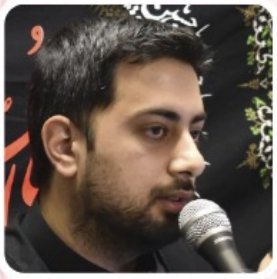
The Apostasy Ruling and its Justification in Twelver Shi'i Jurisprudence



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This study analyses the issue of apostasy in Islam, what constitutes an apostate in light of traditional Shi'i jurisprudence and its penalty.

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Introduction

Freedom of speech and thought are deemed to be some of the most fundamental rights humans possess today. The Islamic orthodox tradition has often been open and comfortable to hearing different opinions, verdicts and claims made by Muslim citizens, scholars, and rulers. Nevertheless, one of the most targeted areas within Islamic law in modern times, has been the Islamic ruling on apostasy. This is particularly true with the rise in discourse regarding universal human rights over the last century in the Western world.

Generally, Muslim jurists have considered the penalty for apostasy for a man to be execution, and for a

woman life-imprisonment. This study intends on first looking at what constitutes an apostate in light of traditional Shi'i jurisprudence, and evidence that is brought forth for its death-penalty for a man. Then it will shed light on evidence used by certain recent Shi'i scholars who hold contrary views. These counter-arguments will be investigated and an argument will be made proposing a serious need for thorough discussion on methodologies, if counter-arguments for the law of apostasy are to ever enter the mainstream.

Definition and Punishment of an Apostate

Traditionally, Muslim scholars have spent a tedious amount of time clarifying definitions and implications of various jargon and concepts in their works. Needless to say, apostasy has not been an exception. 'Allamah al-Ḥilli (d. 1325) defined apostasy as the abandonment of Islam by a responsible individual, either through their actions – such as prostrating to an idol or worshipping the sun – or by statements made against Islam whether due to enmity, mockery, or a certain theological belief (1410 AH v.2, p.189).

Al-Shahīd al-Thānī (d. 1558), in his commentary on *al-Lum'a* of al-Shahīd al-Awwal (d. 1385), defines apostasy as disbelief after Islam, irrespective of it being restricted to one's intentions, statements, or actions. He cites a few examples, such as denying a creator, or the messengers, deeming acts like adultery permissible or deeming permissible acts like marriage impermissible, and essentially denying any matter that is without a doubt a part and parcel of Islam (1410 AH, v.9, p.334). According to him, the principle to deem someone an apostate or not is to see whether they deny anything that is considered a necessary part of Islam, and it does not matter whether this is done out of enmity, actual belief, or mockery.

Subsequently, the jurists have categorized an apostate (*murtadd*) into two types. One is someone who was either born Muslim, also referred to as *al-murtadd al-fitri*, and the other who was initially an unbeliever, converted to Islam and then altered their religion. The latter is referred to as *al-murtadd al-milli*.

Islamic legal punishments on the other hand are generally divided into two, the *ḥadd* and *ta'zīr*. The former is a prescribed punishment that can be found in the Qur'ān or the narrations (*aḥādīth*), whereas the latter is a punishment whose prescription is in the hands of a judge. Shi'i jurists have deemed the punishment for apostasy as a *ḥadd*, indicating that they believe the punishment has been prescribed in reliable sources of law. Interestingly enough, Muḥaqqiq Ḥilli in his magnum opus *Shara'i al-Islām* brings the issue of apostasy under the section of *ta'zirāt* although he was later critiqued by al-Shahīd al-Thānī on this matter (in Ardebili, 1427 AH, v.4, pg.34).

Nevertheless, historically speaking, Shi'i jurists have had no dispute on the punishment an apostate deserves. The penalties also take into consideration whether the guilty is a male or a female. For a male who is *al-murtadd al-fitri*, the verdict of the majority of the scholars is execution without any opportunity for repentance. A male *al-murtadd al-milli* on the other hand is first given an opportunity to repent, and if

he does not do so, he is to be executed as well (Ardebili, 1427 AH, v.4, p.143–146).

A female apostate has a slightly different penalty. There is no disagreement amongst Shi'i jurists that a female apostate – regardless of her being *al–fitri* or *al–milli* – is not to be killed. Rather she is given an opportunity to repent, and if she does not, then she is to be imprisoned for life. If she decides to repent and return back to Islam, she is freed (Ardebili, 1427 AH, v.4, p. 219–221).

Evidence for a Male Apostate's Death–Penalty

As far as Shi'i jurisprudence is concerned, the primary sources of deriving law are the Qur'□n, narrations, the intellect and consensus (*ijm□'*). Needless to say, the intellect on its own would not arrive at the specific law that most jurists have arrived at. While references to consensus have been made in works of deductive jurisprudence by some jurists, this appears merely to strengthen their own personal verdict that is essentially derived from the *had□th* corpus. Furthermore, a consensus, while one has access to the very sources used by jurists to arrive at a law upon which there is a consensus, also known as *al–ijm□' al–madraki*, is not considered binding–proof within Shi'i jurisprudence.

The Qur'□n, while having dealt with the issue of apostasy in a few verses (namely: 3:90, 9:66, 16:106, 4:137, 2:217, 2:108 and 88:23–24), is completely silent on the matter of its punishment (Na□i□m, 2011, p.157). The jurists are therefore looking solely at the narrations when it comes to determining the punishment for apostasy as long as they have established binding–proof for themselves with regards to those narrations.

The type of narrations Shi'i jurists have at their disposal are two–fold. First, those where the Prophet Mohammad is directly being quoted, and second, those that are being reported from one of the twelve infallible Imams from the progeny of the Prophet. While Prophetic traditions have been referenced by a few jurists, they generally are found in Sunni sources and should not technically be binding for a Shi'i jurist. Two such Prophetic traditions are quoted by Shaykh al–□□si (1408 AH, v.5, p.354):

(1) "Whoever changes his religion, then kill him."
(2) "The blood of a Muslim man is not allowed to be spilled except in three cases: Disbelief after belief, or adultery after marriage, or for murder."

These narrations cannot be traced back to reliable primary Shi'i □*ad□th* works. The second category of narrations is of those narrations that have been traced back to one of the infallible Imams. These narrations are plenty in number, but include narrations that have both reliable and unreliable chains of narrators. The subject of these narrations vary, ranging from discussing the penalty of *al–murtadd al–milli*, or *al–murtadd al–fitri*, a male or a female, and supplementary issues such as marriage or child inheritance. We will briefly mention a few of these narrations pertaining to the punishment an apostate:

(3) □usayn bin Sa'□d said: "I read in a letter in the handwriting of a man, sent to Abi al–□asan al–Ri□a

that said: ‘A man is born upon Islam, then disbelieves or commits polytheism and leaves Islam, is he given an opportunity to repent or is he killed without given an opportunity to repent?’ So he (the Imam) wrote back: ‘He is killed, but if a woman apostatizes, then she is not to be killed in any case, rather she is imprisoned if she does not return back to Islam.’” (al-□□si, 1390 AH, v.4, p.254)

(4) ‘Amm□r al-Sab□□i said: “I heard Aba ‘Abdillah saying: ‘Every Muslim born out of two Muslims, who apostatizes from Islam and rejects (*ja□ada*) Mohammad and his Prophethood and nullifies him, then his blood is permissible (to shed) for anyone who hears that from him. His wife is separated from him and does not go close to him, and his wealth is distributed to his inheritors, and his wife observes the waiting period of a widow, and upon the Imam is that he kills and not give him an opportunity to repent.’” (al-Kulayni, 1407 AH, v.7, p.258)

(5) ‘Ali bin Ja’far asked his brother Abi al-□asan: “I asked him about a Muslim who becomes a Christian. He replied: ‘He is killed without given an opportunity to repent.’ So I said: ‘What about a Christian who converts to Islam then apostatizes from Islam?’ He replied: ‘He is given an opportunity to repent and if he returns back to Islam he is spared, otherwise he is killed.’” (al-Kulayni, 1407 AH, v. 7, p.257)

(6) Mo□ammad bin Muslim said: “I asked Aba Ja’far about an apostate, and he said: ‘He who leaves Islam and disbelieves in that which Allah revealed upon Mo□ammad after the fact that he was a Muslim, then there is no repentance for him, and his killing is obligatory, and his wife is separated from him, and his wealth is distributed to his progeny.’” (al-Kulayni, 1407 AH, v. 7, p.256)

The traditional viewpoint has argued that the prima-facie signification of these narrations is clear and there is not much confusion over what the law ought to be. This is merely strengthened by a consensus tracing back a millennium, where the meaning of these narrations has not been understood in any other way.

A Contrary Voice

In recent years, a number of high-ranking Shi’i jurists and scholars have attempted to revisit the law of apostasy. Some prominent names include the deceased Ayatullah Sayyid Mo□ammad Jawwad Gharavi (d. 2005) and Ayatullah Hussein-Ali Montazeri (d. 2009), Ayatullah Yousef Saanei, Shaykh Mo□ammad al-Khashin, Abdulaziz Sachedina and Mohsen Kadivar to name a few. All of these scholars have attempted to look at this issue in light of human rights and certain ethical principles which enjoy support both in the Qur’□n and □*ad□th* literature. This is further argued by presenting another reading of historical reports and traditions, and innovating certain general principles that govern the deduction process within Shi’i jurisprudence.

With regards to the death penalty for a male apostate, essentially all of the aforementioned scholars argue that capital punishment for apostasy during the Prophet’s time, was “a matter of rebellion against Muslim political order and not against the religion of Islam” (Sachedina 2009, p.230). This is crucial, as it

can affect the prima-facie of the narrations used as evidence to derive the traditional ruling. 'Abdul-Karim Ardebilli in his magnum opus, *Fiqh al-Hudūd wa al-Ta'zirāt*, discusses every incident of apostasy during the lifetime of the Prophet in length and concludes (1427 AH, v.4, p.5):

I have not been successful in coming across any case in these narrations, where a man entered into Islam and believed in it and its laws, then left it while his excuse was only a theological doubt, or a claim to a certain deficiency in Islam or its laws. Rather, in most cases, the cause of these individuals leaving Islam was them committing certain crimes, for example murder or spying for the enemies of the Muslims, and other similar crimes.

When Shi'i traditions that speak about execution for an apostate are scrutinized, we come across the usage of the verb *jaḥada* – not to be confused with the more popularly used verb *jahada*. Many of these jurists have argued that this verb means to reject something one knows to be true (Montazeri 1377 SH, p. 582; Saanei 1428 AH; al-Khashin 2015, p. 83; al-Ḥaydari 2013). Qur'ānic verses where this verb has been used are brought as evidence for this, as well as works of authoritative grammarians. The usage of this verb is also not at odds with what appears in historical instances of apostasy during the lifetime of Prophet Moḥammad.

This has serious implications on deriving a ruling, for it will restrict the capital punishment only to someone who, while knowing the truth about the religion of Islam, rejects it. This indicates that a person who would do such a thing, would be someone who has malice against the religion. Furthermore, it leaves the door open for those who leave Islam due to what they deem to be legitimate doubts, or lack of evidence on certain theological or jurisprudential matters.

Some jurists have gone further than that and have used the notion of time and place with respect to law, to argue against its present applicability. This methodology is based on the premise that there are certain laws that are applicable only in certain times or places. Given that the evidence used for the traditional law of apostasy is specifically in cases where apostatizing threatened a political system (as was the case during the Prophet's time), the question then becomes, is the evidence inclusive of the common form of apostasy today which is rooted in theological doubts?

Sayyid Kamāl al-Ḥaydari in his lessons on principles of jurisprudence, argues that the law of apostasy that necessitated the killing of an apostate was a historical and political law and that it is extremely rare to even find an *al-murtadd al-fitri* today (2013). His reasoning is that most individuals who apostatize today are those who had belief in the various Islamic theological beliefs due to imitation (*taqlīd*) rather than personal conviction. Other jurists, such as Montazeri (in Ahmadi 1390) and al-Khashin (2015), have also employed similar arguments to argue that the law of apostasy was a political verdict against those who intended to wage war against an Islamic government. Today apostasy generally takes place because many Muslims encounter doubts or tough questions about their creed, and their reason to leave Islam is generally their claim to having received unsatisfying responses to crucial questions (al-Khashin, 2015, p.135).

Another method by which the traditional ruling on apostasy is critiqued is by resorting to general ethical principles and universal human rights that are established through the Qur'ān and *ḥadīth*. Perhaps the most commonly used principle is the one derived from verse 256 of the chapter al-Baqarah, which states ***"There is no compulsion in religion"*** **(*2:256*)**. The verse has been used to establish one's right to freedom of choice, and it is argued that when one cannot force someone into accepting the religion to begin with, how can then there be any compulsion if one decides to leave the religion (Montazeri, 1387 SH, p. 65). Sachedina, on the other hand, claims that any Islamic criminalization of apostasy defined in the strict sense of public abandonment of the religion – which is one of the instances in the definition employed by traditional jurists – is against basic human rights that the Qur'ān guarantees (2001, p. 101). Similarly, Gharavi's primary argument against the law of apostasy is that it goes against one's freedom and right of choice that God has given to all humans (Gharavi, 1377 SH, p. 629-633).

This form of argumentation is unique, as it encourages a Qur'ān-centric methodology of deriving law, rather than *ḥadīth*-centric. This is to say that if there are narrations whose binding-proof has been established, but they go against human rights principles established through the Qur'ān, instead of trying to reconcile the narrations with the Qur'ānic verses or making exceptions to the principle, the Qur'ān simply nullifies any value that the narrations may have had.

Conclusion

After having become familiar with various counter-arguments to the traditional law of apostasy for men, there are a few remarks that are worthy of being mentioned. The general notion of Islamic law revolves around establishing binding-proof (*hujjiyyah*). On the other hand, two of the primary methods utilized by those opposing the apostasy law are contextualizing the evidence to a certain time and place, and resorting to ethical principles and universal human rights.

Both of these methods in deducing law are relatively recent phenomena which have not gained much traction. Needless to say, there seems to exist a fear of falling trap to Western notions of human rights – see, for example, one of the reasons given by Jameeh Modarresin for removing the *Marja'iyyah* status of Saanei (in Rawanbaksh 2010) – and rightfully so. The basis and source of many apparent rights promoted by the West are questionable themselves. Secondly, contextualizing evidence requires one to look into historical records which, more often than not, do not meet the strict standards utilized by jurists of leading one to certainty or a high degree of assurance whose binding-proof has been established.

As an example, the details of the instances of apostasy during the Prophet's time which would assist in understanding the context of such a law are found in non-Shi'i works of history. It can be argued that these reports being solitary in nature with chains of narrations that are not reliable according to Shi'i standards, result in speculation rather than certainty, and speculation in and of itself is not binding while deriving law. Utilizing such historical reports in reinterpreting reliable Shi'i narrations whose wordings are absolute and relatively clear, is not something jurists are known to carry out.

This presents an epistemological dilemma for the jurists. Here we see the need for a thorough discussion on the role of human rights, ethical and historical propositions within jurisprudence. Perhaps just like there exists general and specific jurisprudential principles that govern the deduction process of a jurist, serious discussions on principles of human rights and ethics need to be carried out which would then overlook and govern the deduction process. On the other hand, while with historical propositions the goal is to uncover the truth regarding the occurrence of an event, the same methodology and strict standard used in deriving law should not be applied or expected in one's historical methodology. History as an independent subject has its set of rules and methodologies, and what role establishing binding-proof plays in that (if any) is a question on its own. However, not enough work has been done on discussing the relationship of history as a subject whose propositions generally do not result in certainty, with jurisprudence.

Shi'i jurisprudence prides itself in being flexible and adaptive to changing times. If that is the case, then these consequential methodological discussions would need to become mainstream if there is any hope for the counter-arguments to be taken seriously. Until then, the global impression towards the implementation of certain Islamic laws – particularly when there is room for discussion on them – will remain an area of concern in the modern contemporary world.

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