Freedom of Religion, Apostasy and Conversion:
Issues, Responses and Developments*
Mohammad Hashim Kamali

Abstract
Our discussion on freedom of religion begins with its definition, its salient features, and its close affinity with human dignity. We proceed to explore the scriptural evidence on both human dignity and religious freedom, which is followed, in turn, by an account of religious freedom in Islam and Judaeo-Christian history. A section is also devoted to the rise of religiosity worldwide, but also of greater restrictions on freedom of religion or belief in recent decades. Turning to developments in Muslim countries, our survey also explores as to how Muslim countries are trying to come to terms with the modern concept of religious liberty. It is this question that has prompted Muslim scholars, including the present writer, to offer fresh interpretations of the scripture that seek to recapture the original callings of the Qur’an and Sunnah in preference to the scholastic positions of the leading schools Islamic law of later periods. Then follows a brief account of the Western media depictions of freedom and that of religious freedom, followed by a similarly brief account of the Amman Message of concern to issues of scholastic differences with special reference to the Sunni-Shia divide. The discussion then turns to developments in Malaysia as a case study of a pluralistic society where legislative responses, judicial decisions and fatwas on issues of freedom of religion, apostasy and conversion are still engaging Muslim scholars, legal profession and the media. We then turn to a round-up of opinion of leading Muslim scholars of earlier times and those of the twentieth on apostasy, and then a conclusion.

Freedom of Religion: Definition and Salient Features
Freedom of religion is a principle that supports the freedom of an individual or community, in public or private, to manifest the religion or belief they adhere to in teaching, practice, worship, and observance. It also includes the freedom to change one’s religion or belief. One of the most influential definitions of religious freedom is given in Article 18 of the Universal Declaration of Human Rights, 1948, which provides that:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Freedom of religion or belief (FRB) is also enshrined in the International Covenant on Civil and Political Rights, 1976. Under international law FRB has two components: a) the freedom to have or not to have or adopt a religion or belief; and b) the freedom to manifest one’s religion or belief, individually or in community with others, in public or private, through worship, observance, practice and teaching.¹

Freedom of religion is a fundamental human right, which often serves as a barometer of respect for other fundamental rights and liberties. Religious tolerance has also been rightly regarded as a model for tolerance in pluralist and diverse societies, yet tension often exists between the theory and practice of religious freedom. British philosopher John Stuart Mill thus remarked that intolerance in what people care about is “so natural to mankind” that religious freedom has not been practically secured unless religious indifference prevails. Religious tolerance is still threatened whenever the feeling of the majority are genuine and intense.²

In a country with a state religion, freedom of religion is generally considered to mean that the government permits the practice of other religions besides the state religion, and does not persecute believers in other faiths. Freedom of belief is different in that it allows the right to believe what religion or belief a person or group may wish to embrace, but it does not necessarily allow the right to practice the religion or belief openly and outwardly in a public manner.³

Religious liberty is essential for civil peace and prosperity in multicultural and pluralistic societies. Empirical data shows that religious freedom is an indicator of respect for other liberties, accountable governments and thriving civil societies. Conversely, denial of religious freedom is often espoused with restrictions on other civil and political rights. Freedom of religion or belief has, as such, been called as 'a bell weather human right, where FoRB is under attack, often other basic rights are threatened too.'⁴ This is partly because freedom of religion is intrinsically linked to freedom of opinion and expression, freedom of association and assembly as well as to other human rights and liberties.⁵

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Religious freedom is at the root of moral freedom, and should be understood, not only as immunity from coercion, but even more fundamentally as an ability to order one’s choices in accordance with truth. This cannot be done through compulsion. A being whose movements are wholly determined like a machine, as Mohammad Iqbal (d.1938) observed, cannot produce goodness. Freedom is thus a condition of goodness. The immense trust that God Most High has shown in humankind, as His trustee and vicegerent in the earth, could also not be carried nor delivered without freedom. Iqbal also observed that conservatism is as bad in religion as in any other department of human activity. For it destroys the ego’s creative freedom and closes up the paths of fresh spiritual enterprise. On the importance of religion for the growth of human personality, Mohammad Iqbal conveys the insight that it is only by rising to a fresh vision of his origin and future, that man will eventually triumph over a society motivated by an inhuman competition, and a civilisation which has lost its spiritual unity by its inner conduct of religious and political values. Religion as a deliberate enterprise to seize the ultimate principle of value and thereby to reintegrate the forces of one’s own personality, is an undeniable aspect of human experience. None of this can, however, be secured under compulsion. Freedom of religion is thus essential for any religion to energise the individual’s inner resources. Today the overwhelming majority of leaders and adherents of all major religions firmly support the freedom to make an un-coerced choice of whether and how to develop a personal relationship with any religious tradition or with none.

At a time when human dignity is being violated in countless forms in countries and societies throughout the world – often in the name of religion – it is imperative that basic values of dignity and freedom are re-emphasised and observed. All religions recognise human beings as fundamentally equal, whether this is understood as a consequence of their status as children of God (Judaism, Christianity, Islam), or their manifestation of the Divine (Hinduism), or of their common original nature and desire for happiness (Buddhism).

**Human Dignity and Freedom**


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7 Ibid., 183.
8 Ibid., 189.
9 Saeed, “Making the Islamic Case for Religious Liberty.”
Respect for freedom of religion, as also for all other fundamental liberties, is integral to human dignity, which is another fundamental principle, and what it means is that all humans are entitled to a basic level of dignity and respect, regardless of race, status, colour or background.

Religious freedom expresses what is unique about the human person. This also casts light on the identity and purpose of the person. To deny or arbitrarily restrict this freedom is to foster a reductive vision of the human person. Fanaticism, fundamentalism, and practices contrary to human dignity can never be justified, even less so, in the name of religion.

Sacred scripture, in harmony with our own experience, in almost all the great religions, reveals the profound value of human dignity. This dignity, understood as a capacity to transcend one’s own materiality and to seek truth, must also be acknowledged as a universal good, indispensable for building a society directed to human fulfilment. The Qur’an is explicit on human dignity for all as in the verse below.

We have bestowed dignity on the children of Adam... and conferred on them special favours, above a great part of Our creation. (al-Isra’, 17:70)

This is not an isolated declaration, as many of the manifestations of human dignity are found elsewhere in the Qur’an in a variety of contexts. With regard to the creation and physical image of humankind, for instance, the text provides that God created human beings “in the best of forms” (al-Tin, 95:4); “He fashioned you in the best of images.” (Ghafir, 40:64), and the affirmation also that “I breathed into him[Adam] of My spirit.” (Saad, 38:72). Then also humankind’s designation as God’s trustee and vicegerent in the earth, and other declarations to the effect that God made all that is there in the heavens and the earth subservient to humankind’s benefits – all of these are affirmative on essential human dignity in the holy Book.

The Qur’an commentator al-Alusi (d. 1270/1854) commented on this verse (i.e 17:70) that “everyone and all members of the human race, including the pious and the sinner, are endowed with dignity, nobility and honour, which may not be taken away nor denied.”

A question that many Qur’an commentators have raised is about the criterion of this dignity. Is it the physical elegance, spiritual eminence, personal attributes, or status in society? According to the Prophet’s Companion Ibn Abbas, who was known among his fellow Companions, as Tarjaman al-Qur’an (Q interpreter par excellence), God Most High has honoured humankind with the faculty of reason, which is the sole criterion of his dignity.

The conclusion has thus been drawn that every human being is endowed with dignity on that

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12 Ibid.
basis, as of the moment of birth, and it is the natural right of everyone. Since it is God-given, no human agency is entitled to deny it.13

Religious Freedom in Islamic Scripture and Jurisprudence on The Qur’an clearly recognises the freedom of religion, as also the co-existence of Islam with other religions, and the people’s freedom to choose which religion they wish to embrace in numerous places, including the following verses, addressed primarily to the Prophet Muhammad, pbuh:

- “Say! O disbeliever! unto you is your religion, and unto me my religion.” (al-Kafirun, 109:6)
- “Whosoever will, let him believe, and whosoever will, let him disbelieve.” (al-Kahf, 18:29)
- “Let there be no compulsion in religion. Truth stands out clear from error.” (al-Baqarah, 2:256)
- “Those who believe, then disbelieve, then believe again, then disbelieve, and then increase in their disbelief – God will not forgive them, nor guide to the right path.” (al-Nisa’, 4:137)
- “If God had willed, everyone on the face of the earth would have been believers. Are you then compelling the people to become believers?” (Yunus, 10:99)

The text further declares that belief in God is an individual choice, and the individual bears the responsibility for how he uses it: “Whoever is guided is only guided for the benefit of his soul. And whoever errs only errs against it. And no bearer of burdens will bear the burden of another” (al-Isra’, 17:15). It is important to note also that the Qur’an encourages inter-faith dialogue as, for instance, in its address to the Prophet to tell the People of the Book, Christians and Jews, to “Come together over a word that is in common between us and you that we worship none but God, that we associate no partner with Him, and we erect not, from among ourselves, lords and patrons other than God.” (Aal-‘Imran, 3:64) We now look at a hadith that has caused a great deal of controversy on freedom of religion.

Overall evidence shows that the Prophet Muhammad upheld the freedom of choice in religious belief and practice. In Mecca and Madinah, the Prophet showed a great deal of tolerance towards other religious communities. They were allowed to manifest and practice their religions and even to govern their lives by their own religious rules and values. Muslims were encouraged not to abuse or slander the followers of other faiths - including even the idolaters, whose beliefs were antithetic to Islam. On one occasion, when the Prophet Muhammad could not convince some non-Muslims to embrace Islam, the Qur’an commanded him to tell them that: “[t]o you be your religion and to me my religion” (Q 109:6). This same principle of tolerance was implemented by the Prophet in “The Constitution

of Madinah,” a compact created to establish relations between the various tribes and religious groups, including the Jewish community, in Madinah. One of the articles of this document stated that: “the Jews of Banu Awf are a community (ummah) along with the believers. To the Jews their religion (din) and to the Muslims their religion.”\footnote{14}

Yet a hadith has been reported from the Prophet that “one who changes his religion kill him.” This has unfortunately been taken out of context, generalised and practiced. Historical records show that death sentence was passed on a few individuals who had renounced Islam. They included Musaylamah al-Kadhdbah, Abdullah b. Abi Sarah and Ka’b b. Malik. Their death sentences were clearly for other reasons than the renunciation of Islam.\footnote{15} The active engagement of the Hypocrites in conspiracies is also referred to in the Qur’anic to the effect that some people would convert collectively to Islam in the morning only to renounce it by the end of the day so as to weaken the hearts of the nascent believers” (cf. Q. Aal-’Imran, 3:72).

It is further noted, on grounds of interpretation, that the hadith under review is a general (‘aam) text that would apply to all it can conceivably apply to, which would also mean cases that evidently fall outside its intention. On its face value, the text would be applicable to say a Hindu that converts to Islam, which is evidently not intended. We also know that the manifest meaning of this hadith has been restricted by reference to the Qur’an (al-Nahl, 16:106) to preclude a person who changes his religion outwardly due to duress but inwardly remains faithful.\footnote{16} Moreover, the Hanafis have held that a woman apostate is not punished by death but by imprisonment. This is because the hadith under review uses the masculine pronominal suffix, which gives rise to an element of doubt concerning its application to women, and punishment is suspended when there is doubt.\footnote{17} The renowned Ibrahim al-Shatibi of Andalus (d.790/1388) has also added a point of interpretation to say that the hadith does not refer to changing one’s religion as such, but to introducing unwarranted changes in the [essentials] of religion. Al-Shatibi further stated that one may be declared an


\footnote{15} Musaylamah declared himself to be the true prophet. Abdullah bin Abi Sarah, a former scribe of the Prophet, was found guilty tampering with the Qur’an and claimed that he also received revelation. He was hiding in Makkah until the time of Conquest of Meccak the Prophet, pbuh, ordered his execution but he was pardoned after he repented. Ka’b bin Malik and two other companions ran away from the Battle of Tabuk; they were boycotted, but then they repented and were pardoned. See also (Q al-Tawbah: 117-119). For fuller information see Ibn Kathir, Tafsir Ibn Kathir, https://archive.org/details/TafeerIbnKathirenglish114SurahsComplete (accessed 4 November 2019).


\footnote{17} There is also authority elsewhere in the hadith that women should not be killed in the battlefield.
apostate only if he himself affirms it without compulsion or duress, but not if he refutes the attribution of apostasy to him altogether.\(^{18}\)

According to the rules of interpretation expounded in *usul al-fiqh*, once a general (‘aam) text is specified in some respect, it is automatically reduced from the rank of decisive (qat‘i) to a speculative text (zanni), and becomes as such, open to further interpretation. The hadith in question has thus been specified further to say that the death penalty therein is reserved only for apostasy that is accompanied by high treason (*hirabah*). Relevant authority for this interpretation is actually found in another hadith, which is as follows:

> The blood of a Muslim who professes that there is no god but Allah and that I am His Messenger is sacrosanct, except in three cases: the married adulterer, the murderer, and a person who abandons his religion while splitting himself off from the community (*al-tarik li-dinihi mufariq li‘l-jama‘ah*).\(^{19}\)

This hadith makes clear that the apostate who is liable to the death punishment must be one who has boycotted the community and challenged its leadership.

Despite the core messages of the Qur’an about religious liberty and freedom to engage with the different Other, Muslim jurists of the classical era after the first generation of Muslims developed a set of rules to govern religious life. By and large, they laid down a range of restrictions on religious freedom and assigned penalties for flouting them. The main concern of these jurists was with defining correct religious practice and prohibiting acts of apostasy, blasphemy, heresy, and hypocrisy in religious affairs. It is also important to understand the context, however, in which these rules governing religious life were developed and propagated.

During the Umayyad and early Abbasid periods (8th to the 10th centuries CE), Islam was rapidly expanding and the Muslim community began to experience political power as they brought more and more non-Muslim lands and communities under their rule. Partly because of this, the great Muslim empire-builders began to grapple with novel issues about how to both establish their rule and remain true to Islam in multi-cultural and multi-confessional polities. Muslim scholars thus began to define mainstream Islamic beliefs when faced with growing political and intellectual pressures to determine Islamic positions on a range of issues. A new Islamic orthodoxy began to emerge, as a result, during Islam’s second and third


centuries, and the propagators and defenders of this new mainstream belief sought to strengthen it by labelling other views as beyond the fold, deviant or heretical. It remains questionable, however, whether all of these later accretions stand in harmony with the original elan and spirit of the Qur’an.

How did the subsequent history unfold in the Judaeo-Christian and Islamic lands is addressed next.

**Great Religions on Religious Freedom: A Historical Sketch**

Many religious traditions have struggled to accept the notion that religious freedom should be permitted for all, especially when the follower of one religion renounces his religion of following and takes up another religion. Laws against religious conversion, or apostasy, are still present in the dominant monotheistic religions of Christianity (e.g. Deuteronomy 13:6), Judaism (note e.g. Stanton and Strousma 1998) and in Islam (not in the Qur’an, but in the hadith as reviewed above. Many individuals have in the past been put to death for changing their religion or for failing to convert to a particular religion. For instance in the fourteenth and fifteenth centuries CE, numerous Muslims and Jews in Spain were slaughtered as infidels and religious enemies.

Religious freedom was, as Swidler wrote, a goal of Christian thinkers and writers before Constantine in the early fourth century CE – but not afterwards when Christianity became the state religion. Swidler has observed further that disconnecting religion from the power of the state is a most transformative concept of the human history. For religion supplied the ethical basis on which the authority of the state and law was built. Very often that relationship was so close that one could speak of the union of religion and state. The emergence of a neutral state committed to the recognition of freedom of religion occurred for the first time in the modern West, especially in the 1789 U.S constitution that raised religious freedom to constitutional rank.

With the development of medieval Christendom in the western half of the former Roman Empire, almost everyone became Christian. Most Roman Catholic European kingdoms also

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20 Cf., Saeed, “Making the Islamic Case for Religious Liberty,” (at fn. 5 above).
23 Ibid., 14-15: In the early centuries of Christianity in the Greco-Roman world, Christian writers were strongly in favour of religious liberty. After the Constantinian embrace of the Christian religion in the fourth century, however, they quickly switched to the position that the state had the responsibility of seeing that the truth was protected and favoured – and of course Christianity had the truth.
24 Ibid., 16.
kept a tight rein on religious expression throughout the Middle Ages. Most notable was the expulsion of all Jews from Spain in 1492. Some of those who remained and converted were tried as heretics in the Inquisition for allegedly practicing Judaism in secret. Despite the persecution of Jews, they were the most tolerated non-Catholic faith in Europe.

After the fall of the city of Granada, Spain, in 1492, the Muslim population was promised religious freedom by the Treaty of Granada, but that promise was short-lived. In 1501, Granada’s Muslims were given an ultimatum to either convert to Christianity or to emigrate. The majority converted, but only superficially, continuing to dress and speak as they had before and to secretly practice Islam. The Moriscos (converts to Christianity) were ultimately expelled from Spain between 1609 (from Castile) and 1614 (rest of Spain), by Philip III.25

Clearly, neither the West nor the Islamic world have perfect formulas for freedom of religion and how the relation between the religion and state should be regulated. In relative terms, however, Muslim countries have historically fared better in the treatment of non-Muslims. Non-Muslims who lived among Muslims were free to practice their own faith. Religious pluralism existed and the religious laws and courts of other religions, including Christianity, Judaism and Hinduism, were accommodated within the Islamic legal framework – as seen in the early caliphates, Al-Andalus, Indian subcontinent, and the Ottoman Millet system. In medieval Islamic societies, the qadi usually could not interfere in the matters of non-Muslims unless the parties voluntarily choose to be judged according to Islamic law, thus the non-Muslim communities living in Islamic states usually had their own laws independently from the shariah – such as the Jews who would have their own Halakha courts.

Non-Muslims were also allowed to engage in religious practices that were usually forbidden by Islamic law, such as the consumption of alcohol and pork, as well as religious practices which Muslims found repugnant, such as the Zoroastrian practice of incestuous marriage where a man could marry his mother, sister or daughter.26

Paul Hedges quotes to a Washington Post article by Daniel Philpot (July 10, 2015) titled “Are Muslim countries really unreceptive to religious freedom,” which contained the following passage: There is considerable historical evidence which shows that the freedom of religion that Europe developed around the period we called the Enlightenment actually came from an admiration of the tolerance seen in the Ottoman Empire. Controlling huge swathes of population across a massive geographical area, the Ottomans had many religious traditions represented amongst their subjects, and enacted policies to allow them to live together in harmony. Europe had nothing like this, and so learnt from it.27

26 Ibid.
Much to their credit, the leading schools of Islamic law have held that matters of concern to state and government should be determined through consultation (shura), public interest (maslahah) and independent interpretation (ijtihad). Muslim jurists have been sensitive enough not to use the phrase ‘Islamic state’ in their writings. They have used a number of other expressions such as caliphate, emirate, sultanate, imamate, but not dawlah Islamiyyah, a term that was first used by Muhammad Rashid Rida (d. 1935). Al-Mawardi’s (d. 450/1058) characterisation of the caliphate is “safeguarding the religion and managing the temporal affairs – hirasat al-din wa siyasat al-dunya.” The state safeguards the religion against heresy and misguidance, but it does not dictate nor regulate the principles of religion. The shariah does not envisage a religious state to be led by theologians and ulema, but by elected leaders that take office through consultation and pledge of allegiance (bay’ah). A complete separation of religion and state is not feasible, yet a closer scrutiny of the evidence points to a functional separation between them. Then it remains for the Muslims themselves to define and refine that relation through continued consultation, public opinion and maslahah, preferably in the direction of greater separation.

Rise of Religiosity and Restrictions on Religious Freedom

Reports indicate that the world is more religious now than it was four decades ago, and that this trend will continue up to 2020 and perhaps beyond, adding that the global share of the nonreligious is likely also to witness a sustained decrease.\(^{28}\) In 1970 nearly 80 percent of world’s population was religious, and by 2010 this had grown to around 88 percent, with a projected increase to almost 90 percent by 2020. This increase is largely attributed to the continuing resurgence of religion, mainly of Buddhism and Christianity in China. In 1970 agnostic and atheist populations claimed 19.2 percent of the world’s population, largely due to communism in Eastern Europe and China. However, after the collapse of the Soviet Union in 1991, large numbers of the nonreligious returned to religion. Christianity and Islam dominate religious demographics and are expected to remain so for the foreseeable future. In 1970 these two religions represented 48.8 percent of the global population, and by 2020 this figure will likely go up to 57.2 percent.\(^{29}\)

Notwithstanding the robust support of the Qur’an and the example of the Prophet Muhammad for religious liberty, the real-world prospects for religious liberty in many Muslim-majority countries are somewhat bleak. Reports by human rights groups and government bodies thus indicate that violations of religious freedom are increasing globally in scale, depth and blatancy. Carried out by both government and non-state actors, they range from the mundane (e.g. administrative restrictions) to the extreme (e.g. genocide).


\(^{29}\) Ibid.
While some violations are obviously related to religion, others can appear to have no relationship to religion or belief, yet can still undermine FRB. The factors underlying FRB violations include intolerant and narrow-minded interpretations of religions (theological issues) as well as political, social and economic factors. Many religious freedom violations are carried out under the guise of protecting national security.

A number of studies monitoring FRB around the globe have concluded that the situation is worsening further. Among the world’s 25 most populous countries, Pakistan, Turkey, Egypt and Indonesia rank among the countries with highest overall restrictions on religious belief and practice, according to a report by Pew Research.30

A large proportion of FRB violations are related to extremist Islam (e.g. in Pakistan, Syria, Yemen), some to authoritarian regimes (e.g. Burma, China) and one to Hindu extremism (India). Conversely, the ‘secular’ West has seen increased intolerance and hostility towards faith groups. Key non-state actors responsible for religious freedom violations include the Islamic State of Iraq and Syria (ISIS), Al-Shabaab in Somalia, and the Taliban in Afghanistan.31

Distortions, Media and State Policies
Distortion has occurred, however, when in the Western media, freedom is generally treated as something absolute and nearly sacred, while religious faith is presented as deplorable and obsolete. Freedom was used, in the context of the Cartoons published in Denmark,32 for instance, as a weapon of insult that led to injury and loss of life and property in numerous places in the Muslim world.33 This posturing of freedom in the Western media is also unrepresentative of the West’s own moral philosophy and religion. Western civilisation is often called ‘Judaeo-Christian,’ but neither Judaism nor Christianity instructs believers to insult or injure other people, and both subscribe to the principle to love fellow human beings (and this does not exclude Muslims).34

The Western perceptions of the Muslim world, as Muzaffar has perceptibly observed, are not just the residue of its huge historical baggage of colonialism, but also when certain Muslim states began to exercise control over their oil from the early 1970s onwards, thus challenging the Western grip over this vital commodity. Similarly, as Zionist influence over the critical sectors of American society increased and the Palestinian resistance to Israeli occupation

31 Iffat Idris, “Threats to and Approaches to Promote Freedom of Religion or Belief,” K4D Helpdesk Report, February 2018. Helpdesk reports are commissioned by the UK Department for International Development and other Government departments. For further information, contact helpdesk@k4d.info.
32 Cartoons that vilified the Prophet Muhammad in caricatures first appeared in in the Danish newspaper, Jyllands-Posten in September 2005.
34 Ibid., 2.
intensified in the sixties, the American media accelerated its imaging of ‘Muslim terror.’ Since the politics of Israel and oil are entrenched within a global hegemonic structure of power, “It is doubtful whether the mainstream Western media will cease to equate Islam and violence in the near future.”

**Apostasy and Religious Freedom: A Round of Opinion**

Historically, apostasy was defined as the “unbelief of a Muslim who had earlier accepted Islam of his or her own free-will, which suggests that an apostate is a Muslim who rejects Islam and/or converts to another religion.

Apostasy is discussed in the Qur’an in no less than 21 places yet nowhere does it specify any temporal punishment for it. Taha Jabir al-Alwani (d. 2016) has thus commented that although the Qur’an is quick to denounce the act of Muslim abandoning Islam, it does not prescribe a worldly punishment for the same. In Alwani’s view, apostasy during the Prophet’s time was a political issue, so if someone abandoned Islam without causing harm to others, there was no temporal punishment for that person. Al-Alwani further noted that about 200 verses in the Qur’an support the freedom of conscience and belief. There is no support in the Qur’an, on the other hand, for any form of coercion that violates the individual’s right to freedom of belief.

The Qur’an also makes many references to hypocrisy (nifaq) and to hypocrites (munafiqun) among the people of Madinah, who were, for all practical purposes, apostates. However, none were put to death. There is no evidence that the Prophet ordered the killing of any person simply because of a change in faith. Instances of death punishment that have been recorded in some cases were cases of blasphemy and treason and not of apostasy through personal conviction and belief. A number of prominent scholars across the centuries have also subscribed to the view that apostasy is not a punishable offence. Ibrahim al-Nakha’i (d. 95/713), the teacher of Imam Abu Hanifah, and Sufyan al-Thawri (d. 161/772), known as the Prince of the Believers in hadith, have both held that the apostate should be re-invited to Islam but should not be condemned to death. They maintained that the invitation should continue for as long as there is hope that the apostate might re-embrace the faith. Abd al-Wahhab al-Sha’rani has also cited al-Nakha’i and al-Thawri’s views and added that “the apostate is thus permanently to be invited to repent.”

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37 Ibid., 11.
Many leading twentieth century scholars have also re-examined the texts on the punishment of apostasy, and came to the conclusion that there is no Qur’anic requirement for the death penalty, nor is there any basis for it within the Prophet’s practice. Isma’il Badawi and Abd al-Hakim Hasan al-‘Ili have commented that by al-Nakha’i’s time Islam was secure from the hostility of disbelievers and apostates. They maintain that al-Nakha’i understood the hadith under review to be political in character and aimed at the enemies of Islam.\textsuperscript{40}

The present writer has also concluded from his own research that this hadith was a temporary legislation (\textit{tashri’ zamani}) that was only meant to address the problem faced at the time, and it should not have been perpetuated. Unfortunately, due to the so-called wars of apostasy (\textit{hurub al-riddah}) that followed suit when tribal leaders refused to pay the \textit{zakah}, and the caliph Abu Bakr equated this with apostasy (notwithstanding the fact the ‘Umar al-Khattab differed with him as he thought this was not apostasy by an act of rebellion) Abu Bakr’s view prevailed. Muslim jurists also acquiesced it seems and the hadith at issue remained and eventually became part of the applied fiqh.\textsuperscript{41}

The former rector of al-Azhar, Mahmud Shaltut (d. c.1965) recorded the view that:

\begin{quote}
The hadith ‘one who changes his religion, kill him’ has evoked various responses from the ulema, many of whom are in agreement that the hudud cannot be established by solitary (\textit{ahad}) hadith, and that unbelief by itself does not call for the death penalty.
\end{quote}

Subhi Mahmassani and Selim el-Awa have similarly remarked that the death punishment was meant to apply, not to simple acts of apostasy from Islam, but when it was linked to political betrayal of the community and high treason (\textit{hirabah}). Hence the death penalty was meant to punish acts of treason that consisted of joining forces with the enemy and resort to conspiracy and sedition against Muslims.\textsuperscript{42}

Ayatollah Motahhari (d. 1979) recorded the view that coercion was incompatible with the spirit of Islam. It is impossible to force anyone to acquire the kind of faith that is required by Islam, just as it is impossible to spank a child into solving an arithmetical problem.\textsuperscript{43} Shad Saleem Faruqi, a prominent professor of law of Malaysia, also concluded: “It is clear therefore that in the Qur’an, apostasy is a sin (punishable in the hereafter) and not a crime (punishable by the state).”\textsuperscript{44}

\textsuperscript{41} Cf., Kamali, \textit{Freedom of Expression in Islam}, 93f.
\textsuperscript{43} Morteza Motahhari, “Islam and the Freedom of Thought,” \textit{Al-Tawhid}, 154.
The Amman Message

The Sunni-Shia division remains to present an area of concern of relevance to religious freedom for both sides. Shias residing in Sunni majority countries and Sunnis residing in Shia majority countries face challenges in the free exercise and expression of their madhhabs of following despite the many positive steps taken that emphasis unity, equal treatment and non-discrimination at all levels. The Amman Message 2004 merits special attention in this regard due its concise coverage of issues and the wide acceptance it has inspired on both sides. The main points of this Message are presented next.

Issued in November 2004 by a number of leading scholars that included Shaykh al-Azhar Sayyid Tantawi, Shaykh Yusuf al-Qaradawi, Ayatollah Khamene’i and Ayatollah Sistani, and subsequently endorsed at a major International Conference of leading Islamic scholars, the Amman Message called for tolerance and unity among Muslims. It was issued in the aftermath of September 2001 attacks and factional violence in Iraq that led to disturbing increase of violence and terrorism among Muslims. The Amman Message started with the following three questions that King Abdullah II of Jordan sent to 24 of the most senior religious scholars from different countries representing all the branches and schools of Islam: (1) Who is a Muslim (2) Is it permissible to declare someone an apostate (takfir), and (3) Who has the right to the issuance of fatwas (legal verdicts)?

Based on the responses received from these scholars, in July 2005 the King convened a major international Islamic conference of 200 of the world’s leading Islamic scholars (the present writer included) from 50 countries in Amman. The scholars unanimously issued a conference statement in three main points as below:

1) Whoever adheres to any one of the four Sunni schools (Hanafi, Shafi’i, Maliki, Hanbali), the two Shia schools (Jaafari, Zaydi), and the Ibadi and Zahiri schools of Islamic jurisprudence is a Muslim. Declaring that person is impossible and impermissible.

2) There exists more in common between these schools than there are differences between them. The followers of the said eight schools are in agreement regarding the basic principles of Islam, the Six pillars of Iman (faith), and the Five Pillars of Islam.

3) Acknowledging the validity of the madhhab means accepting to adhere to the methodology of issuance of valid fatwas requiring personal qualifications the issuer must observe. No one may claim to do absolute ijtihad and create a new madhhab, nor issue unacceptable fatwas that deviate from the accepted principles.

The essence of the Amman Message was read aloud in Masjid al-Hashimiyin and confirmed that acceptance of the said madhhab and their methodology for engagement between them
ensures fairness, moderation, mutual tolerance, compassion, and engaging in dialogue with others.

The signatories of the Amman Message called for casting aside disagreement among Muslims, reaffirming their mutual respect for each other, strengthening mutual affinities and ties of brotherhood between them and uniting them in their love of God. Muslims were also called upon not to permit discord and outside interference between them.

Over a period of one year from July 2005 to July 2006, the substance of this statement was also unanimously adopted by six other major international Islamic scholarly assemblies, culminating with the International Islamic Fiqh Academy of Jeddah in July 2006. In total, over 500 leading Muslim scholars worldwide endorsed the Amman Message.45

The Malaysian Experience
Islam has a gentler history in Malaysia as it came to this country, not through military conquest, but by Muslim Sufis and traders. From early times, Islam in Malaysia was closely aligned to the Malay community who are the indigenous majority of the land.

The federal constitution of Malaysia 1957 declared Islam as the religion of the federation, but also provided that all other religions may be practiced in peace and harmony Art 3(1). Everyone has the right, under Article (11-1) to profess, practice and, subject to Article 11(4) to propagate his or her religion. Art. 11(4) provides, in turn, that the state law, and in respect of the federal territories of Kuala Lumpur and Labuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam. Freedom of religion is also recognised for groups and associations. Thus it is provided that every religious group has the right to manage its own affairs, establish and maintain institutions for religious purposes. (Art. 11-3)

Many non-Muslims have complained that the Article 11(4) which proscribes any preaching of religious doctrines to Muslims amounts to unequal treatment under the law. “Indeed it does,” as Shad Faruqi wrote but explained that it was one of the pre-Merdeka (independence) compromises between the Malays and the non-Malays in order to insulate Malays against

45 See for details the official Website of the Amman Message: ammanmessage.com. The full text of the Amman Message, and the names and countries of its participants can also be found in Ghazi Bin Muhammad Bin Talal, The Book on Respect for Schools of Islamic Jurisprudence (Kitab Ihtiram al-Madhahib), 2nd Revised ed., Amman, Jordan 2006, 14-16. The present writer was among the original signatories of the Amman Message.
internationally-funded and powerful proselytising forces that had become entrenched in the country because of official support from the colonial government.  

The right to convert out of one’s faith is not mentioned explicitly in the Malaysian constitution, though for a non-Muslim it is regarded as an implicit part of the religious freedom guaranteed by the constitution. But due to its implications for child-parent relationships, the court in the case of Teo Eng Huat [1990] held that a child below 18 must conform to the wishes of his or her parents.

With regard to the Muslims, however, conversion and apostasy raise significant religious and political issues. Since Islam is the religion of the federation and Malays are, by constitutional definition, required to be of the Muslim faith, Malays are liable to prosecution for apostasy and conversion out of Islam. The notion that freedom of religion includes the freedom to renounce it is thus rejected in relation to Muslims. It seems that since the 1990s the conservative view in Malaysia has gained strength. A number of states in Malaysia (six out of 13 states) have consequently introduced rehabilitation laws and programmes, and even penal sanctions, that permit detention and re-education for Muslim converts out of Islam. There are also states, however, that are inspired by the Qur’anic mandate on religious freedom, and that of the constitution of Malaysia, and have merely imposed a registration requirement - see for example the Pahang Enactment 1982, section 103(2).

Apostasy laws also raise difficult constitutional issues and trigger debates that pits religion against the constitution and disturb the delicate social fabric that has held all Malaysians together for over 60 years. The following judicial attitudes and conflicts merit attention.

According to High Court, the act of exiting from a religion is not part of freedom of religion – at least not in the case of Muslims: Daud Mamat v Majlis Agama [2002] 2 MLJ 390. A contrary view was expressed by the Court of Appeal in Kamariah bte Ali vs Kerajaan Negeri Kelantan [2002] 3 MLJ 657. Muslims too have a right to renounce. But this renunciation cannot be done unilaterally. A Muslim who wishes to declare apostasy must first get the Shariah court to confirm that he or she has left the religion. A statutory declaration of apostasy is not enough. This is because the act of apostasy by a Muslim would cause a divorce between the apostate and his or her Muslim spouse. Issues of custody and guardianship of children will also arise.

The problem is that the application of most apostates to the Shariah Courts are left unattended. In some cases, criminal action for insulting Islam is taken.

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That said, much to Malaysia’s credit, the government has initiated important policies in an attempt to promote inter-ethnic and inter-religious cohesion among Malaysians. Almost immediately after the 1969 race riots, Rukunegara was launched as a new national ideology that spelt out some key principles all Malaysians must observe. Included in these are respect of the rule of law, the supremacy of the constitution and loyalty to the king and country. Other measures taken included the integrated national schools and extra-curricular activities which called for the involvement of Malaysians from all ethnic and religious backgrounds. In 2006 the cabinet decided to terminate the controversial university guidebook on ethnic relations which many had criticised as being insensitive to non-Muslims.50

Conclusion
As a faith and civilisation, Islam is known to have accommodated the principle of religious freedom and co-existence with other religions. This is evident in both the Qur’an and the Sunnah that by all Muslims are expected to follow, regardless of their ethnic, political and economic backgrounds. Since freedom of religion is the norm in Islam, the challenge for Muslims today is to minimise the gap between the theory and practice of that freedom. Moreover, the challenge for Muslims everywhere, including in Southeast Asia, is not so much with their access to theoretical guidelines and religious injunctions, but in coming to terms with the realpolitik that shapes and directs their relations with their fellow Muslims and also non-Muslims.

As for as the relationship of religion and state in Islam is concerned, the position is somewhat more complex. There is, however, no mandate in the Qur’an or the Sunnah on how the religion and state should relate to one another. The Qur’an does not even make any reference to a state as such, and the Prophet’s often cited instruction on this was addressed to the Muslims informing them that it is for them to determine their own temporal affairs – thus the hadith ‘you know better about your temporary affairs’, (antum a’lamu bi-omuri dunyakum).

Contemporary learned opinion and literature stress the need for practical measures on multiple fronts to protect and promote freedom of religion and belief. A multi-layered approach is thus recommended which combines:

a) The human rights approach – with the focus on monitoring of and reporting on violations and on holding the relevant people accountable.

b) The conflict resolution approach – aiming at finding preventive measures and solutions to avoid infringements and violations of the freedom of religion.

c) The interfaith and interreligious approach – with a strong emphasis on better

information and education of what religion is and is what it is not.\textsuperscript{51}

A holistic approach that pay attention to the foregoing also calls for a multi-actor response emphasising the need for all to pull their weight in their respective areas. The UN Special Rapporteur on Freedom of Religion and Belief has thus stressed the role the international community must play in promoting freedom of religion and belief.\textsuperscript{52} Speaking out against the violation of religious freedom is also a key aspect of this, and can be a powerful tool in preventing further violations. This can be done in various ways including speeches, participating in seminars and events, writing newspaper letters and articles, hosting individuals and groups and their events, visiting the victims of violations and attending the trials of human rights defenders.\textsuperscript{53}

Muslim thought leaders and scholars should dig deeper into their own traditions to rediscover and engage the wealth of insights these traditions may offer. It is important for them to know what resources exist within these traditions to support a contemporary understanding of religious liberty while remaining faithful to Islam.

The Amman Message represents a credible consensus of the twenty first century leading Islamic leaders. The substance of this Message on Muslim unity with special reference to the Sunni-Shia divide must be genuinely respected and observed.

With reference to Malaysia, the stresses and strains of Malaysian Islam notwithstanding, the country’s management of religious pluralism has on the whole been positive in advocating a better understanding among its populace of the need to respect each other’s sensitivities and legitimate claims. The country has also enjoyed peace, democratic and participatory government, and economic prosperity.\textsuperscript{54} Yet tensions can flare up as they have as of late. Further awareness raising through media and educational methods to draw people’s attention to better ways of communication and exercise of self-restraint against provocations seem advisable.

\textsuperscript{52} Ibid, p.1.