

An Appraisal of the offence of Blasphemy under The Islamic Law in Nigeria

¹PIWUNA M. G., ²ABDULLAHI M. R.

Introduction

For Muslim faithfuls at all times and all places, the prophet Muhammed (S.A.W) stands out as a model par-excellence. His life (sira) being the ideal approximate, his sayings (Hadith) to follow and his practice (Sunnah) to emulate. Utmost devotion to love of the prophet has consistently been a prominent trait to every Muslim. According to Islamic injunction to follow the prophet is synonymous with obeying Allah and thus the way for attaining success in hereafter.

In view of the prominent position the Prophet hold in both theoretical and practical aspects of Islamic law, the law prescribes that Qur'an 33:57 "those who annoy Allah and His Messengers, Allah has cursed them in this world and in the hereafter, and he prepared for them a humiliating punishment". So also Sahih al Bukhari 4:52:270 the prophet said: "Who is ready to kill Ka'b Ibn al-Ashraf who has really hurt Allah and his Apostle"? Muhammed bin Muslama said "O Allah Apostle! Do you like me to kill him"? He replied in the affirmative.

Under Islamic law, abuse or insult of the prophet is referred to as (al-Nabi) or (Shatm-Rasul), and whatever is linked to him. This crime is regarded as such a heinous one that, according to some schools of Islamic thought, the Shatim i.e. the one who abuse the prophet cannot be reprieved, even if he repents and resolve not to repeat his crime. In other words, a huge punishment awaits anyone who insults the Prophet.

Blasphemy Under Islamic Law

Blasphemy in Islam is impious utterance or action

concerning Allah, his Prophet or anything considered sacred in Islam or any religion. The Qur'an admonishes blasphemy, but does not specify any worldly punishment for blasphemy. The Hadith, which is another primary source of Sharia suggest various punishment for blasphemy including death. The Qur'an provides that:

"Truly, if the hypocrites, and those in whose hearts is a disease, and those who stir up sedition in the city, desist not, we shall certainly stir thee up against them." Then will they not be able to stay in it as they neighbours for any length of time: they shall have a course on them: whenever they are found, they shall be seized and slain.

Various (fiqh) school of jurisprudence of Islam have different punishment for blasphemy, depending on whether a blasphemer is Muslim or non Muslim, man or woman. There are a number of Surah in the Holy Qur'an relating to blasphemy from which Qur'an 5:33, 33:57 and 33:61 have been most commonly used in Islamic history to justify and punish the commonest type of blasphemy. Beside this is a trite principle that:

Whoever hurts the prophet hurts Allah and whoever obeys the prophet obeys Allah. Because the Muslim community will not get what is from the lord except through the prophet (S.A.W) for there is no way from anyone except through him.

It is equally important to note that Allah forbids Muslims to insult whatever the non-Muslim are worshipping. Allah says:

Reville not ye those whom they call upon besides Allah, lest they out of spite revile Allah in their ignorance. Thus have we made allowing to each people its own

¹Faculty of Law, University of Jos – Nigeria. ²Faculty of Law, University of Jos – Nigeria.

doing. In the end will they return to their lord and he shall then tell them the truth of all that they did.

It is also important to note that under Islamic law, the offence of blasphemy can be committed by insulting any amongst the Prophets of Allah or his signs. This is based on the prophetic Hadith that says: whoever blaspheme my companion flog him. Whoever blaspheme a prophet kill him. Those who blaspheme Islam know this quite well.

As of 2011, all Islamic majority nations, worldwide had criminal laws on blasphemy. But over 125 non-Muslim nations worldwide did not have any laws relating to blasphemy. In Islamic nations, thousand of individuals have been arrested and punished for blasphemy of Islam. Several nations have argued in the United Nations that blasphemy against Muhammad is unacceptable, and laws should be passed worldwide to place "limit on the freedom of expression,". Non Muslim nations that do not have blasphemy law also pointed to abuses of blasphemy law in Islamic nations.

In some countries, blasphemy is outlawed under the criminal code and such laws have led to the persecution, lynching, murder or arrest of minorities and dissident members, after flimsy accusations.

Some Forms of Blasphemy

The offence of blasphemy under Islamic law are in different forms viz:

- i. It is verbal if it is pronounced with the words of mouth,
 - ii. It is written if it is printed.
 - iii. It may be in form of motion picture,
 - iv. It may be in form of an action that amount to degradation of Allah, his prophet and signs, this is otherwise known as blasphemy by conduct.
- 1) The verbal blasphemy may be prosaic or poetic. One example of this is seen in men who used to compose, poems to insult the Prophet of Islam. Another one was the time of war between Muslim and Christian crusaders when the crusaders wanted to degrade and disparage Muslims by blaspheming the Holy Prophet (S.A.W). This was done by changing his name to Mahaund which means a lustful and profligate false prophet and an idolator. Thus this name Mahaund was repeatedly used by Salman Rushdie's satanic verses.
 - 2) Salman Rushdie's prosaic fiction the Satanic Verses is an example of written blasphemy. It could be poetic, prosaic or could come in form of convective as the popular Danish cartons.
 - 3) It may come in form of motion pictures, movies and films or documentaries.
 - 4) Blasphemy by conduct under the Islamic law, could be by tearing and or messing up a page or copy of the Holy Qur'an.

A species of blasphemy by conduct as cited by Sheikh Ibn Taymiyyah is to marry any of the wives of the Holy Prophet (S.A.W) after him. By forbidding marriage to the prophet's wives after his demise, the Qur'an had closed a potential provenance of problems as people would have been falling over each other just to marry them. This practice is seen as an insult on the personality of the Prophet and thus carries the punishment of blasphemy.

Ingredients of Blasphemy

Commenting on what constitutes blasphemy in Sharia, Sheikh Ibn Taymiyyah observes that:

Blasphemy is (constituted by expression which is intended for degradation and malignment and which insult is understood in the estimative intelligence of person. For example, curse and villification.

From the above comment on what constitutes blasphemy in Sharia, three elements can be identified:

- i. That the blasphemous word or action is intended for rebuke and an insult of divinity of Allah and his signs.
- ii. That it is objectively understood to be an insult in the reasonable understanding of the ordinary people, i.e there must be an intention to degrade the divinity of Allah and his signs.
- iii. That it is published.

Starting with the first ingredient, it is clear enough, as it is a general principle in Sharia that: "Action go with intention".

During the Salman Rushdie saga, the scholar who passed the Fatwa otherwise known as Islamic verdict on him and the publishers of his book had to make it clear that the Fatwa to those that were involved in any way in the publication of the book being aware of its contents and knowing what they were doing. The implication of their knowledge of the contents is that they intended a blasphemous act.

As for the second ingredient, it has to be understood to be an insult in the common understanding of the ordinary people. There must be no doubt about its being a degrading insult.

Offences Related to Blasphemy

Under Islamic law, the most related offences to blasphemy are:

1. Apostasy
2. Defamation and
3. Sedition and treason.

Apostasy means to leave one's religion or belief system for another, to change to another religion in Islam. Apostasy (Riddah) is commonly defined as the conscious abandonment of Islam by a Muslim in word or through deed. It includes the act of converting to another religion by a person who was born in a Muslim family or who had previously accepted Islam.

Apostasy in Islam includes in its scope not only former Muslims who have renounced Islam to join another religion or became non-religions, but Muslim who have questioned or derived any "Fundamental tenet or creed" of Islam such as Sharia law, or who have mocked Allah, worshipped one or more idols, or knowingly believed in an interpretation of Sharia that is contrary to the consensus Ummah (Islamic community) the term has also been used for people that trace their origins to Islam, such as Baha in Iran and Ahmadiya Muslim in Pakistan and Indonesia.

The definition of Apostasy from Islam and its appropriate punishment are controversial and they vary among Islamic scholars. In Islam's history, the vast majority of scholars have held that Apostasy in Islam is a crime punishable with the death penalty,

typically after a waiting period to allow the apostates time to repent and return to Islam. Some Muslim scholars Maliki and Hambali hold the traditional view that death penalty for apostasy is required by the two primary sources of Sharia. The Qur'an and the Hadith. While others argue that the death penalty is inappropriate punishment.

A majority considers apostasy in Islam to be some form of religious crime. Although a small liberal minority does not and some reject the use of the death penalty. The actual punishment for the apostate (or murtadd), range from execution to prison term to no punishment. Islamic nations with Sharia courts used civil code to void the Muslim apostates' marriage and deny child custody rights, as well as his or her inheritance rights for apostasy. Twenty three Muslim majority countries, as of 2013 additionally covered apostasy in Islam through their criminal laws. According to critics, punishment for apostasy in Islam is a violation of universal human rights, and an issue of freedom of faith and conscience.

But those who reject faith after they accepted it, and then go on adding to their defiance of faith never will their repentance be accepted; for they are those who have (of set purpose) gone astray.

The Holy Qur'an also provide that:

Make ye no excuses; ye have rejected faith after ye had accepted it. If we pardon some of you, we will punish others amongst you, for that they are in sin.

In yet another chapter of the Qur'an, the Holy Prophet Mohammad (S.A.W) further warned against act of disbelief thus:

He who disbelieves in Allah after his having believed, not he who is compelled while his heart is at rest on account of faith, but he who opens (his) breast to disbelief on these is the wrath of Allah, and they shall have a gracious chastisement.

In these and other verses, The Qur'an reprimands apostasy in Islam and suggests it deserve chastisement. However, Qur'an does not reveal a specific punishment for apostasy. The Sunnah in

Hadiths, which form part of Sharia, specified death penalty. Within the different Hadith collections, there are references to punishment for committing apostasy in Islam. For example, in the *Sadih Al-Bukhari*, punishment for apostasy are described:

Allah apostle said, the blood of a Muslim who confesses that none has the right to be worshipped but Allah and that I am his apostle, cannot be shed except in three cases: in Qisas for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam and leaves the Muslims.

The Hadith went further to state that:

Ali burnt some people and the news reached Ibn Abbas, who said, "had I been in his place I would not have burnt them, as the prophet said, don't punish anybody with Allah's punishment; no doubt, I would have killed them for the prophet said if somebody (a Muslim) discard his religion, kill him.

The *Sahih Muslim* collection, reiterates and confirms that which is in the *Sahih Al-Bukhari* collection.

Punishment of Blasphemy under Shariah

The punishment for blasphemy under Shari'ah depends much on the ingredients of blasphemy than on the subject – but could be on both. If Allah, His prophets and books are made objects of blasphemy, the punishment is more grievous than blaspheming the righteous companions of the prophet (S.A.W).

For this reason, various ingredients of blasphemy have been identified viz:

- 1) Making Allah the object of blasphemy;
- 2) Making the prophet an object of blasphemy;
- 3) Making the symbols (Al-Qur'an) the object of blasphemy;
- 4) Making the believers object of blasphemy.

It is established that in established cases of the first three categories, the punishment is death. When Allah is blasphemed the punishment is death. The Holy Qur'an says:

Those who annoy Allah and His Messenger, Allah has curse them in this world and in the hereafter, and has prepared for them a humiliating punishment.

In a prophetic Hadith the Prophet (S.A.W) ordered the killing of Ka'ab bn Ashraf in these words: Who will finish off with Ka'abbn Ashraf for he has committed annoyance against Allah and His prophet. Also killed for the same reason was Abu Ra'afin. The prophet also ordered Ibn Khatal to be killed.

In another Hadith, the prophet (S.A.W) said in respect of a blasphemer: "who will take charge of my enemy for me?" Khalid under took to do that, and he killed the blasphemer. The same punishment was applied to Nasir bn Ariz and Huqbatbn Abu Muiy. There are so many instances of punishment of the first category of blasphemy, cited by Qad Iyaad in his book for someone guilty of these first three categories of blasphemy, particularly blasphemy of the prophet, which has been the commonest variant.

Blasphemy of the prophet (S.A.W) can sometimes interlink with the blasphemy of Allah, but for certain legal purpose, they are classified differently as done above in the opinion of some scholars of Shafi School, and scholars like Qad Abu Ya'ala, Shareef Abi Jafar and Ibn Hakeel. This is owing to their position that blasphemy of the prophet (S.A.W) is held to be as grievous as blasphemy of Allah. One thing that makes this clearer is the issue of repentance in the two instances.

The followers of Shafi'i school are of the opinion that blasphemy against Allah by a Muslim is apostasy and if a Muslim does it, his repentance will be accepted, and the offender will not be punished. Where a Muslim (or any person) blaspheme the Prophet Muhammed (S.A.W), there is no room for repentance and the person will be killed. This is also the stance of Imam Abu Hanifah. Commenting on this, Imam Ibn Taymiyya observes:

This differentiation necessitates an examination of the punishment meted out to the blasphemer of the prophet as having violated a human right as it is mentioned by

many of the companion. It is also (a violation) of the right of Allah. Whoever violates the sanctity of Allah (as seen in the case someone that blasphemes Allah) will not but have capital punishment inflicted on him. His likes are a fornicator and adulterer, a thief and a drunk and when all those repent after having faced the machineries of the law (it is not accepted).

The above insight given by Shiekh Ibn Taymiyya helps to classify blasphemy of the Prophet as an offence against humanity and divinity (it violates human and divine rights). In certain instance, violation of human rights generally ranks higher in hierarchy of gravity than violation of divine rights and human rights. The gravity can well be imagined. However, according to Shiekh Ibn Taymiyya in the blasphemy neither the blasphemer of Allah nor that of the prophet can be pardoned when he claims to have repented.

In this sense, blasphemy of Allah (God) and His Prophet Muhammad (S.A.W) cannot be differentiated. All these arguments flow from the fact that generally in Islam an apostate is given an opportunity to repent failing which he is executed. A number of scholars such as Imam Shafi'i and Hanfi hold that this extends to a blasphemer. However, Imams Maliki and Hanbali are of the opinion that this amnesty of repentance opportunity is not open to a blasphemer. Therefore, Imam Hanbali remarks:

Whoever blasphemes the Prophet (SAW) and degrades his personality, whether he is a Muslim or an unbeliever, killing is due on him, and I hold that he should be killed, and not be asked to repent.

Shiekh Ibn Taymiyya quotes Abdullahi to have said:

I asked my father on whether someone that blasphemes the Prophet (S.A.W) will be asked to repent. He responded, killing is due on him and he will not be asked to repent.

Khalid bn Walid killed man who blasphemed the Prophet (S.A.W) without asking him to repent. Ibn

Abbas also asserted that a blasphemer will not be asked to repent.

Blasphemy and Freedom of Expression

Under the Islamic law, the word is practically divided into two for the purpose of the application of Islamic law of blasphemy as stated above. Therefore, in non-Islamic states such as Western societies where the freedom of expression is held to be one of the high-points of their democracies, the law of blasphemy has always been an object of criticism in these societies on the grounds of being a bar to freedom of expression.

It is pertinent to note that the author of the satanic verses like many other blasphemers, hid under this freedom of expression to excuse his act. He said:

What is freedom of expression? Without the freedom to offend, it ceased to exist. Without the freedom to challenge or even satisfied all orthodoxies including religious orthodoxies, it ceases to exist.

However, all the constitution of countries all over the world either implicitly or explicitly, contain certain restrictions to limitations on certain freedoms they provide for, when it comes to the area of religion, the issue of freedom of expression becomes more emotive and, definition of what constitutes freedom of expression, becomes controversial.

Some Cases of Blasphemy in Nigeria

The Federal Republic of Nigeria operates two court systems, both systems can publish blasphemy. The constitution provides a customary (secular) system and a system that incorporate Sharia. The customary system prohibits blasphemy by section 204 of Nigeria criminal code. Twelve out of Nigeria's thirty-six state have Sunni Islamic as the dominant religion. In 1999, these states chose to have Sharia courts as well as customary courts. A Sharia court may treat blasphemy as deserving of several punishments up to, and including execution.

The constitution's prohibition against blasphemy in the criminal and penal codes and the prohibition recognized by Sharia may not be lawful because section 38 of the constitution of Nigeria

entitles every Nigerian to freedom of thought, conscience and religion, and section 39 gives every Nigerian the right to freedom of expression.

On 9th August 2008, a Muslim mob in Kano State beat to death a fifty year old Muslim man who blasphemed Mohammed (S.A.W). In October 2007 a Sharia court convicted Sani Kabili, a Christian and a father of six, of the town of Kano of blasphemy against Muhammad. The court sentence Kabili to three years in prison. In February 2009, an appeal court over turned the conviction.

On 20th September 2002, Muslim and Christian mobs rampaged in the cities of Kaduna and Abuja, the rampage began after an article in a daily newspaper. This Day suggested that Muhammed would have approved of a miss world pageant that was taking place in Abuja.

Columnist Isiema Daniel wrote that Muhammed would probably have taken a wife from amongst the contestants.

Summary

This paper is an attempt to enhance the understanding of what constitutes the offence of blasphemy, its meaning, nature and punishment under the Islamic law. However, there are some machineries and instrumentalities which may have impacted positively or negatively on the application of the Islamic law of blasphemy such as state, freedom of expression and co-existence of Islam with other religions. It also dwells on the readiness to the relevance of the principles of the Islamic law of blasphemy in Nigeria. According to Sharia, the state must be based on the concept of vicegerency and supremacy of Allah. Therefore Sharia is not beclouded by any ideological confusion because Allah i.e. the Supreme Being and under no circumstances must Allah or His Prophet be blasphemed. Thus, the Sharia law is not affected by secularism because secularism has no place in its believe system, the freedom of expression must be placed within the normal context of civility.

This paper has revealed that despite all these provision as enshrined in the 1999 Constitution as amended and the Islamic Sharia law, the offence of blasphemy or the abuse of the Supreme Being instead of regressing is progressing. Religious factors have continued to constitute the greatest hindrances to the citizen's desire to seek redress for

the infringement or abuse of religious Supreme Being (God). The paper has also shown that the institutions available for promoting and punishing blasphemers in Nigeria have not been able to live up to expectation. This penalty is due to the various challenges facing the institution, ranging from procedural guidelines to the legal framework. There is need for amendment or outright repeal of some legislation to enable the institution function properly.

This paper has revealed that respect for human dignity and all forms of human rights are absolute in both Nigerian Constitution and Islamic Sharia law, but Nigeria is still grappling with various forms of violations i.e. extra judicial killings, cruel, inhuman and degrading treatment.

Recommendations

Since divinity is the underlying element of the offence of blasphemy under the Islamic law, a law regulating such an offence as blasphemy should be appropriately and adequately put in place.

Where some laws recognize the place of religion, such laws should be very effective and guided by the state, so that the laws will not be dead or become a toothless bulldog. Freedom of expression in all the legal system should clearly exempt freedom of sacrilege and the state should introduce means of punishing blasphemers and eradicating issues of people taking the law into their hands.

The offence of blasphemy over the years has generated a lot of crises due to its critical nature. So the government should ensure sanity and peaceful co-existence between members of the religions and prevent improper accusation.

The penalty of the offence should be spelt out clearly, recognized and enacted into the constitution with clear legal effect. Death penalty should be expunged and replaced with a long jail term with hard labour to serve as a deterrent.

References

- Qur'an 33:57
- Sahih Al-Bukhari: 4:52:270
- Ibn Tay Miyah Assariumi-Maslal Ala Shatimi Rasul, (2003) Darul Hadith pg. 41
- Qur'an 33:61
- Sheikh Ibn Taymniyya, Assarimul-Maslul Ala Shatimi Rasul (2003) Darul Hadith pg. 41

- Qur'an 6:109
 Ibn Taymiyyah Hukum Dim (2002) Darul Hadith pg. 30
 Attan Vett A. Contract with the Devil, in sacrilege versus civility pg. 120
 Rushdie's, the Satanic Verses (1989) Vikin Penguin
 Brain D., Cardinals speaks on Rushdie but Pope is silent in sacrilege versus civility (1999) Cromwell Press Ltd Wiltshire and Islamic Foundation United Kingdom pg. 129.
 Qaadi Iyaad, Ashifa Bitarifu, pg. 244
 Ibn Taymiyyah Assariuml-Maslal Ala Shatimi Rasul, (2003) Dasul pg. 30
 An Nawawi Arba Unal-Hadith Darul Kitab, Hadith No. 2
 Op cit
 Op cit
 Ibn Taymiyyah Assarimul-Maslul Ala Shatimirasul, (2002) Darul Hadith, pg. 41.
 Afghanistan-Law Criminalizing Apostasy Library of Congress (May 2014)
 Qur'an 3:90
 Qur'an 9:66
 Qur'an 16:106
 Sahih Al-Bukhari 9:83:17
 Sahih Al-Bukhari 4:52:260
 Qur'an 33:57
 Qaadi Iyad Ahsifa pg. 178
 Ibid pg. 178
 Ibid pg. 178
 Ibid pg. 178
 Rushdie S. Satanic verses (1998 Viking Penguin
 Ibn Taymiyya Assurimul Maslul pg. 229
 Ibid pg. 389
 Ibid pg. 242
 Ibid pg. 242
 Ahsan M.M. Sacrilege Versus Civility pg. 52
 Ibn Taymiyya Assarimul Maslul pg. 242
 Ibid pg. 242
 Ibn Taymiyya Assarimul Maslul pg. 242
 Ibid pg. 242
 Ibid pg. 242
 Ibn Taymiyya Assarimul Maslul pg. 243
 Ibn Taymiyya Assarimul Maslul pg. 225
 Qaadi Iyaad Ahsifa pg. 179
 Quddah, A.Q. Criminal Law of Islam (1999) Kitar Bhavan pg. 332
 Anthony, Burgess, Islamic Tactic, Sacrilege versus Civility (1999) Cromwell Press Ltd Wilshire and Islamic Foundation United Kingdom pg. 75
 Ibid pg. 76
 Attah V.A. Contract with the Devil in Sacrilege versus Civility (1999) Cromwell Press Ltd Wilshire and Islamic Foundation United Kingdom pg. 102
 Section 38 of the Constitution of Nigeria as Amended
 Section 39 of the Constitution of Nigeria as Amended
 www.BOSNEWSLife. Nigerian Christian killed in Riot over Blasphemy Dozens injured 13 February 2008 accessed on 25 July 2015
 www.BlakeDaniel (16 February 2009) Nigerian Christian freed after imprisonment for blasphemy, Accessed 25 July, 2015
 www.MbachuelDulue (22 November 2002) 100 killed in Nigeria riots triggered by Miss World Pageant. Accessed 28 July 2005.
 Article by Isiema Daniel on 20th November (2002) in this day Daily Newspaper