

The Scope of the Death Penalty Under the Sharia Law

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Abstract

The death penalty is one of the core issues which have been widely discussed around the world. As capital punishment has been the part of the Islamic legal system, the Quran and hadith explicitly established the penalties in various serious crimes. A majority of the world's nations has abolished the death penalties from their constitutions, but most of the Islamic countries firmly believe in this system. One root cause of it is that the Holy Quran and hadith provide the justification for capital punishment. Further, several Islamic countries where Islam has the status of the state religion, allow the application of the death penalty. This work has prompted us to expose that the Islamic penal code is well-established in the legal and political systems of Islamic countries and the impact of religious traditions have an indirect impact on the implication of the death sentence.

Since the death penalty is even now broadly established in Muslim countries, there is also increasing support in several of these states to abolish of the death penalty. Some secular activists have distorted the Quranic verses dealing with the death penalty to support their instance. For different reasons, they claim that political governments may use the death penalty as cover to suppress their political rivals.

Our findings reveal that secular propaganda against the Islamic penal system is based on wrong assumptions and a result of Islamophobia. This research article can provide a logical discussion on the issue of capital punishment, rooted in the true spirit of the Islamic punishment system.

KEY WORDS: *Islamophobia, Hudud, Qisas, Capital punishment, Penal code, Sharia law*

INTRODUCTION

In the majority of Muslim countries, the issue of death penalty has become a “taboo subject”. Governments in Islamic countries often resort to Sharia law to justify the retention and enforcement of the death penalty, which may seem to have closed the debate. However, the Sharia is not fixed on the death penalty as many scholars or states express. Unfortunately, there is a misconception about the Sharia laws that they are restricted to death penalties in serious crimes. In fact, different schools of Islamic law give them different weight. There is a stereotypical belief common in the west that Islamic courts are indebted to impose some flat and predetermined punishments without appreciation or are not allowed to submit extenuating evidence in court. Indeed, this concept is not true.

This article aims to provide readers with “an understanding of Islamic law and jurisprudence” regarding the death punishment. It states the sources of Shari'a law and the relational significance of each source. It also defines the various crimes that could lead to the death penalty and the different views of each, which indicates that “Sharia” does not explicitly require the application of the death penalty. Additionally, it evaluates the crimes and the “evidentiary requirements” of the death penalty under Islamic law. The findings reveal that precautionary measures are so restrictive in Sharia law that it is practically impossible to impose such punishment.

As opposed to conventional explications of the Islamic law that allow the death penalty for four prohibited crimes: “murder, adultery, apostasy, and war against God”, Islam sticks to a much open and discretionary approach. It does not insist on the death penalty, but it offers possibilities to avoid it. This study evaluates each crime in turn, examines the context in which the crime was committed and the

diverse arguments of different schools of thought and Islamic jurisprudence are discussed. It also examines the Shari'a instance regarding other capital offences in Muslim-majority countries. Noticeably, many of the modern crimes punishable by death (such as drug and witchcraft crimes) can be determined on the basis of shari'a laws. Finally, this paper examines how the misperception of the Sharia law is dispelled without knowing the real context and purpose of Sharia laws that led to the death penalty for heinous crimes.

For some Western scholars, the death penalty is an intolerable negation of human right and integrity. This is irreversible, and since “criminal justice systems” are prone to errors and “discrimination, the death penalty will inevitably be imposed on the innocent”.

Several renowned Muslim scholars have expressed that western “human rights” do not applicable to Muslim countries because they rest on Western standards and context. However, many of the core maxims of human rights may have some similarities with the tenets of Islamic law.

The intercultural approach that promotes rather than discredits “the universality of human rights” should be a positive way forward. In fact, Sharia law itself allows in some cases to follow the common values, irrespective of their cultural norms or religious ideologies, which all human beings share equally.

INTRODUCTION TO SHARIA LAW

For a better understanding of the Islamic concept and implementation of the death penalty under the “Sharia law”, it would be pertinent to have a basic understanding of the different concepts that constitute Shari'a. It is believed that Sharia covers every aspect of a Muslim's life. For Muslims, the "divine trend" includes, among other things, moral law and Islamic law. Sharia rules many aspects of Muslim “behaviour, including crime, politics, taxation, inheritance, marriage, divorce, hygiene, diet, prayer, fasting and pilgrimage”. This can be described as a system which guides the way how Muslims should behave in a society and how should be their relations with those who belong to the Islamic religion and who do not believe in Islam.

Sharia law encapsulates just a small part of Islamic teachings. According to Islamic jurists, only 500 out of the 6,236 verses of the Quran are thought to be the source of Shari law. Since the beginning of Islamic law, Islamic jurists have always expressed that the concise

nature of the Quranic verses that deal with the Islamic jurisprudence gives sharia many interpretations and reinterpretations.

Shari'a aims to protect the five basic principles underlying the implementation of the law in Islamic society.¹ Therefore, all laws in the Qur'an were revealed in order to protect the five essential elements of human life which are:

- To protect human life
- To protect an individual's religion/faith
- To protect offspring or human lineage
- To protect property rights
- To safeguard an individual's intellect

For the protection of these five basic rights, Islam has composed two approaches:²

1. "Moral education" is the first approach which emphasizes the development of piety (the conscience of God) so that no individual would indulge in crimes for he believes that God is always aware of his actions and that he will face his crimes in the Hereafter.

"Be mindful of your duty to God. Lo! God is well acquainted with all that you do. (Quran 5:8)"
2. Since "moral piety" alone is not enough to ensure law and order, Shari'a imposes "forms of punishment", which "constitute the criminal justice system" of Islam.

Shari'a also relies on the "basic principle that the function of law in Islam", as recognized by modern Islamic jurists is to "generate common good" for the public interest and at the same time "repel the bad deeds and intentions."³ Shari'a laws are simply a means to that end, in itself. The prominent jurist Abu Ishaq al-Shatby explained the idea of *masalih* "cumulative advantage" as follows:

"God established Sharia in order to advance masalih, and there is unanimous agreement on this. It was also agreed that the masalih which are taken into consideration are those relating to kulliyat [i.e. universal principles, the five 'indispensables' in Islam: protection of an individual's faith, life, intellect,

offspring and property] and not those relating to juz' iyyat ['particular laws' which are merely a means to achieving the universals]...”³

Similarly, "avoiding harm" means restraining anything that may affect basic interests or public interests. Thus, the death penalty was seen as a deterrent to crime and abusers from committing harm against the public interest.

Primary Sources to Sharia Law

The Quran

All the Islamic “schools of theology” and law have consensus that the Qur'an is the “primary source” of all issues related to theology and the law. This notion is founded on the of Muslims firm belief that the Qur'an is the divine words of God descended to the Prophet Muhammad in classical Arabic through “Archangel Gabriel”, and is protected from any changes and insertions until this day.

This does not mean, however, that all legal matters are exclusively expressed in the Qur'an or are extracted directly from it. In fact, just a small portion of the Shari'a laws is right away extracted from the Quranic revelation. Detailed legal interpretations consist of elucidations of the Sunnah or Hadith and other secondary sources of Shari'a like *Ijam* and *Qiyas*.

The Quran is organized in “114 suras” or chapters of various lengths and numbered respectively. In this article, references to the Qur'an will be presented as chapter and verse (Quran 77: 39).

THE SUNNAH (hadith) OF THE PROPHET ﷺ

According to Sharia tradition, “*Sunna*” is consisted of speeches, acts and tacit approval of the Prophet Muhammad. All the Muslims unanimously regard them as the second major source of Shari'a. The literally meaning of the word "Sunna" is "habitual practice", "fixed behaviour" or "standard tradition". In Islamic legal tradition, the term *Sunna* refers to the “normative practices” developed by the Prophet Muhammad as a model which must be copied by all Muslims: His oral statements and actions and his implicit consent to the statements and actions of others, which were later established as legal precedents. Since the Prophet was supposed to be the main interpreter of the Qur'an's message, his statements and actions became a source of

both “Sharia and interpretation” of the Quran. Therefore, the Prophet's Sunnah is considered the basic law alongside the Qur'an.

Another term related to the “*Sunnah*” is “*Hadith*”. Literally, the Arabic word *Hadith* means "speech" or "oral tradition". The traditional way of reporting the *Sunnah* was oral, so the word *Hadith* was also fixed to indicate the transfer of Prophet's words in oral and written form. Besides the technical difference between these two terms, both *Sunnah* and *hadith* are used interchangeably in common people.

Although there exist only one version of the Qur'an, more than one collection and versions of Hadith are found historically. Some Orientalists or modern thinkers try to make the authenticity of Hadith dubious by asserting that compilation of Hadith is debatable among Muslim scholars. The reality is that without accompanying *hadith* to interpret the Quranic message correctly is impossible. Therefore, narrators of Hadith put their best efforts to protect it from any suspicious health and history of the writing and compilation of the Hadith have been the subject of intense debate among Muslims as well as among Western scholars in the Hadith. However, it is important to note “the existence of parasitic and dubious versions of the hadith”. In this research paper, we will make sure to use only the most authentic hadith: those which can be found with great certainty from the Prophet.

SECONDARY SOURCES OF ISLAMIC SHARIA:

IJMA (General Consensus)

Muslims, no matter to which sect they belong, constantly believe that the Qur'an is the divine words of God and revealed gradually in the context of certain events or events in the period of Muhammad the Prophet over twenty-three years. The reason this fact is that the Qur'an was descended to respond and resolve the existing problems of the society which was facing novel issues perpetually.

The physical absence of the Prophet apparently ceased the gradual process of divine revelation. However, the new issues and questions kept arising at a time when the Prophet was no longer present. Secondary sources of Islamic law and “new methods” of extracting laws from the Quran and Sunnah began to develop formally during the period of four righteous caliphates of the Prophet ﷺ

Ijma can be taken place when both the *Quran* and *Hadith* have no direct textual reference to deal with a modern legal issue. In such cases, a consensus is created among the “Islamic scholars and Jurists to solve this issue under the principles of the Quran and Hadith”. A consensus has no credibility which surpasses the Islamic rules. *Ijma* can be established in two ways:

1. To develop a feasible solution, the jurists interpret the main sources of Shari'a (Qur'an and Sunnah) in a unique and peculiar direction. Now their inventive results would be submitted for further discussion and referendum to a group of renowned scholars in order to validate *Ijam* "consensus".
2. There is already consensus prevails on a social practice ("*urf*"), and now it is formally adopted under the rulings of the *Quran* and *Hadith* after the referendum.

It is necessary for both the conditions that the newly established law does not discredit the five basic elements that have been mentioned previously in this article. According to the Quran (42:38), “true Muslims are the ones who decide all their affairs through the process of mutual consultation”. Islamic jurists and scholars are agreed that *Ijma* is only acceptable when it is established after a thoughtful discussion of relevant scholars. The Prophet Muhammad said: “*My nation (ummah) will never agree upon an error!*”⁴(*shura*)”

Although some scholars argue that the term “*ummah*” in the above mentioned “*hadith*” is a restrictive term and refers to scholars and other members of the intellectual community, “there is ample evidence to prove that the Prophet implicitly designated by the word of ‘*ummah*’ the common members of the society regardless of class, race or gender.”⁵ The majority of Islamic jurists are agreed that once *ijma* is established, it would become universal; now it could never be abolished by the current or later generations. Although, *ijma* attempts to confront “the challenges of the new public interest” in the Islamic community, which vary and change over time and geography, but can only be reversed if certain conditions are met.⁶

QIYAS (Analogical Reasoning)

The term “*qiyas*” is the fourth source of Sharia law which uses “analogical reasoning” to provide a solution of a modern problem by identifying a common link between the original law which is explicitly mentioned in the Quran and Sunnah and the one which has no direct

link or “reference” in both “the Quran and Sunnah”. By establishing, a common ground this identified “legal cause” is applied to the newly aroused problem.

For example, the Qur'an clearly forbid drinking alcohol or wine but does not disclose a legal position regarding modern forms of narcotic drugs such as marijuana or cocaine. It is acknowledged by most of the Islamic scholars that Qur'an point out "cause" or "reason" behind every law which is revealed in the Quran. This legal term is known in Islamic tradition as “*illat al-hukm* (‘the cause of or reason for the rule’). Now the task of an Islamic jurist is to search for this "reason" and determine whether this common link applies or not to a novel issue which misses a “direct text or reference” in the Qur'an and Sunnah. According to Islamic Jurists, the cause or *illat al-hukm* for disallowing alcohol or wine in the Qur'an is its quality of intoxication. Therefore, all the substances that share the same quality of intoxication would be prohibited under the original law of Quran which forbids alcohol or wine.

Masalih al-Mursala (public welfare)

“*Masalih mursala*” is a legal tool used to establish Sharia laws in cases where there is no direct reference in the Qur'an or Sunnah to resolve them on legal grounds. Shari'a laws based on *Masalih mursala* take into account the “best interest of society”. In Islamic juristic system, such a "public interest" has the legal authority to overrule “(*juz'iyah*) special laws” infer directly from the Qur'an and the Hadith.

As *masalih* (public interest) depends on time and geography, Shari'a laws that are set up once to protect the public interest of a particular society in the past can be modified and reformed to reflect society's needs. The concept of *masalih al-mursala* is a key legal procedure which Muslims developed to address social changes and to justify legal reforms.

THE DIFFERENT SCHOOLS OF SHARIA LAW

Usually, Sharia law is referred to as “*fiqh*”, it can be describe as how a jurist understand or interpret the primary Islamic sources “the Quran and *Sunnah*” in order to derive religious and social laws. This encompasses secondary laws derived through “*ijma*’, *qiyas* and *masalih al-mursala*”. Since “the interpreters

are human beings”, as Ali Ibn Abi Talib famously said, inevitably there would be differences of opinions among Islamic scholars.

The *fiqh* is generally referred to as a jurist’s perception or interpretation of the main Sharia sources to formally devise new laws. This process also corroborates secondary sources like *ijma’* (consensus), *qiyas* (analogical reasoning) and *masalih al-mursala* (public interest) to derive new laws. Since "interpreters are human beings," as the famous companion, Ali bin Abi Talib said, “there will inevitably be differences of opinion among Islamic jurists”. These differences result from:

- a. particular approach approved by some jurists to interpret and formulate Sharia laws by using primary sources;
- b. sources which were preferred by jurists over other sources;
- c. specific needs and interests of their community or society in a particular period and local settings of the jurists;

Thus, on the above-mentioned reasons Muslim community is divided mostly in five prominent schools of thoughts. However, these five well-known schools are as:

1. Hanafi
2. Maliki
3. Shafi‘i
4. Hanbali
5. Ja’fari

Historically one doctrinal issue has always been discussed among different Islamic jurist and schools of thought that whether the Qur'an and Sunnah should be “interpreted literally”, on the basis of the “intent and purpose of the text or both simultaneously”.⁷ This debate has an impact on the application of the death penalty because of crimes punishable by death under Islamic law is not clearly defined in the Qur'an. In certain “circumstances, *fiqh* (interpretation of the basic sources of law in Islam) was used to interpret the provisions to be applied in certain conditions”.

CATEGORIES OF PENALTIES ACCORDING TO SHARIA LAW

There are three categories of penalties in Sharia law:

1. “*Qisas* crimes: retaliation or retribution”

2. “*Hudud* crimes: claims against God” (mandatory)
3. “*Ta’zir* crimes: claims of the state/society” (discretionary)

The offences which come under the domain of *Hudud* are the most serious crimes in Sharia law and *ta’zir* offences are thought to be the least ones.

For each category of offence, it has different sources of Shari'a. It is often necessary to combine several sources of Sharia law to conclude the definition of a particular crime and identify its elements to determine the requirements for evidence. All “*Qisas, Hudud and Ta’zir*” include references to the death penalty as “uqubat” for four special crimes “murder, adultery, apostasy and waging war against God”, which are discussed in detail in the next section.

***Qisas* crimes: Murder**

Qisas (requit) laws pursue the principle of “eye to eye”. These laws are used to compensate for killing or serious acts of intentional physical harm. For the implementation of these laws, Sharia has set strict conditions which commensurate with the sanctity of human life in Islam and include the following crimes against any individual:

- “Intentional or premeditated murder (first-degree)”
- “Quasi-intentional murder (second-degree)”
- “Unintentional murder (manslaughter)”
- “Intentional injury (battery)”
- “Semi-intentional/unintentional injury”

The types of punishment report in the Qur'an for the crimes related to *qisas* offences are designed to seek justice and reparation through their equivalent. Thus, the Quran sets the punishment of the death penalty in the case of intentional killing.

“Believers, just retribution is prescribed for you in cases of killing: a free man for a free man, a slave for a slave, and a female for a female. If something [of his guilt] is remitted to a person by his brother, this shall be pursued with fairness, and restitution to his fellow-man shall be made in a goodly manner. This is an alleviation from your Lord, and an act of His grace. He who transgresses thereafter shall face grievous suffering. There is life for

you, men of understanding, in this law of just retribution, so that you may remain God-fearing. (Quran 2:178-9)”

The Act of Forgiveness and Restitution in Place of *Qisas*

Although the Quran undoubtedly declares the death penalty as a punishment for murder under the principle of *qisas* which requires "eye-to-eye retribution in response ", it also provides another alternate course of action, through amnesties and reprisals.

“And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed – then it is those who are the wrongdoers. (Quran 5:45)”

Instead of asking retaliation through execution, the Quran urges the victim (or his or her family) to forgive the offender and accept monetary recompense ("blood money") or charitable work or expiation for sin.

According to the Quranic concept of *diyya*, the provision for payment of compensation is an important reason to encourage victim's relatives to forgive the offender, especially since compensation is not treated as a mere amnesty or "charitable payment". As *diyya* is not considered disgusting, it is a right of the victim's family clearly stated in the Qur'an. In many ways, the notion of *diyya* can be compared to the monetary recompense found in criminal and civil laws in several non-Muslim countries.

Conventionally, in Arabic tradition goods or animals were paid in *diyya* rather than money. However, the amount in *diyya* is derived from Hadith, the Qur'an does not state how much debt must be paid. Various Islamic schools of thought have agreed on different amounts of *diyya*.

***HUDUD* OFFENCE – ‘A CRIME AGAINST GOD’**

The second category of serious crimes which penalizes the death penalty in the Sharia is called the *hudud*. The word *hud* means "limit" in Arabic and refers to "fixed sentence". Therefore, *hudud* and *Qisas* are included in such crimes which punishment is pre-established

or mandatory by the Shari'a law for a particular act. This does not mean, however, that they are immutable.

The six offences which are part of *hudud* are as:

- “*Zina* – adultery and fornication”
- “*Riddah* – apostasy”
- “*Hirabah* – ‘waging war against God and society’ or brigandage/banditry”
- “*Sariqa* – theft”
- “*Shurb al-Khamr* – drinking alcohol”
- “*Qadhf* – slander/defamation (meaning false accusation of any of these things)”

Some Islamic jurists argue that the death penalty is applicable in the first three *hudud* offences:

- “*Zina* – adultery”
- “*Riddah* – apostasy”
- “*Hirabah* – ‘waging war against God and society’ or brigandage/banditry”

According to Quranic interpretations and authentic *hadith*, *hudud* offences are thought to be “the most serious crimes” and for that reason they have fixed punishment; effectively, offences committed directly against God. To some critics this is not true, “because neither any textual proof from primary sources exists nor logically the consumption of alcohol or theft, for example, can be deemed to be more serious than murder and other *qisas*-related offences. Moreover, they fall under the category of *huquq Allah* (‘Rights due to God’) which are less serious than the *huquq al-‘ibad* (‘Rights due to fellow human beings’) perhaps due to this fact it is a wrong assumption that they are ‘the most serious crimes’ under Sharia law”.

The above mentioned arguments have serious flaws and they are based on fallacious grounds. As far as the punishment of theft is concerned, it is clearly stated in *Surah Al –Maaidah* verse 38 that

“As to the thief, Male or female, cut off his or her hands: a punishment by way of example, from Allah,

for their crime: and Allah is Exalted in power. Al –
Maaidah:38.

On the other hand, although, the penalty of drinking alcohol is apparently not revealed in the Quran, it is proven from the Sunnah that the Prophet ﷺ himself established 40 whips for that person who consumed alcohol. Furthermore, offences like theft and consumption of wine are no way less serious than offences related to *hudud* and *qisas*. Despite the fact that theft and consumption of wine have been established as *huquq Allah* ('Rights due to God'), the Quran and Hadith have clearly allocated punishments on these crimes which proves that it would be against the will of God to leave the offender unhurt.

The Death Penalty for *Zina* (adultery)

Islam strictly forbids adultery (*zina*). Adultery is maintained both sin and crime by the Muslim scholars. Besides the Islamic treatment of adultery, it was also treated as a serious crime in the Hebrew Bible. (Deuteronomy 22:22).

Adultery (*zina*) has been discussed at several places in the Quran. Initially, Muslims are urged to avoid coming near to adultery:

“Do not come near adultery. Indeed, it is ever abomination and an evil way. (Quran 17:32)”

Latter the Quran reveals that lash out those who commit *zina*:

“The adulterer and the adulteress found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment. (Quran 24:2)”

Although ruling on stoning to death (*rajm*), the penalty associated with married male and female adulterer is not explicitly stated in the Quran, but the distinction of married or unmarried and virgins' punishment is found in Hadith and Sunnah; The Quranic verse only indicates the punishment of flogging without any distinction between the different types of adulterers. However, traditionalists generally believe that the Quranic verse applies only to unmarried men and women, while the the penalty of stoning to death for married men

and women is found from the Sunnah of the Prophet ﷺ and various Hadith references.

Strict Evidentiary Requirements for the Penalty of *zina*

The court is required to establish compelling evidence before giving any verdict against the offender. The gravity of the crime and its punishment demand substantial proofs because the Quran and Sunnah necessitate a fair trial based on indisputable evidence. Owing to this extraordinary and cautious procedure, the court is obliged to dismiss the charges against the offender if the evidentiary process turns slightly doubtful. According to Sharia interpretation, in the case of adultery (*zina*) only such person would be subjected to the death penalty by stoning who Sharia law declares as *muhsan*. The prerequisites to establish a man or women as *muhsan* are that he/she be an adult married Muslim man or women who must commit lawful sexual intercourse with his/her legitimate free partner.⁸

In Sharia law, the first way to prove a person as *muhsan* is his/her own confession or recognition. Most jurists argue that the person should clearly indicate that he fulfills the above conditions. In addition, before admitting a person's confession as sufficient evidence, the judge must ensure that the convict making the confession fully understands the meaning of *muhsan* and the elements which are the part of *muhsan* man or women.

The second way to establish a person as *muhsan* is to call witnesses. The testimony of two men or a man and two women, known for their righteousness, is adequate evidence. After the convict has proved to be as *muhsan*, the next course of action is to prove the offence of adultery against him/her. There are two different procedures to prove the offence:

First Procedure:

It is necessary that the convict freely and voluntarily confesses the adultery offence. However, if he declines his confession, he will not be punished (unless the witnesses are present), because there will be no further evidence of his crime. In case of recognition, the judge is obliged to overlook the first three admissions of the convict. If the adulterer freely repeats his confession four times then he would be subjected to the punishment of *zina*.

Second Procedure:

The second method to prove the act of adultery is based on four male trustworthy Muslim eyewitnesses who testify that they themselves have witnessed the smallest detail of adultery at the same time. Even it will not establish adultery if both a male and female are found naked in a closed room unless four eyewitnesses watch the man's penis rests into the woman's vagina.

The Quran has itself set the criterion of 'four male witnesses' to prove the offence of adultery 42. The given verse was revealed to the Prophet Muhammad ﷺ in response to false allegations of adultery against his wife, Aisha (peace be upon her):

“As for those of your women who are guilty of gross immoral conduct, call upon four from among you to bear witness against them. (Quran 4:15)”

“Why did they [who slandered] not produce for it four witnesses? And when they do not produce the witnesses, then it is they, in the sight of Allah, who are the liars. (Quran 24:13)”

RIDDAH: APOSTASY

The literal meaning of word *riddah* is "relapse or regression". In Islamic terminology term, *riddah* (apostasy) refers to the act of giving up Islam and accept atheism or a different religion in place of Islam. *Riddah* (apostasy) can be carried out through utterances, intention or action to denounce Islam. For example, if a sensible Muslim man/woman rejects the existence of God or denies the obligatory status of daily prayers, fasting, etc., he/she would commit the act of *riddah*.

However, the majority of Muslim scholars adhere to the traditional view that the penalty of apostasy is death. They rely on the hadith reported by Akramah through Ibn Abbas, who quoted the Prophet as saying "kill the person who changes his religion" ⁹. Other *hadith* in this regard states that:

“If someone changes his religion – then strike off his head. (Reported by Malik ibn Anas)”

HIRABAH: BANDITRY OR ROBBERY

The Sharia term *hirabah* is coined from the Arabic *harb* which meaning is war in its literal sense. According to Quranic interpretation, *hirabah* is like “waging war against God”:

“Indeed, the penalty for those who wage war against God and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world, and for them in the Hereafter is a great punishment. (Quran 5:33)”

The offence of *hirabah* is so violent that the Quran declares it war against God. Although the Quran does not literally define the meaning of “waging a war against God”, the Islamic (*fiqh*) jurisprudence has specified it as the form of intentional “extreme violence” which leads to death. It includes: the act of individual murdering, mass murdering, rape and murder, war crimes etc.

The Quran has declared the following penalties against *hirabah* in verse 5:33:

- “execution;”
- “crucifixion;”
- “amputation of hands and feet from the opposite side;”
- “exile (imprisonment).”

Besides the circumstantial evidence, to prove the offence of *hirabah* Sharia law has set a similar procedure as it adopts in *Qisas* and *Hudud convictions*. It is necessary that either the accused should willfully confess his/her crime or at least two eyewitnesses give beyond the doubt testimony against the convict.

Ta‘zir Crimes

Ta‘zir crimes are those which do not come under the categories of *Qisas* and *Hudud*. These crimes are relatively less violent than *Qisas* and *Hudud* offences, therefore, it the right of a state or judge to set punishment in these crimes. There are four conditions when *Ta‘zir* penalties are applied:

(1) attempted adultery; (2) *hudud* crimes which involve “extenuating circumstances or doubt”; (3) condemnable acts such as false testimony etc; (4) acts like obscenity.¹⁰

Ta'zir, instead of "a claim against God", is a crime against the state laws or public interest. The purpose of *Ta'zir* is to prevent greater harm before it occurs in the future. Therefore, the Sharia has allowed the legislation to set up secular laws, if necessary, to intimidate the offenders.

Besides the international criticism against the death penalty, most of the Muslim countries still uphold the law of death penalty in different cases. Moreover, Legislative support has in fact increased the number of offences punishable by death, particularly with regard to drug-related offences, acts of terrorism, attempted murder, witchcraft, homosexuality and arson are some examples of these offences. Some critics, who oppose the death penalty, argue that Islamic scholars and states have extended the scope of the death penalty for crimes that directly do not come under the provision of any specific Quranic interpretations. These critics further argue that in some cases, arguments in support of death penalties are based on inadequate evidence that barely establishes the application of the mandatory death penalty in those cases, given the importance of human life to Islam.

Apart from all the hue and cry from the west against the laws of the death penalty, scarcely any voice from the Islamic world has favoured their demand of the abolition of the death penalty in the Islamic countries. However, many western countries have quashed the death penalty from their legal system. None the less, punishment of death remains valid legal provision in the majority of countries around the world.

In the Islamic perspective, no punishment can be carried out without strong evidence based on the Qur'an, Sunnah, or an appropriate consensus. This consensus requires the approval of all the Islamic scholars who hold the scholarly appreciation in the entire Islamic world. Like all aspects of Islamic life, in the cases of serious offences which require capital punishment, Muslims are encouraged to follow the instructions of the Prophet and forgive the perpetrators to suspend the death penalty as much as possible.

CONCLUSION

Islam without any doubt considers the death penalty as part of the “criminal justice system”. However, its scope is more limited than the western world makes propaganda against Islam. Sharia law creates strict conditions for its use and includes various possibilities to avoid or mitigate the death penalty. In addition, Shari'a explicitly prefers life rather than death through general themes of tolerance, mercy and repentance as a substitute to penalization. Additionally, Islam declares the protection of human life as one of the five "indispensable" rights of any human being.

The purpose of this article is to prove that in some cases, the death penalty is aptly required under the Shari'a law and the suspension of the death penalty would be the last option to eradicate the serious crimes.

Although the Quran explicitly directs the death penalty as a punishment for Qisas (retribution) offence but actively encourages forgiveness and repentance as a substitute.

The death penalty for adultery and apostasy is not explicitly mentioned in the Qur'an, but is founded on several *hadiths*. The strict evidence of adultery (four eyewitnesses) and high investigative procedure proves that capital punishment was not intended to be practice, but with caution. Such as the crime, like *hirabah* the Quran expressly command for the death penalty. However, majority of Islamic scholars have the consensus that the provisions contained in the Qur'an related to *hirabah* offence are not mandatory, but discretionary, which means that an alternative punishment can be applied, such as imprisonment.

Other contemporary crimes related to the death penalties in Muslim countries, such as drugs, homosexuality and witchcraft / magic, have no clear punishments in the Qur'an or Hadith. However, secondary sources such as *Ijma* and consensus and *Qiyas*(logical reasoning) justify such penalization in the light of Quran and Hadith.

In order to avoid injustice, Islam instructs the administration of justice on earth. Therefore, the strict requirements of evidence and the possibilities of avoiding or mitigating the sentence mean that Islam has established a system of deterrent punishment, without the need to apply the death penalty in practice. This corresponds to the idea that if

a person survives the appropriate punishment on earth, absolute divine justice can still be achieved in the Hereafter.

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