



Investigation of apostasy in Imami jurisprudence and public jurisprudence

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Abstract

One of the most provocative crimes in domestic and international arena is apostasy. Apostasy means renunciation and apostate is derived from the same term meaning someone who has renounced Islam. Some prerequisites are necessary to prove apostasy, i.e. maturity, common sense, free will, determination and awareness; however, there is disagreement among different Islamic sects regarding the necessities of apostasy. In addition, Islamic sects also do not agree on the ways of proving apostasy. A severe penalty which differs according to apostate's gender lies ahead for apostasy and Islamic religious attitude toward apostate's penalty is a little inconsistent. This paper attempts to offer a comprehensive study of apostasy (the prerequisites, ways of apostasy).



Introduction

Apostasy means renunciation and apostate is derive from the same term.

Extradition means a request to return something¹

Apostasy and rejection means returning from a travelled path and returning to heresy is called apostasy or rejection in religious culture.²

The term rejection is used for heresy whereas the term apostasy is used for heresy and etc.

Chapter one: the prerequisites of apostasy in Islamic sects

The first section: the prerequisites of affirmation

There are some prerequisites to prove apostasy: if they are not met. No one can be judged an apostate and the judge can not apply the jurisdiction sentences of apostasy to his case. These prerequisites are as follows:

1- Maturity(puberty)

One of the prerequisites of apostasy , agreed on by Shiite jurist³ and some sunni jurists⁴, is maturity.

Most Islamic jurists consider religious as one of the prerequisites of apostasy affirmation; however some Shiite jurists believe that religious puberty is not one of the prerequisites of apostasy so that even a young adult (a teenager who is about the age of puberty) who renounces Islam is punished according to the apostasy penalty mentioned in penal code.⁵

2- Common sense

Someone without common sense cannot be punished as an apostate since common sense is one of the general prerequisites of attendance to Islamic rules at the age of puberty. Therefore, if an insane renounces Islam and speaks or acts against Islam, he will not be deemed an apostate. An insane is considered like a child in religious and jurisdiction texts and is free of any obligation.

3- Free will

Apostasy is not established if the change in belief system or the renunciation of religious necessities happens by the force of others.⁶

All religious sects including Shiite have accepted this prerequisite according to the 106 verse of Nahl surah in Quran which says “ As for one who denies God

after he has believed . with the exception of one who is forced to do it. while his heart rests securely in faith”.⁷

4- Determination

Someone who says or commits a heretical act against Islam should have determination or intention in his speech or commitment. If someone renounces Islam or its necessities or

¹ Alerted

² Almofradat.Ragheb Esfahani.pp. 192-193

³ Javaher Alkalam. 41. 609. And Almosoue Alfaghihe. 2.22

⁴ Alfeghh Ala Mazaheb Arbae.5. 35. Alfeghhe Eslami.7.5579

⁵ Alkhalaf. 3.591

⁶ Almosoue Alfaghihe. 2.23

⁷ Javaher Alkalam. 41.610. Tahrir Alvasileh. 2.445. Almosoue Alfaghihe 2.22



commits a heretical act due to neglect. Mistake, humor, sleep or anesthesia, he is not regarded an apostate.

5- Awareness

Some Shiite jurists believe that awareness and insight of the content of the heretical speech is a prerequisite of apostasy.⁸ It can then be concluded that denial of principles or necessities of Islam by a Muslim is considered apostasy only when he has enough knowledge of Islam and he knows that what he is about to deny is a part of religion.

However, different sects of sunni muslims do not take awareness as one of the prerequisites for apostasy.⁹

The second section : the conditions of proving apostasy

The ways for proving apostasy are as follows:

1- Confession of apostate to change in belief

It is one of the conditions only among Shiite jurists which mean the apostate confesses again to his apostasy and heresy. Sunni sects have never mentioned this condition as one of the ways to establish apostasy.

2- The testimony of two righteous men

All sects of shiite and sunni accept this condition to prove apostasy

3- A blasphemous speech or behavior from an apostate, i.e. denial of god or renunciation of Quran publicly.¹

Chapter two: the verdict and penalty of apostasy

First section: the penalty for apostasy in shia Islam

First paragraph: the penalties for an innate apostate in shia Islam

A) The penalties for a male innate apostate in shia jurisdiction¹⁰

Some penalties are suggested for a male apostate mentioned below:

1- Being deprived of his supervision right in his daughters marriage¹¹

2- Financial penalty : After the debts of his property were paid, His property is divided between his heirs even if he is alive.

3- The breakup of marriage bond without a divorce contract (or agreement)

4- Execution and the rejection of his repentance

However some of the Shiite jurists such as Ibn jonei Skafi Saheb Masalek¹², Shahid Araveh¹³, and Sahib Javaher¹⁴ accept the repentance of an innate apostate.

5- A male innate apostate does not inherit from a Muslim. If a Muslim has no heir other than apostate, his belongings are given to Imam.¹⁵

⁸ Tousi. 1991. 7.231

⁹ Ghorouri et al. 1419 AH. 5.640

¹⁰ Tahrir Alvasileh. 2.496. Almosoue Alfaghihr. 2.15. Almoghni. 10. 106

¹¹ Amini and Ayati. 1996. 116

¹² R.K. Shahid Sani. 1963. 7.388

¹³ Tousi. 1991. 7.217

¹⁴ Najafi. 1991. 30.47

¹⁵ Amini and Ayati. 1996, 120



B) The penalties for a female innate apostate in Shia jurisdiction

In Shia jurisdiction, different penalties such as imprisonment, beating and crackdown are suggested for an innate female apostate. An innate female apostate will keep her possessions and her belongings are not inherited to her heirs until her death. If she has had no intercourse with her husband, she is separated from her husband without a divorce contract and should abstain from sexual intercourse for certain time. If a woman repents during her abstinence, she can live with her husband without renewing the marriage contract. An innate female apostate is not executed but is imprisoned for life and is beaten at prayers time and should be put to most difficult tasks and coarsest clothes

Should be her garment. The worst food is given to her to repent or die. If her apostasy is repeated, she will be executed the fourth time¹⁶.

Second paragraph: the penalties for an ethnic apostate in Shia Islam

Shia jurisdiction has offered some sentences for an ethnic apostate:

1- Breakup of marriage bond

If the apostasy for male or female apostate happens before an intercourse, their marriage contract is terminated. If their apostasy happens after intercourse, the termination of their marriage contract will happen after abstinence, i.e. if the apostate repents during the abstinence from sexual intercourse, he or she can live with his or her spouse without renewing the marriage contract: but if she did not repent during her abstinence, the couple must divorce. If the apostasy happens after the sexual intercourse, the husband must pay the wives dowry and nothing is terminated of the wives dowry.¹⁷

2- Imprisonment

Male and female apostate are imprisoned and asked to repent. If the convict does not repent, he is sentenced to death by execution. A female innate apostate will stay behind the bars unless she repents. The apostate is asked to repent for three days in prison¹⁸.

3- Probable execution

If the repentance appeal is repeated on the side of male apostate (i.e. he returns to apostasy after he repents and returns to Islam, so he is asked to repent again).

He is executed the fourth time or as some believe the fifth time¹⁹.

Second section : the penalties for an apostate in sunni jurisdiction and sunni sects

Sunnis do not categorize an apostate into innate or ethnic and suggest similar sentences for male or female apostates except in Hanafiah School.

Briefly speaking, apostasy means renunciation and returning from Islam.

Islamic jurists and theologians call apostasy as renunciation of Islam by a Muslim.

Imam Khomeini states that an apostate is someone who renounces Islam and chooses heresy.²⁰

¹⁶ Habi Almatin. 5(2).2013

¹⁷ Imam Khomeini.1984.2.235

¹⁸ Imam Khomeini.1984,2,431

¹⁹ Shahid Sani. 1410 AH.2.194

²⁰ Tahrir Alvasile. Imam Khomeini.2/366



Ibn ghodameh, one of the jurists of Sunni Muslims, defines an apostate as someone who returns from Islam to heresy.²¹

Shiite jurists divide apostates in 2 groups which are innate apostates and ethnic apostate.

Innate apostate is someone whose parents were Muslims at the inception of his spermatogenesis and chooses Islam in his puberty but later returns to heresy.

Ethnic apostate is someone whose parents were Muslims at the inception of his spermatogenesis and has announced himself an apostate in his puberty; later, he converts to Islam but renounces it later in his life.²²

There have been a larger number of death penalties in the past decades in Iranian courts due to apostasy whereas Iran's Islamic penal code and other criminal laws have never had a specific article regarding apostasy. However, Iranian courts have imposed death for apostates merely according to religion and jurisprudential texts. Recently, it seems that the authors of the new draft of Iran's General penal code have dedicated an article to the topic of apostasy to prevent the problem of law deficiency regarding apostasy in the Islam Republic of Iran.

This article seeks to suggest an answer to the following question:

- 1- What are the prerequisites of apostasy?
- 2- How can it be proved?
- 3- What are the penalties for an apostate?
- 4- Is there any difference between Shiite jurisdiction and Sunni Muslims regarding apostasy?

Briefly speaking, the penalties for apostates in Sunni sects are as follows:

- 1- Breakup of marriage bond and prohibition of marriage
- 2- Financial penalties
- 3- Imprisonment
- 4- Execution: Execution for an apostate is referred to in all sects of Sunni Muslims
- 5- Prohibition of baptism in Islamic way and prevention of burial in Muslim's cemetery in Maliki's Jurists' belief
- 6- Being deprived of his supervision right in his daughter's marriage in Shafei's jurists' belief

Conclusion

All Islamic sects consider apostasy a criminal act and have suggested penalties for someone who renounces Islam. Some Islamic sects have developed more rigorous penalties for apostates: for instance Shia Muslims have formulated a more rigorous penalty, that is, execution for innate apostasy than ethnic apostasy. Execution due to apostasy has been referred to in all resources of Shia jurisdiction since someone who has accepted Islam has accepted to believe in the necessities of Islam due to his or her commitment to God and when an apostate renounces these necessities, he deserves to be punished.

²¹ Almortad Hova Alraje Anel Eslam Elal Kofr.Moghni Ebne Ghodame,10/74

²² Imam Khomeini.1984



Shia Muslims categorize apostasy to innate and ethnic whereas Sunni Muslims do not accept this categorization and do not distinguish between someone with Muslims parents or pagan parents who chooses Islam. On the other hand, all Islamic sects consider some prerequisites for apostasy affirmation but disagree with each other in some cases.

Many people in the Islamic Republic of Iran have been prosecuted in recent years due to apostasy. The verdict has been terminated in most cases of apostasy in Iran due to deficiency of Iran's penal code regarding apostasy and the judges need to refer to authentic jurisdiction sources to issue a verdict. The authors of the new draft of Iran's penal code have recently been considering apostasy and attempt to compensate for the deficiency of rules regarding apostasy so that Iranian courts can issue sentences for apostasy according to the specific legal articles.

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