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**PUNISHING APOSTASY:
THE CASE OF ISLAM AND SHARI'A LAW RE-CONSIDERED**

by

DECLAN PATRICK O'SULLIVAN

In partial fulfilment of the requirement for the Degree of

DOCTOR OF PHILOSOPHY

VOLUME II : CASE STUDIES

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CHAPTER SIX

6.0 TWO HISTORICAL CASE STUDIES

6.1 Introduction

Two *fatwas* that were issued on two separate cases of blasphemy in Al-Andalus (presently known as Andalusia) during the 3rd_{AH} /9th_{AD} century are of particular interest in assessing. The two cases involved Harun ibn Habib and Yahyà ibn Zakariya al-Hassab and both of these *fatwa* were issued during the reign of ‘Abd al-Rahman II, who reigned from 206_{AH}/822_{AD} until 238_{AH}/852_{AD}. They are the only two recorded cases of two Muslims who were accused of ‘blasphemy against God’ during ‘Abd al-Rahman II’s reign.¹¹⁶⁵ The cases are very interesting to cover, in order to analyse and understand the very specific circumstances that surrounded them, which also led to two very different sentences for the men accused of the same act of blasphemy.¹¹⁶⁶ One of the men, Yahyà ibn Zakariya al-Hassab, was executed, while the other one, Harun b. Habib, was acquitted – and was allowed to walk away as a ‘freeman’.

An overview of these two cases, will aim towards understanding both the blurring of the boundaries between each act, and present what can be argued to be a vague legal definition of a person’s ‘unbelief.’ The case studies will also present the inconsistency that exists in the legal rulings based on the very same act that was committed and involved witness reports.

6.2 The Case of Yahyà ibn Zakariya al-Hassab.

The first *fatwa* is based on the case involving Yahyà ibn Zakariya al-Hassab. He was the nephew of ‘Ajab, the favoured concubine of al-Hakam I, who had been the former Umayyad ‘*amir*, and was also the father of ‘Abd al-Rahman II. Yahyà ibn Zakariya al-Hassab lived in Qurtuba, but nothing else is known of his life, except his family connection with ‘Ajab. His case involved his behaviour on one day in the pouring rain. It is recorded that,

¹¹⁶⁵ It is also clearly recorded that, at that time, a group of Christians and crypto-Christians had sought martyrdom through the acts of insulting Islam and God’s Prophet Muhammad, knowing the result would mean being executed due to the blasphemous acts; Fierro, Isabel, ‘Andalusian ‘*Fatawa*’ on Blasphemy,’ op.cit., ibid., p104

One day while it was raining heavily, he said jokingly (*'abitan, muta'abbitan*) looking at the sky: "The cobbler has started to water the skins." (*bada'a l-harraz yarushshu juluda-hu*). This utterance was denounced by witnesses whose number and names are not recorded.¹¹⁶⁷

It is suggested that the accusation of blasphemy was taken directly to the Umayyad *'amir* and also that it was 'Abd al-Rahman II who personally ordered for the imprisonment of Yahyà ibn Zakariya al-Hassab. 'Ajab, his aunt, petitioned for his release, but the reply she received from the *'amir* was that she would have to wait for a full investigation into the case, as no decision could be made before the opinion of the *'ulama'* had been presented. She was also informed that the Banu Marwan (the Umayyads) had always implemented the penalties for *hudud* crimes in the strictest manner, throughout all the al-Andalus region that they controlled. They even held the public office of the *sahib al-madina*,¹¹⁶⁸ whose role was to gather the *qadi* (judges) and *fuqaha'* (sing. *faqih* ; specialists on jurisprudence).

In the case of Yahyà ibn Zakariya al-Hassab, the assessment panel where of five *fuqaha'* (Islamic jurists), including 'Abd al-Malik b. Habib (d.238AH/852AD), who was the leading Maliki *faqih* (jurist) at that time, and also 'Abd al-'A'la b. Wahb (d.261AH/874AD). The choice of 'Abd al-'A'la b. Wahb as an authentic authority on *fiqh* is of some importance as he, himself, had been

accused of *zandaqa* during the reign of 'Abd al-Rahman II and before the year 234AH/848AD. The sources do not record that his accusation led to any harmful consequence and in fact we find him in this case (which took place after the year 234/848) being consulted by the *'amir* on a matter of religious doctrine.¹¹⁶⁹

It could be argued that the consequences of this case were held against him, but this will be seen below, when the penalty decisions of the *qadi* and *fuqaha'* in the case of Yahyà ibn Zakariya al-Hassab, are assessed.

The *sahib al-madina* presented the details of the accusation in the case to the *qadi* and *fuqaha'*. The final decisions that were made differed slightly. The *qadi* and three of the *fuqaha'* concluded that the accused had made his comments in pure jest, therefore,

¹¹⁶⁶ Fierro, Isabel, Andalusian '*Fatawa*' on Blasphemy, op.cit., p104

¹¹⁶⁷ *ibid.*, p104

¹¹⁶⁸ "This office does not seem to have existed out of al-Andalus," *ibid.*, in footnote 11 on p105

¹¹⁶⁹ *ibid.*, in footnote 13 on p105

he was not to be penalised with the death penalty. They argued that the accused should rather receive a disciplinary punishment (*yakfī fi-hi l-adab*) that is not specified, but would relate to a flogging or some imprisonment as a sufficient reprimand. However, ‘Abd al-Malik b. Habib and the fifth *faqih* concluded on the contrary, that the accused, Yahyà ibn Zakariya al-Hassab, should receive the death penalty. Ibn Habib stated that

he accepted the responsibility for Yahyà’s death (*damu-hu fi-‘unqi*), adding : “The Lord that we worship has been insulted. If we did not defend him, [*sic*] we would be bad servants and should we not be His worshippers?” (*subba / yushtamu rabb ‘abadna-hu in lam nantasir la-hu inna la-‘abid su’ / tumma la nantasiru la-hu inna idhan la-‘abid su’ ma nahnu la-hu bi-‘abidina*).¹¹⁷⁰

It is recorded that he had wept while stating this. The *sahib al-madina* requested that each *qadi* and the *fuqaha’* should write down their decisions, so he could present them to the ‘*amir*, ‘Abd al-Rahman II. The decision then chosen by ‘Abd al-Rahman II, as the punishment to be used was the death penalty. He also, simultaneously, punished the other *fuqaha’* who had concluded on a far more lenient verdict of reprimand. This included dismissing the *qadi* Muhammad b. Ziyad al-Lahmi from his office as a judge, and he also rose an issue for ‘Abd al-‘A’la b. Wahb, by reminding him that he had previously been accused of *zandaqa*. With that reminder, the ‘*amir* stated that ‘Abd al-‘A’la b. Wahb would never be called upon in future cases, in the role as a legal consultant. The final order was for the convicted to be taken to the location of the execution, while accompanied by the two *fuqaha’* who had decided that the death penalty was legitimate and appropriate.

The punishment was implemented by Yahyà ibn Zakariya al-Hassab not only being crucified, but being stabbed to death, while crucified. What he stated before the stabbing, raises some questions as to how legitimate the killing was. He is recorded to have expressed the *shahadah*, recognising not only the Oneness (*tawhid*) of God, but also recognising the Prophet Muhammad to be His messenger. It is also argued within the Islamic Traditions (*ahadith*), that the Prophet personally explained that when someone expresses the first *shahadah* and not, necessarily, both parts of it. In doing

¹¹⁷⁰ *ibid.*, p105

this, they are then to be considered a genuine and sincere Muslim, and are not to be harmed once this has been openly proclaimed. In the case of Yahyà ibn Zakariya al-Hassab, this was not the case, as:

Once on the cross, Yahyà said to Ibn Habib ‘Oh, Abu Marwan! fear God for shedding my blood. I bear witness that there is no god but God and that Muhammad is His Messenger.’ Ibn Habib’s answer was a Qur’anic verse (X, 91) : ‘Now you believe, but before you disobeyed.’ Yahyà died on the cross where he was stabbed to death.¹¹⁷¹

6.3 The case of Harun b. Habib.

The other case of blasphemy within Al-Andalus during the reign of ‘Abd al-Rahman II, in 3rd AH /9th AD century, is that of Harun b. Habib. The person involved in the case, Harun b. Habib, lived in Ilbira (Elvira, presently known as Granada) and was the brother of ‘Abd al-Malik b. Habib, the *faqih* who had decided on the death penalty in the first case. Harun b. Habib is recorded to have been a short tempered, “choleric man, who used to speak his mind openly and who was not on good terms with his fellow citizens.”¹¹⁷² His full biography is not recorded within the Andalusian biographical dictionaries, which could mean that he had not become established in any particular profession, although he was recorded to be interested in *kalam*. The acts he undertook, which led to the accusations of blasphemy, were two verbal outbursts he made in two separate incidents, each of which had enraged him.

The first incident involved a man who had requested to borrow a ladder from Harun b. Habib, in order for the man to undertake repair work at a mosque. Harun b. Habib replied to the man: “I would give it to you if it were to repaire [*sic*] a church (*kanisa*).”¹¹⁷³ The man was shocked at such a statement, with the comparison to another religion’s sacred house, also “reminding Harun that a Mosque is superior to a church,” to which Harun replied :

No, by God. I have realised that he who is devoted to Allah (i.e. the Muslim) is left in the lurch, whereas he who is devoted to the synagogue

¹¹⁷¹ *ibid.*, p105. “The sources that record this event are : al-Husani (d.361/971), *Kitab al-qadat bi-Qurtuba*, (ed. and trans. by J. Ribera, Madrid, 1914), p104-105/127-129; ‘Iyad (d.544/1149), *Tartib al-madarik wa-taqrib al-masalik li-ma’rifat a’lam madhab Malik*, (8 vols., Rabat s.d.), IV, 132-133 and *Sifa’* II, 299-300; al-Nubahi (d.792/1390), *Kitab al-marqaba al-’ulya*, (ed. E. Lévi-Provençal, Beirut s.d.), p55-56; al-Wansarisi (d.914/1508), *Mi’yar*, II, 362, translation by E. Amar (based on the edition Fès 1214-1215) in *Archives Marocaines*, XII, p.322-323.

¹¹⁷² *ibid.*, p106

¹¹⁷³ *ibid.*, p106

and the church (i.e. the Jew and the Christian) is respected and in a good situation.”¹¹⁷⁴

The second incident occurred when two men went to visit Harun b. Habib when he was feeling rather sick. On being asked upon his health and how he was generally feeling, he replied in to suggest that he had never felt so ill before, explaining that:

During my illness I have suffered so much that had I killed Abu Bakr and ‘Umar, I would have not deserved such a punishment.”¹¹⁷⁵

Due to these two public statements his case was taken to the *qadi* of Ilbira, through written declarations by the witnesses (*kitab al-shahadat*). The *qadi* passed them on to the ‘*amir*, ‘Abd al-Rahman II, in Qurtuba. The ‘*amir* then sent the declarations to several *fuqaha*’, requesting for their consideration to assess the legitimacy of whether the words used would categorise them as being blasphemous.

6.4 The Selection Procedure for the *fuqaha*’ (judges) in both cases.

It is important to note here that of the *fuqaha*’ who were selected for this case, two of them had been used in the previous case, sentencing Yahya ibn Zakariya al-Hassab with the death penalty for the exactly the same crime that this case involved. However, added to this point, there are two other fascinating issues to be raised in this selection of the *fuqaha*’ for the case of Harun b. Habib. One of them was his brother, ‘Abd al-Malik b. Habib, and another was ‘Abd al-‘A’la b. Wahb, the *faqih* who had been accused of *zandaqa* several years earlier, who had been opposed to the death penalty in the previous case, which had seemed to have frustrated the ‘*amir*, ‘Abd al-Rahman II. As mentioned above, the ‘*amir* had punished ‘Abd al-‘A’la b. Wahb by informing him that he would never be selected again for consultation in further cases. However, the ‘*amir* contradicted the ‘punishment’ he had delivered, by selecting him again to make a legal decision in the case of Harun b. Habib.

The conclusion to the case, in the assessment that was expressed in the *fatwa* by the brother of the accused, ‘Abd al-Malik b. Habib, declared that in these particular circumstances, that no *hadd*, or punishment (*‘uquba*) should be implemented. His

¹¹⁷⁴ *ibid.*, p106

¹¹⁷⁵ *ibid.*, p106

fairly long *fatwa* refused to accept the legitimacy of both accusations of the verbal outbursts to be categorised as ‘blasphemous’ by proclaiming that : on considering the first accusation, there was only one witness to the act, and in Islamic law just one witness of such a crime is not sufficient, because:

Even where a sole witness had all the legal qualifications, his testimony alone could not be used to condemn anybody to prison, flogging or a more severe penalty. Moreover, if a single witness accuses someone of impiety (*kufir*), adultery, theft of drinking wine, his testimony can not lead to any punishment¹¹⁷⁶

The *fatwa* continued by declaring that if two witnesses came forward, it would be legitimate to find a way to exonerate Harun b. Habib, based on the statement made by ‘Umar ibn al-Khattab, who argued that “If a Muslim hears another Muslim saying something bad, he must force himself to find a way to interpret his words in a good sense.”¹¹⁷⁷ Harun b. Habib’s brother argued that the first expressive outburst to the man requesting a ladder to repair the mosque, should be interpreted as having actually meant:

‘I have realised that a Muslim is left in the lurch *in this town, as you do not give him credit or acknowledge his truth*, whereas a Christian¹¹⁷⁸ is respected *in this town* and is in a good situation *among you as if this town were a non-Muslim town.*’¹¹⁷⁹ [Italics from the original text]

‘Abd al-Malik b. Habib also insisted within the *fatwa*, that this was clearly the genuine meaning of his brother’s pronouncement, as Harun had been making a critique upon the general imperfections of the contemporary times, (*fasad al-zaman*) that had been predicted in the *hadith* which declares “There will be a time when the prosperous (*al-gani*) among them will be libertine (*al-fagir*), whereas nowadays the prosperous among you is the learned and ascetic man.”¹¹⁸⁰ He ended the *fatwa* by announcing that if his decision of how to interpret the words was not accepted as being valid, then his brother should be presented with the death penalty without any

¹¹⁷⁶ *ibid.*, p106. “All these examples correspond to crimes punished by a *hadd*,” *Ibid.*, in footnote 17 on p106. The amount of crimes that are considered to belong within the category of *al-Hudud* will be addressed in Chapter Two.

¹¹⁷⁷ *ibid.*, p106

¹¹⁷⁸ A Jew is not mentioned in this case, but the term ‘Christian’ could be argued to be representing the *ahl al-kitab*, in general.

¹¹⁷⁹ *ibid.*, p106-107

¹¹⁸⁰ *ibid.*, p107

flogging, as his words in any other interpretation would be understood to have been within *kufr*.

In his reply to the second accusation, ‘Abd al-Malik b. Habib acknowledged that the words used were not normally expected from any intelligent person, but would have been considered the ‘norm’ from an ignorant fool. However, he perceived them to be of far less importance than the first outburst, as at the time the accused had made the statement he had been very ill, which could defend any person in acting rather strange. In these circumstances, then the accused should be verbally reprimanded, due to such misbehaviour, but should not receive any flogging or imprisonment, as the offence was not within *tagwir li-llah* (to accuse God of unjust behaviour). ‘Abd al-Malik b. Habib also mentioned that the Prophet had stated that: “When there is ambiguity, ward off the *hudud* from my community (*idra’u l-hudud bi-l-shubuhah ‘an ummati*)”¹¹⁸¹ and, that his brother’s words were ambiguous. He also rejected the authenticity of the witnesses, as they were not to be considered unquestionable in their claims. However the reasons of why such a rejection would be valid has not been recorded. ‘Abd al-Malik b. Habib’s final judgment was that the appropriate punishment for the accused should be incarceration for six months while being chained-up in a cell.¹¹⁸²

The final judgments from the other *fuqaha’* in the case of Harun b. Habib were presented in their own *fatwa*, and differed somewhat. One of the *fuqaha’* agreed with the recommendations and legal sentences of ‘Abd al-Malik b. Habib. He was a *qadi* from Qurtuba, Sa’id ibn Sulayman al-Bulluti, who emphasised in his own *fatwa* that :

‘The enforceable traditions and the past usage’ (*al-atar al-muhkama wa-l-sunna al-madiya*) contemplate capital punishment only for the following cases : murder, blasphemy against God and his Prophets, apostasy and brigandage.¹¹⁸³

This, in itself, is an interesting assessment of the crimes that warrant the death penalty according to those crimes that are categorised as *hudud*, but that analysis is not to be furthered here, as the decision that was taken in this case, is the main point to focus

¹¹⁸¹ *ibid.*, p107

¹¹⁸² *ibid.*, p107

¹¹⁸³ *ibid.*, p107

on. Al-Bulluti argued that the words used by Harun b. Habib could not be interpreted as being any form of *shatm* (blasphemy), and that they could only be interpreted in a positive way. The final legal sentence offered by Al-Bulluti in his *fatwa* was the necessity for a harsh ‘scolding off’ and a long term imprisonment, but he refused the death penalty, as it was an inappropriate punishment for the crime of “one who had revealed himself as a silly loudmouth.”¹¹⁸⁴

The conclusion of the *faqih* Ibrahim ibn Husayn ibn ‘Asim, also entirely matched those delivered by ‘Abd al-Malik b. Habib in both cases of accusation against Harun b. Habib. Relating to the first incident, Ibrahim ibn Husayn ibn ‘Asim also emphasised that there was only one witness, and that the accused had only uttered words that should be interpreted with having a decent meaning. Concerning the second incident, he also focused on Harun b. Habib’s illness, as being a firm defence in the use of such words. They were not a premeditated, derogatory defamation nor any vilification of Abu Bakr and ‘Umar, as the accused recognised the worthiness and value of both men. Ibn ‘Asim argued that there was no other possible interpretation of the words used, than that which would understand Harun b. Habib’s aim in using them, as he was obviously not meaning “to apostatise (*la alhada fi din Allah*).”¹¹⁸⁵

The *fatwa* of Ibrahim ibn Husayn ibn ‘Asim also refers to the ambiguity of the words used. He also made reference to the *hadith* of the Prophet’s encouragement for the community to refrain from accusing a *hadd* crime that involved ambiguous sentences. He declared that a conviction must be based on very clear circumstances, as the established punishment for such a crime would be the death penalty, so the act would have to be clear cut, and not be nebulous enough to freely allow alternative interpretations.¹¹⁸⁶

Another *faqih* used for consultation in this case was Ibrahim ibn Husayn ibn Halid. His conclusion was presented in another long *fatwa*, which proclaimed the accused to be guilty and to be punished with the death penalty. He stated that Harun b. Habib’s words can only be taken literally, with no need for a broad interpretation, as the words

¹¹⁸⁴ *ibid.*, p107

¹¹⁸⁵ *ibid.*, in footnote 22 on p107

¹¹⁸⁶ *ibid.*, in footnote 22 on p107

were self-evident. Isabel Fierro states that “He referred to similar cases: that of Sabig (flogged on ‘Umar’s orders); the person accused of *zandaqa*; the case of Malik b. Nuwayra, executed by Khalid b. al-Walid.”¹¹⁸⁷ His *fatwa* also described the very words used by Harun b. Habib as a blatant exposition of his personal beliefs, and were so obvious that anyone who witnessed them could see they were a sin. The *fatwa* declared that what Harun b. Habib had said, was quite explicitly :

an open declaration of his ideas for those who could see, and implicit for those whose eyesight was poor (*tasrih li-man absara wa-ta’rid ‘inda man raqqa basaru-hu*)¹¹⁸⁸

In reference to the first incident, Ibn Halid argued that this expression unequivocally deserved the death sentence, as the words had stated that God is a liar. He defended this conviction, using the Qur’anic verse 5:56.¹¹⁸⁹ Concerning the second incident, Ibn Halid portrayed the proclamation made by Harun b. Habib against both Abu Bakr and ‘Umar to easily fall within both the categories of *tagwir li-llah* (to accuse God of unjust behaviour) and *tazallum min-hu* (to lodge a complaint of iniquity against God). He also expanded on this decision by defending his judgement on the fact that Harun b. Habib had a common reputation for regularly offering comments of contempt and insolence when referring to God (*al-istihfaf bi-llah wa-l-jur’a ‘alay-hi*).¹¹⁹⁰ His *fatwa* suggested that the ‘*amir* should make a choice in the sentencing of the accused, in order to protect the inviolability of God and His religion, to oppose and obstruct those who ignore it, or willingly attack it.

Ibn Halid also made reference to the *hadith* concerning the avoidance of accusing others if there was any ambiguity involved, but he reiterated that the case of Harun b. Habib did not provide any relevance for using this particular *hadith*. In his conclusion for the correct decision to be made, Ibn Halid accepted the possibility that the ‘*amir* might avoid the death sentence, so his suggestion for an applicable punishment, as the ‘second best’ solution, would be to condemn the accused, flog him, and deliver a life

¹¹⁸⁷ *ibid.*, p108

¹¹⁸⁸ *ibid.*, p108

¹¹⁸⁹ “Those who take God, his [*sic*] Messenger and the believers as their friends, they are members of God’s party, they are the winners,” cited by *ibid.*, p108

¹¹⁹⁰ *ibid.*, p108

imprisonment. “He also suggested writing to the East, raising the question of Harun’s case.”¹¹⁹¹

Of some particular interest in this case, was the consequences of the various *fatwa* provided by the selected *fuqaha*’ with their differing opinions on the sentencing. This induced the brother of the accused, the *faqih* ‘Abd al-Malik b. Habib, to present a second *fatwa*, in reply to the others that had been presented by the decision panel. When read through and analysed, the content of the second *fatwa* becomes a very strange feature to be included in the case assessment. Any *fatwa* should remain a ‘neutral’ legal/theological analysis. Any ‘neutral’ case should only involve the jurists’ reaction to a person’s deeds that are perceived to have been blasphemous. The second *fatwa* presented by ‘Abd al-Malik b. Habib was obviously a reaction to the *fatwa* decisions that had been delivered by the other selected *fuqaha*’ on the panel. It initially refuted the life sentence provided by Ibn Halid, but also battered any credibility to the *fatwa* decisions of Ibrahim b. Husayn b. ‘Asim and Sa’id ibn Sulayman al-Bulluti, who had both rejected the death penalty by seeing it to be inappropriate.

‘Abd al-Malik b. Habib argued that all of the *fuqaha*’ on the decision panel were personally against him, and their decisions had been made deliberately by conjuring together, in order to destroy his renowned reputation of having legal expertise. Although ‘Abd al-Malik b. Habib himself was a *qadi* from Qurtuba, he still tried to technically spoil the *fatwa* presented by another *qadi* from Qurtuba. He argued that the other *qadi* had clearly changed his mind within the very same *fatwa* he had delivered.¹¹⁹² He also aimed at eliminating the decision made by the *qadi* from Ilbira, stating that this particular man was reputed for holding nothing but malice and some personal rancour against the accused, Harun b. Habib.

In summary, he attacked the sentences provided by all the *fuqaha*’, who were both for and against the death penalty. The second *fatwa* stated that each one of the others had some personal envy and jealousy over his own success and prestige, so they were attempting to implement hostility against him. At the end of the *fatwa*, he presented

¹¹⁹¹ *ibid.*, p108

¹¹⁹² “No record of this change of mind is found in the sources,” *ibid.*, in footnote 24 on p108

the 'amir with the choice of either accepting Ibn Habib's own opinion, and in doing so, never again consulting with the other *fuqaha'* involved in this case or, alternatively, if the decision of the 'amir was to reject Ibn Habib's opinion and to accept the other *fuqaha'* then, in that case, Ibn Habib should never be consulted again by the 'amir.¹¹⁹³

The 'amir made his final decision on the case, by accepting Ibn Habib's legal decisions in preference to the others. He immediately ordered the 'amil of Ilbira to release Harun b. Habib. In return, *faqih* Ibn Habib replied, by suggesting that Harun should be imprisoned in Qurtuba as some form of punishment for his impudence, arrogance and insubordination.¹¹⁹⁴

6.5 Comparison of the *fatwa* decisions in both cases.

In the case of Yahyà ibn Zakariya al-Hassab, all of the *fuqaha'* who had been consulted for their legal opinions, were Malikis. In this case, two of these had been pro-death penalty and the others were against it. As evidence shows on the legal position of this *madhhab* (Islamic school of law), there certainly was consistency from the legal schools perspectives, although the *fatwa* decisions differed pro- and anti- the death penalty. It is clear that :

There is no evidence that the discrepancy in their decision could be due to each group belonging to a specific branch of the Maliki madhhab i.e. Medinese or Egyptian branch, or to the fact that they followed the doctrine of a special pupil of Malik's.¹¹⁹⁵

The sources also do not clarify what authorities were used while they compiled the legal statements in the *fatwa*. Also, Isabel Fierro indicates that the actual written *fatwa*'s relating to the case of Yahyà ibn Zakariya al-Hassab are also no longer extant, although the sources declare that the legal decisions had been written down. One factor that could explain their lack of presence, could be that :

The opinions of the *fuqaha' mushawarun* were given orally until the year 291/903, when the *qadi* of Qurtuba forced them to write down their

¹¹⁹³ *ibid.*, p108

¹¹⁹⁴ *ibid.*, p108

¹¹⁹⁵ *ibid.*, p110. It is interesting to note that "Ibn Habib seems too have mainly been a follower of Asbag b. al-Farag, whereas Asbag b. Halil (who supported his *fatwa*) was a staunch follower of Ibn al-Qasim. The *fuqaha'* of the other group had studied with Malik's pupils in Medina, Egypt and Qayrawan," *ibid.*, in footnote 32 on p110

fatawa.....However, in both of the cases studied here mention is made of the *fatawa* being written down. The apparent contradiction could be explained by the fact that in the trials for blasphemy the *fatawa* were requested by the *amir*, not by the *qadi*.¹¹⁹⁶

In general terms, those who opposed the death penalty based their sentences on the fact that Yahyà ibn Zakariya al-Hassab's expression should be interpreted as having been spoken purely in jest, and was not an intentional insult against God. Thus, this act required the *ta'dib* (or *ta'zir* - discretionary punishment). The other *fuqaha'* who preferred the death penalty, stated that this sentence was defensible, as God had been clearly insulted, and the defendants mitigation was irrelevant. The result of this final decision is of great interest, as the accused was referred to as being "called *fasiq* (godless, sinful, dissolute, sinner); no mention is made of him as *murtadd* or *kafir*."¹¹⁹⁷

This is of some relevant importance in the legal decision upon one accused of blasphemy, as *murtadd* is the Arabic word for an 'apostate' and *kafir* is an 'unbeliever.' If neither of these terms were used in the accusations or convictions, then the defence of the death penalty is raised into question. For a Muslim to accuse another as being an 'unbeliever,' this would then fall within the use of *takfir*,¹¹⁹⁸ which is prohibited in Islam.

However, a more important point to focus on in both of these cases is the fact that it was the 'amir himself, 'Abd al-Rahman II, who was the final authority to choose the sentences that would be applied on both of the accused. In the first case, he accepted the decision presented by 'Abd al-Malik b. Habib, and imposed punishments upon the other *fuqaha'* who had adhered to a legal penalty contrary to Ibn Habib. All the *fuqaha'* on the decision panel were legal specialists whom 'Abd al-Rahman II had, himself, selected to assess the case.¹¹⁹⁹ It has been accepted in the literature, that the initial case occurred during the year 237AH/851AD, which was a year before the deaths of both 'Abd al-Rahman II and 'Abd al-Malik b. Habib. However, it is interesting to

¹¹⁹⁶ *ibid.*, in footnote 33 on p110. Also see Tyan, E., *Histoire de l'organisation judiciaire en pays d'Islam*, Leiden, 1960, p236.

¹¹⁹⁷ Fierro, Isabel, *ibid.*, p110.

¹¹⁹⁸ *Takfir* refers to the act of one believer blaming another believer of unbelief. Any act of *takfir* has been openly refuted in many *ahadith* (Traditions). It will be discussed, in detail, in Chapter Five.

note that the *qadi* who rejected the death penalty, Muhammad b. Ziyad, and who's punishment for his decision was the dismissal of his services, this dismissal is recorded by some sources to have occurred in the same year, 237AH/851AD. Fierro states that other sources suggest that the dismissal occurred in another year, so she argues that the court case would have fallen somewhere between the dates of 234AH/848AD and 238AH/852AD. These dates are fairly accurate to use, because in 234AH/848AD Yahyà C. Yahyà al-Layti died, and "he was the leading *faqih* while alive and he would have been consulted were he not dead."¹²⁰⁰ The accuracy of these dates is important to confirm, due to the comparison and contrast of these two cases and the final decisions made in them. The initial case ended in the convicted blasphemer being stabbed to death, while crucified, following the Maliki legal doctrine of *salb*, while in the case that followed the accused was acquitted.¹²⁰¹

However, other confusion does appear in attempting to determine the specific dates of the trials. 'Iyad refers to the case of Harun b. Habib, stating that it occurred after the case of Yahyà ibn Zakariya al-Hassab. It is still possible to argue against this view, when considering that 'Abd al-'A'la b. Wahb, one of the *fuqaha*' who was consulted during Harun b. Habib's trial, was dismissed by the *amir* from the role of being a *faqih mushawar*, following the trial of Yahyà ibn Zakariya al-Hassab. Also, adding to the confusion of dating the trial, Fierro states that the available information that refers to the chronology of the *qadi* under 'Abd al-Rahman II, offer conflicting dates. Some sources cite Sa'id b. Sulayman al-Balluti as having had two terms of office. The first was from 208AH/823AD to 209AH/824AD and the second was from 220AH/835AD until 237AH/851AD. He died in 237AH/851AD. However, other sources cite his second term as a *qadi* to start in 234AH/848AD. Other confusion occurs in the sources that cite Muhammad b.Ziyad, a *qadi* in case of Yahyà, to be the last the *qadi* under 'Abd al-Rahman II, whereas other sources cite Sa'id b. Sulayman al-Balluti as the successor of Muhammad b.Ziyad. Added to these problems in establishing the time factors, Fierro makes another valid point:

¹¹⁹⁹ Fierro, Isabel, op.cit., p110-p111.

¹²⁰⁰ Ibid., in footnote 34 on p111.

¹²⁰¹ There are other similar cases throughout al-Andalus where the person found guilty of blasphemy was punished by being crucified alive, and then stabbed to death. Other cases involving the crucifixion penalty was that of the false portrayal by a person, stating himself to be prophet. This also occurred under the reign of 'Abd al-Rahman II. Ibid., in footnote 35 on p111.

To this chronological confusion is to be added the fact that *in no account of the two trials reference is made to the precedent established by the other*. This is rather odd : even having in mind that in Islamic law a legal opinion does not constitute a binding precedent, it is hard to imagine that the *fuqaha* who disagreed with Ibn Habib's opinion would have missed such an opportunity to attack his obviously biased reasoning and stress his contradictory attitude.¹²⁰²

Exactly the same as in the case of Yahyà ibn Zakariya al-Hassab, all of the *fuqaha* selected to be consulted for their legal opinions on Harun b. Habib, were from the Maliki *madhhab*. Having said that, and although the content of the *faatwa* were recorded, none of them present any reference to a recognisable Maliki authority. Although the recorded references have been abridged, it is still noticeable that even after any abridgement, there should still remain a certain level of Maliki doctrine in a *fatawa* relating to any given case. What also seems incredible in the recordings of this case is the point that this thesis aims to highlight. The obfuscated confusion when not defining each crime as a specific, separate category, can be seen to easily blur one crime into another. As can be seen in the *fatawa* of these two cases:

As a matter of fact, *no mention is made of any specific case of blasphemy, which could constitute a precedent*. The cases mentioned by Ibrahim b. Husayn b. Halid deal with accusations of *bid'a*, *zandaqa* and apostasy: apparently, the line between these offences and that of blasphemy was not clearly drawn.¹²⁰³ [Italics from the original text.]

The case involving the accusations of *bid'a*, (innovation) was that of Sabig, as referred to above. He was accused of attempting to introduce some 'offensive innovations' into Islam, due to his interests in *kalam* (general discussion) and *jadat* (academic debates).¹²⁰⁴ He was sentenced to be repeatedly flogged until he repented. The case involving the accusation of *zandaqa* involved Malik b. Nuwayra, who was accused as being an 'apostate' – and not a *zindiq*. His case followed the Prophet's death, as Nuwayra was accused of referring to the Prophet as *sahibu-kum* (your master) as opposed to *sahibu-na* (our master). Through using this phrase, he was believed to have intentionally ostracised himself from the Islamic community.¹²⁰⁵ This is another very clear example of where a blurring of the crime's definition, easily

¹²⁰² Ibid., p112

¹²⁰³ Ibid., p111

¹²⁰⁴ Ibid., in footnote 37 on p111. Also see Al-Qurtubi, Muhammad b. Waddah (d.287AH/900 AD), *Kitab al-bid'a*, ed. And trans. By Maria I. Fierro, Madrid, 1988, p62-63 and p322-323

crosses over the border from one category of the ‘crime,’ into a different category for the ‘accusation’. Here, the crime was considered to be *zandaqa*, and the perpetrator was named as an ‘apostate’.¹²⁰⁶

The members of the *fuqaha*’ who strongly adhered to the death penalty, emphasised that the words of Harun b. Habib must be taken in their literal meaning, as they are not open to any broader, alternative interpretation. Even ‘Abd al-Malik b. Habib recognised this dilemma, and declared in his decision that, should his brother’s words be taken literally, there would be no doubt that he would be put to death, as the words would fall within *kufr* (unbelief). However, the *fuqaha*’ who promoted the death penalty, supported their decision to take words literally, even to the extent that when someone simply hinted in a subtle remark against God, then the “implication is like an open declaration (*al-ta’rid ka-l-tasrih*).¹²⁰⁷ The members of the *fuqaha*’ whose wished to deliver an alternative penalty had the choice of either imprisonment, flogging or both of these methods of discipline. They presented the opposite understanding of the words used. They argued that there was always a possibility of interpreting the words in a good, non-detrimental meaning and, hence, with the existence of such a valid interpretation, the death penalty could not be applicable in this case. This would clearly have been the position held by ‘Abd al-Malik b. Habib, the brother of the accused.¹²⁰⁸

The main point to expand on in detail, in the case of Harun b. Habib, is the potential link between the *fatawa* decisions that were made. It is argued by ‘Iyad in his account of the case, that on writing their *fatwa*, the *fuqaha*’ were already aware of the content of the *fatwa* by ‘Abd al-Malik b. Habib. This could be due to A) either the ‘*amir*, having already consulted ‘Abd al-Malik b. Habib for his comments on the case, the *fatwa* judgement could then have been made known to the other *fuqaha*’, by using it as a point of reference, or B) previous to the written completion of the *fatawa*, there could have been a meeting of all the *fuqaha*’ *mushawarun*, (although this meeting has

¹²⁰⁵ Ibid., in footnote 38 on p111

¹²⁰⁶ Ibid., in footnote 38 on p111

¹²⁰⁷ Ibid., p112

¹²⁰⁸ “The account given by the sources is abridged : Ibn Habib probably started by not contemplating any punishment for his brother; when he realised that all the other consulted *fuqaha*’ saw it necessary to punish him more or less severely, he was forced to include punishment in one of his *fatawa*.” Ibid., in footnote 40 on p112

not been recorded). During such a meeting, the different opinions on the relevant punishments to be offered could have been discussed amongst them all, so that the finalised decisions taken would have had some consistent support. However, what becomes apparent in the final decisions stated within the *fatwa* by each *faqih*, is that :

it is clear in the preserved account that the opinion of each *faqih* was influenced by that of the rest, in the sense of providing arguments to counteract those put forward by the others and in the sense of introducing nuances in their own positions. It is also worth pointing out the role of the *amir* : his is the final decision and the *fuqaha*' try to influence him in different ways; 'Abd al-Malik b. Habib even resorts to 'threatening' him.¹²⁰⁹

Further assessment of the words that Harun b. Habib used and which created the accusations of blasphemy, also raise some interesting points in the analysis of the case. The first accusation was based on the interpretation of the words used to be an insulting remark against Islam, in suggesting that Christians and Jews are in a better status than Muslims. However, in reference to the 'when and the where' this was stated, Isabel Fierro suggests that "Even if the place is not specified, he was clearly referring to al-Andalus and to Ilbira more specifically."¹²¹⁰ This can be based on certain factors that existed around that time during the reign of al-Hakam I, who was the father of 'Abd al-Rahman II.

Al-Hakam I had appointed a Christian to collect in the tax payments, and the *amir* had contributed one thousand *dinar* that had been gathered in the province Ilbira. At the beginning of the reign by 'Abd al-Rahman II, a delegation representing Ilbira requested from him that the tax collection undertaken by a Christian¹²¹¹ should be cancelled. In doing so, their protests led to some fighting with the *amir*'s troops.

These circumstances led to some strongly held resentment against the *dhimmi* (non-Muslims allowed to live in the Islamic community, by paying the *jiyza* tax) who had been elevated as being equals or placed on a higher status, by the *amir*. It could be argued that these words expressed by Harun b. Habib were more a reflection of those general circumstances surrounding the Muslims, and was therefore a verbal attack

¹²⁰⁹ Ibid., p112

¹²¹⁰ Ibid., p113

¹²¹¹ It is interesting to note that the Christian who collected these taxes was eventually sentenced to death. Some sources argue that the execution occurred under the reign of al-Hakam I, whereas other sources argue it occurred under 'Abd al-Rahman II. See *ibid.*, in footnote 43 on p113

against the *amir* and his polices. However, if this had indeed been the case, “It is then surprising the benevolence shown to him by ‘Abd Rahman II.’”¹²¹²

In reference to the second accusation against Harun b. Habib, when he referred to God as being the cause of his illness, and that his suffering could not be compared to any other punishment that another person had to endure, these comments were taken to be an outrageous attack on God’s justice. It should be noted that Harun b. Habib was very interested in *kalam*, and within *kalam* there were discussions on the role of God’s responsibility for evil and God’s level of justice. Also, during the time of ‘Abd al-Rahman II’s ruling as *amir*, there had been a gradual introduction of *kalam* into al-Andalus. These factors seem to present some valid circumstantial evidence to picture the surrounding context that may well have, at least, induced the ideas of the content to his comments which were expressed.

Having assessed the limited amount of information that is available and relevant to both these cases, it becomes clear that what is available can become somewhat confusing, due to the different suggestions that are presented from different sources. These different views include the date of the trial of Harun b. Habib, and the selection of certain *fuqaha*’ in the second case assessed here. However, with these problems taken into consideration, it is still possible to assess the reasoning behind the *fatwas* that were delivered in these two cases. This is a very important task to do in this present research, as it will aid some understanding as to why such legal sentences were included in the content of each *fatwa*.

Any accusation of blasphemy against a Muslim would have been dealt with directly by the *amir*. Yahyà ibn Zakariya al-Hassab was sentenced to prison by the *amir*, and although Harun b. Habib was sent to prison by the *qadi* of Ilbira, the *qadi* left the control of the actual trial to be undertaken the *amir*. The manner in which both of the cases were dealt with is summarised by Fierro as :

It is the *amir* who personally asked for the legal opinions of the *fuqaha*’, including among them the *qadi* of Qurtuba, who acted not as a *qadi* but as another *faqih*. Those *fuqaha*’ are *fuqaha*’ *mushawarun*, i.e. jurists selected among their class as worthy of consultation by the *qadi* or by the *amir*. The *fuqaha*’ *mushawarun* in the cases studied are undoubtedly named by

¹²¹² Ibid., p113

the *amir* himself, not by the *qadi*. They are Malikis and their *ihtilaf* does not seem to be determined by any specific tendency within the Maliki school : it springs out of their personal reasoning and interpretation of a shared body of doctrine. In one of the cases studied, the consultation takes place in a *maglis*, where the *amir* is represented by the *sahib al-madina*; in both cases, the *amir* has the *fatawa* issued in a written form. The *amir*, on the basis of these *fatawa*, makes his own choice and takes the decision as to which sentence is to be applied to the accused. This choice is not determined by the fact that a majority of the *fuqaha* supported the chosen sentence.¹²¹³

This latter point is highlighted in the very fact that in the case of Yahyà ibn Zakariya al-Hassab, three of the five selected *fuqaha* who were consulted for their legal advice, together with the *qadi*, all came to the conclusion that the death penalty was not applicable in his particular case. However, the *amir* chose and delivered the death penalty, supported by only two of the consulted *fuqaha*. In the case of Harun b. Habib, it is not known how many of them supported the *fatwa* decision that was against the death penalty, provided by ‘Abd al-Malik b. Habib, the brother of the accused. The *amir* chose the same verdict, opposing the death penalty.¹²¹⁴

A very interesting possibility to explain the general situation surrounding both of these cases, was related to by Ibrahim b. Husayn b. Halid. As stated above, he was rather concerned that a letter should be written to the ‘East’ (*al-mashriq*), to request some sound legal advice in reference to the Harun b. Habib case. It is possible to explain the reasons behind this search for outside advice, as it implies that Ibn Halid perceived the ‘East’ to be of a far higher and established authority in jurisprudence affairs, than those that operated in al-Andalus. He, most probably, was referring to Medina or Egypt, as being the ‘East,’ as those were the standard locations where the Andalusian *fuqaha* had trained and specialised in their knowledge of law. Thus, “it shows, therefore, that during the reign of ‘Abd al-Rahman II, the Andalusian *fuqaha* had not reached complete confidence in their skills.”¹²¹⁵ However, that is just one manner of interpreting the reasons why such a suggestion was put forward. It becomes more intriguing to further the investigation, to discover other valid reasons that go a little further into the question of why the legal sentences that were delivered in these cases differ. As Fierro argues :

¹²¹³ Ibid., p114-115

¹²¹⁴ Ibid., in footnote 51 on p115

But there is another possible interpretation of Ibn Halid's words. Taking into account that the accusation was of blasphemy and therefore considered to fall within the competence of the *amir*, could Ibn Halid not be implying that the Umayyad *amir* (whose legitimacy could be questioned) was not the appropriate authority to handle such a case? If this interpretation is correct, Ibn Halid's suggestion can be considered as a very rare instance of some intellectual activity on the part of the Andalusian *fuqaha'* on the question of the Umayyad's legitimacy to their power in al-Andalus.¹²¹⁶

It is of great interest to assess the final verdicts that were pronounced in both cases, as although both cases were of the same accusations of the acts of blasphemy having been undertaken, the dénouement of each trial differed quite dramatically. As Fierro indicates, all of those involved in these cases were already aware of the possible legal sentencing. Hence, as she explains:

In both Yahyà's and Harun's cases, it is taken for granted that the accusation of blasphemy may lead to the death penalty: a) because the punishment of blasphemy is that of the Muslim who falls into *kufir* (Ibn Habib); b) because *al-atar al-muhkama wa-l-sunna al-madiya* contemplate the death penalty for blasphemy together with murder, apostasy and brigandage (Sa'id b. Sulayman al-Balluti); c) because the punishment of blasphemy is one of the *hudud* (Ibn Habib, Ibrahim b. Husayn b. Halid).¹²¹⁷

She also states that in the reports of these cases, that "No Maliki authorities are quoted."¹²¹⁸ She argues that for the *fuqaha'* (Islamic jurists) who sought for the death penalty, they defended this penalty due to the fact that the words of the accused had to be taken literally. For these reasons, the perpetrator had insulted God, together with the fact that "the intention (*niya*) of the offenders should not be taken into account nor any harmless interpretation be permitted."¹²¹⁹ However for the *fuqaha'* who were inclined to offer a more minor, disciplinary penalty, both the intention (*niya*) and the word's interpretation were a vital point to focus on. The defence case argued that if the words used were taken literally and considered to be blasphemous, then "the only way to escape capital punishment was to insist that they should *not* be considered as

¹²¹⁵ Ibid., p115

¹²¹⁶ Ibid., p115

¹²¹⁷ Fierro, Ibid., p115

¹²¹⁸ Ibid., p115

¹²¹⁹ Ibid., p115-116

evidence of unbelief.”¹²²⁰ Here, concerning this legal position, Fierro raises the very important point that:

It is worth recalling the existence in Islam of a tendency to leave the judgement of matters of unbelief to God and not to man.¹²²¹

The *fuqaha*’ against the death penalty presented their defence on these grounds:

a) the intention of the accused had not been to insult God (Yahyà was joking; Harun was ill and out of his mind) ; b) the words were ambiguous and therefore not only could – but should – be interpreted in a harmless way.¹²²²

6.6 Inconsistencies by the Same Jurist in Both Cases.

Fierro suggests that so far, there is nothing in particular that strikes as being surprising. However, what does become shocking and inconsistent in both cases, and “what is really interesting in both cases is that one of the *fuqaha*’ , ‘Abd al-Malik b. Habib, played a different but decisive role in each of them.”¹²²³ She argues that his inconsistency could be due to having convicted and put to death Yahyà, as a blasphemer, whereas the other case involved his brother, whose life he was determined to save. His inconsistency was manifested in the difference of opinion that he had stated in each *fatwa* that he delivered in each case. For Yahyà, ‘Abd al-Malik b. Habib condemned him to the cross, by stressing his personal “pain and outrage for God’s sake, going so far as to weep.”¹²²⁴ However, in the case for his brother, he had minimised any direct attack against God in the words used by Harun. Further than that, he also complained about being intimidated by the other lawyers, to even accuse “them of being jealous of his success and prestige,” while he went “so far as to present the *amir* with the choice of being ‘with me or against me’.”¹²²⁵ It is quite possible that he did not feel completely confident and secure to clear his brother, as Harun’s case is likely to have occurred after Yahyà’s case. To strengthen his defence, ‘Abd al-Malik b. Habib argued that the witnesses against his brother did not fulfil the necessary legal requirements, and he also emphasised that:

¹²²⁰ Ibid., p116

¹²²¹ Ibid., in footnote 55 on p116

¹²²² Ibid., p116

¹²²³ Ibid., p116

¹²²⁴ Ibid., p116

¹²²⁵ Ibid., p116

the behaviour of the *qadi* of Ilbira had been dictated by his hatred of Harun; that the *fuqaha*' consulted were all of them driven in giving their *fatawa* by their envy and jealousy of his prestige.....For all his efforts, the impression remains that his position must have been weak and had he not counted beforehand on the *amir*'s support, Harun's fate might well have been crucifixion.¹²²⁶

Concerning both of these cases, not one of the *fatawa* issued by the *fuqaha*' mentioned any previous case(s) of blasphemy that had occurred either in Al-Andalus or anywhere else. This meant that there were no available cases to be used as precedent for the legal decisions.¹²²⁷ What is also important to reiterate now, as mentioned earlier, is that any cases that were referred in the *fatawa* :

The cases quoted are of *zandaqa*, innovation and apostasy and that this seems to point to the lack of a clear line drawn between these offences and that of blasphemy.¹²²⁸

To expand this very point, another factor emphasises an obvious inconsistency in the legal decisions for :

.....two cases of blasphemy taking place one after the other, probably in the same year (237AH/851AD) and there is no mention of the decision taken or the *fatawa* issued in the first in whatever of the two is the second.

Both cases were identical, with the same accusation of the same crime, so the 'inconsistency' means that the decision of the first case was not taken as being precedent for the second case. Fierro states "in the first in whatever of the two is the second" in her reference to the confusion of the dates the trials were held on. Both cases exist, but the chronological order of when they occurred, differ in the sources reporting them.

Concerning the issue of using court cases as a precedent in later cases, "the two cases studied here were used by *qadi* 'Iyad and by al-Wansharisi in their exposé on the legal doctrine on blasphemy."¹²²⁹ What is of interest to note, is that the case of Harun b. Habib is also used in some legal literature that was written many years after these cases were held. The literature questions whether the words he had stated could be strong enough to present the death penalty from a *Shari'ah* court. Although the final

¹²²⁶ Ibid., p116

¹²²⁷ Ibid., p116

¹²²⁸ Ibid., in footnote 57 on p116

decision for Harun b. Habib was being acquitted from the crime, Fierro argues that the legal decisions on such accusations changed in following generations of Islamic jurists. This very point highlights the fact that legal decisions stated in *fatawa* that judge and conclude one crime, are not unquestionable and unalterable in the decisions to be taken in future cases, that involving the same crime. For example, she declares that there is a strong argument that is made to promote the legal sentencing of *ta'zir*, (or *ta'dib* – discretionary punishment) to be used in cases of blasphemy, as opposed to categorising the crime within *al-Hudud* :

Halil b. Ishaq states in his *Muhtasar* that it is uncertain whether the words 'During my illness I have suffered so much that even if I had killed Abu Bakr and 'Umar, I would have not deserved such a punishment' are to be punished by death or by *ta'dib*, which shows that *later generations did not agree on the soundness of the decision taken by the Umayyad amir on the authority of Ibn Habib's fatwa.*¹²³⁰ [Italics placed in for emphasis]

The three main legal sentencing procedures in *Shari'ah*, which are *qisas*, *ta'zir* and *hudud*, will be discussed much further in Chapter Two, to establish the crimes each system deals with and the relevant punishments related to each crime. It is suffice to mention them here, as this places them in a court-case context to present the difference of jurist's opinions, on whether to use one punishment process or another with the crime of blasphemy. To establish whether the *ta'zir* sentencing process is more appropriate for dealing with apostasy and blasphemy rather than *al-Hudud*, is one aim that this thesis aims to resolve.

6.7 Concluding Remarks on Both Case-Studies.

Fierro states that, apart from these two cases, there are no other reported cases that involve the accusations of blasphemy against Muslims during the Umayyad period. The research by E. Lévi-Provençal promotes the idea that Yahyà's case occurred during the time of the Mozarab 'martyrs' movement in 235AH/850AD.¹²³¹ It becomes apparent that the importance to focus on the words used by Yahyà, and to then denounce him, make sense when considering the current atmosphere in Qurtuba at

¹²²⁹ Ibid., on p117

¹²³⁰ Ibid., on p117

¹²³¹ Ibid., on p117

that time, due to the presence of the Christian blasphemers' there. These Christian 'martyrs' had the sole aim, "to insult the God of the Muslims and His Prophet."¹²³² Such open activity of blasphemy, would have created a great sensitivity amongst the Muslims, regardless of whether it came from members of the *dhimma* or from other Muslims. The perpetration of this misbehaviour may well have caused a counter group, in the form of a 'lobby,' as it were, who worked towards establishing a rather harsh punishment for those found guilty of blasphemy against Islam. Fierro argues that, had this been the case, it was also quite likely that 'Abd al-Malik b. Habib had been the lobby's spokesperson in Yahyà's case. Therefore, "The *amir's* support of Ibn Habib's *fatwa* was then due not only to the influence the latter had on him, but also to the fact that he was under pressure of that 'lobby'."¹²³³ Fierro also postulates that the action undertaken by the *fuqaha'* who opposed the death sentence for Yahyà :

can be explained in two ways, that are not mutually exclusive: they did not bend to the pressures of the moment, but were faithful to the notion that matters of belief are not to be judged by man; they resented Ibn Habib's influence on the *amir* and their *fatwa* was a way of expressing that resentment by opposing him, the doctrinal issue involved being of no real importance. That hatred, envy and jealousy existed among the *fuqaha'* of Qurtuba of the time is clearly shown by the sources.¹²³⁴

These circumstances and the situation at that time, may well have led the *fuqaha'* who had been 'defeated' in Yahyà's case to await their time to then take 'revenge' against the 'triumphant' Ibn Habib, who had won the last case. Therefore, to be chosen to act as his 'opposition' on the same decision panel, in the next legal case:

Harun's accusation must have been considered as too good to be true, especially if the 'lobby'.....existed. In this context, Ibn Habib's success in saving his brother from death against so many odds gives us the measure of his influence on the *amir*.¹²³⁵

There is also evidence which supports the use of *ta'zir* (or *ta'dib* – discretionary punishment) to have been used in these sentencing of both of the cases. The *amir* assessed the decisions made by the *fuqaha'* in each *fatawa* delivered and then, under

¹²³² Ibid., on p117

¹²³³ Ibid., on p117

¹²³⁴ Ibid., on p117

¹²³⁵ Ibid., on p117

his own discretion, announced the final penalty to be delivered. One was the death penalty for the convicted blasphemer, the other was the acquittal of the case.

Whether the final judgements taken and the sentences that were delivered are considered to be dubious, or questionable, is somewhat irrelevant to the discussion at this point. What is important, however, is that the decision process of *taz'ir* was used. This presents a very strong argument against the Islamic jurist's suggestion that the crimes of blasphemy and apostasy can only be dealt with under the process of *al-Hudud*. The final decisions taken in these two cases present enough evidence to show that there was no consistency in the judgements made, because the five *fuqaha'* involved, differed in their opinions as to the most appropriate final sentence that should be delivered. Even after making their own *fatawa* punishment decisions, the *'amir* made his own final decision, after referring to the five statements that were made by the jurists. The very process of *ta'zir*, also referred to as *ta'dib*, can be undeniably seen to be used here, with the *amir's* discretionary punishment having being taken after assessing five legal opinions on each case. It can easily be argued that there was not an unalterable set of rules in the Maliki *Shari'ah* decisions that were utilised here, where the *qadi* (judge), or the *amir* in these cases, would not have been able to intervene with and change the judgement, being based on their own independent discretion. This is indeed, what the *qadi* did, using *ta'zir*.

CHAPTER SEVEN

7.0 THE CASE OF MAHMOUD MUHAMMAD TAHA

7.1 Introduction.

Mahmoud Muhammad Taha, was convicted of the crime of apostasy and executed on 18 January 1985. A background will be presented of the circumstances leading up to the case, while questioning the authenticity of the conviction for such a crime. Identifying legal procedural errors will assess whether President Ja'far Mohammed al-Nimeiri had misused both the Sudanese legal system and Islamic *Shari'a* law that deals with *hadd* crimes (crimes and punishment mentioned within the Qur'an). The conclusion discusses whether al-Nimeiri manipulated the law for a political motive, as opposed to his upstanding respect for the religion of Islam and his defence of Islamic *Iman* (Faith). The Chapter will seek to answer whether Taha actively propagated for an Islamic revival throughout his life, or whether there is any truth in the court's conviction and death sentence, based on Taha's supposed 'insults' and 'repudiation' of Islam.

Mahmoud Mohamed Taha, a qualified engineer by profession, was one of the founders and became the first leader of the Sudanese Republican Party or the Republican Brotherhood (*Ikhwan Jamhuriyyeen*¹²³⁶) in October 1945. The party is also referred to as the Republican Movement or the Republicans.¹²³⁷ The Republicans main aim was to work towards independence for the Sudan as a republic, away from the control held by Egypt and the British colonial rule.¹²³⁸ In 1946, Taha had been imprisoned twice by the

¹²³⁶ Fluehr-Lobban, Carolyn, *Islamic Law and Society in the Sudan*, 1987, Frank Cass and Company Limited, London, England, p.274. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha: Misuse of the Sudanese Legal System and Islamic *Shari'a*?' in *The International Journal of Human Rights*, Frank Cass Publishers, September 2001, Vol., 5, No.3, Autumn 2001, p45

¹²³⁷ An-Na'im, Abdullahi Ahmed, 1986, 'The Islamic Law of Apostasy and its Modern Applicability : A Case From The Sudan' in *Religion*, Vol. 16, p.204. Also see Mayer, Ann Elizabeth, *Islam and Human Rights : Tradition and Politics*, Pinter Publishers, London, (and also published by Westview Press Inc., Colorado, USA) both in 1990, p.182. Also see Arzt, Donna E., 'Religious Human Rights in Muslim States of the Middle East and North Africa' in *Religious Human Rights in Global Perspective: Religious Perspectives*, 1996, John Witte, Jr. and Johan D. van der Vyver (eds.), Martinus Nijhoff Publishers, p.387-454. This is also an article in *Emory International Law Review*, Volume 10, Number 1, Spring 1996, Emory University School of Law, Atlanta, Georgia, USA and can be found on the internet webpage on : <http://www.law.emory.edu/EILR/volumes/spring96/arzt.html>.

¹²³⁸ Warburg, Gabriel, *Islam, Sectarianism and Politics in Sudan Since the Mahdiyya*, Hurst and Company, London, 1993, p160. An-Na'im explains that "In the 1940's, some of the Sudanese nationalists were

British colonial administration, on account of his political activities. The second term of his incarceration lasted for two years and during this time Taha developed his concept of understanding Islam and the idea of the Islamic revival through the evolution of certain aspects within *Shari'a*.

He maintained these ideas once he was released from prison in 1948, and he also based his views on how to practice *salat* (daily prayer), on the same manner in which the Prophet Mohammad had personally chosen to worship.¹²³⁹ In the preface of Taha's work, *The Second Message of Islam*, translated by Abdullahi Ahmed An-Na'im, this point is also raised as :

It was during this second term of imprisonment, and the subsequent period of self imposed religious seclusion (*khalwa*) in his home town Rufa'a, that *Ustadh*¹²⁴⁰ Mahmoud (Taha) undertook the rigorous program of prayer, fasting and meditation that led to his insights into the meaning of the Qur'an and the role of Islamic law.¹²⁴¹

Added to this, for a further explanation, in his work *Rasa'il wa maqalat* Taha describes the reasons for his choice of seclusion after leaving the prison, by stating:

Do you think I went into seclusion seeking knowledge (*ma'rifa*)? No, by God. Definitely not. I went into seclusion for something more honourable than knowledge. Something that knowledge only serves as a means to. It is myself (*nafsi*), inner soul, which I lost in a heap of falsehoods and illusions. I had to search for it in the light of the Qur'an. I wanted to find it, unfold it, and

working for the evacuation of British forces and administrators so that the Sudan may unite with Egypt. Others were seeking independence with very close ties with Britain. The Republican Party was formed to oppose both strategies and demand immediate total independence." An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy and its Modern Applicability,' *ibid.*, in footnote 24 on p219. Also see An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation : Civil Liberties, Human Rights and International Law*, Syracuse University Press, 1990, p.x.

¹²³⁹ An-Na'im explains that "*Ustadh* Mahmoud insisted that his ideas were based on deep religious insights acquired during his profound spiritual experience, and not as a result of purely rational intellectual endeavour. This is important for the religious authenticity of his views in accordance with the mystic approach he had subscribed to throughout his adult life." (An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy and its Modern Applicability,' *ibid.*, in footnote 25 on p.219.)

¹²⁴⁰ *Ustadh* (revered teacher) An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy and its Modern Applicability,' *ibid.*, p.197. *Ustadh* was the honourable title given to Taha by his followers, in their respect and acceptance of his work and his aims for reviving Islam and *Shari'a* law in a modern day context.

¹²⁴¹ Taha's work translated by Abdullahi Ahmed An-Na'im, *The Second Message of Islam by Ustadh Mahmoud Mohamed Taha*, Syracuse University Press, Syracuse, 1987.

be in peace with it before I call others to Islam. This is absolutely essential (for the genuine preacher), because he who does not have cannot deliver.¹²⁴²

He eventually achieved a comprehensive understanding of universal Islamic ideology and continued to maintain this position until he was publicly hung on January 18th 1985.¹²⁴³ His theory covering the universality of Islam is based on the idea that Islam was presented in terms of freedom of choice and each individual having the personal responsibility for making that choice. This argument is based on various verses within the Qur'an that also promote the view of personal responsibility for freedom of choice. Such verses include Surah *Al-Baqarah*, 2, verse 228,¹²⁴⁴ Surah *An-Nahl*, 16, verse 125,¹²⁴⁵ Surah *Al-Khaf* 18, verse 29¹²⁴⁶ and Surah *Al-Hujurat*, 49, verse 13.¹²⁴⁷

¹²⁴² Taha, Mahmoud Mohamed, *Rasa'il wa maqalat*, no date or publishers found, Vol. 2, p.3. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p.46

¹²⁴³ Mayer, Ann Elizabeth, *Islam and Human Rights*, op.cit., p.185. Also see Arzt, Donna E., 'Religious Human Rights in Muslim States,' op.cit., p.387-454. And also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief: A World Report*, 1997, Routledge, London, p.73. Also see Ahmad, Syed Barakat, 'Conversion From Islam,' in *The Islamic World, From Classical to Modern Times – Essays in Honour of Bernard Lewis*, (Eds.) Clifford Edmond Bosworth, Charles Issawi, Roger Savory and A. L. Udovitch, 1989, The Darwin Press, Inc., Princeton, USA, p.16. Also see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights: An Appraisal,' in *The Mediterranean Journal of Human Rights*, Faculty of Laws, University of Malta, Msida, Malta, Vol. 4, (Double Issue), 2000, p.139
The details of the court procedure and the conviction for apostasy that lead to Taha's death sentence and his execution on January 18th 1985 - and particularly the controversy that the case and the court procedure caused - will be discussed below in detail.

¹²⁴⁴ "From the day they are divorced, women are to wait until they have menstruated three times - provided their courses are regular - and are clean before they re-marry. It is unlawful for them to hide what is in their wombs in order to facilitate marriage. If they believe in God and the Last Day they will not resort to such a ploy; rather, they will wait until they have given birth before seeking a new husband. During this time their husbands have the right to take them back, provided that they wish to be reconciled. Women have similar rights which must be upheld with fairness; however, men are a degree above women in the sense that they enjoy the right to be obeyed. And God is Almighty, Possessed of Absolute Wisdom." Surah *Al-Baqarah*, 2, cited as verse 229 in Turner, Colin, *The Quran: A New Interpretation*, Textual Exegesis by Mohammad Baqir Behbudi, Curzon Press, 1997, p.20. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', op.cit., p.204 and in footnote 26 on p.219.

¹²⁴⁵ "Invite the polytheists to God's Path with wisdom and good counsel; debate with them only in the presence of neutral onlookers, since this makes for the best and most courteous of debates. Your Lord knows best those who have strayed from His Path and those who have received guidance." Surah *An-Nahl*, 16, cited as verse 126 in Turner, Colin, *ibid.*, p.164. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204 and in footnote 26 on p.219.

¹²⁴⁶ "This Quran, with its verses dealing with the unseen world, has been revealed in Truth from your Lord. Whoever wishes to believe, let him believe; whoever wishes to disbelieve, let him disbelieve. For those who are black of deed and guilty of covering up the truth, We have made ready the fires of Venus, which will encompass them entirely. And if they should cry out in pain from the burning of the flames and beg for water to quench their thirst, We will pour on their heads a thick, burning liquid that will scald their faces - a vile and evil drink indeed!" Surah *Al-Khaf* 18, cited as verse 30 in Turner, Colin, *ibid.*, p.174. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204 and in footnote 26 on p.219.

An-Na'im suggests that the equality of all people, irrelevant of their sex or religious belief, would have been established if this Qur'anic text had been made the basis of the relevant *Shari'a*. However, this did not occur in the seventh century. An-Na'im explains that "When it was shown in practice that the Arabs were not mature enough to appreciate and live in accordance with those superior principles, and they conspired to kill the Prophet, the offer of freedom and responsibility was withdrawn."¹²⁴⁸ The two concepts of compulsion (*ikrah*) and guardianship were imposed once the Prophet had migrated to Medina. Also at this time, various Qur'anic verses explaining the different levels of *jihad* to promote Islam and the "discrimination against non-Muslims and women were revealed."¹²⁴⁹ The relevant verses include Surah *At-Tauba* or *Baraat*, 9, verse 29¹²⁵⁰, Surah *At-Tauba* or *Baraat*, 9, verse 5¹²⁵¹ and Surah *An-Nisa*, 4, verse 34.¹²⁵²

¹²⁴⁷ "O mankind! We have created you all from one man and one woman, and We have made you, throughout the centuries, into families and tribes so that you might come to know your place and position in the human race. Your heritage – that which you inherit from your forbears – may prompt you to enquire into the history of different cultures, the science of genetics and the study of racial characteristics, the handing down of knowledge and the growth of various civilizations – but it should not lead to pride and bigotry. Nothing is a source of pride and honour unless God has deemed it so. The most honoured among you in the sight of God is he who is the most God-fearing; God knows who fears Him, and to what degree, for He has absolute knowledge of all things." Surah *Al-Hujurat*, 49, cited as verse 14 in Turner, Colin, *ibid.*, p.310. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204 and in footnote 26 on p.219.

¹²⁴⁸ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204. Also see An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation*, *op.cit.*, p.99-100 and also Fluehr-Lobban, Carolyn, *Islamic Law and Society in the Sudan*, *op.cit.*, p.275. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p.46-47

¹²⁴⁹ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204.

¹²⁵⁰ "Fight those who believe not in Allah nor the Last Day, nor hold that forbidden which hath been forbidden by Allah and His Apostle, nor acknowledge the Religion Of Truth, (even if they are) of the People of the Book, until they pay the *Jizya* with willing submission, and feel themselves subdued." Surah *At-Tauba* or *Baraat*, 9, verse 29. Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol I, p.447. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204 and in footnote 27 on p.219.

¹²⁵¹ "But when the forbidden months are past, then fight and slay the pagans wherever ye find them and seize them, beleaguer them and lie in wait for them in every stratagem (of war); But if they repent, and establish regular prayers and practise regular charity, then open the way for them : For Allah is Oft-Forgiving, Most Merciful." Surah *At-Tauba* or *Baraat*, 9, verse 5. Ali, Abdullah Yusuf, *ibid.*, Vol I, p.439. Also see

An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.204 and in footnote 27 on p.219.

¹²⁵² "Men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard in (the husband's) absence what Allah would have them guard. As to those women on whose part ye fear disloyalty and ill-conduct, admonish them (first), (next), refuse to share their beds, (and last) beat them (lightly); but if they return to obedience, seek not against them means (of annoyance) : for Allah is Most High, Great (above you all)." Surah *An-Nisa*, 4, verse 34. Ali, Abdullah Yusuf, *ibid.*, Vol I, p.190-191. Also see An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,'

The policy of the Prophet was to confirm the principles of *Shari'a* on these verses, and elaborate on them, which during the following three hundred years, enabled the Muslim jurists to rationalise the law by systematising and defining the catalogues of crimes. This involved the comparison of the earliest text of law from the Prophet's time in Mecca with the later laws established in Medina. Any laws from Mecca that appeared to be inconsistent with those in Medina were argued to have been repealed or abrogated to the latter in the legal definitions and interpretations. As they remained within the Qur'an and the *ahadith* (traditions), they were still revered by Muslims, and held to represent ethical standards, but with no weight or legal binding. The majority of Muslim jurists concluded that this was the situation to be maintained in *Shari'a*. However, Mahmoud Taha held another position in his corollary.

His main argument was that the idea of the abrogation of the original Meccan Qur'anic verses was, in full meaning, that their repeal was purely a temporary suspension until the appropriate context in the future would allow them to be clearly valid for implementation and enforcement. He based this view on the idea that 'abrogation' should be supported by the logical rationale behind it, which includes the socio-economic and political circumstances that were present in Arabia, at the time of the revelation. Taha argued that through a lengthy period of time, conditions of any society changes and develops. Therefore, *Shari'a* should have developed in such a way that in present times it could be acceptable that the temporary abrogation or 'suspension' on the Qur'anic verses that refer to freedom of choice has now terminated. In modern day *Shari'a*, these verses should now be considered as being authentic and valid. This would uphold the principles of freedom and equality, which would be the basis of modern day *Shari'a*. Thus, "in other words, he advocated the development of a modern Islamic *Shari'a* law from the basic Islamic sources to meet the needs and aspirations of today."¹²⁵³

ibid., p.204 and in footnote 27 on p.219 and An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation*, op.cit., p.99-100.

¹²⁵³ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' ibid., p.205. Also see Mayer, Ann Elizabeth, *Islam and Human Rights*, op.cit., p.182 and also Fluehr-Lobban, Carolyn, *Islamic Law and Society in the Sudan*, op.cit., p.274-275 and also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of*

In the 1950s, the Republican Party re-directed its mandate towards propagating this new, more liberal, interpretation of Islam. However, An-Na'im states that the party was not a genuine 'political party' in the usual use of the label, as it never contested during any election runs and nor did it seek any power by any alternate means. It solely concentrated on aiming to re-educate and acquaint the population through public lectures, public debates and by spreading the information of their conception with pamphlets and books. They held a strict adherence to non-violent, open and very direct acts in their active propagation.¹²⁵⁴

7.2 Taha and the reintroduction of the *shari'a*.

Through this method of approach, Taha aimed to revive Islam to promote the interpretation of Islam as an egalitarian and tolerant belief system, which he held was manifested in the traditional *Shari'a* legal system. He was dedicated and committed towards the removal of specifically restrictive and discriminatory laws, that had been supposedly based on *Shari'a*, by replacing these rules with far more appropriate Islamic principles that met with the humanitarian needs of modern society. An-Na'im declares that his devotion to this desire was so deep that Taha's "own death was the ultimate act in the advocacy of his vision and conception of what he used to call the Second Message of Islam."¹²⁵⁵ These alternative principles, that Taha consistently promoted and demonstrated for over thirty years, would be the formulation of modern day *Shari'a*, as his views were based on the same basic Islamic sources, used to interpret in overcoming the present challenge and problems of modern society.

Taha did not advocate or support secularism, but his aim was to promote the use of an Islamic solution to the problems raised by certain parts of traditional *Shari'a*. These problems included questioning the civil and political rights of all members of an Islamic state, specifically focusing on the status of women and non-Muslims. Although he was against the Marxist idea of 'communism,' Taha did emphasise the concept of a just

Religion and Belief, op.cit., p.73. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p47

¹²⁵⁴ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.205

Islamic socialist economic order, within which all citizens could receive their basic needs to be met as a right, and not gained through dependence on charity. "He also strove to distinguish his conception of democracy and socialism from the prevailing notions of liberal democracy and Marxist socialism."¹²⁵⁶

Taha and his followers were opposed to the drive by President Ja'far Mohammed al-Nimeiri to immediately introduce the traditional *Shari'a*. The Republicans emphasised the need for an essential revision of certain parts of the law and the re-education of Muslims with the new approach towards Islamic moral values and ethics. They argued that this was needed before any introduction of *Shari'a*.¹²⁵⁷ It seemed a rather strange option for Taha and the Republican's, although being devout Muslims, to aim for establishing a socialist, democratic state, which would uphold complete equality between both men and women, together with Muslims and non-Muslims. However, it is not so strange in realising that Taha only supported the socialist economic development, as he was firmly anti-Marxist. "He objected to Marxism's atheism, and accused it of failing to achieve socialism."¹²⁵⁸

The Republican's opposition to Nimeiri's immediate introduction of only *Shari'a* law to be used in the Sudan induced severe hostility and often violent confrontation with the Ikhwan, or 'Muslim Brothers' and other extremist 'Islamic fundamentalist' groups.¹²⁵⁹

¹²⁵⁵ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.206. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p52

¹²⁵⁶ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.206-207. An-Na'im offers a background of Taha's philosophy, as : "*Ustadh* Mahmoud was critical of injustices of the capitalist liberal tradition as well as the atheism and oppression of totalitarian Marxist-Leninism. He published about 30 books and many newspaper and magazine articles. He also lectured and debated in many Sudanese towns and cities for over 20 years. His followers, the Republicans, also published hundreds of pamphlets, booklets and articles and traveled all over the Sudan distributing their literature, holding debates and giving public lectures on their methodology for Islamic Law reform." An-Na'im, *ibid.*, in footnote 35 on p.220-22. Also see An-Na'im, Abdullahi Ahmed, *Toward an Islamic Reformation*, *op.cit.*, p.97-98.

¹²⁵⁷ Thomas, Edward, *Mahmoud Muhammad Taha : His Life in Sudan*, Unpublished PhD Thesis, University of Edinburgh, 1999, p236. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p48

¹²⁵⁸ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *op.cit.*, in footnote 28 on p.219. Also see Arzt, Donna E., 'Religious Human Rights in Muslim States,' *op.cit.*, p.387-454.

¹²⁵⁹ "The Muslim Brothers' fundamentalist movement originated in Egypt around 1928. It spread into Sudan in the late 1940s and early 1950s when it was being persecuted in Egypt. Although there are other fundamentalist groups in Sudan, the Muslim Brothers are by far the strongest and best organised

The major issue of concern involving the Republicans started in May 1983, once they had issued a pamphlet that criticised the Chief of State Security, who also happened to hold the position as the first vice-President of the Republic. The pamphlet stated that he had failed to condemn and/or control the amount of growing incitements towards racial hatred and the almost encouragement for sectarian violence that was undertaken in various mosques and through the state controlled media. In reply to the pamphlet, the Chief of State Security/First Vice-President arrested Mahmoud Taha, together with approximately fifty members of the Republican Party, and they were held in detention without any charges or any trial for eighteen months.¹²⁶⁰ As An-Na'im explains :

Five Republicans, including four women, were released after nine months. A group of Republican students were also arrested and released after six months of detention. Detention orders were issued and periodically renewed under Section 22 of the State Security Act 1973 (as amended in 1975). Section 22 authorised detention without trial only for one who 'is about to commit or is likely to commit any of the offenses under this (State Security) Act,' i.e. specified offenses against the state. The Republicans were neither 'about to commit' nor 'likely to commit' such offenses as they were actively supporting the Regime at the time. In the pamphlet which constituted the immediate cause of their detention, the Republican's declared their support for the Regime and argued that their criticism of the First Vice-President's failure to curb fundamentalism and religious fanaticism was intended to prevent a take-over of power by those forces. The Republicans were denied access to the courts to pursue their complaints of illegal arrest by being physically prevented from appearing before the court as required by the Sudanese Code of Criminal Procedure, Section 156.¹²⁶¹

The detention of the Republican leaders started in May-June 1983 and they remained detained until 19 December 1984. During this period, Nimeiri introduced what he perceived to be the *Shari'a* laws and which An-Na'im refers to as the 'Islamic Laws of 1983-84.' Remarkably enough, the Republicans campaign against this introduction of the *Shari'a* laws was still organised and run by the leaders in March 1984, while they were under political detention, but issuing pamphlets and a booklet. The information in the pamphlets and the booklet were an indictment on how the laws were blatantly violating the Sudanese Constitution by distorting the basic Islamic principles, while they

group." An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, in footnote 29 on p.220. Also see Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p.182-183.

¹²⁶⁰ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.205.

¹²⁶¹ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, in footnote 30 on p.220. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p48

simultaneously contravened the basis of *Shari'a* itself, which they were supposed to represent.¹²⁶² It is interesting to note that :

.....there was no Sudanese law in effect in 1985 establishing that apostasy from Islam constituted a crime. Even though a number of rules designed to revive the more archaic features of *shari'a* criminal law such as the *shari'a* crucifixion penalty were enacted into law in 1983 and even though the government did not hesitate to impose *shari'a* penalties like amputations of limbs, the *shari'a* death penalty for apostasy from Islam had not been restored. One presumes that the failure to reinstate that rule at a time when so many other rules of *shari'a* law were being revived was a result of the kind of ambivalence about this issue that was illustrated by Iran's unwillingness to admit publicly that it executed Baha'is as apostates from Islam.¹²⁶³

The Republicans also raised three constitutional lawsuits in the Supreme Court stating that *Shari'a* laws discriminated against both women and non-Muslims and violated established provisions of the Sudanese Constitution. However, the Supreme Court, having been re-constituted under the same set of rules being questioned, rejected the lawsuits on the grounds that the Republicans were not in the position to raise them, as they were not personally aggrieved by the specific laws they stated. As Donna E. Arzt suggests, Taha,

called his approach the 'Second Message of Islam,' as it distinguished between the Qur'anic passages revealed in Medina, which he argued dealt only with circumstances in Arabia at that time, and the Qur'anic passages revealed in Mecca, which contained an eternal message. This allowed him to justify discarding *Shari'a* rules which violated modern human rights norms. Spurning violence, Taha and the Republicans used litigation, unsuccessfully, to try to invalidate Nimeiri's Islamization campaign on constitutional grounds.¹²⁶⁴

¹²⁶² An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.205. An-Na'im explains that "The pamphlet argued that the laws violated the general precepts of Islam as a religion as well as violating the specific provisions of *Shari'a* as a law. To illustrate the second point, they cited the omission of the requirement that theft must be from a securely enclosed place in order to warrant the penalty of amputation. The omission of this requirement under Section 320 of the 'Islamic' Penal Code greatly increased the incidence of amputation by allowing it to be enforced to a much wider class of offenses than originally intended by *Shari'a*." An-Na'im, *ibid.*, in footnote 31 on p.220. Also see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights, *op.cit.*, p139

¹²⁶³ Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p.184. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p49

¹²⁶⁴ Arzt, Donna E., 'Religious Human Rights in Muslim States,' *op.cit.*, p.387-454. See also Ahmad, Syed Barakat, 'Conversion From Islam,' *op.cit.*, p.16. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *ibid.*, p50

Further to this, on the December 25 in 1984, in the first week of release from detention for Taha and his fellow leaders, they released another pamphlet demanding for the repeal of what they referred to as the 'September 1983 Laws.' The pamphlet entitled *hadha.....aw al-tufan* (Either This or the Flood)¹²⁶⁵ also promoted a peaceful settlement for the civil conflict in the Southern Sudan and it also encouraged to allow public accessibility to gain the necessary knowledge and understanding, through public debates, which would aim towards a correct Islamic revival.¹²⁶⁶

Several days following their release in December 1984, some members of the Republicans were arrested again and charged with the minor crime of stimulating public disturbance due to their activities. However, the Minister for Criminal Affairs, Muhammad Adam 'Isa, interfered in the legal process and changed the charges to the stronger offenses, in a call for capital punishment, for the crime of undermining the Constitution, waging a war against the state, together with two other offenses against the State. Mahmoud Taha was also arrested on January 5 1985 and taken to trial with four of his followers, who were arrested on January 7 1985.¹²⁶⁷ All five people were convicted and presented the death penalty one day later on January 8 1985, following a court

¹²⁶⁵ Thomas, Edward, *Mahmoud Muhammad Taha : His Life in Sudan*, op.cit., p.236. Also, "The September laws (as Nimeri's *shari'a* was known) gave Republican fixations about law and society a dramatic credibility," Thomas, Edward, *ibid.*, p234. For a copy of the pamphlet in Arabic and an English translation, see 'Appendix A'.

¹²⁶⁶ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' op.cit., p.206. An-Na'im also states that, "Civil war had resumed in 1982 in Southern Sudan, following President Nimeiri's violation of the Addis Ababa Agreement of 1972, which ended the first civil war. By first re-dividing the Southern Region and then subsequently unilaterally imposing Islamic *Shari'a* law, President Nimeiri acted against the letter as well as the spirit of that Agreement." An-Na'im, *ibid.*, in footnote 32 on p.220. Also, the disaffected Sudanese in the south, mainly animists or Christians, interpreted Nimeiri's campaign of Islamization as a scheme to lower their status as 'second-class' citizens. They felt that if the reintroduction of laws against apostasy were introduced it would deem Islam to be a legally protected religion, superior to other religions. Also, a counter-point, Nimeiri did not want to publicly create this tension and lose southern Sudanese support for his ruling, and then keep the county divided. See Mayer, Ann Elizabeth, *Islam and Human Rights*, op.cit., p.184.

¹²⁶⁷ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' op.cit., p.206. An-Na'im presents the background information on the arrests. "*Ustadh* Mahmoud was arrested and tried in Omdurman, across the White Nile from Khartoum. Other Republicans were arrested and charged with the same combination of offenses in other parts of the Capital, Khartoum, and in other towns of northern, eastern and central Sudan. All charges against the other Republicans were subsequently dropped following the execution of *Ustadh* Mahmoud. Over three hundred Republicans who were detained without charge around the same time were also released over the two weeks following the execution." An-Na'im, *ibid.*, in footnote 33 on p.220. Also see Mayer, Ann Elizabeth, *ibid.*, p.183 and also see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights, op.cit., p139.

hearing that involved two sessions, each under one hour long. Following this trial, the special criminal Court of Appeal, which also had been constituted under the 'September 1983 Laws,' assessed the cases and upheld the convictions and the five death penalty sentences. On January 17, Nimeiri presented his final approval for the immediate execution of Mahmoud Muhammad Taha, while granting the other four a stay of execution for three days, within which time they should repent (*istitabah*) and recant, or otherwise choose death. The four recanted, and were saved from the sentence.¹²⁶⁸

Taha, and the four Republicans accused with him, Khalid Babikr Hamza, Muhammad Salim Ba'shar, 'Abd al-Latif 'Umar and Taj al-Din 'Abd al-Raziq, boycotted the Court hearing, as they argued that the Court was constituted under such laws that violated both Islam and *Shari'a* - and that the laws had been set-up to terrorise and humiliate the entire population.¹²⁶⁹ Each of the accused made a statement explaining their reasons for refusing to engage in the Court hearing with such a legal process, and they all then remained silent during the trial. They refused to 'co-operate' by answering any of the questions asked, or present any legal defence for their case.¹²⁷⁰ An-Na'im refers to the position held by the Republicans :

They also challenged the technical competence and moral integrity of the judges enforcing those laws because they allowed themselves to be manipulated by the executive branch of government in humiliating and oppressing its political opponents. The five accused considered the trial to be nothing but a political ploy and treated it as such.¹²⁷¹

Taha's statement concerning the reasons he had boycotted the hearing, explained the reasons why the proceedings were not valid, or undertaken within any aspect of Islam. He clarified these views, by announcing :

I have repeatedly declared my view that the September 1983 so-called Islamic laws violate Islamic *Shari'a* law and Islam itself. Moreover, these laws have distorted Islamic *Shari'a* law and made them repugnant. Furthermore, these

¹²⁶⁸ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.206. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p50

¹²⁶⁹ Thomas, Edward, *Mahmoud Muhammad Taha : His Life in Sudan*, *op.cit.*, p.238-239

¹²⁷⁰ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *op.cit.*, p.206 and also in footnote 34 on p.220.

¹²⁷¹ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.206. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p51

laws were enacted and utilised to terrorise the people and humiliate them into submission. These laws also jeopardize the national unity of the country. These are [my] objections from the theoretical point of view.

At the practical level, the judges enforcing these laws lack the necessary technical qualifications. They have also morally failed to resist, placing themselves under the control of the executive authorities which exploited them in violating the rights of citizens, humiliating the people, distorting Islam, insulting intellect and intellectuals, and humiliating political opponents.

For all these reasons, I am not prepared to co-operate with any court that has betrayed the independence of the judiciary and allowed itself to be a tool for humiliating the people, insulting free thought, and persecuting political opponents.¹²⁷²

7.3 Al-Nimeiri and Taha's Alliance – and its Termination

Taha was always seen as a rather controversial character. For example, in reaction to his initial activities of refusing to accept what he saw as the colonial occupation of Sudan:

Twice the British authorities arrested Taha in the late 1940s because of his outright opposition to their interference in what he viewed as internal Sudanese affairs.¹²⁷³

The early activities by Taha and the Republicans were successful in receiving popular support: "The Republicans succeeded in gaining student support for their humane non-legalistic view of Islam and statehood."¹²⁷⁴ Although their policy was anti-communist, the Republicans reinforced the views held by the leftist-dominated transitional government following the October 1964 revolution. This was only a temporary period, because the sectarian parties regained political power in 1965. At that time, the Umma party, led by al-Sadiq al-Mahdi, aimed towards establishing an Islamic state based on shari'a. The repercussions of these policies meant that the Republicans were actively drawn to refuse to support or accept the Umma because they opposed sectarianism and, ideologically, they had renounced what they perceived as discriminatory aspects of an Islamic state in the areas that particularly related to issues involving women and non-

¹²⁷² Abdullahi Ahmed An-Na'im, *The Second Message of Islam by Ustadh Mahmoud Mohamed Taha*, op.cit., p.15 Also see Thomas, Edward, *Mahmoud Muhammad Taha : His Life in Sudan*, op.cit., p.239. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p51

¹²⁷³ Warburg, Gabriel, *Islam, Sectarianism and Politics in Sudan Since the Mahdiyya*, Hurst and Company, London, 1993, p161.

Muslim minorities.¹²⁷⁵ This situation and circumstances lead to Taha's fall. Warburg emphasises on the factors that lead Taha to become known by the authorities as a very public controversial opponent who needed to be confronted.

It was therefore not surprising that Taha published his major works on this topic in 1966–7, attacking the political–legalistic Islam that al-Sadiq and al-Turabi were attempting to enforce in Sudan. First he wrote *Tariq Muhammad* (Muhammad's Path), in 1966, to be followed by his most important book *Al-risala al-thaniya min al-Islam* (The second message of Islam), in 1967. A year later Taha was accused of apostasy and found guilty by the supreme shari'a court in Khartoum. He was sentenced *in absentia*, since he refused to acknowledge the court's right to decide on matters of personal belief. The sentence remained on paper because shari'a courts at that time were limited to jurisdiction on matters on personal status. The court consisted of two judges, propagating ideas similar to those of the Muslim Brothers. One of the two, Husayn Muhammad Zaki, continued to demand Taha's execution for apostasy, following Numayri's assumption of power in May 1969. His reason was that Taha persisted in spreading his anti-Islamic message and thus had to be stopped.¹²⁷⁶

Even though he had been found guilty of apostasy in 1967, the support for Taha and the Republicans remained consistent by students and was also boosted by al-Nimeiri himself. However, over time, this initial affiliation with al-Nimeiri deteriorated and consequently led to the execution of Taha. As discussed by Gabriel Warburg in *Islam, Sectarianism and Politics in Sudan Since the Mahdiyya*, despite Taha's public condemnation by the authorities and the supreme court:

.....the Republicans viewed Numayri's (*sic*) early years with approval and were among his closest allies. He fought against sectarianism, eliminated Communism and promulgated a relatively liberal constitution, based on religious ethnic and cultural diversity. Furthermore, the Republicans regarded the 1972 Addis Ababa Agreement as a vindication of the federal solution of southern Sudan, which they had propagated since 1951.¹²⁷⁷

This point is elaborated on, by identifying that there had been a:

.....curious alliance between Numayri, (*sic*) the 'born–again' *sufi* with a superficial understanding of Islam, and the Republican Brothers. The latter

¹²⁷⁴ Ibid, p161

¹²⁷⁵ Ibid, p161

¹²⁷⁶ Ibid., p161-162

¹²⁷⁷ Ibid., p162

supported him in return for his allowing them to preach freely their 'scholastic neo-Islamic views', which enabled them, for the first time since the 1950s, to reach wider circles of the intelligentsia, at the expense of the Muslim Brothers and the Communists.¹²⁷⁸

To assess Taha's ideas and the principles that he wished to introduce, Warburg cites Abdel Salam Sidahmed from his work *Politics and Islam in Contemporary Sudan*. Sidahmed suggests that:

Taha offered a formulation of a socio-political blueprint for a neo-Islamist alternative based on his interpretation of Islam as consisting of two kinds of messages: a universal message, which is embodied in the Meccan Qur'anic texts, and a limited message for the circumstances of the 7th century.¹²⁷⁹

There were several reasons behind what led to the deterioration of the initial allied mutual support between al-Nimeiri and the Republican Brothers, and the division started in 1977, eight years before Taha's eventual execution.

The alliance between Numayri, (*sic*) and Taha came to an end in 1977 as a result in Numayri's Islamic policy and his reconciliation with the Muslim Brothers and the Ansar, both of whom regarded Taha's views as heresy. The Republicans, along with various secular groups, regarded the new trend as endangering Sudan's unity. However, they avoided an open clash with the regime and preferred instead to attack the Muslim Brothers and their leader Hasan al-Turabi, whom they regarded as being the power behind Numayri. In March–April 1983 Muhammad Najib al-Muti'i, an Egyptian Muslim preacher who had been involved in anti-Coptic agitation at the al-Hamra Mosque near Cairo, was exiled from Egypt to Sudan where he was allowed to air his radical Islamic views on Sudanese television. He used this privilege in order to arouse his audience against the Christians in the South, whom he accused of oppressing Muslims. In his preaching at the Kobar Mosque in Khartoum and in his television broadcasts, he called for the immediate arrest of the heretical Republican Brothers. The Republicans retaliated and called upon General 'Umar al-Tayyib, Numayri's first Vice-President and Chief of Security, to put an end to the fanatical hatred preached by Shaykh al-Muti'i. The result, as might have been expected, was the arrest of Taha and some fifty of his adherents in June 1983. They were kept in prison without being charged until December 1984. On their release from prison the Republicans

¹²⁷⁸ Ibid., p162

¹²⁷⁹ Warburg, *ibid.*, p162. Also see Sidahmed, Abdel Salam, *Politics and Islam in Contemporary Sudan*, St. Martin's, New York, 1996, p122-124.

published their denunciation of the shari'a laws, under the title: '*hadha.....aw al-tufan*' (this.....or the flood).¹²⁸⁰

7.4 The trial of Mahmoud Muhammad Taha in 1985.

The trial of Mahmoud Muhammad Taha has been seen to have been fraught with procedural and substantive errors which were over-looked by both the government and those among the judicial system, but which compromised both. Taha was executed on January 18 1985 and this section offers some background to the trial that took place and the reasons surrounding the accusations, convictions and the final death sentence that ended Taha's life-long campaign.

An-Na'im argues that from the very beginning, the trial was invalid, as the prosecution was unconstitutional for several reasons, due to the Permanent Constitution of the Republic of Sudan of 1973, which was the constitution in use at the time. Articles 47 and 48 in the Permanent Constitution, that guarantee the freedom of thought, belief and expression, were violated. During the trial, it also became apparent that none of the parties involved made any attempt to confirm that the behaviour of the accused met the offenses they were charged with. Thus, An-Na'im argues that one may be fairly justified in determining that the charges under the Penal Code and State Security Act were actually a necessary pretext in order to take Taha to trial because of his political activities and his adamant opposition to Nimeiri's campaign to impose his own definition of *Shari'a* law upon Sudan. Taha's opposition was interpreted as the renunciation of Islam and technically seen as 'apostasy.'¹²⁸¹ Taha's initial arrest and the police interrogation on the accused were undertaken under the state security offenses, with no mention of apostasy, but when the Presidential sanction¹²⁸² for the trial was obtained the State minister for Criminal Affairs also added Section 458(3) of the Penal code and Section 3

¹²⁸⁰ Warburg, *ibid.*, p162-163

¹²⁸¹ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', *op.cit.*, p.207. Also see Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p.184. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *ibid.*, p53

¹²⁸² "The specific sanction of the President of the Republic is required for prosecutions of certain offenses against the state under Section 147 of the Code of Criminal Procedure, 1983," An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, in footnote 36 on p.221.

of the Sources of Judicial Decisions Act. Both of these provisions were first of all introduced in 1983 as an integral part of the 'September 1983 Law.'

Both of these two sections act together to authorise the courts to impose Islamic penal provisions focusing on *hadd* penalties in particular, regardless of any lack of legislative provisions that would punish the specific conduct under Sudanese law. At a later stage, the two sections were used by the Court of Criminal Appeal to confirm the convictions and support the relevant death sentence for apostasy, although during the initial trial, the court made no actual charge of apostasy while, added to that, the two sections violated Article 70 of the Sudan Constitution of 1973.¹²⁸³ As stated above, the accused were charged with several crimes against the state, pleaded not guilty and boycotted the Court. The prosecution produced only one witness, who was the police officer who had interviewed the accused. During the trial, the witness read out what had been stated by the accused, their full admittance of being the authors of the pamphlet. The pamphlet was used as the only prosecution exhibit. No comments were made during the trial, concerning what the accused had previously written and spoken in reference to the broader issues of *Shari'a* reform or an Islamic revival. However, these writings and the views expressed were introduced by the Special Court of Appeal, for their own reasons, to use them as the conviction for apostasy.¹²⁸⁴ As Abdel Salam Sidahmed writes in assessing this court's procedure:

The court argued that Mahmoud M Taha was guilty both by his sayings and 'deviationist views' which 'are known to everybody,' and by his deeds, such as the fact that he does not pray. More specifically, the court argued that Taha's views which claimed that the shari'a, as known and practised during the time of Prophet Muhammad, is incapable of solving the problems of the 20th century, should be taken as sheer heresy.¹²⁸⁵

As there was no case presented to the accused, due to their boycott, it is essential to note that the accused pleaded 'not guilty' and boycotted a trial based on state security offences

¹²⁸³ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', *ibid.*, p.207. Article 70 is an "Article to guarantee against the imposition of criminal punishment in the absense [*sic*] of pre-existing penal provisions in Sudanese law." An-Na'im, *ibid.*, in footnote 36a on p.221. Also see Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p184

¹²⁸⁴ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.207.

as they were not technically on trial for the charges of apostasy being named as the specific crime committed. It is of interest to note the manner in which the court judge led the convictions and sentencing. An-Na'im raises the point that :

Although convicting all of the accused for the state security offences he specifically named, the Trial Judge stated that the death sentence would not be carried out if the accused were to repent and recant at any time before execution. As the notion of stay of execution on the grounds of repentance and recanting of one's beliefs or views is completely alien to Sudanese criminal law, the Judge must have had the Shari'a offence of apostasy in mind although he refused to mention it, presumably because of the obvious constitutional objections.¹²⁸⁶

The judge did not, at any time, describe the details of the offences against the state with which the accused were being charged with and convicted of, but he emphasised certain parts of the pamphlet that pointed towards the need for an Islamic revival and the reform of *Shari'a* law that was sought by the Republicans. The judge declared, without producing any evidence to contest the views and beliefs stated within the pamphlet, that the information provided within it would induce social upheaval if they were allowed to be publicly distributed. An-Na'im argues that this format is the manner in punishing any religious and/or ideological dissent within traditional *Shari'a* thus, the judge "was in fact convicting the accused of apostasy while citing provisions of the Penal Code to make it appear as if the convictions were for regular offences against the state. This clearly violates the requirements of a fair trial provided under Article 64 of the Constitution."¹²⁸⁷

It was not until the case was reviewed and assessed by the special Court of Criminal Appeal that the accusation of 'apostasy' was first raised and specifically named as the appropriate crime. However, this court of Appeal dealt with the issue in question in an unsatisfactory way. The court first noted on the problem of convicting the accused under the relevant sections of the Penal Code, and then offered time to repent and recant, to gain a stay of execution. The Court of Appeal then aimed to 'rectify' the decision of the trial court, by raising the following two questions: 'is apostasy punishable under

¹²⁸⁵ Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights, op.cit., p139. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p53-54

¹²⁸⁶ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', op.cit., p.208. Also see Sidahmed, Abdel Salam, Ibid, p140. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', ibid., p54

Sudanese law and if yes, did the conduct of the accused amount to apostasy as defined in Islamic law sources?' They answered both questions with 'yes' and proceeded to confirm the original conviction and the sentences on all the five accused for the crimes of state security offenses, but also added the new conviction and sentence for the separate crime of apostasy. The Court of Appeal then particularly selected Mahmoud Taha

to be executed immediately, without the opportunity to repent and recant, because he had persisted in advocating his 'heretical' views for many years and refused to heed judicial and other pronouncements."¹²⁸⁸

Added to that, he was to be denied a burial according to Muslim rites and his property was confiscated. As stated in a BBC report the court stated that "no prayers should be said for him, nor should he be buried in a Muslim grave. His estate will be distributed among Muslims after payment of any outstanding debts."¹²⁸⁹ The other four involved were allowed one month to repent and recant, and to 're-embrace' Islam which would prevent their own execution. Interestingly enough, the Court of Appeal stated that all members of the Republicans, and any followers of Taha, were equally held to be considered as apostates and to be treated as such, in all interaction with Muslims. The Republican's books, pamphlets and all other publications were ordered to be collected and destroyed. Any future publications and distribution of information containing the issues they dealt with were banned, along with any other activity of the Republicans. The general overview of the court's assertion on the Republicans can be seen in the comments:

¹²⁸⁷ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.208.

¹²⁸⁸ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.208. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p55

¹²⁸⁹ BBC SWB ME/7853/A/1 (January 19, 1985) cited by Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p.185. Also see Arzt, Donna E., 'Religious Human Rights in Muslim States,' *op.cit.*, p.387-454.

The Republican Brothers was an infidel group and renegade faction that must be dealt with in the same manner as other infidel groups. All books and publications of Mahmud [sic] Muhammad Taha and the Republican Brothers shall be seized from all libraries and destroyed to prevent circulation and printing. The activities and meetings of the group will be banned throughout the county.¹²⁹⁰

The final decision of the Court of Appeal was handed on to Nimeiri, the President of the Republic, for final assessment and confirmation.¹²⁹¹ In analysing the manner in which the court was run and the decisions it concluded with, An-Na'im summarises the misdemeanours of the complete judicial system during this particular case of Mahmoud Taha and his four co-accused :

Since the accused were never formally charged with apostasy, they, naturally, offered no defence against it. Even the prosecution did not present any evidence in support of apostasy! It was the Court of Appeal which took it upon itself to specify and try apostasy for the first time at the confirmation of proceedings stage. In the absence of the accused, and without representation for either side, the Court of Appeal produced its own interpretation of the views and theories of the accused.¹²⁹²

To confirm the decision on conviction for apostasy with reference to Taha, the court relied practically on two points only. One was a previous conviction in a Shari'a court in Khartoum on November 18, 1968, some seventeen years earlier, by some private plaintiffs who were offended by Taha's opinion on Islam. During this trial, "Taha and the movement were declared *kafir*, heathen or non-Muslim, the only such case in modern Sudanese history"¹²⁹³ before its repetition in 1985. The other point raised in 1985 was based on the extra-judicial announcements presented by foreign institutions that declared Taha's apostasy. An-Na'im states that "As to the first ground, the decision of the Shari'a Court was completely null and void because that Court lacked jurisdiction over questions of apostasy as such."¹²⁹⁴ The cause of action was also unconstitutional in reflection of the

¹²⁹⁰ BBC SWB ME/7853/A/1 (January 19, 1985) *ibid.*, cited by Mayer, Ann Elizabeth, *ibid.*, p.185. Also see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights, *op.cit.*, p140

¹²⁹¹ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', *op.cit.*, p.208-209.

¹²⁹² *ibid.*, p.209. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p55

¹²⁹³ Fluehr-Lobban, Carolyn, *Islamic Law and Society in the Sudan*, *op.cit.*, p.276. Also see O'Sullivan, Declan, *ibid.*, p56

¹²⁹⁴ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', *op.cit.*, p.209. An-Na'im further explains that "The jurisdiction of Shari'a Courts was then determined by the Sudan Mohammedan Law Courts (Amendment) Act 1961, which limited such jurisdiction to 'questions regarding marriage, divorce, guardianship of minors or family relationships provided that the marriage to which the question related was

1956 Constitution, that was amended in 1964 and was in force in 1968. Taha, as the defendant, was entitled to refuse any attendance to the trial in 1968 and he, himself, actually disregarded the courts final decision. The prosecutors could neither enforce his attendance or impose any decision the court made. Thus, "How could, therefore, the judgement of one court in a civil cause of action, rendered in the absence of the defendant and without any jurisdiction, be a basis for a criminal conviction by a different court 17 years later?"¹²⁹⁵

On the second point, the Court of Appeal cited the opinions of the Al-Azhar University in Egypt and the Muslim World league. Both argued that Taha was an apostate and proceeded to inform the Sudanese court to treat him as such.¹²⁹⁶ An-Na'im argues that such opinions have no weight in a court of law, particularly as they were not used to present any evidence by the prosecution in a manner that would enable the defense team to cross-examine the expertise claims, to prove the competence in the making of such a judgement in their opinions. Further to this point, the unjudicial reasoning by the Court of Appeal is also apparent by their refusal to accept any legal objections to the decision of the death sentence on Taha. Interestingly enough, in Section 247 of the code of Criminal Procedure, 1983, one of the 'Islamic laws' prohibits such an imposition of the death sentence to a citizen who is over the age of 70 years. At the time of his conviction, Taha was 76 years old. Donna E. Arzt argues that :

concluded in accordance to Mohammedan Law.....', *wakfs*, gifts and succession amongst Moslems or parties who submitted to the jurisdiction of the Court. The Shari'a Court had no jurisdiction over apostasy as such." An-Na'im, *ibid.*, in footnote 37 on p.221. Also see Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p.184.

¹²⁹⁵ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy,' *ibid.*, p.209. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', *op.cit.*, p56

¹²⁹⁶ Al-Azhar University in Cairo, Egypt had officially declared Taha as an apostate previously in 1976. For a copy of the *fatwa* see 'Appendix B'. Also see Mayer, Ann Elizabeth, *Islam and Human Rights*, *op.cit.*, p.182, p.185.

Although neither apostasy nor heresy were then crimes in the Sudan, Taha's appellate court (rather than the prosecutor) introduced hear-say evidence of the 76-year old leader's heresy and ordered him executed without the opportunity to repent. This violated Shari'a and multiple articles of Sudan's Constitution, as well as the Code of Penal Procedure's prohibition on execution of persons over 70 years of age.¹²⁹⁷

The Court of appeal dismissed this provision of age limits, as they held it inappropriate in relation to *hadd* crimes, as the punishments for these are unalterable. However, there was no legal defence for that claim in relation to the Code of Criminal Procedure, 1983, as the code makes no exceptions for *hadd* crimes and there was no provision found to the effect that *Shari'a* legal principles were superior to other legislation, or that which holds the view of presuming consistency within Shari'a law.¹²⁹⁸ In a summary of how the final decision made by the Court of Appeal, An-Na'im assesses it as :

Having dismissed Section 247 in this arbitrary way in relation to the so-called *hadd* offense of apostasy, the Court of appeal immediately proceeded to confirm the conviction and sentence under the Penal Code and the State Security Act, expressly describing them as non-*hadd* offenses. Even if Section 247 of the Code of Criminal Procedure did not apply to apostasy, it surely applied to the ordinary criminal offenses under the Penal Code and the State Security Act. It would therefore seem that the Court of Appeal was keen to confirm the death sentence, irrespective of legal objections.¹²⁹⁹

7.4.1 Nimeiri's Defence of the Sudanese Legal System.

Nimeiri cited both religious and political reasons in his convictions and sentences on all five of the accused, ordering the immediate execution of Taha, but reducing the time-scale for repentance (*istitabah*) and recantation for the other four. Nimeiri repeatedly cited claims about the purported heretical views and beliefs of the five, without however producing or referring to adequate written or verbal evidence as the source of such claims. Added to that, he also cited evidence of the emerging opposition of the Republicans, a group led by Taha, against his own regime. This was part of his desire to

¹²⁹⁷ Arzt, Donna E., 'Religious Human Rights in Muslim States,' op.cit., p387-454. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief*, op.cit., p.73 and also see Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights, op.cit., p140 Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p57

¹²⁹⁸ An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', op.cit., p.209 and also see footnote 38 on p.221.

¹²⁹⁹ *ibid.*, p.209. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p57

label the Republicans as an obvious political organisation and not a 'think-tank,' or an intellectual group. Nimeiri's speech, following the Court of Appeal's sentencing, made no explicit mention of apostasy, but he confirmed the sentences provided by the court, based on various sections of the Penal Code and State Security Act. All his arguments supporting the convictions inclined towards apostasy, moreso than any other offenses.¹³⁰⁰ Nimeiri promoted upholding the conviction "on the basis of Shari'a law to protect the nation from the danger of Mahmud [sic] Muhammad Taha and his slander of God and his insolence towards Him (God) and to protect this homeland from heresy."¹³⁰¹

An-Na'im suggests that Mahmoud Muhammad Taha was then executed for an offense that nobody could be legally tried for under the Sudanese law that was in force at that time. Also, apostasy was :

an offense of which he was not personally guilty in any case, since he was not an apostate but rather a non-violent Muslim scholar and reformer who happened to hold views on Islamic revival that were at variance with those held by the government of the day. In the absence of any other rational explanation, one is forced to conclude that *Ustadh* Mahmoud was sacrificed in the cause of maintaining President Nimeiri's personal drive for Islamization, whatever the real motives behind that drive may have been.¹³⁰²

Thus, Taha was executed in order to psychologically terrorise others who may have felt the same desire to criticise Nimeiri's policies as a whole – and his personal view of Islamization, in particular. While publicly hung in execution, it is reported that Taha remained calm and expressed utter dignity, while being surrounded by members of the *Ikhwan* (Muslim Brothers) and other supporters of Nimeiri, who chanted that Taha's execution was a victory for Islam. Warburg describes the event, stating that Taha was: "in the presence of some 3000 onlookers shouting 'Death to the enemy of God.'"¹³⁰³ One report states that the Muslim World League, who are the larger body above the Islamic

¹³⁰⁰ *ibid.*, p.209.

¹³⁰¹ Mayer, Ann Elizabeth, *Islam and Human Rights*, op.cit., p.185. For this quote, also see Arzt, Donna E., 'Religious Human Rights in Muslim States,' op.cit., p.387-454.

¹³⁰² An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', op.cit., p.209. Also see O'Sullivan, Declan, 'The Death Sentence for Mahmoud Muhammad Taha', op.cit., p58

¹³⁰³ Warburg, Gabriel, *Islam, Sectarianism and Politics in Sudan Since the Mahdiyya*, op.cit., p160.

Council, who introduced the Universal Islamic Declaration of Human Rights, in 1981, actually congratulated Nimeiri following the execution.¹³⁰⁴

Following Taha's execution, the 'heresy' trials of the co-accused were televised throughout the Sudan in some hope as to gain support for Nimeiri's regime in its total defense of Islam. This re-gained the support from those already in the same thinking and mind-set,

However, the calculation was very wrong in terms of anticipating the reaction of the average Sudanese. Outrage and disgust over the execution and televised heresy trial prevailed, even among Sudanese Muslims who had no personal sympathy for Taha's theological positions.¹³⁰⁵

As a postscript to the entire trial, the judicial procedure undertaken and the sentences given, some level of 'justice' was obtained by the daughter of Mahmoud Taha and one of his co-accused. Following the inevitable overthrow of Nimeiri, just three months later on April 6, 1985, Taha's daughter and his co-accused then later on, took a constitutional lawsuit to the Supreme Court demanding to have the judgement on Taha and the co-accused made null and void. Their lawsuit petition, dated on February 25 1986, cited a broad level of constitutional and procedural objections that needed to be addressed by the Supreme Court. On April 17 of that year :

the Attorney General, acting as counsel for the Government, directly admitted the case for the applicants and stated before the Supreme Court that he had nothing to say in defense of that trial which was totally illegal.¹³⁰⁶

Finally, in summary :

Taha's case was seen by many within Sudan and outside as a blatant misuse of the law as he did not reject Islam but merely held views that were not acceptable to those in power. Article 126 of the 1991 Penal code now criminalises apostasy and makes it a capital offence should the offender persist in it after a certain period of grace granted by the court. The provision has been condemned by the Special Rapporteur on Sudan as a direct contradiction of international law, as it can be used not only against members of religious minorities who convert – especially those who do so under

¹³⁰⁴ Mayer, Ann Elizabeth, *Islam and Human Rights*, op.cit., p.185 and Mayer cites from Abu Sahlieh, Sami Aldeeb, 'Les Droits de l'homme et l'Islam' in *Revue générale de droit international public*, No. 89, 1985, p.707, (Mayer, ibid., in footnote 44 on p.241.) Also see O'Sullivan, Declan, ibid., p58

¹³⁰⁵ Mayer, Ann Elizabeth, ibid., p.186. Also see O'Sullivan, Declan, ibid., p58

¹³⁰⁶ The constitutional lawsuit is cited as S.C./Const.S./2/1406, i.e. 1986, An-Na'im, Abdullahi Ahmed, 'The Islamic Law of Apostasy', op.cit., in footnote 38a on p.221.

compulsion – and then change their minds, but also against any Muslims who dissent from the official position on religious matters.¹³⁰⁷

Article 126 of the 1991 Penal code is cited in the record of the 1067th meeting of the United Nation's Human Rights Committee, held on September 13th, 1991. Part of the Article 126 of the 1991 Penal code read as :

(1) There shall be deemed to commit the offense of apostasy every Muslim who propagates for the renunciation of the creed of Islam or publicly declares its renouncement thereof by his statements or conduct;

(2) Whoever commits apostasy shall be given a chance to repent for a period to be determined by the court. Where he insists upon apostasy and he is not a recent convert to Islam, he shall be punished with death;

(3) The penalty provided for apostasy shall be remitted whenever the apostate recants apostasy before execution.¹³⁰⁸

7.5 Conclusion.

On the second point stated in Article 126 of the 1991 Penal code, it seems to be in contradiction to the standard position within the Islamic *Shari'a* law, which offers a given period of three days to allow the accused apostate to reconsider their position. The three day presents efficient time for them to be able to re-embrace Islam. However, having stated that, some jurists within the four schools of Islamic law, argue that this time for consideration should be a life-long period of contemplation for the apostate to re-address whether they will re-join the Islamic community. Taha was not provided with even the minimum time of three days to consider presenting such repentance (*istitabah*).

As mentioned above, there are different opinions presented by the four schools of law concerning whether the perpetrator of blasphemy should be requested to repent and also whether such repentance, if offered, would be acceptable and admissible within the rules of law. In the context of blasphemy, it is essential for the perpetrator to have their repentance accepted, as this would result in the unconditional acquittal of the case. As there are disagreements among jurists, and significantly, amongst jurists of the same

¹³⁰⁷ Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief*, op.cit., p.73. Also see O'Sullivan, Declan, *ibid.*, p59

¹³⁰⁸ Article 126 of the 1991 Penal code, cited in the Summary Record of the 1067th meeting of the Meeting of the Human Rights Committee, as UN Doc. CCPR/C/SR. 1067, September 13, 1991. Also see O'Sullivan, Declan, *ibid.*, p59

school of law, this shows some doubt on trying to determine the precise legal position on this sensitive issue.¹³⁰⁹

The Hanafi school argue that it is recommended to request the blasphemer to repent (*istitabah*) and return to the faith of Islam, and the Maliki school finds repentance unnecessary. The Shafi'is and Hanbalis have different views, one corresponding with the Hanafi's and the other with Imam Maliki view. The majority of opinion is that *istitabah* is a necessary requirement to be received before any punishment is delivered. This did not occur for *Ustadh* Taha, who was not offered the standard three days to re-consider his position.

As argued by Yahya b. Ali Al-Shawkani it is valid to request an apostate to repent if the accused has acted from the stance of ignorance, but it is not a valid option if they also claim to have 'knowledge' and 'righteousness'.¹³¹⁰ If Taha was considered to be a non-believer, or a person who had a misguided interpretation of Al-Islam, he was still not provided with the established *Shari'ah* ruling on how to legally consider a person as being an apostate. Also declared in *Shari'ah*, if the accused has insulted God and/or the Prophet Muhammad, then their repentance, whether requested or not, is admissible by the majority of all jurists, should the accused provide it.

If the repentance by a Muslim apostate consists of their return to Islam by reciting the testimonial of faith (*kalimat al-shahadah*), then this option was also was not offered to Taha, who stated on numerous occasion that he was a devout Muslim. If stating the *shahadah*, which is one of the Five Pillars of Islam, is enough on its own for a person to publicly declare that they are a Muslim, then this was not accepted by the Court of Appeal, or any of the court hearings that covered Taha's case. It becomes rather evident that the legal procedure was full of procedural errors, which can only be described as being inadequate and therefore lacking any legitimate status to convict a Muslim as an

¹³⁰⁹ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p233

¹³¹⁰ Kamali, Mohammad Hashim, *Ibid.*, p233 Kamali also cites Al-Shawkani, *Nayl al-Awtar*, *Ibid.*, VII, p221,

apostate and the death penalty that was delivered by the court was done so with unsound reasons.

It is also important to note that the specific crime of apostasy was not mentioned in the initial court hearings, and was not mentioned in name until the case was reviewed by the special Court of Criminal Appeal. This was the first time that the accusation of 'apostasy' was first of all referred to as the specifically named crime in question.

Until that court hearing, the judge had emphasised on certain parts of the Republicans' pamphlets which were seen to be promoting a need for an Islamic revival and the reform of *Shari'a* law. The judge declared, that the information in the pamphlets could lead to social upheaval if they were allowed to be publicly distributed. This can be seen to be the position of a court case aiming at legally prohibiting the seditious, rebellious group of *al-bagun*. Therefore, the Republican's were in court against having committed *al-baghi* (treason), and not apostasy.

As stated by some scholars who have assessed the court procedures to convict Taha and his followers of apostasy, that by only making reference to the Penal Code that applies to offences against the state (i.e. treason), the court had violated Article 64 of the Constitution, that clarifies the requirements for a fair trial.

Therefore, the case involving Mahmoud Muhammad Taha raises the following questions: 'what form of Islam was President Ja'far Mohammed al-Nimeiri attempting to introduce?' Also, 'what perspective or level of understanding for the message of Islam and the message of the Qur'an did Nimeiri promote?' As stated above, Taha was given no time at all to repent, as opposed to either three days, or even less than this, as his co-accused were offered. It has also been argued that there was a contradiction of Sudan's Constitution, as well as the Code of Penal Procedure's as both prohibit the execution of any person over 70 years of age. Taha was executed at the aged of 76.

It seems to be more obvious that the final decision delivered by Nimeiri for Taha's execution, was far more the manifestation of the human nature of rivalry, competition and hate. Nimeiri was not punishing a disbeliever, but was obliterating someone who was perceived to be a political opponent. This decision had no relation to *Shari'ah* or the tenets of Islam, in any way.

CHAPTER EIGHT

8.0 CASES OF APOSTASY IN EGYPT BROUGHT UNDER THE LAW OF *HISBA*

8.1 Introduction.

This Chapter covers two very recent cases in Egypt where the law of *Hisba* has been used in accusing a Muslim to be an apostate. These cases are of interest, as the first one involves the academic Nasr Hamid Abu Zeid, who was convicted of apostasy in 1996, and was punished with an enforced divorce from his wife. The second case involved the feminist novelist Nawal al-Sa'adawi who was accused of exactly the same crime of apostasy, in April 2001. However, although she was taken to court under *Hisba* law, she was acquitted from any legal punishment in July 2001. Before the assessment of both these cases, the Chapter will start with a detailed analysis of *hisba* law and how it was established historically. It will be then possible to understand if it can be used in a court case involving apostasy and blasphemy in Islam.

8.2 The law of *hisba* in Islam.

Discussing the use of *Hisba* law, by El-Wahsh, Hepburn argues that :

In his self-appointed role as guardian of the faith, Nabih El Wahsh had invoked the ancient Islamic law of Hisba, commonly used in the seventh century to regulate market trading.¹³¹¹

El-Sa'adawi mentioned the historic nature of *Hisba*, and also emphasised the fact that it is no longer used in common Egyptian law in modern times. To explain the legal position she had been placed in, El Sa'adawi stated that:

The *Hisba* law is not used at all. I am the only woman in Islamic history that they applied *Hisba* to it, you know, it's so ridiculous.¹³¹²

¹³¹¹ Hepburn, Samira, reporter on the television documentary *No Compromise*, broadcast on Sunday 28th October, 2001 in the BBC 2 series *Correspondent*; produced & directed by Fiona Lloyd-Davies.

The programme's script can be found at:

http://news.bbc.co.uk/1/hi/english/static/audio_video/programmes/correspondent/transcripts/1619902.txt

¹³¹² Nawal El-Sa'adawi, in *No Compromise*, BBC 2, op.cit.,

Amal Abd El-Hadi, representing the 'New Women's Research Centre' argued that with this particular court hearing:

It is not just against Nawal, it is against every one of us and it is against Egypt actually, that we have such kind of law working in the twenty-first century.¹³¹³

Mona Zulfican, an international lawyer, reiterates the fact that *Hisba* law is an unknown section of *Shari'ah* which, therefore, requires more understanding, in order to avoid its misuse or inappropriate implementation on cases it does not relate to. As Zulfican argues:

People do not understand what *Hisba* is really intended for. People do not understand that, that Islam as a religion is strong enough to be criticised and that criticism by any person is not going to cause damage to Islam.¹³¹⁴

Muhammad Akram Khan declares that "The institution of *hisba* was a Muslim contribution to the human civilisation."¹³¹⁵ The word *hisba* is derived from the root *h.s.b.* and means 'arithmetical problem,' 'sum' and 'reward.' The verb *hasaba yahsubu* means 'to compute' or 'to measure.' In the form of *Ihtasaba* it means 'to take into consideration' or 'to anticipate a reward in the Hereafter by adding a pious deed to one's account with God.'¹³¹⁶ The root also leads to the meaning of 'calculation' and 'sufficiency.'¹³¹⁷ On a technical level, the noun *hisba* implies towards the state institution to promote what is good, or proper, and forbid that which is evil, or improper : '*amr bil ma'ruf wa n-nahi 'anil munkar.*'¹³¹⁸

Hisba is based on the part of *Shari'ah* which covers the concept that overlaps the spheres of religious and secular issues, which allows it to remain intermittently

¹³¹³ Amal Abd El-Hadi in *No Compromise*, BBC 2, *ibid.*

¹³¹⁴ Mona Zulfican, *ibid.*

¹³¹⁵ Khan, Muhammad Akram, '*Al-Hisba and the Islamic Economy*,' as Appendix in Ibn Taymiyya, Shaykh al-Islam Imam Taqi al-Din Ahmad, *al-Hisba fi al-Islam*, (no date given), translated version, entitled *Public Duties in Islam : The Institution of the Hisba*, 1982, Translated by Muhtar Holland, The Islamic Foundation, Leicester, England, p139.

¹³¹⁶ Khan, Muhammad Akram, '*Al-Hisba and the Islamic Economy*,' *ibid.*, p135. Khan also cites from : Cowan, M., *A Dictionary of Modern Written Arabic*, Librairie du Liban, Beirut, 1974, no page number given, (Khan, *ibid.*, in footnote 1 on p149)

¹³¹⁷ *The Encyclopaedia of Islam*, 1971, Leiden, The Netherlands, E. J. Brill, Vol. III, in the Section entitled '*Hisba*,' p487

¹³¹⁸ Khan, Muhammad Akram, '*Al-Hisba and the Islamic Economy*,' *op.cit.*, p135. Khan also cites from Mawardi, 'Ali b. Habib, *Ahkam al-Sultaniya*, 1368AH, p240, no publisher given, (Khan, *ibid.*, in footnote 2 on p149)

present in the *Shari'a* legal system.¹³¹⁹ By definition, *Hisba* is the obligation for every Muslim to use it in “commanding what is *ma'ruf* (good; fair; right and proper) and forbidding what is *munkar* (evil; unfair; wrong and improper),”¹³²⁰ which is also phrased as ‘to command goodness and forbid evil misdeeds’¹³²¹ in the hope of gaining a reward in the Hereafter.

The *Hisba* is when a Muslim individual volunteers to interfere in the lives of others once they commit a crime against God or against the people. The rights of God includes doctrines and beliefs such as believing in God, His Angels, His books, His prophets, as well as praying on time and giving alms, going on pilgrimage, fasting, repenting and reading the Koran. The rights of people are protecting their money, lives and honour and the right to ownership.¹³²²

The forms of how this role can be implemented is clearly recognised as : “A Muslim could do this by warning, remonstrating and, in the case of failure of public authority to act, by legally intervening and constraining.”¹³²³ The person who may bring the case to court is the *Al-hisba* or *muhtasib*,¹³²⁴ who may only challenge cases of fraud or deception. This role evolved to become a part of *Shari'a* from the need to use *hisba* in preventing any fraud or deception in the weighing and the measurements taken during the buying and selling of goods at bazaar markets, and to overcome any dishonesty and immorality.¹³²⁵ Generally speaking :

The *muhtasib* is authorised to force dilators to comply with justice in issues that do not involve testimonies or execution of sentences. These issues are not assigned to the judiciary due to their general or minor nature,

¹³¹⁹ Sfeir, George, N., ‘Basic Freedoms in a Fractured Legal Culture : Egypt and the Case of Nasr Hamid Abu Zayd,’ in *Civil Society, Democratic Transformation in the Arab World*, December 1998, Vol.7, Issue No.84, p13

¹³²⁰ Ibn Taymiyya, Shaykh al-Islam Imam Taqi al-Din Ahmad, *al-Hisba fi al-Islam*, op.cit, p15

¹³²¹ Sfeir, George, N., *ibid.*, p13 and also see Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, The Centre for Human Rights Legal Aid, (CHRLA), Cairo, Egypt, January 1996, in ‘Section 1; *Hisba*.’ Hamad also cites from : *Al-Mawsuaa al-Dhahabiya l-il-Ulum al-Islamiyya*, Dar al-Ghad, Cairo, p604-p605; Hamad *ibid.*, in endnote 1, at the end of ‘Section 1; *Hisba*.’

¹³²² Mansour, Ahmad Sobhi, ‘*Al-Hisba : An Histroical Overview*’ in *People's Rights*, The Legal Research Centre for Human Rights, (LRRC), Cairo, Egypt, Special Issue, June 1995, p1. Also see Article XIX, *The Egyptian Predicament: Islamists*’ op.cit, p54

¹³²³ Sfeir, George, N., ‘Basic Freedoms in a Fractured Legal Culture’ op.cit., p13-14

¹³²⁴ Mansour, Ahmad Sobhi, ‘*Al-Hisba : An Histroical Overview*,’ *ibid.*, p1 and also see Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, op.cit., in ‘Section 2; *Muhtasib*.’

¹³²⁵ Sfeir, George, N., ‘Basic Freedoms in a Fractured Legal Culture’ op.cit., p13. Also see Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, *ibid.*, in ‘Section 1; *Hisba*.’

consequently, they are referred to the *muhtasib*, which acts as an auxiliary of the judiciary.¹³²⁶

It has been argued that the very concept of *hisba* itself was borrowed by Muslims, together with the role of a *muhtasib* from the Romans. During the Byzantine time, there was an official public position, known as the *agronomos*, which held the same duties to inspect the markets, which was a very similar manner of patrol, that the later role of the *muhtasib* held. When the Umayyads set up their administration in Damascus during the seventh century, they introduced the role of *muhtasib*.¹³²⁷ Some argue that they transferred the role of the Byzantine *agronomos* to become the Islamic market 'Byzantine' :

The Umayyads adopted the Byzantine market inspector (the *Agonomus* [sic]), assimilated him to Islamic practice, and granted him a new extended responsibility. He was called a *Muhtasib*, and he was responsible not only for market affairs but also for safeguarding the standards of religious morality (the *hisba*).¹³²⁸

However, Muhammad Akram Khan argues that :

the evidence to show any connection between the two is both scanty and inadequate. There is little reason to believe, in the light of the available evidence, that the Arabs borrowed this institutions from the Romans because the Muslim institution evolved from the Qur'anic injunction of : '*amr bil ma'ruf wa n-nahi 'anil munkar* and had a much wider scope than the Roman *agronomos* or Byzantinian Prefect.¹³²⁹

Another point of view argues that the *muhtasib*, 'a holder of a religious job,'¹³³⁰ was introduced by the Prophet, who played the role himself by inspecting markets to commend or condemn the manner of each market holder. This role was then delegated to his followers, including Said Ibn Al-'As b. Al-'As b. Umayyah who worked as the

¹³²⁶ Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, ibid., in 'Section 1; *Hisba*.'

¹³²⁷ Sfeir, George, N., 'Basic Freedoms in a Fractured Legal Culture' op.cit., p14

¹³²⁸ Pearl, David, *A Textbook on Muslim Personal Law*, 1987, Croom Helm Ltd., Kent, UK, (second edition), p7

¹³²⁹ Khan, Muhammad Akram, '*Al-Hisba* and the Islamic Economy,' op.cit., p139. Khan also cites from : Foster, B. R., '*Agonomos* and *Muhtasib*' in *Journal of Economic and Social History of the Orient*, Leiden, Vol.13, Part II, April 1970, pp128-144 and also Al-Husayni, Musa, 'The Institution of *Hisba* in Early Islam' in *The Islamic Review and Arab Affairs*, London, February 1969, p30-36 (Khan, ibid., in footnotes 20 and 21 on p149)

¹³³⁰ Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, op.cit., in 'Section 2; *Muhtasib*.'

muhtasib in the Mecca markets and ‘Umar Ibn al-Khattab, who worked, in the same role, in the markets of Medina.¹³³¹ The actual term *muhtasib* itself, was not used until the reign of Caliph al-Mahdi al-Abbasi (158AH-169AH).¹³³² However, it is also argued that “it is historically established that the *hisba* was unknown during the times of the Prophet as well as during the times of the great Calpihs, although the latter killed their enemies of the Khawareg, Shi’a and Mawali on the grounds of mere suspicions.”¹³³³

8.2.1 hisba in the Qur’an.

The word *hisba* is not actually used in the Qur’an, although the concept itself is a daily obligation for all Muslims to endeavour, through pursuing to ‘promote good and forbid evil.’¹³³⁴

“Commanding good and forbidding evil (*al-amr bi’l-ma’ruf wa’l-nahy ‘an al-munkar*) is a cardinal Qur’anic principle which lies at the root of many Islamic laws and institutions.”¹³³⁵ Mohammad Hashim Kamali argues that this phrase is a very appropriate description of Islam as a whole, as this principle is the firm basis of both *Shari’a* and the ethics of governmental stability. To promote this theme throughout the community, all citizens are entitled, and encouraged, to speak out and pursue any acts or words which they judge as falling within the categories of either good, that should be congratulated, or evil, that should be forbidden. The length at which such pursuit can go also depends on the differing individual conditions and capabilities that each person would hold in the community as a whole.¹³³⁶

Hisbah is also a fundamental Qur’anic principle that sets out certain privileges which form the basis for modern constitutions. *Hisba* certainly covers a large number of aspects included within Islam, but Kamali still indicates, that :

¹³³¹ Khan, Muhammad Akram, ‘*Al-Hisba and the Islamic Economy*,’ op.cit., p136. Khan also cites : Al-Kattani, ‘Abdul Hay b. ‘Abdul Kabir, *al-Taratib al-Idariyyah*, Dar al-Kitab al-‘Arabi, Beirut, no date given, Vol.I, p287, (Khan, ibid., in footnote 9 on p149)

¹³³² Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, op.cit., in ‘Section 2; *Muhtasib*.’

¹³³³ Mansour, Ahmad Sobhi, ‘*Al-Hisba : An Histroical Overview*,’ op.cit., p1.

¹³³⁴ *The Encyclopaedia of Islam*, 1971, Leiden, The Netherlands, E. J. Brill, Vol. III, in the Section entitled ‘*Hisba*,’ p485

¹³³⁵ Kamali, Mohammad Hashim, 1997, *Freedom of Expression in Islam*, Islamic Texts Society, Cambridge, p28

¹³³⁶ ibid., p28

Although *Hisbah* [sic] is much wider in scope and cannot, therefore, be confined to freedom of speech alone, it is nevertheless no exaggeration to say that this freedom is of central importance to the concept of *hisbah*; indeed it is its *sine qua non*. For without freedom of speech it would be inconceivable to command good or to forbid evil.¹³³⁷

Al-Ghazali,¹³³⁸ referred to *hisbah* as “the greatest pole in religion” (*al-qutb al-a'zam fi'l'din*)¹³³⁹ and regarded it as the most important objective within God’s revealed scripture.

Within the Qur’an, it clearly states that every Muslim should participate in the role of promoting good (*ma'ruf*) and forbidding the evil (*munkar*) nature of acts by people. Muhammad Akram Khan suggests that the relevant verses include Surah *Al-I'mran*, 3, verse 110¹³⁴⁰, Surah *Al-Tawba*, 9, verse 71¹³⁴¹ and Surah *Al-Hajj*, 22, verse 41.¹³⁴² As clarified in Surah *Al-Hajj*, 22, verse 41, the Islamic state has been provided the task to institute the arrangements to overlook the pragmatic implementation of the Qur’anic injunction.¹³⁴³ It has been established as an obligation, that a part of society, or Islamic community, should remain focused on this role (*fard kifaya*). This is also

¹³³⁷ *ibid.*, p28

¹³³⁸ Full name : Abu Hamid Muhammad Ibn Muhammad Al-Tusi Al-Shafi'i Al-Ghazali

¹³³⁹ Kamali, Mohammad Hashim, *op.cit.*, p28.

¹³⁴⁰ “O you who believe! You were the best (leaders) of men to emerge from your society in order to reform it. You enjoin upon the people what is good and forbid what is bad; and you believe in God. If the Jews and Christians come to believe, it will be better for them. Some of them are believers, but most of them are submerged in sin and rebellion and have disobeyed the commands of God.”

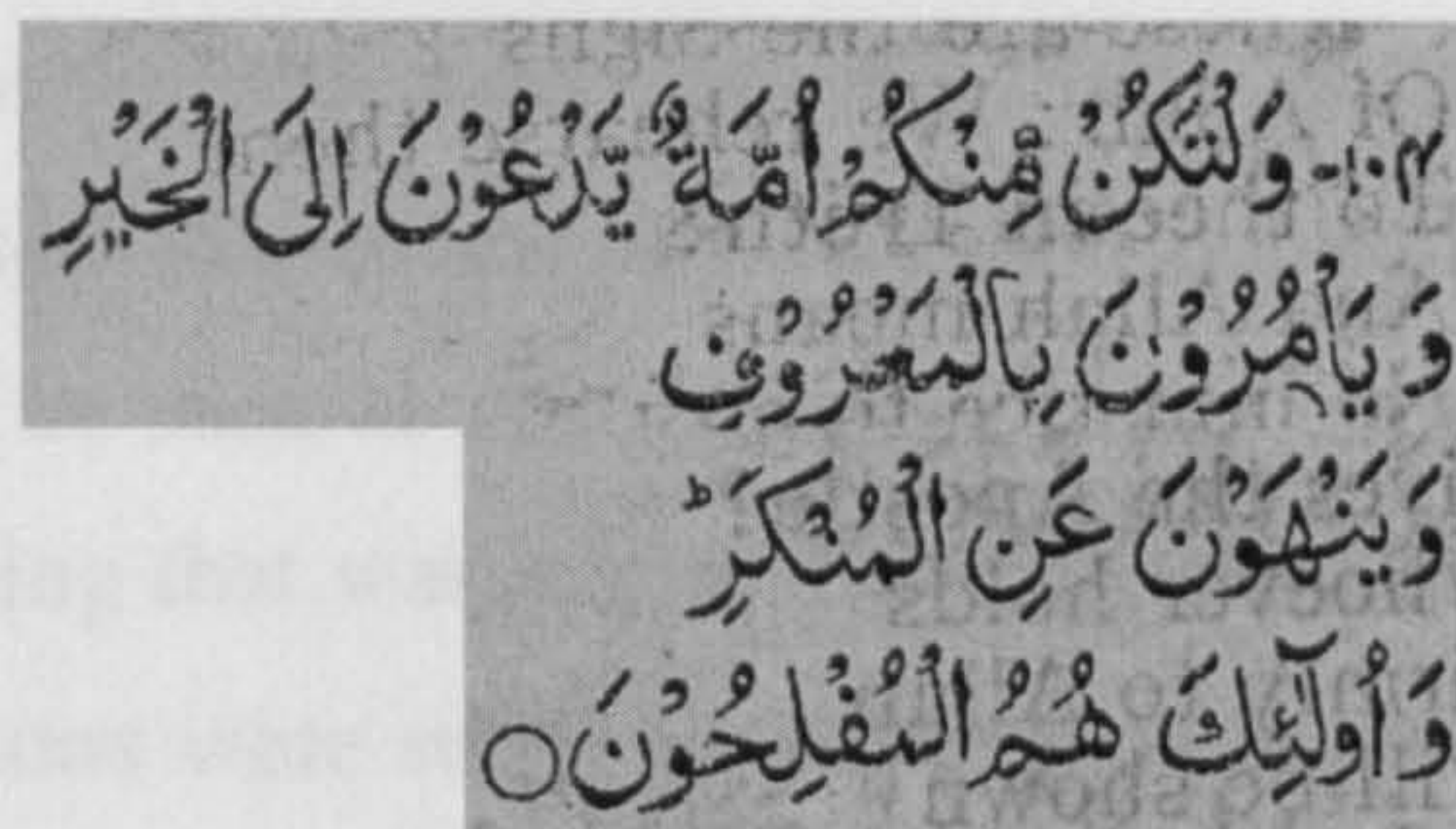
Al-I'mran, 3, verse 111, Turner, Colin P., *The Quran : A New Interpretation*, (Textual Exegesis by Muhammad Baqir Behbudi), 1997, Curzon Press, Richmond, Surrey, UK, p35. (Muhammad Akram Khan cites this verse number as verse 110 in *ibid.*, in footnote 3 on p149). Also see Pearl, David, *A Textbook on Muslim Personal Law*, *op.cit.*; this Qur’anic verse, 3:110, is cited in footnote 11 on p7.

¹³⁴¹ “The believers – men and women alike – are as one: protectors and helpers of each other. They enjoin what is good and forbid what is unlawful. They pray, pay *zakat* and obey God and His Prophet. It is they whom God will soon cover with His Mercy. For God is Almighty, All-Wise.” *Al-Tawba*, 9, verse 71, Turner, Colin P., *The Quran : A New Interpretation*, *ibid.*, p113. (Muhammad Akram Khan also cites this verse number as verse 71 in *ibid.*, in footnote 3 on p149)

¹³⁴² “They are those who, if we give them power and affluence, perform regular prayers, give *zakat*, enjoin what is commanded by religious law and forbid what is wrong and unlawful. And soon God will bring about that which He has planned; and the end of all affairs lies with Him.” *Al-Hajj*, 22, verse 42, Turner, Colin P., *The Quran : A New Interpretation*, *ibid.*, p206. (Muhammad Akram Khan cites this verse number as verse 41 in *ibid.*, in footnote 3 on p149)

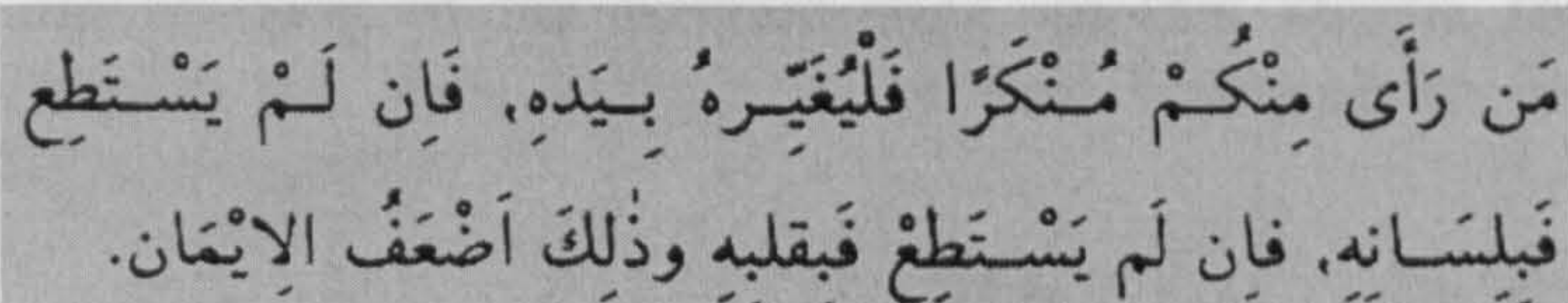
¹³⁴³ Khan, Muhammad Akram, ‘*Al-Hisba* and the Islamic Economy,’ *op.cit.*, p135. Khan cites this verse number in *ibid.*, in footnote 5 on p149).

apparent within in the Qur'an, for example in Surah *Al-I'Imran*, 3, verse 104,¹³⁴⁴ which declares:



Let there be (*waltakun*) among you a group that calls others to do good, commanding good and forbidding evil. Those are the successful ones (*muflihun*) [III:104]¹³⁴⁵

In further reference in the Qur'an to this theme of the need for *hisba* to be present within the community, Mohammad Hashim Kamali also cites the two other verses of 3:110 and 22:41,¹³⁴⁶ as mentioned above. Al-Ghazali's interpretation of the genuine meaning of verse 3:104 has been recorded. He argues that, because it begins with "Let there be (*waltakun*)" then this makes it more of an obligation (*wajib*), and this given context it is a collective obligation to the entire Islamic community.



If any of you sees something evil, he should set it right with his hand; if he is unable to do so, then with his tongue, and if he is unable to do even that, then (let him denounce it) in his heart. But this is the weakest form of faith.¹³⁴⁷

Once the Islamic state had been established in Medina, the Prophet aimed towards

¹³⁴⁴ "There should rise from among you believers a group to lead the community, to invite the people to what is good and right, to enjoin on them the practices of the Prophet and to forbid what is wrong. Should such a group emerge in your community, they will be the ones who attain salvation." *Al-I'Imran*, 3, verse 105, Turner, Colin P., *The Quran: A New Interpretation*, *ibid.*, p34. (Muhammad Akram Khan cites this verse number as verse 104, *op.cit.*, in footnote 4 on p149). Also see Pearl, David, *A Textbook on Muslim Personal Law*, *op.cit.*, as this Qur'anic verse, 3:104, is also cited in footnote 11 on p7

¹³⁴⁵ Arabic script from Ali, Abdullah Yusuf, *The Holy Qur'an: Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Vol.1, p149-150. Translated into English by Kamali, Mohammad Hashim, *op.cit.*, p30

¹³⁴⁶ Kamali, Mohammad Hashim, *ibid.*, p30

¹³⁴⁷ *ibid.*, p31

re-shaping the 'norms' of behaviour by arranging for the protection of the new manner in which to act. The pre-Islamic norms were based on a pagan culture and therefore required immediate modifications. "The Islamic culture, rooted in the foundations of *Tawhid*, *Risala* and *Akhira* could not adopt values of *Jahiliyya*."¹³⁴⁸ However, in order to be seen as accommodating and compromising, the new culture did not reject everything that was within the understood existing nature of behaviour. A lot of the conventions were retained, while most were modified and re-shaped to adequately fit in with the Islamic culture. Part of the fast and comprehensive modifications, from such minor topics as table manners to the standards of diplomacy, the Prophet promoted the endeavour upon all Muslims to be engaged in the task of '*amr bil ma'ruf wa n-nahi 'anil munkar*. This role upon all, is recorded within the collections of *ahadith* (Traditions), including those of Muslim ibn Al-Hajjaj¹³⁴⁹ in *Sahih Muslim*.¹³⁵⁰ The Prophet himself, undertook the inspection procedure to assess whether the merchants were selling the products in the correct weight and in an honest sale manner. If any were found to disapprove with any improper sales, they were forbidden to remain on the market¹³⁵¹ :

This function he carried out both as Prophet of Allah and as head of the Islamic state. In this regard, the Prophet has been termed as the first *Muhtasib* in the Muslim history.¹³⁵²

The function of the *Muhtasib* was undertaken through the reigns of the first four Caliphs, and they held the main position of authority, as the formal *Muhtasib*. However, some reports declare that 'Umar actually had appointed a 'market officer'

¹³⁴⁸ Khan, Muhammad Akram, '*Al-Hisba* and the Islamic Economy,' op.cit., p135-136. *Jahiliyya* – 'The Age of Pre-Islamic Ignorance,' see O'Sullivan, Declan, 'The Comparison and Contrast of the Islamic Philosophy, Ideology and Paradigms of Sayyid Qutb, Mawlana Abul A'la Mawdudi and Fazlur Rahman,' in *The Islamic Quarterly*, Second Quarter of 1418/1998, Vol. XLII, Number 2, p102-103

¹³⁴⁹ The full name of Muslim, the collector of *ahadith* is : Abu'l Husain Muslim bin Al-Hajjaj Al-Qushairi An-Nishapuri Muslim, as found in *Bulugh Al-Maram min Adillat Al-Ahkam: Attainment of the Objective According to Evidence of the Ordinances*, by Shihabuddin Ahmad bin 'Ali bin Muhammad bin Muhammad bin Ahmad Al-Kinani Ash-Shafi'i, (known generally as Al-Hafiz Ibn Hajar Al-Asqalani), with brief notes from the book *Subul-us-Salam* by Muhammad bin Ismail As-Sanani, 1996/1416, Dar-us-Salam Publications, Riyadh, Saudi Arabia, p581

¹³⁵⁰ Khan, Muhammad Akram, '*Al-Hisba* and the Islamic Economy,' op.cit., p136. Khan also states : "See Muslim b. al-Hajjaj b. Muslim, *al-Sahih, Kitabul Imam*," in *hadith* nos. 83, 85 (Khan, *ibid.*, in footnote 6 on p149)

¹³⁵¹ Khan, Muhammad Akram, *ibid.*, p136. Khan also cites : Muslim b. al-Hajjaj b. Muslim, *al-Sahih, Kitabul Imam*, hadith no. 186, (Khan, *ibid.*, in footnote 7 on p149)

¹³⁵² Khan, Muhammad Akram, *ibid.*, p136. Khan also cites : 'Abdul 'Aziz b. Muhammad b. Murshad, *Nizam al-Hisba fil-Islam*, University if Imam Muhammad b. Sa'ud, Riyadh, Saudi Arabia, 1395AH, p29, (Khan, *ibid.*, in footnote 8 on p149)

to take this role.¹³⁵³ During the reign of the Caliphs, the provincial governors acted as the *muhtasib*, relating cases back to the Caliph. “A separate department of *hisba*, with a full-time *muhtasib*, assisted by qualified staff (known as ‘*Arifs* and ‘*Amins*) was introduced by ‘Abbasid Caliph Abu Ja’far al-Mansur in 157AH. He appointed Abu Zakariyah Yahya b. Abdullah as a *muhtasib*.”¹³⁵⁴

When the role of the Caliph, and with it the jurisdiction of their control, expanded the office of *muhtasib*, this also extended the number of functions the position held. The whole institution of *hisba* spread with Islam through Spain and North Africa, remaining an integral part of the state, even after the division of the Baghdad caliphate. “Similarly the office of *muhtasib* was an important department during the rule of Fatimids, Ayyubids, and Ottomans.”¹³⁵⁵ Within India, a formal *hisba* department did not exist as such, but during the Sultanate period, both a *muhtasib* and a *qadi* (judge) were appointed in areas annexed to the state. There were different approaches towards the role of the *muhtasib*, but the implementation of *hisba* was still ever present in differing forms. “The Mughals did not feel easy with the institution of *hisba* due to their own lax moral standards and replaced it with the office of *Kotwal* who had a much more limited jurisdiction than the *muhtasib*.”¹³⁵⁶ Such as the *Kotwal* in India, the role was still maintained, but different titles existed in different areas. In the eastern provinces of Baghdad, the role was still entitled *muhtasib*, but in North Africa the person was referred to as *sahib al-suq* and in Turkey the title was *muhtasib aghasi*.¹³⁵⁷

In certain cases the offices of *qadi* (justice) and the *muhtasib* were entrusted to the same person. At other places the police department (*Shurta*) and the *hisba* were headed by the same officer. And at still other places the three offices were manned by one man. But the functions of *muhtasib* were clearly distinct from those of a *qadi* and as *Shurta*.¹³⁵⁸

¹³⁵³ Khan, Muhammad Akram, *ibid.*, p136. Khan also cites : ‘Ali Muttaqi, *Kanz al-Ummal*, Da’ira al-Ma’arif al-Nizamiyyah, Hyderabad, 1313AH, Vol.3, p176, (Khan, *ibid.*, in footnote 10 on p149)

¹³⁵⁴ Khan, Muhammad Akram, *ibid.*, p136. Khan also cites : ‘Abdul ‘Aziz b. Muhammad b. Murshad, *Nizam al-Hisba fil-Islam*, *op.cit.*, p30, (Khan, *ibid.*, in footnote 11 on p149)

¹³⁵⁵ Khan, Muhammad Akram, *ibid.*, p136

¹³⁵⁶ *ibid.*, p137

¹³⁵⁷ *ibid.*, p137

¹³⁵⁸ *ibid.*, p137. Khan also suggests that for more detailed historical background covering the concept of *hisba* and the role of a *muhtasib*, see the section on *Hisba* in *The Encyclopaedia of Islam*, new edition, Leiden, The Netherlands, E. J. Brill (ed.), no page number or date given, (Khan, *ibid.*, in footnote 12 on p149)

During the period of Western colonialism, the role of such institutions declined and were modified dramatically. *Hisba* lost a great deal of its effectiveness, which continued to such a great extent that “by the 19th century Persia, Turkey, Egypt and India had already transformed the *hisba* function into a number of secular departments discarding its religious content as irrelevant.”¹³⁵⁹ In Morocco the role of the *muhtasib* still existed at the start of the 20th century and in the present time, the secular functions of *hisba* have been assigned to various governmental departments, and the religious functions have taken a secondary role. This seems to only be with any exception within Saudi Arabia where, even here, there are limited roles of the religious and secular functions, because “Saudi Arabia is perhaps the only Muslim state which has retained to this day the religious wing of the *hisba* intact to a large extent, although it too has distributed the secular functions to different departments and ministries.”¹³⁶⁰

Imam Al-Ghazzali,¹³⁶¹ in his work *Ihya’ ‘Ulum ud-Din*, described what, traditionally, the attributes and qualities of the person who was to be selected as the *muhtasib* had to hold. He was to be a free Muslim male, with a reputation of having high degrees of integrity, reverence and be of a respectful social status. To gain this, he would have been sufficiently knowledgeable with *Shari’a*, and competent enough to participate in *Ijtihad* debates, holding a higher insight into the norms of social customs and social mores.¹³⁶² Taqi al-Din Ahmad Ibn Taymiyya, emphasises the point that of all the qualities and beneficial virtues that the *muhtasib* held, those of prime importance were ‘*Ilm* (knowledge), *Rifq* (kindness) and *Sabr* (patience).¹³⁶³ ‘Ali b. Habib Mawardi also indicates that the functions of the *muhtasib* were classified into three separate categories :

¹³⁵⁹ Khan, Muhammad Akram, *ibid.*, p137

¹³⁶⁰ Khan, Muhammad Akram, *ibid.*, p137. Khan also cites : ‘Abdul ‘Aziz b. Muhammad b. Murshad, *Nizam al-Hisba fil-Islam*, *op.cit.*, p189-218, (Khan, *ibid.*, in footnote 13 on p149)

¹³⁶¹ Al-Ghazali’s full name is : Abu Hamid Muhammad Ibn Muhammad Al-Tusi Al-Shafi’i Al-Ghazali,

as stated on the back cover of Gazzali, [*sic*] Imam Muhammad, b. Muhammad, *Ihya’ ‘Ulum ud-Din*, (*The Revival of Religious Learnings*), translated by Al-Haj Maulana Fazal ul-Karim, Kazi Publications, Lahore, Four Volumes, bound in two, no date given

¹³⁶² Khan, Muhammad Akram, ‘*Al-Hisba and the Islamic Economy*,’ *op.cit.*, p137. Khan also cites : al-Ghazzali, Muhammad Ibn Muhammad, *Ihya’ ‘Ulum al-Din*, ‘Isa al-Babi al-Halabi, no date given, Vol.2, p308, (Khan, *ibid.*, in footnote 14 on p149)

¹³⁶³ Khan, Muhammad Akram, *ibid.*, p137-138. Khan also cites : Ibn Taymiyya, Shaykh al-Islam Imam Taqi al-Din Ahmad, *al-Hisba fil-Islam*, al-Jami’ ‘Islamiya, Madina Munawwara, (no date given), p74, (Khan, *ibid.*, in footnote 15 on p149)

- i) those relating to (rights) of God
- ii) those relating to (rights) of people, and
- iii) those relating to both.¹³⁶⁴

The first category covered everything included within religious activities, including the punctuality of prayers, organising the *Jum'a* and *'Id* congregations and generally maintaining the Mosques. The second category dealt with smoothly running community affairs, including proper behaviour in the markets, such as the accuracy of weights and measures of the goods sold, with general honesty in dealings. The third category, was more a municipal administrative role, including maintaining the roads to be clean, with street-lights on each night and assessing whether or not the location plans for building a new factory or residential premises would be of beneficial interest or harm the community already there.¹³⁶⁵

The *muhtasib* had the power to appoint staff who had technical expertise, so they may investigate the trading of specific crafts. The *muhtasib* was the focus point for the community, so members of the public could file their complaints with the *muhtasib*, although the *muhtasib* themselves, could initiate an investigation. The position had wide powers, but they were to be used in a sensible manner. Imam Muhammad b. Muhammad Al-Ghazzali clarifies that the basic interactive participation of the *muhtasib* in reaction to the complaints received, or in an action against any misbehaviour in the market that they became aware of, were on several levels.

There were a number of steps which a *muhtasib* could take. It could be simple advice, reprimand, rebuke, obstruction by forces (*Taghyir bil yad*), threat, imprisonment and expulsion from the town. The *muhtasib* was required to choose a stronger punishment only if a milder one was either ineffective or seemed to carry no weight with the person being admonished.¹³⁶⁶

Further in his work *Ihya' 'Ulum ud-Din*, Imam Al-Ghazzali continued to assess the code of conduct for the *muhtasib*. The *muhtasib* would aim to control the codes of conduct through regular checks and balances. Obviously, he could not doubt or challenge a *prima facie* approved behaviour, nor undertake any secretive investigation

¹³⁶⁴ Khan, Muhammad Akram, *ibid.*, p138. Khan also cites from : Mawardi, 'Ali b. Habib, *Ahkam al-Sultaniya*, *op.cit.*, p243, (Khan, *ibid.*, in footnote 16 on p149)

¹³⁶⁵ Khan, Muhammad Akram, *ibid.*, p138

into any actions he thought of as being doubtful. A critical point for the *muhtasib* to be aware of was that :

The behaviour of a person should be obviously against the injunctions of the *Shari'a* before a *muhtasib* could intervene. Similarly he should not engage in *ijtihad* to punish people; instead he should forbid them from only those actions on which there existed a consensus of the *Umma*. Similarly he should act with wisdom and foresight and not over-zealously. His actions should not invoke a greater mischief than the one he wants to forestall. It means before he intends to obliterate an evil practice of a powerful group he should make sufficient arrangements to counter the reactions effectively.¹³⁶⁷

Added to this, to aid a neutral, objective approach to the procedure of *hisba*, the *muhtasib* was obliged to request for public participation and not, in any way, present their own personal opinion upon the gathered group, towards the matter being dealt with.¹³⁶⁸

8.2.2 The functions undertaken by the *muhtasib*.

Hisba is governed by two different capacities in the forms of the 'investigators.' The first form is the 'vested capacity,' (a volunteer), which is a person in the best position to take on the guiding rules of commanding goodness and condemning evil deeds. Such people in this role would include a husband guiding the wife, or a father guiding the children, or an employee guiding the employees. The second form is the official capacity of *muhtasib*, which is a person having received a decree by a prince, Caliph or ruler that entails them to command goodness and condemn evil misdeeds, when directly required to do so, but also having the authority to take the appropriate action, including legal procedures, aiming to prevent the evil acts.¹³⁶⁹

The role of the *Muhtasib* has been described in detail by al-Imam Ibn Taymiyya in his work *al-Hisba fi al-Islam (Public Duties in Islam : The Institution of the Hisba)*.

¹³⁶⁶ Khan, Muhammad Akram, *ibid.*, p138. Khan also cites : al-Ghazzali, Muhammad Ibn Muhammad, *Ihya' 'Ulum al-Din*, op.cit., Vol.2, p324, (Khan, *ibid.*, in footnote 17 on p149)

¹³⁶⁷ Khan, Muhammad Akram, *ibid.*, p324. Khan also cites : al-Ghazzali, Muhammad Ibn Muhammad, *Ihya' 'Ulum al-Din*, *ibid.*, Vol.2, p320, (Khan, *ibid.*, in footnote 18 on p149)

¹³⁶⁸ Khan, Muhammad Akram, *ibid.*, p139. Khan also cites from : Mawardi, 'Ali b. Habib, *Ahkam al-Sultaniya*, op.cit., p243-244, (Khan, *ibid.*, in footnote 19 on p149)

¹³⁶⁹ Hamad, Ahmad Seif al-Islam, *Hisba : Is Egypt a Civil or Religious State?*, op.cit., in 'Section 3; Capacity in hisba.' Hamad also cites from : *Al-Mawsuaa al-Dhahabiya l-il-Ulum al-Islamiyya*, op.cit., p604-p605; Hamad *ibid.*, in endnotes 4 and 5, at the end of 'Section 3; Capacity in hisba.'

Ibn Taymiyya reiterates that the position of the *Muhtasib* includes ordaining the methods of market behaviour that is appropriate and also to exclude improper acts, in the areas that are not dealt with specifically by governors, judges or administrative officers (*ahl al-diwan*). Also, it is clear that “many religious matters are the common responsibility of all authorities and in these it is incumbent to obey anyone who performs the duty.”¹³⁷⁰ The general list of the role of the *Muhtasib* included ordering the daily five times of prayer, so that they are performed at the correct times; and that those who did not pray were to be flogged or imprisoned. However, a very important point, concerning what levels of punishment this role has the authority to provide, can be seen with Ibn Taymiyya’s footnote, to his list of relevant duties, that “The *Muhtasib* is not competent to inflict the death penalty.”¹³⁷¹

Further duties included supervising both the prayer-leaders and those who give the call to prayer, to make sure that the leaders did not neglect the full duties of their office and that the caller kept within the legally prescribed form of their role. In general terms, if the *Muhtasib* found he was unable to enforce his orders of command, there was sufficient support through the military, the magistrate or any other position in the community who held the status to offer help.¹³⁷²

Initially it can be seen that in his work *Ihya’ ‘Ulum al-Din*, Al-Ghazali argues that :

Enjoining good and forbidding evil is the basic subject of religion. It is such a necessity for which all the Prophets were sent to the world. Had it been closed, Prophethood would have been meaningless, religion lost, idleness reigned, ignorance spread, disturbance prevailed, dangers and calamities appeared and mankind destroyed.¹³⁷³

Also, Ibn Qayyim Al-Jawziyyah, in his work *al-Turuq al-Hukmiyyah fi’l-Siyasah al-Shar’iyyah*, argues that *hisbah* is the basis for all governmental authority (*jami’ al-wilayat*) within Islamic countries. He emphasises that *hisbah* should be accepted as a

¹³⁷⁰ Ibn Taymiyya, Shaykh al-Islam Imam Taqi al-Din Ahmad, *al-Hisba fi al-Islam*, op.cit., in footnote 8 on p26

¹³⁷¹ Ibn Taymiyya, Imam Taqi al-Din Ahmad, *al-Hisba fi al-Islam*, ibid., in footnote 9 on p26

¹³⁷² Ibn Taymiyya, ibid., p26

¹³⁷³ Al-Ghazali, Abu Hamid Muhammad Ibn Muhammad Al-Tusi Al-Shafi’i, *Imam Gazzali’s Ihya’ ‘Ulum-ud-Din (sic) (The Revival of Religious Learnings)*, (no date given), Translated by Al-haj Maulana Fazal-ul-Karim, Kazi Publications, Lahore, Vol.II, p225

'collective' obligation (*fard kafa'i*) for everyone within society to undertake the duty as far as they can manage, rather than it being reduced to the role of selected individual member of the state.¹³⁷⁴

Muhammad Akram Khan divides the literature that covers the topic of *hisba* into two separate categories. One category presents reviews on the general principle of '*amr bil ma'ruf wa n-nahi 'anil munkar*' and the other deals more with the practical rights and duties of the *muhtasib*.

Work within the latter category are more inclined to be operational guides that provide detailed instructions to the role of the *muhtasib*, concerning any malpractice (*munkarat*) in the different trades and crafts they deal with. The author tends to describe each profession in some detail, and the craft in a technical form, highlighting the areas that the *muhtasib* must be alert of, during his vigilance. As Khan points out, a brief glance through the material might cause a generalised conclusion that seemingly, the Muslim society was full of widespread corruption and fraud, that forced the jurists to introduce the role of the *muhtasib*. However, such a corollary is erroneous, as the literature on *hisba*, as that on *fiqh* (jurisprudence), have to be assessed in the format they were written in. Early Islamic jurists developed principles of *fiqh* and then exhibited the operation of how they would be applied, by relating them to fairly prevalent circumstances, as well as to the hypothetical probabilities, parallel to the 'real-life' circumstances given.¹³⁷⁵

For a full appreciation of the role presented by a *muhtasib*, in their rights and duties towards the traders and the market dealers they were daily involved with,

suggests that most of the trades and crafts have either disappeared from the economic horizon or have undergone a complete metamorphosis with the advent of industrialisation, mass-scale production, extension of markets and development of modern credit and finance.¹³⁷⁶

¹³⁷⁴ Kamali, Mohammad Hashim, op.cit., p28. Also see : Al-Jawziyyah, Ibn Qayyim, *al-Turuq al-Hukmiyyah fi'l-Siyasah al-Shar'iyyah*, edited by Muhammad Jamil Ghazi, al-Mu'assasah al-'Arabiyyah li'l-Tiba'ah wa'l-Nashr, Cairo, 1380/1961, p278, cited in footnote 3 on ibid., p107

¹³⁷⁵ Khan, Muhammad Akram, '*Al-Hisba* and the Islamic Economy,' op.cit., p139-140.

¹³⁷⁶ Khan, Muhammad Akram, ibid., p140

As a brief overview of the relevant functions of the *muhtasib*, three main elements appear as of some importance. The first element was that the *muhtasib* was to maintain that the community, in general, was based on a proper level of organisation and had sufficient facilities for performing the *'Ibadat*. This proper form of organisation also included the orderly maintenance of Mosques, the appointment of the *muezzins*, (the caller from the minaret for prayer time), arranging the daily *salat* (prayers), along with the Friday congregations and *'Id* prayers. One functional role position, was the duty of the *muhtasib* to “object to any wilful and volitional non-observance of any other obligation of the *Shari'a* by individuals or by the community.”¹³⁷⁷

The second element is that the *muhtasib* was concerned with the practical implementation of *'adl* (justice) within the community. This was undertaken by using fair play among the economic capacities of society, to minimise any activities of exploitation. This relates to the measurements of weights, metallic content of coins and the quality of the food being sold, as mentioned above. “Similarly, the *muhtasib* would check manipulation of prices, supplies and production, monopolistic collusions, cheating fraud and any other form of inter-sectoral inequity.”¹³⁷⁸ Khan argues that this area of the *muhtasib*'s work needs to be re-addressed in the present day modes of production, distribution and exchange that goes on, in maintaining the very spirit of *'adl* within the economy. The third element of the *muhtasib* is that they focused, as a special consideration, the hygienic levels of the municipal services and facilities on offer. As mentioned above, this included clearing the streets of any rubbish, maintain street lightening, attempt to keep the water supply away from any pollution and was also involved in architectural designs for new building plans.¹³⁷⁹

8.2.3 Assessing the modern-day role of *hisba*.

The modern use of the functions that were established for the *muhtasib*, and how their present day role uses *hisba*, is described by Muhammad Akram Khan:

Most of the functions traditionally carried out by a *muhtasib* have been assigned to different departments of the state these days. But it is unfortunate that the high

¹³⁷⁷ Khan, Muhammad Akram, *ibid.*, p140. Khan also cites from : Mawardi, 'Ali b. Habib, *Alkam al-Sultaniya*, *op.cit.*, no page number given, (Khan, *ibid.*, in footnote 23 on p149)

¹³⁷⁸ Khan, *ibid.*, p140

¹³⁷⁹ *ibid.*, p141

moral standard and the spirit of *'amr bil ma'ruf wa n-nahi 'anil munkar* are significantly absent, leading to a high degree of corruption, disregard of public funds, a callous indifference towards justice and fair play in dealings and selfish individualism. In all probability a *muhtasib*'s office would also soon imbibe all these vices and thus nullify its own existence. This obviously leads one to raise the question : How to make use of a highly valuable institution which was operated successfully for centuries by Muslim states? There is no simple answer to this question.....The Fundamental need is to raise the moral standards at individual level by enforcing a system of training in houses, schools, mosques and offices. The *muhtasib* can succeed only if the society lends him support by its conduct, otherwise he would also drift into the mainstream of corruption and inefficiency.¹³⁸⁰

As Mohammad Hashim Kamali expresses in his work, *Freedom of Expression in Islam*,

Whether collective or individual, *hisbah* has been generally characterised as an obligation. On the whole, the classical expositions of the '*ulama*' on this subject do not address the question as to whether or not *hisbah* also constitutes an individual's right, fundamental or otherwise, or whether it can be designated as a collective right of the community as a whole..... Suffice it here [*sic*] to say that Islamic law recognises both rights and obligations, including fundamental rights, notwithstanding the fact that the '*ulama*' have not treated the latter as a separate category.¹³⁸¹

This point also suggests that the modern day role of *hisba* depends on how its meaning and its use is interpreted. Kamali further extrapolates on the consideration that "*Shari'ah*, tends to be a matter mainly of perspective and style rather than substance"¹³⁸² especially when dealing with the very concept of *hisba*. He postulates on this point of *Shari'ah* upon *hisba*, considering that :

This is, to a large extent, also true of *hisbah*, for although it has been characterised as an obligation, it is quite obvious, nevertheless, that it entitles every

¹³⁸⁰ Khan, *ibid.*, p147-148

¹³⁸¹ Kamali, *Freedom of Expression in Islam*, *op.cit.*, p29

¹³⁸² *ibid.*, p29

Muslim to speak for a good cause or to disapprove and criticise a bad one.¹³⁸³

Evidence of its present use, can be seen in the *Universal Islamic Declaration of Human Rights (U.I.D.H.R.)*, that was adopted by the Islamic Council of Europe, in Paris, on 19 September 1981 / 21 Dhul Qaidah, 1401. The very concept of *hisba* is mentioned within section 'C' of Article IV: *Right to Justice*, which reads as:

(c) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).¹³⁸⁴

The *U.I.D.H.R* also defines the term *hisbah* in the Declarations glossary of the Arabic words used within it, as :

Hisbah - Public vigilance, an institution of the Islamic State enjoined to observe and facilitate the fulfillment of right norms of public behaviour. The '*Hisbah*' consists in public vigilance as well as an opportunity to private individuals to seek redress through it.¹³⁸⁵

8.3 The case of Nasr Hamed Abu Zeid

Nasr Hamed Abu Zeid was born in the village of Qahafa, near Tanta, in 1943. He studied the Qur'an and had learnt it complete at the age of eight, when he became known as 'the sheikh.'¹³⁸⁶ At the age of fourteen he went out to work, to raise money for his family, following the death of his father. Ten years later, in 1968 he joined the faculty of literature at Cairo University and in 1972 he became employed as an assistant of Arabic literature. From 1985 through to 1989 he lived and studied in Japan, during which time he wrote *al-itijah al-'aqli fil tafsir* (The Rational Tendency in the Exegesis of the Qur'an) and also *falsafat al-ta'wil, dirasa fi ta'wil al-Qur'an*

¹³⁸³ *ibid.*, p29

¹³⁸⁴ *Universal Islamic Declaration of Human Rights*, Islamic Council, Paris, France, 19 September 1981 / 21 Dhul Qaidah, 1401, Article IV, p8. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions : Universalism vs Cultural Relativism' in *The International Journal of Human Rights*, Vol. 2, No. 3., Autumn 1998, Frank Cass Publishers, London, p22-48 and p105 in 'Documents' section. And also O'Sullivan, Declan, 'Al-Islam : An Alternative Approach to the Universal Protection of Human Rights ' in *The Islamic Quarterly*, The Islamic Cultural Centre, London, Second Quarter of 1417/1997, Vol. XLI, Number 2, p130-153.

¹³⁸⁵ *Universal Islamic Declaration of Human Rights*, *ibid.*, p17. Also see O'Sullivan, Declan, 'The History of Human Rights across the Regions,' *ibid.*, p109

¹³⁸⁶ Abaza, Mona, 'Civil Society and Islam in Egypt: The Case of Nasr Hamid Abu Zayd' in *Journal of Arabic, Islamic and Middle Eastern Studies*, Vol.2, No.2, no publisher provided, 1995, p30

'ind Muhydin Ibn 'Arabi (The Philosophy of Qur'an Interpretation of Ibn 'Arabi).¹³⁸⁷

In March 1993, during his application for becoming a Professor, his case of being accused as an apostate began. As a full-time lecturer as an Associate Professor of Arabic and Qur'anic studies at the time, in the faculty of Arts at the University of Cairo, he was an established academic, and had published several books focusing on his research interests.¹³⁸⁸

The governing board, involved in the application process, refused to accept him for the position as a Professor, after he had submitted two of his books with 11 academic articles, for them to assess and consider his academic quality and achievements. The refusal was based by a decision made in a report presented to the interview panel, by the university's Permanent Scientific Committee which stated that Abu Zeid's work was heretical.¹³⁸⁹ One of the three experts who was part of the interview panel to assess the work of Nasr Hamed Abu Zeid, was Abdel Sabour Shahine. In his review, Shahine argued that in Abu Zeid's work, he called :

for the criticism and rejection of the Qur'an and *Suna* [sic] (the Prophet's tradition); has said that Islam is the cause of the Muslim's retardation; that secularism is the true religion; and that Salman Rushdie is a martyr.¹³⁹⁰

The main provocation that led a small group of people to initiate the court case against him, seemed to be based on his book *mafhum al-Nass – dirassah fi 'ulum al-Qur'an* (What Can be Understood From the Text – a Study in the Qur'anic Sciences), first published in 1993.¹³⁹¹ Those supporting Abu Zeid, argue that the Committee report and the general assessment of his work does not evaluate the level of his academic

¹³⁸⁷ *ibid*, p30

¹³⁸⁸ An-Na'im, Abdullahi A., 'The Contingent Universality of Human Rights: the case of Freedom of Expression in African and Islamic Contexts', *The Emory Lawyer*, Annual Report 11-18, 1994-95, no publisher or page numbers were provided.

¹³⁸⁹ "The Committee based its decision on a report by Abdel Sabour Shahine, head of the Linguistics Department at the Sciences Faculty at the University of Cairo and a member of the Permanent Committee. Dr. Shahine is president of the Religious Affairs Commission of the ruling National Democratic Party. He is also a very popular preacher at a Cairo mosque and appears frequently in religious television programmes," Article XIX, *The Egyptian Predicament: Islamists, The State and Censorship*, 1997, Article XIX, London, in footnote 63 on p56. Also see An-Na'im, Abdullahi A., 'The Contingent Universality of Human Rights: the case of Freedom of Expression in African and Islamic Contexts', *ibid.*, no page numbers provided.

¹³⁹⁰ Shahine, Abdel Sabour, *Qissat Abu Zeid wa Inhisaru al-Ilmaniya fi Gami'at al-Qahira* (The Story of Abu Zeid and the Encirclement of Secularism in the University of Cairo), Al-Ihsa, 'Dar al-Ma'lim li-Thaqafa, p239, as cited by Article XIX, *The Egyptian Predicament*, *ibid.*, in footnote 64 on p56. Also see Abaza, Mona, 'Civil Society and Islam in Egypt : The Case of Nasr Hamid Abu Zayd,' *op.cit*, p30

ability through his use of scientific and academic criteria but it, rather, expresses an Islamist interpretation of his personal views and beliefs. The Committee's report also portrays Abu Zeid as being a Marxist atheist who denies Islam as a religion.¹³⁹²

The internal argument for his 'job promotion' then left the university and moved on to a further stage in the legal courts. An Islamist lawyer, a member of the informal group *Gama'at al-Hisba*, made a legal charge against Nasr Hamed Abu Zeid aiming towards having him condemned as an apostate (*murtadd*). The case eventually went to court on January 27 1995, where the Court of First Instance in Giza rejected it, on the grounds that those who presented it to the court to be considered had no personal interest in the case, so it did not warrant a court hearing. Of particular interest to note, the Court of First Instance in Giza stated that it could not accept a petition for a divorce, unless it was presented from the married couple involved.¹³⁹³

However, having been rejected from the courtroom was not enough for the accusers, who then took the case to another court, appealing for their accusation to be re-assessed. On June 14 1995, the lower court's decision was then overturned by the Cairo Court of Appeal "in a judgement that caused profound shock within Egypt's civil rights community."¹³⁹⁴ As Abdel Salam Sidahmed explains, the situation for Abu Zeid and his wife :

in 1995 the Cairo Court of Appeal in Egypt ruled that Nasr Hamid Abu Zeid, university lecturer and a writer, should be divorced from his wife Ibtehal Younes¹³⁹⁵ on the grounds that he has been found guilty of apostasy

¹³⁹¹ Sidahmed, Abdel Salam, 'Freedom of Religion, Apostasy and Human Rights : An Appraisal,' in *The Mediterranean Journal of Human Rights*, Faculty of Laws, University of Malta, Msida, Malta, Vol. 4 (Double Issue), 2000, p140

¹³⁹² Egyptian Organisation for Human Rights, press release, May 4, 1995, as cited by Article XIX, *The Egyptian Predicament*, *ibid.*, in footnote 65 on p56. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief : A World Report*, 1997, Routledge, London, p32. Also see Abaza, Mona, 'Civil Society and Islam in Egypt : The Case of Nasr Hamid Abu Zayd,' *op.cit.*, in footnote 2 on p39

¹³⁹³ Article XIX, *The Egyptian Predicament*, *ibid.*, p56. Also see *Al-Ahram*, June 15, 1995, as cited by Abaza, Mona, 'Civil Society and Islam in Egypt : The Case of Nasr Hamid Abu Zayd,' *ibid.*, p29. Also see Sfeir, George, N., 'Basic Freedoms in a Fractured Legal Culture : Egypt and the Case of Nasr Hamid Abu Zayd,' in *Civil Society, Democratic Transformation in the Arab World*, December 1998, Vol.7, Issue No.84, p13

¹³⁹⁴ Article XIX, *The Egyptian Predicament*, *ibid.*, p57.

¹³⁹⁵ Dr. Ibtehal Mohammed Younis is also an academic at Cairo University, focusing here field of specialty in French literature. Abaza, Mona, 'Civil Society and Islam in Egypt' *op.cit.*, p29

and as such could not be lawfully married to a Muslim woman.¹³⁹⁶

By annulling Giza's Court of First Instance decision, the Cairo Court of Appeal ruled that Nasr Hamed Abu Zeid proved through his writing that he was, indeed, an apostate and that he could no longer be married to a Muslim woman.¹³⁹⁷ The court ruling was that his wife, Ibtihal Mohammed Younis, had to leave her husband, irrelevant of her own choice or wishes, as the court decided that co-habiting with an apostate was equivalent to adultery.¹³⁹⁸ It seemed to become clear that :

More than any other judgement, this court ruling was taken by many as evidence that the judiciary had fallen under the influence of militant Islam. According to some lawyers, this was a consequence of certain judges having worked 'in Saudi Arabia on secondment in return for large salaries.....this has had an influence on their attitude.'¹³⁹⁹

This case also led to another hearing, at the Court of Cessation. On 5th August 1996, the Court of Cessation assessed the case and finally upheld the ruling delivered by the 1995 Court of Appeal, so "Therefore the verdict became final as it has been endorsed at the highest judicial level."¹⁴⁰⁰

During both court cases at the Cairo Court of Appeal and the Court of Cessation, the published and the academic research work of Abu Zeid was assessed and reviewed by the judges, to identify the main themes of his methodology in analysing the Qur'an and the *ahadith*. Both courts concluded that through his work, it can be shown that Abu Zeid interpreted the main textual sources of Islam in a way that can be clearly identified as being un-Islamic. Therefore :

¹³⁹⁶ Sidahmed, Abdel Salam, op.cit., p140. Also see An-Na'im, Abdullahi A., 'The Contingent Universality of Human Rights: the case of Freedom of Expression in African and Islamic Contexts', op.cit., no page numbers provided.

¹³⁹⁷ However, even before the court case was held, his situation of public humiliation and accusation was still present, as on his visit to Tunisia in 1994 he became aware that an Islamist newspaper there, 'Aqidati, also announced that he should be charged in court with apostasy, Abaza, Mona, 'Civil Society and Islam in Egypt' op.cit, p30. Also see Sfeir, George, N., 'Basic Freedoms in a Fractured Legal Culture : Egypt and the Case of Nasr Hamid Abu Zayd,' op.cit., p13

¹³⁹⁸ Abaza, Mona, 'Civil Society and Islam in Egypt,' ibid., p29. Also see Sfeir, George, N., 'Basic Freedoms in a Fractured Legal Culture,' ibid., p13

¹³⁹⁹ *The Guardian Newspaper*, London, June 21, 1993, as cited by Article XIX, *The Egyptian Predicament*, op.cit., in footnote 66 on p57.

¹⁴⁰⁰ Sidahmed, Abdel Salam, op.cit., p140

Accordingly, the verdict was that Abu Zeid has been found guilty of apostasy, (*murtadd*), and as such should be separated from his wife.¹⁴⁰¹

Mona Abaza raises the point that :

The shocking matter about the sentence was that neither Professor Nasr Hamid Abu Zayd [*sic*] nor his wife intended to separate or divorce. However, since he was to be declared apostate, according to the court, their marriage was put into question because cohabiting with an apostate could be regarded as adultery.¹⁴⁰²

In the early 1990s, both Abu Zeid and his wife Ibtihal Mohammed Younis, moved to live in the Netherlands, leaving Egypt for their own safety, due to persistent harassment and receiving death threats from Islamists, who were aiming to suppress Abu Zeid's intellectual opinions and academic work. Abu Zeid defended their departure from Egypt because "the cost is too much, both security costs and the inevitable disruption to my students."¹⁴⁰³

The case caused both internal and international publicity, doubting the courts decision of divorce, which was against the personal wish of both spouses. In an interview with *Al-Ahram*, a government official from the Ministry of Internal Affairs argued that "the Ministry was not entitled to apply the sentence since there exists no material or physical damage caused between the couple."¹⁴⁰⁴

The newspaper *Al-Ahram*, publicly presented the information that the court's decision had been taken following an examination of Abu Zeid's academic work, that was seen to offend Islam and contradict the rulings in *Shari'a* relating to the matters of inheritance.¹⁴⁰⁵ After the Court of Appeal's ruling had been delivered, a public announcement was delivered by the Islamist armed group *Jihad*, supporting the court's decision, and demanding the death of Abu Zeid, as he was an apostate. This act of killing him was argued to be in legitimate accordance with *Shari'a*. The declaration was published in the newspaper *Al-Hayat*, as :

¹⁴⁰¹ Ibid., p140

¹⁴⁰² Abaza, Mona, 'Civil Society and Islam in Egypt' op.cit., p29

¹⁴⁰³ Abu Zayd Nasr Hamed, in an interview with Article XIX in July 1995, Article XIX, *The Egyptian Predicament*, op.cit., in footnote 68 on p57

¹⁴⁰⁴ *Al-Ahram*, June 19, 1995, cited by Abaza, Mona, 'Civil Society and Islam in Egypt' op.cit., p29-30

¹⁴⁰⁵ *Al-Ahram*, June 15, 1995, cited by Abaza, Mona, ibid., p29

based on our faith in God's law rather than man's law, we affirm that the apostate ruling stems from Islamic law and whoever denies it or objects to it under false pretexts, such as freedom of expression and opinion, is an infidel and an apostate from Islam.....based on this it is legitimate to shed Nasr Abu Zayd's [sic] blood, whether anyone likes it or not.¹⁴⁰⁶

As Donna Arzt suggests, such public announcements tend to induce an uproar and chaotic public reactions, that can lead to rather vicious acts of revenge by members of the public or, more so, members of 'extremist' groups :

.....official state pronouncements serve to encourage private actions – or vice versa. For instance, after a committee at state-sponsored Cairo University denied full professorship to Nasr Hamid Abu Zeid, he became a target of the same group that had killed Foda. The committee had determined that his scholarship -- on eighth century Islamic writing -- had contained 'discussions resembling atheism.'¹⁴⁰⁷

The court ruling on June 14 1995 also stated that as the crime of 'heresy' was within the purview of the law abiding to personal status, it was subject to *Shari'a*, rather than the law held by the Civil Procedure Code. Thus, "The petitioners, the Court of Appeals argued, therefore had the right to invoke the *Shari'a* rule of *hisba* to petition the court."¹⁴⁰⁸

8.3.1 Abu Zeid's Work on Islam and the Qur'an.

Abaza puts forward the suggestion that the accusation of apostasy against Abu Zeid "reveals the fight between intellectuals and the clergy over the monopoly of the text by the theologians of the government."¹⁴⁰⁹ Navid Kirmani presented the opinion that is held by many Egyptian secular intellectuals, who argue that Abu Zeid was targeted to be accused of apostasy, simply because of his academic challenge. They feel that the work of Abu Zeid aims towards :

¹⁴⁰⁶ *Al-Hayat*, London based Arabic Newspaper, June 22, 1995, quoted by Reuter, and as cited by Article XIX, *The Egyptian Predicament*, op.cit., in footnote 67 on p57

¹⁴⁰⁷ Donna E. Arzt, 'Religious Human Rights in Muslim States of the Middle East and North Africa', in John Witte, Jr. and Johan D. van der Vyver (eds), *Religious Human Rights in Global Perspective: Religious Perspectives* (Martinus Nijhoff, 1996), p.387–454. This is also an article in *Emory International Law Review*, Vol.10, No.1 (Spring 1996), and can be found on the internet webpage <http://www.law.emory.edu/sEILR/volumes/spring96/arzt.html> .

¹⁴⁰⁸ Sfeir, George, N., 'Basic Freedoms in a Fractured Legal Culture : Egypt and the Case of Nasr Hamid Abu Zayd,' op.cit., p13. The law of *hisba*, and whether it was used appropriately or misused in this case, will be discussed below in a separate section.

¹⁴⁰⁹ *Ibid.*, p30

pleading for a hermeneutics of the text, and for subjecting the Qur'an to new interpretations. In *Mafhum an-nass* (The Meaning of the text), Abu Zayd [sic] argues for a contextualisation which opens the way for differing historical interpretations. He equally pleads for reading the Qur'an with 'modern methods,' using linguistics, to locate the meaning (*Mafhum an-nass*).¹⁴¹⁰

In the very same book which caused the whole controversy, Abu Zeid openly declares that :

Arabic-Islamic civilisation is a civilisation of the text, in the sense that its foundations, its sciences and culture were based around its centrality (meaning the Qur'an).....This however, does not imply that the text was the sole factor in the creation of civilisation.¹⁴¹¹

Another main book of major concern that was a significant factor that led to the accusations against Abu Zeid by Cairo University's tenure committee's report, was his book *Naqd al Khitab al-Dini*, published in Cairo, in 1992. Within this book, which can be argued to be a compilation of most of his central themes and ideas from his previous work, he raises one consideration of what he perceives to be a contrast between literary texts and religious texts. What becomes clear as his thesis is that:

It is obvious that religious texts don't pose the same problematic in regard to 'intention' as do literary texts; or rather, they pose it at a different epistemological level, one constituted by the objective conditions – social, economic, and political – which circumscribed the production of these texts and defined their field of application, and hence, their original and fundamental signs and meanings.¹⁴¹²

Essentially, what can be seen by his own personal assessment of his research and the content of his books:

¹⁴¹⁰ Ibid.,p30

¹⁴¹¹ Abu Zayd, Nasr Hamid, *mafhum an-nass – dirasa fi 'ulum ul-Qur'an* (The Meaning of the text – A Study in the Sciences of the Qur'an), al-Marqaz al-Thaqafi al-'Arabi, Beirut, 1990, p9. The text cited here was translated by Mona Abaza, op.cit., p30

¹⁴¹² Abu Zayd, Nasr Hamid, *Naqd al Khitab al-Dini*, Dar al-Thaqafah al-Jadidah, Cairo, Egypt, 1992, p193, as cited and translated from Arabic into English by Hirschkind, Charles, 'Heresy or Hermeneutics: The Case of Nasr Hamid Abu Zayd' in *The American Journal of Islamic Social Sciences*, jointly published by The Association of Muslim Social Sciences and The International Institute of Islamic Thought, no place or publisher provided, Vol.12, No.4, Winter 1995, p467-468 and in footnote 10, on p476

Abu Zayd [sic] identifies his own work as an attempt to establish an 'objective' (*mawdu'i*), 'scientific' (*'ilmi*) framework for the analysis and interpretation (*tafsir*) of religious texts, a goal that evaded those Islamic thinkers who preceded him, as they failed to address adequately the historical dimension of their project. The hermeneutic approach he advocates consists of two moments, each to be placed in dialectical relation to the other. One entails the recovery of the original meaning (*dallalatuhu al asliyah*) of the text-cum-cultural-artifact, [sic] by placing it within the socio-historical context of its appearance. The other seeks to clarify the contemporary sociocultural frames and practical goals that motivate and guide interpretations so that one may distinguish the ideological content of those interpretations from the original historical meaning. A 'productive' reading results when these two steps are placed in relation to each other in an ongoing dialectic, 'a pendular movement between the dimensions of "origin" (*asl*) and "goal" (*ghayah*), or between "sense" (*dallalah*), and "meaning" (*maghza*).'¹⁴¹³

One of Abu Zeid's main points of reference in all his research work, is based on the suggestion that if the Islamic civilisation is unquestionably focused on the sacred text, then the concept of *ta'wil* (interpretation) "becomes the other side of the same coin."¹⁴¹⁴ An important factor of *ta'wil* is that it constitutes a very fundamental mechanism in establishing culture and civilisation, during the very progress and advancement in the development of knowledge. As Abaza explains, Abu Zeid believes that *ta'wil* can be undertaken on several levels. It can be direct, as being the consequence of a very direct encounter of text, "in order to extract the meaning and this is what one identifies as *ta'wil* of religious texts."¹⁴¹⁵ Another form of interpretation can be indirect, or 'symbolic,' as can be found in other fields of knowledge. Abu Zeid also presents what seems to be a rather important point, when considering the legal reaction that his work has caused and the debates it has stimulated. This point concerns the importance of a text when it is perceived to be the main focal point for any society to be based on. Abaza argues that :

¹⁴¹³ Abu Zayd, Nasr Hamid, *Naqd al Khitab al-Dini*, ibid., p110-118, as cited and translated from Arabic into English by Hirschkind, Charles, ibid, p468 and in footnotes 18, 19, 20 on p476

¹⁴¹⁴ Abaza, Mona, op.cit., p30

¹⁴¹⁵ Ibid., p30, taken from Abu Zayd, Nasr Hamid, *mafhum an-nass – dirasa fi 'ulum ul-Qur'an*, op.cit., p9

When a text is so central for a whole civilisation one cannot avoid the multiple interpretations which are subject to change and alteration.¹⁴¹⁶

8.3.2 Abu Zeid's Work on the Concepts of *tafsir*, *ta'wil* and *takfir*.

As discussed in Chapter Five, *takfir* is the term that refers to the act of a Muslim blaming another Muslim of being an 'unbeliever'. The act of *takfir* is completely prohibited in Islam, in both a legal and a theological context. Before addressing Abu Zeid's knowledge, understanding and use of *tafsir*, *ta'wil* and *takfir*, it is useful to have a general definition of the other two words, *tafsir* and *ta'wil* as they are related to the area of 'religious text interpretation'. The definitions of these terms has been covered by Ahmad Von Denffer :

The word *tafsir* is derived from the root *fassara* – to explain, to expound. It means 'explanation' or interpretation. In technical language the word *tafsir* is used for explanation, interpretation and commentary on the Qur'an, comprising all ways of obtaining knowledge, which contributes to the proper understanding of it, explains its meaning and clarifies its legal implications. The word *mufassir* (pl. *mufassirun*) is the term used for the person doing *tafsir* i.e. the 'exegete' or 'commentator.'

The word *ta'wil* which is also used in this connection, is derived from the root *awwala* and also means 'explanation,' interpretation. In technical language it similarly refers to explanation and interpretation of the Qur'an.¹⁴¹⁷

A very clear point that needs to be established in the case brought against Abu Zeid, is to recognise just how legitimate the accusations of 'apostasy' actually are. To convict someone as being a *murtadd* (apostate) it is important to note whether the accused has openly and undeniably rejected Islam in their words and deeds. It becomes rather clear in the case of Abu Zeid that what he undertook, and still undertakes, cannot be clarified to be convincing unquestionable evidence that he has left Islam, or that he has refused to acknowledge the pillars of Islam and the sacred divinity of the Qur'an. As Abaza points out, if one reads Abu Zeid's work, there is nothing that is either direct that could prove, or even a minor indirect implication that would suggest, that

¹⁴¹⁶ Ibid., p30-31, taken from Abu Zayd, Nasr Hamid, *mafhum an-nass – dirasa fi 'ulum ul-Qur'an*, Ibid., p9

he has undertaken *bid'a*, (innovation) while discussing his personal understanding of faith and religion :

A careful reading of Abu Zeid's works reveals that he did not really 'deviate,' or even innovate, from the path which had been previously established some hundred years ago by the Egyptian reformist Mohammed 'Abduh. He has merely claimed to interpret the sacred text and render it understandable to the contemporary class of Egyptian literati and intellectuals.¹⁴¹⁸

Mohammed 'Abduh is argued to have been the first *'alim* in modern Egypt to have written a popular, understandable commentary of the Qur'an, so that the mass population could understand the text. This was seen to be removing the task of 'explanation' away from the elite as, prior to this work, the ability to have 'full knowledge' and 'understanding' of the text "was restricted to professional theologians."¹⁴¹⁹ While concerning Abu Zeid, his work :

has proposed a stimulating interpretation of religious texts for the contemporary class of intellectuals in Egypt and therefore in the process, he has challenged the monopoly of knowledge by the established clergy. It is for this reason that rage descended upon him.¹⁴²⁰

Abu Zeid was seen to have become a potential 'threat,' by having denounced what he saw as the corruption of the 'religious class'. He indicated that he had witnessed inherent contradictions in the religious 'intellectual debates' undertaken in the governmental legal domain and also the religious opposition to that.¹⁴²¹ To emphasise Abu Zeid's commitment to Islam and his devout belief in his personal *'iman* (faith), in both his private life and while undertaking his academic career, it is clear that having publicly pronounced himself as being a Muslim, by proclaiming the *Shahadah*, this can be argued to be enough for anyone do, to remain one.¹⁴²² The Court of Cassation ruled in previous cases, that apostasy could only be proven through very specific ways: either by the court receiving a certificate from a respected religious institution

¹⁴¹⁷ Von Denffer, Ahmad, *'Ulum al-Qur'an, An Introduction to the Sciences of the Qur'an*, The Islamic Foundation, Malaysia, no city was provided, Second Edition, 1989, p123

¹⁴¹⁸ Abaza, Mona, 'Civil Society and Islam in Egypt,' op.cit., p33

¹⁴¹⁹ Ibid., p33

¹⁴²⁰ Ibid., p33-34

¹⁴²¹ Ibid., p34

¹⁴²² Centre for Human Rights Legal Aid, (CHRLA), *From Confiscation to Charges of Apostasy*, Cairo, July 1995, no page number provided

that certifies the named person has converted to another religion; or on hearing a personal confession of conversion from the person who had decided to leave Islam.

The Court declared that :

It is stated that for a person to be a Muslim it is enough that he articulates his belief in Allah and the Prophet Mohamed. The judge may not look into the seriousness of or incentives behind the confession. It is not necessary to make a public confession.¹⁴²³

In January 1975 the Court of Cassation also stated that:

In accordance with the established course of this court, religious belief is considered to be a spiritual matter, and consequently is to be judged only by what is explicitly declared. Therefore, a judge is not to investigate the sincerity nor the motive of such declared statement.¹⁴²⁴

A further ruling was declared in 1981, when the Court stated that :

this court has always taken the course established by the law that religious belief is among matters in which the judgment should be based on declared statement and by no means should the sincerity or motives of this statement be questioned.¹⁴²⁵

These court rulings would surely confirm that Abu Zeid's academic work simply focuses on his academic opinion on interpreting how to understand Islam and how to follow the code of conduct that it proffers. As a broad overview of his work, that stimulated his questioning, it can be seen that his intellectual analysis is based on his own *ijtihad* and *tafsir* :

Abu Zeid argued that Islam is based on an essential point; the freedom of man. Everyone has the right to be a *kafir* or *mu'min* (unbeliever or a believer). According to him, some, (the religious class of '*Ulama* and *da'is*) believe that their words are the absolute religion. He stressed the fact that men of religion are fallible human beings, and thus subject to making errors. In defending

¹⁴²³ Justice Azmy El Bakry, *The Encyclopedia of Jurisprudence and the Judiciary in Personal Status*, 3rd Edition, p. 234, cited in CHRLA, *From Confiscation to Charges of Apostasy*, *ibid* no page number provided

¹⁴²⁴ Cassation 44, judicial year 40, session 26 January 1975.

¹⁴²⁵ Cassation 51, judicial year 52, session 14 June 1981. Both rulings appear in Azmy al-Bakry, *op.cit.*, p. 125

himself, Abu Zayd [*sic*] publicly stated that he is proud of his religion, of his belief in God and the Prophets. Against those who want to kill him he publicly said 'I will not retreat from my *ijtihad* and my scientific Islamic interpretations.'¹⁴²⁶

In his book *al-Khitab al-dini* (Critique of Religious Discourse), Abu Zeid presents a large section of his introduction to the book, explaining why he denies there to be any political difference in the discourse delivered by the moderate Egyptian Islamists, the Islamic figures who present their views on official television channels and in newspaper columns, and those who are in the underground 'extremist' groups.¹⁴²⁷ Abu Zeid extends his position on this point, by accusing these groups of all undertaking the same ideological religious discourse, while implementing *takfir*. He argues that:

the uniting factor of all Islamists is to name political opponents of unbelief (*takfir*). Abu Zayd [*sic*] considers that both sections (the official moderate and the extremists) of the Islamic movement disagree on the details but not on the foundations and aims, which is condemning opponents of *kufir* (unbelief) and therefore they all generally consent to assassination and the use of violence.¹⁴²⁸

Charles Hirschkind highlights in his article *Heresy or Hermeneutics: The Case of Nasr Hamid Abu Zayd* that, for those interested in assessing the different types of movements within the Middle East, both liberal and Islamic, which form the modes of political thought, then it would be useful to consider the work of Abu Zeid, as one way of understanding these contending thought processes. As Hirschkind explains, this is because :

Abu Zayd's work gains particular value in this regard: As a modernist attempt to overcome the divisions separating these traditions, his writings reveal some of the conceptual problematics that such a project entails.

¹⁴²⁶ Abaza, Mona, 'Civil Society and Islam in Egypt,' op.cit., p34. His quote about the *ijtihad* was also cited in the newspaper *Al-Ahram*, on 19th June, 1995.

¹⁴²⁷ Mona Abaza presents further details of Abu Zayd's role, and who he names as the perpetrators: "Abu Zayd strongly criticises the position of various Muslim figures such as Sheikh Muhammad al-Ghazali, one of the founders of the Muslim Brothers, the political attitude of *al-Sha'ab* newspaper (Labour party with Islamist tendencies), Sheikh Mohammed Metwali al-Sha'arawi, the television star preacher who is seen by many secular intellectuals as a charlatan, Fahmi Huwaydi the *Al-Ahram* columnist and Yussef al-Qaradawi an Azhari and former Muslim Brother," Abaza, Mona, 'Civil Society and Islam in Egypt,' Ibid., in footnote 11 on p40

¹⁴²⁸ Abaza, Mona, *ibid.*, p34

In this respect, there are numerous parallels between Abu Zayd [*sic*] and such earlier reformers as Qasim Amin or Taha Husayn, Muslim writers whose advocacy of western social and political models went beyond what many of their contemporaries considered acceptable and reasonable.¹⁴²⁹

Although there are clearly ‘two sides to every story,’ where one opinion that is presented in an academic debate is accepted by some who listen, and is simultaneously rejected and opposed by others, it will clearly be a far more balanced and stable debate for everyone involved to hear both sides of each ‘story’ – rather than just simply focus and promote only one side of the debate, having no flexibility to allow other options to be open or available for discussion. This point, of debating both sides, is vital to maintain, when one considers the crucial topics that each side of the opinions concentrate on. Hirschkind lists the themes that are covered by Abu Zeid, all of which are ‘sensitive’ topics at the least, and which are unequivocally central focus points of Islamic thought, in total. Hirschkind’s overview of the topics included and debated by Abu Zeid, emphasise why they can be seen as polemic and provocative, by those who oppose the views he expresses within his pages:

Abu Zayd’s [*sic*] writings address a number of issues central to Islamic thought, from methods of Qur’anic interpretation to the authority of religious scholars and the appropriate role of religion in contemporary life. Given the recent turmoil, violence, and challenges to political authority in Egypt, it is not surprising that once his work drew the mass media’s attention, it became a rallying point for a number of political currents. Roughly speaking, liberal commentators tended to frame the issue as one of ‘intellectual freedom’: Abu Zayd, [*sic*] in their view, was being punished for having subjected to critical scrutiny the sacred tenets of institutionalised Islamic authority. Comparisons to Salman Rushdie were drawn frequently, while those Cairo University professors who had opposed Abu Zayd’s [*sic*] advancement were charged repeatedly with ‘intellectual terrorism.’¹⁴³⁰

Further than these circumstances, a two-sided fight for what is considered to be the ‘freedom of expression’ and what is acknowledged as not being acceptable to be

¹⁴²⁹ Hirschkind, Charles, ‘Heresy or Hermeneutics: The Case of Nasr Hamid Abu Zayd’ op.cit., 1995, p465

¹⁴³⁰ Hirschkind, Charles, *ibid*, p465-466

expressed, seemed to escalate. This escalation was prompted by other comments and opinions that were made, including :

Abu Zayd's assertion that differences between the Mubarak government and the Islamic opposition were only of degree and not of kind, inasmuch as both were founded upon the same authoritarian, anti-humanistic, and conceptual foundations, drew considerable praise from many on the Egyptian left.¹⁴³¹

The more left-wing minded Egyptians were not content or satisfied with the government and certainly did not feel comfortable, or at ease with the Islamist movements as an alternative. Thus, Abu Zeid's work was to some extent embraced, and seen as being 'due,' because what could be perceived as "a politically viable Marxist critique long since eroded away, many left-leaning intellectuals were encouraged by this elaboration of a liberal alternative."¹⁴³²

However, this was the acceptance by those who defended what was held to be the intellectual critique that had been undertaken by Abu Zeid, in his academic work. However, there are also those who oppose this view, and disagree with everything these 'intellectuals' represent. Hence:

According to Islamic writers, on the other hand, Cairo University had been correct in its decision, as Abu Zayd's [*sic*] work was indeed an affront to a long tradition of respected Islamic scholarship as well as a grave injustice to its primary text: the Qur'an. Many saw in Abu Zayd [*sic*] one more member of a Marxist secularist campaign to expunge Islam from the universities as well as from society in general.¹⁴³³

Hirschkind puts forward the suggestion that, "despite the supposedly dialectical structure of his interpretive method,"¹⁴³⁴ Abu Zeid still can be argued to remain within the methodology structure of what can still be categorised as 'modernity.' This can be seen in the very information presented by Abu Zeid in his introduction to *Naqd al Khitab al-Dini*, where he contends that :

religion, when correctly understood, is that which in accord with a scientific analysis and interpretation denies the false and mythical, while preserving

¹⁴³¹ Hirschkind, Charles, *ibid*, p466

¹⁴³² *ibid*, p466

¹⁴³³ *ibid*, p466

¹⁴³⁴ *ibid*, p468

whatever promotes progress (*taqaddum*), justice, (*'adl*) and freedom (*hurriyah*).¹⁴³⁵

This modernist approach is the central theme throughout the whole of Abu Zeid's work, which sets out the arena of an acceptable interpretation, while blocking any 'backward path' that relates to any historical views. To emphasise this rejection of any hermeneutics that embraces and values historical views only, to the extent that they are ingrained in these ancient meanings, Abu Zeid states that this methodology makes no sense to modern advancement. It becomes illogical and somewhat ludicrous, to interpret the text in these present times, with the same interpretation that was used in the distant past, within obviously very different circumstances and a wholly different socio-political and economical environment. Abu Zeid reinforces this 'modernist' policy by emphatically declaring that :

[The tendency of religious discourse] to obliterate the historical dimension is obvious in its assumption of a congruence between the problems of the present and those of the past, and the application of the past solutions to present conditions. Moreover, recourse to the work of earlier scholars, and the attribution of a sacred status to their texts, further effaces this historical aspect and leads to the deepening of human alienation and the covering of practical problems rooted in reality.¹⁴³⁶

This reiterates the point that any *tafsir* (exegesis) is a human interpretation of the meaning of the text, mainly that of the Qur'an, but it is a human meaning and not a divinely revealed message. Thus, the text of any scholar cannot be held higher than utter respect, but are also always available and accessible to be questioned and contended with differing views and differing *tafsir* – either through in immediate *tafsir* which offers a direct confrontation, or in many centuries after wards, offering a further perspective in the text's meaning.

8.3.3. A Summary of Abu Zeid, his work and his conviction of apostasy

The Egyptian *Shari'ah* judge Mohammed Sa'id Al-'Ashmawi, was quoted in an *Al-Ahram* newspaper article regarding his opinion on how valid Abu Zeid's court case of

¹⁴³⁵ Abu Zayd, Nasr Hamid, *Naqd al Khitab al-Dini*, op.cit., p9, as cited and translated from Arabic into English by Hirschkind, Charles, *ibid*, p468 and in footnote 21

¹⁴³⁶ Abu Zayd, Nasr Hamid, *Naqd al Khitab al-Dini*, *ibid.*, p53,

being charged for 'apostasy' actually was. Mona Abaza highlights the important issue that the article raised, because *Al-Ahram* :

attempted to depict the Abu Zeid case as if it was a judicial mistake, since according to al-'Ashmawi no person and no court has the right to penalise anyone for apostasy. The courts, according to al-'Ashmawi, are in no way able to judge upon what is in people's hearts. Equally, such a case was never applied in modern Egypt, and even some government circles were bewildered by its far reaching efforts..... According to al-'Ashmawi the Qur'an did not provide any punishments for apostasy. The Egyptian constitution clearly states that : 'The State guarantees the freedom of belief, and the freedom of practicing religious beliefs.'¹⁴³⁷

Therefore, if a *Shari'ah* judge denies any Muslim the right to accuse another believer as being a *murtadd* (apostate), let alone stating that the *Shari'ah* court has no legitimate right for pursuing such a case and also, when the same judge cites that no verses or message can be found in the Qur'an to justify a court case for the sin or crime of 'apostasy', then it makes one wonder why it was allowed to go through the legal process. The conclusion of this case also meant that the wife of the convicted was technically punished, as she was forced to divorce her husband who had, seemingly, become an 'infidel' and, therefore, she was not permitted to remain married to him. The one 'saving grace,' as it were, from this case, is that the penalty was enforced divorce and not the death penalty. Therefore, the couple were able to leave Egypt and remain together, whereas the death penalty would have been a very different matter.

The final result of the case, and how the use of *Hisba* law was used, or mis-used, is explained by Na'eem Jeenah:

In the case of Abu Zaid it [MPL – Muslim Personal Law] was used in a side swipe to bypass the secular law and yet get the court to rule on whether a person was a Muslim or not.

¹⁴³⁷ Abaza, Mona, 'Civil Society and Islam in Egypt,' op.cit., p36-37. Mohammed Sa'id Al-'Ashmawi is cited in *Al-Ahram* on 19th June, 1995, and also from his work, Al-'Ashmawi, Mohammed Sa'id, *al-shari'a al-islamiyyah wal-qanun al-masri* (Islamic *Shari'a* and Egyptian Law), Maktabat Madbuli, Cairo, 1986, p85.

And what was the basis of the argument that said that Abu Zaid was not Muslim? Simply that he had held that, “the interpretation of the Qur’an is not and has never been an innocent pursuit devoid of socio-political and cultural impact,” that the interpretation of the Qur’an has always been based on the context in which its readers sought to apply it. He used the example of his own country. In the 1960s, he says, Islam and the Qur’an were presented as the means of social justice, urging Muslims to fight imperialism and Zionism. In the 70s, with the open door economic policy and the treaty with Israel, Islam became the religion – even for many Azhar scholars – that guarded private property and urged Muslims to make peace with the Israelis.¹⁴³⁸

The final conclusion by most – if not all – who have observed this court case, is that the accusation which was initially a simple rejection for an academic to be promoted to become a Professor, dramatically changed. The case led to the highest court, by charging – and eventually convicting – the same academic as having changed their personal religious belief and become an apostate. All this case actually comes down to, is a personal hate campaign, created by the accusers.

In one of his earlier books, *The Hermeneutics of the Qur’an by Muhiy Al-Deen Al-Arabi*, Abu Zaid showed that this great Andalusian Sufi also held that interpretation was informed by contemporary socio-political and cultural factors. Yet it was this part of Abu Zaid’s [sic] thought that was used by those with personal vendettas against him to ensure his downfall and suffering.¹⁴³⁹

As Mona Abaza suggests that: “The irony of this story is exemplified when one reads the writings of Nasr Hamid Abu Zeid. The attack directed against him seems to take the form of a personal vendetta.”¹⁴⁴⁰

It is of particular importance to reiterate that the Court of First Instance in Giza, during the very first case assessment, had stated that there was no legal capacity to accept any petition for a couple to divorce, unless it the divorce case was taken to

¹⁴³⁸ Jeenah, Na’eem, ‘Divorce by Force! The Case of Nasr Abu Zaid’ in *Al-Qalam*, September 1996 Issue, found on: <http://786.co.za/al-qalam/sept96/abuzaid.htm>

¹⁴³⁹ Jeenah, Na’eem, *ibid.*,

¹⁴⁴⁰ Abaza, Mona, ‘Civil Society and Islam in Egypt,’ *op.cit.*, p34

court by the married couple involved in it.¹⁴⁴¹ It is also important to remember that the decision of a forced divorce was also considered inappropriate and invalid, by an Egyptian government official from the Ministry of Internal Affairs, who had stated in *Al-Ahram* newspaper that “the Ministry was not entitled to apply the sentence since there exists no material or physical damage caused between the couple.”¹⁴⁴²

Therefore, to summarise the circumstances that surrounded the accusation, and then the conviction, of apostasy on Abu Zeid and the final decision that the court made, one main conclusion can be made, that seems rather obvious :

The case of Nasr Hamed Abu Zayd [*sic*] has the dubious distinction of being the first in the history of Egypt in which a court has ruled that a husband and wife must be divorced, against their will, because of the opinions and beliefs expressed by one of them.¹⁴⁴³

As the Centre for Human Rights Legal Aid, in Cairo, suggest:

The ruling that Dr. Nasr Hamed Abu Zayd [*sic*] is an apostate has created an atmosphere of blindness, tension, and intolerance which stunts the growth of thought in scientific research. As a result, academics and intellectuals may avoid undertaking research that might anger non-specialists and lead to a fate similar to that of Dr. Abu Zayd.¹⁴⁴⁴

The fact that Abu Zeid had publicly announced the *Shahadah*, which is accepted statement by any person who wishes to declare themselves as a devout Muslim, but this was still not accepted as being enough evidence to confirm his genuine belief in Islam. In offering the *Shahadah*, was offering his repentance and his return to Islam, but this did not appear to be the final result of the case that the prosecution team had a desired to achieve. They pursued on, in order to gain a conviction.

¹⁴⁴¹ Article XIX, *The Egyptian Predicament*, op.cit., p56. Also see *Al-Ahram*, June 15, 1995, as cited by Abaza, Mona, ibid, p29. Also see Sfeir, George, N., ‘Basic Freedoms in a Fractured Legal Culture’ op.cit., p13

¹⁴⁴² *Al-Ahram*, June 19, 1995, as cited by Abaza, Mona, ibid., p29-30

¹⁴⁴³ Article XIX, *The Egyptian Predicament: Islamists*, op.cit., p56. One positive outcome of this entire episode was that on 31 May 1995 -- two weeks before the divorce ruling -- the Cairo University Council had a second sitting of the appointment committee and promoted Abu Zeid to be a full Professor; Centre for Human Rights Legal Aid, (CHRLA), *From Confiscation to Charges of Apostasy*, Cairo, July 1995, no page number provided. Also see Abaza, Mona, ‘Civil Society and Islam in Egypt’ ibid., p30. However, that did not defer he and his wife having to leave Egypt to live and work at Leiden University in the Netherlands.

¹⁴⁴⁴ CHRLA, *From Confiscation to Charges of Apostasy*, ibid., no page number provided

Concerning all the points that have been raised, another important point was been made by Abu Zeid himself, which summarises the entire legal procedure and the inappropriate accusation of apostasy in the first place. This point he raised also declares the very underlying factor that both represents and defends everything Al-Islam (and Christianity and Judaism) stand for; '*iman* (faith), and not politics.

Abu Zeid points out what seems to have been overlooked in the *tafsir* of the Qur'an and Sunnah (Traditions) by the Muslims who undertook *takfir* against him, then took him to court, convicted him as being an apostate (*murtadd*) – and then punished his wife, who was forced to divorce him. The point they may have misunderstood, could be due to some unfortunate confusion and perhaps, ambiguity, in trying to identify the vital difference between 'what it is to be an apostate', compared to 'what it is to be a traitor or a quisling' :

They [the Islamists] want to link religious apostasy with the crime of betraying the nation; and so, they ignore an essential distinction: the freedom of human beings to choose their religion – a freedom upheld by the Qur'an – and 'treason' aimed at harming the modern nation for the benefit of its enemies.¹⁴⁴⁵

The fact that such confusion and misunderstanding of what these terms actually mean and represent is vital, in order to avoid further situations and accusations re-occurring, in a context where the word apostasy is factually incorrect. When the word is used incorrectly is one thing, but when it induces the members of public to kill the innocent 'offender,' then the situation becomes extremely dangerous. One final example will present how easy it can be, to become rather confused in understanding the genuine meaning of the concept of 'apostasy', which leads to its ambiguous use when blaming the perpetrators of the acts which do not include departing from a religion. These acts that are accused with the wrong word, certainly do not deserve the death sentence. This historical case, provides the decision that was provided by a leading *Mufti*, during the debate between those who argued that the world was flat, against those who argued that it was actually a sphere, or a globe. The latter were considered to have left their religion, having denied their '*iman* (faith):

¹⁴⁴⁵ Abu Zeid, Nasr Hamid, 'Met al Rijal wa Bada'at Muhakamatuh,' in *Adab wa Naqd*, no.101, January 1994, p67, as cited and translated from Arabic into English by Hirschkind, Charles, op.cit, p473 and in footnote 38

Furthermore, *fatwas* accusing researchers of apostasy are not limited to the social sciences, but also extend to the natural sciences, as in the case of the well-known *fatwa* issued by the Saudi Mufti, Ibn Baz, who accused all those who believed that the world was round as being apostates.¹⁴⁴⁶

8.4 The Case of Nawal El-Sa'adawi.

In the Arabic newspaper *Al-Quds al-'Arabi*, the AFP news agency reported that on Wednesday 18 April 2001 the well known Egyptian writer Nawal El-Sa'adawi had been accused of apostasy from Islam, by the Egyptian lawyer, Nahib al-Wahsh. The news article states that Al-Wahsh:

announced that he intends to submit his case calling for Nawal al-Sa'adawi to be divorced from her husband. He accuses her of apostasy (*al-riddah*), which in turn denies her the right of remaining the wife of a Muslim [man]. The lawyer wants al-Sa'adawi to be divorced from her husband, who is the intellectual Sharif Hatata."¹⁴⁴⁷

Having just been placed in the very same situation as Abu Zeid and his wife were placed in:

She's been accused of apostasy, or renouncing her religion. Because no Muslim can remain married to an apostate, she and Sharif are also threatened with divorce."¹⁴⁴⁸

Due to this claim, "Egypt's prosecutor-general has ruled that a case against feminist writer Nawal el-Saadawi [*sic*] on charges of apostasy will be heard in court."¹⁴⁴⁹

El-Sa'adawi is certainly not a 'new-comer' to such controversial confrontation with the state. In 1981, the late President Anwar Sadat imprisoned her following her

¹⁴⁴⁶ CHRLA, *From Confiscation to Charges of Apostasy*, op.cit., no page number provided

¹⁴⁴⁷ 'Legal proceedings to divorce Nawal al-Sa'adawi from her husband,' *Al-Quds al-'Arabi*, 19 April, 2001 front page, Volume 12, Issue 3711, translated by Emma Westney, Centre for Middle Eastern and Islamic Studies, University of Durham, England. For the original newspaper article, see 'Appendix C' Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur'an?' in the *Mediterranean Journal of Human Rights*, Faculty of Laws, University of Malta, Msida, Malta, Vol. 5, 2001, p321.

¹⁴⁴⁸ Hepburn, Samira, reporter on the television documentary *No Compromise*, broadcast on Sunday 28th October, 2001 in the BBC 2 series *Correspondent*; produced & directed by Fiona Lloyd-Davies. The programme's script can be found at:

http://news.bbc.co.uk/1/hi/english/static/audio_video/programmes/correspondent/transcripts/1619902.txt

¹⁴⁴⁹ 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1295000/1295075.stm .

Also see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1294000/1294921.stm

conviction as a political activist. Most of her work involves 'feminist' themes, and statements which are perceived to be openly polemic, especially when they are expressed in an Islamic state. In October 2001 in the BBC2 documentary '*No Compromise*,' Samira Hepburn described El-Sa'adawi as a person who "constantly challenges attitudes to sexuality, the practices of veiling and female circumcision and condemns the exploitation of religion for political ends."¹⁴⁵⁰ Four of her books were recently banned from the Cairo Book Fair in January 2001, and that was the main reason for her interview with *Al-Maydan*.¹⁴⁵¹ She claimed that she had wished "to discuss the recent banning of her books at the Cairo book fair, but the journalist [at *Al-Maydan*] focused on her well-known and controversial feminist views on sex and religion."¹⁴⁵²

The prosecution lawyer, Nahib al-Wahsh, had based his accusation on recent comments presented by the Grand Mufti of Egypt, Sheikh Nasr Farid Wasil, who argued that al-Sa'adawi had 'renounced the facts of [the] religion, which, by necessity, means she is excluded from the *da'irat al-Islam* (sphere of Islam).'¹⁴⁵³ He also presented her with the option of renouncing the statements that she had made thus, allowing her repentance. The incident that induced such a reaction by the Sheikh Nasr Farid Wasil, was an interview that El-Sa'adawi had recently undertaken for the weekly magazine *Al-Maydan*, where she is quoted to have stated that the " 'the *hajj* is a remnant of paganism', adding that in the Qur'an 'there is no textual evidence that makes wearing the *hijab* obligatory' for women."¹⁴⁵⁴ She was further quoted in the article as demanding a change in the present Egyptian law on inheritance, to gain the :

'equal rights of inheritance for men and women', which is incompatible with the *shari`ah* [Islamic law], that maintains that a man is entitled to inherit the same amount as two women.' She stated that 'the Egyptian media is out to make the population ignorant, as an

¹⁴⁵⁰ Hepburn, Samira, *No Compromise*, BBC 2, *ibid.*,

¹⁴⁵¹ *ibid.*

¹⁴⁵² *ibid.*

¹⁴⁵³ 'Legal proceedings to divorce Nawal al-Sa'adawi from her husband,' *Al-Quds al-'Arabi*, translation by Emma Westney, *op.cit.*. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur'an?', *Mediterranean Journal of Human Rights*, *op.cit.*, p321

¹⁴⁵⁴ *ibid.* Also see 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, *op.cit.*, and also see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, *op.cit.*

ignorant nation is easier to govern, control and exploit, and for dictatorial rule'.¹⁴⁵⁵

In his reaction to the article, Sheikh Nas Farid Wassel, the Grand Mufti of Egypt had officially declared that :

So we said that whoever has uttered these words, if they still insist on what they say and admit that these words are theirs and deny certain important facts about religion which are part of their duties as Muslims, then she will be accountable under Islamic law. She has chosen to be a Muslim and no one has forced her into it, therefore she has to abide by its rules.¹⁴⁵⁶

Following the initial article and the responses it had received from Sheikh Nas Farid Wassel, *Al-Maydan* then published another article, with the headline which declared:

Sheiks demand that Nawal El-Sa'adawi Apologise and Declare her Contrition in Front of a Group of Prominent Scholars.¹⁴⁵⁷

The newspaper kept on with relevant stories for several weeks, to inform the public of how the situation was developing. Hepburn assessed the situation that was left for El-Sa'adawi, because: "The *Mufti's* response was clear – if the quotes were accurate, Nawal had indeed insulted Islam."¹⁴⁵⁸

However, in her defence, Nawal al-Sa'adawi declared that the Grand Mufti of Egypt, Sheikh Nasr Farid Wasil, who had listened to tape recordings of her interview with *Al-Maydan*, had been listening to – and reading – something that had been twisted from what had actually been said. She claims to have merely referred to some historical facts.¹⁴⁵⁹ Samira Hepburn interviewed Mohamed Hassan Al-Alfy, the Editor-in-Chief at *Al-Maydan* and also Wahed, the journalist who had tape recorded his interview with El-Sa'dawi. The cassette tapes then led on to become the article. Hepburn listened to the tape cassettes of the interview and declares that it is very

¹⁴⁵⁵ 'Legal proceedings to divorce Nawal al-Sa'adawi from her husband,' *Al-Quds al-'Arabi*, op.cit., Also see 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, ibid. and see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, ibid. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur'an?', *Mediterranean Journal of Human Rights*, op.cit., p322

¹⁴⁵⁶ Sheikh Nas Farid Wassel, Grand Mufti of Egypt, quoted from *No Compromise*, BBC 2, op.cit., An English 'voice over' translated by the BBC.

¹⁴⁵⁷ Headline of *Al-Maydan*, quoted by Samira Hepburn, in *No Compromise*, BBC 2, op.cit., Translated by the BBC

¹⁴⁵⁸ Samira Hepburn, in *No Compromise*, BBC 2, op.cit.,

¹⁴⁵⁹ 'Egyptian writer faces apostasy trial', *BBC news report*, Tuesday, 24 April, 2001, op.cit.,

obvious there are certain pauses in the tape, which can only indicate that the full conversation had been edited. This was particular “just before she starts talking about Black Stone.”¹⁴⁶⁰ Hepburn confronted Wahed concerning the pauses, to which he denied that any editing had occurred. She also addressed this same point with Al-Alfy, the Editor-in-Chief. He initially denied that any editing had, claiming that the tapes were complete of the entire interview, but after more questions on this point, he stated:

It happened only many, two times, that we skipped two words or mini seconds, she was attacking political leaders and it was against her and it would be indecent to publish it.¹⁴⁶¹

As Hepburn suggests, stating negative remarks against political leaders may be somewhat offensive, so as to withdraw those statements from a newspaper article would protect the person who is being quoted. However, it does seem to be a contradiction in aiming to avoid politicians being offended, but not treating Imam's or devout believers of any religion with the same respect. Hepburn stated that:

Indecent or not they were happy to publish religious views, which brought everyone here to court where Sherif [El-Sa'adawi's husband] is waiting for the judgement.¹⁴⁶²

Added to the tape cassettes, El-Sa'adawi firmly defended her position, in asserting what the real reasons were that led to such a misunderstanding, and the aggressive reaction to the article:

the editor published the interview in a very distorted way, provocative way, with very big headlines, red and black ink. And then he cut what I said and put something, you know, all this to provoke people.¹⁴⁶³

Following the newspaper article, it cause a response from both Islamic scholars and members of the public. One letter published by *Al-Maydan*, demanded that El-Sa'adawi should be beheaded.¹⁴⁶⁴ The letter read as:

¹⁴⁶⁰ Samira Hepburn, in *No Compromise*, BBC 2, op.cit.,

¹⁴⁶¹ Mohamed Hassan Al-Alfy, in *No Compromise*, BBC 2, ibid.,

¹⁴⁶² Samira Hepburn, in *No Compromise*, BBC 2, ibid.,

¹⁴⁶³ Nawal El-Sa'adawi, in *No Compromise*, BBC 2, ibid.,

¹⁴⁶⁴ Samira Hepburn, in *No Compromise*, BBC 2, ibid.,

Nawal El Sa'adawi says things in her interview that don't just humiliate Islam but also do not respect Allah the greatest. We want her to be beheaded.¹⁴⁶⁵

Hepburn requested Al-Alfy to explain why such a sensitive letter, demanding the death penalty, should be made so public: "But how is printing a letter calling for her beheading protecting her?"¹⁴⁶⁶ In a rather alarming response, Al-Alfy denied all knowledge that the letter even existed, let alone that it had appeared in his newspaper. On being informed that as an Editor of a newspaper, the responsibility of its content rests with the editor, Al-Alfy replied: "I'm not responsible for everything published in the newspaper, you can't follow everything."¹⁴⁶⁷

Hepburn concluded with a very important point, which concerns such controversial cases where a person is blamed for apostasy or blasphemy, and especially when the public are seeking the death penalty, for a crime the accused have not yet been convicted of: "This denial of editorial responsibility seemed both absurd and horrifying."¹⁴⁶⁸ It is clearly very dangerous to provoke such tension amongst the public, as if the accused are acquitted from the case, as what occurred for El-Sa'adawi, the levels of hate and pro-death penalty groups will find it very difficult to accept the court's final ruling.

On assessing all the circumstances surrounding the case, and particularly the characters it involved, Hisham Kassem the publisher of the Cairo Times, argued that :

Dr. Sa'adawi is a very controversial character and she's quite brave. And what she had to say, whether it's true or not has created a stir and there was enough in there to keep responses going for a few weeks and it was certainly boosting the circulation of the paper.¹⁴⁶⁹

When confronted with the issue that a controversial stories would rapidly increase the sales of the newspaper Mohamed Hassan Alalfy: "We publish the newspaper to have reaction. If you don't have reaction you are a dead newspaper, right?"¹⁴⁷⁰ It seemed to

¹⁴⁶⁵ Letter in *Al Maydan, No Compromise*, BBC 2, *ibid.*, Translated by the BBC.

¹⁴⁶⁶ Hepburn, *No Compromise*, BBC 2, *ibid.*,

¹⁴⁶⁷ Al-Alfy, quoted from *No Compromise*, BBC 2, *ibid.*,

¹⁴⁶⁸ Hepburn, *No Compromise*, BBC 2, *ibid.*,

¹⁴⁶⁹ Hisham Kassem Publisher, Cairo Times, in *No Compromise*, BBC 2, *ibid.*,

¹⁴⁷⁰ Al-Alfy, Mohamed Hassan, Editor-in-Chief, *Al Maydan*, in *No Compromise*, BBC 2, *ibid.*,

be more important to gain sales, than address the theological debate on belief and faith in Islam.

8.4.1 The Issues assessed as blasphemous

The headline of *Al-Maydan* she refers to was certainly provocative, reading as : *Dr.Nawal El Sa'adawi says Hajj is a remnant of paganism.*¹⁴⁷¹ The article also stated that: "Dr.Nawal El-Sa'adawi says Hajj and the kissing of the Black Stone are paganism. Sheiks are unhinged regarding sex."¹⁴⁷² The article was published at the time when Muslims were returning to Egypt from Mecca having been on the Hajj. While circling the Ka'aba, (the large Black Stone) one of the sacred practices is to kiss the Ka'aba. Hence, such a statement by a Muslim in referring to this act as being that of pagan worship, is clearly going to cause an outrage in response. In order to emphasis how mis-quoted her comments had been, El-Sa'adawi stated that she is fully aware of the religious importance of Hajj in Islam, and what the word itself refers to. She also declares that she is fully aware that to abuse the word on its own, is to abuse Islam:

The word Hajj itself is very sacred, you know, because it is considered the fifth Pillar of Islam. So, when you say Hajj is paganism it means you are breaking Islam, one of the pillars, you see.¹⁴⁷³

As an overview of what she had believed were the real issues she had discussed during the interview, and how the information that had been published had been either fabricated, or exaggerated to the point of which she had been entirely misquoted :

I wish they'd really put it in correctly. I spoke
.....how social and economic change is happening and how we have to modify these laws and to educate people more about the essence of Islam and to change some of the laws. And I have written that many times before and nothing happened.¹⁴⁷⁴

As she declared, the points she had discussed was not a new topic for her to publicly discuss. She has been covering the very same topics throughout her entire career, which includes her thirty or more books on these same issues. With this being the case, it is important to note that this seems to indicate a prominent political aspect surrounding the accusation of apostasy, as opposed to her having genuinely insulted

¹⁴⁷¹ Headline of *Al-Maydan* on, quoted in *No Compromise*, BBC 2, *ibid.*, Translated by the BBC.

¹⁴⁷² Article in *Al-Maydan*, quoted in *No Compromise*, BBC 2, *ibid.*, Translated by the BBC

¹⁴⁷³ Nawal El-Sa'adawi, in *No Compromise*, BBC 2, *ibid.*,

Islam. The political basis surrounding the accusation of someone blaming another for lacking religious faith, seems to overwhelm any theological justification of the same accusation. From a theological perspective, such an accusation is prohibited, as has been discussed in the Chapter on *takfir al-Muslim*. It is also important to assess why the accusation was raised now, as she had been consistent with the same comments over several decades, and if they were guilty of being blasphemous, one would have to question why she could have repeatedly stated these insults for all these years – but yet, no accusation of apostasy had been raised before now.

Concerning whether the announcement of taking this case to court would be considered legitimate, al-Sa'adawi's husband stated in April that "they'd not been informed of the decision, but – if true – it'd be a licence to kill her. He added that neither he nor his wife planned to leave Egypt."¹⁴⁷⁵

El-Sa'adawi's first appearance in court was on 18 May, when she was presented with the lawsuit against her concerning the comments published in the *Al-Maydan* magazine.¹⁴⁷⁶ This was followed on 23 May with the more formal court hearing, which followed the necessary investigations that were undertaken during interviews with El-Sa'adawi by the Prosecutor-General Maher Abdel-Wahed. During the court hearing on 23 May, Prosecutor-General Maher Abdel-Wahed rejected the accusation in the crime of 'apostasy' held against El-Sa'adawi. This rejection of permitting any legal case on this issue was based on the grounds that there was a lack of any genuine evidence for such a conviction and everything that had been presented by the prosecution, did not warrant a court hearing. The State Prosecutor's office stated clearly, when concerning whether El-Sa'adawi's written opinions made her an

¹⁴⁷⁴ Nawal El-Sa'adawi, in *No Compromise*, BBC 2, *ibid.*,

¹⁴⁷⁵ *ibid.*,. Also see 'Egyptian feminist writer faces apostasy trial,' *BBC World Service*, Tuesday, 24 April, 2001, *op.cit.* Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur'an?', *Mediterranean Journal of Human Rights*, *op.cit.*, p322

¹⁴⁷⁶ Egyptian Committee for Solidarity with Nawal El-Saadawi, *Saadawi Receives Official Court Notification*, Cairo, June 3, 2001, found on <http://www.geocities.com/nawalsaadawi/articles/committeestatementJune3.htm> Also see Hassan-Gordon, Tariq, 'Saadawi rejects lawsuit alleging she 'scorned Islam', *Middle East Times: International Edition*, 25 May, 2001, found on <http://metimes.com/2K1/issue2001-22/methaus.htm>

apostate or not, that : “there is nothing in articles published by Nawal Al Saadawi which justifies the charge.”¹⁴⁷⁷

However, the case was not been completely dropped out of the entire legal arena, because the lawyer, Nabih al-Wahsh on hearing the State Prosecutor’s decision, then filed a further case to be heard in the Cairo Personal Status Court. That case was held on Monday June 18, 2001. The aim of the second case for al-Wahsh, was to achieve his demand that Nawal El-Sa’adawi, should be divorced from her husband, Sherif Hattata, for reasons that al-Wahsh also based on the grounds of ‘apostasy.’ He also argued that it was legitimate for him to bring this claim to court, due to the *Hisba* law (law 3/1996).¹⁴⁷⁸ This *Hisba* law had been amended in Egypt in 1996, following the case of Nasr Hamid Abu Zeid in 1995.¹⁴⁷⁹ The amendment on *Hisba* law 3/1996 changed the existing situation that had occurred before then, where any member of the community could raise such an accusation against anyone whom they felt had personally offended them. In 1996 this position was changed, so that any case to be taken to court could only be initially assessed by the State Prosecutor, who would then deem whether it was valid or not to be heard in court as an authentic *hisba* case.¹⁴⁸⁰ On 18 June the case on El-Sa’adawi was held, but the actual hearing of the case was delayed until 9 July. The delay occurred because of al-Wahsh’s reaction to the amendment:

¹⁴⁷⁷ Hassan-Gordon, Tariq, ‘Lawsuit against Saadawi tossed out,’ *Middle East Times: International Edition*, 1 June, 2001, found on <http://metimes.com/2K1/issue2001-22/methaus.htm> Also see El-Magd Nadia Abou, ‘The price of freedom’, *Al-Ahram Weekly*, 31 May - 6 June 2001, Issue No. 536, found on <http://www.ahram.org.eg/weekly/2001/536/eg7.htm> Also see Egyptian Committee for Solidarity with Nawal El-Saadawi, *Saadawi Receives Official Court Notification*, *ibid.* Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur’an?’, *Mediterranean Journal of Human Rights*, *op.cit.*, p323

¹⁴⁷⁸ Egyptian Committee for Solidarity with Nawal El-Saadawi, *ibid.* Also see Egyptian Committee for Solidarity with Nawal El-Saadawi, *Clarification Regarding the divorce case filed against Dr. Nawal El-Saadawi and Dr. Sherif Hetata*, Cairo, May 26, 2001, found on <http://www.geocities.com/nawalsaadawi/articles/clarification.htm> Also see El-Magd Nadia Abou, ‘The price of freedom’, *Al-Ahram Weekly*, *op.cit.*, Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ *ibid.*, p324

¹⁴⁷⁹ Egyptian Committee for Solidarity with Nawal El-Saadawi, *Monday, June 18th, 2001:*, Cairo, June 18, 2001, found on <http://www.geocities.com/nawalsaadawi/articlesby/June18.htm> Also see Sidahmed, Abdel Salam, ‘Freedom of Religion, Apostasy and Human Rights : An Appraisal,’ *op.cit.*, p140

¹⁴⁸⁰ Mona Zulfican, an international lawyer, described the legal process; “Anybody can file a complaint, which is a constitutional right but you have to go to the public prosecutor. Public prosecutor is the only authority that is competent to press charges and prosecute and this is intended to eliminate abuse,” Mona Zulfican, in *No Compromise*, BBC 2, *op.cit.* Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ *ibid.*, p324

Nabih al-Wahsh's claim is that this stipulation is unconditional, and is taking this case to the High Constitutional Court. The case was therefore postponed to July 9th, to enable the judges to consider Al-Wahsh's request.¹⁴⁸¹

The case to be held on 9 July was then adjourned until 30 July because: "The court in Cairo said it would give its decision by the end of the month as to whether the case against her should be heard."¹⁴⁸² The campaign against El-Sa'adawi was very sensitive and became quite controversial, as :

Nawal El-Saadawi has been called 'the new Salman Rushdie' - a term she vigorously rejects. She considers herself a good Muslim, pointing out that she studied and respects Islam.¹⁴⁸³

However, as there are 'two sides to every story' not every Muslim supports this attack against the freedom for each person to express their own opinion, no matter what the content of that opinion holds. For example :

Khaled Dawoud of the *Al-Ahram* newspaper, says whether she wins or loses this case, this sends a stark warning to other writers. 'I think it is now narrowing further the margin of freedom of expression here,' he said. 'I am sure now within this atmosphere any intellectual, any novelist, will have to take into consideration these kinds of pressures and the presence of these groups and the presence of these kinds of lawyers who are ready to sue you just because of your ideas,' he added. On the streets of Cairo, opinion about this case is divided. Liberals see the lawyer as a cynical opportunist, out to make a name for himself.¹⁴⁸⁴

On 30 July 2001, the court in the Cairo Family Affairs Tribunal made its final decision on whether to pursue the accusation of apostasy on Nawal El-Sa'adawi and whether she should be divorced from her husband of 37 years. In their final decision, the court dismissed the entire case from the legal process.¹⁴⁸⁵ The judges ruled that

¹⁴⁸¹ Egyptian Committee for Solidarity with Nawal El-Saadawi, Monday, June 18th, 2001, op.cit. Also see O'Sullivan, Declan, *ibid.*, p324

¹⁴⁸² 'Egypt apostasy trial adjourned' *BBC news report*, Monday, 9 July, 2001 found on http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1430000/1430497.stm

¹⁴⁸³ 'Egypt apostasy trial adjourned' *BBC news report*, Monday, 9 July, 2001, *Ibid.*, Also see Gardner, Frank 'Court to hear Egypt apostasy case' *BBC news report*, Monday, 9 July, 2001, found on http://news.bbc.co.uk/hi/english/world/middle_east/newsid_1429000/1429415.stm

¹⁴⁸⁴ 'Egypt apostasy trial adjourned' *BBC news report*, Monday, 9 July, 2001, *Ibid.*, Also see Gardner, Frank, *ibid.*

¹⁴⁸⁵ 'Egyptian 'infidel' case dismissed' *BBC news report*, Monday, 30 July, 2001, found on

there was no legitimate evidence to validate the accusations, as “no individual had the right to bring such a case” to court.¹⁴⁸⁶ In response to the court’s final decision to clear her name, and hold the respect for her marriage to her husband “El-Saadawi, 70, told the Associated Press news agency that the court’s ruling was ‘a victory for free thought and expression.’”¹⁴⁸⁷

In response to this court verdict, *Al-Maydan*, the Egyptian weekly newspaper which published their interview with El-Sa’adawi, the content of which initiated this entire court case procedure and accusations of ‘apostasy,’ was not satisfied with the court decision. In response to El-Sa’adawi’s defence, where she stated that *Al-Maydan* had misquoted her and distorted her comments that were made in the interview :

The newspaper, for its part, has filed a criminal libel case against Dr. el-Saadawi, for alleging that her statements had not been reported accurately.¹⁴⁸⁸

The prosecution lawyer Nabih el-Wahsh, was also not satisfied with this court decision and “told the Associated Press that he intended to challenge the court’s verdict, although under Egyptian law the ruling cannot be appealed.”¹⁴⁸⁹ As the legal battle still seems to continue, at least the right for any person in the street to take another person to court under the accusations of blasphemy and/or of apostasy against God, the Qur’an, or anything related to being anti-Islamic, seem to have been dealt with by the court. They seem to have avoided deepening the problems that this particular case may have developed any further. The change in the Egyptian law, as stated above, in the *Hisba* law 3/1996, means that only such accusations can be taken to the Prosecutor General, who will then decide if the case is worthy to undergo the full legal process through the court system. The court decision on 30 July strongly supported the decision of the Egyptian Prosecutor General on 23 May, where :

An earlier attempt by Mr el-Wahsh to have Dr el-Saadawi charged with insulting Islam was rejected by the Egyptian prosecutor general.¹⁴⁹⁰

http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1464000/1464549.stm Also see Samira Hepburn, in *No Compromise*, BBC 2, op.cit.

¹⁴⁸⁶ ‘Egyptian ‘infidel’ case dismissed’ *BBC news report*, Monday, 30 July, 2001, *ibid.*

¹⁴⁸⁷ *ibid.*

¹⁴⁸⁸ *ibid.*

¹⁴⁸⁹ *ibid.*

¹⁴⁹⁰ *ibid.* Also see Egyptian Committee for Solidarity with Nawal El-Saadawi, ‘Clarification Regarding the divorce case filed against Dr. Nawal El-Saadawi and Dr. Sherif Hetata’ Cairo May 26, 2001, found on <http://www.geocities.com/nawalsaadawi/articles/clarification.htm>

8.4.2 The profile of the prosecution lawyer: Nabih el-Wahsh.

In an interview with the BBC, El-Sa'adawi stated that she was astonished that the lawyer Nabih El Wahsh was 'mentally disturbed.'¹⁴⁹¹ It will be useful to discuss the background to El Wahsh motives, for taking El-Sa'adawi to court, using *Hisba* law. Hepburn mentions that, as the public prosecutor dismissed the case, as it had no legitimacy to become a court case, El Wahsh still pursued it. Hepburn declared that although his second "case against Nawal was illegal, it seemed that the court was afraid to throw it out immediately for fear of public opinion."¹⁴⁹² In offering why he had sought a second hearing, despite the public prosecutor's rejection of it, El Wahsh declared that:

The public prosecutor is not a *Mufti* and he doesn't have the last word. He made a mistake when he dismissed the case and didn't listen to the evidence.¹⁴⁹³

To elaborate on this point, and defend the necessity to demand a court hearing, El Wahsh argued that there is a need to confront the normal 'man-made' law in society, especially if the law was seen to obviously contradict God's Law in Islam. As he declared:

In Egypt if the law contradicts Islam then Islam will have priority over the law. I have nothing to do with the law; I mean I can't abide by the law and dismiss the Holy books. We have to do what the Prophet told us to do and reject what's prohibited. If she'd admit that what she said was wrong, then I'd drop the case and that would be the end of it. But if she clings on stubbornly then I'll be stubborn too and stand against her until I finish her off.¹⁴⁹⁴

Hepburn commented on the reasons why El Wahsh chose to defend his use of *Hisba* in this case:

In his self-appointed role as guardian of the Faith, Nabih El Wahsh had invoked the ancient Islamic law of *Hisba*, commonly used in the seventh century to regulate market trading.¹⁴⁹⁵

¹⁴⁹¹ *ibid.*

¹⁴⁹² Samira Hepburn, in *No Compromise*, BBC 2, *op.cit.*,

¹⁴⁹³ Nabih El-Wahsh, in *No Compromise*, BBC 2, *ibid.* An English 'voice over' translated by the BBC

¹⁴⁹⁴ Nabih El-Wahsh, *ibid.* An English 'voice over' translated by the BBC

¹⁴⁹⁵ Samira Hepburn, in *No Compromise*, *ibid.*,

Nabih El Wahsh also defended his belief in the freedom of expression, and the freedom for each Muslim to say and believe in what they decide to. He actually made a statement that promotes the very tolerant message of Islam, where God alone will decide on Judgement Day, how each person had led their life. This interpretation of Islam promotes *takfir*, as no person has the authority or the right to do blame another of whether they believe in God or not. This statement by El Wahsh then, clearly seems to contradict the argument he gave about confronting human made law if it interferes with God's law. Concerning El Sa'adawi, he declared his tolerance, to the extent that:

She can believe what she likes; she can worship what she likes. Dr El Sa'adawi don't direct your poisonous thoughts towards our faith because religion doesn't need anyone to change it. God will protect it.¹⁴⁹⁶

One would have to ask El Wahsh, that if God will protect His religion, and God will protect His devout followers who choose to follow genuine faith in God, then how can a human being have the audacity to take God's place and undertake this protection? If God will deal with all things, surely no human being can take another to court questioning the person's religious faith, by using a law that was created to protect people buying food and goods at a market to be treated fairly by the traders.

El Sa'adawi's husband Sherif Hetata, suggests that what actually encouraged El Wahsh to insist on gaining a court case hearing was due to other factors, that are certainly irrelevant to either protecting God or protecting Islam:

In a situation where there is, where there is cultural intolerance, where there is a lot of conservative Islamic thinking and where there is a lot of fanaticism at the moment; he [El-Wahsh] felt that this was a good opportunity for him to raise a case that would explode in the public eye and make him a kind of hero.¹⁴⁹⁷

Hepburn also highlights the other court cases that El Wahsh has been engaged in, including taking the Queen of England to court, in his belief that the Queen had conspired to have her own daughter in law killed:

That 'hero' was a lawyer named Nabih El Wahsh. His infamous case against the British royal family for

¹⁴⁹⁶ Nabih El-Wahsh, *ibid.* An English 'voice over' translated by the BBC

¹⁴⁹⁷ Sherif Hetata, in *No Compromise*, BBC 2, *ibid.*

orchestrating the death of Princess Diana earned him just a few wry column inches in the world press. But in Egypt his maverick court actions could do real harm.¹⁴⁹⁸

Hepburn requested what exactly El Wahsh had witnessed as having been an offence to and an attack against Islam in the Al-Maydan article. El Wahsh willingly explained what had provoked him to start his legal battle. He argued that:

Firstly, her denial of the Hajj, which is one pillar of Islam. She categorically said that Hajj and the kissing of the Black Stone are remnants of paganism. She also denied a verse in the Qur'an, which says that men are entitled to twice the inheritance of women. *Who is she to demand equality, is she greater than God?*¹⁴⁹⁹ [Italics added for emphasis].

8.4.3 A Summary of El-Sa'adawi and her acquittal for apostasy

Following the final court decision which allowed her to remain married and be a free woman, El Sa'adawi assessed the whole picture of her life, her faith and her overall mission in this world, in being a devout Muslim:

Here is my country, my people, my language, the Arabic. Here is my battles, my struggle, my pain, my love, my happiness. I cannot be really separated from my sea. This is my sea and I'm like a fish so that's why I am, I am going to stay here until my death. This is my grave here. That's my birth and my grave.¹⁵⁰⁰

However, although El Sa'adawi is now a free woman, Hepburn speculates what possibilities the future may bring for her and other Muslims who publicly announce their personal opinions on sensitive issues, that might also include religious matters. Hepburn suggests that although the court dismissed the entire case because the prosecution team had no valid material which could warrant a court hearing, other people such as Abu Zeid and El Sa'adawi may still suffer the same. Referring to El Sa'adawi's present situation, Hepburn raises an important fact that it would be wise for other Muslims to keep in mind:

But she has a dilemma. Either she can leave the country and speak freely about the situation in Egypt or she can stay and face imprisonment and possible physical attack

¹⁴⁹⁸ Samira Hepburn, *ibid.*,

¹⁴⁹⁹ Nabih El-Wahsh, *ibid.* An English 'voice over' translated by the BBC

¹⁵⁰⁰ Nawal El-Sa'adawi, *ibid.*

every time anybody chooses to exploit religion for personal or political gain.¹⁵⁰¹

Sheikh Nas Farid Wassel had also made it clear that:

Freedom of expression, freedom of speech, freedom to be creative and freedom to act in any way is allowed but within the boundaries set by Islamic law.¹⁵⁰²

The human rights lawyer, Hamdi Assyuti, offered to defend El-Sa'adawi, free of charge because he was aware of the threat that the case had posed to the general human rights of all Egyptians. Assyuti stated that:

This case certainly and regrettably gives a bad impression about freedom of expression, freedom of speech and freedom of creativity. So that just to discuss an idea and put an idea on trial before the judge would be catastrophic. This is a disaster.¹⁵⁰³

As an overall concluding point, he raises the main factor that such cases of apostasy are based on. He mentions an important point that can be broadened to include all three monotheistic religions. The religions have one main revealed message from God – but it is up to the human interpretation and exegesis of the revealed message that presents what each person decides the message will be. As the interpretations will differ, whatever is the accepted interpretation, will effect all other believers of that same religion. Assyuti suggests that:

The problem is not religion; it's people's interpretation of it. If we continue to experience restrictions on freedom of speech it will become a general pattern and that concerns me.¹⁵⁰⁴

¹⁵⁰¹ Hepburn, *ibid.*,

¹⁵⁰² Sheikh Nas Farid Wassel, Grand Mufti of Egypt, quoted from *No Compromise*, BBC 2, *ibid.*

An English 'voice over' translated by the BBC

¹⁵⁰³ Hamdi Assyuti, *ibid.* An English 'voice over' translated by the BBC

¹⁵⁰⁴ Hamdi Assyuti, *ibid.* An English 'voice over' translated by the BBC

Following this point, a Tunisian human rights lawyer, Mohamed Gmour, indicated that a court case such as this, creates a far greater effect and involves much more than the court case result for the plaintiff and the defendant. Gmour suggested that the case has a much larger impact, at an international level:

This case humiliates not only the image of Egypt but also of Arabs and Islam. Some people claim they're defending Islam but it's in a very strange way.¹⁵⁰⁵

Hepburn also made an equal suggestion that would defend the need for a new phase in the Islamic world, by promoting *takfir* as the path forward, in order for the non-Muslim West to change their present approach and lack of understanding the genuine religion of Islam. The level of ignorance of Al-Islam in the West can be easily identified with the use of labels such as 'Islamic terrorists,' as often cited in the Western media. However, Hepburn argues that:

Egypt was once the moderate face of the Arab world. But even before the attacks of September the 11th, an Islamic backlash had bred a new intolerance.¹⁵⁰⁶

8.5 Conclusion.

Ahmad Jalal Hammad in his work *Hurriyyat al-Ra'y fi'l Maydan al-Siyasi*, indicates that it is clear that as, "*hisbah* being a pillar of the faith and a cardinal principle of the *Shari'ah* offers a basis which is sufficiently authoritative to validate freedom of expression in political and governmental affairs."¹⁵⁰⁷ Also, the view expressed by Mustafa Al-Siba'i, in his work *Ishtirakiyyat al-Islam*, stimulates the central point of *hisbah* is the general well-being and stability of the whole community. He argues that *hisbah* essentially builds the foundation on society of what can be identified as the 'social liberty' (*al-hurriyyah al-ijtima'iyyah*), as : "it confers upon those who are capable to form an opinion, the liberty to express that opinion or even to criticise others on an issue of social concern."¹⁵⁰⁸ This very view is equally declared by 'Abd al-Karim Zaydan, in his work *Majmu'at Buhuth Fiqhiyyah*, where he defines that "the

¹⁵⁰⁵ Mohamed Gmour, *ibid.* An English 'voice over' translated by the BBC

¹⁵⁰⁶ Hepburn, Samira, *ibid.*

¹⁵⁰⁷ Hammad, Ahmad Jalal, *Hurriyyat al-Ra'y fi'l Maydan al-Siyasi*, Dar al-Wafa' li'l-Tiba'ah wa'l-Nashr, Cairo, Egypt, 1408/1987, p221

¹⁵⁰⁸ Al-Siba'i, Mustafa, *Ishtirakiyyat al-Islam*, second edition, Dar al-Qawmiyyah li'l-Tiba'ah wa'l-Nashr, Damascus, Syria, 1379/1960, p52

principle of *hisbah* necessitates the freedom of the individual to formulate and express an opinion.”¹⁵⁰⁹

As stated by Ibn Taymiyya, the main factors that would be beneficial for the whole community, would be if the *muhtasib* upheld the virtues of *‘Ilm* (knowledge), *Rifq* (kindness) and *Sabr* (patience). Also, if the three main factors in the active role of the *muhtasib* included the issues that relate to i) the rights of God, ii) the rights of people, and iii) issues relating to both i) and ii) then it becomes clear that the first category focused on maintaining the punctuality of prayers for believers and generally looking after the Mosque. The second category dealt with community affairs, focusing on the general honesty of traders in the markets, such as the accuracy of weighing the goods being sold. The third category was purely an administrative role, such as making sure the roads were kept clean and that the street-lights worked.

With this general overview of the job description, it is fairly obvious that the role of the *muhtasib* did not involve the questioning of whether a Muslim in the community had decided to change their personal religious belief or not. Hence, this is the very reason for the existence of *takfir* in Islam, which means that it is prohibited for one believer to accuse someone else of whether they believe in God or not. Also, as stated in the Qur’an, it will be in the Hereafter, after a natural death for every human, when God will punish those who rejected faith and refused to believe in Him in this life. It is not for a human to accuse another, let alone punish those who reject faith in God in this life.

In retrospect, if *Hisba* law was established ‘to validate freedom of expression in political and governmental affairs’ and to secure the ‘stability of the whole community’, and should be used as the foundation of society to gain ‘social liberty’ (*al-hurriyyah al-ijtima’iyyah*); and if it is also present to allow the openness for each person to freely express their own personal opinions and even criticise another’s opinion – then, therefore, for both Abu Zeid and El-Sa’adawi, *Hisba* law has been misused to a great extent, in moving away from its authentic legal role in the market, monitoring market traders.

¹⁵⁰⁹ Zaydan, ‘Abd al-Karim, *Majmu’at Buhuth Fiqhiyyah*, Baghdad, Iraq, Maktabat al-Quds, 1395/1975, p128

It was obviously not a law that was created for the sole use it has been implemented for, where Abu Zeid and his wife still remain as faithful, devout Muslims, but suffer with the stigmatism of 'apostasy', which also includes death threats against them, by other believers. Also, although El-Sa'adawi was acquitted from the case that accused her of apostasy by using *Hisba* law, she has clearly stated that in modern times :

The *Hisba* law is not used at all. I am the only woman in Islamic history that they applied *Hisba* to it, you know, it's so ridiculous.¹⁵¹⁰

¹⁵¹⁰ Nawal El-Sa'adawi, *No Compromise*, op.cit.

CHAPTER NINE

9.0 APOSTASY CHARGES AND VIGILANTE RESPONSES IN CONTEMPORARY EGYPT: 1990-2001

9.1 Introduction.

This Chapter will assess some recent modern day cases of blasphemy and apostasy that have occurred in Egypt between 1990 and 2001. The court cases include the conviction of Salah al-Din Muhsin who was imprisoned in January 2001. Also it covers the case of Farag Foda who was convicted of blasphemy and was then shot dead in the street in 1992. The case of Naguib Mahfouz, the first Egyptian Nobel Prize winner, who was accused of blasphemy and was later stabbed in the neck, during a knife attack in 1994, is also covered. The cases also clearly show that not all accusations of these acts that are held as blasphemous, are accepted to be legitimate claims in the court rulings. Hence, the acquittal of Haider Haider in the court case that was raised by those who had accused him of writing blasphemous books. His case will also be covered. The counter argument against the attacks and killings in the street is presented with an explanation of *Takfir al-Muslim*; as this concept prohibits any Muslim to blame another Muslim of being an 'unbeliever', or in deciding that a Muslim lacks their 'iman (faith) in Islam. In defining the difference between 'Apostasy' and 'Treason,' this will indicate the potential misguided understanding in both *Sharia'h* (Islamic Law) and Islamic theology when declaring that both acts are equal with each other.

Mohammad Sa'id al-'Ashmawy, a prominent Islamic scholar and *Shari'a* judge, presents his position on the reasons behind both legal and physical attacks on writers and intellectuals in Egypt, that have taken place in recent years. Al-'Ashmawy argues that :

Militant Islamists start from the premise that Islam is the sole valid and complete religion and abrogates all other religions. All non-Muslims, it follows, are infidels and should be converted to Islam. An essential part of their creed is the belief that politics is an integral part of the faith, a claim they present without justification or clarification. It is important to distinguish between Islam as history and Islam as religion. If by Islam the Islamists mean a religion, by claiming politics as a pillar of the faith, they have added a sixth to the recognised five pillars of Islam – the recitation of the creed, prayer,

fasting, pilgrimage to Mecca, and charity. Such a claim undermines orthodox Sunni Islamic doctrine.¹⁵¹¹

He further suggests that if the emphasis of the militant Islamists were defining Islam as being the history of Muslim people, then clearly in this context, politics would be an integral part of the historical events. With this understanding then, "Their claim would be unremarkable and their arguments against the civil state, incorrectly referred to by them as secular, would collapse."¹⁵¹² Al-'Ashmawy expands these comments, and makes reference to the policy of these militant groups, who confront the present government systems in Islamic countries, by presenting the question to the population : 'Do you wish to be ruled by God or by man?' Al-'Ashmawy raises an interesting point here, commenting that this is their form of methodology in portraying their message, because "their question is an invitation to bestow the ruler with the divine right to oppress the ruled. It is an invitation to authoritarianism in the name of God."¹⁵¹³ He concludes that such an approach towards Islam is not respecting or representing the belief in faith as a religion, but more obviously their agenda is using the name Islam to promote 'nationalism.' However, it becomes rather clear that using the label of 'Islam,' by mutating the religion and reforming it into 'nationalism,' this becomes a threat to the genuine national interests of any Muslim state or nation. The process of implementing the name of Islam in this manner "erodes the loyalty of the citizen to his country and condemns those who oppose it as traitors and apostates. It is a certain recipe for sectarian strife and racism."¹⁵¹⁴ There have been several attacks on writers and scholars, particularly in Algeria and Egypt, in recent years. As Donna Arzt states, relating to these attacks, reiterating the points raised by Mohammad Sa'id al-'Ashmawy, above :

Even more disturbing are the non-official vigilante cases, which often result in brutal assassinations, ordered without trial by Islamic revivalists in countries where they threaten government stability. While militants in Egypt and Algeria have killed government officials, foreigners, religious minorities,

¹⁵¹¹ Al-'Ashmawy, Mohammad Sa'id, 'What are the Militants after?,' *Index on Censorship*, May/June, London, Vol.1/2, 1994, p119-120. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur'an?' in the *Mediterranean Journal of Human Rights*, Faculty of Laws, University of Malta, Msida, Malta, Vol. 5, 2001, p317

¹⁵¹² al-'Ashmawy, *ibid.*, p120

¹⁵¹³ *ibid.*, p120

¹⁵¹⁴ *ibid.*, p120. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt : Is The Death Penalty Written in the Qur'an?', *Mediterranean Journal of Human Rights*, *op.cit.*, p318

and average Muslim civilians in the course of their struggles for power, when they target intellectuals they often rely on the Shari'a as a rationale.¹⁵¹⁵

As a broader overview on these points, of such vicious attacks becoming more physical, as opposed to remaining merely academic and/or of theoretical verbal attacks, the *Article XIX* human rights organisation declared that :

Lives, even, are at stake. Farag Foda, a noted secular Muslim writer, was murdered by Islamist extremists in June 1992. Naguib Mahfouz, Egypt's first Nobel prize winning novelist, barely escaped with his life when he was the victim of a politically motivated stabbing by an Islamist militant in 1994. At the same time, writers and thinkers have been targeted by the state and harassed by its religious institutions. In May 1997, Allaa Hamed began a one-year prison sentence imposed on account of his writings after an appeal court upheld his conviction and sentence by a court in 1992.¹⁵¹⁶

The Egyptian legal system has one specific law that establishes the position in regard to how to treat a case that would involve a publication being argued to be 'anti-religious'.

As Kamali explains :

Anti-religious publications in Egypt are normally treated under the provisions of the Penal Law no.29 of 1982 which penalise offenders to a term of 'imprisonment ranging from six months to five years and fine of 500 to 1000 Egyptian pounds' (Art.928).¹⁵¹⁷

The three cases mentioned above, involving Farag Foda, Naguib Mahfouz, and Allaa Hamed together with some other cases with very linked circumstances and rather similar consequences, will now be assessed in more detail. The most recent cases for the conviction of blasphemy against either Islam and/or the Qur'an and the Prophet Muhammad involved the Egyptian Salah al-Din Muhsin, who was convicted of blasphemy, and sentenced to prison for three years, in January 2001.

¹⁵¹⁵ Arzt, Donna E., 'Religious Human Rights in Muslim States of the Middle East and North Africa' in *Religious Human Rights in Global Perspective: Religious Perspectives*, 1996, John Witte, Jr. and Johan D. van der Vyver (eds.), Martinus Nijhoff Publishers, p.387-454. This is also an article in *Emory International Law Review*, Volume 10, Number 1, Spring 1996, Emory University School of Law, Atlanta, Georgia, USA

¹⁵¹⁶ Article XIX, *The Egyptian Predicament: Islamists, The State and Censorship*, 1997, Article XIX, London, p48 Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' op.cit., p319

¹⁵¹⁷ Kamali, Mohammad Hashim, op.cit, p291. Also see O'Sullivan, Declan, *ibid.*, p319

9.2 The Case of Salah al-Din Muhsin.

On 27 January, 2001, the Egyptian writer Salah al-Din Muhsin was sentenced by the state security court in Cairo, to three years in jail with the added penalty of hard labour.¹⁵¹⁸

This three year sentence was an extension to Muhsin's original conviction of blaspheming against Islam in June 2000, as the initial sentence was a suspended six months prison term that had been issued by the "State Security Court for Misdemeanours in Giza on 17 June 2000. On 8 July he received a suspended sentence of six months' imprisonment and was subsequently released."¹⁵¹⁹ However, Salah al-Din Muhsin "was being tried for a second time, after prosecutors argued that a six-month suspended jail sentence handed down at his first trial last June was too lenient."¹⁵²⁰

Salah al-Din Muhsin was initially arrested in March 2000, following the private publication of his books, and was taken to court in June. The case accused him of describing the Qur'an as a book of 'holy ignorance.' "He was accused of spreading extremist ideas - a charge which usually carries a five-year sentence"¹⁵²¹ and he was sentenced to a six-month suspended jail term.¹⁵²² Muhsin faced charges of promoting a deviant ideology with the aim of denigrating Islam. In his several books, he expresses views that describe Islam as the main source of 'backwardness' of many Islamic countries.¹⁵²³ During his interrogation, Muhsin stated that he did not believe in God or religion, and also admitted that that he was dedicated to promoting his views and beliefs via his writings. As reported in *Al-Ahram Weekly* newspaper, :

Mohsen [*sic*] has openly stated that he is an atheist. He has also called for the establishment of an Egyptian atheists' association. In Egypt, such

¹⁵¹⁸ BBC World Service, *Egyptian Writer to Jail*, 27 January, 2001, on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_1139000/1139918.stm Also see Amnesty International, *EGYPT: Muzzling Civil Society AI-index: MDE 12/021/2000 19/09/2000* Also found on <http://web.amnesty.org/ai.nsf/Index/MDE120212000?OpenDocument&of=COUNTRIES\EGYPT>

¹⁵¹⁹ Amnesty International, *EGYPT: Muzzling Civil Society*, op.cit.

¹⁵²⁰ *Egyptian Writer to Jail*, 27 January, 2001, *ibid.*, Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' op.cit., p325

¹⁵²¹ BBC World Service, 8 July, 2000, *Egyptian 'Blasphemer' Escapes Heavy Sentence*, on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_825000/825266.stm

¹⁵²² *Ibid.* Also see Amnesty International, *EGYPT: Muzzling Civil Society AI-index: MDE 12/021/2000 19/09/2000*, op.cit.

¹⁵²³ Halawi, Jailan, 'Shudders of Rage,' *Al-Ahram Weekly*, 18 - 24 May 2000, Issue No. 482, found on <http://www.ahram.org.eg/weekly/2000/482/eg11.htm>. Also see Halawi, Jailan, 'Detained for deriding Islam,' *Al-Ahram Weekly* 13 - 19 April 2000 Issue No. 477 Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' op.cit., p325

blasphemous sentiments are not only illegal, but widely considered to be contemptuous of the religious sensibilities of the great majority of the population.¹⁵²⁴

He was arrested on the basis of a report by the state security investigators on his book *Shudders [sic] of Enlightenment*.¹⁵²⁵ The report declared that his book propagates ideas which clearly violate *Shari'ah* and treats Islam with contempt. His house was searched, and the police seized over one hundred copies of three other similar controversial publications, entitled *Musamarat al-Sama'* (Lecture of the heaven), *Mudhakkirat Muslim* (Memoirs of a Muslim) and *Irti'ashat Tanwiriya* (Shivers of Enlightenment).¹⁵²⁶

Concerning all his books, it is argued that:

Mohsen [sic] mocked Islam, its beliefs and religious rites and duties in the context of a discussion of enlightenment ideas and the nature of free creativity. He claimed that Islam is the reason for Egypt's 'backwardness,' that Prophet Mohamed is not in fact a prophet but rather the author of the Qur'an and that the Qur'an moreover is full of contradictions.¹⁵²⁷

Judicial advisors who were interviewed by the newspaper *Al-Ahram Weekly*, indicated that the Egyptian state would take to court those who propagate deviant and/or extremist thoughts, as the country has the right to protect its religious beliefs. The jurists explained that "We are not against freedom of expression, but we strongly fight the spread of deviant beliefs in our society"¹⁵²⁸ and added that "Mohsen [sic] was not arrested because of

¹⁵²⁴ Halawi, Jailan, 'Limits to Expression,' *Al-Ahram Weekly*, 21-27 December 2000, Issue No. 513. Also see Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, BBC news report, 17 June, 2000, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_795000/795456.stm Also Jailan Halawi presents the background to Salaheddin Mohsen, by mentioning that "After finishing his high school studies in 1967, Muhsin began reading the books of revealed religion as well as philosophical texts. He was profoundly influenced by the writings of Jibran Khalil Jibran, an early 20th century Lebanese-American poet, and Abu Al-Ala'a Al-Me'arri, an Abbasid poet well-known for his pessimism. By 1972, Mohsen [sic] had become an atheist. Through his readings and observations, he came to the conclusion that advancement is achieved through science and not religion. In his writings, Mohsen [sic] described the Prophet Mohamed as a Bedouin who developed a new religion with the aim of assuming the leadership of his tribe," see Halawi, Jailan, 'Detained for deriding Islam,' *ibid.*

¹⁵²⁵ Halawi, Jailan, 'Shudders of rage,' *Al-Ahram Weekly*, 18 - 24 May 2000, *op.cit.*. The books title is also translated as *Shivers of Enlightenment*, by BBC News Report, *Suspended Sentence for Egyptian 'Blasphemer'*, 8 July, 2000, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_825000/825306.stm

¹⁵²⁶ Halawi, Jailan, 'Shudders of rage,' *Al-Ahram Weekly*, 18 - 24 May 2000, *ibid.* Also see Halawi, Jailan, 'Detained for deriding Islam,' *op.cit.* Also see Amnesty International, EGYPT: Muzzling Civil Society AI-index: MDE 12/021/2000 19/09/2000, *op.cit.*

¹⁵²⁷ Halawi, Jailan, 'Limits to Expression,' *Al-Ahram Weekly*, *op.cit.* Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p326

¹⁵²⁸ Halawi, Jailan, 'Shudders of rage,' *op.cit.*

his beliefs; he is free to embrace whatever ideology he pleases, but this freedom should not extend to propagating erroneous beliefs.”¹⁵²⁹ Another comment, in reference to the state’s role and its authority to protect religious views, argued that the law “is not, and will never be, against freedom of expression, but any country has the right to protect its religious beliefs against the propagation of deviant or extremist thought.”¹⁵³⁰

In *Shudders of Enlightenment*, Muhsin argues that all civilised nations achieve such success solely by means of scientific research and not through religion.¹⁵³¹ On 14 December 2000 the initial sentencing was abrogated and the office for the ratification of court sentences accepted the appeal for a re-trial. The appeal for a re-trial had been submitted by the prosecutor Ashraf El-Ashmawi, who demanded that the state should implement its role as the protector of subversive, anti-religious ideologies. El-Ashmawi argued that Muhsin had used religion to propagate extremist ideas, to slight Islam and thus, to attempt to “provoke conflict and undermine national unity” adding that “Mohsen [sic] used derogatory terminology in propagating his ‘beliefs,’ and was blatantly disrespectful of the sentiments of pious individuals ‘which is illegal.’”¹⁵³²

Contrary comments were made by Muhsin’s defence lawyer, Samir El-Bagouri, who argued that Muhsin had the legal right to exercise his freedom of expression. The views expressed in his work only raised a philosophical perspective, and thus, it was not a matter to be dealt with by law. El-Bagouri continued by stating a comment similar to what had also been mentioned several years earlier by Naguib Mahfouz, defending ‘Ala’ Hamid. The case of Hamid is covered below, but concerning Muhsin, El-Bagouri argued that:

He has an opinion and he expressed it in these books. Mohsen’s [sic] arguments are not new. In fact, they have been made repeatedly throughout history. Why charge Mohsen [sic] for asking them now?¹⁵³³

¹⁵²⁹ Halawi, Jailan, ‘Detained for deriding Islam,’ op.cit

¹⁵³⁰ Halawi, Jailan, ibid. Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ op.cit., p326

¹⁵³¹ Halawi, Jailan, *Shudders of rage*,’ op.cit

¹⁵³² Halawi, Jailan, ‘Limits to Expression,’ op.cit. Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ op.cit., p327

Further to this point, El-Bagouri also mentioned that it becomes a very sensitive area, when discussing a person's individual religious belief. Therefore it is open to many problems when legally trying a person in a case based solely on their personal faith in God. He announced that taking such a case to court would make it a very dangerous precedent, because "it not only threatens intellectual freedom, but also threatens intellectuals themselves."¹⁵³⁴ Salah al-Din Muhsin's eldest son, Alaa, also defended his father's position to be free in expressing his own views, although he denounced the views themselves. In an interview with the *Al-Ahram Weekly* newspaper in December 2000, Alaa stated "You can criticise what he writes, but the matter should not be taken to the courts. Unfortunately, our society does not respect anyone who tries to challenge traditional assumptions."¹⁵³⁵ He further added that while he, himself, is a devout Muslim, he respects his father's courage in defending his own lack of faith or belief in God.¹⁵³⁶

9.3 The Case of Haider Haider.

The similar case against Haider Haider had occurred in Egypt just a few weeks before the court case of Salah al-Din Muhsin. It was argued that there was:

a major cultural confrontation over a novel by a Syrian writer, Haider Haider. Islamists said the book was blasphemous while many intellectuals argued it had been taken out of context.¹⁵³⁷

Haidar Haidar was accused as being 'a new Salman Rushdie' due to his novel, *A Banquet of Seaweed*,¹⁵³⁸ who was accused of distributing blasphemous comments in this work.¹⁵³⁹

The book was first published in Beirut in 1983 and was not released in Egypt until November 1999, by an institution affiliated with the Ministry of Culture.¹⁵⁴⁰

¹⁵³³ Halawi, Jailan, *ibid.* Also see O'Sullivan, Declan, *ibid.*, p328

¹⁵³⁴ Halawi, Jailan, *ibid.*

¹⁵³⁵ *ibid.*

¹⁵³⁶ *ibid.* Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p328

¹⁵³⁷ Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, *op.cit.*

¹⁵³⁸ The book is also translated as *Feast for Seaweed*, by Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, BBC New report, 10 May, 2000, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_743000/743929.stm

¹⁵³⁹ BBC New report, *A New Salman Rushdie?*, 8 May, 2000, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_741000/741359.stm Also see Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, *op.cit.*

¹⁵⁴⁰ BBC New report, *A New Salman Rushdie?*, *ibid.* Also see Halawi, Jailan, 'Shudders of rage,' *op.cit.* Also see Hawley, Caroline, *Egypt Blasphemy Row Deepens*, BBC New report, 18 May, 2000, found on http://news.bbc.co.uk/1/hi/english/world/middle_east/newsid_754000/754406.stm

This case also included two officials of the Ministry of Culture who the state security prosecutor charged for their role in accomplishing the publication of Haidar's book, believed to be a blasphemous novel.¹⁵⁴¹ Both Ibrahim Aslan, the editor of the series that published the novel, and Hamdi Abu Golail, the managing editor, were charged with "disparaging religion, as well as editing and publishing a work offensive to public morals."¹⁵⁴² However, in their defence, the Culture Ministry announced that it is "one of the best Arabic novels of the 20th century."¹⁵⁴³ They also stated that the ministry had reprinted the book as part of a project to publish celebrated Arabic novels. The main plot of the novel focuses on two left wing Iraqi intellectuals who managed to leave Iraq in the late 1970s, from what they witnessed to be the 'injustice' in Iraq, imposed by President Saddam Hussein. Both characters blamed political oppression in the whole Arab world on dictatorships and the right wing, conservative movements. The author Haidar Haidar, suggests that the book attempted "to explore the atmosphere of Arab hope and the subsequent retreat of this hope."¹⁵⁴⁴

However, it seemed to create a fierce reaction by Al-Azhar, who perceived it to be purely based on blasphemous insults against Islam in general :

Al-Azhar, seen as the final arbiter of all things religious, has thrown its considerable weight into the confrontation. The government-appointed head of Al-Azhar, Mohamed Sayyid Tantawi, said the book offended all sacred beliefs and should not have been printed. Many intellectuals have been shocked by Al-Azhar's stand. A newspaper representing them says the entire body of Arab literature would be lost if judged in a similar vein.¹⁵⁴⁵

The reprinting of the novel led to a rather fierce campaign launched by the fortnightly Islamist-oriented newspaper *Al-Sha'b*, which reproduced selected extracts from the book including one which described God as a 'failed artist' and another which depicted the

¹⁵⁴¹ Halawi, Jailan, 'Shudders of rage,' *ibid.* Also see Hawley, Caroline, *Egypt Blasphemy row Deepens*, *ibid.*

¹⁵⁴² *ibid.* Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p329

¹⁵⁴³ BBC New report, *A New Salman Rushdie?*, *op.cit.*

¹⁵⁴⁴ *Ibid.* Also see Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, *op.cit.*

¹⁵⁴⁵ Hawley, Caroline, *Egypt Blasphemy row Deepens*, *op.cit.* Also see Hawley, Caroline, *Egyptian Writer on Trial Over Religion*, *op.cit.* Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p330

Prophet Mohammed as “a womaniser.”¹⁵⁴⁶ Haidar Haidar was accused of “insulting God and the ProphetThe Syrian writer treats the Koran as rubbish and the Prophet Mohammed as a polygamist who married 20 times.”¹⁵⁴⁷ The BBC news report assessed the situation, stating that

The Islamists have denounced Haidar as a new ‘Salman Rushdie’, the British writer who was forced into hiding in the 1990s after Iran’s religious leaders adopted a *fatwa*, or decree, calling for his death.¹⁵⁴⁸

The media campaign incited thousands of students from Al-Azhar University to demonstrate outside the campus, demanding for the resignation of Farouk Hosni, the Minister of Culture. “Protesters called for Haydar’s death and criticised the grand imam of Al-Azhar, Sheikh Mohamed Sayed Tantawi, for keeping silent regarding the whole affair. Nearly 100 students were briefly arrested and later released.”¹⁵⁴⁹

Several of Egypt’s intellectuals and political analysts argued that the *Al-Sha’b* campaign had been induced by political motivation. They also accused groups, such as the outlawed Muslim Brotherhood, the traditional allies of the Labour Party, (the party which publishes *Al-Sha’b*), of involvement. Another point that observers mentioned was that “the timing of the newspaper’s campaign, ahead of the November parliamentary elections, was also considered to be significant.”¹⁵⁵⁰ However, “Seif El-Islam Hassan El-Banna, a leading brotherhood figure denied the claims, asserting that the Muslim Brothers would not use Islam to achieve political gains.”¹⁵⁵¹

During the newspaper campaign and the student protests, Refa’i Ahmed Taha, an exiled leader of *Al-Gama’a Al-Islamiya*, Egypt’s largest militant group, urged all Egyptians to follow the example of the religious students, who were rioting over Haidar’s novel. Taha declared :

¹⁵⁴⁶ Halawi, Jailan, ‘Shudders of rage,’ op.cit..

¹⁵⁴⁷ BBC New report, *A New Salman Rushdie?*, op.cit

¹⁵⁴⁸ *ibid.* Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ op.cit., p330

¹⁵⁴⁹ Halawi, Jailan, ‘Shudders of rage,’ op.cit. Also see Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, op.cit.

¹⁵⁵⁰ Halawi, Jailan, ‘Shudders of rage,’ *ibid.* Also see Hawley, Caroline, *ibid.*,

¹⁵⁵¹ *ibid.*

We call on the youth of our Muslim Egyptians, in its universities, cities, villages and factories, to follow the example of their brothers in Al-Azhar University and break the chains they [the government] want for them.¹⁵⁵²

In reaction to these accusations and particularly to the manner in which *Al-Sha'b* had been quoting extracts from the book, that had invoked such aggressive public response, Haider Haider “accused his critics of taking the extracts out of context, and said the real message of his novel was totally different.”¹⁵⁵³

Presenting what he believed to be the genuine message of the book, Haidar quoted a paragraph in which one of the Iraqi characters argues that : ‘Islam was the fortress of the old Arab world. We need Mohammed today in the 20th century.’¹⁵⁵⁴ He also accused the protesters of “trying to impose their monopoly of interpreting Islam the way they like. By doing this, they want to impose a totalitarian cultural system after they lost their political battle.”¹⁵⁵⁵ He also declared that the protest against both him and the Egyptian Ministry of Culture was “an attempt to halt the establishment of a civil society that will confront backwardness, reactionism and obscurantism.”¹⁵⁵⁶

As the protests increased, a five-member committee was appointed by Farouk Hosni, to assess the main complaints levelled against the book. The committee’s report described the Islamist campaign against the book as a ‘gross distortion.’ The inquiry also “ruled that a celebrated book which provoked rioting earlier this week is not blasphemous.”¹⁵⁵⁷ It declared that the novel had “been misunderstood, misquoted and taken out of context.”¹⁵⁵⁸ The committee concluded that the *Al-Sha'b* newspaper had published extracts presenting the views of only one of the Iraqi characters, and did not present the other characters response to it. This clearly led to a potentially deliberate misrepresentation of the full nature of the book’s genuine context and the tone with

¹⁵⁵² *ibid.* Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ *op.cit.*, p331

¹⁵⁵³ BBC New report, *A New Salman Rushdie?*, *op.cit.*

¹⁵⁵⁴ BBC New report, *ibid.*

¹⁵⁵⁵ *ibid.*

¹⁵⁵⁶ *ibid.*

¹⁵⁵⁷ Hawley, Caroline, *Syrian Book Cleared of Blasphemy, Religious students pelted the police with Stones*, *op.cit.*

which it was written in. In a BBC news report, Caroline Hawley presented what the committee had highlighted upon, in its assessment :

In one particular extract, it says the paper omitted a punctuation mark, so that it appeared that the Koran was described with an obscene word, when this was not, in fact, the case. The committee described this as a deliberate provocation.¹⁵⁵⁹

9.4 The Case of Muhammad Sa'id al'Ashmawy

Another important case to assess, are the accusations of blasphemy against Mohammad Sa'id al-'Ashmawy who, although an Islamic scholar and a *Shari'a* court judge in Egypt has, himself, had to take twenty four hour armed police protection, due to death threats by the Islamist groups.

In 1991 Muhammad Sa'id al'Ashmawy was criticised by Al-Azhar concerning his various books on Islam, such as *al-Khilafa al-Islamiyya* (Islamic Caliphate), *al-Islam al-Siyyassi* (Political Islam), *al-Riba wa al-Ribh fi al-Islam* (Usury and Interest in Islam) and *Usul al-Shari'a* (Origins of Islamic Law), as they are seen to challenge Islamist ideology in many areas. In his work, he uses a broad range of primary sources with which to confront the Islamists' assertions that Islam contains a complete and unified political and judicial system. Al'Ashmawy argues that this belief is at the very heart of 'political Islam' and such confrontation provoked outrage and infuriation by the Al-Azhar sheikhs and all Islamist movements.¹⁵⁶⁰

In January 1991 an Al-Azhar committee attempted to officially remove five of al'Ashmawy's books from a display at the Cairo International Book Fair, but they decided to withdraw their complaint, when al'Ashmawy threatened to sue them in court. Following the Book Fair, al'Ashmawy began to receive death threats from Islamist groups, that led to his present 24 hour armed protection. In the following year, a further action by Al-Azhar was successful in removing eight of al'Ashmawy's books from the exhibition at the Cairo International Book Fair in January 1992. This act led to a public

¹⁵⁵⁸ *ibid.*

¹⁵⁵⁹ *Ibid.* Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p332

¹⁵⁶⁰ Article XIX, *The Egyptian Predicament*, *op.cit.*, p50

out-cry as the protestors stated they were witnessing 'a crude act of censorship' by Al-Azhar against various Egyptian writers, human rights groups and the international media. The public and media attention was such that President Mubarak personally intervened and ordered the books to be returned to the exhibition.¹⁵⁶¹

During March 1994, the 'Committee for Qur'anic Affairs and Sciences,' a government institution within the Supreme Council of Religious Affairs, declared that al'Ashmawy's books were banned from being distributed in public circulation because they had "defamed and mutilated the image of Islam, offended the Prophet Mohammed and the early Caliphates of the Islamic community."¹⁵⁶² This decision led to an inflammatory campaign in the Islamist press against al'Ashmawy, with the accusation that he had intentionally harmed Islam. There was a demand for his prosecution and a ban on all his work.¹⁵⁶³ His position now is that :

despite this campaign, however, and the continuing threat to his safety, Sa'id al'Ashmawy has continued his writings and remains prepared to challenge Islamist dogmas.¹⁵⁶⁴

9.5 The Case of Farag Foda

Farag Foda was an outspoken critic of what he argued were human rights abuses perpetrated by both the Egyptian government and the Islamist groups. He published several books that challenged the Islamist groups' agenda and defended the Egyptian Coptic Christian minority community, due to their suffering of state repression. He also put forward the argument that al-Azhar were involved in some complicity and collusion with the Islamist groups, and in response to this accusation Al-Azhar publicly condemned these suggestions and banned Farag Foda's books.¹⁵⁶⁵

¹⁵⁶¹ Article XIX, *ibid.*, p50. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief: A World Report*, 1997, Routledge, London, p32. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p333

¹⁵⁶² Article XIX, *ibid.*, p50

¹⁵⁶³ Article XIX, *ibid.*, p50. Also see the Egyptian Organisation for Human Rights, press release, December 27, 1994.

¹⁵⁶⁴ Article XIX, *ibid.*, p50-p51. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p334

In 1990, on his return to Egypt from a lecture tour in Tunisia, Foda was summoned to appear before the State Security Intelligence (S.S.I.) officials to explain his reasons for writing his book *Nakun Aw la Nakun* (To Be Or Not To Be). His summons to appear before the S.S.I. followed an official complaint lodged by Al-Azhar in which they expressed their concern over the book and various articles written by Foda, that had been published in newspapers, over the previous three years. The articles covered various topics, such as violence by Islamist groups and what Foda saw as Al-Azhar's interference in 'freedom of thought.'¹⁵⁶⁶ Following this 'interview' with the S.S.I., Farag Foda was charged with offending religion, encouraging atheism, objecting to the application of *Shari'a* law and for having offended the Rector of Al-Azhar by not using his official title, 'His Honourable Sheikh.' However, Foda was released without any prosecution, but the sale of his book was then banned by the Minister of the Interior.¹⁵⁶⁷ There was some hostility against Foda by Al-Azhar, as in mid-1992 a group of Islamist scholars from Al-Azhar distributed a public statement announcing that Farag Foda was a follower of a non-Islamic movement which rejected Islam. During their campaign the scholars "effectively declared him an apostate."¹⁵⁶⁸ They also publicly demanded Foda's prosecution and a ban on all of his work.

One week after being declared an apostate by Al-Azhar, on 8 June 1992, Farag Foda was shot dead by a member of the Islamist group *al-Gama'a al-Islamiyya*. Foda's teenage son was also wounded during the attack.¹⁵⁶⁹ During the court hearing for one of the alleged assassins, the defendant referred specifically to the Al-Azhar statement as providing justification for the writer's killing. The group *al-Gama'a al-Islamiya* admitted their responsibility and justified the killing because Farag Foda was perceived to be an apostate, on account of his activity in advocating the separation of religion and the state,

¹⁵⁶⁵ Article XIX, *ibid.*, p51. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *Freedom of Religion and Belief*, *op.cit.*, p29

¹⁵⁶⁶ Article XIX, *ibid.*, p51

¹⁵⁶⁷ *Middle East Report*, January/February 1993, as cited by Article XIX, *ibid.*, in footnote 54 on p51

¹⁵⁶⁸ Article XIX, *ibid.*, p51. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p335

¹⁵⁶⁹ Article XIX, *ibid.*, p51. Also see Arzt, Donna E., 'Religious Human Rights in Muslim States of the Middle East and North,' *op.cit.*, p.387-454. Also see Amnesty International, *EGYPT: Muzzling Civil Society AI-index: MDE 12/021/2000 19/09/2000*, *op.cit.*

and his opposition to the use of *Shari'ah* as the official Egyptian law.¹⁵⁷⁰ This claim also received unequivocal support from Sheikh al-Ghazzali, who was at that time one of the most prominent religious figures in Egypt and the Arab world, and also a member of the influential Islamic Research Academy (I.R.A.) at Al-Azhar. Sheikh al-Ghazzali appeared in court as a witness for the defence "and told the court that, in his view, anyone who objected to the implementation of the *Shari'a* is an excommunicate and an apostate."¹⁵⁷¹ He further stated that any individual, or group of people, who killed such a person is not liable to be punished, because in carrying out the act of such a killing they would be executing the legitimate *hudud* penalty on apostasy, within *Shari'a*.¹⁵⁷² According to Sheikh al-Ghazzali:

Farag Foda had denied the Rule of Islam to me personally in an open debate at the Cairo Book Fair two years ago. Now a man is free to believe that if he wants to; he can go and sit at home and say it. But this man went out into the streets and worked against the Rule of Islam. This is unacceptable because it strengthens Zionism and colonialism and I am against anything that strengthens these.¹⁵⁷³

9.6 The Case of Naguib Mahfouz

Naguib Mahfouz is a world wide respected author of novels, who became a noticeably distinguished writer having being awarded the Nobel Prize for Literature in 1988. He was the first Arab to be awarded the Nobel Prize in the field of literature. Mahfouz is a very prolific writer, and has produced many books and articles covering his views on contemporary social and political aspects. Several of his books have also been made into films and plays, while some have become set standard texts in universities and colleges throughout the Arab world.¹⁵⁷⁴

¹⁵⁷⁰ Arzt, Donna E., *ibid.* Also see Amnesty International, *EGYPT: Muzzling Civil Society Al-index'* *ibid.*

¹⁵⁷¹ Article XIX, *ibid.*, p51-p52. Also see Boyle, Kevin and Sheen, Juliet, (eds.), *op.cit.*, p32. Also see Arzt, Donna E., *ibid.*, p.387-454. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p335-336

¹⁵⁷² 'Sheikh Ghazzali's *fatwa* : an invitation to extra-judicial killing', Egyptian Organisation for Human Rights, press release, June 29, 1993, as cited by Article XIX, *ibid.*, in footnote 55 on p52. Also see Also see Boyle, Kevin and Sheen, Juliet, (eds.), *ibid.*, p32 and also Arzt, Donna E., *ibid.*

¹⁵⁷³ *The Guardian Newspaper*, London, April 8, 1994, An interview with Sheikh Ghazzali. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p336

¹⁵⁷⁴ Article XIX, *The Egyptian Predicament*, *op.cit.*, p52. Also see Amnesty International, *EGYPT: Muzzling Civil Societ'*, *ibid.*

However, despite his contribution to modern Egyptian literature, a few of Naguib Mahfouz's novels have become banned, due to their content, by addressing 'politically sensitive' issues. Such sensitive topics include work on Egypt's human rights record, the status of women in an Islamic community and the role of the military in governing the country. Mahfouz has also become openly criticised by Arab nationalists in their response to his support for President Sadat's peace process and the initiatives undertaken with Israel. Mahfouz has also been condemned by Islamists due to his promotion of secularism, but in particular, due to one specific novel, *Awlad Haritna*, that was first published in 1959.¹⁵⁷⁵ From the outset, *Awlad Haritna* was immediately banned in Egypt by Al-Azhar, who argued that it offended the Prophets. However, since then, the book has always been publicly available in other Arab countries, although it has remained banned in Egypt, due to some influence by the Islamists. Mahfouz has been the target for a relentless campaign by the Islamists to humiliate him and his reputation. Acts in this campaign includes some Islamist literature which declares that, because of *Awlad Haritna*, Mahfouz "will burn in hell."¹⁵⁷⁶ Other Islamist publications present cartoons portraying Mahfouz walking into the fires of Hell, while carrying the collection of his books under his arms. One example of this literature, including these cartoons, was published as recently as 1994, entitled *Kalimatuna Fi Radi Ala Awlad Haritna* (Our Response to *Awlad Haritna*).¹⁵⁷⁷ The Egyptian Organization for Human Rights (E.O.H.R.) supports the view that militant Islamic groups have undertaken relentless attacks on Naguib Mahfouz, which led to the successful banning of the book *Awlad Haritna*. Also, "their own publications include virulent attacks on Mahfouz insisting that he will burn in Hell fire for the book."¹⁵⁷⁸ Naguib Mahfouz has been "subject to relentless attacks as the 'corrupter of youth' and 'the filth of the artistic community.'¹⁵⁷⁹ The hostility by the Islamists against Mahfouz is so extreme, that several incidents have occurred against him.

¹⁵⁷⁵ *ibid.*, p52

¹⁵⁷⁶ *ibid.*, p53. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p337

¹⁵⁷⁷ Kashk, Sheikh, A. H., *Kalimatuna Fi Radi Ala Awlad Haritna* (Our Response to *Awlad Haritna*), 1994, al-Mukhtar al-Islami for Publication and Printing, Cairo, Egypt; as cited by Article XIX, *ibid.*, in footnote 57 on p53

¹⁵⁷⁸ The Egyptian Organization for Human Rights (EOHR), 'Fires of Hell' in *Index on Censorship*, May/June, London, Vol.1/2, 1994, p118

In 1989 there was a campaign to support Mahfouz, with an attempt to remove the ban from *Awlad Haritna*. The newspaper *Al-Yasar* published a series of extracts from the book. However, the reaction to this attempt to have the book re-published caused so much public controversy that Mahfouz personally requested the newspaper to stop publishing the book's extracts. As E.O.H.R. commented:

By this stage Sheikh Omar Abdul Rahman, the spiritual leader of the militant *Al-Gama'a al-Islamiya*, had issued a *fatwa* excommunicating the author and calling on him to repent having written the novel and to denounce it.¹⁵⁸⁰

This reaction can be argued to have been an inevitable reaction on account of the support Mahfouz had previously given to Sadat and also having publicly protested against the death sentence *fatwa* on Salman Rushdie's:

Mahfouz, who had publicly denounced the death warrant against Rushdie and supported Anwar Sadat's peace accord with Israel, was 'excommunicated' by the *fatwa* by Sheikh Omar Abdul Rahman, who demanded that the author denounce his own 1959 novel, *Children of Gebelawi*.^[sic]¹⁵⁸¹

When Sheikh Omar Abdul Rahman delivered his *fatwa*, he stated that the author Salman Rushdie would not have dared to go forward and publish his own infamous book *Satanic Verses*, had Mahfouz been correctly punished for his own 'crimes' much earlier.¹⁵⁸² Following Abdul Rahman's *fatwa*, Mahfouz then became the victim of a knife attack by a member of an Islamist group while walking along the street in Cairo. It was reported that:

Following the issue of this *fatwa* against Naguib Mahfouz, the author was the victim of an assassination attempt by a young Islamist militant. The attack, which resulted in Naguib Mahfouz being stabbed in the neck and seriously wounded, was carried out on 14 October 1994, the sixth anniversary of the date on which he had received the Nobel Prize for Literature. The attempt against his life was felt in Egypt and the Arab world 'like an earthquake.'¹⁵⁸³

¹⁵⁷⁹ Arzt, Donna E., op.cit., p.387-454.

¹⁵⁸⁰ EOHR, ibid., p118. Also see Amnesty International, *EGYPT: Muzzling Civil Society Al-index: MDE 12/021/2000 19/09/2000*, op.cit. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' op.cit., p338

¹⁵⁸¹ Arzt, Donna E., op.cit., p.387-454.

¹⁵⁸² Article XIX, op.cit., p53

¹⁵⁸³ Article XIX, ibid., p53. Also see Arzt, Donna E., op.cit., p.387-454. Also see Amnesty International, *EGYPT: Muzzling Civil Society* op.cit. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' op.cit., p338-339

After this knife attack, two Islamist group members were arrested and taken to court as the perpetrators. During the trial one of the defendants is reported to have confessed to the 'assassination attempt' which he had undertaken in order to meet the requirement of the *fatwa* recently delivered by Abdul Rahman. "On 10 January 1995 a military court sentenced two people to death for their part in the attempted murder of Naguib Mahfouz."¹⁵⁸⁴ Following the trial of the attackers, the Egyptian daily newspaper *al-Ahali*, was allowed to publish *Awlad Haritna* in a 'special edition,' despite the novel's ban. However, although the government accepted this, making no attempt to intervene, several journalists at *al-Ahali* received death threats, and the Islamist press accused them of apostasy. The journalists were described as being the enemies of God and the Prophet.¹⁵⁸⁵

9.7 The Case of 'Ala' Hamid.

In December 1991 there was another prosecution for the crime of blasphemy in Egypt, against the novelist 'Ala' Hamid, for his book *Masafah fi 'Aql Rajul* (Distance in a Man's Mind). Hamid's case also included the book's publisher, Mohammed Madbouli and the printer, Fathi Fadl to be put on trial. 'Ala' Hamid was sentenced to eight years in prison as the book was argued to be a fictionalised satirical account of the life of the Prophet Muhammad, and was believed to threaten 'national unity' and 'social peace.'¹⁵⁸⁶ Both Mohammed Madbouli and Fathi Fadl received similar sentences.¹⁵⁸⁷ The case was undertaken in a special court in Cairo and the final legal sentences delivered were drawn from the part of law that covers subversion, hence that is why the publisher and printer were included as accomplices. The book was originally published in 1988 by Madbouli, a respected publisher in Egypt, and reactions against the book initiated in 1989.¹⁵⁸⁸

The Disciplinary Administrative Prosecutor undertook an investigation, following complaints put forward by a one of 'Ala' Hamid's work colleagues at the taxation office.

¹⁵⁸⁴ Amnesty International, EGYPT: Muzzling Civil Society' op.cit.

¹⁵⁸⁵ Egyptian Organisation for Human Rights, press release, December 27, 1994, as cited by Article XIX, *The Egyptian Predicament*, ibid., in footnote 58 on p53. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' op.cit., p339

¹⁵⁸⁶ Article XIX, ibid., p59. Also see Amnesty International, *EGYPT: Muzzling Civil Society*', ibid.

¹⁵⁸⁷ Article XIX, ibid., p59. Also see Amnesty International, ibid.

This resulted in Hamid being suspended from work, as his novel was seen to ridicule religions and mocked prophets. Several newspaper articles were then published in both pro-Islamist and semi-official media, where Ahmed Bahgat, an Islamist writer undertook a confrontational attack against Hamid through the columns of *al-Ahram* newspaper. Through the campaign, the articles by Ahmed Bahgat were “accusing him of blasphemy and heresy and portraying him as ‘a second Salman Rushdie in Egypt.’”¹⁵⁸⁹ This campaign resulted in Hamid being summoned to the state security police, for further investigations. In March 1990, the Islamic Research Academy (I.R.A.) also condemned ‘Ala’ Hamid’s work on the grounds that it contained “ideas advocating atheism, blasphemy and denial of the heavenly religions,” and they accused the author for both heresy and atheism.¹⁵⁹⁰ Kamali suggests that the reports of the case indicate that “it seems that this case was in many ways similar to that of the British author, Salman Rushdie, who blasphemed against Islam in his novel *The Satanic Verses*.”¹⁵⁹¹ ‘Ala’ Hamid’s book focused as a story based on a sequence of dreams that are formed in a rather discourteous context, portraying the Prophet Muhammad in a very negative manner. This theme is consistent with that which was presented by Rushdie in his own book.

After being detained for four months, Hamid, together with Mohammed Madbouli and Fathi Fadl were brought to trial in front of the State Security Court. However, it is interesting to note here that, contrary to international fair trial standards, defendants in the State Security Court are denied a right of appeal. Although, concerning ‘Ala’ Hamid’s case, newspapers raised the fact that because this case was being held in the special security courts, this made it a rather unusual location, as the normal practice for security courts in Egypt, was to hold cases that were solely related to political offences, and ones perceived to be threatening to the state.¹⁵⁹² Perhaps also due to these circumstances, any appeals raised against the sentences delivered by the security courts, can only be directed

¹⁵⁸⁸ Article XIX *ibid.*, p59

¹⁵⁸⁹ *ibid.*, p59 Also see O’Sullivan, Declan, ‘Acts of Blasphemy Against Islam by Muslims in Egypt’ *op.cit.*, p340

¹⁵⁹⁰ Article XIX, *ibid.*, p59. Also see O’Sullivan, Declan, *ibid.*, p340

¹⁵⁹¹ Kamali, Mohammad Hashim, *op.cit.*, p290. Also see BBC News Report, *Suspended Sentence for Egyptian ‘Blasphemer,’* 8 July, 2000, *op.cit.*

¹⁵⁹² Kamali, Mohammad Hashim, *ibid.*, p291.

towards the Prime Minister of Egypt, as the only ratification of the sentences can also, only be delivered by the Prime minister.¹⁵⁹³

Referring to how the case of 'Ala' Hamid was dealt with, a BBC World Service news report on 27 December 1991, stated that it had been arranged that there would be no allowance for any appeal to be made on the court's decision.¹⁵⁹⁴ This being so, the Egyptian Organization for Human Rights (E.O.H.R.) worked against this refusal for an appeal, and were reported in *New Straits Times*, a Malaysian newspaper based in Kuala Lumpur, to have made an appeal to the Prime Minister of Egypt, in defence of 'Ala' Hamid.¹⁵⁹⁵ From another perspective, it could be argued that:

the response of the Egyptian press to Allaa Hamed [*sic*] was muted in the extreme. Indeed, shortly after the sentence was pronounced, Tharwat Abaza, President of the Writer's Syndicate, which has generally been seen as a defender of writers, openly attacked Allaa Hamed in the most extraordinary terms, as 'a superficial boy who dared curse the prophets and offend them, rejecting that the Qur'an is the Word of God.....seeking fame by destroying social peace and public security and national unity. Doesn't he deserve to be punished?'¹⁵⁹⁶

Interestingly enough, Naguib Mahfouz also wrote an article in a newspaper that made reference to the final court verdict upon Hamid. Mahfouz's article declared that he and several other Egyptian writers and intellectuals were astounded by the seemingly harsh nature of the penalty delivered and also the manner in which Hamid had been tried and convicted. In re-assessing how the case could, or should, have been dealt with, Mahfouz argued in that :

Would it not have been better to rationally analyse and criticise the book and then shelve it, if you will, among all those other books that have, since the Middle Ages, attacked Islam?¹⁵⁹⁷

¹⁵⁹³ *ibid.*, p290-p291 Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p341

¹⁵⁹⁴ *BBC World Service* radio news report, broadcast on 27 December 1991, personally heard by Mohammad Hashim Kamali, see *ibid.*, p291 and in footnote 7 on p293

¹⁵⁹⁵ *New Straits Times*, Kuala Lumpur, Malaysia, 6 January, 1992, p8

¹⁵⁹⁶ Article XIX, *The Egyptian Predicament*, *op.cit.*, and the quote is cited from *Al-Ahram*, 13 January, 1992, see Article XIX *ibid.*, in footnote 74 on p60. Also see O'Sullivan, Declan, 'Acts of Blasphemy Against Islam by Muslims in Egypt' *op.cit.*, p341-342

¹⁵⁹⁷ Hashim Kamali, *op.cit.*, p291. Also see O'Sullivan, Declan, *ibid.*, p342

These comments were reiterated in December 2000, by Samir El-Bagouri, Salaheddin Mohsen's defence lawyer in his recent case, as stated above.

As all security court sentences delivered "are subject to ratification by the Prime Minister, before they may be implemented, and, to date, such ratification has not been forthcoming,"¹⁵⁹⁸ this must mean that up until 1997, when the organisation Article XIX published this information in their document, *The Egyptian Predicament: Islamists, The State and Censorship*, no ratification of the sentence on Hamid had been acknowledged so far. However, as that may seem as rather good news for the convicted, who has been sentenced but has still not yet been put into prison, Hamid's legal case story did not end there. As he was living in the permanent fear and expectation of being imprisoned by the government with the eight year sentence, or either being physically attacked or even killed by Islamist militant groups, in October 1993, he then became involved in another court case, concerning his book *al-firach* (The Bed). This second case against him ended with his second conviction, and he was sentenced to one year in prison. The court declared that the second book, *al-firach*, included sexually explicit material that promoted 'disrespect for religious clerics and advocates immorality, sexual freedom and the non-commitment to the legitimacy of marriage.'¹⁵⁹⁹ As Amnesty International reported on the case:

Cairo Court of Misdemeanours sentenced 'Ala Hamed to one year's imprisonment for another of his publications *al-Firash* [sic] (The Bed). 'Ala Hamed was charged on the grounds that his book contained "disrespect for religious men (clerics)" and advocates "immorality, sexual freedom and disregard of the legitimacy of marriage" in violation of Article 178 of the penal code which provides up to two years' imprisonment for violations of "public morality". The sentence was upheld by an appeal court in May 1997.¹⁶⁰⁰

After this second court case, while still not having been imprisoned, although he had been found guilty and had been sentenced a second prison term, he was dismissed from his employment in the government tax office, because "an administrative court ruled that the

¹⁵⁹⁸ Article XIX, op.cit., p59

¹⁵⁹⁹ Article XIX, Ibid p48 and p60. Also see O'Sullivan, Declan, op.cit., p343

¹⁶⁰⁰ Amnesty International, *EGYPT: Muzzling Civil Society*, op.cit.

ideas expressed in *al-firach* made him a permanent danger to his female colleagues.”¹⁶⁰¹ *al-ahram* also referred to *al-firach* to be the foundation that would lead to “the destruction of social, religious and moral values.”¹⁶⁰² Although he submitted an appeal against the second conviction with the one year prison sentence, the appeal process rejected the claim in May 1997, and he then started his one-year jail period, at that time.¹⁶⁰³

9.8 Conclusion.

A review of how these cases have been covered by the *Shari'ah* courts and the difference of the sentences delivered in them, presents a very clear understanding on the different opinions that are felt by different groups. It becomes obvious that there are very differing views on what is perceived to be offensive against Islam and what is seen as creative writing.

An example of this vast difference of opinion can be seen in the case of Haidar Haidar. It was argued, by some groups who had campaigned against his work, including the Islamist-oriented newspaper *Al-Sha'b*, that his novel was blasphemous and he had become the ‘new Salman Rushdie.’ However, contrary to this view, the Ministry of Culture in Egypt described the book as being an excellent contribution to Arab literature. With such a contradiction in how the work is received indicates the very sensitive nature of how the *Shari'ia* court has to cope with such accusations. In the case of Haidar Haidar, he was acquitted. In defence of this court decision, it has been suggested that the basis for such accusations of such a sensitive crime, or sin, of blasphemy and apostasy tends to be driven by political motivation. This suggestion can be supported with the hypothesis of the thesis that such accusations that are acquitted from the court room can clearly identify with the message of the *hadith* that ‘if one Muslim blames, or denounces another as being an unbeliever, and the accused are then proven to be innocent, and are still a Muslim then, in that situation, the accuser becomes the *kafir* themselves.’ Following this same theme, is the promotion that tolerance and open-minded acceptance should prioritise over

¹⁶⁰¹ Article XIX op.cit p60

¹⁶⁰² Reuter News Service, 13 July, 1994, as cited by *ibid.*, in footnote 75 on p60

¹⁶⁰³ Article XIX, *Ibid* p60 Also see O’Sullivan, Declan, op.cit., p343

a person's doubt of another person's *'iman*, through the very prohibition of *takfir al-Muslim* in Islam.

What becomes even more disturbing was the killing of Farag Foda and the knife attack on Naguib Mahfouz. It has been established by most Islamic theological work and Islamic jurisprudence, that no other human being as the authority to implement *Shar'iah* rulings, apart from a trained jurist and a legally qualified, competent *qadi* (judge). The whole area of *Shar'iah* is such a vast and complex area of knowledge to understand, that many disagreements exist between jurists in the very same Islamic school of law, let alone the inconsistencies between different schools of law. Therefore, it cannot be a logical conclusion to argue that every Muslim has the authority to be accountable for implementing a *Shari'ah* ruling.

CHAPTER TEN

10.0 THE SALMAN RUSHDIE CASE REASSESSED IN 2002

10.1 Introduction.

This is a very brief overview of the work by Salman Rushdie and the reactions to it, as it has been covered immensely over the last twelve years, but is relevant to be mentioned in this research. The relevance concerns the legal position taken by the different Islamic schools of law and how Rushdie would be legitimately dealt with by *fiqh* (jurisprudence). The legal positions will be covered below, after a brief review of the local and international reaction to his book *The Satanic Verses*.

The Satanic Verses was published on September 28 1988 in the United Kingdom, by a well renowned publishing house Viking Penguin.¹⁶⁰⁴ It caused a level of controversy that became so public, that every person in Britain, let alone throughout all Islamic countries, will be aware of the book's title, at the very least. There were demands for the book to be immediately banned, as it was seen to be openly insulting and aggressively blasphemous against Islam. Mohammad Hashim Kamali provides a sufficient list of events that occurred, following the publication of the book and the *fatwa* upon both it and Rushdie by Ayatollah Ruhollah Khomeini in Iran. Concerning the *fatwa* Ayatollah Ruhollah Khomeini delivered it on February 14th 1989, declaring :

...the author of the book entitled *The Satanic Verses*, which abuses Islam, the Prophet , and the Koran, and all those involved in its publication who were aware of its content, are sentenced to death.....I ask the Muslims of the world at large to swiftly execute the writer and the publishers, wherever they find them, so that no one in the future will dare to abuse Islam. Whoever is killed on this path will be regarded as a martyr, God willing.¹⁶⁰⁵

¹⁶⁰⁴ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, 1997, Islamic Texts Society, Cambridge, UK, Appendix V on p294

¹⁶⁰⁵ *ibid.*, p296. Also see Front page article, 'Battle of the Book,' *Newsweek*, February 27th 1989

The incidents and the public reaction escalated to the extent that it effected all those involved in the book, and not just the author. The incidents involved the deaths of members of the public, publishers, translators, and even a liberal Imam, as :

Protests against escalated The Satanic Verses with remarkable speed and resulted in the death of five people in Pakistan, and one in Kashmir in February 1989. The following month, two men, the imam of Belgium's Islamic community and his assistant were shot dead, and in June 1991 the Japanese translator of Rushdie's novel was also killed in Tokyo. The aftermath of Rushdie's inflammatory publication has been widely debated and publicised.¹⁶⁰⁶

These dates differ slightly with other reports, as Carmel Bedford reports in *Fiction, Fact and the Fatwa, 2000 Days of Censorship*, that the Japanese translator was murdered in July, not June:

11th July, 1991 – Tokyo: Professor Hitoshi Igarashi, Japanese translator of The Satanic Verses [was] stabbed to death at Tsukuba University. A spokesman for the Pakistan Association in Japan says : 'the murder was completely 100 per cent connected with the book.....Today we have been congratulating each other. Everyone was really happy.'¹⁶⁰⁷

Also the killing of a protestor in Kashmir is reported to have occurred in March 1989, and not in February :

3rd March 1989: In Kashmir, India, confrontations between police and Muslim demonstrators leave one person dead and 84 injured.¹⁶⁰⁸

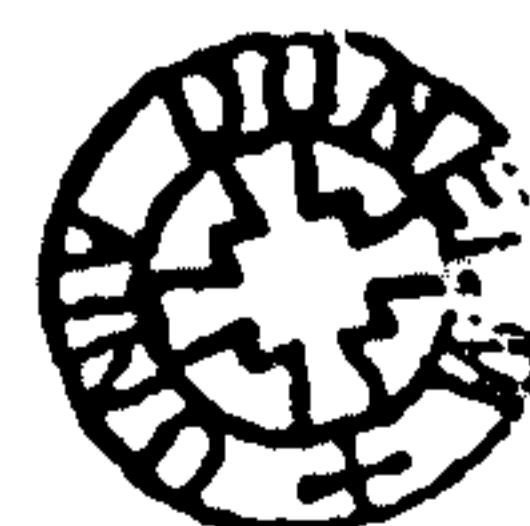
Concerning the two Muslims leaders who were murdered in Belgium Bedford reports that:

29th March 1989: The spiritual leader of Belgium's Muslims, Abdullah Ahdal, a Saudi Arabian, and his deputy, Salim Bahri, a Tunisian, [were] shot dead and killed. [sic] A police spokesman says that Mr.Ahdal had received threats after a statement he made on Belgium TV in which

¹⁶⁰⁶ Kamali, *ibid.*, p294

¹⁶⁰⁷ Bedford, Carmel, *Fiction, Fact and the Fatwa, 2000 Days of Censorship*, 1994, Article XIX, International Centre Against Censorship, London, UK, p66

¹⁶⁰⁸ *Ibid.*, p15



he was reported as saying that the death sentence pronounced by Ayatollah Khomeini against Mr. Rushdie was aimed at public opinion with Iran but that in Europe there was freedom of expression.¹⁶⁰⁹

10.2 Response to the 1989 fatwa today

There was a diverse reaction from respected Muslim leaders, ranging from the complete support and moved over to the considered reservations of the decision that promoted any Muslim to be legitimately acceptable in killing Rushdie as the sentence, which did not adhere to any due judicial process. Kamali argues that this point was possibly the only procedural fault in the verdict, which but then became the main focus for the Western press to repeatedly address. However, “those who were exposed to media coverage of the whole episode would know that no serious Muslim commentator has challenged the basic validity of the Ayatollah’s *fatwa*.”¹⁶¹⁰

The adjudication was held as a necessary function to discover whether Rushdie was sincerely willing to repent. This position was presented by Sheikh Dr. ‘Abd. Allah al-Mashhad, the Chairman of the *fatwa* Committee of Al-Azhar University, in a statement that referred to the death sentence delivered by Ayatollah Ruhollah Khomeini. The statement declared that :

Islam requires the claimant to present evidence, and the defendant to defend himself either by counter evidence or by taking a solemn oath. Issuing a judgement in the manner it was (issued in), denied such an opportunity.....¹⁶¹¹

Also, the Rector of Al-Azhar University in Egypt, Sheikh Jad al-Haqq, advised more quiet deliberation and the relevant adjudication, in response to the huge demonstrations and the more spontaneous, sensational responses, which have, unfortunately and ironically, actually motivated and advanced a demand for the book and its expanded distribution. Sheikh Jad al-Haqq also commented on the fascinating fact that very verdict had, albeit inadvertently, “shot up the sales of this book beyond even the author’s own

¹⁶⁰⁹ Ibid., p22

¹⁶¹⁰ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p297

wildest dreams.”¹⁶¹² That is a very good point, because if the book had not been brought to everyone’s attention in such broad media coverage, and had it been quietly and subtly banned from being sold in bookshops, then most members of the public would not have shown any interest in what would have been seen as another ‘fictional’ novel by an author who was fairly ‘unknown’ to most people.

As this did not occur, Dr. Tantawi, the Mufti of Egypt, considered as the most senior Muslim authority in Egypt, officially confirmed the need for a full and fair trial. He argued that the court should request from the author a detailed explanation on the motives and intentions for him having written the book, so that a more neutral judgement could be made, without any influence of a misreading, misunderstanding and misinterpretation of the book’s contents. In this case, the author as “the accused, even if proven guilty, can seek clemency and forgiveness.”¹⁶¹³

During the eleventh session of the Islamic Law Academy of the Muslim World League (*Rabitat al-‘Alam al-Islami*), held in Mecca, on 10 to 26 February 1989, a statement was issued, based on Salman Rushdie, from their assessment on the case. The session was chaired by one of Saudi Arabia’s more prominent ‘*ulama*, Sheikh ‘Abd al-‘Aziz Ibn Baz and the six-point statement :

declared Rushdie as an apostate, and recommended that he and his publishers should be prosecuted under criminal charges in a British court, and that the Organisation of Islamic Conference should take up the case against them.¹⁶¹⁴

Further to this, the Academy also recommended that Rushdie should be tried *in absentia* in an Islamic country following the rulings in *Shari’a*. This was to ensure that the final decision, even if not enforceable, would serve the desire to express the anger and denunciation of all Muslims concerning such an impertinent affront. In reference to

¹⁶¹¹ Ahmad, Raf‘at Sayyid, *Ayat Shaytaniyyah: Naqd Kitab Salman Rushdie*, al-Dar al-Sharqiyyah, Cairo, 1409/1989, p91, cited by Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p297

¹⁶¹² Ahmad *ibid.*, p112 and p119, as cited by Kamali, Mohammad Hashim, *ibid.*, p297

¹⁶¹³ Appignanesi, Lisa and Maitland, Sara, *The Rushdie File*, Seracuse University Press, New York, 1990, p139

Rushdie's public statement of an 'regret,' due to the hurt he had caused on all Muslims, which he gave on February 18, 1989, the Academy dismissed this 'apology' as "idle and meaningless" as it failed to renounce the very contents of such an offensive writing. Added to his, the Academy requested all Muslim countries, and their governments, to ban any importation and sales of *The Satanic Verses*.¹⁶¹⁵

A month after the session of the Islamic Law Academy of the Muslim World League the Organisation of Islamic Conference, held their twelfth session at Riyadh on 13 to 16 March 1989. From this session they also presented a statement that denounced Rushdie's book as clearly being a flagrant violation of the very right to the freedom of expression. They referred to the Universal Declaration of Human Rights and the limitations of such a right in the freedom of speech. The statement argued that :

this right is not to be exercised at the expense of the rights of others, nor should Islam be made the target of sacrilege in the name of freedom of expression.¹⁶¹⁶

The member states of the Organisation of Islamic Conference also declared their "strong denunciation of *The Satanic Verses* whose author is considered an apostate."¹⁶¹⁷ They based their view on the book holding an ignorant position on the principles of morality, civilised conduct and decent respect for the sensitivities and sensibilities of over one billion Muslims world-wide. The statement also, understandably, suggested that all Muslim countries should ban any importation and sales of the book.¹⁶¹⁸

In assessing the 'artistic' and 'literary' level of the book, Shabbir Akhtar reached the conclusion that :

There is nothing in *The Satanic Verses* which helps to bring Islam into fruitful confrontation with modernity, and nothing to bring it into thoughtful contact with contemporary secularity and ideological pluralism.¹⁶¹⁹

¹⁶¹⁴ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p297

¹⁶¹⁵ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p297-298

¹⁶¹⁶ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p298

¹⁶¹⁷ *ibid.*, p298

¹⁶¹⁸ Kharufah, 'Ala'uddin, *Hukm al-Islam fi Jara'im Salman Rushdie*, Dar al-Isfahani li'l-Tiba'ah, Jeddah, 1410/1989. Also see Kamali, Mohammad Hashim, *ibid.*, p298

¹⁶¹⁹ Akhtar, Shabbir, *Be Careful with Muhammad: The Salman Rushdie Affair*, Bellew Publishing, London, 1989, p6

Shabbir Akhtar also assessed the book arguing that the very characterisation of the book is blatantly “a calculated attempt to vilify and slander Muhammad.”¹⁶²⁰ This is not an abstract view, as it is also confirmed substantially by other commentators. They argue that there is a vast difference between writing that provokes a healthy form of anger, that stimulates a stable debate, as it opens the eyes of the readers to new ideas and new thoughts to be openly discussed. This form differs from the type of writing that is formed in a deliberately hurtful setting, with the sole purpose of offending the readers. Clearly, Rushdie's mind-set for writing this particular book fits easily into the second category. As argued by other commentators on this point :

The ignorance, ridicule, humiliation and resentment that parts of this book have nourished will neither illuminate the human condition nor open the minds and hearts of people on different sides of the great divide between tradition and modernity.¹⁶²¹

This very point was raised in a letter, published in a Canadian newspaper, *Globe and Mail*, in Toronto on February 18, 1989. The writer of the letter, Khalid Sayeed, raises the question of whether a man with an established history of published work, of having a respectable level of education, which can place him into the status of a ‘man of letters,’ how far can such a character go to overturn the basic social values in the name of art? As Sayeed argued in the newspaper letter :

If I were to tell you that I had a dream in which Hitler appeared and said He had been maligned, that he didn't kill the Jews, and then I wrote about this in lyrical prose, are you going to say to me that this is a work of art and should be judged by different standards!¹⁶²²

10.3 Responses by the Sunni Schools of Shari'a Law.

‘Ala’uddin Kharufah, a member of the ‘*ulama* at Muhammad Ibn Saud University of Medina,¹⁶²³ wrote the book *Hukm al-Islam fi Jara'im Salman Rushdie, (Islam's Verdict*

¹⁶²⁰ Akhtar, Shabbir, *ibid.*, p6

¹⁶²¹ Appignanesi, Lisa and Maitland, Sara, *op.cit.*, p140

¹⁶²² Sayeed, Khalid, *Globe and Mail*, Toronto, 18 February, 1989

¹⁶²³ At the time of writing and publishing Kamali's own book in 1997, Kamali points out that ‘Ala’uddin Kharufah was, at that time, working for the International Islamic University in Malaysia, see Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p299

on the *Crimes of Salman Rushdie*), and within this work, he summarised the views, doctrines and opinions of the leading schools of Shari'a law. Kharufah assesses the case of Rushdie as follows :

The offences that Rushdie has committed amount to apostasy (*riddah*) (*sic*) Under the rulings of all of the *madhahib* (*sic*) that we have quoted. Rushdie is undoubtedly an apostate; I endorse this and consider him an offender who has renounced Islam and become an apostate. The jurists have, however, differed in regard to whether or not it is obligatory to ask the apostate to repent, and then they have differed as to the admissibility, or otherwise, of his repentance.¹⁶²⁴

'Ala'uddin Kharufah goes on to explain that he, personally, preferred the opinion put forward by the Hanafi school of law which argues that the accused should be given a full three consecutive day period for them to re-consider their position and have that that time scale to offer sincere repentance.

The three days, in the Hanbali view, would follow the conviction of an apostate by a competent court, and the death sentence would not become valid to be enforced until the three day zone, when soliciting for a full and sincere repentance, had been complete. Kharufah further recognises a very positive legal assessment of the case, that "repentance by an apostate like this (i.e. Rushdie) would be admissible to Imam Abu Hanifah."¹⁶²⁵

According to the responses from the other schools of *Shari'a*, Kharufah describes their differing views on this crime of apostasy. He presents the Shafi'i view that repentance is admissible even in cases where repeated apostasy occurs. Considering a case involving the acts of Salman Rushdie, the Shafi'i school would require "someone like Salman Rushdie to recite the two testimonials of the faith (*al-shahadatayn*) and declare his penitence and remorse for vilifying Islam."¹⁶²⁶

¹⁶²⁴ Ala'uddin Kharufah, *Hukm al-Islam fi Jara'im Salman Rushdie*, p105. Also see Kamali, Mohammad Hashim, *ibid.*, p299

¹⁶²⁵ Kamali, Mohammad Hashim, *ibid.*, p299

¹⁶²⁶ Ala'uddin Kharufah, *Hukm al-Islam fi Jara'im Salman Rushdie*, p107, Also see Kamali, Mohammad Hashim, *ibid.*, p299

Concerning the opinion held by the Hanbali school of law, in Rushdie's case, Kharufah argues that the accused could submit his repentance, but being aware of the the condition of having to declare it very honestly and clearly, by reciting the *al-shahadatayn* of true faith. He would also have to, sincerely and unequivocally, express his own personal disgust and new awareness of the level of his offensive insults, in the act that he undertook. While this is the case for the repentance, there still exists the need to implement stern discipline upon an apostate, to aim towards future deterrence. However, it may be pointed out, that according to the Hanbali scholar, Taqi al-Din Ibn Taymiyya, individuals such as "the likes of Salman Rushdie would be considered infidels whose repentance is neither necessary nor acceptable, with no respite being given prior to their execution."¹⁶²⁷

Kharufah makes it clear that any of these rulings could be implemented, but it must be understood that they are to used "on condition that it be for the benefit of Islam (*li-maslahat al-Islam*).....and in the meantime presents a good image of Islam (*di'ayah tayyibah li'l-Islam*)."¹⁶²⁸ Kamali also raises the important point that :

Bearing in mind that Islam is a religion of tolerance, magnanimity and breadth, contemporary Muslims need to prove the reality of these, especially in the context of relations between Muslims and non-Muslims at the present time.¹⁶²⁹

In the consequence of having viewed the differing opinions provided by the main schools of Shari'a' law, the majority opinion of the Hanafi, Shafi'i and Hanbali schools, any repentance offered by Rushdie would be considered as acceptable under specific conditions. The conditions would have to ensure that the repentance :

is unequivocal and expresses regret over his conduct; that he will not attempt to publish his book again; and finally, that he withdraws the existing copies from the market. When he does all of these things, it then becomes obligatory to accept his statement on face value as Islam does not permit contrived soul searching.¹⁶³⁰

¹⁶²⁷ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p299

¹⁶²⁸ *ibid.*, p299

¹⁶²⁹ *ibid.*, p299

¹⁶³⁰ *ibid.*, p299

Kharufah continues with the obvious corollary that, if Rushdie had the disrespect to refuse any apology and also to refused to unquestionably accept the conditions presented, then he will clearly remain living in fear for the rest of his life, as it will still remain an obligatory duty to all Muslims “to reach him so long as he is still alive (*an yulahiquh mada hayatith*) and never to neglect his duty.”¹⁶³¹

Rushdie argues that he had already re-entered Islam. On December 28 1990, the London based newspaper *The Times* published an article by Rushdie entitled ‘*Why I Have Embraced Islam.*’ Within the article he declares that “Although I come from a Muslim family background, I was never brought up as a believer, and was raised in an atmosphere.....broadly known as secular.”¹⁶³² He claimed that, four days earlier, he had met with six respected Muslim scholars on December 24 1990, and the meeting proved rather fruitful towards compassion, understanding and tolerance. However, while still promoting his own work, although it was the very cause of the situation he was now in, and never mentioning the very content of the book, he instead declared support for it, by stating “This is not a disavowal of my works, but the simple truth, and to me pleasure it was accepted as such.”¹⁶³³ In some form of either complete unawareness, or basic ignorance of what his insensitivity had caused, he went on to announce that “in spite of everything, *The Satanic Verses* is a novel that many of its readers have found to be of value. I cannot betray them. I believe the book must continue to be available so that it can gradually be seen for what it is.”¹⁶³⁴

The whole ambiguity of his approach to any genuine repentance and his sincerity in becoming a Muslim can be seen in the following, which seems to contradict his religious status when compared to the way he acts concerning the book:

On 7 January 1991, the American Magazine *Newsweek*, wrote that in February 1989 Salman Rushdie had declared

¹⁶³¹ Ala’uddin Kharufah, *Hukm al-Islam fi Jara’im Salman Rushdie*, p106-109. Also see Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, *ibid.*, p300

¹⁶³² *The Times*, 28 December, 1990. Also see Bedford, Carmel, *Fiction, Fact and the Fatwa, 2000 Days of Censorship*, *op.cit.*, p57

¹⁶³³ *The Times*, *ibid.*, Also see Bedford, Carmel, *ibid.*, p57

¹⁶³⁴ *The Times*, *ibid.*, Also see Bedford, Carmel, *ibid.*, p57

‘I am a Muslim.’ Then ‘last week at a Christmas Eve meeting with Islamic leaders in England, Rushdie publicly asserted ‘There is no god but Allah, and Muhammad is His last prophet.’¹⁶³⁵

It is clear that when announcing *al-shahadatayn* it is the public announcement of sincerely embracing Islam, becoming a devout Muslim. However, his actions contradict any commitment to the faith, as “Professing the testimonial of the faith is an interesting development but it could only produce the anticipated consequence when Rushdie explicitly repents, stops defending and justifying his blasphemous publication and indicates his intentions to that effect.”¹⁶³⁶

The manner in which just a verbal proclamation of faith will carry no weight and lose its value and meaning, is when the same person consistently defends a blasphemous book and offers no acknowledgement of its insults and the offence it caused. Kamali argued that what is now required to discover whether Rushdie’s action was done for financial benefits, or for some genuine moral claim of ‘righteousness,’ then a competent judicial tribunal could assess the case. Such a court which adjudicates this case would exercise the full judicial authority to finalise with a binding decision. This is necessary because “It is one thing for Rushdie to make statements in the knowledge that he does not have to comply with a binding order, and quite another when he knows that he would have to face the consequences of his conduct.”¹⁶³⁷

10.4 Summary of events after the publication of *The Satanic Verses*.

On February 14, 1989, Ayatollah Ruhollah Khomeini delivered over the radio in Tehran the *fatwa* which set out a death sentence that focused on both Rushdie the author, plus everyone else who were part of the publication of the book, with full knowledge of its content, as :

I inform the proud Muslim people of the world that the author of *The Satanic Verses* book which is against Islam, the Prophet and the Koran, and all involved in its

¹⁶³⁵ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p300

¹⁶³⁶ *ibid.*, p300

¹⁶³⁷ *ibid.*, p301

publication who were aware of its content, are sentenced to death.¹⁶³⁸

The other comment supporting this act of the death sentence, was that for anyone who may be killed while doing so, they “will be regarded as a martyr and go directly to heaven.”¹⁶³⁹

On February 17, 1989, the Iranian President, Ali Khamenei stated that should Rushdie repent and apologise to all Muslims, that “it is possible that the people may pardon him.”¹⁶⁴⁰ Also on that day, “Iran’s Chargé d’Affaires, Muhammad Mehdi Akhoond Zadeh Basti, describes Ayatollah Khomeini’s execution order as ‘purely a religious statement’ not meant as a political gesture against Britain.”¹⁶⁴¹ Concerning this point, on February 17, 1989, *The Bookseller*, a UK trade magazine, announced that *The Satanic Verses*, was the best-selling hardback fiction for the fourth consecutive week, with an estimated selling rate of 2,000 books each week.¹⁶⁴²

February 18, 1989: Rushdie announced his apology by claiming As author of *The Satanic Verses* I recognise that Muslims in many parts of the world are genuinely distressed by the publication of my novel. I profoundly regret the distress that publication has occasioned to sincere followers of Islam. Living as we do in a world of manyfaiths this experience has served to remind us that we must all be conscious of the sensibilities of others.¹⁶⁴³

In response to this approach of an apology, the joint secretary of the Bradford Council of Mosques stated that “This is good news and we are glad and satisfied. We want to keep in harmony and peace. But Rushdie should have apologised in the first instance weeks ago. If he had been polite, it would not have erupted.”¹⁶⁴⁴ However, a further statement from

¹⁶³⁸ Bedford, Carmel, *Fiction, Fact and the Fatwa, 2000 Days of Censorship*, op.cit., p1

¹⁶³⁹ Bedford, Carmel, *ibid*, p1

¹⁶⁴⁰ Bedford, Carmel, *Fiction, Fact and the Fatwa*, *ibid*, p3

¹⁶⁴¹ *ibid*, p3

¹⁶⁴² *ibid*, p4

¹⁶⁴³ *ibid*, p4

¹⁶⁴⁴ *ibid*, p4

the Bradford Council of Mosques declared that the apology was “not a sincere apology but a further insult to the Muslim community as a whole.”¹⁶⁴⁵

Another response came from Hesham El-Essawy, the Chairman of the Islamic Society for the Promotion of Religious Tolerance, who accepted Rushdie’s comments as :

“I regard it as an apology. It should pave the way out of this crisis. I hope that it will resolve the problems between Iran and Britain.”¹⁶⁴⁶

Also on February 18, 1989 Kalim Siddiqui, the Director of the Muslim Institute in London upheld the *fatwa* on the radio programme on the ‘BBC Radio 4’ programme *Today*.¹⁶⁴⁷ On the following day, February 19, 1989, Rushdie’s apology was rejected by Ayatollah Ruhollah Khomeini, in Iran. He stated publicly that the form of apology provided did not meet the *Shari’a* legal position required for an adequate pardon. As this was the case, he reinforced the *fatwa* sentence with the further comment that “It is incumbent on every Muslim to employ everything he has got, his life and his wealth, to send him to hell.”¹⁶⁴⁸

March 24, 1989, following an anti-Rushdie demonstrations in Bombay, twelve Muslim demonstrators were shot dead by police, during the riots that had developed from the march, together with fifty others who were injured.¹⁶⁴⁹ February 24, 1989, following an anti-Rushdie demonstrations in Bombay, twelve Muslim demonstrators were shot dead by police, during the riots that had developed from the march, together with fifty others who were injured.¹⁶⁵⁰ In Pakistan, on February 28, 1989, the weekly newspaper *Takbeer*, was banned on having published short extracts from the book *The Satanic Verses*. Also on this day, a Pakistani security guard was killed after a bomb attack on the British Council Library in Karachi. With that, in India, there was a demonstration in Srinagar, protesting against the police force of repressing the march that was held in Bombay, four

¹⁶⁴⁵ *ibid*, p5

¹⁶⁴⁶ *ibid*, p5

¹⁶⁴⁷ *ibid*, p5

¹⁶⁴⁸ *ibid*, p5

¹⁶⁴⁹ *ibid*, p5

¹⁶⁵⁰ *ibid*, p10

days earlier. This demonstration led to yet another marcher being killed, as is what happened in Bombay. Seven other were injured in ¹⁶⁵¹

March 3, 1989, following an anti-Rushdie demonstration in Kashmir, India, Muslim demonstrators clash with the police, and one is shot dead, with 84 were injured.¹⁶⁵² On March 29, 1989, the leader of Muslims in Belgium, Abdullah Ahdal, who was a Saudi Arabian, together with his deputy, Salim Bahri, a Tunisian, were both shot dead. The police report stated that the shooting followed several death threats on Abdullah Ahdal after the comments that he had made on a Belgium television programme, "in which he was reported as saying that the death sentence pronounced by Ayatollah Khomeini against Mr. Rushdie was aimed at public opinion with Iran but that in Europe there was freedom of expression."¹⁶⁵³

April 1, 1989, Kalim Siddiqui, the Director of the Muslim Institute, at a conference in London, arranged by the Institute, he recited the *fatwa* in verbatim and argued that the *fatwa*'s decision was "only a sentence of death according to the Divine Law."¹⁶⁵⁴ On June 3, 1989, Ayatollah Ruhollah Khomeini died in Iran.¹⁶⁵⁵ On the following day, Kalim Siddiqui argued that the validity of the death sentence would still remain, despite the death of Ayatollah Ruhollah Khomeini. He highlighted the legitimacy of the legal decision of the *fatwa*, because "there's no question of the death sentence being lifted just because the judge who passed the sentence has died. It will still stand."¹⁶⁵⁶

In Tehran, during a weekly sermon at a Mosque on Friday February 9th 1990, which was simultaneously broadcast over the radio, Ayatollah Khamene'i declared that :

The *fatwa* issued by His Eminence Imam Khomeyni.....concerning the writer of the blasphemous

¹⁶⁵¹ *ibid*, p13

¹⁶⁵² *ibid*, p15

¹⁶⁵³ *ibid*, p22

¹⁶⁵⁴ *ibid*, p22

¹⁶⁵⁵ *ibid*, p28

¹⁶⁵⁶ *ibid*, p28

book 'The Satanic Verses' is still valid and should be implemented.¹⁶⁵⁷

He also reiterated the moral position within Islam in these circumstances, and proffered a clear warning to those who had the inclination of writing similar material, that would be considered to be a deliberate insult and/or an intentional derogatory slight of Islam. His warning highlighted the moral ruling of such acts, indicating that :

The mercenary hands which try to wipe from view the value of Islam, who try to slight or ridicule Islam through cultural and propaganda plots, such as writing the blasphemous book 'The Satanic Verses,' must know that they are making a mistake. The harm of such plots will rebound on them.¹⁶⁵⁸

Four years later, on February 14th 1994, which was the fifth anniversary of the date the *fatwa* was initially presented, the IRNA news agency clarified the firm nature of the decree, and the unalterable factor, due to the specific crime that it involves, hence, where the death sentence was derived from :

World Muslims and leaders of Muslim countries have made it clear that no one has the right to alter or hinder the implementation of this decree. According to divine laws, an apostate like Rushdie, born into a Muslim household, carries the death sentence for blaspheming prophets and values held dear by world Muslims.¹⁶⁵⁹

Adding to this point, the IRNA agency also clarified the understanding that the sentence is a divine and revealed legal approach to the act of apostasy, therefore the *fatwa*, although delivered by Ayatollah Khomeyni, does not become invalid upon his own death, as which is held for 'normal' *fatwa* decisions. This is because a *fatwa* is generally held to be only legitimate while the Imam who delivered it is alive and can still defend their opinion. However, as this particular case of Rushdie involves such activity that implements the sacred 'revealed message' or, indeed – more importantly – the human

¹⁶⁵⁷ *Iran-UK relations; Khamene'i says fatwa on Rushdie must be implemented*, in SWB ME/0685 i, February, 10th,1990

¹⁶⁵⁸ *ibid.*,

¹⁶⁵⁹ *Iranian agency says death sentence against Rushdie cannot be lifted*, in SWB ME/1923 MED/1, February, 16th,1994

interpretation of the 'revealed message', it is argued that the decision in the *fatwa* remains valid even after the Imam who delivered it has died. As the IRNA agency declared :

The sentence has to be carried out irrespective of whether the apostate repents or not because repentance in such a case is a matter solely concerning divine mercy in afterlife depending on the sincerity of intention involved. The confirmation by 51 Muslim states of the fact that Salman Rushdie is an apostate means Rushdie should not be looked at as being within national or state framework of a single country. Salman Rushdie is not a national issue to any certain Muslim country.

The Western countries continue to support the sentenced apostate and insist on their demands from the Islamic Republic of Iran and disregard the fact that the decree of the apostasy of Salman Rushdie is not a political or governmental problem but is related to the whole of the Muslim world.¹⁶⁶⁰

Even further information was presented which signifies the breadth of how Islamic countries protect all of the prophets within the monotheistic religions of the *ahl al-kitab*. The report indicated that the film *The Last Temptation of Christ*,¹⁶⁶¹ although they referred to the film using the title *The Last Temptation of Jesus*, that was directed by Martin Scorsese in 1988, was equally banned as an outrageous act of blasphemy, and was dealt with in Islam, just as it was within Christian countries :

With respect to that important element, Iran has also protested the showing of the film "The Last Temptation of Jesus" [as received] which insults the teachings of Prophet Jesus (peace be upon him) and also his followers.¹⁶⁶²

Further to these reports, on the eleventh anniversary of the initial date the *fatwa* was delivered, these points raised above were reiterated during an Iranian radio programme, which was broadcast on February 13th 2000. The programme was reported by the SWB (Summary of World Broadcasts) news team in Tehran, on February 15th 2000, entitled as:

¹⁶⁶⁰ Ibid.

¹⁶⁶¹ The film of 1988 was based on the book by the same title, by the Greek author Nikos Kazantzakis (1885-1957).

¹⁶⁶² Iranian agency says death sentence against Rushdie cannot be lifted, in SWB ME/1923 MED/1, February, 16th, 1994, op.cit.

*Guards Corps says Rushdie fatwa “remains in force” until he is killed.*¹⁶⁶³ The report makes reference to the statement released by the Islamic Revolution Guards Corps (IRGC), using the *Voice of the Islamic Republic of Iran, Tehran* in Persian, as the source. The report declares that:

The Islamic Revolution Guards Corps has released a statement commemorating 25th Bahman [14th February], the anniversary of the issuing of the *fatwa* [in 1989] by the exalted Imam Khomeyni, may God’s mercy be upon him, which described Salman Rushdie as blasphemous. It announced: In view of divine instructions and the *fatwa* issued by the Guardian of the Muslims’ Cause [Khomeyni], the decree which described Salman Rushdie as a blasphemous individual remains in force and nothing will change that.

According to the statement: The feelings of Muslims all over the world were injured because of the insult to the holy presence of the Prophet of Islam who has a lofty status. Their wounds have not been healed and they will be in pain for as long as the religious decree on that blasphemous writer has not been implemented.¹⁶⁶⁴

10.4.1 February 2001 – Twelfth anniversary of Rushdie’s death sentence.

A year following the comments made by The Islamic Revolution Guards Corps (IRGC), in February 2001 the IRGC made exactly the same statement, confirming that the *fatwa* of the death sentence for Rushdie will always remain valid, and be legitimate to be undertaken. The statement was delivered in Tehran, on February 12th 2001 and was reported by the BBC World Service as:

The Islamic Revolution Guards Corps (IRGC) in a statement said the death sentence issued by the late Imam Khomeyni against the apostate Indian-born British writer Salman Rushdie was irrevocable. The IRGC's statement, a copy of which was made available to IRNA here Monday [12 February], called on Iranian statesmen to adopt diplomatic measures in support for the world Muslims and

¹⁶⁶³ *Guards Corps says Rushdie fatwa “remains in force” until he is killed*, SWB ME/3764 MED/1, February, 15th, 2000

¹⁶⁶⁴ *Ibid.*

the oppressed's rights and confront any move that might derail the sentence and portray it as less important.¹⁶⁶⁵

Equal to this statement, another group, the 'Islamic Propaganda Organization' (IPO), also declared that they unquestionably supported the *fatwa*. To publicly announce this, they presented a message via the IRNA, the Iranian news agency. The SWB reported that the IPO urged Muslims throughout the world :

to implement the historical verdict of the founder of the Islamic republic and father of the Islamic revolution the late Imam Khomeyni against Salman Rushdie. IPO's statement, issued on the occasion of the anniversary of the late Imam Khomeyni's verdict, said 'Satanic Verses' reveals age-old hostility of the colonialism against the vigilant Muslims and is a bell tolling the danger of colonialism and international Zionism against the world of Islam.¹⁶⁶⁶

Words such as this clearly show how the IPO support the death sentence by confirming that, although it was issued by the late Imam Khomeyni in 1989, it is still – and will always remain – valid, because they believe that the sentence is a divine creed, due to the religious crime of the author. As the BBC further reported, IPO's declaration argued that:

Rushdie who authored the highly-blasphemous book 'The Satanic Verses' was, in accordance to divine laws, sentenced to death in February 1989 by the late Imam Khomeyni, days after the ugly work spilled Muslims' blood in India and Pakistan.¹⁶⁶⁷

Also on the twelfth anniversary of the *fatwa*, an Iranian newspaper, *Jomhuri-ye Eslami*, wrote an article declaring that even if Rushdie was secretly moved away from Britain to live in America, he would still be a legitimate target to be killed. As the newspaper article stipulated, the author should acknowledge that the sentence is 'waiting to be delivered'. It seems that it is now irrelevant as to where Rushdie goes to live, as the sentence does not seem to be bound to be undertaken only within *Dar al-Islam*, (the territory of Islam), as

¹⁶⁶⁵ BBC Summary World Broadcasts, *Iran: Guards Corps says death sentence against writer Rushdie irrevocable*, BBC Mon ME1 MEPol asn; Taken from a report in English by Iranian news agency IRNA, Tehran, on 12th February, 2001

¹⁶⁶⁶ Ibid.,

¹⁶⁶⁷ Ibid.,

this statement warrants that it is legitimate for him to be killed even within *Dar al-Harb* (territory of Infidels) :

The main issue is that wherever the apostate, Salman Rushdie, might be he must await his death. Imam Khomeyni's decree remains as strong as ever and it has not changed at all. Transferring the apostate, Salman Rushdie, from Britain to America, would not do him any good. On the contrary, it will provide a better setting for implementing the decree, because the possibility of the revolutionary execution of this traitor is much greater in America.¹⁶⁶⁸

The ruling mentioned here seems to present some inconsistency from where *Shari'ah* actually stands on this very point. Technically, *Shari'ah* can only be legitimately used within *Dar al-Islam* (the territory of Islam). Therefore, to state that a *Shari'ah* legal sentence can be delivered within a non-Islamic state, i.e., part of the *Dar al-Harb* (territory of Infidels), this would certainly present a strong debate to question just how authentic the *Shari'ah* could be, when the criminal involved is caught, and the sentence is delivered, outside the realms of Islam. *Shari'ah* states that, should the criminal return to *Dar al-Islam*, then they can be arrested and taken into prison and legally dealt with. Therefore, the idea of taking the *Shari'ah* ruling into another territory, which is controlled by a secular legal system, presents a contradiction that would need to be addressed. This point can be taken up further, by others who could research beyond the limited boundaries that this present thesis has.

Continuing the recent statements made in Iran, another Iranian newspaper *Resalat*, also reported on 14th February 2001, that the decision within the *fatwa* will remain valid. As the article reads:

Now, on the 12th anniversary of the issuing of the historical decree by the Imam (may his soul be sanctified), the Muslims of the world consider this decree binding. That group of Western countries, which continue to support the

¹⁶⁶⁸ BBC Summary World Broadcasts, *Iran: Paper says Salman Rushdie easier to kill in America*, BBC Mon ME1 MEPol ms; A report in the Iranian newspaper *Jomhuri-ye Eslami*, Tehran, in Persian, on 14th February, 2001; translated into English by the BBC

criminal apostate, is still pursuing the policy of a clash with the Islamic world, contrary to its claims of dialogue.¹⁶⁶⁹

10.4.2 June 2001: President Mohammad Khatami Nullified the *fatwa*

To counter the position that upholds the *fatwa*, and the belief that it is an unalterable divine decree, President Mohammad Khatami made a statement in Tehran, on 4th June, 2001, which asserted his desire that both the death penalty on Salman Rushdie, together with the encouragement for anybody, either Muslim or non-Muslim to be the assassin that kills him, should now be terminated.¹⁶⁷⁰

He is cited in *Tose'eh*, the daily Persian newspaper, in requesting that journalists and/or diplomats did not ask either him, or any authority of the Republic of Iran, whether the death sentence was still valid or not. He explained that :

I hope this repeated question which has been raised for the past couple of years will not be brought up again.....We should consider the question of Salman Rushdie as finished.....the Islamic republic has formally announced that it has no decision on the subject.¹⁶⁷¹

Khatami also reiterated the governments strong position against any form of terrorism, and that Iran stands very firmly against this violence:

We explicitly announce that we are against terrorism in all its shapes, as demanded by our religious, moral and cultural mores and will seriously fight against this phenomenon¹⁶⁷²

Tose'eh also quoted Khatami as claiming that :

In our view, what happened in the Salman Rushdie saga was an expression of a cultural offensive initiated by the West against Islam and the Islamic revolution, towards which we took up a defensive position¹⁶⁷³

¹⁶⁶⁹ BBC Summary World Broadcasts, *Iran: Conservative paper says Fatwa against Rushdie declared binding*, BBC Mon ME1 MEPol sb; Taken from an unattributed commentary: "*Rushdie - A source of Humiliation for the West*," by the Iranian newspaper *Resalat*, Tehran, in Persian, on 14th February, 2001, p13; text translated into English by the BBC

¹⁶⁷⁰ BBC Summary World Broadcasts, *Iran: Khatami says Salman Rushdie's case must be considered closed*, BBC Mon ME1 MEPol nm; An excerpt from the report in English by IRNA, the Iranian news agency, Tehran, on 4th, June 2001

¹⁶⁷¹ President Mohammad Khatami quoted in *Tose'eh*, as cited in *Ibid.*,

¹⁶⁷² President Mohammad Khatami as cited in *Ibid.*,

¹⁶⁷³ President Mohammad Khatami quoted in *Tose'eh*, as cited in *Ibid.*,

Khatami also argued that the Islamic republic was not against the freedom of thought and the freedom of a person or a group to express themselves but, however, it was important for the Christian West to be aware that:

what Salman Rushdie had done was an affront to Islamic sanctities which was unacceptable. Hundreds of books, opposing our beliefs and programmes, are published around the world, many of which are even translated and published inside Iran. However, we should define freedom of thought. We do not consider insults and abuses to (religious) sanctities as having anything to do with thoughts¹⁶⁷⁴

Tose'eh also quotes Khatami as making it clear that “the Islamic republic had opted to push ahead with a civilizational dialogue instead of clashes of cultures in the world.”¹⁶⁷⁵

The BBC report summarised the very positive approach that Khatami has introduced when dealing with the Salman Rushdie affair, and that he has also improved the general image of Iran which has enabled the country to re-establish itself with the outside world, to some extent. This is due to Khatami's

adoption of a *détente* policy has improved Iran's image around the world, helping the Islamic republic to mend ties with many countries, once considered enemies of the Islamic revolution. The moderate Shi'i Muslim cleric, who won a landslide victory in 1997, is seeking another massive mandate to re-launch his liberal social and political reforms.¹⁶⁷⁶

10.5 Conclusion.

It is clear then, that the situation presently covering the whole Salman Rushdie affair, means that the *fatwa* is now being considered both valid and invalid by different groups within Iran.¹⁶⁷⁷ This case also involves an individual who has been accused of being both an 'apostate' and a 'blasphemer,' so either there is confusion as to what specific crime he had committed, or it could be argued that he had committed both. If the latter point is the

¹⁶⁷⁴ President Mohammad Khatami quoted in *Tose'eh*, as cited in *Ibid.*,

¹⁶⁷⁵ *Ibid.*,

¹⁶⁷⁶ *Ibid.*,

¹⁶⁷⁷ For a copy of the *fatwa* issued by The Shari'ah Court Of The UK in 1998 which asserts that the original *fatwa* death sentence is still valid, see Appendix D

case, then he would be an apostate and would, therefore, have left the fold of the Islamic community, being allowed three days to repent (*istitaba*). As mentioned above, he did offer some form of apology on February 18th 1989 but, again, there are 'two sides to the story', as the apology was considered both acceptable and unacceptable. It was unacceptable for Ayatollah Ruhollah Khomeini himself, who rejected it the day afterwards, on February 19th in Iran.

There also seem to be a lack of following the Islamic theological and Shari'ah ruling which declares that if a person publicly announces *al-shahadatayn* then they are to be accepted and acknowledged as a Muslim. In February 1989 Rushdie publicly declared the *al-shahadatayn*, but this was not accepted, as he was seen to be a charlatan. However, the contradiction lies in the understanding that some *hadith* report the Prophet Muhammad clarified that if a person only announced *al-shahadatayn* then it has to be accepted. No human has the authority to know or accuse the person who publicly states their faith that they are a liar, or part of the *munafiqun* (hypocrites). That decision will be made by God alone on Judgement Day. The message in one the *hadith* found in the collection by Abu Da'ud explains this concept in a broader context. The *hadith* promotes against the act of *takfir al-Muslim*, and explains what 'iman is based on very simple points: not to kill a person who announces the *al-shahadatayn*, and not to assume that any person is an infidel, irrespective of how unacceptable their behaviour may be. This *hadith* is narrated by Anas ibn Malik:

The Prophet (peace_be_upon_him) said: Three things are the roots of faith: to refrain from (killing) a person who utters, "There is no god but Allah" and not to declare him unbeliever whatever sin he commits, and not to excommunicate him from Islam for his any action; and *jihad* will be performed continuously since the day Allah sent me as a Prophet until the day the last member of my community will fight with the *Dajjal* (Antichrist). The tyranny of any tyrant and the justice of any just (ruler) will not invalidate it. One must have faith in Divine decree.¹⁶⁷⁸

¹⁶⁷⁸ Abu Da'ud, hadith number 2526, narrated by Anas ibn Malik from e:\islamica\winhadis\winhadis.tex on CD Rom *islamica : Digital Library of Islamic Software*, op.cit. Also see Abu Da'ud, Sulaiman bin Al-Ash'ath bin Ishaq Al-Azdi As-Sijistani, *Sunan Abu Da'ud*, op.cit, no date given, no page number given.

CHAPTER ELEVEN

11.0 CONCLUSION

The following remarks will summarise the findings of this research. One main point that has been established in this thesis, and is of some particular importance, is that there is a dispute amongst Muslim theologians and *Shari'a* jurists on the number of crimes that can be legitimately categorised as *al-hudud*. Therefore, it has been proven that there is a lack of consistency in the number of crimes and related punishments that God revealed as being easily identified in the Qur'an. As this research has proven, some theologians and jurists declare the *hudud* crimes in the Qur'an to list six which include apostasy and the consumption of alcohol. Others name only four, omitting these two acts. Also, others name seven with the seventh *hadd* being *al-baghi*: sedition, treason.

Therefore, if *al-baghi* has been listed as the seventh crime to be punished by the *hudud* system, then the death penalty is related to the rebellious acts undertaken by dissidents and murderers who perpetrate *al-baghi*. If they are also convicted of committing *irtidad wa ridda* during their agitated sedition against the state, they are to be punished with the death penalty for *al-baghi* – and not *irtidad wa ridda* from Islam.

It was also important to present the specific difference in the definition of 'treason' and the definition of 'apostasy' to indicate that the words have been misused due to the belief that they are synonymous. With this knowledge and a detailed explanation of what treason is, it proves that there is no need for any ambiguity or confusion in mixing up the terms, or over-lapping them in their use. The thesis argues that if there is a disagreement – or even a misunderstanding – in how Muslim jurists and theologians accept what actually defines the act of 'apostasy', then it is entirely incorrect and inappropriate for a translation of the Arabic words *irtidad* and *ridda* by using the English word 'treason'. As assessed in the thesis, the Arabic word *al-baghi* means sedition or treason, whereas both *irtidad* and *ridda* specifically mean apostasy. These are obviously different words, with different definitions and each act they relate to hold separate legal implications.

11.1 Ambiguity in the Definition of Unbelief.

The assessment of the case studies provided evidence of further inconsistencies in the sentencing for the conviction of blasphemy or apostasy. The sentences that were delivered indicate a large variety of penalties, which were the court's decision for the same named crimes that were committed. Such ambiguity in the terms used for one specific crime, can lead to the wrong legal sentence being delivered for the actual crime that was committed. This can also be seen in both the historical and contemporary case studies covered in the research.

An example of these issues can be seen in the court case that occurred in Spain and Morocco in 457AH/1064AD. These trials were undertaken by the Maliki Islamic school of law, and the accused were on trial for the act of *zandaqah* (free-thinking), whereas the actual crime they were accused of was *sabb al-rasul*. As *sabb al-rasul* is a form of blasphemy against the Prophet Muhammad, it does not fall within the definition of *zandaqah*. One who commits *zandaqah* is named as a *zindiq* and *not* a blasphemer. However, as shown above, it can be seen that Malik ibn Anas, in *al-Muwatta'*, argues that a *zindiq* is to be considered as being an apostate, i.e., someone who acts as a believer, but aims to hide their 'apostasy' of genuine disbelief (*kufr*). This adds even more confusion, because in this statement, a *zindiq* (a free-thinker), which is one form of hypocrisy (*munafiq*) is believed to be a *murtadd* (apostate). The confusion and ambiguity derive from what is almost a contradiction in terms, as a *munafiq* pretends to be a Muslim, but deep down they secretly do not believe at all, whereas a *murtadd* is a person who *was* openly a genuine Muslim, but then decided to leave the fold of Islam.

Other court case reports offer a perfect example of the nebulous use of the meaning of such terms, and shows a lack of any specifically refined and restricted definition of these terms when related to the crimes and sins of 'unbelief' that they become attached to. The most important court case reports that highlight the problems that the accusations and the trials create, centred around the two accusations of 'blasphemy' which were presented by Isabel Fierro. As seen above, she indicated that there is open disagreement (*ikhtilaf*) between the Islamic legal scholars concerning the punishment presented for those

convicted of blasphemy. This manifests the inconsistency that exists throughout the four Sunni schools of law and the Shi'a legal position, as they all undertake very separate interpretations of how *Shari'ah* should be implemented.

These two cases also show that there is a mixture between the different categories of 'unbelief', where the term used in the accusation could differ somewhat from the term used describing the act undertaken by the accused. For example, in the case of Yahyà ibn Zakariya al-Hassab, he was convicted and executed for 'blasphemy', but he was referred to during the court case as being a *fasiq* (a godless sinner) – but in none of the reports by the *fuqaha*' who considered his case, was there any mention of him as being either a *murtadd* or a *kafir*.

It is also important to note here what the actual court cases involved, that were cited as being 'precedent' for the two cases of 'blasphemy' against Yahyà ibn Zakariya al-Hassab and Harun b. Habib. In the reports of these two cases there was no reference to any other case specifically dealing with a case of 'blasphemy'. The actual cases cited as 'precedent' by one of the Islamic jurists, who was pro- the death penalty, were cases that included the accusations of *bid'a*, *zandaqah* and apostasy. As was mentioned above, this is clear evidence that there is no definite line between these three very different offences, and the other very different offence of blasphemy. This thesis argues that in these cases, the dividing line was clearly not recognised, or consciously understood, historically. The thesis also aims to show that it is clear that this dividing-line, to maintain each crime and punishment separated individually, has still not been drawn in modern times.

The sentences delivered in the contemporary cases range from the execution of Mahmoud Muhammad Taha, and the death sentence delivered *in absentia*, on Salman Rushdie, to the forced divorce of Nasr Hamid Abu Zeid and the imprisonment of various other Muslims, all convicted of blasphemy and apostasy. Another example of the inconsistency of the court decisions was the acquittal of Haider Haider and Nawal El-Sa'adawi, who had both been accused of committing almost exactly the same insult to religion as those who were killed or imprisoned. Most of the court cases involve the accused who publicly

announced *al-Shahadah*, declaring themselves as faithful Muslims. However, one case also involved the prison sentence on Salah al-Din Muhsin, who openly admitted he was an atheist, and was therefore a genuine apostate who declared his rejection of belief in God and his rejection of *'iman*. The court decision in this particular case clearly identifies the very sensitive issue of how the Islamic community should deal with those who decide to leave Islam. The prison sentence delivered on Muhsin highlights the actual presence of the necessary tolerance that *Shari'ah* can provide for adamant unbelievers. It is important to note that even Salman Rushdie, who had been openly offensive against Islam, and insulted the Prophet Muhammad's wives, he still decided to publicly announce *al-Shahadah*, which was something that Salah al-Din Muhsin refused to do. However, the complex nature of this topic can be seen in the different penalties delivered to the convicts. The publicly announced Muslim, who had offered his repentance (*istitaba*) and stated he had returned to Islam, received the death penalty – whereas a proud atheist, who had been born a Muslim, was only given a prison sentence.

11.2 Inconsistency in the Time Allowed for *istitaba* (Repentance).

Another indication of further inconsistencies between the different schools of law in the relevant areas of *Shari'ah* that relates to apostasy, can be found in the length of time that a convicted apostate is allowed to seek repentance (*istitabah*). The schools of law present time-scales that start with the standard time of three days before the accused would be executed should they fail to repent in that time. However, the Malikis do not consider any length of time to be allowed for repentance. They base this on the *hadith* 'Kill those whoever changes his religion,' as the *hadith* does not refer to a length of time for repentance. Some other jurists argue for a period of one month, as they consider that three days is too short for an apostate to be able to re-consider their position. Other Muslim jurists and theologians argue that the convicted apostate should be allowed their whole life-time to change their mind and repent. This life-long allowance is in order for them to have the chance to regain their loss of faith, so they may re-learn how to worship God before they reach Judgement Day. This is further evidence on the inconsistency between the schools of law, due to very different human interpretations of how to punish those who refuse to remain within the Islamic community.

What also becomes apparent is the inconsistency within the *same* schools of law, and not just the differences that occur between the separate schools in their interpretation of *Shari'ah*. As has been shown, the Hanbalis and Malikis Sunni schools of law present contradictory rulings. They argue that there is no need for a blasphemer to repent, because even if they did, they would not be saved from the appropriate punishment in this life. They believe that such repentance will only be beneficial for the accused in the Hereafter. Contrary to that, they also argue that it is obligatory to offer any convicted blasphemer every opportunity to repent. There is another opinion held in the two other Sunni schools of law (Hanafis and Shafi'i) who argue that repentance of both a blasphemer and an apostate is to be accepted as admissible evidence for their legal defence.

There is also evidence that certain levels of ambiguity show how sinners who committed different forms of 'unbelief' have been treated in a vague, undefined manner. This further supports the argument that the boundaries of one act of unbelief blurs into another. A good example of this can be seen if we go back in history: those found guilty of being a *zindiq*, particularly in Iraq, where given a far more harsh and inflexible legal sentence than those convicted of apostasy. Apostates were allowed time to repent (*istitabah*), whereas both the Hanafi and Maliki schools of law delivered the irrevocable death sentence on those convicted of being a *zindiq*.

Such inconsistencies prove that within each school of Islamic law there is lack of agreement for one single confirmation of how to implement the legal ruling against blasphemy and apostasy. The manner of the legal rulings on apostasy seem to differ. Some differences are minor, but others differ to a much greater extent.

It would be more logical to support the argument that when a person changes their private religious belief, they should either ostracise themselves from the Islamic community, to remove them from influencing any other believers, or be left alone to lead their own life, as long as it did not effect anyone else.

11.3 Inconsistency on the Legal Sentence Delivered on Apostate Women.

The research has also found other inconsistencies of how the different schools of law interpret *Shari'ah*. Whereas three of the Sunni schools of law, (Maliki, Shafi'i and Hanbali) agree that both men and women can be put to death for apostasy, the fourth school (Hanafi) and also the Shi'a interpretation of *Shari'ah*, only sentence men to death, while they incarcerate apostate women, even if she was born a Muslim. This decision is based on the understanding that women are not considered to be strong enough to fight in wars. If a woman did fight, this would be their participation in a seditious act of treason. Therefore, the death penalty would be for treason, due to physical attacks on the Islamic authorities, and not for the act of apostasy.

To support this view, it has been proven that the Prophet Muhammad forbid the killing of women due to their lack of fighting abilities. The conclusion found in this research is that the whole legal basis for killing a man or a woman is based on *hirab* (when fighting or acting in support for the enemy) and the death sentence is not merely based on a person's change of faith. Such inconsistency found in the different penalties for the same crime, would suggest that *Shari'ah* sentencing is obviously based on a human interpretation of God's message.

11.4 Ahadith Related to the Prohibition of *takfir al-Muslim*.

The arguments suggesting confusion and ambiguity, or certainly disagreement, with the correct definition of the different forms of *kufir*, can be supported with the rejection of accepting the act of *takfir al-Muslim*. To reiterate on how the differing opinions held against a Muslim who accuses another of being a non-believer is against the Qur'an and against the basic principles of Islam, this can be shown in the collection of *ahadith* by al-Bukhari. In his work *al-Imam*, book 22, one *hadith* narrated by Abu Hurayrah states:

If a Muslim charges a fellow Muslim with *kufir*, he is himself a *kafir*, if the accusation should prove untrue” and also, “the reproach of *kufir* is equivalent to murder.¹⁶⁷⁹

¹⁶⁷⁹ Khan, Muhammad Muhsin, hadith no. 125A in *The Translation of the Meanings of Sahih Al-Bukhari*, Arabic-English, Volume VIII, Kazi Publications, Lahore, Pakistan, 1979, also see hadith 8.125A from e:\islamica\winhadis\winhadis\tex on the CD Rom *islamica : Digital Library of Islamic Software*, Islamic

This can also be seen in the opinion expressed by Ibn Hazm, who brings to attention the fact that the '*ulama*' also disagreed on the position of whether a person who refused to obey and undertake the obligatory prayers (*salah*), or pay the tax of *zakat*, or fast (*siyam*) or attend the pilgrimage (*hajj*), would become a *kafir*. As an example, Ibn Hazm assesses the differing views and doctrines held by the Kharijiyyah, the Qadariyyah, the Batiniyyah and the Murji'ah, together with the accusations and the counter-accusations thrown between them in their debates. He analyses each case, to consider if it led to transgression or unequivocal disbelief. Kamali does not see the need to cover the details in further analysis concerning the polemics raised in the debates of disbelief. However, he makes the following essential point:

many of these accusations tend to be at odds with the letter and the spirit of the guidance that is found in the revelatory sources.¹⁶⁸⁰

This point is also due to the lack of any consensus in finding a single definition of *kufr* in the accusations against each sect or faction, that are held against each other. Many of the definitions of *kufr* as a concept, reach such a broad scope that it was possible to use '*kufr*' as a label for virtually any deviation or disagreement. He argues that the far more reasonable approach would be diametrically opposed to this, to narrow the definitions of *kufr* and make it more specific, in order to isolate it from concepts that relate closely to it. One possibility here, would be to distinguish the varying types of *kufr* and the differing contents of them, which would isolate them. He concludes this point by stating that

There is evidence to suggest that such an approach would be more in harmony with the Sunnah of the Prophet.¹⁶⁸¹

The basic guideline can be found in various *ahadith* (Traditions), which are succinctly summarised by Muhammad Abu Zahrah, in his work *al-Jarimah wa'l-'Uqubah fi'l-Fiqh al-Islami*, as :

no one may accuse another of disbelief, blasphemy or apostasy without manifest evidence, and anyone who does so partakes of the charge himself.¹⁶⁸²

Computing Centre, London, [www.ummah.org/icc] also see 'The Encyclopaedia of Islam', Volume IV, 1975, op. cit., p407

¹⁶⁸⁰ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit., p220

¹⁶⁸¹ *ibid.*, p220

This view is also supported by the opinion of Abu Hamid Muhammad al-Ghazali, who offered a critical reaction to such a peremptory condition that several sectarian scholars have used in accusing opposing sects of infidelity and disbelief. In his work *al-Munqidh min al-Dalal*, al-Ghazali argues that :

The Hanbalites tax the Ash'arites with unbelief regarding the affirmation of God Most High 'being firmly seated on the throne.....' The Ash'arites accuse the Mu'tazilah with unbelief claiming that the latter tax the Apostle with lying regarding the 'possibility of the ocular vision of God Most High.'¹⁶⁸³

Al-Ghazali expresses his own opinion on this matter concerning such accusations with :

Speculative matters are of two sorts, one which touches on the roots of belief, and one which touches on the branches. Now, the roots of belief are three : belief in God, and His Apostle, and in the Last Day. All other things are branches. Know too, that there can in no wise [sic] be any taxing with unbelief regarding the branches.....¹⁶⁸⁴

Kamali argues that the precise meaning of the references in each source for the ocular vision of God and that of God 'being firmly seated on the throne,' such as in Surah *Al-Hadid*, 57:4¹⁶⁸⁵, are not known. This factor is speculative thus, "to base accusations of

¹⁶⁸² *ibid.*, p220. Kamali also cites the work of Abu Zahrah, Muhammad, *al-Jarimah wa'l-'Uqubah fi'l-Fiqh al-Islami*, Dar al-Fikr al-'Arabi, no date given, p82 and also Al-Bahnasawi, Salim, *al-Hukm wa Qadiyyat Takfir al-Muslim*, op.cit., p50, (Kamali, *ibid.*, in footnote 153 on p256)

¹⁶⁸³ *ibid.*, p220. Kamali also cites : al-Ghazali, Abu Hamid Muhammad, *al-Munqidh min al-Dalal*, English translation by R. J. MacCarthy, Twayne Publishers, Boston, USA, 1980, p150, (Kamali, *ibid.*, in footnote 154 on p256)

¹⁶⁸⁴ Kamali, *ibid.*, p220. Kamali also cites : al-Ghazali, Abu Hamid Muhammad, *al-Munqidh min al-Dalal*, *ibid.*, p162, (Kamali, *ibid.*, in footnote 155 on p256)

¹⁶⁸⁵ "He it is who has created the heavens and the earth in six aeons, and is established on the throne of His almightiness. He knows all that enters the earth, and all that comes out of it, as well as all that descends from the skies, and all that ascends to them. And He is with you wherever you may be; and God sees all that you do." Asad, Mohammad, *The Message of the Qur'an : Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, *Al-Hadid*, 57:4, p836.

The identical phrase is used in *Al-A'raf*, 7, 54, which reads as : "O people! The One Who nurtures and sustains you is God Almighty, He Who created the heavens and the earth in the space of six days before establishing Himself on His Throne of Power. He draws the veil of night over the face of day and makes light cover darkness so that day and night follow each other in quick succession. Your Lord has created the sun, the moon and the stars, all of which obey His command. Know that all creation is from Him and that all commands are His. May He be blessed, for He is the Nurturer and Sustainer of all worlds!" Turner, Colin, *The Quran : A New Interpretation*, Textual Exegesis by Mohammad Baqir Behbudi, Curzon Press, 1997, *Al-A'raf*, 7, 55, p90.

There are further verses within the Qur'an which address this concept . "As regards the term 'arsh

unbelief on them is totally unjustified.”¹⁶⁸⁶ These phrases are also used in the Qur’an in sections that are referred to as *mutashabihat* (obscure) the meaning of which is only known by God. Kamali suggests that to engage in such speculative discourse and polemics on such an area of the Qur’an is clearly discouraged in the Sunnah. Claims for authority absolute certainty on this matter “is an excess in itself, let alone a basis for a charge of disbelief.”¹⁶⁸⁷ On a similar tone as that of Al-Ghazali, was presented by Muhammad Amin Ibn ‘Abdin, in his work *Hashiyat al-Radd al-Mukhtar ‘ala’l-Durr al-Mukhtar*. He mentioned that there are curious unfounded accusations of disbelief within the legal material by the followers of the Islamic schools of law, but he does argue that none of the more prominent *mujtahidun* ever became involved in such debates. The people who provided such charges “where mainly writers of a lesser calibre whose works do not command a high degree of credibility.”¹⁶⁸⁸

Historically, the prominent political relevance of these offences, during the early days of the Islamic community, can be identified in the hostile reaction, which led to the Prophet involved in some eighty-five battles, following his migration to Medina, becoming the head of community.¹⁶⁸⁹ Kamali argues that in modern times, it is now necessary to form a distinct separation between the political and religious content of blasphemous acts and apostasy. His view is based on the fact that there was a predominant political basis for this offence during the early days of Islam – and therefore, it should no longer be

(lit. ‘throne’ or ‘seat of power’), all Muslim commentators, classical and modern, are unanimously of the opinion that its metaphorical use in the Qur’an is meant to express God’s absolute sway over all His creation. It is noteworthy that in all the seven instances where God is spoken of in the Qur’an as ‘established on the throne of His almightiness’ (7:54; 10:3; 13:2; 20:5; 25:59; 32:4 and 57:4) this expression is connected with a declaration of His having created the universe.” Asad, Mohammad, *The Message of the Qur’an*, ibid, footnote 43 on p211. Also “The phrase ‘*arsh* is used in the Holy Qur’an here and on six other occasions, viz. 10:3; 13:2; 20:5; 25:59; 32:4 and 57:4.....Turning to lexicons, we find that ‘*arsh* literally means ‘a thing constructed for shade’ or ‘anything roofed.’ According to the latter authority ‘the court or sitting place of the sultan’ is called ‘*arsh* on account of its eminance.” Maulvi Mohammad Ali, 1920, *The Holy Qur’an : Containing the Arabic Text With English Translation and Commentary*, Ahmadiyya Anjuman-I-Ishaat-I-Islam, Lahore, India, *Al-A’raf*, 7, 54 and footnote 895 on pp339-340

¹⁶⁸⁶ Kamali, op.cit., p220-221

¹⁶⁸⁷ Kamali, ibid., p220-221

¹⁶⁸⁸ Kamali, ibid., p221. Kamali also cites the work of Ibn ‘Abdin, Muhammad Amin, *Hashiyat al-Radd al-Mukhtar ‘ala’l-Durr al-Mukhtar*, (also known as *Hashiyat Ibn ‘Abdin*), Dar al-Fikr, Cairo, 1399/1979 and second edition, Cairo, Matba’at al-Babi al-Halabi, 1386/1966, Vol. IV, p237, (Kamali, ibid., Footnote 156 on p256)

¹⁶⁸⁹ Kamali, Mohammad Hashim, op.cit., p247-248

categorised as a dangerous political offence in contemporary times. Blasphemy was seen then as a strong threat to the continuance of Islam, as Islam was then a 'new faith,' and the newly established state had no firm basis to defend itself from the constant hostility thrust upon it.¹⁶⁹⁰

Making comments on the assessment of the apostasy cases at that time, and concluding that they were political offences, 'Abd al-Hakim Hasan al-'Ili analysed the cases and suggests that the Prophet had permitted the death sentence for apostasy in certain cases, under his authority, when he was the political leader at that time. However, the Prophet Muhammad also had the capacity of discretionary decisions in his judgement, so "as such, the Prophet himself has treated apostasy as a *ta'zir* (تعزير) offence."¹⁶⁹¹ It is recorded as evidence that the Prophet exempted several people from the death sentence, who had not just renounced Islam but had also vilified and insulted him. Kamali mentions that throughout this assessment, the word 'apostasy' is used synonymously with 'blasphemy.' Also, it is important to note that most, if not all, of the cases that involved apostasy were linked with physical and verbal attacks upon Islam or the Prophet. It was such a common occurrence to name the offence of treason as blasphemy or apostasy, that the three words became indistinguishable.

Although the crimes committed were politically rebellious sedition, they were understood to have had a religious emphasis. This is why the crimes committed were referred to as being either blasphemy or apostasy. Islam had no separation between religion and politics, or religious and civil authority and that principle it still argued to be the case of the Islamic state today; with little, or no, separation of the state and religion. However, Kamali argues that the things that have changed throughout history include the distinction between the crimes that are categorised of having a religious basis, and those of a having a political nature. This has been both recognised and has also been in practice. The political crime of treason has been treated in a different manner as to that of blasphemy. The obvious gravity held against treason should have a much more severe penalty than

¹⁶⁹⁰ Ibid., p248

¹⁶⁹¹ Ibid., p248

that the act of blasphemy. This can be due to the more modernised structure of the state, compared to the first state that was established in Medina. Kamali succinctly explains this change over time :

Whereas the state in Medina under the leadership of the Prophet and the Rightly-Guided Caliphs, was clearly committed to, and rooted in, the ideology and religious law of Islam, and political loyalty was measured by these criteria, this is no longer the case with the nation-state today.¹⁶⁹²

Due to this, the whole consideration of the crimes of apostasy and blasphemy has changed, as they presently do not relate, in any definitive way, to a political motive. If this is the case, it would be more logical to re-consider the appropriate punishments that relate to the change of reasons surrounding the crime. Kamali suggests that, as blasphemy is no longer to be seen as a political act by a rebel, on the same level as any subversive treason would be, and it is also not one of treason's accompanying effects, it is not applicable to treat it in modern times, in the same manner in how it was treated with historically, in Medina. However, having established this point, it is still very obvious that blasphemy is an offensive act, and can often incite violent reactions against it, including the loss of life, through the chaos it creates. It seems to:

pose a threat to law and order in society, as was seen in the aftermath of Salman Rushdie's misguided venture. But even so, blasphemy today can in no sense threaten the existence or continuity of Islam as a great religion, a legal system and a major civilisation.¹⁶⁹³

Kamali argues that, historically, "The scholastic doctrines of the *madhahib* treated blasphemy and apostasy on the same footing and viewed blasphemy as an extension of apostasy, a position which is no longer justified."¹⁶⁹⁴ He clearly concludes that blasphemy should be categorised as a *ta'zir* (تعزير) crime, that allows the judge who is considering any case, to have the discretion of what sentence to deliver, depending on the surrounding circumstances in each individual case. His final words explains that a clearer

¹⁶⁹² Ibid., p249

¹⁶⁹³ Ibid., p249

¹⁶⁹⁴ Ibid., p250

definition of the crime itself, should also be achieved, to overcome any ambiguity and confusion that may exist :

Based on this appraisal, the precise definition of blasphemy, the acts and words that incur this offence, and then the quantum of the punishment, may be determined and specified, or amended and refined as the case may be, by the legitimate political authority and legislative organ of the state in modern times.¹⁶⁹⁵

11.5 tafsir (exegesis) – Assessment of the Qur’anic Message.

As discussed in Chapter Three, it is important to indicate a clear understanding on the concept of religious freedom. It is particularly important to note the message in the Qur’an in 2:256, *la ikraha fi-l-din* (لَا إِكْرَاهَ فِي الدِّينِ) – there is no compulsion in religion), which is a verse that is argued to have not been abrogated (*naskh*), although, a limited number of Muslim scholars argue that it has been. Also the message in 4:137 openly declares that people may repeatedly believe, then reject faith, then believe again and still reject faith, so that those who remain being unbelievers will receive the wrath of God in the hereafter on judgement day, following their natural death.

Therefore, before engaging in assessing the complexities of the different interpretations through *tafsir* and the various levels of how to understand the text, it is important to be aware that no religion agrees or condones those who decide to leave it, but the death penalty is not an adequate method to resolve a person’s lack of faith or their refusal to be a *muslim* (obedient) in offering *islam* (their devout submission to God). The Qur’an openly states that as long as a person lives their life as a tolerant, humble and pious person, the final judgement on their behaviour in this life will be made by God.

One salient point can be clarified by assessing the *tafsir* of the Qur’anic verse 5:32. The verse clearly clarifies that to kill one innocent person is the same as killing the population of the whole world, whereas to save one life, if the person being saved was a believer of Islam or not, it would still be equal as to save all of humanity. It is important to note that

the verse provides two legitimate exceptions as being acceptable to kill a person. One exception is to kill a murderer, and the other exception is to kill a person who attempts to spread corruption, and aims to destroy the community. The first exception includes the death penalty for a murderer, and the second exception allows self-defence against someone undertaking the act of seditious treason. At no point does this verse, or any other verse, refer to the legitimacy or allowance for a Muslim to kill someone who had performed any form of *kufr*, or having committed *irtidad*. The verse 5:32 declares:

مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَىٰ بَنِي إِسْرَائِيلَ أَنَّهُ مَن قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ
فَسَادٍ فِي الْأَرْضِ فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا أَحْيَا النَّاسَ
جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعَدَ ذَلِكَ فِي
الْأَرْضِ لَمُسْرِفُونَ ﴿٣٢﴾

Because of this did We ordain unto the children of Israel that if anyone slays a human being – unless it be [in punishment] for murder or for spreading corruption on earth – it shall be as though he had slain all mankind; whereas, if anyone saves a life, it shall be as though he had saved the lives of all mankind. And, indeed, there came unto them Our apostles with all evidence of the truth: yet, behold, notwithstanding all this, many of them go on committing all manner of excesses on earth.¹⁶⁹⁶

As stated by Abdullah Yusuf Ali in his translation of the Qur'an, although this verse is based on the story of an argument between Adam's sons Cain and Abel, the verse declares a much broader meaning:

Israel rebelled against God, slew and insulted righteous men who did them no harm, but on the contrary (they) came in all humility. When God withdrew His favour from Israel because of its sins and bestowed it on a brother nation, the jealousy of Israel plunged it deeper into sin. To kill or seek to kill an individual because he represents an 'ideal' is to kill *all* who uphold the 'ideal'. On the other

¹⁶⁹⁵ Ibid., p250

¹⁶⁹⁶ Asad, Mohammad, *The Message of the Qur'an : Translated and Explained*, 1980, Dar al-Andalus Limited, Gibraltar, p147-148.

hand, to save an individual life in the same circumstances, is to save a whole community. *What could be stronger condemnation of individual assassination and revenge?*¹⁶⁹⁷

[Italics added by thesis author for emphasis]

In the Qur'an blasphemy is referred to as being the opposition (*muhadadah* or *mushaqaqah*) to God, to insult (*adha*) God and the Prophet.

Two verses of the Qur'an emphasise the fact that God is the Judge on a person's faith, and humans are simply the witnesses of unbelievers in this world. This very point is clarified in *Al-Mai'dah*, 5:44, where God promotes all people to not be distracted by human misbehaviour, or to be over concerned in a person's refusal to live as a humble believer. The verse declares: "therefore fear not men, but fear Me," as it is a far greater priority for each person to live in the House of God:

Al-Mai'dah, 5:44

إِنَّا أَنْزَلْنَا التَّوْرَةَ فِيهَا هُدًى وَنُورٌ يَحْكُمُ بِهَا النَّبِيُّونَ الَّذِينَ أَسْلَمُوا
لِلَّذِينَ هَادُوا وَالرَّبَّانِيُّونَ وَالْأَحْبَارَ بِمَا اسْتُحْفِظُوا مِنْ كِتَابِ اللَّهِ
وَكَانُوا عَلَيْهِ شُهَدَاءَ فَلَا تَخْشَوُا النَّاسَ وَآخِشُوا وَلَا تَشْتَرُوا بِآيَاتِي
ثَمَنًا قَلِيلًا وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْكَافِرُونَ



It was We Who revealed the Law [*Taurât* (Torah) to *Mûsa* (Moses)]: therein was guidance and light. By its standard have been judged the Jews, by the Prophet who bowed (as in Islam) to Allah's Will, by the Rabbis and the Doctors of Law: for to them was entrusted the protection of Allah's Book, and they were witnesses thereto: therefore fear not men, but fear Me, and sell not My Signs for a miserable price. If any do fail to judge by (the light of) what Allah hath revealed, they are (no better than) Unbelievers (*Kâfirûn*).¹⁶⁹⁸

¹⁶⁹⁷ Ali, Abdullah Yusuf, *The Holy Qur'an : Text, Translation and Commentary*, 1969, Sh. Muhammad Ashraf, Kashmiri Bazar, Lahore, Pakistan, Volume 1, in footnote 737 on p252

¹⁶⁹⁸ Ali, Abdullah Yusuf, , *The Holy Qur'an*, op.cit. In this translation, the verse is cited as 5:47. Also see

Concerning the appropriate and desired mode of conduct for how Muslims should implement the message of the Qur'an into everyday life, this is also fully explained in 5:48. This verse suggests that true believers need to live under God's Will, and not human intervention on God's Law, as the latter has been clearly stated and established in the revealed scriptures for all the *ahl al-kitab*. All matters that pertain to how one should gain true belief and how to act in the correct manner by showing this path to God to the community, will be assessed and either rewarded or punished by God alone:

Al-Mai'dah, 5:48

وَأَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ مُصَدِّقًا لِمَا بَيْنَ يَدَيْهِ مِنَ الْكِتَابِ وَمُهَيِّمًا
عَلَيْهِ فَاحْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ عَمَّا جَاءَكَ
مِنَ الْحَقِّ لِكُلِّ جَعَلْنَا مِنْكُمْ شِرْعَةً وَمِنْهَاجًا وَلَوْ شَاءَ اللَّهُ لَجَعَلَكُمْ
أُمَّةً وَاحِدَةً وَلَكِنْ لِيَبْلُوَكُمْ فِي مَا آتَاكُمْ فَأَتَّبِعُوا الْخَيْرَاتِ
إِلَى اللَّهِ مَرَجِعُكُمْ جَمِيعًا فَيُنَبِّئُكُمْ بِمَا كُنْتُمْ فِيهِ تَخْتَلِفُونَ ﴿٤٨﴾

To thee We sent the Scripture in truth, confirming the scripture that came before it, and guarding it in safety; so judge between them by what Allah hath revealed, and follow not their vain desires, diverging from the Truth that hath come to thee. To each among you have We prescribed a Law and an Open Way¹⁶⁹⁹. If Allah had so willed, He would have made you a single People, but (His Plan is) to test you in what He hath given you: so strive as in a race in all virtues. The goal of you all is to Allah. it is He that will show you the truth of the matters in which ye dispute;¹⁷⁰⁰

The final point which signifies the sole reason for a human to find happiness, peace and faith in this life can be seen in the point made by Abdullah Yusuf Ali, who makes it very clear that all human beings need to simply recognise that everyone has different opinions, and that obviously some will oppose others. In order to live in harmony with each other, people need to accept that God will be the negotiator, as God will provide reconciliation

¹⁶⁹⁹ "Law; *shir'at* = rules of practical conduct," Ibid., in footnote 760 on p258

between the many differences that exist. However, as that reconciliation will not occur until Judgement Day, each person needs to acknowledge that it is far more courageous to compromise with such inevitable differences of perspectives on how people define as the 'right path' to God. As long as people are prepared to 'agree to disagree' but still accept and respect each other, then the underlying Message of the Qur'an will be followed. The underlying message declares that everyone needs to live and believe in – their own way – by following everything that relates to God's *tawhid*, (Oneness). As Yusuf Ali suggests:

As our true goal is God, the things that seem different to us from different points of view will ultimately be reconciled by Him. Einstein is right in plumbing the depths of Relativity in the world of physical science. It points more and more to the need of Unity of God in the spiritual world.¹⁷⁰¹

11.6 Certain Disunity within Islam.

The issue of 'disunity within Islam' is an important point to raise, in any debate concerning the Islamic perspective on human rights. It would be a wholly misguided assumption indeed, to believe that Islam is a unified force and a ready alternative to the Western approach. As Farhang argues, Muslims do not have a unified and monolithic perception of their faith - no more so than followers of any other religion, whether they are the monotheistic religions or others. He claims that the contemporary interpretations of the Qur'an, by various Muslim thinkers and intellectuals, ranges from the extreme Left to the extreme Right, incorporating any combination of themes within that spectrum.

He states that the discourse in Islam often revolves around the meaning of the Revelation, or the intentions of the Prophet but that, in fact, this is a manifestation of more deeply rooted conflicts and contradictions in the socio-economic structure of society. Farhang also asserts that, contrary to the media and some academic assertions that describes Islamic societies as having a special proclivity in linking religion and state power – that actually a separation between these two has been the norm in the Muslim world for much

¹⁷⁰⁰ Ibid., the verse is cited as 5:51. Vol. One, p258-259

¹⁷⁰¹ Ibid., in footnote 762 on p259

of its history.¹⁷⁰² Despite the *Shari'a* grasp of nearly all aspects of individual and social life, it is argued that there is no unified Islamic legal system as such, which is enshrined in integrated codes and accepted by all Muslims. Artz argues that, although there is a great emphasis in Islam for complete submission to the Qur'an and the unanimity for the tenets of Islam, the different schools of law clearly have different principles of *fiqh* (orthodox jurisprudence). The different schools of *Shari'a* are dispersed in the locations of where they are implemented. The Hanafi school is dominant in Afghanistan, Pakistan, Turkey and Egypt, Shafi'i *shari'a* is dominant in Indonesia and Eastern Africa; the Maliki school is dominant in Northern Africa and Hanbali law is dominant in Saudi Arabia.¹⁷⁰³ Artz claims that the major – and almost considered heretical – divergence from the four Sunnite schools of *Shari'a*, is that of the Shi'ite *fiqh*, mainly dominant in Iran. Artz asserts that even before modern times, Islamic law was characterised by a broad jurisprudential diversity and this was based on geographic, ethnic and racial grounds, as well as philosophical differences.¹⁷⁰⁴ Farhang supports this argument claiming that, besides the sectarian divergence in interpreting the *Shari'a*, the willingness of the state to apply the law – which is often a function of its ideological and political underpinning – is also a determining factor. Farhang points out that these differences of opinion, and most certainly the different *tafsir* of the Qur'an seems to divide the Islamic world to some extent:

for example, Saudi Arabia, Libya, Pakistan and Iran all consider themselves as Islamic states, but none of them is recognised by the others as authentic.¹⁷⁰⁵

The extent to which Islamic doctrines have been instrumental in the formulation of criminal or private codes in these four nations has, according to Farhang, stemmed from what their leaders perceive to be true Islam. This is a perception that has been clearly

¹⁷⁰² Farhang, M., 1988, 'Fundamentalism and Civil Rights in Contemporary Middle Eastern Politics' in Rouner, L., (ed.) *Human Rights and the World's Religion's*, University of Notre Dame Press, Indiana, USA, p64-65. Also see O'Sullivan, Declan, 'Al-Islam : An Alternative Approach to the Universal Protection of Human Rights,' in *The Islamic Quarterly*, Vol. XLI, Number 2, 1417/1997, The Islamic Cultural Centre, London, p138.

¹⁷⁰³ Artz, Donna., 'The Application of Human Rights Law in Islamic States' in *Human Rights Quarterly*, Vol.12, No.2, May 1990, The Johns Hopkins University Press, Baltimore, USA., p204. Also see O'Sullivan, Declan, 'Al-Islam : An Alternative Approach to the Universal Protection of Human Rights,' *ibid.*, p139.

¹⁷⁰⁴ Artz, Donna., *Ibid.*, p204. Also see O'Sullivan, *Ibid.*, p139

¹⁷⁰⁵ Farhang, M., *op. cit.*, p65. Also see O'Sullivan, *Ibid.*, p139

influenced and shaped by a plethora of subjective political, psychological, social, economic and historical factors.¹⁷⁰⁶

11.7 Contemporary 'Models' where Blasphemy is legally assessed through *ta'zir*.

There is a need for placing 'unbelief' to be assessed and penalised through the *ta'zir*, system, allowing the judge to make a final decision, based on their legal knowledge and discretion, given the individual case circumstances.

11.7.1 The Model Presented in Malaysia.

There are several examples that show how the act of blasphemy and apostasy is presently dealt with in the legal system of various countries. Although Malaysia is not an Islamic State, Islam has a prominent position in the Malaysian Constitution. Islam also has a very strong presence in Malay society. Malaysia consists of large minority groups including Chinese (approximately 30%), Indians (approximately 10%), and others (also approximately 10%) of the population. Due to these large figures of non-Malaysians living there, the government accepts the country to be a multi-religious and multi-cultural society, and focuses more towards a secular ruling.¹⁷⁰⁷

Muslims constitute approximately 50% of the population, "and the Malay rulers or sultans must necessarily be Malay, professing the religion of Islam. There is however, nothing in the Constitution which provides that the Prime Minister or any Minister or Federal high officials must be Muslims."¹⁷⁰⁸ This presents certain levels of tolerance, which is also enhanced in the Federal Constitution, which states that Islam is 'the religion of the Federation' while providing allowance in Article 3(1) that 'other religions may be practiced in peace and harmony in any part of the Federation.'¹⁷⁰⁹

¹⁷⁰⁶ Farhang, M., *Ibid.*, p65. Also see O'Sullivan, *Ibid.*, p139

¹⁷⁰⁷ Kamali, Mohammad Hashim, *Freedom of Expression in Islam*, op.cit, p285

¹⁷⁰⁸ Kamali, *ibid.*, p285. Also see Ibrahim, Ahmad, 'The Position of Islam in the Constitution of Malaysia,' in Ahmad Ibrahim, et al, *Readings on Islam in Southeast Asia*, Institute of Southeast Asian Studies, Singapore, 1986, p215

¹⁷⁰⁹ Article 3(1) of the Constitution of Malaysia, no date provided

Article 11 allows every person to be free to profess their own religion. It even provides the allowance and ability for each person to propagate their own religion, but only when they meet the condition provided by Clause 4, which declares that :

State law and in respect of the Federal Territories of Kuala Lumpur and Labuan, Federal Law may control or restrict the propagation of religious doctrine or belief among persons professing the religion of Islam.¹⁷¹⁰

This is a significant order to protect Muslims from being coerced away from Islam, and protects the Islamic community from being infiltrated by believers of other religions.

With specific reference to blasphemy, the Administration of Muslim Law Enactment of Selangor of 1952 (and amended in 1983), includes a clause that deliberately covers any act that would be considered as the mockery and derision of religion. Kamali points out that “the provision appears in part IX of the enactment “which exclusively deals with offences concerning the religion of Islam.” Part IX of the provision states:

Whoever by words spoken or written or by visible representations insults or brings into contempt or attempts to insult or bring into contempt [*sic*] the Muslim religion or the tenets of any sect thereof or the teaching of any lawfully authorised religious teacher or any *fatwa* (religious edict) lawfully issued by the President (of the State Religious Council) or under the provisions of this Enactment shall be punishable with imprisonment for a term not exceeding six months or with a fine not exceeding one thousand dollars.¹⁷¹¹

In the Terengganu Administration of Muslim Law Enactment of 1986, there is also a specific provision protecting Islam from deliberate insults and hate campaigns against the religion, believers, and also the four Sunnite schools of law. Section (209) of the Enactment proclaims that:

Whoever, whether orally or in writing or by any act or in any manner whatsoever, treats with contempt the Religion of Islam or the ways of any of the four Mazhabs, [*sic*] or any religious officer or religious teacher or authorised Imam or any *fatwa* lawfully issued under this Enactment

¹⁷¹⁰ Article 11(Clause 4) of the Constitution of Malaysia

¹⁷¹¹ Part IX, Administration of Muslim Law Enactment of Selangor of 1952 (and amended in 1983)

commits an offence and shall be punishable with a fine not exceeding three thousand ringgit or with imprisonment not exceeding one year or with both.¹⁷¹²

The *Shari'ah* Criminal code of Kedah Enactment (No.8 of 1988) has a broad legal provision that refers to the general category of any deliberate utterance of indecent words.

The Code reads as:

Any person who, in any place, wilfully utters or disseminates any word which is contrary to *Hukum Syarak* and likely to cause a breach of peace shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or both.¹⁷¹³

In assessing the manner in which this criminal code has been structured in its word form, Kamali makes a suggestion that links in closely to the research this thesis has addressed.

Kamali indicates:

.....the wording of this Section is broad enough to comprise not only blasphemy but also *bid'ah* or any distortion of the principles of the established *Shari'ah*.¹⁷¹⁴

This level of certain tolerance in punishing different forms of unbelief in *Shari'ah* rulings can also be found in the Penal Codes of other Malaysian states. In Terengganu, the imprisonment for contempt against religion, which also includes blasphemy, is the imprisonment of one year, and is restricted to six months in other states. It is important to note in this section of the thesis, a remarkable legal ruling which supports the hypothesis of this research. The 1986 Administration of Islamic Religious Affairs Enactment of Terengganu provides specific reference to the offence of any contempt against either the Qur'an or the *hadith*. Although this offence carries a greater punishment than that for blasphemy, the punishment still only includes imprisonment or a fine, and at no point is the death penalty mentioned. Section (206) of the Enactment states quite clearly that:

Whoever, whether orally or in writing or by any act or in any manner whatsoever, treats with contempt, or causes to be treated with contempt, any verse from the Qur'an or any Hadith or any word or sentence regarded as holy by Muslims commits an offence and shall be punished with a

¹⁷¹² Section (209), *Terengganu Administration of Muslim Law Enactment*, 1986

¹⁷¹³ *Shari'ah* Criminal code of Kedah Enactment, No.8, 1988

¹⁷¹⁴ Kamali, *op.cit.*, p287

fine not exceeding three thousand ringgit or with imprisonment not exceeding one year or with both.¹⁷¹⁵

One of the most important points to be raised, which supports the hypothesis of this thesis is covered in Section (205) of the Enactment. This section, although it does not use the term, it can be seen to deny the opportunity for any Muslim to undertake *takfir al-Muslim*. It also stipulates that the only person who has the authority to judge another Muslim as being a 'believer' or 'unbeliever' is the legally qualified judge, or the religious community leader, as the Mufti. This ruling links in very well, and matches with the situation in Egypt, where the accusation, via *hisba* law, of a person of blasphemy or apostasy can only be assessed by the Prosecutor General's discretion, once they have considered each individual case's surrounding circumstances. Section (205) of the Enactment is a crucial legal point to be referred to in the conclusion of this thesis, as it refers to the material covered in most of the previous Chapters. Kamali makes reference to it in his work:

As to whether the perpetrator of the said offence would still be regarded as a Muslim or is an apostate, the Terengganu Enactment provides that 'No person, except the Majlis (i.e. the Islamic Religious Council of Terengganu) or the Mufti shall.....make or issue any *fatwa*, relating to the Religion of Islam or *hukum syarak*, or accuse any person professing the religion of Islam [of] being a *murtad* (apostate), *syirik* (polytheist) or an infidel.' (205).

The next clause in the same Section also provides that, 'No person, except *Hakim Shar'i* shall decide' whether a person professing the religion of Islam has become an apostate or infidel. The term '*Hakim Shar'i*' here means a competent *qadi* who is knowledgeable about the *Shari'ah*.¹⁷¹⁶

11.7.2 The Model Presented in Pakistan.

Further support for the use the *ta'zir* penalty system for blasphemy is the legal position held in Pakistan. The Penal Code and the Code of Criminal Procedure were altered during the ruling of General Zia ul-Haq. In 1986 he added new provisions into the Penal Code, which specifically name acts of offence, and certain limited penalties have also been

¹⁷¹⁵ Section (206), *Administration of Islamic Religious Affairs Enactment of Terengganu*, 1986

stated. The set offences that have been named include a Muslim making any utterance that would imply – either directly or indirectly – some disrespect to the Prophet Muhammad, to any member of his family (the *ahl al-bayt*), or even insults to one of the Companions of the Prophet. Other named offences would be any insults or contempt that is directed towards other aspects related to Islamic ceremonies or rituals (*sha'a'ir-i Islam*). The set penalties that have been attached to these given offences range from imprisonment, a financial fine, and the death penalty, depending on the extent and nature of the act that was committed. Section 295-C of the Pakistan Penal Code, having been referred to by its opponents as referred to as ‘the blasphemy trap,’¹⁷¹⁷ list the crimes and the range of related punishments as:

Whoever by words, either spoken or written, or by visible representation, or by any imputation, innuendo, or insinuation, directly or indirectly, defiles the sacred name of the Holy Prophet Muhammad (peace be upon him) shall be punished with death, or imprisonment for life, and shall also be liable to fine.¹⁷¹⁸

As each case is assessed by the judge, who considers each individual event and the circumstances that revolve around it, then the punishment system in use here is the *ta'zir* form, rather than including such acts of clear blasphemy under the *hudud* system. This Penal code in the Islamic State of Pakistan seems to contradict the suggestion by some *Shari'a* jurists and various theologians that blasphemy has to be categorised under the lists of named *hudud* crimes and punishments that occur in the Qur'an. The *ta'zir* form of punishment for blasphemy is supported by such statements as made by Kamali, where he highlights the reasons why it is inappropriate to include blasphemy offences under the *hudud* form of punishment:

The offence here is obviously treated as a *ta'zir* offence which may be punished, in its most aggravated instances, by death. In other instances, the offence carries life imprisonment and a fine.¹⁷¹⁹

What is to be noted here is that the death penalty is only used in cases that involve “aggravated instances” which clearly implies the agitated, seditious and rebellious acts

¹⁷¹⁶ Kamali, op.cit., p288

¹⁷¹⁷ <http://www.andrew.cmu.edu/course/79-104/Readings/FYI/fyimodern.htm>

¹⁷¹⁸ Section 295-C, (1986 amendment), *The Pakistan Penal Code*, no page number provided

¹⁷¹⁹ Kamali, op.cit., p289

that can only be classified under the crime of treason and not the sins of blasphemy or apostasy. This is not a theoretical speculation when one reads the Penal Code further, where other acts are specifically cited with their related penalties as being either imprisonment or fines. The acts that are stated include such vicious and heinous anti-Islamic crimes that includes desecrating the Qur'an – but the punishment provided for this sacrilegious hate is not the death penalty.

The Penal Code also provides that anyone who 'wilfully^[sic] defiles, damages, or desecratesthe Holy Qur'an.....or an extract therefrom....shall be punishable with imprisonment for life (295-B). Furthermore, the penal code makes liable to a term of imprisonment 'which may extend to three years, or with fine, or with both', anyone who 'directly or indirectly defiles the sacred name of any wife (*ummul mumineen*), or members of the family (*ahle bait*) of the Holy Prophet' (298-A). And finally, anyone who wilfully^[sic] 'insults or attempts to insult' the religious feelings of any class of the citizens of Pakistan is liable to punishment 'which may extend to two years or with fine, or both' (295-A).¹⁷²⁰

A report on relevant court cases suggests that the courts are also tolerant when dealing with those who are convicted of blasphemy. Although Section 295-C has been criticised as an option for Muslims to attack other non-Muslims for political reasons, by raising religious insults as the crime committed, it still becomes apparent that the death penalty is not a sentence that is regularly delivered with wanton disinterest by the judge.

Section 295-C of the penal code, imposed in 1986, mandates the death sentence for defiling the Prophet Mohammed. Thus far, appeals courts have overturned all blasphemy convictions. Magistrates are now required to conduct investigations before accepting charges. Nevertheless, Muslims have filed spurious blasphemy charges against Ahmadis, Christians, and Hindus in order to extort land and money. Human rights groups say that more than 200 Christians [have been] jailed after being sentenced to death for blasphemy.¹⁷²¹

¹⁷²⁰ Ibid., p289-290

11.8 The Significance of linking *ta'zir* with *tafsir* and *takfir al-Muslim*.

Therefore, the conclusion of this research is that even if there is a blur in the definitions of different forms of 'unbelief' in Islam, there should not be a blur in the established legal sentencing on each specific act. All forms of 'unbelief,' even if they are harsh forms of this sin, to be included in the categories of blasphemy, apostasy or heresy, still remain theological issues. Therefore, they remain outside the realm of politics, and do not involve the acts of political agitation and rebellious attacks against the state. Although in Islam the state and religion are the same, apostasy and blasphemy still remain to be the rebellion against God alone – and not against human beings. As is clear in the information provided, when a human undertakes the rebellious attacks against another human, this is the crime of treason, and not the sin of apostasy. The concept of *takfir al-Muslim* provides a resolution in preventing any confusion and preventing a person's misguided misinterpretation of theology as being politics. *Takfir* sternly declares that it is prohibited for a believer to judge another on whether the other believes in God, and it prohibits a believer from demanding another on the way in which the accused should practice their belief in God. Apart from publicly announcing *al-shahadah*, which declares their belief in God, their belief in the Prophet Muhammad and their belief in the Five Pillars of Islam, beyond that it is inappropriate for any Muslim to inform another how they should manifest their internal faith.

Mawduwdi spoke of the importance of the reasoning behind the fact that the act of *takfir* can be even more dangerous than killing someone. A dead person obviously cannot become an unbeliever, but a person left to live has the free choice to join or reject their Islamic faith and the Islamic community. Even if a person made it openly clear that they disbelieved, then even when witnessing that act, it is still not wise for another Muslim to accuse them of not being a devout Muslim, as there is never any guarantee of how strong that person's genuine inner faith in God is. Avoiding accusations from one Muslim to another will prevent the allegation being returned to the accuser, should their denunciation be proven wrong. Pointing the finger of blame should not be based purely on presumptions. Mawduwdi states this point, quite clearly:

¹⁷²¹ <http://freedomhouse.org/survey99/country/pakistan.html>

The aim of these injunctions is that there should be as much caution in calling a Muslim *kafir* as there is in pronouncing a death sentence against someone. In fact, this matter is even more serious because by killing a person there is no risk of one becoming a *kafir*, but this risk does exist if one calls a Muslim *kafir* if that man is not really a *kafir*. Should there even be an iota of Islamic belief in that man's heart, the slander of *kufr* shall reflect back upon the accuser. Hence, he who has fear of God in his heart, and has some realisation of the great danger of being involved in *kufr*, shall never dare call a Muslim *kafir* until he has carried out a thorough enquiry and fully ascertained that such a person was a *kafir*. There is so much caution in this regard that if there is a man whose conduct clearly shows insincerity, and whose condition is openly showing that he is not a Muslim at heart, if even he recites the *Kalima* with his tongue, it is not allowed to call him *kafir* and treat him as a *kafir*.¹⁷²²

Mawduwdi senses the very strong need to act with extreme caution if one Muslim believes that another Muslim is acting in any manner suspected to be a form of *kufr* (unbelief). The factors involved need to include a very open and obviously visible activity which is clearly categorised as being an undeniable level of specific hate against Islam, and all – or any - of its Five Pillars. This is of more importance, rather than someone deciding that they have the right and authority to interfere with a person's internal private questioning, while they seek to either find or reject their personal religious belief. Even if it becomes clear that these basic rules of Islam have not been followed by a Muslim, then it still becomes the necessity for the Islamic jurists to refer to the Qur'an, in order to determine what the revealed Message from God states, rather than relying on a human decision.

Hence, every case must be taken with individual assessment, as no one case will equal any other. As Mawduwdi indicates, Islam offers the freedom through tolerance, by implementing a very flexible *tafsir* (exegesis) in how to deal with those who are accused of lacking faith. He declares that as long as there is an open mind which willingly accepts

¹⁷²² Abul Ala Mawduwdi, Sayyid. *Tarjuman al-Quran*, issue for month Jumadi al-Awwal, 1355A.H., circa 1936A.D, Vol. viii, p5. Found on <http://tariq.bitshop.com/misconceptions/fatwas/prohibition.htm>
Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy and Apostasy against Islam: *Takfir al-Muslim* (Prohibition against Attacking those Accused)', op.cit., p.123

an interpretation of the acts of the accused in a very positive manner, then in no case – whatsoever – can the final decision clarify the existence of *kufr* in any form. Mawduwdi suggests that, in assessing the accused:

If he still does not accept, and insists upon his view, we must put it to the Book of God to see whether or not the thing on which he is so insistent is contrary to the clear directions which distinguish between faith and disbelief. And also whether or not the man's belief or action in question can be regarded as an interpretation. If it is not against the clear directions, *and there is room for interpretation, then the verdict of kufr cannot be applied.* The most that can be said is that he is misguided, and even that in relation to that particular issue, not in all matters. However, if his belief is contrary to clear teachings, and even after finding out that his belief is opposed to the Book of God he continues to adhere to his stand, and one is unable to treat his belief as an interpretation, then in such a case the judgment of wrong-doing or *kufr* could be applied to him, while bearing in mind the nature of the issue involved. But account must be taken of degree and gravity. All crimes and all criminals are not equal. They differ in seriousness, and it is a requirement of justice that the punishment which is awarded must take account of the degree of seriousness. To use the same rod on everyone is certainly unjust.¹⁷²³ (Italics added in for emphasis)

It is necessary to refer again to how the Prophet Muhammad defined being an authentic Muslim, that it simply requires a sincere public announcement of the *shahadah*. This should aim towards avoiding theology being mixed and confused with politics.

An ideal example of when such ambiguity and confusion occurred between 'theology' and 'politics' was when the Kharijites denounced 'Ali as the legitimate Caliph. This led to some difference of opinion by Muslim jurists in their attempt to define exactly what a Muslim is. Hence:

having adopted this Kharijite innovation, the jurists could not arrive at an agreed definition of a Muslim. They tried to add various qualifications to the Prophet's simple definition, and thus, in the words of al-Ghazali (450/1058-

¹⁷²³ Mawduwdi, 'Mischiefs of *Takfir*,' *ibid.*, no page number provided. Also see O'Sullivan, *ibid.*, p123

505/1111), constricted 'the vast mercy of God to make Paradise the preserve of a small clique of theologians.'¹⁷²⁴

These attempts of the legal specialists of jurisprudence resulted in certain levels of confusion. This led to the situation where it could be regarded that the full definition of what it is to be a Muslim, as defined by the separate schools of Islamic law, is totally subjective, based on their different priorities. This same point was noted by Muhammad Munir, the former Chief Justice of Pakistan when he presided over the Court of Inquiry which investigated the Punjab (Pakistan) disturbances that occurred in 1953. The Court of Inquiry, in Lahore, presented the *Report of the Court of Inquiry Constituted Under Punjab Act, II of 1954 to Enquire into the Punjab Disturbances of 1953*. In his commentary on the inquiry, Muhammad Munir explained the situation of confusion and a lack of consistency in the human interpretations of what is the legal definition of a Muslim. Munir mentioned that:

Keeping in view the several definitions given by the *ulama*, need we make any comment except that no two learned divines are agreed on this fundamental. If we attempt our own definition as each learned divine has done and that definition differs from that given by all others, we unanimously go out of the fold of Islam. And if we adopt the definition given by any one of the *ulama*, we remain Muslims according to the view of that *alim* but *kafirs* according to the definition of everyone else.¹⁷²⁵

Shaykh Muhammad Sayyid Tantawi, presently The Grand Imam of Al-Azhar in Cairo, has made a very clear statement which specifically supports the hypothesis of this thesis. His view separates the acts of when a Muslim simply changing their faith, then they should be left alone and unharmed, when compared to a Muslim who undertakes a physical hate campaign, deliberately attacking people and anything related to Islam, either physically or verbally, while also rejecting their faith. Tantawi emphasises that there are separate rules related to these acts, as the latter is the seditious crime of treason

¹⁷²⁴ Lewis, Bernard, *Islam in History*, op.cit., p289. Also see Ahmad, Sayd Barakat, *Conversion from Islam*, op.cit., p14.

¹⁷²⁵ Munir, Muhammad, the former Chief Justice of Pakistan, *Report of the Court of Inquiry Constituted Under Punjab Act, II of 1954 to Enquire into the Punjab Disturbances of 1953*, Lahore, 1954, p128. Also

against the Islamic state, and to be punished for this reason, and not for their theological change in religious belief. Tantawi also argues that both Muslims and non-Muslims need to focus more on accepting Islam for its tolerance, and accepting the message the Qur'an promotes: لَا إِكْرَاهَ فِي الدِّينِ (*La ikraha fi l-din*) – “there is no compulsion in religion.”¹⁷²⁶

In conclusion to this thesis, it can be declared that the findings have proven that Islam provides the freedom for people to believe in God or reject their faith. The choice is their own, and God will either punish or reward each person in the Hereafter, depending on the life they choose to lead in this world. The summary of Shaykh Tantawi's views reiterates these points, and promote this extremely positive theosophy:¹⁷²⁷

Shaykh Tantawi's ruling on the subject of a Muslim apostasizing has certainly shed new light on this subject, while making the non-Muslims realise that Islam is a religion of moderation.

To Shaykh Tantawi, a Muslim who renounced his faith or turned apostate should be left alone as long as he does not pose a threat or belittle Islam. If the Muslims were forced to take action against the apostate, he said it should NOT [sic] be because he or she had given up the faith but because he or she had turned out to be an enemy or a threat to Islam.

Shaykh Tantawi, in his views, shows clearly how simple and moderate Islam is, a religion that is tolerant and not coercive on anybody. Shaykh Tantawi repeatedly stresses the need for Muslims to acquire traditional Islamic knowledge as well as the modern ones so that they could add to the strength of the Muslim community to defend the religion.¹⁷²⁸

11.9 Concluding Remarks on what has Developed from this Research.

The proposed plan of this PhD research was to review both historical and contemporary *shari'ah* court cases of blasphemy and apostasy. The different approaches of the legal

see Barakat Ahmad, Syed, *ibid.*, p14 and in footnote 48 on p24. Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy', *op.cit.*, p.125

¹⁷²⁶ O'Sullivan, Declan, 'Egyptian Cases of Blasphemy', *ibid.*, p.129

¹⁷²⁷ O'Sullivan, *Ibid.*, p129

sentences that have already been delivered by the Sunni *madhhib* (schools of law) have been covered, which indicate the inconsistencies that exist in this field of *shari'ah* law. The *tafsir* of the Qur'an was assessed, together with the relevant *ahadith*, providing support in analysing the historical and theological roots of where the death sentence could have derived from. The factor of specifically defining the difference between 'treason' and 'apostasy' was essential, in order to emphasise the point that the former is a crime and the latter is a sin. A crime is dealt with and punished by the legal system, but a sin will be punished by God, in the Hereafter.

What became apparent during this research was the noticeable importance of the research topic that had been chosen. Before the research was complete, two court cases occurred in Egypt, where Nawal El-Sa'adawi and Salah al-Din Muhsin were accused of apostasy. These cases were covered with intense detail by the international press which meant that, therefore, the topic under study was being brought to the attention of 'everyday news' around the world, so it had become removed from its academic niche. Further than that, although it covers a rather sensitive topic, it is most certainly an issue that is alive and active in the academic world. It is also clear that this thesis has been able to contribute more relevant information which developed the academic debates that it assessed, bringing together the intellectual arguments from Islamic Law, Islamic Theology and Middle Eastern Politics.

¹⁷²⁸ Shaykh Muhammad Sayyid Tantawi, 'Issue of Apostasy' in *The Grand Imams of Al-Azhar: Shuyukhul Azhar*, found on http://www.sunnah.org/history/Scholars/mashaykh_azhar.htm#tantawi this site was visited on January 25th 2002. Also see O'Sullivan, Declan, 'Egyptian Cases of Blasphemy', *ibid.*, p129-130

APPENDIX 'A'**The pamphlet entitled "Hatha Aow Al-Tawafan" [Either This or the Flood]****هَذَا .. أَوْ الطَّوْفَانُ !!**

(و اتقوا فتنة لا تصيبن الذين ظلموا منكم خاصة .. واعلموا أن الله شديد العقاب)
صدق الله العظيم

غابتان شريفتان وقفنا ، نحن الجمهوريين ، حياتنا ، حرصا عليهما ، و صونا لهما ، وهما الإسلام و السودان .. فقدمنا الإسلام في المستوى العلمي الذي يظفر بحل مشكلات الحياة المعاصرة ، و سعينا لنرعى ما حفظ الله تعالى على هذا الشعب ، من كرايم الأخلاق ، و أصايل الطباع ، ما يجعله وعاء صالحا يحمل الإسلام إلى كافة البشرية المعاصرة ، التي لا مفازة لها ، و لا عزة ، إلا في هذا الدين العظيم ..

و جاءت قوانين سبتمبر ١٩٨٣ ، فشوهدت الإسلام في نظر الأذكيا من شعبنا ، وفي نظر العالم ، و أساءت إلى سمعة البلاد .. فهذه القوانين مخالفة للشريعة ، و مخالفة للدين ، و من ذلك أنها أباحت قطع يد السارق من المال العام ، مع أنه في الشريعة ، يعزر و لا يحد لقيام شبهة مشاركته في هذا المال .. بل إن هذا القوانين الجائرة أضافت إلى الحد عقوبة السجن ، و عقوبة الغرامة ، مما يخالف حكمة هذه الشريعة و نصوصها .. هذه القوانين قد أذلت هذا الشعب ، و أهانت ، فلم يجد على يديها سوى السيف ، و السوط ، وهو شعب حقيق بكل صور الإكرام ، و الإعزاز .. ثم إن تشاريع الحدود و القصاص لا تقوم إلا على أرضية من القربية الفردية و من العدالة الاجتماعية ، وهي أرضية غير محققة اليوم ..

إن هذه القوانين قد هددت وحدة البلاد ، و قسمت هذا الشعب في الشمال و الجنوب و ذلك بما أثارته من حساسية دينية كانت من العوامل الأساسية التي أدت إلى تفاقم مشكلة الجنوب .. إن من خطل الرأي أن يزعم أحد أن المسيحي لا يضار بتطبيق الشريعة .. ذلك بأن المسلم في هذه الشريعة وصي على غير المسلم ، بموجب آية السيف ، و آية الجزية .. فحقوقهما غير متساوية .. أما المواطن ، اليوم ، فلا يكفي أن تكون له حرية العبادة وحدها ، و إنما من حقه أن يتمتع بسائر حقوق المواطنة ، و على قدم المساواة ، مع كافة المواطنين الآخرين .. إن للمواطنين في الجنوب حقا في بلادهم لا تكفله لهم الشريعة ، و إنما يكفله له الإسلام في مستوى أصول القرآن (السنة) .. لذلك فنحن نطالب بالآتي :-

١- نطالب بإلغاء قوانين سبتمبر ١٩٨٣ ، لتسوية الإسلام ، و لإزالة الشغب ، و لتهديدها الوحدة الوطنية ..

٢- نطالب بحقن الدماء في الجنوب ، و اللجوء إلى الحل السياسي و السلمي ، بدل الحل العسكري. ذلك واجب وطني يتوجب على السلطة ، كما يتوجب على الجنوبيين من حاملي السلاح. فلا بد من الاعتراف الشجاع بأن للجنوب مشكلة ، ثم لا بد من السعي الجاد لحلها ..

٣- نطالب بإتاحة كل فرص التوعية ، و القربية ، بهذا الشعب ، حتى ينبعث فيه الإسلام في مستوى السنة (أصول القرآن) فإن الوقت هو وقت السنة ، لا الشريعة (فروع القرآن) .. قال النبي الكريم صلي الله عليه وسلم : (بدأ الإسلام غريبا ، و سيعود غريبا ، كما بدأ ، فطوبى للغرباء قالوا: من الغرباء يا رسول الله؟؟ قال: الذين يحبون سنتي بعد اندثارها). بهذا المستوى من البعث الإسلامي تتحقق لهذا الشعب عزته ، و كرامته ، ثم إن في هذا البعث يكمن الحل الحضاري لمشكلة الجنوب ، و لمشكلة الشمال ، معا ... أما الهوس الديني ، و التفكير الديني المتخلف ، فهما لا يورتان هذا الشعب إلا الفتنة الدينية ، و الحرب الأهلية .. هذه نصيحتنا خالصة ، مبرأة ، نسديها ، في عيد الميلاد ، و عيد الاستقلال ، و نرجو أن يوطئ لها الله تعالى أكناف القبول ، و أن يجنب البلاد الفتنة ، و يحفظ استقلالها و وحدتها و أمنها .. و على الله قصد السبيل.

أم درمان

٢٥ ديسمبر ١٩٨٤م

٢ ربيع الثاني ١٤٠٥هـ

الأخوان الجمهوريون

The pamphlet entitled *Hatha Aow Al-Tawafan*.

In the name of God, the Beneficent, the Merciful

Either This or the Flood

“And guard against a turmoil that will not befall the unfair ones alone, and know that God is severe in punishment.” (Qur'an ; 8:25)

We, the Republicans, have dedicated our lives to the promotion and protection of two honorable objectives namely, Islam and the Sudan. To this end we have propagated Islam at the scientific level as capable of resolving the problems of modern life. We have also sought to safeguard the superior moral values and original ethics conferred by God upon this people [the Sudanese], thereby making them the appropriate transmitters of Islam to the whole of modern humanity, which has no salvation nor dignity except through this religion [Islam].

The September 1983 Laws {that is, the series of enactments purporting to impose Sharia law in the Sudan} have distorted Islam in the eyes of intelligent members of our people and in the eyes of the world, and degraded the reputation of our country. These laws violate Sharia and violate religion itself. They permit, for example, the amputation of the hand of one who steals public property, although according to Sharia the appropriate penalty is the discretionary punishment (*ta'zir*) and not the specific (*hadd*) penalty for theft, because of the doubt (*shubha*) raised by the participation of the accused in the ownership of such [public] property. These unfair laws have added imprisonment and fine to the specified (*hadd*) penalties in contravention of the provisions of Sharia and their rationale. They have also humiliated and insulted the people [of this country] who have seen nothing of these laws except the sword and the whip, although they are a people worthy of all due respect and reverence. Moreover, the enforcement of the specified penalties [*hudud* and *qassas*] presupposes a degree of Individual education and social justice which) are lacking today.

These laws have jeopardized the unity of the country and divided the people in the north and south [of the country] by provoking religious sensitivity, which is one of the fundamental factors that has aggravated the southern problem [that is, conflict and civil war in the non-Muslim southern part of the country]. It is futile for anyone to claim that a Christian person is not adversely affected by the implementation of Sharia. A Muslim under Sharia is the guardian of a non-Muslim in accordance with the "verse of the sword" and the "verse of jiziah" [respectively calling the Muslims to use arms to spread Islam, and for the imposition of a humiliating poll tax on the subjugated Christians and Jews-verses 5 and 29 of chapter 9 of the Qur'an]. They do not have equal rights. It is not enough for a citizen today merely to enjoy freedom of worship. He is entitled to the full rights of a citizen in total equality with all other citizens. The rights of southern citizens in their country are not provided for in Sharia but rather in Islam at the level of fundamental Quranic revelation, that is, the level of Sunnah. We therefore call for the following:

1. The repeal of the September 1983 laws because they distort Islam, humiliate the people, and jeopardize national unity.

2. The halting of bloodshed in the south and the implementation of a peaceful political solution instead of a military solution [to the civil war in the southern part of the country]. This is the national duty of the government as well as the armed southerners. There must be the brave admission that the South has a genuine problem and the serious attempt to resolve it.

3. We call for the provision of full opportunities for the enlightenment and education of this [Sudanese] people so as to revive Islam at the level of Sunnah [the fundamental Qur'an]. Our times call for Sunnah not Sharia [the distinction is explained in the text of this book], The Prophet, peace be upon him, said: "Islam started as a stranger, and it shall return as a stranger in the same way it started . . . Blessed are the strangers . . . They [his companions] said: Who are the strangers, Oh Messenger of God? He [the Prophet] replied: Those who revive my Sunnah after it has been abandoned." This level of Islamic revival shall achieve pride and dignity for the people. In this level too, lies the systematic solution for the southern problem as well as the northern problem [that is the socio-economic and political problems of the northern part of the country]. Religious fanaticism and backward religious ideology can achieve nothing for this [Sudanese] people except upheaval and civil war.

Here is our genuine and honest advice. We offer it on the occasion of the Christmas and Independence Day [December 25 and January 1, which is Sudan's Independence Day], and may God expedite its acceptance and safeguard the country against upheaval and preserve its independence, unity, and security.

25th December 1984, The Republicans

2 Rabi' Al-Thany 1405 A.H. OMDURMAN

APPENDIX 'B'

fatwa on Mahmoud Muhammad Taha, by Al-Azhar in 1975.¹

العزيزين إياي ، وبحمق هذا التخلف الفكري الذي منى به علماء
السعودية وعلماء مصر وتبعينهم فيه الشئون الدينية ،
تحالفوا جميعاً على الإفتاء بكفر الجمهوريين واستعداد سلطنة
دعيتهم بعد أن أوسعوا أخطارنا تشويطاً ، لا ذيين وفذلين
بالباطل ، من غير ثروا الحماة ، ولا وقار العارفين ، ولا
وع المندبين . وفتاياتهم هي أبلغ ما يقضح جسد الانتم ،
ملك ، ومن عجب أن تجوز هذه الجلالة على بعض المستويين
الذين يتولون مناصب من أخطر المناصب في بلادنا . أقرأوا
نصوص هذه الخطابات من السعودية ومن مصر ومنه الشئون
الدينية --

(صورة طبقه الأصل)

بسم الله الرحمن الرحيم

(والمعصوما بحبل الله جميعاً ولا تفرقوا)

إحطة العالم الإسلامي . الرقم (١-٣) / ٧ / ٢٦٣١

الإمامة العامة . التاريخ ٥ ربيع الأول ١٣٩٥ هـ

مكة المكرمة . المرفقات

حضرة مناصب المعالي الشيخ الدكتور محمد شريف قاسم

المقر

مدير الشئون الدينية والأوقاف

السلام عليكم ورحمة الله وبركاته " " "

¹ Republican Brothers, *al-din wa rejal al-din 'abr al-senien*, first edition, July 1975, p37-38. The Arabic script of the *fatwa* was translated by Tariq Bakheit, University of Durham, England.

معاليكم بأن من ضمن الفقهاء الإسلامية التي ناقشنا
المجلس التأسي للرابطة العالم الإسلامي من دورته السادسة
عشرة (محمد محمد طه) السوراني الذي أدرج الرسالة وناقش
ختم الرسالة وأنه المسيح المنتظر كما أتكلم الجزء الثاني
من الشارة إلى آخر ما هي من إرغاء الله الباطلة ..

أفيد
تعاليمكم

وبعد مناقشة الموضوع من جميع جوانبه أصدر
المجلس حكمه بالإجماع بإشاد المذكور من الإسلام وتأيد
لما حكمت به المحكمة الشرعية العليا بالخرطوم وأنه يجب على
المسلمين أن يعاملوه معاملة المرتدين كما يجب فصادرة
كثبه أيثما وحدث ومنع طبعه .

أرجو من معاليكم التكرم بنقل هذا القرار إلى
حكومتكم الموقرة وبتك مساعيكم الحميدة لدى المستودع
قيل للمساهمة معنا في تنفيذها وخاصة قد صدر
عن (المجلس) مجلس يقم نخبة من العلماء والزعماء
المثليين من معظم الشعوب الإسلامية من العالم .
وانتوا هذه الفرصة للاعتراف بصادق شكر وتقدير
لثباتكم الدائم مع الرابطة فيما يخص شأن الإسلام والمسلمين
وتفضلوا بقبول فائقه التحية والاحترام .

التوقيع / الأمين العام

أحمد صالح القرانجي

هؤلاء هم علماء رابطة العالم الإسلامي، أسمع
التأنيدهم جهلاً، وتخليفاً، أبلغ من هذا ؟!!

Fatwa on Mahmoud Muhammad Taha, by Al-Azhar in 1975.

In the Name of Allah, the Compassionate, the Merciful.

“And hold fast, all of you together, to the Rope of Allâh (i.e. this Qur’ân), and be not divided among yourselves.....” [Al-‘Imran, 3:103]

The World Islamic League General Assembly, Mecca,

No. (1-3) 7/2631

Date: 5th Rabia el-Awal, 1395AH

To His Excellency Brother, Doctor Aown Al-Sharif Gasim, the Honourable,
The Minister of Religious and Endowment Affairs.

Salaam ‘alaikum wa rahmatuallah wa barakato’uhu,

It gives me pleasure to inform you that amongst the Islamic issues discussed during the 16th session of the General Assembly of the Islamic World League was (Mahmoud Muhammad Taha) the Sudanese who claimed Prophethood and denied that the Prophet Muhammad was not the seal of Prophets and he claimed to be the Messiah, and denied the second part of the *Shahadah*, including many other blasphemous claims.

And after a full and thorough discussion, the Assembly has unanimously decided the aforementioned to be an apostate, supporting what the High *Shari’ah* Court in Khartoum had ruled [in 1968].

He is supposed therein, to be treated as such, as well as confiscating all his books, wherever they are found and they are now banned from being published. We would also like to ask your Excellency to convey this decision to your respectful government and to take all the necessary steps to help us in executing this decision, especially when it has been decided on by authoritative scholars and leaders, who represent most of the Islamic world. And I would like to seize this opportunity to express my great thankfulness and gratitude for your co-operation with the League in what will aid Islam and Muslims. And please accept our true respect.

Signed by:

The Chairman General

Ahmad Salih El-Ghazzaz

APPENDIX 'C'

Al-Quds Al-Arabi Volume 12- Issue 3711 Thursday 19 April 2001

القدس العربي
AL-QUDS AL-ARABI

السنة الثانية عشرة - العدد 3711 الخميس 19 نيسان (أبريل) 2001 - 25 محرم 1422 هـ

دعوى لتفريق نوال السعداوي عن زوجها

■ القاهرة - اف ب: افاد مصدر قضائي ان المحامي المصري نبيه الوحش اعلن عزمه امس الاربعاء التقدم بشكوى لتفريق بين نوال السعداوي وزوجها لانه يتهمها بالردة ما يفقدها بالتالي اهليتها للبقاء زوجة رجل مسلم.

ويريد المحامي الحصول على التفريق بين السعداوي وزوجها المثقف شريف حتاتة بالاستناد الى التصريحات الاخيرة التي ادلى بها مفتي مصر الشيخ نصر فريد واصل ومفادها انها «انكرت معلومات من الدين ما يخرجها بالضرورة عن دائرة الاسلام».

وكانت السعداوي قالت في مقابلة صحفية ان «الحج من بقايا الوثنية»، مضيفة انه «لا يوجد نص يوجب ارتداء الحجاب» للنساء في القرآن.

وطالبت السعداوي بـ«المساواة في الميراث بين الرجال والنساء» ما يخالف الشريعة التي تقول ان للذكر مثل حظ الانثيين. وقالت ان «الاعلام المصري يعمل على تجهيل الشعب لان الشعب الجاهل يسهل قيادته وضربه واستغلاله وان يحكم ديكتاتوريا».

3. 'Iranian intellectuals welcome Tehran's initiative on the Rushdie Affair,' *al-Quds al-'Arabi*, 26/27 September, 1998, p.3.

4. 'Kofi Annan welcomes the Iranian decision (qarar)' *al-Quds al-'Arabi*, 26/27 September, 1998, p.3.

TEXT:

THE SHARI'AH COURT OF THE UK

Case No: SR/F31

Your Ref.: Salman Rushdie

Date: 5 Jamadi Al-Thani 1419 - 26th September 1998

FATWA OR DIVINE DECREE CONCERNING SALMAN RUSHDIE

Q: What is The Fatwa Regarding A Person like Salman Rushdie Who Insults the honour of The Messenger Muhammad (SAW) and What are the divine rules concerning The Apostate, his/her wealth and Family?

A: There are different types of apostates who have different rulings however all of them can be forgiven from any punishment if they repent except the Apostasy through insulting the honour of the Messenger Muhammad (SAW). This is due to the fact that the final Messenger of God Muhammad (SAW) said:

" Whoever Insults any Messenger of God must be Killed " And " May God be my Witness that there is no sanctity for the life of the one who insults a Messenger". In addition the companions of the Messenger Muhammad (SAW) consented on carrying out capital punishment upon those who committed this crime. Moreover the classical Juristic Scholars among the Mazaahib i.e. The Islamic Schools of thought agree that capital punishment is the only verdict for the one who insults the Messenger Muhammad (SAW) even if the insulator repents and becomes the most pious person on Earth thereafter. The above divine evidence and Juristic agreement is clear that the Islamic Decree for the insulator of the Messenger Muhammad (SAW) is to be killed by an Islamic authority i.e. the Islamic State. However today, In the absence of a true Islamic State i.e. Al-Khilafah, such capital punishment cannot be implemented by individuals. As far as the consequence of insulting the Messenger Muhammad (SAW) is concerned the property and family of the insulator will be the responsibility of the Islamic State and the person will be buried in a non-Muslim cemetery if the verdict is carried out before he repents. Alternatively if the insulator repents their property and family will be re-attributed to them and they will be buried in a Muslim cemetery, even though they will still be subject to be killed, yet the persons family will in this instance be eligible for inheritance from the deceased unlike for the one who does not repent.

NB: The above type of Juristic Fatwa i.e. Divine Decree is not open for retraction by any authority even in the presence of a true Islamic State.

References for the above Fatwa:

1. Imam Ahmad's collection of the sayings, actions and consent of the Messenger Muhammad (SAW) in his book Al-Musnad.
2. Imam At-Tabarani's collection of the sayings of the Messenger Muhammad (SAW) in his book Al-Mu'ajam.
3. Al-Qadhi I'yaadh in his book Al-Shifaa.
4. Imam Ibn Taymiyyah in his book As-saarem Al-Masloul (The Sharp Sword against the insulator of the Messenger).
5. The collection of Fatwas against Salman Rushdie from current scholars from different parts of the world.

Sheikh Omar Bakri Muhammad
Judge of The Shari'ah Court of The UK

Mr Anjem Choudary
The Secretary General of The Society of Muslims Lawyers.

THE SHARI'AH COURT OF THE UK
Registered Charity No. 1037987 In co-operation with The London School of
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