

Free Speech and Critique of Religion in Contemporary Islam

Free speech (and the limits of expression) is one of the important issues of contemporary human rights and undoubtedly started with the Universal Declaration of Human Rights (UDHR) (1948). It does not mean that it is perfect or beyond critique.¹ It ignored ‘human duties and responsibilities’ before him/herself and God,² on the one hand, and it was written in a specific secular atmosphere in the aftermath of World War II,³ on the other.

There are three concerns here. First, is the impossibility of a comprehensive universal declaration including both human rights and human duties and responsibilities especially in the regions of conflict between believers and atheists.⁴ Second, a comprehensive universal declaration between believers including Abrahamic and non-Abrahamic traditions is not realistic.⁵ It is not clear that such a declaration is practically accessible between different denominations of each tradition such as Catholics and Protestants in Christianity, and Sunnis and Shi‘ites in Islam. Third, freedom of expression and religious freedom are among those rights that reconciliation between these camps are so difficult.

Beyond these practical concerns, the articles of the UDHR have become the norms of international law and scholarly discussions of human rights since the mid-twentieth century. We can say that many of these articles including

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- 1 See, for example, Roger Ruston, *Human Rights and the Image of God* (London: SCM Press, 2004); and Carrie Gustafson and Peter Juviler, eds, *Religion and Human Rights: Competing Claims?* (Armonk: M. E. Sharpe, 1999).
 - 2 Seyyed Hossein Nasr, ‘Standing before God: Human Responsibilities and Human Rights’, in *Humanity before God: Contemporary Faces of Jewish, Christian and Islamic Ethics*, ed. William Schweiker, Michael A. Johnson and Kevin Jung (Minneapolis: Fortress Press, 2006), 299–320.
 - 3 Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting, and Intent* (Philadelphia: University of Pennsylvania Press, 1999).
 - 4 Mohsen Kadivar, *Human Rights and Reformist Islam*, trans. Nikky Akhavan (Edinburgh: Edinburgh University Press, 2021), chapter 7.
 - 5 For example, see Mirsolav Volf, ed., *Do We Worship the Same God? Jews, Christians, and Muslims in Dialogue* (Grand Rapids: William B. Eerdmans Publishing, 2012).

freedom of expression and religious freedom are considered as ‘the disciplines of the reasonable people’ (*sīrat al-‘uqalā’*). It means that the reasonable people in view of their being reasonable (*al-‘uqalā’ bi-mā hum ‘uqalā’*) support freedom of expression and religion. Although Muslim reformists welcome this approach, most Muslim conservatives deny it absolutely or partially.⁶

Free speech and its limits include several issues. I focus here on merely one: a critique of religion, which means the common ground between freedom of expression and religious freedom. This common ground includes several issues of its own. To focus and deepen my discussion, I have chosen only six of them: first, the decriminalization of apostasy and blasphemy versus capital punishment for an apostate and blasphemer or at least civil penalty for the latter; second, critique of Islam in Muslim-majority countries versus critique in those with Muslim minorities; third, critique of Islam by non-Muslims versus critique by Muslims; fourth, scholarly critique of Islam versus non-scholarly criticism; fifth, critique of Islam in public for the masses versus critique in closed circles; sixth, respectful critique of Islam versus defamation of Islam and blasphemy.

The context of these six issues are Articles 18 and 19 of the UDHR.⁷ While the UDHR is not a treaty, and as such does not directly create legal obligations for countries, the 1967 International Covenant on Civil and Political Rights (ICCPR) is a legally binding treaty, for the states which ratified it. There are two related articles in the ICCPR in support of religious freedom⁸ and freedom

6 Kadivar, *Human Rights and Reformist Islam*, chapter 8.

7 Article 18: ‘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.’ Article 19: ‘Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.’

8 The first one is Article 18: ‘1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and

of expression. Although the wording of Article 18.1 in the ICCPR is similar to the UDHR, the former does not specifically mention the freedom to change religion.

Article 19 (ICCPR) reads:

1. Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This is the standard of freedom of speech and freedom of religion in our time. As can be seen, it acknowledges large and broad regions for these two types of freedom as two basic rights for human beings. Before any judgement is made, it is necessary to consider the related articles of the 1990 Cairo Declaration on Human Rights in Islam (CDHRI). It is the declaration of the member states of the Organization of Islamic Cooperation (OIC) (Conference of Foreign Ministers) which provides an overview on the conservative Islamic perspective on human rights. The CDHRI declares its purpose to be ‘general guidance for Member States [of the OIC] in the field of human rights’.

Article 10 (CDHRI) reads:

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

And Article 22 (CDHRI) states:

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari‘a. (b)

moral education of their children in conformity with their own convictions.’

Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Sharī'a. (c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

It is obvious that religious freedom and freedom of expression are unqualified forms of freedom in the UDHR and ICCPR, but both are restricted to the Sharī'a in the CDHRI. There is a big difference between UN documents and the conservative Islam that is presented in the CDHRI.

1. Decriminalisation of Apostasy and Blasphemy

(A) According to Article 18 of the UDHR explicitly, and Article 18.1 of the ICCPR, changing religion or belief is not only not a crime but also an essential part of freedom of religion. CDHRI Article 10 prohibited any 'compulsion' or 'exploitation' in conversion *from* Islam, but it does not condemn the same techniques in conversion *to* Islam.⁹ While apostasy is a crime in traditional Sharī'a (the explicit framework of the CDHRI) with severe punishments, these punishments are not removed, nor is apostasy decriminalised.

The best sources of criminalisation of apostasy in Sunnī Islam is *al-Fiqh al-Islāmī wa-adillatuh* (*Islamic Jurisprudence and Its Evidences*, 1996);¹⁰ and in Shī'ite Islam, the long and detailed article on *irtidād* (apostasy) in *Mawsū'at al-fiqh al-Islāmī tibqan li-madhhab Ahl al-Bayt* (*Encyclopaedia of Islamic Jurisprudence according to the Doctrine of the Household [of the Prophet]*, 2007).¹¹ This is the encyclopaedia of the Iranian Supreme Leader's office and represents

9 For more information, see Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Colorado: Westview Press, 2012), chapter 9.

10 Wahba al-Zuhaylī (1932–2015), *al-Fiqh al-Islāmī wa-adillatuh* (Damascus: Dār al-Fikr, 1996), 6:183–90, 7:621.

11 *Mawsū'at al-fiqh al-Islāmī tibqan li-madhhab Ahl al-Bayt*, ed. al-Sayyid Maḥmūd al-Hāshimī al-Shāhrūdī (Qom: Mu'assasat Dā'irat Ma'ārif al-Fiqh al-Islāmī, 2002–12), 8:353–457. Al-Shāhrūdī (1948–2018), its chief editor, was Chief Justice of the Islamic Republic of Iran (1999–2009) and Chairman of the Expediency Discernment Council (*Majma'-i Tashkis-i Maslahat-i Nizām*) from 2017 until his death. In addition, he was one of the main writers of the Iranian penal code (*Qānun-i Mujāzāt-i Islāmī*, 2013).

conservative Shī'ī jurisprudence. There are many similarities between these two schools. I have narrated both of them in detail elsewhere,¹² but here I omit the former and focus on the main parts of the latter.

The penalty of a *fiṭrī*¹³ male apostate is immediate execution without *istitāba* (being given a chance to repent). As for a *millī*¹⁴ male apostate: if he is asked to repent, he does so, and returns to Islam, then there is no punishment. If not, his execution is consensual. A female *fiṭrī* or *millī* apostate is asked to repent. If she refuses, she is imprisoned, pressured, whipped during the prayer times, and subjected to severe punishments until she repents or dies. The second punishment is dividing the apostate's property among his heirs before his death. The third punishment is annulling the marriage.

Apostasy is criminalised in about twenty Muslim-majority countries including Iran.¹⁵ The most important particular of Article 220 of Iran's penal code is punishment of apostasy that was expressed indirectly and implicitly.

Blasphemy is decriminalised in the UDHR and ICCPR. Article 22, clause (c), of the CDHRI states: 'It [information] may not be exploited or misused in such a way as may violate sanctities and the dignity of prophets', referring to the prohibition of blasphemy, and it is obvious that the framework of this declaration is the Shari'a. In conservative Islam, and for the Sunnīs, this is the Shari'a ruling in the case of blasphemy: 'The four Sunni legal schools have reached consensus that a Muslim man who insults a prophet or one of the angels (*malā'ika*) is to be executed. The Mālikī school, based upon a widespread opinion, says that repenting is not an option.'¹⁶

For the Shī'ites: 'The jurists have reached a consensus that blasphemy [*sabb Allāh, sabb al-rasūl* or *sabb* of one of the Imāms] is apostasy and the person

12 Mohsen Kadivar, *Blasphemy and Apostasy in Islam: Debates in Shi'a Jurisprudence*, trans. Hamid Mavani (Edinburgh: Edinburgh University Press, 2021), 2–4, 27–34.

13 One who was born into Islam.

14 One whose parents were disbelievers at the time of sexual intercourse, and the child converted to Islam and later on left it.

15 Article 220 of Iran's penal code (2013): 'It should be done according to the Article 167 of the Constitution of the Islamic Republic of Iran in the cases of *ḥudūd* punishments which are not mentioned in this bill.' Article 167 of the Iranian Constitution (1989): 'The judge is bound to endeavour to judge each case on the basis of the codified law. In case of the absence of any such law, he has to deliver his judgement on the basis of authoritative Islamic sources and authentic *fatāwā*. He, on the pretext of the silence of or deficiency of law in the matter, or its brevity or contradictory nature, cannot refrain from admitting and examining cases and delivering his judgement.'

16 al-Zuhaylī, *al-Fiqh al-Islāmī wa-adillatuh*, 6:184.

is considered *mahdūr al-dam* (a guilty person whose blood may be shed with impunity). Blaspheming Fāṭima [the Prophet's daughter] and other prophets is attached to apostasy. Blasphemy and apostasy are not the same, even though sometimes they do occur together; executing a blasphemer does not require the ruler's permission.¹⁷ Blasphemy (*sabb al-nabī*) is explicitly expressed in Iran's penal code (*Qānun-i mojāzāt-i Islāmi*, 2013).¹⁸

(B) I have rejected penalising apostasy and blasphemy in the following way: from an Islamic perspective, people have the freedom to choose a religion and a belief system and cannot be compelled to accept the 'true religion' and the 'right belief system'. Islam recognised the diversity of religions and beliefs after its revelation as the divine call to the true religion, in the sense that some responded and others persisted in error. The latter are divided into many groups and sects.

Those who knowingly decide to ignore this invitation out of stubbornness and obstinacy will be punished only in the afterlife. Islam's invitation to others is based on reasoned logic, peace and compassion, as opposed to violence and despotism. Faith pertains to the heart and, as such, it is impossible to force a person to change his or her religion. However, if his or her denial was due to spite and hostility, such a person will face a severe retribution in the afterlife. Given that Islam has inscribed the freedom of religion and faith, any *ḥadīth* that sanctions killing or shedding an apostate's blood with impunity is incompatible with the noble Qur'an and must be rejected. There is no reliable proof from the Qur'an, Sunna, consensus (*ijmā'*) or reason that can establish the validity of executing anyone accused of apostasy or blaspheming the Prophet. On the contrary, such actions violate both the Qur'an and human reason. Moreover, the negative effects of allowing such a practice would be numerous and, as such, would certainly weaken Islam.

Only a sound judicial system can issue a judgement and supervise its implementation. The issuance of a ruling by a *mujtahid* who is qualified to issue a legal opinion (*fatwā*) in the community without undergoing due process in the state's judicial system does not suffice.

The Qur'an absolutely pronounces no death penalty on an apostate and a

17 *Mawsū'at al-fiqh*, 8:364–67.

18 Article 262: 'Anyone who curses the Prophet or the each of the messengers of God or falsely accused them of unchastity (*qadhf*) is a blasphemer (*sābb al-nabī*) and is sentenced to the death penalty. Note: Accusing each of the Shī'ite infallible Imāms of unchastity (*qadhf*) or Fāṭima al-Zahrā' [daughter of the Prophet] or cursing them is blasphemy.'

blasphemer of the Prophet. Traditionalist jurists, by employing derivative *ijtihād*, have arrived at this judgement and claimed consensus by relying on ‘isolated’ *ḥadīths* (*khābar al-wāḥid*). The ruling on killing apostates and blasphemers is incorrect and cannot be implemented on account of the following seven proofs:

First, the necessity of stopping the execution of an apostate or a blasphemer by invoking the secondary injunction (*ḥukm thanawī*) of ‘*wahn* Islam’ (i.e. implementing the punishment would impair or debilitate Islam; avoiding the harm or seeking public welfare or governmental injunction). Second, the necessity of suspending or stopping the *ḥudūd* punishment absolutely or at least the *ḥudūd* that would lead to killing a person during the Imām’s occultation (since the mid-tenth century). Third, since the judgement on killing is based on *thiqa* ‘isolated reports’ (*khābar al-wāḥid*), it is mandatory to exercise caution on matters that lead to shedding someone’s blood (human life). Fourth, when dealing with vital and critical issues, all *thiqa* ‘isolated *ḥadīths*’ (*khābar al-wāḥid*) are rendered non-probative and non-authoritative. Fifth, removing the death penalty for the apostate because of alteration of the subject matter of a ruling or situational context (*mawḍū’*). Sixth, *ḥadīths* that are contrary to explicit and univocal (*muḥkamāt*) Qur’anic verses are rendered non-probative and non-authoritative. Seventh, reason dictates that it is abominable to terrorise a person merely for abandoning Islam or insulting its holy personages or primary injunction (*ḥukm awwalī*) of ‘*wahn* of Islam’.

In conclusion, given that no temporal punishment has been mandated for apostasy, executing anyone for insulting the Prophet, the Qur’an or any of Islam’s other sacred objects is indefensible. The right to life has no relationship to one’s beliefs and convictions. As the results and consequences of one’s faith will only appear in the afterlife, no reward or punishment should be assigned in this world, irrespective of the validity of one’s faith. The prescribed punishments to be carried out in this world pertain to the perpetration of crimes. As no worldly punishment has been assigned for committing sins, apostasy by itself cannot be punished in any way, let alone by capital punishment. Likewise, there is no worldly punishment for remaining an unbeliever and refusing to embrace Islam. A sound judicial system cannot convict and punish such people, because religion is a matter of the heart and personal choice. In addition, the Lawmaker did not proclaim any punishment in this world or in the hereafter for erring in one’s research and study. Of course, in the afterlife an apostate who rebelled and exhibited hostility and enmity to truth will receive a severe retribution.

I classified blasphemy under ‘hate speech’, hence the blasphemer’s execution

is rejected, and punishment is possible only by the judicial system. This light civil punishment can be suspended depending on the level of the society's development.¹⁹

To summarise this section: religious freedom and freedom of expression are not defined in terms of the criminalisation of apostasy and blasphemy. That is to say, there is a deep contradiction between these two types of freedom and the penalisation of apostasy and blasphemy. It is impossible to believe in them both. We can choose only one of them. The claim of religious freedom and freedom of speech of those who did not decriminalise apostasy and blasphemy is baseless and unacceptable.

2. Critique of Islam, Muslim-Majority Countries and Muslim Minorities

The subject of this section is comparing the ruling of critique of Islam as a constant with two variables, Muslim-majority countries and Muslim minorities. Is there any difference between these two situations? Practically, there is no room for critique of Islam in countries or societies where Muslims constitute the majority, while the critique of Islam is smoother and easier in countries or societies where Muslims are a minority. When the Muslims are a majority, they prevent critique of their tradition in legal and even illegal ways. When they are a minority, they do not have authority to do so, and it leads them to tolerate the critique of Islam.

Does this mean that there is a problem in Islam in the case of critique of itself? The answer depends on the types of Islam, or one can say, interpretations of Islam. Conservative Muslims²⁰ do not tolerate any critique of Islam and interpret it as animosity or a plot for weakening or removing Islam. Public media and pedagogy are restricted and censored in this case by the dictatorship of the majority. Islamic states or theocracies intensify this restriction and censorship. Most of the cases of critique of Islam are classified under apostasy and blasphemy in such countries and the critics are sentenced to death or assassinated. There are many examples of this in Asia and Africa.²¹

19 This is the topic of my book *Blasphemy and Apostasy in Islam*.

20 Traditionalists, sometimes called conservatives, are those jurists who adhere to classical *fiqh* rulings and methodology; they constitute a strong majority in religious centres of learning.

21 Abdullah Saeed, *Human Rights and Islam: An Introduction to Key Debates between Islamic*

In contrast, reformist Muslims²² not only do not fear critique of Islam, but also believe that such critiques strengthen the Muslims in competition with other cultures and traditions, on the one hand, and manifest the advantages of Islam and eliminate the probable weaknesses of their religious knowledge, on the other. They argue that even if the critiques of Islam are harmful, it is impossible to prevent them in the time of the Internet and satellites. From their perspective, a 'closed society' is not an Islamic one.

Reformist Muslims compared Muslim minorities who do not only lose their faith, but also find the most progressive tactics for defending their faith, with Muslim-majority countries which tried to reduce or remove the critique of Islam and conclude that the Muslims who live in free societies without any restriction of such critique are better and more up-to-date believers in the case of defence of their faith in modern times than the Muslims who live in closed societies.

I have a memoir very close to this section. I was put in jail by an 'Islamic state' for delivering a critical speech on the Night of Destiny (*laylat al-qadr*), 23 Ramadan 1419 (12 January 1999), in Hussain-Abad Congregational Mosque in Isfahan regarding the 'prohibition of terror in Sharī'a', and for a critical interview ('An overview of the twenty-year record of the Islamic Republic', *Khurdad Daily*, February 14–16 1999) and spent eighteen months of my conviction period.²³ It was precisely the violation of freedom of expression. In May 2000,

Law and International Human Rights Law (Massachusetts: Edward Elgar Publishing, Inc., 2018), 198–200.

22 Reformist Muslims are a spectrum of Muslims who have these characteristics: first, they are aware of the tremendous impact of modernity on humanity and human life, and strive to reconcile religious knowledge with modernity. Secondly, they believe in the necessity of separating the institution of religion from the state (objective secularism). Thirdly, they do not consider traditional *ijtihād* to be sufficient in the derivatives of jurisprudence (*al-furū' al-fiqhī*), but advocate a holistic and comprehensive reform based on the core foundation and principles of Islamic thought and jurisprudence. In contrast to 'semi-reformists', who concentrate on piecemeal reforms, reformists argue that it is not enough to simply reinterpret rulings within the traditional framework, that is, traditional *ijtihād*; what is required is rethinking the underpinnings of classical juristic methodology. They contend that meaningful reform in *fiqh* rulings is the fruit of two deep reforms: that of the juristic methodology (*uṣūl al-fiqh*) and that of its foundations (*mabānī*), which involves other areas of Islamic intellectual thought; in other words, structural *ijtihād*. It is only then that modern issues, such as the emergence of nation-states and the expansion of discourses of citizenship, human rights, gender equality and democracy, can be addressed from within an Islamic framework.

23 *Bahā-yi Azādi: defā'īyyāt-i Mohsen Kadivar dar dadgah-i viji-y- ruḥāniyyāt* [The price of

I received a new book from my family entitled *Violence, Human Rights and Civil Society*, which was written by an atheist author.²⁴ The following question, posed by the author, impressed me a lot: 'If you ever had to live abroad for any reason, where would you rather be? Where do you think your rights may be protected, your opinions may be respected and you're not told to give up your ideas lest you be crucified: in Baghdad, Kabul, Riyadh, Khartoum, Damascus, or Washington, London, Paris and Berlin?!' It was a serious question. After being released from jail, I tried to live in that closed society under the ruling of fundamentalist Muslims,²⁵ but I was restricted more and more. I was fired from my tenured academic job, all of my publications including my websites were banned and now I am writing from exile (United States of America). This is a lived experience of freedom of expression in contemporary Islam. I criticised the weaponisation of Islam or abusing Islam as an instrument for political purposes by the governments of the Islamic state, and one can imagine what happens to someone who criticises Islam.

I can conclude that critique of Islam is permissible with no difference between Muslims in the majority or minority according to reformist Islam. Conservative Muslims, however, use a double-standard criterion: they do not support critique of Islam in Muslim-majority countries, while they use religious freedom and freedom of expression when they are the minority in other countries. This double-standard approach is certainly questionable.

3. Critique of Islam by Non-Muslims and Muslims

freedom: Mohsen Kadivar's defence in the cleric court], comp. Zahra Roodi [Kadivar] (Tehran: Nashr-i Nay, 2000).

24 Mohammad Reza Nikfar, *Khosounat, Hoquq-Bashar va Jāmi'i-yi Madani* (Tehran: Tarh-i Now, 1999).

25 Fundamentalists (or radical Muslims or extremists – I do not have any reservations on the name) are a spectrum of Muslims with the following characteristics: first, they are dogmatic in their religious views and consider themselves empowered to impose their beliefs and ideas on others. Secondly, the establishment of an Islamic state is considered a prerequisite for the main task of implementation of the Shari'a. Thirdly, in order to achieve this main purpose, *violence* is allowed to the extent that is expedient. Fourth, the Shari'a is considered the main source of Islamic state laws. Fifth, among the Shi'ites, the Islamic state is considered equivalent to the political Guardianship of the Jurist-Ruler (*wilāyat al-faqih*). They constitute a much smaller group than traditionalists.

In this section, I try to compare the constant of critique of Islam with two other variables, that is, the religion of the critics. Is there any difference between Muslim and non-Muslim critics? We know that Muslims have more restrictions in the case of apostasy according to the conservative understanding of Islam which criminalises apostasy. A non-Muslim would not be accused of apostasy and be executed, for example. From the same perspective (criminalisation of blasphemy) a blasphemer would be punished severely regardless of being Muslim or non-Muslim.

Critique by a non-Muslim is usually justified as the religious hostility that is predictable, such that the critic would necessarily be a non-Muslim, because he or she did not find Islam perfect and complete. Critique of Islam by a Muslim is divided into at least three types. The first is the critique that easily could be attributed to the misunderstanding or deviation of Muslims' actions from the standards of Islam that are mentioned in the Qur'an and the tradition of the Prophet and his household. This type of critique has been tolerated without any difficulty. The second is the critique of Islam, but not critique of the Qur'an and the tradition of the Prophet and his household. It is the critique of superstitions or local customs or understanding of past jurists or abrogated or time-bound rulings that are considered as Islamic. This type of critique or purification of Islamic teachings is introduced in the authentic *ḥadīth* of Imām Ja'far al-Ṣādiq:

The scholars are the heirs of the prophets because the prophets did not leave any Dirham or Dinar (units of money) as their legacy. What they left was certain pieces of their statements. Those who acquired anything of these pieces of their statements they have certainly gained a large share. You must be very careful, when acquiring such knowledge, to see from what kinds of people you receive them. Among us (the Ahl al-Bayt, household of the Prophet) after every one there comes a just person who removes (and exposes) the forgeries of the exaggerators from it (knowledge), the infiltrated materials of the fallacious ones and the interpretations of the ignorant ones.²⁶

This is the precise job of the true '*ulamā*'. These reforms or corrections or cultural surgery are on controversial issues. Many conservative or ultra conservative '*ulamā*' and their followers insist on their old-fashioned understandings and do

26 Muhammad ibn Ya'qub al-Kulayni, *al-Kaḥfi*, trans. Muhammad Sarwar (New York: The Islamic Seminary, Inc., 1999), 1:61.

not listen to reformist '*ulamā*'. Public acceptance of these reforms depends on religious and cultural authority of reformist '*ulamā*'. These Islamic reforms are not acceptable by many conservative '*ulamā*', while they are the only way of reviving Islamic teachings. We should tolerate these contradictory viewpoints. Imposing each of these two viewpoints, fanatic and reformist, that each of them are supported by two types of '*ulamā*' is not acceptable. Freedom of expression requires tolerance of both. Critique of each of them is an academic right.

The third type of critique of Islam is the critique of God, His Prophet, the Qur'an and the Shi'ite Imāms by a Muslim. The critiques by non-Muslims are understandable, tolerated and justified as the hostility or hatred or misunderstanding of a disbeliever, but these critiques by Muslims are problematic. These critiques are the signs of inconsistency with Islamic faith according to the mainstream of Islamic thought.²⁷

The key question in this type is, how can a person believe in these statements and simultaneously consider him/herself a Muslim? We can criticise these statements and argue that they are wrong and could not be introduced as Islamic teachings, on the one hand, and give evidence for their inconsistency with Islamic teachings, on the other, but we are not allowed to call such a critic non-Muslim as long as he or she considers him/herself a Muslim. The only judge for the claim of Islam is God in the hereafter. We are in charge of accepting the appearance of people in the matter of faith and religion. And this is an important principle of the decriminalisation of apostasy and blasphemy.

27 The following viewpoints could be examples of this type: the Qur'an is not the word of God but it was written by Muhammad; the revelation is the Prophet's dreams, and the Qur'an needs *ta'wīl* (interpretation) not *tafsīr* (exegesis); the revelation followed the human personality of Muhammad; Muhammad was an authoritarian figure who forced people of his time to convert to Islam; Islam meant submission to his political power even without faith and believing in God and His Prophet; the real meaning of God's servant ('*abd Allāh*') is His slaves; the Qur'an is the book of fear (*kitāb al-khawf*); the Qur'an and Islam were imperfect and incomplete because of the lack of 'love' – it was the Sufis such as Rumi who added love to Islamic teachings, and as such the *Mathnawī* and *Diwan-i Shams* of Rumi are the references/criteria not the Qur'an; God is an arbitrary ruler who should be worshipped to be immune of His punishment; the real meaning of God's punishment in the Qur'an is torture; the Qur'an, Muhammad as a prophet and even God are not free of error and mistake; the Qur'an is Muhammad's interpretation of the world; it is doubtful that the Qur'an was written by one person in the name of the Prophet – it could have been written by a team of Arabs and non-Arabs before or after the Prophet's life; there is no required worship in Islam, but prayer or worship are totally optional and voluntarily.

Critique of Islam is free, but responding to such critiques and arguing against them also is free. The authority of the arguments of each side determines the winner, not removing or killing the critics. In other words, the logic of Islam is the logic of demonstration not the logic of force and coercion. There is a big difference between the two.

We should tolerate dissidence, innovation, new ideas or critique of Islam. It means that these viewpoints, even when we are convinced that they are wrong, are not crimes and their producers are not to be punished. This is the meaning of freedom of expression. But it does not mean that no one has the right to criticise these innovative ideas. We should be ready to participate in a fair competition. It is not acceptable to cover our weakness or laziness with the concern of restriction of the freedom of expression.

4. Scholarly Critique of Islam versus Non-scholarly Criticism

The subject of this section is two other variations, that is, scholarly and non-scholarly critique in relation to our constant, critique of Islam. Non-scholarly criticism of Islam was not considered in the pre-modern period. Although most of such critiques may be deemed baseless, irrational or hedonistic, we cannot ignore the impact and importance of non-scholarly criticism of Islam in mass media, global social networks and the Internet in the modern era. Many of these critiques are organised to shape Islamophobia, and they help form the attitudes of Western audiences to Islam.

The world is described as a small village in modern times. If this is true, we should acknowledge that the influence of these critiques of Islam on the Muslim masses is undeniable. Banning them is not possible, issuing fatwas of prohibition (*tahrim*) of reading or listening or watching them is not effective and sentencing the producers to severe punishment is not the solution. What can Muslims do in such a case? First, we should acknowledge the non-scholarly critique of Islam in the modern period as an unpleasant reality. Second, we should respond to these critiques in a scholarly way, using language and style that is understandable by the masses. These arguments will start competing with those critiques and the non-scholarly defamation of Islam. This is exactly the implementation of a Qur'anic teaching: 'Call unto the way of thy Lord with wisdom and goodly exhortation. And dispute with them in the most virtuous manner. Surely thy Lord is He who knows best those who stray from His way,

and He knows best the rightly guided' (16:125).²⁸

Scholarly critique of Islam has a rich history in the lived experience of Muslims. There was not any red tape for scholarly critiques in the traditional seminary. The most important issues in Islamic theology and philosophy are the unity of God, the hereafter and prophesy. For example, all of them were criticised respectively by Sa'd ibn Manṣūr Ibn Kammūna²⁹ (1215–84) in his *Shubha* (*Dubious Issue*), Omar Khayyam (1048–1131) in his *Rubā'īyyāt* (poetry in the form of quatrains)³⁰ and Abū Bakr Muḥammad ibn Zakariyā al-Rāzī (854–925) in his attributed theory of religion.³¹

Although the martyrs of Sufism al-Husayn ibn Manṣūr al-Ḥallāj³² (858–922), 'Ayn-al-Quzāt Hamadānī³³ (1098–1131) and Shihāb al-Dīn Yaḥyā ibn Ḥabash Suhrawardī³⁴ (1154–91) were executed by the fatwas of close-minded conservative jurists of their times, they were exceptions, and Sufis grew and produced their masterpieces in the margins of *fiqh* (jurisprudence) and *kalam* (scholastic theology) works. There were pressures and restrictions on some of the philosophers, mystics and dissidents by the close-minded conservative jurists in the time of the Safavids (15701–1736) and Qajarids (1789–1925) but Islamic philosophy and mysticism continued their academic lives successfully.³⁵ I confine myself to two examples from these two periods. Ṣadr al-Dīn Muḥammad Shīrāzī, also called Mullā Ṣadrā³⁶ (1572–1640), one of the foremost Muslim philosophers in

28 Seyyed Hossein Nasr, editor-in-chief, *The Study Quran: A New Translation and Commentary* (New York: HarperOne, 2017).

29 Ibn Kammūna, *al-Kāshif (al-jadīd fī al-ḥikma)*, ed. Ḥamid Nāji Iṣfahānī (Berlin: Freie Universität Berlin, Institut für Islamwissenschaft; Tehran: Iranian Research Institute of Philosophy, 2008), chapter 7, section 2. He himself tried to respond to the 'dubious issue'.

30 Edward FitzGerald, ed., *The Rubā'īyyāt of Omar Khayyam* (New York, 1942).

31 Sarah Stroumsa, *Freethinkers of Medieval Islam: Ibn al-Rāwandī, Abū Bakr al-Rāzī and Their Impact on Islamic Thought* (Leiden: Brill, 2016).

32 Carl W. Ernst, ed., *Hallaj: Poems of a Sufi Martyr* (Chicago: Northwestern University Press, 2018).

33 Arthur John Arberry, *A Sufi Martyr: The 'Apologia' of 'Ain al-Qudat al-Hamadhani* (London and New York: Routledge, 2008).

34 Mehdi Aminrazavi, *Suhrawardi and the School of Illumination* (New York: Routledge, 2013).

35 Seyyed Hossein Nasr and Oliver Leaman, eds, *History of Islamic Philosophy* (New York: Routledge, 2015).

36 Fazlur Rahman, *The Philosophy of Mulla Sadra Shirazi* (Albany: State University of New York Press, 1976).

Islamic history and the founder of *al-ḥikma al-muta'aliya* (the transcendent philosophy), in some of his works described some of the pressures and restrictions of his time.³⁷ He was accused of apostasy because of his theory of *wahdat al-wujūd* (unity of existence). Shaykh Mohammad Hadi Tehrani (1835–1903), one of the leaders of Constitutionalist movement, was accused of blasphemy and because of that he was called Shaykh Hadi Mukaffar ('the Unbeliever').³⁸

Despite some of its tragic exceptions, scholarly critique of Islam has been the best examples of freedom of expression among Muslims, and has continued to the present.

5. Critique of Islam in Public for the Masses versus Critique in Closed Circles

The subject of this section is comparing the constant of critique of Islam with two other variations, 'in public for the masses' and 'in closed circles'. The conventional image of this comparison could be described in the following way: freedom of expression including critique of Islam is acceptable in closed circles especially academic ones. The correct place of responding to critiques of Islam is closed academic circles. '*Ulamā*', or the scholars of Islam, clarify the perfection of Islam, and prove the invalidity of any suspicions or dubious issues about Islam. They also welcome debate with critics of Islam. Closed non-academic circles are somehow tolerated, not because of their theoretical permission in conservative Islam, but because of the difficulty or even impossibility of monitoring such circles. Imagining their low influence on the masses, these circles are ignored by '*ulamā*' or Islamic states.

The story of critique of Islam in public for the masses is something else. Conservative Islam requires hard restrictions in public. The concern is not shaking the faith of the masses due to weak public information. This concern is a thoughtful one, especially when we know that many of these suspicions

37 Ṣadr al-Dīn Muḥammad Shīrāzī, *al-Ḥikma al-muta'aliya fī al-asfār al-'aqliyya al-arba'a* [The transcendent philosophy of the four journeys of the intellect] (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1990), 1:6–7; *Risāla-yi Sih Asl*, ed. Mohammad Khajavi (Tehran: Mawla, 1997); *Majmū'ī-ye Ash'ār Ṣadr al-Dīn Shīrāzī*, ed. Mohammad Khajavi (Tehran: Mawla, 1997); *Masnavi-yi Mullā Ṣadrā*, ed. M. Fayzi (Qom: Kitābkhāna-yi Mar'ashi Najafī, 1999). The latter two are editions of selections of Mullā Ṣadrā's poetry.

38 Ne'matullah Safari Forishani, 'Resali-yi Haqq wa Hukm wa Sharh-i Hal-i Shaykh Muhammad Hadi Tehrani', *Nami-yi Mufid* 1, no. 4 (Spring 1996).

or dubious issues about Islam are organised, and Islamophobia is a political agenda in the post-colonial period. The background of this approach is Plato's *Republic*, which justifies censoring for the protection of people's expediency and real goodness.³⁹

There is a big question here. If the censor and restriction of the public sphere were possible in the pre-modern period, are they possible in the modern era? This type of closed society can be found in North Korea and China. Modern technology, especially the Internet and satellites, negate the possibility of restriction of the public sphere. Regional or local media (radio, television and magazines) in Muslim-majority countries restricted the critiques of Islam, but they could not deny that many citizens secretly listen, watch and read censored media. Comparing the believers of two different societies, the believers of open societies are more enlightened and immune of deviation than believers of closed societies. These are two types of anthropology. Conservative '*ulamā*' should be more optimistic regarding human beings. Islamic faith could be protected in open societies regarding the freedom of expression.

Freedom of expression in Muslim-majority countries does not mean preaching atheism or anti-Islam, or distributing propaganda against Islam, but it means that these ideas could be broadcast in private media, or could be taught or discussed in private academic centres. Discussing these issues in public media, academies and research centres would be done in the framework of regional law.

Morteza Motahhari (1919–79), the distinguished Islamic theologian, a few months before his assassination expressed very important points in his speech on the freedom of belief that was published in the *Future of the Islamic Revolution*. I narrate a brief segment of his detailed discussion, because of its high importance (the longest quotation in this paper). He mentioned the samples of freedom of discussion in the history of Islam:

Non-Muslims and disbelievers came to the Mosque of the Prophet in Medina and freely denied the principles of Islam, rejected God or expressed that they did not believe in God; the other event [is that] they sat in the Holy Mosque (*Masjid al-Ḥarām*) in Mecca and said they disbelieved in God, in the Prophet, in the pilgrimage (*hajj*) and even mocked the pilgrimage. Islam could remind [us] because of these freedoms. If those who denied God and Islamic teachings in Medina

³⁹ Plato, *The Republic*, Book 3.

in early Islam were beaten or killed, Islam would not exist today. Islam has survived, because it encountered different thoughts which were in contradiction with Islam bravely and frankly.

Al-Mufaḍḍal ibn ‘Umar al-Ju‘fī [d. ca. 762], one of the companions of Imām Ja‘far al-Ṣādiq and theologians of the eighth century, came to pray at the Mosque of the Prophet (*Masjid al-Nabī*) in Medina. A few materialists (*Dahrī*) started a discussion on the non-existence of God and rejected the prophecy of the Messenger of God. After his prayer, al-Mufaḍḍal, who was very angry, challenged them strongly. The materialists told him: ‘First of all, tell us from which group you are. Are you a companion of Imām Ja‘far al-Ṣādiq?’ He confirmed [this]. The materialists told him: ‘Okay! We discussed in his presence much more than this several times, and he did not get angry. He listened carefully to our discussions, and then criticised our claims one by one.’ This is the method of our Imām, Ja‘far ibn Muḥammad al-Ṣādiq. This is the reason of the survival of Islam.

He continued:

The discussions and arguments of the materialists were written and protected by our ‘*ulamā*’. The materialists’ books, if there were any, have not survived and did not reach our time. Abū Ja‘far Muḥammad b. ‘Alī, well known as Shaykh al-Ṣadūq or Ibn Bābawayh (after 917–91), in one of his books entitled ‘*Uyūn akhbār al-Riḍā*’ (*The Sources of Traditions on [Imām] al-Riḍā*), compiled the *ḥadīths* of the Eighth Shī‘ite Imām, ‘Alī ibn Mūsā al-Riḍā. A large part of this book comprises the Imām’s debates with Sunnī Muslims, Christians, Jews, the Sabaeans, Zoroastrians (*Majūs*) and materialists (*Dahrī*) in the time of al-Ma’mūn al-‘Abbāsī (768–833). Some of these non-Muslim scholars expressed blasphemous ideas against the Prophet and Islam.

Abū Manṣūr Aḥmad ibn ‘Alī al-Ṭabrisī, the twelfth-century scholar, compiled the arguments and debates of the Prophet and Imāms against their opponents in his book *al-Iḥtijāj ‘alā ahl al-lijāj* (*Argumentation against the People of Stubbornness*), best known as *al-Iḥtijāj*. Muḥammad Bāqir ibn Muḥammad Taqī al-Majlisī (1628–1699), in his narrative encyclopaedia *Biḥār al-anwār al-jāmi‘a li-durar akhbār al-a‘immat al-āthār* (*Seas of Lights: The Collection of Pearls of the Reports of the Pure Imāms*), compiled the arguments and debates of the Prophet and Imāms

in section four (volumes 9 and 10), *Kitāb al-Iḥtijājāt wa-l-munāẓirāt* ('on argumentations and debates'), containing eighty-three chapters. This is the way of survival of Islam.

Motahhari concluded:

I advise the youths and proponents of Islam: do not imagine that the way of protection of Islam is negation of freedom of expression. Islamic beliefs and Islamic philosophy are not preserved by not letting others express their ideas. No! let them talk, do not let them betray [Islam]. Keep in your mind that Islam could not be guarded by preventing others to express their thoughts and beliefs. The only way that we can guard Islam is [by] *logic*, regarding freedom [of expression] and encountering opposite thoughts explicitly, frankly and clearly.⁴⁰

He means by 'logic' demonstration (*burhān, istidlāl*), not force and suppression. Motahhari strongly advocated the freedom of expression. His colleague Hossein-Ali Montazeri Najaf-Abadi (1922–2009), my mentor of *fiqh* and ethics, continued this way for three decades.⁴¹ My brief comment on Motahhari's speech is his last point: 'Do not let them betray [Islam].' Does it mean that '*ulamā*' or Muslim governments should examine each speaker before expressing his or her ideas, and be sure that there is no betrayal? If so, practically it opens the arbitrary restriction of freedom of expression in the name of prevention of betrayal. This is not acceptable.

Motahhari created the difference between the freedom of thought (*fikr*) and the freedom of belief ('*aqīda*) by accepting the reasonability of the former, and by denying the latter because of the rational possibility of incorrectness of some beliefs;⁴² and it is not an acceptable position. This is because thinking does not require taking permission from any authority, and in general it is not preventable. Freedom of thought is neither the subject of challenge, nor a favour to be accepted from Motahhari. Where there is room for critique and dispute

40 Morteza Motahhari, *Ayandeye Enqelab-e Eslami* [Future of the Islamic Revolution] (Tehran: Sadra, 2006), 46–49.

41 Hossein-Ali Montazeri Najaf-Abadi, *Hukūmat-i dīnī va huqūq-i insān* [Religious state and human rights] (Qom: Sarā'i, 2008).

42 Morteza Motahhari, *Piramoun-e Jomhuri-e Eslami* [On the Islamic Republic] (Tehran: Sadra, 1989), 87–136; Morteza Motahhari, *Piramoun-e Enqelab-e Eslami* [On the Islamic Revolution] (Tehran: Sadra, 1989), 6–22.

is the freedom to express one's views and the freedom to act in accordance with them. Thus, making a distinction between thinking and belief does not solve the problem. Which beliefs do introduce themselves as false or incorrect? Those who are faced with such a division will take their place on the side of those who deny the freedom of belief and religion.⁴³

To conclude this section: freedom of expression in public and private is the best way of spreading Islam and strengthening Islamic thought. Freedom of expression provides a competitive sphere, and the winners will be those who are stronger in argumentation, theoretical knowledge, practical dialogue and in convincing the people. Censorship, banning media, restriction or violation of freedom of speech are not the solution.

6. Freedom of Expression and Blasphemy

The subject of this section is the most controversial issues related to the freedom of expression in Islam, and it is its key question: Does freedom of expression include blasphemy? Many believers including Muslims distinguish respectful critique of Islam, on the one hand, from defamation of Islam and insulting or cursing or mocking the Prophet, his household and his Companions, on the other. It means that the freedom of expression in Islam in both areas of individuals and religions does not include the freedom to ridicule, insult and make a mockery of anyone, especially prophets, while critique of religion is allowed.

The UDHR and ICCPR, which recognise freedom of expression, define its domain as 'respect of the rights or reputations of others, and the protection of national security or of public order, or of public health or morals'. Muslim countries have repeatedly tried to ban insults to Muslim beliefs by relying on this clause and have never succeeded. This is because the clause deals with violations of the rights of 'individuals', and no rights are recognised for 'religions' (or followers of religions). That is, insulting an 'individual' can be a crime, but insulting the 'religious beliefs' of individuals in these documents is not considered a crime in principle!

The Human Rights Council thus observes that 'in the framework of international human rights law, the combination of "defamation" with "religion" remains unclear'. The other problem is that many Muslim-majority countries

43 Kadivar, *Human Rights and Reformist Islam*, 225.

do not have codified definitions of the crime.⁴⁴

Unlike what I wrote a few years ago,⁴⁵ the argumentation based on ‘hate speech’ for excluding blasphemy from freedom of expression, in the framework of United Nations documents, is problematic. There is a deep conflict between Islamic thought and United Nations documents. What can we do or what should we do? Practically, although the Muslims’ main purpose has been rejection or banning blasphemy, mockery or insulting the Prophet or Islam, in the West where the Muslims are a minority, they cannot do anything. In Muslim-majority countries, although they have restricted the freedom of expression, the blasphemy laws ‘are often used by governments to suppress unorthodox religious views or the governments’ oppositions under the guise of protecting religion’.⁴⁶

As Abdullah Saeed continues: ‘Even if blasphemy laws do not formally exist in a state, there have been cases where individuals have taken the law into their own hands and murdered accused blasphemers for their apparent violation. For instance, in 2017, Pakistani student Mashal Khan was accused of blasphemy and killed by fellow students after a debate in which he raised sensitive theological questions. NGOs in the country estimate 65 people have been killed extrajudicially in Pakistan since 1990 after being accused of blasphemy.’⁴⁷

The other example is the gripping story of Rāfiq Taqī (1950–2011), an Azerbaijani journalist and writer, who was condemned to death by Iranian Shi’ite authority Mohammad Fazel Lankarini (1931–2007) for a blasphemous news article in 2006.⁴⁸

Theoretically, defamation of Islam and insulting or cursing or mocking the Prophet or his household intentionally is a sin and ethically worthy of blame. But penalising these actions or utterances under the label of blasphemy is problematic. The Qur’an does not criminalise blasphemy. The *ḥadīths* of considering the blasphemer as *mahdūr al-dam* (a guilty person whose blood may be shed with impunity) are invalid for several reasons.⁴⁹ Undoubtedly,

44 Paul Marshall, ‘Exporting Blasphemy Restrictions: The Organization of the Islamic Conference and the United Nations’, *The Review of Faith & International Affairs* 9, no. 2 (2011): 61. Marshall’s article concentrates on OIC member countries.

45 Mohsen Kadivar, ‘Islam: Between the Freedom of Expression and the Prohibition of Hate Speech’, in *Human Rights and Reformist Islam*, 321–24.

46 Saeed, *Human Rights and Islam*, 183.

47 Ibid.

48 My book *Blasphemy and Apostasy in Islam* takes this event as a case study.

49 Kadivar, *Blasphemy and Apostasy in Islam*, 146–65.

severe punishment for blasphemy is ‘*wahn* of Islam’ (i.e. implementing the punishment would impair or debilitate Islam). Light civil punishment could be implemented in developing countries to pave the way for absolute decriminalisation of blasphemy.

I want to add one more essential point here. Islamic jurisprudence should be revisited in the light of freedom of expression and religious freedom. The Qur’an and the tradition of the Prophet and the Imāms support these two rights strongly. This revisiting is a return to Islamic standards.

Free speech and the limits of expression are the new problems (*al-masā’il al-mustahdatha*) in contemporary Islam. Its subject matter (*mawḍū’*) is new too. There are several new dimensions that cannot be found in early Islam, or in medieval times. Although we can learn from the Qur’anic teachings, as well as the method of the Prophet, Imām ‘Alī and other Imāms, it is obvious that the traditional derivatives of jurisprudence or *ijtihād* (*al-furū’ al-fiqhī*) are not sufficient and we need structural *ijtihād*, that is, *ijtihād* in principles and foundations (*al-uṣūl wa-l-mabādī*).⁵⁰ The problem of freedom of expression is less juridical (*fiqhī*) and more related to the *mabādī al-fiqh*, or pre-judicial principles, such as anthropology, criminology, international criminal law and history, which may be termed the requirement of one’s time and place.

50 Mohsen Kadivar, ‘Reforming Islamic Thought through Structural Ijtihad’, *Iran Nameh: A Persian–English Quarterly of Iranian Studies* 30, no. 3 (2015): xx–xxvii.