



APOSTASY IN THE ISLAMIC REPUBLIC OF IRAN

Iran Human Rights Documentation Center

The Iran Human Rights Documentation Center (IHRDC) believes that the development of an accountability movement and a culture of human rights in Iran are crucial to the long-term peace and security of the country and the Middle East region. As numerous examples have illustrated, the removal of an authoritarian regime does not necessarily lead to an improved human rights situation if institutions and civil society are weak, or if a culture of human rights and democratic governance has not been cultivated. By providing Iranians with comprehensive human rights reports, data about past and present human rights violations, and information about international human rights standards, particularly the International Covenant on Civil and Political Rights, the IHRDC programs will strengthen Iranians' ability to demand accountability, reform public institutions, and promote transparency and respect for human rights. Encouraging a culture of human rights within Iranian society as a whole will allow political and legal reforms to have real and lasting weight.

The **IHRDC** seeks to:

- Establish a comprehensive and objective historical record of the human rights situation in Iran, and on the basis of this record, establish responsibility for patterns of human rights abuses;
- Make the record available in an archive that is accessible to the public for research and educational purposes;
- Promote accountability, respect for human rights and the rule of law in Iran; and
- Encourage an informed dialogue on the human rights situation in Iran among scholars and the general public in Iran and abroad.

Iran Human Rights Documentation Center

129 Church Street

New Haven, Connecticut 06510, USA

Tel: +1-(203)-772-2218

Fax: +1-(203)-772-1782

Email: info@iranhrdc.org

Web: <http://www.iranhrdc.org>

IHRDC would like to thank the principal author of this report, Shahin Milani, as well as the team of researchers, editors and translators that made this publication possible.

© 2014 All Rights Reserved.

Iran Human Rights Documentation Center, New Haven, Connecticut

Apostasy in the Islamic Republic of Iran

Iran Human Rights Documentation Center

July 2014

Contents

Executive Summary	1
Introduction.....	2
1. Definition of Shari'a Law and the Crime of Apostasy in Islam	4
1.1. Apostasy in the Qur'an.....	5
1.2. Apostasy in Oral Traditions	7
1.3. Difference Between Murtad-e Fitri and Murtad-e Milli	8
1.4. Differences in Penalties Imposed on Men and Women	9
1.5. Swearing at the Prophet in the Qur'an	9
1.6. Swearing at the Prophet in Oral Traditions	9
2. Apostasy and Other Religious Crimes under Current Iranian Law	13
2.1. Apostasy.....	13
2.2. Swearing at the Prophet	14
2.3. Insulting Sacred Religious Values.....	15
2.4. Evidentiary Standards for Religious Crimes	16
2.4.1. Apostasy.....	16
2.4.2. Swearing at the Prophet	17
2.4.3. Insulting Sacred Religious Values	17
2.5. Lack of Adequate Legal Sanction for Extra-judicial Killings of Apostates or Persons Accused of Swearing at the Prophet	17
3. Notable Cases of Apostasy and Swearing at the Prophet in Iran.....	18
3.1. Charges of Apostasy against Muslims.....	19
3.1.1. Hasan Yousefi Eshkevari	19
3.1.2. Hashem Aghajari.....	25
3.1.3. Seyed Ali Gharabat	29
3.1.4. Rouhollah Tavana	27
3.2. Charge of Apostasy against Christians	29
3.2.1. Davood.....	29
3.2.2. Hossein Soodmand.....	34
3.2.3. Youcef Nadarkhani	35
3.3. Charge of Apostasy against Bahá'ís	37
3.3.1. Zabihollah Mahrami.....	37
4. International Human Right Law	39

4.1. Freedom of Thought, Conscience and Religion	39
4.2. Freedom from Discrimination and Equality before the Law.....	37
4.3. Right to Life	37
4.4. Conviction Based on Laws Existing at the Time the Offense is Committed.....	38
Conclusion	41

Executive Summary

Under Iranian law, a Muslim who leaves his or her faith or converts to another religion can be charged with apostasy. In addition, any person, Muslim or non-Muslim, may be charged with the crime of “swearing at the Prophet” if he or she makes utterances that are deemed derogatory towards the Prophet Mohammad, other Shi’a holy figures, or other divine prophets.

Both apostasy and swearing at the Prophet are capital offenses. While the latter has been specifically criminalized in the Islamic Penal Code, the former has not been explicitly mentioned as a crime. Nevertheless, provisions in the Islamic Penal Code and the Iranian Constitution state that Shari’a, or Islamic religious law, applies to situations in which the law is silent. As a result, the Iranian judiciary is empowered to bring apostasy charges based on its interpretation of Shari’a law.

While the Qur’an does not explicitly state that apostasy should be penalized, the majority of Islamic jurists agree that an apostate is to be put to death. This ruling is mostly based on oral traditions attributed to Prophet Mohammad. In Shi’a Islam, the official state religion in Iran, the oral traditions attributed to Shi’a Imams, who are considered Prophet Mohammad’s rightful successors by Shi’as, are also important for imposing the death penalty on apostates.

Cases of apostasy and swearing at the Prophet are rare occurrences in Iran. Nevertheless, a diverse group of individuals has been charged with these religious crimes. Muslim-born converts to Christianity, Bahá’ís, Muslims who challenge the prevailing interpretation of Islam, and others who espouse unconventional religious beliefs have been targeted and prosecuted by the Iranian state. In some instances, apostasy cases have clear political overtones, while others seem to be primarily of a religious nature. This report examines a number of cases of apostasy and explains the context and circumstances surrounding each case to demonstrate how apostasy laws have been applied in practice.

Under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the government of the Islamic Republic of Iran (IRI) is bound to uphold freedom of thought, conscience and religion. Iran’s laws regarding apostasy, swearing at the Prophet, and the lesser offense of insulting Islamic sacred beliefs violate Iran’s commitments under international human rights law. Furthermore, imposing the death penalty for religious crimes violates international law because international human rights law limits the death penalty to the “most serious crimes”, and the crime of apostasy does not meet that standard. Inequality in application of apostasy laws to Muslims and non-Muslims as well as to men and women, and the fact that the crime of apostasy is not clearly defined in the law, are other ways in which Iran’s apostasy laws violate international norms.

Introduction

On February 14, 1989, Ayatollah Khomeini, the founder and first Supreme Leader of the Islamic Republic, issued a fatwa¹ condemning Salman Rushdie to death.² Salman Rushdie, an Indian-British writer, was the author of *The Satanic Verses* (1988), a novel that many Muslims deemed as offensive to Prophet Mohammad. Ayatollah Khomeini's fatwa said:³

I would like to inform the valiant Muslims of the world that the author of the book, *The Satanic Verses*, which has been written and published against Islam, the Prophet and the Quran, as well as the publishers aware of its content, are sentenced to death. I request the valiant Muslims to execute them promptly wherever they found them so that nobody else would dare to insult the sanctities of Muslims. Anyone, who would be killed in this path, is a martyr, God willing. Meanwhile, if anyone has access to the author but does not have the courage to execute him, one should introduce him to the people so that he could get the reward for introducing him. May God's peace, mercy and blessings be upon you.

In 2012, Ayatollah Lotfollah Safi Golpaygani issued a similar fatwa against Shahin Najafi, an Iranian rapper residing in Germany.⁴ The lyrics of Najafi's song "Naqi" were deemed offensive to the tenth Shi'a Imam, Ali al-Naqi. Following this fatwa, an Islamist website announced a \$10,000 reward for anyone who kills Najafi.⁵

The Rushdie and Najafi fatwas were based on Islamic apostasy laws. Rooted in Islamic jurisprudence and developed over centuries, apostasy laws are commonly accepted by Muslim jurists. Senior Muslim clerics have remained faithful to apostasy laws as they existed in the pre-modern era.⁶ The majority of Muslim jurists believe that a Muslim is not permitted to change his or her religion.⁷ Several acts such as denying the existence of God, the denial of a particular prophet, and the denial of one of the fundamental tenets of Islam may constitute apostasy.⁸

The Islamic Penal Code (IPC), which is Iran's criminal code, does not explicitly prohibit apostasy. Nevertheless, it states that in accordance with Article 167 of the Iranian Constitution, Shari'a law is to apply in instances where the IPC is silent regarding a particular crime. This provision enables the Iranian judiciary to prosecute apostasy cases even though there is no codified provision defining the crime of apostasy. With no exact definition, and without a uniform understanding of what actually constitutes apostasy, the legal framework within which apostasy cases are prosecuted is ambiguous. The crimes of "swearing at the Prophet" and "insulting sacred Islamic beliefs," which have been explicitly mentioned in

¹ A fatwa is a ruling of an Islamic religious scholar on a jurisprudential question. *See Fatwa*, ENCYCLOPAEDIA IRANICA (Jan. 24, 2012), <http://www.iranicaonline.org/articles/fatwa>.

² 1989 Ayatollah: *Sentences Author to Death*, BBC, http://news.bbc.co.uk/onthisday/hi/dates/stories/february/14/newsid_2541000/2541149.stm (last visited Aug. 8, 2014).

³ 21 ROUHOLLAH KHOMEINI, SAHIFE-YE IMAM 265 (The Inst. For Compilation and Publication of Imam Khomeini's Works trans., 2008), available at <http://statics.ml.imam-khomeini.ir/en/File/NewsAttachment/2014/1715-Sahifeh-ye%20Imam-Vol%2021.pdf>.

⁴ Thomas Erdbrink, *Rapper Faces Death Threats in Iran Over Song*, THE NEW YORK TIMES (May 14, 2012), http://www.nytimes.com/2012/05/15/world/middleeast/shanin-najafi-iranian-born-rapper-faces-death-threats-over-song.html?_r=0.

⁵ *Id.*

⁶ ABDULLAH SAEED & HASSAN SAEED, FREEDOM OF RELIGION, APOSTASY AND ISLAM I (2004).

⁷ *Id.* at 36.

⁸ *Id.*

the IPC, are also vague because it is not clear what statements qualify as offensive enough to justify a criminal charge.

The charge of apostasy has been brought against a wide range of individuals since the founding of the Islamic Republic. Christian converts, Bahá'ís, Muslims who hold different views from the conservative establishment, and individuals who have unconventional religious beliefs have been targeted by Iranian authorities. In some cases the death penalty has been carried out, while in other cases defendants have been sentenced to lengthy prison terms.

The laws and practices of the IRI regarding apostasy contravene Iran's obligations under international human rights law. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights guarantee freedom of thought, conscience and religion. In addition, they also protect the right to life, the right to be equal and free from discrimination before the law, and the right to only be charged with crimes that are clearly defined in the law. Apostasy laws violate the freedom of thought, conscience and religion by imposing punitive measures against individuals who change their religious beliefs or denounce Islam. Meanwhile, these laws do not apply equally to Iranian citizens because non-Muslims who become Muslims do not face any adverse consequences, and will, in fact, receive legal protections which they were previously denied. Finally, the IRI's apostasy laws are characterized by a significant degree of ambiguity and therefore violate international legal standards that call for clearly defined crimes.

This report first provides a brief background on Shari'a law and the development of Islamic jurisprudence regarding apostasy and follows with an analysis of Iran's laws on apostasy and related religious offenses. In the third section a number of apostasy cases are examined in more detail, and background information is provided to detail the context in which these apostasy cases were prosecuted. In the final section, this report explains how the IRI violates international human rights law by prosecuting and punishing individuals deemed to have become apostates.

1. Definition of Shari'a Law and the Crime of Apostasy in Islam

Shari'a is generally defined as "Islamic religious law."⁹ The vast majority of Iranians are followers of Twelver Shi'a Islam, and Shi'a Islam is Iran's official state religion.¹⁰ In Shi'a jurisprudence, Shari'a law derives its rulings from four sources: the Qur'an, *sunnah*, *ijma'* and *aql*. The first, and most important, is the Qur'an itself. Considered to be God's revelation, the Qur'an contains laws that have been incorporated into Shari'a law. The second source is *sunnah*, which can be understood as the collective actions of Prophet Mohammad, his son-in-law Ali, and eleven of Ali's descendants, known as Imams. *Sunnah* is based on oral traditions related from the life of Prophet Mohammad, Ali, and his eleven descendants. These oral traditions are referred to as *hadith*, and they constitute the basis for the majority of rulings in Shari'a law.¹¹ The third source is *aql*, which can be translated as "intellect" or "reason". Shi'a jurists have different views regarding *aql* and the degree to which it should be relied on as a source for resolving jurisprudential questions.¹² The fourth and final source of Islamic law is *ijma'*, which means the consensus of Islamic scholars.

It is worth noting that there are significant differences between Sunni and Shi'a interpretations of Shari'a law. Sunni jurisprudence differs from Shi'a jurisprudence in two important respects. First, Sunni jurists use *qiās* instead of *aql*. *Qiās* involves the process of legal analogy, in which old cases are used to solve new problems. The second important difference is that in Sunni jurisprudence, use of *hadith* is limited to the sayings and actions of Prophet Mohammad and it does not extend to his descendants.

Apostasy, or *irtidād*, is recognized as a major sin and a punishable crime in both Shi'a and Sunni jurisprudence. *Riddah*, the Arabic root word from which *irtidād* is derived, literally means "turning back."¹³ *Murtad*, the Arabic term for an apostate, means one who turns back.¹⁴

A charge of apostasy can be based on one's mere intention or belief, utterance, or action.¹⁵ In general, denying the fundamentals of Islam is considered as apostasy. But, there is some disagreement as to what concepts are considered Islamic fundamentals. While belief in the existence of God and the belief in the Prophet Mohammad are understood to be among the fundamentals, jurists have come to different conclusions regarding other Islamic precepts. For instance, Allāmiḥ Majlisī has stated that fundamentals of

⁹ SHARI'A 1 (Abbas Amanat & Frank Griffel eds., 2007).

¹⁰ QANŪNI ASĀSĪYI JUMHŪRĪYI ISLĀMĪYI IRĀN [THE CONSTITUTIONS OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980], art.12, available at http://www.iranchamber.com/government/laws/constitution_ch11.php.

¹¹ SHARI'A *supra* note 9, at 3.

¹² Siyyid Muḥammad Mūsā Muṭallibī & Hasan Jamshīdī, *Manzilati Dalīli Aql Dar Sīriyi Istīnbāṭīyi Fuqahāyi Shī'i*, 8 MAJALLIYI 'ILMĪ-PAZHŪHISHĪYI PAZHŪHISHHĀYI FIQHĪ 105, 106-107 (2012). Some jurists like Sheykh Tousi believed that *aql*, or human intellect, could resolve some jurisprudential questions on its own because human intellect can recognize whether an action is good or bad. *Id.* at 120. Muḥaqiqi Ḥilli was another jurist holding that *aql* was instrumental in understanding the meaning of divine revelation.

¹³ SAEED & SAEED, *supra* note 6, at 36.

¹⁴ *Id.*

¹⁵ Sayyid Muṣṭafā Muḥaqiqi Dāmād, *Irtidād in DA'IRATUL MA'ARIFI BUZURGI ISLĀMĪ* 443, available at <http://www.cgie.org.ir/fa/publication/entryview/8791>.

Islam are concepts or laws that are familiar to all Muslims except new converts.¹⁶ However, Moqaddas Ardabili has stated that any religious belief that has been accepted by a Muslim can be considered a fundamental belief, and its rejection by that person could result in his or her apostasy.¹⁷ It is very important to note that years before the Iranian Revolution, Ayatollah Khomeini held a different view regarding fundamentals of Islam. In *Al-Tahara*, which was written in 1954-58¹⁸, Ayatollah Khomeini stated that believing in God, Mohammad's prophethood, and "possibly" believing in the afterlife are all that is necessary for being considered a Muslim.¹⁹ He further stated that if a person believes in the above but does not believe in Islamic laws due to some doubts, that person is still a Muslim.

One of the key differences between Sunni and Shi'a beliefs raises another jurisprudential issue. For Shi'a Muslims, the infallibility of the Shi'a Imams is an established principle. Sunni Muslims, however, do not hold this view. Some senior Shi'a clerics such as Ayatollah Sadeq Rohani believe that denying the infallibility of the Shi'a Imams qualifies as apostasy.²⁰ Applying this view, a Shi'a Muslim who decides to become a Sunni could potentially be charged with apostasy. This view is not shared by all Shi'a jurists.²¹

Some jurists hold that even having doubts about Islamic principles could be grounds for apostasy.²² For instance, Ayatollah Mesbah Yazdi, an influential Iranian cleric, has stated that having doubts over the concept of *amr bi ma'ruf*, or commanding others to good deeds, could lead one to become an apostate because doubting this principle is tantamount to denying the essence of Islam.²³

As discussed in Section 2.1. *infra*, Iranian law neither explicitly criminalizes nor defines apostasy. Consequently, there is no uniform definition that can be used in apostasy cases.

1.1. Apostasy in the Qur'an

The Qur'an does not explicitly prescribe the death penalty for apostasy. A number of verses in the Qur'an, however, have been interpreted to mean that apostates should be killed. Verse 2:217 has often been interpreted as prescribing the death penalty for an apostate. This verse states, in part, "And if any of you turn back from their faith and die in unbelief, their works will bear no fruit in this life and in the hereafter; they will be companions of the fire and will abide therein."²⁴ Fakhreddin Razi, the renowned Sunni theologian (1149-1209), interpreted this verse as stating that an apostate should be killed. The operative

¹⁶ Alīrizā Ruhānī, *Ẓarūriāti Dīn*, HAWZAH.NET, <http://www.hawzah.net/fa/magazine/magart/4385/4400/29562> (last visited July 22, 2014). Muḥammad Baqir Majlisī (1627-1699 or 1700), also known as Allāmiḥ Majlisī, was an eminent Shi'a jurist and one of the most important hadith scholars of Shi'a Islam. Ḥilyat al-Mutaqqīn, one of his Persian manuscripts, is a collection of traditions on recommended customs and behavior. See *Majlesi, Moḥammad-Bāqer*, ENCYCLOPAEDIA IRANICA, (Feb. 4, 2011), <http://www.iranicaonline.org/articles/majlesi-mohammad-baqer>.

¹⁷ Rūhānī, *supra* note 16. Aḥmad B. Muḥammad Ardabili, also known as Moqaddas Ardabili, was a Shi'a jurist and theologian in the early Safavid period. His date of birth is unknown. He died in Najaf in 1585. See *Ardabīlī*, ENCYCLOPAEDIA IRANICA (Aug. 11, 2011), <http://www.iranicaonline.org/articles/ardabili-ahmad-b>.

¹⁸ *Kitāb al-Ṭahāra*, JAMARAN, http://www.jamaran.ir/fa/4968/جد_الطهارة_باب_امام_حديث_بيداري/كتاب_الطهارة_4 (last visited Aug. 8, 2014).

¹⁹ Hasan Yousefi Eshkevari, *Zātī Va 'Arazi Dīni Islām*, RADIO ZAMANEH (Apr. 1, 2013), http://www.radiozameh.com/56997#_ftn5.

²⁰ *Āyā Inkāri 'Iṣmati A'immihiyī Athār Az Maṣādīqi Irtidād Ast?*, SAYYED MOHAMMAD SADEGH ROHANI OFFICIAL WEBSITE, <http://www.rohani.ir/istefta-935.htm> (last visited July 22, 2014).

²¹ Muḥaqqiqi Dāmād, *supra* note 15 at 443.

²² Alī Muḥammadiān Kibrīā, *Shak Vā Shubhi Va Irtidād Az Dīdgāhi Mazāhibi Islāmī*, MAJALLIYI FIQH VA HUQŪQI ISLĀMĪ, no. 9, 2007, at 231, <http://www.ensani.ir/storage/Files/20101113130400-142.pdf>.

²³ *Āyatullāh Miṣbāḥ: Shak Dar Vuḥūbi Amri Bi Ma'rūf Bi Irtidād Mī'anjāmad*, Khabar Online (Aug. 4, 2010), <http://khabaronline.ir/detail/89595/Politics/parties>.

²⁴ Qur'an 2:217, (Abdullah Yusuf Ali trans. 1934), available at <http://www.islam101.com/quran/yusufAli/QURAN/2.htm>.

phrase is “their work will bear no fruit in this life.” As the contemporary Iranian cleric Ayatollah Mohammad Javad Fazel Lankarani explains, Razi held the view that all of the apostate’s good deeds are null and void.²⁵ Accordingly, an apostate’s life can be taken because his life is no longer of value. To support this view, Lankarani cites a *hadith* by Imam Sadeq, the sixth Shi’a Imam, who is reported to have said that protection of a person’s blood, marriage and inheritance are contingent on him having declared his faith in God and the Prophet Mohammad.²⁶ Therefore, an apostate who recants his belief in Islam could be considered to have relinquished his life, his marriage and his inheritance. Lankarani insists that the phrase “their work will bear no fruit in life” means that in addition to voiding all the apostate’s good deeds in the afterlife, a punishment in this world is also required by the Qur’an because an apostate’s life is no longer to be “respected.”²⁷

Ayatollah Lankarani also relies on another portion of verse 2:217 to make his argument. This verse also states, “Tumult²⁸ and oppression are worse than slaughter.” Given that murder is punishable by death, he argues, it is reasonable to assume that inciting dissent or disorder should also be punishable by death. Lankarani argues that apostasy is understood as a form of tumult or sedition, and as such, the Qur’an supports the death penalty for apostates.²⁹

Another verse from the Qur’an on which Ayatollah Lankarani relies to establish the death penalty for apostasy is verse 2:54: “And remember Moses said to his people: “O my people! Ye have indeed wronged yourselves by your worship of the calf: So turn (in repentance) to your Maker, and slay yourselves (the wrong-doers); that will be better for you in the sight of your Maker. Then He turned towards you (in forgiveness): For He is oft-returning, most merciful.” Ayatollah Lankarani argues that God commanded that Israelites who had turned away from God and become apostates should be killed. Although this verse involves Moses and the Israelites, Ayatollah Lankarani argues that based on the concept of *istiṣhāb*, a preexisting command that has not been superseded or voided still stands. Therefore, he argues, this verse supports the death penalty for apostates in Islam as well.³⁰

Verse 5:33 is yet another Qur’anic verse cited in support of the death penalty for apostasy. This verse states, “The punishment of those who wage war against Allah and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet

²⁵ Āyatullah Hāj Shiykh Muḥammad Javād Fāzili Lankarānī, *Pāsukhi Muḥammad Javādi Fāzili Lankarānī Bi I’ tirāz Bi Fatwāyi Tirur*, MOHSEN KADIVAR OFFICIAL WEBSITE (Dec. 13, 2011), <http://kadivar.com/?p=8979>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Yusuf Ali, whose English translation of the Qur’an is considered among the most authoritative, has used “tumult” to translate the Arabic word *fitnih*. *Fitnih* can also be translated as either “sedition” or “revolt.”

²⁹ Lankarānī, *supra* note 25.

³⁰ *Id.* *Istiṣhāb* is a principle in Islamic jurisprudence, and it refers to the situation in which a pre-existing legal state or rule is presumed to continue under new circumstances. For instance, when a person disappears, his or her belongings are not to be distributed among the heirs until the death of the disappeared person is ascertained or until a time after which one cannot reasonably assume that he or she is still alive. During this period, the presumption that the disappeared person is still alive relies on the pre-existing condition of him or her being alive. The term used to describe this pre-existing condition is *istiṣhāb*. See Asadullah Lutfī, *Asli Istiṣhāb Dar Fiqh Va Ḥuqūqi Muḏū’i*, 101 FAŞLNĀMIYI ḤUQŪQ 257 (2010).

from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in the hereafter.” Ayatollah Lankarani quotes Sheikh Tousi (996-1067), a prominent Shi’a jurist, as saying that this verse was revealed to the Prophet Mohammad regarding a tribe who had first become Muslim but then became apostates.³¹ Ayatollah Lankarani also looks to verses 48:16 and 3:85 in his argument for Qur’anic support for capital punishment in cases of apostasy.³²

Numerous Islamic scholars contend that the Qur’an does not support imposing the death penalty for apostasy. A treatise by Mohsen Kadivar³³ discusses apostasy and the death penalty in detail.³⁴ Verse 2:256 states, “Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and believes in Allah hath grasped the most trustworthy hand-hold, that never breaks. And Allah heareth and knoweth all things.” Kadivar argues that the enjoinder against compulsion in religion expressed in this verse means that individuals should be free in both accepting and leaving Islam.³⁵ Ayatollah Seyyed Hossein Sadr, a Shi’a cleric based in Iraq, has also stated that Verse 2:256 was revealed to the Prophet Mohammad regarding Muslims who had converted to Christianity, and that the Prophet Mohammad advised against forcing them to return to Islam.³⁶

Verses 10:99 and 11:28 are among other passages that Kadivar relies on to make his argument.³⁷ In addition, Kadivar points out that while several verses in the Qur’an declare that apostates will be punished in the afterlife, the Qur’an does not prescribe any punishment that should be carried out on earth.³⁸

1.2. Apostasy in Oral Traditions

It can be argued that without support from oral traditions, or *hadith*, there would be little basis for sentencing apostates to death on the Qur’an alone.³⁹ Numerous sayings attributed to the Prophet Mohammad and Shi’a Imams, however, have formed the foundation of Islamic jurisprudence on this issue for centuries.

One of the most cited *hadith* from Sunni sources regarding apostasy is a saying attributed to Prophet Mohammad, where he is quoted as saying, “Whoever changes his religion, kill him.”⁴⁰ Several versions of

³¹ Lankarānī, *supra* note 25.

³² Verse 48:16 states, “Say to the desert Arabs who lagged behind: “Ye shall be summoned (to fight) against a people given to vehement war: then shall ye fight, or they shall submit. Then if ye show obedience, Allah will grant you a goodly reward, but if ye turn back as ye did before, He will punish you with a grievous Penalty.” Verse 3:85 states, “If anyone desires a religion other than Islam [submission to Allah], never will it be accepted of him; and in the hereafter He will be in the ranks of those who have lost [All spiritual good].”

³³ Mohsen Kadivar is a dissident Iranian cleric and a visiting professor of Islamic studies at Duke University.

³⁴ MOHSEN KADIVAR, *Risāliyi Naqdi Mujāzāti Murtad Va Sāb ul-Nabī* (2011), *available at* <http://mkadivar.wpengine.com/wp-content/uploads/2012/02/Kadivar-Criticism-of-Punishment-for-Apostasy-and-Religious-Insulting.pdf>.

³⁵ *Id.* at 63.

³⁶ *Guftugū Bā Āyatullāh Siyyid Husayn Sadr*, DIN ONLINE (May 14, 2014, 7:29 PM), <http://www.dinonline.com/detail/News/3671>.

³⁷ Verse 10:99 states, “If it had been thy Lord’s will, they would all have believed,- all who are on earth! wilt thou then compel mankind, against their will, to believe!” Verse 11:28 states, “He said: “O my people! See ye if (it be that) I have a Clear Sign from my Lord, and that He hath sent Mercy unto me from His own presence, but that the Mercy hath been obscured from your sight? shall we compel you to accept it when ye are averse to it?”

³⁸ KADIVAR, *supra* note 34, at 68.

³⁹ Lankarānī, *supra* note 25.

⁴⁰ *Volume 9, Book 84, Number 57 Narrated by ‘Ikrima*, SAHIH-BUKHARI.COM, <http://www.sahihbukhari.com>.

another often cited *hadith* quote Prophet Mohammad as saying that the blood of a Muslim man cannot be spilled unless under three circumstances: if he commits apostasy, if he kills another person, or if he commits adultery.⁴¹

Shi'a jurists also rely on numerous *hadith* to reach a similar conclusion. An important *hadith* is from Imam Mohammad Baqer, the fifth Shi'a Imam, who defines an apostate as someone who repudiates Islam and denies that which has been revealed to the Prophet. According to this *hadith*, an apostate's repentance will not be accepted, and he must be put to death. As a consequence of his apostasy, his wife is also considered to be divorced from him, and his property will be distributed among his heirs.⁴² In another *hadith*, Imam Mousa Kazem, the seventh Shi'a Imam, states that a Muslim who converts to Christianity should be killed.⁴³ In yet another *hadith*, Imam Ja'far Sadeq, the sixth Shi'a Imam, is quoted as saying that a person who had claimed to be a prophet should be put to death.⁴⁴ In addition, according to three *hadith* attributed to Imam Sadeq, there are at least three instances in which Ali, the first Shi'a Imam and the fourth Caliph, killed individuals who had committed apostasy.⁴⁵

According to Kadivar, the oral traditions stating that apostates should be put to death are not reliable, and they should not be the basis for Islamic jurisprudence on the issue of apostasy.⁴⁶

1.3. Difference Between Murtad-e Fitri and Murtad-e Milli

Shi'a jurisprudence makes a distinction between an apostate who is born to Muslim parents (*murtad-i fitri*) and an apostate who is born to non-Muslim parents (*murtad-i milli*). According to jurists such as Ayatollah Khomeini, the repentance of apostates born to Muslim parents cannot be accepted. Therefore, such apostates are to be killed.⁴⁷ Even if only one of the parents is a Muslim at the time of conception, that person is considered to be a Muslim.⁴⁸ An apostate who is not born to Muslim parents is considered to be a *murtad-i milli*. Such an apostate will be given a chance to repent, and he is only to be executed if he does not repent.⁴⁹ Some jurists have held that a *murtad-e milli* should be given a three-day period to repent, and

com/Pages/Bukhari_9_84.php (last visited July 24, 2014). The full *hadith* states, "Some Zanadiqa (atheists) were brought to 'Ali and he burnt them. The news of this event, reached Ibn 'Abbas who said, 'If I had been in his place, I would not have burnt them, as Allah's Apostle forbade it, saying, 'Do not punish anybody with Allah's punishment (fire).' I would have killed them according to the statement of Allah's Apostle, 'Whoever changed his Islamic religion, then kill him.'"

⁴¹ 8 ABŪ BAKR AL-BIYHAQQĪ, SUNAN AL-KUBRĀ 337 (Dar al-Kotob al-Ilmiyah 3rd. ed, 2003) (n.d.), available at <https://archive.org/stream/snnkb/skb08#page/n335/mode/2up>. *Id.* at 338, available at

<https://archive.org/stream/snnkb/skb08#page/n337/mode/2up>.

⁴² 7 MUHAMMAD IBN YA'QŪB AL-KULIYŪNĪ, AL-KĀFĪ 256 (3rd. ed. 2009) (n.d.), available at

http://shiaonlinelibrary.com/الكافي-الشيخ-الكليبي-ج-7/الصفحة_1128/الكتب?pageno=256#top.

⁴³ *Id.* at 257, available at http://shiaonlinelibrary.com/الكافي-الشيخ-الكليبي-ج-7/الصفحة_207_1128/الكتب#top.

⁴⁴ *Id.*

⁴⁵ Lankarānī, *supra* note 25.

⁴⁶ KADIVAR, *supra* note 34, at 14.

⁴⁷ 4 ROUHOLLAH KHOMEINI, TAHRĪR AL-VASĪLA 255 (Sayyid Alī Rizā Naqavī, trans., 2001), available at <http://statics.ml.imamkhomeini.ir/en/File/NewsAttachment/2014/0000-tahrir%20j4-nA4.pdf>.

⁴⁸ 1 ROUHOLLAH KHOMEINI, TAHRĪR AL-VASĪLA 21 (Sayyid Alī Rizā Naqavī, trans., 2001), available at <http://statics.ml.imamkhomeini.ir/en/File/NewsAttachment/2014/0000-tahrir%20j1-nA4.pdf>.

⁴⁹ Muḥaqqiqi Dāmād, *supra* note 15, at 443.

he should be killed if he refuses to repent after three days.⁵⁰ In contrast, Sunni jurisprudence does not recognize any distinction between apostates born to Muslim parents and those born to non-Muslim parents.⁵¹ Therefore, Sunni jurists hold that all apostates should be given the opportunity to repent.⁵²

1.4. Differences in Penalties Imposed on Men and Women

Based on a number of oral traditions attributed to Shi'a Imams, Shi'a jurists believe that female apostates are not to be killed.⁵³ Ayatollah Khomeini states that a female apostate is to be imprisoned for life, beaten at times of prayer and afforded only a small amount of food. If she repents, she is to be set free.⁵⁴ Sunni jurists have differing opinions regarding female apostates. Some hold that female apostates can only be imprisoned, but others believe that female apostates should be put to death if they refrain from repenting.⁵⁵

1.5. Swearing at the Prophet in the Qur'an

The Qur'an does not specify a punishment for swearing at the Prophet.⁵⁶ The verses on this topic generally discuss consequences in the afterlife. For instance, 9:61 states,

Among them are men who molest the Prophet and say, "He is (all) ear." Say, "He listens to what is best for you: he believes in Allah, has faith in the Believers, and is a mercy to those of you who believe." But those who molest the Messenger will have a grievous penalty.

Verse 33:57 also pertains to swearing at the Prophet.⁵⁷ This verse states, "Those who annoy Allah and His Messenger - Allah has cursed them in this world and in the hereafter, and has prepared for them a humiliating Punishment." Hence, although swearing at the Prophet is decried as reprehensible, the Qur'an does not provide for specific punishment for such an act.

1.6. Swearing at the Prophet in Oral Traditions

There are a number of oral traditions that form the basis for issuing the death penalty in cases of swearing at the Prophet. One *hadith* attributed to Imam Sadeq quotes the Prophet Mohammad as saying that anyone who hears a person swear at the Prophet is obligated to kill him. Likewise, a ruler who is informed that a person has sworn at the Prophet is also obligated to kill him.⁵⁸

⁵⁰ 4 ROUHOLLAH KHOMEINI, *supra* note 47, at 255.

⁵¹ Muḥaqqiqi Dāmād, *supra* note 15, at 443.

⁵² *Id.*

⁵³ 28 AL-HURR AL-ĀMILĪ, WASĀ'IL AL-SHI'Ā 330-31 (Alulbayt Foundation 1993), available at <http://alkafeel.net/islamiclibrary/hadith/wasael-28/wasael-28/v16.html#183>. The treatment of female apostates under Shi'a jurisprudence is based on oral traditions attributed to Shi'a Imams. The subsection in Wasael al-Shi'a discussing female apostates contains six *hadith* attributed to three Shi'a Imams.

⁵⁴ 4 ROUHOLLAH KHOMEINI, *supra* note 47, at 255.

⁵⁵ Muḥaqqiqi Dāmād, *supra* note 15, at 4.

⁵⁶ KADIVAR, *supra* note 34, at 55.

⁵⁷ *Id.* at 56.

⁵⁸ *Id.* at 14.

Another *hadith* attributed to Imam Hossein, the third Shi'a Imam, states that a person who swears at the Prophet should be killed by the person who is the closest to him before the matter is referred to the local ruler. Mohsen Kadivar argues that this particular *hadith* is the only relatively reliable oral tradition prescribing the death penalty for swearing at the Prophet.⁵⁹ Kadivar notes, however, that this *hadith* is not proven to be authentic, and that *Shari'a* law cannot impose the death penalty for swearing at the Prophet based on only one such *hadith*.⁶⁰

2. Apostasy and Other Religious Crimes under Current Iranian Law

2.1. Apostasy

Despite the fact that Iranian courts have found many individuals guilty of apostasy, there is no provision in the IPC criminalizing the act. There are, however, several legal provisions that give judges the discretion to find defendants guilty of apostasy. Article 167 of Iran's Constitution declares:

The judge is bound to endeavor to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgment on the basis of authoritative Islamic sources and authentic fatwa. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgment.⁶¹

Accordingly, Article 220 of the IPC states,

Article 167 of the Constitution of the Islamic Republic of Iran applies regarding the *hudūd* not specified in this code.⁶²

Hudūd is the plural for *hadd*. Article 15 of the IPC defines *hadd* as a punishment for which its cause, category, quantity and quality are determined by Shari'a law. As such, Article 220 of the IPC effectively states that crimes punishable under Iranian law are not limited to the ones specified in the IPC. This provision leaves the door open for prosecutors and judges to bring charges and render convictions based on crimes not explicitly defined or even mentioned in any code. Article 8 of the Establishing Law for the Public and Revolutionary Courts also states that judges should rely on existing laws as well as Article 167

⁵⁹ *Id.* at 15.

⁶⁰ *Id.*

⁶¹ QANŪNI ASĀSĪYI JUMHŪRĪYI ISLĀMĪYI IRĀN [THE CONSTITUTIONS OF THE ISLAMIC REPUBLIC OF IRAN] 1358 [1980] art. 167, available at http://www.iranchamber.com/government/laws/constitution_ch11.php.

⁶² QĀNUNI MUJĀZĀTI ISLĀMĪ [ISLAMIC PENAL CODE] Tehran 1392 [2013], available at <http://www.iranhrc.org/english/humanrights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>.

of the Constitution in resolving disputes.⁶³ The principle that Shari'a law should be enforced when there is no codified law is also applicable in civil matters.⁶⁴

2.2. Swearing at the Prophet

Unlike apostasy, the crime of *Sabb-e Nabi*, or swearing at the Prophet, has been codified in the IPC. Articles 262 and 263 address this crime:

Article 262. Anyone who swears at or commits *qazf*⁶⁵ against the Great Prophet [of Islam] (peace be upon him) or any of the Great Prophets, shall be considered as *Sāb ul-nabi* [a person who swears at the Prophet], and shall be sentenced to the death penalty.

Note- Commission of *qazf* against, or swearing at, the [twelve] *Shi'ite* Imams (peace be upon them) or the Holy Fatima (peace be upon her) shall be regarded as *Sabb-e nabi*.

Article 263. When the accused of a *sabb-e nabi* (swearing at the Prophet) claims that his or her statements have been under coercion or mistake, or in a state of drunkenness, or anger or slip of the tongue, or without paying attention to the meaning of the words, or quoting someone else, then he or she shall not be considered as *Sāb ul-nabi* [a person who swears at the Prophet].

Note- When a *sabb-e nabi* (swearing at the Prophet) is committed in the state of drunkenness, or anger or quoting someone else, if it is considered to be an insult, the offender shall be sentenced to a ta'zir punishment of up to seventy-four lashes.⁶⁶

It is not precisely clear what constitutes insulting the Prophet, and arguably many statements could be deemed offensive.

⁶³ QĀNŪNĪ TASHKĪLĪ DĀDGĀHHĀYĪ 'UMŪMĪ VA INQILĀB [THE ESTABLISHING LAW FOR THE PUBLIC AND REVOLUTIONARY COURTS] Tehran 1373 [1994], art.18, available at <http://www.ghavanin.ir/detail.asp?id=7466>.

⁶⁴ *Id.*, art. 3. Article 3 states, "Judges are required to adjudicate disputes according to laws, and to issue the necessary verdicts or resolve conflicts. If laws are not complete or explicit, or they are contradictory, or if there is no law regarding the disputed issue, judges should issue their verdicts according to reliable Islamic sources, reputable fatwas, and legal principles that are not in conflict with Shari'a law. They cannot refrain from addressing the dispute and issuing a verdict with the excuse that laws are silent, incomplete, brief or contradictory. If they do, they are considered to be in dereliction of duty, and they will be accordingly punished.

⁶⁵ *Qazf* is defined as a false accusation of adultery or sodomy. Even accusing a dead person of committing adultery and sodomy could be the basis for a charge of *qazf*.

⁶⁶ QĀNUNĪ MUJĀZĀTI ISLĀMĪ [ISLAMIC PENAL CODE] Tehran 1392 [2013], arts. 262 & 263, available at <http://www.iranhrc.org/english/humanrights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>.



The “Oshin” Controversy

Ayatollah Khomeini’s reaction to an unexpected candid response in an interview broadcast on Iran’s state-run radio demonstrates the arbitrary nature of laws against defaming Islamic holy figures. In a live program aired on January 28, 1989, an interviewer asked a number of individuals who they thought was the appropriate role model for Iranian women. The program was aired on the birthday of Fatima, the Prophet Mohammad’s daughter. Interviewed individuals were expected to state that Fatima was the role model for women. One woman, however, unexpectedly answered that in her opinion Oshin (pictured), the lead character of a popular Japanese TV series, was the appropriate role model for Iranian women. She further stated that Fatima belonged to fourteen centuries ago, and that women needed a contemporary role model. The next day Ayatollah Khomeini wrote a sharply worded letter to Mohammad Hashemi, the Executive Manager of the Islamic Republic of Iran Broadcasting (IRIB), and demanded the punishment of the individuals responsible for the broadcast. Considering the woman’s remarks as insulting to Fatima, Ayatollah Khomeini wrote that if it is proven that the insult was intentional, the insulting individual must certainly be executed. No one was sentenced to death, but four IRIB employees were sentenced to four years of imprisonment and forty lashes. Ayatollah Khomeini eventually pardoned these individuals, but there are conflicting reports about the way in which these pardons took place.

2.3. Insulting Sacred Religious Values

Book Five of the IPC deals with *ta’zir* crimes. *Ta’zir* is defined as a class of punishment which cannot be classified under the categories of *hudūd*, *qisās* or *diya*, and which is imposed according to codified law in cases of some religious offenses or other violations of the law.⁶⁷ In cases of religious offenses, *ta’zir* is a punishment for an act which is religiously prohibited but for which no specific punishment has been set out in religious texts. Under Book Five of the IPC, insulting sacred Islamic beliefs is considered a punishable *ta’zir* crime. Article 513 states:

Anyone who insults the sacred values of Islam or any of the Great Prophets or [twelve] Shi’ite Imams or the Holy Fatima, if considered as *Sāb ul-nabi* [as having committed actions warranting the *hadd* punishment for insulting the Prophet], shall be executed; otherwise, they shall be sentenced to one to five years’ imprisonment.⁶⁸

⁶⁷ The concept of Qisas is at the core of the Islamic justice system, and it gives the family of a murdered individual, often the father, the opportunity to exact retribution on the perpetrator. In cases of intentional injury, the victim has the right to demand that the perpetrator suffer the same injury. Diya is the amount a victim or his or her family can receive under Islamic law as compensation.

⁶⁸ KITĀBI PANJUMI QĀNUNI MUJĀZĀTI ISLĀMĪ [BOOK FIVE OF THE ISLAMIC PENAL CODE] Tehran 1375 [1996], art. 513, available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republicof-iran-book-five.html>.

It should be noted that the very next Article deals with individuals who insult Ayatollah Khomeini, the late founder of the Islamic Republic, and Ayatollah Khamenei, the current Supreme Leader. Article 514 states:

Anyone who, by any means, insults Imam Khomeini, the founder of the Islamic Republic, and/or the Supreme Leader shall be sentenced to six months to two years' imprisonment.

Again, the text of these two Articles does not specify what types of utterances are considered to be insults. In an explanatory note, Majles, the Iranian parliament, attempted to clarify the issue. In this note, the Majles stated:

From the point of view of criminal law, insulting, swearing and the like involve using phrases that are explicit or obvious, or taking actions and performing acts which, considering the norms of the society, time, place, and the circumstances of the affected individuals, cause the humiliation of those persons. An insult does not materialize without explicit words.⁶⁹

The above explanation does not adequately address the question. There is no line drawn between mere criticism and an insult, for example. Moreover, the second sentence in the explanatory note seems to be in contradiction with the first sentence. While the first sentence states that certain actions could be classified as insults, the second sentence states that there must be explicit words for insult to materialize.

2.4. Evidentiary Standards for Religious Crimes

According to the IPC the evidentiary standard for *hudūd* crimes can be overcome in several ways. This section examines the evidentiary standards at play in the religious crimes outlined above.

2.4.1. Apostasy

Since the IPC is silent on the crime of apostasy, there is no explicit provision describing the manner in which a charge of apostasy may be proven. Nevertheless, Article 160 of the IPC mentions the different methods by which the commission of a crime may be proven. According to this article, confessions, the testimony of two male witnesses or the “knowledge of the judge” can each be the basis for a conviction.⁷⁰ Article 211 of the IPC defines the concept of the knowledge of the judge:

Knowledge of the judge is defined as a certainty resulting from manifest evidence in a matter brought before him. In cases where a judgment is based on the knowledge of the

⁶⁹ The Law Clarifying the Phrases “*Ihānat*,” “*Tuhīn*,” or “*Hatki Ḥurmat*” of Dec. 24 2000, available at <http://rc.majlis.ir/fa/law/show/93465>.

⁷⁰ QĀNUNI MUJĀZĀTI ISLĀMĪ [ISLAMIC PENAL CODE] Tehran 1392 [2013], art. 177, available at <http://www.iranhrdc.org/english/humanrights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. Article 177 of the IPC delineates the characteristics of an acceptable witness. This article states: An admissible witness under Shari’a rules shall meet the following requirements: (a) having passed puberty, (b) reason, (c) faith, (d) justice, (e) legitimacy of birth [born in wedlock], (f) not being a beneficiary to the claim, (g) not being in conflict with any or both of the parties, (h) not chosen beggary as his/her occupation (i) not being a vagrant.

Note 1- The judge shall confirm that the requirements mentioned in this article are met.

Note 2- Regarding the requirement of ‘not being in conflict’, if the witness’s testimony is in favor of the party s/he is in conflict with, it shall be accepted

judge [as the proof of the offense], he is obliged to stipulate in the judgment the manifest circumstantial and hearsay evidence that has been the source of his knowledge.⁷¹

Islamic jurists have different views regarding whether the knowledge of the judge is sufficient in legal disputes. The majority of jurists, including Ayatollah Khomeini, have stated that the knowledge of the judge is applicable in all circumstances.⁷² Some jurists hold that knowledge of the judge only applies when the “rights of God” are involved, while another view is that it should be limited to instances where the rights of the people are at issue.⁷³

2.4.2. Swearing at the Prophet

The evidentiary requirements for conviction on the charge swearing at the Prophet are the same as other crimes: either a confession from the accused, testimony from two male witnesses or the knowledge of the judge is sufficient to establish guilt.

2.4.3. Insulting Sacred Religious Values

The criteria for establishing the crime of insulting sacred religious values are the same as other crimes: either a confession from the accused, the testimony of two male witnesses or the knowledge of the judge is necessary.

2.5. Lack of Adequate Legal Sanction for Extra-judicial Killings of Apostates or Persons Accused of Swearing at the Prophet

The extra-judicial killing of apostates or individuals who have been shown to have sworn at the Prophet—or are simply alleged to have done so—is considered acceptable by many Islamic jurists. For instance, Ayatollah Khomeini states that a person who hears another person swear at the Prophet has a duty to kill him.⁷⁴ Ayatollah Mohammad Sadeq Rohani has also stated that anyone has the right to kill an apostate, and that the permission of a religious judge is not required.⁷⁵ Iranian law does not allow extra-judicial killing of an apostate or a person swearing at the Prophet. Nevertheless, Iranian law protects the person who kills an apostate or who kills a person who has sworn at the Prophet from capital punishment. Article 302(a) of the IPC states that if the murdered person has committed a capital offense, the perpetrator is not eligible for

⁷¹ QĀNUNI MUJĀZĀTI ISLĀMĪ [ISLAMIC PENAL CODE] Tehran 1392 [2013], art. 211, *available at* <http://www.iranhrdc.org/english/humanrights-documents/iranian-codes/100000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>. For an example of a case in which the knowledge of the judge was used to convict a defendant, see *Witness Statement of Ali Kantoori*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (May 5, 2010), <http://www.iranhrdc.org/english/english/publications/witness-testimony/3180-witness-statement-ali-kantoori.html>.

⁷² Sayyid Abulfazl Mūsaviān, *Qalamrui Hujūyati ‘Ilmi Qāzī Dar Fiqh*, 77 MAQĀLĀT VĀ BARRASĪHĀ 93, 94 (2005), *available at* http://sid.ir/Fa/VEWSSID/J_pdf/51613840301.pdf.

⁷³ *Id.* at 94.

⁷⁴ 4 KHOMEINI, *supra* note 47, at 165.

⁷⁵ *Mujrūi Hukmi Murtadī Fiṭrī Chih Kasīst*, SAYYED MOHAMMAD SADEGH ROHANI OFFICIAL WEBSITE (July 19, 2014), <http://www.rohani.ir/istefta-1119.htm> (last visited July 19, 2014). Ayatollah Mohammad Sadeq Rohani is a conservative Ayatollah, and according to his website, his first *Risālih* was published in 1961. He was under house arrest for 15 years for allegedly opposing Ayatollah Montazeri’s appointment as successor to Ayatollah Khomeini in 1985. See Husiyn Alī Muntazirī, *Intiqād Az Khud* 56 (2009), *available at* <http://www.amontazeri.com/farsi/Enteghad/Enteghad-Az-Khod.pdf>.

qisas, or the death penalty.⁷⁶ Instead, the perpetrator will be sentenced under the *ta'zir* category. The applicable article of the *ta'zir* code states,

Anyone who commits a murder and where there is no complainant, or there is a complainant but he has forgiven and withdrawn his application for *qisas*, or if *qisas* is not executed for any reason, if his act disrupts the public order and safety of the society or it is thought that it emboldens the offender or others [to commit murder again], the court shall sentence the offender to three to ten years' imprisonment.⁷⁷

As a result, a person who kills another person for apostasy or swearing at the Prophet may receive between three to ten years of imprisonment, provided that the conditions mentioned above are satisfied.

3. Notable Cases of Apostasy and Swearing at the Prophet in Iran

Since the Iranian Revolution of 1979 many individuals have been accused of apostasy. In the vast majority of cases, however, defendants were charged with apostasy along with other crimes related to national security such as waging war against God and the Prophet. Since these defendants were tried in summary trials and hastily executed, apostasy was not seriously discussed in the prosecution of these defendants. Rather, the charge of apostasy appeared among a litany of charges against them.

In 1988 Ayatollah Khomeini issued a fatwa that laid the groundwork for the massacre of thousands of political prisoners. This fatwa mentioned apostasy as one of the reasons for the execution of members of the Mojahedin-e Khalq Organization (MEK).⁷⁸ Members of Marxist opposition groups were also executed during the 1988 massacre. The leftist prisoners were asked whether they were Muslim, whether they prayed and whether they accepted the Islamic Republic.⁷⁹ Thousands of prisoners who answered in the negative were executed.⁸⁰ According to the memoirs of Ayatollah Montazeri, who was the designated successor to Ayatollah Khomeini at the time, 2,800 to 3,800 MEK members and about 500 nonreligious political prisoners were executed during the massacre.⁸¹ The 1988 massacre of political prisoners has been well documented and discussed in two previous IHRDC reports entitled *Deadly Fatwa: Iran's 1988 Prison Massacre* and *Speaking for the Dead: Survivor Accounts of Iran's 1988 Massacre*.⁸² These reports detail the IRI's serious human rights abuses against opposition groups.

⁷⁶ QĀNUNI MUJĀZĀTI ISLĀMĪ [ISLAMIC PENAL CODE] TEHRAN 1392 [2013], art. 302(a), available at <http://www.iranhrdc.org/english/humanrights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>.

⁷⁷ KITĀBI PANJUMI QĀNUNI MUJĀZĀTI ISLĀMĪ [BOOK FIVE OF THE ISLAMIC PENAL CODE] TEHRAN 1375 [1996], art. 612, available at <http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000351-islamic-penal-code-of-the-islamic-republic-of-iran-book-five.html>.

⁷⁸ See IRAN HUMAN RIGHTS DOCUMENTATION CENTER, DEADLY FATWA: IRAN'S 1988 PRISON MASSACRE, (2009), available at <http://www.iranhrdc.org/english/publications/reports/3158-deadly-fatwa-iran-s-1988-prison-massacre.html#.U4jRw3JdXyI>

⁷⁹ *Id.* at. 17.

⁸⁰ *Id.*

⁸¹ *Id.* Ayatollah Montazeri was the designated successor to Ayatollah Khomeini at the time of the massacre. He was removed from his position after he protested the prison massacre of 1988.

⁸² *Id.*; See also IRAN HUMAN RIGHTS DOCUMENTATION CENTER, SPEAKING FOR THE DEAD: SURVIVOR ACCOUNTS OF IRAN'S 1988 MASSACRE (2009), available at <http://www.iranhrdc.org/english/publications/reports/3160-speaking-for-the-dead-survivor-accounts-of-iran-s-1988-massacre.html>.

Apostasy had been politicized years earlier. In 1981, Ayatollah Khomeini accused the National Front of apostasy when party leaders opposed the implementation of the law of *qisas*.⁸³ The National Front protested the implementation of *qisas* in Iran's criminal code, and referred to the bill establishing *qisas* as inhuman. The National Front called for a protest to take place on June 15, 1981.⁸⁴ On that day Ayatollah Khomeini gave a speech and stated that members of the National Front were apostates:

*The "National Front" is condemned as an apostate group from today. Sure, the "National Front" can come up and declare that they had never made such statements. If they have to come on radio this afternoon and declare that the statement that referred to a definite Islamic decree as "inhuman" was not made by them, we will accept it.*⁸⁵

Although several National Front leaders were arrested for their political activity, none were charged with apostasy. While the MEK, the Marxist opposition groups and the National Front were accused of apostasy in broad terms, the jurisprudential aspect of apostasy was not the dominating factor in the Islamic Republic's campaign against them.

The cases in which the charge of apostasy has been leveled for religious purposes are less frequent. Although in religious cases the underlying motivations may have been political, the operative facts in these cases are very different from political cases. Moreover, in religious cases the application of Islamic jurisprudence plays a more pronounced role compared to political cases. This report will examine several religiously motivated apostasy cases to highlight the human rights violations particular to them.

3.1. Charges of Apostasy against Muslims

3.1.1. Hasan Yousefi Eshkevari

Hasan Yousefi Eshkevari was charged with apostasy after attending a controversial conference in Berlin in 2000.⁸⁶ Eshkevari's case is among the best-known apostasy cases in Iran due to his position as a cleric and the political aftermath of the Berlin conference. Born in 1949, Eshkevari attended the Islamic seminary in Qom for 15 years and became a cleric.⁸⁷ Eshkevari was a follower of Ayatollah Khomeini both politically and religiously, and he was involved in the Islamic revolutionary movement. During the Pahlavi era, he was arrested and detained for three months in 1975 and for another three months in 1976.⁸⁸ After the Iranian Revolution, Eshkevari was elected as a member of the first post-revolutionary Iranian parliament. He became disillusioned with the Islamic Republic following the violent crackdown on government opposition in the early 1980s.⁸⁹ He left politics after serving one term in the Iranian parliament, and he turned his attention to research and writing. He was an instructor of Islamic history and Islamic theology at

⁸³ Muḥammad Ḥusayn Nayyirī, *Qānūni Qisās*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER, <http://www.iranhrdc.org/persian/permalink/3500.html> (last visited July 25, 2014).

⁸⁴ *Id.*

⁸⁵ 14 ROUHOLLAH KHOMAYNI, SAHIFE-YE IMAM 292 (The Inst. For Compilation and Publication of Imam Khomeini's Works trans., 2008), available at <http://statics.ml.imam-khomeini.ir/en/File/NewsAttachment/2014/1708-Sahifeh-ye%20Imam-Vol%2014.pdf>.

⁸⁶ For an account of another individual arrested and imprisoned for his involvement in the Berlin conference, see *Witness Statement of Ali Afshari*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (2008), <http://www.iranhrdc.org/english/publications/witness-testimony/3175-witness-statement-ali-afshari.html#.U3Fo5oFdXyI>.

⁸⁷ IHRDC Interview with Hasan Yousefi Eshkevari (April 25, 2014) (on file with IHRDC).

⁸⁸ *Id.*

⁸⁹ *Eshkevari: 'Idāmhāyi Sāli 67 Tīri Khalāṣ Bar Bāvarhāyi Man Būd*, DEUTSCHE WELLE PERSIAN, <http://www.dw.de/a-17413073>.



Allameh Tabataba'i University from 1985 to 1989.⁹⁰ He was barred from teaching at Allameh Tabataba'i University after a speech he gave at a memorial service for Dr. Kazem Sami.⁹¹

Figure 1 Hasan Yousefi Eshkevari, a former member of the Iranian parliament, was convicted of apostasy and sentenced to death in 2000. His death sentence was eventually reversed, and he was released after serving four and a half years of imprisonment for other charges.

Eshkevari was aligned with the reform movement that gained power following the 1997 election of President Mohammad Khatami. In 1999, Eshkevari was invited to participate in a conference in Berlin on the future of Iran. The conference, which was called “Iran after General Elections,” was sponsored by the Heinrich Boll Foundation, and was scheduled to take place in April 2000 following parliamentary elections in which reformists were expected to win at the expense of conservatives.⁹² A number of Iranian intellectuals and activists including Ezatollah Sahabi, Mehrangiz Kar, Shahla Lahiji, Jamileh Kadivar, Akbar Ganji, Mahmoud Dolatabadi, and Ali Afshari, along with a number of German writers and journalists were among the participants in panel discussions. Eshkevari was the only cleric invited to the conference.

The conference was disrupted by a number of Iranian expatriates opposed to the Islamic Republic, and some panel discussions were cancelled.⁹³ Meanwhile, conservative newspapers in Iran such as Kayhan, Resalat and Jomhuri Eslami started running stories that were critical of the conference. Iran’s state-run television also joined in attacking the participants in this conference.⁹⁴ According to Eshkevari, these attacks were aimed at derailing President Khatami’s efforts and the reform movement.⁹⁵

Following their return to Iran, Iranian authorities arrested several participants in the Berlin conference. Eshkevari returned to Iran on August 5, 2000 after spending four months in Paris for medical treatment.⁹⁶ The day following his return, officials from the Special Court for the Clergy went to Eshkevari’s residence

⁹⁰ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87.

⁹¹ Kazem Sami was Iran’s first Minister of Health after the Iranian Revolution of 1979, and he was close to the Freedom Movement of Iran. He was assassinated in 1988 under unclear circumstances.

⁹² The Heinrich Boll Foundation is an organization based in Germany. It defines itself as “a catalyst for green visions and prospects, a think tank for policy reform, and an international network.” According to its website, the Heinrich Boll Foundation is “closely affiliated” with the German Green Party. See *An Introduction to Our Foundation*, HEINRICH BÖLL FOUNDATION (Jan. 17, 2013), <https://www.boell.de/en/foundation/organisation-16464.html>.

⁹³ On the second day of the conference, for example, a man and a woman took off their clothes while Eshkevari was reading his prepared remarks. See Hasan Yousefi Eshkevari, *Asnādi Dādgāhi Kunfirānsi Birlīn-Dībāchi*, YOUSEFIESHKEVARI.COM (April 10, 2011), <http://yousefieshkevari.com/?p=1771>.

⁹⁴ Hasan Yousefi Eshkevari, *Asnādi Dādgāhi Kunfirānsi Birlīn-Dībāchi*, YOUSEFIESHKEVARI.COM (April 10, 2011), <http://yousefieshkevari.com/?p=1771>.

⁹⁵ *Id.*

⁹⁶ *Id.*



Figure 2 Mohammad Ebrahim Nekounam, a prosecutor at the Special Court for the Clergy, played a pivotal role in prosecution and conviction of Eshkevari.

in Tehran to arrest him.⁹⁷ The agents entered his home after showing a warrant. Their search was focused on his library, and they collected a number of his books and writings.⁹⁸ Eshkevari was then taken to the Special Court for the Clergy, where he was arraigned.⁹⁹ He was subsequently taken to Ward 325 of Evin Prison. This ward is the designated ward for inmates who have been charged or sentenced by the Special Court for the Clergy.

Eshkevari's interrogation began on the next day.¹⁰⁰ He immediately requested an attorney, but his request was denied.¹⁰¹ He was first interrogated by assistant prosecutor Sotoudeh-Kalam. Then he was interrogated by Mohammad Ebrahim Nekounam, a prosecutor for the Special Court for the Clergy.¹⁰² At one point during the interrogation, Eshkevari suggested that a Muslim should have the right to reject Islam or to embrace another religion if he or she so chooses. According to Eshkevari, Nekounam was angered by this statement and said, "If it were up to me, I would execute you right here!"¹⁰³ Following this interrogation session, Nekounam ordered Eshkevari to be defrocked, despite the fact that Eshkevari had yet to be found guilty.¹⁰⁴

Eshkevari was interrogated for about a month.¹⁰⁵ His interrogation sessions would start at about 8:30 or 9 in the morning, and they continued until 12:30 or 1 in the afternoon. After a break for lunch and prayers, interrogations would resume from 2:30 or 3 pm and last until 5 or 6 pm.¹⁰⁶ According to Eshkevari's calculation, he was interrogated for approximately one hundred hours in total.¹⁰⁷ Although Eshkevari was not physically tortured, he was hospitalized one week into his detention due to psychological pressure.¹⁰⁸ After the conclusion of interrogations, Ali Razini, the head of the Special Court for the Clergy, told

⁹⁷ The Special Court for the Clergy was formed on May 24, 1979 by the order of Ayatollah Khomeini. According to Khomeini, "Although in Islam the punishment for criminals does not differ between classes and everyone is equal before the law, and criminals who committed crimes while wearing clerical attire must be punished; nonetheless, I am told that a number of opponents of Islam and the clergy are attempting to degrade the clergy in the name of purging and thereby opening the way for tyrants." See Majid Mohammadi, *Special Court for the Clergy: Raison d'être, Development, Structure and Function*, IRAN HUMAN RIGHTS DOCUMENTATION CENTER (Aug. 2010), http://www.iranhrdc.org/files/pdf_en/LegalCom/Special_Court_for_the_Clergy_854451794.pdf. Also, Article 1 of the procedural code governing the Special Court for the Clergy states that this court is established for "curbing the influence of deviant and delinquent individuals in the seminaries, preserving the reputation of the clergy, and punishing clerical offenders."

⁹⁸ Yousefi Eshkevari, *supra* note 94.

⁹⁹ *Id.*

¹⁰⁰ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87.

¹⁰¹ Hasan Yousefi Eshkevari, *Asnādi Dādghāhi Kunfirānsi Birlīn-Muqaddamih (Qismati Duvvum)*, YOUSEFIESHKEVARI.COM (Mar. 19, 2011), <http://yousefieshkevari.com/?p=1791>.

¹⁰² *Id.* Nekounam was elected as a member of the Iranian parliament in 2007. After serving one term, he was appointed as an advisor to Sadeq Larijani, the head of the Iranian judiciary.

¹⁰³ Yousefi Eshkevari, *supra* note 101.

¹⁰⁴ *Id.*

¹⁰⁵ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Eshkevari that he should select an attorney. Eshkevari stated that he wanted Mohsen Rahami to represent him.¹⁰⁹ Razini told Eshkevari that he could only pick an attorney from a list provided by the Special Court for the Clergy.¹¹⁰ When Eshkevari protested and indicated that he would rather represent himself, Razini stated that in such a high profile case it is necessary to have an attorney, even if that attorney is more like a “decorative” item.¹¹¹ Eventually a cleric named Abbas Barzegar was appointed as Eshkevari’s attorney by the court.¹¹²

Eshkevari was charged with several crimes including apostasy. The text of his indictment, which is dated September 13, 2000 and is published on his website, listed his charges as follows:

- A. Insulting sacred Islamic beliefs, denying and repudiating basic tenets of the enlightening religion of Islam and everlasting laws of the Qur’an through giving a speech against the Islamic veil and Islamic penal laws, giving interviews to foreign radio stations and denying the everlasting nature of Islamic and Qur’anic laws (addressed in the first discussion of the chapter apostasy in Imam Khomeini’s *Tahrīr al-Vasīlah* as well as in Article 513 of the Book of *Ta’zirat*).
- B. Waging war on God, sowing corruption on earth, and acting against national security through participation in and leadership of a group that acted with the slogan of changing the religious government, taking part in the shameful Berlin conference, giving speeches against the Islamic Republic, participating in the meeting of the People’s Fedaian Organization (majority branch) in Berlin, and other similar acts while abroad (related to Articles 186 and 498 of the Islamic Penal Code).
- C. Propaganda against the Islamic Republic and disseminating falsehoods through speeches, writing articles, and giving interviews to foreign publications and radio stations (related to Articles 500 and 698 of the Islamic Penal Code).
- D. Insulting and making false accusations against Imam Khomeini by attributing false statements to him (related to Articles 514 and 697 of the Islamic Penal Code).
- E. Seriously insulting the clergy by engaging in the above.¹¹³

The charge of apostasy mentioned in the first count of the indictment was not predicated on an explicit rejection of Islam by Eshkevari, nor was it based on him swearing at the Prophet. Rather, the claim in the indictment was that Eshkevari had become an apostate through rejecting and denying basic Islamic precepts. The indictment had clear political overtones. In explaining the apostasy charge, the indictment began by discussing Eshkevari’s political leanings:

Unfortunately, from the time he was a member of the parliament, Mr. Yousefi Eshkevari became entangled with liberals, the so-called “Freedom Movement” and Westoxified intellectuals. This problem and entanglement has been the root cause of his

¹⁰⁹ Only clerics could represent defendants charged in the Special Court for the Clergy. Muhsin Rahāmī, a cleric, had previously represented Abdulāh Nūrī, President Khatami’s Minister of Interior.

¹¹⁰ Yousefi Eshkevari, *supra* note 101.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

misguidedness. It is surprising that Imam Khomeini repeatedly warned about this issue but they [members of the Freedom Movement] did not pay any attention.¹¹⁴

Turning to Eshkevari's alleged repudiation of Islamic precepts, the indictment quoted Eshkevari as saying that virtually all Islamic laws are "social laws," and, as such, they are subject to change, even if they have been mentioned in the Qur'an.¹¹⁵ In particular, Eshkevari had allegedly included "eternal" Islamic laws such as the veiling of women, the amputation of a thief's hand, judgeship of women and inheritance laws among provisions that could be changed. The indictment quoted Eshkevari as saying that Islamic laws revealed to Prophet Mohammad were not meant to be eternal, but that they were revealed to solve a particular issue at the time.¹¹⁶ "If these [laws] are mutable, what remains of Islam, which, according to the Qur'an's text, it was supposed to be the most perfect religion, and its permissible and prohibited acts were supposed to be immutable until the Judgment Day? Is this not denying religious laws?"¹¹⁷



Figure 4 Eshkevari's participation in the Berlin conference in April 2000 was the basis for his arrest after he returned to Iran. Second from the left at the table, Eshkevari can be seen participating in a panel discussion in the Berlin conference. Source: BBC Persian.

Eshkevari was not notified of his trial date. Rather, on a day in which he was brought to the court to visit his family, he was informed that his trial was to take place right away.¹¹⁸ Despite Eshkevari's protests, the trial went ahead. Eshkevari's attorney convinced him to take part in the trial because he believed abstaining in protest would not be beneficial to his case.¹¹⁹ Eshkevari's trial was not open to the public, and even his relatives were not allowed to observe the proceedings.¹²⁰

Defending the apostasy charge in his trial before Judge Mohammad Salimi, Eshkevari stated that he had not repudiated Islamic laws. Rather, he argued, he had only made the point that Islamic laws could be viewed as temporary solutions and not immutable dictates governing society.¹²¹ Citing examples from Islamic history and even that of the Islamic Republic itself, Eshkevari maintained that he had not said anything new.¹²² In particular, Eshkevari argued that the concept of *Velayat-e Faqih*, or the Guardianship of the Jurist, relies on the same principle because it allows the Islamic state to suspend Islamic laws for a

¹¹⁴ Hasan Yousefi Eshkevari, *Asnādi Dādghāhi Kunfirānsi Birlīn-Muqaddami (Qismati Sivvum)*, YOUSEFIESHKEVARI.COM (Apr. 25, 2011), <http://yousefieshkevari.com/?p=1799>.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Yousefi Eshkevari, *supra* note 101.

¹¹⁹ *Id.*

¹²⁰ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87. Article 165 of the Iranian Constitution states, "Trials are to be held openly and members of the public may attend without any restriction; unless the court determines that an open trial would be detrimental to public morality or discipline, or if in case of private disputes, both the parties request not to hold an open hearing." Despite this constitutional guarantee, the right to public trial is routinely violated in Iran.

¹²¹ Hasan Yousefi Eshkevari, *Asnādi Dādghāhi Kunfirānsi Birlīn-Lāyihiyi Defā' Az Ittihāmāti Kiyfarkhāst*, YOUSEFIESHKEVARI.COM, <http://yousefieshkevari.com/?p=1816>.

¹²² *Id.*

superseding reason.¹²³ The second and final session of Eshkevari's trial was held on October 15, 2000, and Eshkevari repeated his arguments.¹²⁴

On October 18, 2000, while Eshkevari was in prison, he saw the news of his conviction on state-run television.¹²⁵ Appearing in a press conference, the Attorney General at the time, Gholamhossein Mohseni-Ejei stated that Eshkevari's sentence had been issued, but he indicated that he disagreed with the court's findings on the first two counts. He refused, however, to reveal what the court had ruled.¹²⁶

On November 21, 2000 Eshkevari was taken to the prosecutor's office at the Special Court for the Clergy, and he was informed that his verdict was issued. Nekounam told Eshkevari that Judge Salimi had sentenced Eshkevari to death, but this sentence would not be carried out because Attorney General Mohseni-Ejei was opposed to this sentence.¹²⁷ Eshkevari was found guilty on all charges except the fourth charge, which involved insulting Ayatollah Khomeini.¹²⁸ Accordingly, he was sentenced to death and two years of imprisonment, and he was permanently defrocked.¹²⁹

Eshkevari filed an appeal to the Special Court for the Clergy's appellate court.¹³⁰ The appeal process took approximately two years, during which Eshkevari remained in prison. After two years, the appeals court quashed Eshkevari's conviction and ordered a new trial.¹³¹ In the new trial, which was held in the summer of 2002, the charges of apostasy, waging war against God, and sowing corruption on earth were dropped.¹³² While no official reason was given for dropping the charges, Eshkevari states that Supreme Leader Khamenei had been opposed to his death sentence.¹³³

Eshkevari was, nevertheless, found guilty of insulting sacred Islamic beliefs on the basis of questioning whether the veil could be compulsory.¹³⁴ Eshkevari was sentenced to four years of imprisonment for this charge. In addition, he was sentenced to two years of imprisonment for disseminating falsehoods and one year of imprisonment for participating in the Berlin conference.¹³⁵ Eshkevari was eventually released on February 6, 2005 after serving four and a half years of his sentence, in accordance with Article 38 of the previous Islamic Penal Code. This article permitted the provisional release of prisoners after serving two thirds of their sentences.¹³⁶ Eshkevari left Iran prior to the disputed 2009 presidential election, and he supported the post-election protest known as the Green Movement.¹³⁷

¹²³ *Id.* Eshkevari also mentioned the Expediency Council as an example of an institution within the Islamic Republic that can overrule Islamic laws. According to the Iranian Constitution, when the Guardian Council finds a law passed by the parliament to be in conflict with the Iranian Constitution or Islam, the Expediency Council could act as a final arbiter, and is empowered to pass laws which have been deemed inconsistent with Islam.

¹²⁴ Hasan Yousefi Eshkevari, *Asnādi Dādgāhi Kunfirānsi Birlīn-Hukmi Dādgāhi Badvī*, YOUSEFIESHKEVARI.COM, <http://yousefieshkevari.com/?p=1824>.

¹²⁵ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87. Prisoners in many Iranian prisons such as Evin and Rajaei Shahr have access to Iran's state-run television programming. There is no access to television when a prisoner is in a solitary ward and undergoing interrogation.

¹²⁶ *Id.*

¹²⁷ Yousefi Eshkevari, *supra* note 124.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Hasan Yūsifī Ishkivarī Āzād Shud*, BBC PERSIAN (Feb. 6, 2005, 03:21 PM), http://www.bbc.co.uk/persian/iran/story/2005/02/050206_a_eshkevari.shtml.

¹³⁶ *Id.*

¹³⁷ IHRDC Interview with Hasan Yousefi Eshkevari, *supra* note 87.

3.1.2. Hashem Aghajari

On June 19, 2002, Hashem Aghajari, a professor at Tarbiat Modares University and an amputee veteran of the Iran-Iraq War, gave a controversial speech at Hamedan's Teachers' House. His speech marked the 25th anniversary of Ali Shari'ati's death. Ali Shari'ati, a sociologist and prominent Islamic thinker, had advocated for a new interpretation of Islam. In his speech, Aghajari discussed similar themes and talked about the need for an "Islamic Protestantism." Aghajari stated,

One of the things Shari'ati did...was to separate essential Islam from historical Islam. He said that many things that official and traditional religious authorities say in the name of Islam are not part of the essence of Islam, but rather a part of historical Islam...The works of Allāmiḥ Majlisi, his *Hilyat al-Muttaqqīn* are for Muslims who lived 300 or 400 years ago¹³⁸...The understandings and conclusions of clerics in past eras are not related to Islam...Who has made it a rule that the prayer imam must be a cleric?...Shari'ati said, 'We should not look at the Imams or the Prophet as super-human beings...Shari'ati said that the relationship between religious scholars and the people is one of a teacher and a student, not one of a leader and a follower and not one of an emulator and a person to be emulated. Are the people monkeys who are supposed to emulate someone else?... Islamic Protestantism is an ongoing process, a process which we continuously need.

A number of individuals attending the speech were outraged by Aghajari's remarks, and they disrupted the event. Aghajari could not finish his speech and had to leave the auditorium. Aghajari's speech and his subsequent sentencing sparked a political firestorm in the Islamic Republic's political and religious establishment. Ayatollah Makarem Shirazi, for instance, said,

I do not know why political groups do not distance themselves from individuals who offend [Islam]. Shi'a clergy, religious seminaries and government officials who come from the seminaries have always been a barrier against exploitative powers. There has been an illogical and savage attack against the clergy and religious seminaries. They are in complete harmony with the news that comes from the West. Their main goal is to distance the people from the clergy through false arguments and sophistry, so that they can easily reach their evil goals and gain influence over Islamic Iran. They say, 'Why should people emulate [clerics] in matters of religious law, emulation is what [monkeys] do.'

Condemnation of Aghajari's statement was not limited to hardline conservatives. Even reformist figures such as President Khatami and Majles Speaker Mehdi Karroubi criticized Aghajari.¹³⁹

¹³⁸ *Hilyat Al-Muttaqqīn*, which is a Persian work of Allāmiḥ Majlisi, is a collection of traditions on recommended customs and behavior. See *Hilyat Al-Mottaqin*, ENCYCLOPAEDIA IRANICA (Mar. 22, 2012), <http://www.iranicaonline.org/articles/helyat-al-mottaqin>.

¹³⁹ *Matni Kāmili Ra'yi Dādgāhi Umūmīyi Tihrān Dar Khusūsi Parvandiyyi Muttaham Hāshim Āghājāi*, FARS NEWS AGENCY (July 23, 2004, 07:18 PM), <http://www.farsnews.com/newstext.php?nn=8305020109>. In a speech in Ardabil, President Khatami said, "One can expect the enemies to weaken and, if possible, destroy the clergy and the sources of emulation. But why weaken the clergy in the name of enlightenment and reform? A true intellectual is one who rises to strengthen the Islamic Republic and the institution of clergy." Majles Speaker Mehdi Karroubi said, "[Shari'ati] definitely approves and praises emulation. He [Shari'ati] admires the religious seminaries with the best of words. It is not right for you to dishonor him."



Figure 5 Hashem Aghajari, an amputee war veteran and a university professor, was convicted of apostasy and sentenced to death after giving a speech in Hamedan in 2002. He was eventually released in 2004

On July 1, 2002 Aghajari was summoned for questioning at Hamedan. Aghajari did not appear in court, and he requested a change of venue to Tehran.¹⁴⁰ This request was denied. Aghajari was arrested on August 8, 2002.¹⁴¹

Later, during his third trial, Aghajari stated that he had spent about ten months in solitary confinement after his arrest. He also claimed that at nights a person who was sentenced to death for drug offenses was sent to his cell so that it could be claimed that he was not held in solitary confinement.¹⁴² A number of families of individuals killed in the Iran-Iraq War as well as the Mo'talefeh Party joined the criminal complaint against Aghajari.¹⁴³ He faced a long list of charges in the case brought against him at Branch 14 of the Hamedan General Court:

1. Insulting the righteous religion of Islam and comparing it to misguided Christianity and referring to Islam as outdated and backward, considering the teachings of the holy religion of Islam as dark and out of date, stating that there is a need to change the guiding religion of Islam through Islamic Protestantism, denying Islam's basic principles, ridiculing the enlightened laws of Islam such as performing Islamic marriage, repudiating emulation of just jurists and comparing it to the act of monkeys, despite the fact that it (the principle that the jurists' fatwa is binding and it is necessary to follow them) is among the fundamentals of all Islamic sects, and denying Islam in general.
2. Insulting holy Imams and denying their divine station.
3. Insulting Islamic jurists and Shi'a senior clerical establishment and the masses of followers of the great senior clerics
4. Disrupting public order in Hamedan and creating tension across the entire country.¹⁴⁴

¹⁴⁰ *Tuz̄ihāti Dād̄gustariyi Ustāni Hamidān Dar Muridi Ravandi Residigī Bi Ittihāmāti Āghāairī*, ISNA (July 6, 2002, 04:01 PM), <http://isna.ir/fa/news/8104-03249>.

¹⁴¹ *Matni Kāmili Ra'yi Dād̄gāhi Umūmīyi Tihrān Dar Khusūsi Parvandiyei Muttaham Hāshim Āghājāi*, *supra* note 139.

¹⁴² Footnote 142: *Āghāzi Muḥakimiyei Alanī Hāshimi Āghājārī*, ETTELAAT.NET, http://ettelaat.net/04-07/a_g_e_g_m.htm (last visited July 25, 2014).

¹⁴³ *Id.* Mo'talefeh Party, which is a conservative political organization known to be close to the traditional merchant class, traces its roots to 1962. According to its website, Mo'talefeh was founded on the recommendation of Ayatollah Khomeini. Mo'talefeh has never controlled any branch of the Iranian government.

¹⁴⁴ *Matni Kāmili Dād̄nāmiyei Sayyid Hāshimi Āghājārī/1*, ISNA (Nov. 9, 2002, 07:19 PM), <http://www.isna.ir/fa/news/8108-05128/> - حقوقی-متن-کامل-دادنامه-ی-سید-هاشم-آعاجری-.

On November 7, 2002 reports emerged indicating that the court has found Aghajari guilty of apostasy and has sentenced him to death.¹⁴⁵ The court opinion referred to Aghajari as “more Marxist than Marx” because he had referred to religion as not only an “opium for the masses,” but also an “opium for the governments.”¹⁴⁶ The court quoted Aghajari as saying that all religious teachings taught by traditional and official institutions are old, dark and antiquated, and that such teachings should be criticized and thrown away.¹⁴⁷ The court concluded that making these statements was tantamount to repudiation of all religious laws and basic religious understandings.¹⁴⁸

According to Saleh Nikbakht, Aghajari’s attorney, the trial lasted about 35 hours. During the trial Aghajari had reportedly stated that he never opposed Islam and he had merely criticized some of the views held by clerics. In addition, Aghajari had stated that he believes in all Islamic laws, and that he considers informed emulation the responsibility of all Muslims.¹⁴⁹

The court did not accept Aghajari’s defenses. Accordingly, the court sentenced Aghajari to death based on Article 513 of the IPC. On the second charge, the court found Aghajari’s statements about Shi’a Imams to be insults, and sentenced him to five years of imprisonment and exile. Moreover, the court barred Aghajari from teaching for ten years after his release.¹⁵⁰ The court also found Aghajari guilty of insulting Islamic jurists and individuals emulating them. The court sentenced Aghajari to one year of imprisonment, exile, and 74 lashes for this charge. Aghajari was convicted of the fourth charge as well, and he was sentenced to two years of imprisonment and exile for disrupting public order.¹⁵¹ Overall, Aghajari was sentenced to death, eight years of imprisonment and exile, 74 lashes, and a ten year prohibition from teaching.

This sentence was condemned by many individuals and political organizations, particularly by reformist politicians and student groups.¹⁵² Even conservative student groups such as the Shiraz branch of the Office for Strengthening Unity¹⁵³ and several university Basij offices condemned the death sentence.¹⁵⁴ A number of professors at Tarbiat Modares University resigned in protest.¹⁵⁵

¹⁴⁵ *Hāshimi Āghājārī Bi I‘dām, 8 Sāl Habs, 74 Żarbi Shallāq Va 10 Sāl Maħrūmīyat Az Tadrīs Maħkūm Shud*, ISNA, (Nov. 7, 2002), <http://www.isna.ir/fa/news/8108-04519>.

¹⁴⁶ *Matni Kāmili Dādnāmiyi Sayyid Hāshimi Āghājārī /2/*, ISNA (Nov. 9, 2002, 07:38 PM), <http://www.isna.ir/fa/news/8108-05124>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Jalasiyi Maṭbu‘ātīyi “Tashrīhi Ākharīn Vaz‘ītati Parvandiyyi Hāshimi Āghājārī /2/*, ISNA (Nov. 13, 2002, 02:29 PM), <http://www.isna.ir/fa/news/8108-06426>.

¹⁵⁰ Since Aghajari was sentenced to death on the first charge, the additional sentences were only a formality at this point.

¹⁵¹ *Matni Kāmili Dādnāmiyi Sayyid Hāshimi Āghājārī /2/*, *supra* note 146.

¹⁵² In a December 2013 interview, Aghajari stated that were it not for student protests he would have been executed. See Amīr Kalhur & Muhsin Āzmūdīh, *Dānishjūyān Man Rā Nijāt Dādand*, ETEMAAD (Dec. 16, 2013), <http://www.etemaad.ir/Released/1392-09-25/345.htm#261378>.

¹⁵³ *Bayānīhiyī Daftari Tahkīmi Vahdat (Muntakhabi Shīraz) Darbāriyyi Hukmi Badvī Dādgāhi Āghājārī*, ISNA (Nov. 8, 2002, 01:21 PM), <http://isna.ir/fa/news/8108-04645>.

¹⁵⁴ *Darbāriyyi Hukmi Āghājārī: Basījhāyi Dānishjūyī Ti‘dādī Az Dānishgāhhāyi Tīhrān Bi Raīsī Quvviyyi Qazāiyyi Nāmih Nivishtand*, ISNA (Nov. 9, 2002, 05:58 PM), <http://www.isna.ir/fa/news/8108-05106>.

¹⁵⁵ *Dar I‘tirāz Bi Hukmi Āghājārī; Jam‘ī Az Mudīrāni Gurūhhāyi ‘Ilmīyi Dānishgāhi Tarbiāti Mudarris, Isti‘fā Kardand*, ISNA (Nov. 10, 2012, 05:51 PM), <http://www.isna.ir/fa/news/8108-05446>.



Figure 6 Aghajari's death sentence was met with widespread condemnation. University students held numerous rallies in support of Aghajari. In a 2013 interview, Aghajari credited student protests with saving his life.

Branch 27 of Iran's Supreme Court reversed and remanded the verdict.¹⁵⁶ On remand, the court defined apostasy as "cutting off one's relation with Islam by a believer through an act...or a statement that is uttered through enmity, ridicule or belief against Islam."¹⁵⁷ Accordingly, the court sentenced Aghajari to death for the second time in early May 2004.¹⁵⁸ On May 15, 2004, the Iranian Students' News Agency (ISNA) reported that Supreme Leader Khamenei had asked the judiciary to resolve Mr. Aghajari's case as soon as possible.¹⁵⁹ This report also indicated that Ayatollah Khamenei was very disappointed in the prolonged appeal process.¹⁶⁰ The judiciary denied that the Supreme Leader had intervened in the case, but ISNA reiterated that it fully stood behind its story.¹⁶¹ On June 1, 2004 the spokesperson for the Iranian judiciary stated that the Supreme Court has overturned the death sentence.¹⁶²

In a media interview conducted in 2008, several years after the resolution of the case, Ayatollah Mohammad Sajjadi Ataabadi—a Supreme Court judge who ruled on the Aghajari case—stated that the Supreme Court was under pressure by hardliners to uphold the death penalty.¹⁶³ For instance, he said, some hardliners had threatened to burn a mosque.¹⁶⁴ Nevertheless, he stated, there were serious legal flaws in the opinion that had sentenced Aghajari to death. Ayatollah Sajjadi Ataabadi indicated that the Supreme Court had written to the Supreme Leader regarding the case, and that the Supreme Leader had instructed them to

¹⁵⁶ *Nigāhī Guzarā Bi Ravandi Parvandihiyī Āghājārī*, ISNA (July 23, 2004, 01:49 PM), <http://www.isna.ir/fa/news/8305-00236>.

¹⁵⁷ Hiydar Manşūrī, *Hukmi Dādghāhi Avvalīyī Hāshimi Āghājārī Mabnī Bar Irtidād*, MABĀHISI HŪQŪQI (Oct. 2, 2011, 6:40 PM), <http://hoghough82.blogfa.com/post-104.aspx>.

¹⁵⁸ *Ta'īdi Hukmi I'dāmi Āghājārī*, BBC PERSIAN (May 3, 2004, 06:45 PM),

http://www.bbc.co.uk/persian/iran/story/2004/05/040503_si_aghajarideathsentence.shtml.

¹⁵⁹ *Rahbarī Inqilāb Khāhāni Tajdīdi Naẓar Dar Parvandihiyī Āqājārī Shudand*, ISNA (May 15, 2004, 07:49 PM), <http://www.isna.ir/fa/news/8302-11694>.

¹⁶⁰ *Id.*

¹⁶¹ *Dar Piyyi Izhārāti Rayīsi Muhtarami Quvviyī Qazāyīh Dar Muridi Parvandihiyī Āqājārī; Isna Bar Şihhati Juz' Bi Juz'i Khabari Shanbih Shabi Khud Ta'kid Mikunad*, ISNA (May 17, 2004, 19:27 PM), <http://isna.ir/fa/news/8302-12683>.

¹⁶² *Hukmi I'dāmi Āqājārī Naqz Shud*, ISNA (June 1, 2004, 09:31 AM), <http://isna.ir/fa/news/8303-05235>.

¹⁶³ *Āyatullāh Sajjādī: Bi Laghvi Hukmi I'dāmi Āghājārī Iftikhār Mikunam*, FARARU (Mar. 11, 2008, 01:10 PM), <http://fararu.com/fa/news/9085>.

¹⁶⁴ *Id.*

act according to Islamic law.¹⁶⁵ Ayatollah Sajjadi Ataabadi further stated that he is proud that the Supreme Court did not bow to pressure and did not confirm the death sentence.¹⁶⁶

After reversing the decision a second time, the Supreme Court remanded the case to Branch 1083 of Tehran's General Court.

The Tehran General Prosecutor's Office, which was now in charge of prosecuting the case against Aghajari, did not bring charges involving apostasy and insulting the Prophet, and limited the charges to the lesser offense of insulting sacred beliefs.¹⁶⁷ Although the more serious charges were dropped, the court discussed the matter in its opinion and stated that Aghajari was not guilty of apostasy and insulting the Prophet. Accepting Aghajari's contention that he had not denied the principles of Islam and that he had not intended to insult the Prophet or Imams, the court stated there is no contrary evidence upon which the charges of apostasy and insulting the Prophet could stand. The court, however, found Aghajari guilty of the charge of insulting sacred beliefs. Aghajari was sentenced to five years of imprisonment, two of which were suspended for five years.¹⁶⁸ Aghajari was released on July 31, 2004.¹⁶⁹

3.1.3. Seyed Ali Gharabat

According to Mashregh News, a conservative website, Seyed Ali Gharabat was executed on January 26, 2011 in Karoun Prison at Ahvaz.¹⁷⁰ He was reportedly arrested at Susangerd and was charged with apostasy and encouraging prostitution.¹⁷¹ The nature of Gharabat's activities and religious claims are not clear.



Figure 7 Seyed Ali Gharabat, a former commander in the Islamic Revolutionary Guard Corps, was convicted of apostasy and executed in 2011. According to Iranian media, Gharabat had claimed to be God.

According to Mashregh News, Gharabat had claimed to be God.¹⁷² In an August 28, 2010 report entitled "Birthday Party of a Person Claiming to be God," Mashregh News reported that a number of people in Khuzestan Province had accepted Gharabat's claim and that some of them had traveled to other Persian Gulf countries to spread Gharabat's message. This report stated that Gharabat had been arrested and was serving his prison sentence.¹⁷³ This report did not mention that Gharabat was facing the death penalty.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Āghāzi Muhakimiyi Alanū Hāshimi Āghājarī, supra note 142.*

¹⁶⁸ *Matni Kāmili Ra'yi Dādgāhi Umūmīyi Tihrān Dar Khusūsi Parvandiyyi Muttaham Hāshim Āghājāi, supra note 139.*

¹⁶⁹ Ali Akbar Dareini, *Iranian Professor Freed From Jail*, THE GUARDIAN (Aug. 2, 2004, 05:12 AM),

<http://www.theguardian.com/world/2004/aug/02/highereducation.internationaleducationnews>.

¹⁷⁰ According to other sources Gharabat's first name was Abdolreza. See e.g., *Durūghquyī Ki Iddi'āyi Khudāyī Dāsht I'dām Shud*, ALEF (Jan. 31, 2011, 05:23 PM), <http://alef.ir/vdcaemno.49nyw15kk4.html?9wml>.

¹⁷¹ *Khudāyi Kachal Dar Khūzistān I'dām Shud*, MASHREGH (Jan. 31, 2011, 01:15 PM),

<http://www.mashreghnews.ir/fa/news/27309>.

¹⁷² *Jashni Tavalludi Yik Mudda'iyi Khudāyī Dar Khūzistān*, MASHREGH (Aug. 28, 2010, 02:03 PM),

<http://www.mashreghnews.ir/NSite/FullStory/News/?Id=4744>.

¹⁷³ *Id.*

Mashregh News also published a video of Gharabat's birthday celebration. A part of this seven-minute video shows a number of men and women prostrating in front of Gharabat while another person recites a prayer in Arabic.¹⁷⁴ According to Mashregh News, this video was shared via Bluetooth wireless technology in some regions in Khuzestan Province. Mashregh News also stated that Gharabat did not talk very much so that his lack of knowledge would not be revealed.¹⁷⁵

According to Al-Arabiya, Gharabat was a senior IRGC commander during the Iran-Iraq War, and his sentence was issued by the Special Court for the Clergy.¹⁷⁶ This claim, however, is not consistent with Fars News Agency's report, which stated the Ahvaz Islamic Revolutionary Court sentenced Gharabat.¹⁷⁷

According to a family member quoted in the Al-Arabiya report, Gharabat had started making claims about being in contact with the Twelfth Imam after the Iran-Iraq War. This family member was also quoted as saying that the authorities knew about Gharabat's claims for years, and that they cracked down on Gharabat and his followers only after Gharabat started criticizing Iran's Supreme Leader.¹⁷⁸

3.1.4. Rouhollah Tavana

In October 2011, men believed to be from the Ministry of Intelligence arrested Rouhollah Tavana at his house in Mashhad. Tavana, a quality control engineer born in 1978, was charged with *Sabb-e Nabi*, or swearing at the Prophet. This charge arose from comments he allegedly made in a private video. In addition to the main charge of swearing at the Prophet, he was also charged with other crimes such as using illegal drugs, drinking and producing alcoholic beverages, adultery, acts against national security, insulting top ranking officials, and disturbing public opinion.

¹⁷⁴ The prayer's translation is as follows:

In your name, my Lord, love and affection. If the tongue could express, it would never stop. Teach us your approach/curriculum, how you are and what you know. Your appearance and your within. So that in the name of God, perhaps we can achieve some of the closeness you have. Because this greatness is a stranger to the small, like us. Expand out what's within and without us so that we don't tire you more than we already have. Today by the blessing of your birth, we ask you to give us the rays of strength to deal with challenges. So that we can be obedient servants that are polite and compassionate to the gracious and merciful Creator. In celebrating this birth, we are optimistic, oh dear God, as you've taught us that you will bless us with the great guidance. And to gift us with maturity and the ability to be seen in Your eyes as your servants. Blessings be upon us and upon everything that was and was not. You are The Lord and no one else. We're defeated and wish to never survive. We're intoxicated and wish to never wake up. We wish to not wake up from our intoxication and look out to you, and cohabitation near you and serving with you, of God of this universe. You, who in the morning is my smile. And you, in my evening, are my concern. I love you. Because you're the tear in my eye. And in the heart, my joy. And in darkness, my candle. I love you, oh you who, in the orchards of love, is my rose. Oh you, who is the love in my poem, and the friend in my journey. Thank you my Lord, and your presence is very welcome.

¹⁷⁵ *Jashni Tavalludi Yik Mudda 'īyi Khudāyī Dar Khūzistān*, supra note 172.

¹⁷⁶ *I'dāmi Yik Farmāndiyi Sābiqi Sipāh Dar Ahvāz Bi Ittihāmi "Iddi'ayi Irtibāt Ba Imāmi Zamān"*, ALARABIYA (Jan. 30, 2011, 06:39 PM), <http://www.alarabiya.net/articles/2011/01/29/135543.html>.

¹⁷⁷ *Khudāyī Durūghīn Dar Ahvāz Bi Dāri Mujāzāt Āvīkhtih Shud*, FARS NEWS AGENCY (Jan. 31, 2011, 04:11 PM), <http://www.farsnews.com/printable.php?nn=8911111212>.

¹⁷⁸ *I'dāmi Yik Farmāndiyi Sābiqi Sipāh Dar Ahvāz Bi Ittihāmi "Iddi'ayi Irtibāt Ba Imāmi Zamān"*, supra note 176.



Figure 8 Rouhollah Tavana, a quality control engineer, is facing the death penalty after being found guilty of swearing at the Prophet. His death sentence has been upheld by the Supreme Court. Source: Radio Zamaneh.

Tavana was in solitary confinement for three and a half months. He was held at a Ministry of Intelligence facility in Mashhad.¹⁷⁹ During this period he did not have access to counsel.¹⁸⁰ Later, he was transferred to Vakilabad Prison in Mashhad.¹⁸¹ His family did not know where he was until six weeks after he had been arrested.¹⁸² His family stated that they could visit him once a week through a booth, and could have in-person visits with him every 45 days.¹⁸³

On August 3, 2013, the Fifth Branch of the Khorasan Razavi Criminal Court found Tavana guilty of swearing at the Prophet and sentenced him to death.¹⁸⁴ Tavana's sentence was upheld on appeal.¹⁸⁵ On February 14, 2014, Branch 14 of the Iranian Supreme Court also upheld his death sentence, which can now be carried out at any time.¹⁸⁶

Fakhri Jamali, Tavana's mother, has described the events that led to his arrest. According to her, one of Tavana's friends called the Mashhad Ministry of Intelligence office and told them that Tavana had information at his home that was 'anti-revolutionary' and 'against the Supreme Leader'.¹⁸⁷ Intelligence agents searched Tavana's home without having a warrant. They searched through all his books, personal items, and his computer. Tavana and one of his brothers had made a video clip of themselves on the night of his birthday, and this clip was stored on Tavana's computer.¹⁸⁸

According to Tavana's mother, the video shows Tavana holding a knife as he was about to cut his birthday cake. The video shows Tavana saying "Put this knife up your prophet's butt."¹⁸⁹ According to Tavana's mother this film was private and there was no one in it except Tavana and his brother.¹⁹⁰

¹⁷⁹ *Stop Death Sentence in Inquisition Trial*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Feb. 20, 2014), <http://www.iranhumanrights.org/2014/02/inquisition/>.

¹⁸⁰ *Document- Iran: Facing Death for Insulting the Prophet: Rouhollah Tavana*, AMNESTY INTERNATIONAL (Feb. 24, 2014), <http://www.amnesty.org/en/library/asset/MDE13/012/2014/en/93531c73-2309-4fdf-994a-c5ecc8565248/mde130122014en.html>.

¹⁸¹ *Stop Death Sentence in Inquisition Trial*, *supra* note 179.

¹⁸² *Document- Iran: Facing Death for Insulting the Prophet: Rouhollah Tavana*, *supra* note 180.

¹⁸³ *Stop Death Sentence in Inquisition Trial*, *supra* note 179.

¹⁸⁴ *Document- Iran: Facing Death for Insulting the Prophet: Rouhollah Tavana*, *supra* note 180.

¹⁸⁵ *Stop Death Sentence in Inquisition Trial*, *supra* note 179.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

The Court also sentenced him to imprisonment and flogging on charges of alcohol consumption, making alcoholic beverages, and illicit sexual relations. A Revolutionary Court in Khorasan Razavi province sentenced him to a further three years imprisonment after convicting him of insulting the founder of the Revolution and the Supreme Leader.¹⁹¹

Tavana's mother has indicated that Tavana suffered from mental illness and drug and alcohol abuse.¹⁹² According to her, the medical examiner's office has diagnosed Tavana with Cluster B personality disorders.¹⁹³ She has stated that the prosecutors continued their investigations and interrogations regardless of his psychological issues.¹⁹⁴

In his defense, Tavana's lawyers declared that first, the aforementioned crime was never committed by the defendant because his comments were meant to be private. Second, his comments were not explicitly intended for the Prophet Mohammad or any other prophet; therefore, they could not be considered as insulting. Third, Tavana's lawyers argued that based on the tradition of Prophet Mohammad the death penalty should only be used in cases where a person repeatedly insults the Prophet.¹⁹⁵

Fourth, they argued, Tavana's comments were made when he was under the influence of alcohol and suffering from mental disorder. Finally, Tavana's lawyers argued that he lacked appropriate knowledge and awareness of the seriousness of this religious matter.¹⁹⁶

The court did not accept the lawyers' arguments. The court decided that the amount of the alcohol that he consumed had not affected him enough to render him incapable of making a sound judgment.¹⁹⁷ It should be noted, however, that Article 263 of the IPC states that when a person accused of swearing at the Prophet claims that he or she made the statement in a state of drunkenness, he or she should not be executed. Rather, if the comments are found to be insulting, the offender should be sentenced to up to 74 lashes.¹⁹⁸

3.2. Charge of Apostasy against Christians

3.2.1. Davood¹⁹⁹

Davood is a Protestant Christian convert from Tabriz. He described what he experienced in an interview with IHRDC. Although he was born into a Muslim family, Davood was not a practicing Muslim.²⁰⁰

Davood converted to Christianity in 2005 after learning more about the religion. Soon after converting, Davood moved to Tehran because he did not know other Christians in Tabriz and wanted to be in a

¹⁹¹ *Document- Iran: Facing Death for Insulting the Prophet: Rouhollah Tavana*, *supra* note 180.

¹⁹² *No One In Iran Is Willing To Save My Son*, TAVAANA (Feb. 19, 2014), <https://tavaana.org/en/content/no-one-iran-willing-save-my-son>.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ QĀNUNI MUJĀZĀTI ISLĀMĪ [ISLAMIC PENAL CODE] Tehran 1392 [2013], art. 263, *available at*

<http://www.iranhrdc.org/english/human-rights-documents/iranian-codes/1000000455-english-translation-of-books-1-and-2-of-the-new-islamic-penal-code.html>.

¹⁹⁹ A pseudonym has been assigned to this witness to protect his identity.

²⁰⁰ IHRDC Interview with Davood (March 2, 2014) (on file with IHRDC).

community that shared his religious beliefs.²⁰¹ He started serving at a home church in Tehran. In 2007 Davood moved to Shiraz and continued to serve as a pastor.

According to Davood, around noon on December 7, 2009, five or six plainclothes intelligence agents entered his residence and searched the premises.²⁰² Although Davood's wife asked them for a warrant, they did not produce any. One or two of them were armed. According to Davood, they were from the No. 100 detention facility. The agents collected every item that demonstrated the Christian beliefs of Davood and his wife. According to Davood, the agents confiscated more than a hundred of Davood's books. The agents used two vehicles, a Peugeot and a Samand, to take Davood, his wife, and their belongings.²⁰³

Davood says he and his wife were taken to the No. 100 detention facility. They were not blindfolded when they were arrested, but they were blindfolded before entering the facility. Davood was put in a wooden cell. He was interrogated until 11 pm that night. They placed a piece of paper in front of Davood. Then they asked him about his religious beliefs and told him to write down his responses. He indicated that he was a Christian. Then the interrogators asked him about the religious beliefs of the people he knew through his church. Davood responded that they are not Christian. The interrogators told Davood that he was lying, but he responded that faith is a personal issue and he could not say whether they were or were not Christians on their behalf.

Davood was held at the No. 100 facility for 30 days. According to him, he was interrogated for 25 of those days. The interrogations would typically start at around 8 in the morning and last until late at night, with only a lunch break in between. There were two individuals interrogating Davood. One sought information, and the other one argued with Davood about his faith and tried to convince him that his beliefs were wrong. Meanwhile, Davood's wife was also interrogated.²⁰⁴

Davood was transferred to Adelabad Prison after 30 days. For one day, however, Davood was returned to the No. 100 facility. On that day Davood was brought face to face with a Christian who did not believe in the trinity. Davood engaged in a theological discussion with him, but he does not know why the authorities arranged that meeting. Davood was released ten days after he was transferred to Adelabad on a bond of 30 million tomans.²⁰⁵ Overall Davood was imprisoned for 40 days.

Prior to his release, Davood was threatened by his interrogators, and he was told that if he continues his religious activity he could face consequences:

*In a casual tone, they would say, 'You could be run over by a car if you continue what you are doing.'*²⁰⁶

During the interrogations, Davood was questioned about his relationship with Elam. Elam, which was founded in 1990, is a Christian institute with offices in the UK and the US, and it is dedicated to spreading Christianity in Iran.²⁰⁷ While in prison, Davood contracted influenza but was not given adequate medical

²⁰¹ While Davood indicated that he did not know other Christians in Tabriz, it should be noted that there is an Armenian Christian community. Armenians, however, are also an ethnic minority and they are mostly Orthodox Christians.

²⁰² IHRDC Interview with Davood, *supra* note 200.

²⁰³ *Id.*

²⁰⁴ Davood's wife was released after 35 days, which was 5 days before Davood was released.

²⁰⁵ This amount approximately equals \$30,000 per the exchange rate in 2009.

²⁰⁶ IHRDC Interview with Davood, *supra* note 200.

²⁰⁷ On its website, Elam states, "The mission of Elam is to strengthen and expand the church in the Iran region and beyond." See ELAM, www.elam.com (last visited July 25, 2014).

care. The authorities made Davood promise that he would stop his religious activity after his release. Davood, however, continued to promote his faith.

Davood and his wife were originally charged with apostasy, insulting Islam, membership in groups or organizations opposed to the Islamic Republic and engaging in propaganda on their behalf. As in a number of similar cases, the alleged association with Elam seems to have been the basis for the charge of membership in organizations opposed to the Islamic Republic.²⁰⁸ The charge of apostasy was later dropped. The remaining charges were bifurcated into two cases. The charge of insulting Islam was under the jurisdiction of the Criminal Court while the propaganda charge went under the jurisdiction of the Revolutionary Court.

Davood and his wife left Iran in June 2011 before they could be tried. As a result, they were tried in absentia. The Shiraz Criminal Court acquitted Davood and his wife of the charge of insulting Islam, citing lack of evidence and denial of the accused. The Revolutionary Court, however, found Davood and his wife guilty and sentenced each to two years of imprisonment. The court opinion, which was given to the attorney representing Davood and his wife, did not explain the decision, and it simply stated that it was relying on the report submitted by the Ministry of Intelligence.²⁰⁹

3.2.2. Hossein Soodmand

Hossein Soodmand is the only Christian convert who has been officially executed for apostasy. Soodmand, who belonged to the church of the Assemblies of God, was executed on December 3, 1990. Soodmand was born to a Muslim family on June 30, 1951 in Mashhad, Iran. He converted to Christianity during his military service in the 1960s. After his service, he moved to Isfahan and began working at a Christian hospital for the blind, where he met the woman who would become his wife. In 1979, after the Iranian Revolution, Soodmand returned to Mashhad. There he opened a house church in his basement and attracted a following. Soodmand's church and sermons caught the attention of Iranian authorities.

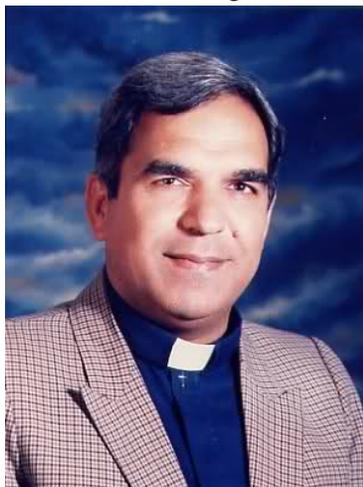


Figure 9 Hossein Soodmand, a Christian convert, is the only known Christian executed for apostasy in Iran. Soodmand was executed on December 3, 1990. Source: The Telegraph.

Soodmand was first arrested in April 1990.²¹⁰ While in prison, the authorities warned him that if he did not renounce his faith, his life would be in danger.²¹¹ Even though Soodmand refused to recant his faith, the

²⁰⁸ IHRDC Interview with Davood, *supra* note 200.

²⁰⁹ *Id.*

²¹⁰ *The Cost of Faith: Persecution of Christian Protestants and Converts in Iran*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN 32 (2013), http://www.iranhumanrights.org/wp-content/uploads/Christians_report_Final_for-web.pdf.

authorities released him a month later.²¹² In an interview, Soodmand's daughter, Rashin Soodmand, stated that "the religious police released him without explanation and without apology."²¹³ He was arrested again six months later in October of 1990 on charges of apostasy, setting up an illegal church, and for proselytizing activity.²¹⁴

While in prison, authorities pressured Soodmand to recant his Christian faith but he refused.²¹⁵ After spending two months in prison Soodmand was found guilty of apostasy and executed by hanging on December 3, 1990.²¹⁶ Information regarding Soodmand's trial, including where it took place, the evidence presented against him by the state and his defense, was not made public.²¹⁷ Furthermore, no specific information is available about the court's verdict.²¹⁸ After his execution had taken place, authorities informed Soodmand's family that he "had been hanged for remaining steadfast in Christianity."²¹⁹ The authorities did not give Soodmand's remains to his family. Instead, they buried him in a part of Mashhad cemetery designated for those the government considered "cursed."²²⁰ The authorities did not permit Soodmand's family to put up a headstone or otherwise mark his grave.²²¹

On August 20, 2008, eighteen years after his father's execution, Ramtin Soodmand was arrested.²²² Ramtin Soodmand was not charged with apostasy because he was born a Christian.²²³ However, in an interview with Radio Farda, his sister stated that she was positive that his brother was arrested due to his religious beliefs. He was released on a bail of 20 million tomans on October 22, 2008.²²⁴

3.2.3. Youcef Nadarkhani

Youcef Nadarkhani is an Iranian Protestant pastor. He converted to Christianity at the age of 19.²²⁵ Nadarkhani was arrested in October 2009.²²⁶ He was tried at the 11th Branch of Gilan Province Appeals Court.²²⁷ On September 22, 2010, the court sentenced Nadarkhani to death.

²¹¹ Shahram Gahremani, *Masīhānī ki Dar 20 Sālih Guzashthi Tavassuṭi Jumhūrī Islāmī Bi Qatl Risīdand*, GOOYA (Feb. 7, 2011, 04:35 PM), <http://www.gooya.com/external/my.gooya.com/permalink/3420.html>.

²¹² *The Cost of Faith: Persecution of Christian Protestants and Converts in Iran*, *supra* note 210, at 32.

²¹³ Alasdair Palmer, *Hanged for being a Christian in Iran*, THE TELEGRAPH (Oct. 11, 2008), <http://www.telegraph.co.uk/news/worldnews/middleeast/iran/3179465/Hanged-for-being-a-Christian-in-Iran.html>.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *30 Rūz Bāzdāshthi Bidūni IttihāmiYik Masīhī Dar Mashhad*, RADIO FARDA (Sept. 20, 2008), http://www.radiofarda.com/content/f6_Iran_Christan_Soodmand/465661.html.

²¹⁷ *Memorial: Hossein Sudmand*, ABDORRAHMAN BOROUMAND FOUNDATION, <http://www.iranrights.org/memorial/story/41705/hossein-sudmand> (last visited July 26, 2014).

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ Mark Ellis, *Daughter of Martyred Iranian Carries her Father's Zeal*, GOD REPORTS BLOG (July 2, 2013), <http://blog.godreports.com/2013/07/daughter-of-martyred-iranian-carries-her-fathers-zeal/>.

²²¹ *Id.*

²²² Palmer, *supra* note 213; *30 Rūz Bāzdāshthi Bidūni IttihāmiYik Masīhī Dar Mashhad*, *supra* note 216.

²²³ *Rāmtīn Sūdmand Āzād Shud*, RADIO FARDA (Oct. 25, 2008), http://www.radiofarda.com/content/f6_Iran_Soodmand_Releasing/470368.html.

²²⁴ *Id.* This amount approximately equals \$31,000 per the exchange rate in 2008.

²²⁵ *Kishīsh Nadarkhānī Az Zindān Āzād Shud*, BBC PERSIAN (Sept. 8, 2012, 02:53 PM), http://www.bbc.co.uk/persian/iran/2012/09/120908_mgh_nadarkhani_released.shtml.

²²⁶ Saeed Kamali Dehghan, *Iranian Christian Pastor Released From Jail*, THE GUARDIAN (Sept. 8, 2012, 10:59 AM), <http://www.theguardian.com/world/2012/sep/08/iranian-christian-pastor-released-jail>.

²²⁷ The Gilan Province Appeals Court was the court of first instance in this case.



Figure 10 Youcef Nadarkhani, a Christian convert, was sentenced to death in 2010 for apostasy. He was eventually acquitted of apostasy, and he was released after three years of imprisonment. Source: Deutsche Welle.

In its opinion, the court wrote that in his interrogations Nadarkhani had repeatedly denied that Mohammad was a prophet.²²⁸ Establishing that Nadarkhani was, in fact, a Muslim before converting to Christianity was critical for the court:

“Even in the last interrogation session on March 15, 2010, in his answer to the question about what religion he had from puberty until the age of 19, he stated that since his parents were Muslims I was a Muslim too until I became a Christian at the age of 19.”²²⁹

The court then proceeded to establish that Nadarkhani did not believe in Islam:

In his answer to the question about whether he believes in the [Islamic] religious principles of oneness of God, prophethood, and the afterlife, he stated that he believes in the oneness of God and the afterlife but that he does not believe in the prophethood of Mohammad (PBUH).²³⁰

The five-member panel of judges rejected the arguments put forward by Nadarkhani and his lawyers. His lawyers argued that Nadarkhani had not been a Muslim in the first place and that apostasy laws would not apply to him. In the trial, Nadarkhani said that he had only conceded that he was previously a Muslim at the suggestion of his interrogator, who had argued that anyone who is born to Muslim parents and does not actively choose another religion is considered a Muslim by default.²³¹ The court rejected this contention, and stated that Nadarkhani’s confessions and the record provided by the Ministry of Intelligence confirmed that Nadarkhani had been a Muslim before converting to Christianity.

The court acknowledged that there is no specific provision criminalizing apostasy. Nevertheless, the court relied on Article 167 of the Iranian Constitution, the Islamic Penal Code, and the Civil Code of Procedure for Public and Revolutionary Courts. The court sentenced Nadarkhani to death based on Shari’a law.²³² The court cited Ayatollah Khomeini’s *Tahrīr al-Vasīlah* and religious rulings by Supreme Leader Ali Khamenei, Ayatollah Mohammad Reza Golpaygani, Ayatollah Safi Golpaygani, Ayatollah Makarem Shirazi and Ayatollah Behjat Fomani in support of its ruling.²³³

²²⁸ *Unprecedented Death Sentence for Christian Pastor on Charge of Apostasy*, INTERNATIONAL CAMPAIGN FOR HUMAN RIGHTS IN IRAN (Dec. 7, 2010), <http://www.iranhumanrights.org/2010/12/khanjani-nadarkhani-apostasy/>.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² *Id.*

²³³ *Id. Tahrīr al-Vasīlah* is Ayatollah Khomeini’s seminal treatise on matters of Islamic jurisprudence. Ayatollah Mohammad Reza Golpaygani, Ayatollah Safi Golpaygani, Ayatollah Makarem Shirazi and Ayatollah Behjat Fomani are senior Shi’a clerics and they are considered as “sources of emulation,” a title given to senior clerics who may be followed by believers in matters of faith.

Nadarkhani's death sentence was met by international condemnation.²³⁴ The United States, the European Union, and the Vatican voiced concern over Nadarkhani's sentence.²³⁵ Iran's Supreme Court quashed the verdict due to "investigative deficiencies," and remanded for reconsideration.²³⁶ Meanwhile, Nadarkhani's attorney indicated that the trial court had decided to ask for the opinion of the Supreme Leader regarding Nadarkhani's case.²³⁷ There is no information available on whether the Supreme Leader intervened in this case or not. Nadarkhani's retrial took place in September 2011, during which he was reportedly asked to renounce his Christianity and accept Islam, which Nadarkhani refused to do.²³⁸ The court finally issued its verdict on September 8, 2012, acquitting Nadarkhani of the apostasy charge. Nevertheless, the court found him guilty of evangelizing and sentenced him to three years of imprisonment, which he had already served.²³⁹ Nadarkhani was released on September 8, 2012.

3.3. Charge of Apostasy against Bahá'ís

The IRI systematically discriminates against the Iranian Bahá'í community. According to human rights groups, more than 200 Bahá'ís have been executed or killed in the years following the Iranian Revolution of 1979.²⁴⁰ The plight of the Iranian Bahá'í community has been documented in three previous IHRDC reports entitled *A Faith Denied: The Persecution of the Bahá'ís of Iran*, *Community under Siege: The Ordeal of the Bahá'ís of Shiraz* and *Crimes against Humanity: The Islamic Republic's Attacks on the Bahá'ís*. Generally, members of the Bahá'í Faith are not charged with apostasy because apostasy involves conversion from Islam. If, however, a Muslim becomes Bahá'í he or she will be subject to apostasy laws. The case of Zabihollah Mahrami, a Bahá'í who returned to the Bahá'í Faith after allegedly denouncing the Bahá'í Faith and becoming a Muslim, demonstrates how a Bahá'í convert could be targeted as an apostate.

3.3.1. Zabihollah Mahrami

Zabihollah Mahrami was a Bahá'í from Yazd. Mahrami was born into a Bahá'í family in 1946. He worked for the Organization of Rural Cooperatives, which is administered by the Iranian Ministry of Agriculture.²⁴¹

While Ayatollah Khamenei is not commonly known to be a source of emulation, his religious rulings are significant due to his position as the Supreme Leader of the Islamic Republic.

²³⁴ *The Cost of Faith: Persecution of Christian Protestants and Converts in Iran*, supra note 210, at 34.

²³⁵ *Statement by the Press Secretary on Conviction of Pastor Youcef Nadarkhani*, THE WHITE HOUSE (Sept. 29, 2011), <http://www.whitehouse.gov/the-press-office/2011/09/29/statement-press-secretary-conviction-pastor-youcef-nadarkhani>; *Statement by the spokesperson of EU High Representative Catherine Ashton on case of Youcef Nadarkhani*, COUNCIL OF THE EUROPEAN UNION (24 Feb. 2012), http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/128146.pdf; Michele Chabin, *Possible Development in Youcef Nadarkhani Case*, NATIONAL CATHOLIC REGISTER (Oct. 11, 2011), <http://www.ncregister.com/daily-news/iran-sets-retrial-for-christian-pastor-youcef-nadarkhani>.

²³⁶ Footnote 236: *Dīvāni 'Ālī Kishvār: Parvandihiy Irtidādi "Yūsifī Nadarkhānī" Naqẓ Shudi Ast*, RADIO FARDA (Oct. 11, 2011), http://www.radiofarda.com/content/f5_iran_high_court_rejects_allgation_case_on_iran_pastor_returned_the_case_to_initial_court/24356457.html.

²³⁷ *Id.*

²³⁸ *The Cost of Faith: Persecution of Christian Protestants and Converts in Iran*, supra note 210, at 34.

²³⁹ *Id.*

²⁴⁰ *The Bahá'í Question: Cultural Cleansing in Iran*, BAHÁ'Í INTERNATIONAL COMMUNITY (2008), <http://news.bahai.org/documentlibrary/TheBahaiQuestion.pdf>.

²⁴¹ Email correspondence with a relative of Zabihollah Mahrami, (Apr. 17, 2014) (on file with IHRDC).

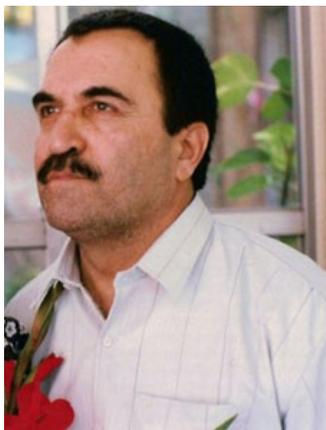


Figure 11 Zabihollah Mahrami, a Bahá'í, was convicted of apostasy and sentenced to death. His sentence was later commuted to life in prison. He died in prison in 2005 while serving his life sentence. Source: Bahá'í World News Service.

In 1981 a notice was published in a newspaper in Mahrami's name, stating that he was not a Bahá'í.²⁴² The authorities often force Bahá'ís who recant their faith to publish such notices.²⁴³ Following the publication of this notice the Bahá'í community suspended Mahrami's membership. Mahrami maintained that he had neither consented nor signed the advertisement, and he was eventually reinstated in the Bahá'í community in 1991.²⁴⁴ As part of his reinstatement, Mahrami was asked by the Bahá'í community to write a letter to the Yazd Ministry of Intelligence office and inform them that he had not placed the notice in the newspaper.²⁴⁵ Following his letter to the authorities, he received a phone call from the Ministry of Intelligence and was asked to go to their office for questioning. He was questioned for two hours, but he was not detained.

Four years later, however, Mahrami was arrested for denying his previous recantation. The authorities charged Mahrami with apostasy. On August 16, 1995 Mahrami appeared before the Yazd Islamic Revolutionary Court.²⁴⁶ He declared that he was a Bahá'í to the court.²⁴⁷ The court ordered Mahrami to attend three "guidance" sessions in order to restore his faith in Islam:

Because of the negative effects of his accepting the wayward Bahá'í sect after being a Muslim for seven years, and based on religious axioms, the Revolutionary Court in Yazd (branch number 1) endeavoured to hold certain meetings for the purpose of guiding him [to the path of truth] and encouraging him to repent for having committed the most grievous sin, i.e., apostasy. The first meeting was held on 11 Míhr 1374 [3 October 1995], during which he clearly announced himself to be a Bahá'í and a follower of the principles of this sect. Despite his limited knowledge of the blessed religion of Islam and of the misleading and wayward Bahá'í sect, he did not accept the suggestion of this court to receive guidance from well-informed individuals.²⁴⁸

The second and third sessions failed to achieve their stated goal as well. Mahrami's trial was held on January 2, 1996. According to the court opinion, Mahrami and the attorney he had chosen made statements in his defense.²⁴⁹ The court concluded that Mahrami had become an apostate by rejoining the Bahá'í Faith and sentenced him to death.²⁵⁰ The court also ruled that Mahrami's properties were to be confiscated because Mahrami's heirs are disinherited due to his apostasy.

Iran's Supreme Court later invalidated the death sentence and remanded the case.²⁵¹ Mahrami was eventually sentenced to life in prison. He died in prison on December 15, 2005 under suspicious

²⁴² *Iranian Death Sentence of Mr. Dhabihu'llah Mahrami: Provisional Translation from Persian*, BAHÁ'Í LIBRARY ONLINE (1996), http://bahai-library.com/dhabihullah_mahrami_musa_talibi#0.

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Email correspondence with a relative of Zabihollah Mahrami, *supra* note 241.

²⁴⁶ *Iranian Death Sentence of Mr. Dhabihu'llah Mahrami: Provisional Translation from Persian*, *supra* note 242.

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *US National Spiritual Assembly Confirms Commuting of Mr. Mahrami's Sentence*, BAHÁ'Í LIBRARY ONLINE (1996), http://bahai-library.com/dhabihullah_mahrami_musa_talibi#0.

circumstances.²⁵² The official reason given by the coroner was a heart attack. However, according to Diane Ala'i, the representative of the International Bahá'í Community, Mahrami did not have any prior heart condition.²⁵³

4. International Human Right Law

4.1. Freedom of Thought, Conscience and Religion

Freedom of thought, conscience and religion is among the most firmly established freedoms in international human rights law. Article 18 of the Universal Declaration of Human Rights (UDHR) states,

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.²⁵⁴

The same principle is clearly stated in the International Covenant on Civil and Political Rights (ICCPR) in almost identical language. Article 18.1 states,

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.²⁵⁵

Moreover, Article 18.2 declares,

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Iran has signed and ratified the ICCPR without any reservations. Provisions that criminalize swearing at the prophet as well as the practice of criminalizing apostasy are in clear violation of Article 18. Criminalizing the act of changing one's religion violates the right to freedom of religion, and it effectively coerces Muslim citizens to refrain from adopting a different religious belief.

Article 18.3 of the ICCPR states that the freedom to manifest one's religion may be subject only to limitations that are "necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." The IRI does not base its laws regarding apostasy on any such consideration. For instance, neither the text of the Islamic Penal Code nor the judicial decisions in apostasy cases discuss implications for public safety. In fact, apostasy and insulting the prophet are punishable even if there is no unrest or public outcry. As such, it is clear that the intention of these laws is to curtail religious freedom, violating Iran's international obligations under the ICCPR.

²⁵² *Margi Marmūzi Yik Bahāyī Dar Zindāni Yazd: Musahibih Ba Sukhangūyi Jāmi'iyi Bahāyīān*, RADIO FARDA (Dec. 20, 2005), <http://www.radiofarda.com/content/article/315419.html>.

²⁵³ *Id.*

²⁵⁴ European Convention on Human Rights, art. 7, Nov. 4, 1950, 213 U.N.T.S. 221, *available at* http://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁵⁵ International Covenant on Civil and Political Rights, Art. 18.1, Dec. 16, 1966, S. Exec. Rep. 102-23, 999 U.N.T.S. 171, *available at* <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

4.2. Freedom from Discrimination and Equality before the Law

Equal treatment under the law is one of the basic principles of international human rights law. Article 7 of the UDHR states,

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.²⁵⁶

Likewise, Article 26 of the ICCPR declares,

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁵⁷

Laws regarding apostasy in Iran violate this principle because the prohibition on changing one's religion only applies to Muslims who change their religious beliefs. Members of other religious communities and non-believers are free to become Muslims. In addition, the laws prohibiting sacred beliefs exclude sacred beliefs of other religious groups or non-believers. Also, it should be noted that apostasy laws do not treat men and women equally. Shi'a jurists generally hold that only male apostates are to be killed. Female apostates, on the other hand, may only be imprisoned.

4.3. Right to Life

Article 3 of the UDHR and Article 6 of the ICCPR state that every human being has the right to life. The ICCPR recognizes that the death penalty may be imposed under limited circumstances:

In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.²⁵⁸

The ICCPR does not define "most serious crimes." General Comment No. 6, drafted by the Office of the High Commissioner for Human Rights, explains that the "expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure."²⁵⁹ As discussed in Section 4.1. *supra*, criminalization of religious practices and penalizing the act of changing one's religion is contrary to norms of international human rights law. Therefore, imposing the death penalty for apostasy and swearing at the prophet is a clear violation of the right to life as recognized under the UDHR and the ICCPR.

²⁵⁶ Universal Declaration of Human Rights, art. 7, *supra* note 254.

²⁵⁷ International Covenant on Civil and Political Rights, art. 26, *supra* note 255.

²⁵⁸ International Covenant on Civil and Political Rights, art. 6.2, *supra* note 255.

²⁵⁹ UN Human Rts. Comm., Gen. Comment. No. 6, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994).

4.4. Conviction Based on Laws Existing at the Time the Offense is Committed

Both the UDHR and the ICCPR state that a person cannot be convicted of a crime that is not recognized as an illegal act at the time it is committed. Article 11.2 of the UDHR and Article 15.1 of the ICCPR state, “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.”²⁶⁰ While this principle is commonly understood to prohibit ex post facto convictions and protect against retroactive application of criminal statutes, it has also been interpreted as saying that criminal statutes must be clear and precise. This provision does not necessarily mean that unwritten legal rules and principles, such as custom, cannot stand. It does, however, mean that governments must define all crimes and punishments to satisfy the requirement for legal certainty.²⁶¹ The UN Human Rights Committee has stated that Article 15 of the ICCPR limits criminal liability and punishment to “clear and precise provisions in the law that was in place and applicable at the time the act or omission took place.”²⁶²

The European Court of Human Rights has discussed the principle of legal certainty in a number of its decisions.²⁶³ Article 7 of the European Convention on Human Rights contains the exact language as Article 11.2 of the UDHR and Article 15.1 of the ICCPR.²⁶⁴ Discussing this article in *Kokkinakis v. Greece*, the European Court of Human Rights observes,

Article 7 para. 1 (art. 7-1) of the Convention is not confined to prohibiting the retrospective application of the criminal law to an accused’s disadvantage. It also embodies, more generally, the principle that only the law can define a crime and prescribe a penalty (nullum crimen, nulla poena sine lege) and the principle that the criminal law must not be extensively construed to an accused’s detriment, for instance by analogy; it follows from this that an offence must be clearly defined in law. This condition is satisfied where the individual can know from the wording of the relevant provision and, if need be, with the assistance of the courts’ interpretation of it, what acts and omissions will make him liable.²⁶⁵

²⁶⁰ Universal Declaration of Human Rights, art. 11.2, *supra* note 254.

²⁶¹ FABIÁN O. RAIMONDO, GENERAL PRINCIPLES OF LAW IN THE DECISIONS OF INTERNATIONAL CRIMINAL COURTS AND TRIBUNALS 2 (2008).

²⁶² UN Human Rts. Comm., Gen. Comment. No. 29, ¶ 7, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

²⁶³ Established in 1959, the European Court of Human Rights is one of the most important international courts in the world. This court has jurisdiction over alleged violations of the civil and political rights delineated in the European Convention on Human Rights.

²⁶⁴ European Convention on Human Rights, art. 7, Nov. 4, 1950, E.T.S. 5, *available at* http://www.echr.coe.int/Documents/Convention_ENG.pdf.

²⁶⁵ *Kokkinakis v. Greece*, 17 Eur. Ct. H. R. 397 (1994), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57827>. In *Kokkinakis v. Greece*, the issue was whether a conviction based on a statute prohibiting proselytizing could stand under the European Convention on Human Rights. The statute stated,

1. Anyone engaging in proselytism shall be liable to imprisonment and a fine of between 1,000 and 50,000 drachmas; he shall, moreover, be subject to police supervision for a period of between six months and one year to be fixed by the court when convicting the offender.

The term of imprisonment may not be commuted to a fine.

2. By ‘proselytism’ is meant, in particular, any direct or indirect attempt to intrude on the religious beliefs of a person of a different religious persuasion (eterodoxos), with the aim of undermining those beliefs, either by any kind of inducement or promise of an inducement or moral support or material assistance, or by fraudulent means or by taking advantage of his inexperience, trust, need, low intellect or naïvety.

3. The commission of such an offence in a school or other educational establishment or a philanthropic institution shall constitute a particularly aggravating circumstance."

The European Court of Human Rights found that this statute was specific enough to satisfy Article 7 requirements. However, the court overturned the conviction, citing religious freedom protections.

The requirement for legal clarity was also raised by Martin Scheinin, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. Discussing the matter in the context of anti-terrorism laws, the UN Special Rapporteur stated, “To be ‘prescribed by law’ the prohibition must be framed in such a way that: the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and the law is formulated with sufficient precision so that the individual can regulate his or her conduct.”²⁶⁶ This view is based on *the Sunday Times v. the United Kingdom*, another case decided at the European Court of Human Rights.²⁶⁷ This case, which involved the British common law of contempt of court, presented questions regarding the extent to which non-statutory laws could be enforced under the European Convention on Human Rights. Article 10.2 of the European Convention on Human Rights, which lists the instances in which restrictions on freedom of expression may be permitted, states,

“The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are *prescribed by law...*” (emphasis added).

In its opinion, the court maintained that “the word ‘law’ in the expression ‘prescribed by law’ covers not only statute but also unwritten law.” The court added that the inclusion of the phrase “prescribed by law” was not meant to invalidate common law systems. Nevertheless, the court explained,

“In the Court’s opinion, the following are two of the requirements that flow from the expression ‘prescribed by law’. Firstly, the law must be adequately accessible: the citizen must be able to have an indication that is adequate in the circumstances of the legal rules applicable to a given case. Secondly, a norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able - if need be with appropriate advice - to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail.”²⁶⁸

Iran’s apostasy laws are neither adequately accessible nor sufficiently precise. Iran has a civil law system; therefore, lack of statutory specification is more problematic than it would be under a common law system. Virtually all *hudūd* crimes have been included in the IPC and are punished accordingly. Even the crime of *qazf*, which is defined as making a false accusation of adultery or sodomy and is rarely, if ever, prosecuted, has been included in the IPC. Apostasy is the only exception, and it has been left out of the IPC through the code’s numerous revisions.

According to the Iranian Constitution and the IPC, Shari’a law will govern situations where the law is silent. Therefore, Iran’s compliance with Article 15 of the ICCPR depends on the extent to which apostasy is defined in Shari’a law. As discussed in Section 1 *supra*, there is considerable disagreement and ambiguity regarding acts that could constitute apostasy. While jurists generally concur that leaving Islam and embracing another religion or atheism establishes apostasy, they have different views regarding what specific acts are tantamount to apostasy. In addition, there is considerable ambiguity as to how apostasy

²⁶⁶ Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Promotion and Protection of Human Rights*, ¶ 46, U.N. Doc. E/CN.4/2006/98 (Dec. 25, 2008), available at http://www.coe.int/t/dlapil/codexter/3_CODEXTER/Working_Documents/2006/Sheinin%20E-CN.4-2006-98.pdf.

²⁶⁷ *The Sunday Times v. United Kingdom*, 2 Eur. Ct. H. R. 245 (1979), available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57584#{"itemid":\["001-57584"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57584#{).

²⁶⁸ *Id.*

laws affect Sunni Muslims, who comprise five to ten percent of Iran's population.²⁶⁹ Given that Sunni beliefs, including beliefs regarding apostasy, differ from those of Shi'a Muslims, it is not clear whether a Sunni person will be considered an apostate based on Shi'a or Sunni jurisprudence. In addition, it is not clear whether a Shi'a person who becomes a Sunni could be charged with apostasy. Considering the seemingly deliberate omission of apostasy from IPC, and the ambiguity regarding acts that may establish apostasy, it may be argued that the legal framework within which apostasy is prosecuted contravenes Article 11.2 of the UDHR and Article 15.1 of the ICCPR.

²⁶⁹ *The World Factbook: Iran* CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ir.html>.

Conclusion

The IRI has prosecuted a wide range of individuals on charges of apostasy and swearing at the Prophet. Muslims who hold different views from the conservative establishment, Christian converts and Bahá'ís have been targeted by the Iranian government. In addition, the IRI has used the charge of apostasy against its political opposition. Ayatollah Khomeini's declaration that the members of the National Front were apostates and his fatwa authorizing the 1988 prison massacre are clear examples of this approach.

Shari'a law does not have a uniform definition of apostasy. While converting to another religion typically constitutes apostasy, jurists disagree on other acts that could render a person an apostate. The IPC has not defined apostasy. Therefore, judges have the discretion to adjudicate apostasy cases based on their own understanding of Shari'a law. In many cases, the convictions have been eventually reversed, demonstrating the lack of clarity regarding apostasy laws.

Prosecutions and convictions based on charges of apostasy and swearing at the Prophet are contrary to international human rights law and Iran's obligations under the UDHR and the ICCPR. The IRI is violating the freedom of thought, conscience and religion. Moreover, by imposing the death penalty for religious crimes, Iran is also violating the right to life. Finally, the ambiguous nature of apostasy in Iranian law could be considered a violation of the requirement that criminal convictions should be based on laws existing at the time the offense is committed.

Methodology

IHRDC gathered and analyzed information for this report from the following sources:

Testimony of victims and witnesses. Due to the small number of individuals charged with apostasy, interviewing a large number of witnesses was not possible. Interviews with witnesses have been used where available.

Government Documents. The latest version of the Islamic Penal Code, which became enforceable in 2013, explicitly provides for punishment of individuals engaging in swearing at the Prophet. The same code also states that when the law is silent on a topic, judges should refer to Shar'ia law. Other documents issued by the Iranian government have been used as appropriate.

Documents issued by non-governmental organizations. Reports and press releases from the Abdorrahman Boroumand Foundation and the International Campaign for Human Rights in Iran were among sources that have been used in drafting this report.

Academic articles and books. Books and articles on Shari'a law in general and apostasy in particular have been consulted and cited in this report.

Media reporting. Various Iranian media sources, as well as non-Iranian media sources, have been used to provide details and context for this report.

Where the report cites or relies on information provided by government actors or other involved parties, it specifies the source of such information and evaluates the information in light of the relative reliability of each source. The IHRDC has meticulously cross-checked all the sources of information used to compile this report to ensure their credibility and accuracy.

All names of places, organizations, etc. originally written in the Persian language have been transliterated using the system of the International Journal of Middle Eastern Studies (IJMES), available at <http://ijmes.chass.ncsu.edu/docs/TransChart.pdf>.



Hasan Yousefi Eshkevari, a cleric and a former member of the Iranian parliament, was charged with apostasy in 2000. This charge was based on his statements against compulsory veiling of women in Islam. He was tried for apostasy, as well as other charges, at the Special Court for the Clergy. He was initially sentenced to death, but his sentence was reduced on appeal. He was released after serving more than four years of his seven-year sentence.

His case, which is described in detail in IHRDC's report *Apostasy in the Islamic Republic of Iran*, demonstrates both the jurisprudential and political context in which apostasy cases are prosecuted in the Islamic Republic of Iran.

(Pictured: a defrocked Eshkevari. Source: <http://yousefieshkevari.com/>)