

## **CAPITAL PUNISHMENT - A FAITH ISSUE IN -- AN ISLAMIC PERSPECTIVE**

By Dr. Shahid Athar

In the United States, 38 states have reinstated capital punishment, and 3,000 prisoners are on death row. The homicide rate in 12 states which do not have capital punishment is higher than those who have it. Afro-Americans claim that in certain states, they receive an unduly higher proportion of the death penalty. To date in the U.S.A., 45 men have been executed, only to have their innocence proved later on. The fairness of implementation of death penalty laws from state to state is a major issue. Many defendants had neither adequate counsel, nor could they afford a private one during their trials. On the other hand, it is claimed that the rich and influential, black or white, can get away with the crime by hiring the most expensive trial lawyers.

Although capital punishment has been around for thousands of years, its status has always been questioned. The human rights groups discuss whether or not it is legally sound, the law enforcement agencies argue whether or not it is useful and effective, and the Legislature discusses whether or not it is cost effective. However, it is hardly ever discussed as an issue of faith.

We must consider capital punishment from the aspect of a giver of life and death. "He who created life and death, that He may test which of you is best in deed. He is the mighty, the forgiving." (Qur'an 67:2) "No one can die except by God's permission, the terms being fixed as by writing." (Qur'an 3:145) Life is sacred. "Do not take the life which God has made sacred except in (the course of) justice." (Qur'an 6:151)

Thus it is clear that the giver of life and death is God Himself alone, and anyone acting on His behalf must act according to His principles. "We decreed for the children of Israel that whosoever kills a human being for other than man's slaughter or corruption on earth, it would be as if he killed all mankind; and whosoever saves one life, it would be as if he had saved the life of mankind." (Qur'an 5:32)

Capital punishment is mentioned in the Holy Qur'an as well as in the Old Testament as a form of retaliation (qisas). "And we prescribe for them therein the life for a life, the eye for the eye, the nose for the nose, the ear for the ear, the tooth for the tooth, and for wounds of retaliation. But whosoever forgives it (in the way of charity), it shall be expiation for him. Whosoever judges not by that which God has revealed, such as wrongdoers." (Qur'an 5:45). A similar verse is seen in the Old Testament (Exodus 21:23-25.) In the New Testament, the law of retaliation

was omitted. "You have heard it said, an eye for an eye and a tooth for a tooth, but I say to you, do not resist one who is evil but if anyone strikes you on the right cheek, turn to him the other also." (Matthew 5:38-39).

However, these New Testament verses should be interpreted in the light of another of Jesus's statement, "Think not that I have come to abolish the law and the prophets. I have come not to abolish them but to fulfill them." (Matthew 5:17). Capital punishment was prescribed in the Old Testament, not only in lieu of murder, but 18 other crimes also including adultery, blasphemy and homosexuality. In the Bible, the penalty is death for blasphemy. "When he blasphemeth in the name of the Lord, he shall be put to death." (Leviticus 24:16) Salman Rushdi, in those days, did not need a fatwa.

Thus it is clear that Islam did not initiate the law of capital punishment; it was there in the Old Testament, and Islam added the concept of blood money, which was practiced by Arabs before the Qur'an was revealed. The concept of blood money can be compared with the modern concept of compensation to the victim or the wronged party.

There are three crimes for which the death penalty is justified: (a) In lieu of an unjust and proven murder, life for life; (b) adultery (zina) committed by a married person, either confessed by him or her four times, or if the act is witnessed by four people; and (c) apostasy from Islam after willingly accepting it, declaring an open revolt against Islam, threatening the solidarity of the Muslim community.

The punishment for homicide in Islam could be either qisas (retaliation) or payment of diya (blood money). This is mentioned in Qur'an as the punishment for homicide as either killing of the murderer or payment of compensation to the next of kin if they do not insist on retaliation (qisas). Qur'an says, "O you who believe, retaliation is prescribed for you in the matter of murder, the free man for the free man, the slave for the slave, the female for the female, but if any remission is met to him by his brother (brother in faith), then grant any reasonable demand and compensate him with handsome gratitude. This is an alleviation and mercy from your Lord, and whosoever transgresses after this for him, there will be a painful punishment. In qisas, there is life for you, for men of understanding, in order that you may become God conscious." (Qur'an 2:17)

For accidental homicide, there is a different law mentioned. "Never should a believer kill a believer unless by mistake, and whoever kills a believer by mistake should free a believing slave and pay compensation to the family of the deceased, unless they remit it freely." (Qur'an 4:92). Thus, taking these verses together, it is clear that no qisas or retaliation is owed for accidental homicide, but compensation is allowed.

Islam's emphasis on the sanctity of life extends not only to which it considers a living person. Thus, if a pregnant woman in the stage of viable pregnancy is injured, for example, by a thief to the extent that she aborts or delivers a dead fetus, the thief can be charged with murder of the fetus; and the law of qisas will apply unless the mother forgives him and accepts the blood money.

Islamic laws are based on justice as one of the attributes of God Himself is Al-Adil ("The Just One"). Therefore, justice must be applied to those to whom it has been done injustice. The main question is who should apply the justice. Certainly, it cannot be an individual taking the law into his own hands and applying capital punishment to the murderer. A Sharia court comprised of judges who are familiar and expert in the Islamic laws is the best authority. An Islamic judge, however, may turn the case over to the next of kin for a compassionate judgment.

The secular justice system is a questionable authority in Islam. Most of our justice system is flexible and changes according to public opinion. Islam is not a religion of individuals or public opinion. We are told in Qur'an that "It is not fitting for a believing man or believing woman to have an opinion in their affairs when God and His messenger have decided an affair for them. And whoever is rebellious to God and His messenger, has gone astray in an error manifest." (Qur'an 33:36).

Islamic law of capital punishment cannot be hastily applied. Investigation and proof. Circumstantial evidence alone cannot be used to take away someone's life. Confession by the criminal himself four times is the best witness. However, other witnesses can be used by the court. The eye-witnesses should have known high moral quality and standing in the community. Usually two male witnesses or one male and two female witnesses are enough except in cases of adultery when four witnesses are required to make it more difficult for conviction.

Once the capital punishment has been prescribed by the court of Sharia, it should be carried out in a public ceremony. The purpose is to give a lesson to the witnesses present as a reminder and as a deterrent. There should be no sympathy in their hearts or protest against a just, legal system, and the punishment prescribed for an evil crime, i.e., the bombing of the Oklahoma City Federal Building. There should be no public cheering or shouts of protest.

The emphasis in Islam is not on punishment itself but the reform of the criminal as well as a reminder to those who are witnesses to the punishment. We believe that after receiving the due punishment in this world, the murderer in the life hereafter will not be questioned about it, and will receive his due share of rewards for the good he might have done in this life. For this reason, before the administration of capital punishment, he is advised to perform the ritual prayer and pray to God for his forgiveness before he departs this world.

The present capital punishment law in the U.S.A. varies from state to state, and it is claimed that it is more biased against Afro-Americans. To the contrary, Islamic law, if correctly applied, will be uniform in each state and will not discriminate against any race, color or gender.

The Divine Justice and Wisdom cannot be compared to the ever-changing man-made laws. The rights of the criminal cannot be the same as those of the innocent victims and civilians. The latter cJustice seeks to protect innocent civilians from future crimes of the serial killer or rapist at large. The cost to keep him in is about \$50,000 per year per person. However, life is priceless of the victims of the homicide as well as of legalized murder.

\*Presented at the Indiana University School of Law, Sunday, May 7. Dr. Athar, an Islamic speaker and writer, is the past President of the Islamic Society of Greater Indianapolis, and Co-Chair, Medical Ethics, Islamic Medical Association. The program was moderated by Professor Norman Lefstein, Dean, Indiana University School of Law.