

Blasphemy in *seerat al-nabī, shari'ah* and Pakistani Law (A comparative study)

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Abstract:

Blasphemy is one of the most important and sensitive issue in the discipline of *seerat al-nabī, shari'ah* and as well as in contemporary criminal law, while it has been recently exploited by the international human rights activists due to its rigorous punishment in Pakistan Penal Code (PPC) on the basis of *shari'ah* commandments, which is exclusively recommended as death penalty. This issue will be analyzed in the light of Quran and Sunnah along with viewpoints of the prestigious Muslim Jurists and practice of Muslim *Ummah* from the era of the Prophet (PBUH) till today.

Institution of Islamic Law has primarily five objectives, and the first one is to preserve and protect the religion of believers. Therefore anyone who reverts back will be punished by the state as it has been prescribed by *shari'ah*. But the question arises that whether the punished of *Murtad* (Apostate) is “*Had*” or *ta'zir*. This question has been discussed in detail, and different viewpoints have been presented. The case of MUHAMMAD ISMAIL QURESHI Petitioner versus PAKISTAN in 1990, when the FEDERAL SHARIAT COURT of Pakistan, has examined the law under the authority conferred by constitution of Pakistan that the said discretionary power is repugnant to the injunction of Islam and only death penalty should be fixed by legislative Act.

Key Words: Blasphemy, Apostasy, *seerat ul-nabī* Punishment, *Had, Ta'zir*, Narrators, Jurists, Islamic Law, PPC.

The Concept of Blasphemy in Islamic Law

Literally in Arabic Language the word “*Sab*” and “*Shātam*” and “*īdā*” have been used for the contempt of the Holy Prophet in Holy Quran and Sunnah. “*Sab*” means to suffer, to harm, to molest, to contemn, to insult,

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to annoy, to irritate, to injure, to trouble, to malign, to degrade, and to scoff.¹ The Arabic word “*Shātam*” means: to insult, to abuse, to revile, to scold, to curse, to defame.²

Technically the concept of Blasphemy in Islamic Law is wider than its practice that is concluded as: any attempt to contempt or any derogatory remarks regarding Allah almighty, the Prophet (PBUH), all prophets and any symbolic of Islam will be considered as Blasphemy, as it has been clearly stated by Muslim Jurists.³ While we will circumvent the discussion into the contemnor of the Prophet.

Allama Ibne taīmīā stated while explaining the significance of the contempt its means: “to curse the Prophet, prays for any difficulty for him or refers to him such a thing which does behave with his position or uses any insulting falls and unreasonable words or imputes to him or blames him with any human weakness etc.”⁴

Apostasy and Blasphemy

Blasphemy is deeply related with Apostasy, due to its interrelation with each other concerned to the apparent consequences of both issues. Obviously Muslim Jurists have the opinion that contemnor would be considered as Infidel. So it is needed to settle the issue for the designation of punishment of contemnor.

Linguistically, the word “apostasy” in Arabic is derived from “turning back” or “backsliding”. So an apostate is a backslider; Allah, Exalted be He, says: “.... And do not turn back...”⁵

That do not turn backside.

“In Islamic law an apostate is the one who willingly turns back after embracing Islam, whether through utterance, belief, doubt, or action”.⁶

1 *Lisān al-‘arab*, Volume, 1, page, 455; published by, dāru al-‘āfāq al-‘arabīā. 1414 AH, *Al-mu‘jam al-wasīṭ*, volume 1, page, 411. published by majma‘u al-luġaṭ al-‘arabīā,

2 *Lesan Al Aab*, volume, 12, page, 318.

3 *Al-sāif al-maslūl*, *Taj Uddin al-subkī*, page 405, published by, dār al-fataḥ, ‘umān, 1421 AH, *Al-shifā` qāḍī` aīāḍ*, with its Commentary by *Mulāah ‘Alī qārī*, volume 2, page 470...473. published by, dār al-kutub al-‘ilmīā, 1421 AH

4 *Al-ṣawārimu al-maslūl*, *Ibne taīmīā*, page 526, published by muṣṭafa al-ḥalbī, Egypt

5 *ālmā`īda*: 21.

6 *Rasā`ili ibne ‘ābīdīn*, Resala no 15.

So the contemnor is also considered apostate due to his backsliding and will be dealt as apostate. In Islamic Law there are prescribed penalties imposed of the apostate in this world, and the hereafter, Allah says:

“... and whoever of you reverts from his religion (to disbelief) and dies while he is a disbeliever - for those, their deeds have become worthless in this world and hereafter, and those are the companions of the fire, they will abide therein forever.”¹

Allah Almighty did not mention the penalty of apostate in the above mentioned verses of the Quran but the Holy Prophet (PBUH) stated in the Hadiths which has been narrated by the authority of the many of his companions as: Abu Musa Ashri (R.A), Ibn e Abbas, Ali bin Abi *Talib* etc. by various ways and words which may be summarized as:

That the one who apostatizes will be given death penalty by the state. The words of the Hadith are very clearly indicates that:

“If anyone (Muslim) changes his religion (i.e. apostatizes) kill him.”²

Confusion regarding narrator ‘*ikramā*’ (RA) in *seerat ul-nabī*:

The narrator of this Hadith is ‘*ikramā*’ who is criticized by those who denied the “*ḥad*” punishment of an apostate, while there is a confusion between two names; ‘*umar bin ‘atā*’ *mūla* of *wirraz* and *jurāij* narrating from him, this one is criticized by *muḥadithīen* and *yaḥīa bin Maien* says that “he is nothing”.³

While the Hadith narrated by ‘*ikramā*’ who was *mūla* of *Ibn Abbas*, and he has verified by all of the *muḥadithīen*, like *yaḥīa Ibn Maien*⁴, and *Ibn Hajar* declared him as *ḥiqā* (*authentic*), *ḥabat*, and Expert in *tafsīr*⁵, and *Hafīz Ali* remarked that he is *ḥiqā* and there is nothing what some people said about him he is also a *Tabi’ee*⁶.

1 *Al-baqarā*: 217.

2 *Saḥīḥu al-bukḥārī alonge with fatḥu al-bārī*, volume 2, page 123. Published by maktabā al-salafīā, Egypt, 1422 AH.

3 *Tārīkh ibn ma ‘īn*, by *yaḥīa Ibn ma ‘īn*, volume 3, page:101. published by *dār al-m’amūn*, 1399 AH.

4 Ibid, volume, 3, page:32,88,105.

5 *Taqrību al-taḥḍīb* by *Ibn Hajar asqalānī*, volume, 6, page14, published by *dār al-rashīd*, 1406 AH.

6 *Tārīkh al-ḥiqā* by *āḥmad al- ‘ajlī*, volume, 1, page 453, published by, *maktabaū al-dār, ālmadīnāū al-munawarā*, 1405 AH.

Another renowned and authentic Muslim scholar *Imam hītamī* stated that it is only narrated by 'ikramāṭ', but there is other supportive authorities which has been narrated by the lots of companions which has got status of *shuhraṭī* (near to *mutawāṭir*) as narrated by *ṭabrānī* from Abu Huraira (RA) with excellent narration (*aisnād Hassan*) and also narrated by *Mu'āwīṭā bin Heeda* (RA), and all of the narrators are *ṭhiqaṭī* likewise *Imam Mālik* narrated in his book *Maūṭa'a* from *Zaid bin Aslam*.¹

Other narrators in Seerat un Nabi

This authority has narrated by Bukhari by two chains:

The first chain of narrators

1. *Ali Ibn Abdullah al-madā'inī* who is *ṭhiqaṭī*.²
2. *Sufiān bin 'uāinaṭ* who is a prominent *muḥadith* and *Tabi'ee*.³
3. *Ayub al- al-sakhtānī* who is *ṭhiqaṭī*.⁴

The second chain of narrators

1. *Abu Nu'man Muhammad bin Al-faḍal Al-sudūsī* titled by *Arim*. He is *ṭhiqaṭī*. And *Sabat*.⁵
2. *Hamaād bin Zaid*. He is *ṭhiqaṭī*. And the one of the most authentic narrator.⁶

There is another authentic narration of *Hadrat Uthman* (RA) when rebellions besieged him, he said, " why you don't know? Allah Messenger said, " *The blood of Muslim who testifies that there is no god but Allah, and that I am Allah's messenger, may not be lawfully shed but one of three reasons: one who turns away from his Islam, a married man who commits fornication, a life for a life.*"⁷

The Narrators

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- 1 *Majma'u al-zawwā'id* by *Imam hītamī*, Hadith 10572, , published by, *maktaba al-qudsī, Egypt, 1414 AH, ṭabrānī fī al-'aūsaṭ*, volume, 8, page 275, *Maūṭa'a Malik*, page 282, *Hadith no*, 1419.
 - 2 *Tārīkh ibn ma'īn*, volume, 2, page: 403; *Taqreeb*, volume, 4, page:760.
 - 3 *Ibid*, volume3, page: 18.
 - 4 *Ibid*, volume3, page 78.
 - 5 *Taqribu al-tahqīb*, volume 2, page: 502; *Al Isaf fih Egasah Sukaf*, by *Abdullah Ibn Fahad Halbi*, volume 1, page:4.
 - 6 *Tārīkh ibn ma'īn*, volume3, page 117.
 - 7 *Sunan abū dāu'ud*, *Imam abū dāu'ud Sajistani*, volume 13, page 186. *dār al-Hadith*.

1. Sulaiman bin Harb al Azdi. He is *thiqaṭ*, *imām* and *ḥāfiẓ*.¹
2. *Hamaād bin Zaid*. We have discussed him above.
3. *yaḥiā ibn Saeed bin Qais al Ansari*. He is *thiqaṭ* and *Sabat*.²
4. *Abū aumāmaī bin sahal*. He is one of the companions of the Prophet (PBUH).³

The same authority by the *Hadrat Uthman* (RA) narrated by the following chain:

1. *wakī' bin Jarāḥ*. He is *thiqaṭ*.⁴
2. *Muhammad bin qaīs bin rabī'*. He is *ṣadūq*. Sufiān bin 'uāinaā and other who narrates from him is⁵ *Ibn e Hajar*, and he says: He is *thiqaṭ* and *ṣadūq*.⁶
3. Dawood bin Haseen. He is also *seqa*.⁷

With the same meaning, it has been narrated by *Abdullah bin Mas'ood* that Allah's messenger said:

*"The blood of Muslim who testifies that there is no God but Allah, and that I am Allah's messenger, may not be lawfully shed (killed) but one of three reasons: a married man who commits fornication, a life for a life, and one who turns away from his religion and abandons the community".*⁸

It has also been reported by Aisha (RA) that Allah's messenger said:

“A Muslim may lawfully be killed only for one of the three cases, a married man who commits fornication in that case he should be stoned to death, a man who kills a Muslim deliberately for which he should be killed and a man who apostatizes from Islam and fights with Allah and his messenger, in that case he should be killed and crucified or banished from the land”⁹.

1 *Tārīkh ibn ma'īn*, volume4,page :221; *taqrību al-tahqīb* ,volume 1, page:250.

2 *Taqrību al-tahqīb*, volume, page: 591.

3 *Taqrību al-tahqīb*, volume3, page: 104; *tārīkh ibn ma'īn*, volum 3, page:259.

4 *Tārīkh ibn ma'īn*, volume1, page: 51.

5 Ibid, volume1, page: 457; volume 3, page 412.

6 *Taqrību al-tahqīb*, volume 10,page: 45.

7 *Tārīkh ibn ma'īn*, volume 3, page: 235; *taqrību al-tahqīb*, volume1,page: 198.

8 *Saḥīḥ Muslim by Imam Muslim*, volume3,page 1320 ch:6, published by dār al-fikr bīrūt.

9 Ibid.

Apostasy takes place by committing one of the breaches of the Islam, whether seriously, playfully or mockingly, Allah Exalted He, Says:

*".. And if you ask them, they will surely say, we were only conversing and playing, say, Is it Allah and His Aayat (proofs, evidences, verses, lesions, science, revelations etc) and His Messenger that you are mocking? Make no excuse, you have disbelieved (I. e. rejected faith) after your belief if we pardon someone...."*¹

In the above mentioned verse Allah Almighty is taking strictly action against those who even mocks his messenger and enounced of no excuse for him then what will be the case of a person who clearly contempt Prophet (PBUH)?

Another Hadith narrated by Abu Dawood that:

*"On the day of fathi e Makkah (Victory of Makkah) the Prophet (BUH) forgave all the people except the fours, at that time Hadrat Uthmam (RA) came along with Abdullah bin Abi sarh and asked the Prophet to swear him but the Prophet declined three time and then accepted the request. After wards he said to the companions: Is there was no one among you who kill him at the time when I declined?"*²

In the said Hadith there are two types of crime which has been committed by Ibn e Abi Sarh 'one of them is apostasy ' while the second one is high treason by his involvement in anti-Islamic activities under the umbrella of *dāru al-ḥarb* ' so in this case when he repented it was accepted but due to high treason he was liable to death penalty until his pledge was accepted and the case were become more sensitive after *Hadrat Uthman* has given him protection which has high value in Arab custom as well as in Islam therefore companions have keep refrain themselves from any such type of action against him .and were waiting for an a clear decision of the Prophet (PBUH).

1 Al-taūbaī: 65-66.

2 Sunan abū dāu'ud, volume 3, Page 11, Hadith No, 2685.

And in the Hadith of *mu'āz bin Jabal* when he was sent to *Yaman* the Prophet (PBUH) ordered him, " *anyone who apostates preach him, if he do not accept kill him, likewise any woman if apostates preach her otherwise kill her.*"¹

It has also been reported by Abu Musa (RA) that a Jew embraced Islam and then reverted back, when the *mu'āz* (RA) came to know he said, " *I will not sit until he is killed.*" So he was killed.²

Practice of Sahabah (The companions of the Prophet)

There are so many cases in the era of the Rightly Guided Caliphs in which the ruling was so clear about the death penalty of an apostate as narrated by Ali Ibn e abu Talib,³ *Tāu'u's* from *Ibn Abbas*⁴, Bahaz bin ḥakīm from his grandfather⁵, ānas is from Ibn Abbas⁶, *Sha'abī* form Ali ibn e Abu Talib⁷, and Ayub Bin Abi Tamima from Ibn Abbas⁸.

Therefore it has been cleared from the above discussion and different *āḥādīth* that the objection raised by many critics that the Ikrama is the sole reporter from Ibn-e-Abbas is not true and this argument is baseless. It has also been disclosed that from the above *āḥādīth* that all companion of Prophet (SAW) are agreed unanimously upon the death penalty of apostate.

Consensus among Muslim Scholars

There is consensus among Muslim scholars on this judgment and its relevant ruling, such as separating between the apostate and his wife and preventing him from disposing of his property before killing him as it has stated in " *hidāya* " a prominent book of the Hanafi School of Thought:

" *Whenever a Muslim apostate he will be imprisoned for three days and if come back in Islam he will be released otherwise will be killed*"⁹

1 *Saḥīḥu al-bukḥārī* along fathu al-bārī, volume 12,page 268.

2 Ibid, volume 19,page 38; *ṣaḥīḥ* Muslim,volume9,page:345.

3 Muṣanaf ibni ābī Shaībaī, by ibni ābī Shaībaī Hadith no, 2899, published by dār al-qiblaī 1409 AH.

4 Ibid, Hadith No:2801.

5 Al-mu'jam Al-kabīr by Tabrānī, volume 14, Hadith 353. Published maktabaū al-'ulūm wālḥikam,1404 AH.

6 Muṣanaf ibni ābī Shaībaī, Hadith 17312.

7 Ibid ,volume 10, page 188

8 Al-Sunan al-kubra by bīhaqī, volume 8, page 195. published by, dār al-kutub al-'ilmīāī, 1424 AH.

9 *Al-hidāya* by *Murgīnānī* ,volume 1, page: 580, published by, idāraī al-'ulūm Karachi.

While it has been declared in *Al-Majmū' Sharḥu al-muhwḍab* a well-known book of Shāfi'ī School of thought that:

"*Anyone who backsides from Islam will be killed whether he is a free person or a slave and Muslim Jurists have agreed upon the death penalty of the apostate.*"¹

Ibne Rushd al-mālikī written that:

"it is clearly stated by Muslim jurists that When an apostate has captured before fighting with him, he will be sentenced to death without any other option before judge, due to the saying of the Prophet (PBUH): Who backslides from Islam he will be killed".²

Likewise, *Ibn e Qudāma* from ḥanbalī School of Thought says while discussing the issue of apostasy:

"that Muslim Jurists have consensus upon the compulsory death penalty of apostate which is narrated by Abu Bakar (RA), Umar (RA), Uthman (RA), Ali (RA), Ma'āz (RA), Abu Musa (RA), Ibn e Abad (RA), and Khalid (RA) etc. while no one from the companions of the Prophet (PBUH) went against this which shows the consensus of the companions regarding the death penalty of the apostate."³

In the above-mentioned legal texts, it has been proved that all schools of thought are agreed upon the death penalty of the apostate, which is the only punishment without any other option, and they have clearly mentioned that this punishment is obligatory in Islamic Law, but the question is that it will be considered as "Had" or Discretion of Imam (the State)?

Allama ibn e 'ābidīn has discussed in his *Rasā'il* about the said issue in detail, which can be concluded in the following points:

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- 1 *Al-Majmū' Sharḥu al-muhwḍab*, by Sharfuddin al Nawwi volume 19, page:228, published by dār al-fikr, bīrūt, 1423 AH.
 - 2 *Bidā'atū al-mujtahid*, by ibne rushd, volume, 2, page:343, published by dār al-kutub al-'ilmīā, 1425 AH.
 - 3 *Al-mughnī* with *Sharh ul Kabir*, by *Ibn e Qudāma* ḥanbalī, volume 10, page: 74. published by king abdul aziz foundation.

1. Consensually the apostate will be killed, and his repentance will be accepted, if he is not *zindīq* ¹.
2. There is a basic difference between the death penalty of an apostate and original infidel one, because, in case of an infidel the Imam will offer him three option, killing, slaving, and putting *jizīat* (poll tax), while in case of apostasy, death is a special penalty due to its status as right of Allah, without any other option, so it means that it is *Had* penalty.
3. Apostasy is an exceptional case which is to be pardon if he repents, as it has been stated in the Holy Quran:

"Say to those who have disbelieved (that) if they ceased, what has previously occurred will be forgiven for them...." ²

It resembles to the case when a person has been convicted through his confession for fornication/adultery and then reverted back from his confession will not be punished as "*Had*". ³

So, in the above case when the reason of the penalty has been not existed then he will not be punished. And also no one can object that this is a unique and an exceptional case due to its nature. On the basis of hadith of Prophet (PBUH) one's coming back to Islam is just like that he was in Islam and he has committed no crime. Hadith of Prophet (PBUH) that: "Islam demolishes all what was done before embracing Islam." ⁴

So, the same point of view has been adopted by Qādī 'aīād ⁵, Ibn Munzir ⁶, Muhammad bin Suḥnūn ⁷, *Al-kḥaṭābī* ⁸, and Ishāq bin rāhwīh ⁹ regarding the death penalty of the apostate.

Punishment of apostasy in Shariah Islamia

Regarding the nature of punishment of apostasy that whether it is "*Had*" (Right of Allah) or *sīāsāt* (Right of State or political punishment), so

1 The person who is apparently Muslim but not in fact. *Hāshiatu ibn 'ābidīn*, volume3, page 293.

2 *Al-'anfāl*: 38.

3 *Rasā'il of ibn e 'ābidīn*, page: 315,316.

4 *Sahih Muslim*: 121.

5 *Al-shifā'* by Qādī 'aīād, volume 2, page:212.

6 *Al-īshrāf 'ala maḍāhib āhlu al-'ilm*, volume 3, page 16.

7 On the authority of *al-shifā'* by Qādī 'aīād, volume 2, page:215.

8 *Ma'ālimu al-sunan*, volume, 4, page 199.

9 On the authority of Ibn Abdul Bar in "*al-tamhīd*", volume page 226.

majority of the Jurists have the opinion that it is a “*Had*” while the Hanafi School of thought considered it as a *sīāsā*. But confusion has been created by “*fatāwa bazāzīyāt*” who declared it as “*Had*” and according to his predecessor Qādī ‘aīād who also stated in his book “*al-shifā*” that *ridā* is “*Had*” in Hanafi School of Thought. Afterwards many of Hanafi Jurists have blindly quoted “*fatāwa bazāzīyāt*” this regard without consulting classical Hanafi views. Actually, the punishment of “*Had*” is not laid down under rules and characteristics of “*Had*” because they have been accepted as an exceptional in many cases which is clearly contrary to its rules, e.g.¹

- I. According to *ḥanafī*, “*Had*” cannot be proved by *Kḥabru al-’āḥād* (Hadith reported by one authority), the ahadiths relating to this issue are not more than *Kḥabru al-’āḥād*.
- II. Repentance is not acceptable in *ḥudūd* but in the case of *ridā* Hanafi Jurists along with Imam Shāfi‘ī have view to accept repentance even at third or fourth time. Moreover, time of three days has to be given to an apostate to rethink and it will be strived to remove his doubts about Islam.
- III. Woman is not liable to death penalty in case of apostasy at Hanafi School of thought. As *ibn e ’ābidīn* says that woman is not sentenced to death because she is not creating high treason and if she does then she will also be executed. It means that according to the *ḥanafī*, it is not a “*Had*” because in “*Had*” there is no difference of man and woman.
- IV. The cause of death penalty in case of *ridā* is not only *ridā* but persistence on it. So how an infidel can be punished by as “*Had*” because he is not an audience (*mukḥāṭab*) of Islamic Law as per rule and “*Had*” could not be implemented upon him (infidel).

More ever there is a tradition:

The blood of Muslim who testifies that there is no God but Allah, and that I am Allah’s messenger, may not be lawfully shed but one of three reasons: a married man who commits fornication,

1 *Badā’ī’u al-ṣanā’ī’* by *al-kāsānī*, volume 7, page 135; *al-Mabsūṭ* by *al-sarakḥsī*, volume10, page 183, *Rasā’īl of ibn e ’ābidīn*, risala no 15.

a life for a life, and one who turns away from his religion and abandons the community".¹

“Abandons the community” means that the penalty of *ridāʾ* is because of high treason created by him not only because of *ridāʾ*. While the order of death penalty in Sunnah is due to its involvement in high treason (*fasād*). Therefore it may be divided into *ردة مجردة* (simple apostasy) and *ردة مغلفة* (apostasy with High treason) and the second one is accompanied with high treason.

Blasphemy Law in Pakistan:

In Pakistan during the process of Islamization of laws, blasphemy has also been declared as a crime, and a section has been inserted in the Pakistan Penal Code, 295 –C, which states that.

“use of derogatory remarks , etc. :in respect of the holy Prophet, whoever by words , either spoken or written or by visible representation, or by any imputation , innuendo or institution, directly ,or indirectly, defiles the sacred name of the holy Prophet Muhammad (PBUH) shall be punished with death , or imprisonment for life , and shall also be liable to fine “.²

In the above legal section of Pakistan penal code, court has been given option to award either death penalty to the contemnor or if it is considered more appropriate imprisonment of life it may be awarded.

In the light of 295 C we can say that it is declared “*sīāsāt*” because according to the section, the judge has been given a discretionary power.

On the other hand, the situation becomes more interesting in the case of MUHAMMAD ISMAIL QURESHI Petitioner versus PAKISTAN through Secretary, Law and Parliamentary Affairs Respondent Shariat in 1990, when the FEDERAL SHARIAT COURT of Pakistan³, has examined the law under the authority conferred by constitution of Pakistan that the said discretionary power is repugnant to the injunction of Islam and only death penalty should be fixed by legislative Act. As stated in the judgment that.

1 Sahīḥ Muslim, volume3,page 1320 ch:6.

2 Pakistan Penal Code sec 295 , c.

3 PLD 1991 Federal Shariat Court 10.

“In view of the above discussion we are the view that the alternate punishment of life imprisonment as provided in section 295-C, P.P.C. is repugnant to the injunction of Islam as given in the holy Quran and Sunnah and therefore, the said word be deleted there from”¹

In the above paragraph “said word “means the punishment of imprisonment for life which has been directed to removed and make an amendment in the said law as it is the constitutional demand and responsibility of the government of Pakistan,

In the said case it has been stated that if the authority has failed in carrying out the order of the court according to the amendment of the said law then, “in case, this is not done by 30th April, 1991 the word “or imprisonment for life “ in section 295 –C shall cease to have effect on that date”²

It means that the honorable court has declared it as “*Had*” punishment which cannot be changed and cannot provide any discretion to the judge. Here the court has adopted the opinion of the other Muslim jurists than *hanafi* school of thought.

Conclusion:

The said issue of blasphemy may be concluded as:

Blasphemy is apostasy because contempt of Prophet (SAWM) is considered one of the cases of apostasy and the punishment of an apostate is sentenced to death as stated in different *āḥādīth*, and the Practice of the Companions of the Prophet (SAWM) like Umar (RA) and Ali (RA).

Muslim Jurists have agreed upon the death penalty of an apostate, but they have adopted different point of view regarding the interpretation of such *āḥādīth*, whether it is “*Had*” or *sīāsai*.

Majority of the jurists (*jaumhūr*) counted it as “*Had*”. But in original Hanafi School of thought it did not clearly mention that it is “*Had*”, and in fact it is very difficult to considered it as *Had* according to their principles (*uṣūl*) because of status of the authority which is *kḥabar wāḥid*, and due to acceptance of his repentance and excluding of woman form death penalty

1 Ismail Qureshi vs state, PLD 1991.

2 Ibid.

which shows that is not “*Had*” but *sīāsāʿ* (political punishment). This shows that apostasy is not treated as “*Had*” in the classical Hanafī School of Thought.

In the Pakistan Penal Code, its punishment has been declared as “*taʿzīr*” and court may award according to the situation either death penalty or imprisonment for life. But according to the court decision in the above-mentioned case its punishment has been fixed in the shape of death as a “*Had*”.

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8. *Al-Mabsūṭ* by *al-sarakḥsī*, published by dār al-fikr, bīrūt, 1414 AH.
9. *Al-Majmūʿ Sharḥu al-muhwḍab* by Sharfuddin al Nawwi published by dār al-fikr, bīrūt, 1423 AH.
10. *Al-muġhnī* with *Sharh ul Kabir*, by *Ibn e Qudāmaṭ ḥanbalī*, published by king abdul aziz foundation.
11. *Al-ṣawārimu al-maslūl*, *Ibne taīmīāṭ*, published by muṣṭafa al-ḥalbī, Egypt.
12. *Al-shifāʿ* by *Qādī ʿaīād*, with its Commentary by Mulā ʿalī qārī, published by, dār al-kutub al-ʿilmīāṭ.
13. Al-sunan al-kubra by bīhaqī, published by, dār al-kutub al-ʿilmīāṭ, 1424 AH.
14. Badai Al Sanai by Kasani, published by Dar Al Kutab Al Arabi, 1406 AH.

15. *Bidāīatū al-mujtahid* by ibne rushd, published by dār al-kutub al-‘ilmīā, 1425 AH.
16. *Lisān al-‘arab* by ibn e Manzūr, published by, dāru al-‘āfāq al-‘arabīā. 1414 AH.
17. *Ma‘ālimu al-sunan, , Al-kḥaṭābī published by, al-maṭba‘atū al-‘ilmīā, ḥalab, 1351 AH.*
18. *Majma‘u al-zawwā’id* by Immam hītamī, published by, maktabā al-qudsī, Egypt, 1414 AH.
19. *Maūṭa‘a Malik*, by Imam Malik, published by dār ihīiā’ al-‘arabī. 1406 AH.
20. *Muṣanaf ibni ābī Shaība* by ibni ābī Shaība, published by dār al-qibla 1409 AH.
21. *Rasā’ili ibne ‘ābīdīn* by Muhammad amen *ibne ‘ābīdīn*
22. *Saḥīḥu al-bukḥārī* by Imam Muhammad bin Ismail *al-bukḥārī* alonge with fathu al-bārī published by maktabā al-salafīā, Egypt. 1422 AH
23. *Saḥīḥu Muslim*, by Imam Muslim, published by dār al-fikr bīrūt.
24. *Sunan abū dāu’ud* by Imam abū dāu’ud Sajistani, *dār al-Hadīth*.
25. *Taqrību al-tahdīb* by *Ibn Hajar asqalānī*, published by dār al-rashīd, 1406 AH.
26. *Tārīkh al-thiqāt* by *āḥmad al-‘ajlī*, published by, maktabā al-dār, *ālmadīnā al-munawarā*, 1405 AH.
27. *Tārīkh ibn ma‘īn*, by *yaḥiā Ibn ma‘īn*, published by *dār al-m‘amūn*, 1399 AH.
28. *Pakistan Penal Code*.
29. *PLD, Ismail Qureshi VS State Case, Federal Shariat Court of Pakistan*.