

Freedom of expression, apostasy, and blasphemy within Islam: *Sharia*, criminal justice systems, and modern Islamic state practices

Javaid Rehman investigates the uses and abuses of certain interpretations of *Sharia* law and the *Quran*.

The Danish cartoon saga and the Salman Rushdie affair represent two high profile examples of alleged intolerance of Muslim communities. Both cases are alleged to have insulted Islam and the Prophet of Islam, Prophet Muhammad. These cartoonists and Salman Rushdie continue to face serious threats – including threats to their life.

Both instances have precipitated considerable violence at a global level, despite both instances occurring outside of Muslim majority states. In Muslim majority states, particularly those enforcing the *Sharia* – Islamic legal system – there have been demands for the punishment of blasphemers and apostates. Such demands can be accommodated within the criminal justice systems of many *Sharia*-compliant states: in these states apostasy and blasphemy against Islam are recognised as criminal offences, with the respective legal systems sanctioning severe penalties, including the death penalty. Despite the apparent harshness of the legal systems, as this paper explores, these punishments are based only upon Islamic traditions and subjective interpretations of the *Sharia*, rather than any established, firm legal principles. Furthermore, the implementation of the so-called anti-blasphemy and apostasy laws relate

almost exclusively to eliminating either political dissidents or targeting vulnerable religious minorities.

Islamic law is often referred to as the *Sharia*. *Sharia* places its primary reliance on the *Quran* (the Muslim Holy Book) and the traditions and practices of Prophet Mohammad, known as *Sunna*. Different Islamic Schools have also with varying degrees relied on a number of secondary sources of Islamic law. Within the *Sharia*, apostasy and blasphemy are treated separately, although there is often considerable overlap. Apostasy (also known as *Ridda*) occurs when a Muslim (by his words or actions) renounces and rejects Islam. Rejection or criticism of the All Mighty or His Prophet is perceived as an insult to Islam, offensive and routinely regarded as blasphemous. Apostasy is universally acknowledged by Muslim jurists as a *Hadd* offence alongside adultery, defamation, alcoholism, theft, brigandage and rebellion, and corruption of Islam (Bassiouni, 1982) – the most serious offences within the *Sharia*, for which fixed, mandatory punishments have been prescribed. Classical, as well as some modern, interpretations of *Sharia* regard the death penalty as the most appropriate punishment for apostates. Blasphemy connotes the insult of God or Prophet Mohammad and other revered figures in Islam,

and can be committed by believers and non-believers alike. Apostasy from Islam and blasphemy against Islam therefore remain (and have always remained) unacceptable.

Despite the grave nature of the offences, the precise remit of punishment for apostasy and blasphemy remain the subject of intense controversy. The *Quran* condemns apostates noting that ‘for those who disbelieve in their Lord is the chastisement of hell, and an evil resort it is’ (*Quran* 67:6) and ‘whoso seeks a religion other than Islam, it shall not be accepted from him, and in the life to come he shall be among the losers’ (*Quran* 3:84–86). Despite the condemnation of apostates, the *Quran* does not explicitly prescribe criminal sanctions: the only punishment, albeit a serious one, is eternal hell in the hereafter. The sanctioning of the death penalty for apostates is derived from a *Sunna* of the Prophet, whereby the Prophet commanded ‘whoever changes his religion, kill him’ (Khatturi, 1955). However, as the Prophet did not implement this sentence himself, the validity of this *Sunna* is open to challenge.

There are thus no clear, unequivocal *Sharia* principles sanctioning the imposition of criminal liability upon apostates. The *Quranic* injunctions are no more than comments on vile or immoral behaviour. Even critics acknowledge the absence of any criminal law sanctions for apostates. Arzt (1995–1996) notes that *Quranic* ‘verses cajole the Muslim into adhering to the faith, to avoid the temptation to convert, but the exhortation is moral, not penal. Moreover, during his lifetime, Muhammed is said never actually to have executed persons, who, once having adopted Islam later renounced it’. There are also well-publicised disagreements amongst the four *Sunni* Schools of Islam as to the penal punishment to be awarded to apostates: the *Hanifis* would not agree to the execution of women apostates, while the *Shafi* and the *Malikis* allow period for repentance before the implementation of the death penalty. More recently, a growing body of Islamic jurists have relied on *Quranic*

verses which advocate absolute freedom of religion. In the re-interpretation of classical *Sharia*, these jurists argue for the recognition of a guaranteed right of freedom of religion or belief including atheism or the rejection of Islam (Rehman, 2005). Some other modern Islamic scholars reserve penal sanctions only in instances where apostates challenge the writ of the Islamic state. Similar controversies are also found in relation to blasphemy within the *Sharia*. Juristic opinion remains divided on the scope of punishment in relation to blasphemy, in the absence of unequivocal statements in the *Quran* and *Sunna*. Consequently, a significant body of Islamic jurists have restricted the criticism of blasphemers to moral condemnation and punishment in the hereafter. However, there is considerable juristic opinion which perceives blasphemy as an offence warranting serious criminal law sanctions, including imprisonment, flogging, and the death penalty – as demonstrated in official state policies.

In the presence of such significant uncertainty and ambiguity, the continued retention of penal laws within Islamic states targeting apostasy and blasphemy is notable. In explaining this phenomenon, a number of patterns emerge. With the politicisation of Islam, the criminal justice systems in several Muslim majority states have been manipulated to empower the political elite (often working in conjunction with religious clerics). Secondly, the enforcement of these draconian laws has provided an excuse for the elimination of political opponents or moderate reformers. Thirdly, apostasy and anti-blasphemy laws have been manipulated in order to marginalise religious minorities or vulnerable communities. In 1984, Mahmoud Mohamed Taha, a religious reformer and political opponent of President Jaafar Nimeiry of Sudan, was executed on trumped up charges of apostasy. The absence of legal and procedural safeguards confirmed the political nature of the proceedings. Additional examples of persecution can be found in the cases of Taslima

Nasrin in Bangladesh (1994) and Iranian academic Hashem Aghajari (2002). Nasrin provoked the wrath of the religious lobby with her suggestion that 'the *Quran* should be revised thoroughly' whereas Aghajari urged Muslims against blindly following the clergy. One of the most publicised cases, was the *fatwa* (legal opinion) issued by the late Ayatollah Khomeini of Iran in 1989 against the British author Salman Rushdie, in which Rushdie was condemned to death for his depiction of the Prophet Mohammed and his wives.

The dictatorial regime of General Zia (1977–1988) introduced draconian and arbitrary anti-blasphemy legislation in Pakistan. While ostensibly aimed at the Islamisation of Pakistan, the primary purpose of these laws was to strengthen Zia's theocratic and religiously fundamentalist regime. Chapter XV of the Pakistan Penal Code (PPC) 1860 (as amended) lists in Section 295–297 a series of offences 'relating to Religion'. The most controversial, however, has been the interpretation and application of Section 295–C of the PPC, which has made it an offence (subsequently held to be punishable by death) to make derogatory remarks about the Holy Prophet. The interpretation and application of the so-called anti-blasphemy laws, in particular Section 295–C, has been extremely unfortunate. Muslims as well as non-Muslims have been charged with the offence of blasphemy, with spurious charges such as support for Rushdie, or for the Ahmaddiyas displaying the *Kalma Tayyaba* in their shops or for offering *Azan* (Islamic call for prayers) (Rehman, 2001). It must be emphasised that the overall impact of these laws has been regrettable; not only have they produced a culture of religious intolerance, bigotry, and fanaticism but they also deter any form of rational and tolerant expression on matters pertaining to religion. This has created an environment which inculcates a sense of fear; religious extremists consider any criticism of existing political and socio-economic evils within the 'Islamic State' to contravene the blasphemy laws. Cases have been registered

against non-Muslim minorities and Muslims alike, under the blasphemy laws. The situation is such that even a recommendation to reconsider the existence of these laws potentially evokes serious recriminations and, therefore, any official proposal of repeal appears unlikely.

The primary sources of the *Sharia* – the *Quran* and *Sunna* – disapprove of blasphemy and condemn apostasy. The *Quran*, however, does not provide any criminal sanctions for apostates or blasphemers in the manner that it sanctions punishments for adulterers or thieves. Furthermore, there are *Quranic* verses which provide compelling evidence to support freedom of religion and freedom of expression. This paper has attempted to establish that the regimes which continue to apply punitive sentences for blasphemy or apostasy do so primarily for selfish, political motives. Apostasy and anti-blasphemy law are regularly abused: these laws are inherently vague and are applied arbitrarily. Neither the *Sharia* nor international human rights law sanctions their application (Rehman, 2009). ■

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