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DEATH PENALTY AND *RIDDAH*: A CRITICAL EVALUATION TOWARDS THE CLAIM OF A JURISTIC *IJMĀ'*

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ABSTRACT

Contemporary academics and *'ulama* debate back and forth regarding whether Islam really supports the execution of those who have apostatised away from Islam (i.e. committed *riddah*). There is already numerous research dedicated to the interpretation of verses of the Qur'an and *aḥadīth* relevant to *riddah,* and what legal rulings can be derived from them. What often alludes contemporary academics is what some *'ulama* call the "third primary source of Islamic law", namely *ijmā'*. Claims of and counterclaims against *ijmā'* regarding executing the *murtadin* have often been cited in passing, somehow the latter more lengthily explained. What is missing, however, is a comprehensive analysis of these *ijmā'* claims and counterclaims and this is what our research does. Through literature research using comparative *fiqh* analysis, we critically examine whether an *ijmā'* has been achieved during the era of the *Salaf al-Ṣāliḥ* (pious predecessors) then the classical *madhāhib* regarding the matter of *murtadin* execution, considering also potential exceptions. Finding the affirmative, we critically analyse what to make of the contemporary dissenting opinions in navigating the present-day challenges to implement Islamic criminal law.

Keywords: Islamic Criminal Law, *Ijmā',* Apostasy.

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HUKUMAN MATI DAN RIDDAH: PENILAIAN KRITIKAL TERHADAP TUNTUTAN PANDANGAN IJMA'

ABSTRAK

Ahli akademik kontemporari dan ulama saling berdebat tentang sama ada Islam benar-benar menyokong hukuman mati ke atas mereka yang telah murtad dari Islam (iaitu melakukan riddah). Sudah terdapat banyak penyelidikan yang dikhaskan untuk tafsiran ayat-ayat Al-Quran dan hadith yang berkaitan dengan riddah, dan apa keputusan undang-undang yang boleh diperoleh dari mereka. Apa yang sering merujuk kepada ahli akademik kontemporari adalah apa yang disebut oleh sesetengah ulama sebagai "sumber utama ketiga undang-undang Islam", iaitu Ijma'. Tuntutan dan tuntutan balas terhadap Ijma' mengenai pelaksanaan hukuman mati atas murtadin sering disebut secara ringkas, walau bagaimanapun yang kemudiannya (tuntutan balas) lebih panjang dijelaskan. Walau bagaimanapun, apa yang hilang adalah analisis komprehensif tuntutan dan tuntutan balas Ijma' ini, dan inilah yang dilakukan oleh penyelidikan kami. Melalui penyelidikan kesusasteraan, kami mengkaji secara kritikal sama ada Ijma' telah dicapai semasa era Salaf Al Salih (orang- orang terdahulu yang soleh) kemudiannya mazhab-mazhab klasik mengenai pelaksanaan hukuman mati murtadin, dengan mempertimbangkan juga pengecualian- pengecualian yang berpotensi. Mencari afirmatif, kami menganalisis secara kritis apa yang perlu dibuat daripada pendapat-pendapat kontemporari yang berbeza dalam menavigasi cabaran masa kini untuk melaksanakan undang-undang jenayah Islam.

Kata kunci: Undang-Undang Jenayah Islam, Ijma', Murtad.

INTRODUCTION

The matter of *riddah* (apostasy) in Islam is perhaps the biggest and most difficult part of the Islam and human rights discourse. In fact, when the Universal Declaration of Human Rights was adopted in 1948, Saudi Arabia abstained as they refused to recognise the right to apostate away from Islam.[1]

[1] Jacob Dolinger, "The Failure of the Universal Declaration of Human Rights," *The University of Miami Inter-American Law Review* 47, no. 2 (2016): 191.

Internally among the Muslims nowadays, the issue of whether *riddah* should be criminalised at all is a difficult topic. Even more, whether to execute the *murtadin* (apostates). Some *'ulama* and academics have maintained that the punishment for apostasy is death, such as Saudi Arabia's *Fatāwā al-Lajnah al-Dāʾimah li al-Buḥūth al-ʿIlmiyya wa al-Iftā*,[2] Shaykh Wahbah al-Zuhayli,[3] and Mohd. Hisham Mohd. Kamal.[4] Meanwhile, others claim that the act of *riddah* is not in itself punishable by death, such as Ṣubḥī Muḥmaṣṣānī,[5] Hashim Kamali,[6] and Ahmad Ibrahim.[7]

Among the most central to the debate among the aforementioned personalities is usually the apparent contradiction between a Quranic verse Surah Al-Baqarah (2) verse 256: "Let there be no compulsion in religion…" and the *aḥadīth* including one where Prophet Muhammad ﷺ said "Whoever changed his religion (i.e. away from Islam), then kill him".[8] The aforementioned *'ulama* and academics, among many other literature, provide arguments regarding how to interpret the Qur'an and *aḥadīth* in ways that eventually support their conclusions. This is not to suggest that therefore neither position is justified, after all, they are two polar opposites where it is impossible that both are incorrect (or both are correct).

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[2] Aḥmad ibn 'Abdulrazaq Al-Duwayshi, ed., *Fatāwā Al-Lajnah Al-Dāʾimah Li Al-Buḥūth Al-ʿIlmiyya Wa Al-Iftā*, vol. 1 (Riyadh: Dar al-Mu'ayyad, 2003), 401.

[3] Wahbah Al-Zuḥaylī, *Fiqih Islam Wa Al-Adillatuhu*, vol. 7 (Jakarta: Gema Insani Press, 2011), 513–14.

[4] Mohd Hisham Mohd Kamal, "Kebebasan Beragama Dan Isu Riddah Dari Perspektif Syariah," in *Isu-Isu Kebebasan Beragama & Penguatkuasaan Undang-Undang Moral*, ed. Mohd Hisham Mohd Kamal and Shamrahayu A. Aziz (Selangor Darul Ehsan: Department of Islamic Law IIUM & Harun M. Hashim Law Centre, 2009).

[5] Ṣubḥī Muḥmaṣṣānī, *Arkān Ḥuqūq Al-Insān* (Beirut: Dār al-ʿIlm li-l'Malayīn, 1979), 123–124.

[6] Mohammad Hashim Kamali, *Crime and Punishment in Islamic Law: A Fresh Interpretation* (Oxford University Press, 2019), 141–47.

[7] Ahmad Mohamed Ibrahim, *The Administration of Islamic Law in Malaysia* (Kuala Lumpur: Institute of Islamic Understanding Malaysia, 2000), 593–95.

[8] Muḥammad ibn Ismā'īl Al-Bukhārī, *Sahih Al-Bukhari*, vol. 9 (Riyadh: Darussalam, 1997), Hadith no. 6922. There are many other *aḥadīth* on this subject, we only cite one here.

What seems to lack discussion is what many scholars identify as the third primary source of Islamic law, namely *ijmā'* (consensus). This is an important subject, because an *ijmā'* cannot be wrong as Prophet Muhammad ﷺ purportedly said: "my 'ummah will not unite upon error", meaning that differing opinions coming before or after (obviously cannot be during) the occurrence of the *ijmā'* are unquestionably incorrect as explained in a later section of this paper.

Some contemporary *'ulama* or academics claim that the execution of *murtadin* is justified by *ijmā',* but they often only say so without listing evidence of *ijmā'* or perhaps only citing a few classical *'ulama* (sometimes only one) who also makes a claim of *ijmā'* without exploring the evidences of it.[9] On the other hand, the opposing side in the cited references often mentions examples of classical *'ulama* who purportedly hold that *murtadin* are not to be executed. Yet they do not really counter the claim of *ijmā',* as it is possible that the *'ulama* they cite have opined after or before the formation of an *ijmā'*.

Therefore, our research will explore the literature of *fiqh* throughout the ages pertaining to the issue of *riddah* and deal with the main question of whether there is an ijmā' on the execution of *murtadin*. In doing so, we will follow a few steps using a literature research method, particularly comparative *fiqh*. First, we explain the status and identification of *ijmā'* in Islamic jurisprudence. Second, we explore how an *ijmā'* on the execution of the *murtadin* has been formulated during the times of the *Ṣaḥābah* (companions of Prophet Muhammad ﷺ). Third, we analyse purported exceptions to the *ijmā'*. Fourth, we critically examine how the relevant *ijmā'* is perpetuated by the classical *fuqaha* of the *madhāhib*. Fifth, finally, we discuss what to make of the *khilaf* arising in the contemporary era.

IJMĀ' IN ISLAMIC JURISPRUDENCE: STATUS AND IDENTIFICATION

The *'ulama* has a major role in the formation of Islamic Law. It is them who derive legal rulings from the Qur'an and Sunnah into *fiqh* rulings ready for the Muslims to apply. There are times when the *'ulama* have *ikhtilaf* (differences of opinion) in making rulings due to various factors, such as differences in: *uṣūl al-fiqh* methodology, use and

[9] See *inter alia*: Al-Zuḥaylī, *Fiqih Islam*, 2011, 7:513–14.

grading of *ḥadīth,* linguistics, *etc*.[10] Examples of *ikhtilaf* in the case at hand are regarding how many days are given for the *murtadin* to repent before executing them, or even whether to give them any chance at all.[11]

An *ikhtilaf* is only valid when there are issues of *ijtihad* (juristic reasoning). It must be noted that *ijtihad* is only allowed when there is no clear text from the Qur'an, Sunnah, or *ijmā'* regulating a particular matter.[12] For example, fasting (in the month of Ramaḍan) is an unquestionable obligation as per Surah Al-Baqarah (2) verse 183: "O you who have believed, decreed upon you is fasting as it was decreed upon those before you that you may become righteous."

If a matter is specifically ruled upon in the clear text of the Qur'an and Sunnah, *ijtihad* can be made to clarify certain details not made clear in the main ruling. For example, regarding fasting in Ramadan, the *fuqaha* (Islamic jurists) differ on how exactly to determine the start of Ramadan and whether all Muslims across the globe should fast on the same day.[13]

When a valid *ikhtilaf* occurs, the jurist has the following options to do:

- *Tarjīḥ*: choosing the strongest opinion based on the *dalīl* used by the differing rulings, if the jurist is capable of this.
- *Ittiba*' to the *madhhab* (school of jurisprudence): following the (official) opinion of the jurist's *madhhab* of *fiqh*, if the jurist is not capable of *tarjīḥ*.
- *Khuruj min al-khilaf*: choosing the safest option, such as preferring an impermissibility ruling over a permissibility ruling.

In such a situation, the jurists holding different opinions must respect each other. As per the *qa'idah fiqhiyyah* (Islamic legal maxim):

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[10] Wahbah al-Zuḥaylī, *Fiqih Islam Wa Al-Adillatuhu*, vol. 1 (Jakarta: Gema Insani Press, 2011), 72–76; Aḥmad ibn `Abd al-Ḥalīm Ibn Taymiyyah, *Raf' Al-Malām 'an Al-Aimmat Al-A'Lām* (Riyadh: Dār al-Iftā', 1413), 9.

[11] See *inter alia* ʿAlī ibn Aḥmad ibn Saʿīd ibn Ḥazm, *Marātib Al-Ijmā'* (Dār ibn Ḥazm, 1998), 210.

[12] Abū Ḥāmid Muḥammad Al-Ghazālī, *Al-Muṣtaṣfa Min 'Ilm Al-Uṣūl* (Beirut: Dar al-Kutub 'Ilmiyyah, 1993), 374–75.

[13] Wahbah Al-Zuḥaylī, *Fiqih Islam Wa Al-Adillatuhu*, vol. 3 (Jakarta: Gema Insani Press, 2011), 50–60.

an *ijtihad* does not annul another *ijtihad*. This is why, for example, a follower of the Shafi'i *madhhab* requires the recitation of *bismillah* before *Al-Fatihah* in *ṣalāh* (the Islamic ritual prayer) while a follower of the Maliki *madhhab* does not, but there is no problem for a Shafi'i to be *ma'mum* (praying behind an *imam*, or *ṣalāh* leader, in a congregational *ṣalāh*) behind a Maliki *imam*.[14]

There are, however, times when the *'ulama* have managed to reach a consensus on a particular matter, and this is what is referred to as an *ijmā'*. When such an *ijmā'* has been established on a particular matter, then any differing opinion that comes afterward is rejected.[15] In fact, as a matter of determining specific *Shar'i* rules, *ijma'* often provides more certainty than the Qur'an and Sunnah.[16] Depending on the degree of the matter discussed, to reject or differ from a matter agreed upon by a previous *ijmā'* can result in a Muslim declaring to have committed *riddah* or apostatised from Islam.[17]

In general, there are usually two classifications of *ijmā'*, which are: *ijmā' sarih* (clear) where the *'ulama* who reached consensus in a particular time have clearly pronounced their ruling on the matter, and *ijmā' sukuti* (hidden) where only some *'ulama* have stated their opinion while no rejection can be found during that period.[18]

While there is a difference of opinion whether *ijmā'sukuti* is a definitive legal basis,[19] it is important to note the reason behind such a classification and its implications because they cannot be taken strictly at face value of their description above. As Al-Tufi says concurring

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[14] Jalāl al-Dīn al-Khuḍayrī Al-Suyūṭī, *Al-Ashbāh Wa Al-Nazhā'ir* (Beirut: Dar al-Kutub 'Ilmiyyah, 1983), 101–2.

[15] Badr ad-Dīn Muḥammad Al-Zarkashī, *Tashnīf Al-Masāmi'*, vol. 3 (Makkah: Maktabah Al-Makiyyah, 1998), 137.

[16] Muḥammad ibn 'Alī Al-Shawkānī, *Irshād Al-Fuḥūl*, vol. 2 (Beirut: Dar al-Kitab Al-'Arabi, 1999), 278. This is not to say that the Qur'an and Sunnah are below human opinions, rather often the Qur'an and Sunnah are not always specific and definitive in their wordings and therefore still open to interpretation. *Ijmā',* on the other hand, are usually specific and definitive.

[17] 'Uthmān bin ' Alī Ḥasan, *Manhaj Al-Istidlal 'Alā Al-I'tiqād 'Inda Ahl Al-Sunnah Wa Al-Jamā'Ah* (al-Riyāḍ: Maktabah Ar-Rushd, 1415), 149–50.

[18] Sayf al- Dīn Al-Āmidī, *Al-Iḥkām Fî Uṣūl Al-Aḥkām*, vol. 1 (Beirut: Maktab al-Islami, 1402), 252.

[19] Badr ad-Dīn Muḥammad Al-Zarkashī, *Al-Baḥr Al-Muḥīṭ*, vol. 6 (Kuwait City: Dar al-Kutubi, 1994), 456.

with Ibn Taymiyyah, if silence (categorically) cannot indicate consent, then *ijmā'* either cannot exist at all or in most cases.[20] He continues that *ijma* is achieved by the pronouncement of some and the approval of others.[21]

One must first understand why *ijmā'sukuti* is not accepted by some *fuqaha* as a definitive legal basis. It is hard to imagine how to achieve a true *ijmā'* when the Muslims are spread out in various lands that are very distant from each other. Additionally, technological limitations at the time did not allow, for example, the *'ulama* of Al-Andalus (Spain) to easily and quickly access the most recent publications of the *fuqaha* of Madinah (Arabian Peninsula). Therefore, the *'ulama* who are silent cannot definitely be claimed to have done so out of approval because some may be silent because they were unaware of the existence of certain opinions due to the remoteness of their geographical location.

Understanding the above explanation, depending on the circumstances, some silences cannot be reasonably interpreted as anything other than affirmation. For example, some opinions are discussed in such a widespread among major *'ulama* across different schools. Even more so if they are related to very general and basic matters in the daily life of Muslims, such as *ṣalāh* and *jinayat* (Islamic criminal law). Also, there were times when all the *'ulama* were in relatively close geographical proximity to (and also in close correspondence with) each other, i.e. among the *Ṣaḥābah*. In these situations, it will be increasingly likely that the silence of some *'ulama* is an affirmation over the pronouncement of others, contrastingly proportionate with the decrease of likeliness that any *'ulama* would not voice out their dissenting opinion.

In such a case, *ijmā'sukuti* is as strong as *ijmā'sarih*. Or, in fact, most if not all *ijmā'sarih* might actually consist of an *ijmā'sukuti* so strong that it might as well have been *sarih*. We simply cannot find any matter in Islam established by *ijmā'* which is supported by a record of affirmation by literally every *fuqaha* alive during the period in which the *ijmā'* was claimed to have been formulated. For example, the daily compulsory *ṣalāh* of five times a day is always used as an example of

[20] Najm ad-Dīn Sulaymān ibn ʿAbd al-Qawī Al-Ṭūfī, *Sharḥ Mukhtaṣar Al-Rawḍah*, vol. 3 (Beirut: Mu'assasah al-Risalah, 1987), 83.
[21] Al-Ṭūfī, *Sharḥ Mukhtaṣar Al-Rawḍah*, 3:83.

obligations unquestionably established by *ijmā'* since the time of the *Ṣaḥābah*.[22] We do not have a record of every single *Ṣaḥābah* pronouncing five compulsory *ṣalāh* s in a day. What we do have is the pronouncement of some *'ulama* of the *Ṣaḥābah* and the silent approval of other *Ṣaḥābah* in such circumstances (number, geographical coverage, and represented *madhhab*) that it is inconceivable that a dissenting opinion would not have been known.

Having that said, there are a couple of requirements to prove the existence of an *ijmā'*. First, one must explore the works of the *fuqaha* as far and wide as possible in a manner that it is inconceivable for a dissenting opinion not to be found. Second, potential dissenting opinions must be evaluated whether (a) they exist in the first place and (b) whether they existed before or after the period in which the *ijmā'* is claimed to have been formulated. This is where claims and counterclaims can occur, and it is the duty of the *fuqaha* to identify the existence of *ijmā'* if they indeed have occurred or to admit the existence of legitimate *khilaf* if it exists.[23] It is also possible that there is *khilaf* regarding whether a matter is *ijmā',* and the case will be determined based on evidence.

FORMULATION OF *IJMĀ'* ON MURTADIN EXECUTION

This section explains the legal rulings related to the *murtadin* during the period of the *salaf,* in particular the *Ṣaḥābah*. We first explain how the *Ṣaḥābah* treated the issue of the *murtadin,* then second, we address the alleged differences of opinion during that period.

The *Ṣaḥābah* and the *Murtadin*

During the time of the *Ṣaḥābah*, it is important to note that they witnessed Prophet Muhammad ﷺ prescribing execution for the *murtadin,* as per the *ḥadīth* mentioned in the introduction of this paper. However, even in the absence of the Prophet Muhammad ﷺ, there have been numerous incidents where the *Ṣaḥābah* have had to raise their thoughts and legal rulings regarding the *murtadin*.

We start with Mu'adh ibn Jabal who decreed execution for a man who was once Jewish but had accepted Islam and then committed

[22] al-Khaṭīb Aḥmad ibn ʿAlī al-Shāfiʿī Al-Baghdādī, *Uṣūl Al-Dīn* (Beirut: Dar al-Kutub 'Ilmiyyah, 2002), 213.

[23] Irrespective of whether they agree with the dissenting opinion.

riddah. This man had been imprisoned by Abu Musa al-Ash'ari for two months when Mu'adh ibn Jabal came and made such decree, and the former acquiesced.[24] Then we have 'Abdullah Ibn 'Umar who was narrated to say that an apostate should be offered to reaccept Islam three times, then they should be released if they accept and executed if not. [25]

Perhaps the biggest testament of the position of the *Ṣaḥābah* towards the *murtadin* is the *Riddah* wars occurring after the demise of Prophet Muhammad ﷺ. There were some tribes around the Jazirah who had renounced Islam. Al-Qāḍī 'Iyāḍ mentions three types of *murtadin* in this period: those who returned to pagan worship, those who followed false prophets (Musaylamah and Al-Aswad al-Ansi), and those who proclaimed to still be Muslim but rejected the *hukm* of *zakat* (compulsory alms in Islam).[26]

Under the *khilāfah* (caliphate) of Abu Bakr, the Muslims waged war spanning between 632-633 AD and eventually defeated these *murtadin*.[27] At first, the *Ṣaḥābah* differed on whether it was correct to wage war.[28] It must be noted here that the disagreement was only regarding waging war against the third group of *murtadin* (rejecting the *hukm* [law] of *zakat*), as some *Ṣaḥābah* thought that perhaps a more amicable approach would make this third group eventually pay *zakat*.[29] Also, 'Umar asked whether the failure to pay *zakat* is a matter between the individuals and Allah and not the government. Abu Bakr explained that rejecting *zakat* is like rejecting *salat* (i.e. an act of *riddah*) so they should both be treated the same: by the sword, and 'Umar agreed with him.[30] The *Ṣaḥābah* then came to a consensus to wage war against the *murtadin*.[31]

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[24] 'Abd Allah ibn Muḥammad Ibn Abī Shaybah, *Muṣannaf Ibn Abī Shaybah*, vol. 6 (Riyadh: Maktabah al-Rushd, 1409), no. 32729.

[25] 'Abd Allah ibn Muḥammad Ibn Abī Shaybah, *Muṣannaf Ibn Abī Shaybah*, vol. 5 (Riyadh: Maktabah Al-Rushd, 1409), no. 30928.

[26] 'Ali Muhammad As-Sallabi, *The Biography of Abu Bakr As-Siddeeq* (Riyadh: Darussalam, n.d.), 353.

[27] As-Sallabi, *Abu Bakr*, 347–550.

[28] ibn Ḥazm, *Marātib Al-Ijmā'*, 209.

[29] As-Sallabi, *Abu Bakr*, 358.

[30] Al-Bukhārī, *Sahih*, 9:hadith no. 6924-6925.

[31] ibn Ḥazm, *Marātib Al-Ijmā'*, 209.

The final and very important narration on the subject is regarding ‘Ali ibn Abi Ṭālib who commanded the execution of some *murtadin* via burning. ‘Abdullah Ibn ‘Abbas, hearing what ‘Ali has done, agrees that the *murtadin* should be executed but doing so with fire is prohibited.[32] ‘Ali then acknowledges his mistake, agreeing with Ibn ‘Abbas.[33]

The above narration is important not only because it indicates the position of two major *faqih* (renowned jurists) among the *Ṣaḥābah*, but also because it shows that the *‘ulama* will not be silent if there is a wrong legal ruling given by the other.[34] Therefore, as Ibn Qudamah mentions, the *ijmā‘* of the *Ṣaḥābah* regarding the execution of *murtadin* is established by the pronouncement of numerous major *Ṣaḥābah* (Abu Bakr al-Siddiq, ‘Uthman ibn Affan, ‘Umar ibn al-Khaṭṭāb, Abu Musa al-Ash‘ari, ‘Abdullah ibn ‘Abbas, Khalid ibn al-Walid, Mu‘adh ibn Jabal, and others) and the acquiescence of the other *Ṣaḥābah*.[35]

Differing Opinions Among the Salaf?

As explained much earlier, the evidence against *ijmā‘* is the existence of *khilaf*. For the *khilaf* to be meaningful evidence against *ijmā‘* it must have occurred during the time of the alleged *ijmā‘* was formed. If the *khilaf* were to occur after the *ijmā‘* was formulated, then it would be a violation against *ijmā‘* instead of being evidence against it. Otherwise, if the *khilaf* occurred before the *ijmā‘,* then its validity is annulled after the *ijmā‘* was formulated.

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[32] Muḥammad ibn ʿĪsā al-Sulamī Al-Tirmidhī, *Jami Al-Tirmidhi*, vol. 3 (Riyadh: Darussalam, 2007), hadith no. 1458.

[33] Al-Tirmidhī, *Jami Al-Tirmidhi*, 3:hadith no. 1458.

[34] This is also the case when ‘Amr ibn ‘Abasah warned Mu‘āwiyah ibn Abi Sufyan for wrongly preparing to attack the Byzantines during a peace treaty termination period: Abu Dawud Sulaymān ibn al-Ash‘ath Al-Sijistānī, *Sunan Abu Dawud*, vol. 3 (Riyadh: Darussalam, 2008), hadith no. 2759. Another case is when Ibn ‘Abbas and Zayd ibn Thabit disagreed regarding *fiqh al-mawāris* (inheritance law). See: Muḥammad ibn Aḥmad Al-Qurṭubī, *Al-Jāmi’ Li Aḥkām Al-Qur’ān*, vol. 5 (Cairo: Dar al-Kutub Al-Misriyyah, 1964), 57.

[35] ʿAbd Allāh b. Aḥmad ibn Qudāmah Al-Maqdīsī, *Al-Mughni*, vol. 12 (Riyadh: Dar ’Alam al-Kutub Lil Tiba’ah, 1997), 264.

As will be shown in this section, Hashim Kamali is perhaps the contemporary academic who has listed some *salaf* who allegedly ruled against executing the *murtadin*. However, we also add claims by other academics such as Mohamed El-Awa, and analyse these claims in this section.

'Umar ibn al-Khaṭṭāb

We start with El-Awa's claim[36] that 'Umar ibn al-Khaṭṭāb did not execute the *murtadin*. This is important because we have claimed that the *ijmā'* occurred at the time of the *ṣaḥābah* of Rasulullah ﷺ, while 'Umar is also a *ṣaḥābah*. El-Awa cites the narration of Anas ibn Malik returning from Tustar, asking 'Umar about the fate of six *murtadin* from Bakr ibn Wa'il. Anas asked if there was any alternative to executing them, to which 'Umar responded "Give *da'wah* so that they return, and if they refuse then imprison them."[37]

Even assuming the narration is authentic at all,[38] caution is needed to understand it. Considering the whole conversation with Anas, especially what he asked to 'Umar, Hashim Mehat notes that 'Umar does not deny execution but means to imprison the *murtadin* first before executing them if they persist with their apostasy.[39] As explained in the previous section, 'Umar ibn al-Khaṭṭāb is evidence for instead of against the existence of an *ijmā'* at the time of the *ṣaḥābah* regarding the execution of *murtadin*. Therefore, at this point, any claims of *khilaf* would naturally be invalid. Nonetheless, we still assess the names offered by some contemporary academics as evidence against *ijmā',* for reasons that will be apparent later.

'Umar ibn 'Abdil'Aziz

As one of the most notable *khalifah* of the Bani Umayyah, it was narrated that some people in the Jazirah had embraced Islam but committed *riddah* not long after. In response, 'Umar ibn 'Abdil 'Aziz

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[36] Mohamed S. El-Awa, *Punishment in Islamic Law: A Comparative Study* (Indianapolis: American Trust Publications, 1982), 55.

[37] Muḥammad ibn 'Alī Al-Shawkānī, *Nayl Al-Awṭār*, vol. 7 (Egypt: Dar al-Hadith, 1993), 226.

[38] Al-Shafi'i says that some 'ulama see that there is a missing narrator. See: *ibid*.

[39] Hashim Mehat, *Malaysian Law & Islamic Law on Sentencing* (Kuala Lumpur: International Law Book Services, 1991), 207.

did not punish them at all but rather only asked them to pay the *jizyah* (special tax for non-Muslims).[40] This narration was taken by Abdulrazzaq from Ma'mar, who is a very reliable *ḥadīth* narrator.[41]

However, the aforementioned narration does not explain what the reason was for 'Umar ibn 'Abdil 'Aziz's policy, but another narration also reported by Abdulrazzaq from Ma'mar gives us insight. In this other narration, upon hearing news of persons committing *riddah,* he commanded to ask if the said persons are aware of the Shari'ah of Islam. If they are unaware, then they should be left alone and asked to pay *jizyah*. But if they are aware, then they should be executed.[42]

What this means is that 'Umar ibn 'Abdil 'Aziz is not against the execution of the *murtadin* but considers knowledge of the Shar'iah as a requirement to apply the *hudud*. That said, 'Umar ibn 'Abdil 'Aziz is not evidence against *ijmā'*.

Ibrahim Al-Nakhā'i

The significance of Al-Nakhā'i is because he was a *tabi'in* who learned directly from the *ṣaḥābah* who was said to have formulated the *ijmā'*. The issue with Al-Nakhā'i is that there are two opinions attributed to him.

The first opinion is that the *murtadin* are asked to repent for an indefinite period of time which means, according to Kamali, that the *murtadin* "…should not be condemned to death."[43] The second opinion attributed to Al-Nakhā'i is that he is actually in favour of executing the *murtadin*, as Imam Al-Bukhari mentions in *Jami' al-Ṣaḥīḥ*.[44]

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[40] 'Abd al-Razzāq Al-Ṣan'ānī, *Al-Muṣannaf*, vol. 10 (India: Majlis al-'Ilmi, 1983), no. 18714.

[41] Muḥammad ibn Hibbān, *Kitab Al-Thiqāt*, vol. 7 (Hyderabad: Da'arah Al-Ma'arif Al-'Uthmaniyyah, 1973), 484; Ibn Ḥajar Al-ʿAsqalānī, *Tahdhib Al-Tahdhib*, vol. 10 (India: Dā'irah Al-Ma'ārif Al-Niẓamiyah, 1326), 245. Note: Ibn Hajar cited Ibn Ma'īn saying Ma'mar's narrations taken by the Iraqis are rejected, but 'Abd al-Razzāq is from Yemen where he studied from Ma'mar.

[42] Al-Ṣan'ānī, *Al-Muṣannaf*, vol. 10, no. 18713.

[43] Kamali, *Crime and Punishment*, 146.

[44] Al-Bukhārī, *Sahih*, 9:88.

There are two approaches to responding to these multiple opinions attributed to Al-Nakhā'i. The first approach is to consider the authenticity of the attributions of said opinions to him. The first opinion was narrated in the Musannaf of Abdulrazzaq,[45] where Sufyan al-Thawri narrates from 'Amr ibn Qais who narrates from Ibrahim Al-Nakhā'i. However, other sources, such as Al-Bayhaqi,[46] mention that 'Amr ibn Qais did not take directly from Al-Nakhā'i but from an unknown source. Here it may appear that Abdulrazzaq made the mistake because there are stronger hadith narrators who put the unknown source between 'Amr and Al-Nakhā'i in this narration, namely Waki' and Ibn Wahb.[47] Therefore, the unknown source in Abdulrazzaq's narration makes this opinion unreliably attributed to Al-Nakhā'i.

Meanwhile, the second opinion was cited in Imam Al-Bukhari's *Jami'al-Ṣaḥīḥ* which is widely recognised for its authenticity in attributing narrations.[48] To elaborate further, Ibn Hajr explains that this narration to Al-Nakhā'i is supported by three separate authentic chains:[49]

- Narrated by Ma'mar who narrated from Sa'id ibn 'Uruba from Abi Ma'shar from Al-Nakhā'i.
- Narrated by Ibn Abi Shaybah from Hammad ibn Abi Sulayman from Al-Nakhā'i.
- Narrated by Sa'id ibn Mansur from Hashim, who narrated from 'Ubaydah ibn Mughith, from Al-Nakhā'i.

[45] Al-Ṣan'ānī, *Al-Muṣannaf*, vol. 10, no. 18697.

[46] Abu Bakr Aḥmad Ibn al-Ḥusayn Al-Bayhaqi, *Al-Sunan Al-Kubra*, vol. 17 (Cairo: Markaz Hajr Lilbuḥūth wal Dirāsat al-'Arabiyyah wa al-Islamiyyah, 2004), no. 16833.

[47] Ibn Abī Shaybah, *Muṣannaf*, 1409, vol. 6, no. 32752; Muḥammad ibn Jarīr Al-Ṭabari, *Jāmi' Al-Bayān 'An Ta'Wīl Āyat Al-Qur'An*, vol. 9 (Makkah: Dar al-Tarbih wa al-Turath, n.d.), 318; Al-Bayhaqi, *Al-Sunan Al-Kubra*, vol. 17, no. 16833.

[48] Muḥammad ibn Ṣāliḥ Al-'Uthaymīn, *Muṣṭalah Al-Ḥadīth* (Cairo: Maktabah Al-'Ilm, 1994), 49; Yaḥya ibn Sharaf Al-Nawawī, *Al-Arba'īn Al-Nawawiyyah* (Beirut: Dar Al-Minhaj, 2009), 49.

[49] Ibn Ḥajar Al-ʿAsqalānī, *Fatḥ Al-Bārī Bi Sharḥ Al-Bukhārī*, vol. 12 (Cairo: Al-Maktabah Al-Salafiyyah, 1390), 268.

It must be noted that Al-Bukhari arranges *ḥadīth, athar* (narrations), and chapter headings in such a way to reflect *fiqh al-Bukhari* (i.e. his understanding of the *aḥadīth*).[50] He could have chosen to cite so many other *'ulama* of the *salaf* to start his chapter of *aḥadīth* titled "*hukm al-murtad wa al-murtadah*" (law pertaining male and female apostates), yet he chose to cite three: Ibn 'Umar, al-Zuhri, and Ibrahim Al-Nakhā'i. An easy conclusion is that we can dismiss the first opinion, and only correctly attribute the second opinion to Al-Nakhā'i.

The second approach to reconcile the contradiction between the two alleged opinions of Al-Nakhā'i is what later *fuqaha* appear to do. They attempt to make *ta'wil* (shifting the meaning) of Al-Nakhā'i's words "…asked to repent ***forever***" (emphasis added), perhaps intending to compromise the two contradictory opinions.

One group, including Al-Qāḍī 'Iyāḍ[51] and Abu Zahrah[52] says that Al-Nakhā'i's "forever" actually means that there should be a time limit set for the *murtad* to return to Islam, but Al-Nakhā'i chooses not to mention a definite number. This means that efforts to re-invite the *murtad* to Islam must be done for no specific time limit until the *murtad* either accepts the invitation or is executed when whoever is in charge feels that all efforts have been exhausted and there is no more hope for the *murtad* will accept.

Another group, including Al-Shaybani[53] and Ibn Ḥajr,[54] explain that what Al-Nakhā'i meant was that a *murtad* who then committed *riddah* again and then returned to Islam multiple times must always be given the opportunity to return to Islam again no matter how many times.

The last group would be those who interpret as it is, that Al-Nakhā'i does not believe that the *murtadin* should be executed at all. This interpretation was made *inter alia* by Ibn Qudamah who

[50] Ibn Ḥajar Al-ʿAsqalānī, *Fatḥ Al-Bārī Bi Sharḥ Al-Bukhārī*, vol. 1 (Cairo: Al-Maktabah Al-Salafiyyah, 1390), 13.

[51] 'Iyāḍ bin Mūsa, *Ikmāl Al-Mu'Alim Bifawā'Id Muslim*, vol. 6 (Dar al-Wafa Lil Ṭiba'ah wa al-Nashr wa al-Tawzi', 1998), 223.

[52] Muhammad Abu Zahrah, *Al-Jarīmah Wa Al-'Uqubat Fī Al-Fiqh Al-Islami* (Cairo: Dar al-Fikr Al-'Arabi, 1998), 157–58.

[53] In: Muḥammad ibn Aḥmad ibn Abi Sahl Al-Sarakhsī, *Sharḥ Al-Siyār Al-Kabīr* (Egypt: Al-Shirkah al-Sharqiyyah li l-I'lānāt, 1971), 1939.

[54] Al-ʿAsqalānī, *Fatḥ Al-Bārī*, 1390, 12:270.

immediately rebuked this purported Al-Nakhā'i's opinion as contradicting the *sunnah* and *ijmā'*.[55] However, it is important to note that Ibn Qudamah does not appear to really attribute this opinion to Al-Nakhā'i, merely commenting on it because the said opinion is spread out in the literature. Just a few pages earlier in the same book (*Al-Mughni*), Ibn Qudamah cites Al-Nakhā'i as one of the authorities who ruled that there is no distinction between men and women *murtadin* in terms of the obligation to execute them.[56]

It appears that the second interpretation is more convincing as it is supported by another narration attributed to Al-Nakhā'i. In this other narration, Al-Nakhā'i says that the *murtad*s shall be asked to return to Islam every single time they commit *riddah*.[57] This narration is also brought through Al-Thawri from 'Amr ibn Qais directly from Al-Nakhā'i, which has the same problem of authenticity with the first narration but this whole ordeal of *ta'wil* appears to put aside the authenticity problem to begin with.

Either way, either possibility leads to the same end. Al-Nakhā'i rules, and Al-Thawri concurs, that *murtadin* should be executed. *Ijmā'* is not broken here.

Sufyan Al-Thawri

Here we refer to the main narration cited in the section of Al-Nakhā'i earlier, because the first *qawl* of Al-Thawri to discuss is in that same narration (it was Al-Thawri who cited Al-Nakhā'i). Consequently, as is the case with Al-Nakhā'i, there appear to be multiple narrations of contradictory positions attributed to Al-Thawri. One narration says that Al-Thawri narrates, with approval of the contained *fiqh* ruling, the first opinion attributed to Al-Nakhā'i as mentioned earlier. This opinion of Al-Thawri was also subject to the same *ta'wil* as Al-Nakhā'i's opinion by the *fuqaha* who made the *ta'wil*. Therefore, as was the case with Al-Nakhā'i, Al-Thawri's position is not evidence against an *ijmā'* and instead is evidence in favour of it.

Another opinion attributed to Al-Thawri is that he allegedly said that the *murtadin* should be offered to reaccept Islam, and refusal results in imprisonment until they eventually reaccept Islam or die (in

[55] Al-Maqdīsī, *Al-Mughni*, 12:268.
[56] Al-Maqdīsī, *Al-Mughni*, 12:264.
[57] Ibn Abī Shaybah, *Muṣannaf*, 1409, vol. 6, no. 32752.

captivity). We have not managed to find a source for this any earlier than Yaḥyā' ibn Abi al-Khayr Al-Umrani (d.553 H)[58] who did not bring any *sanad*. This does not hold much water as compared to Al-Tirmidhi (d.279), whose *Jami'* is a much earlier source, who related that Al-Thawri made an exception (from execution) for female *murtadin*.[59] The case of female *murtadin* will be discussed in a later section of this paper, but this is more authentic evidence that Al-Thawri is in favour of executing male *murtadin*.

It is interesting to point out that Kamali cites Al-Thawri's opinion via Al-Sha'rani's book *Al-Mīzān Al-Kubra* as evidence for not executing the *murtadin.*[60] However, Al-Sha'rani in this case is actually an evidence against Kamali's point because he narrates that apostates are "asked to repent forever" by saying "*ḥukiyya 'an al-Thawri*" (حكي عن الثوري).[61] This phrase means "this *ḥukiyya* (story) was taken from Al-Thawri", but using the term "*ḥukiyya*" in narrations like this is known as *sighat tamrid* which means the narrator is indicating doubtful attribution or information from unreliable sources (such as weak *ḥadīth*).[62] This might mean that, according to Al-Sha'rani, the opinion "asked to repent forever" is either:

- Unreliably attributed to Al-Thawri, which appears like Al-Umrani's narration, or
- an opinion (of someone else) unreliably narrated from Al-Thawri, very likely referring to the previously mentioned alleged

[58] Yaḥyā' ibn Abi al-Khayr Al-Umrani, *Al-Bayān Fi Madhhab Imām Al-Shāfi'Ī*, vol. 12 (Jeddah: Dar al-Minhaj, n.d.), 48.

[59] Al-Tirmidhī, *Jami Al-Tirmidhi*, 3:hadith no. 1458. See Al-Tirmidhi's comment on the hadith.

[60] Kamali, *Crime and Punishment*, 146.

[61] ʿAbd al-Wahhāb ibn Aḥmad Al-Shaʿrānī, *Al-Mīzān Al-Kubra*, vol. 3 (Damascus: Dār al-Taqwā, 2022), 377.

[62] Mahmūd Al-Ṭahhān, *Taysīr Muṣṭalaḥ Al-Ḥadīth* (Maktabah Al-Ma'arif Lil Nashr wa al-Tawzi', 2004), 85; Ṭāhir ibn Ṣāliḥ Al-Jazayri, *Tawjīh Al-Nazhr Ilā Uṣūl Al-Athar*, vol. 2 (Aleppo: Maktabah Al-Maṭbū'ah Al-Islāmiyyah, 1995), 229.

opinion Al-Nakhā'i[63] narrated by Al-Thawri in 'Abdulrazzaq's *Muṣannaf*,[64] or

- Both.

Eitherways, Al-Sha'rani is actually indicating that such an opinion is unreliably attributed to Al-Thawri. This is why, just one page earlier, Al-Sha'rani also says that "all Imams agree that the *murtadin* must be killed" which confirms the *ijmā'*.[65]

PERPETUATING THE *IJMĀ'*: THE CLASSICAL *FUQAHA* OF THE *MADHĀHIB*

In this section, we will consider the *madhāhib* (*madhhab,* plural) in how they have determined the status of the *murtadin*. Each *madhhab* has its own list of scholars who sometimes differ on certain issues, and has their internal system on how to determine which opinion officially represents the *madhhab* (*mu'tamad*) albeit recognising differences. Following the previous section, we found that an *ijmā'* has been achieved during the time of the *Ṣaḥābah*. Therefore, any *khilaf* after this point would be rejected due to its contradiction against an *ijmā'*. It is nonetheless prudent to examine to what extent the *fuqaha* of the *madhāhib* perpetuated the established *ijmā'* throughout the ages.

Going first through the Hanafi *madhhab,* we start with Al-Sarakhsi (d. 483 H). It is most prudent to start with him because many contemporary academics –Hashim Kamali included—who cite Al-Sarakhsi to show the absence of worldly punishments for the *murtadin*. In Kamali's translation, Al-Sarakhsi wrote in Al-Mabsūṭ "Renunciation of the faith and conversion to disbelief is admittedly the greatest of transgressions, yet it is a matter between man and his Creator, and its punishment is postponed to the Day of Judgment."[66] Unlike the case of

[63] Kamali seems to understand it this way as well: Kamali, *Crime and Punishment*, 146.

[64] Or, if one wishes to go further down this 'rabbit hole' of doubtful attribution, Al-Dhahabi mentions that 'Abdulrazzaq is indeed a direct student of (and therefore narrates directly from) Sufyan Al-Thawri but, according to Yahya ibn Ma'īn, was 'not the strongest' among those who narrates from Al-Thawri: Muḥammad ibn Aḥmad ibn ʿUthmān Ibn Al-Dhahabī, *Siyar A'Lām Al-Nubalā,'* vol. 9 (Beirut: Mu'assasah al-Risalah, 1422), 564–65.

[65] Al-Shaʿrānī, *Al-Mīzān Al-Kubra*, 3:376–77.

[66] Kamali, *Crime and Punishment*, 146.

Al-Nakhā'i and al-Thawri, there is no problem in attributing this statement to Al-Sarakhsi.

Nonetheless, the issue with this alleged opinion appears to be, with all due respect, reading comprehension. If one reads the passage before and after what was cited above (same page), it is clear that Al-Sarakhsi concurs with the execution of *murtadin* who have been given the opportunity to repent and failed to do so. In Al-Sarakhsi's own words (in that same page, but obviously translated into English), "Execution is not for one who commits *riddah,* rather for those who persist in it".[67] A couple of pages earlier, Al-Sarakhsi unequivocally writes how the *murtadin* should be offered to return to Islam and executed on the spot if he refuses, except if he requests a delay then it will be granted for him three days until he either repents or be executed.[68]

Later Hanafi jurists such as Al-Kasani (d. 587 H) explicitly say that the *Ṣaḥābah* has reached an *ijmā'* that the *murtadin* should be killed.[69] Al-Marghinani (d.593 H), a contemporary of Al-Kasani, also mentions that the *murtadin* should be killed.[70] There appears to be no difference of opinion among the Hanafis.

However, unique to the Hanafis is the exception of women. It is their position that women *murtadin* are imprisoned indefinitely until they re-accept Islam (if ever) and not executed. This claim of exception is discussed in a later section of this paper.

Moving next to the Maliki *madhhab,* we start with Ibn 'Abd al-Barr (d. 463 H) who hailed from Cordoba. Like Al-Kasani, Ibn 'Abd al-Barr mentioned that there has been a consensus among the *ṣaḥābah* that the *murtadin* should be executed.[71] The next Maliki *faqih* for us to discuss is Abu al-Walid al-Baji (d.474 H). He too was alleged by some,

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[67] Muḥammad ibn Aḥmad ibn Abi Sahl Al-Sarakhsī, *Al-Mabsūṭ Fī Al-Fiqh*, vol. 10 (Beirut: Dar al-Ma'rifah, n.d.), 110.

[68] Al-Sarakhsī, *Al-Mabsūṭ*, 10:98.

[69] 'Alā al-Dīn Al-Kāsānī, *Badā'i' Al-Ṣanā'I'*, vol. 7 (Beirut: Dar al-Kutub 'Ilmiyyah, 1328), 134.

[70] Burhān al-Dīn Al-Marghīnānī, *Al-Hidāyah Fī Sharḥ Bidāyat Al-Mubtadī*, vol. 4 (Karachi: Idarah al-Qur'an wa al-'Ulum al-Islamiyyah, 1417), 330–31.

[71] Yūsuf Ibn 'Abd Allah ibn 'Abd Al-Barr, *Al-Tamhīd*, vol. 3 (London: Mu'assasah al-Furqan, 2017), 707.

including Hashim Kamali, to not agree with the execution for the *murtadin.* However, such a claim cannot be further from the truth. Al-Baji clearly explains that the *murtadin* should be executed if their acts of *riddah* are shown and could be seen, because those who hide their *riddah* are classified as something else (i.e., *zindiq*).[72]

Finally, among the Malikis is another Cordoban jurist, Ibn Rushd (595 H). Despite being a Maliki jurist, his book *Bidayah al-Mujtahid* is quite unique because it is a renowned work of *fiqh al-muqarran* (comparative *fiqh*) where he identifies the difference of opinions across different *madhhabs* and *fuqaha* on various legal issues. *Bidayah al-Mujtahid* is still used today as a book for *fiqh al-muqarran,* as a reference for both Islamic law pedagogy as well as by jurists in making fatwa.[73] In this book, Ibn Rushd explains that there is an *ijmā'* to execute male *murtadin* and that the Hanafis disagree in the case of women.[74]

The next is the Shafi'i *madhhab*. The Shafi' appears to be more consistently explicit in mentioning that the execution of male *murtadin* is supported by *ijmā'*. For example, Ibn al-Mundhir (d. 241 H) wrote a book titled Al-Ijmā' to compile various matters that he found to be *ijmā'*, and the execution of the *murtadin* is in that book.[75] Then Al-Nawawi (d. 676 H) too explicitly mentions that it is compulsory, based on *ijmā'*, to execute the *murtadin*.[76] Finally, for the Shafi'is, Al-Sha'rani (d. 973 H), as mentioned earlier, writes that "All Imams have agreed that those who have committed *riddah* must be executed."[77]

Finally, in the Hanbali *madhhab,* Ibn Qudamah Al-Maqdisi (d. 629) emphasised that there is an *ijmā'* to execute the *murtadin*.[78] The

[72] Abu al-Walīd Al-Bājī Al-Mālikī, *Al-Muntaqa Sharḥ Al-Muwaṭṭa*, vol. 5 (Cairo: Mathba'ah al-Sa'adah, 1332), 281–82.

[73] This book is still used to teach *fiqh al-muqarran* in various Islamic universities in Saudi Arabia, Yemen, Indonesia, and many others.

[74] Muḥammad ibn Aḥmad ibn Rushd, *Bidāyat Al-Mujtahid Wa Nihayat Al-Muqtaṣid*, vol. 4 (Cairo: Maktabah Ibn Taymiyyah, 1415), 426.

[75] Muḥammad ibn Ibrāhīm ibn Al-Mundhir, *Al-Ijmā'* (Cairo: Dar al-Athar lil Nasr wa al-Tawzi', n.d.), 133.

[76] Yaḥya ibn Sharaf Al-Nawawī, *Al-Minhaj Sharḥ Ṣaḥīḥ Muslim*, vol. 12 (Beirut: Dar Ihya al-Turath al-'Arabi, 1392), 208.

[77] Al-Shaʿrānī, *Al-Mīzān Al-Kubra*, 3:376.

[78] Ibn Qudamah Al-Maqdisi, *Al-Mughni*, vol. 12 (Dar 'Alam al-Kutub al-Tiba'ah wa al-Nasr Wa al-Tawzi', 1997), 264.

duty to execute is also mentioned by Al-Khiraqi (d. 334)[79] whose work was commented upon by Ibn Qudamah, Al-Hajjawi (d.986) in Al-Iqna.[80] Al-Mardawi mentioned that the *khilaf* in this issue is only regarding whether it is a requirement to ask the *murtadin* to repent first, but execution is unquestionably the punishment for the *murtadin* who refuses to repent.[81]

The last among the Hanbalis to mention is Imam Ibn Taymiyyah (d.728 H), often dubbed "Shaykh al-Islam", has often been claimed to be among the precursors of today's extremism.[82] If one believes such a claim, it is certainly a big deal to say that even Ibn Taymiyyah does not believe in the execution of the *murtadin*. Hashim Kamali claims that Ibn Taymiyyah in *Al-Ṣārim al-Maslūl* separates between the *murtadin* who merely leaves Islam and does nothing further and those (physically) wage war against the Muslims, and only the latter should be executed.[83]

As was the case with Al-Sarakhsi, the problem with the purported position of Ibn Taymiyyah on this issue is reading comprehension. When Ibn Taymiyyah mentions not executing *murtadin* who did not wage physical war against the Muslims, he meant those who have repented and returned to Islam because there was a juristic discourse on whether repented *murtadin* should still be executed. Also, Ibn Taymiyyah unequivocally writes how persons leaving Islam in itself should be executed and explicitly mentioned that this ruling is based on an *ijmā'* of the *Ṣaḥābah*.[84]

Often, the *madhāhib arba'ah* (four *madhhabs*) is seen as enough to represent the bulk of Islamic scholarship of *fiqh*. In fact, some

[79] Abu Umar ibn al-Husayn Khiraqi, *The Mukhtasar of Al-Khiraqi*, trans. Anas Khalid (New York: New York University, 1992), 234.

[80] Mūsá ibn Aḥmad Al-Ḥajjāwī, *Al-Iqnā' Al-Ṭālib Al-Intifā'*, vol. 4 (Darah Al-Malik 'Abd al-'Aziz, 2002), 291.

[81] 'Alī ibn Sulaimān Al-Mardāwī, *Al-Inṣāf Fi Ma'rifat Rājiḥ Min Khilāf* (Bayt al-Fikar al-Dawilyyah, 2004), 1775.

[82] See *inter alia* Masaki Nagata, "The Radical Nation-State and Contemporary Extremism," *Middle East Law and Governance* 11, no. 3 (2019): 319–45. This claim is of course subject to a strong debate, but it is beyond our scope to analyze this further.

[83] Kamali, *Crime and Punishment*, 146.

[84] Aḥmad ibn `Abd al-Ḥalīm Ibn Taymiyyah, *Al-Ṣārim Al-Maslūl 'Ala Shātim Al-Rasūl* (Saudi Arabia: Al-Haras Al-Waṭāni Al-Su'ūdi, n.d.), 313–20.

'ulama (including a majority of the contemporary ones) say that it is impermissible to follow other than the *madhāhib arba'ah.*[85] However, here we also explore a few other *madhhab* that existed in the past and whose opinions can still be tracked today. One example would be the *Jariri madhhab*, whose founder, Muḥammad ibn Jarīr Al-Ṭabari (d.310 H), says that a *murtadin* must still be reinvited to Islam no matter how many times he has committed *riddah* and reaccepted Islam before.[86] The fate of the *murtadin* who refuses reaccepting Islam is clear.

What might be the most famous 'miscellaneous'[87] *madhhab* is the *Dhahiri* school, famous for their literalist *uṣūl al-fiqh* (theory of jurisprudence) and rejection of *qiyas* (analogy). Ibn Hazm (d. 456 H) is perhaps the most important *Dhahiri* jurist, who wrote an important *Dhahiri* treatise titled *Al-Muhalla*. In explaining the various differences of opinion relating to the punishment towards the *murtadin,* Ibn Hazm noted how all different opinions concerning whether to give a chance to (and how long) the *murtadin* to return to Islam, but they all end the same way: if the *murtadin* still refuses, they will be executed.[88] In his other book titled Maratib al-Ijmā'*,* he notes that there is an *ijmā'* on executing the *murtadin* but *khilaf* regarding how long they are given time to repent.[89] Another notable *Dhahiri* is Al-Shawkani (d. 1250 H)[90] who also writes that the *murtadin* should be executed, while noting the *khilaf* on time given to repent.[91]

[85] This opinion was cited by Al- Zuḥaylī, but it is important to note that he disagrees with it: Wahbah al-Zuḥaylī, *Uṣūl Al-Fiqh Al-Islāmī* (Damascus: Dar al-Fikr, 1986), 1139–40.

[86] Al-Ṭabari, *Jāmi' Al-Bayān*, 9:318.

[87] For lack of better term.

[88] ʿAlī ibn Aḥmad ibn Saʿīd ibn Ḥazm, *Al-Muhallā Bi Al-Āthār*, vol. 12 (Beirut: Dār al-Fikr, n.d.), 108–13.

[89] ibn Ḥazm, *Marātib Al-Ijmā'*, 210.

[90] As a side note, Al-Shawkani is a Zaydiyyah in *aqīdah,* but in terms of *fiqh* has departed away from the Zaydiyyah and is known among the *Dhāhiriyyah*.

[91] Al-Shawkānī, *Nayl Al-Awṭār*, 7:224.

THE *KHAṢṢ*[92] CLAIMS: EXCEPTIONS?

There are at least two exceptions from the rule relating to the penalty for *riddah* that would need to be discussed. First, the exception for female *murtadin* and second, for non-violent acts of *riddah*.

The Exception for Women?

The exception for women *murtadin* is famously the position of Imam Abu Hanifah and followed by the Hanafi school of *fiqh*.[93] While Abu Hanifah does not negate the general rule to execute the *murtadin,* he opines that female *murtadin* follows a different ruling. One must first start with the ruling related to *kafir harbi* (non-Muslims with whom war is waged)[94] who may be killed. In that subject, female *kafir harbi* –insofar as they do not actively participate in the actual fighting—are excluded so that they may not be killed.[95] The Hanafis consider the *murtadin* to also fall under the criteria of *kafir harbi,* therefore it follows that the men may be killed but not the females.

It is not our scope to critically analyse his reasoning, though. The question is whether this exception –which, by nature, is a derogation— breaks the *ijmā'*. The general language used when referring to the execution of *murtadin* during the time of the *Ṣaḥābah* when the *ijmā'* was formulated would *prima facie* mean that the *ijmā'* itself does not distinguish male and female *murtadin*. Then the task is to find if there is any precedence of exception towards women before Abu Hanifah.

It was purported that Al-Nakhā'i, who was a *tabi'i* (student of the *ṣaḥābah,* but did not meet Prophet Muhammad ﷺ) also had this view as narrated by Ibn Abi Shaybah through Hafs from 'Ubaydah. However, it has been explained earlier in Al-Nakhā'i's section of this paper that, as per Ibn Hajr's comments, the stronger attribution to Al-Nakhā'i is that he agrees with the execution of *murtadin* who failed to re-enter Islam. In that narration, Al-Nakhā'i specifically mention that

[92] The term *khaṣṣ* means 'specific', often used to describe an exception from an '*ām* (general) rule.

[93] Al-Sarakhsī, *Al-Mabsūṭ*, 10:108–9.

[94] Meaning, there is no difference between persons who were *kafir* since birth or those who became so upon acts of *riddah*.

[95] Al-Sarakhsī, *Sharḥ Al-Siyār*, para 2741.

the ones to be executed are إِذَا ارْتَدَّ الرَّجُلُ أَوِ **الْمَرْأَةُ** عَنِ الْإِسْلَامِ ("if a man **or woman** leaves Islam").

Another more important figure said to have supported the exception for female *murtadin* is 'Abdullah Ibn 'Abbas. This is especially important because Ibn 'Abbas was a *ṣaḥābah,* and would be –if the claim was true—evidence in favour of an exception for female *murtadin*. We find this opinion attributed to Ibn 'Abbas's from three sources: from 'Abdulrazzaq,[96] from Al-Dāraquṭnī,[97] and from Abu Hanifah.[98]

However, the problem with this opinion is the attribution to Ibn 'Abbas. All of their chains towards Ibn 'Abbas contain 'Aṣim who is well known as a weak narrator as mentioned earlier, and one of Al-Dāraquṭnī's chain is worse as it contains a hadith forger named 'Abdullah ibn 'Isa al-Jazari.[99] Therefore, such an opinion cannot be attributed to Ibn 'Abbas.

Equally important –or arguably even more so—is a position attributed to Abu Bakr Al-Siddiq. Al-Sarakhsi justified not executing female *murtadin* citing Abu Bakr who enslaved a woman of Banu Hanifah who committed *riddah en masse*.[100] It is known that the Muslims fought against Banu Hanifah due to their *riddah*, so if the men are fought but not the women, it follows –according to the Hanafis— that Abu Bakr does not believe that women *murtadin* should be executed.

There are, however, at least two ways (a third is revealed later) to perceive Abu Bakr's command. The first is to take it at face value as how the Hanafis see it. The second perspective follows the majority *fuqaha* who, according to Al- Wā'ilī, observed that the enslaved women of Banu Hanifah were ones who had never been Muslims to

[96] Al-Ṣan'ānī, *Al-Muṣannaf*, vol. 10, no. 18731.

[97] 'Alī ibn 'Umar Al-Dāraquṭnī, *Sunan Al-Dāraquṭnī*, vol. 4 (Beirut: Mu'assasah al-Risalah, 2004), no. 3211.

[98] Al-Dāraquṭnī, *Sunan Al-Dāraquṭnī*, vol. 4, no. 3455.

[99] Muḥammad Nāṣiruddīn Al-Albānī, *Silsilah Al-Ḍā'Ifah*, vol. 7 (Riyadh: Dar al-Ma'arif, 1412), 291–92. See also Al-Dāraquṭnī's note in: Al-Dāraquṭnī, *Sunan Al-Dāraquṭnī*, vol. 4, no. 3211.

[100] Al-Sarakhsī, *Al-Mabsūṭ*, 10:111.

begin with.[101] While all the Banu Hanifah rose against the *Khalifah,* some of them were once Muslims who then committed *riddah*, while others had never accepted Islam in the first place. Upon their defeat against Khalid ibn Al-Walid's army at Yamamah, the *murtadin* made peace with and rejoined the Muslims.[102] It was among those who were never Muslims and chose to remain that way that were enslaved.

What seems to support the second interpretation is another narration of Abu Bakr, who was also narrated on another occasion to have ordered the execution of a female *murtad* named Umm Qirfah who refused to return to Islam.[103] This narration is used by some *'ulama* like Layth ibn Sa'd but not by others like Al-Shafi'i because it is *mursal* (has missing narrator in its chain).[104]

It appears to come down to the status of the female *murtadin* taken as captives: were they really *murtadin* as the Hanafis claim? Khawlah bint al-Ja'far was the evidence cited by Al-Sarakhsi, a woman enslaved by Abu Bakr who was then wedded by 'Ali ibn Abi Ṭālib and bore Muhammad ibn al-Hanafiyyah as son.[105] Khawlah, as explained by Al-Shafi'i, was a *murtadin*.[106] She was not the only woman taken as a slave at Yamamah, so at this point, the majority *fuqaha* might be correct with regards to some but not for other captives of Yamamah.

Nonetheless, the fact that 'Ali married Khawlah opens up a third way to perceive Abu Bakr's instruction. It is a well-established (based on *ijmā'*) prohibition for a Muslim man to marry female *murtadin* and *mushrik* (polytheist),[107] therefore Khawlah must have become Muslim

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[101] Muḥammad ibn Ḥumūd Al-Wā'ilī, *Bughayat Al-Muqtaṣid Sharḥ Bidāyat Al-Mujtahid*, vol. 16 (Beirut: Dar Ibn Hazm, 1440), 9919.

[102] As-Sallabi, *Abu Bakr*, 509.

[103] Al-Bayhaqi, *Al-Sunan Al-Kubra*, 17:hadith no. 16956.

[104] Al-Bayhaqi, *Al-Sunan Al-Kubra*, 17:hadith no. 16956. See comment of Al-Shafi'i and response by Al-Bayhaqi in the footnote of the narration.

[105] Muḥammad ibn Aḥmad ibn ʿUthmān Ibn Al-Dhahabī, *Siyar A'Lām Al-Nubalā,'* vol. 4 (Beirut: Mu'assasah al-Risalah, 1422), 110; Al-Sarakhsī, *Al-Mabsūṭ*, 10:111.

[106] Cited in: Abū Ḥafṣ ʿUmar Ibn ʿAlī Ibn Al-Mulaqqin, *Khulaṣah Al-Badr Al-Munīr*, vol. 2 (Maktabah Al-Rushd, 1989), 298.

[107] Wahbah Al-Zuḥaylī, *Fiqih Islam Wa Al-Adillatuhu*, vol. 9 (Jakarta: Gema Insani Press, 2011), 115; Sayyid Sabiq, *Fikih Sunnah*, ed. Muḥammad Nāṣiruddīn Al-Albānī (tahqiq and takhrij), vol. 3 (Jakarta: Cakrawala Publishing, 2009), 334.

during captivity before ‘Ali married her. As per the dispute regarding the execution of female *murtadin* and what meaning we put to Abu Bakr’s instruction above, his stance on female *murtadin* will not change the chronology of events. If he thought they should be executed, Khawlah reaccepting Islam would have prevented such execution anyway.

Under the aforementioned line of reasoning, we cannot know for sure what Abu Bakr’s thought process was in not executing Khawlah. Meaning, this precedent does not help either side of the debate. Yet, the reason why we were debating this in the first place was because the Hanafis first brought it up as their evidence. Considering the evidence, it appears that this third view is most reasonable so the Hanafis proposition –since the onus is on them to prove the exception—does not stand.

All that said, in our view, no precedence stands as acceptable exception against the *ijmā‘* formed at the time of the *Ṣaḥābah* in the case of women. Nonetheless, one must admit that the Hanafi interpretation of Abu Bakr’s precedence is plausible, and the *fuqaha* throughout the ages have recognised –albeit disagreeing with—the Hanafi’s stance on this issue. We therefore concede that there is a legitimate *khilaf* regarding whether there is an *ijmā‘* on the matter of executing female *murtadin*, although it is our position that there is an *ijmā‘*. Consequently, the Hanafi’s *khilaf* on the subject matter is legitimate and subject to *tarjih,* which is beyond the scope of our present research.

The Exception of Non-Violent *Murtadin*?

All the contemporary opinions cited in this article as those who disagree with the execution of the *murtadin,* allege that *riddah* is only punishable if it is not a mere act of leaving the religion of Islam but also doing so together with waging physical war against the Muslims. Following such claim, the *murtadin* becomes a security concern, so it is purportedly tantamount to *baghy* (rebellion) or *hirabah* (hostile robbery).[108] Therefore, according to this view, the act of leaving Islam is not in itself what incurs the punishment. As evidence, they purport,

[108] See *inter alia*: Muḥmaṣṣānī, *Arkān Ḥuqūq Al-Insān*; Kamali, *Crime and Punishment*; Ibrahim, *The Administration of Islamic Law in Malaysia*; El-Awa, *Punishment*.

is how the *Riddah* wars were fought due to the *murtadin* rebelling against the Khalifah.

Such a proposition, however, is a strange one. It appears that we have not found a single *'ulama* to have made such an opinion until the contemporary era. There are a few reasons why this has never been the case.

First, the *riddah* wars were not fought only because of the act of rebellion. As explained in the previous section regarding the *Ṣaḥābah* and the *Murtadin*, not all *murtadin* were fighting against the *khilafah*. Some simply reverted back to their pagan life, others simply rejected the *hukm* of *zakat*. Additionally, the short debate between 'Umar and Abu Bakr regarding those who rejected the *hukm* of *zakat* (mentioned in the same previous section) further indicates how the main cause for the *Ṣaḥābah* to wage war was the act of *riddah* itself. This is the reason why the war was called *riddah* wars.

Second, even if one (incorrectly) accepts that the *riddah* wars were indeed fought due to the belligerency of the *murtadin* at the time, this does not really help much. Also, in the same previous section on the *Ṣaḥābah* and the *Murtadin*, there are numerous (unopposed) opinions of the *Ṣaḥābah* regarding the execution of *murtadin* not in the context of the *riddah* wars or any other wars.

Third, we will always find *riddah, hirabah* and *baghy* as separate legal terminologies and classes of crimes in the works of the *fuqaha* throughout the ages.[109] Had the punishable act of *riddah* been an issue of physically fighting against the Muslims, it would have been under the same chapter as *baghy* or *hirabah*. Perhaps the clearest message in this regard is by Ibn Rushd who says "a *murtad*, if captured before declaring war, is to be executed..."[110] He then proceeds to explain that

[109] See *inter alia*: ibn Ḥazm, *Al-Muhallā Bi Al-Āthār*; ibn Rushd, *Bidāyat Al-Mujtahid Wa Nihayat Al-Muqtaṣid*; Yaḥya ibn Sharaf Al-Nawawī, *Al-Majmu' Sharḥ Al-Muhadhdhab*, (Beirut: Dar al-Fikr, n.d.); Al-Ḥajjāwī, *Al-Iqnā' Al-Ṭālib Al-Intifā'*, or most other (if not all) major *fiqh* compendiums from all *madhhabs*.

[110] ibn Rushd, *Bidāyat Al-Mujtahid*, 4:426. Here, Ibn Rushd recognizes the Hanafi position regarding female *murtadin* as a legitimate khilaf.

if the persons commit *riddah* after belligerency (*ḥirabah*), then they are executed due to their act of *ḥirabah*.[111]

Fourth, the obstacles to punishment are different. Had the problem of *riddah* been an issue of physical violence and/or security concerns, punishments would have been averted by having the *murtadin* cease their acts of violence and that would be it. In the case of *hirabah,* they can avoid punishment if they cease their acts before capture.[112] The case is similar to *baghy,* but they can even be forgiven by the ruler after being captured.[113] In the case of *riddah,* not a single jurist discusses ceasing any acts of violence, and instead only talks about re-accepting Islam. If execution is only for acts of violence towards the Muslims beyond the mere act of leaving Islam, punishments would be averted by peace deals such as *jizyah* instead of offering to return to Islam. In fact, Ibn Hazm dedicated a good portion of explanation on how *riddah* cannot be part of *hirabah,* since the subject of the laws of *hirabah* must be a Muslim committing violence (cannot be a *kafir,* and cannot be an *apostate*).[114]

It is true that some among the *'ulama* do explain how the act of *riddah* is punishable due to its state of "waging war against Allah and His Messenger". However, it needs to be noted that, in the context of *riddah,* this does not always have to mean physical violence. It can, as Ibn Taymiyyah explains, because some acts of *riddah* can be committed together with other acts of violence such as murder and pillaging.[115] However, the act of *riddah* even without the acts of physical violence is still "waging war against Allah and His messenger" in a metaphysical sense when the perpetrator refuses to re-accept Islam, as Al-Sarakhsi explains.[116]

[111] ibn Rushd, *Bidāyat Al-Mujtahid*, 4:426.
[112] Muḥammad ibn Aḥmad Al-Qurṭubī, *Al-Jāmi' Li Aḥkām Al-Qur'ān*, vol. 6 (Cairo: Dar al-Kutub Al-Misriyyah, 1964), 158.
[113] Al-Ḥajjāwī, *Al-Iqnā'*, 4:293.
[114] ibn Ḥazm, *Al-Muhallā*, 12:276.
[115] Ibn Taymiyyah, *Al-Ṣārim*, 298.
[116] Al-Sarakhsī, *Al-Mabsūṭ*, 10:110.

CONTEMPORARY KHILAF: WHAT TO MAKE OF THEM?

We have responded to the claims of alleged 'breakers' of *ijmā'*, and neither of these claims stands. However, only in the last one or two centuries, suddenly unequivocal dissenting opinions start to emerge. As mentioned in the introduction, there are some contemporary academics and *'ulama* who opine that the *murtadin* are not to be executed. Some among these contemporary academics, such as Ibrahim Salama, go as far as accusing those who agree with *murtadin* execution as an "ultra-conservative" scholar and "inciting violence" that should not be supported as it is incompatible with contemporary human rights principles.[117]

It is perhaps fate that the subject of our discussion here is *riddah* and *ijmā'*. Hating the Shari'ah and believing in non-Shari'ah laws to be superior to the Shari'ah are among the *nawaqid al-Islam* (nullifiers of Islam) and therefore an act of *riddah* based on *ijmā'*.[118] One may be tempted to hypothetically ask: what is the status of a person who claims to be Muslim but rejects an *ijmā'* and prefers to place contemporary human rights law over it? Alas, is inappropriate to make *takfîr* (i.e., declare as *murtad*) to specific individuals and more so execute without considering the proper procedures and conditions as per what the *fuqaha* have set, therefore "inciting violence" is hardly an accurate claim.

It is not within our scope to critically analyse their line of reasoning. It is, however, within our scope to analyse what to make of their opinions, considering our findings that there has been an *ijmā'* regarding the permissibility (and even obligation) to execute the *murtadin*. To put it simply, any opinion contradicting an *ijmā'* is naturally incorrect. Consequently, none of these contemporary opinions, who disagree that the punishment for *riddah* is execution, can be correct. That much is clear and, as explained in the second section

[117] He pointed at our first author specifically in this accusation. See: Ibrahim Salama and Michael Wiener, *Reconciling Religion and Human Rights: Faith in Multilateralism* (Edward Elgar Publishing, 2022), 37; Ibrahim Salama and Michael Wiener, "'Faith for Rights' in Armed Conflict: Lessons from Practice," *Journal of Human Rights Practice* 20 (2023): 11.

[118] Al-Ḥajjāwī, *Al-Iqnā'*, 4:297–98; Aḥmad ibn `Abd al-Ḥalīm Ibn Taymiyyah, *Majmū' Al-Fatāwā*, vol. 27 (Madinah: Mujamma' al-Malik Fahd, 2004), 58; Ḥamūd Al-Ruḥayli, *Al-'Alamaniyyah Wa Mawqif Al-Islām Minhā* (Madinah: Madinah International University, 1422), 396.

above, denying an *ijmā''* may also be a nullifier of Islam (*naqid al-Islam*) depending on how serious the subject matter is.

Perhaps it deserves its own research to observe why, after over a thousand years of *ijmā',* suddenly now did the dissenting opinions emerge. It may be a point of interest that a vast majority of these opinions were given by *'ulama* and academics whose lives strongly intersected with (and whose works sometimes cite) international human rights. One might want to consider Syed Muhammad Naquib Al-Attas who has observed that hundreds of years of colonialism and secularisation have caused the Muslim world to be detached from their 'Islamic worldview' and suffer from severe inferiority complex towards its own intellectual heritage.[119] More specifically on matters of intersection between Islamic law and international law standards, Nesrine Badawi has observed that this same inferiority complex has caused some scholars to conjure up interpretations (no matter how flawed) and cherry-picking sources of Islamic teachings to force them to be compatible with international standards.[120]

It is perhaps true that it is very hard to find any Muslim majority today fully implementing Islamic laws, and those even talking about the *ḥudūd* would be under immense political pressure from much stronger nations in the world who follow Eurocentric secular worldviews.[121] For most Muslim nations, it is very difficult to withstand these repercussions from the world's nations.

Nonetheless, it is difficult to imagine that the solution is to betray the intellectual heritage of Islamic law and conjure up false arguments just for the sake of aligning with the Eurocentric secular interpretation of human rights. Especially not when strong academic movements are strongly criticising such interpretation and calling for a more inclusive development of international law generally and human rights

[119] See especially his chapter of the internal causes of the decline of the Muslims: Syed Muhammad Naquib Al-Attas, *Risalah Untuk Kaum Muslimin* (Kuala Lumpur: ISTAC, 2001).

[120] Nesrine Badawi, "Regulation of Armed Conflict: Critical Comparativism," *Third World Quarterly* 37, no. 11 (2016): 1990–2009.

[121] See generally : Antony Anghie, *Imperialism, Sovereignty, and the Making of International Law* (New York: Cambridge University Press, 2004); Syed Muhammad Naquib Al-Attas, *Islam and Secularism* (Kuala Lumpur: ISTAC, 1993).

specifically.[122] The *'ulama* and Muslim academics should be the first to be proud of the Islamic law intellectual heritage and promote it as a solution for various problems suffered by humankind.[123] Breaking a long standing *ijmā'* backed by clear authentic *aḥadīth* should not even be at the bottom of the list of alternatives.

One must admit however that the aforementioned academic movement will take so much more to translate into real politics actually making a change in the world's dynamics.[124] The day when the world sincerely accepts and tolerates Islamic criminal laws (including execution for the *murtadin*) does not seem to be feasible in any near future, perhaps not even distant except if we include the end of times prophecies in Islamic eschatology. A realistic solution is therefore needed today.

Islamic law has its own solution that has been in Islamic scholarship for centuries. One of the roots was the gradual revelation of Islamic teachings throughout the life of Prophet Muhammad ﷺ, proportionate to the readiness of the *Ṣaḥābah*.[125] Also, there is a famous practice of 'Umar ibn al-Khaṭṭāb during his caliphate, suspending the *ḥudūd* for theft (*sariqa*) due to a famine at the time. Without needing to play around conjuring up strange arguments denying such criminal sanction in the Shari'ah, 'Umar simply saw that the current situation increases the prevalence of *shubuhat* (doubt) that would negate one of

[122] See *inter alia* Antony Anghie, "International Human Rights Law and a Developing World Perspective," in *Routledge Handbook of International Human Rights Law*, ed. Scot Sheeran and Sir Nigel Rodley (New York: Routledge, 2013); Makau Mutua, "Savages, Victims, and Saviors: The Metaphor of Human Rights," *Harvard International Law Journal* 42, no. 1 (2001): 201–46; Mohsen Al Attar, "Reframing the 'Universality' of International Law in a Globalizing World," *McGill Law Journal* 59, no. 1 (2013): 95–139.

[123] Fajri Matahati Muhammadin and Shania Dwini Azzahra, "The Role of Fiqh Al-Siyar in International Law-Making: Escaping the Lethargy," *Al-Jami'ah: Journal of Islamic Studies* 60, no. 2 (2022): 509–46.

[124] Naz Khatoon Modirzadeh, "'[L]et Us All Agree To Die A Little': TWAIL's Unfulfilled Promise," *Harvard International Law Journal (Upcoming)* 65 (2023): 1–67.

[125] Muḥammad ibn Ṣāliḥ Al-'Uthaymīn, *Uṣūl Fī Tafsīr* (Al-Maktabah Al-Islamiyyah, 2001), 16–17.

the required elements to apply *sariqa*.[126] These are but a few out of many practices throughout the ages.

This solution, in Al-Qaradawi's (d. 2022 CE) terms, *fiqh al-awlawiyat* or the laws of priorities. The general idea is that different societies in different social political and historical settings may have different levels of readiness in accepting Islamic laws, so that the Shari'ah should not be implemented in its whole bulk in one go. Rather, they should first adjust to the current situation of the respective societies, invest strongly in *da'wah* (propagation) and education, then build up more Islamic law implementation over time proportionate with the development of awareness and readiness of that society.[127]

That said, instead of breaking an *ijmā'* and running over numerous *aḥadīth* of Prophet Muhammad ﷺ in the process (sometimes even misrepresenting classical scholarship), it is possible to apply *fiqh al-awlawiyat* in the case of execution towards the *murtadin*. Execution towards the *murtadin* is well established as *ijmā',* but it is practically impossible to apply it due to the repercussions that the Muslims will potentially face and are unlikely to be able to withstand today. Only a very few states such as Saudi Arabia, Yemen, and Taliban's Afghanistan are exceptions to this, and, even then, it is hard to find examples of implementation of *riddah* executions at all. The Malaysian State of Kelantan also places apostasy as a crime punishable by death in Article 23 of the Syariah Criminal Code (II) (1993) 2015, but it is thus far non-enforceable.[128] The latest example of apostasy execution we managed to find done by a Muslim state was the execution of Sudan's Mahmoud Muhammad Taha, and that was in 1985 i.e. thirty-eight years ago.[129]

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[126] Al-Ṣan'ānī, *Al-Muṣannaf*, vol. 10, no. 18990.

[127] See: Yūsuf Al-Qaraḍāwi, *Fi Fiqh Al-Awlawiyat* (Maktab al-Islami, 1999).

[128] See: Mohamed Azam Mohamed Adil, "Syariah Criminal Code (II) Enactment 1993 Amendment 2015: Can Kelantan Enforce Hudud?," *ICR Journal* 7, no. 4 (2016): 548–51.

[129] Some academics claim foul play in the proceedings, that the Sudanese government manipulated the judgement because Taha was a political opposition: Declan O'Sullivan, "The Death Sentence for Mahmoud Muhammad Taha: Misuse of the Sudanese Legal System and Islamic Shari'a Law?," *The International Journal of Human Rights* 5, no. 3 (2001): 45–70. Nonetheless, legitimate Islamic jurists (other than the judges of the Sudanese courts) have issued *fatwas* declaring Taha as an

Therefore, as *fiqh al-awlawiyat* dictates, the execution for *murtadin* can still be affirmed but its implementation suspended until a more favorable political climate emerges. This may be a good middle ground considering the current situation in the world.

CONCLUSION

It is very evident that there is *ijmā'* in support of executing the *murtadin*, and it is most obviously so for the male *murtadin*. This *ijmā'* was established during the time of the *Ṣaḥābah,* and perpetuated for over a thousand years by the *fuqaha* of the *madhāhib.* We have a strong case in favour of female *murtadin* execution also being *ijmā',* although we acknowledge the legitimacy of the Hanafi dissenting opinion.

The dissenting opinions only emerging in the contemporary era are, therefore, necessarily wrong because they contradict the *ijmā'*. Contemporary academics holding these positions, when making counterclaims against *ijmā',* mostly rely on misunderstanding or even misrepresentation of classical scholarship. In case of the latter, some academics make so many misrepresentations on one single issue that one cannot help but be suspicious.

We nonetheless acknowledge the difficulty of navigating today's world where Muslim nations cannot (or sometimes are not even willing) to implement full Islamic laws, including those related to *riddah*. However, the solution is not to ditch the Shari'ah or parts of it . Rather, implementation of these 'difficult' laws should still be acknowledged but suspended until the *'ummah* is stronger and more ready for it.

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apostate due to his extremely heretical beliefs, such as the Muslim World League and the Al-Azhar Research Academy: Sāmī Al-Dhīb, "Tawaruṭ Al-Azhar Fī Shanaq Muḥammad Ṭaha," Ahewar.org, February 8, 2015, http://www.m.ahewar.org/s.asp?aid=454296&r=0.