

Blasphemy in Islamic and Pakistani Law

(A comparative study)

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Abstract

Blasphemy is one of the most important and sensitive issue in Islamic Law and as well as in contemporary criminal law, while it has been recently exploited by the international human rights activists due to its rigorous punishment in Pakistan Penal Code (PPC) on the basis of Shariah commandments which is exclusively recommended as death penalty. This issue will be analyzed in the light of Quran and Sunnah along with viewpoints of the prestigious Muslim Jurists and practice of Muslim Ummah from the era of the Prophet (PBUH) till today.

Institution of Islamic Law has primarily five objectives, and the first one is to preserve and protect the religion of believers. Therefore, anyone who reverts will be punished by the state as it has been prescribed by Shariah. But the question arises whether the punishment of Murtad (Apostate) is Hadd or Ta'zir. This question has been discussed in detail and different viewpoints have been presented. The case of MUHAMMAD ISMAIL QURESHI Petitioner versus PAKISTAN in 1990, when the FEDERAL SHARIAT COURT of Pakistan, has examined the law under the authority conferred by constitution of Pakistan that the said discretionary power is repugnant to the injunction of Islam and only death penalty should be fixed by legislative Act.

Key Words: Blasphemy, Apostasy, Punishment, Hadd, Ta'zeer, Narrators, Jurists, Islamic Law, PPC.

The Concept of Blasphemy in Islamic Law

Literally in Arabic Language the word “Sab” and “Shatm” and “Eza” have been used for the contempt of the Holy Prophet in Holy Quran and Sunnah. “Sab” means to suffer, to harm, to molest, to condemn, to insult, to annoy, to irritate, to injure, to trouble, to malign, to degrade, and to scoff.¹ The Arabic word “Shatm” means: to insult, to abuse, to revile, to scold, to curse, to defame.²

Technically the concept of Blasphemy in Islamic Law is wider than its practice that is concluded as: any attempt of to contempt or any derogatory remarks regarding Allah

almighty, the Prophet(PBUH),all prophets and any symbolic of Islam will be considered as Blasphemy as it has been clearly stated by Muslim Jurist³ while we will circumvent the discussion into the contemptor of the Prophet.

Allama Ibne Taimiyah stated while explaining the significance of the contempt its means: “to curse the Prophet, prays for any difficulty for him or refers to him such a thing which does behove with his position or uses any insulting falls and unreasonable words or imputes to him or blames him with any human weakness etc.”⁴

Apostasy and Blasphemy

Blasphemy is deeply related with Apostasy, due to its interrelation with each other concerned to the apparent consequences of both issues. Obviously Muslim Jurists have the opinion that contemptor would be considered as Infidel. So it is needed to settle the issue for the designation of punishment of contemptor.

Linguistically, the word “apostasy” in Arabic is derived from “turning back” or “backsliding”. So an apostate is a backslider;Allah, Exalted be He, says:“.... And do not turn back...”⁵

That do not turn backside.

In Islamic law an apostate is the one who willingly turns back after embracing Islam, whether through utterance, belief, doubt, or action.⁶

So the contemptor is also considered apostate due to his backsliding and will be dealt as apostate. In Islamic Law there are prescribed penalties imposed of the apostate in this world, and the hereafter, Allah says:

“... and whoever of you reverts from his religion (to disbelief)and dies while he is a disbeliever - for those, their deeds have become worthless in this world and hereafter, and those are the companions of the fire, they will abide therein forever.”⁷

Allah Almighty did not mention the penalty of apostate in the above mentioned verses of the Quran but the Holy Prophet (PBUH) stated in the Hadiths which has been narrated by the authority of the many of his companions as: Abu Musa Ashri (R.A), Ibne Abbas, Ali bin Abi Talib etc by various ways and words which may be summarized as:

That the one who apostatizes will be given death penalty by the state. The words of the Hadith are very clearly indicates that:

*“If anyone (Muslim) changes his religion (i.e. apostatizes) kill him.”*⁸

Confusion regarding narrator Ekrama(RA)

The narrator of this Hadith is Ekrama who is criticized by those who denied the Hadd punishment of an apostate,while there is a confusion between two names; Umar bin Ata Mula of wirraz and Juraj narrating from him,this one is criticized by Muhadditheen and Yahya bin Mohin says that he is nothing.⁹

While the Hadith narrated by Ekrama who was Mula of Ibn Abbas and he has verified by all of the Muhaddetheen like Yahyah Ibn Muhin¹⁰, and Ibn Hajar declared him as *Seqah* (authentic), *Sabat*, and Expert in Tafseer¹¹, and Hafiz Ajli remarked that he is *Seqah* and there is nothing what some people said about him he is also a *Tabi’ee*¹².

Another renowned and authentic Muslim scholar Imam Haithami stated that it is only narrated by Ekrama but there is other supportive authorities which has been narrated by the lots of companions which has got status of *Shuhra*(near to *mutawatir*) as narrated by *Tabrani*

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from Abu Huraira(RA) with excellent narration(*Isnad Hassan*) and also narrated by Muaawiya binHeeda(RA),and all of the narrators are Seqat likewise Imam Mlik narrated in his *Mowatta* from Zaid bin Aslam.¹³

Other narrators

This authority has narrated by Bukhari by two chains:

The first chain of narrators

1. Ali Ibn Abdullah al-madini who is Seqah.¹⁴
2. Sufyan Bin owaina who is a prominent *Muhadith* and *Tabi'ee*.¹⁵
3. Ayub al- Saktiyani who is Seqah¹⁶

The second chain of narrators

1. Abu Nu'man Muhammad bin Alfazal Alsudusi titled by Arim. He is Seqah and Sabat.¹⁷
2. Hamad bin Zaid. He is Seqah and the one of the most authentic narrators.¹⁸

There is another authentic narration of Hazrat Usman (RA) when rebellions besieged him,he said," why you don't know? Allah Messenger said," *The blood of Muslim who testifies that there is no god but Allah, and that I am Allah's messenger, may not be lawfully shed but one of three reasons: one who turns away from his Islam, a married man who commits fornication, a life for a life.*"¹⁹

The Narrators

1. Sulaiman bin Harb al Azdi. He is Seqah,Imam and Hafiz.²⁰
2. Hamad bin Zaid. We have discussed him above.
3. Yahya ibn Sayeed bin Qais al Ansari. He is Seqah and Sabat.²¹
4. Abou Aumama bin Sahl. He is one of the companions of the Prophet (PBUH).²²

The same authority by the Hazrat Usman (RA) narrated by the following chain:

1. Wakee bin Jarrah. He is Seqah.²³
2. Muhammad bin Qais bin Rabih. He is Sadooq and Sufian bin owaina and who narrates from him.²⁴ Ibni Hajar says: He is Seqah and Sadooq.²⁵
3. Dawood bin Haseen. He is also seqa.²⁶

With the same meaning, it has been narrated by Abdullah bin Mas'ood that Allah's messenger said:

*"The blood of Muslim who testifies that there is no God but Allah ,and that I am Allah's messenger, may not be lawfully shed(killed) but one of three reasons: a married man who commits fornication, a life for a life ,and one who turns away from his religion and abandons the community".*²⁷

It has also been reported by Hazrat Aisha (RA) that Allah's messenger said:

*" A Muslim may lawfully be killed only for one of the three cases, a married man who commits fornication in that case he should be stoned to death, a man who kills a Muslim deliberately for which he should be killed and a man who apostatizes from Islam and fights with Allah and his messenger , in that case he should be killed and crucified or banished from the land"*²⁸.

Apostasy takes place by committing one of the breaches of the Islam, whether seriously, playfully or mockingly, Allah Exalted He, Says:

*".. and if you ask them, they will surely say, we were only conversing and playing, say, Is it Allah and His Aayat (proofs, evidences, verses, lesions, science, revelations etc) and His Messenger that you are mocking? Make no excuse, you have disbelieved (I. e. rejected faith) after your belief if we pardon someone...."*²⁹

In the above mentioned verse Allah Almighty is taking strictly action against those who even mocks his messenger and enounced of no excuse for him then what will be the case of a person who clearly contempt Prophet (PBUH)?

Another Hadith narrated by Abu Dawood that:

*" On the day of Fateh e Makkah(Victory of Makkah) the Prophet(BUH) forgave all the people except the fours, at that time Hazrat Usman (RA) came along with Abdullah bin Abi Sarh and asked the Prophet to swear him but the Prophet declined three time and then accepted the request. After wards he said to the companions: Is there was no one among you who kill him at the time when I declined?"*³⁰

In the said Hadith there are two types of crime which has been committed by Ibn e Abi Sarh 'one of them is apostasy ' while the second one is high treason by his involvement in anti-Islamic activities under the umbrella of Darul Harb ' so in this case when he repented it was accepted but due to high treason he was liable to death penalty until his pledge was accepted and the case were become more sensitive after Hazrat Usman has given him protection which has high value in Arab custom as well as in Islam therefore companions have keep refrain themselves from any such type of action against him .and were waiting for an a clear decision of the Prophet (PBUH).

And in the Hadith of Mua'az bin Jabal when he was sent to Yaman the Prophet (PBUH) ordered him," *anyone who apostates preach him, if he do not accept kill him, likewise any woman if apostates preach her otherwise kill her.*"³¹

It has also been reported by Abu Musa (RA) that a Jew embraced Islam and then reverted back, when the Mua'az (RA) came to know he said,

"I will not sit until he is killed." So he was killed.³²

Practice of Sahabah (The companions of the Prophet)

There are so many cases in the era of the Rightly Guided Caliphs in which the ruling was so clear about the death penalty of an apostate as narrated by Ali Ibni Talib,³³ Tawoos from Ibn Abbas³⁴, Bahaz Bin Hakeem from his grandfather³⁵, Anas is from Ibn Abbas³⁶, Shaabi form Ali Ebni Abi Talib³⁷, and Ayub Bin Abi Tamima from Ibn Abbas³⁸.

Therefore, it has been cleared from the above discussion and different *Ahadith* that the objection raised by many critics that the Ikrama is the sole reporter from Ibn-e-Abbas is not true and this argument is baseless.

It has also been disclosed that from the above Ahadith that all companion of Prophet (SAW) are agreed unanimously upon the death penalty of apostate.

Consensus among Muslim Scholars

There is consensus among Muslim scholars on this judgment and its relevant ruling,such as separating between the apostate and his wife and preventing him from

disposing of his property before killing him as it has stated in "Hedayah" a prominent book of the Hanafi School of Thought:

"Whenever a Muslim apostate he will be imprisoned for three days and if come back in Islam he will be released otherwise will be killed" ³⁹

While it has been declared in Mujmooh Shar ul Muhazab a well-known book of Shafa'ee School of thought that:

*"Anyone who backsides from Islam will be killed whether he is a free person or a slave and Muslim Jurists have agreed upon the death penalty of the apostate."*⁴⁰

Ibne Rushed al-malkihas written that:

*"it is clearly stated by Muslim jurists that When an apostate has captured before fighting with him he will be sentenced to death without any other option before judge, due to the saying of the Prophet (PBUH): Who backslides from Islam he will be killed".*⁴¹

Likewise, Ibne Qudama from Hanbli School of Thought says while discussing the issue of apostasy:

*"that Muslim Jurists have consensus upon the compulsory death penalty of apostate which is narrated by Abu Bakar (RA), Umar (RA), Usman(RA), Ali(RA), Maaz (RA), Abu Musa (RA), Ibne Abad (RA), and Khalid(RA) etc while no one from the companion of the companions of the Prophet (PBUH) went against this which shows the consensus of the companions regarding the death penalty of the apostate."*⁴²

In the above juristically text it has been proved that all schools of thought are agreed upon the death penalty of the apostate which is the only punishment without any other option, and they have clearly mentioned that this punishment is obligatory in Islamic Law, but the question is that it will be considered as Hadd or Discretion of Imam (the State)?

Allama ibn Abideen has discussed in his Rasaeal about the said issue in detail, which can be concluded in the following points:

1. Consensually the apostate will be killed, and his repentance will be accepted, if he is not *Zindeeq*⁴³.
2. There is a basic difference between the death penalty of an apostate and original infidel one because in case of an infidel the Imam will offer him three options, killing, slaving, and putting Jezya (poll tax), while in case of apostasy, death is a special penalty because of the right of Allah, without any other option, so it means that it is *Hadd* penalty.
3. Apostasy is an exceptional case which is to be pardon if he repents, as it has been stated in the Holy Quran:

*"Say to those who have disbelieved (that) if they ceased, what has previously occurred will be forgiven for them....."*⁴⁴

It resembles to the case when a person has been convicted through his confession for fornication/adultery and then reverted back from his confession will not be punished as Hadd.⁴⁵

So in the above case when the reason of the penalty has been not existed then he will not be punished. And also no one can object that this is a unique and an exceptional case due to its nature. On the basis of hadith of Prophet (PBUH) one's coming back to Islam is just like that he was in Islam and he has committed no crime. Hadith of Prophet (PBUH) that: "Islam demolishes all what was done before embracing Islam."⁴⁶

So the same point of view has been adopted by Qazi Ayaz⁴⁷, Ibn Munzir⁴⁸, Muhammad bin Sahnoon⁴⁹, Alkhatabi⁵⁰, and Ishaq bin Rahwai⁵¹ regarding the death penalty of the apostate.

Punishment of apostasy

Regarding the nature of punishment of apostasy that whether it is Hadd (Right of Allah) or Siyasat (Right of State or political punishment), so majority of the Jurists have the opinion that it is a Hadd while the Hanafi School of thought considered it as a *Siyasah*. But confusion has been created by Fatawa Bazazia who declared it as Hadd and also according to his predecessor Qazi Ayaz Malki who also stated in his book “Al Shifa” that *Riddah* is Hadd in Hanafi School of Thought. Afterwards many of Hanafi Jurists have blindly quoted Fatawa Bazazi in this regard without consulting classical Hanafi views. Actually the punishment of Hadd is not laid down under rules and characteristics of Hadd because they have been accepted as an exceptional in many cases which is clearly contrary to its rules, e.g.⁵²

- I. Hadd cannot be proved by *Khabar al Ahad* (Hadith reported by one authority) according to Hanafies, the ahadiths relating to this issue are not more than Khabar al Ahad.
- II. Repentance is not acceptable in Hudood but in the case of riddah Hanafi Jurists along with Imam Shafi have view to accept repentance even at third or fourth time. Moreover time of three days has to be given to an apostate to rethink and it will be strived to remove his doubts about Islam.
- III. Woman is not liable to death penalty in case of apostasy at Hanafi School of thought. As Ibn A’abidin says that woman is not sentenced to death because she is not creating high treason and if she does then she will also be executed. It means that according to the Hanafies it is not a Hadd, because in Hadd there is no difference of man and woman.
- IV. The cause of death penalty in case of riddah is not only riddah but persistence on it. So how an infidel can be punished by as Hadd because he is not an audience (Mukhatab) of Islamic Law as per rule and Hadd could not be implemented upon him (infidel).

More over there is a tradition:

*The blood of Muslim who testifies that there is no God but Allah, and that I am Allah’s messenger, may not be lawfully shed but one of three reasons: a married man who commits fornication, a life for a life, and one who turns away from his religion and abandons the community”.*⁵³

“Abandons the community” means that the penalty of Riddah is because of high treason created by him not only because of Riddah.

While the order of death penalty in Sunnah is due to involvement in high treason (Fasad). Therefore it may be divided into ردة مجردة (simple apostasy) and ردة مغلفة (apostasy with High treason) and the second one is accompanied with high treason.

Blasphemy Law in Pakistan:

In Pakistan during the process of Islamization of laws, blasphemy has also been declared as a crime, and a section has been inserted in the Pakistan Penal Code, 295 –C, which states that,

“use of derogatory remarks, etc :in respect of the holy Prophet, whoever by words , either spoken or written or by visible representation, or by any imputation , innuendo or institution, directly ,or indirectly, defiles the sacred name of the holy Prophet Muhammad

*(PBUH) shall be punished with death , or imprisonment for life , and shall also be liable to fine “.*⁵⁴

In the above legal section of Pakistan penal code, court has been given option to award either death penalty to the contemnor or if it is considered more appropriate imprisonment of life it may be awarded.

In the light of 295 C we can say that it is declared “Siyasat” because according to the section, the judge has been given a discretionary power.

On the other hand the situation become more interesting in the case of MUHAMMAD ISMAIL QURESHI Petitioner versus PAKISTAN through Secretary, Law and Parliamentary Affairs Respondent Shariat in 1990, when the FEDERAL SHARIAT COURT of Pakistan⁵⁵, has examined the law under the authority conferred by constitution of Pakistan that the said discretionary power is repugnant to the injunction of Islam and only death penalty should be fixed by legislative Act. As stated in the judgment that.

*“In view of the above discussion we are the view that the alternate punishment of life imprisonment as provided in section 295-C, P.P.C. is repugnant to the injunction of Islam as given in the holy Quran and Sunnah and therefore, the said word be deleted there from”*⁵⁶

In the above paragraph “said word “means the punishment of imprisonment for life which has been directed to removed and make an amendment in the said law as it is the constitutional demand and responsibility of the government of Pakistan ,

In the said case it has been stated that if the authority has failed in carrying out the order of the court according to the amendment of the said law then,

*“in case, this is not done by 30th April, 1991 the word “or imprisonment for life “ in section 295 –C shall cease to have effect on that date”*⁵⁷

It means that the honorable court has declared it as “Hadd” punishment which cannot be changed and cannot provide any discretion to the judge. Here the court has adopted the opinion of the other Muslim jurists than Hanfi school of thought.

Conclusion:

The said issue of blasphemy may be concluded and analyzed as:

Blasphemy is apostasy because contempt of Prophet (SAWM) is considered one of the cases of apostasy and the punishment of an apostate is sentenced to death as stated in different Ahadith, and the Practice of the Companions of the Prophet (SAWM) like Hazrat Umar (RA) and Hazrat Ali (RA).

Muslim Jurists have agreed upon the death penalty of an apostate, but they have adopted different point of view regarding the interpretation of such Ahadith, whether it is Hadd or Siyasa. Majority of the jurists (Jamhoor) counted it as Hadd. But in original Hanafi School of thought it did not clearly mention that it is Hadd, and in fact it is very difficult to considered it as Had according to their principles (Usul) because of status of the authority which is Khabr e Wahid, and due to acceptance of his repentance and excluding of woman from death penalty which shows that is not Hadd but Siyasa (political punishment). This shows that apostasy is not treated as Hadd in the classical Hanafi School of Thought.

In the Pakistan Penal Code, its punishment has been declared as “Tazir” and court may award according to the situation either death penalty or imprisonment for life. But according to the court decision in the above-mentioned case its punishment has been fixed in the shape of death as a Hadd.

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