

عقوبة جريمة الردة في قانون العقوبات المصري والجزائري
دراسة تقييمية في ضوء ما قرره الشريعة الإسلامية

Punishment of Apostasy Offence under the Egyptian and Algerian Penal Codes, an Evaluative Study from an Islamic Viewpoint

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Abstract

The study aimed at evaluating the penalty of apostasy offence according to Egyptian and Algerian Criminal laws in the light of Islamic Law (Shari'a). The study used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature was administered. The study came to the conclusions that: first. Islamic Law (Shari'a) criminalizes apostasy and imposes death penalty for apostasy crime; second, the Egyptian and Algerian Criminal law neither criminalize apostasy nor impose a penalty for the convicted of apostasy offence and this contradicts with what Islamic Law (Shari'a) necessitates. The study recommended that the Egyptian and the Algerian Criminal law ought to criminalize apostasy and adopt death penalty for apostasy crime in response to what Islamic Law (Shari'a) requires.

Keywords: Punishment of Apostasy Offence, Islamic Law (Shari'a), Penal Code.

ملخص:

استهدفت الدراسة الحالية تقييم عقوبة جريمة الردة في قانون العقوبات المصري والجزائري في ضوء ما قرره الشريعة الإسلامية في هذا الخصوص. واستندت الدراسة إلى المنهج الوصفي. واعتمدت في إطار ذلك على الأسلوب التقويبي. وتمثلت أداة الدراسة في مسح الأدبيات المتعلقة بموضوع الدراسة. وأسفرت الدراسة عن العديد من النتائج أهمها: أن الشريعة الإسلامية أوجبت عقوبة القتل على كل من ارتد عن الإسلام واستوفى شروط العقوبة الحدية- أن قانون العقوبات المصري والجزائري لم يجر ما الردة ولم يشيرا إلى وجوب إنزال العقاب بالمرتد. وهذا يخالف ما قرره الشريعة الإسلامية من تحريم الردة ووجوب إيقاع عقوبة القتل على كل من ثبتت رده عن الإسلام، واستوفى شروط العقوبة الحدية. وأوصت الدراسة مقنن الجنائي المصري والجزائري إلى ضرورة التدخل بالنص على تجريم الردة، والنص على وجوب إيقاع عقوبة القتل على كل من ثبتت بحقه جريمة الردة واستوفى شروط العقوبة الحدية، وذلك بما يتفق مع ما أوجبه الشريعة الإسلامية في هذا الخصوص.

الكلمات المفتاحية: عقوبة جريمة الردة، الشريعة الإسلامية، قانون العقوبات.

Introduction

Praise be to Allah and Peace and Blessings of Allah upon our Prophet Muhammad, his family, his companions and all who follow his guidance to the Day of Judgment .

(O, believers, be pious to Allah and care nothing but to die on Islam)

(O, people, be pious to Allah Who created all of you from a male and a female and who created the female from the male and created all humans from both of them. O, people, be pious to Allah Who you will stand before for Judgment and He will question you about what you have done with your relatives. Remember that Allah observes you all)

(O, believers, fear Allah and say what is right in order that Allah mend your deeds and forgive your sins. Whosoever obeys Allah and His Messenger shall win a great victory)

To proceed

Islam accentuates safeguarding faith⁽⁵⁾. That's why Islam not only forbids apostasy⁽⁶⁾, but it also imposes particular punishment for those

who commit this offence which is called Hadd A-Redda (the prescribed penalty of apostasy⁽⁷⁾).

But the quick look at the penal legislations of the Muslim countries, one notices that they ignore what Islam decide concerning how to punish apostates and follow suit of the secular legislations relating this question in the name of modernity and mercy which turn out to be false.

It is noted that both Egyptian and Algerian Codes follow in the footsteps of this convention.. That is why the question has been raised about how the Egyptian and the Algerian Codes deal with apostasy and to what extent they conform with the teachings of Islam. This is the core of the current study.

The Problem of the Study

The study problem is put in the following main question;

How do the Egyptian and Algerian Penal Codes punish for apostasy offence and to what extent do both of them conform with Islam teachings?

This main question can be divided into the following subcategories;

- 1- What is Islam's viewpoint of the penalty of apostasy offence?
- 2- How does the Egyptian Penal Code punishes for apostasy and to what extent does it conform with Islam teachings?
- 3- How does the Algerian Penal Code punishes for apostasy and to what extent does it conform with Islam teachings?

The Objectives of the Study

Based on the pre-raised questions, the study objectives are as follows;

- 1- Investigating Islam viewpoint of penalty of apostasy offence.
- 2- Investigating how the Egyptian Penal Code punishes for apostasy and to what extent it conforms with Islam teachings.
- 3- Investigating how the Algerian Penal Code punishes for apostasy and to what extent it conforms with Islam teachings.

The importance of the Study

The study importance is shown in two aspects;

First: Theoretically;

The study seeks to bridge the gap in this area to develop what previous studies have come to.

Second: Practically;

The study draws the attention of legislators to adopt the Islamic viewpoint concerning the penalty of apostasy offence. .

The Methodology of the Study

The study has used the descriptive methodology to reach the targets in question. To gather the required data, a review of literature has been administered.

The Scheme of the Study

The study has been planned as follows;

- Introduction.
- Chapter I.
- Chapter II.
- Chapter III.
- Conclusion.
- Bibliography.

The coming lines will tackle these points in further detail.

Chapter I

The Penalty of Apostasy from the Viewpoint of Islam

Islam forbids apostasy and imposes particular punishment for apostates which is the killing penalty. This punishment is called Hadd A-Redda (The Prescribed Penalty of Apostasy). This penalty is evidenced by the Holy Book (The Noble Qur'an), Sunna (Hadith) and the unanimity of the Scholars as follows;

I. Evidence from the Holy Book:

A) First Evidence:

Allah, exalted be He, says, "Whosoever of you recants from his religion and dies an unbeliever, their works shall be annulled in this world and in the Everlasting Life, and those shall be the companions of Hell, and there they shall live forever" ⁽⁸⁾. Al-Qurtobi, may Allah have mercy on him, said, "His speech, exalted be He, 'Whosoever of you recants' means to convert from Islam into unbelief ... "His speech, exalted be He, ' their works shall be annulled' means that their good deeds will not be accepted ... This is verse is a threat to those who recant from Islam" ⁽⁹⁾. "His speech, exalted be He, 'in this world and in the Everlasting Life' means that the apostate will no longer be a Muslim and will longer have the rights of being a Muslim in this world, and will have no reward in the Hereafter" ⁽¹⁰⁾. Al-Fakhr A-Razi, may Allah have mercy on him, said, "The annulment of work in this world means that the apostate has to be killed when caught and has to be fought until he is caught, and he deserves neither loyalty, patronage nor praise ... As for the annulment of work in the Hereafter

... it means that the apostates 'shall be the companions of Hell, and there they shall live forever' " (11).

B) Second Evidence:

Allah, exalted be He, says, "Believers, whosoever of you turns from his religion, Allah will bring a nation whom he loves and they love Him, humble towards the believers and stern towards the unbelievers, striving for the Path of Allah and fearless of anyone's blame. Such is the Bounty of Allah; He bestows it on whom He will. He is the Embracer" (12). Al-Fakhr A-Razi, may Allah have mercy on him, said, " This verse was revealed for Abu-Baqr, may Allah please him, and the reason for this is that ... this verse deals with fighting the renegades and Abu-Baqr was who fought the renegades" (13). "It shows that all those who recant from Islam Allah, exalted be He, will bring people to crush and overmaster them" (14).

C) Third Evidence:

Allah, exalted be He, says, "If they repent and establish the prayer and pay the obligatory charity, let them go their way. Allah is forgiving and the Most Merciful" (15). Ibn Katheer, may Allah be merciful to him, said, "Abu-Baqr, may Allah please him, drew upon this verse and the like to argue for his fight against the people who refused to pay the obligatory charity. According this verse, it is not permissible to fight those who embrace Islam as long as they establish the prescribed prayers and pay the obligatory charity" (16). This verse makes it evident that the penalty of apostasy is killing.

II. Evidence from Sunna (Hadith):

A) First Evidence:

The Prophet, peace and blessings of Allah be upon him, says, "Whosoever recants from Islam shall receive the penalty of killing" (17). Ibn Abd Al-Barr, may Allah be merciful to him, said, " This Hadith shows that necessitates that anyone recants from Islam shall receive the penalty of death. The Companions said that the apostate is to be asked to repent. If he didn't, he would be killed" (18).

B) Second Evidence:

Ibn Mas'oud, may Allah please him, narrated that the Prophet, peace and blessings of Allah be upon him, says, " A Muslim is not permissible to be killed unless he is one of the three following; a married person guilty of adultery (19), a killer of innocent Muslims and an apostate who turns away from Islam and abandons the society" (20). A-Nawawi, may Allah have mercy on him, said, "His saying, peace

and blessings of Allah upon him, ' an apostate who turns away from Islam and abandons the society' refers to those who recant Islam who have to be killed if they do not turn back to Islam" ⁽²¹⁾.

C) Third Evidence:

Abu-Musa Al-Ash'ari, may Allah please him, reported that he came to the Prophet, peace and blessings of Allah upon him, with two Ash'ari men; one on his right and one on his left while the Prophet, peace and blessings of Allah upon him, was brushing his teeth with siwak (tooth pick). Both of them asked the Prophet, peace and blessings of Allah upon him, to be named emir. the Prophet, peace and blessings of Allah upon him, said, " O, Aba-Musa or O, Abdullah Ibn Qais". Abu-Musa said, "By Who has sent you as a Messenger, they neither told me what they asked nor did I realize that. The Prophet, peace and blessings of Allah upon him, said, " We do not designate for office those who hanker after, but, O, Aba-Musa or O, Abdullah Ibn Qais, go to Yemen". Then, Mua'az Ibn Jabal followed in his footsteps. When Mua'az came to him, Abu-Musa welcomed him. Then, Abu-Musa said, 'Get down'. To his surprise, a man was chained before him. Mua'az asked, "Who is this?". Abu-Musa answered, "He was a Jew, then he converted into Islam, then he turned back to Judaism. Abu-Musa continued, "Sit down". Mua'az said, "I won't sit down until he is killed. He repeated three times, "This is the sentence of Allah and his Messenger". Then, the man was ordered to be killed ⁽²²⁾. Al-Qastalani, may Allah have mercy on him, said, " Mua'az ' statment, 'I won't sit down until he is killed ... This is the sentence of Allah and his Messenger' means that any Muslim recants his religion shall receive death penalty" ⁽²³⁾. "He shall be killed for his apostasy" ⁽²⁴⁾. Ibn Hajjar, may Allah be merciful to him, said, "This Hadith makes it evident that the penalty of apostasy is killing" ⁽²⁵⁾.

D) Fourth Evidence:

Abu-Hureira, may Allah please him, reported that when the Prophet, peace and blessings of Allah upon him, died and Abu-Baqr was appointed as a successor, and some Arabs apostatized, Umar said, " O, Abu-Baqr, Are you going to fight people and the Prophet, peace and blessings of Allah upon him, says, "I am ordered to fight people until they profess that there is no God but Allah. Whosoever professes that there is no God but Allah and put it into effect, will be safe". Abu-Baqr said, "By Allah, I will fight those who differentiate between the prayers and the obligatory charity ⁽²⁶⁾, the obligatory charity is the

right of wealth. By Allah, if people refuse to give the treasury a young goat they gave at the time of the Prophet, peace and blessings of Allah upon him, I shall fight them. Umar, said, "By Allah, Allah opened my breast for what Abu-Baqr goes. So, I realized that his opinion is right" ⁽²⁷⁾. Al-Qastalani, may Allah have mercy on him, said, "The Prophet's speech, peace and blessings of Allah upon him, 'Whosoever professes that there is no God but Allah and put it into effect, will be safe' means that if a Muslim intentionally kills another Muslim, abandons the prescribed prayers or denies paying the obligatory charity, he shall be fought until he repents. If he does not repent, he shall receive the death penalty" ⁽²⁸⁾. And if those Muslims who abandon performing the prescribed prayers or deny paying the obligatory charity deserve killing, the renegades are more deserving.

III. Evidence from the Consensus of Scholars:

There is complete unanimity that if the apostate does not turn in penitence to Allah, he shall receive the penalty of killing. This unanimity is reported by more than one scholar. Ibn Battal, may Allah be merciful to him, said, "All the Scholars unanimously agree that killing is the prescribed penalty for any person recants Islam; whether being a slave or a freeborn man or woman" ⁽²⁹⁾. He added that "Ibn Umar, Azuhry and Ibrahim A-Nakha'ai mentioned that the penalty of apostasy is killing" ⁽³⁰⁾.

Ibn Hazm, may Allah be merciful to him, said, "It is unanimously agreed that the apostate shall be killed if he or she does not turn back to Islam" ⁽³¹⁾.

Al-Qassani, may Allah be merciful to him, said, "Whosoever recants from Islam shall be killed. The Prophet, peace and blessings of Allah upon him, says, 'Whosoever turns back from Islam, shall be killed' ⁽³²⁾. And when the some Arab tribes apostatized after the death of the Prophet, peace and blessings of Allah upon him, all the Companions, may Allah please them, unanimously agreed that they had to be killed" ⁽³³⁾.

Ibn Qudamah, may Allah have mercy on him, said, "All the Scholars unanimously agree that the apostate shall be killed" ⁽³⁴⁾. He added, "If a sane adult male or female apostatizes ⁽³⁵⁾, we shall bring pressures on him for three days and urge him to return to Islam, , if he does not return to Islam, he shall be killed" ⁽³⁶⁾. In other words, "If he does not give penitence and return to Islam, he shall be killed by the sword because it is the tool of killing" ⁽³⁷⁾.

A-Nawawi, may Allah be merciful to him, said, " There is complete unanimity that if the apostate does return to Islam, he or she; free or a slave, shall be killed" ⁽³⁸⁾. He added, "Before putting him to death, the apostate is to be urged to repent ... if he or she does not repent and return to Islam, he or she shall be killed" ⁽³⁹⁾.

Ibn Taimia, may Allah be merciful to him, said, "It is unanimously agreed that the apostate shall be killed" ⁽⁴⁰⁾.

Al-Khateeb A-Sherbini, may Allah have mercy on him, said, " It is necessary to urge the apostate to repent and return to Islam ... If he or she does not repent and return to Islam, the Imam or his representative shall order him or her to be killed using the sword ... and he or she is not permissible to be buried in Muslims cemetery" ⁽⁴¹⁾.

Al-Buhuti, may Allah have mercy on him, said, "All Muslim Scholars unanimously agree that the apostate shall be killed" ⁽⁴²⁾.

The Saudi Permanent Committee for Researches and Fatwa said, "Authentic Hadiths and the unanimity of the Companions make it clear that if the apostate does not return to Islam, he shall be killed" ⁽⁴³⁾.

From what is above mentioned, it is evident that according to Islam those people of age who are proved guilty of apostasy and they do not seek sincere repentance shall receive the penalty of killing. But it must be taken into consideration that this punishment is not meant to torture the guilty. It is prescribed for the sake of the individual and for the group. It protects the individual from being misguided and deviated and it protects the society from being degenerated.

Furthermore, it must be taken into account that the penalty of killing is the most inhibitive and deterring as it is prescribed from Allah, the best knowing and the Most Wise who knows what is better for Mankind in this world and the world to come.

Ibn Taimia, may Allah be merciful to him, mentions the reason that the apostate must be punished by being killed saying, "Allah, exalted be He, prescribes the penalty of killing on the guilty of apostasy in order to protect Muslims. If the apostate is not killed, it will be easy for any person to pretend that he embraces Islam and then he recants it on false pretenses to misguide Muslims. That is why he or she must be killed" ⁽⁴⁴⁾.

It is evident that the reasons for prescribing the penalty of apostasy are as follows;

First, "This penalty deters any person to embrace Islam sanctimoniously. When he knows that he shall be killed if he apostatizes, he won't dare to do this" ⁽⁴⁵⁾.

Second, "Any person embraces Islam means that he becomes a member of the Muslim group and this necessitates that he has to be completely loyal to this group and does his best to keep off any danger that threatens its unity and sows the seeds of discord among them. Apostasy is one of these dangers that cause dissention and disunity among the Muslim group and the penalty of killing is the effective deterrent to these dangers" ⁽⁴⁶⁾.

Third, "Those Muslims whose faith has not entered their hearts and those who have not converted to Islam may be influenced by the fake pretenses and falsehoods the apostates propagandize to turn off the light of Islam and to drive people away from converting into Islam. That is why the apostates must be killed" ⁽⁴⁷⁾.

Fourth, "The contemporary secular laws prescribe the death penalty for those who threaten the security and the stability of the society such as those who traffic in illegal drugs. The religion of Islam is more deserving to be protected from the dangers of the apostates by imposing the killing penalty on them since it is the only way for people security, stability and happiness in this world and in the world to come" ⁽⁴⁸⁾.

Furthermore, no doubt that the punishment Islam imposes for this crime is the best way to guard the society from the dangers of crime because of the following ⁽⁴⁹⁾;

First; it has the ability to restrain the wrongdoer from returning to the world of crime whereas the punishment imposed by the secular law proved to be ineffective to realize this target.

Second; it rehabilitates the wrongdoer and strengthens his weaknesses to be a good citizen whereas the punishment imposed by the secular law is likely to increase the tendency to delinquency especially when the offender is mixed with other criminals in prison.

Third; it deters others from entering the world of crime whereas the secular penal legislations fail to accomplish this purpose ⁽⁵⁰⁾.

Chapter II

The Penalty of Apostasy from the Viewpoint of the Egyptian Penal Code

The Egyptian Penal Code does not prescribe a particular penalty for apostasy. This is owing to the belief that apostasy is not a behavior that is punishable by law.

All the Egyptian Constitutions since the 1952 Coup legalizes apostasy under the name of freedom of faith.

Article 43 of the 1956 Egyptian Constitution states that: "Freedom of faith is unconstrained and the government protects freedom of religions and creeds practices".

Article 34 of the 1964 Egyptian Constitution prescribes that: "Freedom of faith is unconstrained and the government protects freedom of religions and creeds practices".

Article 46 of the 1971 Egyptian Constitution states that: "The State guarantees freedom of creed and performing religious rituals".

Article 43 of the 2012 Egyptian Constitution states that: "Freedom of creed is protected and the State guarantees freedom of creed and performing religious rituals".

Article 64 of the 2014 Egyptian Constitution prescribes that: "Freedom of faith is unconstrained and freedom of practicing religious rituals is a right regularized by the Law".

Article 46 of the 2019 Egyptian Constitution states that: "The State guarantees freedom of faith and freedom of performing religious rituals".

All those constitutional texts protect freedom of faith whatever this faith is divine or not; right or not. They also protect what is called the freedom of apostasy. Moreover, the Egyptian Constitution does not protect freedom of faith, but it also prescribes that the State ought to foster this freedom as it is shown under Article 46 of the 1971 and 2019 Egyptian Constitutions.

No doubt that the apostasy the Egyptian Constitution protects under the name of freedom of faith breeches what Islam calls for. Islam calls for protecting the individuals and the groups from apostasy. That is why Islam prescribes the penalty of killing on those who commit the crime of apostasy.

In addition, the Articles that guarantee what is called freedom of faith are unconstitutional as they violate the Second Article of the 1971, 2012 and 2014 Egyptian Constitutions which states that: "Islam is

the established religion of the country ... and the principles of Islamic Sharia'a are the main source of legislation". According to this article, apostasy is unlawful since it is prohibited from the viewpoint of Islam teachings. Thus, those texts calls for apostasy under the name of freedom of faith are considered to be unconstitutional.

Chapter III

The Penalty of Apostasy from the Viewpoint of the Algerian Penal Code

The Algerian Criminal Code follows in the footsteps of its Egyptian equivalent. It does not prescribe a penalty for apostasy as well. This is due to the thought that apostasy is not unlawful. It is permitted under the name of freedom of faith.

Since the independence of Algeria in 1962, all the Algerian Constitutions call for freedom of faith under which apostasy is permitted. Article 4 of the 1963 Algerian Constitution states that: "The State secures respect of different opinions and beliefs and freedom of practicing religions".

Article 53 of the 1976 Algerian Constitution prescribes that: "Freedom of faith is protected".

Article 35 of the 1989 Algerian Constitution states that: "Freedom of faith cannot be encroached".

Article 42 of 1996 Algerian Constitution and its 2016 amendments prescribes that: "No infringement on freedom of faith".

From the above-mentioned texts, it is obvious that the Algerian Constitution secures freedom of faith without limits. In other words, according to this Constitution, any person has the right to keep to his faith and has the right to change it whenever he desires to. Thus, freedom of apostasy is protected under the Law. And this breaks Islam teachings. Apostasy is forbidden and punishable according to Islamic Law.

In addition, it is noticed that the previous Articles that dictate freedom of faith are unconstitutional as they breach the Constitutional Rules that state that Islam is the main source of legislation. The Preamble of the 1989 Algerian constitution and the 1996 Algerian constitution and its 2016 amendments states that: "Algeria is the homeland of Islam". Article (10) of the 1996 Algerian Constitution and its 2016 amendments says: "It is not permissible for the authorities ... to break the codes of Islam". According to these articles, Islam is the main source of all articles of the Algerian

Constitution. In the light of this, the Algerian Penal Law, including the before-mentioned articles - must abide by what Islam states. Since the previous Articles neither criminalizes nor penalizes apostasy, they break the Algerian Constitution and thus they are unconstitutional.

Conclusion

The study came to two the following findings:

First: Islam prohibits apostasy and imposes the death penalty for those who are proved guilty of apostasy provided meeting the stipulations of the penalty.

Second: the Egyptian Penal Code neither criminalizes nor penalizes apostasy. And this breaks the teachings of Islam.

Third: the Algerian Penal Code neither criminalizes nor penalizes apostasy. And this breaks the teachings of Islam as well.

In the light of these findings. The study recommends that the Egyptian and Algerian legislators should make a law that criminalizes apostasy and prescribes the death penalty on those who are proved guilty of it . This comes in agreement with what Islam dictates in this question and goes line in line with what the 2014 Egyptian Constitution Second Article states saying:" Islam is the established religion of the state ... and Islam teachings are the main source of legislation" and with what Article (10) of the 1996 Algerian Constitution and its 2016 amendments states saying: " It is not permissible for the authorities ... to break the codes of Islam".

In the light of these principles, the study suggests that a new Article criminalizing and penalizing apostasy to be amended to the Egyptian and Algerian Penal Codes as follows:

-Any person proved guilty of apostasy shall receive the death penalty using the sword and their punishment must be witnessed by a party of believers.

Note: It should be taken into consideration having the Articles relating to freedom of faith under the Egyptian and the Algerian Constitutions amended in the light of what suggested in this research.

Notes

- 1) Surat Al-Imran (The Family of Imran) III, verse: 102.
- 2) Surat An-Nisaa (The Women) IV, verse: 1.
- 3) Surat Al-Ahzab (The Confederates) XXXIII, verse: 70.
- 4) Al-Albany, **Sahih Al-Targheeb wa Tarheeb**, edit. 1, p.3.
- 5) Ibn Taimia, **Majmo' Al-Fatawa**, no edition, vol. 20, p. 102.
- 6) Apostasy means recanting from Islam. Apostasy can occur using words such as denying the existence of Allah, rejecting the Divine Attributes, belying or belittling the truth of the sent Messengers, rejecting the Holy Qur'an, thinking or doubting that the Christians and the Jews are not unbelievers, denying the prescribed prayers, obligatory charity, the prescribed fasting or the prescribed pilgrimage or denying that adultery is forbidden. Apostasy can also occur using action such as the intentional prostration to an idol, the sun, the Cross or any creature, intentionally ripping, spitting or throwing the Holy Qur'an in the impurities or reluctance to Islam. Refer to: Al-Kheraqi, **Matn Al-Kheraqi**, no edition, vol. 1, p. 132, Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 3, Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, pp. 427-433, Al-Beijori, **Hashiat Al-Beijori**, no edition, vol. 2, pp. 500-501, Al-Qaliubi and Al-Burullusi, **Hashiata Qaliubi and Omeira**, no edition, vol. 4, p. 177, Sheikhi Zadah, **Majma'a Al-Anhur**, no edition, vol. 1, p. 680, Al-Bujeiremi, **Al-Bujeiremi on Al-Khateeb**, no edition, pp. 112-120, Qaied Qaroush, **Toroq Intiha'a Welaiat Al-Hoqqam fe A-Sharia'a Al-Islamia wa A-Nuzum A-Dostoria**, edit. 1, pp. 272-273, Monqez A-Saqqar, **A-Takfeer wa Dawabetoh**, no edition, pp. 9-11 and A-Lajna A-Daema Lel-Buhuth Al-Elmiam wa Al-Ifta'a, **Fatawa Al-Lajna A-Daema**, no edition, part 1, vol. 22, p. 231.
- 7) The penalty of apostasy is prescribed punishment imposed on the guilty of apostasy. According to this penalty, the guilty is to be beheaded using the sword. For further details, refer to: Al-Kheraqi, **Matn Al-Kheraqi**, no edition, vol. 1, p. 132, Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 3, Al-Fakher A-Razi, **Mafateeh Al-Ghaib**, edit. 3, vol. 6, p. 394 and Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, pp. 427-433
- 8) Surat Al-Baqara, (The Cow Chapter) verse 217.
 - 9) Al-Qurtobi, **Al-Game' Lahkam Al-Qura'n**, edit. 2, vol.3, p.46.
 - 10) A-Shawkani, **Fath Al-Qadeer**, edit. 1, vol. 1, p. 250.
 - 11) Al-Fakher A-Razi, **Mafateeh Al-Ghaib**, edit. 3, vol. 6, p. 394.
 - 12) Surat Al-Ma'idah (The Table Spread with Food Chapter) , verse 54.
 - 13) Al-Fakher A-Razi, **Mafateeh Al-Ghaib**, edit. 3, vol. 12, p. 378.
 - 14) Al-Fakher A-Razi, **Mafateeh Al-Ghaib**, edit. 3, vol. 12, p. 378.
 - 15) Surat A-Tawba (The Repentance Chapter), verse 5.
 - 16) Ibn Katheer, **Tafseer Al-Qura'an Al-Azeem**, edit. 1, vol. 4, p. 98.
 - 17) Narrated by Ibn Abbass, may Allah please him and his father. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Calling the Apostates to

Give Penitence and Fighting Them, Chapter of the Ruling of the Male and Female Apostate, Hadith no. (6922), p. 15.

18) Ibn Abd Al-Barr, **Al-Istezkar**, edit. 1, vol. 7, p. 151.

19) The married person is a free sane male or female adult whose marriage is authentic. For further details, refer to: A-Nawawi, **Al-Minhaj**, edit. 2, vol. 11, p. 190.

20) Reported by Bukhari and Muslim and the version of Bukhari. Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, vol.9, Book of Blood Money, Chapter of Killing Using a Stone or a Stick, Hadith no. (6878), p. 5 and Muslim, **Sahih Muslim**, no edition, vol.3, Book of Qasamah, Dissenters, Retaliation and Blood Money, Chapter of What Legalizes Killing the Muslim, Hadith no. (1676), p.1302.

21) A-Nawawi, **Al-Minhaj**, edit. 2, vol. 11, p. 185.

22) Reported by Bukhari. Refer to: Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Calling the Apostates to Give Penitence and Fighting Them, Chapter of the Ruling of the Male and Female Apostate, Hadith no. (6923), p. 15.

23) Al-Qastalani, **Irshad A-Sari L-Sharh Sahih Al-Bukhari**, edit. 7, vol. 10, p. 81.

24) Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 5.

25) Ibn Hajjar, **Fath Al-Bari**, no edition, vol. 12, p. 275.

26) His speech: "Who differentiates between the prescribed prayers and the obligatory charity" means that any Muslim approves the prescribed prayers and disapproves the obligatory charity will be considered apostate and he will be killed if he does not approve the obligatory charity as he does with the prescribed prayers. Refer to: Al-Qastalani, **Irshad A-Sari L-Sharh Sahih Al-Bukhari**, edit. 7, vol. 10, p. 82.

27) Reported by Bukhari. Refer to: Refer to: Al-Bukhari, **Sahih Al-Bukhari**, edit. 1, Book of Calling the Apostates to Give Penitence and Fighting Them, Chapter of Killing Those Who Denies the Obligatory Religious Observances, Hadith no. (6924) & (6925), p. 15.

28) Al-Qastalani, **Irshad A-Sari L-Sharh Sahih Al-Bukhari**, edit. 7, vol. 10, p. 82.

29) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 505.

30) Ibn Battal, **Sharh Sahih Al-Bukhari**, edit. 2, vol. 8, p. 571.

31) Ibn Hazm, **Al-Mohalla**, no edition, vol. 12, p. 115.

32) This Hadith is previously documented.

33) Al-Kassani, **Badae'h A-Sa'naeh**, edit. 2, vol. 7, p. 134.

34) Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 3.

35) It must be noted that there are particular stipulations for the apostasy to be valid. Of which are sanity, maturity and freedom of choice. The apostasy of the insane person and the discerning minor is not valid. But the

requirement of maturity is disagreed. Abu-Hanifa and Mohamed Ibn Al-Hassan, may Allah have mercy on them, think that the apostasy of discerning minor is valid, but Abu-Yusuf believes that it is not valid. As to freedom of choice, it is agreed that the apostasy under coercion is not valid. For further details, refer to: Al-Kassani, **Badae'h A-Sa'naeh**, edit. 2, vol. 7, p. 134.

- 36) Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 3.
- 37) Ibn Qudamah, **Al-Moghni**, no edition, vol. 9, p. 6.
- 38) A-Nawawi, **Al-Majmo' Sharh Al-Mohazzab**, no edition, vol. 19, p. 228.
- 39) A-Nawawi, **Rawdat A-Talibeen**, edit. 3, vol. 10, p. 76.
- 40) Ibn Taimia, **Majmo' Al-Fatawa**, no edition, vol. 20, p. 100.
- 41) Al-Khateeb A-Sherbini, **Moghni Al-Mohtaj**, edit. 1, vol. 5, pp. 436-437.
- 42) Al-Buhoti, **Kashaaf Al-Qina;a**, no edition, vol. 6, p. 168.
- 43) A-Lajna A-Daema Lel-Buhuth Al-Elmiam wa Al-Ifta'a, **Fatawa Al-Lajna A-Daema**, no edition, part 1, vol. 22, pp. 242-244;
- 44) Ibn Taimia, **Majmo' Al-Fatawa**, no edition, vol. 20, p. 102.
- 45) A-Lajna A-Daema Lel-Buhuth Al-Elmiam wa Al-Ifta'a, **Fatawa Al-Lajna A-Daema**, no edition, part 1, vol. 22, p. 232.
- 46) A-Lajna A-Daema Lel-Buhuth Al-Elmiam wa Al-Ifta'a, **Fatawa Al-Lajna A-Daema**, no edition, part 1, vol. 22, p. 233.
- 47) A-Lajna A-Daema Lel-Buhuth Al-Elmiam wa Al-Ifta'a, **Fatawa Al-Lajna A-Daema**, no edition, part 1, vol. 22, p. 233.
- 48) A-Lajna A-Daema Lel-Buhuth Al-Elmiam wa Al-Ifta'a, **Fatawa Al-Lajna A-Daema**, no edition, part 1, vol. 22, p. 233-234.
- 49) Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit., p. 253.
- 50) Mamoun Salamah, **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3, pp. 622-630, Mahmoud Najjuib Hosni, **Elm Al-Eqab**, edit. 3, pp. 94-97 and Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit., p. 53.

References

- Al-Albany, Mohamed Nacer, (2000). **Sahih Al-Targheeb wa Tarheeb**, edit. 1, A-Riad, Al-Ma'ref Publishing House.
- Al-Beijori, Ibrahim Ibn Ahmed, (no. date). **Hashiat Al-Beijori**, validated by: Ayman Ibn Mohamed Arafa, no edition, Cairo, Al-Maktaba A-Tawfiqia.
- Al-Buhoti, Mansur, (no date) **Kashaaf Al-Qina;a**, no edition, Beirut, Dar A-Qutub Al-Elmia.
- Al-Bujeiremi, Suliman, (no. date). **Al-Bujeiremi on Al-Khateeb**, no edition, Cairo, Al-Maktabah A-Tawfiqia.

- Al-Bukhari, Muhammad Ibn Ismail, (2011). **Sahih Al-Bukhari**, validated by Ahmed Mohamed Awad, no edition, Al-Mansura, Maktabat Fayiad.
- Al-Fakhr A-Razi, Abu-Abdullah, (no date). **A-Tafsier A-Kabeer**, edit. 3, Beirut, Dar Ihia;a A-Turath Al-Arabi.
- Al-Kasani, Alaa A-Din, (1986). **Badae'h A-Sanaeh**, edit. 2, Beirut, Dar A-Qutub Al-Elmia.
- Al-Khateeb A-Sherbini, Mohamed Ibn Mohamed (1994). **Moghni Al-Mohtaj**, edit. 1, Beirut, Dar A-Qutub Al-Elmia.
- Al-Kheraqi, Abu-Al-Qassim, (1993). **Matn Al-Kheraqi**, no edition, Cairo, Dar A-Sahaba.
- Al-Kortoby, Abo Abdullah, (no date). **Al-Gamie' Le-Ahkam Al-Qura'n**, edit. 2, Cairo, Dar A-Rayyan.
- Al-Qaliubi, Ahmed and Al-Burullusi, Ahmed, (1995). **Hashiata Qaliubi and Omeira**, no edition, Beirut, Dar Al-Feqr.
- Al-Qastalani, Ahmed Ibn Mohamed, (1323 H.). **Irshad A-Sari L-Sharh Sahih Al-Bukhari**, edit. 7, Cairo, Al-Matba'a Al-America Al-Qubra.
- A-Nawawi, Abu-Zakaria, (no. date). **Al-Majmo' Sharh Al-Mohazzab**, no edition, Beirut, Dar Al-Feqr.
-
- A-Nawawi, Abu-Zakaria, (1991). **Al-Minhaj**, edit. 2, Beirut, Dar Ihia'a A-Turath Al-Arabi.
- A-Nawawi, Abu-Zakaria, (1991). **Rawdat A-Talibeen**, validated by: Zuheir A-Shawish, edit. 3, Beirut, Al-Maktab Al-Islami.
- A-Shawkani, Mohamed Ibn Ali, (1994). **Fath Al-Qadeer**, edit. 1, Damascus, Dar Ibn Katheer.
- Fatawa A-lajna A-Dae'ma Lel-Bohouth Al-Elmia and El-Ifta'a**, (no date). Chairmanship of Scientific Researches and Al-Eftaa', Saudi Arabia,
- Hani Al-Manaeli, **Al-Okoba fe A-Tashrieh Al-Islami**, no edit, Al-Mahalla A-Qubra, Egypt, Dar A-Qutub A-Qanonia.
- Ibn Abd Al-Barr Abu-Umar, (2000). **Al-Istezkar**, validated by: Salim Mohamed Atta and Mohamed Ali Moa'wad, no edition, Beirut, Dar Al-Qutub Al-Elmia.
- Ibn Battal, Abu-Al-Hassan, (2003). **Sharh Sahih Al-Bukhari**, validated by: Yasser Ibn Ibrahim, edit. 2, Riyadh, Maktabat A-Rushd.
- Ibn Hajjar, Ahmed Ibn Ali, (1379). **Fath Al-Bari**, validated by: Mohibb A-Din Al-Kahteeb, no edition, Beirut, Dar Al-Ma'refa.
- Ibn Hazm, Abu-Mohamed, (no date). **Al-Mohalla**, no edition, Beirut, Dar Al-Feqr.
- Ibn Katheer, Abu- Al-Fida'a, (1999). **Tafseer Al-Qura'an Al-Azeem**, validated by: Mohamed Hussein Shams A-Din, edit. 1, Beirut, Dar A-Qutub Al-Elmia.

- Ibn Qudamah, Mowaffaq A-Din, (1968). **Al-Moghni**, edit. 3, Cairo, Maktabat Al-Qahera.
- Ibn Taimia, Ahmed Ibn Abd Al-Halim, (1995). **Majmo' Al-Fatawa**, validated by: Abd Al-Rahman Ibn Mohamed Qassim, no edition, Al-Madinah A-Nabawia, Mojama' King Fahd.
- Mahmoud Najjuib Hosni, (1973). **Elm Al-Eqab**, edit. 3, Cairo, Dar A-Nahda Al-Arabia.
- Mamoun Mohamed Salamah, (1983). **Qanon Al-Okobat; Al-Qesm Al-Khas**, edition 3, Cairo, Dar Al-Fiqr Al-Arabi.
- Mohamed Saleem Al-Awwa, **Fe Usul A-Nezam Al-Jinaei Al-Islami, A Comparative Study**, no edit, Cairo, Dar Al-Ma'aref.
- Monqez A-Saqqar, (no. date). **A-Takfeer wa Dawabetoh**, no edition, Makka Al-Mokarramah, Rabitat Al-Alam Islami.
- Muslim, Abu-Al-Hassan, (no. date). **Sahih Muslim**, validated by Mohamed Fouad Abd Al-Baqi, no edition, Beirut, Dar Ihia'a A-Turath Al-Arabi.
- Qaied Qaroush, (1987). **Toroq Intiha'a Welaiat Al-Hoqqam fe A-Sharia'a Al-Islamia wa A-Nuzum A-Dostoria**, edit. 1, Beirut, Moassat A-Risalah.
- A-Nawawi, Abu-Zakaria, (no. date). **Al-Majmo' Sharh Al-Mohazzab**, no edition, Beirut, Dar Al-Feqr.
-
- A-Nawawi, Abu-Zakaria, (1991). **Al-Minhaj**, edit. 2, Beirut, Dar Ihia'a A-Turath Al-Arabi.
- A-Nawawi, Abu-Zakaria, (1991). **Rawdat A-Talibeen**, validated by: Zuheir A-Shawish, edit. 3, Beirut, Al-Maktab Al-Islami.
- Sheikhi Zadah, Abd Al-Rahman Ibn Mohamed, (no. date). **Majma'a Al-Anhur**, no edition, Beirut, Dar Ihia'a A-Turath Al-Arabi.