

## BURHANUDDIN AL-MARGHINANI ON THE ATTITUDE OF THE ISLAMIC STATE TOWARDS APOSTATES AND REBELS

Toshqulov Jo‘raboy,

Head of Department, Institute of State and Law, Doctor of Law, Professor  
Academy of Sciences of the Republic of Uzbekistan

### Abstract

This article analyzes the legal views of the Islamic jurist Burhanuddin al-Marghinani on apostates (murtadd) and rebels (baghi) in the context of Islamic law. Based on his renowned legal treatise "al-Hidaya," the author examines how al-Marghinani interpreted legal, social, and governance matters concerning apostasy and rebellion. The article also highlights al-Marghinani's contributions to the development of Islamic international law during the medieval period.

**Keywords:** Marghinani, al-Hidaya, Islamic law, apostasy, rebellion, international law, fiqh, dar al-Islam, dar al-harb, jizya, bayt al-mal.

### Introduction

In the “Chapter on the Rulings Concerning Apostates” of the Book of Siyar, the author of al-Hidaya presents the Islamic state’s position on apostates<sup>1</sup> —those who renounce Islam—and the treatment of their property, debts, and slaves. According to al-Marghinani’s opinions on this matter:

- A person who renounces Islam is granted three days to reconsider their actions. If they repent and return to Islam, no punitive measures are taken. If they refuse to return, they are to be executed. To support this view, the jurist cites verse 5 of Surah At-Tawbah from the Qur’an: “Kill the polytheists wherever you find them,” as well as the saying of Prophet Muhammad (peace be upon him): “Whoever changes his religion, kill him.”
- If someone kills an apostate before offering them the opportunity to return to Islam, the killer is not held legally accountable.
- A woman who renounces Islam is not executed; she is imprisoned until she returns to Islam. If a female slave renounces Islam, her master is obligated to compel her to return to the faith.
- The apostate’s property is removed from their possession until they return to Islam. If they do not repent, they are deprived of their property, and it is transferred to the public treasury (bayt al-mal). If they return, the property is restored to them.

<sup>1</sup> Муртадлар ҳақида батафсил қаранг: Ўзбек тилининг изоҳли луғати. 5 жилдли иккинчи жилд. Т.: “Ўзбекистон миллий энциклопедияси” Давлат илмий нашриёти, 2006. – Б. 646; Ислом энциклопедия. Т.: “Ўзбекистон миллий энциклопедияси” давлат илмий нашриёти, 2004. – Б.168; Мухтасар: (Шариат қонунларига қисқача шарҳ). Т.: Чўлпон, 1994. – Б.301-303; Мақсудхўжа ибн Мансурхўжа. Мажмаъ ул-Мақсуд... Т.: “Мовароуннаҳр”, 2005. – Б. 524-528; Тошқулов Ж. Исломда жиноят ҳуқуқи (лот.) Ўқув қўлланма. Т.: “Тошкент ислом университети”..., 2018. – Б. 109-113; Ўша муаллиф. Исломда халқаро муносабатларни тартибга солишнинг ҳуқуқий асослари. Ўқув қўлланма. Т.: “Сомплекс Принт”, 2021. – Б. 151-157. Ражабов М. Ислом ҳуқуқи: жиноят ва жазо. Ўқув қўлланма. Т.: “Ўзбекистон халқаро ислом академияси”, 2021. – Б. 157-158.



- If an apostate dies or is executed for apostasy, any property acquired during their time as a Muslim is inherited by their heirs. Property acquired during the period of apostasy is considered fay'—spoils of war.
  - A female apostate's earnings are passed on to her heirs because women are not capable of engaging in warfare against Muslims; thus, there is no basis to consider her wealth as fay'.
  - If a woman apostatizes during illness, her husband is entitled to inherit from her. If she does so while healthy, the husband is not entitled to inherit, since the intention might have been to prevent him from inheriting.
  - If the apostate flees to dar al-harb (enemy territory) and finds refuge there, and this status is confirmed by the ruler or judge, any slave he declared free after his death and any female slave who bore him a child is to be set free. Debts incurred during his time as a Muslim are repaid from the wealth earned at that time. Any remaining wealth goes to his heirs. Debts from the apostasy period are repaid from wealth earned during that same period.
  - According to one narration from Abu Hanifa, the apostate's debts are first paid from wealth earned while they were Muslim; if that is insufficient, then from wealth earned during apostasy. According to another narration, the opposite order applies.
  - If an apostate flees to dar al-harb and is acknowledged as such by the ruler or judge, and later returns to dar al-Islam as a Muslim, any property retained by his heirs is returned to him.
  - If a Muslim had sexual relations with a Christian slave girl before apostatizing, and she bears a child more than six months after his apostasy, and he claims the child, the child is considered legitimate if she acknowledges that he is the father. The child is free and attributed to the father, but does not inherit from the apostate.
  - If the slave woman involved in the sexual relationship is Muslim and her master apostatizes, then flees or dies, the child is entitled to inherit from the father.
  - If an apostate takes his property with him to dar al-harb and the Muslim army later conquers that territory and seizes the property, it is treated as fay'. However, if the apostate returns, takes the property and again flees to dar al-harb, and later the Muslims conquer the territory, the heirs may claim the property if they identify and prove ownership before it is distributed among Muslims.
  - If a slave of an apostate (who had fled to dar al-Islam) is declared by a judge to be under the possession of the apostate's son, and the son enters into a mukataba (emancipation contract) with the slave, then if the apostate returns to Islam and to dar al-Islam, the contract remains valid. The apostate regains legal capacity to contract and claim kinship rights<sup>2</sup>.
- The author of al-Hidaya does not overlook the legal consequences arising when a Muslim who has apostatized causes bodily harm to another person or deprives someone of life. He states that if an apostate kills someone unintentionally (by negligence) and then flees to dar al-harb, or if the killer is executed while still in the state of apostasy, then according to Abu Hanifa, the blood money (diyyah) for the victim is paid from the wealth the apostate earned during the time he was a Muslim. According to Abu Yusuf and Imam Muhammad, the blood money is to be paid from the wealth acquired during both the period of being a Muslim and the period of apostasy.
- Al-Marghinani, while commenting on the opinions of Abu Hanifa and his close disciples, writes

<sup>2</sup> Қариндошлик ҳуқуқи қариндошларнинг бир-бирининг номидан иш юритиш ва амалга ошириш, бир-бирига меросхўр бўлиш каби ҳуқуқ ва мажбуриятларни келиб чиқишига асос бўлади.



that in such cases the agnatic (paternal) relatives of the apostate do not provide financial support to the apostate relative. The reason is that, according to Islamic law, a Muslim is not obligated to support a non-believing relative. According to Abu Hanifa, the wealth acquired during the apostate's time as a Muslim is inherited by the heirs. The wealth earned during the period of apostasy is treated as fay' (spoils of war) and goes to the Muslim treasury. In contrast, Abu Yusuf and Imam Muhammad argue that the heirs of the apostate are entitled to inherit both the wealth earned during the apostate's time as a Muslim and the period of apostasy, since in both cases the wealth was lawfully acquired.

According to Burhanuddin al-Marghinani, if someone intentionally inflicts a wound upon a Muslim (e.g., cuts off his hand), and the wounded person later apostatizes and dies from that wound, or flees to dar al-harb and then returns to dar al-Islam as a Muslim and dies from the wound, the person who caused the injury must pay half the diyyah (blood money) to the heirs of the deceased. On this issue, al-Hidaya cites al-Quduri's opinion, who writes:

- "If an apostate whose hand was intentionally cut off flees not to dar al-harb but returns to Islam within dar al-Islam and then dies, the perpetrator is liable to pay the full diyyah for the severed hand."
- Al-Marghinani highlights that there is no consensus on this matter between Abu Hanifa and his disciples. He provides an analysis of their respective opinions and presents his own view on resolving the issue.
- According to Imam Muhammad and Imam Zufar, in the scenario described above, the offender must pay only half of the diyyah. They justify their opinion as follows:
- "The occurrence of apostasy nullifies the legal consequence of the crime resulting in death. Thus, upon the apostate's return to Islam, the crime does not regain its compensable status. Just as when the apostate's hand was intentionally severed and he subsequently returned to Islam, the offense is still deemed non-compensable and void"<sup>3</sup>.

In contrast, Abu Hanifa and Abu Yusuf argue that the offender must pay the full diyyah, and they justify their view as follows:

"The act of cutting off the hand was committed at a time when the victim's life was inviolable (i.e., during his time as a Muslim), and it reached its conclusion (i.e., led to death) at a time when life was still inviolable. Therefore, full diyyah must be paid. The same ruling would apply if no apostasy had occurred and the hand was cut off: full blood money would still be obligatory"<sup>4</sup>.

If a mukatab (contracted) slave who has apostatized flees to dar al-harb (the abode of war) and is captured by the Islamic ruler along with the wealth earned during his apostasy, and he refuses to return to Islam, then, according to al-Marghinani's opinion regarding the fate of the mukatab and his property, he is to be executed. From the wealth he earned during his apostasy, the amount stipulated in the manumission contract is paid to his master, and the remaining wealth is transferred to his heirs.

Burhanuddin al-Marghinani also presents his views on the fate of a Muslim husband and wife who apostatize and flee to dar al-harb, have children and grandchildren there, and the consequences that follow if dar al-harb is conquered by Muslims. The jurist writes that if a Muslim couple renounces Islam and flees to dar al-harb, and the wife gives birth there, and their

<sup>3</sup> Бурхониддин Маргиноний Ҳидоя. Б. 449.

<sup>4</sup> Бурхониддин Маргиноний Ҳидоя. Б. 350.



child also later has children, and then dar al-harb is conquered by Muslims, both the child and grandchild are considered fay' (spoils of war). The apostate woman is treated as a slave, and thus her child is also enslaved. The child is compelled to return to Islam. However, the grandchild is not forced to return to Islam.

According to the author of al-Hidaya, minors, the mentally incompetent, and intoxicated individuals who apostatize are to be compelled to return to Islam but are not to be executed. This is because execution is a form of punishment, and, according to the principle of mercy towards children, punishment is not applied to them. Likewise, mentally disturbed individuals, the insane, and those who renounce Islam in a state of severe intoxication are not to be punished, as they are not capable of managing or being responsible for their actions.

One of the significant topics in the Book of Siyar is the legal foundations of the Islamic state's position toward rebels (baghi)<sup>5</sup>. The author of al-Hidaya presents his views—based on the practices of Caliph Ali ibn Abu Talib (may Allah be pleased with him), Abu Hanifa and his students, Imam al-Shafi'i, and other renowned Islamic jurists—on the conditions under which individuals can be accused of rebellion against the legitimate head of state, the measures to dissuade rebels from their objectives, and the legal rulings regarding the treatment of captured rebels and their properties, taxes levied after suppression, and the criminal liability of rebels. He outlines his views as follows:

- If a group of Muslims seizes a city and refuses to obey the head of state, the ruler invites them to abandon their harmful intentions.
- If the rebellion stems from misunderstanding or an issue requiring clarification, the substance and causes of the issue are explained to the rebels.
- If all measures and efforts yield no results, the ruler does not initiate combat against the rebels until they start fighting Muslims.
- If the rebels begin military action against Muslims, the Muslim forces continue fighting until the rebels' unity is broken.
- The rebels' organization of troops, public disobedience to the Islamic ruler, and purchase of weapons indicate that they have initiated actual warfare.
- If there is another group that could join or support the rebels in battle, the Muslims fight them to defeat them. If no such group exists, the wounded rebels are not to be killed, and those who flee are not to be pursued.
- The children of rebels are not to be enslaved, and their property is not to be distributed among Muslims because, despite their rebellion, they are still Muslims. Islam protects the lives and property of Muslims.
- In cases of necessity, Muslims may use weapons captured from the rebels against them. In response to Imam al-Shafi'i's opinion that it is impermissible to use weapons without the owner's consent—since the weapon is Muslim property—al-Marghinani argues: "In this matter, the principle 'a lesser harm is permitted to eliminate a greater harm' applies."

<sup>5</sup> Боғийлар ҳақида яна қаранг: Мақсудхўжа ибн Мансурхўжа. Мажмаъ ул-Мақсуд... Б. 528-530; Мухтасар, ... Б. 303-304; Ражабова М. Ислом ҳуқуқи: жинойт ва жазо. Ўқув қўлланма. Т.: "Ўзбекистон халқаро ислом академияси", 2021. – Б. 184, 245-246; Тошқулов Ж. Исломда халқаро муносабатларнинг ... Б. 158-165.



- The head of state takes measures to safeguard the property of captured rebels. This property is not returned to the rebels nor distributed among the soldiers. The aim is to dissuade rebels from their harmful intentions and reintegrate them into the Muslim community.
  - If taxes such as kharaj and ushr were collected from the population of a city occupied by rebels and were spent in accordance with Sharia, they are not re-collected. If they were spent in contravention of Sharia, some jurists say they should be re-collected. Marghinani objects and states that the ruler should begin collection anew, not for past years but starting from the upcoming year.
  - If one rebel soldier kills another, and the city is later captured by Muslims and the killer is caught, he is not held accountable, as the killing occurred when the Islamic ruler had not yet reestablished authority in the city.
  - If a resident of a city occupied by rebels intentionally kills another resident, and the city is then captured by Muslims, and the rebels had not yet implemented their laws, the killer is subject to qisas (retribution), since the crime occurred when Islamic law was still in force.
  - If a just Muslim kills a rebel relative, he is still entitled to inherit from the deceased.
  - If a rebel kills a just relative and claims, "I killed him rightfully and still believe I was right," then according to Abu Hanifa and Imam Muhammad, the killer inherits from the deceased. However, if the rebel admits, "I knew I was in the wrong when I killed him," he is not entitled to inheritance.
  - According to Marghinani, if a just Muslim kills a rebel or destroys his property, he is not required to pay compensation or blood money and is not considered sinful. The killing is done to eliminate the evil of the rebels, and the just Muslim is obligated to fight against them.
  - If a rebel kills a just person and says, "I killed him rightfully," he does not pay blood money but is still considered sinful and must atone by performing a righteous act, such as freeing a slave.
  - It is makruh (discouraged) for Muslims to knowingly sell weapons to rebels or their soldiers. However, if the sale occurs unknowingly, the seller is not considered sinful.
- Based on the aforementioned, we deem it necessary to highlight the following points regarding Burhanuddin al-Marghinani's views on international law:
- **Burhanuddin al-Marghinani** was a unique jurist and legal scholar who left an indelible mark in history as someone who made a tremendous contribution to the development of specific fields of Islamic law.
  - **Marghinani's role** in the dissemination of the Hanafi school's teachings on various branches of Islamic law in the region of Transoxiana was invaluable.
  - **His work al-Hidaya** served as an unparalleled guide for the application of Islamic legal norms in practice and functioned as a textbook in educational institutions such as madrasas.
  - In al-Hidaya, alongside other fields of Islamic law, special attention is given to the author's views on Islamic international law. Relationships regulated by its various institutions and norms are analyzed in connection with those governed by institutions and norms of other fields of Islamic law—such as public law, family law, civil law, tax law, criminal law, and procedural law.
  - **Burhanuddin al-Marghinani was a product of his time;** his views on Islamic law—including international law—were shaped under the influence of the socio-political, legal,





cultural-educational, ideological, and scholarly environment of the era in which he lived and worked. They reflected the realities and demands of inter-state relations during that period.

- The scholar's ideas regarding war, jihad, the attitude toward followers of other religions, the partial limitation of rights of non-Muslims residing in Islamic lands, as well as his strict approach toward apostates and those who disobeyed the Islamic state leadership, were considered acceptable in the medieval context and did not evoke serious objection at that time.

- In an era when principles such as “might makes right,” “war is the main means of resolving international disputes,” “if you don't conquer others, they will conquer you,” “brute force is always just,” “any means and methods are allowed in war,” “military operations may target any objects,” “destruction, bloodshed, and killing innocents are ordinary events,” and “inter-religious intolerance” were norms of daily life, **Marghinani's views**—such as the requirement to initiate war based on clearly defined rules, to direct hostilities only at military targets, to precisely define who may participate in combat, to allow conquered lands to remain with their owners while collecting kharaj tax in fixed amounts and according to strict procedure, to guarantee the inviolability of the lives, property, and freedom of those who accepted Islam, to sign treaties with those who refused to convert, to offer state protection to non-Muslims (dhimmis) under such agreements, and in return to collect a fixed amount of jizya (poll tax) from male dhimmis based on their financial standing, to exempt women, children, disabled persons, the elderly, and monks from paying jizya, to permit dhimmis to retain, repair, and reconstruct their places of worship, to perform religious rituals, ceremonies, and worship within their religious communities under their own norms, to regulate personal matters like marriage, divorce, trade, and inheritance under their own religious laws, to grant safe passage (aman) to representatives of the enemy side allowing them to enter Islamic territory while guaranteeing the inviolability of their lives, property, and freedom, to distribute movable spoils of war fairly, to offer apostates (murtads) and rebels (baghis) time and opportunity to reconsider their actions, and to pardon those who repented—embodied ideas of **humanitarianism, religious tolerance, and interfaith understanding and respect** in a period marked by inter-state wars, massacres, religious conflicts, and violent unrest.

- The views on the branches of Islamic law—including international law—expressed by the author of the fundamental legal work al-Hidaya served as an important source for shaping and developing the legal doctrines of both his contemporaries and later jurists.

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