



The Salman Rushdie Issue: A Synthesis of the Islamic Law of Blasphemy/Apostasy in the Context of Canadian Multiculturalism



Introduction

An e-mail communication by a visitor to our website made us aware, once again, of the need to make available reliable information on those particular provisions of Muslim Law which so often shock a casual, uninformed non-Muslim observer, who is particularly accustomed to a 'Western'/secular way of thinking. Consequently the derogatory epithets emanating from such people seem to acquire a life and a currency of their own. Such reactions in their turn, seem to shock and baffle the Muslims out of their wits too! Yet, in some vague fashion, both parties seem also to realize that their relative sets of basic values, fundamental principles and concepts and inherent philosophies are different in so many ways. Both parties are also likely to realize more often than not that their respective positions make sense in the context of their own circumstances. No doubt both are appreciative of the realities of life that the world has shrunk and changed so much that there is no practical alternative but to live and let others live side by side. Tolerance and co-existence is no longer a matter of choice in this nuclear age. Genuine, real tolerance is not an option anymore. Instead it has now become an imperative that cannot be ignored. Therefore, it is incumbent on both sides to make sincere efforts to demolish the barriers of mutual discontent and mutual ignorance. No doubt the knowledge vacuum has to be eliminated, but how does one go about filling in this vacuum? Philosophical discourses, academic presentations and high-brow elitist approaches do have their own roles to play in their own

limited spheres, but it is the need of the man on the street which must be given top priority. This need can only be fulfilled by providing reliable information and knowledge in a simple yet sophisticated manner to satisfy the wide spectrum of the grasp of the average man. In faithful pursuit of its mandate, the Canadian Society of Muslims is trying to do just that despite our own limitations of resources.

Our modest effort in this respect is mainly meant to assist the non-Muslim, Western, secular man on the street, in an unbiased understanding of Islamic teachings. We felt that there was no point in resorting to the archaic language or the detailed scholarly discussions and the academic texts of the usual classical legal compendiums such as *Fatawa Alamgiri*, *Hidaya*, *Kifaya*, *Dural Mukhtar*, *Radd al-Muhtar*, *Quaduri*, etc. We have therefore tried to use simple dictionaries and other not-so-difficult English books which are readily available in Western countries and easy to understand without getting into too much detail of an academic nature.

We are obliged to our thoughtful correspondent for pinpointing the need for information on the Islamic Law of Blasphemy and Apostasy. We have tried to cover almost all the points of his letter which in effect are used as our parameters for discussion of the subject matter.

I. Dictionary of Islam⁽¹⁾

by T.P. Hughes:

The following definitions are important for our discussion:

Blasphemy - "(Kufr) 'to hide' (the truth).

It includes a denial of any of the essential principles of Islam.

A Muslim convicted of blasphemy is sentenced to death in Muhammadan countries."

According to *Webster's Dictionary*⁽²⁾ "contemptuous and irreverent speech about God or kings regarded as sacred."

Apostasy - "According to Muslim Law, a male apostate, or *murtadd*, is liable to be put to death if he continue obstinate in his error; a female apostate is not subject to capital punishment, but she may be kept in confinement until she recant. If either the husband or the wife apostatize from the faith of Islam, a divorce takes place *ipso facto*; the wife is entitled to her whole dower, but no sentence of divorce is necessary. If the husband and wife both apostatize together, their marriage is generally allowed to continue, although Imam Zufar says if either husband or wife were singly to return to Islam, then the marriage would be dissolved.

According to Abu Hanifah, a male apostate is disabled from selling or otherwise disposing of his property. But Abu Yusuf and Imam Muhammad differ from their master on this point, and consider a male apostate to be as competent to exercise every right as if he were still in the faith.

If a boy under age apostatize, he is not to be put to death, but to be imprisoned until he come to full age, when, if he continues in the state of unbelief, he must be put to death. Neither lunatics nor drunkards are held to be responsible for their apostasy from Islam. If a person upon compulsion became an apostate, his wife is not divorced, nor are his lands forfeited. If a person become a Mussulman [i.e. Muslim] upon compulsion, and afterwards apostatize, he is not to be put to death.

The will of a male apostate is not valid, but that of a female apostate is valid.

Ikrimah relates that some apostates were brought to the Khalifa Ali, and he burnt them alive; but Ibn Abbas heard of it and said that the Khalifa had not acted rightly, for the Prophet had said " *Punish not with God's punishment (i.e., fire), but whosoever changes his religion, kill him with the sword.*"

Apostasy - Returning to Webster's dictionary this time for a definition of Apostasy and Treason: - "the public

abandoning of a religious faith, esp. Christianity, for another; a similar abandonment of a doctrine or party." "Treason is' defined: "not only as an attempt to overthrow by illegal means, the government to which a person owes allegiance, the act or attempted act of working for the enemies of the State, and attempt to kill or injure the sovereign, but also betrayal of trust, disloyalty (to a cause, friend, etc.)."

II. Abingdon Dictionary of Living Religions

(3)

Apostasy in Islam is defined/described as follows:

Irtidad and *Ridda* [signifies 'turning back' from Islam to another religion or to unbelief] are the technical Arabic terms and an apostate is a *murtadd*; (Lit. "one who turns the back") [forsakes Islam for another religion or unbelief]. In the Qur'an, God's punishment for *Irtidad* is only in the afterlife [life in the next world] (Sura 16:106, ff.; 3:86 ff.; 2:217), although one who repents, not having become confirmed in apostasy, will be saved.

In the Prophetic Tradition, apostasy is punishable by death, a view which is upheld and detailed in both the Sunnite and Shi'ite law books.⁽⁴⁾ However, the offender is usually granted an opportunity to recant. Only adult, sane, male apostates who have acted freely are to be executed (traditionally by the sword). Women are either imprisoned until they recant (Hanafites and Shi'ites) or are executed (Malikites, Shafi'ites, and Hanbalites).

The death penalty is rarely carried out today, but there remains a powerful sense of outrage among Muslims when one of their number forsakes the community.

Bibliography, Muhammad Ali, *The Religion of Islam* (nd), pg. 591-99; S.M. Zwemer, *The Law of Apostasy in Islam* (1924); Burhan al-Din Ali, *The Hedaya*, etc., Hamilton, (1791), II, 227. (F.M. Denny)."

III. The Concise Law Dictionary⁽⁵⁾ (Legal Definitions)

Please note, the following definitions deal with the British Common Law system and do not cover the French/Civil/Roman law system, yet they could help for a sort of a comparison with the Muslim Law provisions.

Blasphemy "The public or ciminal libel of speaking matter relating to God, Jesus Christ, the Bible, or the Book of Common Prayer, intending to wound the feelings of

mankind or to excite contempt and hatred against the Church by law established, or to promote immorality. It is a common law misdemeanour."

Apostasy "The total renunciation of Christianity by one who has been educated in or professed that faith within this realm. It is punishable under 9 WILL, 3, c.35"

Nationality "The character of or quality arising from membership of some particular nation or state, which determines the political status and allegiance of a person. It may be acquired by birth, descent, naturalisation, conquest, or cessation of territory, or (if a woman) by marriage."

Naturalization "When a person becomes the subject of a State to which he was before an alien."

State "The organized community: the central political authority. In international law, a State is a people permanently occupying a fixed territory, bound together in one body politic by common subjection to some definite authority exercising, through the medium of an organized government, a control over all persons and things within its territory, capable of maintaining relations of peace and war, and free from political external control."

Treason "Breach of allegiance -- In all prosecution for treason some overt act must be alleged and proved: there existed formerly both high treason and petty treason -- *The Treason Act*, 1800, provided that in case of high treason, where the acts charged were the killing of the king or any direct attempt against his life or whereby his life might be endangered or his person suffer bodily harm, the person charged should be indicted, arraigned and tried in the same manner as if he stood charged with murder. *The Treason Act*, 1945 amended the Act of 1800 to make it of general application to all cases of treason."

Capital punishment "Punishment of death, awarded for treason and the capital felonies . . ."

Law "A law is an obligatory rule of conduct. The command of him or them that have coercive power (Hobbs); A law is a rule of conduct imposed and enforced by the Sovereign (Austin). But *the* law is the body of principles reorganised and applied by the State in the administration of justice (Salmond).

Ihering found the end of law in the delimitation of interests; and Vinogradoff saw law as "a set of rules

imposed and enforced by a society with regard to the attribution and exercise of power over persons and things."

Right "An interest recognised and protected by the law, respect for which is a duty and disregard of which is a wrong (Salmond). A capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others (Holland.)"

Obligation "A duty: the bond of legal necessity which binds together two or more determinate individuals. It is limited to legal duties arising out of a special personal relationship existing, whether by reason of a contract or a tort, or otherwise between two or more individual persons; e.g. debtor and creditor."

IV. The Muslim Conduct of State ⁽⁶⁾

I would like to reproduce here below paragraphs 330 to 335 from Dr. Muhammad Hamidullah's *The Muslim Conduct of State* in order to elaborate further on this subject. It should be borne in mind that this book is a recognized authority on Muslim International Law and that the law of Apostasy is discussed in the International context:

"To wage war against apostates is justified on the same principle as that on which the punishment of a solitary apostate is based. The basis of Muslim polity being religious and not ethnological or linguistic, it is not difficult to appreciate the reason for penalizing the act of apostasy, for it constitutes a politico-religious rebellion. The greater the harm of a given rebellion to a polity, the greater is the severity of repression. Every civilization, not the least the modern Western one - both in the communistic and capitalistic manifestations - has provided capital punishment against violating the integrity of what it considers its very *raison d'etre*; and one cannot deny that right to Islam. As an independent organic community, Islam will have the liberty to determine what points should be dearer to it: colour of one's skin, language spoken by its subjects or ideology which animates its existence. As a passing remark, let us recall that the Byzantine law of the epoch of the Prophet also punished with death the apostasy from the Byzantine sect of Christianity. (paragraph 330)

Apostasy in Muslim law means turning from Islam after being a Muslim. Not only does it occur when a person declares his conversion to some non-Islamic religion, but also when he refuses to believe in any and every basic

article of the Islamic faith. (paragraph 331)

The sayings and doings of the Prophet, the decision and practice of the Caliph Abu Bakr, the consensus of the opinion of the Companions of the Prophet and all the later Muslim jurists, and even certain indirect verses of the Qur'an, all prescribe capital punishment for an apostate. In the case of apostasy, no distinction is made between a Muslim born of Muslim parents and a convert; and similarly there is no difference between accepting Judaism or Christianity, atheism or idol-worship or any other non-Islamic faith. Nevertheless, Muslim jurists emphasize that before prosecuting and condemning an apostate, it is necessary officially to discuss the matter with him and to remove his doubts regarding the soundness and reasonableness of the Islamic point of view in the matter concerned. Time is given him for reflection sometimes even for months before finally proceeding with the prosecution. There is no difference between a free man and a slave, as Sarakhsiy is explicit. ⁽⁷⁾

In case an insane person, a delirious, a melancholy and perplexed man, a minor, or intoxicated, one who had declared his faith in Islam under coercion, and a person whose faith in Islam has not been known or established were to become apostate, they would not suffer the supreme penalty. So, too, an apostate woman, or a hermaphrodite, according to the Hanafi school of law, would not be condemned to death, but imprisoned and even physically tortured. An old man from whom no offspring is expected is also excepted. (paragraph 333)

Treatment of an Apostate

The apostate has to choose between Islam and the sword; he cannot be given quarter, nor will he be allowed to become a *dhimmi*, i.e. a resident non-Muslim subject of the Muslim State, on payment of the yearly protection-tax. (paragraph 334)

De jure he is dead. So if he does not re-embrace Islam, and escapes to some non-Muslim territory, his property in the Islamic territory will be distributed among his Muslim heirs as if he were dead. In addition to this, the debts owed to him will be wiped out if he has reached non-Muslim territory. This is what Mawardi says, but I wonder why these debts should not be inherited by the heirs of the renegade just like the rest of his property." (paragraph 335)

V. Introduction to Islam ⁽⁸⁾

by Dr. M. Hamidullah

I will now refer to a very useful book entitled "*Introduction to Islam*" by the same author. A thorough reading of this book is highly recommended for good general background information about Islam, particularly the chapter on "The Islamic Conception of Life" (Par. 99 to 125). Paragraphs: 261-265; 118, 119, 440, 387, and 533 are particularly relevant. For ease of reference we are reproducing these paragraphs separately in the Appendix.

VI. More Definitions and Differences

In order to properly grasp the significance of why blasphemy/apostasy are treated as *Treason*, it is crucial to note that Islamic concepts of "State, nation/nationality," "citizenship" and "naturalization" are drastically different from these notions as we understand and routinely use them in the Western secular countries where they are defined as follows: a "nation" is defined as "a body of people recognized as an entity by virtue of their historical, linguistic or ethnic links; a body of people united under a particular political organization, and usually occupying a defined territory." And a "state" is defined as, "a self-governing political community occupying its own territory; a partly autonomous member of a political federation; the political organism as an abstract concept." Islam came to class these notions among the evil traits of humanity and tried to bring about a cure. ⁽⁹⁾

What is the Islamic cure? Or to put it another way: How different then is the Islamic concept? To start with, the basis of the Islamic nationality is *religious* not political, ethnic, linguistic or regional. ⁽¹⁰⁾

A common ideology is the basis of "nationality among the Muslims, and Islam is this ideology ⁽¹¹⁾ and this Islamic ideology is a synthesis of the requirements both of the body and the soul. ⁽¹²⁾ After all, life in this world is but ephemeral, and there must be a difference between the behaviour of a man and a beast. ⁽¹³⁾ "Naturalization" (to grant citizenship) or "nationality" in Islam is a thing depending solely upon the will and the voluntary choice of the individual, not on an essentially ineluctable accident of nature. ⁽¹⁴⁾

Islam rejects the narrow Western basis of birth and common blood, language, etc. as the element of solidarity

called "nationality".⁽¹⁵⁾

A citizen, by definition, has rights and owes allegiance to the State howsoever defined. Under the secular, non-Islamic, Western way of life, based on *political* authority, a western citizen owes his allegiance to the political entity. In Islam a Muslim citizen owes his allegiance to a *politico-religious entity* which is based upon his religious ideology.

Now, one is likely to wonder what the concepts of state, religion, treason and apostasy have to do with blasphemy, and why is it necessary and even relevant to mention laws of Apostasy in the same breath. Without a proper background on the subject, it would be very difficult for a non-Muslim to understand the reasoning. Let me explain.

In Islam, contemptuous, irreverent speech or sacrilegious acts, not only about God, but also about the Prophet Muhammad and all other prophets, and the members of these prophets' households, as well as the holy scriptures, including the Qur'an, and other things that are of a similar religious nature (i.e., which are regarded as sacred) are all acts of blasphemy. Muslims regard blasphemy to be as heinous a crime as apostasy. Since blasphemy is tantamount to apostasy, which in Islam is an act of political treason, (i.e. a crime against the state which is a capital offence) the punishment for blasphemy is the same as the punishment for apostasy. In other words, by committing blasphemy, a Muslim takes himself out of the pale of Islam and becomes an infidel, an apostate. As to the question of the severity of punishment for treason, we need only mention the fact that almost every country and every nation in the world regards Political Treason as a capital offence which calls for capital punishment involving forfeiture of life. In order to bring the differences and similarities of the two systems into relief, the following illustration may be useful: -

Tabulated 'Equation'

| WEST | = | ISLAM |
|--|---|--|
| STATE (Political entity) | = | IDEOLOGY (politico-religious entity) |
| ALLEGIANCE to state | = | ALLEGIANCE to ideology/faith |
| DISLOYALTY to state | = | DISLOYALTY to religious faith/ideology |
| such disloyalty TREASON | = | such disloyalty = APOSTASY |
| TREASON: Capital Crime | = | APOSTASY: Capital Crime |
| BLASPHEMY = non-capital offence | = | BLASPHEMY = CAPITAL CRIME |
| Blasphemy does NOT equate to Apostasy | = | Blasphemy = Apostasy |
| PUNISHMENT different (for both offenses) | = | PUNISHMENT identical (for both crimes) |

**VII. Kitab al-fiqh Ala' al-Madahib
al-Arba'ah⁽¹⁶⁾
by 'Abd al-Rahman Jaziri (Urdu translation)
Excerpts and examples to further illustrate what
constitutes blasphemy in Islam**

It is necessary to have evidence of two reliable witnesses corroborating each other before a *Khazi* (judge) shall be required to question the witnesses. Thereupon the witnesses will have to make statements describing the words uttered or the acts done which constitute apostasy.

Apostasy can be committed in two ways: (1) by uttering expressly by tongue that he is (or has become) a *Mushrik*, a polytheist (i.e. one who associates others with the One God and considers them to be worthy of worship) or, by saying something which is bound to connote in its meaning a denial of the existence of God, for instance to say that God has corporeal (physical, material) existence just like any other corporeal object, or (2) by the performance of an act in which one cannot avoid the clear conclusion that it is tantamount to '*kufr*' (infidelity, denial of Islam), for example, to throw away with contempt the holy Qur'an or any part of it or even a single word of it; or to throw it in the fire in an insulting, contemptuous manner; or to throw it in such a place as a garbage dump where there are filthy, dirty and repulsive things; or in a spittoon etc. These acts would be blasphemous and

constitute apostasy.

The same rules apply to the Most Beautiful Names of Allah as well as to books of Ahadith (Prophetic Traditions - i.e. records of the Prophet's sayings, doings and tacit approvals) and it would be considered blasphemy amounting to apostasy.

The same rules apply to books of *Fiqh* (Muslim jurisprudence) provided the acts are done with the intention of defaming or belittling with contempt the Islamic injunctions or the Islamic code of law. This would be regarded as blasphemy/apostasy.

Other examples of blasphemy/apostasy are:

- To believe in transmigration of souls or reincarnation because this amounts to rejecting the belief in life-after-death and the world of the Hereafter.
- To deny or reject something of which the whole Muslim Community (*Ummah*) is agreed upon, e.g. to hold that the obligatory ritual prayers or fasting are not obligatory or to deny legal permissibility (*halal*) of a thing on which the whole Muslim Community is agreed upon and which is definitely proven to be so on the basis of its proof from the holy Qur'an and Hadith *mutawatir*.
- To call names and use swear-words in respect of all such Messengers of God, Apostles, Prophets who are accepted as such by the whole Muslim Community.

- This same rule applies to angels.
- This same rule applies to angels and prophets with regard to fault-finding using taunting or derogatory or sarcastic language against them even in respect of their physical/bodily defects.
- To use sarcasm and belittling words in respect of the moral character or the way of life (religion) of the Prophet Muhammad or other prophets.

VIII. Some Pertinent Issues

1. Issues cannot be addressed in isolation or out of context.

In dealing with the application of the Islamic penal system, first of all one has to try to understand its place within the Islamic legal framework as a whole or rather within Islam itself. It is well known that Islam provides a complete system for regulating every aspect of human life. The rules, obligations, injunctions and prohibitions laid down by or derived from the Qur'an and the Sunnah produce a complete picture of the Muslim community, from which no part can be removed without the rest being damaged. Equally no isolated part of this scheme, especially when taken out of context, can make any sense or be of any use. Mohammad S. al-Awa in his "Punishment in Islamic Law"⁽¹⁷⁾ points out: "Within any legal system, the philosophy of punishment is an integral part of the system which cannot be understood or applied except within its principles, in order to protect the values recognized by it. If this is correct, and it is undoubtedly correct, then it must be completely wrong to borrow the penal philosophy of one legal system and adapt it to [or compare it with] another which is based on different principles and values ..."

2. Unquestionable Reverence and Legislative Authority of Prophet Muhammad (pbuh) - The Essential Tenet of Islam

The unquestioned reverence and legislative authority of the Prophet Muhammad has been acknowledged by the Muslims as the Messenger of God, and whatever he gave them in his lifetime, (i.e., commands as well as injunctions, in the name of his Sender, God), is accepted by the Muslims as indisputably *final* and *most reasonable*. The belief in the Messengers of God is useful even from the point of view of jurisprudence, in that the awe and

respect and reverence towards them lead to the acceptance of certain fundamentals without any dispute. It is from this that other and further details may be elaborated. For this reason, the Muslim savants are very thankful to the generosity of God, for He gave men along with *reason* certain chosen *human guides* to help them in the conduct of life. These chosen ones pointed out God's commands (for He is the real Sovereign and Lawgiver) with regards to good and evil and with regards to their rights and the corresponding obligations.⁽¹⁸⁾

3. Hadd or Tazeer?

As to the technical terminology of '*hadd*' (unalterable punishment) and '*tazeer*' (discretionary punishment) classification of punishments, according to Hanafi, Shafii and Zahiri⁽¹⁹⁾ schools of law, the death penalty is a '*hadd*' punishment. The Hanbali and Malikki⁽²⁰⁾ do not classify it as '*hadd*' punishment. This difference of opinion arises mainly because of the different ways the grammatical imperative mood of the word 'kill' used in the *Hadith* may be interpreted. This punishment is based on a *Hadith* narrated by Ibn 'Abbas (Sahih Bukhari) in which the Prophet is reported to have said, "Whoever changes his religion, kill him." It is primarily on the strength of this *Hadith* that jurists have based their view that an apostate should be sentenced to death. Their work on the subject leads them to interpret the words, "kill him" as a grammatical imperative, (*sighat al-amr*), that is, an order which must be carried out. The jurists have held that the imperative, *sighat al-amr*, may be used in sixteen different ways. Some of them are: inimitability, recommendation, threat, permission and the literal meaning of the imperative which signifies a *command* or an *order*.⁽²¹⁾

Briefly, in the '*hadd*' category of crime, the judge has no discretion to alter or reduce the prescribed punishment once the crime is proved. In the '*Tazeer*' category of crime the judge has the *discretion* to impose the maximum (in the case of Blasphemy/Apostasy) death penalty or commute the sentence to life imprisonment or pronounce some other appropriate punishment, such as a fine, etc.

4. Severity and Harshness of Islamic Punishment?

Hudud punishments prescribed by the command of the Qur'an or the Prophet are, of course, considered most reasonable, fair and justified in the eyes of Muslims. We would like to quote Paragraph 229 and 230 from the book *Introduction to Islam*,⁽²²⁾ in order to explain the nature of Islamic law and morality as follows: "Islam is based on

the belief of Divine revelation sent to men through prophets as intermediaries. Its law and morality, even its faith, are therefore based on Divine commandments. It is possible that in the majority of cases human reason also should arrive at the same conclusion but essentially it is the Divine aspect which has the decisive significance in Islam and not the reasoning of a philosopher, a jurist or a moralist, the more so because the reasoning of different individuals may differ and lead to completely opposite conclusions. Sometimes the motive of discipline is found underlying an obligation and practice which is apparently superfluous.

One may divide human actions, first of all, into good and evil, represented by orders and prohibitions. The acts from which one must abstain are also divided into two big categories: Those against which there is temporal sanction or material punishment in addition to condemnation on the day of the Final Judgement and those which are condemned by Islam without providing a sanction other than that of the Hereafter."

It must, therefore, be particularly noted that except in cases of extraordinary gravity, the public authorities do not take cognizance of them and it is at this juncture that the discretionary system of punishment (*tazeer*) comes to play its role.

It should also be noted that Islam attaches particular importance to morality "in its ardent desire to attack the very sources of evil and not merely certain of its manifestations. Islam has imposed, recommended, or otherwise encouraged certain practices, which astonish us sometimes if we do not take into consideration their profound motives. All religions say that fornication and adultery are crimes, but Islam goes further and prescribes means to diminish these temptations. It is easy to hope that everyone would develop individual morality in order to resist the temptations; but it is wiser to diminish the occasions in which persons with weak characters - who constitute the majority of human beings - need to engage in a battle where defeat is a foregone conclusion."⁽²³⁾ Perhaps the very aim of human society is none other than controlling temptations and remedying the damage already done.

This is the position of Islam and Muslims with respect to law, morality, prevention of evil, and its system of punishment.

Now we shall look at what one knowledgeable Christian scholar says of the severity of Islamic punishment.

An Excerpt from "Preliminary Discourse", by Charles Hamilton,⁽²⁴⁾

"This book treats only of the punishment incurred by *crimes of a spiritual nature* [i.e. the *Hudud* punishment], those instituted for offences against a person or property being discussed under their respective heads. The punishment for adultery is certainly severe, yet we will not, perhaps, be forward to condemn this severity, if we compare it for a moment with what is recorded in the twentieth chapter of Leviticus upon the same point - in fact, from the nature of the evidence required, it was next to impossible that the offence should ever be fully proved, even among the tents of the Arabs; so that the institution of the prescribed punishment was in a great measure nugatory, except in cases of confession by the parties. That those confessions were sometime made in the early days of Islamism, is a fact; and made, as they were, at the certain expense of life, they afford a wonderful instance of devoted zeal among the first followers of Muhammad. Still, however, even in those instances, every means that precaution could suggest is enjoined to avoid the necessity of inflicting the sentence . . ."

"Chapter IV containing the penalties of drunkenness, exhibits a degree of lenient indulgence with respect to that vice which we should scarcely expect to meet in a Mussulman law-book, as it hence appears that a man may offend in this way, even to a considerable degree, without any danger of legal cognizance. [See below: "*Adhab*"] Slander [accusing a person of unchastity.] As treated of in Chapter V, comprehends all expressions which may either affect the reputation of a man or a woman previously possessed of a fair character, of the legitimacy of their issue and the punishment has added to it, an effect equally just and politic, namely incapacitating the slanderer from appearing as an evidence. [witness] on any future occasion."

"Discretionary correction [*Tazeer*], which forms the subject of Chapter VI extends to all petty descriptions of personal insult, even to abusive language. In fact two-thirds of the punishment in Turkey, Persia, or India, are inflicted under the name of *Tazeer*."

We must not pass this book without noticing the extraordinary indulgence shown to slaves, in subjecting them, for all spiritual offences, to only half the punishment of freemen. The reasons alleged for this leniency manifest an uncommon degree of consideration and feeling for the state of bondage."

Adhab (= torment, suffering, punishment)

“The punishment is considered in Muslim law either as the right of God (hakk Allah) or as the private right of man (hakk adami). In the latter case, the punishment is applied only at the desire of the injured party (or of the latter’s relatives or heirs). The punishment, e.g. retaliation, is inflicted upon the culprit as the personal right of the plaintiff.

In the case of a transgression against God, the punishment consequently being then a hakk Allah, a peculiar principle in the law applies. God, it is supposed, is forbearing and, in fact, desires not at all the punishment of the transgressor.

Punishment was considered in the beginning of Islam, just as in Arabian paganism, as a purification from sin. So for instance a certain Ma’iz b. Malik came to the Prophet and said to him: tahhirni “purify me,” i.e. punish me! Cf. I. Goldziher, *Muhamm. Stud.*, i. 27, note I; do., *Das Strafrecht im Islam (Fragen zur Rechisvergleichung, gestellt von Thom. Mommsen, beantwortet von H. Brunner, c.s.)* P. 101, 104, note 2. But the Prophet is stated to have said “God will forgive the sins of every believer except when the sinner himself makes them known. God loves those of his servant that cover their sins.”

On the ground of this tradition, there is a prescription in the Muslim law books that when the punishment is to be considered as a hakk Allah the transgressor should hide his guilt as much as possible and not confess it, and even when he does confess it revoke this confession. He should rather turn himself to God in stillness, for God accepts his conversion when his intention is pure.

The witnesses too are recommended not to testify to the detriment of the accused person, and it is meet that the judge should show the latter all the circumstances extenuating his guilt and the validity of revoking his confession. The judge may even entirely remit the punishment except when the right of a man is also injured at the same time and the latter demands the punishment of the guilty one.

Only in the case of a punishment established by the law (hadd) the judge has no choice and must execute the punishment. With regard to the latter punishments even an intercession on behalf of the culprit is not allowed, while otherwise it is recommended. But in order to establish the guilt of the culprit in these cases, a very difficult legal proof is always required. In fact the rules of

the Muslim canon-law offer everybody the opportunity for escaping such punishments. Practically there is only one ground on which the legal evidence and the execution of “determined punishments” may be based, namely the confession of the culprit himself; so that in this respect, the “determined punishments” have the character of penitence.” 31

The following additional differences and distinctions between the Islamic and western ideologies, philosophies of life and legal systems (including systems of punishment) deserve particular attention: –

- ! Islam does not believe in the principle of separation of the spiritual and the temporal, the sacred and the profane nor the church and the state.
- ! Similarly unlike in the western system, Islam does not separate the treatment of the moral and the legal. Islamic law is essentially a code of moral standards which are to be observed in a Muslim Society and the function of the law is to enforce these moral standards even by punishments. Islamic Society’s standard of morality is indeed very much higher and strict than those of other societies.
- ! Sexual immorality is considered particularly reprehensible in Islam for two of the five Hadd punishments are related to the sexual offenses of fornication, adultery and false accusation of chastity.
- ! Islam makes no distinction between private and public morality. The Islamic concept of PERSONAL FREEDOM is the complete opposite of contemporary western thought. According to Islam, personal freedom is available and permissible only in respect to matters which are NOT REGULATED by the injunctions and prohibitions laid down by the Qur’an and the Sunnah, for these are expressions of the inherent Divine Wisdom manifested through the Divine Will.
- ! Finally, the most important point of all is the concept of Sovereignty and legislative authority. A proper understanding of the Islamic concept of Sovereignty and its paramount significance (which permeates every aspect of human life), will help explain many differences

between the Islamic legal systems and western legal systems: *In Islam all (political, legal and popular) sovereignty belongs to God alone. Every Muslim is bound by his faith to acknowledge God as the sovereign in all spheres of life – moral, social, cultural, economic and political. Islam repudiates entirely the latest version of the philosophy of western democracy in which the west accepts the absolute sovereignty of the people, the absolute powers of legislation rest in the hands of the people, lawmaking is their prerogative and legislation must correspond to the mood and temper of their opinion.*

Since belief in the unity and sovereignty of God is the foundation of the social and moral system of Islam, it is also the very starting point of the Islamic political and legal philosophy.

All civilized legal systems aim at combining the rigidity of their principles through the legislation of a set of rigid constitutional laws with the relative flexibility of the regular civil and criminal laws of the country. As to the ability of the Islamic system of law to adapt itself to the changing needs of society, Muslims are very particular in pointing to this unique aspect of their system which accommodates the changing needs of society. Muslims maintain that the Islamic system combines these two opposite aspects more successfully than those systems which are not based on Divine Law. The uniqueness of Islam lies in the fact that the Divine Law which includes a strict and severe regimen of punishment (i.e., *Hadd* punishments) is absolutely inflexible and unalterable, whereas the system of punishments falling under the category of *Tazeer* are very adaptive and very flexible because they accommodate changing needs in the continuous evolution of human society. Simply put, western constitutions are amendable, although with very rigid rules for very special circumstances. In Islam, however, the *Shariah* (i.e. the Qur'an and the *Sunnah*), which may be regarded as a parallel to the western style of constitutional law, is not amendable – period. The rationale for the extreme rigidity of the Islamic Shariah Law (i.e., the Qur'an and the *Sunnah* of the Prophet) which is distinct from the rest of the Muslim jurisprudence (*Fiqh*), is that the provisions of the *Shariah* deal with such matters that are of a universal and perpetual nature. These principles relate to the three basic unchanging human needs from the beginning to the end of time which relate to man's physical, moral and spiritual aspects of life. Obviously these needs never require

changing. Just as wholesome foods are necessary for physical nourishment so are good and virtuous deeds necessary for moral nourishment and a constant awareness of man's position in the universe vis a vis his Creator is necessary for his spiritual nourishment.

Now to take a quantum leap from the 18th century to the present we will discuss current issues. To wit:

5. Postmodernism and Islam

The predicament and promise of postmodernism is the subject of an interesting book, *Postmodernism and Islam*, by Akbar S. Ahmed, Professor of Anthropology at Cambridge University, England. Professor Ahmed also has written and produced "*Living Islam*," a six-part television series for the BBC England.⁽²⁵⁾

In his book, Professor Ahmed says, "As Muslims, we will live in the postmodern world which is just beginning to shape our lives; therein lies the Muslim predicament: that of living by Islam in an age which is increasingly secular, cynical, irreverent, fragmented, materialistic and, therefore, for a Muslim, often hostile. However, postmodernism also promises hope, understanding and toleration - and this is where it connects with Islam. In an age of cynicism and disintegration, Islam has much to offer."

6. The Western Media and the 'Knowledge Vacuum'

Professor Ahmed further asserts that the present encounter with its universal Western culture and pervasive technology, is perhaps the most forceful of onslaughts on Muslim civilization yet. Islam appears so threatened and vulnerable because it is so amorphous and because it appears in the most unexpected places. The TV and VCR in its character and origin, has become part and parcel of Western civilization. It needs no passport or visa for it can invade even the most isolated home and challenge the most traditional values.

According to Professor Ahmed, even a Muslim like His Highness the Agha Khan who is known to be sympathetic to the West and who scrupulously avoids political controversy, is concerned about the relationship between Islam and the West. He feels that the perception of Islam as a dark threat to order, is never far from the Western mind. The Agha Khan further says, "With Islam encompassing a large area of the world with significant populations, Western society can no longer survive in its own interest by being ill informed or misinformed about

the Islamic world. They have to get away from the concept that every time that there is a bush fire, or worse than that, it is representative of the Islamic world. So long as they make it representative of the Islamic world itself, they are sending erroneous messages back. This is what I call a 'knowledge vacuum'. It is hurting everyone."

Professor Ahmed then states that "we cannot, therefore, even in our modern or postmodern age, ignore or disregard what traditionalists have believed to be necessary. More specifically, for the traditionalists, the larger message of Islam, rather than the narrower sectarian or personal quibbles, is of paramount importance. As a result they believe both in the universal message of God as well as in inter-faith dialogue.

Seyyed Hossein Nasr has pointedly underlined this same need in the following way: "There is also the very important task which lies ahead for Muslims to try to make peace on a theological level, not only on a political level, with other religions in the West, to extend a hand, which Islam has always done [in the past], to Judaism and Christianity and to other religions."

7. The Rushdie Affair

This need to create a better understanding in order to eliminate this 'knowledge vacuum,' assumes an even greater urgency in light of many recent developments. For example, consider the atmosphere which has surrounded the Rushdie affair and the enmity which it has created. An even more tragic example is the Balkan onslaught with its policy of 'ethnic cleansing.' These examples show how desperate is the need for communication and tolerance. Professor Ahmed says in relation to this need that, "even the hope and promise of the modern and postmodern era seem to be losing their appeal and any claim to tolerance, liberal-mindedness and *laissez-faire*, seems a hollow and spent force. 'To each his own thing' type of thinking, which was supposed to be changing the world, is not so in practice and reality."

"In their shrill intolerance of opposing voices, some of these labelled 'post-modernist' authors sound suspiciously like other more conventional authors of earlier times. We saw how lines were drawn in the Rushdie affair at many points, stereotypes negated and paradoxes created. Many staunch Christian priests were totally supportive of Muslims, while many liberal intellectuals sounded like Inquisition Priests in their shrill and blanket condemnations. In the one case, a millennium of hostility to Muslims was set aside; in the other, a

century of liberal philosophy . . . In their emphasis on ethnicity, many postmodernist political movements generate racial violence which is as barbaric as any we know of from primeval tribal warfare. Ethnicity is the unprimed and potentially most explosive reality of human society, as we see in the disintegrating communist states. Its links with postmodernism are still to be discovered clearly. Muslims and Marxists slit the throats of fellow Muslims and fellow Marxists; ethnicity in these cases overrides larger ideological loyalties. Our age is littered with notorious examples."

Ayatullah Khomeini had condemned Salman Rushdie because his book was considered blasphemous; the Pope condemned Madonna for her provocative songs. As head of his respective religious structure, each did what was expected of him by his followers. Any Muslim cleric would have reacted to this book in the same manner as the Ayatullah; any Catholic priest would have found Madonna's songs distasteful.

IX. The basic concepts and special features of Rights and Duties, Fundamental Freedoms and Reasonable Constraints.

1. In the Context of the Islamic Law

[Law is defined as] "the science of the rights and obligations of man" - a definition attributed to Abu Hanifah. Muhibbullah al-Bihary (1109 A.H.) defines 'law' as : "the science of ascertaining religious commands (which embrace practically all the affairs of human life, material as well as spiritual) by means of their detailed guides. (By 'guides' he means authority or source of information).

For a definition of Law, Right and Obligation, and other terminology under the British Common Law system, see *III. The Concise Law Dictionary*.

One of the important features of Islamic law seems to be the emphasis on the correlation between rights and obligation. Not only the mutual relations of men amongst themselves, but even those of men with their Creator, are based on this same principle. One also has obligations as a member of the larger family *viz* the society and the State in which one lives. To speak only of the "rights of man," without simultaneously realizing his duties, would be transforming him into a nefarious beast, wolf or devil. Out of sheer necessity in civilized societies, legitimate constraints must be imposed upon man's rights. The

nature and extent of various constraints and the shapes and forms which these limits assume in any given socio-political *cum* religious context, must always be a function of the dialectic between the rights and duties of the participants in this context. Consequently, the rights of individuals with regards to freedom of speech or expression, has to be balanced against the rights of other individuals to be protected from defamation, insults, slander and libel, etc. The same holds true with respect to the rights of all members of society *vis a vis* States, Sovereign rulers and the Real Sovereign, God - they all have to be harmonized in their own context. Obviously, then, when dealing with Islam or Muslims, one has to take into consideration the sensibilities of the whole Muslim 'Community'/ 'nation'/ 'Ummat' and *their* need for protection against harm, say for instance, through *their* rules of Blasphemy, which are framed on the basis of *their own* philosophy of life depicted through *their own* perception and sensibilities with regard to sacrilege, desecration, defamation, slander, libel and so on. Therefore, in the case of Blasphemy, it goes without saying that the Islamic rules are obviously determined by Muslims on the basis of their own religious principles. As I have stated earlier, it is a universally accepted fact that although many different ethnic groups and races with a variety of colour, language and geographical origins are represented within Islam, as 'Muslims' (as those who follow the Islamic religious tradition) all these various ethnic groups and races are one people, one community, one nation, one Ummah *vis a vis* the rest of the world.⁽²⁶⁾ This principle is extended to all other religions and cultural groups.

According to Islam, as a consequence of this philosophy, despite the various ethnic racial and other differences, non-Muslims too are treated collectively as one people, one community, one nation, one Ummah *vis a vis* the Muslim community, technically known as *Daral-Harb*.⁽²⁷⁾

The fairness of this equal treatment results in what is commonly referred to as *tolerance* - in the real sense. And at the heart of this tolerance lies the basic principle of Muslim International law that: "*In the affairs of this world, Muslims and non-Muslims are equal and alike.*" This principle of equality serves the function of a pivot. It is this point which balances all the detailed rules regulating the protection of the spectrum of legitimate interests of non-Muslim minorities - the 'protected' communities. As a result, it is not surprising to see that one of the characteristic features of Islam is the award of judicial, social and cultural autonomy to these communities. Islam permits and even encourages every

group (Jewish, Christian, Magian or other) to establish their own tribunals presided over by their own judges who apply their own laws - without any interference from Muslim authorities. Such judicial autonomy is intended to encompass not only individual private matters (involving personal status) but for all the affairs of life: civil, penal, religious, cultural, etc. As far as issues of social and cultural autonomy are concerned, the safeguards of the rights of non-Muslims in Islamic territories so far as giving them liberty to practise customs that are entirely opposed to those of Islam. For instance, manufacture, importation, sale and consumption of alcohol, games of chance, marriage with close relatives, contracts that entail interest etc., are all permitted. After all, to establish liberty of conscience in the world was one of the aims and objectives of the Prophet Muhammad. However, to be more realistic, it is always useful to remind ourselves to distinguish between the 'Muslim Law' and the 'laws of the Muslims'.⁽²⁸⁾

Closer to home, in Canada these are the principles of the Islamic Law which correspond to similar principles in the *Canadian Charter of Rights and Freedoms* which relate to: (1) The Supremacy of God and the Rule of Law (Preamble); (2) Guarantee of Rights and Freedoms (3) Fundamental Freedoms (4) Equality Rights; (5) Multicultural heritage.

2. In the Context of Canadian law: The Canadian Charter of Rights and Freedoms

(1) The preamble in the Canadian Charter of Rights and Freedoms clearly states that "Canada is founded upon principles that recognize the Supremacy of God and the Rule of Law.

(2) It "*guarantees*" the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

(3) Section 2 sets out the Fundamental Freedoms; "everyone has the following freedoms: a) freedom of conscience and religion b) freedom of thought, belief, opinions and expression, including freedom of the press and other media of communication; c) freedom of peaceful assembly; and d) freedom of association.

(4) Section 15(1) sets out Equality Rights: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without

discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability."

(5) Section 27 on Multicultural heritage states: "this Charter shall be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of CANADIANS"

(1) According to the Preamble of the Charter, "Canada is 'founded upon the principles that recognize the *Supremacy of God* and the Rule of Law." This "preamble" too must be interpreted in the light of Section 27 which makes it mandatory that "this Charter shall be interpreted in a manner consistent with the *preservation* and *enhancement* of the *multicultural heritage* of Canadians."

Islam is and has been (even going back to the time of Confederation) a part and parcel of multicultural heritage and Muslim adherents have had the privilege of enjoying the status of 'Canadians'.

Because of the recognition of "Supremacy of God," Islamic law, which originates from the Divine Source of the Supreme Legislator, God, deserves to be recognized as a legitimate code under the Rule of which Law Muslims are constitutionally entitled to live and be recognized under Section 2(a): as to freedom of conscience and religion -- in the same way as Islam recognizes the right of non-Muslims to live by their own laws when living as minorities in a Muslim State (as mentioned under "Islamic Law").

As to the recognition of the "Supremacy of God" under the Preamble of the Charter, when interpreted in the context of the "multicultural heritage" provision of Section 27, let us pause here for a moment and ponder on this point: are we in a position to go to the ridiculous extent and say that, yes, we do recognize the Supremacy of the Christian God, or the Jewish God, but not the Muslim God?! Then, what about the *de facto* context of Canadian secularism. By definition secularism is *supposed* to be neutral (neither in favour of nor against religion), where does the God of the Preamble fit into this scheme of things?

(2) The Canadian Charter of Rights (Section 1) also requires that any reasonable limits on the guarantees of the Charter have to be demonstrably justified. It is our position that in view of the above arguments that the limits prescribed by Islamic law, with regards to blasphemy/apostasy, *do satisfy* both the Charter

requirements. Namely

- (i) the Islamic limits are *reasonable limits*, and are
- (ii) *demonstrably justified* within the meaning of Section 1 of the Charter on these grounds:
 - a) The provision of the Preamble regarding the Supremacy of God,
 - b) the constitutional obligation to interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians,
 - c) that over one billion people (Muslims) worldwide consider those limits to the freedom of speech/expression to be *reasonable*,
 - d) (i) what such a large segment of the Canadian minority believes as a precept of their faith/religion ought to be fully recognized if the Charter's provision respecting *freedom of religion* are to have any real meaning.
 - e) (ii) Adherence to Islamic principles in this context, ought to be accepted as sufficient enough to satisfy the Charter Requirement of *demonstrable justification*. Recognition of Islamic standards of reasonable limits on the freedom of speech by the Canadian courts does not necessarily entail any obligation to enforce the Islamic punishment for blasphemy/apostasy within the Canadian jurisdiction. The Muslims themselves (with the exception of the small Shi'ite minority) do not generally believe or insist on any extraterritorial rights to enforce Islamic *Hadd* punishment in non-Islamic countries. (See footnote 1, under II, Abingdon Dictionary of Living Religions).

Therefore, it seems logical and reasonable that when dealing with situations which involve Islamic Blasphemy, the Canadian courts, in all fairness, must also determine the issue of the reasonableness of the limits on the freedom of speech and the issue of demonstrable justification in accordance with the sensibilities of the whole Muslim Community/*Ummah*. Muslims adhere to the Islamic religious principles underlying their laws, which according to them, are legislated under the very authority of the Real Sovereign, the 'God', Who is also recognized by the Charter Preamble.

(3) Failing to do so will be a flagrant breach of equality rights under Section 15(1) of the Charter. Because of this failure, Muslims will not be given the equal protection and equal benefit of the law and they will not be treated as equal before and under the law. Indeed, Muslims will thus be discriminated against on the basis of race, national or ethnic origin, colour and especially religion. All such diverse people as those who follow the Islamic religious tradition, despite their various race and ethnic

origin are *one people*.

(4) Failing to interpret the guaranteed rights and freedoms of Muslims, in accordance with the true spirit of multiculturalism results in the effective denial of this fundamental philosophy of the Canadian constitution. This is a tragic departure from that cherished 'tolerance' (the real tolerance) which is the distinguishing quality of a cultured people. The more tolerant a nation, the more cultured its people will be. With this measure of cultural excellence, Canada does hold a place of honour in the nations of the world and indeed we proudly stand head and shoulders above so many other nations. What a sad thing it would be to not appreciate the necessity of inculcating this multicultural philosophy into our daily lives. How else can human beings become civilized enough to be able to claim that they do actually respect other cultures and wish to co-exist with them.

X. Conclusion

In view of this supreme law of the land, it would seem that when dealing with the issues of freedom of expression, the laws dealing with defamation, slander, libel, sacrilege, desecration, blasphemy and apostasy (in the context of the rights of the Muslim minority population living as lawful citizens of this country), not only our courts but also all our citizens are under a legal constitutional obligation to look into the matter in the light of the above essential considerations.

The Islamic Blasphemy/Apostasy issue cannot be looked at or discussed in isolation or out of multicultural context in that the religious beliefs of the Muslim population of Canada and their way of life is an integral part of the multicultural heritage of Canadians.

The Maturing of Canada

(a) Phase One: from an ethnocentric, monolithic, unilingual society towards a bilingual, bicultural and multicultural society.

In Canada, a country with its longstanding bilingual and bicultural history, as well with its constitutional commitment to ethnic equality and multiculturalism, things seem to have come to a dead stop. When efforts are made to persuade the powers that be to implement the theory of multiculturalism, to put it into practice, one finds little evidence of any sincere measures. A great deal of heated debate and hot air is created in sheer rhetorical terms. This is all that one finds in plentiful measure.

In practice, the alleged liberal-mindedness of Canadians and their claim to world leadership as international brokers of peace and peace-keeping or as champions of fairness and equality, etc., etc., amounts to mere platitudes meant only for foreign consumption and packaged to please the ears of the international community.

To illustrate this point of view, let us take a closer look at the latest development in the Canadian constitutional arena. The Calgary Declaration recognizes the unique character or unique identity of Quebec society, and in the same breath, stresses that all Canadians and all provinces are equal. What is the basis of this wonderful arrangement/agreement? What do we find? We find that none of the participating leaders at the Calgary conference (or even during debates in the provincial legislatures for support of the declaration) deemed it necessary to give any serious thought to multiculturalism or attempt to create a supra-racial, supra-regional or supra-linguistic society. None of these leaders seemed to acknowledge the reality that the Canadian mosaic consists of a *multiplicity of special and distinctive societies* within Canada - not just Anglo Saxon and the French cultural societies. We do not seem to have fully overcome the unfortunate national trait, described by Keith Spicer in his fact-finding report on Canadian constitutional problems, as "*the coast-to-coast terminal meanness matched by terminal bitterness in Quebec.*" But we have made some progress in expressing our generosity in acknowledging and accommodating the obvious distinctness of Quebec and its special needs. Is it not incumbent upon all Canadians to extend a similar generosity to that multiplicity of special and distinctive societies (other than Quebec) within Canada who have constitutional rights under the multicultural heritage provision to be treated equally along with the Quebec society. When it comes to granting that necessary extra, we cannot seem to overcome our 'traditional meanness' identified by Keith Spicer as one of the major causes of our constitutional problems. We act as though granting the same necessary extra to other cultural entities *somehow diminishes the rest of us*.

When it comes to identities, a person can and does possess overlapping identities. In our modern age, this allows the possibility of enrichment and pleasure. A person can be a devout Muslim, Christian, Jew or of secular persuasion and still be a loyal citizen of Canada. Multiple identities mean eclecticism which requires tolerance of others. Without some conscious attempt to comprehend the logic of this formula, we reduce

Multiculturalism to a meaningless *shibboleth*.

(b) Phase Two: from a multi-culture to a universal Culture - a natural evolution of human society

To quote Marmaduke Pickthall, "the aim of culture is not the cultivation of the individual or a group of individuals, but of the entire human race. It aims at nothing less than universal human brotherhoods -- literary, artistic, linguistic and scientific achievements are regarded as the *incidental* phenomena of culture [and serve to act] as either aids to the end, or refreshment for the wayfarer." (29) In other words, as he further asserts, culture "aims *not* at beautifying and refining the resources of human life: it *aims at beautifying and exalting human life itself*."

Inherent in such a conception of culture it is the active principle of unity which is rooted in a shared framework concerning a progressive belief in the ideals of universal brotherhoods without distinction of race, religion, ethnic background, language or place of abode.

To paraphrase a passage from our publication, '*Oh! Canada: Whose Land? Whose Dream?*':³⁰, "The practise of universal brotherhood requires *tolerance of differences*. Tolerance can be helped to become established and to flourish by ensuring that there are an array of social, judicial, political, educational, and constitutional means of protecting, preserving and enhancing the autonomy of individuals and communities. This is especially true in relation to minorities who, because of their relative disadvantage of not belonging to the ethnic/racial/religious/secular majority, need to be treated as a "protected community" *within* the larger community. Indeed, governments have a duty of care to protect the legitimate interests of these "strangers," rather than forcing on them a culture of assimilation which is not conducive to the preservation of the identity and integrity of such minority groups.

In the context of the special cultural/religious needs of the Muslim community in respect of their beliefs about blasphemy, it indeed behooves a broad-minded people like Canadians to accommodate their (Muslim community's) needs by simply taking that extra step discussed earlier - this will *not diminish* the rest of us. Mutual respect, compassion and diversity will only help us grow together rather than apart. Surely it will be worthwhile to rise above the pettiness and the 'terminal meanness' of linguistic, regional, racial and narrowly defined cultural considerations. It is our belief that this sentiment is a living force among Canadians who are fast

becoming aware of the futility of working with the handicap of tunnel-vision which tends to create blind spots at the expense of the broad supra-racial, supra-linguistic and supra-territorial peripheral vision which encompasses universal brotherhood.

For Muslims, Faith means Faith in the Unity of Reality which includes physical and supra-physical Nature. Consequently, it is a Faith in the unity and solidarity of Humanity which the Qur'an enunciates by saying that all human beings are the multiplication of one soul. It follows from this that all humanity is one social organism, and "*Whoever slays a soul unless it be for man-slaughter [as a legal punishment] or mischief in the land, it is as though he slew all men and whoever keeps it alive, it is as though he kept alive all men.*" [Qur'an 5:32] As a corollary of this belief an individual as a human being exists only as an integral part of a social organism; the injury to one part is an injury to the whole. Sa'di, the philosopher poet has interpreted the Qur'anic teaching in these words, "Human beings form one body and individuals are limbs and organs of it: when one part suffers, its painful effects must necessarily be felt by all other parts."

The efficacy of this universally accepted principle is in fact demonstrated ever so often in our daily lives. For instance, whenever a major natural calamity (e.g. earthquake, flood, fire, or famine, etc.) occurs in some part of the world, people from all over the world rush in to help alleviate the sufferings of the unfortunate victims. This principle, which is applied in this example to suffering of a physical, material nature, must be extended in its application to similar devastating dimensions of the emotional injuries which are inflicted upon the victims of blasphemy. For nothing can cause more destruction or havoc to the universal tolerance of people especially with respect to religious matters than this despicable capital crime. In this respect, the realization of the oneness of humanity, is the highest point of morality and culture - a necessary condition of the well-being of man. Lack of information ('the knowledge vacuum') about the religious needs of Muslims results in the intolerance which prevails in the non-Muslim sectors of the Canadian population.

In this context and in this sense, a two-fold challenge for such non-Muslim sectors of Canada is how to expand the Western idealistic notions of justice, equality, freedom and liberty beyond their bounds to include all humanity, and secondly to reach out to those not of their civilization and openly extend the collective hand of

genuine friendship. It goes without saying that in both cases a mutual understanding as well as a working relationship are essential. Obviously, this will only be possible if there is a universal tolerance of others among Muslims and non-Muslims alike, an appreciation of their *uniqueness* and a willingness to understand them. Muslims need not be seen as sulking strangers to complete the second phase of the maturing of Canada. In the next millennium, it is imperative that these sentiments become both personal philosophy and national policy. It is our earnest hope that our efforts to fill in the 'knowledge vacuum' (which causes intolerance of other cultures) will enable Canadians at large to develop a heightened sensitivity to the needs of the Muslim community that resides *within* the larger multicultural Canadian community.

Similar sentiments seem to be expressed, perhaps in a somewhat different context, by Michel Montaigne. He says, "the souls of emperors and cobblers are cast in the same mold - the same reason that makes us wrangle with a neighbour causes a war twixt princes."

Appendix

From *Introduction to Islam*, by Dr. Muhammad Hamidullah

440: Conversion "The Islamic law expressly recognizes for non-Muslims the liberty to preserve their beliefs; and if it forbids categorically all recourse to compulsion for converting others to Islam, it maintains a rigorous discipline among its own adherents. The basis of the Islamic "nationality" is religious and not ethnic, linguistic or regional. Hence apostasy has naturally been considered political treason. It is true that this crime is punished by penalties, but the necessity scarcely arose as history has proved. Not only at the time when the Muslims reigned supreme from the Pacific to the Atlantic Oceans, but even in our own age of political as well as material and intellectual weakness among Muslims, apostasy of Muslims is surprisingly non-existent. This is true not only of regions where there is the semblance of a Muslim State, but even elsewhere, under the colonial powers who have made all humanly possible efforts to convert Muslims to other religions. Islam is gaining ground today, even among Western peoples, from Finland and Norway to Italy, from Canada to Argentina. And all this in spite of the absence of any organized missionary activity.

118: For reasons best known to Him, God has endowed different individuals with different talents. Two children of the same couple, two pupils of the same class do not always have the same qualities or capacities. All lands are not equally fertile, climates differ; two trees of the same species do not produce the same quantity or quality. Every being, every part of a being has its own peculiarities. On the basis of this natural phenomenon, Islam affirms, on the one hand, the original equality of all, and on the other, the superiority of individuals one over the other: All are creatures of the same Lord, and it is not material superiority which counts for obtaining the greater appreciation of God. Piety alone is the criterion of the greatness of the individual. After all, life in this world is but ephemeral, and there must be a difference between the behaviour of a man and a beast.

119: Nationality " It is in this sense, that Islam rejects the narrow basis of birth and common blood as the element of solidarity. The attachment to parentage or to the soil on which one is born, is no doubt natural; yet the very interest of the human race demands a certain tolerance towards other similar groups. The distribution of the natural wealth in different parts of the world in varying quantities renders the world interdependent. Inevitably one is forced to "live and let live"; otherwise an interminable succession of vendettas will destroy all. Nationality on the basis of language, race, colour or birthplace is too primitive; therein is a fatality, an impasse - something in which man has no choice. The Islamic notion is progressive, and is based solely on the choice of the individual. For it proposes the unity of all those who believe in the same ideology, without distinction of race, tongue, or place of abode. Since extermination or subjugation of others is excluded, the only valid possibility is assimilation. And which means can serve better such assimilation, if not belief in the same ideology? It may be repeated that Islamic ideology is a synthesis of the requirements both of the body and the soul; moreover it inculcates a tolerance. Islam has proclaimed that God has always sent His messengers, at different epochs among different peoples. Islam itself claims nothing more than the function of renewing and reviving the eternal message of God, so often repeated at the hands of prophets. It prohibits all compulsion in the matter of religious beliefs; and however unbelievable it may sound, Islam is under the self-imposed religious dogmatic duty of giving autonomy to non-Muslims residing on the soil of the Islamic State. The Qur'an, the Hadith and the practice of all time demand that non-Muslims should have their own laws, administered in their own tribunals by their own judges, without any

interference on the part of the Muslim authorities, whether it be in religious matters or social.

259: Nationality "One finds in human society, turn by turn, two contradictory tendencies: centripetal and centrifugal. On the one hand, separate individuals group themselves in wedlock, families, tribes, city-states, states and empires, sometime willingly and at other times under compulsion. On the other hand, descending from the same couple and ancestors, groups detach themselves from bigger units in order to lead separate and independent lives, away from their relatives; and this separation is occasioned sometimes amicably, for the purpose of finding the means of livelihood elsewhere and lightening the charge on locality too restricted to furnish food for all; while at other times it is dictated by passions, quarrels and other motives.

261: "At the dawn of Islam, in the 7th century of the Christian era, differences and prejudices arising from race, language, place of birth and other things had become the rule rather than the exception; they developed deep-rooted notions, which grew to be almost natural instincts. It was so everywhere in the world, in Arabia, in Europe, in Africa, in Asia, in America and elsewhere. Islam came to class these notions among the evil traits of humanity, and tried to bring about a cure.

262: "The unifying ties of family, of clan, and even of tribe proved too weak to serve the needs of defense and security in a world where egoism and cupidity had rendered inevitable wars of everybody against everybody else. But groups bigger than tribes were created sometimes by the use of force by warriors and emperors. Failing however to create an identity of interests among the totality of the subjects, these artificial unions were constantly menaced by disintegration

263: "Without entering into the history of the several thousand years of the development of this aspect of human society, it would suffice to consider the idea of nationality prevalent in our own time in order to illustrate the point. If nationality is based on the identity of language, race, or place of birth, it goes without saying that it will make the problem of aliens or strangers exist perpetually, and such a nationality will be too narrow, ever to be able to embrace the inhabitants of the entire world; and if the aliens are not assimilated, there will always be the rise of conflicts and wars. In fact, the tie of nationality is not a very sure bond at all. For two brothers may be enemies, and two strangers, having a common ideology, may be friends.

264: "The Qur'an (30:22, 49:13) has rejected all superiority on account of language, colour of skin or other ineluctable incidences of nature, and recognizes the only superiority of individuals as that based on piety. A common ideology is the basis of "nationality" among the Muslims, and Islam is this ideology. We shall not speak of religions which do not admit conversion. Among the religions of universal applications, Islam distinguishes itself by the feature that it does not exact the refunction of the world, but insists on the body and soul growing and operating simultaneously. The past has shown that Muslims have assimilated this supra-racial and supra-regional idea of brotherhood; and this sentiment is a living force among them to this day.

265: "Naturalization is a feature now admitted among all "nations" but to be naturalized in a new language, in a new colour of skin, and in a new land is not as easy to adhere to as new ideology. For others, nationality is essentially an ineluctable accident of nature; in Islam it is a thing depending solely upon the will and choice of the individual.

432: "There is a tendency among a large number of people to imitate and ape their governors and chiefs, in the outer conduct of life, such as dress, coiffure, etiquette, etc. The result is a superficial assimilation, which brings no advantage to the ruling community, but which causes a moral damage to the classes which imitate in a servile manner. In an Islamic State, non-Muslims constitute a protected community (*dhimmi*). Therefore if it is the duty of the government to protect the legitimate interest of these "strangers." Hence it is that we see, during the 'Abbasid caliphate that, far from seeking the assimilation of "strangers" by force, the government discouraged all imitation of one by the other: Muslims, Christians, Jews, Magians and others conserved their own modes of dress, their social manners and their distinctive individualities. Only a total assimilation, through religious conversion, was sought, and not a confusion of communities. This is proof enough that the measure had nothing to do with the religious exigencies of Islam - and in the time of the Prophet, there was absolutely no trace of it - but a condition of life, suiting the social conceptions of the epoch: and its essential purpose was to recognize, at the very first sight, the religious community of each and every individual. The intention was to protect in this way the culture of everyone, so that its intrinsic values and defects should come more into relief. In passing, it may be repeated that the conception of nationality in Islam is based neither on an ethnic source nor on place of birth, but on the identity of ideology, i.e., of religion.

387: Obligations of women "In religious matters, her first duty, even as that of man, is to believe in the oneness of God, which is the only means of salvation in the Hereafter. One knows that Islam has formally prohibited the use of compulsion to convert anybody to Islam - and it may be recalled by the way that a non-Muslim wife of a Muslim man has the full right to conserve her religion and to practise it in her individual capacity in wedlock - and one also knows that inside the Muslim community, a rigorous discipline is maintained for its conservation as a whole and the preservation of its system of life. Treason in this respect is punished: yet certain cases of the time of Orthodox Caliphs show that the punishment of women on account of apostasy is less severe than that of men.

533: "In the case of the conversion of a married man to Islam if his wife is Jewish or Christian and does not want to be converted with he husband, the marriage continues undisturbed. If the wife is of the prohibited categories, and persists in her irreligion, conjugal life must cease immediately; she should be given a reasonable time to think over, and in the final resort, divorce will have to take place.

Endnotes

1. T.P. Hughes, *Dictionary of Islam*, Lahore, Pakistan, Premier Book House.

2. *The New Lexicon Webster's Encyclopaedic Dictionary of the English Language*, Canadian Edition, New York, Lexicon Publications Inc., 1972.

3. Keith Crim, General Editor, *Abingdon Dictionary of Living Religions*, Nashville, USA 1981

4. The Hanafi school of law is based upon a Prophetic Tradition (*Hadith*) reported by 'Atiyah ibn Qais al-Kilaby (vide Sarakhsy, *Sharha al-Siar al-Kabir*, vol IV, 108). The Hanafi scholars rely on this Tradition: "The Prophet has said: 'Whoever commits murder or fornication or theft [*in our territory*] and escapes and then returns with permission, shall be tried and punished for what he wanted to escape from. Yet if he has committed murder, or fornication or theft *in the territory of the enemy* and came with permission, he *will not be tried* for what he committed in enemy territory.'" However, as to the

enforcement of the law, the Sunnite and the Shi'ite schools of law operate on two different principles: the Sunnites exercise their enforcing authority/powers within the legal/geographical boundaries of their own jurisdiction. But under the Shi'ite law, enforcement powers can be exercised even in foreign lands, that is to say, beyond the jurisdiction of their own country. In other words, the Sunnites do not believe in extraterritorial jurisdiction, but the Shi'ites do.

As to the enforcement of punishment of an apostate and the pre-prosecution, pre-trial, and pre-conviction procedures, see the excerpt of paragraph 332 under the next heading of 'The Muslim Conduct of State' and *Kitab al-Fiqh ala al-Madahib al-Arbaa'h*

5. P.G Osborn, *The Concise Law Dictionary 4th Edition*, London, U.K., Sweet and Maxwell, 1954,

6. Muhammad Hamidullah, *The Muslim Conduct of State*, Lahore, Pakistan: Sheikh Muhammad Ashraf, 1977, page 6

7. Sarakhsiy, *Sharh as-Siyar al-Kabir*, IV, 162 *vide* The Muslim Conduct of State., paragraph 332.

8. Muhammad Hamidullah, *Introduction to Islam*, Lahore, Pakistan; Sheikh Muhammad Ashraf, 1974

9. *Ibid*, para. 261

10. *Ibid*, para. 440

11. *Ibid*, para. 264

12. *Ibid*, para. 119

13. *Ibid*, para. 118

14. *Ibid*, para. 265

15. *Ibid*, para. 119

16. 'Abd al-Rahman Jaziri, Urdu translation, Munzur Ahsan Abbasi, *Kitab al-fiqh Ala' al-Madahib al-Arba'ah*, Lahore, Pakistan, Ulama Academy, 1985

17. Mohamed S. el-Awa, *Punishment in Islamic Law*, Indianapolis, MD: American Trust Publications, 1982.

18. Muhammad Hamidullah, *The Muslim Conduct of State*, Lahore, Pakistan: Sheikh Muhammad Ashraf, 1977, paragraph 10

19. Collectively, it would be a fair estimate to say that

they comprise an overwhelming majority of say 95% or so of the total Muslim population. No reliable statistics are available to this writer at the present time.

20. A very small minority, perhaps an estimated 5% or so of the total Muslim population. No reliable statistics are available to this writer at the present time.

21. (Baydawi Minhaj al-wusul pp. 37-38); Nasafi, Manar al-anwar fil Usul al-Fiqh, pp. 24-29; Khallaf, Usul al-Fiqh, pp. 194-195. Examples of these forms of usage may be found in the first authority, i.e. Baydawi. *vide* Mohamed S. el-Awa, *Punishment in Islamic Law*, Indianapolis, MD: American Trust Publications, 1982.

22. Muhammad Hamidullah, *Introduction to Islam*, *op cit*.

23. Muhammad Hamidullah, *Introduction to Islam*, *op cit*. paragraph 391

24. Shaikh Burhann'd-din al-Marghinini, *al Hedaya*, Eng. trans. Charles Hamilton, Islamic Book Trust, New Delhi, India, 1982

25. Akbar S. Ahmed, *Postmodernism and Islam*, Rutledge, 1992

26. Muslims consider themselves as comprising the Dar al-Islam, "literally, "The Household or the Land of Submission" (and the rest of the world is regarded as Dar al-Harb, literally "The Household of the Land of Warfare"). According to the *Radd al-Mukhtar*, Vol. III, "Land of Islam is a country in which the edicts of Islam are fully promulgated.

27. A country belonging to infidels in which, according to the *Qamus*, peace has not been proclaimed between Muslims and unbelievers.

28. This distinction is important in view of the fact that what the Islamic Law (*Shariah*) says, may or may not be, correctly incorporated into the local legislation of Muslim countries, mainly because of *their own* interpretations which is quite permissible under the Islamic System. The Muslim population living in such countries in effect have no choice but to follow the local, man-made laws. To be valid, these laws must be derived from and based upon the *Shariah*. They may be at variance in respect of the details of a secondary nature, (not in respect to the principles of law) with the pristine Islamic Law of the *Shariah* contained in the Qur'an and the *Sunnah*.

29. Marmaduke Pickthall, *Cultural Side of Islam*, Lahore,

Pakistan, Shaikh Muhammad Ashraf, 1976.

30. Syed Mumtaz Ali and Dr. Anab Whitehouse, *Oh! Canada: Whose Land? Whose Dream?*, The Canadian Society of Muslims, 1991

31. Excerpt from: The Shorter Encyclopedia of Islam, by H.A.R. Gibb and J.H. Kramers, E.J. Brill, 1995, Leiden, The Netherlands, pg. 15