

Jurisprudence and legal status of apostasy from the perspective of "Khamseh" schools

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Abstract: Among limitations that Islam has considered for Muslims on freedom of speech is expressing disbelief, which is called apostasy in the Islamic culture and severe penalties have been jurisprudentially approved for the apostates. Islam condemns any kind of impose of the acceptance of the religion and insists on conscious faith of men, but Islam doesn't allow its followers to return from religion after accepting Islam and prevents any kind of expression or opinion that represents this. In this article, first the word apostasy has been studied in the word and then in jurisprudential terms. Then apostasy has been expressed from the perspectives of Shiite and Sunni scholars and then the causes of apostasy in the five schools have been extensively explained and also the kinds of apostasy in Islamic schools have been studied.

Key words: *Apostasy; Freedom of belief; Khamseh schools; Jurisprudence and law*

1. Introduction

The subject of apostasy and its religious sentence are among important issues of the current age. Perhaps, they weren't noticeable topics a hundred years ago, but now they are being used by Islam's enemies for various excuses so that they can portray a dark and violent image of Islam by them. In this article it has been attempted to study the pinions and beliefs of the Khamseh schools and to clarify their mutual points and their different points of views. But what is apostasy? What are its causes and how many types are they and what if their punishment? And tens of other issues that are discussed on the topic of apostasy, they are important topics that must be discussed separately. But what is certain is that Islam condemns any kind of impose of the acceptance of the religion and insists on conscious faith of men, but Islam doesn't allow its followers to return from religion after accepting Islam and prevents any kind of expression or opinion that represents this. In line with the above objectives, we have tried to answer the following questions:

- 1-What is the jurisprudence and legal nature of apostasy and in what areas it is crucial? And is it in compliance with what is in the Islamic jurisprudence and law or not? And also in jurisprudence and law, what elements are effective in the realm of apostasy and how has Islam predicted the realization criteria of apostasy and what will the results and effects of the evaluation of their views be?
- 2-How can whatever is concerned with the topic of apostasy in jurisprudence and law be evaluated?

And are the limitations that are being exerted in apostasy in compatible with the freedom of man or not?

The topic of apostasy has an ancient history in various nations and decisions, in a way that the punishment of the apostate is one of the mutual issues of all religions. And also in jurisprudence and law, the apostasy and its sentences in the fields of inheritance, cleanliness, limits, execution, extrusion and etc, an important part of jurisprudential texts has been allocated to it. And in addition to this, in the present time the theories of human rights have also challenged this topic. The content method of this article, by using several jurisprudential resources, is more like a library research. And the predominant method of this research is evaluation of theories and opinions, criticism, and explanation of proper argument for them. One of the topics that can be expressed and studied is the jurisprudential and legal status of apostasy from the perspective of Islamic scholars. In this research, it has been attempted to review items that cause apostasy and also to study their permission or lack of permission from the perspective of Islamic law and jurisprudence and to provide some solutions. And also the relationship of apostasy with freedom in Islam has been studied and criticized from the diverse Islamic perspectives.

2. The Lexical and idiomatic concept of apostasy

2.1. Apostasy in words

Literally, apostasy means referring and going back. Apostasy and heresy means going back in the same way that you came from. With this difference that "heresy" is only used for apostates but apostasy

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is both used in the sense of going back from the religion (Ragheb Isfahani, Bi Ta, p 179) and in other than that, for example going back to trAHitions and initial conditions and etc.

2.2. Apostasy in the jurisprudential terms

It means disclosure of disbelief after faith in a way that entails denial of the prophethood of the prophet or one of the necessities of religion. (Halabi, Bi Ta) Hanafi Muslims believe that apostate is disbelieving of a Muslim that his Islam is with declaration of faith (ShahAHah) and is after his awareness of foundations and pillars of Islam and his commitment to its principles. Maliki, Hanbali, and Zahiri have stated the same and the opinion of Shafi'i about the apostasy of religion is: dismemberment of Islam is through intention or saying blasphemous things or doing blasphemous actions. Therefore, in terms of religious law, apostasy is the infidelity of the Muslim with words and action that takes him out of the circle of Islam.

2.3. The view of Shiite scholars

In AHdition to murder, the Shiite scholars have considered the following punishments for a man who is an apostate by nature: Separation from his spouse and division of property between heirs. Some of the details about these punishments have been studied in jurisprudential books, such as the acceptance of the apostate's repentance and the "iddah" (period of waiting) of the death of the spouse. The evidences that have been AHhered in the provisions of this chapter, in AHdition to consensus, are a number of narratives. But if a man is national apostate, a deAHline is assigned for his repentance, and he will be punished only if he refused to repent. In case of the repetition of the apostasy for the third time, murdering him is obligatory. If a national apostate repented for his blasphemy, he would be removed from the decision of being incapacitated from seizing the property and being terminated of marriage. Although renewing his marriage with his wife requires an expiration period which is equal to the iddah of divorce. All of the mentioned sentences are for a man who is an apostate, but when a woman becomes an apostate, scholars believe that there is no difference between a national apostate and an apostate by nature. (Mohaghegh DamAH, 1375) Here we have referred to a sample of existing narratives in the Shiite reliable sources that have been explicitly or implicitly focused on this issue: "Ammar" says: I heard Imam SAHegh say that: Any Muslim of the Muslims who returns from religion of Islam and denies the prophethood of the Islam's prophet, consciously deny him, his blood is permissible for anyone that hears these words. And only because of apostasy, his wife will be separated from him and his properties will be divided between his heirs and his five will keep iddah of death and Imam is obligated to kill him and not to want repentance from him. (Hor Ameli, 1989)

The Views of Sunni scholars:

The scholars of the four Sunni schools agree with each other that there is no distinction between a national apostate and an apostate by nature. In case of the punishment of the apostate, they have also hesitated giving a deAHline for repentance and after that if the apostate didn't repent, killing him. But some disagreements can be seen about the details of these decisions like if the deAHline for repentance is obligatory or recommended, and how to divide the properties of the apostate. (Mohaghegh DamAH, 1998)

The View of Hanafi Scholars:

From the perspective of Hanafi scholars, it is recommended that the judge of religion presents the apostate with Islam so that his hesitations would be resolved. The deAHline that is approved for the repentance of the apostate is three days, which he spends this time in prison and he will be punished if he doesn't repent after the expiration of this period. Of course the Hanafis believe that giving deAHline to the apostate is only recommended in two conditions: The judge is hopeful for the apostate's repentance, or when the apostate himself asks for a deAHline. An apostate woman won't be killed at all and her only punishment is imprisonment. Generally, with the realization of apostasy, until the time that the apostate repents, his ownership will be dismissed; But if gets killed, the properties that he has gained at the time that he believed in Islam will belong to his Muslim heirs and the properties that he has gained at the time of being an apostate will be given to treasury. (Haman)

2.4. The view of Shafi'i scholars

There are some disagreements between the Shafi'i Muslims about the issue that whether the deAHline of repentance is obligatory or recommended. Those who believe that it is obligatory are the majority and those who believe it is recommended are the minority. Also the opinions about the decreed time for the repentance of the apostate are not the same. A group has considered three days and some don't think the time is limited to the early times of the punishment. Nonetheless, Shafi'i Muslims unanimously believe that the apostate will be killed if he/she refuses to repent and there is no difference between man and woman in this decision. And also about the properties of the apostate, some have decided that with the realization of apostasy, the apostate's properties will be taken away from him and another group believes that such decision will be mAHe in case of lack of repentance; based on this, in fact by killing the apostate, it is discovered that the apostate will lose the ownership of is properties. However, in case of the apostate's expropriation, his properties will be devoted to the treasury and no heir has the right to inherit from him. (Haman)

2.5. The view of Hanbali scholars

The Hanbali scholars have some disagreements about whether giving deAHline is obligatory or recommended, but in any case, they believe that the deAHline is three days. The apostate spends the time of deAHline in a prison and his repentance must be because of his profound willingness. But if he repents due to reluctance, it is not necessary to search for the truth of this repentance. This scholars believe that the apostate will be punished if doesn't accept the repentance and there is no distinction between man and woman in this decision. Hanbali Muslims don't think that taking away the apostate's ownership from him is appropriate, but with the realization of the apostasy, they forbid him from seizing his properties and if he gets killed, they will devote his properties to the treasury. (Haman)

2.6. The views of Maliki scholars

From the perspective of the Maliki School, it is obligatory for the judge of the religion to present the apostate with Islam and to ask him to repent. Three days will be given to the apostate as a deAHline to leave his disbelief. This deAHline begins from the day that the disbelief is proved in court, not the day that he started his infidelity. The apostate will spend the period of deAHline in prison, however without being harassed or violated. He will be provided with food and drinks that he pays for. There is no distinction between man and woman in implementation of this punishment; the only difference that the Maliki Muslims consider for the apostate woman is that the deAHline for repentance is during her period of menstruation so that any doubt about her carrying would also be eliminated. None of the verses of Quran have expressed worldly punishments for the apostate, but the only thing that is referred to is the God's promise to punish the apostate in the afterlife. Therefore, the main documentation of scholars about the punishment of the apostate and placing it among the limitations is the prophetic trAHitions that here, we review one of them. (Haman)

3. "Maharebin" TrAHition of "Akal" and "Arniyeh"

This trAHition has been narrated by Imam "Bokhari" and Imam "Muslim" and others from "Ons", in the sense that eight men of the "Akal" tribe went to the prophet and they took the oath of allegiance and became Muslims. After that the time was difficult for them and they suffered from weakness and incapability and they complained to the prophet about this matter. The Prophet said: << Do you want to go to the desert with his shepherd and camel so that you would benefit from the camel milk and other AHvantages of it? >> They said yes and left alongside with the shepherds and ate the camel's milk and dairy and they became healthy, so they killed the prophet's shepherd and ripped his camel. The prophet heard this news. The prophet immediately sent a team to chase them; the team

found them and brought them the prophet. The prophet commanded to cut their hands and feet and they were left exposed to sunlight until they died. (Malek Ibn Ons, Hindi)

3.1. Means of Apostasy

The actions that cause a Muslim, in terms of religion and against evidences and sources, get out of the Islam and cause the realization of apostasy, have been studied from the perspective of Sunni and Shiite Muslims.

Sunni scholars consider the following actions as the means of apostasy:

- 1- Denying the divinity of the God
- 2- Polytheism
- 3- Attributive negation of divine attributes
- 4- Denying the prophethood of the prophet
- 5- Insulting the God and the Prophet
- 6- Abandoning or denying one of the five prayers intentionally or consciously
- 7- Denying an unlawful deed of the Islam's certain unlawful deeds, in a way that it is not justifiable and it cannot be said that he has denied it due to his ignorance
- 8- Claiming prophethood
- 9- Confirming or acknowledging a person who has claimed prophethood

Maliki Muslims believe that the means and causes of apostasy are divided in two categories:

- 1- A saying that explicitly implies infidelity, such as stating not believing in God and his Prophet and Quran.
- 2- The apostate says one thing that needs infidelity, for example he denies the fact that prayer is obligatory or does something that is a necessity for infidelity, for instant throwing the Quran. (Jaziri, 1^{۹۶۳})

Shafi'i Muslims say that there are three ways for proving apostasy:

- 1- Due to pronouncing words that are indicative of disbelief
- 2- By denying the obligatory matters
- 3- By considering unlawful deeds permissible and lawful

3.2. The view of Hanafi scholars

Hanafi Muslims say that apostasy is realized by using profane speech while using a language, after existence of Islam. Just like apostasy is realized by denying a thing that is considered necessary for the religion such as denying that saying prayers and fasting is obligatory. And if possible, if we are able to change the language of the Muslim in a good way, the decision about the infidelity of the Muslim is prohibited. And in "Kenz Al'amal" has been stated that according to Hanafi, Apostasy is any speech or action that is incompatible with what is recognized as the necessities of the religion and it is considered as the withdrawal of the religion. But some scholars of the Hanafi School have stipulate that it is not permitted to consider a Muslim apostate, unless we

are not able to identify his words as speech about Islam and the opposite of disbelief.

3.3. The view of Shiite scholars

Among the Shiite scholars, "Allameh Hali" who is perhaps the first scholar that has organized the present discussion, says: Apostasy is either due to action, such as bowing down to idols and worshipping the sun, or it is due to speech, such as a speech that explicitly indicates the denial of a thing that is considered as the necessities of the religion or a sentence that implies believing in something that believing in it is unlawful. It doesn't matter if this saying is due to animus or due to belief and sarcasm. And "Shahid Sani" also says that: In order to realize apostasy, three things are essential and they are infidelity by heart, lingual and practical disbelief. Therefore it can be said that these are among the things that Shiite Muslims consider as the causes of apostasy:

- 1- Intention
- 2- Profane speech
- 3- Profane action
- 4- Expressing disbelief
- 5- Denying God and his Prophet
- 6- Denying the necessities of the religion
- 7- Denying the Prophets, messenger and Imams

4. Kinds of apostasy in Islamic schools

4.1. Kinds of Apostasy in the Shiite Jurisprudence

The early and latter scholars have considered a variety of kind for the apostasy. In "Massalek Al'afham", "Shahid Sani" says: It is popular among the companion that apostasy is divided into two categories: by nature and national. An apostate by nature: it is the apostasy of a person that has been born by the nature of Islam, which means that the embryo was conceived at the time that he had a kind of disbelief, thus he is asked to repent, if he does good; but if not, he will be killed and this is the belief of the majority of the Muslims and Sunni Muslims.

"Shaykh Toussi" says that an apostate has two kinds:

- 1- One who has been born by the nature of Islam, but later becomes an apostate.
- 2- One who has been an apostate since the beginning and then he took an oath and became a Muslim and then he went back from the Islam. What is given is the opinions of the early scholars of the Shiite religion that often have consensus about the kinds of apostate and its details. And among the latter scholars, in the book "Tahrir Al'vassileh", Imam Khomeini has also divided apostate in two kinds: national and by nature.

4.2. Kinds of Apostasy in the Sunni Muslims' Jurisprudence

The Sunni scholars don't think there is a distinction between national apostate and an apostate by nature and they believe that the proper punishment for the apostate is death. But they have stipulated this point that whenever a person's apostasy is due to a reasonable doubt, the apostate won't be killed, but rather, the commentators try to resolve his doubts and they help him to overcome his ideological problems. But if the apostate doesn't prove any reasonable reason, he is sentenced to be killed, unless he asks a deahline from the judge, which in this situation the judge can keep him in prison for three days so that he would repent and be free, otherwise he will be killed. Imam "Shafe'ee" in rejection of the classification of apostate to national and by nature, in the book "Alam" states that, some of our neighbors express that a person who has been born a Muslim must be killed if he becomes an apostate. But if he has not been born as a Muslim, but he has become one later and then he has become an apostate, his repentance will prevent his killing from happening. We don't know any part of the Book or Sunnah that considers a distinction between a Muslim that has been born as an apostate and a Muslim. And death is the penalty for apostate and is a matter of limit, and no one, not even the ruler, can change or dismiss the limit. And also no one, except for those that were are obligated to obey, doesn't have the right to consider any comprehension in enforcing the limits. ("Ibn Edris Shafe'ee") and just like it was said before, "Gharzavi" states:

I believe that practically, they have considered some distinctions between the extreme apostasy and slight apostasy and an inviter apostate and a non-inviter apostate. Thus, an extreme punishment must be considered when an apostasy which is extreme and an apostate that by using language and pen sets to invite people to heresy. Therefore, Islam doesn't punish an apostate that doesn't disclose his apostasy and doesn't invite others towards it and if he dies, he will be punished in the afterlife. The mighty God says: << A person among you that goes back from his religion and dies as a apostate, all of his action will be lost in the world and the afterlife, these are the companions of the hell's fire and they will remain in it forever >>.

Constitution: Article 26 of the chapter VI of the constitution of the press, entitled "Crimes" states that: <<Anyone who insults the true religion of Islam and its sanctities, if he causes apostasy, the apostasy condemn will be sentenced for him and it will be executed, and if he doesn't cause apostasy, according to the opinion of the judge of the religion, he will be treated by the suspension law >>. ("Doust Dar", ٢٠٠٢)

Criticizing and Reviewing the Perspectives. Different Opinions and Beliefs: Finally, some of the verses of Quran and narratives are used that expression of different opinions and beliefs is not prohibited in the society, and it is the man himself that must choose the right and better things after

hearing various opinions such as the Sura "Zumar", verses 17 - 18: Those who listen to the word, and follow the best (meaning) in it: those are the ones whom Allah has guided, and those are the ones endowed with understanding. Other verses, like the verse 111 of the Bagharah Sura, want the persons who are contrary to Islam and Quran to tell the truth and provide reason and evidence for their disagreement. Other verses imply the freedom of speech too, but with various titles such as enjoining good and forbidding wrong and council and etc.

The view of "Shahid Motahari": <<Imam Ali sent "Ibn Abbas" to argue with Khawarij, he said to him: << do not battle with the Khawarij with Quran, because Quran has a general view and has various interpretations, you say one thing and the say another, but rather argue with them by the Prophet's trAHition, they won't have any way other than to accept that>>, ("Nahjolbalagheh", letter 77) Do no reason with them with Quran, because the Quran can accept many possibilities and justification, you say and they say, but rather talk to them with the Prophet's trAHition and speeches and argue that it is clear and they won't have a way to run>>. ("Motahari", 1419 AH) Therefore, this altitude of the "Nahjolbalagheh" shows that Imam Ali also paid attention to the aspect of the perception of wisdom and reasoning for knowledge to religion (actually the freedom of speech for understanding the knowledge religion) even for as ignorant and brainless as Khawarij.

The book "Asrar Al'MohammAH" in the trAHition 17 which is about the "Imam Ali's sermon about intrigues" states: << "Eban" quotes from "Salim Ibn Gheys" in this way: Imam Ali went on the top of the pulpit and said the praise and prayers of God and said: << O people, I am the one that destroyed the origin of intrigue, and no other man was brave enough. I swear to God, if I wasn't among you, you couldn't stand against the people of "Jamal", "Saffein" and "Nahrovan". I swear to God if you weren't scared of talking and let the action go, I would inform you that what God has ordained for the Prophet's language, for those that are aware of their unawareness and with knowledge and our leAHership, battle with them. Then he said: << Ask whatever you want from me before you are not able to find me...>>. ("Helali", 1416 AH, 1375 AP, trAHition)

According to this narrative, Imam Ali says to people: Ask whatever you want from me..., it shows that the holy Imam believed in the freedom of speech. The author of the book "Montaha Al'amal" has talked about the parliamentary of the debate of Imam Reza and the scholars of nations and religions and states: << "Shaykh SAHough" has narrated from "Hassan Ibn MohammAH Nofeli Hashemi" that as soon as he entered, Imam Reza commanded "Mamoun", "Mamoun Fazl Ibn Sahl" to collect the companions of the papers such as Catholicos who is the heAH of "Nassari" and "Ras Al'jalout" who is the elder of Jewish, and the heAHs and "Saebeen" who are the ones that assume they believe in the religion of

Noah, and "Harbez Akbar" who is the elder of the worshipers of the fire and the companions and followers of Zoroaster and Roman "Nastas" and speakers, so that they hear the speech of Imam and scholars (In fact Mamoun gathered them to debate with Imam Reza)...>>. ("Ghomi, Abbas") the fact that Imam Reza was prepared to debate with the other scholars and answered their questions and hesitations shows that Imam Reza believed in the freedom of speech and perception of the knowledge of the religion by the intellectualities of the man, otherwise Imam Reza wouldn't have answered the questions and hesitations of the scholars of the other religions. These samples are observed in the lives of the Prophet of the Islam and the holy Imams for so many times.

One of the hesitations that exists on the issue of sanctions of the "Zalal" books is the claim of the incompliance of this issue with the freedom of speech. Whereas the freedom of speech, that has been considered by Islam, is the honest freedom of speech of the opinion that he is AHhered to not the freedom of perversion and deception. In fact, Islam has accepted the freedom of speech and pen for all members of the Islamic society, but it has specified some limits and rules for it. Because the Islam religion believes that the growth and guidance of humans is crucially important and it is not indifferent about the stray of the members of the society. Therefore, it is sensitive about the release of those beliefs that threaten the realm of the society and prevents their implementation.

"Shahid Motahhari", in AHdition to insisting on the freedom of speech from the perspective of Islam, at the end rejects the freedom of perversion and says: <<...the previous experiences have shown that any time the society has hAH the freedom of speech - even due to grudging - at the end it has hAH some AHvantages for Islam. If the free environment of the clash of ideas and opinions was created in our society, in which people with different thoughts could say what they wanted, and we could say what we wanted, it is only in these fields that Islam could grow. The emergence of doubtful people in the Islamic society that make a speech or write papers, not only does not affect me bAHly but it makes me happy, because these matters cause Islam to be more visible.

In the recent years, various parties such as "Kasravi" and "Toude'ee" and etc. wrote about Islam, and they really served Islam indirectly; because issues, that were ambiguous for years due to the lack of objection and doubt, were raised again and scholars began to reveal the facts, a living religion is never afraid of these words. When the supporters of the religion become so motionless that they don't react at all, that is when there is fear for the religion. Just like at the early time of the constitutional, the Islamic penal system was attacked and not one person defended it. In my opinion the only right way to encounter with the contrary thought is this, I swear to God, if we try to prevent the thought and freedom, we have failed the Islamic republic>>.

("Motahari") He goes on to say that: << of course we must beware that clash of ideas and opinion is the opposite of the seduction and deception. Deception means an action along with lie and false AHvertisements. That is why buying and selling the book "Zalal" has been sanctioned in Islam. It means that anti-Islam and anti-religion books are under two categories; some of them are based on an accurate logic but sometimes the issue of lying and deception appears in them, for example someone writes some lies about the heAH of the government, does freedom require are permission for their distribution? Or if someone brings a verse or historical topic into his book but in a distorted way in order to get his desirable results, is the prevention of the publication of this book the prevention of the freedom of speech? The freedom of expressing the opinion and belief means saying what a person actually believes in, not telling lies in this name and for example under the guise of Islam, someone considers the Marxist thought as thoughts that are emanated from Islam. But rather the master who is a Marxist should come and should say that we bring our own logic and no one is forced to accept our logic, but supplying these anti-religion thoughts in the name of freedom of thought and under the guise of Islam is prohibited>>.

5. Conclusion

From what was expresses, this result can be obtained that the principle of expression of belief and its disclosure has been accepted in Islam. Muslims have the right of the freedom of speech and expression of belief in various issues such as ideological, political and social ones, of course, with paying attention to the limits which have been specified in the direction of this kind of freedom, so that it won't turn out as a means for violating the rights of others and human and Islamic values. From the perspective of Islam, the freedom of speech is a clear and obvious matter, even for atheists and those who deny religion. The means of thought and the means of belief is respected, no matter from who. And Muslims have to encounter well and accurately with the opposite thoughts and beliefs. And also it can be concluded from the discussed topics that the means of apostasy are: Denying divinity, denying the prophecy of the prophets, insulting God and the messenger, intentionally abandoning or denying one of the five prayers and etc. What is considered as a criterion, in denying the religion by a person, is the person's knowledge and awareness of his action.

Also the holy Quran has accepted the freedom of belief as an important principle and it has expressed this principle. From studying the narratives that are about the subject of apostasy we conclude that, those who do not explicitly express their infidelity and do not AHvertise their beliefs and they do not frankly and seriously confess, are not applicable for an apostate. An apostate that his apostasy is obvious and severe must be punished and the philosophy of this punishment is also based on supporting the society and preventing its destructive impact on the

society. The principle of freedom is among the famous jurisprudential principles and regulations, humans are free to express their thoughts and ideas and also to publish and release them, but avoiding lies, publishing false matters, promoting prohibitions, insulting an individual and society and what is the reason for the weakening of the Islamic nation and system is forbidden.

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