



Jamal Al-Banna`s position on Islamic legal rulings of *Hijab* and apostasy

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Abstract

Interpretations on the meaning of Hijab (veil) and its legality in Islamic law have triggered attention in the recent years particularly in the Muslim Sunni world. Many Muslim scholars, organizations and academic institutions have made efforts to define the veil for Muslim women. There seems to be incoherent interpretations on the justification of use of Hijab as either compulsory or voluntary, considering the size and nature of its usage. Despite the effort of previous scholars in this regard, the pronouncement by Jamal Al-Banna that use of Hijab by Muslim women is not obligatory but mere Arab culture is a serious liberal legacy that requires urgent evaluation from Shariah perspective. Therefore, this paper aims to examine the concept of hijab and apostasy in Islam and see to what extent Jamal Al-Banna`s argument is consistent with the true Islamic perspective.

Keywords: hijab, apostasy, Islamic law, Jamal Al-Banna

Introduction

Hijab which is the Muslim female dress has recorded varying interpretation among researchers, thinkers and orientalist from different parts of the world. In the recent years, many Muslim scholars, organizations and academic institutions have made efforts to define the veil for Muslim women. There are some incoherent interpretations on the justification of the use of Hijab as either compulsory or voluntary, the size and nature of its usage. Additionally, there other juridical questions which need to be methodologically dealt with: Is the hijab a headscarf, veil or burqa? Does it cover the face? According to Lisanu-l-arab, one of the greatest Arabic dictionary, Hijab is defined as the veil for blocking thing, to make obscure an action from behind the veil.

The meaning of blocking in the lexical term is to hide the case or something: cover it; preventing from entering or inheriting, making it a barrier. (Blocking) the thing: hide it (hide) and abstained, a total barrier between two things. Despite all the literal meaning of the hijab in Arabic language and the modern Merriam-Webster is a piece of cloth worn usually by women over the head and shoulders and sometimes over the face. It is also something that covers or hides something else.

However, Jamal Al-Banna, among others, has issued a series of controversial pronouncements on the justification of Hijab in Islam. This position is not new particularly from the orientalist researchers and thinkers.

According to Egyptian magazine; Egypt today, Jamal Al-Banna was quoted to have said:

On the veil, El-Banna states that neither the Qur`an nor authentic Sunnah demand it of women. "There is no specific verse that obliges women to wear headscarves, but you find verses setting the broad lines for [public modesty or decency].

Although, the liberal position of Jamal on the authenticity of

Hijab as women`s dress was supported by many evidences, hence, there is a need to critically study some of his evidences, in comparison with the position of mainstream Muslim jurists on the justification of use of Hijab for Muslim women. The researcher, therefore, aims to conduct juristic analysis of these positions.

Jamal Banna ^[1] on Jijab

We find that the approach used by al-Bana in understanding the Qur`anic text has influenced the issue of veil. His opinion is different from the one agreed upon by majority of scholars both ancient and modern regarding women`s hijab and their veil. As we said earlier, al-Bana does not care about the views of exegetes and jurists. Rather, he affirms that an understanding of the Qur`anic text should be from the Qur`an itself.

Jamal El-Banna was once quoted in one of the "Egypt Today" an Egyptian magazine saying thus, "There is no specific verse that obliges women to wear headscarves, but you find verses setting the broad lines for [public modesty or decency]. According to him, the Quranic meaning of the verse that states: 'and tell the believing women to lower their gaze and be modest, and to display of their adornment only that which is apparent and to draw their veils over the bosoms [24:31].'

He argued that the verse does not categorically mention that women should cover their hairs. Had the Qur`an wanted to oblige women to do so, it would have stated it very clearly.

However, he further queried why expressions used in the Quran could not be subjected to specific understanding because he believed it has varying interpretations? Jamal Al-Banna posited in his book, "Al-Hijab" that Quran can be

¹ Although, Jamal Al-Banna is a younger brother of Hassan Al-Banna. Both are from same parents; however they both differ in ideology and methodology of interpretation of the Quran. Hassan Al-banna who is the founder of the Muslim Brotherhood does not share the view of his brother, rather he is directly opposite.

understood without the interpretation of scholars of exegesis and jurist. He, therefore, stated that the veil is not an Islamic tradition, rather its origin could be traced back to pre-Islamic era of the Arab, prior to the Prophethood of Muhamad (PBUH). Jamal El-Banna argued by saying that "In those days, he says, Arab women covered their head and left the upper parts of their chest uncovered. He thus concludes that the verse commands women to cover their chests, not their heads" [2].

Therefore, he concludes that hijab, according to the Qur'an, does not imply veil or garment. Rather, it implies a door or a curtain which hides someone inside from being seen from the outside. This makes it obligatory upon someone who wishes to enter to seek permission. This, according to him, is the meaning of hijab in the Qur'an. He buttresses his argument by the context of the verse where "it is accompanied by the verses of authorization (for entering a second person's house) and it is not mentioned except with regards to the wives of the Prophet (S.A.W)" [3]. With this, he claims that the Qur'an does not explicitly make it binding except covering one's pockets i.e. covering their chests and casting their garments over their persons. As for the veil, it should be given the same conception as the turban for a man who is just meant to protect his head [4].

However, to the query as to what about the authentic *hadith* that pronounces the obligation of hijab and veil for women? Is it not important to take these *ahadith* into account when dealing with one of the important issues regarding women? The Al-Banna's response to these questions is that that the Sunnah (even though is acknowledged as an evidence) cannot independently come up with a ruling except with a support from the Qur'an. He stresses that "if there are hadeeths narrated from the Prophet, the opinion is mentioned in the previous writings that the Sunnah is not opposed to the Quran. But if this happens, the hadeeth in question could be a fabricated or compiled in an inaccurate manner, or it is intended to have a psychological effect at a time when this effect was useful....." [5].

Al-Banna on Apostasy

In Egypt, there are hot debates between Jamal Al-Banna and his critics at Al-Azhar University, the Cairo-based fulcrum of Sunni thought on this issue. Majority of his antagonist from the University believes he is denying the Sunnah; the sayings, actions and tacit approval of the prophet (PBUH). Although he has claimed in one of his recent publication that his position is exactly what the Prophet (PBUH) approved. According to him, "the orally transmitted traditions of the Prophet (PBUH) are less binding on Muslims than the Qur'an itself" [6] although *Al-Banna says*.

"We cannot deny the Sunnah, even though it has been proven that most of the sayings attributed to the Prophet (PBUH) have been made up, were narrated in other people's words or were transmitted inaccurately. This does not mean that there are no true sayings that set many Islamic fundamental principles; what it means is that it's high time to study the Sunnah in a different way" [7].

One of the instances in which his approach is applied in understanding the Qur'an is the claim that the case of apostasy is connected with freedom, and that Islam gives to mankind (absolute freedom). He contends in more than one occasion that "faith and disbelief are personal issues which concern only the person in question".

According to him, apostasy is not among the issues of public order, and therefore, no intervention or coercion should be exhibited by any party [8]. He elaborates that the Qur'an "mentions the case of apostasy frequently and in an explicit manner without imposing a worldly punishment on it. Rather, Allah emphasizes repeatedly that He will adjudicate on the day of judgment concerning that about which they disagree [9]."

Based on that, he sees that no worldly punishment is attached to apostasy. If an inquirer asks about the Sunnah that imposes death penalty on the crime of apostasy which says: "Whoever changes his religion should be killed" [10]. It is said that the approach of Al-Banna does not accept any hadeeth that independently gives a ruling. Rather, he sees the necessity of the Qur'an to support Sunnah in any of its legislation [11].

The Jurists 'mentioned a number of reason that can make a person becomes an apostate. Hence, an act of apostasy can either be from a particular creed, actions or words that indicate an exit from the path of Islam. It could also be as a result of rejecting faith which indicates disbelieve in Allah. A close example to this is to hold the creed that Allah is three in one, or to believe non except Allah is worthy of worship and devotion. Apostasy is also determined when someone denies some of the attribute of Allah such as prostrating for deities and gods, or fabricate lies against the prophets of Allah (PBUH) [12]. For example, a direct act of mockery of religion, abusing the prophet or denying his teaches and traditions [13].

⁷ <http://muslim-chronicle.blogspot.my/2006/08/gamal-el-banna-hijab-is-not-islamic.html>, cullled on 02/08/2017.

⁸ Jamal al-Bana, *Huriyyat al-Fikri wa al-I'tiqaad fi al-Islam*, (Cairo: Dar al-Fikri al-Islami, 1998) P.6.

⁹ Jamal al-Bana, *Huriyyat al-Fikri wa al-I'tiqaad fi al-Islam*, P. 18, See: Jamal al-Bana, *al-Islam wa al-Huriyyah wa al-Almaniyyah*, (Cairo: Dar al-Fikri al-Islami, P.7

¹⁰ Muhammad Ibn Ismail Ibn Ibraheem Ibn Mugheerat al-Bukhari, Saheeh al-Bukhari, Edition of: Muhammed Zuhair Ibn Nasir al-Nasir, (Dar Turuqi an-Najaat, E 1, 1422 A.H) Chapter: La yuadhab bi adhabi Allah, Hadeeth Number (3016). See: Abu Dawud Sulaiman Ibn al-Ash'ath as-Sajistaniy, *Sunan Abu Dawud*. (Beirut: Dar al-Kitab al-Arabiyy). Vol.4, P. 224. Hadeeth Number (4353).

¹¹ Ibid, H, Zakariyah, Jamal Al-Bana's Approach to Studying the Qur'anic Text and Its Effects on Islamic Legal Rulings: A Critical Analytical Study.

¹² See: Z, Habeebullah. جريمة الردة في الفقه الجنائي الإسلامي حد أم تعزير؟. *Journal of Islamic and Human Advanced Research* جهاز, [S.I.], v. 3, n. 8, Aug. 2013. Available at: <<http://www.sign-ific-ance.co.uk/index.php/JIHAR/article/view/609/608>>. Date accessed: 09 Sep. 2017.

¹³ As-Samirani, An-Numan, Numan bin Abdur-Razaq, *Ahkām-l-Murtadi fi Shari'ah Islamiyah*, (Ar-Riyad: Darul-Ulum, n.d. 1983), P.64.

² <http://muslim-chronicle.blogspot.my/2006/08/gamal-el-banna-hijab-is-not-islamic.html>, cullled on 02/08/2017.

³ Jamal al-Banna, *al-Mar'at al-Muslima baina Tahreer al-Qur'an wa Taqyeed al-Fuqahaa*, P. 31.

⁴ *al-Mar'at al-Muslima baina Tahreer al-Qur'an wa Taqyeed al-Fuqahaa*, P. 34.

⁵ *al-Mar'at al-Muslima*, P. 36.

⁶ H, Zakariyah, Jamal Al-Bana's Approach to Studying the Qur'anic Text and Its Effects on Islamic Legal Rulings: A Critical Analytical Study, *International Journal of Arts Humanities and Social Sciences* Volume 2 Issue 6, (2017) P.21. www.ijahss.com.

As Ibn Taimiyyah and Ibn Manzūr have narrated to have similar position as recorded in the school of taught of Maliki, Allaithi Ahmad, ishāq and Ashāfi that among the condition of apostasy is to insult the Prophet or reject any of the pillars of Islam such as solat or Zakat ^[14].

Conditions of apostasy according to Islamic Jurist

Shariah as a universal law which guide the affairs of believer has also prescribed conditions for declaring an individual as apostate- with the primary aim of discouraging the Muslims from an attempt to commit it. Although, Islamic law has set capital punishment for an apostate ^[15], it is a deterrent punishment that will deter people from committing it. The nature of the Shariah usually have pre-requisite for every procedure of juristic rulings. Hence, a declared apostate must possess certain characteristics before the penalty can be imposed on him ^[16].

First: puberty: The jurists use this condition as an explanation to indicate puberty as a benchmark in imposing the punishment on the apostate. Puberty age according to the jurist is usually not by age but with possession of certain natural features ^[17].

Second: the Sound mind: A sound mind is a healthy individual devoid of all mental deviations. Hence, a mad person cannot be accused of apostasy because he is not in his right senses ^[18].

Third: Ability to make choice: An act of apostasy is counted as criminal offence when an apostate acts voluntarily, not compelled by anyone and as a result of the choice of his master or parents or owner. As scholars have agreed; that if someone is under duress to disbelieve, such a situation is not apostasy as he is saying what is against his mind and intention ^[19].

Criminalization of Apostasy in Islamic jurisprudence

Majority unlike al-Bamaa argue that there several textual evidences which prohibits and criminalize apostasy. For instance, the Quran states:

And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire, they will abide therein eternally ^[20].

The Prophet is also on record to have stated "It was narrated in

¹⁴ As-Subuqī, Taqiyu din Ali bin Abdul Kāfi, Fatawah As-Subuqī, (Bairut: Darul marifah, n.d) V.2, P.569., see: Ibn Taimiyyah Ahmad bin Abdul Halīm, Sālim Al- Maslūm Ala Shātimir-Rasūl, wa ibn Qudāmah, Al-Mugni, P.547.

¹⁵ Ibid, Z, Habeebullah. جريمة الردة في الفقه الجنائي الإسلامي حد أم تعزير؟ Journal of Islamic and Human Advanced Research.

¹⁶ Ibn Abdul-Bari, At-Tamhīdi, 312/5.

¹⁷ Al-Marwadī, Ali bin Sulaimān, Al-insāf fi ma'rifat Ar-Rajih alā mazhab Al-imam Aḥmad bin Anbali, Muhamad Hassan bin Muhammad Hasan Ismail, 1st Ed., Bairut: (1997), V.10, P.276.

¹⁸ Al-Kasānī, Alau din, Badāi' sanai' fi tartīb sharaiḥu, (Bairut: Darul Kitāb Al-arabī, 1st Ed. (1982). V. 7, P.134.

¹⁹ Asarkhusī, Shamsudin Abu bakri Muhammad bin Abi Sahl, Al-Mabsūt, tahqīq: almaisi, khalīl muḥiydīn, (Bairut: Darul Fikr li taba', 1st ed. 2000), V.12, P.217.

²⁰ Al-Baqarah verse: 217.

the hadīth of Ibn Mas'ood (may Allah be pleased with him) that the Prophet (peace and blessings of Allāh be upon him) said:

"The blood of a Muslim who testifies that none has the right to be worshipped but Allah and that I am His Messenger, cannot be shed lawfully, except in three cases: a married person who committed adultery, in Qisas (retaliation) for murder (life for life) and the apostate from Islam who abandons the Muslim Jama'ah (community)." Agreed upon ^[21].

Based on the aforementioned verse and tradition of the prophet (PBUH), majority of Islamic Jurist are unanimous that whoever commits an offence of apostasy and do not repent, after satisfying the aforementioned characteristics, it is an obligation on the authority or delegating authority to impose on such person an appropriate capital punishment.

Conclusion

The position of Jamal Al-Banna on interpretation of the Quran and legality and acceptance of applying the prophetic traditions has triggered attention of many scholars and jurist in the Sunni world. Can we categorize this position to be correct? To what extent can we claim Jamal Al-Banna is violating fundamental Islamic principle on Apostasy? These issues and many others relating to situation of Jamal Al-Banna need be revisited further from Shariah perspective.

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