

ACTS OF BLASPHEMY AGAINST ISLAM BY MUSLIMS IN EGYPT: IS THE DEATH PENALTY WRITTEN IN THE QUR'AN?

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There is an initial introduction to the definition of the act of blasphemy within Islam, and how this concept can be legally determined, in its various forms. There is also a short analysis of the different legal school's opinion as to whether or not the accused are able to repent their deeds before the accusations could lead to a court case. In this context, there is a brief reference to how Islamic scholars and jurists interpreted the ahadith (Traditions) to establish the relevant legal punishments for blasphemy. This is followed by a detailed assessment of how certain verses in the Qur'an have been selected by those who interpret them, to promote the death penalty as the established and standardised punishment for blasphemy. Attention is also paid to those scholars who reject this interpretation, as they argue that it does not reflect the Qur'anic Message. Finally, some very recent modern cases of blasphemy that have occurred in Egypt are assessed in some detail. These include the cases of the feminist writer Nawal al-Sa'adawi, in April 2001 and Salaheddin Mohsen who was imprisoned in January 2001. The article also covers the case of Farag Foda who was convicted of blasphemy and was then shot dead in the street, in 1992 and the case of Naguib Mahfouz, the first Egyptian Nobel Prize winner, who had also been accused of blasphemy and was later stabbed in the neck, in a knife attack, in 1994. Other cases are also discussed, and the conclusion provides an overview of the present situation in Egypt, and within Islamic law in general. The question is then raised as to how the historical interpretation of the Qur'an, together with the legal documents of the different Islamic schools of law, could respond to the need for a change in the way in which the law on punishment for blasphemy is presently implemented.

1. Blasphemy within Islam – Definition

The terms of blasphemy within Islam consists of several possible forms, *Sabb Allah* (to vilify, slur, insult, blaspheme against God), *Sabb al-Rasul* (blasphemy against the Messenger), this is also known as *Sabb al-Nabi* (blasphemy against the Prophet), and there is also *Sabb al-sahabi* (to insult one of the Companions of the Prophet). The blasphemer is a *sabbab*.¹ The main words used for blasphemy in Arabic are *sabb* (abuse, insult) and *shatm* (abuse, vilification).² Lutz Wiederhold expands on these words, in his recent article when signifying that:

*“In addition, there are a number of other terms that are used less frequently in order to describe acts of blasphemy, such as la’n (cursing, malediction), ta’n (accusing, attacking), idha (harming, hurting), or the verb nala with the preposition min (do harm to somebody, defame).”*³

The use of the word *la’n* will be presented in further detail below here. Mohammad Hashim Kamali in his work *Freedom of Expression in Islam* makes: *“a general statement that classical Islamic law penalises both blasphemy and apostasy with death – the juristic manuals of fiqh (jurisprudence) across the madhahib (the four Islamic Schools of law⁴) leave us in little doubt that this is the stand of the*

¹ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, 1997, Islamic Texts Society, Cambridge, UK, p.326

² Wiederhold, Lutz, ‘Blasphemy against the Prophet Muhammad and his Companions (*sabb al-rasul, sabb al-sahabah*): The Introduction of the Topic into Shaf’i Legal Literature and its Relevance for Legal Practice under Mamluk Rule’ in *Journal of Semitic Studies*, Vol.XLII, No.1, Spring 1997, p.40

³ Wiederhold, Lutz, *ibid.*, p.40

⁴ The four Islamic schools of Sunni law are the Hanafi, Maliki, Shafi’i and Hanbali, named after their founders: Imam Abu Hanifah, 80-150AH, circa 700-767AD (full name: Abu Hanifah al-Nu’man bin Thabit.), Malik bin Anas, 93-179AH, circa 712-795AD (full name: Malik bin Anas bin Malik bin Abu ‘Aamir al-Asbahi Malik.), Muhammad bin Idris Shafi’i, 150-204AH, circa 767-820AD, (full name: Muhammad bin Idris bin Al-‘Abbas bin ‘Uthman bin Shafi’ bin As-Sa’ib bin ‘Ubaid bin ‘Abd Yazid bin Hashim bin ‘Abdul-Muttalib bin ‘Abd Manaf Al-Qurashi Al-Makki) and Ibn Hanbal, 164-241AH, circa 780-850- AD, (full name: Ahmad bin Muhammad bin Hanbal Ash-Shaibani), see Shihabuddin, Ahmad bin ‘Ali bin Muhammad bin Muhammad bin Ahmad Al-Kinani Ash-Shafi’i, (known generally as Al-Hafiz Ibn

law.”⁵ However, he then goes on to raise the important issue that: “*despite the remarkable consistency that one finds on this point, the issue of punishment by death for apostasy is controversial, and various opinions have been recorded on the matter ever since the early days of Islam.*”⁶

A major, ever present, problem is the actual difficulty in defining the concept of blasphemy. It has always been an offence with a very wide scope. Thus it becomes complicated to mark its boundaries. Kamali argues that this is also the case within Christianity and Judaism. A main obstacle to a precise definition within Islam is that there is no specific definition of blasphemy in the *fiqh* (jurisprudence) literature, as it is cited in these legal documents to be included under the offence of apostasy and treated within that category. Kamali suggests though, that blasphemy has its own classification as being: “*a contemptuous and hostile attack on the fundamentals of religion which offends the sensibilities of its adherents. It is on this basis that blasphemy can be distinguished from apostasy, for the latter can take place without any contemptuous attack or sacrilege being committed.*”⁷ The overall reason for subsuming blasphemy under apostasy is based on the idea that when someone blasphemes the essential nature of a faith, in doing so, they simultaneously abandon it. This is understandable, but there is an important need for a unique definition of blasphemy on its own, to establish the crime itself because, obviously a non-Muslim can only commit blasphemy against Islam, but *not* become an apostate, by leaving it.

From a linguistic perspective, the origin of the word ‘blasphemy’ can be derived from the Greek words *blapto* (to harm) and *pheme*

Hajar Al-Asqalani), *Bulugh Al-Maram min Adillat Al-Ahkam: Attainment of the Objective according to Evidence of the Ordinances, (with brief notes from the book Subul-us-Salam by Muhammad bin Ismail As-Sanani)*, 1996/1416, Dar-us-Salam Publications, Riyadh, Saudi Arabia, p.580, p.585 and p.588, also see Khadduri, Majid, *The Islamic Laws of Nations; Shaybani's Siyer*, 1966, The Johns Hopkins Press, Baltimore, USA, p.302, and also see Nasir, Jamal, J., *The Islamic Law of Personal Status*, 1986, Graham and Trotman Ltd., London, p.14-16.

⁵ Kamali, Mohammad Hashim, *op.cit.*, p.212-213.

⁶ *Ibid.*, p.213.

⁷ *Ibid.*, p.213.

(speech), which, when placed together, refer to an insult or defamation.⁸ For a broad definition of blasphemy, as perceived in Islam, the *Encyclopedia of Religion and Ethics* suggests that it is:

“all utterances expressive of contempt for God, for His Names, attributes, laws, commands and prohibitions...such as the case, for instance, if a Muslim declares that it is impossible for Allah to see or hear everything, or that Allah cannot endure to all eternity, or that He is not one (wahid)... All scoffing at Muhammad or any other prophets of Allah is also to be regarded in Islam as blasphemy.”⁹

Kamali refers to this definition as being so broad that there is a very flexible scale of acts that it can apply to, thus combining different and overlapping concepts. This definition does not offer a clear understanding of what is perceived to be an accurate accusation of blasphemy *per se*. It means that there is a vague boundary, not presenting precise distinctions between the similar concepts of apostasy from Islam (named as *ridda* and *irtidad*), heresy (*zandaqah*)¹⁰ and the denial of Islam, or disbelief (*kufr*). He refers to

⁸ Ibid., p.214.

⁹ Ibid., p.214, Also see *Encyclopaedia of Religion and Ethics*, ed. James Hastings, New York, T&T Clark, 1908, Vol.II, p.672.

¹⁰ A *zindiq* is “anyone who, professing to be a Muslim, is really an unbeliever, or anyone who belongs to no religion,” *The Encyclopaedia of Islam*, Volume IV, 1978, p.771. Also, in a general reference to heresy it relates to those who are considered as atheists (*zanadiqah*; single as *zindiq*), see Kamali, *op.cit*, p.330. *Zandaka / zandaqah* is defined as “heresy, unbelief” and this word had an important emphasis and relevance to the “convert of the Manichaeans.” in 982AD, *The Encyclopaedia of Islam*, Volume VI, p.421 Essentially, *zindak* and the other forms derived from it are terminology used in *Sharia*’ courts to describe the heretic whose written work and spoken teachings are considered as a danger to the state. The conviction of this crime is potentially with the sentencing of the death penalty, based on an interpretation of both the Qur’anic verses 5:33 and 26:48. It also induces damnation by the Maliki school of law, which states that it is useless to ask the convicted *zindak* to recant (*istitaba*). However, diametrically opposed to this position, is the Hanafi school of law in their *takfir* [the denunciation, or excommunication of an unbeliever]. Bernard Lewis, *Islam in History: Ideas, People and Events in the Middle East*, 1993, Open Court, Chicago, USA, p.290 and also H. A.R. Gibb and J. H. Kramers, *Shorter Encyclopaedia of Islam*, 1953, p.659.

the differing approach of Judaism, which attempts to confine the scope of what it seen as blasphemy, where it does not include the act of simple disbelief of faith. Also, unlike modern Western law, the simple renunciation of faith is not included within the category of blasphemy.

Isabel Fierro, within her work *Andalusian 'Fatawa' on Blasphemy*, argues that there is little consistency, with much disagreement (*ikhtilaf*) between the Islamic legal scholars about the punishment to be given to those convicted of blasphemy against Islam, the Qur'an and/or the Prophet Muhammad. As she states:

"Punishment for blasphemy, like that for apostasy, is usually (but not without ikhtilaf) included among the hudud (sing. hadd). Both are crimes against religion and can lead to the death penalty¹¹"

The apostate is granted the possibility to repent (*al-istitaba*) with a period of three days, to allow the possibility of returning to Islam.¹² The possibility for repentance (*al-istitaba*) is denied to those accused of *zandaqa*, thus perceived to be a *zindiq*. Malik ibn Anas in his work *al-Muwatta'* argues that a *zindiq* is an apostate who overtly acts as a believer, hiding their 'apostasy' of disbelief (*kufr*).¹³ If the apostate does not repent, he is then sentenced to death by the sword (*man baddala dina-hu fa-qtulu-hu*), in the manner of being beheaded, as can be seen by the expression of the *hadith*: *man jayyara dina-hu fa-dribu 'unqa-hu*.¹⁴

Within Islamic law, there is an emphasis on protecting the honour of the Prophet and the Islamic community, rather than regulating religious belief. As Malise Ruthven explains, the Islamic law of blasphemy is only applied in Muslim countries. Classical jurists,

¹¹ Fierro, Isabel, 'Andalusian 'Fatawa' on Blasphemy' in *Annales Islamologiques*, Institut Français D'Archéologie Orientale du Caire, 1991, Tome XXV, p.103.

¹² Safwat, Safia F., 'Offences and Penalties in Islamic Law,' in *The Islamic Quarterly*, The Islamic Cultural Centre, London, 1982, Vol. 26, No. 3, p.168, also see An-Na'im, Abdullahi Ahmed, 1986, 'The Islamic Law of Apostasy and its Modern Applicability: A Case From The Sudan' in *Religion*, Vol. 16, p.211.

¹³ Fierro, Isabel, *Andalusian 'Fatawa' on Blasphemy*, op.cit., in footnote 4 on p.103

¹⁴ Ibid. p.103. No translation of the Arabic transliteration was provided.

having divided the world into the *Dar al-Harb*¹⁵ (the abode of war) and *Dar al-Islam* (the abode of Islam), *Dar al-Islam* is the 'liberated' territory where the law, or 'God's final revelation to mankind' is applied in its fullness. It is clear that:

*"Its rulers, apart from the caliphs, who virtually disappeared from political view after the tenth century CE, are not theocrats: in theory they cannot legislate. The Law having been revealed in its perfection, their duty is to maintain it by 'ordering the good and forbidding the evil.' Subjects are enjoined to obey their rulers, however arbitrary: in a famous phrase quoted with approval of Ibn Taymiyyah, 'the Sultan is the Shadow of God on earth. Sixty years with an unjust imam is better than one night of anarchy.'"*¹⁶

2. Repentance for Blasphemy by Muslims

Blasphemy (*shatm*)¹⁷, when specifically used against both Allah (*sabb Allah*) and His Messenger, the Prophet Mohammad (*sabb al-rasul*) in normally accepted and handled within the same category as that of apostasy. This is because a blasphemer, and also one who is believed to be magician (*sahir*) are those who undertake the acts of *kufr* (unbelief). However, specifically on this point, the Maliki school of law have established a separation between the blasphemer and the apostate. This school argues that a blasphemer should not be given the chance to repent or to recant his acts. Also, Fierro argues that within the Maliki school the penalty may not be death, but a discretionary punishment (*ta'dib, adab*), as this final sentence should

¹⁵ This concept also exists within Christianity. There is Christian theological belief that the world is divided into 'the territory of believers' and those who live in the *in partibus* (in heretical territory). This derives from the original form of *in partibus infidelium* which is the Latin for 'in the region of the unbelievers,' Sykes, J.B. (Ed.), *The Concise Oxford Dictionary of Current English*, 1988, The Oxford University Press, Oxford, p.517

¹⁶ Ruthven, Malise, 1991, *A Satanic Affair: Salman Rushdie and the Wrath of Islam*, The Hogarth Press, London, p.51

¹⁷ Fierro, Isabel, Andalusian '*Fatawa*' on Blasphemy, op.cit. p.107. Also see Wiederhold, Lutz, op.cit, p.40

reflect the degree of seriousness attached to the words said by the accused, which initiated the accusation for the act of blasphemy.¹⁸ This is a crucial point to raise, as any discretionary punishment indicates the acceptance that the crime ought to be categorised within the *ta'zir* (discretionary punishment) system, as opposed to *hudud* crimes and this punishment system.¹⁹

Fierro also states that capital punishment is not clearly specified within *Shari'ah*. Although one could simply assume that a blasphemer would be killed, beheaded by the sword, as is the sentence for an apostate; other forms of execution were undertaken, such as "whipping, decapitation, hanging, burning and crucifixion."²⁰ The punishment of crucifixion (*salb*) is stated within the Maliki doctrine, particularly in the work entitled *Muhtasar*, by Halil ibn Ishaq (d.776AH/1374AD). He based his own work mainly on the previous work undertaken by the respected *Qadi* (judge) 'Iyad (d.544AH/1149AD) who wrote *al-Sifa' bi-ta'rif huquq al-Mustafa*.

It interesting to note that *Qadi* 'Iyad not only based his work of legal interpretation purely on the relevant evidence he found in the Qur'an and the appropriate *ahadith* (Traditions), together with earlier

¹⁸ Fierro, Isabel, Andalusian '*Fatawa*' on Blasphemy, *ibid.* p.104

¹⁹ *Ta'zir* is the discretionary punishment, delivered on the assessment of given circumstances to provide deterrence of the offence to re-occur; Kamali, Mohammad Hashim, *op.cit.*, p.94 and p.329. The Islamic legal system consists of three forms of punishment, *hudud*, or *hadd* in single form, (fixed punishments stated within the Qur'an,) *Qisas* (retaliation) and *Ta'zir* (discretionary punishment). *Hudud* and *Qisas* are both restricted to crimes where both the offences and the punishments are prescribe within the Qur'an and Sunnah. See Mohammad Iqbal Siddiqi, *The Penal Law of Islam*, 1991, International Islamic Publishers, New Delhi, p.158 also see El-Awa, Mohammad Selim, *Punishment in Islamic Law: A Comparative Study*, American trust Publications, Indianapolis, 1982, p.96 also see Tahir-ul-Qadri, Muhammad, *Islamic Penal System and Philosophy*, Minhaj-ul-Qur'an Publications, Lahore, 1995, p.259, p.429 See also Tahir-ul-Qadri, Muhammad, *Classification of Islamic Punishments*, Minhaj-ul-Qur'an Publications, Lahore, 1988, p.5, and see O'Sullivan, Declan, '*Al-Hudud: Definition of Crimes and Punishments stated within the Qur'an and Sunna – Focusing on 'Apostasy' [Ridda wa irtidad: as a Hadd: in Le Courrier Du Geri – Recherches D'Islamologie et de Theologie Musulmane, in 'Vol. 3, No. 1-2, Printemps-Automne 2000' January 2000, GERI (Groupe d'Etudes et de Recherches Islamologiques) in l'Université Marc Bloch de Strasbourg, France, p.41-72.*

²⁰ Bernard Lewis, *Islam in History*, *op.cit.* p.291

Maliki doctrinal documentation by former authorities. It also became clear that he had based his conclusions on the legal precedents formally established by two *fatwas* that had been issued on the cases of blasphemy in Al-Andalus (presently known as Andalusia) during the 3rdAH /9thAD century. The two cases involved Harun ibn Habib and Yahya ibn Zakariya al-Hassab and both of these *fatwa* were issued during the reign of 'Abd al-Rahman II, who reigned in that Spanish region from 206AH/822AD until 238AH/852AD. They are the only two recorded cases of two Muslims who were accused and convicted of blasphemy against God during 'Abd al-Rahman II's reign.²¹ They are very interesting cases to assess through further reading, in order to analyse and understand the very specific circumstances that surrounded them, that also led to two very different sentences for those convicted of the same crime of blasphemy.²² However, they will not be covered now, within the limited space of this present article.

Kamali makes it apparent that differences of opinion are presented by the four schools of law concerning whether the perpetrator of blasphemy should be requested to repent and also whether such repentance, if offered, would be acceptable and admissible within the rules of law. In the context of blasphemy, it is essential for the perpetrator to have their repentance accepted, as this would result in the unconditional acquittal of the case. He points out that there are disagreements among jurists, and significantly, amongst jurists of the same school of law. This offers some doubt when trying to determine the legal position on this issue.²³

The Hanafi school argue that it is recommended to request the blasphemer to repent (*istitabah*) and return to the faith of Islam, while Imam Malik finds such repentance unnecessary. The Shafi'is and Hanbalis have differing views, one corresponding with the Hanafi's and the other with Imam Malik's view. The majority opinion is that

²¹ It is also clearly recorded that, at that time, a group of Christians and crypto-Christians had sought martyrdom through the acts of insulting Islam and God's Prophet Muhammad, knowing the result would mean being executed due to the blasphemous acts; Fierro, Isabel, *Andalusian 'Fatawa' on Blasphemy*, op.cit., ibid. p.104

²² ibid. p.104

²³ Kamali, Mohammad Hashim, op.cit., p.233

istitabah is a necessary requirement to be received before any punishment is delivered. As already mentioned, there is a period of three days, which are allowed for the accused to consider their position and offer a repentance within this time-scale. However, the Malikis do not consider that any time for repentance should occur, based on the *hadith* 'Kill whoever changes his religion.' Some Shafi'i and Hanbali jurists accept this view. The support for the acceptance of repentance is based on a tale from A'ishah (a wife of the Prophet Muhammad) which describes how a woman renounced Islam on the day of the battle in Uhud and the Prophet Mohammad ordered that she should be requested to repent of her own will.²⁴ In his work covering the concept of apostasy, Yahya b. Ali Al-Shawkani intertwines both views, by maintaining that it is valid to ask an apostate to repent if the accused has acted from the stance of ignorance. But he argues that repentance would not be a valid option if the accused also claims to have superior 'knowledge' and is self-righteous.²⁵

When the accused has insulted God and/or the Prophet Muhammad then repentance, whether requested for, or not, is admissible according to the majority of jurists. It is the need for repentance and its importance that is addressed by differing approaches from the schools of law. The predominant view of both the Hanbalis and Malikis is that repentance will not exempt the blasphemer from punishment in this world, although it would help him if he was sincere, as it would then be more beneficial for him in the 'hereafter.'²⁶ Under these conditions, the Hanbalis and Malikis do not draw any distinction between insulting either God or the

²⁴ Kamali, Mohammad Hashim, *op.cit.*, p.233 Also see Al-Shawkani, Yahya b. Ali, *Nayl al-Awtar: Sharh Muntaqa'l-Akhbar*, no date given, Mustafa al-Babi al-Halabi, Cairo, VII, p.221, and also Ibn Qudamah, Muwaffaq al-Din Ibn Qudamah al-Maqdisi, *al-Mughni*, 1267AH, Dar al-Manar, Cairo, third edition, X, p.74 and also Al-Yahsabi, al-Qadi Abu'l-Fadl 'Iyad, *al-shifa' bi-Ta'rif Huquq al-Mustafa*, (annotated by Ahmad al-Shamani), no date given, Dar al-Fikr li'l-Tiba'ah wa'l-Nashr, II, p.254

²⁵ Kamali, Mohammad Hashim, *Ibid.*, p.233 Also see Al-Shawkani, *Nayl al-Awtar*, *Ibid.*, VII, p.221

²⁶ Kamali, Mohammad Hashim, *Ibid.*, p.234 Also see Muhammad 'Ali b. Ahmad b. Sa'id al-Zahiri Ibn Hazm, *al-Muhalla*, no date given, Maktabat al-Salam al-'Alamiyyah, Cairo, XI, p.411 and also Al-Buhuti, Mansur b. Yunus b. Idris, *Kashshaf al-Qinna' an Matn al-Iqna'*, 1968, Maktabat al-Nasr al-Hadithah, Riyadh, VI, p.168

Prophet Muhammad. Either act is considered the same offence and should, thus to be treated on an equal level. The position is based on the cases dealt with by the Caliph 'Umar b. al-Khattab who gave equal punishments on *Sabb al-Allah* and *Sabb al-Rasul*. In both cases he never requested repentance from the blasphemers:

*"Thus it is said that the main difference between blasphemy and apostasy is that the latter is open to repentance but the former is specifically not."*²⁷

However, contrary to this, there is another view held by the Hanbali and Maliki schools of law, both of which state that it is obligatory for a convicted blasphemer to be given every opportunity to repent and return to Islam.²⁸ A further difference of opinion is present in the other two schools of law, as the Hanafi and Shafi'i jurists classify blasphemy within the same category as apostasy. They argue that repentance from both the blasphemer and the apostate is acceptable as legally admissible. The blasphemer is to be allowed three days, as is the apostate, to contemplate, and consider whether to repent and return to Islam. The three days begin on the day of conviction. During the three days the convicted is entitled to food, clothing and anything else felt necessary. Repentance, in the case of a Muslim who has become an apostate, consists of their return to Islam, by reciting the testimonial of faith (*kalimat al-shahadah*).²⁹

²⁷ Kamali, Mohammad Hashim, *Ibid.*, p.234 Also see Ibn Taymiyya, Taqi al-Din, 1398/1978, *al-Sarim al Maslul 'ala Shatim al-Rasul*, edited by Mohammad Muhyi'l-Din 'Abd al-Hamid, Beirut, Dar al-kitab, p.302

²⁸ al-Samara'i, Nu'man 'Abd al-Razzaq, 1968, *Akham al-murtadd fi al-shariat al-Islamiyyah*, Dar al-'Arabiyyah li'l-Taba'at wa'l-Nashr wa'l-Tauzi, Beirut, Lebanon, p.104, also see Kamali, Mohammad Hashim, *Ibid.*, p.234 Also see Al-Jaziri 'Abd al-Rahman, *Kitab al-Fiqh 'ala'l-Madhahib al-Arba'ah*, 1392AH, Dar al-Fikr li'l-Tiba'ah wa'l-Nashr, Beirut, V, p.425

²⁹ There are two statements within it, thus it is entitled the *shahadatun*, and is spoken by devout Muslims to express their unquestionable belief of the truth: "*ashhadu an la ilaha illa-Llah, wa ashhadu anna Muhammadan rasulu-Llah*" (None has the right to be worshipped but Allah, and Muhammad is the Messenger of Allah), Az-Zubaidi, Al-Imam Zain-ud-Din Ahmad bin Abdul-Lateef, *The Translation of the Meanings of Summarized Sahih Al-Bukhari, Arabic-English*, translated by Khan, Muhammad Muhsin, 1994, Maktaba Dar-us-Salam Publications, Riyadh, Saudi Arabia, p.1068, also see Cyril Glasse, *The Concise Encyclopaedia of Islam*, Stacey International, London, 1989, p.370

Concerning a Muslim apostate, the Hanafi and Shafi'i schools of law accept his repentance and return to Islam for a maximum of only four states of apostasy. If the apostate repents, then commits apostasy on a fifth occasion and returns to Islam, the fifth return to the faith will carry no weight. On the first four times the apostate is allowed the three day consideration time, in order to repent. This procedure is based on a report about the Prophet Muhammad having asked a Nabhan 'for repentance four or five times.' This is reported by *Qadi 'Iyad al-Yahsabi* (d.544AH/1149AD), who states that Ibn Wahab reported from Imam Malik that on each occasion that the apostate committed the offence, he should be asked to repent permanently. There is also the same ruling by Imams Shafi'i and Ibn Hanbal.³⁰ Another report holds that a differing time-scale for repentance is held. It states that 'Ali b. Abi Talib held the view that an apostate should be called to repentance over a period of two months. Further more, both Ibrahim al-Nakha'i, who taught Imam Abu Hanifah, and Sufyan al-Thawri hold the view that the door of repentance should remain open indefinitely, giving the apostate the length of his natural lifetime to be allowed to re-embrace Islam.³¹

3. Interpretation of the *ahadith* (Traditions) for the Punishment of Blasphemy

As Wiederhold suggests, concerning the relevant *hadith* that researchers have analysed covering this topic, it is quite correct to argue that all the respected *hadith* collections contain consistent traditional themes. The main emphasis is that any vilification of the Prophet and/or his Companions was considered completely intolerable and therefore, was expressly forbidden by some religious scholars at the time when the *hadith* books were compiled.³² However, there is a very important point that he also observes, which explains

³⁰ Kamali, Mohammad Hashim, *Ibid.*, p.234. Also see Al-Yahsabi, al-Qadi Abu'l-Fadl 'Iyad, *al-shifa' bi-Ta'rif Huquq al-Mustafa*, *Ibid.*, II p.260

³¹ Kamali, Mohammad Hashim, *Ibid.*, p.235, Also see Al-Yahsabi, al-Qadi Abu'l-Fadl 'Iyad, *al-shifa' bi Ta'rif Huquq al-Mustafa*, *Ibid.*, II p.260, and also Ibn Qudamah, Muwaffaq al-Din Ibn Qudamah al-Maqdisi, *al-Mughni*, *op. cit.*, VIII, p.125, and also Al-Shawkani, Yahya b. Ali, *Nayl al-Awtar*, *op. cit.*, VII, p.221

³² Wiederhold, Lutz, *op.cit.*, p.41-42

why a certain level of confusion and ambiguity has arisen in the legal sentencing of this crime. As he explains, following the point just made:

*"Be that as it may, the extent to which the hadiths [sic] in question reflect theological disputes regarding the role of the Prophet and his Companions in the first two centuries of Islam appears far from being examined in an exhaustive manner."*³³

One primary example of a case involving utter intolerance of blasphemy against the Prophet Muhammad, (*sabb al-rasul*) occurred in the 2ndAH /8thAD century, in which which imposed the death sentence was imposed. This particular conviction involved Muhammad b. Sa'id b. Hassan al-Urdunni, who was executed in 153AH /770AD, for having added one sentence to the end of a *hadith* that he had related to other people. The *hadith* in question makes reference to the well-known statement expressed by the Prophet, that: *"I am the seal of the prophets; there will not be any Prophet after me."* In his own version of the *hadith*, al-Urdunni attached to the end of this phrase his extra comment, claiming that the Prophet had also explained: *"if God does not intend otherwise."* This led al-Urdunni to be accused and convicted of a blasphemous act by the political and religious authorities of the time.³⁴ With this case, it can be argued that there was clearly a very strong feeling that anything even remotely close to being perceived as an act of blasphemy against the Prophet was considered intolerable during the 2ndAH /8thAD century. This level of intolerance can also be found in the legal manual *Muwatta'* authored by 'Abdallah b. Wahb (d.197AH/812AD).

In this manual, in the chapter on *al-muharabah*, 'Abdallah b. Wahb refers to anybody who commits any form of *sabb* (insult) against the Prophet, which could potentially lead to the death penalty for such behaviour. Referring to the possibility of the offender having the right to repent before being punished, the work quotes from

³³ Wiederhold, Lutz, *ibid.*, p.43

³⁴ Ess, Joseph van, *Theologie und Gesellschaft in 2 und 3 Jahrhundert Hidschra*, Berlin, 1991, vol.I, p.136-137. Also see Wiederhold, Lutz, *ibid.*, p.43

Malik ibn Anas, whose opinion on this issue is that any blasphemer, specifically those who express insults against the Prophet Muhammad, whether they are Muslims or Christians, are not to be regarded as having any chance to state their repentance. The same paragraph also reports the opinion from the Caliph 'Umar b. 'Abd al-'Aziz (the Caliph from 101-104AH/717-720AD), who emphasised that only those who insulted and/or blasphemed the Prophet Muhammad himself, would be punished. Therefore, similar insults towards the Prophet's Companions, or any other prophets, were not considered as being equally punishable, at that time.³⁵

However, as time passed by, the 3rdAH/9thAD century, the opinion of jurists who focused on the legal sentencing for such crimes, had broadened more. The law then included that the act of insulting any of the Prophet's Companions would also be categorised as blasphemy and thus, the perpetrator would receive the established punishment for the act of *sabb al-rasul*. This change of the penalties for each crime can be seen in the work of a Maliki legal manual of the 3rdAH/9thAD century, entitled '*Utbiyyah*', compiled by the Maliki *faqih* (jurist), Muhammad al-'Utbi (d.255 AH/869AD).³⁶

The main source for the actual acts of blasphemy by using any verbal abuse or insults, when they are referred to by using the legal terminology of *sabb* and/or *shatm*, can be found within the collections of *ahadith* (Traditions). One particular *hadith* that is relevant to this debate, is the case of Abu Bakr who, in the presence of the Prophet Muhammad, was insulted by an unnamed man. During the man's expressions of abuse and insult, Abu Bakr was confused by the reaction of the Prophet, who had refrained from defending Abu Bakr, his Companion, and was also seen to be smiling while the insults were delivered. However, when Abu Bakr reciprocated the insults to the anonymous abuser, the Prophet became angry and rose to his feet, to leave. When the insulting interaction had terminated, Abu Bakr requested the Prophet to explain why he had not offered any support while Abu Bakr had been the receiver of the blatantly offensive comments. He also requested the Prophet to

³⁵ Muranyi, M., '*Abd Allah b. Wahb (125/743-197/812. Leben und Werk. Al-Muwatta'*. *Kitab al-muharaba*), Wiesbaden, 1992, p.287-288. Also see Wiederhold, Lutz, *ibid.*, p.43

explain why he had become angry when Abu Bakr had attempted to defend himself by returning equivalent comments of insult. The Prophet replied that while Abu Bakr had initially been calm while receiving the insults, an angel had entered the place and had replied for Abu Bakr, but when his reply had become equally offensive, the Prophet explained that the devil (*iblis*) had then entered into the argument, and he could not have remained seated there while the devil was present.³⁷

This *hadith* can be found in the collection of Abu Da'ud, where it is narrated by Sa'id ibn al-Musayyab, and also in the collection of Mishkat al-Masabih, narrated by Abu Hurayrah. It has also been reported by Ahmad Ibn Hanbal, the founder of the Hanbali school of law, in his work *Musnad*. The version held by Abu Da'ud reads as:

*"While the Apostle of Allah (peace be upon him) was sitting with some of his companions, a man reviled Abu Bakr and insulted him. But Abu Bakr remained silent. He insulted him twice, but Abu Bakr controlled himself. He insulted him thrice and Abu Bakr took revenge on him. Then the Apostle of Allah (peace be upon him) got up when Abu Bakr took revenge. Abu Bakr said: 'Were you angry with me, Apostle of Allah?' The Apostle of Allah (peace be upon him) replied: 'An angel came down from Heaven and he was rejecting what he had said to you. When you took revenge, a devil came down. I was not going to sit when the devil came down.'"*³⁸

This *hadith*, along with many others proffers the theme that the Prophet himself, personally presented. He promoted the concept of

³⁶ Wiederhold, Lutz, *ibid.*, p.43

³⁷ Wiederhold, Lutz, *ibid.*, p.41-42

³⁸ Abu Da'ud, Sulaiman bin Al-Ash'ath bin Ishaq Al-Azdi As-Sijistani, *Sunan Abu Da'ud*, edited by Muhammad Muhyi al-Din 'Abd al-Hamid, Matba'at Mustafa Muhammad, Cairo, no date given, *hadith* number 4878. Also see Ash-Shaibani, Ahmad bin Muhammad bin Hanbal, *Musnad*, Cairo, Vol.II, 1913, p.436 and also see Mishkat al-Masabih, found on e:\islamica\winhadis\winhadis.tex on CD Rom *islamica: Digital Library of Islamic Software*, Islamic Computing Centre, London, [www.ummah.org/icc], *hadith* No.5102

total tolerance as be the priority for all Muslims when they endeavour to engage with non-Muslims and especially those who offer such hateful insults in any manner related to God, the Qur'an or Islam.

4. Interpretation of the Qur'an for the Punishment of Blasphemy

It is interesting to note how the use of both the terms *sabb* and *shatm* occur within the Qur'an and the *hadith* (Traditions), to determine how they were interpreted by jurists to be included within the context of *shari'ah* law. In the Qur'an, the words derived from *s-b-b*, in connotation of any abuse or insults, occur twice, but only in one verse, 6:108, as:

"wa-la tasubbu al-ladhina yad'una min duni allahi fa-yasubbu allaha 'adwan bi-ghayri 'ilmin

Abuse not those to whom they pray, apart from God, or they will abuse

God in revenge without knowledge."³⁹

This Qur'anic verse encourages the tolerance of all Muslims to completely accept that polytheists will worship idols, as they see such objects as 'divine,' but it is up to the polytheists to find their own way to the True faith, and only God has the authority to decide whether to punish them or not, should they remain in their 'ignorance' (*jahl*), which is a specific form of *kufr* (unbelief). It is interesting to discover that there is no mention within any verse of the Qur'an, which is directed towards the act of vilification, that uses either the verb *shatama*, or any other derivation from the root of *sh-t-m*.⁴⁰

Kamali suggests that the most detailed analysis of the treatment of blasphemy in the Qur'an, still remain the studies undertaken by Taqi al-Din Taymiyyah (d.728AH/1328AD), in his work *al-Sarim al-Maslul 'ala Shatim al-Rasul*. Within this work Ibn Taymiyyah also covers the punishment for apostasy and the evidence in the Qur'an

³⁹ Wiederhold, Lutz, op.cit., p.41. The English translation of the verses is from Arberry, Arthur, J., *The Koran: Interpreted*, Oxford University Press, Oxford, 1933, (first published in 1955 by Allen & Unwin Ltd., no place given), p.134

⁴⁰ Wiederhold, Lutz, *ibid.*, p.41

that relates to it.⁴¹ Ibn Taymiyyah wrote the book to illustrate the legal position on this topic, in reaction to the dispute he engaged in with a Christian cleric who was accused of insulting the Prophet.⁴² As Ruthven explains:

“Ibn Taymiyya links vilification of the Prophet with disparaging the Muslims: both constitute a hadd offence – that is an offence against the ‘boundaries’ set by God, which cannot be settled by compensation. According to Ibn Taymiyya, anyone defaming the Prophet must be executed, whether he is a Muslim or not. There is a disagreement among the experts about whether the blasphemer should be allowed to repent. Ibn Taymiyya comes down on the side of those who insist that even if the culprit repents, or converts to Islam in the case of a non-Muslim, he must be killed. Some authorities argued that Jews or Christians who cursed the Prophet should be killed unless they converted to Islam, and there are documented cases where this was applied.”⁴³

While Ibn Taymiyyah gives a meticulous survey of the diverse opinions held on the issue, he himself is consistent that blasphemy is liable to the mandatory death penalty, as the deciding judge has very little choice but to implement this punishment on given proof and also that the convicted offender does not need to be requested for repentance. Ibn Taymiyyah’s conclusions are equivalent to those of his predecessor, the Maliki jurist *Qadi ‘Iyad al-Yahsabi* in his work *al-shifa’ bi-Ta’rif Huquq al-Mustafa*. Both cover the authority of the Qur’an and cite from the same verses, both finding the same interpretation as to the applicable punishment.⁴⁴ Kamali argues that perhaps both Ibn Taymiyyah and *Qadi ‘Iyad al-Yahsabi*, although they were well-respected, distinguished and erudite authors, may have taken slightly too far their interpretation of the Qur’an on this

⁴¹ Kamali, Mohammad Hashim, op.cit., p.236 and also see Ruthven, Malise, *A Satanic Affair*, op.cit., p.51

⁴² Ruthven, Malise, *A Satanic Affair*, ibid., p.51.

⁴³ ibid., p.51

⁴⁴ Kamali, Mohammad Hashim, op.cit., p.236 Also see Al-Yahsabi, al-Qadi Abu’l-Fadl ‘Iyad, *al-shifa’ bi-Ta’rif Huquq al-Mustafa*, op. cit., Vol. II p.219

issue. Ibn Taymiyya has written copiously on blasphemy but maintained from the beginning that the death penalty for this act of insult against both God and His Messenger is provided by the Qur'an. More importantly, Ibn Taymiyya defends the punishment as being a Qur'anic command. Thus he sees it as a *hadd* crime, leaving a convicting judge with no option but to deliver the death penalty.⁴⁵

Ibn Taymiyya uses seven Qur'anic verses to defend his corollary of the death sentence, which include 9:61; 9:63; 58:5; and 8:12-13,⁴⁶ but the main focus of Ibn Taymiyya's hypothesis, and where he firmly bases his conclusion on the death penalty, is within verse 33:57-58:

إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَأَعَدَّ لَهُمْ
عَذَابًا مُهِينًا. وَالَّذِينَ يُؤْذُونَ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ بَغَيْرِ مَا كَتَبْنَا
فَقَدْ أَحْتَمَلُوا بُهْتَانًا وَإِثْمًا مُّبِينًا

*"Verily, those who insult/annoy (yu'dhuna) God and His Messenger, have been cursed by God in this world and in the Hereafter, and He has prepared for them a humiliating punishment. And those who insult/annoy believing men and women without due cause bear on themselves a calumny (buhtanan) and a glaring sin (ithman mubinan)."*⁴⁷

Ibn Taymiyya's assessment of the text in this verse brings him to an unquestionable conclusion that: *"This verse makes obligatory the death penalty for one who insults God and His Messenger."*⁴⁸ Also here, Ibn Taymiyya draws a parallel between *Sabb Allah* (insulting

⁴⁵ Kamali, Mohammad Hashim, *Ibid.*, p.237-238

⁴⁶ *Ibid.*, p.238,

⁴⁷ Kamali, Mohammad Hashim, *Ibid.*, p.240, Qur'an 33:57-58

⁴⁸ Kamali, Mohammad Hashim, *Ibid.*, p.240, Also see Ibn Taymiyya, *al-Sarim al-Maslul*, op. cit., p.40

and blasphemy against God) and the act of *Sabb al-Rasul* (blasphemy against the Messenger) and *Sabb al-Nabi* (blasphemy against the Prophet) which he perceives as being clearly drawn from the verse. Thus, he argues that anyone who insults the Prophet, will act in the same manner as anyone who insults God, so “*anyone who insults God is an infidel (kafir) and legally liable to be executed (halal al-dam).*”⁴⁹ In his interpretation of this verse, Ibn Taymiyya also distinguishes different penalties for someone who insults God and/or the Messenger compared to those delivered on those who insult just believers. The acts of the former receive great humiliation but the latter commit a major sin. He emphasizes that God will curse those who blaspheme, such as “*Cursing (la’nah) is the opposite of mercy (rahmah) [sic]: anyone whom God has cursed and precluded from His mercy both in this world and the next is certainly a non-believer (kafir).*”⁵⁰ To express the vast nature of the *la’nah* (also *la’n*) involved, Ibn Taymiyya uses a *hadith* that is related to the latter act. It states that:

لَعْنُ الْمُؤْمِنِ كَقَتْلِهِ

- “*cursing a believer is tantamount to killing him.*”⁵¹

The word for cursing (*la’n*) has also been explained by the Shafi’i jurist Taqi al-Din al-Subki, (d.755AH/1355AD), in his work *al-Fatawa*.⁵² Al-Subki presents the arguments by Ibn Hazm (d.456AH/1064AD), a prominent figure of the Zahiri school of Islamic law. Ibn Hazm declared “that cursing (*la’n*) is a sin which entails more severe legal consequences than merely to abuse (*sabb*).”⁵³

Kamali argues that Ibn Taymiyya has neglected to perceive the figurative style of the language used in this *hadith*, as he concluded

⁴⁹ Kamali, Mohammad Hashim, *Ibid.*, p.240

⁵⁰ *Ibid.*, p.241

⁵¹ p.241

⁵² al-Subki, Taqi al-Din, *al-Fatawa*, Beirut, no date given, vol.II, p.571-p.584. “Al-Subki is also the author of a treatise on blasphemy against the Prophet entitled *al-Sayf al-maslul ‘ala man sabba al-rasul*,” Wiederhold, Lutz, *op.cit.*, p.40 and also see footnotes 1 and 4 on p.40

⁵³ Wiederhold, Lutz, *ibid.*, p.55

that someone who has been cursed by God is then eligible for the death penalty – “*It is thus known that killing him is permissible (fa ‘ulima anna qatluhu mubah)*”⁵⁴ Kamali’s view is that cursing a believer alone does not warrant the curse from God, either in this world or the next, as this has been distinguished within the Qur’an as a separate crime from the act of insulting God and His Messenger. Insulting a Muslim is seen as an act of glaring sin (*ithman mubinan*), which is a slanderous allocation (*qadhaf*), a *hadd* crime. This is an appalling offence, but is not so severe as the *Sabb Allah* and *Sabb al-Rasul* or *Sabb al-Nabi*. Kamali argues that only these latter forms of blasphemy would receive chastisement in this world and the next.⁵⁵

5. Assessing the Interpretation of the Qur’anic Message

Kamali assesses Ibn Taymiyya’s interpretation of the relevant Qur’anic verses which lead to his belief that the Qur’an clearly delivers the death penalty for blasphemy. Kamali claims that Ibn Taymiyya’s selection of the Qur’anic verses: “*does not sustain the conclusions that he has drawn from it.*”⁵⁶ Kamali makes a rather direct assessment of Ibn Taymiyya’s work and the corollary that he discovered, as:

“The tone and tenor of this analysis are dominantly speculative and it does not, with due respect to Ibn Taymiyya’s unquestionable erudition and piety, stand the test of accuracy which is normally observed by the commentators (mufasssirun) on the Qur’an. The Qur’an has made no reference to the death penalty for blasphemy, and the text does not warrant the conclusion that it is a Qur’anic obligation, or a prescribed punishment or a mandate. On the contrary, we would submit that the general language of the Qur’an can only sustain the broad conclusion that the perpetrator of blasphemy disgraces himself and invokes the

⁵⁴ Kamali, Mohammad Hashim, op.cit., p.241; Also see Ibn Taymiyya, *al-Sarim al-Maslul*, op.cit., p.42

⁵⁵ Kamali, Mohammad Hashim, Ibid., p.241; Also see Ibn Taymiyya, *al-Sarim al-Maslul*, op.cit., p.44

⁵⁶ Kamali, Mohammad Hashim, Ibid., p.243

curse of God upon himself, and that it is a criminal offence which carries no prescribed or mandatory punishment, and, as such, automatically falls under the category of ta'zir offences, whose punishment may be determined by the head of state or competent judicial authorities."⁵⁷

Kamali further argues that there is ample evidence within the Qur'an that the pagan Arabs, the disbelievers, the polytheists and the hypocrites quite often offended and insulted the Prophet. One example is the Qur'anic Surah *Lahab*, 111, which refers to Abu Lahab, one of the Prophet's uncles who used to offer constant slights and vilification. His actual name was 'Abd al-'Uzza, but he was commonly known by his nick-name Abu Lahab which means 'father of the flame,' or 'he of the flame,' that related to his hot temper and his red countenance. "*He was one of the most inveterate enemies of early Islam.*"⁵⁸ There were often accusations that the Qur'an had been written by the Prophet, as a self-created product, done by an insane 'poet.'⁵⁹ There are other references in the Qur'an relating to the disbelievers' suggestions that the Prophet was a 'soothsayer' (*kahin*), a 'magician' or a 'sorcerer' (*sahir*).⁶⁰ Kamali raises the point that the Qur'an openly addresses the falsehood of these charges and "*on numerous occasions instructs the Prophet to exercise patience, sound reasoning and persuasion.*"⁶¹

⁵⁷ Ibid., p.243-p.244

⁵⁸ Ali, Abdullah Yusuf, *The Holy Qur'an: Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol. III, in footnote 6294 on p.1804, also see Asad, Mohammad, *The Message of the Qur'an: Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, in footnote 1 on p.983 and Daryabadi, Maulana Abdul Majid, *Tafsir-ul-Qur'an: Translation and Commentary of the Holy Qur'an*, (Preface dated as 1941), Islamic Book Foundation, Islamabad, Pakistan, Vol. IV, in footnote 583 on p.638; and also Ali, Maulvi Mohammad, 1920, *The Holy Qur'an: Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-I-Ishaat-I-Islam, Lahore, India, in footnote 2813 on p.1233

⁵⁹ Ali, Abdullah Yusuf, *The Holy Qur'an*, Ibid., Volume III, in footnote 4057 on p.1196; and also Maulana Abdul Majid Daryabadi, *Tafsir-ul-Qur'an*, Ibid., Vol.IV, in footnote 186, on p.22 and Mohammad Asad, in *The Message of the Qur'an*, Ibid., in footnote 14 on p.684 and in footnote 38 on p.680 (in reference to 36:69)

⁶⁰ Kamali, Mohammad Hashim, Ibid., p.244

⁶¹ Ibid., p.244

Kamali then refers to a Qur'anic verse which offers the Prophet and his Companions the correct approach at such ill-treatment. The verse is from Surah *Al-Imran*, 3, verse 186, which reads as:

وَلَتَسْمَعَنَّ مِنَ الَّذِينَ آتَوْا الْكِتَابَ مِنْ قَبْلِكَ وَمِنَ الَّذِينَ أَشْرَكُوا أَذًى
كَثِيرًا وَإِنْ تَصْبِرُوا وَتَتَّقُوا فَإِنَّ ذَلِكَ مِنْ عَزْمِ الْأُمُورِ

*"And you shall certainly hear much that will insult you (adhan kathira) from those who received the Scripture before you and from the polytheists. But if you persevere patiently and guard against evil, this will be the best course with which to determine your affairs."*⁶² (3:186)

This verse was revealed in Medina, leaving very little doubt that the Prophet and his Companions frequently received such disrespect. This was considered to be a fully expected opposition, considering the mission of the Prophet in the surrounding environment of 'those who received the Scripture before you,' i.e. the *ahl al-kitab* (the People of the Book; i.e. Christianity and Judaism). Thus, these circumstances did not offer much time to be spent on being: *"preoccupied with persecution and punishment. This is precisely what the Qur'an has recommended and also what the Prophet actually did."*⁶³ However, the judicial approach that developed later on, took another approach, that took a far more direct punitive response, as opposed to extending patience and perseverance. The hostile reaction that the Prophet received is also stated elsewhere in the Qur'an, confirming its inevitable existence.

The cases that are documented to involve *Sabb al-Rasul*, all occurred in Medina, once the Prophet had gained the position of the head of the state. Kamali argues that, although he was frequently insulted and abused during his time in Mecca, there is no report that he ever raised the issue against the offender(s). Thus, *"this*

⁶² Ibid., p.244

⁶³ Ibid., p.245

would suggest that blasphemy as a punishable offence materialised in a political context.”⁶⁴ Due to the circumstances within Mecca during the very early days of Islam, these did not allow for any enforcement of punishment or penalties for the act of blasphemy. Kamali states that, as can be seen in the Qur’an and Sunnah, there is a direct denunciation of such behaviour and that the perpetrators will be subject to the wrath of God in the Hereafter. Another fascinating point is raised by Kamali here, that:

*“It is also significant to note that the Prophetic Sunnah, during the Meccan period, does not provide the evidence by which to identify blasphemy as the serious offence it was later identified as under different circumstances in Medina.”*⁶⁵

The many cases that Kamali has assessed do not provide unequivocal evidence to establish a: *“distinction ex post facto between the religious and the political contents of the cases that were prosecuted for blasphemy and insult.”*⁶⁶ It becomes manifestly clear that the jurists have not attempted to separate blasphemy from apostasy and have also shown no awareness of isolating anything religious from political. Thus, as Kamali suggests, it is then difficult to determine whether the people involved were given the death sentence for their apostasy on its own; or whether the apostasy was a peripheral incident, as their main crime was the more serious attempted treason and clandestine rebellious acts against the newly established Islamic state.

The crimes could even have been more as personal insults against the Prophet. It is also important to note that there is no record that, in Medina, any Muslim was either accused or punished for the offences of high treason or any conspiracy against the state. Thus, as blasphemy and apostasy were certainly equivalent to treason, they became offences to be included in that category of crimes. Kamali also mentions that: *“there is no separate terminology either in the Qur’an or in the sayings of the Prophet for ‘high treason.’ It is*

⁶⁴ Ibid., p.246

⁶⁵ Ibid., p.246

⁶⁶ Kamali, Mohammad Hashim, Ibid., p.247

*understood that the death penalty was designed not for blasphemy as a crime against religion alone but primarily as a crime against the community and state.*⁶⁷

It will now be of some interest to assess the very recent cases of blasphemy against Islam, the Qur'an and/or the Prophet Muhammad that have occurred in Egypt, in recent months, and recent years. These case assessments will cover how the legal system presently works in Egypt on cases of blasphemy, but also includes cases that involved both a knife attack in the street, in 1994, and a shooting that killed the victim, in 1992, as public reactions to the court convictions. The cases also clearly show that not all accusations that very similar acts should be considered as blasphemous crimes, are accepted as legitimate by the court rulings, hence the acquittal of Haidar Haidar from the accusation of blasphemous writing, which will be covered below.

6. Modern Day Cases of Blasphemy in Egypt

Mohammad Sa'id al-'Ashmawy, a prominent Islamic scholar and *Shari'a* judge, presents his position on the reasons behind both legal and physical attacks on writers and intellectuals in Egypt, that have been undertaken in recent years. Al-'Ashmawy argues that:

*"Militant Islamists start from the premise that Islam is the sole valid and complete religion and abrogates all other religions. All non-Muslims, it follows, are infidels and should be converted to Islam. An essential part of their creed is the belief that politics is an integral part of the faith, a claim they present without justification or clarification. It is important to distinguish between Islam as history and Islam as religion. If by Islam the Islamists mean a religion, by claiming politics as a pillar of the faith, they have added a sixth to the recognised five pillars of Islam – the recitation of the creed, prayer, fasting, pilgrimage to Mecca, and charity. Such a claim undermines orthodox Sunni Islamic doctrine."*⁶⁸

⁶⁷ Kamali, Mohammad Hashim, *Ibid.*, p.247

⁶⁸ Al-'Ashmawy, Mohammad Sa'id, 'What are the Militants after?,' *Index on Censorship*, May/June, London, Vol.1/2, 1994, p.119-120

He further suggests that if the emphasis of the militant Islamists were defining Islam as being the history of Muslim people, then clearly in this context, politics would be an integral part of the historical events. With this understanding then, *"Their claim would be unremarkable and their arguments against the civil state, incorrectly referred to by them as secular, would collapse."*⁶⁹ Al-'Ashmawy expands these comments, and makes reference to the policy of these militant groups, who confront the present government systems in Islamic countries, by presenting the question to the population: 'Do you wish to be ruled by God or by man?' Al-'Ashmawy raises an interesting point here, commenting that this is their form of methodology in portraying their message, because: *"their question is an invitation to bestow the ruler with the divine right to oppress the ruled. It is an invitation to authoritarianism in the name of God."*⁷⁰ He concludes that such an approach towards Islam is not respecting or representing the belief in faith as a religion, but more obviously their agenda is using the name Islam to promote 'nationalism.' However, it becomes rather clear that utilising the label of 'Islam,' by mutating the religion and reforming it into 'nationalism,' this becomes a threat to the genuine national interests of any Muslim state or nation. The process of implementing the name of Islam in this manner *"erodes the loyalty of the citizen to his country and condemns those who oppose it as traitors and apostates. It is a certain recipe for sectarian strife and racism."*⁷¹

There have been several attacks on writers and scholars, particularly in Algeria and Egypt, in recent years. As Donna Arzt states, relating to these attacks, reiterating the points raised by Mohammad Sa'id al-'Ashmawy, above:

"Even more disturbing are the non-official vigilante cases, which often result in brutal assassinations, ordered without trial by Islamic revivalists in countries where they threaten government stability. While militants in Egypt and Algeria have killed government officials, foreigners, religious minorities, and average Muslim civilians in the course of

⁶⁹ al-'Ashmawy, *ibid.*, p.120

⁷⁰ *ibid.*, p.120

⁷¹ *ibid.*, p.120

their struggles for power, when they target intellectuals they often rely on the Shari'a as a rationale."⁷²

As a broader overview on these points, of such vicious attacks becoming more physical, as opposed to remaining merely academic and/or of theoretical verbal attacks, the *Article XIX* human rights organisation declared that:

*"Lives, even, are at stake. Farag Foda, a noted secular Muslim writer, was murdered by Islamist extremists in June 1992. Naguib Mahfouz, Egypt's first Nobel prize winning novelist, barely escaped with his life when he was the victim of a politically motivated stabbing by an Islamist militant in 1994. At the same time, writers and thinkers have been targeted by the state and harassed by its religious institutions. In May 1997, Allaa Hamed began a one-year prison sentence imposed on account of his writings after an appeal court upheld his conviction and sentence by a court in 1992."*⁷³

The Egyptian legal system has one specific law that has established the position to be upheld in regard to the treatment in cases involving any publication that is cited as being based on an 'anti-religious' theme. As Kamali explains:

*"Anti-religious publications in Egypt are normally treated under the provisions of the Penal Law no.29 of 1982 which penalise offenders to a term of imprisonment ranging from six months to five years and a fine of 500 to 1000 Egyptian pounds'(Art.928)."*⁷⁴

⁷² Arzt, Donna E., 'Religious Human Rights in Muslim States of the Middle East and North Africa' in *Religious Human Rights in Global Perspective: Religious Perspectives*, 1996, John Witte, Jr. and Johan D. van der Vyver (eds.), Martinus Nijhoff Publishers, p.387-454. This is also an article in *Emory International Law Review*, Volume 10, Number 1, Spring 1996, Emory University School of Law, Atlanta, Georgia, USA

⁷³ Article XIX, *The Egyptian Predicament: Islamists, The State and Censorship*, 1997, Article XIX, London, p.48

⁷⁴ Kamali, Mohammad Hashim, *op.cit*, p.291

The three cases mentioned above, involving Farag Foda, Naguib Mahfouz, and Allaa Hamed together with some other cases with very linked circumstances and rather similar consequences, will now be assessed in more detail. The most recent cases for the conviction of blasphemy against either Islam and/or the Qur'an and the Prophet Muhammad involved the Egyptian writers Nawal al-Sa'adawi and Salaheddin Mohsen. Nawal al-Sa'adawi was accused of apostasy in April 2001, and Salaheddin Mohsen was convicted of blasphemy, and sentenced to prison for three years in January 2001.

6.1 The Case of Nawal El-Sa'adawi

In the Arabic newspaper *Al-Quds al-'Arabi* (see below),⁷⁵ the AFP news agency reported that on Wednesday 18th April 2001 the well known



Al-Quds Al-Arabi Volume 12- Issue 3711 Thursday 19 April 2001

السنة الثانية عشرة - العدد 3711 الخميس 19 نيسان (أبريل) 2001 - 25 محرم 1422 هـ

دعوى لتفريق نوال السعداوي عن زوجها

■ القاهرة - أ.ب.: إمام مصدر قضائي إن الحامي المصري نبيه الوحش أعلن عزمه أمس الأربعاء التقدم بشكوى للتفريق بين نوال السعداوي وزوجها لأنه يتهمها بالردة ما يفقدها بالتالي اهليتها للبقاء زوجة رجل مسلم.

ويريد الحامي الحصول على التفريق بين السعداوي وزوجها لتلطف شريف جنتانة بالاستناد إلى التصريحات الأخيرة التي أدلى بها مفتي مصر الشيخ نصر فريد واصل ومفادها أنها «انكرت معلومات من الدين ما يخرجها بانضروية عن دائرة الإسلام».

وكانت السعداوي قالت في مقابلة صحفية إن «الحج من بقايا الوثنية» مضيفة أنه «لا يوجد نص يوجب ارتداء الحجاب» للنساء في القرآن.

وظالمت السعداوي بالمساواة في الميراث بين الرجال والنساء» ما يخالف الشريعة التي تقول إن للذكر مثل حظ الأنثيين. وقالت إن «الإسلام المصري يعمل على تجهيل الشعب لأن الشعب الجاهل يسهل قيادته وضربه واستغلاله وإن يحكم ديكتاتوريا».

⁷⁵ An extract from this newspaper article is published above.

Egyptian writer Nawal al-Sa'adawi had been accused of apostasy from Islam by the Egyptian lawyer, Nahib al-Wahsh. Al-Wahsh:

*"announced that he intends to submit his case calling for Nawal al-Sa'adawi to be divorced from her husband. He accuses her of apostasy (al-riddah), which in turn denies her the right of remaining the wife of a Muslim [man]. The lawyer wants al-Sa'adawi to be divorced from her husband, who is the intellectual Sharif Hatata."*⁷⁶

Due to this claim: *"Egypt's prosecutor-general has ruled that a case against feminist writer Nawal el-Saadawi [sic] on charges of apostasy will be heard in court."*⁷⁷

Nahib al-Wahsh had based his accusation on recent comments presented by the Grand Mufti of Egypt, Sheikh Nasr Farid Wasil, who argued that al-Sa'adawi had: *"renounced the facts of [the] religion, which, by necessity, means she is excluded from the da'irat al-Islam (sphere of Islam)."*⁷⁸ He also presented her with the option of renouncing the statements that she had made, thus allowing her repentance.

The incident that induced such a reaction by the Sheikh Nasr Farid Wasil, was an interview that Al-Sa'adawi had recently undertaken for the weekly magazine *Al-Midan*, where she is argued to have stated that the *"the hajj is a remnant of paganism,"* adding that in the Qur'an: *"there is no textual evidence that makes wearing the hijab obligatory' for women."*⁷⁹ She is further accused of

⁷⁶ 'Legal proceedings to divorce Nawal al-Sa'adawi from her husband,' *Al-Quds al-'Arabi*, 19 April, 2001 front page, Volume 12, Issue 3711, translation by Emma Westney, Centre for Middle Eastern and Islamic Studies, University of Durham, England.

⁷⁷ 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1295000/1295075.stm. Also see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1294000/1294921.stm

⁷⁸ 'Legal proceedings to divorce Nawal al-Sa'adawi from her husband,' *Al-Quds al-'Arabi*, op.cit.

⁷⁹ Ibid. Also see 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, op.cit., and also see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, op.cit.

demanding a change in the present Egyptian law on inheritance, to gain the:

*"equal rights of inheritance for men and women", which is incompatible with the shari'ah [Islamic law], that maintains that a man is entitled to inherit the same amount as two women.' She stated that 'the Egyptian media is out to make the population ignorant, as an ignorant nation is easier to govern, control and exploit and for dictatorial rule.'*⁸⁰

However, in her defence, Nawal al-Sa'adawi declared that the Grand Mufti of Egypt, Sheikh Nasr Farid Wasil, who had listened to tape recordings of her interview with *Al-Midan*, had distorted what had actually been said. She claims to have merely referred to some historical facts.⁸¹ In an interview with the BBC, she also stated that: *"she was astonished at the prosecutor's decision, adding that el-Wahsh was 'mentally disturbed.'*"⁸²

Nawal al-Sa'adawi is not a 'new-comer' to such controversial confrontations with the state, as in 1981, the late President Anwar Sadat imprisoned her following her conviction as a political activist. Most of her work involves 'feminist' themes and statements that are perceived to be blatantly polemic views when expressed in an Islamic state. Some of her books were recently banned from the Cairo Book Fair in January 2001.⁸³ Concerning whether the announcement of taking this case to court would be considered as sufficiently legitimately valid to do so, al-Sa'adawi's husband stated that, as yet: *"they had not been informed of the decision, but – if true – it would be a licence to kill her. He added that neither he nor his wife planned to leave Egypt."*⁸⁴

⁸⁰ 'Legal proceedings to divorce Nawal al-Sa'adawi from her husband,' *Al-Quds al-'Arabi*, *ibid.* Also see 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, *ibid.* and see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, *ibid.*

⁸¹ 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, *ibid.*

⁸² *ibid.*

⁸³ *ibid.*

⁸⁴ *ibid.*, and also see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, *op.cit.*

This case would resemble the case involving the Qur'anic scholar Nasr Hamid Abu Zayd, in 1995. His wife, Ibthal Younis was informed that she should divorce Abu Zayd, as she was not legally entitled to remain married to an apostate. They both refused to divorce, and left Egypt in the same year, "*fearing attacks by Islamic fundamentalists.*"⁸⁵ Further details of this case involving Nasr Hamid Abu Zayd, can be found in a previous edition of *The Mediterranean Journal on Human Rights*, presented in the article by Abdel Salam Sidahmad.⁸⁶

El-Sa'adawi's first appearance in court was on the 18th May, when she was presented with the lawsuit against her concerning the comments published in the *Midan* magazine.⁸⁷ This was followed on the 23rd May with the more formal court hearing, which followed the necessary investigations that were undertaken during interviews with El-Sa'adawi by the Prosecutor-General Maher Abdel-Wahed. During the court hearing on 23rd May, Prosecutor-General Maher Abdel-Wahed rejected the accusation of the crime of 'apostasy' against Nawal El-Sa'adawi, and this rejection of permitting any legal case on this issue was based on the grounds that there was a lack of any genuine evidence for such a conviction. The State Prosecutor's office stated clearly, when considering whether El-Sa'adawi's written opinions made her an apostate or not, that: "*there is nothing in the articles published by Nawal Al Saadawi which justifies the charge.*"⁸⁸

⁸⁵ 'Egyptian writer faces apostasy trial', *ibid.*

⁸⁶ Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights: An Appraisal,' in *The Mediterranean Journal of Human Rights*, Vol. 4 (Double Issue), 2000, p.125-144

⁸⁷ Egyptian Committee for Solidarity with Nawal El-Saadawi, *Saadawi Receives Official Court Notification*, Cairo, June 3, 2001, found on: <http://www.geocities.com/nawalsaadawi/articles/committeestatementJune3.htm> Also see Hassan-Gordon, Tariq, 'Saadawi rejects lawsuit alleging she 'scorned Islam', *Middle East Times: International Edition*, 25 May, 2001, found on <http://metimes.com/2K1/issue2001-22/methaus.htm>

⁸⁸ Hassan-Gordon, Tariq, 'Lawsuit against Saadawi tossed out,' *Middle East Times: International Edition*, 1 June, 2001, found on <http://metimes.com/2K1/issue2001-22/methaus.htm> Also see El-Magd Nadia Abou, 'The price of freedom', *Al-Ahram Weekly*, 31 May – 6 June 2001, Issue No. 536, found on <http://www.ahram.org.eg/weekly/2001/536/eg7.htm> Also see Egyptian Committee for Solidarity with Nawal El-Saadawi, *Saadawi Receives Official Court Notification*, *ibid.*

However, the case has not been completely dropped from the legal arena, because the prosecutor, Nabih al-Wahsh also filed a further case to be heard within the Cairo Personal Status Court, which was held on Monday June 18th, 2001. The aim of this case for al-Wahsh, was to achieve his demand that Nawal El-Sa'adawi 70, should be divorced from her husband, Sherif Hattata, 78, for reasons that al-Wahsh also based on the grounds of 'apostasy.' He also based his legitimacy to bring this claim to court, on the *Hisba* law (law 3/1996).⁸⁹ This law was amended in 1996, following the case of Nasr Hamid Abu Zayd in 1995, where he was involved in his own legal struggle in trying to defend both himself and his wife, Ibtehal Younes, against such demands for an enforced divorce, against both married couple's wish.⁹⁰ The *Hisba* law 3/1996 changed the existing situation that had occurred before then, where any member of the community could raise such an accusation against anyone whom they felt had personally offended them. In 1996 this position was changed, so that any case to be taken to court would only be assessed initially by the State Prosecutor, who would then deem whether it was valid or not to be heard in court as a *hisba* case. On the 18th June, the case of Nawal El-Sa'adawi and Sherif Hattata was held, but the actual hearing of the case was delayed until 9 July, because:

*"Nabih al-Wahsh's claim is that this stipulation is unconstitutional, and he is taking this case to the High Constitutional Court. The case was therefore postponed to July 9th, to enable the judges to consider Al-Wahsh's request."*⁹¹

⁸⁹ Egyptian Committee for Solidarity with Nawal El-Saadawi, *ibid.* Also see Egyptian Committee for Solidarity with Nawal El-Saadawi, *Clarification Regarding the divorce case filed against Dr. Nawal El Saadawi and Dr. Sherif Hetata*, Cairo, May 26, 2001, found on: <http://www.geocities.com/nawalsaadawi/articles/clarification.htm> Also see El-Magd Nadia Abou, 'The price of freedom', *Al-Ahram Weekly*, *op.cit.*

⁹⁰ Egyptian Committee for Solidarity with Nawal El-Saadawi, *Monday, June 18th, 2001*, Cairo, June 18, 2001, found on <http://www.geocities.com/nawalsaadawi/articlesby/June18.htm> Also see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights: An Appraisal,' *op.cit.*, p.140

⁹¹ Egyptian Committee for Solidarity with Nawal El-Saadawi, *Monday, June 18th, 2001*; *ibid.*

6.2 *The Case of Salaheddin Mohsen*

On the 27th January 2001, the Egyptian writer Salaheddin Mohsen was sentenced by the state security court in Cairo, to three years in jail with the added penalty of hard labour.⁹² This three-year sentence was an extension to Mohsen's original conviction of blaspheming against Islam in June 2000, as the initial sentence was a suspended six months prison term. However, Salaheddin Mohsen "*was being tried for a second time, after prosecutors argued that a six-month suspended jail sentence handed down at his first trial last June was too lenient.*"⁹³ Salaheddin Mohsen was initially arrested in March 2000, following the private publication of his book, and was taken to court in June. The case accused him of describing the Qur'an as a book of 'holy ignorance.' "*He was accused of spreading extremist ideas – a charge which usually carries a five-year sentence*"⁹⁴ and he was sentenced to a six-month suspended jail term.⁹⁵ Mohsen faced charges of promoting a deviant ideology with the aim of deriding Islam. Within his several books, he expresses his views that describe Islam to be the main source that had caused the 'backwardness' of many Islamic countries.⁹⁶

During his interrogation, Mohsen stated that he did not believe in God or religion, and also admitted that that he was dedicated to promoting his views and beliefs via his writings. As reported in *Al-Ahram Weekly* newspaper:

"Mohsen has openly stated that he is an atheist. He has also called for the establishment of an Egyptian atheists' association. In Egypt, such blasphemous sentiments are not only illegal, but widely considered to be contemptuous of

⁹² BBC World Service, *Egyptian Writer to Jail*, 27 January, 2001, on: http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1139000/1139918.stm

⁹³ *Egyptian Writer to Jail*, 27 January, 2001, *ibid.*

⁹⁴ BBC World Service, 8 July, 2000, *Egyptian 'Blasphemer' Escapes Heavy Sentence*, on: http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_825000/825266.stm

⁹⁵ *Ibid.*

⁹⁶ Halawi, Jailan, 'Shudders of Rage,' *Al-Ahram Weekly*, 18 – 24 May 2000, Issue No. 482, found on: <http://www.ahram.org.eg/weekly/2000/482/eg11.htm>. Also see Halawi, Jailan, 'Detained for deriding Islam,' *Al-Ahram Weekly* 13 – 19 April 2000 Issue No. 477

*the religious sensibilities of the great majority of the population.*⁹⁷

He was arrested based on a report by the state security investigators, concerning his book entitled *Shudders of Enlightenment*.⁹⁸ The report declared that his book propagates ideas which clearly violate *Shari'ah* (Islamic law) and hold Islam in contempt. His house was searched, and the police seized over one hundred copies of three other similar books, entitled *Chatting With Heaven*, *Abdel-Ati* and *A Muslim's Memoirs*.⁹⁹

Within all four books, it is argued that:

*Mohsen mocked Islam, its beliefs and religious rites and duties in the context of a discussion of enlightenment ideas and the nature of free creativity. He claimed that Islam is the reason for Egypt's 'backwardness,' that Prophet Mohamed is not in fact a prophet but rather the author of the Qur'an and that the Qur'an moreover is full of contradictions.*¹⁰⁰

⁹⁷ Halawi, Jailan, 'Limits to Expression,' *Al-Ahram Weekly*, 21-27 December 2000, Issue No. 513. Also see Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, BBC news report, 17 June, 2000, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_795000/795456.stm Also, Jailan Halawi presents the background to Salaheddin Mohsen, by mentioning that "After finishing his high school studies in 1967, Mohsen began reading the books of revealed religion as well as philosophical texts. He was profoundly influenced by the writings of Jibran Khalil Jibran, an early 20th century Lebanese-American poet, and Abu Al-Ala Al-Me'arri, an Abbasid poet well-known for his pessimism. By 1972, Mohsen had become an atheist. Through his readings and observations, he came to the conclusion that advancement is achieved through science and not religion. In his writings, Mohsen described the Prophet Mohamed as a Bedouin who developed a new religion with the aim of assuming the leadership of his tribe," see Halawi, Jailan, 'Detained for deriding Islam,' *ibid.*

⁹⁸ Halawi, Jailan, 'Shudders of rage,' *Al-Ahram Weekly*, 18 - 24 May 2000, *op.cit.* The books title is also translated as *Shivers of Enlightenment*, by BBC News Report, *Suspended Sentence for Egyptian 'Blasphemer'*, 8 July, 2000, found on: http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_825000/825306.stm

⁹⁹ Halawi, Jailan, 'Shudders of rage,' *Al-Ahram Weekly*, 18 - 24 May 2000, *ibid.* Also see Halawi, Jailan, 'Detained for deriding Islam,' *op.cit.*

¹⁰⁰ Halawi, Jailan, 'Limits to Expression,' *Al-Ahram Weekly*, *op.cit.*

Judicial advisors who were interviewed by the newspaper *Al-Ahram Weekly*, indicated that the Egyptian state would take to court those who propagate deviant and/or extremist thoughts, as the country has the right to protect its religious beliefs. The jurists explained that *"We are not against freedom of expression, but we strongly fight the spread of deviant beliefs in our society"*¹⁰¹ and added that: *"Mohsen was not arrested because of his beliefs; he is free to embrace whatever ideology he pleases, but this freedom should not extend to propagating erroneous beliefs."*¹⁰² Another comment, in reference to the state's role and its authority to protect religious views, argued that the law *"is not, and will never be, against freedom of expression, but any country has the right to protect its religious beliefs against the propagation of deviant or extremist thought."*¹⁰³

In the book, *Shudders of Enlightenment*, Salaheddin Mohsen argues that all civilized nations achieve such success solely by means of scientific research and not through religion.¹⁰⁴ On 14 December 2000 the initial sentencing was abrogated and the office for the ratification of court sentences accepted the appeal for a re-trial. The request for a re-trial had been submitted by the prosecutor Ashraf El-Ashmawi; who demanded that the state should enforce its role as the protector against subversive, anti-religious ideologies. El-Ashmawi argued that Mohsen had used religion to propagate extremist ideas, slight Islam and thus, attempt to: *"provoke conflict and undermine national unity."* El-Ashmawi added that: *"Mohsen used derogatory terminology in propagating his 'beliefs,' and was blatantly disrespectful of the sentiments of pious individuals 'which is illegal.'"*¹⁰⁵

Contrary comments were made by Mohsen's defence lawyer, Samir El-Bagouri, who argued that Mohsen had the legal right to express his views freely. His views expressed in his work raised philosophical points, and thus, was not a matter to be dealt with by law. El-Bagouri continued the defense of Salaheddin Mohsen by stating the perhaps liberal, but by all means very relevant comment that had also been

¹⁰¹ Halawi, Jailan, 'Shudders of rage,' op.cit.

¹⁰² Halawi, Jailan, 'Detained for deriding Islam,' op.cit

¹⁰³ Halawi, Jailan, *ibid.*

¹⁰⁴ Halawi, Jailan, *Shudders of rage,* op.cit

¹⁰⁵ Halawi, Jailan, 'Limits to Expression,' op.cit.,

mentioned several years earlier by Naguib Mahfouz as defense, in his case 'Ala' Hamid. This can be read below, but as El-Bagouri explained, concerning Mohsen:

*He has an opinion and he expressed it in these books. Mohsen's arguments are not new. In fact, they have been made repeatedly throughout history. Why charge Mohsen for asking them now?*¹⁰⁶

Further to this point, El-Bagouri extended the potential problems in legally trying a person for their individual religious beliefs. He announced that it would be a dangerous precedent because: "*it not only threatens intellectual freedom, but also threatens intellectuals themselves.*"¹⁰⁷ Mohsen's eldest son, Alaa, also defended his father's position to be free in expressing his own views, although he denounced the views themselves. In an interview with the *Al-Ahram Weekly* newspaper in December 2000, Alaa stated: "*You can criticise what he writes, but the matter should not be taken to the courts. Unfortunately, our society does not respect anyone who tries to challenge traditional assumptions.*"¹⁰⁸ He further added that while he, himself, is a devout Muslim, he respects his father's courage in defending his own lack of faith or belief in God.¹⁰⁹

Another recent case occurred in Egypt just a few weeks before the court case of Salaheddin Mohsen, which involved a novel by the Syrian writer, Haidar Haidar.

6.3 *The Case of Haidar Haidar*

The trial and controversy of the case of Salaheddin Mohsen followed just weeks after a major cultural confrontation over a novel by a Syrian writer: Haidar Haidar. Islamists said the book was blasphemous while many intellectuals argued it had been taken out of context.¹¹⁰ Haidar Haidar was accused as being 'a new Salman Rushdie' due to his novel, *A Banquet of Seaweed*,¹¹¹ and was accused

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, op.cit

of distributing blasphemous comments in this work.¹¹² The book was first published in Beirut in 1983 and was not released in Egypt until November 1999, by an institution affiliated with the Culture Ministry.¹¹³

This case also included a charge by the state security prosecutor against two Culture Ministry officials for their role in accomplishing the publication of the book believed to be a blasphemous novel.¹¹⁴ Both Ibrahim Aslan, the editor of the series that published the novel, and Hamdi Abu Golail, the managing editor, were charged with “*disparaging religion, as well as editing and publishing a work offensive to public morals.*”¹¹⁵ However, in their defense, the Culture Ministry announced that it is “*one of the best Arabic novels of the 20th century.*”¹¹⁶ They also stated that the ministry had reprinted the book as part of a project to publish celebrated Arabic novels. The main plot of the novel focuses on two left-wing Iraqi intellectuals who managed to leave Iraq in the late 1970s; fleeing from what they witnessed to be the ‘injustice’ in Iraq imposed by President Saddam Hussein. Both characters blamed political oppression in the whole Arab world on dictatorships and the right wing, conservative movements. The author Haidar Haidar suggests that the book aimed towards trying “*to explore the atmosphere of Arab hope and the subsequent retreat of this hope.*”¹¹⁷

¹¹¹ The book is also translated as *Feast for Seaweed*, by Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, BBC New report, 10 May, 2000, found on: http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_743000/743929.stm

¹¹² BBC New report, *A New Salman Rushdie?*, 8 May, 2000, found on: http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_741000/741359.stm Also see Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, op.cit.

¹¹³ BBC New report, *A New Salman Rushdie?*, ibid. Also see Halawi, Jailan, ‘Shudders of rage,’ op.cit. Also see Hawley, Caroline, *Egypt Blasphemy Row Deepens*, BBC New report, 18 May, 2000, found on: http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_754000/754406.stm

¹¹⁴ Halawi, Jailan, ‘Shudders of rage,’ ibid. Also see Hawley, Caroline, *Egypt Blasphemy row Deepens*, ibid

¹¹⁵ ibid.

¹¹⁶ BBC New report, *A New Salman Rushdie?*, op.cit

¹¹⁷ Ibid. Also see Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, op.cit.

However, it seemed to create a fierce reaction by Al-Azhar, who perceived it to be purely based on blasphemous insults against Islam in general:

*"Al-Azhar, seen as the final arbiter of all things religious, has thrown its considerable weight into the confrontation. The government-appointed head of Al-Azhar, Mohamed Sayyid Tantawi, said the book offended all sacred beliefs and should not have been printed. Many intellectuals have been shocked by Al-Azhar's stand. A newspaper representing them says the entire body of Arabic literature would be lost if judged in a similar vein."*¹¹⁸

The novel's reprinting led to a rather fierce campaign launched by the bi-weekly Islamist-oriented newspaper *Al-Sha'b*, which quoted selected extracts from the book including one which described God as a 'failed artist' and another which depicted the Prophet Mohammed as "a womaniser."¹¹⁹ Haidar Haidar was accused of "insulting God and the Prophet ... The Syrian writer treats the Koran [sic] as rubbish and the Prophet Mohammed as a polygamist who married 20 times."¹²⁰ The BBC news report assessed the situation, stating that:

*"The Islamists have denounced Haidar as a new 'Salman Rushdie', the British writer who was forced into hiding in the 1990s after Iran's religious leaders adopted a fatwa, or decree, calling for his death."*¹²¹

The media campaign incited thousands of students from Al-Azhar University to demonstrate outside the campus, demanding the resignation of the Culture Minister Farouk Hosni: "Protesters called for Haidar's death and criticised the grand imam of Al-Azhar, Sheikh Mohamed Sayed Tantawi, for keeping silent regarding the whole affair. Nearly 100 students were briefly arrested and later released."¹²²

¹¹⁸ Hawley, Caroline, *Egypt Blasphemy row Deepens*, op.cit. Also see Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, op.cit.

¹¹⁹ Halawi, Jailan, 'Shudders of rage,' op.cit.

¹²⁰ BBC New report, *A New Salman Rushdie?*, op.cit.

¹²¹ *ibid.*

¹²² Halawi, Jailan, 'Shudders of rage,' op.cit. Also see Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, op.cit.

Several of Egypt's intellectuals and political analysts argued that the *Al-Sha'b* campaign had been instigated by political motivation. They also accused groups such as the outlawed Muslim Brotherhood, the traditional allies of the Labour Party, (the party which publishes *Al-Sha'b*), to have also been involved. Another point that observers mentioned was that "*the timing of the newspaper's campaign, ahead of the November parliamentary elections, was also considered to be significant.*"¹²³ However: "*Seif El-Islam Hassan El-Banna, a leading brotherhood figure denied the claims, asserting that the Muslim Brothers would not use Islam to achieve political gains.*"¹²⁴

During the newspaper's campaign and the student protests, Refa'i Ahmed Taha, an exiled leader of *Al-Gama'a Al-Islamiya*, Egypt's largest militant group, urged all Egyptians to follow the example of the religious students, who were rioting over Haidar's novel. Refa'i Ahmed Taha made the statement that:

*"We call on the youth of our Muslim Egyptians, in its universities, cities, villages and factories, to follow the example of their brothers in Al-Azhar University and break the chains they [the government] want for them."*¹²⁵

In reaction to these accusations and particularly to the manner in which *Al-Sha'b* had been quoting extracts from the book, that had invoked such aggressive public response, Haidar Haidar: "*accused his critics of taking the extracts out of context, and said the real message of his novel was totally different.*"¹²⁶ To present the genuine message of the book, he quoted a paragraph where one of the Iraqi characters argues that: "*Islam was the fortress of the old Arab world. We need Mohammed today in the 20th century.*"¹²⁷ Haidar also accused the protesters of "*trying to impose their monopoly of interpreting Islam the way they like. By doing this, they want to impose a totalitarian cultural system after they lost their political battle.*"¹²⁸

¹²³ Halawi, Jailan, 'Shudders of rage,' *ibid.* Also see Hawley, Caroline, *ibid.*

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ BBC New report, *A New Salman Rushdie?*, *op.cit.*

¹²⁷ *ibid.*

¹²⁸ *ibid.*

He also declared that the protest against both him and the Egyptian Ministry of Culture was: "*an attempt to halt the establishment of a civil society that will confront backwardness, reactionism and obscurantism.*"¹²⁹

As the protests increased, a five-member committee was appointed by the Egyptian culture minister, Faruq Husni, to assess the main complaints held against the book. The committee's report described the Islamist campaign against the book as a 'gross distortion.' The inquiry also "*ruled that a celebrated book which provoked rioting earlier this week is not blasphemous.*"¹³⁰ It declared that: "*the novel 'Feast for Seaweed', by Syrian writer Haidar Haidar, has been misunderstood, misquoted and taken out of context.*"¹³¹ The committee concluded that the *Al-Sha'b* newspaper had published extracts presenting the views of only one of the Iraqi characters, and did not present the other characters' response to it. This clearly led to a potentially deliberate misrepresentation of the full nature of the book's genuine context and the tone with which it was written. In a BBC news report, Caroline Hawley presented what the committee had highlighted in its assessment:

*"In one particular extract, it says the paper omitted a punctuation mark, so that it appeared that the Koran [sic] was described with an obscene word, when this was not, in fact, the case. The committee described this as a deliberate provocation."*¹³²

Another interesting case to mention, is that of Mohammad Sa'id al-'Ashmawy who, although an Islamic scholar and a *Shari'a* court judge, has himself had to take twenty-four hour armed police protection, due to death threats by the Islamist groups whose legitimacy he has questioned, following similar statements as cited above, that this article begins with.

¹²⁹ *ibid.*

¹³⁰ Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with stones*, *op.cit.*

¹³¹ *ibid.*

¹³² *Ibid.*

6.4 *The Case of Muhammad Sa'id al'Ashmawy*

In 1991 Muhammad Sa'id al'Ashmawy was criticised by Al-Azhar concerning his various books on Islam, such as *al-Khilafa al-Islamiyya* (Islamic Caliphate), *al-Islam al-Siyyassi* (Political Islam), *al-Riba wa al-Ribh fi al-Islam* (Usury and Interest in Islam) and *Usul al-Shari'a* (Origins of Islamic Law), as they are seen to challenge the Islamists' ideology in many areas. Within his work, he utilises Islamic references as primary sources to confront the Islamists' assertions that Islam contains a complete and unified political and judicial system. Al'Ashmawy argues that this belief is the heart of 'political Islam' and such confrontation provoked outrage and infuriation by the Al-Azhar sheikhs and all Islamist movements.¹³³

In January 1991 an Al-Azhar committee attempted to officially remove five of al'Ashmawy's books from a presentation at the Cairo International Book Fair, but they decided to withdraw their complaint, as al'Ashmawy threatened to sue them in court. Following the Book Fair, al'Ashmawy began to receive death threats from Islamist groups, which led to his present 24-hour armed protection. In the following year, a further action by Al-Azhar was successful in removing eight of al'Ashmawy's books from the presentation at the Cairo International Book Fair in January 1992. This act led to a public outcry as the protestors stated they were witnessing 'a crude act of censorship' by various Egyptian writers, human rights groups and the international media. The public and media attention was such that President Mubarak personally intervened and ordered that the books be returned to the exhibition.¹³⁴

During March 1994, the 'Committee for Qur'anic Affairs and Sciences,' a government institution within the Supreme Council of Religious Affairs, declared that Muhammad Sa'id al'Ashmawy's books were banned from being distributed in public circulation because the books had "*defamed and mutilated the image of Islam, offended the Prophet Mohammed and the early Caliphates of the*

¹³³ Article XIX, *The Egyptian Predicament*, op.cit. p.50

¹³⁴ Article XIX, *ibid.*, p.50. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief: A World Report*, 1997, Routledge, London, p.32

Islamic community."¹³⁵ This decision created a rather inflammatory campaign in the Islamist press, against al'Ashmawy with the accusation that he intentionally harmed Islam. There was a demand for the banning of all of his work and for the prosecution of al'Ashmawy.¹³⁶ His position now is that:

*"despite this campaign, however, and the continuing threat to his safety, Sa'id al'Ashmawy has continued his writings and remains prepared to challenge Islamist dogmas."*¹³⁷

Now the case will be covered, concerning the murder of Farag Foda, who was shot dead in 1992, due to his intellectual arguments and polemical academic views.

6.5 *The Case of Farag Foda*

Farag Foda was an outspoken critic of what he argued were human rights abuses committed by both the Egyptian government and the Islamist groups. He published several books that challenged the Islamist groups' agenda and defended the Egyptian Coptic Christian minority community, due to their suffering of state repression. He also put forward the argument that al-Azhar were in complicity and collusion with the Islamist groups, and in response to this accusation Al-Azhar publicly proclaimed its condemnation of such suggestions and banned Farag Foda's books.¹³⁸

In 1990, on his return to Egypt from a lecture tour in Tunisia, Foda was summoned to appear before the State Security Intelligence (S.S.I.) officials to explain his reasons for writing his book *Nakun Awla Nakun* (To Be Or Not To Be). This 'appointment' with the S.S.I. had been raised following an official complaint put forward by Al-Azhar to the S.S.I., with which they presented their concern for the book and various articles written by Foda, which had been published in newspapers over the previous three years. The articles covered

¹³⁵ Article XIX, *ibid.* p.50

¹³⁶ Article XIX, *ibid.* p.50. Also see the Egyptian Organisation for Human Rights, press release, December 27, 1994.

¹³⁷ Article XIX, *ibid.* p.50-p.51

¹³⁸ Article XIX, *ibid.*, p.51. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief*, *op.cit.*, p.29

various topics, such as violence by Islamist groups and what Foda saw as Al-Azhar's interference in 'freedom of thought.'¹³⁹ Following this 'interview' with the S.S.I., Farag Foda was charged with offending religion, encouraging atheism, objecting to the application of *Shari'a* law and for having offended Sheikh Al-Azhar by not using the Sheikh's official title as 'His Honourable Sheikh.' However, Foda was released without any prosecution, but his book was then banned for sale by the Minister of the Interior.¹⁴⁰ This seemed to start some hostility towards Foda by Al-Azhar, as in mid-1992 a group of Islamist scholars from Al-Azhar distributed a public statement announcing that Farag Foda was a follower of a non-Islamic movement that rejected Islam "*and effectively declared him an apostate.*"¹⁴¹ They also publicly demanded Foda's prosecution and a banning of all of his work.

One week after being declared as an apostate by Al-Azhar, on 8 June 1992, Farag Foda was shot dead by a member of the Islamist group *al-Gama'a al-Islamiyya*. Foda's teenage son was also wounded during the attack.¹⁴² During the court hearing for one of the alleged assassins, the defendant referred specifically to the Al-Azhar statement as providing pure justification for the writer's killing. The group *al-Gama'a al-Islamiyya* announced their responsibility, and justified that the killing was undertaken because Farag Foda was perceived to be an apostate, due to his activity in advocating the separation of religion and the state, and his opposition to the use of *Shari'ah* as the official Egyptian law.¹⁴³ This claim also received unequivocal support from Sheikh al-Ghazzali, who was, at that time, one of the most prominent religious figures in Egypt and the Arab world, and also a member of the influential Islamic Research Academy (I.R.A.) at Al-Azhar. Sheikh al-Ghazzali appeared in court as a witness for the defence "*and told the court that, in his view, anyone who objected to the implementation of the Shari'a is an*

¹³⁹ Article XIX, *ibid.*, p.51

¹⁴⁰ *Middle East Report*, January/February 1993, as cited by Article XIX, *ibid.*, in footnote 54 on p.51

¹⁴¹ Article XIX, *ibid.*, p.51

¹⁴² Article XIX, *ibid.*, p.51. Also see Arzt, Donna E., 'Religious Human Rights in Muslim States of the Middle East and North Africa,' *op.cit.*, p.387-454.

¹⁴³ Arzt, Donna E., *ibid.*

excommunicate and an apostate."¹⁴⁴ He further stated that any individual, or group of people, who killed such a person is not liable to be punished, because in carrying out the act of such a killing they would be executing the legitimate *hudud* penalty on apostasy, within *Shari'a*.¹⁴⁵ Sheikh al-Ghazzali furthered his position on his judgement of Farag Foda in a press interview, stating that:

*"Farag Foda had denied the Rule of Islam to me personally in an open debate at the Cairo Book Fair two years ago. Now a man is free to believe that if he wants to; he can go and sit at home and say it. But this man went out into the streets and worked against the Rule of Islam. This is unacceptable because it strengthens Zionism and colonialism and I am against anything that strengthens these."*¹⁴⁶

Another such case of a physical attack in a public street also occurred to Naguib Mahfouz, who was stabbed in the neck. However, he managed to survive this attack.

6.6 *The Case of Naguib Mahfouz*

Naguib Mahfouz is a world wide respected author of novels, who became a noticeably distinguished writer, having being awarded the Nobel Prize for Literature in 1988. He not only became the first Egyptian, but also the first Arab, to be awarded such an achievement in the world of literature. Mahfouz is a very prolific writer, and has produced many books and articles covering his views on contemporary social and political aspects. Several of his books have also been made into films and/or plays, along with some of his work which has been set as the standard texts for studying within universities and colleges throughout the Arab world.¹⁴⁷

¹⁴⁴ Article XIX, *ibid.*, p.51-p.52. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *op.cit.*, p.32. Also see Arzt, Donna E., *ibid.*, p.387-454.

¹⁴⁵ 'Sheikh Ghazzali's *fatwa*: an invitation to extra-judicial killing', Egyptian Organisation for Human Rights, press release, June 29, 1993, as cited by Article XIX, *ibid.*, in footnote 55 on p.52. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *ibid.* p.32 and also Arzt, Donna E., *ibid.*

¹⁴⁶ *The Guardian Newspaper*, London, April 8, 1994, An interview with Sheikh Ghazzali.

¹⁴⁷ Article XIX, *The Egyptian Predicament*, *op.cit.* p.52

However, irrelevant to his particularly impressive input as a contributor to modern Egyptian literature and thought methodology, a few of Naguib Mahfouz's novels have come to be banned, due to their content which addresses 'politically sensitive' issues. Such sensitive topics include work on Egypt's human rights record, the status of women within an Islamic community and the role of the military in governing the country. Mahfouz has also been openly criticized by Arab nationalists, in response to his support for President Sadat's peace process and the initiatives undertaken with neighbouring Israel. Mahfouz has also been condemned by Islamists due to his promotion of secularism, but in particular, due to one specific novel, *Awlad Haritna* (Children of Gaballawi), that was first published in 1959.¹⁴⁸ From its very first publication in 1959, *Awlad Haritna* was banned in Egypt, by Al-Azhar, because they argued that it offended the Prophets. However, since then, the book has always been publicly available in other Arab countries, although it has remained banned in Egypt, due to some influence by the Islamists. Mahfouz has been the target for a relentless campaign by the Islamists to humiliate him and reduce his reputation, which includes some Islamist literature stating that, because of *Awlad Haritna*, Mahfouz "will burn in hell."¹⁴⁹ Other Islamist publications present cartoons portraying Mahfouz walking into the fires in Hell, while carrying the collection of his books under his arms. One example of this literature, including these cartoons, was published as recently as 1994, entitled *Kalimatuna Fi Radi Ala Awlad Haritna* (Our Response to *Awlad Haritna*).¹⁵⁰

Naguib Mahfouz has been "subject to relentless attacks as the 'corrupter of youth' and 'the filth of the artistic community.'"¹⁵¹ The hostility of the Islamists against Mahfouz is so extreme that several incidents have occurred against him. The Egyptian Organization for Human Rights (E.O.H.R.) supports the view that militant Islamic

¹⁴⁸ *ibid.* p.52

¹⁴⁹ *ibid.* p.53

¹⁵⁰ Kashk, Sheikh, A. H., *Kalimatuna Fi Radi Ala Awlad Haritna* (Our Response to *Awlad Haritna*), 1994, al-Mukhtar al-Islami for Publicization and Printing, Cairo, Egypt; as cited by Article XIX, *ibid.*, in footnote 57 on p.53

¹⁵¹ Arzt, Donna E., *op.cit.* p.387-454.

groups have undertaken relentless attacks on Naguib Mahfouz, which led to the successful banning of the book *Gablawi's Children*. Also, "their own publications include virulent attacks on Mahfouz insisting that he will burn in Hell fire for the book."¹⁵² In 1989, there was a campaign to support Mahfouz, with an attempt to remove the ban from *Awlad Haritna* (Children of Gaballawi). The newspaper *Al-Yasar* allowed a series of extracts from the book to appear in the paper. However, the reaction to this attempt to have the book re-published caused so much public controversy that Mahfouz personally requested the newspaper to stop publishing the book's extracts. As E.O.H.R. commented:

*"By this stage Sheikh Omar Abdul Rahman, the spiritual leader of the militant 'Gamaat Islamia' [sic], had issued a fatwa excommunicating the author and calling on him to repent having written the novel and to denounce it."*¹⁵³

This was also seen to be an almost inevitable reaction to:

*"Mahfouz, who had publicly denounced the death warrant against Rushdie and supported Anwar Sadat's peace accord with Israel, was 'excommunicated' by the fatwa by Sheikh Omar Abdul Rahman, who demanded that the author denounce his own 1959 novel, Children of Gebelawi.[sic]"*¹⁵⁴

When Sheikh Omar Abdul Rahman delivered the *fatwa*, he stated at that time that the author Salman Rushdie would not have dared to go forward and publish his own infamous book *Satanic Verses*, had Mahfouz been correctly punished for his own 'crimes,' much earlier.¹⁵⁵ Following the release of the *fatwa*, Naguib Mahfouz became the victim of a knife attack by a member of an Islamist group, while he walked along the street in Cairo. It has been reported as:

"Following the issue of this fatwa against Naguib Mahfouz, the author was the victim of an assassination attempt by a

¹⁵² The Egyptian Organization for Human Rights (EOHR), 'Fires of Hell' in *Index on Censorship*, May/June, London, Vol.1/2, 1994, p.118

¹⁵³ EOHR, *ibid.* p.118

¹⁵⁴ Arzt, Donna E., *op.cit.* p.387-454

¹⁵⁵ Article XIX, *op.cit.* p.53

*young Islamist militant. The attack, which resulted in Naguib Mahfouz being stabbed in the neck and seriously wounded, was carried out on 14 October 1994, the sixth anniversary of the date on which he had received the Nobel Prize for Literature. The attempt against his life was felt in Egypt and the Arab world 'like an earthquake.'*¹⁵⁶

After this knife attack, two Islamist group members were arrested and taken to court as the perpetrators. During the trial, one of the defendants is reported to have confessed to the 'assassination attempt', which he had undertaken in order to meet the desires expressed in the *fatwa* recently delivered by Sheikh Omar Abdul Rahman. In March 1995, both men were found guilty of the act. Both then received the death sentence, and were executed. One interesting result, concerning this physical attack on Mahfouz, was that following the trial of the attackers, the Egyptian daily newspaper *al-Ahali*, was allowed to publish *Awlad Haritna* in a 'special edition,' despite the novel's ban. However, although the government accepted this, making no attempt to intervene, several journalists at *al-Ahali* received death threats and, within the Islamist press, they were accused of apostasy and were described as being the enemies of God and the Prophet.¹⁵⁷

6.7 The Case of 'Ala' Hamid

In December 1991 there was another prosecution for the crime of blasphemy in Egypt, against the novelist 'Ala' Hamid, for his book *Masafah fi 'Aql Rajul* (Distance in a Man's Mind). As being very similar to the recent case of Haidar Haidar, as mentioned above, Hamid's case also included the book's publisher, Mohammed Madbouli and the printer, Fathi Fadl, being put on trial. 'Ala' Hamid was sentenced to eight years in prison, as the book was argued to be a fictionalised satirical account of the life of the Prophet Muhammad, and was believed to threaten 'national unity' and 'social peace.'¹⁵⁸

¹⁵⁶ Article XIX, *ibid.* p.53. Also see Arzt, Donna E., *op.cit.* p.387-454

¹⁵⁷ Egyptian Organisation for Human Rights, press release, December 27, 1994, as cited by Article XIX, *The Egyptian Predicament*, *ibid.*, in footnote 58 on p.53

¹⁵⁸ Article XIX, *ibid.* p.59

Both Mohammed Madbouli and Fathi Fadl received similar sentences.¹⁵⁹ The case was heard in a special court in Cairo and the final legal sentences delivered were drawn from the part of law that covers anti-subversion, hence including the publisher and printer as accomplices. The book was originally published in 1988 by Madbouli, a respected publisher in Egypt, and reactions against the book initiated in 1989.¹⁶⁰

The Disciplinary Administrative Prosecutor undertook an investigation, following complaints put forward by one of 'Ala' Hamid's work colleagues, at the taxation office. This resulted in Hamid being suspended from work, as his novel was seen to ridicule religions and mock prophets. Several newspaper articles were then published in both pro-Islamist and semi-official media, where Ahmed Bahgat, an Islamist writer undertook a confrontational attack against Hamid through the *al-Ahram* newspaper columns. Through the campaign, the articles by Ahmed Bahgat were: "*accusing him of blasphemy and heresy and portraying him as 'a second Salman Rushdie in Egypt.'*"¹⁶¹ This campaign resulted in Hamid being summoned to the state security police, for interviews for their further investigations. In March 1990, the Islamic Research Academy (I.R.A.) also condemned 'Ala' Hamid's work for it contained: "*ideas advocating atheism, blasphemy and denial of the heavenly religions,*" and they accused the author of both heresy and atheism.¹⁶² Mohammad Hashim Kamali suggests that the reports of the case indicate that: "*it seems that this case was in many ways similar to that of the British author, Salman Rushdie, who blasphemed against Islam in his novel 'The Satanic Verses.'*"¹⁶³ 'Ala' Hamid's book in question, *Masafah fi 'Aql Rajul* (Distance in a Man's Mind) focused as a story based on a sequence of dreams that are formed in a rather discourteous context, portraying the Prophet Muhammad in a very negative manner. This theme is consistent with that presented by Rushdie in his own book.

¹⁵⁹ *ibid.* p.59

¹⁶⁰ *ibid.* p.59

¹⁶¹ *ibid.* p.59

¹⁶² *ibid.* p.59

¹⁶³ Kamali, Mohammad Hashim, *op.cit.* p.290. Also see BBC News Report, *Suspended Sentence for Egyptian 'Blasphemer,'* 8 July 2000, *op.cit.*

After being detained for four months, Hamid, together with Mohammed Madbouli and Fathi Fadl were brought to trial in front of the State Security Court. However, it is interesting to note here that, "*contrary to international fair trial standards, defendants in the State Security Court are denied a right of appeal.*" Although, concerning 'Ala' Hamid's case, newspapers raised the fact that as this case was being heard before the special security courts, this made it a rather unusual location, as the normal practice for security courts in Egypt, was to hear cases that were solely related to political offences, and ones perceived to be threatening to the state.¹⁶⁴ Perhaps also due to these circumstances, any appeals raised against the sentences delivered by the security courts, can only be directed towards the Prime Minister of Egypt, just as the only ratification of the sentences can also, only be delivered by the Prime minister.¹⁶⁵

Referring to how the case of 'Ala' Hamid was anticipated to be dealt with, a BBC World Service news report on the 27th December 1991, stated that no allowance for making any appeal in this case was the generally understood view.¹⁶⁶ This being so, the Egyptian Organization for Human Rights (E.O.H.R.) still worked against the main stream of thought and was reported in *New Straits Times*, a Malaysian newspaper based in Kuala Lumpur, to have made an appeal to the Prime Minister of Egypt, in defence of 'Ala' Hamid.¹⁶⁷ From another perspective it was argued that despite the fact that the very nature of the case involved potential damage to the individual's right to freedom of expression, which the case was clearly based on, nevertheless:

"The response of the Egyptian press to Allaa Hamed [sic] was muted in the extreme. Indeed, shortly after the sentence was pronounced, Tharwat Abaza, President of the Writer's Syndicate, which has generally been seen as a defender of writers, openly attacked Allaa Hamed [sic] in the most extraordinary terms, as 'a superficial boy who dared curse

¹⁶⁴ Kamali, Mohammad Hashim, *ibid.* p.291

¹⁶⁵ *ibid.*, p.290-p.291

¹⁶⁶ BBC World Service radio news report, broadcast on 27 December 1991, personally heard by Mohammad Hashim Kamali, see *ibid.* p.291 and in footnote 7 on p.293

¹⁶⁷ *New Straits Times*, Kuala Lumpur, Malaysia, 6 January, 1992, p.8

*the prophets and offend them, rejecting that the Qur'an is the Word of God...seeking fame by destroying social peace and public security and national unity. Doesn't he deserve to be punished?"*¹⁶⁸

Interestingly enough, Naguib Mahfouz also wrote an article in a newspaper that made reference to the final court verdict upon Hamid. Mahfouz's article declared that he and several other Egyptian writers and intellectuals were astounded by the seemingly harsh and severe nature of the penalty delivered and also the manner in which Hamid had been tried and convicted. In a thoughtful re-assessment of how the case could, or should, have been dealt with, Mahfouz argued that:

*"Would it not have been better to rationally analyse and criticise the book and then shelve it, if you will, among all those other books that have, since the Middle Ages, attacked Islam?"*¹⁶⁹

These comments were reiterated in December 2000, by Samir El-Bagouri; Salaheddin Mohsen's defence lawyer in his recent case, as stated above.

As all security court sentences delivered "*are subject to ratification by the Prime Minister, before they may be implemented, and, to date, such ratification has not been forthcoming,*"¹⁷⁰ this must mean that up until 1997, when the organisation Article XIX published this information in their document, *The Egyptian Predicament: Islamists, The State and Censorship*, no ratification of the sentence on Hamid had been acknowledged so far. However, as that may seem as rather good news for the convicted man, who has been sentenced but has still not yet been put into prison, the story of Hamid's legal case did not end there. While he was living in the permanent fear and expectation of either being imprisoned by the government with the eight-year sentence, or being physically attacked or even killed by Islamist militant groups; in October 1993, he then became involved

¹⁶⁸ Article XIX, *The Egyptian Predicament*, op.cit. and the quote is cited from *Al-Ahram*, 13 January, 1992, see Article XIX ibid., in footnote 74 on p.60

¹⁶⁹ Hashim Kamali, op.cit. p.291

¹⁷⁰ Article XIX, op.cit. p.59

in another court case, concerning his book *al-Firach* (The Bed). The result of this case caused another conviction, and he was sentenced to one year in prison. The court declared that the second book, *al-Firach* (The Bed), included sexually explicit material that presented: “disrespect for religious clerics and advocates immorality, sexual freedom and the non-commitment to the legitimacy of marriage.”¹⁷¹ After this second court case, while still not having been imprisoned, although he had been found guilty and had been sentenced to a second prison term, he was dismissed from his employment in the government tax office, because: “an administrative court ruled that the ideas expressed in *al-Firach* made him a permanent danger to his female colleagues.”¹⁷² *Al-Ahram* newspaper also referred to *al-Firach* as the foundation that would lead to “the destruction of social, religious and moral values.”¹⁷³ Although he submitted an appeal against the second conviction to the one-year prison sentence, the appeal process rejected the claim in May 1997, and he then started his one-year jail period, at that time.¹⁷⁴

7. Conclusion

The concept of blasphemy within the Qur’an is held as the opposition (*muhadadah* or *mushaqaqah*), to insult (*adha*) God and the Prophet, which closely resembles high treason. The prominent political relevance of these offences, during the early days of Islamic establishment, can be identified in the hostile reaction to it, which led to the Prophet to be involved in some eighty-five battles, following his migration to Medina and becoming the head of state.¹⁷⁵ Kamali puts forward the argument that it is now essential to form a distinct separation between the political and religious content of blasphemy. This is based on the fact that there was a predominant political basis to this offence during the early days of Islam – and thus, more so, that it is now no longer a specifically political offence in contemporary times. Blasphemy was seen then as a strong threat to

¹⁷¹ *ibid.* p.48 and p.60

¹⁷² *ibid.* p.60

¹⁷³ Reuter News Service, 13 July, 1994, as cited by *ibid.* in footnote 75 on p.60

¹⁷⁴ Article XIX, *ibid.* p.60

¹⁷⁵ Kamali, Mohammad Hashim, *op.cit.* p.247-248

the continuance of Islam, as it was a 'new faith,' and the newly established state had no firm basis to defend itself from the constant hostility thrust upon it.¹⁷⁶

Making comments on the assessment of the apostasy cases at that time, and concluding them to be a political offence, 'Abd al-Hakim Hasan al-'Ili analysed the cases and promoted the corollary that the Prophet had permitted the death sentence for apostasy under his authority as the political leader at that time. He also had the capacity of discretionary decisions of judgement, so: "*as such, the Prophet himself has treated apostasy as a ta'zir offence.*"¹⁷⁷ It is recorded as evidence that the Prophet exempted several people from the death sentence, who had not just renounced Islam but had also vilified and insulted him. Kamali mentions that throughout this assessment, the word 'apostasy' is used synonymously with 'blasphemy' as most, if not all, of the cases that involved apostasy were interwoven with blasphemous attacks upon Islam or the Prophet. This was such a common occurrence that the two offences became indistinguishable.

Although the crimes committed were politically rebellious, they were also simultaneously inclined towards having a religious emphasis. Islam had no separation between religion and politics, or religious and civil authority, in the very early stages of the Islamic state. In principle it still possesses that structure today, with little or no separation of state and religion. However, Kamali argues that the things that have changed throughout history include the distinction between the crimes that are categorised as having a religious, and those having a political nature. This has been both widely recognised and also widely practised. The political crime of treason has been treated in a different manner than that of blasphemy. The obvious gravity with which treason is regarded has much more weight than the way in which blasphemy is regarded. This can be due to the more modernised structure of the state, compared to the first state that was established in Medina. Kamali succinctly explains this historical change so:

¹⁷⁶ *ibid.* p.248

¹⁷⁷ *ibid.* p.248

*"Whereas the state in Medina under the leadership of the Prophet and the Rightly-Guided Caliphs, was clearly committed to, and rooted in, the ideology and religious law of Islam, and political loyalty was measured by these criteria, this is no longer the case with the nation-state today."*¹⁷⁸

Due to this, the whole consideration of the crimes of apostasy and blasphemy has changed, as they presently do not relate, in any definitive way, to a political motive. If this is the case, it would be more logical to reconsider the penalties and punishments related to the change of the crime's basis. Kamali suggests that, as blasphemy is no longer to be seen as a political crime on the same level as any subversive treason would be, and it is not one of treason's accompanying effects, it is now not allowable to treat it in the same manner that it had to be treated historically, in Medina. However, blasphemy is still a very dangerous offence, openly inciting violence and the loss of life through the chaos it creates. It seems to: *"pose a threat to law and order in society, as was seen in the aftermath of Salman Rushdie's misguided venture. But even so, blasphemy today can in no sense threaten the existence or continuity of Islam as a great religion, a legal system and a major civilisation"*¹⁷⁹

Kamali argues that, historically: *"The scholastic doctrines of the madhahib treated blasphemy and apostasy on the same footing and viewed blasphemy as an extension of apostasy, a position which is no longer justified."*¹⁸⁰ He clearly concludes that blasphemy should be categorised as a *ta'zir* crime, that allows the judge who is considering any case, to have the discretion of what sentence to deliver, depending on the surrounding circumstances in each individual case. His final words explain that a clearer definition of the crime itself, should also be achieved, to overcome any ambiguity and confusion that may exist:

"Based on this appraisal, the precise definition of blasphemy, the acts and words that incur this offence, and

¹⁷⁸ *ibid.* p.249

¹⁷⁹ *ibid.* p.249

¹⁸⁰ *ibid.* p.250

then the quantum of the punishment, may be determined and specified, or amended and refined as the case may be, by the legitimate political authority and legislative organ of the state in modern times."¹⁸¹

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