

# **AN ANALYSIS OF APOSTASY UNDER SHARIA AND SUDANESE CRIMINAL LAW IN RELATION TO THE CASE OF MARIAM IBRAHIIM**

**By**

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## **Abstract**

**This Article examines the offence of Apostasy in Sharia and Sudanese law with regard to the meaning, elements and the punishment. These laws are examined in relation to the case of Mariam Ibrahim. It is argued that Mariam who allegedly grew up as a Christian may be deemed to have had no knowledge that she was committing apostasy by her action. The article raises issues with regard to the alleged crime and its punishment.**

## **Introduction**

**Certain offences are considered to be dangerous to the Islamic State and these include murder, adultery, homosexuality, highway robbery, rape, theft, apostasy, among others. Some of these major offences are punishable by death as prescribed under Sharia, while others, the death punishment is imposable on the discretion of the Muslim judge. This article only addresses the offence of apostasy or 'riddah', which means 'turning back' on Islam, or literally, denouncing Islam<sup>1</sup> or where a person seeks another religion than Islam and violates the solemn commitment.<sup>2</sup> Specifically, the article examines the offence of apostasy with reference to the Sudanese case of Mariam Ibrahim including analysis of Sudanese law on apostasy and its application to Mariam's case.**

**With this introduction, the article examines the offence of apostasy under Sharia, the elements of this offence, and punishment for this offence. It also analyses the legal basis for the punishment of apostasy, gives a comparative analysis of Sudanese criminal law on apostasy and Sharia and lastly examines the case of Mariam Ibrahim.**

## **Apostasy in Islam**

**The offence of apostasy is provided for in different verses of the Holy Quran and Hadiths of the Holy Prophet**

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**<sup>1</sup>Abdul Qadir Audah, Penal Law of Islam in Comparison with Secular Law, (Daarul Hadith, Cairo, 2009) 543.**

**<sup>2</sup>Bhikhu Parekeh, 'The Rushdie Affair: Research Agenda for Political Philosophy', (1990) 38 Political Studies, 695-709, 698.**

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(SAW). For instance, in the Holy Quran Allah says; ‘And if any of you turn back from their faith and die in unbelief their work will bear no fruit in this life and hereafter, they will be companions of fire and will abide therein’<sup>3</sup> This means that a person commits apostasy where he or she no longer professes Islam. Thus, where a person denounces Islam by joining another religion and transfers false ideas which breach Islamic teachings, then he or she commits apostasy. Similarly, if a person abandons the Islamic religion or fabricates something which is not taught in Sharia, such a person is deemed to be an apostate.

In addition, a person may be a Muslim but when he or she does not believe in the signs of Allah. Among the signs of Allah include the following; the creation of human beings and the presence of creatures like the sun, moon, stars, life, death as well as many other things which show the existence of Allah. In the Holy Quran Allah says; ‘Those who believe not in the signs of Allah, Allah will not guide them, and theirs will be a grievous chastisement.’<sup>4</sup>

He also says; ‘It is those who believe not in the signs of Allah that forge falsehood: it is they who lie.’<sup>5</sup> This implies that where a person does not believe in the signs of Allah as stated above, he or she is deemed as a liar and will not be guided by Allah. In addition, where a person does not believe in Allah’s commandments, for instance, by associating Allah with something else, declines to pray, fast, or pay zakat, such a person will be punished by Allah. In this case, the person commits apostasy due to failure to adhere with the revelation of Allah and the Holy Prophet. Allah also says; ‘Anyone who after accepting faith in Allah, utters unbelief except under compulsion, his heart remaining firm in faith but such as open their breast to unbelief on them is wrath from Allah, and theirs will be a dreadful chastisement.’<sup>6</sup> Implying that any person who disobeys Allah after accepting faith, he or she will be punished heavily except for a person who has acted under compulsion.

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<sup>3</sup>Quran 2:217.

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Quran 16:104. See also Quran 16:107 that ‘Allah will not guide those who reject faith’.

<sup>5</sup> Quran 16:105.

<sup>6</sup> Quran 16: 106.

All the above verses emphasise that disbelief in Allah or associating with Him anything is a great sin which a person should avoid all the time. Such a sin is stated to be one of the seven grave sins which were taught by the Holy Prophet to his companions. He said:

Avoid the seven grave sins.

They said what are they o messenger of Allah? He said, the association with Allah, the magic, the killings of the soul which Allah had forbidden but with the right, the eating of money of Riba, the eating of the money of the orphan, the running away during the battle, slandering the believing innocent Muslim females.<sup>7</sup>

The above tradition shows that Allah is alone and a Muslim is not allowed to believe other than in Him. This implies that apostasy is one of the major sins and a Muslim is not allowed to denounce Islam in whatever situation.

The classical Muslim scholars in four different schools of thought also had different views in understanding the offence of apostasy. Some scholars considered a person to be an apostate by mere expression, while others, the expression must be accompanied with action as discussed below;

According to the Hanafie school of thought, deserting Islam occurs expressly by word of mouth (orally denouncing Islam); the Maliki school of thought stated that deserting Islam occurs expressly by word of mouth accompanied with action (orally denouncing Islam with action). This school also added that an apostate should be mature. For the Shafie school of thought, denouncing Islam occurs expressly by word of mouth, or by action or by character. This school also added that the offence of apostasy is for a mature person who has turned away from Islam. For the Hambalie school of thought, an apostate was deemed to be a person who deserts Islam, or does not believe in Allah, His books and His Prophets, or abuse Allah and His Prophet.<sup>8</sup>

Thus, Hanafie, Malik and Shafie schools of thought agree that an apostate is a person who expressly by word of

<sup>7</sup> Bukhari, 2615, Muslim,145

<sup>8</sup> Abdul Qadir Audah, Penal law of Islam in Comparison with Secular Law, (Daarul Hadith, Cairo, 2009) 597; see also Badria Abdul Munim Hasuunat, Crimes Relating to Intentional and Unintentional Murder, Murder by Mistake and Fixed Crimes in Sharia and Law: Judicial and Islamic Jurisprudence (Arab Culture Printing Press, Cairo, 2006) 385.

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mouth denounces Islam. However, Malik and Shafie schools of thought add that such denouncement should be accompanied by actions and the person should be mature. For the Shafie school of thought, they add the character of the person as one of the factors which determines whether or not the person is an apostate. However, the Hambalie school of thought gives a general understanding of an apostate as someone who deserts Islam or disbelieves in Allah, His books, His Prophets, among others. Impliedly, this may be done orally, by action or character or any other means.

Therefore, all the four schools of thought accept that the crime of apostasy is committed where a person denounces Islam which can be by express word of mouth, actions or a person's character. The maturity of the person is also important to determine criminal liability.

**Elements of Apostasy**

According to Abdul Qadir Audah<sup>9</sup> the offence of apostasy has two elements, that is, deserting Islam and criminal intention.

**Deserting Islam;**

This refers to denouncing Islam or to disbelieve in it, which is in three ways; by action, expression or disbelief. Thus, to desert Islam means to act contrary to Islamic teachings and treating acts which are prohibited in Islam as legal.<sup>10</sup> For instance, if a person insists that interest (Riba) is permitted under certain circumstances. However, this does not include a person who wrongly interprets Islamic teachings.<sup>11</sup>

Impliedly, where a person performs an act without knowledge that it is an offence, such a person is not deemed an apostate. However, if it is confirmed that the person is pretending and yet he or she knows that the act is prohibited in Islam, such a person is deemed as an apostate. Thus, a person is deemed to have committed the offence of apostasy

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<sup>9</sup>Abdul Qadir Audah, *Penal Law of Islam in Comparison with Secular Law*, (Daarul Hadith, Cairo, 2009) 543.

<sup>10</sup> *Ibid*, 544.

<sup>11</sup> *Ibid*.

where he or she has knowledge that such an act is prohibited.

#### **Criminal Intention;**

The offence of apostasy is deemed to have been committed where a person has the intention to commit this crime or expressly denounces Islam. However, if the person expresses something but does not understand the meaning, he or she is not an apostate. The need to prove intention of the person to show that the crime was committed knowingly is supported by the Hadith of the Holy Prophet where he said; 'Every act is judged by intention and a person gets what intends to get'.<sup>12</sup>

With regard to the Muslim scholars, Imam Shafie argues that the person's intention is not enough but he or she should express orally such an intention. However, other scholars like Imam Malik and Imam Abu Haniifa argued that mere expression is enough for a person to denounce Islam.<sup>13</sup> This implies that a person must have acted knowing that the act or omission is contrary to Islamic teachings.

#### **Punishment of Apostasy**

The punishment of apostasy is controversial whereby some scholars argue that the crime of apostasy is punishable by a fixed punishment of death while others argue that it is a civil liability since there are alternative punishments as discussed below. The Holy Quran provides for punishment in the hereafter whereby a person who commits the offence of apostasy will be in hell.<sup>14</sup> This is the punishment administered after death.

According to the Holy Prophet; 'If somebody (a Muslim) discards his religion, kill him.'<sup>15</sup> He also says; 'it is not allowed to kill a Muslim except for three things these include: murderer, adulterer and the one who denounced the religion.'<sup>16</sup> This means that, where a person commits apostasy in this world, the punishment is death.

<sup>12</sup> Narrated by Bukhari, 2392.

<sup>13</sup> Abdul Qadir Audah, Penal Law of Islam in Comparison with Secular Law, (Daarul Hadith, Cairo, 2009) 547.

<sup>14</sup> Quran 2:217 Allah says 'And if any of you turn back from their faith and die in unbelief, their work will bear no fruit in this life and hereafter, they will be companions of fire and will abide therein.'

<sup>15</sup> Narrated by Bukhari 52260, Sunan Tirmidhi 1530.

<sup>16</sup> Narrated by Bukhari (8337).

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In addition, it was unanimously agreed by all the companions of the Holy Prophet including Abubakar, Omar, Othman, Ali, Ma-az and Ibn Abas on the killing of an apostate and none rejected the punishment.<sup>17</sup> Further still, the four classical Islamic schools of thought including Imam Abu Haniifa, Imam Malik, Imam Shafie and Imam Ahmad bin Hambal unanimously agreed that the punishment for apostasy is death after giving time to the person to repent.<sup>18</sup>

Except for Imam Abu Haniifa, the majority of these scholars like Imam Malik, Imam Shafie and Imam Ahmad bin Hambal state death as the punishment for an apostate without distinguishing between a man and a woman.<sup>19</sup> Thus, Imam Abu Haniifa is of the view that a woman who commits apostasy is not killed but is forced to return to Islam. This can be done by imprisonment with a daily remainder to return or be imprisoned until death.<sup>20</sup>

It is also important to note that if a person is killed for apostasy, his or her wealth is confiscated thereby losing control over such property. Imam Malik, Imam Shafie and Imam Ahmad bin Hambal argued that if the apostate is executed his wealth is confiscated and is not inherited.<sup>21</sup> This implies that the property of an apostate is left to the discretion of the judge to handle as he deems fit.

In addition, Muslim scholars have various views on the requirement for repentance before an apostate is killed. According to scholars like Imam Malik and Shiazaidiat, repentance is compulsory while others like Imam Abu Haniifa, Imam Shafie and Imam Ahmad bin Hambal, it is

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<sup>17</sup>Badria Abdul Munim Hasuunat, Crimes relating, to Intentional and unintentional murder, murder by mistake and fixed crimes in sharia and law: judicial and Islamic jurisprudence (Arab Culture Printing Press, Cairo, 2006) page 385.

<sup>18</sup> Ibid.

<sup>19</sup>Muhamad Abu Zahara crime and punishment in Islamic Jurisprudence Daarul Fikril Arabi, Cairo 1998 V2 page 192

<sup>20</sup>I Laaudiin Abubakar Alkasaan, Badaaiswanai, V7, Darulilmiyat 2000 page 135; Badria AbdulMunim Hasuunat, 387.

<sup>21</sup>Shamsdiin Abdallah a Imagrib, Mawahibuljaliilfi Sharhimukhtaswarkhaliil , Daarul Fikir, V6, 2010 page 282, Mansour Yunus Al buhuuti, Kishaaful Kina Daarul Fikr, V4, 1982 page 104 Ibn Qudaamat, Mugnii, Daarul Qalam , 1997 V10 page 18 Penal Law of Islam V2 page 559

not compulsory to repent but liked.<sup>22</sup> The time for repentance also varies from scholar to scholar with Imam Malik, Imam Shafie and Ahmad bin Hambal stating that the time for repentance is three days after trial of the person alleged to have committed apostasy. However, Imam Abu Haniifa states that the time for repentance is left to the discretion of the judge.<sup>23</sup>

It was also stated by caliph Omar that a person is given time for repentance. It is reported that ‘a man from Muslim Army came and asked him, do you have amazing news? He said yes, a man denounced the religion of Allah after being a Muslim, Omar asked what did you do to him? We caught him and beat his neck (killed him) He said ‘did you put him in the house and feed him every day with bread and encourage him may be he could repent and go back to Allah? Oh Allah I have not participated, and I have not ordered and I could not accept if I was informed’.<sup>24</sup> This shows that repentance is very important before the punishment of apostasy is carried out.

Therefore, where a person repents before the punishment is executed, such a person is absolved from being killed and another punishment is imposed at the discretion of the judge (taaziir). Such a substituted punishment is administered depending on the health condition of the person and this may include flogging, a fine or imprisonment. Some Muslim scholars argue that a person who has denounced Islam more than once should receive a strong punishment and one who has denounced for the first time should be forgiven, unless where he or she has abused the Holy Prophet.<sup>25</sup>

### **Legal Basis for the Punishment of Apostasy**

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<sup>22</sup>Badaaiswanai Kasaani V7 page 134, Badria Abdul Munim Hasuunat 387

<sup>23</sup>, Abdulbaaqi Al masr, Sharhzarqaan Ala mukhtasar Said Khaliil, Daarul Kutubul Ilmiyat , Cairo, 2002.v8 page 95, Penal Law of Islam page 555 and Badaiswanaai, volume 7, 135, Muhammad ibn Abaasi Aramliinihaayatul Muhtaaaj Darul Kutubul Ilmiyat, 1997 V7 page398, Mugnii volume 10, 78

<sup>24</sup>Bukhar and Muslim

<sup>25</sup>Mawahibiljaliil volume 6, page 282, Nihayatulmuhtaaaj, volume 7 page 401, Mugnii volume 10 page113

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The justification for death as the punishment for an apostate is based on the following sources of law: In the Holy Quran Allah says;

**They but wish ye should reject faith as they do and thus be on the same footing as they so take not friends from their ranks until they flee in the way of Allah from what is forbidden but if they turn renegades seize them and slay them wherever ye find them; and in any case take no friends or helpers from their ranks.<sup>26</sup>**

**But (even so) if they repent Establish regular prayers and pay zakat they are your brethren in faith daily in faith thus do we explain the signs in detail for those who understands ... But if they violate their oaths after their covenant and attack your faith fight ye the chief of unfaith for their oaths are nothing to them, that thus they may be restrained.<sup>27</sup>**

This means that a Muslim should not befriend people who reject Islamic faith until they become believers and to kill those who desert Islam.

The majority of the Muslim scholars in favour of the death punishment for apostasy also based their arguments on different traditions of the Holy Prophet (S.A.W). He said; 'If somebody (a Muslim) discards his religion, kill him.'<sup>28</sup> He also said;'It is not allowed to kill a Muslim except for three things these include: murderer, adulterer and the apostate and the one denounced the religion'.<sup>29</sup>

It is also narrated by Ikrimat that; 'Some Zanadiqa (atheists) were brought to 'Ali and he burnt them. The news of this event, reached Ibn 'Abbas who said, "If I had been in his place, I would not have burnt them, as prophet forbade it, saying, 'Do not punish anybody with Allah's punishment (fire).' I would have killed them according to the statement of the prophet, 'Whoever changed his Islamic religion, then kill him.'<sup>30</sup> This means that the punishment of an apostate is death since the above Hadiths do not reject death as a punishment but only the mode of imposing this punishment is contested.

It was also narrated that the Holy Prophet said:  
During the last days there will appear some young foolish people who will say the best words but their faith will not go

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<sup>26</sup>Qur'an 4:89.

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Quran 9:11-12.

<sup>28</sup>Narrated by Bukhari, 52260, Sunan Tirmidhi, 1530.

<sup>29</sup> Narrated by Bukhari, 8337.

<sup>30</sup> Narrated by Bukhari, 8458.

beyond their throats (i.e. they will have no faith) and will go out from (leave) their religion as an arrow goes out of the game.

So, wherever you find them, kill them, for whoever kills them shall have reward on the Day of Resurrection.<sup>31</sup>

It should also be noted that even after the death of the Holy Prophet, orthodox caliphs fought wars for apostasy. This can be evidenced by Caliph Abubakar when he was sending an army to fight the apostates, he stated:

Allah guided the truth whoever believe in him and the prophet, hit whoever turns his back to Him till come back to Islam, willingly or grudgingly, I have also learned that some of you have turned back from your religion after you had acknowledged Islam and laboured in it, out of negligence of

Allah, his commands ... I have sent you someone at the head of an army of the Muhajirun and the Answar and those who follow them... I have ordered him to fight those who deny

(Him) for that reason. So he will not spare any one of them he can gain mastery over, (but may) burn them with fire, slaughter them by any means, and take women and children captive; nor shall he accept from anyone anything except Islam.<sup>32</sup>

This clarifies that apostasy is the crime in Islam punishable by death to the person who rejected Islamic faith. However, in some circumstances the punishment of apostasy was never implemented this can be evidenced in the tradition of the Holy Prophet which states:

A Bedouin gave the pledge of allegiance to the Prophet for Islam. Then the Bedouin got fever at Medina, came to the Prophet and said, "O Prophet! Cancel my pledge" But Prophet refused. Then he came to him (again) and said, "O Prophet!

Cancel my Pledge." But the Prophet refused then he came to him (again) and said, "O Prophet! Cancel my Pledge." But

Prophet refused. The Bedouin finally went out (of Medina) whereupon Prophet said, "Medina is like a pair of bellows (furnace): It expels its impurities and brightens and clears its good."<sup>33</sup>

This means that it is wrong for a person to turn back on his pledge to Islam which is similar to apostasy. Possibly, that is why the Bedouin ran away from Medina for fear that his actions would led him to be punished.

<sup>31</sup>Narrated by Bukhari, 8464-65.

<sup>32</sup>Silas, The Punishment for Apostasy from Islam, available, <<http://www.answering-islam.org/Silas/apostasy.htm>> last visited, 30 August 2015; see also Mirza Tahir Ahmad, Murder in the Name of Allah, (Lutterworth Press, 1989) available at [http://www.alislam.org/library/books/mna/chapter\\_7.html](http://www.alislam.org/library/books/mna/chapter_7.html) last visited, 30 August 2015.

<sup>33</sup>Sahih al-Bukhari, Vol. 9, No.318.

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Such instances of leniency to cases similar to apostasy creates an understanding that the punishment of death is not imposed in all instances. This position is supported by some scholars who argue that such a punishment is within the discretion of the judge.<sup>34</sup> This is partly based on the decision passed by caliph Omar bin Abdul Aziiz (Omar II a fifth Khalif) during the Umayyad period, where some people converted to Islam during his reign and the same people denounced Islam after some time, then Mamoun bin Mahran, the Governor of that area, informed Khalif about this incident, who in response, ordered him to impose jizya<sup>35</sup> on them but did not put them to death for apostasy. It should be noted that although these people were ordered to pay jizya, the death punishment for apostasy was not refuted.

Other Muslim scholars including Imam Sarkhasi al Hanafie and Sufiyan Thauri argue that apostasy is not punishable by death like Huduud cases. This is because Huduud cases are not suspended where a person repents like the case for apostasy. They also argued that an apostate should be re-invited to Islam may be this person can change his or her mind.<sup>36</sup>

Arguably, these scholars refuted the death punishment because a person may change his or her mind and come back to Islam. However, they do not state the appropriate punishment in situations where the apostate declines to repent and return to Islam. This means that the punishment is left under the discretion of a judge (tazir) of which, the death punishment may also apply.

**A Comparative Analysis of Sudanese Criminal Law on Apostasy and Sharia**  
The criminal law of Sudan is regulated mainly by the Criminal Act (1991) which provides for the offence of apostasy under section 126(1) stating; ‘there shall be deemed the offence of apostasy, every Muslim who

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<sup>34</sup> ‘Apostacy and Islam’, available at <<http://apostasyandislam.blogspot.co.uk/>> last visited, 30 August 2015.

<sup>35</sup> Ibid, (jizya means tax levied on non-Muslims lives in an Islamic State who meet certain criteria).

<sup>36</sup> Muhammad Shams din Sarkhasi, Al Mabsout, vol. 10, (Maarifat, Beirout 1989) 110, see also ‘Apostasy and Islam’ available at <<http://apostasyandislam.blogspot.co.uk/>> last visited, 30 August 2015.

propagates for renunciation of the creed of Islam or publicly declares his renouncement thereof by express statement or conclusive act.’ (emphasis added). This means that the offence of apostasy is committed by 1) every Muslim, 2) who spreads his or her rejection of Islam, or 3) publicly rejects Islam through a statement or by action.

Thus, the offence of apostasy is committed by a person who is a Muslim, who makes known his or her rejection of Islam, or through a statement or by action, publicly rejects Islam. This provision brings out the element of a Muslim informing other persons of his or her renunciation of Islam. This implies that the Sudanese Criminal Act (1991) is similar to Sharia<sup>37</sup> whereby both laws emphasise that every Muslim who expressly denounces Islam or acts contrary to Islam is considered an apostate.

In addition, under the Sudanese Criminal Act (1991), section 126(2) the punishment for apostasy is provided for. The section states that ‘whoever commits apostasy shall be given a chance to repent during the time to be determined by the court, where he insists upon apostasy and not being recant to Islam, he shall be punished with death’. (emphasis added). Also section 126(3) states that ‘the penalty provided for apostasy shall be remitted whenever the apostate recants apostasy before execution’. (emphasis added) This means that the person is punished by death for apostasy where that person insists on rejecting Islam even after being given time to repent as determined by the judge. However, if the person repents before execution, the punishment of death is remitted.

The punishment of apostasy in Sudanese Criminal Act (1991) is also similar to Sharia<sup>38</sup> where by both laws

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<sup>37</sup> See Bhikhu Parekeh, ‘The Rushdie Affair: Research Agenda, for Political Philosophy’ (1990) 38 Political Studies 695-709, 698; see also Abdul Qadir Audah, Penal Law of Islam in Comparison with Secular Law, (Daarul Hadith, Cairo, 2009) 543, 544, 597; Badria Abdul Munim Hasuunat, Crimes Relating, to Intentional and Unintentional Murder, Murder by Mistake and Fixed Crimes in Sharia and Law: Judicial and Islamic Jurisprudence page 385 and the Holy Quran 2:217.

<sup>38</sup> See Quran 9:11-12; The Holy Prophet is also reported to have stated; ‘If somebody (a Muslim) discards his religion, kill him.’ Narrated by Bukhari 52260, Sunan Tirmidhi 1530. He also said ‘it is not allowed to kill a Muslim except for three things these include: murderer, adulterer and the apostate and the one denounced the religion.’ Narrated by Bukhari (8337). See also Badria Abdul Munim Hasuunat, Crimes

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punish the person by death after the person is given an opportunity to repent. This is with the exception of Imam Abu Haniifa who does not agree that a woman is also killed for committing the offence of apostasy. It is important to note that before 1991 when the Sudanese Criminal Act was enacted, Sudan applied Sharia to punish persons alleged to have committed the offence of apostasy.<sup>39</sup>

Further still, the Sudanese Criminal Act (1991) does not differ from Sharia in excluding criminal responsibility for minors. Under section 8 of this Act, it is provided that 'there shall be no responsibility except upon a mature person of free will' Also section 9 provides 'a child who has not attained puberty shall not be deemed to have committed an offence....' This implies that a minor is not punished under the Sudanese Criminal Act (1991) as is the case under Sharia.<sup>40</sup>

**Analysis of the Case of Mariam Ibrahim**

Mariam Ibrahim, a Sudanese national, was sentenced to death in May 2014 for getting married to a Christian.<sup>41</sup> According to Dallia M Abdelmoniem, Mariam was brought up by a Christian mother after her father, a Muslim, 'abandoned the family when she was six years

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Relating, to Intentional and Unintentional Murder, Murder by Mistake and Fixed Crimes in Sharia and Law: Judicial and Islamic Jurisprudence. page 385.

<sup>39</sup> See the case of Mahmoud Taha also known as Ustaz Mahmoud Mohammed Taha, who was a Sudanese religious thinker, leader, and trained engineer. He was convicted of the crime of apostasy and executed on 18 January 1985 at the age of 76 by the regime of Jaafar Nimeiry. See detailed discussion of this case in Declan O'Sullivan, 'The Death Sentence for Mahmoud Mohammed Taha: Misuse of Sudanese Legal System and Islamic Sharia Law?' (2001) 15(3), The International Journal of Human Rights 45-70.

<sup>40</sup> Muhammad Abu Zahara crime and punishment page 336 see also Abdul Qadir Audah, Penal Law of Islam in comparison with secular law. page 597

<sup>41</sup> Nicholas Bariyo, 'Sudan Court Hears Appeal of Apostasy Death Sentence', The Wall Street Journal, available at <<http://online.wsj.com/articles/sudan-court-hears-appeal-of-apostasy-death-sentence-1402406085?gclid=CPyEu6ewxcACFWvlwgodjLQAdA>> last visited,

30 August 2015.

old.<sup>42</sup> When she got married to a Christian man she was charged with apostasy and adultery because such a marriage was deemed illegal under Sudanese law.<sup>43</sup> She was then sentenced to 100 lashes for committing adultery and death by hanging, for marrying a non-Muslim. However, she was given time to repent which Mariam refused insisting to be a non-Muslim.<sup>44</sup> A judge is reported to have stated; 'We gave you three days to recant but you insist on not returning to Islam. I sentence you to be hanged to death.'<sup>45</sup> Owing to international intervention, the punishment was never administered. She is currently in the United States (US), her departure having been 'cleared by the Sudan government'.<sup>46</sup>

Under the Sudanese Criminal Act (1991), section 126(1) apostasy is committed by a Muslim who spreads his or her rejection of Islam by statement or action. Seemingly, the Sudanese court based on this section which emphasises that every Muslim who denounces Islam or acts contrary to Islamic teachings is deemed to have committed apostasy. Similarly, under sharia, whoever denounces the religion is deemed to have committed the offence of apostasy.<sup>47</sup>

According to the evidence, Mariam did not accept the crime of apostasy or confess at all. She even refused to repent and totally denied that she was a Muslim. Such a person may be treated as having no knowledge of any offence she has committed. During trial, she is reported to have informed the judge that; 'I am a Christian and I never

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<sup>42</sup>Dallia M Abdelmoniem, 'Sudan's Recent Apostasy Death Sentence is a Manifestation of the Wrongful use of Religion in Politics', available at Aljazeera, <<http://www.aljazeera.com/indepth/opinion/2014/05/sudan-woman-apostasy-2014517102213211469.html>> last visited, 30 August 2015.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> 'Woman Faces Death for Apostasy' BBC NEWS AFRICA, 15 May 2014, last visited, 30 August 2015.

<sup>46</sup> The Independent, 'Meriam Yahia Ibrahim Ishag's Release and Safe Arrival is a Diplomatic Triumph for Italy', available at <<http://www.independent.co.uk/news/world/europe/meriam-yahia-ibrahim-ishags-release-and-safe-arrival-is-a-diplomatic-triumph-for-i>> last visited, 30 August 2015.

<sup>47</sup> Abdul Qadir Audah, Penal Law of Islam in Comparison with Secular Law, 597 and also Badria Abdul Munim Hasuunat, Crimes Relating, to Intentional and Unintentional Murder, Murder by Mistake and Fixed Crimes in Sharia and Law: Judicial and Islamic Jurisprudence, 385,

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committed apostasy.<sup>48</sup>As mentioned above, it is reported that Mariam was born to a Christian mother and a Muslim father, who abandoned the family when she was six years old.<sup>49</sup> Under Sharia, every person is born without any knowledge of anything but it is the role of the parent to make sure that he or she teaches that child to become a practising Muslim. The Holy Quran says:

And Allah brings you fourth from the wombs of your mothers knowing nothing.<sup>50</sup>The Holy Prophet also said, 'Each child is born in a state of "Fitrah", then his parents make him a Jew,

Christian or a Zoroastrian, the way an animal gives birth to a normal offspring. Have you noticed any that were born mutilated?<sup>51</sup>

This means that a person is born when he or she knows nothing including religion and it is upon the parent to teach the child about any religious belief. Thus, even though Mariam was born to a Muslim father by virtue of which she was a Muslim by birth, she is said to have grown up with an orthodox Christian mother. Her upbringing may have hindered her from being a practicing Muslim and instead grew up practicing Christianity. Perhaps she may not have understood the essence of being a Muslim thus, the eventual assertion that she was a Christian.

With regard to the punishment imposed against Mariam, it was also based on Sudanese Criminal Act (1991) section 126(2), which provides for the chance of repentance where the person is given time to reconsider his or her decision to renounce Islam. Failure of that, the person is punished by death. This is the same position under Sharia. This implies that the punishment for apostasy in Sudanese criminal law and Sharia is death after giving time to the accused person for repentance. It is stated that Mariam was given three days to repent but declined<sup>52</sup>thus explaining the judge's pronouncement of the death sentence.

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<sup>48</sup>'Woman Faces Death for Apostasy' BBC NEWS AFRICA, 15 May 2014.

<sup>49</sup>Dallia M Abdelmoniem,'Sudan'sRecent Apostasy Death Sentence is a Manifestation of the Wrongful use of Religion in Politics', available at Aljazeera <http://www.aljazeera.com/indepth/opinion/2014/05/sudan-woman-apostasy-2014517102213211469.html>last visited, 30 August 2015.

<sup>50</sup> Quran 16 : 78

<sup>51</sup> Collected by Sahiih Muslim. 6426.

<sup>52</sup>'Woman Faces Death for Apostasy' BBC NEWS AFRICA, 15 May 2014.

As discussed above, Mariam never accepted that she was a Muslim thus it is not easy to impose the death punishment against Mariam because there was doubt in her religion. The Holy Prophet said 'Avoid prescribed punishments where there is doubt'.<sup>53</sup> This means whenever there is doubt, it is not recommended to punish a person who is alleged to have committed crimes. Thus, the position of the Sudanese government to set Mariam free, whose religious upbringing was questionable, was in accordance with the teachings of Islam.

In addition, compelling a person to profess Islam is not allowed and Allah says; 'Let there be no compulsion in the religion truth stands out clear from error'.<sup>54</sup> It means compulsion is incompatible with Islamic faith since religion depends upon faith and will, which would be meaningless if induced by force.<sup>55</sup> Thus, telling Mariam to repent who insisted on being a Christian would appear as if she was being compelled to practice Islam against her will.

### Conclusion

The offence of apostasy under Sharia is similar to the Sudanese criminal law on apostasy in many respects as discussed above. This is in regard to 1) the meaning of apostasy, 2) the circumstance under which a person is deemed to have committed the offence of apostasy and 3) the punishment for apostasy. Thus, it is clearly shown that these laws seek to punish a Muslim who rejects his or her Islamic faith through an express statement or by actions. Such a person is only punished after being given time to repent. When these laws are examined in relation to the case of Mariam Ibrahim, she insisted on being a Christian, thus contested professing Islamic faith. In addition, her upbringing by a Christian mother since she was 6 years old, raises the question of whether she could be deemed as having committed apostasy, yet she seems not to have been brought up as a practicing Muslim. This brings doubt as regards to her appreciating the nature of offence allegedly committed by her. As noted above, Sharia does not allow punishing a person when in doubt and also, Islam does not compel a person to be a Muslim. Therefore, setting her free was perhaps the best option in the prevailing circumstances.

<sup>53</sup>Narrated by Tirmithi, *Huduud*, 1344. See also Baihaqi, *Huduud*, 8/238.

<sup>54</sup>Quran 2:256.

<sup>55</sup>The Holy Quran translation of the meaning and commentary, (Saudi Arabia) 115.

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