Limitations on religious freedom in Islam
Rethinking through the *Maqasid*?

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Religious belief is central to much of human experience. Even before the advent of formal religious traditions, the search for God or for some kind of transcendental being was an integral part of human history. Religious belief and faith are ingrained in the human psyche, and religious traditions are an important aspect of the lives of most human beings, bringing hope and consolation to billions of people. Furthermore, religious identity remains closely tied with community. Given this, it is perhaps not surprising that the struggle for religious freedom has been ongoing for many centuries (see University of Minnesota Human Rights Library).

Many religious traditions have struggled to accept the notion that religious freedom should be permitted for all, especially when departure from one religious tradition leads adherents to take up another. Laws against religious conversion or what is known as apostasy are present in the dominant monotheistic traditions of Christianity (see, for example, Deuteronomy 13: 6), Judaism (see, for example, Stanton and Stroumsa 1998), and Islam. Many individuals have, in the past, been put to death for changing their religion or for failing to convert to a particular tradition. For example, in the fourteenth and fifteenth centuries CE, many Muslims and Jews in Spain were slaughtered as infidels and religious enemies for refusing to be baptized into the Christian faith (Zagorin 2003). Furthermore, the religious intolerance and violence that followed the divisions created by the Lutheran Reformation and counter-reformation culminated in the Thirty Years' War (1618–1648), ultimately decimating large parts of Europe (Fiala 2013).

However, between the seventeenth and twentieth centuries CE, a significant shift in attitude occurred in Western societies. Replacing the assumption that it was justifiable to maintain religious unity by force, the view that it was wrong to use coercion or to kill in the cause of religion came to prevail (Zagorin 2003). Although examples of religious intolerance in Western societies continued to occur, this shift in the dominant attitude towards religious freedom was significant. Laws of apostasy and punishment using the death penalty gradually lost their importance in these societies. In the face of this global trend, today, Islam seems to be the only major religion to maintain that conversion away from the religion (apostasy) must be punished.

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1 These laws are explored later in this chapter.
with death. In a number of Muslim-majority countries such as Saudi Arabia, apostasy laws and the associated death penalty still prevail. Given this situation, it is important to explore the issue of apostasy and ways of rethinking this in the context of Islam, as part of an argument for freedom of religion among Muslims. Hence the focus of this chapter.

This chapter explores briefly the notion of religious freedom in Islam, and outlines efforts towards a new understanding of traditional interpretations. Specifically, this chapter shows that by utilizing the *maqasid al-shari'a* (the aims and objectives of *shari'a*) – and in particular the concept of “inductive corroboration” – Muslim thinkers can argue for a notion of religious freedom that is in line with Article 18 of the Universal Declaration of Human Rights (UDHR).

**Religious freedom and traditional Islamic law**

Contrary to popular belief, the Qur’an contains many texts – revealed in both the Meccan and Medinan periods – that uphold the right to freedom of religion. These texts recognize each individual’s right to believe or not to believe in God. The Prophet Muhammad (d. 632 CE) respected this right throughout his life. However, traditional Islamic law and theology developed a range of limitations on this freedom in the post-prophetic period. The most notable of these are the laws relating to apostasy, blasphemy, heresy, and hypocrisy, and they are, by and large, in the area of limitations on Muslims. For the purpose of this chapter, I will not be dealing with any restrictions or limitations that may exist in Islam on the religious freedom of non-Muslims under Muslim rule.

Historically, apostasy (*ridda*) 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. The majority of Muslim jurists have maintained that apostasy is a crime that should be punished by death.

The notion of blasphemy initially related to the prohibition of the use of foul language with respect to the Prophet Muhammad (*sabb al-rasul*), although that stipulation was later extended to include foul language in relation to either God (*sabb Allah*), any of the angels, or other prophets. Anyone using such offensive language was considered to be a “blasphemer” and grave sinner, and if the blasphemer was Muslim the transgression was punished by death.

The notion of heresy was often associated with “intellectual rebellion,” when this was seen to be insulting to the Prophet Muhammad’s honor. However, this was an ambiguous concept that was difficult to regulate by law. Some scholars considered it to be a crime punishable by death, although there was no consensus among Muslim jurists on the definition of a heretic (*zindiq*).

The transgression of religious hypocrisy (*nifaq*) dates back to the time of the Prophet. During the Medinan period (622–632 CE), Qur’anic revelation included many references to religious hypocrites (*munafiqun*) and hypocrisy (*nifaq*). Muslims were warned that hypocrites were a danger to the Muslim community. One Qur’anic text (9:73) commands the Prophet to engage in jihad against any hypocrites and unbelievers who were engaged in hostilities; other verses warned them of punishment in hell. However, no text in the Qur’an orders Muslims to kill hypocrites or states that hypocrisy should be punished by death. Despite this, some religious authorities attempted to equate hypocrisy with apostasy.

These ideas continue to dominate much of Muslim thinking about the religious freedom of Muslims today. Their dominance has been such that any discussion on a right to freedom of religion as expressed in Article 18 of UDHR is still problematic for many Muslims, particularly in relation to the issue of “change of religion.” Many examples of limitations on religious freedom can be found in the legal systems of many Muslim-majority states even today.
Limitations on religious freedom in Islam

Nevertheless, a growing number of Muslims argue that freedom of religion is an important right that can be supported by the Qur'an and the practice of the Prophet Muhammad. Before outlining their arguments, it is useful to examine the development of these limitations.

The notion of “protection of religion”

The classical legal texts from each of the surviving schools of Islamic law establish a range of limitations on the religious freedom of Muslims. Many of these limitations were developed during the post-prophetic period on the premise of the protection of religion (ḥifz al-din). Andrew March summarizes this concept:

Religion consists of divine rules which God has revealed through prophets to guide mankind to truth in matters of belief and to good in matters of behavior and social relations. Religion constrains mankind by these rules and brings them into submission to their commands and prohibitions so that they may attain the happiness of this world and the next.²

However, the sense in which the jurists understood the protection of religion to be one of the aims of the shari’a (Islamic law) was connected to the notion that as Islam was established by God as the final religion, it was therefore valid for all time. According to this view, God gave us the freedom to adopt a religion, but individuals had the responsibility to ensure that the religion they professed was valid.

Jurists have established the way in which the shari’a protects religion by establishing certain positive elements of religion and specifying the removal of potential harmful elements (March 2012: 364). In the words of the famous legal theorist Abu Ishaq al-Shatibi (d. 1388 CE) who wrote extensively on the maqasid al-shari’a (objectives of shari’a): “Preserving religion involves calling to it with promises and warnings, fighting those who resist it and those tumors who rot it from within, and repairing any accidental unforeseen defects.”³

Jurists then elaborated three levels necessary for the “protection of religion”: necessities (daruriyyat), needs (hajiyyat), and improvements (tahsiniyyat). The first level (daruri) involves faith in God, which is necessary for any act to be valid in the eyes of God. The first necessary level for the protection of religion is therefore “establishment of faith in the hearts” of human subjects. This includes the first pillar of Islam: the declaration of God’s unity and Muhammad’s prophethood (March 2012: 364). Building on faith, the second level (haji) consists of worship as expressed in both the inner and outer aspects of humankind’s behavior.⁴ This level includes the remaining pillars of Islam: prayer, zakat, fasting, and the pilgrimage to Mecca (March 2012: 364–5). Finally, the third level (tahsini) includes the “supererogatory prayers, pilgrimages, good works, and acts of charity, which might contribute to the perfection of religion when the earlier stages of belief have been achieved” (ibid.: 365).

Generally, jurists further elaborate several means by which protection of religion could be assisted: the killing of self-declared and self-obscuring apostates, combating pernicious

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innovations (bid’a) in religious matters by punishing the innovators (mubtadi’un) and occultists, and forbidding sinful behavior, which is punished through both prescribed (hudud) and discretionary (ta’zir) penalties (March 2012: 366). The removal of specific threats to the protection of religion went on to provide the foundation for many aspects of Islamic public and criminal law (ibid.: 367).

Shari’a and Apostasy: emerging new understandings

In line with the notion of “protection of religion,” conversion from Islam to another religion (apostasy) was not considered a “right” from the jurists’ point of view. Indeed, most jurists considered conversion from Islam a crime. For them, Islam is the only valid religion and its authority and authenticity are beyond doubt: having recognized this, a Muslim should not even contemplate leaving Islam. From this perspective, an individual leaving Islam is considered to be following a path that will ultimately lead to eternal damnation in hell, which calls for community intervention. Moreover, the jurists argued, apostasy that openly challenges the validity of Islam could undermine the ranks of the Muslims. Indeed, the most dangerous thing for a community is the chaos caused by disruption to its commonly held beliefs, causing intellectual disarray and a lack of trust in what preserves its order. Thus, the apostasy of a Muslim could be considered much more dangerous than mere unbelief, because apostates have been exposed to the proof and evidence that led to belief in Islam by free choice, whereas a non-Muslim by birth has not had this opportunity. For these reasons, when the jurists discussed protection of religion they did not include the freedom to convert to another religion as part of such protection.

From the jurists’ point of view, apostasy was punishable with the death penalty. This penalty was developed on the basis of certain sayings (hadith) attributed to the Prophet Muhammad. The most obvious of these is the hadith that states: “Whoever changes his religion, kill him.” There are several other examples of hadith in which the Prophet reportedly ordered the execution of specific individuals, and these are often used to bolster the argument that the appropriate punishment for conversion from Islam is death.

Not all Muslim scholars today take this view, however. In the modern period, Mahmud Shaltut – the highest religious authority in Egypt during the 1960s – argued that apostasy was not a criminal offence under Islamic law (Farooq 2007). Elaborating further, Saif al-Deen Abdul-Fattah clarifies that the historical incidents of apparent apostasy were cases of state or national security, where the penalty for apostasy was applied to protect the whole state, instead of applying the penalty for simple cases of individual changes of religion (Farooq 2007). Taha Jabir al-Alwani, one of today’s leading Muslim scholars, similarly notes that although the Qur’an is quick to condemn the act of a Muslim abandoning Islam, it does not prescribe a worldly punishment for this action.

In al-Alwani’s view, apostasy during the time of Prophet Muhammad was foremost a political issue, so that if someone left Islam without causing harm to others there was no earthly punishment for that person (Farooq 2007). He argues that this is made evident by the records

8 al-Alwani, La Ikraha fi al-Din, 11. See also Taib and Imran (2011).
stating that during the time of the Prophet some people would convert to Islam in the morning and then leave Islam at night (ibid.). Abdullah Bin Hamid Ali, in an article on the politics of compulsion, agrees:

It is my educated belief that the injunction to execute apostates during the Prophetic era was introduced into the legal parlance as a way to discourage defection from the Muslim military forces.

(Ali 2011: 3–9)

Mohammad Omar Farooq highlights the specific circumstances wherein a Muslim leaves Islam and encourages others to fight against Muslims; such an act is considered akin to treason and punished accordingly (Farooq 2007).

Looking to the historical evidence, Mohammad Hashim Kamali, another leading Muslim thinker based in Malaysia, suggests that the Prophet did not treat apostasy as a proscribed offence (hadd), but instead pardoned many individuals who had embraced Islam, renounced it, then embraced it again (Kamali 1994). Similarly, Abdullah Bin Hamid Ali notes that “the fact that the lives of known hypocrites [munafiqun] who did not disengage from the community, despite being unbelievers or apostates, were spared by the Prophet is further evidence that people were not killed for simply leaving Islam” (Ali 2011: 3–9).

Traditional Islamic law has, therefore, sometimes adopted more restrictive approaches to freedom of religion than is evidenced by the teachings of the Qur’an or the actions of the Prophet. This has, in some cases, brought traditional Islamic law into conflict with modern standards pertaining to freedom of religion. A modern articulation of religious freedom is Article 18 of the Universal Declaration of Human Rights (UDHR). This is compared briefly with Islamic teachings and tradition below.

**Article 18 of the Universal Declaration of Human Rights**

In many contemporary societies, the notion of freedom of religion is understood in relation to Article 18 of the UDHR:

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.

This statement declares that freedom of religion is a fundamental human right, and it identifies a number of aspects of this freedom. Firstly, this statement asserts the right of an individual to adopt a religion or belief of his or her choosing. Secondly, it affords individuals the right to practice their religion openly. Finally, it allows an individual the right to change his or her religion without coercion or disadvantage. Although the implications of these rights for the community are worth examining, my focus in this chapter is freedom of religion for the individual.

Article 18 of the UDHR has been incorporated into other international instruments, such as the International Covenant on Civil and Political Rights and the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. For many, Article 18 of the UDHR is the standard for all societies.
Some Muslim states remain doubtful – or even antagonistic – towards this “universal” declaration on religion, although the majority of Muslim states today are parties to important UN conventions on human rights with similar conceptions of religious freedom to Article 18.

However, throughout most of the history of Islam, Muslim states have recognized (at least in principle) the right of the individual to freedom of religion. The Qur’an evidences a remarkable degree of tolerance towards other religions: it not only recognized the diversity of religious traditions, institutions, and values of the period, but acknowledged that these belief systems were important to those people who practiced them. While the Qur’an and the Prophet seem in many instances to support the idea of religious freedom as expressed in Article 18, the picture is not clear when it comes to traditional Islamic law. Dominant views make it very clear that limitations must exist on the religious freedom of Muslims. Any effort to deal with the question of religious freedom for Muslims today will require some grappling with the texts, opinions, and legal positions that are a part of traditional Islamic law and used by opponents of religious freedom among Muslims.

Toward this end, the following section briefly examines how the concept of *maqasid al-shari’a* (the aims and objectives of shari’a), in particular the notion of “inductive corroboration” can assist us in gathering support from Islamic tradition for the notion of religious freedom as articulated by Article 18 of the UDHR.

**Maqasid al-shari’a**

*Maqasid al-shari’a* refers to the goals and objectives of the *shari’a*: either generally, or in reference to its particular themes and subjects (Kamali 2011: 248). Early scholars of *maqasid* identified five essential goals (*danuriyyat*): the protection of religion, life, intellect, property, and family (March 2012: 364). Of these, for our purposes, it is the “protection of religion” that we will be focusing on. This framework of “protection” includes rules about limitations on religious freedom as developed in traditional Islamic law. Although such rules may have worked effectively in the pre-modern context, in the modern period religious freedom has become an important value and, in a Muslim context, limitations on religious freedom that are not supported by the Qur’an and the Prophet Muhammad’s practice may have to be reconsidered.

For this reason, a wide range of Muslim scholars have begun to argue for traditional rules regarding limitations to be re-evaluated and for the notion of freedom of religion as expressed in Article 18 to be adopted. Taha Jabir al-Alwani – a major contributor to the discipline of *fiqh* for minorities (*fiqh al-aqalliyyat*) and principles of jurisprudence (*usul al-fiqh*) – argues that the Qur’an’s support of freedom of conscience and belief is undeniable. He notes that approximately 200 Qur’anic verses support the view that the Qur’an does not condone any form of coercion that violates an individual’s right to freedom of belief. For Abdulaziz Sachedina, freedom of conscience and religion is “fundamental to the Koranic vision of religiosity.”

9 For example, when the UN General Assembly enacted the UDHR, two Muslim countries, Pakistan and Saudi Arabia, took opposite stands on the issue: Pakistan strongly endorsed the document, while Saudi Arabia refused to sign, arguing that Islamic *shari’ah* had already adequately recognized the rights of men and women in Islam. See discussion in al-Ahsan 2009: 572.


Limitations on religious freedom in Islam

Abdul-Fattah, Professor of Political Theory at Cairo University, suggests that the oft-quoted Qur’anic verse “there is no compulsion in religion” (2:256) provides the rule that governs freedom of religion. He argues that religion “cannot by any means be compared to a trap; [where] whoever is trapped in it can never get out” (Abdul-Kareem 2013). Obaidullah Fahad Falahi argues that the Qur’an clearly “invalidates all kinds of compulsion (ikrah) in the faith” (2009–2010). These scholars support their positions with definitive texts from the Qur’an and hadith.

Their approach is similar to that of Kamali, who suggests that many Qur’anic verses provide significant weight towards a modern understanding of religious freedom as a valid goal or objective of the shari’a. In his well-known text Freedom of Expression in Islam, Kamali declares that the Qur’an is “consistent in its affirmation of freedom of belief and it fully supports the conclusion that the objectives of the shari’a cannot be properly fulfilled without granting people freedom of belief, and the liberty to express it.”

Kamali proposed expanding the list of five essential goals (damriyyat) in the maqasid al-shari’a to produce what he described as an “open chapter of the shari’a that could evolve in tandem with the progress of science and civilisation” (Kamali 2011: 247). In his view, the classical approach of principles of jurisprudence (usul al-fiqh) has been weighed down with technicality and literalism, whereas the maqasid look to the future and permit innovative approaches to the shari’a and to contemporary issues (ibid.: 246). To this end, Kamali proposes the use of specific tools to situate the validity of the maqasid according to an open-ended scale of values: namely, induction (istiqa’), unrestricted reasoning (istidlal), human intellect (‘aql), innate human nature (fitra), along with the textual guidelines of Islam (ibid.: 266). These are expected to lead to the realization of benefits for human beings at both individual and societal levels (ibid.: 249).

In Kamali’s system, the validity of the maqasid is first determined by reference to a definitive text of the Qur’an or hadith. If no reference is available for the subject of enquiry, recourse can then be had to the other tools. In addition, various textual references on a subject – all of which may be allusions rather than decisive declarations – can be read together to provide a collective meaning or to give weight to a specific matter (Kamali 2011: 257–8).

Kamali suggests that as the maqasid pertain to the goals and objectives of the shari’a, they cannot be logically limited to a particular number: the shari’a itself is not limited in that sense. Muslims understand the shari’a to have ongoing relevance and the capacity to grow and develop through independent reasoning (ijtihad); hence, the goals and the objectives of the shari’a must also continue to evolve (Kamali 2011: 266). Kamali’s approach thus provides Muslims with an open-ended intellectual framework for reconsidering traditional rules or practices in line with modern values and conditions (March 2012: 369–70).

Inductive corroboration

A key idea associated with maqasid al-shari’a methodology is “inductive corroboration,” which can help provide a stronger textual basis for specific principles as well as rules in the shari’a. For instance, a large part of the principles of Islamic jurisprudence (usul al-fiqh) literature deals with the sources (or principles) on which the law is based, and the textual bases of those sources. Specific sources of law are arrived at after an extensive search and examination of the material upon which the shari’a is based, and texts of the Qur’an and the

Sunna substantiate the importance of these sources, or principles, as well as the hierarchy of these sources to be relied upon.

Shatibi proposes that even in the case of sources of law, it is essentially a process of inductive corroboration (istiqra’) that provides a justification for the authority of the sources themselves. Shatibi’s inductive corroboration brings together a vast array of evidence (textual and other) to support a particular source in law and to afford it authority (see also Hallaq 1985–86: 91–2). For Shatibi, certainty about the general principles of the law must be derived from conclusive textual evidence (adilla) – which he sees as being rare – or from “an inductive survey of the multitude of probable pieces of evidence supporting these principles” (Hallaq 1990: 25). Shatibi argues that the sum of such pieces of evidence will be the main source of certainty in law. For example, each individual chain of transmission of the hadith reports is undeniably probable. Once a sufficient number of reports that state the same thing are brought together, the contents of the reports become certain through inductive corroboration. Indeed, Shatibi argues that even the five pillars of Islam and the authoritativeness of sources such as consensus (ijma’) are known on this basis (Hallaq 1990: 25). Similarly, the necessary and universal objectives of shari’a elaborated by the great theologian Abu Hamid al-Ghazali (d. 1111 CE) and other scholars, such as the protection of the right to own property, are not individually certain: they are merely probable. Nevertheless, according to Shatibi, “in their multitude they corroborate and affirm the validity of these principles beyond any doubt” (Hallaq 1990: 25–6).

Shatibi also proposes that the evidence that can be considered to provide the certainty of sources of law or legal principles is not limited to the exact texts of the Sunna (hadith) or the Qur’an, but can extend to thematic induction (istiqra’ ma’na’i) regarding “the spirit and the letter of the shari’a” (Hallaq 1990: 26). Thus, if an issue or theme reoccurs in the Sunna or the Qur’an, or if there is compelling circumstantial evidence, according to Hallaq, this will “inevitably” lead to certainty for Shatibi (ibid.: 26). Indeed, Shatibi states that “widespread and constantly recurrent themes or statements . . . rank equally with decisive and conclusive texts” (ibid.: 26–7). In Shatibi’s theory of inductive corroboration, “all mutawatir and mashhur reports have a force equivalent to that of summative induction” (ibid.: 27). Thus, for Shatibi, inductive corroboration provides the means to arrive at certainty of knowledge and the foundations of the law. Both the source of law and specific objectives are based on this kind of reasoning.

In relation to specific objectives of shari’a, for example, a number of Qur’anic texts suggest that protection of a human being’s life is absolutely essential as far as law and religion are concerned. Following these texts will lead to the understanding that life is and should be protected. However, Shatibi goes beyond these individual or particular pieces of textual evidence about the protection of life. In a variety of contexts, the Qur’an actually emphasizes the importance of respect for life and highlights that it is the community’s responsibility to preserve it. Without taking into account the entire Qur’anic text, the bulk of the hadith material, the consensus around this issue, and the kinds of analogical (or rational) reasoning that can be applied in relation to the value of the protection of life, the individual pieces of evidence remain probable. Once all these different texts, precedents, and arguments are put together collectively, relying on the notion of “inductive corroboration,” however, they lead to the kind of importance that can be considered, in Shatibi’s opinion, to be aligned with certainty.

Revisiting Article 18: Maqasid and freedom of religion

Using Shatibi’s notion of inductive corroboration as a key tool, we may need to return to particular pieces of evidence – both textual and rational – and apply them to the case of whether a modern conception of freedom of religion that is in line with Article 18 of UDHR can be supported. A relevant issue here is the extent to which there is the necessary evidence within the Islamic textual and legal tradition to provide an authoritative position on freedom of religion. The key elements of freedom of religion identified in Article 18 are therefore revisited below in this context.

The protection of an individual’s right to freedom of religion can be examined using texts from the Qur’an and various associated prophetic traditions. The Qur’an presents religion as a human good whose protection is of utmost importance. Protecting the right of an individual to believe and practice the faith and religion of his or her choice is one of the most important functions of the community and government. In the Qur’an, God’s plan for humankind is not that everyone should follow the same path: instead, belief is left to individual conscience and personal reflection, and should be sincere. From the perspective of the Qur’an, forcing belief on another does not result in genuine belief, which is an essential element of faith. The Qur’an therefore condemns hypocrisy and hypocrites in many verses, and exhorts sincerity (see 9:68, 63:1). It also condemns attitudes that promote blind imitation of ancestral precedents at the expense of independent thought and personal conviction (Kamali 1997: 101. See also Q. 2:170). The Qur’an declares: “Had God willed it, He would have guided all to the right path.”

Moreover, on the Day of Judgment individuals will stand before God and be questioned about what they did or failed to do (Q. 10:41). Accountability is thus very closely connected to the individual and the personal responsibility to choose.

For the Qur’an, revealed religion is sacred and each scripture must be approached with respect. Both Judaism and Christianity, for example, are respected as “religions of the book” alongside Islam (Q. 5:69, 3: 113–114). The same degree of respect, however, is not shown to belief systems that involve practices such as idol worship, which were widespread in Arabia at the time of revelation: these beliefs and practices are not recognized as legitimate by the Qur’an. Despite this, the Qur’an urges Muslims to deal with all people – including idolaters – with respect, as long as they too show respect (49:11). The Qur’an also strongly rejects the idea of forcing anyone to adopt Islam, or of initiating hostilities towards any communities with whom Muslims had peaceful relations (9:4). As such, the Qur’an reflected a remarkable degree of tolerance towards other religions (5:69) at a time when religious tolerance was not generally the norm.

There is little disagreement among Muslim scholars on the legitimacy of conversion from one faith to another outside Islam. However, conversion of an individual from Islam to

14 Q. 10:99, “If it had been thy Lord’s will, they would all have believed – all who are on earth! wilt thou then compel mankind, against their will, to believe!”; Q. 13:31 “If there were a Qur’an with which mountains were moved, or the earth were claven asunder, or the dead were made to speak, (this would be the one)! But, truly, the command is with Allah in all things! wilt thou then compel mankind, against their will, to believe!”

15 Q. 4:115, 72:23. “Unless I proclaim what I receive from Allah and His Messages: For any that disobey Allah and His Messenger, – for them is Hell:They shall dwell therein for ever.”
another religion has been consistently banned, and severe punishment applied as a deterrent. The question remains as to the extent to which the prohibition on conversion from Islam and its punishment are based on clear Qur’anic and prophetic guidance and whether there is room to argue for moving away from the death penalty for conversion to simply consider conversion a sin, not a punishable crime.

An examination of the Qur’an suggests that it does indeed uphold the view that individuals had the freedom to convert from Islam – if they desired – in a broad sense. The Qur’an makes it clear that individuals in Mecca were free to decide not to follow the Prophet and his teachings (17:15, 18:29, 6:104), although it criticizes those Muslims who converted from Islam: “The truth [has now come] from your Sustainer: let, then, him who wills, believe in it, and let him who wills, reject it” (18:29). Similarly, the Qur’an strongly emphasizes that individuals should not be compelled to believe in Islam: “There is no coercion in matters of faith/religion” (2:256). The Prophet’s duty was to deliver the message, not to determine who should or should not believe in this message (Q. 4:80, 24:54, 5:99, 64:12, 3:20, 88:21).

On a number of occasions, the Qur’an declares that those who move away from the true path of God and the Prophet are to be condemned and punished in the life after death (4:115; 72:23). However, in line with its view of individual and personal responsibility for matters of belief and religion, the Qur’an seems to allow Muslims the option to convert to their former religions or to any other religion during their lifetime (3:20; 64:12), even though it declares that this action will lead to the individual’s eternal damnation. The Qur’an also deals with what appears to be apostasy in several verses; but despite condemning those individuals who had – in some cases, repeatedly – committed the sin of apostasy (63:3), the Qur’an envisaged a natural death for them, rather than capital punishment.

There is no evidence to indicate that the Prophet Muhammad himself ever imposed the death penalty on an apostate for the simple act of conversion from Islam (Kamali 1994: 91). Such penalties were imposed by the Prophet in a number of specific cases, and were related to crimes other than apostasy. Notably, a report in the hadith collection of Bukhari (one of the most important and reliable collections of hadith for Sunni Muslims) details a man who came to Medina and converted to Islam. Shortly after his arrival, this man wanted to return to his former religion and asked the Prophet for permission to do so. The Prophet let him go without imposing the death penalty, or any other punishment.16

In early Islamic history, the question of apostasy appears to have been closely associated with the security of the Muslim community, and was defined in relation to combating treachery and aggression. Thus, the issue of apostasy at the time was closely related to both the identity and the survival of Muslims (Saeed 2011). Unbelief (kufr) on its own was not used in the Islamic legal tradition as a justification for war or for any form of capital punishment (ibid.).

However, in the Qur’an, conversion from Islam is strongly discouraged, because Islam is seen as the authentic religion of God and the approved path to God. This is based on belief in the oneness of God and Prophet Muhammad as the messenger of God. From a Qur’anic and prophetic point of view, any person who actually comes to Islam is embracing something that will lead to a very positive outcome in the life to come. Moving away from this promise for the next life is strongly disapproved of. Despite this, the Qur’an asserts that it is an individual’s responsibility to follow the approved path or not to follow it (27:92, 10:108). The vast array of Qur’anic texts and the practice of the Prophet thus demonstrate that while apostasy itself is

16 Sahih al-Bukhari, supra note 6, 9:92-424a.
strongly discouraged, they leave the issue to the individual, respecting the right of the individual to believe or not to believe, to remain a Muslim or to leave Islam. Inductive corroboration thus affirms this right and can be used to argue for an Islamic notion of religious freedom that is in line with Article 18 of UDHR.

Concluding remarks

Given the limitations that exist in traditional Islamic law on different aspects of religious freedom, it is difficult to argue for the universal religious freedom of an individual within a strictly traditional Islamic legal context.

However, as this chapter shows, there is a remarkable degree of support for religious freedom as expressed in Article 18 in the two most important sources of Islam: the Qur’an and the practice of the Prophet. The range of texts and precedents from various sources are so extensive that when brought together using Shatibi’s notion of inductive corroboration, the textual evidence available amounts to a high degree of certainty that Islamic law protects, to a large extent, modern notions of an individual’s right to freedom of belief and religion. In the maqasid literature, protection of religion (hifz al-din) is not explicitly concerned with religious freedom as articulated by Article 18 of the UDHR. Nevertheless, the notion of maqasid can be used to support a more expanded understanding of the protection of religion.

Certainly, there are encouraging signs of change in Muslim-majority countries, and despite the limitations on freedom of religion in traditional Islamic law, many Muslim-majority countries are adopting the standards provided in Article 18 of the UDHR. Obviously practice on the ground varies enormously, and much still needs to be done to implement these values. Given the importance of religious freedom in today’s world, Muslims need to rethink traditional limitations and adopt an understanding of religious freedom that is based on a wide range of Qur’anic and Sunna texts, as well as the broader aims and objectives of shari’a. In doing so they may need to redefine protection of religion (hifz al-din) and broaden it to cover the kinds of freedoms specified in Article 18 of the UDHR. The approach put forward by Shatibi is very helpful in this regard.

To achieve a genuine and sustainable shift in attitude among Muslims, support for freedom of religion must come from within the Islamic tradition. Islam plays a very important role in the social, cultural, political, and legal affairs of most Muslim-majority states (Baderin 2007: 1, 5) and there is evidence that Muslim communities are more receptive to change if it is justified and based on Islamic traditions and ideas (ibid.).

While the focus of this chapter has been on religious freedom in Islam, freedom of religion remains a challenge in some religious traditions. The approach of using key discourses from within the tradition to encourage re-interpretation or change may be helpful for similar debates on religious freedom occurring in other traditions. As one scholar has phrased it, “the implementation of international human rights norms in any society requires thoughtful and well-informed engagement with religion (broadly defined) because of its strong influence on human belief systems and behavior.”

Bibliography


