

REVISITING LAW OF APOSTASY IN ISLAMIC LAW

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ABSTRACT

There are various verses from Al-Quran that speak about freedom of beliefs. However, none of them instruct the believers to exercise mandatory death penalty on apostate. There are few Prophetic Traditions that have been used as the basis to form the mandatory death penalty by four major schools of jurisprudence. The need to revisit this issue is supported by a handful of modern Islamic scholars such as Sheikh Dr. Muhammad Sa'id Ramadhan al-Bouthi, Dr. Thoriq Suwaidan, Dr. Adnan Ibrahim among others. This paper does not intend to undermine the previous works of our past great scholars but this came as a form of enriching the intellectual discourse in the sphere of Islamic Law and Studies. The authors affirm that there is no strong argument or evidence to support mandatory death penalty on apostate.

Keywords: freedom, beliefs, apostate, mandatory death penalty, apostasy

INTRODUCTION

God Almighty, Allah (S.W.T.), said in the Quran “There is no compulsion in religion” (2:256). This maxim has always been the foundation of professing Islam as a religion and acknowledging it as one’s belief. There should not be any element of force in conviction. This is because, professing a religious belief is a deeply heart matter. Hence those two words of conviction and compulsion will never ever be in the same basket. When someone is forced to profess a belief (i.e. Islam), then at that very moment his ‘confession’ of *shahadah* is null and void. This very maxim is also applied on someone who is forced to disbelieve in Allah (S.W.T.), he will still remain a Muslim even though the utterance word of disbelieve (i.e. *Kufr*) had been delivered because he was not wilfully doing it with his willing heart.

There are verses from Al-Qur’an that state about the freedom to profess a belief. Here the authors will bring out a few verses, for example:

“And say: the truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve” (18:29)

“Indeed, this is a reminder, so he who wills may take to his Lord a way” (76:29)

“Say: Allah [alone] do I worship, sincere to Him in my religion” (39:14)

“And had your Lord willed, those on earth would have believed - all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers?” (10:99)

From our main sources (i.e. Al-Qur’an), it is crystal clear that someone should not be forced to revert to Islam and vice versa as the belief that is being forced upon is not valid in its actual sense. Therefore, it is questionable why mandatory death penalty is fixed as the legal punishment for apostasy which widely taught and found in Islamic Jurisprudence books, institutions and even in some Islamic countries constitution? It seems that this punishment is contradicting with the most basic maxim of

professing a belief that had been laid down in Al-Qur'an? This paper intends to revisit this legal punishment of apostasy that warrants a fixed death penalty. Prior to that, the authors will discuss the definition of apostasy in Islam, when and how can someone turn into an apostate, what is the procedure when someone was caught to be an apostate before being punished and lastly will be analysing the Al-Qur'an, Prophetic Traditions, ancient and current Islamic Jurisprudence books to find out whether it is true that in Islamic Law the legal punishment for apostasy is mandatory fixed death penalty

II. BACKGROUND

A. Definition

Before we proceed to discuss the issue of death penalty of apostasy in Islam, it is extremely important for any given research or studies of any discipline to start it from the linguistic and terminology approach of the subject word in its origin language.

Apostasy in Arabic Language is *al riddah*. Abdul Rauf Al-Manawi in his book *At-tauqif 'ala muhimmati al-ta'arif* defined *al-Riddah* linguistically as "leaving of something for something else" (Al-Manawi 1990). The agent or the doer of the action (i.e. apostasy) is called al murtad.

Al-Riddah in its terminological definition (i.e. in Islamic sense) means "to disbelieve after professing the religion of Islam". Mansur bin Yunus or widely known as al-Bahuti from the Hanbali school of jurisprudence in his book *Kasshaf al-qina'i 'an matn al-iqna'i* defined it as "Someone who becomes a disbeliever after professing Islam either by word or belief or doubt or action." (Al-Bahuti, 1982) Ahmad bin Muhammad al-Khaluti or known as as-Sawi from the Maliki school of jurisprudence in his book entitled *Bulghat al-saliki li aqrab al-masaliki* opined that an apostasy is when a Muslim disbelieves with utterance of direct expression of word or using word that portrays disbelieve or an action that shows disbelieve. (As-Sawi, N.D). Abu Bakar bin Mas'ud or widely known as al-Kasani from the Hanafi school of jurisprudence in his book of *Badai' al-sanai'i fi tartib al-sharai'i* in the opinion that "The principle of what makes an apostasy is utterance of word of disbelieve by mouth after having the believe (i.e. Islam), thus an apostasy is leaving of the believe. (Al-Kasani, N.D). Muhammad bin Abdul Rahman al-'Usmani from the Syafi'i school of jurisprudence in his book called *Rahmat al-ummah fi al-ikhtilaf al-a'immah* defined it as "renunciation of Islam by word or action or intention. (Al-Usmani, N.D)

Yahya Bin Sharaf or widely known as an-Nawawi in his book *Minhaj al-talibin wa 'umdat al-muftin* defined it as "renunciation of the religion of Islam either by intention in heart or words of disbelieve or action of it, be it he said those words as a form of jokes or stubbornness or truly believe in it. (An-Nawawi 2005). All the four major schools of jurisprudence and others besides them have around the same line as those definitions of what *al-Riddah* means in term of definition.

B. Types of ways that lead to apostasy

There are three different ways where one can be considered as an apostate and that is either by believing, or uttering of word or an action.

1) Believing

The first nature of apostasy is to believe in his or her heart about something that will bring him or her to disbelieve. Among examples are to believe that:

1. Islam is not the true religion
2. Islam has flaws
3. Al-Qur'an is incomplete
4. There are instructions in verses in Al-Qur'an that are unsuitable for current era

5. Prophet Muhammad is not a messenger
6. The five obligatory prayers as a daily routine is not really important

2) Uttering of word/s

The second nature of apostasy is to utter the word/s of disbelieves. Either it is in direct expression such as:

1. "I am not a Muslim anymore"
2. "Allah is not our God"
3. "I do not believe in what Muhammad said"

Or it can also be the utterance of word/s of disbelieves in indirect expression such as:

1. "Christianity is better than Islam"
2. "Maybe heaven and hell does not exist"
3. "There might be verses from the al-Qur'an that are not in our *Mushaf* currently"

3) Action

The third nature of apostasy is to act upon an action that portrays disbelieve. Few of such examples are:

1. Worshipping a statue
2. Kicking the Al-Qur'an
3. Practicing black magic/voodoo/sorcery
4. Wearing a 'cross' for good luck charm

These three different types of ways that can lead to apostasy is not necessary to commit it wholeheartedly. It also includes those commit it in a form of joke. It is because religion and belief is pure and sanctity in nature and should not be defiled by jokes and lowly narratives of humour. It is a blasphemous to religion. Therefore, any kind of disrespect will automatically be categorised the act of apostasy

C. Causes of apostasy

In this part, a series of interview had been conducted by the authors in Negeri Sembilan area to find out the reasons and causes of apostasy which could serve as a sample of apostasy case in Malaysia. As we are aware, there must be some reasons why someone commits apostasy.

Apostasy can be divided into two categories namely apostasy committed by those who was born Muslim and apostasy committed by those who reverted to Islam but later returning back to their previous religion.

Below are the explanations regarding these two groups of people who committed apostasy based on the interviews:

(1) An apostate who was born as a Muslim

In this group, there are two major causes that lead to their apostasy. Firstly, lack or zilch of Islamic education upbringing. Parents or guardians are vital in building up a child future but sad to say, majority of them only focus on the success building for the worldly and materialistic achievement whereas achievement for the Hereafter most often neglected. If a child has not been inculcated with religious values since toddler, they will certainly see no value in it either sooner or later.

For example, a born Muslim who has not been instilled in him about the importance of obeying Allah's words, he will eventually drop off from clinching onto the religious status of Islam. It is because of they will use logic and their personal experience in approaching any issue without being aware and submitted to the authority of Allah's words, for example like the issue of homosexual relationship. Allah (S.W.T.) had given a stern warning in the Al-Qur'an about how the people of Lut who were practicing homosexual activities were being totally destroyed and demolished by Allah's wrath even on Earth. It was also supported by the *hadith* that Prophet (P.B.U.H) sternly prohibited it with saying that Allah's denunciation is on them. So a born Muslim without Islamic background upbringing certainly unable to understand the prohibition of homosexual activities. Furthermore, in our current era whereby the freedom of everything without boundaries and limitation clouded their mind until it makes them think that Islam are stone age religion and is not appropriate in today's time.

If they were to be brought up by their parents who had been instilling the importance of obeying Allah's instruction, then whatever modern psychological warfare being pushed onto them, they are able to face it.

Secondly, it is because they were brought up by a non-Muslim guardian or family members (whom either or both of the child parents are a new Muslim). A child will always try to imitate or follow the adult from their household. Take for example, who teach a child that before entering a room or a house, firstly they must knock the door? In most cases none of the parents teach the children. They learn by looking at their adults' routine and habit. That is why when a born Muslim child is being brought up by a Non-Muslim they tend to become apostate because of firstly there is no one to instil the importance and information about Islam and secondly they will try to follow the routine of their guardian as they are part of that nucleus family household. A child most needed asset is care and emotional support. For them to be feel loved they would like to be a part of the family, if it does not, they will feel left out because of different lifestyle will infer to this child they are not one thus not totally being viewed like one warmth family.

(2) An apostate who revert to his previous religion

Some people reverted to Islam for worldly reason such as marriage. They become Muslims not because of their convictions towards Islam as a true religion but rather for the sake of marriage. As we know, in any Muslim majority countries, a civil marriage is not valid if one of the partners is Muslim and the other is not. So for the couple to get married, the non-Muslim partner must firstly revert to Islam and only then they will be allowed to get married by the respective Muslim Marriage Registry.

So the massive problem stem from this kind of marriage is combination of two major factors from what the authors are able to observe. Firstly, the non-Muslim who reverts to Islam solely and only to be allowed to get married with the other Muslim partner. Secondly, when they had married, the Muslim born partner or/and their family members did not infuse Islamic values either by guiding the revert or portraying an Islamic lifestyle. Even after these two issues are intertwining into the new Muslims daily life diary, they still have not yet choose to apostate. Their turning point to apostasy only come into the picture when there is an issue of divorce. Divorce in considered one of the most common reason why a non-Muslims revert become apostate and return back to their previous religion, as they never seem to feel attached nor strongly believe in Islam.

Punishment of Apostasy as Widely known Islamic Law

It is widely known among the Muslims and even the Non-Muslims that the punishment for apostasy is mandatory fixed death penalty. This is what we have learned from the major schools of Islamic jurisprudence. This punishment however will only being carried after a grace of period of three days of consultation and counselling to confirm the intention of the doer and to be asked for repentance.

In Islam every action must be accompanied with intention. One's intention affects greatly on its consequences in regards of laws be it in divorce or case of murder or anything else. The importance of intention can be captured by one of the most popular prophetic tradition narrated by Imam Muslim which said that 'Umar bin Al-Khattab heard from the Prophet (P.B.U.H) that he said:

“Verily action is accompanied with intention, and for every human is for what he intent” (Muslim , 2000)

That is why when someone was caught for saying or doing an action deemed to be an apostasy's action, his intention should first be questioned because there might be element of threat, coercion, a slip of tongue or any other elements whereby the real intention of the doer was never in the first place to declare an apostasy or make fun of religion of Islam.

In regards for the grace period that will be offer for the doer after he was caught or confessed, for Syafi'i' school of jurisprudence, Ibrahim Bin 'Ali al-Syirazi in his book titled *al-tanbih fi al- fiqh al-Syafi'i* said that there are two sayings in this school of jurisprudence in regards of this matter. Firstly, the apostate is to be given three days for repentance and secondly is to ask the apostate for his repentance as soon as he was caught or confessed. According to al-Shirazi the second saying is more correct in regards of this school of jurisprudence opinion (al-Shirazi, 1983). Whereas in Hanbali school of jurisprudence, Abdullah bin Ahmad Bin Hanbal the son of the founder for this school of jurisprudence, Imam Ahmad Bin Hanbal, in his book *Masa'il al-Imam Ahmad riwayat ibn Abdullah* said that an apostate should be asked three times for repentance and if he still stubborn, he will be punished by death. (Abdullah, 1981) For Maliki school of jurisprudence, in the book of *Hasyiah al-Dasuqi 'ala al-sharh al-kabir* by Muhammad bin Ahmad al-Dasuqi said that it is an obligation for the judge to give an apostate three days to repent. (al-Dasuqi, n.d) And for Hanafi school of jurisprudence, Abu Bakar bin Ahmad al-Kasani in his magnum opus *Badai' al-sanai' i fi tartib al-sharai' i* said that it is desirable (*mustahab*) for the judge to ask the apostate whether he want to repent or not because as there might be a chance that he want to repent but it is not obligatory on the judge to ask for the apostate's repentance as the calls (*dakwah*) had already reached him (the apostate). (al-Kasani, n.d) Thus it is dependable on the judge seeing on the apostate situation of his probability to repent, or if the apostate has asked for time to think then he may be given three days extension but if the apostate did not demand for any period to reconsider his action then he will be brought to the gallows directly.

B. Contradiction with basic legal maxim of belief

As we have gone through in the sub-chapter before this, it had clearly stated that all four major schools of jurisprudence agreed on one particular thing and that is when a Muslim become an apostate, firstly they will be asked for their repentance and if they are still stubborn with their stand to turn their back on Islam then their punishment is mandatory fixed death penalty.

However, there is a major contradiction that found in regards of apostate punishment and the maxim in many verses in Al-Quran that states on freedom of belief.

So do human beings have freedom of choice to choose their own beliefs? Yes, humans are absolutely given this set of freedom as narrated in the Al-Quran, Chapter Al-Kahfi verses 29 in which Allah (S.W.T.) said:

“And say: the truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve”.

In this verse Allah (S.W.T.) instructed Prophet Muhammad (P.B.U.H.) to tell the human race that: what I am conveying to all of you is the truth from our God, there is no doubt nor uncertainty in the message that I had brought upon you. Whoever wants to believe, then they believe and whoever wants to disbelieve then they disbelieve.

So in this verse, Allah (S.W.T.) had stated even towards the first layer of caller to Islam (i.e. the Prophet Muhammad P.B.U.H.) that we as a Muslim have the obligation to propagate this religion of truth to all humankind but whether afterward those people that we had called to Islam would like to embrace Islam or still not accepting Islam, it is all up to their choice.

It is for the simple reason that when we were to threaten them with death if they do not want to accept Islam, then of course at that very moment they will 'accept' Islam but do they believe in Islam and embrace that there is no God except Allah (S.W.T.) and Prophet Muhammad (P.B.U.H.) is His prophet? Or are they accepting Islam for the mere reason to avoid being killed? If it was for the second reason on why someone accepts Islam, then the ways that the caller to Islam did was wrong. He did not abide to the procedure our God had prescribed in the Holy Book whereby they, the one whom we called upon to Islam, have the freedom of choice to accept our calling or not.

On top of that Allah (S.W.T) also do remind us that there is no forcing in religion as like the authors had said prior to this, and that is, if we were to force the "belief" unto someone then the Shahadah that they utter is just mere lip service and is not resolute deep in their heart. It defeats the purpose and true meaning of what "believe" was supposed to mean. To bring this thought into light, Allah (S.W.T.) had said in Chapter al-Baqarah verse 256: "There is no compulsion in religion". (2:256)

Besides that, Allah (S.W.T) had briefly said in Al-Quran, Chapter Yunus verse 99 to Prophet Muhammad (P.B.U.H) about the fact that there is no use to force a religion unto someone as we humans are unable to achieve their acceptance of *Iman* with coercion. Allah (S.W.T) said:

"And had your Lord willed, those on earth would have believed - all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers?" (10:99)

We as the callers to Islam are supposed to keep spreading and teaching the message of Islam as guide like a teacher or even a promoter as an analogy. It is because this 'product' is a quality, original and a necessity product. Soon when people began to realise and learn about it and how it is the only one and only available in the market for them as a necessity, they will surely 'buy' it with an unwavering heart. For a Non-Muslim who had never heard about Islam before or have heard about Islam but through the wrong media and people thus they will surely need time to chew on what we are delivering. Same like when you are selling a product that have never been available in a country before, you will need a strenuous of work and lengthy time to make your demographic educated by your product and that same goes to *dakwah*. It takes time and most important point that the authors would like to highlight is, no compulsion in belief. It is because in the end we want the non-Muslim to become Muslim because they believe with their whole heart that there is no God but Allah and that Prophet Muhammad is His messenger. Same goes to an apostate that leaves Islam. Can we force them back into the religion with saying that it is a fixed mandatory death penalty if you do not come back into Islam? Do we want them to return back to Islam with coercion? Afterward they might 'come back' to Islam, but is it with total faith of belief? Or is it they just return for the sake of escaping from death penalty? Then in which will contradict with all the verses above.

After saying all this, we need to bear in mind that, even though Allah (S.W.T.) give humans the freedom of choice to believe, it is only applicable on our earthly life in this World. Whereas in the Hereafter, we will have to shoulder what we have chosen for during our life in this World. Yes, Allah (S.W.T.) gave us the chance to believe what we would like to believe even though the call of Allah had come to us. So if someone was to meet Allah (S.W.T.) as a believer then the reward of Paradise is for him. But if someone was to meet Allah (S.W.T.) with his status as a disbeliever then he has to pay the price of his choice and that is torture and Hell for him in the Hereafter. Every action has its tag. If you are willing to bring it to the counter, then make sure you are willing to pay for it. As per written in Chapter al-Kahfi verse 29 which Allah said:

“And say: the truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve. Verily We (Allah S.W.T) have prepared for the injustice (the disbelievers) Hell.”

In that very verse, Allah (S.W.T.) stated that he indeed gives man the freedom to choose their belief but in Hereafter we are to be responsible with what we had chosen and for the disbeliever the return is Hell. So that does not mean that freedom of choice does not have any weightage, only that in this life in this particular World, we are tested with belief and no earthly fixed Godly-instruct punishment to be done by man on man. Man may believe if they want to and they may disbelieve if they may want to but eventually those action will be questioned after the end of this worldly life. So to bring upon perspective of apostasy, for them to return back to their previous religion is also a form of free to believe that had been stated by Al-Quran but bear in mind, for the Hereafter's implication is waiting for them.

C. Dalil (proof) in regards of apostasy punishment

In Islamic Jurisprudence, for any *hukum* (Islamic Law) there must be (proof) to support its legal standing as a valid law for it to be legalised in Islam. The *dalil* have to come from the sources of Al-Qur'an and As-Sunnah (prophetic tradition). Then as a strong addition to support its legal standing there are other various forms of sources on where to extract those *dalil*. The discipline of study in which one learn the ways on where or how to extract *dalil*, exist in the sphere of the discipline study of *Usul Fiqh* (Principle of Islamic Jurisprudence).

So what is the proof that the major schools of jurisprudence rely on in deducing the law of apostasy as a mandatory fixed death penalty?

The authors had done research on the four major schools of jurisprudence on their basis of proof for the fixed capital punishment for apostasy. For Syafi'i school of jurisprudence, the authors based it on Dr. Muhammad Zuhaili's book titled *al-Mu'tamad feel fiqhi ash-shafi'i* (Az-Zuhaili, 2007). For Hanafi school of jurisprudence, the authors based it on Abu Bakar bin Mas'ud al-Kasani's book titled *Badai' al-sanai'i fi tartib al-sharai'i* (al-Kasani, n.d.). Whereas for Hanbali school of jurisprudence, the authors based it on the book of *al-Mubdi' sharhi al-muqni'* by Ibrahim Bin Muhammad or widely known as Ibn al-Muflih al-Hanbali (Ibn al-Muflih, n.d). Lastly, for Maliki school of jurisprudence, the authors based it on Dr Wahbah al-Zuhaili's book titled *al-Fiqh al-Maliki al-muyassar*. (Al-Zuhaili,2002)

In looking for any proof to decide its Islamic law, a jurist must and will always start the exploration and searching from Al-Qur'an and then Al-Sunnah. As we start looking for proof/s in the Al-Qur'an for the mandatory fixed death penalty upon apostate, there is actually no proof that can be found from Al-Qur'an. Even when we were to research on books from all the four schools of jurisprudence, we can find that, the jurists did not bring in any proof from Al-Qur'an to derive the Islamic Law for mandatory fixed capital punishment for apostasy. It is because there is none to be found in Al-Qur'an in regards of fixed capital punishment, in comparison for fornication and stealing, their fixed punishment was embedded in the Al-Qur'an. The only verse from Al-Qur'an that the schools of jurisprudence did took on during explanation in the chapter of apostasy in each of their books is the verse 217 from chapter al-Baqarah which Allah (S.W.T.) said:

“Whoever from you that convert back to your previous religion(apostasy) then he will die as disbeliever and all his deed shall void in the World and Hereafter” (2:217).

This verse does not infer anything on the fixed capital punishment of apostasy as it only informs that the apostate's good deed shall not be accepted by Allah (S.W.T.) and eventually they will end up in the Hellfire, later in the Hereafter.

Next, going forward into the proofs from As-Sunnah. There is one popular *hadith* that all four schools of jurisprudence mentioned and used it for constructing the fixed capital punishment for apostasy as an Islamic law. This particular *hadith* can be seen as the main cursor of current understanding of fixed death penalty for apostasy. There are various *Muhadithin* (narrators of hadith) including Imam Al-Bukhari narrated this particular *hadith* in their books but this *hadith* was not narrated by Imam Muslim. Some of the hadith are as follows:

(1) Imam al-Bukhari (3017)

‘Ali Bin Abdullah told us, Sufian told us, from Ayub, from ‘Ikrimah that Ali set fire on a group of people and that news reached to the knowledge of Ibn ‘Abbas and so he said that: if it was me, I will not set fire on them because Prophet (P.B.U.H) had said: (Do not punish with punishment of Allah S.W.T). No doubt I will kill them as Prophet (P.B.U.H) said: (whoever changes his religion, kill him.) (Al-Bukhari . n.d)

(2) Ibnu Majah (2535)

Muhammad bin as-Sabbah told us, Sufian bin ‘Uyainah inform us, from Ayub, from ‘Ikrimah, from Ibn ‘Abbas said: The Prophet (P.B.U.H) said: (Whoever changes his religion, kill him). 9 Ibn Majah, n.d)

(3) At-Tirmizi (1458)

Ahmad bin ‘Abdata al-Dabiyyu al-Basaree told us, ‘Abdul Wahab al-Tsaqafiyyu told us, Ayub told us, from ‘Ikrimah: Verily ‘Ali had set up a group of apostates on fire, and this event reached to the knowledge of Ibnu ‘Abbas and he said: Even for me, I will kill them for the saying of the Prophet (P.B.U.H): (Whoever changes his religion, kill him)). But for me, I will never set them up on fire because of the Prophet (P.B.U.H) saying that: (Do not punish with the punishment of Allah S.W.T). 9 At-Tirmidzee, 1999)

(4) Abu Dawud (4351)

Ahmad bin Muhammad bin Hanbal told us, Ismail bin Ibrahim told us, Ayub inform us, from ‘Ikrimah: ((Verily ‘Ali was setting up a group of apostates on fire and this event reached to the knowledge of Ibn ‘Abbas and he said: I will never burn them with fire, as Prophet (P.B.U.H) had said: (Do not punish with the punishment of Allah S.W.T) and surely I will kill them from the saying of Prophet (P.B.U.H): (Whoever changes his religion, kill him). (Abu Daud , n.d)

(5) Al-Nasa’i (4076)

‘Imran bin Musa said telling us, ‘Abdul Warith said telling us, Ayub inform us, from ‘Ikrimah said, Ibn ‘Abbas said: Prophet (P.B.U.H) said: (Whoever changes his religion, kill him). (Al-Nasa’i, 2000)

All the five *hadith* above, mentioned the phrase of *whoever changes his religion*, and by changing it means someone who was initially or already a Muslim but decided to convert to other religion for example like Christianity or Buddhism and it does also include those who convert to atheism (i.e. not believing in God).

That first *hadith* is undoubtedly the most used and quoted As-Sunnah form of proof to derive the fixed punishment of death penalty for apostasy. After it, there is another *hadith* that came second most quoted hadith by jurists to construct the Islamic Law of mandatory fixed death penalty for apostasy. That *hadith* is:

(1) Imam al-Bukhari (6878)

‘Umar bin Hafsa told us, My father told us, al-A’ mash told us, from Abdullah bin Murrah, from Masruq, from Abdullah said: Prophet (P.B.U.H) said:

(Not *halal* the blood of Muslim who had confessed that there is no god except Allah and I am Allah’s messenger, except for three situations: life for life, and married fornicator, and leaver of Islam and deserter from the community.) (Al-Bukhari, n.d)

(2) Imam Muslim (1676)

Abu Bakar bin Abi Shaibah told us, Hafsu bin Ghiya-tsin and Abu Mu’awiyah and Waqi’ told us, from al-A’ mash, from Abdullah bin Murrah, from Masruq, from Abdullah said: Prophet (P.B.U.H) said:

(Not *halal* the blood of Muslim who had confessed that there is no god except Allah and I am Allah’s messenger, except for three situations: married fornicator, and life for life, and leaver of Islam and divider of the community.) (Muslim, 2000)

(3) Al-Nasa’i (4033)

Ishak bin Mansoor told us and said, Abdul Rahman informed us, from Sufian, from al-A’ mash, from Abdullah bin Murrah, from Masruq, from Abdullah said: Prophet (P.B.U.H.) said: (And verily that have no god except Him, not *halal* the blood of Muslim who had confessed that there is no god except Allah and I am Allah’s messenger, except for three types of people: leaver of Islam and divider of the community, and married fornicator, and life for life.) (Al-Nasa’i, 2000)

IV ANALYSES

A) First Hadith

Here, let us view this *hadith* and analyse it thoroughly. In terms of looking for status of a *hadith*, it is categorised either as accepted (مقبول) or rejected (مردود). In the Science of Prophetic tradition, it is called “Science of knowledge reliability of prophetic tradition” (علم الحديث دراية). And under each of these two categories, they will branch out a few more sub-categories in terms of ranking of acceptance and rejection. The authors will not go deeper for each categorisation as the authors does not sees the importance and relevance to be place in here.

So for now let us focus on the status of the first hadith, whether it is accepted or rejected by the *muhaddith* (experts of prophetic traditions). Yes, the first hadith was categorised in term of status as accepted hadith. Its status can be known from any commentary of *muhaddith*. For example, the famous and sought after modern era *muhaddith* named Syeikh Nasiruddin Albani in his book titled *Irwa’ al-ghalil fi takhrij ahadith manar al-sabil* said that this hadith is authentic (صحيح) (Albani, 1985) -one of the ranking for accepted hadith.

But the issue that the authors found in this hadith is not regarding its status but it is about its main classification in terms of “Science of narration of prophetic traditions” (علم الحديث رواية) .

The issue in regards of status of a *hadith* in usual sense come after this main classification. So the main classification in “Science of narration of prophetic tradition” at the first level are given into two types: the consecutive (المتواتر) and the isolated (الأحاد). Then going on further, under the isolated hadith, there are three more branches in descending order of reliability: the famous (المشهور), the rare (العزيب) and the scarce (الغريب). (Aabaadee, 2003)

After analyzation had been done on the first *hadith*, we found that it is hadith *Ahad* (the isolated). Even though it was narrated by most *muhaddithin* except for Imam Muslim, but the very first layer of chain of narrators that had actually heard the saying of Prophet (P.B.U.H.): (Whoever changes his religion, kill him) is only one person (i.e. Ibn ‘Abbas). Even if in each five layers of chain of narrators have ten narrators but if one of those layers happen to be only one or two or up to three narrators, then it falls under the category of *Ahad*. For this *hadith*, it falls under the lowest ranking of *Ahad* and that is

the category of *Al-Gharib* (the scarce) because of there is only one narrator in one of the layer of the chain of narrators.

There is a thing that the authors need to make clearly understood. The authors totally submitted to the fact that it is an authentic hadith and Ibn ‘Abbas is among the trusted companion of Prophet (P.B.U.H.). Only that, if it does not collide in terms of principle of its gist with a much stronger form of proof (for example; hadith al-mutawaatir or verse from Al-Quran) then the authors will accept it as the fixed death penalty punishment. We must accept it because nothing stronger or equivalent ranks form of proofs blocking it. But because of that *hadith* was colliding with a lot of verses from Al-Quran that talked about freedom of belief on worldly situation that infer of against fixed death penalty punishment, it stands short. In the discipline of Principle of Islamic Jurisprudence, when a *Dilalah Qat’ie* (which is a clear type of proof or coming from an undebatable sources) and a *Dilalah Zhanni* (which is an unclear type of proof or coming from a debatable sources) collided, the former will prevail. In this case, the Ibn ‘Abbas hadith was a *Dilalah Zhanni* due to its nature as hadith *Ahad* whereas the verses from Al-Quran that speak about freedom of belief is *Dilalah Qat’ie*. Thus after analysing the first hadith, we find that it not strong enough to stand and use as a legal indicator for mandatory fixed death penalty for apostasy.

B. Second Hadith

The issue in regards of the second *hadith* to be used as a reference for fixed death penalty for apostasy is not appropriate at all. It is because, if we were to observe the *matan* (the text of *hadith*), we learned that all life cannot be taken away except for three types of people:

1. Life for life (which means someone who had committed murder)
2. A married fornicator
3. Leaver of Islam and divider of the community

We can realise that after breaking it apart into three parts, the punishment for apostasy is not merely just to leave Islam but the apostate must also do something that cause to divide the community of Islam, such as spreading hatred or misinformation propaganda in Muslim community to stir them up. So by that definition, for an apostate who just merely renounced Islam without causing any trouble towards the Muslim community to be breaking apart, then he is not under the category that is allowed of his blood. Thus an apostate in general by light of that very hadith will not face mandatory fixed death penalty. So to reiterate from this hadith, fixed death penalty does not apply to the apostates generically.

C. The apostasy of Abdullah Bin Sa’ad Bin Abi Sarhi

Before we go deeper into the story of this once companion of our Prophet (P.B.U.H.) that turned apostate and then turned back to Islam, let us get to know his background as narrated by Muhammad Bin Ahmad al-Zahabi in his book (al-Zahabi, 1998) *Siyar a’lam al-nubala’i*. This is a very useful and reliable book on the biography of the companions.

His full name is Abdullah bin Sa’ad Bin Abi Sarhi Bin al-Haarith. He was the foster brother of Uthman Bin ‘Affan by breastfeeding. He was initially a Muslim and the writer of Al-Quran for the Prophet (P.B.U.H.) but in the midst of his Islam in Madinah before the conquest of Mecca, he decided to leave Islam and becomes apostate and seeks refuge in Mecca. When Prophet (P.B.U.H.) knew about his apostasy, he ordered Abdullah Bin Sa’ad Bin Abi Sarhi to be killed. During the conquest of Mecca, Abdullah bin Sa’ad Bin Abi Sarhi was caught but he asked help from his foster brother, ‘Uthman bin ‘Affan, to talk through it with Prophet (P.B.U.H.) because he was about to be killed. Then Prophet (P.B.U.H.) decided not to kill him.

Here, is the *hadith* that say about Abdullah bin Sa’ad Bin Abi Sarhi was a writer for Prophet in inscribing the words of Allah and then he turned apostate:

Imam al-Nasa'i (4086)

Zakaria Bin Yahyaa told us and said, Ishak Bin Ibrahim informed us and said, 'Ali Bin al-Husain Bin Waqid reported to us and said, my father reported to me, from Yazid an-Nahwi, from 'Ikrimah, from Ibn 'Abbas said: Concerning the verse in Surat an-Nahl, ("Whoever disbelieves in Allah after his belief, except for one who is forced while his heart is secure in faith, but those who willingly open their hearts to unbelief, then upon them is wrath from Allah and for them is a great punishment,") (an-Nahl 16:106) that this is amended and an exception was made for that, as Allah said, ("Thereafter, your Lord is to those who emigrated after they had been put to trial and then they strove and were patient, verily, your Lord after that is forgiving and merciful.") (al-Nahl 16:110)

This verse was regarding Abdullah bin Sa'ad bin Abi Sarh, who was in Egypt and he would write for the Messenger of Allah, peace and blessings be upon him, but the devil deceived him and he joined the unbelievers. The Prophet ordered that he should be killed on the day of liberation, but 'Uthman ibn 'Affan sought protection for him, so the Prophet granted him protection.) (al-Nasa'i, 2000)

-This hadith had been graded authentic by Syeikh Muhammad Nasiruddin Albani in his book titled *Sahih sunan al-Nasa'i*. (Albani, 1999)

The second hadith that will be contributing in the issue of Abdullah Bin Sa'ad Bin Abi Sarhi is about the details during the event of Conquest of Mecca:

Imam an-Nasa'i (4084)

Al-Qasim Bin Zakaria informed us and said, Ahmad Bin Mufaddhal told us and said, Asbaat told us and said, Z'am al-Saddi said, from Mus'ab bin Sa'ad that his father said:

On the day of the Conquest of Mecca, the Messenger of Allah (P.B.U.H.) granted amnesty to the people, except four men and two women. He said: (Kill them, even if you find them clinging to the covers of Ka'bah). (They were) 'Ikrimah bin Abi Jahl, 'Abdullah bin Khatl, Miqyas bin Subabah and 'Abdullah bin Sa'd bin Abi As-Sarh. 'Abdullah bin Khatl was caught while he was clinging to the covers of Ka'bah. Sa'id bin Huraith and 'Ammar bin Yaasir both rushed toward him, but Sa'id, who was the younger of the two, got there before 'Ammar, and he killed him. Miqyas bin Subabah was caught by the people in the marketplace, and they killed him. 'Ikrimah travelled by sea, and he was caught in a storm. The crew of the ship said: 'Turn sincerely towards Allah, for your (false) gods cannot help you at all in this situation.' 'Ikrimah said: 'By Allah, if nothing came to save me at sea except sincerity toward Allah then nothing else will save me on land. O Allah, I promise You that if You save me from this predicament I will go to Muhammad (P.B.U.H.) and put my hand in his, and I am sure that I will find him generous and forgiving.' So he came, and accepted Islam. 'Abdullah bin Sa'ad bin Abi Sarhi hid in the house of 'Uthman Bin 'Affan, and when the Messenger of Allah (P.B.U.H.) called the people to give their Oath of Allegiance, he brought him, and made him stand before the Prophet (P.B.U.H.). He ('Uthman) said: 'O Messenger of Allah! Accept the allegiance of 'Abdullah.' He raised his head and looked at him three times, refusing his allegiance each time, then he accepted his allegiance after three times. Then he turned to his Companions and said: 'Was there not any sensible man among you who would get up when he saw me refusing to give him my hand and kill him?' They said: 'We did not know, O Messenger of Allah, what was in your heart. Why did you not gesture to us with your eyes?' He said: 'It is not befitting for a Prophet that his eyes be deceitful.' (An-Nasa'i, 2000)

-This *hadith* too had been graded authentic by Syeikh Muhammad Nasiruddin Albani in his book titled *Sahih sunan al-Nasa'i*. (Albani, 1999)

The issue that the authors observed is; whether during the event that Prophet (P.B.U.H) released him without death punishment, is he still a disbeliever or already back as a Muslim is not certain. Yes, the authors agreed that he did die as a Muslim because 'Uthman Bin 'Affan appointed him as the

governor of Egypt during his reign as Khalifah (surely a governor of an Islamic territory must be a Muslim) and also of his leadership conquest of Africa for Islam during that period. But the golden question still lingers, was he already a Muslim or even accepting Islam when Prophet (P.B.U.H.) decided to release him? The probability is higher that he was not yet revert back to Islam during the Conquest of Mecca incident due to my three observations and analyses that the authors have extracted from the *hadith* above:

(1) In that *hadith*, they use the word allegiance (*bai'at* / البيعة-بايع) instead of using the words: embracing Islam (أسلم) or asking for repentance (استتاب) or anything likewise. The word *Bai'at* is a general word as it can mean that Abdullah Bin Sa'ad Bin Abi Sarhi pledged allegiance to Prophet (P.B.U.H.) to accept back Islam or it can also mean that he pledged allegiance to Prophet (P.B.U.H.), who was at that moment the conqueror of Mecca, as his protector because of his situation as *Ahl al-Zimmah* (The disbelievers that ought to be protected).

(2) If it was true that the allegiance was to mean that Abdullah Bin Sa'ad Bin Abi Sarhi want to accept back Islam as his religion, then why does it took Prophet (P.B.U.H.) four times of requests from him to accept that 'allegiance'? Also in the end, when Prophet (P.B.U.H.) did accept the 'allegiance' after four tries from 'Uthman Bin 'Affan, why does Prophet (P.B.U.H.) still seemed unsatisfied with Abdullah Bin Sa'ad Bin Abi Sarhi? Surely, if that 'allegiance' was to mean that Abdullah want to return back to Islam, Prophet (P.B.U.H.) will never take more than one try to accept it with wholeheartedly. It is for the simple fact that it is totally impossible, due to his nature of spreading and teaching *shahadah*. When facing in a situation whereby someone who had gotten lost in the middle of the road and afterwards would like to come back to the real destination, Prophet (P.B.U.H.) will gladly accept him because of his task as a Messenger of God.

(3) After all of these analyses, we can find that Abdullah Bin Sa'ad Bin Abi Sarhi was actually still not yet a Muslim during that very moment when Prophet (P.B.U.H.) released him. If it is true that the mandatory fixed punishment for apostasy is death penalty, surely Prophet (P.B.U.H.) will not release him. It is because, if it was a fixed punishment came from Allah (S.W.T.), he will definitely continue with the punishment even with whatever the circumstances were. Like how Prophet (P.B.U.H.) had said in a famous *hadith* (Muslim, 2000) that even if his daughter Fatimah was to steal, he will cut her hand as per inscribed by Allah's punishment. What more a non-family member? So this is a clear proof that fixed death penalty is not a punishment for apostasy.

V. CONCLUSION

This seminar paper does not intend to undermine the work of previous scholars and jurists of Islam. This work is sincerely a work of the authors to study and analyse the contradiction where he found between the basic fundamental principle of embracing a belief in Al-Qur'an that can be found in numerous verses and a numbers of Hadith that had been used as the proofs for the mandatory fixed death penalty for apostasy in general. Even though majority of the jurists put a clause of the need to give the apostate a grace period (i.e. three days) before sentencing the capital punishment for the apostate, it still does not fit into the frame of verses that speak about freedom of belief.

So is there really contradiction between the Prophet's saying and the word of God? The authors had proven otherwise. He had studied and analysed the said proof of the used *hadith* that is vital in validating the mandatory fixed death penalty for apostasy. He found that the *hadith* (Whoever changes his religion, kill him) was concluded as *hadith Ahad* which if to be colliding with verses of Al-Quran will surely be put aside. That is for the reason of *hadith Ahad* is a *Dilalah Zhanni* (which is an unclear type of proof or coming from debatable sources) whereas the verses from Al-Qur'an that speak about freedom of belief are *Dilalah Qat'ie* (which is a clear type of proof or coming from an undebatable

sources), so in that sense with the discipline study of Principle of Islamic Jurisprudence, the latter prevailed.

Next, the authors too studied and analysed the second most used *hadith* for constructing the mandatory fixed death penalty for apostasy which is the *hadith* (Not *halal* the blood of Muslim who had confessed that there is no god except Allah and I am Allah's messenger, except for three situation: married fornicator, and life for life, and leaver of Islam and divider of the community) and found that *hadith* is not appropriate and correctly use to enact the law of mandatory fixed death penalty for apostate. It is because the said *hadith* came with extra elaboration of "...and divider of the community" attached to the phrase of "leaver of Islam". So if an apostate does not cause trouble which will break apart the community of Islam then he must not be punished with the death penalty. In other words, the mandatory fixed death penalty is not for all apostates.

Lastly, the authors reviewed the case of apostasy of a companion of Prophet (P.B.U.H.) named Abdullah Bin Sa'ad Bin Abi Sarhi and interestingly found that there is no clear indication that the Prophet (P.B.U.H.) release him from the punishment of death only after he decided to come back to Islam. So that means, when the Prophet (P.B.U.H.) decided to release him, he was still an apostate, at that very moment. If an apostate has a fixed death penalty, surely the Prophet (P.B.U.H.) will not leave him and will certainly brought him straight for sentencing. It is because when a punishment that is fixed came from Allah (S.W.T.), the Prophet (P.B.U.H.) will never abandon nor neglect those rights of Allah (S.W.T.). He would without a doubt exercises those punishments even if the offender happened to be his family member. With that, it showed that the fixed death penalty on apostasy is not actually a fixed punishment.

In conclusion, the authors concluded that the death penalty that was imposed was not in general sense for all apostate as a fixed punishment but instead it was more towards a political move and state security purposes because of the threat of high treachery and uprising turmoil which will cause devastation for the citizen. It is not wrong for a nation to have a law on treachery offences, almost all independence and first world countries have these kinds of law to avoid high treachery and conspiracy that will break apart the harmony of a nation. It is rational law for peace keeping.

Last words from the authors are that, even though we were given by Allah (S.W.T.) the freedom of belief, it does not mean we will not be question. Allah (S.W.T.) may or may not inflict retribution for the apostate during the living on this World but surely He will put them in Hellfire if they were to die in that unfortunate status.

REFERENCES

Al-Qur'an.

Al-Qur'an. Al-Baqarah 2:217.

Al-Qur'an. Al-Baqarah 2:256.

Al-Qur'an. Al-Kahf 18:29.

Al-Qur'an. Al-Insan 76:29.

Al-Qur'an. Al-Nahl 16:106.

Al-Qur'an. Al-Nahl 16:110.

Al-Qur'an. Al-Zumar 39:14.

Al-Qur'an. Yunus 10:99.

Hadith

Abu Daud, Sulaiman Bin al-Ash'ath. n.d. *Sunan Abi Daud*. n.pl.: Dar Ihya' al-Turaath al-'Arabee. Kitab al-Hudud: Bab al-Hukmu Fiman Irtadda. Juz' 4: p. 126. #4351.

Al-Bukhari, Muhammad Bin 'Ismail. n.d. *Sahih al-Bukhari*. n.pl.: Dar al-Fikr. Kitab al-Jihad: Bab Laa Yu'azzabu Bi 'Azaabillah. Juz' 4: p. 27. #3017.

Al-Bukhari, Muhammad Bin 'Ismail. n.d. *Sahih al-Bukhari*. n.pl.: Dar al-Fikr. Kitab al-Diyat: Bab Qaulilahi Ta'ala (Surah Al-Ma'idah:45). Juz' 4: p. 27. #6878.

Al-Nasa'i, Ahmad Bin Syu'aib. 2000. *Sunan Al-Nasa'i*. Stuttgart: Jam'iyyat al-Maknaz al-Islami. Kitab Tahrim al-Dam: Bab Zikri Ma Yahillu Bihi Dam al-Muslim. Juz' 2: p. 662. #4033.

Al-Nasa'i, Ahmad Bin Syu'aib. 2000. *Sunan Al-Nasa'i*. Stuttgart: Jam'iyyat al-Maknaz al-Islami. Kitab Tahrim al-Dam: Bab al-Hukm Fi al-Murtad. Juz' 2: p. 669. #4076.

Al-Nasa'i, Ahmad Bin Syu'aib. 2000. *Sunan Al-Nasa'i*. Stuttgart: Jam'iyyat al-Maknaz al-Islami. Kitab Tahrim al-Dam: Bab al-Hukm Fi al-Murtad. Juz' 2: p. 670. #4084.

Al-Nasa'i, Ahmad Bin Syu'aib. 2000. *Sunan al-Nasa'i*. Stuttgart: Jam'iyyat al-Maknaz al-Islami. Kitab Tahrim al-Dam: Bab Taubat al-Murtad. Juz' 2: p. 671. #4086.

Al-Tirmizi, Muhammad Bin Isa. 1999. *Jami' al-Tirmizi*. Riyadh: Dar al-Salam Li al-Nashr Wa al-Tauzi'. Abwab al-Hudud: Bab Ma Ja'a Fi al-Murtad. p. 354. #1458.

Ibn Majah, Muhammad Bin Yazid. n.d. *Sunan Ibn Majah*. n.pl.: n.pb. Kitab al-Hudud: Bab al-Murtad 'An Dinihi. Juz' 2: p. 848. #2535.

Muslim, Ibn al-Hajjaj. 2000. *Sahih Muslim*. Beirut: Dar Ihya' al-Turath al-'Arabi. Kitab al-Qasamah wa al-Muharibun wa al-Qisas wa al-Diyat: Bab Ma Yubahu Bihi Dam al-Muslim. p. 750. #1676.

Muslim, Ibn al-Hajjaj. 2000. *Sahih Muslim*. Beirut: Dar Ihya' al-Turath al-'Arabi. Kitab al-Hudud: Bab Qat' al-Sariq al-Sharif Wa Ghairih Wa al-Nahyu 'An al-Shafa'ah Fi al-Hudud. p. 758. #1689.

Muslim, Ibn al-Hajjaj. 2000. *Sahih Muslim*. Beirut: Dar Ihya' al-Turath al-'Arabi. Kitab al-Imarat: Bab Qauluhu (S.A.W.) {Innama al-'Amal bi al-Niyyah} Wa Annahu Yadkhulu Fihi al-Ghazwu Wa Ghairihi Min al-'Amal. p. 855. #1907.

Books

Abadi, Muhammad Abul Laith al-Khayr. 2003. *Ulum al-hadith asliha wa ma'asiriha*. Selangor: Darul Syakir.

Abdullah Bin Ahmad Bin Hanbal. 1981. *Masa'il al-Imam Ahmad riwayat ibnuhu Abdullah*. Beirut: Maktab Al-Islami.

Al-Dasuki, Muhammad Bin Ahmad. n.d. *Hasyiah al-Dasuki 'ala al-sharh al-kabir*. Damascus: Dar al-fikr.

Albani, Muhammad Nasiruddin. 1985. *Irwa' al-ghalil fi takhrij ahadith manar al-sabil*. Beirut: Al-Maktab al-Islami.

Albani, Muhammad Nasiruddin. 1999. *Sahih sunan al-Nasa'i*. Lebanon: Maktabah Al-Ma'arif.

Al-Bahuti, Mansur bin Yunus. 1982. *Kasshafu al-qina'i 'an matn al-iqna'i*. Damascus: Darul Fikr.

Al-Kasani, Abu Bakar bin Mas'ud. n.d. *Badai' al-sanai' fi tartib al-sharai'*. Beirut: Dar al-Ihya al-Turath al-'Arabi.

Al-Manawi, Abdul Rauf. 1990. *Al-tauqif 'ala muhimmat al-ta'arif*. Al-Kaherah: 'Alim al-Kutub.

Al-'Usmani, Muhammad bin Abdur Rahmaan. n.d. *Rahmah al-ummah fi al-ikhtilaf al-a'immah*. Egypt: Maktab al-Tauqifiyyah.

Al-Nawawi, Yahya Bin Sharaf. 2005 *Minhaj al-talibin wa 'umda al-muftin*. Damascus: Dar al-Fikr.

Al-Shirazi. Ibrahim Bin 'Ali. 1983. *al-Tanbih fil fiqh al-Syafi'i*. Egypt: 'Alam al-Kutub.

Al-Sawi, Ahmad bin Muhammad al-Khaluti. n.d. *Bulghatu al-saliki li aqrab al-masaliki*. Lebanon: Dar al-Madar Al-Islami.

Al-Zahabi, Muhammad bin Ahmad. 1998. *Siyar a'lam al-nubala'*. Beirut: Muassasah al-Risalah.

Al-Zuhaili, Dr. Muhammad. 2007. *al-Mu'tamad fi al-fiqhi al-shafi'i*. Damascus: Darul Qalam.

Al-Zuhaili, Dr Wahbah. 2002. *al-Fiqh al-Maliki al-muyassar*. Damascus: Dar al-Kalim al-Tayyib.

Ibnu Muflih al-Hanbali, Ibrahim Bin Muhammad. n.d. *al-Mubdi' sharh al-muqni'*. Beirut: Dar al-Kutub al-'Ilmiyyah.