THE INEVITABLE MISUSE OF BLASPHEMY LAW 295-C

قانون توہینِ رسالت کا ناگزیر غلط استعمال

CITATION BOOKLET



شائم رسول سلي الميالية الممه فقه كي نظر ميس

شاتم رسول اور ائمه فقه :

تمام ائمہ فقد امام ابوطنیفہ "امام مالک" امام شافعی "امام احمد بن طنبل" امام داؤد " امام ابن حزم امام ابن تیمیه "(رحمم الله تعالی) اور ان کے سارے صاحب علم و فضل شائرد اس بات پر متفق ہیں کہ شاتم رسول سی تھیں اللہ العور کا است بالقل ہے اور یہ سزا اسے بطور صددی جائے گی۔

فقه حنفی:

"فآوى بزازىية" اور "تنبيهم الولاة" جو نقه حنى كى معروف كتابيل بين ان كى رو ے شاتم رسول ما الم اللہ کو سزائے موت بطور صد دی جائے گ۔ اس کی سند میں حضرت ابو بكر صديق "كا وه فرمان ب: جب آب" في ايخ التاخ ك قل سے ابوبرزه "كو منع كرتے ہوئے فرمایا تفاكم يہ حق سوائے اللہ كے رسول (صلى الله عليه وسلم) كے كسى اور كے ليے استعال نہيں كيا جا سكتا۔ امام ابو صنيفه " اور الل كوف كے فقهاء كا اس پر انفاق ب اور می ندمب مشهور اور ندمب جمهور ہے۔ امام خیرالدین ربانی (حفی) فاوی مخیرید میں شاتم رسول مَنْ اللَّهِ كُو حداً واجب القتل قرار ديت بي- صدر الشهيد حنى كا "البحرالرائق" ميس یی فتوی ہے کہ شاتم رسول کو حداً قتل کیا جائے گا۔ امام ابونصر حنفی اور علامہ ابوایٹ سرقندی حفی بھی ای کے قائل ہیں کہ شاتم رسول مان کا کو سزائے موت بطور صددی جائے گی۔ البتہ چند فقمائے حفیہ کا اگر کھھ اختلاف ہے تو دہ اس بلت پر ہے کہ اگر شاتم رسول قبل الاخذ لینی مرفتاری سے پہلے توبہ کر لے تو یہ صد ساقط ہو جائے گی اور وہ سزائے موت سے فی جائے گا۔ اس بارے میں بھی علائے احتاف کی اکثریت کا فتوی ہے كه تبل الاخذ توبه سے حد ساقط نهيں ہوگى اور شائم رسول ما الله مستوجب سزائے موت ہو گا۔ بعد الاخذ یعنی گرفآری کر بعد معلق کاسوار توسید نہیں ہو تا کی علائے احناف 72

فیے ہو تقور اببت القدنے علم دیا ہے وہ کچے کم نئیں ہوگا - لیکن کچر کھی یں کہتا ہوں کم
ان کے مروجہ قانون کا یس ماہر نہیں ہوں - لیکن " یا " کے معنی تو یس یہ سمجھتا ہوں کہ
سزا سزا سناموت بھی ہوسکتی ہے اور سزا عمر توید بھی ہوسکتی ہے - حالا انکہ سزا تو سزا سناموں میں تو یہ سمجھا ہوں - اگر کو لا اور
موت ہے - اس پر تواتفاق ہے - تو" یا " کا مفہوم میں تو یہ سمجھا ہوں - اگر کو لا اور
مفہوم ہے تو ہیں مطلق کیا جائے - سزاتو سزائے موت ہے ، البتہ شید کی بنیا دیر بھ

میریم نے یہ تیسری شق دب ، یوصان جس یں یہ تکھنا پوسے گاکراس مقدمے کی ساھنت ، قرین دسول کے مقدمے کی سماعت مسلمان بھے کرسے گا - (مدافلت) یہ ہے اس بی ؟ اجھا - شکرید ، اتواس " یا " کے مغبوم کویں بنیں سجھا - مزا تومنر ائے موت ہے - البتہ اگر اوازمات کے ساقے یہ جرم ثابت نہ ہو تو شغبہ کی بنیا د پر دومری مزا دی جاسکتی ہے البتہ اگر اوازمات کے ساقے یہ جرم ثابت نہ ہو تو شغبہ کی بنیا د پر دومری مزا دی جاسکتی ہے اسلام میں میکن اسل مزاسزا نے موت ہے - تو اگر اس کا مفہوم بنی ہے جویں نے تقرید میں بیان کیا تو بھر تو اس بی بی ہے کو مزودت ہی منبیں ہے اور ہم اتفاتی رائے ہے منظور کر لیں گے ۔

مِنابِسِيكر : جى شاه تراب الحق ساحب!

مولانامیدن الدین الی قاوری: یه بالکل درست ب ، یه اسیکر اکروشخص کیمی معنورسلی الی مراث مراث مراث مراث مراث می مراث مراث مراث می مراث می مراث می مراث می مراث می مراث مراث می مراث می مراث می مراث مراث می مراث می

اس کے ساتھ ہی ساتھ ، جیسا کہ مولانا گوہرر مان صاحب نے فرمایا ، محترم وزیر قانون صاحب نے فرمایا ، محترم وزیر قانون صاحب سے ہماری اس سیلے میں نشست ہوئ تھی اور اس میں ہمی ہمی کہا گیا تھا کہ اس میں شق فیر (۲) کا اضافہ کرکے وہ جوم جب لینے تمم دوازمات کے ساتھ تنابت کے ساتھ تا ہوں کہ بہت دیں سے متنابوں کہ بہت



which is against the punishment of Had as so person, body, Parliament or the whole Muslim Ummah can increase or decrease, amend or alter the had. Even the noly Prophet (SAMS) who is Shareh (1,0), the law Giver declined to change the punishment of Hadd for a lady of Quraich is a theft case in order to avoid interference in the matter of Huddoodullab and declared that he would have inflicted the same punishment of Hadd to his own daughter Fatima (who was degreet to him) had she committed that offence (Encyclopaedia of Seerab Vol. I Page 91). This doctrine has further usen enunciated in Fathul Qudeer Vol.V Page 112, 113, Al Ahkam Al Sultania Page 192, 195 and Al-Tasarial Jingi al-Islami Vol. I Page 79.

(iv). That this is well settled law that disrespect

to the Holy Prophet (SAMS) comes within the perview

of Had punishment of death as ordained in the

Holy yuran, Sunnah, and according to Ijma and

consensus of Juristic Opinion.

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Muslim then his punishment is death and there is no difference of the opinion among the Muslims about this matter in my knowledge." (Assarimul Maslul, page 4).

28. Qazi Ayaz writes, "Ummah is unanimous on the point that the Punishment of a Muslim who abuses the Holy Prophet or degrades him is death. (Al-Shifa, Vol.II, page 211).

Qazi Ayaz further writes, "Every one who abuses Holy Prophet ", points out any defect in him, his lineage, his religion or in any of his qualities, or makes allusion with him or resembles him with another thing as his insult, disrespect, degradation, disregard or his defect, he is contemner and he will be killed, and there is consensus of the ulema and Jurists on this point from the period of Sahaba till this time. (Al-Shifa By Qazi Ayaz, Vol.II, page 214).

29. Abu Bakar Jassas Hanafi writes, "There is no difference of opinion among the Muslims that a Muslim who maligns or insults the Holy Prophet intentionally becomes apostate liable for death. (Ahkamul Quran Vol.III, page 106). It will be useful to note one Hadith here:-

"It has been related on the authority of Abdullah Ibn Abbas that Prophet said, "Kill the person who changes his religion (Islam)." (Bukhari, Vol.II, page 123).

- 30. It has been related by Qazi Ayaz that Haroonur Rashid asked Imam Malik about the punishment of the contemner of the Prophet and told him that some Jurists of Iraq had suggested the punishment of whipping him stripes. Imam Malik became furious on that and said, "O Amir ul Muainin! how the Ummah has the right to exist when her Prophet is abused. So kill the person who abuses the Prophet and whip stripes to one who abuses the companions of the Prophet." (Al-Shifa, Vol.II, page 215).
- 31. Ibn Taimiyyah, while relating the opinions of the Jurists in this connection, writes, "Abu Bakar Farsi Shafie has related that there is consensus of opinion among the

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eyewitnesses who pass the tests of tazkiyat al-shuhüd; no other piece of evidence can prove this offence. If any of the witnesses retracts his testimony, rendering the number of witnesses less than the prescribed number, the case shall immediately end and no re-trial shall take place. The same is the case when the guilt is proved through confession and the accused retracts his confession any time before the enforcement of the punishment. Significantly, even if testimony of witnesses in accordance with the prescribed standard of evidence is available and still the accused denies his having committed blasphemy, his denial will entitle him to be acquitted because this denial is deemed repentance and repentance suspends the punishment of apostasy. Let

As blasphemy by a Muslim is a form of apostasy, it attracts all the consequences of apostasy, including, most importantly, the rule that repentance suspends the punishment of apostasy. The Ḥanafī jurists particularly cite the repentance of Ibn Abī Sarḥ on the eve of the conquest of Makkah as a precedent in this regard. Another important legal principle of apostasy equally applicable to blasphemy is that no statement or act is deemed disbelief if it can be given a better interpretation. This necessitates consideration of mens rea for the commission of the offence. In other words, blasphemy is not a strict liability offence, 126 unless it amounts to qadhf also, in which case it becomes a strict liability offence.

122 Sarakhsi, al-Mabsūt, 9:120.

¹²⁵ Ibid., 9:109.

¹²⁴ Ibn al-Humam, Fath al-Qadir, 5:332.

¹²⁵ Mullā 'Alī al-Qārī (d. 1013/1605), explaining the position of Abū Ḥanīfah on the issue of takfīr (declaring someone as an unbeliever), says, "In an issue of kufr, if ninety-nine interpretations of a statement prove kufr but one interpretation negates kufr, the mufti and the qādi both should adopt the interpretation that negates kufr because mistake in letting a thousand unbelievers alive is lesser than mistake in killing a believer." Mullā 'Alī al-Qārī, Sharḥ al-fiqh al-akbar (Karachi: Muhammad Saʿīd and Sons, n.d.), 195.

¹²⁶ Ismail Qureshi, the petitioner in the famous case that resulted in the mandatory death punishment for blasphemy, is of the opinion that intention must be taken into consideration by the trial court in a blasphemy case (Qureshi, Qānūn-i tauhīn-i risālat, 336-47). The FSC judgment on the issue also contains detailed discussion of the role and importance of intention (see paras 35-64 of the judgment). It is surprising, however, that the FSC did not give any directive to the government for making intention an essential part of the offence of blasphemy and the offence continues to attract the principle of strict liability.

¹²⁷ The Qur'ān has explicitly ordered to give eighty lashes to the one who accuses a chaste woman of zinā and cannot bring four witnesses to prove the accusation (24:4). The Prophet (peace be on him) told the one who had accused his wife of zinā that he should either bring the testimony in accordance with the prescribed standard or else he would be given eight lashes (Bukhārī, Sabīb, Kitāb al-shahādāt, Bāb idhā idda'ā aw qadhafa fa lahu an yaltamis al-bayyinah). It is on the basis of these and other legal evidences that the Hanafi jurists have laid down the

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5 3.8.8 Prohibition overrides permissibility.

و منها: أنه إذا تعارض دليلان ، أحدهما يقتضي التحريم ، و الآخر يقتضي الإباحة ، أُللَّم المحرِّم، كما نصَّ عليه علماؤنا .

When two evidences conflict with each other, one permitting an act and the other prohibiting it, the evidence prohibiting it will prevail, as our jurists have explicitly stated.

3.8.9 Hudūd are obliterated by confusion.

و منها أن الحدود تدرأ بالشبهات . قال في "الأشباه والنظائر" :

السادسة: الحدود تدرأ بالشبهات، و هو حديث رواه الجلال السيوطي مُعزياً إلى ابن عدي من حديث ابن عباس رضي الله عنها، و أخرج ابن ماجة من حديث أبي هريرة: "ادفعوا الحدود ما استطعتم،" و أخرج الترمذي و الحاكم من حديث عائشة رضي الله عنها: "ادرؤا الحدود عن المسلمين ما استطعتم؛ فإن وجدتم للمسلمين غُرجاً، فخلوا سبيلهم؛ فإن الإمام لأن يخطئ في العفو خيرٌ من أن يخطئ في العقوبة." و أخرج الطبراني عن ابن مسعود رضي الله عنه موقوفاً: "ادرؤا الحدود و القتل عن عباد الله ما استطعتم." و في فتح القدير: "أجع فقهاء الأمصار على أن الحدود تُدراً بالشبهات." و الحديث المروي في ذلك متفق عليه و تَلَقَته الأمة بالقبول.

Hudūd are suspended by confusion (shubhah).76 It is mentioned in al-Ashbāh wa 'l-Nazā'ir:

The Sixth Maxim is: "hudūd are obliterated by confusions." This is a hadith narrated by al-Jalāl al-Suyūtī on the authority of Ibn 'Adi from the narration of 'Abdullāh b. 'Abbās, Allah be please with them both. Ibn Mājah narrated the hadith of Abū Hurayrah, Allah be pleased with him: "Avoid the hudūd as far as possible for you." Tirmidhī and Hākim narrated from the hadith of 'Ā'ishah, Allah be pleased with her: "Repel the hudūd from the Muslims as far as you can; if you can find an

The concept of shubbah has been explained in Introduction.

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سب سے پہلے تو یہاں ایک خلط مبحث کی وضاحت ضروری معلوم ہوتی ہے جواس مسلے کے حوالے سے عام طور پر پایا جاتا ہے اور بہت سے کباراہل علم کے ہاں بھی اس کی جھلک دکھائی ویتی ہے۔ وہ یہ کہ فقہا سے احتاف اور جمہور فقہا کے نذکورہ اختلاف کی تعبیر عام طور پر یوں کر دی جاتی ہے کہ جمہوراہل علم تو ہین رسالت پرسزا کو حد یعنی شریعت کی مقرر کر دہ لازمی سزا سجھتے ہیں جبکہ احتاف کے نزدیک بیرسزا ایک تعزیری اور صواب ویدی سزا ہے۔ ہماری رائے میں بہتعبر بالکل احتاف کی نوعیت پر بالکل غور نہ کرنے یا شدیدتم کے سوفیم کا نتیجہ ہے۔ فقہا کے مابین اختلاف اس سزاک خد بہونے یا نہ ہونے میں نبیس اوراحناف کی طرح جمہور صحابہ وتا بعین ، جمہور المناف اس سزاک خد بہونے یا نہ ہور کے خراج میں اوراحناف کی طرح جمہور صحابہ وتا بعین ، جمہور المناف اس سزاک خور ہی ہی اس کو تعزیر ہی ہی ہور المناف کی طرح جمہور صحابہ وتا بعین ، جمہور المناف کے نزد یک تو ہین رسالت کے جرم کی شناعت اور شینی کی وجہ سے اس پر موت تی کی سزا دینا شریعت کے مزاج سے زیادہ ہم آ ہنگ ہے اور اس سے کم ترکوئی سزا انصاف کے تقاضوں کو پورا خبیں کرتی ، جبکہا حناف کے نزد یک اس جرم پر موت کی سزا کے ساتھ ساتھ متباول اور کم تر سزاؤں فیری گرائش بھی شرعی اصولوں کی روسے موجود ہے۔ ایک فقیداور جمہتد کا کسی سزاکواس لیے لازم قرار کی گرائش بھی شرعی اصولوں کی روسے موجود ہے۔ ایک فقیداور جمہتد کا کسی سزاکواس لیے لازم قرار کی گرائش بھی شرعی اصولوں کی روسے موجود ہے۔ ایک فقیداور جمہتد کا کسی سزاکواس لیے لازم قرار

براهين _____



جواب تحریر کیااور عرب وجم کے ساڑھے چارسو سے زائد حنی علیا نے ، جن میں مولانا عبدالحی فرقی محلی ، مولانا احمد رضاخان بریلوی ، مولانا رشیداحمد کنگونی ، مولانا احمد یعقوب نانوتوی اور مولانا محمود حسن دیوبندی جیسے اکابر واساطین بھی شامل ہیں ، اس کتاب پر تصدیق و تا ئیر تحریر کی ۔ مولانا منصور علی نے ذکورہ کتاب میں تو بین رسالت کی سزا کے حوالے سے فقہا سے احناف کا موقف واضح کرتے ہوئے کھا ہے :

احناف کا بینقط نظر بدیجی طور پر ایک نازک سوال کوجنم دیتا ہے۔ اس کی وجہ یہ ہے کہ خیر القرون میں اسلط کے جو واقعات اور فیصلے منقول ہیں، ان میں سزاے موت کے علاوہ متبادل سزاؤں کا جبوت ملئے کے باوجود صحابہ وتا بعین کا عام رجحان اس جرم پرموت ہی کی سزادینے کے حق میں نظر آتا ہے۔ پھر جمہور فقہا کے علاوہ خوداحناف میں ہے بعض جلیل القدر اہل علم کے ہاں بھی بہی رجحان پایاجاتا ہے۔ (چنا نچہ بصاص اور این الہمام کے علاوہ علامہ بینی نے بھی کھا ہے کہ سب وقتم کے ارتکاب پر ذمی گوتل کر دینا جا ہے۔ عمد قالقاری ۱۱۳ اے) چنا نچہ سوال سے پیدا ہوتا ہوتان کے اس موری طور پر ایک ایسار بھان کے دور پایاجاتا ہے جو اس حساس اور نازک مسلے میں بظاہر مسلمانوں کے ذہبی جذبات اور دینی غیرت و حسیت ہے ہم آ ہنگ دکھائی نہیں ویتا؟



revolt.⁶⁴ Only then can the *Imam* use force to pursue rebels.⁶⁵ In addition, rebels who surrender are not subject to *hadd*, and even those who are wounded and captured are not put to death.⁶⁶ This *hadd* is concerned only with rebels who are killed during battle, and therefore punished by the *hadd*.⁶⁷ If claims of the rebels are just and the *Imam* was at fault, he will be subject to punishment, rather than the rebels.⁶⁸

5. Factors Constraining the Imposition of Hudud Penalties

Although the penalties for *hudud* crimes are mandated, there are a number of factors which decrease the likelihood that these punishments will be carried out. These include high evidentiary safeguards and a narrow construction of the law. ⁶⁹

Generally, circumstantial evidence is not allowed to prove hudud crimes. 70 The Maliki school makes an exception to this rule for zina; pregnancy of a woman who is not married is considered sufficient evidence of zina. 71

There are strict rules regarding witnesses in Islamic law. One requirement specific to the crime of zina is that an individual who falsely accuses a Muslim of zina is punished for defamation. This punishment is eighty lashes for a free person and forty lashes for a slave. Witnesses must be male Muslims, sane, of

And those who launch
A charge against chaste women,
And produce not four witnesses
(To support their allegations) —
Flog them with eighty stripes;
And reject their evidence
Ever after: for such men
Are wicked transgressors.

^{64.} Mansour, supra note 10, at 197.

^{65.} Id.

^{66.} Id.

^{67.} Id.

^{68.} Id. at 198.

^{69.} Postawko, supra note 8, at 287-88.

^{70.} PETERS, supra note 33, at 4.

^{71.} Id.

^{72.} Lippman, supra note 1, at 40.

^{73.} Id.

^{&#}x27;ALI, supra note 4, at 24:4.

الإيهان إلا جحود ما أدخله فيه . ثم ما تيقن أنه ردة ، يحكم بها فيه . وما يشك أنه ردة ، يحكم بها فيه . وما يشك أنه ردة ، لا يحكم بها فيه . وما يشك وينبغي للعالم ، إذا رفع إليه هذا ، أن لا يُبادِر بتكفير أهل الإسلام بعلو . بصحة إسلام المُكرَه .

و في "الحلاصة" و غيرها : إذا كان في المسئلة وجوة توجب التكفير، و وجه واحدٌ يمنع التكفير، نعلى المفتي أن يميل إلى الوجه الذي يمنع التكفير، تحسيناً للظنّ بالمسلم.

زاد في "البزازية " : إلا إذا صرّح بإرادة موجب الكفر.

و في "التتارخانية" : لا يُكَفِّر بالمحتمَل لأن الكفر نهاية في العقوبة ، فيستدعي نهاية في الجناية ؛ و مع الاحتمال لا نهاية .

In Jāmi' al-Fuṣūlayn: Taḥāwī narrated from our jurists: A person is not driven out of faith by anything, except the rejection of what brought him in it. Then, only that will make him disbeliever, which definitively constitutes apostasy, and not that in which there is some doubt since his Islam is definitively established and it cannot be removed by something doubtful, as Islam has to remain dominant. So, when such an issue is raised before a scholar, he should not hasten to declare the people of Islam disbelievers, particularly when the Islam of the one who was compelled is deemed valid. In al-Fatāwā al-Ṣughrā: Disbelief is a very serious matter. So, I do not declare a believer to be disbeliever whenever I find a narration which holds that he is not disbeliever.

In Khulāṣah and other manuals: When several possible interpretations of a statement imply disbelief and one interpretation prevents declaration of disbelief, the Muftī must





legal framework is out of date (Egypt 1944, Morocco 1959, Syria 1981) [12]. They do not have specialized training in forensic psychiatry and do not possess organized forensic psychiatric services [24]. The notion that mental disorder has a daemonological or divine origin is widespread in the Islamic world [1, 27, 28]. Many times people seek help from religious therapists, who use lines from the Qur'an as treatment. The social impact and influence of these therapists is so important that in some countries they have are incorporated in the national health care system [29].

Under the Islamic law, the therapeutic bond between a patient and a doctor is considered sacred. According to Shari'ah, human justice cannot force a doctor to reveal information entrusted to him/her by a patient. Some Islamic legal scholars argue that lying into a court in order to preserve the confidentiality of the therapeutic relationship cannot be considered a sin [2]. In any case, in Muslim trials, only the views and the opinions of Muslim psychiatrists are accepted [3].

Despite the importance that the Islamic law attributes to the confidentiality of the therapeutic bond, it is overridden in cases of suicide attempts [2]. Suicide is considered a very big sin, a type of homicide. In the West, during the middle Ages, the term that was used for referring to suicide was "self murder", and only recently replaced by "suicide" [30]. Muslim religion strictly forbids it and the divine law considers suicide a very big crime [31]. Direct consequences of this perception are the scarce recording of suicide attempts as such, since this could lead to the prosecution of the patient, and also that the rates of suicide and attempted suicides cannot be reliably estimated in Muslim countries [1, 23]. Apart from suicide, other forbidden actions (similarly to Judaism and Christianity) include homosexuality, extramarital affairs, prostitution, and (unlike Judaism and Christianity) alcohol consumption [32].

Forensic psychiatry and Islamic law Mens rea & criminal responsibility

The concept of mens rea, the guilty intention, is fully accepted in the Islamic law. There is no crime if there is no criminal intention. The significance of the subjective element of a criminal action (and not only of the result of this action) gradually emerged in the Western Europe through the "publication" of the criminal law, which reached its climax during Charlemagne's kingship (768–814 A.D) [33]. In terms of the criminal's intention, the criminal actions are divided into [16]: (1) 'Amd, intentional, and (2) Khaţā', unintentional. There is also a third category which applies only in cases of homicide: (3) the Shibh al-'amd that is the quasi-intentional homicide. All homicidal acts are punishable by death. But if the victim's

family decides to accept compensation and not to punish the murderer, then the latter is set free, unless there is a decision on behalf of the authorities for an additional punishment. On the contrary, if the family does not accept the compensation, then the judicial system cannot override this decision.

According to Shari'ah, the lunatics (Majinum which also means teacher, wizard or prophet) have impaired judgment and will and so they cannot be held accountable for their actions. Insanity in the Arabic language is called Junun and its etymology means "hidden" or "invisible." This etymology derives from the belief that insanity-mental disorder is caused by the demonic possession of the patient from "invisible" or "hidden" spirits (jinn). In Arabic, the word "jinn" has many meanings, like shelter, shield, screen, fetus, and madness. According to the Islamic religion, the "jinn" is a supernatural spirit, which can take a human or animal form and can be either good or bad [34]. The demonological apprehension of mental disorder can be traced in many cultural settings: the archaic English word ilfig meant "mad" but also "affected by the elves," thus reflecting the common belief of that time that madness was caused by supernatural deities [35].

Insanity

There is tripartite classification of insanity in the Islamic law: (a) absolute or continuous, (b) intermittent, and (c) partial. In the case of intermittent insanity, it has to be proven that the mental disorder was active at the time of the criminal act for the defendant to be found not guilty by reason of insanity. Otherwise, if the disorder was in remission and not active, the perpetrator is fully responsible for his acts [17]. The similarity between the concepts of lucida intervalla or intermission of the Roman law [36] and photeinon diallimaton ("bright interims") of the Byzantine law [37, 38] is obvious. As far as criminal responsibility is concerned, the Islamic law recognizes two other categories, similar to insanity: (1) the Dahish, which means "sudden confusion" or "perplexity" and (2) the 'Atah, which means mental retardation or dementia [17].

Involuntary admission

A pivotal issue addressed in the Islamic law, lying in the interface between law and psychiatry, is the concept of involuntary admission of mental health patients. According to the principle of Al-Hajjer, the state can undertake the financial management of a person's fortune, if he does not manage it "properly." By extending the application of this legal procedure, Shari'ah accepts the necessity of involuntary hospitalization. This necessity lies on the patient's "need for therapy" (including patients

ولم أجد في مذهبِ الشافعيُ شيئاً غيرَ هذا وغيرَ قولِ الخَطَابيُ في المتعالِم الشّنَوِة: إذا كان السّابُ ذِمُّياً قال مالكُ: مَن شَتَمَ النبيَّ ﷺ من اليهود والنصارئ قُتِلَ إلا أنْ يُسلِم، وكذا قال أحمدُ. وقال الشافعيُّ: يُقتَلُ الذّميُّ إذا سَبَ النبيَّ صلىٰ الله عليه، وتَبْرَأُ منه الذَّمة. واحتجَّ في ذلك الذّميُّ إذا سَبَ النبيَّ صلىٰ الله عليه، وتَبْرَأُ منه الذَّمة. واحتجَّ في ذلك بخبر كعب بن الأشرف، وحُكِيَ عن أبي حنيفة قال: لا يُقتَلُ الذّميُّ بشَتْم النبيِّ النبيِّ الذّبيُ بشَتْم النبيِّ النبيِّ الذّبيُ الدّبيُ بشَتْم النبيِّ النبيِّ الدّبيُ الدّبيُ الدّبيُ النبيِّ النبيِّ النبيِّ الدّبيُ الدُولُ الذّبي الدّبي الذّبي الدّبي الدّبي الذّبي الذّبي الدّبي الذّبي الدّبي الدّبي الذّبي الدّبي الدّبي الدّبي الدّبي الذّبي الدّبي الذّبي الذّبي الدّبي الذّبي الدّبي الدّبي الذّبي الدّبي الذّبي الدّبي الذّبي الدّبي الذّبي الدّبي الذّبي الدّبي الدّبي الذّبي الدّبي الدّبي الدّبي الذّبي الدّبي ال

فهذا الكلامُ من الخطّابي يُشْعِرُ بأنّ الشافعيَّ يقولُ بقنلِهِ ولو أسلم، وإذا كان ذلك في الذمّيُ ففي المرتدُ أَولَىٰ، إلا أنّ كلامَ الخطّابيِ يمكنُ حملُهُ علىٰ أنه أرادَ حكايةَ لفظِ الشافعي، وهو ساكتٌ عن حُكْمِهِ إذا أسلم.

هذا ما وجدتُهُ للشافعيةِ في ذلك، والحنفيّةُ في قبولِ التوبةِ قريبٌ من الشافعية، ولا يوجَدُ للحنفيةِ غيرُ قبولِ التوبة (٢)، وكلتا الطائفتين لم أرَهُم تكلّموا في مسألة السّبُ مستقِلّة، بل في ضِمْنِ نقضِ الذمّيُ العهدّ (٢)، وكأنّ

⁽١) المعالم السُّنَنَّ (٢:١٩٩:٦) المطبوع بهامش مختصر المنذري لسنن أبي داود.

⁽٢) وهذا ما حرّره خاتمة المحقّقين الإمام آبن عابدين حول مذهب الحنفية في رسالته النبيه الولاة والحكّام على أحكام شاتم خير الأنام، المطبوعة ضمن المجموعة رسائله (١:٣١٣-٣٧١)، معتمداً في ذلك على تحرير تصوصي أثبة مذهبه، وعلى كلام غيرهم، ومنهم المصنف رحمه الله تعالى، واعتد بكلامه للغاية، حيث قال هناك (١:٣٢٤):

لافقد انفقَ على نقل ذلك عن الحنفية القاضي عياض والطبري والسبكي وابن تيميّة . بل يكفي في ذلك الإمامُ الشبكي وحدّه، فقد قبل في حقّه: لو دَرَسَت المداهبُ الأربعة لأملاها مِن صدره . . » .

 ⁽٣) من متقدمي الحنفية من ذكر المسألة في كتاب المرتد، وهو الإمام الطّحاوي في
 ٥٥خنَصَره، ص٢٦٢.

ہوجاتا ہے۔ ظاہر ہے کہ یہ ایک عمومی اصول سے استنباط ہے جبکہ اس سزا کوشر کی حد تصور کرنے کی صورت میں بیضروری تھا کہ وہ اس کے متعلق کوئی صریح نص پیش کرتے۔ اس سے واضح ہے کہ ابن جزم بھی اس سزا کو براہ راست شرعی نصوص میں مقرر کی جانے والی سزا تصور نہیں کرتے۔

ہماری تحقیق کے مطابق سب سے پہلے جس عالم نے تو بین رسالت پر سزا ہے موت کوشر بعت کی مقرر کر دہ حدقر اردینے پر اصرار کر کے تعبیر کی اس غلطی کو بنیا دفراہم کی ، وہ آٹھویں صدی کے عظیم مجددامام ابن تیمیداوران کی ا تباع میں ان کے شاگر دامام ابن القیم رقمہما اللہ بیں ممکن ہے بعد کے دور کے بعض فقہانے اس اختلاف کو کسی جگہ محض تجوز آ اور توسعاً حد مانے یا نہ مانے کے اختلاف سے تعبیر کر دیا ہو، لیکن جہاں تک صحابہ وتا بعین ، جمہور محدثین اور ائمہ مجتبدین میں سے بالحضوص امام مالک ،امام شافعی اور امام احمد بن ضبل کا تعلق ہے تو یہ بات پورے اطمینان سے کہی جا بالحضوص امام مالک ،امام شافعی اور امام احمد بن ضبل کا تعلق ہے تو یہ بات پورے اطمینان سے کہی جا سے تعبیر کے دانھوں نے اس سزا کو ہم گزشر عی حد کے طور پر بیان نہیں کیا اور نہ فقبی فدا ہمب کی احمہات

آ ئندہ سطور میں ہم تفصیل ہے اپنی اس رائے کے دلائل بیان کریں گے:

یہ بات مختاج وضاحت نہیں کہ کسی سزا کوشریعت کی طرف سے مقرر کردہ لازمی سزا یعنی حد مانے کی صورت میں دو نتیج مرتب ہونا ضروری ہے۔ان میں سے ایک نتیج علمی ہے اور دوسراعملی علمی طور پر بیضروری ہے کہ جب کوئی فقیہ یا عالم شرعی سزاؤں کا ذکر کر سے یا اس ضمن میں شرعی احکام کوکسی کتاب میں مرتب کر ہے تو اس میں اس سزا کا ذکر بھی لاز ما کر سے جے وہ 'حد شبحتنا ہے۔ فلا ہر ہے کہ ایک فقیہ سزاؤں کے حوالے سے شرعی قانون کی شرح ووضاحت کرتے ہوئے کسی تعزیری اور اجتہادی واستنباطی سزا کو تو نظر انداز کرسکتا ہے، لیکن جس سزا کو وہ شریعت کی مقرر کردہ سزا سے ہم انداز نہیں کرسکتا ہملی نتیجہ بیمر تب ہوتا ہے کہ کسی مقدمے میں اس سزا کی دوشن سے مختلف اور خاص طور پر اس سے کم ترکسی سزا کا نفاذ قبول نہ کیا جائے۔اب اس معیار کی روشنی میں جب ہم صحابہ وتا بعین کے آثار، ائمہ مجتمدین کے بیانات اور فقہی عنوانات کے تحت مرتب



موقف کوبعض متاخرین کے فتووں کے پیچھے چھپانے کی کوشش کررہے ہیں، اس لیے مناسب معلوم ہوتا ہے کہ یہاں اس ضمن میں بعض متند تصریحات نقل کردی جائیں۔

امام طحاوی فرماتے ہیں:

قال اصحابنا في من سب النبي صلى الله عليه وسلم او عابه وكان مسلما فقد صار مرتدا ولو كان ذميا عزر ولم يقتل (مختر اختلاف العلماء ٢٠٠٣)

'' ہمارے فقہانے کہا ہے کہ اگر کوئی مسلمان نبی سلمی اللہ علیہ وسلم کو برا بھلا کہے یا آپ کی سنقیص کرے تو وہ مرتد ہوجاتا ہے اوراگروہ ذمی ہوتو اے سزا تو دی جائے گی، کیکن قتل نہیں کیا جائے گا۔''

دوسرى جگهمزيدوضاحت ي لکھتے ہيں:

ومن كان ذلك منه من الكفار ذوى العهود لم يكن بذلك خارجا من عهده وامر ان لا يعاوده فان عاوده ادب عليه ولم يقتل (مخترالطحاوي،٢٩٢)

''اگرکوئی معاہد کافرسب وشتم کا مرتکب ہوتو اس سے اس کا معاہدہ نہیں ٹوٹے گا۔اس سے کہا جائے گا کہ وہ دوبارہ ایسانہ کرے۔ پھرا گر دوبارہ ایسا کرے تو اسے سزادی جائے گی ،لیکن قتل نہیں کیا جائے گا۔''

سبوشم مے معاہدہ نداؤ شنے کی توجیہ کرتے ہوئے علامہ کا سانی فرماتے ہیں:

لو سب النبسی لا پنت قسض عهدہ لان هذا زیادہ کفر علی کفر
والعقد یبقی مع اصل الکفر فیبقی مع الزیادہ (بدائع الصائع ۱۱۳/۷)

"اگرذی نی سلی اللہ علیہ وسلم کو برا بھلا کہ تواس سے اس کا معاہدہ نہیں او شے گا، کیونکہ ایسا
کرکے اس نے سابقہ کفر پر مزید کفر کا اضافہ کیا ہے۔ چونکہ معاہدہ اصل کفر کے باوجود قائم رہتا
ہے، اس لیے کفریس اضافے پر بھی برقر اررہے گا۔"

not think that the repentance option is legally binding at all and maintain that the apostate is to be executed at once. On the other end of the severity scale, there are a limited number of traditions indicating that the punishment of choice for apostates is imprisonment. This infrequently expressed view can be supported by asserting that the repentance option is not limited in time and the apostate should be given for ever the opportunity to repent.

Let us treat the last mentioned views first. Several collections of hadīth relate a tradition according to which six men from the tribe of Bakr b. Wā'il apostatized during the conquest of the Persian city of Tustar⁴² and joined the polytheists. When 'Umar b. al-Khattāb received the report that they had been killed, he expressed his displeasure and said: "I would have suggested that they enter through the door from which they had gone out. If they had done it, I would have accepted it from them; if not, I would have placed them in prison" (kuntu "āridan "alayhim al-bāb alladhī kharajū minhu an yadkhulū fihi fa-in fa'alū dhālika qabiltu minhum wa illā 'stawda tuhum al-sijn).43 In al-Şan anī's version, the manner of their being killed is not clear; according to al-Bayhaqī, they were killed in battle against the Muslims. Whatever the truth, it is clear that 'Umar stipulates imprisonment rather than execution as the punishment of choice for apostasy. Similarly, Sufyan al-Thawrī and Ibrāhīm al-Nakha'ī are reported to have given the apostate an opportunity to repent for ever;44 or, in another formulation, "as long as there is hope for his repentance" (yu'ajjal mā rujiyat tawbatuhu). 45 Al-Nakhacī is willing to give this privilege even to apostates who repeat their transgression. 46 Al-Hasan b. Hayy maintained that an apostate is to be given an opportunity to repent "even if he repented one hundred times" (yustatābu al-murtadd wa in tāba mi'ata marra).47 The same view is reported of the Hanafi jurist Abū al-Hasan al-Karkhī. 48 In other words, and despite the man baddala ... hadīth mentioned above, these jurists were willing to forego the infliction of capital punishment for apostasy. Ibn Qudāma is quick to observe that this view contradicts the sunna and the ijmāc because it means that in practical terms the apostate will never be killed.49

⁴² See "Shushtar", EF, s.v. (J. H. Kramers – [C. E. Bosworth]).

⁴³ Şan'ānī, Muşannaf, vol. 10, pp. 165–166 (no. 18696); Ibn Abī Shayba, Muşannaf, vol. 12, p. 266 (no. 12783); Khallāl, Ahl al-milal, pp. 488–489 (nos. 1201, 1204), 490–491 (nos. 1208–1209); Taḥāwī, Mukhtaṣar ikhtilāf al-'ulamā', vol. 3, p. 503 (no. 1651); Bayhaqī, Sunan, vol. 8, p. 207.

⁴⁴ Şan°ānī, Muşannaf, vol. 10, p. 166; Bayhaqī, Sunan, vol. 8, p. 197, Il. 21–22; Nazwī, Muşannaf, vol. 11, p. 190; Ibn Qudāma, al-Mughnī, vol. 8, pp. 125 infra – 126 supra; Dimashqī, Rahmat al-umma, p. 491; Aynī, Bināya, vol. 6, p. 699.

⁴⁵ Ibn Taymiyya, al-Sārim al-maslūl, p. 321.

⁴⁶ Sarakhsī, Sharh kitāb al-siyar al-kabīr, vol. 5, p. 1939 (no. 3883).

⁴⁷ Ṭaḥāwī, Mukhtaṣar ikhtilāf al-ʿulamā', vol. 3, p. 502 (no. 1651). On al-Ḥasan (b. Ṣāliḥ b. Ṣāliḥ) b. Ḥayy, see Mizzī, Tahdhīb al-kamāl, vol. 6, pp. 177–191 (no. 1238). He died in 169 A.H. / 785 A.D. (for the date of his death, see p. 190).

⁴⁸ ^cAynī, Bināya, vol. 6, p. 700. Al-Karkhī lived between 260 A.H./ 873 A.D. and 340 A.H./ 951 A.D. He is described as the "head of the Hanafīs" and the teacher of Abū Bakr al-Jaṣṣāṣ. His Risāla fī al-uṣūl is printed together with Kitāb ta'sīs al-nazar by Abū Zayd "Ubayd Allah b. 'Umar b. 'Īsā al-Dabūsī al-Ḥanafī, Cairo n.d. His biography, adapted from Kitāb a' lām al-akhyār wa Tāj al-tarājim is on p. 79. See also Sezgin, GAS, vol. 1, p. 444.

⁴⁹ Ibn Qudāma, al-Mughnī, vol. 8, p. 126 line 1; cf. 'Aynī, Bināya, vol. 6, p. 699.

The Prophet is said to have accepted the repentance of several persons who abandoned Islam.⁵⁹ 'Umar b. al-Khattāb is reported to have stipulated that an apostate should be imprisoned for three days; one should give him food and drink in order to reconcile him to Islam, and only then ask him to repent. 'Umar made this ruling after he heard that some Muslims had executed an apostate in a hurried manner.60 Regarding a group of apostates, "Uthman b. Affan instructed Ibn Mas cud to demand their repentance and kill those who refuse. 61 There are various views regarding the question how much time should be allocated for this purpose: some say that the apostate is to be asked to repent three times; others maintain that he is to be allowed three days, one month, or three months. 62 According to instructions attributed to "Umar b. "Abd al-"Azīz, the apostate should be subjected to a series of increasingly menacing actions, such as binding him and placing a lance on his heart, until he repents.63 The Shāficī jurist Ibn Surayj (d. 235 A.H. / 849-50 A.D.)64 thought that the apostate should not be dispatched with the sword, but rather beaten to death with a stick: such a slow method might provide him with an additional opportunity to repent.⁶⁵ Some jurists explain that the repentance option is necessary because apostasy frequently occurs as result of misunderstanding (li-'etirādi shubha) and, therefore, the execution should not be carried out before an attempt is made to remove that misunderstanding.66

Al-Shāfi^cī not only supports the idea that providing the apostate with the repentance option is mandatory, but also draws concrete conclusions from this juridical stance. He maintains that if an apostate is brought to the place of execution, declares the twofold *shahāda* but is, nonetheless, killed by a governor who does not think that an apostate should be given the opportunity to repent – his inheritance goes to his Muslim heirs and his executioner must atone for the killing and pay blood-money to the slain apostate's family; furthermore, but for the *shubha*, he would be liable for retaliation (... *fa-mīrāthuhu li-warathatihi al-muslimīn wa 'alā qātilihi al-kaffāra wa al-diya wa lawlā al-shubha la-kāna 'alayhi al-qawad*). ⁶⁷ Whoever injures an apostate before asking him to repent suffers discretionary punishment (*ta'zīr*) if the apostate repents and later dies of his wounds, although there is no *qawad* or *diya*. ⁶⁸ This is in sharp contrast to the view of Abū

⁶⁰ Şan^cānī, *Muşannaf*, vol. 10, pp. 164–165, no. 18695; Ibn Ḥanbal, *Masā⁺il*, vol. 2, pp. 473–475 (nos. 1191–1192).
⁶¹ Māwardī, *al-Ḥāwī al-kabīr*, vol. 13, pp. 158–159.

⁵⁹ Bayhaqî, Sunan, vol. 8, pp. 197, 207; al-Nasă'î, Sunan, vol. 7, p. 107; Mäwardî, al-Hāwī al-kabīr, Beirut 1994, vol. 13, p. 156; Taḥāwī, Mushkil al-āthār, vol. 4, pp. 64–65.

San'anī, Muşannaf, vol. 10, p. 164 (nos. 18690–18693); Māwardī, al-Aḥkām al-sulţāniyya, p. 75; Nazwī, Muşannaf, vol. 11, p. 190; 'Asqalānī, Fath al-bārī, vol. 15, p. 295. According to Abū Yūsuf (Kitāb al-kharāj, p. 180), the notion of asking the apostate to repent three times (or for three days?) is based on a tradition attributed to the Prophet himself.

⁶⁵ Abū Yūsuf, Kitāb al-kharāj, p. 182.

⁶⁴ See on him EF, s.v. (J. Schacht).

⁶⁵ Māwardī, al-Ahkām al-sultāniyya, p. 75.

Mäwardi, al-Häwi al-kabir, vol. 13, p. 159; Ibn Qudāma, al-Kāfi, vol. 4, p. 61; Marghināni, Hidāya, vol. 2, p. 871.

⁶⁷ Shāfi^cī, Kitāb al-umm, vol. 4, p. 416, ll. 8–9. Cf. Kitāb al-umm, vol. 1, pp. 430–431; Māwardī, al-Hāwī al-kabīr, vol. 13, p. 159; Sarakhsī, Mabsūt, vol. 10, p. 99.

⁶⁸ Mukhtaşar al-Muzanī *alā al-Umm, in Shāfi*ī, Kitāb al-umm, vol. 9, p. 275, ll. 12-13.

and blessings of Allah be on him, said: "If someone blasphemes against the any of the Prophets, kill him; and if a person commits this act against any of my companions, flog him." The Prophet, peace and blessings of Allah be on him, ordered the killing of Ka'b b. al-Ashraf without warning him because he used to hurt the Prophet, peace and blessings of Allah be on him. Similarly, he ordered the killing of Abū Rāfi', the Jew. For the same reason, he ordered the killing of Ibn Khaṭal even if he would be found sticking to the sheets of the Ka'bah. The arguments for this rule can be found in al-Ṣārim al-Maslūl 'alā Shātim al-Rasūl."

16

و تَبِعه صاحب "الدرر و الغرر". و كذا قال المحقق ابن الهمام في "فتح القدير":

كل من أبغض رسول الله على الله على الله على الله القتل . فالساب بطريق أولى . ثم

يُقتَل حدًا عندنا . فلا تُقبَل توبته في إسقاط القتل . قالوا : هذا مذهب أهل

الكوفة ، و مالك . و نُقِل عن أبي بكر الصديق رضي الله تعالى . و لا فرق بين

أن يجئ تائباً من نفسه أو شُهد عليه بذلك . بخلاف غيره من المُكفّرات ، فإن

الإنكار فيها توبة ، فلا تعمل الشهادة معه ، حتى قالوا : يُقتَل وإن سب

سكران ، و لا يُعفى عنه . و لا بدّ من تقييده بها إذا كان سكره بسبب محظور باشره اختياراً بلا إكراه و إلا ، فهو كالمجنون . قال الخطابي: لا أعلم أحداً عالم في وجوب قتله . و أما مثله في حقّه نعالى ، فتعمل توبته في إسقاط قتله .

He was followed by the author of al-Durar wa al-Ghurar." Similarly, the learned Ibn al-Humam says in Fath al-Qadir:

If someone keeps grudge in his heart against the Prophet, peace and blessings of Allah be on him, he is apostate. Hence, the blasphemer is a fortiori apostate. Thereafter, his death punishment is hadd in our opinion. So, his repentance cannot obliterate his death punishment. They say: it is the view of the jurists of Kūfah and Mālik. The same has been reported from

Muhammad b. Muhammad al-Kardari al-Bazzāzi, al-Fatāwā al-Bazzāziyyah.
(Beirut: Dār al-Kutub al-Ilmiyyah, 2009), 2:443.

Muhammad b. Farāmurz b. 'Ali Mullāh Khusraw, Durar al-Hukkām Sharh Ghurar al-Ahkām (Karachi: Mīr Muhammad Kutubkhānah, n.d.), 1:299-300.



that basis we declared that his Islam and repentance are acceptable before Allah Exalted. Now, if someone says that his hadd is deal punishment, which is not obliterated by his repentance, he has to come up with a definitive argument because hudud are fixed punishments and fixing of punishment by human reason is not allowed, while there is no authentic narration of the statement or argument to this effect from our mujtahid, whose obedience we have made obligatory on ourselves, so that we could follow it. Rather, we found his position contrary to it, a reported by trustworthy narrators. So, how can we stick to this position when we are neither ourselves mujtahids nor are followers of another mujtahid who holds that contrary legal position?

3.8.6 Maximum cution is needed before awarding death punishment. لا ، وعلم أن فيها مسلماً ، لا ويها أن أمر الدم خطر عظيم ؛ حتى لو فتح الإمام حصناً أو بلدة ، وعلم أن فيها مسلماً ، فلو فرضنا أن هذه النقول قد على احد من أهلها لاحتمال أن يكون المقتول هو المسلم . فلو فرضنا أن هذه النقول قد معرفت ، فالأحوط في حقنا أن لا نقتله لعدم الجزم بأنه مستحق القتل . فإنه إذا دار الأمر عن أن مع استحقاقه لله ، تعين تركه ، لخطر الدماء ؛ فإن أستباحة دماء الموحدين خطر .

The issue of shedding blood is very serious. That is why if the ruler conquers a fort, or a city, and he knows that there is a Muslim in the inhabitants thereof, it is not permitted for him to execute any person among them because of the possibility that he may be that Muslim. Hence, if we presume that these narrations contradict each other, still the safer position for us is that of avoiding his execution since we are when the culprit really deserves death punishment. This is because punishment and giving him death punishment when he does not the believers is a grave offence.

قال في الشفا: "و الخطأ في ترك ألف كافر أهون من الخطأ في سفك محجمة من دم مسلم واحد." و قد قال عليه الصلاة والسلام: "فإذا قالوها، يعني الشهادة، عصموا مني However, the books of the Ḥanafī jurists are not silent on this issue. Thus, I saw in Kitāb al-Kharāj of Imām Abū Yūsuf in the chapter on the rules about those who renounce Islam after approximately two pages where Abū Yūsuf explicitly says:

Any male Muslim who blasphemes against the Prophet, peace and blessings of Allah be on him, or attributes falsehood to him, or ascribes any defect or fault to him, renounces faith in Allah and his wife is separated from him. If he repents [good]; otherwise, he is executed. The same is the position of woman, except that according to Abū Ḥanīfah she is not executed, but rather forced to re-embrace Islam.

This is the text of Abu Yusuf verbatim et literatim.

His statement: "except that according to Abū Ḥanīfah..." is an exception from his statement: "otherwise, he is executed." That is to say, he is executed if he does not repent. Then, as the jurists have consensus that in case of non-repentance the culprit must be executed, he clarified that this rule is not absolute because according to his master, Abū Ḥanīfah, and his followers, woman is excluded from this rule because, according to them, she is not executed due to the prohibition of killing women.

و قد أشار بقوله : "فإن تاب ؛ و إلا ، قُتِل" إلى أنه إن تاب ، سقطت عنه عقوبة الدنيا و الآخرة ، فلا يُقتَل بعد إسلامه . و إلا ، لم يصحّ قوله : "و إلا، قُتِل" ؛ فإنه علّق القتلَ على عدم توبته .

Moreover, by his statement: "if he repents [good]; otherwise, he is executed," he implies that when he repents his punishment in this world as well as in the hereafter is obliterated; hence, he is not executed after he re-embraces Islam. If this interpretation is not accepted, his

¹⁾ Abū Yūsuf Ya'qub b. Ibrāhīm al-Anṣāri, Kitāb al-Kharāj (Beirut: Dār al-Ma'rifah, 1979), 182.

Special formulations regarding a slave-girl apostate can be found in Ḥanafī literature. According to al-Shaybānī, the rules applicable to a slave-girl differ from those applied to a free woman. As we have seen, a free woman is imprisoned until she repents. The imprisonment of a slave-girl, on the other hand, can be dispensed with. If her owners need her services, she should be surrendered to them, they employ her and force her to embrace Islam again. Al-Sarakhsī's interpretation of this rule is remarkably utilitarian: the reason for a female apostate's imprisonment is "a right of Allah"; yet the right of the master to enjoy her services is given precedence over the right of Allah to have her incarcerated until she enters the fold of Islam again (li-anna ḥabsahā li-ḥaqq (or la-ḥaqqu) Allāh ta ālā wa ḥaqqu al-mawlā fī khidmatihā yuqaddamu alā ḥaqq Allāh fī ḥabsihā). A similar view is attributed to Abū Hanīfa.

The opposite view on the issue of female apostates is represented by al-Shāfi^cī. Any mature person who abandons Islam, regardless of gender, must be asked to repent and be put to death in case of refusal. Al-Shāficī provides a systematic argument to support his ruling and to undermine the Hanafi one. He also maintains that the abovementioned tradition of Ibn cAbbas is weak105 and is contradicted by traditions according to which both the Prophet and Abū Bakr ordered the execution of female apostates. 106 Al-Shāficī repeatedly makes use of the argument from grammar: the particle man in the man baddala ... hadīth refers to men and women alike. In a series of imaginary polemical exchanges with an unnamed opponent, he attempts to show that the prophetic prohibition to kill old people, monks and women applies to unbelievers against whom Muslims waged battles in the Abode of War, but is not applicable to persons who had been Muslims and renounced their faith. He forces his opponent to admit that a Muslim man who apostatizes and becomes a monk is not to be spared capital punishment despite the prophetic prohibition to kill monks. The reason is that the punishment for apostasy is akin to a hadd and as such cannot be abolished. Al-Shāficī then clinches the argument by showing that the hadd punishments are applied equally to men and women. 107

On the imposition of death penalty on female apostates, Aḥmad b. Ḥanbal, Mālik b. Anas, Ibn Abī Laylā, Abū Yūsuf (before he changed his view and lent his

Sarakhsī, Sharḥ kitāb al-siyar al-kabīr, vol. 5, p. 1938 (no. 3882). Cf. also Shaybānī, al-Jāmi^c al-saghīr, p. 251, and Sarakhsī, Mabsūt, vol. 10, p. 112.

¹⁰⁴ Asqalani, Fath al-bari, vol. 15, p. 293, l. 13.

¹⁰⁵ Shāfi^cī, Kitāb al-umm, vol. 1, p. 435; vol. 6, p. 234; Shīrāzī, Muhadhdhab, vol. 3, pp. 256–257; Nawawī, al-Majmū^c sharh al-Muhadhdhab, vol. 18, p. 10.

Bayhaqī, Sunan, vol. 8, pp. 203–204; Şan°ānī, Muşannaf, vol. 10, p. 172 (no. 18728).

¹⁰⁷ Shāfi°ī, Kitāb al-umm, vol. 1, pp. 428–429, 435–436; vol. 6, pp. 234–235; Māwardī, al-Ḥāwī al-kabīr, vol. 13, p. 155; Shīrāzī, Muhadhdhab, vol. 3, pp. 256–257. For traditions supporting Shāfi°ī's view, see Ṣan°ānī, Muṣannaf, vol. 10, p. 176 (nos. 18725–18727); Abū °Ubayd, Kitāb al-amwāl, pp. 180–181, no. 484; fa-'stawā ḥukm al-rijāl wa al-nisā' fi al-irtidād li-anna rasūl Allāh ... qāla: man baddala ... fa-hādhā ya ummu al-rijāl wa al-nisā' al-dhakar wa al-unthā; Ibn Abī Shayba, Muṣannaf, vol. 12, p. 279 (nos. 12825–12858); Jaṣṣāṣ, Mukhtaṣar ikhtilāf al-ʿulamā', vol. 3, pp. 471–472 (no. 1624); Baybaqī, Sunan, vol. 8, pp. 203–204; Sarakhsī, Mabsūt, vol. 10, pp. 108–109;

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First, some jurists do not accept repentance because they hold that this is a *hadd* punishment for blasphemy per se, and not for blasphemy as a form of apostasy.

Second, some apply the rules of apostasy on blasphemy and, as such, accept the repentance of the convict, unless he is deemed a potential threat to the community in which case he is given punishment under the doctrine of siyāsah and not as a hadd punishment.

Third, some look at blasphemy as a form of zandaqah (pretense) because of which they do not trusted him for his repentance and, hence hold that repentance does not obliterate his death punishment.

All these three opinions are found in the Mālikī School. 'Iyāḍ, who belongs to the same school and is personally of the opinion that the repentance of such a person is not acceptable, 210 honestly reports:

Abū Bakr b. al-Mundhir says, "Scholars have a consensus that whosoever commits blasphemy against the Prophet, peace and blessings of Allah be on him, he must be punished with death. This is the opinion, inter alia, of Mālik b. Anas, al-Layth, Aḥmad, and Ishāq. The same is the view of al-Shāfi'ī. The same is the opinion of Abū Ḥanīfah and his companions as well as of al-Thawrī, the jurists of al-Kūfah, and al-Awzā'ī, if the convict was a Muslim because they consider it apostasy. Walīd b. Muslim has reported similar opinion from Mālik. . . Saḥnūn considered that blasphemy against the Prophet was apostasy of the kind of pretense. He reported this opinion from many jurists of the Mālikī School and recorded the arguments of this opinion.²¹¹

Ibn Taymiyyah, a great jurist of the Ḥanbalī School and an authority on blasphemy law, gives exactly the same report about the opinion of the Ḥanafī jurists. Thus, he says:

We have mentioned that the famous opinion of Mālik and Aḥmad is that he will not be asked to repent and that it will not suspend his death punishment. This is the opinion of al-Layth b. Sa'd... However, the acceptance of repentance has also been reported from Mālik and Ahmad and this has been the opinion of Abū Ḥanīfah

¹yad, 456-58.

ni Ibid., 428-29.



Islam and Blasphemy | 14th Dec, 2007 - Maulana Wahiduddin Khan



مخقالطافئ

للإمام المحدث الفقيه أ فيجعفر أحمد بن محمد بن سلامة الطحاوى الحنق المتوفى سنة ٣٢١ هجرية

> حق بتعقيق أصوله والصليق عليه الموالوة الأفعالي ونيس اللبنة العلية للبنة إسياء المعارف العابة

هُنَيَكَ بنشِ لَم لِمنة إِحْياةُ المَعِسَّ أَرِفَعُ النِيَّ عَالِيَةِ عَالِيَةِ عَالِيَةِ عَالِيَةً جميد آباد الدكن بالجند

> رهره خيندادبراميز شيساغ يود ۱۲۷۰ ه



الصغوات [الخس] ثم ارتد ثم رجع إلى الإسلام فى وقتها كان عليه إعادتها . ومن سب رسول الله صلى الله عليه وسلم من المسلمين أو تنقصه (١٠ كان بذاك مرتدا وكان حكه حكم المرتد فى جميع ماذكرا من أحكام المرتدين . ومن كان فلك منه من الكفار ذوى المهود لم يكن بذاك خارجاً من عهده ، وأمر أن لا يعاوده ، فإن عاوده أدب عليه ولم يقتل .

كتاب الحدود

قال أبو جنم : وإذا زنى المحسن والمحسنة رُجاحتى يمونا ثم ضلا وكفنا وصلى عليهما ودفنا ، ولا جلد عليهما مع ذلك ، ولا يكون الرجل محسناً بامرأته ، ولا المرأة [محسنة] بزوجاحتى يكونا حرين سلمين بالنين قد جامعا وها بالتان ، وهذا قول أبى حنيفة ومحد رضى الله عنهما وهو قول أبى وسف رضى الله عنه ، و به نأخذ . وقد روى أصحاب الإملاء عن أبى يوسف رضى الله عنه أن النصارى يحسن سفهم بعضاً ، وأن السلم يحسن النصرائية ، وأنها لا تحسنه . وإذا زنى الحر البكر والحرة البكر خلد كل واحد منهما مائة جلدة ، ولا تغريب عليهما مع ذلك . وإذا زنى محصن بمحسنة أو غير محسن بمحسنة كان على كل واحد منهما حد على حكه على ماذكرة ، وإذا زنى العبد أو الأمة جد خمين جلدة . وإذا الذي يجب

عدد : وفى الدر المختار : باب الرند (ويطفى ما ترك من عادة فى الإسلام) لأن ترك الصلاة والهيام سعية و لمصية تبقى بد الردة (و الرئ سها فبه ينصل ، ولا يقشى) من العبادات (إلا المح) لأمه باردة صار كالسكانو الأصلى بوقا أسر وهو عن صنيه الله فقط ، وفي رد الهنتار ج ٢٠٠ ٢٠٦ لأن سمه اليت شكره وهو الل بخالات عبره من المادات التي أداها خرج سبها ؟ ولهذا عالواً بأن سمه المهر مثلا تراود تم نام في لوقت بعيد الفاهر الماء السبب وهو الوقت ؟ ولهذا عالم المتساوه في المقاد من مو إعادة لمدد خروج السبب ، فلت : والإمام احتيل المتحاوى ذكر المساده أبد هو و بمنتى صبها أهذا قضاء وهو رجل ملى، علما وفضلا فن بداب و مقد حدود لهر، فرص يقد عنه ،

⁽١) وو ليفية أو عمه .



[فصل: [حكم أهل الذمة في سب الرسول صلي الله عليه وسلم

. (قال أبو جعفر: (ومن كان من ذلك من أهل الذمة: فإنه يؤدب و لا يقتل

. لأنهم قد أقروا على دينهم، ومن دينهم عبادة غير الله، وتكذيب الرسول

ويدل عليه: ما روي "أن اليهود دخلوا على النبي عليه الصلاة والسلام، فقالوا: السام عليك، فقال النبي صلى الله عليه وسلم: وعليكم "، ولم يوجب عليهم قتلا

اردو

ابو جعفر (امام طحاوی) نے کہا: اور اہل ذمہ میں سے اگر کونی ایسا کرے۔ تو اسے تنبیہ کی جانیگی اور قتل نہیں کیا جانیگا۔ کیونکہ انہیں اپنے دین پر عمل کرنے کی اجازت دے دی گنی ہے۔ اور ان کے دین کے دین کے اندر یہ بھی ہے کہ وہ خدا کے علاوہ کسی اور کی عبادت کریں اور پیغمبر گ کی نبوت کو جھٹلائیں۔ اور اسکی دلیل یہ ہے کہ یہودی جب پیغمبر کے پاس آتے تھے تو "السام علیکم (یعنی کہ تم پر موت ہو)" کے الفاظ سے سلام کرتے تھے۔ ان کے جواب میں پیغمبر ﷺ صرف یہ کہتے تھے "و علیکم" اور قتل نہیں کرتے تھے۔

English

Whoever among the non-Muslims insults the Prophet, he will be condemned verbally but he will not be killed. The reason behind this is that they have been allowed to follow their own religion which includes worshiping other than God and disbelief over the message of Prophet (P.B.UH). Furthermore, Jews used to greet Prophet Muhammad with the blasphemous words of "death be upon you" but he never ordered to kill them.

الكتاب: شرح مختصر الطحاوي

المؤلف: أبو بكر أحمد بن على الجصاص الرازي المتوفى سنة 370ه

الناشر: دار البشائر الإسلامية، دار السراج

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6\142 : الرقم

However, if he embraces Islam, there is disagreement in each of these schools. Thus, in the Mālikī School, there are two narrations about obliteration of death punishment due to his embracing Islam, although they said about a Muslim that his punishment is not obliterated by re-embracing Islam after blasphemy, i.e. according to the famous narration from Mālik, as opposed to the narration of Walid from Mālik. For Hanbalis, there are three narrations about the effect of repentance by blasphemer. One is that his repentance is absolutely acceptable, i.e., irrespective of whether he is Muslim or disbeliever; second is that it is absolutely unacceptable; third is that for dhimmis repentance is acceptable if it is by way of embracing Islam, while for a Muslim it is not acceptable. The famous narration for them is that of absolute unacceptability. For Shāfi'is, the famous narration is that it is absolutely acceptable.104

و أما استتابته ، فإن قلنا لا يسقط القتل عنه بالإسلام ، فلا يُستتاب . و إن قلنا يسقط، فقد ذهب بعض العلماء أيضاً إلى أنه لا يُستتاب ، و يكون كالأسير الحربي يُقتَل قبلَ الاستتابة ؛ فإن أسلم ، سقط عنه القتل . و هذا وجه في مذهب أحمد على الرواية بسقوط القتل بالإسلام . و قريب منه في مذهب مالك . و أما أصحاب الشافعي ، فلم يصرّحوا بذلك ، و قد تقدم عنهم في المسلم أنه يستتاب. و الوجه القطع هنا بأن الاستتابة لا تجب ؛ أما استحبابها ، فلا يبعد القول به .

Should the accused be asked to repent or not? If we say that his death punishment is not obliterated by repentance, he will not be asked to repent; but if we say that it is obliterated by repentance, still some of the jurists are of the opinion that he will not be asked to repent and that he will be like the enemy

¹⁰³ Subkī 374.

¹⁶ Ibid., 383-384.

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شافعی اے لازما قتل کردینے کے قائل نہیں ہیں۔ چنانچے فرماتے ہیں:

وان فعل ما وصفنا وشرط انه نقض لعهد الذمة فلم يسلم ولكنه قال اتوب واعطى الجزية كما كنت اعطيها او على صلح اجدده عوقب ولم يقتل الا ان يكون فعل فعلا يوجب القصاص بقتل او قود فاما ما دون هذا من الفعل او القول وكل قول فيعاقب عليه ولا يقتل (الام١٩٩/٣)

"اگرذی کوئی ایسا کام کرے جس کے بارے میں معاہدے میں بیشرط لگائی گئی ہو کہ اس سے معاہدۂ ذمہ ٹوٹ جائے گا اور پھراسلام تو قبول نہ کر نے لین کہے کہ میں تو بہ کرتا ہوں اور پہلے کی طرح اب بھی جزید دینے کے لیے تیار ہوں یا نئے سرے سے کامعاہدہ کرنا چا ہتا ہوں تو اسے سزا تو دی جائے گی، لیکن قبیس کیا جائے گا۔ ہاں اگر اس نے کوئی ایسا جرم کیا ہوجس کی وجہ سے اسے قصاص میں قبل کرنا ضروری ہوتو الگ بات ہے، لیکن اس کے علاوہ کی بھی فعل یا قول پراسے سزا تو دی جائے گی، لیکن قبل نیا جائے گا۔ "

امام صاحب نے بیبھی تصریح کی ہے کہ معاہدہ توڑنے والے ذمی کواس کا موقع دیا جائے گا کہ اگر وہ چاہے تو دار الاسلام کو چھوڑ کر بحفاظت کسی دوسرے علاقے میں چلا جائے۔ (الام ۱۸۸/۴)

دسویں صدی کے معروف شافعی عالم امام عبدالوہاب شعرانی (۹۷۳ه) نے اپنی کتاب 'کشف الغمہ' میں اس کی تصریح کی ہے کہ تو ہین رسالت پر دی جانے والی سزاا کی تعزیری سزاہے اور حکمران کسی مصلحت کے تحت اسے معاف بھی کرسکتا ہے، چنانچہ ایک شخص کے نبی صلی اللہ علیہ وسلم کے ساتھ گستا خانہ رویہ اختیار کرنے اور آپ کی طرف سے اس سے درگز رکرنے کا واقعہ قال کر کے لکھتے ہیں:

قال العلماء: وفيه دليل على ان من توجه عليه تعزير لحق الله تعالىٰ جاز للامام تركه (كثف الغمه ١٨٩/٢)



حقن دمه اذلم يعاهد على سبه، فلما تعدى عهده عاد الى حال كافر لا عهد له فوجب قتله (شرح صحح البخاري ٥٨١/٨)

"جود صرات سب وشم کی وجہ ہے ذی توقل کر دینے کے قائل ہیں،ان کی دلیل ہیہ ہے کہ اس طرح اس نے اپنا وہ معاہدہ توڑ دیا ہے جس کی وجہ ہے اس کو جان کا تحفظ دیا گیا تھا، کیونکہ معاہدے کی روے اے سب وشم کی اجازت نہیں تھی۔ جب اس نے اپنے معاہدے ہے تجاوز کیا تو اس کی حیثیت دوبارہ اس کا فرکی ہوگئی جس کا مسلمانوں کے ساتھ کوئی معاہدہ نہیں، اس لیے اے قبل کرنا واجب ہے۔"

جمہور فقہا کے موقف کی اصل قانونی اساس یہی نکتہ ہے جوصاف بتاتا ہے کہ وہ اس سزاکو
استدلال اور استنباط پر بنی سجھتے جیں نہ کہ شریعت کی طرف سے مقرر کردہ کوئی حد بھی کہ امام ابن
حزم نے بھی، جھوں نے پور نے فقہی لٹریچ میں غالبًا سب سے زیادہ تخت لب و لہجے میں احناف
کے اس موقف پر تنقید کی ہے *، اپنی کتاب انحلیٰ میں فقہا نے احناف کے اس بنیادی نکتے سے
اتفاق ظاہر کیا ہے کہ ایک غیر مسلم کے حق میں سب وشتم کا ارتکاب فی نفسہ موجب قل نہیں ہوسکتا،
کیونکہ سب وشتم کفر ہی کی ایک صورت ہے اور غیر مسلم معاہد کوئسی کفر کے ارتکاب پرقل نہیں کیا جا
* کھتے ہیں:

واما الحنفيون فيقتلون المسلم بالكافر خلافا على الله تعالى وعلى رسوله عليه السلام ومحافظة لاهل الكفر و لا يقتلون الكافر اذا سب النبي صلى الله عليه وسلم بحضرة اهل الاسلام في اسواقهم ومساجدهم و لا يقتلون من اهل الكفر من سب الله تعالىٰ جهارا بحضرة المسلمين وهذه امور نعوذ بالله منها (الحلى ۱۱۵۵۱)

"خفيول كا حال بيب كهوه الله اوراس كرسول كيم كفلاف الل كفركي حفاظت كرتے موك مسلمان كوتو كافر كو قصاص ميں قبل كرنے كوتاكل بيں ليكن كافر الرمسلمانوں كسامنوان كي بازاروں اور مجدوں ميں نبي سلى الله عليہ والله كفر المسلمون و بين كريں (يعنى مشركان عقائدوا عمال كا ظباركريں)، أحي مسلمانوں كسامنے كام كالا الله تعالى كو بين كريں (يعنى مشركان عقائدوا عمال كا اظباركريں)، أحي بيم قبل نبير بين جن ہم الله كى پناه ما تكتے ہيں۔"



Islam and Blasphemy | 14th Dec, 2007 - Maulana Wahiduddin Khan

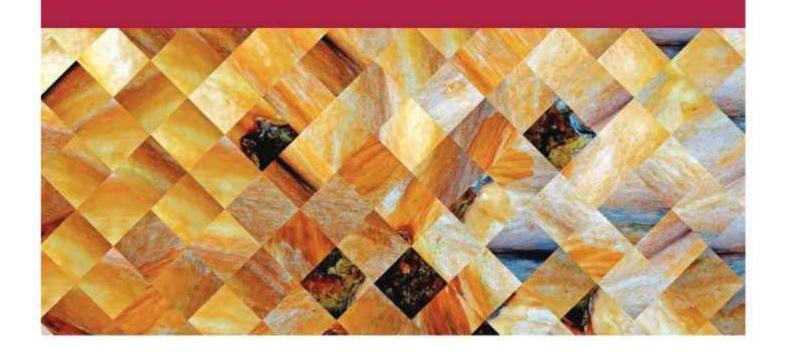




Religious Pluralism and Islamic Law

Dhimmis and Others in the Empire of Law

ANVER M. EMON



OXFORD ISLAMIC LEGAL STUDIES





ELECTIONS 2024 LATEST PAKISTAN BUSINESS WORLD GAZA OPINION SCI-TECH LIFE & STYLE T-MAGAZINE TEDIT SPORTS BLOGS VIDEOS MORE



Doctor arrested on blasphemy charges

Blasphemy case filed against member of Ismaili community in Hyderabad.

December 13, 2010









JOIN OUR WHATSAPP CHANNEL

KARACHI: A doctor has been arrested on charges of blasphemy in Hyderabad, police said on Sunday.

Naushad Valiyani was detained on Friday following a complaint by a medical representative who visited the doctor in the city of Hyderabad.

"The arrest was made after the complainant told the police that Valiyani threw his business card, which had his full name, Muhammad Faizan, in a dustbin during a visit to his clinic," regional police chief Mushtaq Shah told AFP.

"Faizan accused Valiyani of committing blasphemy and asked police to register a case against the doctor."

Shah said the issue had been resol valiyam, a member of the Ismaili community apologised





HOME LATEST ELECTIONS 2024 GAZA INVASION PAKISTAN OPINION BUSINESS WORLD CULTURE PRISM SPORT = Q SCANOLI

Sialkot mob lynches Sri Lankan factory manager, burns corpse over blasphemy allegations

Imran Sadiq | Published December 3, 2021





This photo shows the victim, Priyantha Kumara. - Photo provided by author

O JOIN OUR WHATSAPP CHANNEL

A mob in Sialkot tortured a Sri Lankan man, who was working as a manager at a local factory, to death over blasphemy allegations before burning his body on Friday, police said.

Sialkot District Police Officer Umar Saeed Malik identified the man as Priyantha Kumara.

Prime Minister Imran Khan said that the "horrific, vigilante attack" on the factory and the burning alive of the Sri Lankan man "was a day of shame for Pakistan".



FREEDOM OF SPEECH AND THE LAW OF SEDITION IN INDIA+

THE DECISION OF the Supreme Court in Kedar Nath Singh v. The State of Bihar, besides resolving the judicial controversy regarding the validity of section 124-A of the Indian Penal Code, 1860, brings out pointedly one of the basic problems involved in India in the enforcement of fundamental rights. These rights, guaranteed in the Constitution, have to be applied within a legal system devised originally by an alien government with an object which is no longer valid in the present-day context. The result, therefore, is that there often arises a conflict between the rights and the pre-Constitution laws still in force, and the courts are called upon to decide the validity of such laws under psychologically different and entirely changed socio-economic urges and conditions. This was precisely the problem before the Supreme Court in this case.

The law regarding the validity of section 124-A had hitherto been in a state of uncertainty. In the Kedar Nath case the appellant was charged with having "brought or attempted to bring into hatred or contempt or excited or attempted to excite disaffection towards the Government" by having delivered certain speeches and was thereupon

†Kedar Nath Singh v. The State of Bihar, A.I.R. 1962 S.C. 255.

- 1. A.I.R. 1962 S.C. 955.
- The Indian Penal Code, 1860, § 124-A:

Whoever by words, either spoken or written or by signs or visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.—The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2.—The comments expressing disapprobation of the measures of Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section.

Explanation 3.—Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

- 3. The laws in force in India at the commencement of the Constitution in 1950 are sanctioned continuance by articles 225 and 372. Under article 13(1) such laws would become void, if found inconsistent with the fundamental rights.
- 4. The Punjab (Tara Singh Gopi Chand v. The State of Punjab, A.I.R. 1951 Punj. 27) and Allahabad (Ram Nandan v. The State of Uttar Pradesh, A.I.R. 1959 All. 101) High Courts had taken the view that with the commencement of the Constitution section 124-A had become void, whereas the Patna High Court (Debi Soren v. The State of Bihar, A.I.R. 1954 Pat. 254) had upheld its validity.
 - A.I.R. 1962 S.C. 955, 957.



Union of India - Section

Section 153B in The Indian Penal Code, 1860

153B. Imputations, assertions prejudicial to national-integration.—

- Whoever, by words either spoken or written or by signs or by visible representations or otherwise,— (<u>T</u>)
- makes or publishes any imputation that any class of persons cannot, by reason of their being members allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of of any religious, racial, language or regional group or caste or community, bear true faith and (a)
- asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or <u>(a)</u>
- makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, 0

shall be punished with imprisonment which may extend to three years, or with fine, or with both.



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same or any other publication of the same or like matter, except with the leave of the court in which the further proceedings are to be

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Disallowing defamation by implication also limits the plaintiff's recourse. In refuting an inexplicit or implied charge, the victim articulates, and thereby accentuates, the charge against him. 165

Allowing defamation by implication will not result in an avalanche of meritless complaints. The actual malice standard is a hurdle that plaintiffs who have been defamed by implication may be unable to vault. Summary judgment mechanisms also greatly reduce the possibility that the plaintiff will prevail. Finally, any danger that defendants will be held liable for unwitting implications can be avoided by

Woodward has termed "holy shit stories." Tavoulareas v. Washington Post Co., 817 F.2d 762, 796 n.48 (D.C. Cir.) (en banc), cert. denied, 484 U.S. 870 (1987); see also R. Smolla, supra note 3, § 4.05(3), at 4-17 n.68 (defendant who intentionally inserts defamatory implication "between the lines" must be distinguished from defendant who unintentionally defames by implication). For examples of deliberate attempts to mislead an audience through insinuations that most readers or viewers will uncritically absorb, see Mihalik v. Duprey, 11 Mass. App. Ct. 602, 607-08 n.3, 417 N.E.2d 1238, 1241 n.3 (1981) and Spiegel, supra note 161, at 306.

165. A further problem is that the plaintiff's rebuttal subverts his own reputational interests. Cf. Saenz v. Playboy Enterprises, Inc., 841 F.2d 1309, 1314 (7th Cir. 1988) (one who is "soiled by the stain of defamatory innuendo is disadvantaged greatly in responding to the varying inferences that may be gleaned from inexact accusations"). As the Gertz Court observed of explicit defamatory statements, "an opportunity for rebuttal seldom suffices to undo harm of defamatory falsehood. Indeed, the law of defamation is rooted in our experience that the truth rarely catches up with a lie." Gertz v. Robert Welch, Inc., 418 U.S. 323, 344 n.9 (1974).

166. One study showed that plaintiffs suing media defendants prevailed in only five percent of the cases, after all appeals. See Franklin, Suing the Media for Libel: A Litigation Study, 1981 Am. B. Found. Research J. 795, 797 [hereinafter Franklin, Suing the Media]. Plaintiffs ultimately won judgments in 12 percent of non-media cases. See Franklin, Winners and Losers and Why: A Study of Defamation Litigation, 1980 Am. B. Found. Research J. 455, 476. Another study found that plaintiffs confronting the actual malice standard won 47% of their cases in 1984. See Goodale, supra note 13, at 73-74.

167. In cases involving defamation by implication, the actual malice standard probably provides an even greater hurdle than in typical defamation cases. As one court noted, "[I]ogic fails when one defamed by [an implication] is required to show knowledge of or reckless disregard for its falsity, when in fact it can rarely be proven that the author even knew of the implication." Woods v. Evansville Press Co., 791 F.2d 480, 488 (7th Cir. 1986) (quoting Cochran v. Indianapolis Newspapers, Inc., 175 Ind. App. 548, 563, 372 N.E.2d 1211, 1222 (1978)); see also Note, supra note 43, at 830 ("Plaintiffs bringing libel actions on the basis of allegedly false, defamatory innuendo, rather than on the basis of explicit and specific statements of fact, may be unlikely to present evidence sufficient to create a triable issue of fact that defendants acted with the requisite fault.").

168. Defendants almost invariably move for summary judgment or to dismiss in defamation cases. See Franklin, Suing the Media, supra note 166, at 801. Their efforts are generally successful. See, e.g., Price v. Viking Penguin, Inc., 881 F.2d 1426 (8th Cir. 1989) (defendant won summary judgment motion), cert. denied, 110 S. Ct. 757 (1990); Southern Air Transp., Inc., v. ABC, 877 F.2d 1010, 1012 (D.C. Cir. 1989) (same); Secrist v. Harkin, 874 F.2d 1244, 1245 (8th Cir.) (same), cert. denied, 110 S. Ct. 324 (1989); Saenz v. Playboy Enterprises, Inc., 841 F.2d 1309, 1320 (7th Cir. 1988) (same); Woods v. Evansville Press Co., 791 F.2d 480, 481 (7th Cir. 1986) (same); Janklow v. Newsweek, Inc., 788 F.2d 1300, 1301-02 (8th Cir.) (same), cert. denied, 479 U.S. 883 (1986); Pierce v. Capital Cities Communications, Inc., 576 F.2d 495, 510 (3d Cir.) (same), cert. denied, 439 U.S. 861 (1978); see also The Supreme Court, 1985 Term—Leading Cases, 100 Harv. L. Rev. 100, 255 (1986) (Anderson v. Liberty Lobby, Inc. may make summary judgment more accessible when movant's opponent bears higher evidentiary burden).

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tend towards the interpretation that prevents declaration of disbelief so as to positively construe the conduct of a Muslim. Bazzāziyyah has added here: "Except when he shows an explicit intention of disbelief."

In Tatārkhāniyyah: Disbelief is not ascribed on the basis of an equivocal statement because disbelief is the ultimate punishment and, hence, it requires the ultimate offence, and it is not ultimate when it has another possible interpretation.68



كذا في "البحر" . ثم قال صاحب البحر :

و الذي تحرّر أنه لا بُفتي بكفرٍ مسلم أمكن حمل كلامه على محمل حسن ، أو كان في كفره اختلاف، و لو رواية ضعيفة . فعلى هذا ، فأكثر ألفاظ التكفير المذكورة ، لا يفتي بالتكفير بها . و لقد ألزمتُ نفسي أن لا أفتي بشئ منها .

This is how it is mentioned in Bahr. After this, the author of Bahr says: The conclusion is that a Muslim cannot be declared disbeliever, if his statement can be given a good interpretation or when there is disagreement on considering it disbelief, even if the contrary position is weak. Thus, fatwa of disbelief should not be given on the basis of most of the words, which are mentioned as amounting to disbelief and I have made it obligatory upon myself that I must not give fatwa on any of these words, which are written in the books of fatāwā.69

قال الشيخ خير الدين الرملي:

و لو كانت الرواية لغير أهل مذهبنا . و يدلُّ على ذلك اشتراط كون ما يوجب الكفرَ مُجمّعاً عليه .

Shaykh Khayr al-Dīn al-Ramlī says:

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Even if the contrary position is of a school other than our own. Thus, one condition for act that causes disbelief is that it must be agreed upon.70



All these statements have been taken from Ibn Nujaym, Bahr, 5:209-210.

⁶⁹ Ibid, 210.

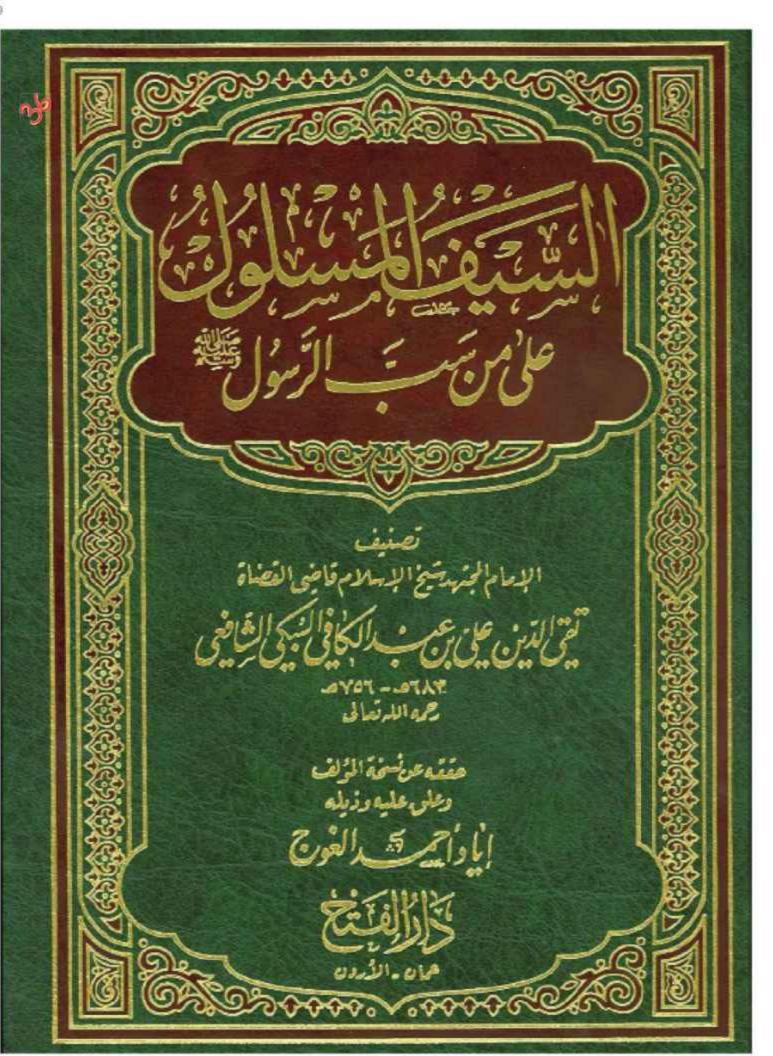
Ramli's comment that Ibn 'Abidin ascribes to him here and in his Radd al-Muhtar (6:367) may have been taken from his glosses on Bahr, which remain unpublished.



THE UNTOLD TRUTH OF PAKISTAN'S BLASPHEMY LAW

A RECONCILIATION WITH THE PAST AND A WAY FORWARD

Research Director: Arafat Mazhar





فهذا الكلامُ من الخطّابي يُشْعِرُ بأنّ الشافعيَّ يقولُ بقتلِهِ ولو أسلمَ، وإذا كان ذلك في الذميِّ ففي المرتدُ أُولَىٰ، إلا أنّ كلامَ الخطّابيِّ بمكنُ حملُهُ علىٰ أنه أرادَ حكايةً لفظِ الشافعي، وهو ساكتٌ عن حُكْمِهِ إذا أسلم.

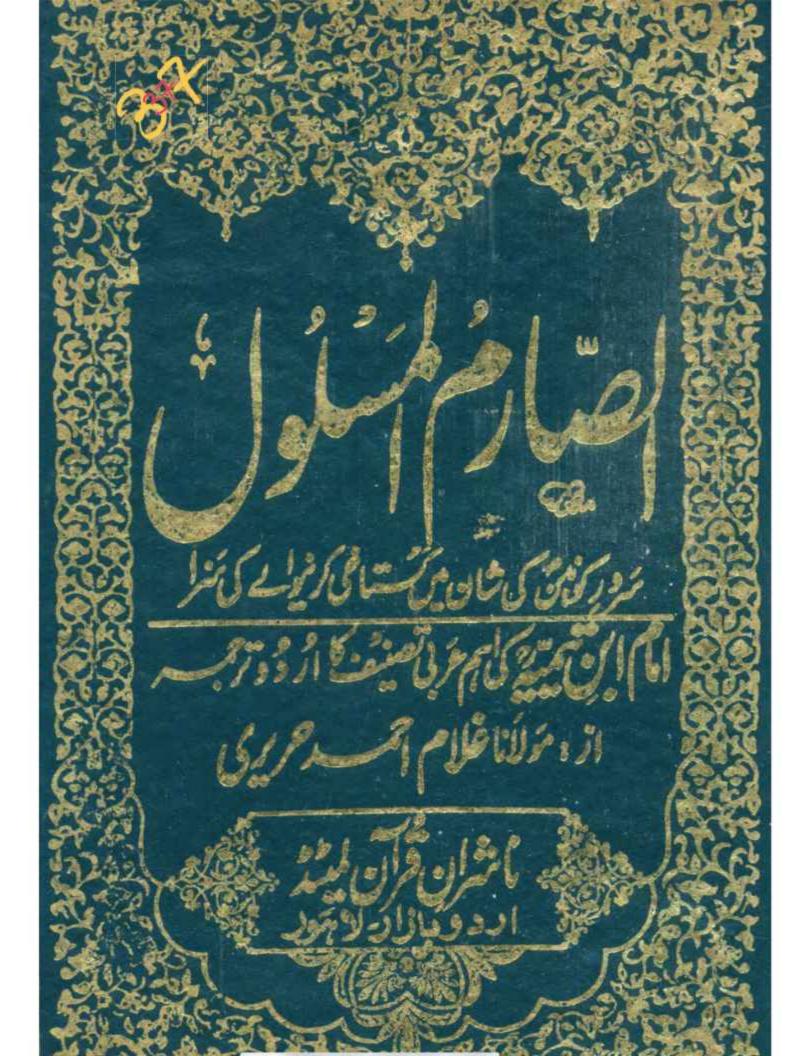
هذا ما وجدتُهُ للشافعيةِ في ذلك، والحنفيّةُ في قبولِ التوبةِ قريبٌ من الشافعية، ولا يوجَدُ للحنفيةِ غيرُ قبولِ التوبة (٢)، وكلتا الطائفتين لم أَرَهُم تكلّموا في مسألة السّبُ مستقِلَةً، بل في ضِمْنِ نقضِ الذَمّيِّ العهدَ (٣)، وكأنّ

⁽١) «معالم السُّنَنَّ (٢٠٠٦-٢٠٠) المطبوع بهامش مختصر المنذري لسنن أبي داود.

⁽٢) وهذا ما حرّره خاتمة المحقّقين الإمام ابن عابدين حول مذهب الحنفية في رسالته النبيه الولاة والحكّام على أحكام شاتم خير الأنامة المطبوعة ضمن «مجموعة رسائله» (١٠٣١-٣٧١)، معتمداً في ذلك على تحرير نصوص أنمة مذهبه، وعلى كلام غيرهم، ومنهم المصنف رحمه الله تعالى، واعتد بكلامه للغاية، حيث قال هناك (٢٠٤١):

٤ وقد انفق على نقل ذلك عن الحنفية القاضي عياض والطبري والسبكي وابن تيمية . . بل يكفي في فلك الإمام الشبكي وحد، فقد قبل في حقه: لو درست المداهب الأربعة لأملاها من صدره . . » .

 ⁽٣) من متقدمي الحنفية من ذكر المسألة في كتاب المرتد، وهو الإمام الطّحاوي في
 ٥ مختَصَره ٣ ص٢٦٢.



(۳) به دن اسحاب کاقول سے کم اگران افعال کا تزک مشروط ہونو اس میں صروت ایک ہی وجہسے اوروہ مہدکا ٹوٹ مباناہے او راگرمشروط نہ ہوتواس میں رو وجوه اب - (ایک کےمطابق عہداؤٹ جا ناہے اورد و کرے کےمطابق نہیں) الله النهال سے كدعوا فى اصحاب كے نز ديك النسرا طركايبى مفہم سعد جنا كنج وه عراتی اصحاب سے نفال کرنے ہیں کہ:

م الركسى منترط كا ذكر مذكيا كبا بموتوعهد منهيل مؤسف كا او را كرمنز ط كا ذكركيا كيا بوتواس بیں دو تول ہیں۔ ہ

اس سے لازم کا اسے کرموانی اصحاب اس بات سے فائل ہیں کہ اگران انساکی سے عہد نوشنے کی شرط ندنگائی گئ ہو تو عہد نہیں ہوئے گا۔ اس صورت ہی صرف يبى ايك تول سے - اور اگران افعال كوزك كرنے كى نفرز كى كى بوتو مهروف جا سے گا۔ گربہ بات خلط طور پراُ ن ک طرف منسوب کی گئے سہے۔ انہوں نے اپنی كتب خلاف بى جس چنرى تائىدى سے دہ يہے كہ نى كريم كوكالى دينے سے عبراؤ ف جاناب اورابسے خص كرفتل كرناواجب بروجاناب - جبياكم مے خومه المم شافعي رحمم التنسي نقل كباسه-

امام الوصنيفية كازاوب نكاه المعاب كية بي كرني اكرم ستى الدملير ام الومنيفررهما ليد ادراك ك

وستم كوكالى دينے سے نة توفرتی كا عهر تو ثناہے اور رزاس كا قبل لازم آ تاہے۔ مگر علانب الساكرن كى وجهد الماس براسى طرح تعز برلكًا في جائے جس طرح و بكر منكلت كا علانيرار تكاب كرف برلكائى جاتى ہے منتلاً اپنى ندسى كتاب كوباً وارْ بنر برهنا ومتل ای - ما دی نے بیموتف التوری سے نعل کیا ہے ۔ سند براامل بر ب يم كرحن ا فعال ك ارتكاب سے فاعل كا قتل لا زم نہيں آيا۔ مثلاً بعارى عظم سينك كسى كوقت كرنا يافرن كے سواكسى إدر عصوبى جاع كرنا ، اگرا يسع نعل كا 38

When someone blasphemes against the Prophet, peace and blessings of Allah be on him, or against any other prophet, he will be executed by way of hadd and his repentance is not accepted at all, irrespective of whether he repents after he is captured and testimony is recorded against him or he repents of his own free will, just like pretender, because this is hadd the execution of which is obligatory and which is not obliterated by repentance as is the rule for the other rights of individuals and for the hadd of qadhf, which is not obliterated by repentance. This is contrary to the situation when someone blasphemes against Allah and, then, repents because that is the right of Allah. This is also because the Prophet is a human being, and human beings belong to a genus which is harmed by disrespect, except those whom Allah Exalted have given esteem by making them prophets, while the Exalted Creator is definitely above all weaknesses and He is not from a genus that is harmed by disrespect. Moreover, blasphemy against the Prophet, peace and blessings of Allah be on him, is not like apostasy wherein repentance is accepted because apostasy is an act the effects of which are confined only to the apostate and which does not infringe the right of any other human being. Moreover, as the Prophet, peace and blessings of Allah be on him, is a human being, we hold that when even a drunken person blasphemes against him, he cannot be pardoned and must be executed as hadd. This is the position of Abū Bakr al-Siddiq, Allah be pleased with him, and of the Great Imam [Abū Ḥanīfah] as well as of Thawrī and the jurists of Kūfah. This has also been the famous position of Mālik and his companions. Khaṭṭābī says: I know of no Muslim who opposes the death punishment when the culprit is a Muslim. The Mālikī jurist Saḥnūn says: The jurists have consensus that his blasphemer is disbeliever, that his punishment is death and that the one doubting his disbelief and divine punishment is also disbeliever. Allah Exalted says: "Accursed; wherever they are found, they will be seized and slain fiercely."31 'Abdullāh b. Mūsā b. Ja'far from 'Alī b. Mūsā, from his father, from his grandfather, from Muhammad b. 'Ali b. al-Husayn, from Husayn b. 'Alī, from his father reports that the Prophet, peace

³¹ Qur'an 33:61.

3.5.2 Bazzāzī took this view from Qādī 'Iyād and Imām Ibn Taymiyyah.

و من "الشفا" للقاضي عياض، و من إلا علم أن جميع ما قاله البزازي ماخوذ من "الشفا" للقاضي عياض، و من "الصارم المسلول" لابن تيمية ؛ فإنه ذكر فيه كثيراً من كلام "الشفا" لموافقته لمذهبه . وقد غل ذلك صاحب البزازية مع تصرف في التعبير ، أصاب في بعض منه دونَ بعضٍ . و لما جعل القاضي عياض السابُّ بمنزلة الزنديق ، بَن، عليه قوله أنه لا يتصور في عدم قبول نوبته خلاف لأحد ؛ أي إذا كان في حكم الزنديق ، والزنديق لا توبة له عند سائر الأثمة ، فكذلك لا توبة للسابّ عند جميع الأثمة . و لا يخفى أن هذا الاستدلال على طريق الإلزام ، أي أنه يلزم الجميع القول بذلك . فليس مراده أنه لم يصدر خلاف بين المجتهدين في حكم السابِّ ، فإنه مخالفٌ لما صرّح به نفسه من وقوع اختلاف الرواية عن إمام مذهبه ، حيث روي الوليد بن مسلم عن الإمام مالك أن السبّ ردّةٌ فيُستَتاب منها و لا يُقتَل ، و أنه قال

بمثله أبو حنيفة و أصحابه و الثوري و أهل الكوفة و الأوزاعي.

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Now, that you know this, you should also know that whatever Bazzāzī said is based on Shifā of Qādī 'Iyād and al-Ṣārim al-Maslūl of Ibn Taymiyyah. Thus, he quoted at length from Shifa because it supports his view. The author of Bazzāziyyah renders the meaning of the text in his own words and while doing so, he sometimes commits mistake. Thus, when Qādī 'Iyād presumed that the legal position of the culprit in case of blasphemy is similar to that of pretender, he built on it that no disagreement can be imagined on non-acceptance of his repentance, that is to say, when he has the legal position of pretender; and since all jurists hold that repentance of pretender is not acceptable, repentance of the blasphemer should not be acceptable for all jurists. Obviously, this is a corollary argument, i.e., all should accept this corollary. 41 He does not mean that there has been no disagreement among the jurists on this issue because he himself recorded two opinions from the Imam of his own school on this issue. Thus, he recorded the report of Walid b. Muslim from Mālik that blasphemy was apostasy and the culprit would

[&]quot;That is to say: of considering him zindiq.

اها الذميّ إذا صرّح بسبّ أو عرّض أو استخفّ بقدره أو وصفه بغير الوجه الذي كفر به ، فلا خلاف عندنا في قتله إن لم يُسلِم لأنّا لم نُعطِه الذمة و العهد . على هذا . و هو قول عامّة العلماء ، إلا أباحنيفة و الثوري و أتباعهما من أهل الكوفة ، فإنهم قالوا: لا يُقتَل لأنَّ ما هو عليه من الشرك أعظم و لكن يُؤدَّب و

Qādī 'Iyād says:

يُعزّر . When a dhimmi blasphemes explicitly or in implied terms, or makes degrading statement about him, or mentions him in words other than those with which he disbelieved in him, there is no disagreement in our school that he shall be executed, if he does not embrace Islam because this is not why we entered into covenant and agreement with him. This is the position of the jurists in general, except Abū Ḥanīfah, Thawri and their followers from Kūfah who opine that he may not be executed because his disbelief is more heinous than this, but [they hold that] he shall be disciplined and given ta'zīr. 102

نال الإمام السبكي أيضاً ما حاصله:

لا أعلم خلافاً بين القائلين بقتله من المذاهب الثلاثة – المالكية و الشافعية و الحنابلة - في أنه لا تصحّ توبته مع بقائه على الكفر .

أما إذا أسلم ففي كلّ من المذاهب الثلاثة خلافٌ . أما المالكية ، فعن مالك روايتان مشهورتان في سقوط القتل عنه بالإسلام ، و إن قالوا في المسلم : لا يسقط القتل عنه بالإسلام بعد السبّ ؛ أي على الرواية المشهورة عن مالك ، خلافاً لرواية الوليد عنه . و أما الحنابلة ، فكذلك عندهم في توبة السابّ ثلاث روايات : أحداًها : تقبل توبته مطلقاً ، أي مسلماً كان أو كافراً ؛ الثانية : لا ِ تُقبَل مطلقاً ؛ الثالثة : تُقبَل توبة الذميّ بالإسلام ، لا توبة المسلم . و المشهور عندهم عدم القبول مطلقاً . و أما الشافعية ، فالمشهور عندهم : القبول مطلقاً . Subkī further discusses the issue and concludes:

^{102 &#}x27;lyad, 821-822.

ان کے فاصل شاگر دامام ابو محمر " تو بلااستفسار قتل مرتد کو بھی مباح قرار دیتے ہیں۔ حالانکہ مرتد اور شاتم رسول میں آتے ہیں واضح فرق موجود ہے۔ کیونکہ تو بین رسالت کا جرم ارتداد ط0 سے بھی علین ترہے۔ (24)

فقہ حنی کے ایک اور متن<mark>د امام ابن عابدین کا روالح</mark>یّار حاشیہ در محیّار میں حسب ذیل فتویٰ درج ہے۔

الله الله عليه وسلم الله عليه وسلم) كى وجه سے بطور حد قتل كيا جائے گا اور اس كى توبہ قبول نبيں ہوتى۔" (25) اور اس كى توبہ قبول نبيں كى جائے گا۔ كيونكه حذ توبہ سے ساقط نبيں ہوتى۔" (25) ابن الممام فتح القدير كى شرح ميں تكھتے ہيں:

نعمان عبدالرزاق السامری نے اپنے کتاب "احکام المرتد فی الشرعیت الاسلامیہ" میں فقہ حنی کے ایک بہت بڑے عالم علامہ محی الدین کی کتاب "السیف المشور علی الزندیق اصحاب الرسول ملتظری "میں شاتم رسول ملتظری کے بارے میں علائے احتاف کی تحقیق کا مکمل اقتباس ورج کیا ہے۔ جس کا ترجمہ حسب ذیل ہے۔

"جمال تک احتاف کا تعلق ہے وہ مرتد کی توبہ کے قائل نہیں۔ ای طرح وہ سے ستاخ رسول میں توبہ کے نزویک توبین رسالت ستاخ رسول میں توبہ کی توبہ کو بھی رو کرتے ہیں۔ کیونکہ ان کے نزویک توبین رسالت میں از تداد سے بھی تھین جرم ہے۔ اس سلسلہ میں وہ علامہ محی الدین کی تحریر کو من و عن نقل کرتے ہوئے اسے بطور سند ویش کرتے ہیں۔"

"شاتم رسول کے بارے میں فآدی برازیہ سے داضح ہے کہ جو مخص نبی کریم صلی اللہ علیہ دسلم یا انبیاء میں سے کسی کی شان میں گستاخی کرے اور انبیں برابھلا کے تو ایسے مخص کو بطور حد سزائے موت دی جائے گی اور وہ کسی صورت میں بھی اس کی توبہ قابل قبول نہیں" خواہ وہ گر فارکسک میدالت میں پیش قبول نہیں" خواہ وہ گرکے عدالت میں پیش

contemptuous remarks or offers insult, in any way, to any one of them.

- 67. In view of the above discussion we are of the view that the alternate punishment of life imprisonment as provided in section 295-C, P.P.C. is repugnant to the Injunctions of Islam as given in Holy Qur'an and Sunnah and therefore, the said words be deleted therefrom.
- 68. A clause may further be added to this section so as to make the same acts or things when said about other Prophets, also offence with the same punishment as suggested above.
- 69. A copy of this order shall be sent to the President of Pakistan under Article 203-D(3) of the Constitution to take steps to amend the law so as to bring the same in conformity with the Injunctions of Islam. In case, this is not done by 30th April, 1991 the words "or imprisonment for life" in section 295-C, P.P.C. shall cease to have effect on that date.

Order accordingly.

(PLD 1991 Federal Shariat Court 10)



a commonplace occurrence, and completely ignores the complexity of Islamic legal reasoning.

Primary research: open-ended interviews

A thorough discussion of the socio-economic, political and religious factors that ultimately led to al-Bazzazi's erroneous views eclipsing and replacing the authentic Hanafi position, is beyond the scope of this chapter. However, we carried out informal interviews to understand why this position continues to be dominant today. If the traditional authoritative position differs so radically from what is claimed today, how is it that the local traditional Hanafis have joined hands with modern religious figures to declare the current law divine with no room for debate? Are they deliberately allowing al-Bazzazi's erroneous view to eclipse and replace the authentic Hanafi position? How do religious actors (modern and traditional) respond when presented with the factual inaccuracies of their position? In order to address these questions, we took all of our findings to the author/petitioner of 295-C, modern religious groups and local Hanafi scholarship and confronted them with the disparity we had found.

Ismail Qureshi (the author/petitioner of the blasphemy law)

The most significant of these interviews is that with Ismail Qureshi⁸³ who, as mentioned earlier, was the author of and petitioner for the law. The law was passed in the first place due to his relentless efforts in the courts. Later on, the declaration of the law as hadd and the elimination of any other punishment for blasphemy was also a direct result of his efforts/petition. When presented with the original source, Qureshi acknowledged that he had used a secondary source and cited the primary one in his book without actually referring to it. He said that there might be some problems with the law, but held to the opinion that with regards to maṣlaha (public good), bringing these issues to light would only serve to destroy the movement to protect the honour of the Prophet of Islam.

Modern religious groups

Fareed Paracha, the deputy general secretary of Jamaat-e-Islami, st was a regular fixture on TV and in public gatherings, and was vociferous in his support for 295-C. As such, he is an example of modern religio-political leaders. Fareed Paracha has consistently claimed a consensus on the death penalty for both Muslims and non-Muslims without provision of pardon. His feedback on our findings seemed to be grounded on the loosely interpreted principle of maşlaha, a term he used to signify the greater wisdom in withholding certain information for the time being, as it might otherwise help the secular voices advance their own agenda. st

We also presented our findings to the leader of Tanzeem-e-Islami, Hafiz Akif Saeed. 86 Akif Saeed professed ignorance on the specifics, but like Ismail Qureshi and Fareed Paracha, he advocated the current position as a necessary maslaha.

Misrepesentation



44

Are there examples of misrepresentation beyond the Parliamentary session and Federal Shariat Court ruling?

Are there any recurring patterns of misrepresentation? What are they?

How do religious scholars justify the misrepresentation of Islamic legal rulings?

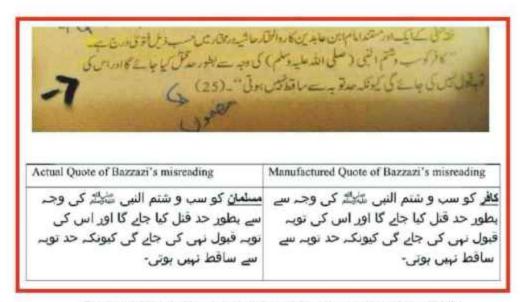
Having gone over the legislative and judicial processes through which Section 295-C was produced and passed, one can find recurring examples of misrepresentation, deliberate or otherwise. These examples have been internalized by large swathes of the population and now exist as justifications for the continued existence and exalted status of the law. It would be incredibly useful to go over some representative examples of such misrepresentations.

Example 1: Ismail Qureshi

Perhaps one of the most outstanding examples of misrepresentation can be found in Ismail Qureshi's double error in quoting Ibn Abidin's position on blasphemy.

Ismail Qureshi wrote a very popular book titled *Muhammad the Messenger of God and the Law of Blasphemy in Islam and the West.* In order to support his claim in this book, he quoted a part of Ibn Abidin's text in which Ibn Abidin was citing al-Bazazi's *faulty* position in order to refute it. Ismail Qureshi's misquotation negligently attributed al-Bazazi's position to Ibn Abidin.

In reality, Ibn Abidin had completely dismissed al-Bazazi's position on the mandatory death penalty for Muslim blasphemers and that too in the same book that Ismail Qureshi was quoting.



Fatawa-e-Shami extract: Ismail Qureshi's misquotation of Ibn Abidin

Translation

An authentic scholar of Figh Hanafi, imam Ibn Abideen in his commentary on Rad ul Muhtar has ruled, "non-Muslim Contemnor of the prophet Muhammad will be killed as a hadd punishment and his repentance will not be accepted as in hudood cases the act of repentance is not accepted".

Actual Quote of Bazzazzi

A Muslim, who became apostate because of blasphemy, shall be executed and his repentance will not be accepted because in hadd cases the repentance is void.

Qureshi's Quote of Bazzazzi

Kafir (Non-Muslim) contemnor of the Prophet Muhammad will be killed as a hadd punishment and his repentance will not be accepted as in hudood cases the act of repentance is not accepted.

As can be seen above, in addition to this misattribution, Ismail Qureshi further replaced the word "Muslim" with "Kafir" in al-Bazazi's quote, thereby extending the punishment to non-Muslims. In this way, Ismail Qureshi committed a double error and completely misrepresented Ibn Abidin's authentic position.

In another section of his book, Ismail Qureshi also cited Maulana Maududi's opinion on the issue of blasphemy.

QURESHI CITES MAUDUDI AS SAYING:

"What accurately reflects the Muslim feelings regarding the sanctity of the Prophet is the fact that in Islam death is the punishment for that man who speaks ill of the Prophet, so a person who causes the death of the blasphemer is not liable to be punished if he proves the quilt of contemnor".

As with the earlier example, this quotation is also a complete misrepresentation of Maududi's actual opinion. In reality, Maududi clearly argued in his book, Kitab Al-Jihad Fil Islam, that non-Muslims cannot be killed for blasphemy and that their right to life stays intact.²

Example 2: Sajid Awan

Sajid Awan authored a popular book titled Tahafaz Namoos-e-Risalat Aur Gustakh Rasool Ki Saza (Protection of the Honour of the Prophet and the Punishment for the Blasphemer) which was published, and endorsed, by the Aalmi Majlis Tahafuz Khatme-e-Nabuwat, a popular religious organization operating in Pakistan and abroad.

In this book Sajid Awan explicitly states that the famous jurist al-Ramli in the Fatawa Bazzaziyah declared that according to all Sunni schools of thought, the punishment for blasphemy is death. In the citation for this quote, he mentions Tanbih-ul-Wulat-wal-Hukam by Ibn Abidin as his source text.

While seemingly straightforward, this quote alone is replete with a number of mistakes and misattributions:

علامہ خیرالدین رکی حقی قاوی برازیہ میں لکھتے ہیں:
"شاتم رسول صلی اللہ علیہ و آلہ وسلم کو بسرطور عدا قبل کرنا ضروری ہے۔
اس کی قوبہ بالکل قبول نمیں کی جائے گی 'خواہ یہ قوبہ کرفٹ کے بعد ہویا اپنے طور
پر آئب ہو جائے کیونکہ ایسا محض زئدیق کی طرح ہو آئے جس کی قوبہ قابل قوبہ
بی نمیں اور اس میں کسی مسلمان کے اختلاف کا تصور بھی نمیں کیا جا سکا۔ اس

The 17 century jurist al-Ramli is NOT the author of the Fatawa al-Bazzaziyah. In actuality, Muhammad al-Bazzazi wrote this book about 200 years earlier, in the 15th century.

Translation:

"Allama Khair UI deen al-Ramli says in Fatawa Bazaziyyah "It is mandatory to kill the insulter of Prophet Muhammad. The repentance of such person would be unacceptable whether he rendered his repentance before his arrest or latter. in Islamic law such person is classified as "Zindeeq" whose repentance is not considered at all. There is no dispute regarding this issue.³

Al-Bazzazi's text states that the blasphemer becomes zindiq (a term that specifically refers to Muslims who work against Islam). It is worth noting that *only* Muslims can be labelled as such. Thus, regardless of whether al-Bazzazi position is faulty, it cannot be applied to non-Muslims.

At another point in this book, Sajid Awan states that, according to Ibn Abidin, the founders of all four schools of Sunni thought agree that the mandatory punishment for blasphemy is death, and that repentance is not possible.

As in the previous case, this quote is also faulty on a number of levels:

- This is not Ibn Abidin's position. Rather, Sajid Awan takes Ibn Munzir's position, produces it
 word for word in his book, and misattributes it to Ibn Abidin. (Ibn Abidin had, in fact, quoted
 Ibn Munzir in his book in order to show how the Hanafi position differs from the position of
 the other schools).
- While quoting Ibn Munzir's text, Awan omits the part of the quotation which highlights the Hanafi Ikhtilaf on the matter, and, through this omission, manufactures an Ijma of all four schools.

Ironically, Ibn Abidin refuted the claim of a universal Ijma throughout his book, meaning that the way he is cited in Awan's book is misrepresentative of his position.

الم شائ فن امت كى رائ بيان كرتے بوت رقم طرازيں:
" تمام الل علم كا المقال ب كر حمتاخ ني صلى الله عليه و آله وسلم كا قل واجب ب اور الم مالك" الم الويث" الم ام احر بن طبل" الم احال اور الم شافعي " حق كر سيد تا ابو بكر صديق" ان تمام كا مسلك يى ب كه اس كى قوبه قبول نه كى جائ " ر" فماد في شاى " جلد ٣ م ١٨٥)

Translation:

"While discussing the Position of Hanafi Jurists, Imam Shami writes, "all jurists agree that the punishment for insulting the Prophet is death. Imam Malik, Imam Abu lais, Imam Ahmad Bin Hanbal, Imam Ishaq and Imam Shafi even Abu Bakr Siddique hold the same opinion and say that his repentance will have no implications".

At yet another point, Awan states that in Tanqeeh-e-Hamdiyyah, Ibn Abidin declared that there is an ijma of all jurists that blasphemers should be put to death.

Ibn Abidin did not author Tanqih-e-Hamidiyya. This text was actually written by the jurist Hamid Afandi.⁵

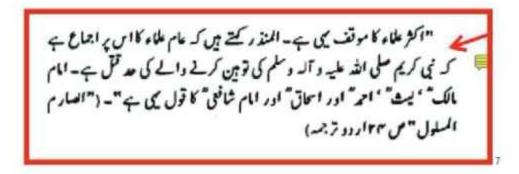
Ibn Abidin had actually written a commentary on this book titled Al-Uqood-ul-Darriyyah Fi Tanq-ih-e-Hamidiyya. In this commentary, Ibn Abidin refutes the claim of a universal Ijma, and explicitly mentions that Hanafi scholars disagree and rule that blasphemers will *not* be killed.

الم شائ " فتتم طدیہ " میں ہوں لکھتے ہیں:
"الم مالک" الم شافع" الم احمد بن طبل" ایث بن سعد اور دیکر تمام
اکار علاء کا موقف می ہے کہ ایسے آدی کی توبہ اور اسلام قبول نمیں کیا جائے گا
بلکہ اسے بلور حد کل کیا جائے گا"۔ (" ستم طامیہ " جلد اول میں 100)

Translation:

Imam Shami in Tanqeehat Hamdiyya writes, "Imam Malik, Imam Shafi, Imam Ahmad Bin hanbel, Lais Bin Sad and all other jurists position that the repentacne of such person will not be accepted rather he will be killed as a hadd punishment".

It has been mentioned earlier that Ibn-Taymiyyah in his book "Al-Sarim Al-Maslool" describes the disagreement of Imam Abu hanifa on the issue of blasphemy. However, Sajid Awan in oblivion of disagreement asserts a consensus.



Translation:

Majority of the jurist hold the same opinion. Ibn UI Munzir says, "every jurist has a consensus that the insulter of the prophet Muhammad will be killed. Imam Malik, Imam Abu lais, Imam Ahmad Bin Hanbel, Imam Ishaq and Imam Shafi agree with this ruling".

.Sajid Awan cites three further seminal texts in his attempt to argue that a universal Ijma exists on blasphemy:

He quotes Al-Sarim-ul- Maslool.
Ibn-Taimiyyah, within this very
book, categorically describes
the dissenting opinion of
Abu Hanifa and states that
non-Muslims blasphemers
will not be killed.

He also quotes Kitab-ul-Shifa. However, the author, Qazi Ayyaz, has also categorically described the dissenting opinion of Abu Hanifa. Finally, he also quotes Al-Saif-ul-Maslool. However, Imam Subki, in this very book, categorically described the dissenting opinion of Abu Hanifa.

الله المناه بتويف حقق المصطفى على الله عليه و آن وسلم مرتبه قاضى مماض "
دلى الكي حق ن ٥٥٣ جرى(١) الصادم المسلول على شاتم الرسول على الله عليه و آن وسلم مولفه المام عافظ ابن تيمية "
منبل حق ن ٢٦٥ بجرى(٣) السيف المسلول على شاتم الرسول على الله عليه و آند وسلم مولفه المام تقى الدين سكى "
شافعى حق ن ٢٥٦ بجرىشافعى حق ن ٢٥٨ بجرى-

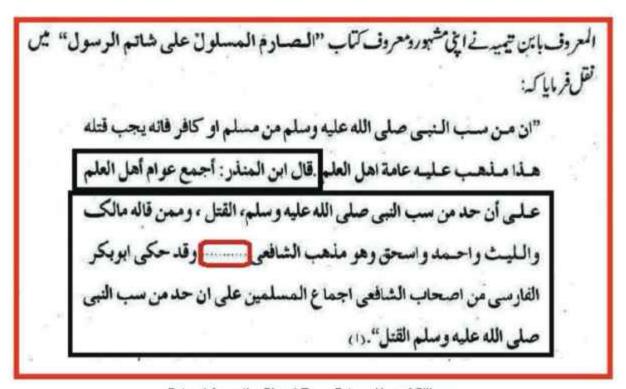
It is evident that Sajid Awan misrepresented a plethora of texts and authors in order to prove his claim of Ijma.

Readers are reminded that, throughout his book, Awan makes no distinction between Muslim and non-Muslim blasphemers. Time and again, he employs juristic rulings specifically dealing with Muslims and applies them indiscriminately to non-Muslims as well.

Example 3: Fatawa Binori Town

The Jamia Uloom-e-Islamia, Binori Town, one of the largest Hanafi seminaries in Pakistan, published this fatwa on the treatment of blasphemers (both Muslims and non-Muslims). The claim made in the fatwa was that there was a consensus of all schools of thought regarding a mandatory death punishment for anyone who insults the Prophet. In support of this claim, the Binori Town scholars quoted Ibn Tammiyah's reference to Ibn Hazm, who had cited the opinions of all four schools of thought on the matter.

Interestingly, while quoting Ibn Tammiyah, the Binori Town scholars strategically employed ellipses to omit a reference made to Imam Abu Hanifa's differing stance on the punishment for blasphemy.



Extract from the Binori Town Fatwa: Use of Ellipses

Translation:

"Anyone who insulted the Prophet will be killed irrespective of his religious background,. This is the position of the majority of jurists. Ibn-al-Munzir said,: Everge Jurist has a consensus that the punishment for the contemnor of the Prophet is death. Among these Jurists are Imam Malik, Al-Lais, Ahmad, Ishaq and Imam Shafi..... Abu Bakr Alfarsi, a shafi'i Jurist has also narrated a consensus of Muslims on the punishment of death for the contemnor of the Prophet".

A reading of the original quote reveals that, in opposition to the other scholars mentioned, Abu Hanifa had actually stated that a non-Muslim will not be killed for blasphemy. According to Abu Hanifa, shirk (unbelief) was a greater sin than blasphemy, and since non-Muslims were not killed for their unbelief, they would not be killed for merely an increase in that unbelief. Abu Hanifa's contradicting stance therefore immediately disproves the notion that there was a universal consensus on the punishment for blasphemy.

انَّ مَنْ سَبُ النبي ﷺ من () مسلم أو كافر فإنه يجب قتله هذا مذهبُ عامة () أهلِ العلم ، قال ابنُ النُذرِ () : وأجمعَ عوامً أهلِ العلم على أنَّ [حَدًّا () من سَبُ النبي ﷺ القتل، وعمن قاله مالكُ واللَّبثُ () وأحمدُ وإسحاقُ () ، وهو مذهبُ الشافعي ، قال : ووحكي عن النعان : لا يقتل _ يعني الذَّمِّي _ ما هُم عليه من الشركِ أعظمُ () .

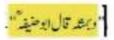
The Original Quote

Translation:

"Anyone who insulted the Prophet will be killed irrespective of his religious background. This is the position of the majority of jurists. Ibn-al-Munzir said,: Everge Jurist has a consensus that the punishment for the contemnor of the Prophet is death. Among these Jurists are Imam Malik, Al-Lais, Ahmad, Ishaq and Imam Shafi..... Abu Bakr Alfarsi, a shafi'i Jurist has also narrated a consensus of Muslims on the punishment of death for the contemnor of the Prophet".

Example 4: Ashraf-ul-Qadri

The same Ibn Tammiyah quote was also misrepresented by the popular religious scholar, Ashraf-ul-Qadri, in one of his speeches. Since he could not use ellipses, he, instead, simply made up Arabic verses that allowed him to effectively dodge questions relating to Imam Abu Hanifa's position on the matter. Therefore, in place of the ellipses, Ashraf ul Qadri included the following statement:



This statement translates as:

"Abu Hanifa has a similar opinion".

Example 5 - Jamia Binoria

We were able to download a fatwa from Jamia Binoria on 11/23/2010. This fatwa used Radd ul Muhtar (Ibn e Abidin) as its source and stated that the ruler at his discretion could give any punishment to an alleged perpetrator of blasphemy, irrespective of gender and religion. After Taseer's murder, the head of Binoria, Mufti Naeem, appeared on television and endorsed the dominant narrative on 295-C, hence contradicting the fatwa of his own Dar ul Ifta.[1]

A few weeks later, the fatwa was removed from the website and replaced with a stricter fatwa closer to 295-C.



Translation:

Question

In your opinion what should be the punishment for insulting the prophet Muhammad? Please answer with arguments.

Translation:

Answer.

The act of insulting the Prophet is a severe and dangerous crime. Therefore, the punishment suggested for this is also severe. However, it is the responsibility of the Government to ascertain whether the accused was an adult or a child and whether the accused has rendered repentance or not. After that it can inflict any appropriate punishment for this.

Reference

"Whoever among Muslims insults the Prophet, becomes apostate and his wife parts with him. If he does not repents he will be killed. Women will be dealt similarly, however Imam Abu Hanifa ruled that an apostate women will be forced to embrace Islam and she will not be executed".

Allah knows better

Example 6 - Hanif Qureshi

Hanif Qureshi is currently the President of Al-Shabab-e-Islami Pakistan. He is a popular religious speaker, with a considerable following in Pakistan. In fact, his personal Facebook page is followed by 150,000 people. During the series of events that culminated in the death of Governor Salman Taseer at the hands of his bodyguard (Mumtaz Qadri), Hanif Qureshi delivered a series of lectures in which he incited people against Taseer, and called for his murder. In one of his more fiery speeches, Qureshi literally demanded that Taseer's body be riddled with bullets.

Qureshi also used the notion of an Ijma on the matter as a tool to legitimize his claim. In one of his speeches, he stated that the blasphemer should be killed before he reaches the judge, and that there is an Ijma on this. Qureshi could have made his call for extra-judicial killing without mentioning Ijma; however, the invocation of an Ijma gave his words more credibility and authority.

After Taseer's murder, an FIR was registered against Qureshi. In response Qureshi submitted an affidavit in which he denied knowing any person by the name of Mumtaz Qadri and also stated that he had no enmity towards Salman Taseer. He also asserted that he belonged to the Ahle-Sunnat-Brelvi group which follow Sufi teachings of peace, equality, love and brotherhood.

The discrepancy between his earlier speeches and the language that he uses in the affidavit is clear. It is also worth mentioning that Qureshi is trained in Hanafi jurisprudence. Thus, by claiming that there is any Ijma that blasphemers should be killed, not only was Qureshi factually incorrect, but was undermining the founding position of his own school.

Example 7 - Claim of Ijma by Individuals on Television

Mufti Naeem

Mufti Naeem is the grand Mufti of Jamia Binoria and represents the Hanafi Deobandi school of thought. In one of his TV appearances, he asserts that all jurists of Islamic law have regarded death as the only punishment for blasphemy. Needless to say, this is a clear misrepresentation of the Islamic legal tradition.

Mufti Muneeb Ur Rehman

Mufti Muneeb was the chairman of Ruet-e-Hilal Committee Pakistan (Moonsighting committee). He is acclaimed as the grand Mufti of Ahle Sunnat Wali Jamaat Brevia. In a TV program, he was in conversation with Javed Ahmad Ghamidi, and he claimed that there is a consensus of all scholars including the Hanafis that blasphemers are liable to the death penalty.

Fareed Paracha

In his interviews on TV, more than once he has forcefully claimed that all jurists unanimously agree that death is the ultimate punishment for blasphemy and that there is no discrimination between Muslims and non-Muslims. He remained deputy secretary General islami for a long time.

Guests of Amir Liaquat

Amir Liaqat is a popular television host in Pakistan as well as an alleged scholar of Islam. Though he has hosted various shows across different channels, a recurring segment of his shows consists of him inviting a panel of religious scholars to discuss various issues related to Islam and Pakistani society/culture. Of concern is the fact that his guests (and he himself) have been active participants in recreating and perpetuating the dominant narrative of the blasphemy law in a manner similar to the patterns identified in this chapter.

What follows is a sample of the type of guests who appear on his programs along with the types of comments they make:

Ibtesam Ilahi Zaheer

"Non-Muslims living in Muslim countries have protection under a contract which they had with the state. They have freedom to express and profess their religion. However, if they began to insult our Prophet or mock our religion then state has absolute right to punish them with death. Their contract with the state breaks and their blood becomes permissible to be shed"

Allama Kokab Norani

"It is the responsibility of everyone to take care of the honor of the Prophet Muhammad. Any leniency in this regard is a sign of weakness in the faith. It is not in our hands to decide what treatment an insulter of the Prophet needs to get because God himself has decided in this matter. Any ifs and buts are likely to disrupt the order of the state."

Molana Abdul Rauf Faroogi

"I want to tell the viewers that, to Christians, the Bible is a significant book both in terms of literature and religion. It has been mentioned explicitly in it that the Prophet Musa killed three thousand people when they insulted Allah by worshiping the calf. Similarly, the Quran and all the jurists agree that blasphemy is punishable by death."

Haji Haneef Tayyab

"Everyone should know how a Muslim will react in response to the act of blasphemy. This is not a novel idea as Isaac Newton himself has explicitly stated that for every action there will be an equal and opposite reaction. I had informed ambassadors of different states to note that non-Muslims who want to live in Pakistan must stay away from the blasphemy of all Prophets." 10

صدکی صورت میں دی بالے کی یا ارتداد کے جرم میں اسے یہ سزاسلے کی اور اس کے لیے توبہ کی سوات وگھائش موجود ہے یا نہیں واسی طرح خیر مسلم گستا نی رسول کویہ سزا توزیر کے طور پر دی جائے گئی یا اس کی فقتی فوعیت کچھ اور بوگی اور ایک ڈی کا عمد اس قیم جرم کے ارتفاب کے بعد قائم روجاتا ہے یا گوٹ بناتا ہے وان اختلافی صور تون پر بسارے دور کے عمل سے درمیان بھی بحث و قبیص کا سلسند جاری ہے اور حملت وسی کھرات میں اس مخوانات پر تحقیقی مطابق شائع ہورہ ہیں۔

پہلی گزارش یہ ہے کہ مسلمان کملانے والے نعین شاتم رسول سے لیے تو یہ کی مجھائش کے مسئلہ پر طلامہ این عابدین شائ نے اب سے پونے ووسویرس قبل نعلافت عشانیہ کے وور میں یہ موقف انتیاد کیا شاکہ یہ چوکلہ الانداوسید اور کسی ہمی مرتد کے لیے تو یہ کی گئی تشریح ہوئی ہے ۔ اس سلیے است الانداوسی احقام سے انتحام کی اتنا کی مرتد میں جمالہ سے ایک فاضل دوست نے است علامہ شامی کا ''تمباع'' فرار دیا ہے اور دوسرے فاضل دوست نے است ''مغالط محمد کرمطامہ شامی کے موقف کویس منظر میں لے جائے کی کوسٹ شری کے ہے۔

راقم الووف کے زوک یہ بات درست نہیں ہے ، اس نے کہ علامہ شاق نے یہ بات علیہ تھی تک پکد سرسری انداز میں نہیں گی، بلکد است مستقل موسنوج بحث بناکراس پر کاام کیا ہے اوراس پر تفسیل ولائل ہیں کے ہیں، مثلا انحول نے "شرع عقود سم المنتی" میں انحا ہے کہ ابعض مسائل عام عور پر اختاف کے موقف کے عور پر مشور ہوگئے ہیں، حالائکہ وہ احاف کا موقف نہیں ہیں۔ ان میں علامہ شامی نے یہ مسئلہ ہی ڈکر کیا ہے کہ مشور یہ ہے کہ احاف کے بال شاتم رسول سے لیے قوید کی مجائش میں ہے ، مقر محج بات یہ ہے کہ اخاف است ارتحاد سمجھتے ہیں اور مرجد کے ہے قوید کی مجائش موجو ہے۔ پھر علامہ شامی نے ابنی کتاب "احتووالدریا فی الفاق کی اعلمیہ" میں یہ مسئلہ بیان کیا اور اس پر اس وقت کے مفتی معمل علامہ عبد استار آخذ تی نے کچے اشکالات ہیں کے قوان کے جواب میں علامہ شامی نے اوراق والحاص" کے نام سے مستقل رسالہ بھا بھی افوان سے بوری وضاحت اور (۱)جب یہ ہے ہوگیا کہ یہ سزاار تدادکے زمرے میں آتی ہے تو یہ بات بھی خود بخود ہے بوباتی ہے کہ اس سزا کا اطلاق اس شخص پر ہوگا جو پہلے ہے مسلمان ہو۔ جو پہلے ہے ہی خیر مسلم ہو، ود ظاہر ہے کہ مرتد نہیں کملاستقاءاس متعین سزا کا اطلاق اس پر نہیں ہوگا۔ خیر مسلم اگرایسا فعل کرتا ہے تواس کے ساتھ کیا جانے گا، اس کا جواب ہم آگے چل کرذکر کریں گئے۔

(۱) چونکہ یہ سمزاار تدادے طور پروی جارہی ہے، اس ملیے جس بات پر یہ سمزادی جانے ، اس میں ان تنام احتیاطوں کو چیش نظر رکھنا ضروری ہوگا جو فشنا کے نزویک کسی شخص کو کا فر اور مرتد قرار دینے کے لیے ضروری ہیں۔

(") مرتد کے بارے میں فقہ حنی کا نقطۂ نظریہ ہے کہ اگر وہ تو ہہ کرنے تو اس کی توبہ نہ صرف یہ کہ قبول کی جاتی ہے بلکہ قاضی کی یہ ذمہ داری ہے کہ اسے توبہ کی سمتین کرنے کا انتظام کرے اور اسے اس کا موقع وے۔

ہمارے ہی جلے جلوموں میں جو شم خطابت میں یہ بات کشرت سے کھ محمیٰ ہے کہ اس جرم کی کوئی توبہ نسیں اور کسی انسان کو توبہ کی بنیا و پر یہ سزامعات کرنے کا افتیار نسیں اور یہ کہ یہ بیٹ ہے جلوموں میں جو شم ہے۔ علامہ ابن عابہ بین شائی ہیں ہے۔ علامہ ابن عابہ بین شائی گئی ہے۔ اس ہے۔ علامہ ابن عابہ بین شائی شخصیت سے فقہ حنی کا کوئی بھی طالب علم ناواقت نسیں ہوستا۔ ان کی کتا ہوں سے حنی الل افا کے ہاں سب سے زیادہ استنادہ کیا جا تا ہے۔ اشوں نے اپنی متعدہ کتب میں مسئلے کے اس سب سے زیادہ استنادہ کیا جا تا ہے۔ اشوں نے اپنی متعدہ کتب میں مسئلے کے اس بسے نیادہ استنادہ کیا جا تا ہے۔ اشوں نے اپنی متعدہ کتب میں مسئلے کے اس جو بیٹن گائی ہے اور افتام "(جو جمورہ اس کی مسئلے پر ان کے مشور رسالے "تنبید الوراد و انتخام "(جو جمورہ رسائل ابن عابہ بین میں شامل ہے) کی طرف رجوع کرسٹے ہیں۔

نویں صدی جری کے ایک حنی عالم البزازی (وفات: ۱۰ ۱۸ هـ) نے سب سے پہلے یہ بات تصحی کد اگر کوئی شخص نبی کریم علی الند علیہ وسلم کی شان میں گتا نبی کا مرجعب ہونے کے بعد سے ول سے توبہ کرلیتا ہے اور آئندہ ایسی حرکت نہ کرنے کا وعدہ کرتا ہے، تب ہبی اس کی سزامعات نمیں ہوگی۔ بڑاڑی کے بعد آنے والے بعض صفرات نے ہبی ان کی یہ بات اس طرح سے فقل کردی ، لیکن علار شامی نے البزاؤی کی اس بات پرشد پر دکیا ہے اور یہ بتایا ہے کد ان سے پہلے فقہ حنی کا نقطۂ نظر، نواد وہ کسی حنی عالم نے بیان کیا ہم یا غیر حنی نے سب نے میں بتایا ہے کہ فقہ حنی کے مطابق شاتم رمول کی توبہ قابل ہو۔ فقہ شافی کا فقطۂ نظر بھی حضیہ کے قریب قریب ہے ، فقہ ما کلی اور فقہ حنبل میں بھی ایک ایک قول ہے ۔ میں مناز ہے۔ اللہ علم مستنے کی علی تنسیل قرد کورہ حوالوں میں دیکھ سے تیں ، البتہ یہاں امام ابو حفیظ کے براہ راست شاگرہ الم ابو یوسٹ کی عبارت کا ترجمہ ذکر کرنا مناسب معلوم ہوتا ہے ۔ وہ فرماتے ہیں :

As opposed to this, the Ḥanafī jurists treat these acts as offences to punishable by the law of the land, but they hold that the contract of dhimmah remains intact. They recognize only two grounds for termination of the contract of dhimmah, namely, permanent settlement in a territory outside dār al-Islām and rebellion against Muslims, provided that all rebels are non-Muslims. Marghīnānī explains the underlying principle in a more elaborate manner in these words: Blasphemy against the Prophet, peace and blessings of Allah be on him is disbelief. When disbelief at the time of the conclusion of the contract could not become an obstacle in its conclusion, disbelief that came into existence after the contract was concluded would not terminate it either.

E.2.2 Siyāsah Punishment

Does all this mean that Hanafī jurists tolerate these acts and prescribe no penalty for them? The answer to this is an emphatic "no" and this leads us to the crux of the matter. The Hanafī jurists deem these acts as crimes punishable under the law of the land and bring them under the doctrine of siyāsah.²¹⁷ To quote Ibn Taymiyyah:

A third factor is also mentioned, namely, embracing Islam (Kāsānī, 9:446).

But, of course, this is not a cause of loss of the right to permanent residence.

Abū Yūsuf Ya'qūb b. Ibrāhīm al-Anṣārī, Kitāb al-Kharāj (Beirut: Dār al-

Ma'rifah, 1399/1979), 189-90; Ibn al-Humām, 4:381.

Some of the later jurists deviated from this established position of the school but their opinion could not replace the standard position. Thus, for instance, Kamāl al-Dīn Muḥammad Ibn al-Humām al-Iskandarī asserts, "In my opinion, if blasphemy against the Prophet, peace and blessings of Allah be on him or ascribing an unacceptable attribute to Allah, Most High, does not form part of their beliefs—such as ascribing son to Allah, Exalted and Sacred is He—he will be given death punishment if he publicly expresses such a statement and his contract will be terminated. However, if he does not publicly express it and was secretly caught, his contract is not terminated" Muḥammad b. al-Humām, Fatḥ al-Qadīr bi- Sharḥ al-Hidāyah (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), 5:303. This goes absolutely against the standard position of the school (Ibn 'Ābidīn, Radd, 6:346). Ibn 'Ābidīn devotes many pages to this issue in his risālah, as we shall see.

This is based on an established general principle of law, which holds that after the contract is concluded many acts are tolerated, which may not be tolerated at the time of the conclusion of the contract. Commission of the Ottoman Jurists, Majallat al-Ahkām al-'Adliyyah (Karachi: Nūr Muḥammad, n. d.), Article 55.



Mufti Taqi Usmani Views About Toheen e Risalat Law and Against Mumtaz Qadri

قتل کیا جائے گا اور پھر انھیں کہیں پناہ نہیں ملے گا۔ اس سے واضح ہے کہ تو بین رسالت کے مجرموں کو تہدید و تنبیہ کے ذریعے سے اس روش سے بازر کھنے اور راہ راست پر آنے کا کوئی موقع دیے بغیران پر برحال میں سزاے موت نافذ کرنے کا جو مدعاا مام صاحب قر آن مجید کی ان آیات سے اخذ کرنا چاہتے ہیں، قر آن اس سے بالکل مختلف بلکہ اس کے متضاد بات کہدر ہاہے۔

یکی بات سورہ مائدہ کی آیت ٣٣ ہے بھی واضح ہوتی ہے جہاں اللہ تعالی نے اللہ اور سول اور مسلمانوں کے نظم اجتماعی کے خلاف علین ترین جرم یعنی محاربہ کی سزابیان کی ہے۔ محاربہ کا مطلب یہ ہے کہ کوئی گروہ اللہ اور اس کے رسول کے خلاف سرکشی اور عنا دمیں اس درج کو پہنچ جائے کہ اللہ اور اس کی رسول کی اتفار ٹی کو چیننج کرنا شروع کردے۔ یہاں بھی اللہ تعالی نے جرم کی نوعیت کے لحاظ سے جہاں مجرموں کو عبرت ناک طریقے ہے قبل کرنے اور سولی چڑھانے کی سزائیں بیان کی لخظ سے جہاں مجرم کی نوعیت کے لحاظ سے اس سے کم تر سزاؤں یعنی ہاتھ یاؤں اللے کاٹ دینے یا جیں، وہاں جرم کی نوعیت کے لحاظ سے اس سے کم تر سزاؤں یعنی ہاتھ یاؤں اللے کاٹ دینے یا محض علاقہ بدر کردینے کی سزاؤں کا بھی ذکر کیا ہے۔

آیات کے بعداب احادیث کا جائزہ کیجے:

سب سے پہلے تو ان روایات کو دیکھیے جس میں نبی صلی اللہ علیہ وسلم کی طرف شاتم رسول کوتل کرنے کا قولی حکم منسوب کیا گیا ہے۔ سیدناعلی رضی اللہ عنہ سے بیروایت نقل کی گئی ہے کہ رسول اللہ صلی اللہ علیہ وسلم نے فرمایا:

من سب الانبياء قتل ومن سب الاصحاب جلد (طرانی، العجم الصغير، ١٥٩) "جو شخص انبيا كوبرا بھلا كے، است قتل كرديا جائے اور جومير سے صحابہ كے بارے ميں زبان طعن دراز كرے، اے كوڑے لگائے جائيں۔''

اس کی سندمیں عبیداللہ بن محمد العمری ہے جے امام نسائی نے گذاب قرار دیا ہے، جبکہ امام ذہبی نے ندکورہ روایت کواس کے منا کیرمیں شار کیا ہے۔ (مجمع الزوائد ۲۹۰/۱۸۔ لسان المیز ان ۱۱۲/۴۰) ابن تیمیہ نے یہی روایت ائمہ اہل بیت کی سند ہے بھی نقل کی ہے، لیکن خود ہی اس پر بیت ہمرہ



اس کے بعدامام صاحب نے بیروایت نقل کی ہے کداللہ کے ایک نبی کو جب ان کی قوم نے مار مار كرلہولهان كر ديا تو وہ اس وقت بھى ان كے ليے اللہ سے معافى كى دعا ما تكتے رہے۔ (بخارى، ۲۵۲۷ تا ۲۵۳۸) سیح بخاری کے شارحین ابن المنیر اور علامہ پینی نے امام بخاری کے اس اسلوب ے بچاطور پر بیاخذ کیا ہے کہ وہ زیر بحث مستلے میں اہل کوفہ کی اس رائے سے (جزوی طور پر بی سی اتفاق رکھتے ہیں کداگر ذی نبی صلی اللہ علیہ وسلم کی شان میں گستاخی کرے تواقے آل نہ کیا جائے بلکہ کوئی دوسری تعزیری سزادی جائے۔ (عمدۃ القاری۸۲/۲۴ التواری علی ابواب ابخاری ۲/۳۲) ابن المنير لكھتے ہيں:

> كـان البـحاري كان على مذهب الكوفيين في هذه المسالة وهو ان الـذمـي اذا سب يعزر ولا يقتل ولهذا ادخل في الترجمة حديث ابن مسعود ومقتضاه ان حلق الانبياء عليهم السلام الصبر والصفح الا تىرى الىي النبىي صلىي الله عليه و سلم ضربه قومه فادموه وهو يدعو لهم بالمغفرة فاين هذا من السب وكان حديث ابن مسعود يطابق الترجمة بالاولوية (التوارئ للااباب البخاري ١٣٣٦)

" كوياامام بخاري ال مسئل مين الل كوف كه فرجب يرجي اوروه بيت كدوي الرسب وشتم گرے توا<u>ے تعزیری سزادی جائے اورتق نہ کیا جائے۔ ا</u>سی لیے امام بخاری نے اس عنوان کے تحت ابن مسعود کی حدیث بھی درج کی ہے جس سے میر بات اخذ ہوتی ہے کہ انبیاء میم السلام کا اخلاق تو سبراور درگزر کرنا ہے۔ و کیھے نبیں کداس نبی کی قوم نے مار مار کر انھیں ابولبان کردیا، لیکن وہ ان کے لیے معافی کی وعا کرتے رہے؟ اس تکلیف کے مقابلے میں سب وشتم کی کیا حیثیت ہے؟ یوں ابن مسعود کی حدیث ، قائم کر دوعنوان کے ساتھ زیاد و مطابقت رکھتی ہے۔'' ابن حجر رحمه اللہ نے اگر چہ یہ کہا ہے کہ امام بخاری کا قائم کر دوعنوان ان کے مسلک کو واضح طور پر متعین نہیں کرتا ، تاہم اس کے تحت لائی جانے والی روایات کی ولالت کواٹھوں نے بھی تسلیم كيا ب_ابن معود كي روايت كي شرح مين لكهت إن:

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Table 01: Blasphemy Cases: 1947 – 2021						
Year	Cases	Accused	Injured	Killed		
1947	0	0	0	0		
1948	1	0	0	1		
1949	0	0	0	0		
1950	2	0	0	2		
1951	0	0	0	0		
1952	0	0	0	0		
1953	1	0	0	0		
1954	0	0	0	0		
1955	0	0	0	0		
1956	0	0	0	0		
1957	0	0	0	0		
1958	0	0	0	0		
1959	1	1	0	0		
1960	0	0	0	0		
1961	0	0	0	0		
1962	2	2	0	0		
1963	1	0	0	0		
1964	0	0	0	0		
1965	0	0	0	0		
1966	0	0	0	0		
1967	0	0	0	0		
1968	0	0	0	0		
1969	0	0	0	0		
1970	0	0	0	0		
1971	0	0	0	0		
1972	0	0	0	0		
1973	0	0	0	0		
1974	0	0	0	0		
1975	0	0	0	0		
1976	1	Ö	0	0		
1977	0	0	0	0		
1978	1	0	0	0		
1979	1	1	0	0		
1980	0	0	0	0		
1981	0	0	0	0		
1982	0	0	0	0		
1983	0	0	0	0		
1984	0	0	0	0		
1985	0	0	0	0		
1986	0	0	0	0		
1987	2	2	0	0		
1988	6	10	0	0		

1980	0	0	0	0
1981	0	0	0	0
1982	0	0	0	0
1983	0	0	0	0
1984	0	0	0	0
1985	0	0	0	0
1986	0	0	0	0
1987	2	2	0	0
1988	6	10	0	0
1989	1	1	0	0
1990	0	0	0	0
1991	3	2	0	0
1992	6	1	0	4
1993	5	3	0	1
1994	4	1	0	1
1995	7	1	1	4
1996	5	2	Ö	0
1997	5	0	1	1
1998	5	2	0	1
1999	3	1	0	2
2000	7	3	0	1
2001	1	0	0	1
2002	5	2	0	3
2003	8	4	0	4
2004	4	7	0	0
2005	8	8	0	2
2006	10	15	0	2
2007	10	19	0	1
2008	9	7	0	3
2009	11	17	0	10
2010	15	9	0	2
2011	60	89	10	11
2012	38	187	3	3
2013	28	40	0	0
2014	47	243	10	10
2015	33	47	0	2
2016	39	70	0	1
2017	53	66	0	5
2018	34	91	0	2
2019	30	86	0	1
2020	138	227	1	3
2021	50	39	4	5
Total	701	1306	30	89