at Stake, Kuala Lumpur, 1995: pp 105ff

a Muslim, then on what grounds would it prohibit a person from leaving it. This question assumes a particular importance in societies where Muslims represent a majority, since it raises issues touching on the principle of equality before the law of all citizens, regardless of their religious affiliations. Yet, as is clearly reflected by the apostasy punishment, a non-Muslim is welcome to convert to Islam, but is not allowed to forsake it. Neither is a Muslim allowed to convert to another religion. If such logic is justifiable in the eyes of Muslims on grounds that Islam is inherently better than other religions, it is hardly acceptable to followers of these religions or to secularists. Rather, it perpetuates the image that Islam is a creed, which seeks to protect the community of its followers by force and coercion. A more plausible position therefore is the suggestion that the same spirit, which governs the act of conversion to Islam - free will and choice -, should also regulate the continuity in the faith. Otherwise the postulation that there is no compulsion in Islam becomes an empty phrase¹⁵.

Moving to the second category, apostasy of a born Muslim: would a person born to a Muslim family and choosing to become a non-Muslim be regarded as an apostate? If so, on what grounds? Again this question raises the possibility of contravention with the fundamental principle of non-compulsion in Islam. If Islam does not compel any person to become a Muslim, and does not allow the killing of a person simply because s/he is not a Muslim, then there is freedom of choice in Islam. Consequently, it seems reasonable to argue that a person who has not chosen his/her religion as s/he has been born into a Muslim household, but then chooses to become a non-Muslim out of his/her own accord and after attaining adulthood is just practising his/her right of choice. Otherwise why should a non-Muslim who chooses *not to become a Muslim* be permitted to do so, while a born Muslim who *chooses to become a non-Muslim* be punished?

An example of apostasy converts is the case of the Baha'is in Iran. The Baha'i is a religious sect breakaway from Islam who apparently adhere to certain views that are regarded as un-Islamic

¹⁵ See Abdullahi A An-Na'im: Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law, Syracuse, Syracuse University Press, 1990

by the followers of mainstream Islam. The Baha'i faith is not recognized as one of the legitimate religions under the Iranian constitution. Members of the Baha'i community have been subjected to continuous harassment and persecution since the establishment of the Islamic Republic of Iran in 1979, and over 200 Baha'is were executed mostly during the 1980s.¹⁶

Significantly, however, the Iranian authorities never admitted that the Baha'is have been prosecuted because of their religious beliefs as apostates but for other 'secular' criminal political offences such as espionage and subversive activities. The apostasy element emerged when these mostly trumped up charges, were dropped where accused Baha'is were willing to repent and proclaim their adherence to Islam¹⁷. In other cases charges of apostasy were pressed by the state prosecution when there appeared to be insufficient evidence to back up charges of secular political crimes.¹⁸

The insistence of the Iranian Establishment in denying the fact that Baha'is are persecuted because of their religious beliefs points to the difficulty of applying the apostasy punishment and the immense problems that such a penalty may create for the concerned state with regard to contemporary international law. On the other hand, the persecution of the followers of Baha'i faith in contemporary Iran demonstrates that even descendants of people who were regarded as apostates from Islam may themselves be liable to apostasy punishment. The principle here resembles the same one which used to govern the status of slaves in classical jurisprudence; namely that the descendants of slaves are slaves.

To sum up this part, it is indeed impossible to assert the principle

¹⁶ Amnesty International: *Iran: Dhabihullah Mahrame Prisoner of Conscience* (AI Index MDE 13/34/96), October 1996: p2

¹⁷ Ann Elizabeth Mayer: *Islam and Human Rights*, p178

¹⁸ An *Urgent Action* issued by Amnesty International on 30 January 1997 called for appeals on behalf of the Iranian citizen Musa Talibi who was sentenced to death in July 1996. The document states that Musa Talibi who was arrested in June 1994 on unknown charges was initially sentenced to 10 years, and then to 18 months' imprisonment following a re-trial. However, the prosecution objected to this lighter sentence on the grounds that Musa Talibi was an apostate who should be punished by death.

of freedom of religion while at the same time maintaining apostasy punishment.

4. Interpretation of Islam

Charges of apostasy based on divergent views with regard to interpretation of Islam, the implications of its message in this or that aspect of life, or interpretation of its main sources such as the Qur'an and the Prophetic traditions, are the commonest forms of apostasy charges. The main question associated with the problem of apostasy on grounds of varying interpretations of Islam, is who has the authority to decide on what constitutes true Islam and the correct interpretation of its main texts, particularly in today's world?

From the classical period of Islam onwards, there were various schools of thought and groups built around differing views and interpretations of Islam. Charges of infidelity were somehow common among followers of various groups and sects, though incidents of individuals who were executed on charges of apostasy were rather few ¹⁹. Nonetheless, all were operating within the framework of a more or less universally accepted Islamic order. Dissenting opinions were therefore either tolerated, rejected or penalized in accordance with the wishes of the political authority at the time – the Caliphate.

In the contemporary world things are more complicated than just the prevalence of divergent views and interpretations of Islam within a generally accepted Islamic order. In today's world Muslims are generally operating within the context of a secular international order and governed by the secular entities of their respective nation-states. Responses to such a state of affairs may vary but one can identify three groups: Secularists, or people who generally endorse secular institutions and regulations of state and society; second the Islamists who call for comprehensive Islamization of state and society, and finally, Reformists who try to strike a compromise or a balance between the dominant secular institutions and the Islamic heritage and teachings.

It is within this context that the question of apostasy may arise,

¹⁹ *Concise Encyclopaedia of Islam*, p. 44.

particularly in areas such as the role of Islam in public life, or how its main textual sources are interpreted. Charges of apostasy are normally advanced by Islamists against secularists, and in some cases even against the reformists' attempts to come to terms with present day realities. Their main contention is that these are people who are holding views that can only be regarded as implying infidelity, or who have denied what is necessarily known to be part of Islam. The main problem here is where one draws the line. What is necessarily known to be part of religion is sometimes stretched to include such things as the immediate implementation of shari'a law, particularly in criminal justice and /or the state's own brand of Islam. Hence, a secularist who endorses application of secular laws, or a reformist who holds dissenting views regarding the shar'ia law and its implementation may be found guilty of apostasy in the eyes of Islamists. In this connection charges of apostasy were actually mounted by proponents of shari'a application to silence their opponents, hence equating their own legalistic projects with the totality of Islam²⁰.

Last but not least, who has the right to pass verdicts of apostasy and to implement its punishment? Is it the political authorities in the respective Muslim countries, the religious institutions (such as the *'ulama* (jurists), or al-Azhar [the most renowned institution of Islamic learning in the Sunni world), or are they the Islamist groups who appropriated for themselves the prerogatives of champions of true Islam and who advocate the immediate application of shari'a. Although, each of the above claims a certain legitimacy in representing the community of Muslims in matters of religion as well as other matters, each has a deficiency of a sort.

The legitimacy of the respective political authorities is challenged in a number of countries and their religious credentials in particular are questionable. The religious institutions on the other hand are accused either of succumbing to the will of those in power, or of clinging to a traditionalist and outdated view of Islam, and therefore not equipped to pass an appropriate judgement. In any event they do not have the necessary authority to impose their verdict. The Islamist groups, diverse as they may be are mostly engaged in a

²⁰ See *al-Mukashfi, al-Ridda*, pp. 19/20; Rose *Ismail, Hudud*, pp. 19/20.

political dispute and the majority of them are likely to invoke charges of apostasy mostly in relation to their own interpretations of Islam which are not necessarily shared by the majority of Muslims.

Nonetheless, as the following examples will reflect, charges of apostasy are not just verbally pronounced but actively pursued resulting in grave consequences on the individuals in question.

5. Examples of contemporary cases of apostasy

- a) **Mahmoud Muhammad Taha**, a Sudanese religious reformist leader, was executed on charges of apostasy on 18 January 1985. In December 1984 the Republican Brothers group, a neo-Islamist party founded and led by Taha, issued a leaflet criticizing the enforcement of the shari'a penalties in the Sudan by the then president Ja'far Nimeiri in September 1983.²¹ Following the distribution of the leaflet Mahmud M Taha and four of his followers who happened to be around were arrested and charged with the misdemeanour of incitement of disturbance of public order; but the charge was increased by the Minister of Criminal Affairs to the capital offence of undermining the constitution and waging war against the state, – an offence which was punishable by death. The whole process was accomplished in less than two weeks. Mamud Muhammad Taha and his co-accused were arrested on 7 January 1985 sentenced by the Umdurman Criminal Court to death on 8 January, the sentence was confirmed by the Special Criminal Court of Appeal on 15 January, endorsed by the president of the Republic on 17 January and Mahmud M Taha was hanged in public on 18 January 1985.²²

The whole trial was indeed a grossly unfair and politically motivated one. However what concerns us here is the apostasy charge which provided the basis of the execution of

²¹ See *al-Mukashfi, al-Ridda*, pp. 167ff

²² For more on the incident and Taha's ideas see *Abdullah An-Na'im: 'The Islamic law of Apostasy And its Modern Applicability' Religion* (1986) 16, pp. 197-224.

this 76 year old reformist Muslim, and led to the imposition of a ban on his books and organization. The apostasy charge was not mentioned at all in the indictment, and was only implicit in the verdict of the Omdurman Criminal Court which based its ruling on the defendants' "peculiar interpretation of Islam" and gave them time to repent. In its confirmation of the sentence the Criminal Court of Appeal laboured mainly on the apostasy charges and gave its verdict accordingly. The court argued that Mahmoud M Taha was guilty both by his sayings and "deviationist views" which "are known to everybody", and by his deeds such as the fact that he does not pray. More specifically, the court argued that Taha's views which claimed that the shari'a, as known and practised during the time of Prophet Muhammad, is incapable of solving the problems of the 20th century, should be taken as sheer heresy.

- b) **Nasr Abu Zeid** – In 1995 the Cairo Court of Appeal, in Egypt ruled that Nasr Hamid Abu Zeid, a university lecturer and a writer, should be divorced from his wife Ibtihal Younes on the grounds that he has been found guilty of apostasy and as such could not be lawfully married to a Muslim woman. The case had originally been raised by some individuals before a court in Gezza, which rejected it on 27 January 1994, and hence came the appeal. The ruling was upheld by the Court of Cassation on 5 August 1996. Therefore the verdict became final as it has been endorsed at the highest judicial level.

Nasr Abu Zeid, who was a professor of Arabic and Quranic studies in the faculty of Arts of the University of Cairo, has published a number of works on Islam and contemporary Islamism. His main publication which provoked wide controversy and eventually led to apostasy charges against him was his book *mafhum al-Nass – dirassah fi 'ulum al-Qur'an* (What can be understood from the Text – A study in the Quranic Sciences) which was first published in 1993.

Both Courts which looked into Abu Zeid's case reviewed extracts of his books and research studies concerning the main textual sources of Islam; Qur'an and the prophetic Tradition, and concluded that he has interpreted these texts in a way that can only be regarded as un-Islamic. Accordingly

the verdict was that Abu Zeid has been found guilty of apostasy, *murtad*, and as such should be separated from his wife²³.

- d) **Salman Rushdi** – In September 1988 Salman Rushdi published a novel entitled “Satanic Verses”. The novel contains certain references and analogies, which were regarded by the majority of Muslims as insulting to Islam and Muslims. Demonstrations were staged by Muslims in the UK as well as elsewhere calling for the book to be banned and its author penalized. On 14 February 1989 the late Ayotallah Khomeini of Iran issued a *fatwa* calling on Muslims to kill Salman Rushdi as an apostate. In February 1997 the Iranian charitable Foundation 15 *khordad* was reported to have increased the reward for the murder of Salman Rushdie to \$ 2.5 million. The head of the foundation Ayotallah shaykh Hassan Sanei, a senior member of the religious establishment and personal representative of the leader of the Islamic Republic Ali Khameini, was reported to have declared that anyone who killed the “apostate” writer could claim the reward, including non-Muslims and his bodyguards²⁴.

After the *fatwa*, a number of individuals lost their lives or were the targets of attempted murders because of their connection with “Satanic Verses”, as in the case of the Japanese translator Hitoshi Igarashi, and the Italian translator Ettore Capriolo who were stabbed in their respective countries in July 1991. The former died instantly while the latter suffered serious injuries. In 1993 the Norwegian publisher of the book William Nygraad, survived an attempt on his life. Salman Rushdie himself has been living under constant police protection since the time of the *fatwa*.

²³ A summary of Abu Zeid’s court cases may be found in M. Salim al-Awa, *huryyat al-ta’beer.*; cf Johannes Jansen, The Dual Nature of Islamic Fundamentalism, Hurst and Company, London, 1997: pp110-13.

²⁴ See Amnesty International, Iran: Eight Years of Death Threats: Salman Rushdie (A1 Index 13/17/97), London, May 1997.

6. Reflections

Both cases of Taha and Abu Zeid were obviously linked to their respective attempts of Islamic reform, each in his own way and methodology. While Taha was the founder of a movement, Abu Zeid had mainly worked within the confines of the intellectual and academic sphere. Yet, despite their divergent social and political background, both aimed to reconstruct a concept of Islam, which is more compatible with the notions of human rights, equality, women's rights etc. However, what is at issue here is not the substance of their ideas but the response generated by their unorthodox interpretation of the main textual sources of Islam. The fact that both were prosecuted shows that very little room is allowed for differing views or approaches, which seek to look beyond the literalist meaning of the Scripture.

Indeed people are bound to differ with regard to interpretation of the primary texts of Islam and the question of religious reform, but which authority is entitled to pass judgement on these views and on what ground?

The examples of Taha and Abu Zeid show that apostasy charges are often used for political purposes. The trial of M Taha and his followers was clearly a political one with direct involvement of the ruling establishment at the highest level. In the Abu Zeid case, although the political authority was not behind the prosecution, the case was nevertheless part of the dispute between the Islamist groups and their opponents. In their attempts to silence those who disagree with their version or interpretation of Islam, some groups tended to charge others with infidelity, which for them is punishable by death. Although the case against Abu Zeid was a civil one concerning the separation between him and his wife, the verdict of apostasy was in effect an incitement to the fanatics to assassinate him. This is not a mere speculation. In 1992, Faraj Fouda, another Egyptian secularist and a writer known for his relentless opposition to Islamism was assassinated by a fanatic member of one of these groups.²⁵

If the incitement to murder was implicit in the case of Abu Zeid, it was directly pronounced by the highest political and religious

²⁵ See Johannes Jansen, The Dual Nature of Islamic Fundamentalism, pp113ff.

authority in a Muslim country, Iran, in the case of Salman Rushdie. Indeed one may understand that the majority of Muslims all over the world were outraged by the Satanic Verses, and that the book has been banned in all Muslim countries, but what was the rationale behind seeking the author's head? If the rationale was the substance of his book, then this could have been addressed otherwise, and it was in fact addressed by countless writings and responses. However, if the grounds for seeking punishment of the author was the fact that he was a Muslim, what then would be the position if the same book had been written by a non-Muslim? Obviously, the question of apostasy would not arise, but rather the subject of the book, and a possible response to it.

The *fatwa* on the other hand raises the issue of the boundaries of the Muslim community in the contemporary world. The fact that the *fatwa* was issued in relation to a citizen of a non-Muslim country presumes that the Islamic community is universal. Yet, if that is true in religious terms on the ground that there are Muslims all over the world, it is not so in political terms. This dilemma was resolved by the Iranian decision to pay to the would be assassins, regardless of their religion. Why should a *universal* community find it necessary to protect its 1500 year-old faith through hiring assassins?.

Rather a universal community, which extends across borders of geography, politics, and nationalities, should essentially be more accommodating and tolerant by its very interaction with various groups and situations.

7. Conclusion

To summarise this discussion, I would argue that apostasy punishment opens the door widely not just for religious discrimination, but also for the possibility of imposition of a states' own brand of Islam or orthodoxy. Furthermore, the threat of persecution on grounds of apostasy would invariably tend to narrow the scope of reform and independent interpretation of Islam in the light of the problems of the contemporary world. Additionally, and as we have seen in the above examples, the apostasy punishment is bound to be a weapon in the hands of states or Islamist movements to silence their opponents who would be merely expressing a dissenting political opinion.

There are other important considerations apart from the purely political sphere. In today's world Muslims live in and interact with followers of other faiths, creeds and ideas, and are bound to influence and be influenced, directly or indirectly, as a result of this interaction. Co-existence is no longer a question of choice but rather a living reality, and co-existence can only be governed by mutual respect and appreciation of differences rather than mutual hostility. If such a principle is to be translated into freedom of opinion, including freedom of religious beliefs, and conscience, this must invariably include freedom to change one's religion without persecution.

A significant feature of today's realities is the existence of Muslim minorities in the majority of countries, including the expanding Muslim communities in Europe and North America. Members of these communities have over the years sought and in most cases achieved rights to practice their religious obligations and values both as individuals and in groups, including the right to convert others to Islam. This is exactly the provision of article 18 of the UDHR. Now if we are to turn the table and look into a situation where Muslims are a majority; would they accord the same rights to a non-Muslim minority? If the answer is yes, as one would expect, would such a right cover recognition of the right of individual Muslims to forsake Islam should they so choose? The answer may not be a simple one for an Islamist or a proponent of apostasy punishment, but the point is clear: religious freedom is a double-edged standard and has to be accepted in its entirety. Otherwise it becomes an empty phrase.

In this context one may ask what would be the situation for Muslims, especially Muslim minorities, if conversion to Islam in the societies they are living in were to be outlawed!

One final note. Article 18 is not about preaching apostasy or licensing the hegemony of missionaries in the world of Islam. Rather it is simply about tolerance. As followers of every religion are bound to think of their faith as the one and only Truth, mutually acceptable principles of human rights may be the only common ground for all.