## CONTENTS

Foreword	хi
Acknowledgments	xv
Introduction	1
PART A APOSTASY (IRTIDAD)	
Introductory Remarks	23
Chapter 1 Muslim Legal Traditions of Apostasy	
and Relevant Human Rights Law 1.1. Related Legal Traditions and Their Three	27
Different Phenomena	27
1.1.1. Conversion	27
1.1.2. Blasphemy (Sabb)	31
1.1.3. Heresy	32
1.1.4. Punishment of Apostasy	36
1.1.5. Legal Consequences of Apostasy	38
1.2. Related International Human Rights Law	39
1.2.1. Conversion and Proselytizing	39
1.2.2. Offences against Religion, and Religious	
Hatred Speech	43
1.3. Summary	51
Chapter 2	
Current Application of Traditional Rules of	
Conversion and Proselytizing	55
2.1. Legislation on Conversion	55
2.2. Legislation on Proselytizing	57
2.3. Legal Consequences of Conversion	60
2.3.1. Legislation on Legal Consequences of Conversion	60
2.3.2. Legal Consequences of Conversion in Practice	62
2.3.3. Use or Abuse of Legal Consequences of Conversion	65

## viii Contents

2.4.	Case Studies	68
	2.4.1. Legislation on Conversion and Proselytizing in	
	Practice: The Case of Malaysia	68
	2.4.2. Case of Abdul Rahman in Afghanistan	71
2.5.	The States Official Positions	73
	2.5.1. Drafting of the Related International Instruments	73
	2.5.2. Implementation of the International Covenant on	
	Civil and Political Rights and the Declaration on	
	the Elimination of All Forms of Intolerance	
	Based on Religion or Belief	76
	2.5.3. Implementation of the Convention on the Rights	
	of the Child	82
2.6.	Summary	82
Chapte	or a	
- mil	nt Application of Traditional Rules of	
	phemy (Sabb)	0-
	Related Legislation	85
	Rushdie: A Sabb Case?	85 88
	Summary	
2	· · · · · · · · · · · · · · · · · · ·	91
Chapte		
	nt Application of Traditional Rules of Heresy	93
	Related Legislation	93
4.2.	Heretic Religious Groups	99
	4.2.1. The Ahmadies	99
	4.2.2. Other Heretic Religious Groups	102
	4.2.3. Security Laws against Heretic Religious Groups	106
4.3.	Sources of Takfir (Declaring Other Muslims as Infidel)	107
	4.3.1. Authorized (Official) Sources	107
	4.3.2. Semi-authorized and Arbitrary Sources	108
4.4.	The Major Heresy Cases	112
	4.4.1. The Case of Ostadh Mahmud Muhammad Taha	
	(Sudan)	112
	4.4.2. The Case of Professor Nasr Hamed Abu Zayd	
	(Egypt)	114
	4.4.3. The Case of Hasan Yousefi Eshkevari (Iran)	117
	4.4.4. The Case of Professor Hashem Aghajari (Iran)	117
	Summary	120
Concluding Remarks		

PART B	PROTECTION OF RELIGIOUS MINORITIES (DHIMM	ИАН)
Introd	luctory Remarks	135
Chapt	er 5	
•	m Legal Traditions of <i>Dhimmah</i>	
	Relevant Human Rights Law	139
	Dhimmah and Its Practice in Recent History	139
-	5.1.1. Dhimmah	139
	5.1.2. Dhimmah system in recent centuries	143
5.2.	Related Human Rights Law on Religious Minorities	146
	5.2.1. Protection of Religious Minorities in Their Right	
	to Identity (Identity Rights)	146
	5.2.2. Right of Religious Minorities to Be Legally	
	Recognized	156
	5.2.3. Right of Minorities to Personal Legal Autonomy	163
	5.2.4. Discrimination on Grounds of Religion and	
	Discrimination in Religious Rights (Discrimination	
	on Grounds of Identity and Discrimination in	
	Identity Rights)	169
Chapt	er 6	
Curre	nt Application of Public Aspects of Dhimmah	175
6.1.	Recognition of Non-Muslim Religious Minorities by	
	Muslim States	175
6.2.	The Rights of Non-recognized Religious Minorities	180
	6.2.1. 'Krishnaswami Study' and Different Practices of	
	Muslim States in Recognition of Religions	180
	6.2.2. The Rights of Non-recognized Religious Minorities	
	in the Constitution of Iran	182
	6.2.3. The Legal Status of Baha'is in Muslim Countries	184
6.3.	Discrimination on Grounds of Religion in Legislation	189
	6.3.1. Provisions of the Constitutions	189
	6.3.2. Discrimination in Legislation Concerning the	
	Head of State and Other Official Positions	190
	6.3.3. Discrimination Concerning Issues of Evidence	
	and Punishment: Mixed Dhimmah-Hudood	
	Related Muslim Legal Traditions	192
	6.3.4. Discrimination in Legislation against the	
	Employment of Non-recognized Religious	
	Minorities	105

## x Contents

Chapter 7	
Current Application of Personal Aspects of Dhimmah	197
7.1. Recognition of Marriage and Personal Law of Minorities	197
7.2. Areas of Discrimination	202
Concluding Remarks	209
PART C RIGHTS OF THE CHILD	
Introductory Remarks	215
Chapter 8	
Implementation of the Convention on the Rights of	
the Child by Muslim States	219
8.1. Related Muslim Legal Traditions and Reservations of	
Muslim States to the Convention	219
8.2. The Concept of Maturity in Muslim Legal Traditions	
and Issues Concerning 'Age': Articles 1 and 37	221
8.2.1. Child Marriage	224
8.2.2. Penalizing of Premarital Sexual Intercourse	225
8.2.3. Capital Punishment of Juveniles	228
8.3. Possible Areas of Distinction and Discrimination	
Article 2 of the Convention	230
8.3.1. Children Born out of Wedlock	232
8.3.2. Different Ages of Marriage for Boys and Girls	237
8.3.3. Difference between the Mother and the Father in	
Their Rights (Duties) of Custody and Guardianship	
of Children	238
8.4. Freedom of Religion: Article 14 of the Convention	241
8.5. Kafalah of Muslim Legal Traditions and Adoption	
Articles 20 and 21 of the Convention	245
8.6. The Committee on the Rights of the Child, Reservations	
and Muslim Legal Traditions	251
Concluding Remarks	255
Conclusion	
	259
Written Legislation and Legal Practise	259
Introducing 'Shariah' as a Reference to Islam	260
In Line with This Study	261
Selected Bibliography	267
	20/
Index	281