Blasphemy and apostasy laws relate to the implementation of the so-called anti-Islamic legal principles. Furthermore, the apparent harshness of the legal systems, as this paper explores, these include the death penalty. Despite the grave nature of the offences, the precise remit of punishment for apostasy and blasphemy remain the subject of intense controversy. The Quran condemns apostates noting that ‘for those who disbelieve in their Lord is the chastisement of hell, and an evil resort it is’ (Quran 67:6) and ‘whose seeks a religion other than Islam, it shall not be accepted from him, and in the life to come he shall be among the losers’ (Quran 3:84–86). Despite the condemnation of apostates, the Quran does not explicitly prescribe criminal sanctions: the only punishment, albeit a serious one, is eternal hell in the hereafter. The sanctioning of the death penalty for apostates is derived from a Sunna of the Prophet, whereby the Prophet commanded ‘whoever changes his religion, kill him’ (Khadduri, 1955). However, as the Prophet did not implement this sentence himself, the validity of this Sunna is open to challenge.

Both instances have precipitated considerable violence at a global level, despite both instances occurring outside of Muslim majority states. In Muslim majority states, particularly those enforcing the Sharia – Islamic legal system – there have been demands for the punishment of blasphemers and apostates. Such demands can be accommodated within the criminal justice systems of many Sharia-compliant states: in these states apostasy and blasphemy against Islam are recognised as criminal offences, with the respective legal systems sanctioning severe penalties, including the death penalty. Despite the apparent harshness of the legal systems, as this paper explores, these punishments are based only upon Islamic traditions and subjective interpretations of the Sharia, rather than any established, firm legal principles. Furthermore, the implementation of the so-called anti-blasphemy and apostasy laws relate almost exclusively to eliminating either political dissidents or targeting vulnerable religious minorities.

Islamic law is often referred to as the Sharia. Sharia places its primary reliance on the Quran (the Muslim Holy Book) and the traditions and practices of Prophet Mohammad, known as Sunna. Different Islamic Schools have also with varying degrees relied on a number of secondary sources of Islamic law. Within the Sharia, apostasy and blasphemy are treated separately, although there is often considerable overlap. Apostasy (also known as Ridda) occurs when a Muslim (by his words or actions) renounces and rejects Islam. Rejection or criticism of the All Mighty or His Prophet is perceived as an insult to Islam, offensive and routinely regarded as blasphemous. Apostasy is universally acknowledged by Muslim jurists as a Hadd offence alongside adultery, defamation, alcoholism, theft, brigandage and rebellion, and corruption of Islam (Bassiouni, 1982) – the most serious offences within the Sharia, for which fixed, mandatory punishments have been prescribed. Classical, as well as some modern, interpretations of Sharia regard the death penalty as the most appropriate punishment for apostates. Blasphemy connotes the insult of God or Prophet Mohammad and other revered figures in Islam, and can be committed by believers and non-believers alike. Apostasy from Islam and blasphemy against Islam therefore remain (and have always remained) unacceptable.

There are thus no clear, unequivocal Sharia principles sanctioning the imposition of criminal liability upon apostates. The Quranic injunctions are no more than comments on vile or immoral behaviour. Even critics acknowledge the absence of any criminal law sanctions for apostates. Arzt (1995–1996) notes that Quranic ‘verses cajole the Muslim into adhering to the faith, to avoid the temptation to convert, but the exhortation is moral, not penal. Moreover, during his lifetime, Muhammed is said never actually to have executed persons, who, once having adopted Islam later renounced it’. There are also well-publicised disagreements amongst the four Sunni Schools of Islam as to the penal punishment to be awarded to apostates: the Hanafis would not agree to the execution of women apostates, while the Shafi and the Malikis allow period for repentance before the implementation of the death penalty. More recently, a growing body of Islamic jurists have relied on Quranic
verses which advocate absolute freedom of religion. In the re-
interpretation of classical Sharia, these jurists argue for the recognition of a guaranteed right of freedom of
religion or belief including atheism or the rejection of Islam (Rehman, 2005). Some other modern Islamic
scholars reserve penal sanctions only in instances where apostates challenge the writ of the Islamic
state. Similar controversies are also found in relation to blasphemy within the Sharia. Juristic opinion
remains divided on the scope of punishment in relation to blasphemy, in the absence of unequivocal
statements in the Quran and Sunna. Consequently, a significant body of
Islamic jurists have restricted the criticism of blasphemers to moral
condemnation and punishment in the hereafter. However, there is
considerable juristic opinion which perceives blasphemy as an offence
warranting serious criminal law sanctions, including imprisonment,
flogging, and the death penalty – as demonstrated in official state
policies.

In the presence of such significant uncertainty and ambiguity, the
continued retention of penal laws within Islamic states targeting
apostasy and blasphemy is notable. In explaining this phenomenon, a
number of patterns emerge. With the politicisation of Islam, the
criminal justice systems in several Muslim majority states have been
manipulated to empower the political elite (often working in
conjunction with religious clerics). Secondly, the enforcement of
draconian and arbitrary anti-
blasphemy legislation in Pakistan. While ostensibly aimed at the
Islamisation of Pakistan, the primary
purpose of these laws was to strengthen Zia’s theocratic and religiously fundamentalist regime. Chapter XV
of the Pakistan Penal Code (PPC) 1860 (as amended) lists in Section
295–297 a series of offences ‘relating to Religion’. The most controversial, however, has been the interpretation
and application of Section 295–C of the PPC, which has made it an
offence (subsequently held to be punishable by death) to make
derogatory remarks about the Holy Prophet. The interpretation and
application of the so-called anti-
blasphemy laws, in particular Section 295–C, has been extremely
unfortunate. Muslims as well as non-
Muslims have been charged with the
offence of blasphemy, with spurious charges such as support for Rushdie,
or for the Ahmadis displaying the
Kalma Tayyaba in their shops or for offering Azan (Islamic call for
prayers) (Rehman, 2001). It must be emphasised that the overall impact
of these laws has been regrettable;
not only have they produced a culture of religious intolerance, bigotry, and fanaticism but they also
deter any form of rational and tolerant expression on matters pertaining to religion. This has
created an environment which inculcates a sense of fear; religious extremists consider any criticism of
existing political and socio-
economic evils within the ‘Islamic State’ to contravene the blasphemy
laws. Cases have been registered
against non-Muslim minorities and Muslims alike, under the blasphemy
laws. The situation is such that even a recommendation to reconsider the
existence of these laws potentially
provokes serious recriminations and, therefore, any official proposal of
repeal appears unlikely.

The primary sources of the Sharia – the Quran and Sunna – disapprove of blasphemy and condemn
apostasy. The Quran, however, does not provide any
criminal sanctions for apostates or blasphemers in the manner
that sanctions punishments for adulterers or thieves. Furthermore, there are Quranic verses which
provide compelling evidence to support freedom of religion and
freedom of expression. This paper has attempted to establish that the
regimes which continue to apply punitive sentences for blasphemy or
apostasy do so primarily for selfish, political motives. Apostasy and anti-
błasphemy law are regularly abused: these laws are inherently vague are
applied arbitrarily. Neither the Sharia nor international human rights law
sanctions their application (Rehman, 2009).

References
Bassiouni, M.C. (1982), ‘Sources of
Islamic law and the protection of human rights in the Islamic criminal justice
system’, in Bassiouni, M.C. (ed.) The
Khadduri, M. (1955), War and Peace in the
Rehman, J. (2001), ‘Minority rights and the constitutional dilemmas of Pakistan’,
Rehman, J. (2005), Islamic State
Practices, International Law and the
Threat from Terrorism: A Critique of the
‘Clash of Civilizations’ in the New World
Rehman, J. (2009), International Human
Rights Law, London: Longman.

Javaid Rehman is Professor of Law and Head
of Brunel Law School.

Javaid Rehman is Professor of Law and Head
of Brunel Law School.